



ALTERNATIVE REPORT CHILE

Alternative Report Chile

**Response to the key recommendations of the
United Nations Committee on the Rights of the Child**



*Network of Child and Youth
NGOs, Chile*

Santiago-Chile June 2005

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Introduction

Some of the problems that most affect children and adolescents in Chile - lack of protection, exploitation, lack of opportunities and psychological aggression - tend to be ignored by government policy. This is the main conclusion we have arrived at in comparing our reality to that stipulated in the United Nations Convention on the Rights of the Child, which was ratified by the Chilean Government in 1990. Moreover, it is particularly concerning that sometimes these problems are virtually “invisible” to State institutions.

This Report, prepared by the Network of Child and Youth NGOs of Chile, the main coalition of community organisations working on this issue, brings together the points of view, information and experience of each of its member organisations on issues relevant to the focus of their work.¹

We concerned ourselves as much with child labour as we did with the family environment and schooling levels of children and adolescents; we looked into the discrimination affecting those from indigenous minorities and those who have migrated from neighbouring countries; the problems of access to education and other services, which is especially difficult for those who come from low income households; and the violence that is perpetrated or has been perpetrated against children and adolescents, leaving long term consequences, whether it be political repression, sexual exploitation or child trafficking.

The problems or situations outlined in the Report reflect the experience and convictions of non-government organisations that work directly with the affected children and adolescents, and thereby serves as a direct testimony from them. Constructing an analysis from the basis of the direct work of these organisations, not only allows us to validate the information but also to create better conditions for dialogue between the community and the State. The political autonomy that defines a strong community and that, in turn, stimulates productive dialogue with the State, can benefit from a spirit of constructive criticism like that which underlies this Report.

In reviewing the degree of implementation of the general principles of the Convention on the Rights of the Child, we found problems in common between different groups of the child and youth population of Chile: deprivation of their right to fully access education and healthcare services, and deprivation, in different ways and to different degrees, of their right to live without violence and with full legal protection. Such situations affect: the youngest members of our country's indigenous population; migrant children who mainly come from neighbouring countries; children who work or live in the street; children who are the object of sexual exploitation and illegal trade and trafficking; and finally those who, as children, were imprisoned or tortured during the military regime. In regards to this last group, the Report analyses their present situation and the appeals they are making to the State for legal and economic compensation.

The new Juvenile Criminal Responsibility Act is also analysed in the Report because of the wide ranging effects it will have on children and adolescents who live in vulnerable human rights situations.

¹ We acknowledge the participation of the following organisations in the preparation of this Report: ACHNU, Agrupación de ExMenores, Colectivo Sin Fronteras, Aldeas S.O.S., Colectivo de Investigación Crítica, Hogar de Cristo, La Caleta, Moani, Pidee, Raíces, Serpaj, Tierra de Esperanza, Vicaría Pastoral Social (Catholic Church).

Non discrimination

Indigenous Children

Article 2 UN CRC: *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

26. The Committee has requested information about the measures adopted by the Chilean State to deter and combat racial discrimination, in law and in practice, especially against those who live in rural areas. Chile is a multiethnic and multicultural country inhabited by various indigenous peoples: Aymara, Colla, Kawéskar (Alcalufe), Likanantay (Atacameño), Diaguita, Mapuche, Quechua, Rapa Nui and Yámana. According to figures from the most recent official Census (2002), the indigenous population is numbered at 692,192, and corresponds to 4.4% of the total Chilean population. Of the almost 700,000 people who belong to the indigenous population, 223,000 are under 18 years of age (32.2%).²

Historically, policies and legislation applied to indigenous people by the State were designed to assimilate these groups into Chilean society, but without any measure of respect for their culture and identity. This situation was exacerbated during the military regime (1973-1989) with the passing of Acts No. 2,568 and 2,750, which constituted a threat to indigenous people's survival, lands and culture, and this mainly affected the Mapuche people.

With the return to democracy, indigenous people's issues have begun to acquire a greater visibility. In 1993 Act No. 19,253 was passed and the National Indigenous Development Corporation, CONADI, was established as the organisation that would implement this Act. Gradually, the State has begun to recognise indigenous rights related to land ownership. Likewise, it has begun to implement welfare and development programs. These initiatives represent an effort to comply with international agreements and conventions. Despite government efforts, the indigenous population, especially those that live in rural areas, is a long way from attaining a satisfactory level of basic needs and integrated development. Several human development indicators demonstrate that the poverty level in the indigenous population is 35.6% in comparison with 22.7% in the non-indigenous population.

Mapuche People. The Mapuches are the most important indigenous group in the country. 35.2% of the Mapuche population lives in rural areas, as compared to 12.4% of the non-indigenous population; this means that a third of the Mapuche population lives in rural areas. The regional distribution of the country's child population is concentrated in the 9th Region (51.4%) and the majority of them live in rural zones (25.1%).

The poverty affecting the Mapuches is reflected in social indicators that place this sector of the population in a clear situation of comparative disadvantage in relation to the rest of the country's population. The Human Development Index (IDH) of the Mapuche population is one digit lower than the non-indigenous population (0.6 versus 0.7), and the lowest IDH in the entire country corresponds to the Mapuche population in the Araucanía sector (0.5).³

² National Institute of Statistics-Chilean Planning Min. "Census 2002". Indigenous Population Statistics. Santiago-Chile, 2004.

³ UNICEF-Chilean Planning Min. "Infancy Index. A municipal and regional overview". Santiago-Chile, 2002.

The Infancy Index⁴, prepared by UNICEF and the Chilean Planning Ministry (2002) measures the level of basic needs of children in the following categories: deficient, less than sufficient, sufficient, more than sufficient and satisfactory. The measurement is graded from 0 to 1, 0 being the minimum and 1 the maximum. According to these indicators, the average value of the Infancy Index in Chile is 0.62; corresponding to a satisfactory level. The Araucanía Region has the highest percentages of poverty and homelessness and, at the same time, has the highest proportion of Mapuche population (32.6%). In nineteen of the region's municipalities the level of conditions for child development is deficient. The municipalities that show the worst infancy indexes are Puerto Saavedra, with an index of 0.16, the Ercilla Municipality with 0.21 and Loncoche with 0.26. These three municipalities register very low levels in all aspects, especially in income and education.

Situated geographically in the Puerto Saavedra Municipality, the Lake Budi territory is home to 120 Mapuche communities. Around 50% of the houses in this area are categorised as deficient. Although the housing subsidy in this zone has increased, the families live in overcrowded conditions, because the family groups are too large for the size of the dwellings (on average eight people per 50 m²). As well, it is important to note that in indigenous culture, family groups consist of children, parents and grandparents. The Mapuche population traditionally takes care of the “elders” (old people), a custom that is also part of their strategy of support and survival.

* **Education.** The government has implemented compulsory 12 year free primary education. Nevertheless, the schooling level of indigenous children is 2.2 years less than the non-indigenous average (9.5 versus 6.7 years). While illiteracy in urban areas has almost disappeared, in rural areas it is registered at 12.2%.⁵ In the Mapuche communities the illiteracy rate reaches 34%. The educational lag in the Mapuche population is concentrated in the female members of the communities, where the average schooling is 4.3 years.

The lack of a complete educational experience is a result of the fact that in rural areas 75% of schools only offer up to 6th or 8th grade. For children and adolescents from isolated areas, like the communities that live in Lake Budi, to continue their education they have to be able to provide compulsory uniforms, personal hygiene items for boarders, books, supplies, supplementary food, and the cost of travelling to the boarding institution, all of which the families do not have the economic resources to cover. This lack of resources becomes a threat to the continued education, and thereby increasing school desertion. It is important to note that a family with three children and one grandparent live on the equivalent of US\$100 a month, monies received from the old age pension and family care allowances.

The poor quality of primary education provided in rural schools is another reason why children drop out. These schools, and specifically those in Lake Budi, use a system of “automatic promotion” in all primary grades, which means that students go up to the next grade, even though they may not have acquired the knowledge and skills of the grade they have just completed. These schools are in fact infringing the “automatic promotion” rule, since the Chilean Education Ministry has set this down exclusively for 1st Grade students. This transgression becomes obvious when the adolescents enter secondary schools: they show

⁴ UNICEF-Chilean Planning Ministry. “Infancy Index. A municipal and regional overview”. Santiago-Chile, 2002.

⁵ Javier San Miguel. “Safe nutrition and education for the rural population”. Chilean Education Dept. Santiago-Chile 2004.

very poor academic performance, or they simply fail and end up dropping out of the education system. A study carried out by the Chilean Teachers' Union and the International Labour Organisation⁶ maintains that the poor quality of learning is a result of the fact that children and adolescents have to fit in their school tasks around their work (care of animals, harvests, domestic chores), and this situation causes absenteeism and holds back their learning process. Also, the study emphasises that students suffer a lack of motivation, because what they are taught at school is incompatible with cultural teachings at home.

The Chilean Education Ministry has designed an intercultural education program for indigenous communities. To date they are no records of the evaluation of this program, which makes it impossible to ascertain how much impact this policy has had and whether it accords with the interests and needs of the indigenous population. In the case of subsidised schools in Lake Budi (which represent 99% of the local schools)⁷, the implementation of the intercultural education program is left to the discretion of the school's owners. The absence of monitoring of department policies has led to the situation where there are schools that simply do not have an intercultural program, for example the rural schools of Huillinco, Huallepén Bajo and Huallepén Alto in the Contulmo Municipality (8th Region).

These practices contradict the State's duty to provide education that ends the cycle of poverty and prepares students for the future. Low quality education accentuates differences and lowers the possibility of achieving a better quality of life. This reality forces young people to emigrate to the city in search of opportunities.

María Nahuel. President of the Collileufu Grande community, Lake Budi, states:

"We don't know if our children will set foot in the university. We keep this uncertainty to ourselves because we don't have the resources to think about tertiary education, and also because we know that our children are not prepared for further education. We want our children to study because we know that this is a tool for facing modern life, but this is not being provided in rural schools because the majority of these schools do not provide good education and the teaching methods are directed towards people in the city, not people in the country.

I have five children; the eldest two didn't finish school because I didn't have the resources to send them to the town to finish their studies. Carlos, my third child, is at high school because he was sponsored and his godmother sent him the school supplies, uniform and money for transport. It's a tremendous help, without it he wouldn't have finished school either.

Today's education clashes with our traditions, our customs. Our rituals are not respected. When classes begin we are in the middle of harvesting and that causes a conflict for us because we must harvest to be able to eat during the year. Maybe children in the city can start school in the first days of March, but not country children because things in the country are different. I think that education is created for city people and not for us."

* **Health.** The Mapuche communities of Lake Budi do not have sanitation or safe drinking water. The water source they drink from is a well. Studies carried out by the Frontera University of Temuco show that well water in this region presents high levels of bacteria but,

⁶ Chilean Teachers' Union-ILO. "Child Labour and Indigenous Peoples". Santiago-Chile, 2005.

⁷ In Lake Budi there are 43 schools, only two are public schools. The other 41 schools belong to private owners, which means the owner or "sustainer" receives funding from the State of approximately US\$55 per enrolled student.

despite its contamination, it is used for daily consumption, both at home and at school. The lack of hygiene and sanitation services are factors that promote gastrointestinal diseases and skin infections, mostly in children.

Added to this poor health quality, there is also a poor level of nutrition in the child population. This situation can be observed in the bad teeth and obesity caused by the high consumption of bread, fat and potatoes. The scarcity of crops in Lake Budi is a result of the meagre amount of cultivable land, the poor quality earth and depleted soil, produced by erosion and mono cultivation.

Poor nutrition has affected the height of the indigenous population. Academic studies sustain that the height of the Mapuche people is almost two standard deviations (on average) less than the international reference, keeping in mind that the height of the ethnic peoples that were studied increased with the decrease of social vulnerability and conditions of impoverishment in the family. This last assertion is independent of the origin of the ethnic people, and states that it is the result of permanent exposure to an unfavourable environment.⁸

In health terms, the Mapuche infant population is at a disadvantage with respect to the national infant population. In the Lake Budi zone, there is one health clinic for each five to eight communities, which only provides first aid attention. Access to medical attention is fortnightly or monthly, with visits from a doctor and a midwife who focus on child health control, pregnancy control and general medical attention. Children that need specialised medical attention must be referred to a nearby city, or must travel to Temuco, the Region's capital.

* **Human Rights.** The territorial conflicts which erupted in 1994 between some Mapuche communities and forestry companies became more intense in 2001. The 8th, 9th and 10th Regions have been the scene of a long history of exclusion, marginalisation and land seizure. During these last 12 years, the central figures in the conflict have been the communities' leaders and "lonkos". They are the ones who defend their rights to land, culture and development with body and soul. Children and adolescents appeared to be on the sidelines of the disputes.

Nevertheless, recently there have been incidents of human rights' violations of children and adolescents. Alex Lemus, 17 years old, was killed by police inside the Santa Alicia farm in the 9th Region; Daniel Ñancupil, 12 years old, was wounded at point blank range in the El Carmen farm (9th Region, 2001). The repression of the Civil Police (Investigaciones) near the Tirúa Public School (9th Region, 2001), while the children and adolescents were in classes; the violence exercised by the police against children during a Mapuche demonstration in Santiago (Metropolitan Region, 2002), being just a few of many incidents.

In the last four years, the 350 Mapuche children and adolescents who belong to the Temucuicui, José Guñi6n, San Ram6n, Tricauco, Chekenko and Nahuelmapu communities in the Ercilla Municipality (9th Region), have been living in a constant atmosphere of uncertainty and violence. The land conflict that the communities have with the Mininco Forestry Company, Caut6n Forests, Arauco Forestry Company and the Diguill6n Company has worsened since 2001. In that time, a large number of families have had to change their way of life to be able to survive. Many children have had to leave school in order to take charge of

⁸ Marcia Erazo, Hugo Amigo and Patricia Bustos. "Ethnic Mapuches and socioeconomic conditions in relation to adult height". *M6dica Chile Review*, April 2005. Vol. 133 N° 4.

the home because their fathers were arrested or had to go away for fear of reprisals. The children and adolescents live in fear because these communities are surrounded by uniformed police and special police forces. The constant police vigilance and the general militarization of the area have created a situation of permanent abuse, especially for the children of community leaders. The child and adolescent population of these communities face situations ranging from social problems related to the absence of the head of the household, to psychological disturbances produced by the raids, systematic persecution and terror campaigns they have been subjected to.

The Mapuche leader José Cariqueo Saravia states that the area has been militarised for six years and this situation is affecting their cultural rituals, for example the rogations and the nguillatún.

“There is constant fear about how visitors invited to ritual ceremonies will be treated, and if we will be able to hold these ceremonies peacefully. The children experience the same fear because their belongings are searched every time they go to school. Children who have been beaten, like my own children, experience a greater level of fear”, he adds.

José Cariqueo⁹, lonko of the José Guiñón community, has four children (15, 10, 8 and 5 years old). *“My eldest child was beaten and had his hair torn out when they went to arrest me. After beating him they put him in the police truck with all of us who had been arrested. That was in 2004, and in 2005 Natalia, my 5 year old daughter, was beaten during a raid. They broke her ribs because they kicked her in the back. Not only my children, but all the children in the communities, have had to go through this. A boy in Temucuicui was arrested and interrogated by the police to find out if his father had weapons in the house, and this child still lives in a state of fear. The problem is very serious because it is the authorities who are abusing the children, it is the authorities who are not concerned about Mapuche children. We don’t receive any psychological support for children in affected communities, because it is the State itself that perpetrates the negative image of the Mapuche people. They treat us as terrorists and not as a people claiming land rights”.*

Synthesis. The largest group within the indigenous population in Chile is the Mapuche people (87.3% of the country’s total indigenous population). People of Mapuche background, like the rest of the members of indigenous communities in the country, live in conditions of

⁹ José Osvaldo Cariqueo Saravia. Lonko of the Cacique José Guiñón community, Ercilla Municipality, 35 years old. He is also the “dungu machife” of his community (the person who assists the “Machi” [priest] in ceremonies). He is the brother of Florencio Jaime and Juan Patricio Marileo Saravia, both convicted of terrorist arson. He was arrested on 4 December 2002, charged with illicit terrorist association. Later, in January 2003, he was charged with committing arson at the Poluco Pidenco forestry station. He was imprisoned for 13 months in the Temuco and Angol Prisons (from December 2002 until February 2004). He failed to appear at the trial of the Poluco Pidenco case in August 2004, and remained fugitive from justice until October 2005.

In December 2005, an oral hearing for illicit terrorist association was held, and he was absolved of all charges. In February this year, José Cariqueo was freed after more than three months awaiting trial. The court was unable to appoint a qualified judge to try his case, therefore the trial was not held in the legally stipulated time (11). Nevertheless, an oral hearing began on 20 March and he was placed in preventive detention after rejecting defence, since according to Cariqueo the conditions necessary for a fair trial did not exist. At the present time, José Cariqueo is being judged in his absence, held in a side room, and his trial is being carried out behind closed doors, without a public audience. The media that came to cover the trial had their cameras confiscated by order of the court, and these will not be returned until the trial finishes, expressly violating Article 1 of the Criminal Procedure Code that states: “every person has the right to an oral and public pre-trial.”

impoverishment and homelessness. Their poverty is reflected in social indicators that place them in a situation of obvious disadvantage compared to the rest of the country's population. The Human Development Index (IDH) of the Mapuche population is one digit less than the non-indigenous population (0.6 compared to 0.7), and the lowest IDH of the entire country corresponds to the Mapuche population in the Araucanía sector (0.5). From these indexes we can gauge the structural discrimination that operates against the Mapuche population in social and economic spheres, which manifests in their limited access to government services, including education and health, and restricts their gaining any benefit from the overall development that occurs in the country.

In the framework of constitutional reforms, Chile is one of the few countries in Latin America, together with El Salvador, Honduras, Costa Rica and Uruguay, which still has not reformed the Constitution to recognise the existence of indigenous people and to incorporate constitutional guarantees for their rights. Furthermore, Chile has not ratified the International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169). The failure to ratify this convention has been cited as an important limitation to the development of indigenous people in Chile¹⁰.

Recommendations

- * We request that the Chilean State create psychosocial programs directed towards the well-being and development of Mapuche children and adolescents in rural areas. These should have specific goals and objectives, subject to evaluation.
- * We recommend that the Chilean State undertake an audit of the intercultural bilingual education program, both in regards to the efficiency of its implementation as well as its effectiveness. Similarly, the State should supervise the teaching in rural schools, with the aim of reducing failure and drop out rates as a result of the poor quality of education students receive.
- * We request that the Chilean State embrace the world view and development concepts of the Mapuche people, in the areas of education and health. Current policies tend to homogenise lifestyles, which causes a suffocation of the rituals and customs of the Mapuche people.
- * We request that the Chilean State implement public policies that more effectively recognise cultural diversity, through the widening of rights and opportunities. Only in this way will we be able to contribute to improving the integration of the original peoples of this land into our society.
- * We recommend that the Chilean State ratify Convention 169 of the International Labour Organisation, as well as other international agreements that guarantee the human rights of indigenous peoples.
- * We request that the Chilean State take note of the human rights violations occurring in the areas where there are land disputes since, without motive or reason, children and adolescents are suffering police repression, live under constant observation, and are subject to identity controls, persecution and/or intimidation.

¹⁰ FIDH. "The other Chilean transition: Rights of the Mapuche people, criminal law policies, and social protest in a Democratic State". Santiago-Chile 2006 Pp 5 & 6.

Migrant and Refugee Children

Article 2 UN CRC: *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

28. The Committee has requested information about definite measures taken to reduce economic, social and geographic inequalities, with the aim of avoiding discrimination against the most disadvantaged groups of children, among them children of minority groups or indigenous communities, disabled children, children born out of wedlock, non-Chilean children, children who are migrants, displaced, refugee or asylum seekers, and children who live or work in the street.

In Chile there are 45,548 foreign-born children under 18 years of age, according to figures from the most recent official Census. The Argentinian-born child population resident in Chile is 20,041, making up 44% of the total. A total of 4,381 Peruvian children live in the country, equivalent to 9.6%, and there are 2,678 children and adolescents from the United States, corresponding to 5.9% of the migrant population.

In the years between the official Census of 1992 and 2002, there was an increase of 219% in the Peruvian population of Chile. The figure of 1,373 in 1992 rose to 4,381 in 2002. The 2002 Census indicates that the number of people aged 14 years or under who came from South American countries were 25,153. Within this group, the migrant population who come from Peru, Bolivia and Ecuador show the most vulnerable socioeconomic characteristics.

The principle of *Non Discrimination* is enshrined in the framework of human rights, as well as being described in the International Convention on the Rights of the Child, and is integrated in the Chilean Constitution. Equal rights are upheld, in the same way, in the National Policy and Integrated Plan in Favour of Children and Adolescents 2001-2010 which establishes that “the State is especially obliged to guarantee ‘equal consideration and respect’ for all children and adolescents, by adopting appropriate measures to ensure the effectiveness and protection of their rights, thereby requiring the establishment of protection and compensation policies with regard to children and adolescents in high risk situations, with the aim of ensuring equal opportunity to access and exercise their rights.”¹¹ In spite of this, the regulatory framework for children’s rights does not guarantee these same rights for migrant and refugee children and adolescents. This omission has become, therefore, one of the causes of violation of the rights of the child migrant population.

Currently, debate about a migration policy is in process, and this would complement actions promoted by the State, with the aim of reducing the rising level of discrimination that is affecting these foreign-born children and adolescents that have made Chile their home.

* **Health.** There are no laws, judicial or administrative regulations that establish guarantees for migrant children and adolescents to access their basic right to health care or social security. The Political Constitution of Chile only mentions that the State must guarantee

¹¹ Chilean Planning Ministry. “National Policy and Integrated Plan in Favour of Children and Adolescents 2001-2010”. Santiago-Chile 2000, p. 11.

access to basic social security for the whole population, but it does not specify that this guarantee should also extend to the migrant or refugee population.

The public health system, therefore, excludes migrant and refugee children and adolescents, leaving them completely unprotected in emergency situations. A diagnostic study carried out at the end of 2004 by the non-government organisation Colectivo sin Fronteras (No Frontiers Collective), revealed that of 77 families of Peruvian, Bolivian and Ecuadorian background residing in the Metropolitan Region of Santiago, 40% were not registered in a public health service, since both the parents and the children did not have valid visas.

This study confirmed that, according to the regulations established by the National Health Fund¹², “the identification of the person who uses this (health) card will be verified by their identity card”. In this way, foreigners that do not have a RUN (National Registry Number) that identifies them cannot access the public health system and, therefore, do not receive medical attention. An identity document and RUN are given out when foreigners have their residency visa approved. This means that children and adolescents, or their parents, whose residency applications are in process or who have an expired visa, do not have the RUN that accredits them as a public health beneficiary, and this impedes their access to the public health system. This difficulty is caused by the anachronistic nature of the current Aliens and Migration Regulation, which establishes special requisites for the contracting of foreign labourers. These requisites are incompatible with the current Chilean labour market and, in practice, restrict the possibilities of acquiring a residency visa. On the other hand, with regards to the refugee population, the RUN is granted between eight months and a year after submitting the refugee application. During this period refugee families have no guarantee of their right to health care. Medical attention for migrants and refugees who do not comply with the RUN requisite is exclusively left up to the discretion of the health service personnel

In municipalities with a high concentration of migrants and where there are no departmental health services – which up to 2005 provided health care on the simple presentation of a passport – the number of persons who used public health services decreased to 26.6%. This situation has become critical since 2005 when departmental health services abolished health services for foreigners without RUN.

The study carried out by the NGO Colectivo sin Fronteras also revealed that 15% of children were denied attention in primary health services, despite presenting obvious symptoms of being ill.

“He couldn’t stand the sore throat any longer. The high temperatures, feeling lacklustre, persistent coughing and pounding headaches, had made Jonathan’s life hell. Raquel, his mother, had no other option but to treat him as best she could on her own. Feeling angry and powerless, she knew that going to the public health service would be a waste of time, because instead of receiving help she knew they would shut the door in her face.”

¹² See www.fonasa.cl / Institución/ Ley FONASA/ Decreto supremo 369/85. Art. 6

“My son was sick, really sick. He was shivering. He couldn’t even speak. But going to the health service was useless, because they have never wanted to help him; they have always refused to do so.”¹³

The only group within the migrant population that has health care rights are pregnant women. In 2002 a project was developed in the Metropolitan Region of Santiago, and its outcome clarified the situation of pregnant women with unresolved residency status. The project centred on registering the women in their local public health service, with the aim of facilitating the control and monitoring of their pregnancy. The Interior Ministry granted a temporary visa for pregnancy control. In 2003, the Health Ministry extended health care for pregnant women to the whole of the Metropolitan Region, “expecting in the short term to cover the entire country”.¹⁴ This regulation does not apply to pregnant women applying as refugees. In 2005 there were three documented cases of health attention being refused to pregnant refugee women who did not have a RUN because their refugee visa application was in process.¹⁵

According to representatives of the Refugee Program of the Catholic Church’s Social Vicariate – United Nations High Commissioner for Refugees (UNHCR), there was “an agreement made between the government, UNHCR and the Vicariate that facilitated, for children and adolescents, access to health care provided by public institutions belonging to the government and municipal health system”.¹⁶ Nevertheless, this agreement has no legal or regulatory backup and therefore “currently, many of the public health services that attend refugees, demand that they fulfil the same requirements as the rest of the population to be able to access the public health system.”¹⁷ That is, they need to have a RUN, as stated above.

The mental health service provided by the public health system is not attuned to the special needs of migrant or refugee children. The State does not have programs that take in or provide treatment in response to the emotional trauma of being a migrant or refugee. This type of service is covered, in part, by the Social Support Foundation of the Christian Churches (FASIC), an institution that implements a mental health program for refugees.

Faced with this reality, the NGO Colectivo Sin Fronteras made contact with representatives of the Health Ministry and the National Health Fund, and achieved the setting up of a working committee in January 2006. The purpose of this committee is to generate alternative health services for migrant and refugee children and adolescents. The representatives of both State institutions assumed the responsibility of providing a quick response to the problem. This commitment has not yet been fulfilled.

* **Education.** The Chilean Government states that “in the educational field the principle of non-discrimination is given full consideration in the educational reform, and one of the most significant measures taken in this area has been the campaign entitled ‘For the Right to Education: integration, diversity and non-discrimination’”, which seeks to facilitate and promote the entry of all the children of migrants currently residing in Chile into the different general, basic and secondary education establishments. Children of foreign nationality whose

¹³ La Nación Newspaper. “Migrant Children: Not Healthy”. Santiago-Chile, 9 January, 2006.

¹⁴Third Chilean Government Report to the United Nations Committee on the Rights of the Child.

¹⁵ Marta González. “Refugee Program of the Catholic Church’s Social Vicariate – UNHCR”, interview September 2005, Santiago-Chile, 2005.

¹⁶ Colectivo Sin Fronteras. “Migrant Children in Chile: Rights and Realities”. LOM Editions, Santiago-Chile, 2004. p. 81.

¹⁷ Marta González. Cited interview.

migrant status has not been regularized will be granted residency permits as ordinary students”.

In December 2004, 79% of the children interviewed by the NGO Colectivo Sin Fronteras attended schools. These children and their families had been able to complete the necessary requirements, both in their country of origin and in Chile, to obtain properly legalised educational records. 11% of the children interviewed were not attending any educational establishments, the main reason for this being that they did not have the documentation that the schools require from foreigners. The process of legalising educational records must be done through the Education and Foreign Affairs Ministries, and the Chilean Consulate in the country of origin; as well as the Foreign Affairs and Education Ministries in Chile.¹⁸

Deyanira is 14 years old and was born in Lima, Peru. She came to Chile, for the first time, in 1999, to spend Christmas with her mother. She then returned to Peru to finish the school year, and finally came back to Chile with her father and siblings. She started school in the middle of 2000, in the Bernardo O’Higgins State Secondary School, *“but I had to leave because it was too embarrassing. There I found out what it means to be marginalised. The kids insulted me, they set up tricks to make me look stupid so they could laugh at me. The Maths teacher was always bothering me, he despised me”*. After that she decided to study with her brother, who was also not attending a school because he didn’t have the educational records that the Education Ministry required. *“I have had a bad time in Chile because they exclude me, above all at school. My experience in the school was difficult”*.

The Chilean government recognises the difficulty of inserting the principles of equality into the society and the different levels of the state apparatus. Meanwhile, the NGO Colectivo Sin Fronteras has developed cross institutional initiatives that tackle the violation of children’s health and education rights. These initiatives brought about the establishment of a working committee with the Education Ministry, which began its work in September 2005. The guideline that regulates the entry, permanency and exercise of the rights of migrant students in Chilean educational establishments¹⁹ establishes guarantees for the access to education for migrant children and adolescents. A few months after coming into force, the majority of educational establishments, public service personnel and the migrant community were unaware of both information about the guideline and its regulations. This lack of awareness of the guideline has become an obstacle to the exercise of education rights by migrant children and adolescents. In October 2005, the NGO Colectivo Sin Fronteras documented 40 cases of children in the Metropolitan Region whose permanency in schools was being threatened.

It has also been verified that foreigners are excluded from the State University Credit Solidarity Fund, therefore university students cannot apply for the financial credit that the State grants to students from low income families unable to cover university fees. From 2006, a bank credit system guaranteed by the State, came into operation. This system includes as beneficiaries, foreigners with permanent residency status. Although it has not yet been

¹⁸ The majority of these processes are centralised in the respective country’s capital cities, which makes them especially difficult for children who were born in regional areas. In the case of Peru, for example, the process takes an average of two months and costs the families US\$30.

¹⁹ Chilean Education Ministry, Reg. N° 07/1008, 29 July 2005. Guideline regulating the entry, permanency and exercise of the rights of migrant students in officially recognised Chilean educational establishments.

possible to evaluate this system, the NGO Colectivo Sin Fronteras documented two cases of young Peruvian migrants whose Internet application for credit was rejected.

The Committee requested information about the measures being taken to avoid and eliminate attitudes and prejudices against children that give rise to social or ethnic tensions, racism and xenophobia.

Contextualising this request, we can state that the existence of social and cultural discrimination – especially against children and adolescents from Andean countries (Peru, Bolivia, and Ecuador) – was backed up by a UNICEF²⁰ study carried out in 2004 with primary and secondary students. The research established that 46% of those interviewed considered that one or more nationalities were inferior to Chileans, particularly referring to Peruvian and Bolivian citizens. Faced with this, the Education Ministry has included in some primary school textbooks learning modules that develop topics related to diversity and tolerance, in which migrants are mentioned. Nevertheless, education policies promoting multiculturalism and the integration of migrants still do not exist.

The State has not established any initiatives that inform public service personnel about the rights, needs and abuse protection of migrant children. Neither has the State assigned any specific financial resources for the benefit of migrant or refugee children. These attitudes do not accord with the stated objective of the government to protect the migrant population, by which the State claims it has promoted a series of actions designed to reduce the rising discrimination affecting foreign children and adolescents residing in our country.

Synthesis. The phenomenon of adult migration is not a new topic in Chile. Nevertheless, movement from one country to another has increased since 1992²¹. Although there is a significant migrant presence in Chile, there is no legislation regulating their situation in an integrated way. Effectively, the existing guideline is limited by Act No. 1,094 of 1975, the Aliens' Regulations (Executive Decree 597 of 1984) and the Supreme Decree 5,142 of 1960. This is particularly concerning taking into consideration that migration, far from being a diminishing phenomenon in Chile, is clearly on the increase.²²

Local NGOs do not have methodical developed programs to tackle this issue. Inadequate funding has resulted in a lack of systematisation and dedication, without which they cannot cover the entire migrant population. This difficulty is exacerbated by the fact that the State's agenda does not include the issue of foreigners in Chile.

Adult migrants have to deal with discrimination, and problems that hinder their inclusion in the workforce and access to health care. These difficulties augment with regard to the children and adolescents of these migrant families that have come to live in Chile. The setbacks that face children and adolescents and that require urgent attention are: a) access to health care; b) access to education; c) wider protection measures for refugees and d) the eradication of discriminatory and intolerant attitudes.

Recommendations :

* We request that the Chilean State treat the migrant issue as a Human Rights problem.

²⁰ UNICEF. "The prejudices of children and adolescents". Iquique, Santiago and Temuco. Quantitative report. Santiago-Chile, 2004.

²¹ Diego Portales University. Facts 2004 - 2005. Annual Human Rights Report. Santiago-Chile, 2005.

²² Idem.

- * We request that the Chilean State implement a new migration policy and law in accordance with the government's commitments to the rights of children and adolescents, refugees and migrant workers.
- * We request that the Chilean State implement measures that facilitate the regularisation of the status of migrant workers and their families, and that speed up the resolution of refugee applications.
- * We request that the Chilean State incorporate guarantees for the health care rights of migrant children in public health policies; and incorporate refugees in the Reparation and Integral Health Care Program PRAIS.
- * In the area of education, we request that the Chilean State establish multicultural policies that promote integration and non-discrimination directed towards this community.
- * We request that the Chilean State pass anti-discrimination laws, recognising this as a crime against civil liberties.
- * We request that the Chilean State sign and ratify all conventions and instruments that have been adopted in relation to migrant workers and their families.

Children deprived of their family environment

Street Children

Article 20 UN CRC: *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

35. In response to Committee concerns about advances made in the care and protection of children and adolescents who do not live in an environment that provides adequate protection, we can state that the reasons why children live in the street are determined by factors such as: socioeconomic situation, dysfunctional families, dropping out of school, domestic violence and abuse, among others. In Chile, there is no official documentation of children who are deprived of their family environment. However, it is estimated that 120 to 130 thousand children live in the street in the 5th, 6th, 7th, 9th, 10th and Metropolitan Regions.

Street children and adolescents are recognisable because they sell products on the street, they beg, they clean windscreens or perform acrobatics and juggling while cars are stopped at traffic lights; they live under bridges or alongside train lines and their social life occurs in the street and in "caletas" (place where street kids and/or gangs sleep). It is in these spaces – the street and the "caletas" – where they find the company of others, they eat and amuse themselves. At the same time, in these spaces, they are exposed to danger, violence and are unprotected. As well as this, they are also exposed to vulnerable situations such as drug-taking, commercial sexual exploitation and police abuse.

Street children are abandoned by their families and the community, the mass media and the State. They are invisible, stigmatised by the media because of their means of survival. The media do not fulfil their role of creating awareness about the deficiencies and difficulties that have driven these human beings to "choose" the street.

In 2003 the National Minors' Service (SENAME) assisted a total of 6,592 street children and adolescents under the age of 18. Of these, 39% were female and 61% male. The figure corresponds to 11% of all children assisted by the same service during that period. The assistance is provided through day care and alternative residential shelters.

SENAME also signed a "Street Children" Cooperation Agreement with the Carabineros de Chile (Chilean uniformed police), which aims to eradicate child commercial sexual exploitation, to widely protect the rights of children and adolescent crime victims and those who live in the street, and to contribute to the improvement of related police procedures.

The National Drug Control Commission (CONACE) has implemented 13 national programs that aim to strengthen those organisations that work with street children. CONACE's support provides drug detoxification treatment and involves 25 children per region.

The measures adopted by some state organisations are less than adequate because they do not meet the national demand for such services. Even less so when the State has not as yet designed any specific and defined initiatives for any of the five Intervention Areas proposed in the National Policy and Integrated Plan in Favour of Children and Adolescents 2001-2010. Community networks and family support are also incapable of reverting the reasons which lead children to "choose" the street.

This demonstrates that Article 20 of the Convention on the Rights of the Child is not relevant in the development of State policies. The absence of a cross-sector policy creates yet more adversity for street children, and tends to set off a chain of institutional abuse.

The following is a case of institutional abuse received by a girl living on the street, which clearly demonstrates the omission and violation of her rights by the Health Ministry.

Rosario is 13 years old. During her life her rights have been violated by various institutions. She has been expelled from her family environment, from school and she has not received adequate medical treatment for the psychological disorders that she suffers.

In January 2005, she began to take part in a Hogar de Cristo (Home of Christ) Program. She was placed in the Rucalhue Shelter. The abuse she received from her mother during her infant years was verified by the Corporation for Assaulted Children. From an early age she deserved to receive therapeutic support.

In this place and during a three month period the girl tried to commit suicide three times. Twice she ingested medication and the other time she self-inflicted cuts in her arms. All three times she was taken to the Roberto del Río Hospital. One time she was transferred to the Intensive Care Unit (ICU) and the others to the Adolescent Mental Health Unit. She was always treated as an out-patient with a maximum hospitalisation period of six days. At the end of this period, the Unit's medical team determined that Rosario *"is a problematic patient that refuses hospitalisation. The girl cannot remain here because she presents violent conduct in the Unit and with her peers, and this is a situation that the medical team cannot control"*. The psychiatrists responsible for this decision were Doctor René Martínez and Doctor Funes.

Faced with the "incapacity" to treat Rosario, the clinical team at the Roberto del Río Hospital contacted the Carabineros, so that a Juvenile Court Judge might determine her situation. Meanwhile, the Hogar de Cristo organised support from their own Health Section in order to

get her admitted to the terminally ill ward, so that she could be medicated in order to inhibit her self abusive conduct.

Rosario walked out of this place, drowsy and very sedated, without her carers realising that she had gone. She went back to her mother's house, but a few days later she re-entered the terminally ill ward of the Health Section of the Hogar de Cristo, on a provisional basis. The decision was negotiated by a teacher in the Street Children Program who, on visiting her in her house, confirmed that she was receiving abusive treatment from her mother.

A request is made to the National Minors' Service (SENAME) for an institutional response that would determine where the child should be placed in order to receive the care she needed. In turn, SENAME requests that the Health SEREMI (Regional Secretariat of the Health Ministry) send a resolution to the director of the Roberto del Río Hospital so that the girl can be placed in their Adolescent Mental Health Department, a highly appropriate place because of the expertise of the medical team and their mental health speciality.

Rosario was NOT received by the hospital. After three hours waiting, the professional in charge justified the negative response by mentioning that there were no doctors who could evaluate her mental health state. Faced with this situation, SENAME arranged that Rosario be allowed to sleep in the clinic of the Transit and Diagnostic Centre in Pudahuel. She was taken to this Centre, convulsive and in a state of dystonia, as a result of the amount of medication she had received in order to inhibit her self abusive conduct. At no time was she seen by a specialist at the Roberto del Río Hospital.

The following day the psychologist of the Hogar de Cristo's Street Children Program once again took her to the Roberto del Río Hospital. After a negotiation lasting several hours it is determined that, under certain conditions, the girl can remain in the hospital, but only if SENAME agrees to provide 24 hour permanent care for her, and to find a place where she can be transferred to. SENAME accepts these conditions, and the girl is admitted to the hospital.

In the hospital Rosario is kept in isolation. She cannot socialise with others because she must sleep and eat in a separate area. She is constantly alone, and in areas that are not used by the rest of the children. After two weeks in the hospital she is released. SENAME transfers her to the El Peregrino Shelter for a transitional period.

The abusive treatment received by Rosario in the Roberto del Río Hospital is a result of their refusal to provide her with medical care, their maintaining her isolated during the period of her admission, and the negative diagnosis of the psychologist that examined her in the final stage. Rosario was diagnosed as "primitive" because she was in an early stage of development and it was therefore difficult to obtain results.

The Education Ministry, as well as the Health Ministry, was guilty of institutional abuse. In Chile the style of education is prescriptive, rigid, has overly long school hours and the students spend the majority of their time in a classroom. A child who has lived in the street finds it difficult to fit in to this scheme. This means that if they are reintegrated into formal education they drop out of school a short time later, not because they don't want to study, but because the system does not welcome them. The system denies street children the possibility of acquiring educational skills and knowledge that would help them in their development and social integration.

On the other hand, the State exercises a coercive legal control over street children that maintains the vicious circle of exclusion. This is a situation that is understandable fundamentally in sociocultural terms, since the factors that cause it are generated from the basis and conditions of an adverse life, both in the families and communities. Meanwhile, the practices observed in the treatment of street children indicate that the system provokes the continuity of their exclusion.

Special Protection Measures

Working Children

Article 32 UN CRC: *States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

49. In response to the Committee's questions regarding the economic exploitation of children and adolescents, the Chilean State refers to the legal advances that have been introduced as protection measures against economic exploitation of children, among these a regulatory mechanism that establishes the minimum working age at 15, as stated in Article 13 of the Labour Code. It also points out that Chile signed Convention No. 182 of the International Labour Organisation (ILO) against the Worst Forms of Child Labour. In line with international agreements, Chile adopts the definitions established by the ILO that divide child labour into acceptable and unacceptable, and commits itself to progressively eradicating the latter.

Official figures show that in Chile 238,187 children and adolescents aged between 5 and 17 years work. Of these, 106,676 (44.9% of the total) work in unacceptable jobs, and 68,000 of these are under the age of 15. A total of 88,428 children and adolescents work in acceptable jobs (37.1%) and 42,083 (17.6%) carry out domestic chores for at least 21 hours a week. Of this last group, 85% are females. The 21% of children and adolescents who work more than 21 hours a week do not attend school. Nevertheless, the remaining 79% work and study.²³

Of the children and adolescents that work in unacceptable jobs²⁴: 36,000 children are aged under 12; 31,000 are aged between 12 and 14; and 39,000 are adolescents aged between 15 and 17 years old.

Furthermore 3,000 children and 15,000 adolescents have a working week of more than 49 hours, 13,000 children and adolescents work in the street, and 11,000 children and 12,000 adolescents work at night.

These statistics do not include the number of children that work and live in the street or in institutions. Neither does it include the declarations of children and adolescents in regards to

²³ Alejandro Gómez. UNICEF Consultant Lawyer - Chile. www.unicef.cl/noticias/newsletter. 02.08.2005.

²⁴ Unacceptable jobs are classified as: **Child Labour:** Children aged 11 years and under. Children aged between 12 and 14 who are not studying. Children aged between 12 and 14 who work 14 or more hours a week. **Adolescent Labour:** Children aged between 15 and 17 who work 21 or more hours a week and do not attend school.

the worst forms of child labour like commercial sex and drug trafficking. This is because the survey was only carried out in homes. Also it did not include children and adolescents who undertake domestic chores for less than 21 hours a week²⁵

The most frequent jobs are: merchandise packing in supermarkets; car washing and shoe shining; collecting paper and cardboard; domestic chores or care of younger siblings; work in productive workshops; agricultural and seasonal work; apprenticeships in the large fishing industry; work in the small fishing industry; and in small gold, copper or coal mining concerns.

In research carried out by the NGO ACHNU (2005) in three regions of Chile²⁶, early entry of children into the workforce was documented. The entry age of 50% of the children fluctuated between 5 and 10 years old, 39% between 11 and 14 years old, and only 11% between 15 and 17 years old.

Work in the street. Night jobs. The children and adolescents that work on the street usually live in outer suburbs of the city where the existence of sub cultures and certain codes of communication are a part of their daily life. They belong to families beset by a variety of social problems that render them highly vulnerable. The environment in these outlying suburbs is negative for children and adolescents because there are no spaces for recreational and cultural activities, and the school does not support them, with all the difficulties that they have trying to divide their time between work and studies. This type of non intentional exclusion makes it attractive to emigrate “for the day” to places that on the surface appear to provide them with alternative income sources. Nevertheless, a lot of the time they find themselves faced with situations that are worse than the causes of their working on the street.

Among working children who are not studying, 47% of males do not attend school because of reasons related to the system (learning and behavioural problems) and 41% because of economic reasons.²⁷

They present difficulties adapting to institutional establishments because these do not fit their needs and characteristics. The educational system makes no distinction when teaching children who are lacking in resources and affection, and this usually leads to them dropping out of school.

It is common that public schools do not keep a record of working students, and even less of the places where they work. This statement is based on a study that the Peace and Justice Service Foundation (SERPAJ) is carrying out in the Captain Pastene School in La Florida Municipality (Metropolitan Region), where it was found that 100 students work on the street. Prior to this analysis, the school did not have any information about students who work on the street. This example demonstrates the limitations of educational policy with regards to support for and retention of working children and adolescents in schools.

These children and adolescents’ perceptions of school²⁸ are summed up as: the majority of those interviewed consider schools boring and time-consuming but, nevertheless, they are

²⁵ Alejandro Gómez. *Op.cit.*

²⁶ M. Espina., A. Cortes & V. Terra. – ACHNU. Exploratory Studies: “Perceptions about child labour in Chile” www.achnu.cl/data/images_upload/proyectos. Santiago-Chile, 2006

²⁷ ILO. Labour Department. “First National Survey on Child Labour and Adolescence”. Chile 2003.

aware that at school they can learn things that will be useful in their life or work. They concur that school hours are incompatible with working hours, a fact which drives many children and adolescents to drop out of school in order to continue working. To this effect, one of their demands is that schools should be more flexible so that they can fit in education with work.

“they should offer flexible timetables for working children” (Boy, Quilpue -5th Region)

Many of those interviewed commented that the school environment is negative and they often feel unprotected, as well as feeling unsatisfied with how teachers treat them. Even though education is valued as the way to achieve your goals, they criticise the implementation of the long school day and they are aware of the poor quality of education, especially in the public (municipal) system.

“if they have a long school day, the idea is that we have more recreational activities and learn more, not just mental work: writing, writing, writing, but doing more enjoyable things, but all the teachers do is writing, writing or dictation”. (Boy, Metropolitan Region)

“schools don’t have adequate infrastructure for so many of them (children), some schools don’t even have canteens, they can’t provide lunch there, but like they still want to impose something that in reality they can’t, because the conditions don’t exist”. (Boy, Metropolitan Region)

“on top of it all, the education is so bad, especially in public schools, what’s the point in having, I dunno, being at school for eight hours, sometimes more, if you are just learning the same as in previous grades or the education is bad or they don’t teach well and all that”. (Boy, Metropolitan Region)

"Child Seasonal Workers". The children and adolescents that work in the agricultural sector are the most vulnerable group, because of their working conditions and the hours they work. At the height of the harvesting season, it is estimated that there are 25 to 30 thousand seasonal workers in the Atacama Region.²⁹ Many seasonal workers migrate from city to city and from region to region in search of better work opportunities. Their impoverished and unprotected living conditions have become a notorious feature of the social panorama of many Chilean cities and rural areas. In the case of migrating seasonal workers, child labour is functional, so that the family can stay together; but there are also jobs that lend themselves to be undertaken by children, mainly males aged between 5 and 14 years.

People who carry out seasonal work do so under extenuating conditions, with working days of more than 12 hours, high temperatures, lack of kitchen facilities, insufficient sanitary services on the worksite, scarcity of drinking water and lack of child care and camping grounds to provide shelter for their children.

The working conditions of child seasonal workers are:

* they work in the presence of pesticides and undertake employers’ fumigation jobs, without protective equipment.

²⁸ “ACHNU – CAT. “Exchange and Training Project for Union Development about Child Labour in Chile”. Advance report, Santiago-Chile, 2005.

²⁹ Amauta Foundation. “Child Labour”, Network of Child and Youth NGOs, Chile (Editors.), IV National Meeting of Child and Youth NGOs, Chile 2004. Lota: National Working Committee of Child and Youth NGOs.

- * they carry out heavy tasks, like filling crates with grapes. “El Coloso” (the colossal one), the crate that the fruit is stored in weighs 20 kilos.
- * they work in hazardous health conditions – dehydration, sunstroke, burns.
- * they undertake jobs where they are exposed to the risk of accidents such as cuts that result from the incorrect handling of scissors and other sharp instruments and physical damage as a result of falls caused by uneven ground (working on the sides of the Copiapó Valley and Huasco hills)
- * they receive low wages and there are no work contracts that protect them in their job situation.³⁰

As was pointed out previously, children and adolescents mainly work assisting their parents, during a half day or full day’s work, and often work during school terms. This makes their studying incompatible with their work, and they drop out after repeating grades. A high percentage of children and adolescents are granted course completion certificates in accordance with an agreement that parents make with the school, however the preparation and quality of their learning is reflected in the low academic level they achieve at the end of secondary schooling, making it impossible for them to continue on to tertiary education.

The Chilean government recognises that no specific guidelines are used to monitor child labour, although this monitoring could be expedited via a letter or in response to a direct request on the part of the affected child or adolescent, the same as for any person who suspects irregularities in the provision of services to minors.

If the monitoring guidelines are arbitrary, the risks for working children increase. Therefore it is crucial that the Chilean State uphold the regulations, if its objective is to eradicate unacceptable child labour. Also it has been corroborated children and adolescents are not informed about the mechanisms through which they can make complaints and seek advice with respect to their jobs.

Synthesis. Since 1990, total poverty and child poverty in Chile has been reduced by half. However, the unequal income distribution - one of the worst in the world, and which has not varied since 1990 – especially affects children. As the 2002 National Socioeconomic Survey (CASEN) demonstrates, children and adolescents under 18 years of age make up 42.1% of the poorest quintile of the Chilean population, and only 21.3% and 24.3% of the two richest quintiles, and 31.1% of the total population. UNICEF concludes that, in this successful economy that expands an average of 6 or more percentage points per year, social inequality worsens and children and adolescents are the most affected.³¹

To a large extent this economic success is made possible by flexible labour regimes and unstable, low quality and unprotected jobs. As a consequence, a significant number of children are part of the workforce, either in paid work or unpaid domestic work. We can find children working in agricultural, fishing and forestry jobs; as street sellers, waiters or packers in supermarkets; as assistants to their parents in commercial street based services, car care or construction jobs. 64% of working children and adolescents belong to the poorest 40% of the population, according to the Labour Ministry.³² The National Survey on Child and Adolescent

³⁰ “Child Seasonal Workers”, in Chilean Social Forum, presented by the Network of Child and Youth NGOs, Chile. Working Committee, Atacama Region formed by 6 institutions. Santiago-Chile, 2004.

³¹ UNICEF. “Children in Chile 1990-2005”. Santiago-Chile, 2005.

³² UNICEF, *Op.cit.*

Labour, jointly carried out by the ILO and the Chilean Government, confirms that the greater the poverty the greater the probability that children and adolescents work outside the home.³³

According to the same survey, in Chile there are 238,187 child workers aged between 5 and 17 years, which represent 6.6% of the national population in this age group. Although the large majority of these children and adolescents attend schools (79%), those that work and study dedicate on average 21 hours a week to their jobs, which obviously creates a hindrance to their fully exercising their right to education, as well as recreation and relaxation.

In accordance with International Conventions, child labour violates the essential rights of the child, threatening her or his access to education, rest and recreation, and placing at risk her or his normal psychological and social development.

Another factor that highlights the challenges facing the Chilean State, its institutions and the community, in regards to the rights of child workers, is their invisibility and the low value given to their organisations and proposals. In relation to this last point, we should consider the opinions of organised working children and adolescents who belong to the Movement of Working Children and Adolescents (Mochinat's). This organisation was created by children and adolescents aged between 12 and 18 years with the aim of reinforcing connections, defending their right to decent and protected jobs, supporting themselves in education and recreation, and creating closer ties with their respective families.

Among their proposals is the right to receive an education that helps them to face the future; the creation of decent employment for their parents; the right to free health care for child and adolescent workers, and the right to participate in the development of social policies directed towards child and adolescent workers.

Nicolás Lara. Spokesperson for the Chilean Movement of Working Children and Adolescents (Mochinat's) states:

“Neither the government, nor the Trade Union Movement, nor the Education Ministry, nor the Labour Ministry have ever taken us seriously, they just want to eradicate it (child labour), but while poverty exists they will never be able to do it”.

Recommendations

- * We request that the Chilean State implement education policies directed towards retaining working children and adolescents in the educational system.
- * We request that the Chilean State instigate monitoring regulations and programs in the most vulnerable sectors of the population.
- * We request that the Chilean State undertake a diagnostic study of the situation of children and adolescents who work, and provide support for schools so that teachers are fully aware of the demands placed on their students outside the classroom.
- * We request that the Chilean State open up dialogue with the organisations that represent working children and adolescents.

³³ ILO, National Statistics Institute, Chilean Government. “Child and Adolescent Labour in Figures. Synthesis of the First National Survey and Register of their Worst Forms”. Santiago-Chile, 2003.

Commercial Sexual Exploitation of Children

Article 34 UN CRC: *States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.*

51. In response to the concerns of the Committee in regards to the Commercial Sexual Exploitation of Children (CSEC - ESCIA³⁴), it has been noted that currently there exists a greater awareness about this issue both on the part of the State and the community. The problem is not denied, however, there are still deficient responses to tackling the issue in an integrated way, as well as in understanding what this abuse means for the affected children and adolescents.

The laws and guidelines that regulate protection against commercial sexual exploitation of children and adolescents are:

- Framework for Action Against the Commercial Sexual Exploitation of Children and Adolescents. Justice Ministry, June 2000.
- National Policy and Integrated Plan in Favour of Children and Adolescents 2001-2010. Planning and Cooperation Ministry, December 2001-2010.
- Act No. 19,927 amends the Criminal Code, the Criminal Procedure Code and the Criminal Trial Code in reference to child pornography offences. Santiago, Chile. Promulgated in January 2004.

The National Policy and Integrated Plan, prepared in 2001 demonstrates how, up until a few years ago, the problem of CSEC was not specifically understood. In fact, the Plan does not include a specific item guaranteeing the protection of children who have been sexually abused or exploited. The issue is mentioned within the context of child abuse and, with respect to implementation of programs, it refers to measures directed towards the eradication of sexual abuse of children, as an instrument for the prevention and eradication of commercial sexual activity of children and adolescents.

In this sense, and as a broad attack against this practice, the passing of Act No. 19,927 (January 2004) that amends the Criminal Code, the Criminal Procedure Code and the Criminal Trial Code in reference to child pornography offences, represents an important advance. Although it doesn't identify Commercial Sexual Exploitation of Children and Adolescents as an offence, it does contain certain provisions that contribute to the sanctioning of this practice.

- It raises the age of sexual consent from 12 to 14 years, thereby protecting the development and sexual integrity of children aged under 14.
- It increases the sentencing for the majority of related offences: rape, "estupro" (intercourse with an adolescent girl through seduction or deceit, as opposed to force) and sexual abuse, among others.
- It creates new offences, like the special offence that sanctions those who obtain "sexual services" from a minor in exchange for monetary or other remuneration, with sentences ranging from 3 years and a day to 10 years.
- It seeks to avoid the revictimisation of the child by introducing new methods of testifying.

³⁴ ESCIA is the acronym commonly used in Chile to refer to Commercial Sexual Exploitation of Children and Adolescents.

- It punishes as aggravated sexual abuse, the use of animals or the introduction of objects vaginally, anally or orally.

The fact that the process of passing this Act was arduous and slow, demonstrates that the will to move forward in preventing this offence was not, in itself, a part of the Chilean political agenda. The community organisations involved in the issue (NGO Raíces, ARASI, Network of Child and Youth NGOs) lobbied systematically so that the Project would contain certain aspects that they considered fundamental to the adequate protection of children and adolescents. They worked continuously with parliamentarians and senators, as well as with the Justice Ministry and the media to inform and create awareness of the issue, and they permanently sent information to ECPAT³⁵ and the Inter-American Children's Institute.

On the other hand, local newsworthy events gave an important boost to the passing of the Act. Firstly, thanks to a journalist's investigation that uncovered the network of child pornography called "Paidos". This report caused a scandal and brought to light the absence of legal norms sanctioning this offence. In October 2003, the Child Pornography Bill was passed unanimously in the Lower House. The Bill was presented by the parliamentarians Pía Guzmán, Patricio Walker and María Antonieta Saa. Ms. Saa had included several articles referring to remunerated sexual relations with minors, in which it was proposed to punish the "client", and not only the pimp. The public attention caused by the "Paidos" case allowed this Bill to advance to the Senate's Constitutional, Legislation and Justice Commission. However, it still had to await Senate approval, during which time several articles, essential for the protection of the victims, were suppressed. Afterwards, these articles were reinstated thanks to the pressure and lobbying of the different community organisations.

It took another paedophile scandal to make the Bill move forward. This time it was the detention of businessman Claudio Spiniak³⁶ in 2003. Spiniak's private parties rocked public opinion. As a result of these events, the Executive requested that the Senate urgently review the legislation and it was promulgated a few months later.

It is surprising that the aforementioned scandals were the impulse for legislative change, and that this was the way that the State approached compliance with international standards stipulated in conventions signed by Chile. In 1999, Chile signed agreements such as the Final Declaration of the Regional Seminar "Violence and Commercial Sexual Exploitation of Children in Latin America and the Caribbean", organised by the Inter-American Children's Institute. In the same year, Chile ratified Convention No. 182 of the International Labour Organisation (ILO) against the "Worst Forms of Child Labour". In 2000 it signed and in 2003 ratified the "Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography"³⁷.

* **Public Policies.** Together with the modifications in the legislation there has been, in the last three years, a shift in awareness about CSEC in public policies. Nevertheless, the problem has not been seriously taken on in all its aspects, consequently resulting in a lack of real

³⁵ End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes. ECPAT is a network of organisations and individuals who work together for the elimination of child prostitution, child pornography and child trafficking for sexual purposes. ECPAT holds Consultative Status with the United Nations Economic and Social Council (ECOSOC).

³⁶ Claudio Spiniak is a businessman who is being tried for illicit association for the production of pornographic material and the promotion of prostitution with minors.

³⁷ Chilean Government Report, 2002

advancement in the prevention and reparation of the situation of child and adolescent victims of CSEC.

The National Minors' Service (SENAME) is the institution charged with implementing state policies and carrying out the task of social rehabilitation and reintegration of the child and adolescent victims of CSEC. As well, it is the institution responsible for developing research and documentation in conjunction with the Carabineros (uniformed police), Investigaciones (civil police) and the Labour Directorate. This research or documentation, which is public information, is not available, and there are no expeditious ways of acquiring it.

Currently, and motivated to a great extent by the media scandals, there are 16 programs of assistance and reparation for victims of CSEC. These are carried out in 11 regions of the country and attend 730 children and adolescents.

In 2003, SENAME together with ILO/IPEC undertook a study that gave an estimated figure of 3,719 child victims of CSEC in Chile. Around 80% are female and their average age is between 12 and 13 years. The child and adolescent victims of CSEC present serious problems of retarded schooling and the majority live with their families. The characteristics of CSEC observed in the same study demonstrate that it is linked with forms of hidden child labour, it is utterly invisible, takes on varied formats, is clandestine, has an organised demand, is related to drug traffic and abuse, is linked to adolescent pregnancy, school desertion and abusive family dynamics³⁸.

The multiple causes of CSEC require multidisciplinary strategies that have certain flexibility. A weakness has been noted in regards to the recovery programs for children and adolescents in CSEC under the care of SENAME. These programs are not coordinated with other parties in order to carry out an integral intervention. Neither does SENAME establish coordination of cross sector agreements to address this weakness. This deficiency has been noted in the areas of education, health and justice.

***Education.** Many children and adolescents in CSEC are excluded from the education system. There is no coherent policy that responds to this situation, which is exacerbated by the fact that some of them do not even know how to read and write. In the recovery process, schooling is essential but the rigid formal education system has difficulty including them. It has become the task of the NGOs themselves to find allies who will take on the schooling of the child and adolescent victims of CSEC, without the existence of a coherent policy.

Furthermore, the State has no programs that allow for the training of adolescents in shelters. Community organisations have to develop their own alliances, which is often difficult, and it is the children and adolescents who lose out.

***Health.** There is a total absence of state agreements with psychiatric or drug addiction treatment services. A percentage of the child and adolescent victims of CSEC, as a result of their situation, suffer severe traumas that require daily psychiatric attention. The CSEC programs do not employ psychiatrists and if they do have a specialist available it is only for reduced time periods, which are insufficient in order to respond to the magnitude of the problems that occur. There is an urgent need to draw up cross sector agreements between psychiatric services and residential centres that cater for children and adolescents. This could

³⁸ Arcis University. "Study of the Commercial Sexual Exploitation of Children and Adolescents in Chile". OIT/IPEC, SENAME. Santiago - Chile. 2004.

benefit many children and adolescents in vulnerable situations, and not only the victims of CSEC.

* **Justice.** Children and adolescents are highly unprotected in this area. Often, personnel of the rehabilitation centres for victims of CSEC accompany the children and adolescents when they testify against “clients” or pimps. In these situations, the consequences of the severe lack of protection of these children in the justice system are notable. The public prosecutor and defence lawyers take charge of the case, frequently violating during the judicial process the rights of the child and adolescent victims, and without these latter being provided with protection and defence.

The new format of oral hearings that came into force with the Criminal Procedure Reform exposes the child and adolescent to a process of revictimisation on the part of the judges who do not consider – or do not know about – the trauma that these situations produce in people who are recently beginning a recovery process. In this way, Chile fails to comply with the international recommendation that victims be given appropriate legal assistance with the possibility of legal intervention, because not only is it necessary to communicate to the victims that they have the right to file a complaint, but also they must have a real possibility of being able to do so. In the case of minors, the Criminal Procedure Code (Art. 111) states that, as plaintiffs, they must be represented by their legal guardian (parent or responsible adult). The child and adolescent victims of CSEC often do not have a legal guardian, or it may be that their legal guardians are implicated in the offence, therefore making it considerably difficult for them to file a complaint.

In the same way, it has been noted that many people in Chilean society still hold attitudes that disqualify and castigate child and adolescent victims of CSEC. A media campaign was produced in 2003 by SENAME and ILO/IPEC with the basic aim of placing the issue of CSEC in the public arena. The issue became known and recognised by Chilean society, mainly because the campaign coincided with information about and promotion of the Spiniak case. Currently it is possible to say that Chilean society does not ignore the issue, however, there are still discriminatory attitudes and blame attached to the child and adolescent victims.

To alleviate these situations it is necessary to implement a coherent policy, which takes into account the different fundamental aspects in the process of psychosocial rehabilitation of child and adolescent victims of CSEC. This requires the involvement of other Ministries or state bodies and, being the institution committed to the welfare of children, it is SENAME’s responsibility to create and put into practice the appropriate cross sector agreements and communication policies.

Synthesis. All over the world commercial sexual exploitation of children and adolescents has mainly been related to poverty which, without doubt, becomes a relevant cause because of the negative consequences it creates. In Chile, even though democratic governments have had the aim of eradicating poverty particularly among the most vulnerable – impoverishment and homelessness in persons under 18 years of age has decreased by 50% in this period³⁹- they have still failed to establish effective mechanisms for wealth distribution⁴⁰ that would satisfy the basic needs of one sector of the population.

³⁹ UNICEF. “Situation of Children in Chile 1990-2005.” Santiago-Chile 2005

⁴⁰ According to the United Nations Human Development Report 2005, Chile today has one of the worst income distributions in Latin America, comparable to Paraguay, Honduras, Swaziland and Zambia. The richest 10% of the population receives 47% of the income, while the poorest 10% only receives 1.2%.

The official UNICEF figures state that up until the year 2000, 29% of children and adolescents aged between 0 and 14 years were still living in impoverished conditions, which means that for every 10 Chilean children, three have difficulty assuring their education, food, health and optimum level of development. In Chile, children and adolescents aged under 18 represent 30.9% of the total Chilean population and, of the 70 thousand families that up until August 2003 had been assisted by the protection system of Chile Solidario (Solidarity Chile - a program of the Planning Ministry which aims to eradicate extreme poverty) 43.4% are children and adolescents living in conditions of homelessness and exclusion. These facts paint an extreme situation of vulnerability.

Without understating the efforts made by the National Minors' Service (SENAME) in the fight against commercial sexual exploitation by opening 16 rehabilitation centres in various regions and, considering that this is a burgeoning issue in the country, we have observed the lack of systematic state strategies from different Ministries, principally in the health, education and labour areas (carrying out of joint programs, cross sector agreements). We have detected a lack of preventive strategies⁴¹, and also the existence of enormous deficiencies in providing opportune protection and attention for those children and adolescents who present severe traumas (given the high vulnerability of this group of children and adolescents, rapid attention in public health services is required to prevent sexually transmitted diseases or HIV/AIDS, and in counselling, referral and treatment). For those children who show high levels of addiction to drugs and solvents, the response is still insufficient⁴². In the mental health area, it has been shown that young people who have been exposed to sexual exploitation for lengthy periods present deep traumas that require long term treatment in specialised services. If there were health services equipped to treat severe disorders, for example, high risk situations could be prevented at an early age.

In the educational area, these children and adolescents that live in the street or spend the whole day totally abandoned, are not part of the school system, and when they enter, they drop out fast, because they cannot locate non traditional schooling, and they don't fit in to the existing rigid system. On top of this, there are no adolescent vocational training programs that would really help them to get out of the situation they are in, since the existing alternatives do not constitute a real alternative in the labour market.

Recommendations

* We request that the Chilean State establish cross-ministerial agreements that lead to the implementation of psychiatric services, specialised education levelling (tutoring), as well as vocational training programs with planning goals.

We request that the Chilean State implement a prevention policy that includes: sexual Education Programs for children and adolescents that include self esteem, self assertiveness and recognition of their rights; knowledge of the characteristics of children in their different stages of development; emotional validation and campaigns directed at looking after your body. The current campaigns and programs are directed towards adult responsibility for children, and this has contributed to holding back the victims' processes of self determination and participation. Adequate channels of information are necessary so that children can formalise complaints and exercise their rights.

⁴¹ It is important to highlight that in 2004, SENAME and ILO/IPEC implemented a month long campaign against the commercial sexual exploitation of children.

⁴² Considering that a child or adolescent with severe addiction problems cannot be forced to stay in an institution to undertake anti-addiction programs or maintain treatment.

* We request that the Chilean State share information that arises from the evaluation of ministerial and cross-ministerial programs with the aim of educating and making society aware of sexual abuse and exploitation. Assistance programs should be extended and better publicised. The community only has access to the corresponding evaluation of the NGO Raíces' Redress of Trauma Experienced by Victims of Sexual Abuse and Exploitation Pilot Project (Santiago 2001-2005) and the NGO AURA's (8th Region) Commercial Sexual Exploitation Project (2002-2005).

* We request that the Chilean State make a commitment to implementing these measures in the short term, because there are still spaces and environments involved in providing assistance and protection of children and adolescents in Chile that show a low sensibility towards the issue. A part of our society has perpetuated prejudice and disinterest over the understanding that the existence of sexual exploitation and abuse is a violation of the rights of the child.

The sale and illicit trafficking of children

Article 35 UN CRC: *States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*

52. With regards to the measures adopted by the Chilean State, on a national, bilateral and multilateral level, to impede the smuggling, sale or trade of children for whichever purpose or in whatever manner, we wish to point out that in August 2002, Chile signed the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children" that supplements the "United Nations Convention against Transnational Crime" (Palermo 2000). This Protocol was adopted in 2003 and published in the Official State Newspaper in February 2005. A similar process has occurred with the "Protocol against the Smuggling of Migrants by Land, Sea and Air", which supplements the "United Nations Convention against Transnational Crime" (Palermo 2000).

Chile is also party to the "Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography", the "Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour", the "General Plan for Reciprocal Cooperation and Coordination for Regional Security in MERCOSUR" and the "International Protocol of the World Congress Against the Commercial Sexual Exploitation of Children (CSEC)", held in Stockholm, Sweden in 1996.

In spite of these regulations, Chilean legislation demonstrates serious deficiencies in adapting to the international standards with respect to criminalisation, procedural rules and adequate protection for victims. Chile criminalises the sale or trade of children in Article 367 bis of the Criminal Code according to the following characteristics and weaknesses:

- "Entry and exit from the country" is an essential requisite or element of the offence, thereby excluding actions where there are no "border crossings", or the "internal trade" of persons.
- "The exercise of prostitution" is the only purpose contemplated in this trade (excluding all others such as forced services or labour, or practices analogous to slavery).

With respect to illicit trafficking in migrants, no specific offence of "illicit trafficking in persons" is established (special type), and the only applicable offence in this case is the criminal regulations that sanction the falsification of documents. In the Aliens Law, it is sanctioned that "any foreigner that enters the country or attempts to exit the same, using

falsified or adulterated documents, or documents issued in the name of another person...” (Article 68, Act No. 1,094), meaning that only the “non regularised immigrant or emigrant” is sanctioned.

In response to this situation, the parliamentarian María Antonieta Saa, with the support of non government organisations and the co-patronage of nine other parliamentarians presented, in 2004, the following Bill: “*Project to Modify, Strengthen and Promote the Adoption of the Bill for the Criminalisation of the Trafficking of Children and Adults and to Establish Regulations for its Prevention and More Effective Criminal Prosecution*”. The purpose of this legal initiative is to correct the loopholes that exist in the current legislation on the issue. Currently it is subject to modifications by specialised institutions, and soon these will be presented to Congress. Up until now, the Chilean State has not officially commented on the subject. The impetus of community organisations, in the framework of the International Campaign “Stop Child Trafficking”, has been fundamental in the process of the Bill. The work of the NGO Raíces, together with the NGO La Caleta, the Working Committee of NGOs of the 8th Region and the “Niño en la Huella” Foundation of the 1st Region have been especially relevant in this task.

* **Public Policies.** The illicit trafficking, trade and sale of children and adolescents are burgeoning issues in Chile. Although some state and community organisations have already shown a certain concern for the issue, it has still not acquired the importance that it deserves.

The Official Report responds to the measures adopted by the State in relation to the smuggling of children for illegal adoption. The trade or sale for sexual and labour exploitation of any kind, as well as the illicit trafficking of minors not accompanied by adult guardians, is not mentioned. In the Official Report there is no link established between missing children and adolescents and trade. This shows that the issue is not being regarded in its full dimension and this consequently reveals the respective policy weaknesses. The Integrated Plan for the period of 2001-2010, which is purportedly related to the National Children’s Policy, does not include preventive or protective measures in the case of child victims of trading or sale.

There are some indications⁴³ that the State realises that Chile is one more place in the world which is an exit, transit, and destination point of men, women, children and adolescents for the purposes of sexual and labour exploitation⁴⁴. The National Minors’ Service (SENAME), which is a section of the Justice Ministry, has provided legal custody, counselling and psychological support to child and adolescents victims of trade. Likewise, it took definite steps with the Japanese Government to repatriate an adolescent girl who was the victim of trade for commercial sexual exploitation. Along the same lines, in 2003 it assisted the repatriation of four young Bolivians who were traded to Chile. On the other hand, the Report prepared by the State Department of the United States of America in June 2005, documents that Chileans have been traded to Argentina, Peru, Bolivia, United States, Europe and Asia for sexual exploitation. Despite these facts, the trade of children and adolescents is still not an issue incorporated in policies related to children and adolescents.

⁴³ Denisse Araya / Ana María Moya. “Descriptive diagnostic of sexual commerce and trafficking of children and adolescents”. NGO Raíces. Santiago-Chile, 2001.

⁴⁴ Womens Institute Foundation, La Morada Corporation. “Trafficking of Women Project – Final Report” Santiago-Chile, 2004.

The incredible story of four girls, of Bolivian nationality, begins with a deceptive offer. They boarded a train believing they were going to Uyuni, a place in Bolivia, but they ended up in Calama, without knowing they were in Chile until five days later.

The police found Jennifer Soto in her usual workplace. They sought her out because she was the person named as responsible for the illegal border crossing. The woman denied having gone to Oruro, then later accepted that she had gone once, had offered them work but didn't bring them to Chile. When the children arrived Jennifer Soto employed them for 30,000 pesos (US\$60). Two of them stayed in her house and the other two in her mother's house.

According to the children's story, they worked up to 15 hours a day and they were practically locked up, but they knew they couldn't complain about the abuse because they were illegal. According to the evidence gathered by the Bolivian Consul, they worked at least two months in Chile.

Conscious of their situation, the girls escaped. They walked through the desert from Calama, and when they became tired they slept in a creek in Lasana. The people who found them took them in for three weeks. The girls planned to walk the 250km to the border at Ollagüe, but neighbours contacted the Consul and the girls were deported in February 2004, from the Iquique airport.

They returned to their homes but they would not be the first nor the last to be "transferred" to Chile by unscrupulous persons, including organised groups that put them in mortal danger, exposing them to all sorts of abuse and exploitation⁴⁵.

The absence of legislation, lack of knowledge and not facing up to the problem, has hindered the establishment of procedures to detect it. Chile does not have adequate documentation of this issue, and it therefore becomes impossible to compile figures and/or approximations as to the extent of the rights violations occurring through trade and illicit trafficking in persons. The Police Departments in charge of registering reports of presumed accidents or death do not provide a breakdown of this information in order to identify the real figures of children and adolescents who are victims of trade and trafficking. Some of the figures that are known come from studies by Non Government Organisations. For example the survey carried out by the ONG Raíces in 2001.

If the offence is not criminalised, then consequently neither are there recovery programs for the victims. SENAME attends child and adolescent victims of trade within the CSEC programs. This means that there is no specialised attention that responds to the particularities of these children and adolescents. Neither is there any alternative support for those who are victims of forms of exploitation other than sexual exploitation.

The government has not carried out campaigns to raise awareness about the existence of illicit trafficking and trade in children and adolescents in Chile. The only work of this kind has been the "Stop Child Trafficking" Campaign run by the NGO Raíces since 2001, in which the following other community organisations have participated: NGO La Caleta, the Working Committee of NGOs of the 8th Region and the "Niño en la Huella" Foundation of the 1st Region, as mentioned above.

It is not easy for community organisations to raise this issue in the media, since the media itself does not recognise that Chile could be, as a country of origin, transit or destination, a place in which trade and trafficking in persons occurs. Some particular cases have drawn

⁴⁵ TV Channel 13, Catholic University of Chile, in a Report on child trafficking. "Contacto" Program. Santiago-Chile, 2004.

media attention but the fact that they were treated from a sensationalist perspective, neither validates the magnitude of this rights violation, nor creates the interest for media follow-up of the issue.

It is interesting to highlight that, as a result of the work done by community organisations as part of the “Stop Child Trafficking” Campaign, an agreement was signed between the Chilean Government (represented by the Ministry of the Interior) and Save the Children Sweden in 2005. In this way, Chile became part of the network of Missing Latin-Americans, whose main aim is to locate persons, and also to identify possible situations of trade or trafficking in children and adolescents.

The web site www.chilenosdesaparecidos.org, created in Chile, is an instrument which permits the identification of missing persons, allows the community to find out about anomalous situations related to the disappearance of persons, and also allows for the filing of complaints about sexual exploitation. This instrument is an effective support in confronting the issue of the disappearance of children and adolescents in Chile; but, as it also allows for the detection of possible trade and trafficking, it represents a small move forward.

Lastly, www.chilenosdesaparecidos.org facilitates cross sector initiatives because it has become an instrument that promotes networking between state institutions and the community. It has brought together the Ministry of the Interior, the Justice Ministry, the Public Prosecutor’s Office, SENAME, Carabineros (uniformed police), Policía de Investigaciones (civil police forces) and the NGO Raíces in order to tackle the issue of trade and trafficking in children and adolescents.

Recommendations

- * We request that the Chilean State pass legislation related to trade and trafficking in children which not only applies sanctions for those who commit this offence, but also includes specific paragraphs for the protection and recovery of victims.
- * We request that the Chilean State establish networks between Carabineros (uniformed police), Policía de Investigaciones (civil police forces) and NGOs concerned about the issue, with the aim of detecting and contributing to the rescue of children who have been trafficked or transferred into the country for the purposes of commercial sexual exploitation.
- * We request that the Chilean State develop campaigns that encourage the population to file complaints when they become aware of cases of trade and/or trafficking in children.
- * We suggest that the Chilean government support programs direct resources towards the prevention of the problem and the recovery of those who have been its victims.
- * We recommend that the Chilean State: develop a national plan, including the government and the community, in order to tackle the issue with respect to men, women and children; that this plan coordinate training strategies for those whose work is related to the issue; that the necessary resources are directed towards the carrying out of assistance and recovery programs, as well as public information and awareness campaigns; promulgate the Bill that is in discussion, so that traffickers are truly sanctioned and children are protected.

Juvenile Justice System

Torture and Detention

Article 37 UN Convention on the Rights of the Child: *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, neither capital punishment nor life imprisonment. No child shall be deprived of his or her liberty unlawfully or arbitrarily. Every child deprived of liberty shall be treated with humanity, shall be separated from adults and shall have the right to maintain contact with his or her family and shall have the right to prompt access to legal and other appropriate assistance.*

Article 39 UN Convention on the Rights of the Child: *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: (...) armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

54. In accordance with the Committee's recommendation that Chile continue to revise legislation and practices related to the juvenile justice system and thereby achieve, as soon as possible, complete conformity with the provisions of the Convention, in particular Articles 37, 39 and 40 and other relevant international regulations, like the "Beijing Rules"; we consider it our obligation to inform the Committee about the situation of "*Child Political Prisoners and Victims of Torture in Chile*".

In September 2003, the Chilean State created the National Commission on Political Imprisonment and Torture through Executive Decree No.1,040, with the aim of identifying, recognising and compensating those who were victims of human rights violations during the military regime of Augusto Pinochet Ugarte (1973 – 1990). With this Decree, it was established that the Commission would receive, between November 2003 and May 2004, the testimonies of all persons that wished to present their information in order to be recognised as having been deprived of freedom and tortured for political reasons.

The National Commission on Political Imprisonment and Torture published its report in December 2004. In its conclusions it highlighted that, during the military regime, a State policy was implemented aimed at subordinating the opposition through vexatious treatment and torture described in detail in the report. And it included an appendix of 102 persons named as "Minors born in detention centres or detained with their parents". All the persons identified in this appendix, were aged under 14 at the time of detention, and were detained or tortured with the aim of forcing their parents to give themselves up to security organisms, or if not, to pressure them into divulging information.

The abovementioned appendix revealed an omission in the work of the National Commission on Political Imprisonment and Torture, which was the lack of research that could identify and recognise those persons who were victims of detention and torture when they were children.

In spite of numerous records provided by the Archives of the Catholic Church's Vicariate of Solidarity and the Foundation for the Protection of Children Harmed in States of Emergency (P.I.D.E.E.), the Commission did not design an exhaustive approach to the gathering of testimonies from the child victims of human rights violations. This deficiency was reflected in the fact that there were Commission personnel who were unwilling to receive information from those persons who were victims of detention and torture while children, on the grounds that the Commission did not cover juvenile cases. In other instances it was claimed that the parents' testimony was sufficient for the recognition of political imprisonment and torture. It is also undeniable that there were exceptions, where those in charge of gathering information

encouraged people to give their testimony, thereby recognising that many children were tortured and detained along with their parents.

The final result is that the large majority of those who were political prisoners and victims of torture while children, have not been duly recognised by the Chilean State.

Faced with this situation, the Association of Ex-Juvenile Victims of Political Imprisonment and Torture, along with other Human Rights organisations, put their concerns to the National Commission on Political Imprisonment and Torture. The Commission recognised its omission and committed itself to receiving, between January and March 2005, all the cases that could be identified during this period.

However, the National Commission on Political Imprisonment and Torture did not publicise any notification within Chile in order to rectify their omission, and at the end of their deliberations they had only recognised a further 87 cases of children who were political prisoners and victims of torture, while the large majority of the victims remained unrecognised.

The Association of Ex-Juvenile Victims of Political Imprisonment and Torture had received information about 200 cases of persons who were detained and/or tortured while children, and who were not recognised by the Chilean State. Amongst this group there were cases of:

- Children who were in period of gestation when their mothers were detained and tortured in torture centres and prisons in the country;
- Children who were born in prison;
- Children who were conceived and born as a result of the repeated rape of their mothers in torture centres;
- Children who were kidnapped from their homes, from their schools, or in the street to force their parents to surrender to repressive organisms;
- Children who were detained and interrogated in their homes;
- Children who were interrogated and beaten when their homes were raided;
- Children who were taken to torture centres where their parents were being held to force them to divulge information;
- Children who were tortured in front of their parents to force them to divulge information;
- Adolescents who participated in youth movements of the time.

When NN was five years old, she was taken out of school by an agent of the Security Services and taken to her house. A few hours before, her father had been detained and her mother was under house arrest along with their other, 2 year old, child.

“Every night they took my mother into another room to interrogate her. We were left on our own. I was very scared, because I didn’t know what they were doing to her. And I couldn’t sleep until she came back. Sometimes they let us go out of the room, but every time I was alone I was bullied by the blonde woman from the CNI (Intelligence Service). She spoke to me about children’s things but then she would ask me about the people who came to my house. What were their names? What time did they visit? Is he your uncle? I didn’t answer because I was terrified of her.”

Compensation Act No. 19.992. Once the work of the National Commission on Political Imprisonment and Torture was finished, the State passed the Compensation Act for Victims of Political Imprisonment and Torture, covering persons recognised by the Commission.

Initially, the Act established different compensation for those persons who were victims of torture because of their political or social militancy as opposed to those who were victims of imprisonment and torture because of the militancy of their parents.

At first, the compensation that the Act set down for those who were victims while children was limited to the granting of a voucher that was nowhere near the value of the former vouchers handed out to victims of human rights violations. This demonstrates that those who suffered human rights violations while children were still not being seen as direct victims.

In response to this discrimination, the Association of Ex-Juvenile Victims of Political Imprisonment and Torture approached the National Commission on Political Imprisonment and Torture, accompanied by senators of the Republic, with the objective of manifesting their complete disagreement with the Act. This action resulted in some modifications being made to the regulations of the Act, which enshrined their right to receive an equal amount of compensation to the rest of the victims of political imprisonment and torture.

These modifications to the Compensation Act No. 19.992 established a new arbitrariness between those who were born in prison and/or were detained in prisons and torture centres (now considered direct victims), and those who were detained and interrogated in their own homes or were tortured while in gestation in their mother's womb (now considered indirect victims). This arbitrariness reduces, firstly and fallaciously, the number of children affected by State terrorism, minimising this type of human and child rights violations. Secondly, this injustice discriminates against those who are considered indirect victims, considerably reducing their right to compensation.

It is not possible to measure the amount of suffering experienced. It is not possible to establish a scale evaluating the impact that torture could have on a person. It cannot be established whether a child hostage suffers more or less than a child who has been the victim of torture while in gestation.

Synthesis. The Association of Ex-Juvenile Victims of Political Imprisonment and Torture has requested that the Committee for the Rights of the Child, in its examination of the report that the Chilean State is required to present and which will be published in January 2007, during its 44th session, grant special priority to the situation of children who, during the Pinochet dictatorship (1973-1990) were detained along with their parents, were born in prison, were the result of the rape of their mother or who were held as hostages in order to capture or cause the self-incrimination of their parents, and who, in many cases, suffered torture or cruel, inhuman or degrading treatment. The appellants state that the Report of the National Commission on Political Imprisonment and Torture, created by the government in 2003, did not individually consider their situations as political prisoners and torture victims – except for 189 ex juveniles – leaving them unable to access benefits contemplated in an Act passed especially for this reason, and therefore discriminating against them.

Furthermore, the Association has requested the Chilean Government open a new case assessment period in order to attend more than 200 ex juveniles in the abovementioned situation, and other cases that have not yet even been documented.

Recommendations

* We request that the Chilean State recognise all persons who were victims of political imprisonment or torture while children, thereby promoting the rights of the child in armed conflict or states of emergency. Secondly, this initiative could become a preventive model for countries which are currently in states of emergency and which, in the future, may wish to set up commissions that have similar characteristics to those implemented in Chile. It is desirable that these commissions recognise children as subjects of law and, therefore, subjects worthy of integrated recognition and compensation.

* We request that the Chilean State implement, in accordance with the Conclusions and Recommendations of the Committee against Torture (CAT/C/CR/32/5/) of 14/06/2004, Recommendation 7 (e) which states: “Adopt all the necessary measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators”. Justice is a cornerstone of full compensation; it allows the society to acknowledge its ethical and legal responsibility for the events that have occurred.

* We request that the Committee for the Rights of the Child take an active part in this complaint against the State, and request the creation of a new Compensation Act for torture victims that contemplates from the outset the identification of and full compensation for those who suffered imprisonment and torture while children. Furthermore, this new Compensation Act should consider all minors as direct victims, without differentiating between those who were victims because of their political militancy and those who were victims because of their parents’ militancy.

The Juvenile Criminal Responsibility Act

Article 40 UN CRC: States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's fundamental rights,...and particularly to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law,... to have legal or other appropriate assistance in the preparation and presentation of his or her defence... Whenever appropriate and desirable,(adopt) measures for dealing with such children without resorting to judicial proceedings or institutional care.

53. In response to Committee concerns about the validity of the Minors Act of 1967, we must point out that on 12 October 2005, the National Congress promulgated the Juvenile Criminal Responsibility Act. This Act was originally presented by the Executive in 2002 with the aim of amending the Minors Act of 1967, which is based on the concept of “irregular situation”, and as such, from the point of view of judicial procedures and handling, makes no clear distinction between children who need assistance and protection and those who have been in conflict with the law. Once the Act is ratified by the President of the Republic, it comes into operation six months later.

The age of discernment established in the Juvenile Criminal Responsibility Act is 14 years. In accordance with the Act, minors aged between 14 and 16 years can be sentenced to a maximum of 5 years imprisonment and minors aged between 16 and 17 years can be sentenced to a maximum of 10 years imprisonment for serious offences. Another of the relevant modifications is its “special justice” status, giving it powers of sentencing and socio educational intervention.

A study of this Act reveals that it fails to respect any international regulations, that its approval was strongly supported by the mass media, and the thrust of the debate occurred in a context where the social and economic conflicts that provoke the issue of public safety were in the forefront of political discussion.

* ***The Juvenile Criminal Responsibility Act.*** When the Juvenile Criminal Responsibility Act (JCRA)⁴⁶ is placed in the context of international laws, for example: the International Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (UNSMRAJJ) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNRPJDL), this Act appears to be a "minimalist" law: in relation to the use of measures that deprive juveniles of their liberty (whether they be preventative or sanctioning); in respect to the specialisation of those who administer juvenile justice; and, in relation to the enforcement of the sentences and the procedures that are applied.

* ***Measures that deprive juveniles of their liberty.*** International law establishes that the deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period. The JCRA ignores this fundamental perspective in each and every one of the dispositions that refer to detention, preventive imprisonment and prison sentences.

Taking this into account, the sentencing framework proposed by the JCRA (10 years maximum for juveniles aged over 16, and five years for adolescents aged between 14 and 16) is highly questionable, considering, on the one hand, the "mimum necessary period" of imprisonment referred to by the United Nations and, on the other hand, a broader application of joint sanctions previous to imprisonment. These mandates were not considered by the legislators, and in fact joint sanctions were defined as sentences less than 541 days. With regard to detention pending trial, this will also not be applied for the shortest possible period of time, and therefore on this point the Act is not in accordance with Rule 13.1 of the UNSMRAJJ and Rule 17 of the UNRPJDL.

What occurs when a minor is detained in the event of a flagrante delicto offence is also worrying, because the Act authorises – subject to a request by the Public Prosecutor's Office and the decision of the Guarantee Court (Tribunal de Garantía) – the extension of the detention for up to three days (Art. 31 Juvenile Criminal Responsibility Bill (JCRB) in relation to Art. 132 of the Code of Criminal Procedure)⁴⁷. The circumstances in which the minor is apprehended does not stop the public prosecution officer from formalizing the investigation and requesting the corresponding pre-trial detention in the custody hearing. Further, considering the necessary specialisation of the bodies involved, as well as the fact that the court must consider without delay the issue of release of the minor thereby avoiding harm to her or him (Rules 10.2 and 10.3 of UNSMRAJJ) and that investigative bodies "shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention" (Rule 17 of the UNRPJDL), it is inconceivable that the court has the power to extend, upon a request from the public prosecution officer, the detention of a minor caught in a flagrante delicto offence. This demonstrates that the criteria applied to adults still persist in this new Act.

⁴⁶ JCRA. From here on this acronym will be used to refer to the Juvenile Criminal Responsibility Act.

⁴⁷ On the other hand, Article 31 of the JCRB does not comply with Rule 10.1 of the UNSMRAJJ, which states that "Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension".

The fact that the international regulations do not distinguish between the age of minors at the time of deciding the extension of the period of detention – as stated in Article 40.1 of the Convention on the Rights of the Child – makes the option adopted in the Act even more questionable. It is not possible to argue that a 3 day extension is the same for an adult as it is for a 14 year old child. All this demonstrates a lack of procedural “specialisation”, and that the general (adult) criminal procedures are being applied to children.

* **Specialisation of personnel.** The JCRA does not consider any real commitment to the specialised training of personnel who are involved in juvenile justice. Rather, it minimises this commitment by using the concept of “preference” in Article 29, which on the one hand is weakened in comparison with the bodies it is directed at, and on the other, does not underline the specialisation of those involved as an essential element of juvenile justice.

The JCRA does not echo the most progressive tendencies in relation to juvenile criminal justice. The Act does not show any element of restorative justice, other than the possibility of drawing up reparatory agreements, which are considered in the new Criminal Procedure Code. This is particularly deficient, considering that one of the central objectives of a “special justice” is to reinforce the juvenile offender’s respect for the human rights and fundamental freedoms of others.

Another aspect that shows the limited commitment of the State to the specialisation of juvenile justice is that of the “hearing that determines the sentence” considered in Art. 40 of the JCRA. The Court calling for the opinion of expert witnesses to determine the appropriate sentence should be a compulsory attribute, as a way of stimulating the specialisation of those involved in this stage. Making this compulsory would stimulate public prosecutors and defence lawyers, as the primary agents involved from the point of view of accusations, to pose arguments about the appropriateness of the sanction applicable for each particular case, in full accordance with Rules 5 and 17 of the UNSMRAJJ.

The proposal of compulsory presentation of expert witnesses would also be in accordance with Rule 16 of the UNSMRAJJ which states that “before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated“. We believe that this would create discussion about which sanction would help to fulfil the objective of encouraging attitudes and skills that will assist juvenile offenders in developing their potential as members of society, as well as reinforcing their respect for the human rights and fundamental freedoms of others, and safeguarding – of course – the rights of each and every one of those who are involved in the criminal procedure. On the contrary, as set down in the JCRA, the hearing that determines the sentence will focus on legal aspects, fundamentally to decide whether the sanction should be harsh or lenient, without much consideration of the factors that could contribute to the child’s reintegration.

* **Procedural specialisation.** In relation to procedure, Article 27 of the JCRA outlines that “the investigation and judgement of juveniles’ responsibility for criminal law infractions will be governed by the dispositions contained in the present Act, supplemented by the rules of the Criminal Procedure Code“. In this way the Act guarantees each and every one of the judicial guarantees set out for adults in international agreements, but not those that refer to children and adolescents.

The general criminal procedure legislation is insufficient to safeguard the juvenile's interests above all others. This was not rectified by the JCRA, in relation to the protection of her or his privacy, since criminal trials are public, thereby contravening Rule 8 of the UNSMRAJJ. Therefore, the possibility of ordering a reserved trial, during the investigative or judgement stage, is left up to the discretion of each court⁴⁸.

With respect to the faculties of the criminal prosecution bodies, the JCRA is ambiguous in certain aspects, while in others it runs contrary to the spirit of international laws and comparative experiences. For example, the application of the "Expediency Principle" is not sufficiently specified in the JCRA⁴⁹, at the same time as there is no consideration of the possibility of referring police or public prosecution cases to non-judicial proceedings. In this way all alternative measures for the treatment of these infractions are blocked.

This contradicts not only the spirit of the Convention on the Rights of the Child – which states in its Article 40.3 (b) "promote whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings" – but also the UNSMRAJJ which in Rule 11 contemplates the possibility of dealing with juvenile offenders without resorting to formal trial. This demonstrates that, for Chile, there is no other way of dealing with juvenile offenders other than a judicial proceeding, with all the labelling that this implies. In the same way, the Act does not incorporate any of the reasons that the United Nations recommends for the diversification of responses to juvenile crime and delinquency.

Finally, in relation to the execution of sanctions that deprive juveniles of their liberty, the JCRA does not ensure that the juvenile offender is aware of their rights and responsibilities, for example, through the compulsory publication of a guideline as stated by the United Nations. On the other hand, the JCRA does not fully comply with international laws because it does not contemplate the possibility of juvenile detainees leaving detention facilities for a visit to their home and family or to receive special permission to leave the detention facility for educational, vocational or other important reasons. It is hoped that via regulations, the Executive will rectify this omission, thereby ensuring "that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society" (Rule 59 UNRPJDL).

⁴⁸ This is particularly relevant when recently (07-09-05), and with the new criminal justice system fully operational, the media gave broad coverage to the detention of a group of minors who specialised in theft by force in apartments, the designated "spider girls". In this case the custody trial was televised, and this demonstrated that the general procedural legislation must be defined in reference to juveniles – with the most appropriate guideline being the JCRB – in order to fully comply with the norms set out by the United Nations for the administration of juvenile justice.

⁴⁹ In Art. 35 of the JCRB it is stated that "public prosecutors will especially take into consideration the importance that their decision may have in the adolescent's future life", which could be interpreted as a call for greater persecution, taking into account the current trend in criminal policies. Also we believe that, in accordance with Art. 40.1 of the CRC, there needs to be a priority option for the application of the expediency principle in cases of children aged under 16 years, as was proposed to the National Congress by the NGO issue group. In the case of assuming the need for age distinctions as a legal parameter for the application of the expediency principle, we believe that it would be an excellent opportunity to derive cases to non-judicial instances (community programs, for example) that implement restorative justice practices.

Synthesis. The treatment of children in Chile is based on a guardianship system, and this will be modified when the Juvenile Criminal Responsibility Act comes into operation (this has been delayed for a year, until June 2007, because the basic programs necessary for it to function were not in place). The most significant changes are related to the elimination of the discernment process, an anachronistic institution that arises from the former criminal law system previous to the guardianship system, which defined the possibility of imposing criminal sanctions on adolescents aged between 16 and 18 years according to the legal evaluation of their discernment ability. Another significant change will be the so-called separation of process between children under judicial protection and those who are alleged to have broken the law.

The Juvenile Criminal Responsibility Act, approved by the Congress of the Republic of Chile in October 2005, proposes a special criminal justice system for adolescents aged between 14 and 18, with a catalogue of criminal sanctions that can impose a prison sentence of up to 5 years for adolescents aged between 14 and 16, and up to 10 years for subjects aged between 16 and 18. UNICEF Chile publicly expressed its disagreement with the length of the sanctions contained in the Act.

On the other hand, the promulgation of the Protection Act, which contemplates the processing of cases of rights violations, is still pending. The emphasis of public legislative policy is more directed towards the control of legal infractions than the protection of rights. The proposals that have been presented by the State up until now lack specificity in terms of mechanisms that will guarantee the rights of children and adolescents. In this way, a large part of the treatment of children in Chile continues to be dominated by the concepts of the guardianship system, which is previous to the International Convention on the Rights of the Child.

Recommendations.

* We request that the Chilean State include a variety of services – psychological, educational and vocational – in the programs directed towards juvenile offenders, with the perspective of integration on a local level.

* We request that the Chilean State implement systematic monitoring programs for post treatment cases. To this end, we propose that an external body be set up to work in parallel with SENAME, with the aim of accompanying adolescents from the time they enter programs on the different levels of assistance (diagnostic, treatment in open centres and detention centres)⁵⁰. The great majority of the SENAME programs have a large body of work experience and have developed original models of psychosocial intervention with juvenile offenders. Their technical specificity is restricted by the imposition of technical and administrative regulations that work against the flexibility of their psychosocial intervention.

* We request that the coordination between the justice system and the SENAME programs be made more effective, similarly between the state institution and juvenile magistrates. In order to achieve this objective, we recommend that the Chilean State design effective coordination strategies, which will be equally necessary in the framework of the JCRA. It is probable that the dichotomy between the judicial sanction and psychosocial intervention continues to be felt in the new legal framework. This implies that, along with investing in the development of secondary and tertiary psychosocial prevention, it will be necessary to generate formal

⁵⁰ D. Mettifogo and R. Sepúlveda, Editors. “Life Paths of Adolescent Offenders”. Centre for Public Safety Studies, Public Affairs Institute, University of Chile. Santiago-Chile, 2005

instances of dialogue between the juvenile justice system, the community and specialists, for the benefit of the fundamental well-being of child and juvenile offenders.

* We suggest that, given the fact that the implementation of the JCRA has been postponed (approximately one year), the Chilean State could use the revision process to incorporate restorative justice mechanisms which allow for the participation of families and the community in the determination of non-punitive alternatives for juvenile offenders.

APPENDICES

1.- Presentation of the Network of Chile and Youth NGOs, Chile

INTRODUCCION

La Red Infancia Chile es una Coordinación de Organizaciones de la Sociedad Civil especializadas en temas de infancia y adolescencia, encargada de promover el estudio, análisis y propuestas de los temas relativos a la infancia, adolescencia y familia en Chile desde la perspectiva de los Derechos de Niños y Niñas.

La Red se constituye a partir de la necesidad de generar un espacio de encuentro, discusión, reflexión y difusión de las temáticas que les son comunes a un abanico amplio de instituciones y organizaciones de nuestro país. Su objetivo es poder generar un trabajo conjunto dentro de la especificidad que comparten cada una de ellas y generar lazos de apoyo, de transferencia de experiencias y conocimiento que le permitan constituirse en una voz y referente responsable y autorizado, desde la sociedad civil, en lo que a materias de infancia y adolescencia se refiere.

La Red Nacional de ONGs de Infancia y Juventud Chile se constituye en el año 2001 poniéndonos como objetivo *generar un trabajo conjunto dentro de la especificidad que compartimos y generar lazos de apoyo, de transferencia de experiencias y conocimiento para que, en un futuro, que anhelamos cercano, nos constituyamos en una voz y referente responsable y autorizado, desde la sociedad civil, en lo que a materias de infancia y juventud se refiere"*

Durante estos años hemos logrado contar con una forma de trabajo descentralizada, donde el respeto a las autonomías regionales es fundamento de la relación, permitiendo además, que cada institución haga aportes desde su propia especificidad; elaborar material desde las propias instituciones, insumos teórico – prácticos que sirven de base para nuevas propuestas de la Red; y legitimidad como interlocutor antes la autoridades estatales, el Consejo de Ministros por la Infancia y otras organizaciones de la sociedad civil.

En este momento la Red tiene presencia en las regiones de Atacama, Bio Bio, Valparaíso y Metropolitana (III, VIII, V y XIII) con 50 instituciones miembros.

Aún cuando este avance es significativo, la Red tiene mucho camino que recorrer para poder incidir de manera relevante, en tanto sociedad civil, en la generación de políticas públicas acorde con la Convención sobre los Derechos del niño. El Estado de Chile no ha adecuado la legislación a los principios de la CDN ni ha hecho todas las modificaciones estructurales que ella demanda. La Red tienen que fortalecerse para lograr presionar de manera relevante para que estas transformaciones ocurran.

Es por ello es que nos hemos propuesto mirar nuestro accionar en una perspectiva de mediano plazo (cinco años) de manera de tener una guía orientadora y consensuada que nos permita efectivamente *constituírnos en una voz y referente responsable y autorizado, desde la sociedad civil, en lo que a materias de infancia y juventud se refiere.*

MISION

La Red Nacional de ONGs de Infancia y Juventud de Chile, en tanto actor social y político, reconocido por los niños y jóvenes; asume un rol crítico y propositivo en la sociedad promoviendo la defensa y respeto de los derechos infanto juveniles para la construcción de una cultura de derechos.

VISION

La Red Nacional de ONGs; de Infancia y Juventud de Chile al 2010 ha incidido en la generación de condiciones jurídicas,

políticas y sociales que garanticen el respeto y la efectivización de los derechos infanto juveniles cautelados por la sociedad en su conjunto.

ESTRATEGIAS

- Fortalecimiento de capacidades
- Articulación de acciones conjuntas con distintos actores
- Fortalecimiento de alianzas estratégicas con actores claves
- Generación de espacios de participación de niños, niñas y jóvenes
- Difusión permanente de las acciones de la Red.

ESTRUCTURA DE FUNCIONAMIENTO

Son miembros de la Red de ONGs de Infancia, todas aquellas instituciones que se definen como organizaciones privadas, sin fines de lucro, con objetivos de bienestar público y en particular con experiencia de trabajo en infancia y adolescencia, que tengan como fundamento de su actuar la Convención de los Derechos del Niño y la niña, y que adhieran a la Carta de Compromiso como integrantes de la Red. La acreditación de Integrante de la Red está sujeta a los criterios establecidos por la Mesa Nacional de la Red y a la reglamentación que esta establezca, teniendo en cuenta las recomendaciones que para tal efecto le formulen las mesas regionales.

La Red cuenta con las siguientes instancias representativas de funcionamiento:

- a) La Asamblea Anual de ONGs de Infancia
- b) La Mesa Nacional de ONGs de Infancia
- c) Las Mesas Regionales de ONGs de Infancia

La Mesa Nacional de ONGs es electa por un periodo de 2 años en la Asamblea Nacional. La constituyen dos representantes designados por cada mesa regional. Todas las organizaciones participan en igualdad de condiciones y derechos.

LISTADO DE ORGANIZACIONES MIEMBROS

MESA REGIÓN DE ATACAMA

Fundación Instituto de Educación Popular

Fundación «Amautas» de Tierra Amarilla

Fundación Padre Roberto Lebegue

Fundación Hogar de Cristo, Copiapó

Fundación Hogar de Cristo, Tierra Amarilla

Corporación SERPAJ

CIJ Caldera

MESA REGIÓN DE VALPARAÍSO

Organización Comunitaria Funcional Centro El Puerto

ONG Acordes

Casa Taller La Covacha

Colectivo La Isla

Corporación Privada de Desarrollo Social Epifanía

Corporación SERPAJ

Taller de Aprendizaje Forestal

MESA REGIÓN DEL BÍO BÍO

Fundación Tierra de Esperanza

Hogar de Cristo

Aldeas SOS

La Caleta, Lota

Fundación CEPAS

Jardín Infantil Emanuel

Centro Integral Loida

Jardín Píecesitos

Jardín Sobrinos

CEMURI

Clubes Infantiles Moani

SEPADE

ACHNU

Serpaj Coronel

PIA Teresa de Calcuta

MESA REGIÓN METROPOLITANA

Achnu - Prodeni

CENCODEL - Worl Visión

Hogar de Cristo / C. de la Mujer

Caleta Sur

ONG Cordillera

Colectivo sin Frontera

ONG RAICES

Aldeas SOS

Fundación PIDEE

Serpaj - Hogar de Niños

La Caleta

Fundación Anide

Vicaria Pastoral Social



ALTERNATIVE REPORT CHILE

Vicaria Zona Centro

CIJ Vicaria Esperanza Joven

Corporación Chasqui

IDECO

ONG Firmamento

CIJ El Galpón

Tierra de Humanidad TDH

2.- Report Monitoring the Rights of the Child: “Participation, Freedom of Expression and Information”. Regional Working Committee (8th Region) of the Network of Child and Youth NGOs, Chile.

**DOCUMENTO TRABAJADO POR LA
COMISIÓN INFORME ALTERNATIVO
MESA DE ONGS DE INFANCIA Y JUVENTUD OCTAVA**

Organizaciones Participantes en Investigación

Fundación CEPAS - Fundación Tierra de Esperanza

Piececitos (Iglesia Luterana) - Aldeas Infantiles SOS

Fundación Hogar de Cristo - Achnu-Prodeni - La Caleta/Lota - Clubes Moani

Los Sobrinitos - Jardín Infantil Emmanue I-Jardín Infantil Loida

REDACCIÓN FINAL DEL DOCUMENTO Y ANÁLISIS DE DATOS

Equipo la Fundación Tierra de Esperanza

CONCEPCIÓN, MARZO DEL 2006

I. INTRODUCCION

Las transformaciones acontecidas en el mundo referidas a la infancia y a la juventud en los últimos dos decenios implican para los gobiernos que ratifican la Convención de los derechos del Niño revisar constantemente sus indicadores de logros para observar los avances, retrocesos, limitaciones y desafíos que existen en la aplicación real de políticas, programas y proyectos que se orientan en beneficio de cumplir con las demandas de cada artículo estipulado en la Convención.

Un punto de gran complejidad en la implementación de políticas es el desplazamiento desde una concepción “tradicional” de los niños, niñas y adolescentes como objetos de intervención, incapaces, pasivos y dependientes del mundo adulto hacia una concepción novedosa de agente social y fundamentalmente como sujeto de derechos. Lo anterior significa una redefinición de la figura del niño y de la niña otorgándoles la posibilidad de una voz crítica para su propio desarrollo, implicando una redefinición y apertura del concepto de ciudadanía a través del reconocimiento de derechos fundamentales para la convivencia democrática como es el derecho de participación. Con la introducción del concepto de participación, la Convención desvía el enfoque desde una cultura protectora y de bienestar hacia la construcción de una cultura de derechos; y lo hace promoviendo el derecho de expresar opiniones y de ser escuchados, el derecho a la libertad de expresión, el acceso a la información y el derecho a la libertad de asociación.

En este contexto, la Red Nacional de ONG’s de Infancia y Juventud se ha dado como misión monitorear la situación de los Derechos de los niños, niñas y adolescentes en Chile para la elaboración del informe alternativo dirigido al Comité de los derechos del niño de Naciones Unidas, priorizando entre otros temas: Niños(as) en situación de calle, niños(as) inmigrantes, explotación sexual comercial infantil y juvenil (ESCI), trabajo infantil y participación.

La mesa regional de ONGs de Infancia y Juventud de la 8 región integrada por

Fundación Cepas, Fundación Tierra de Esperanza, La Caleta/Lota, Fundación Hogar de Cristo, Aldeas Infantiles SOS - Chile, Proyecto Loida Coronel, Jardín Infantil Emmanuel, Jardín Piececitos, Proyecto Agüita de la Perdiz, Achnu/Prodeni, Clubes Juveniles MOANI, Servicio Paz y Justicia/Coronel (SERPAJ) asumió la responsabilidad de investigar el tema sobre la participación infanto-juvenil en la región y para ello elaboró un cuestionario dirigido a 77 niños, niñas y adolescentes pertenecientes a las comunas de San Pedro de la Paz, Hualpen, Concepción, Chiguayante, Lota y Coronel.

Un agradecimiento especial a los niños, niñas y jóvenes que participaron contestando las encuestas y compartiendo su visión respecto de lo que ellos perciben en relación a su derecho de participación, libre expresión e información. De la misma manera queremos manifestar un reconocimiento especial a la Fundación Tierra de Esperanza por el tiempo y recursos dedicados a la redacción final y análisis de datos de este informe

Para abordar el tema de la Participación Infantil, entendiendo que la *participación* no se limita a áreas específicas, y por lo mismo incluye el tomar parte en las decisiones de la familia, la escuela, la comunidad y la sociedad se ha indagado en la opinión de los niños, niñas y adolescentes mediante un cuestionario semi-estructurado sobre la situación de

cumplimiento de los derechos de la infancia en el tema de la participación, centrándose en las percepciones y en el conocimiento que poseen sobre participación, las dimensiones diversas que contiene y los otros derechos que implica. La aplicación ha sido realizada a niños, niñas y jóvenes que forman parte de los programas y proyectos de las instituciones que forman parte de la mesa regional de ONG.

El siguiente informe entrega los resultados de la aplicación de este instrumento y señala algunas conclusiones preliminares sobre participación Infantil en la región. Por ello en un primer momento se entrega una pequeña conceptualización sobre participación, especificando los diferentes niveles que el concepto contiene y las relaciones fundamentales que establece con otros derechos de la infancia, avanzando en una concepción integral de los derechos de los niños y niñas. Seguido abordamos la cuestión metodológica señalando algunos de los elementos propios del diseño aplicado, el instrumento y la muestra.

En un tercer momento, se entregan los resultados de la aplicación del instrumento, acompañada de su análisis e interpretación correspondiente, para terminar con unas conclusiones relevantes sobre el tema de la *participación infantil* en la región.

II. CONCEPTUALIZACIÓN

Varias de las disposiciones que aparecen en la Convención sobre los Derechos del Niño abordan el derecho de los niños, niñas y adolescentes en la participación. [El artículo 12](#)¹,

concretamente, revela esta dimensión especial. La participación es uno de los principios rectores de la Convención, así como uno de los retos principales que presenta el tratado. El principio afirma que el niño/a es una persona en todo el sentido de la palabra que tiene el derecho a expresar sus opiniones en aquellos asuntos que le afecten, e indica que estas opiniones deben ser escuchadas y tenidas debidamente en cuenta en función de la edad y madurez del niño/a. Este artículo reconoce las posibilidades que tienen los niños, niñas y adolescentes de enriquecer el proceso de toma de decisiones, compartir su perspectiva y participar como ciudadanos y promotores del cambio.

La Convención contempla una nueva relación entre los adultos y los niños, niñas y adolescentes. Los padres y las madres, los profesores, las personas encargadas de la atención y otras personas que se relacionan con los niños/as no se consideran como meros proveedores, protectores o defensores, sino también como negociadores y animadores. Se espera por tanto que los adultos organicen espacios y promuevan procesos concebidos para habilitar a los niños/as y posibilitar que expresen sus opiniones, sean consultados y puedan influir en las decisiones

El artículo 12 de la Convención sobre los Derechos del Niño indica que los niños/as tienen el derecho a participar en los procesos de toma de decisiones que pueden afectar sus vidas y a influir en las decisiones que se toman en nombre suyo, ya sea en el marco de la familia, de la escuela o de la comunidad. El significado práctico del derecho del niño/a a la participación debe tomarse en cuenta en cada una de las cuestiones que afectan a los niños/as y adolescentes. Este artículo indica que los niños/as tienen que participar en el proceso que conduce al cumplimiento de sus derechos. Al ser uno de los derechos fundamentales del niño/a, el derecho a la participación se sostiene por sí solo; pero para que se convierta en una realidad viable, es necesario un compromiso claro y la puesta en práctica de actividades eficaces, y por tanto su cumplimiento requiere mucho más que una simple estrategia.

Fue por esta razón que el Comité de los Derechos del Niño consideró el derecho a la participación como uno de los principios rectores de la Convención. La participación es un valor subyacente que debe iluminar el método por el cual todos los derechos del individuo se garantizan y se respetan; un criterio que permita analizar los progresos alcanzados en el proceso de aplicación de los derechos de la infancia; y una dimensión que sirve de refuerzo al derecho a la libertad de expresión, reconocido en todo el mundo, ya que implica el derecho de los niños(as) a ser escuchados y a que sus opiniones se tomen en cuenta.

Respetar las opiniones de los niños/as significa que no es posible prescindir de estos puntos de vista; no significa que haya que aceptar automáticamente las opiniones de los niños/as. Expresar una opinión no es lo mismo que tomar una decisión, pero implica la posibilidad de influir en la toma de decisiones. Es preciso alentar un proceso que incluya el diálogo y el intercambio de puntos de vista, en el cual los niños/as asuman cada vez mayores responsabilidades y participen de forma activa, tolerante y democrática. En tales procesos, los adultos deben ofrecer a los niños dirección y orientación, al mismo tiempo que toman en consideración sus puntos de vista en función de la edad y la madurez del niño/a. Por medio de este proceso, el niño puede obtener una mayor comprensión sobre las razones que explican porque se escogieron determinadas opciones, o porque las decisiones que se tomaron difieren de las que el niño o la niña hubieran preferido.

La Convención reconoce que los niños pueden formarse un juicio propio a una edad muy temprana, y se refiere a la "evolución de las facultades" del niño para tomar una decisión. Esto significa, por ejemplo, que los padres y las madres y, cuando sea apropiado, los

miembros de familia y de la comunidad deben ofrecer al niño las direcciones, orientaciones y consejos apropiados. Pero la orientación y los consejos de los padres tienen un mayor valor y significado a medida que el niño/a crece y se desarrolla, obtiene madurez y experiencia, y se convierte en una persona más autónoma y responsable.

La Convención favorece los procesos democráticos, entendidos no como procesos que conducen a una determinada forma de régimen político, sino como procesos de cambio social que permitan a los niños el ser incluidos en todas las decisiones que afecten sus vidas. Los autores de la Convención no hicieron referencia a la edad del niño/niña, sino a la “evolución de sus facultades”², y por supuesto que son distintas las posibilidades de participación de los niños y niñas más pequeños y de los jóvenes adolescentes.

El Comité de Derechos del Niño ha enfatizado el rol de la familia en la promoción de estos derechos, señalando que es el espacio donde se puede iniciar la experiencia democrática del niño o de la niña. Los valores de la tolerancia, comprensión, mutuo respeto y solidaridad que se viven en la familia, fortalecen la capacidad del niño/a para una participación ilustrada en procesos de decisión. Al participar, el niño aprende; al participar el niño asume como propios los asuntos en los que participa, trátase del ambiente escolar o de su comunidad. O trátase de ámbitos políticos, como pueden ser los movimientos por la paz de los niños/as en algunos países de la región, y su participación en procesos electorales o en parlamentos infantiles.

Se ha comprobado que la participación conduce a mayor eficiencia y sustentabilidad de los procesos de cambio. Se explica que al entender la participación como una posibilidad de compartir el control de recursos y de decisiones, los niños y jóvenes asumen responsabilidad, entendida ésta como un mecanismo de apropiación de los procesos y obligaciones contenidos en esta apropiación. En este sentido, la responsabilidad explica la relación entre participación y eficiencia: el niño o niña, al participar, se convierte en “parte” de aquello en lo que participa, se convierte en su autor. Tal conciencia de ser el autor de un proceso o de un proyecto, engendra una responsabilidad que se manifiesta en actuar de modo favorable al proyecto o proceso.

UNICEF entonces afirma que respetar a los niños y darles oportunidades de participación es una de las maneras más efectivas de fomentar en ellos la creencia en sí mismos, la confianza en sus posibilidades, y el aprender a negociar en los procesos de toma de decisiones. La participación se convierte así en un fin en sí misma, y no sólo en un mecanismo para asegurar el cumplimiento de otros derechos. La participación, fortalecida con el derecho a la información, se constituye así en un derecho básico, civil y político, cuya vigencia podrá garantizar las sociedades al alcance de los niños/as.

Niveles de Participación

En el apartado anterior hemos contextualizado las principales aristas de la discusión sobre el derecho de participación infantil, no obstante hablar de participación implica entenderla desde una posición integral y plena, lo que supone que el concepto de participación contiene otros derechos y diversas dimensiones. Desde esta concepción debemos preguntar :

¿Qué entendemos por participación?.

La participación supone ser parte, tener parte y formar parte, estas tres condiciones sintetizan compromiso, involucramiento y sentido de identidad. En este sentido hacer algo junto a otros no es sinónimo de participación. Participar significa mucho más que actuar en grupo; involucra metas en común, consenso acerca de los medios para alcanzarlas, formas compartidas para tomar decisiones, roles diferenciados y un control compartido de las acciones.

Para considerar que una propuesta reúne condiciones de participación integral o plena, deberían considerarse cuatro niveles:

- 1) Participación en la información.
- 2) Participación en la consulta.
- 3) Participación en la decisión.
- 4) Participación integral.

En la Participación en la información es una pseudo-información ya que los involucrados son informados de los problemas y de las decisiones que se han tomado y solo participan en la implementación que otros han decidido.

La participación en la consulta significa que las personas son informadas de las cuestiones que hay que resolver y se las consulta. En este nivel todavía no hay una toma de decisión compartida, pero se consideran e incluyen los intereses y visiones del conjunto.

La participación en la decisión significa que los involucrados son informados sobre los temas que hay que resolver, se los consulta y las decisiones se asumen en forma compartida. En este nivel de participación tiene lugar el diálogo, la reflexión y el análisis colectivo. Las acciones se deciden considerando las opiniones de todos.

La participación integral o plena, significa que los involucrados están informados sobre los problemas que se deben resolver, imaginan las posibles soluciones, toman las decisiones en forma compartida y participan en el control de la ejecución de las acciones comprometidas.

Visto desde este ángulo la participación significa la posibilidad de, a la vez, otros derechos de la infancia como el derecho a la información, el derecho para formar asociaciones y el derecho de expresarse libremente, entre otros.

III. Diseño Metodológico

Los siguientes son los objetivos, tanto el general como los específicos, que guían el seguimiento:

1. Objetivo general:

Establecer un monitoreo efectivo del cumplimiento de los derechos de la infancia en el tema participación y de los derechos que se relacionan con este.

2. Objetivos específicos:

- a) Identificar el conocimiento que tienen los niños/as usuarios de los programas de la red sobre la participación y las formas en que pueden hacerlo.

- b) Conocer la percepción que tienen los niños/as de su derecho de expresión y de ser escuchados.
- c) Establecer la existencia de instancias reales o medios mediante los cuáles los niños/as puedan cumplir con su derecho de información.
- d) Conocer la existencia de oportunidades como elemento constituyente del derecho de participación.

Muestra e Instrumento.

Para cumplir con los objetivos planteados se aplicó un cuestionario semi-estructurado³, que consta con un total de 20 (veinte) preguntas abiertas y 5 (cinco) cerradas a un total de 77 (setenta y siete) niños/as de 10 a 18 años, que hayan sido usuarios de los programas y proyectos de las instituciones que conforman la Red Nacional de ONGs de Infancia y Adolescencia de la Octava región.

IV. ANÁLISIS E INTERPRETACIÓN DE LOS DATOS

A continuación se presentan los análisis e interpretaciones de los resultados obtenidos en la aplicación de los instrumentos (cuestionarios). Según los objetivos planteados los temas son participación, asociación-movilización, expresión, información y decisión que corresponden a los niveles del Derecho de Participación Infantil anteriormente conceptualizado⁴.

a. Sobre el derecho de libre expresión:

De acuerdo a la pregunta de la importancia de escuchar a los niños/as y de pedirles su opinión por parte de las autoridades. Un 7,8 % del total de encuestados responde negativamente a la pregunta, el mismo porcentaje se ubica en la alternativa no sabe o no responde. Mientras que un 84,4 % responde afirmativamente la pregunta. (Gráfico n° 1)

Dentro de la alternativa afirmativa (84,5 %) podemos dividir en tres subopciones, que corresponden a las razones por las cuáles se responde afirmativamente. Un 41,6 % responde SI, sin entregar las razones de su selección; mientras que el porcentaje restante (42,9 %) responden SI ya sea porque es un derecho o bien porque es una necesidad. (Gráfico n° 1.1)

De este 42,9 %, un 15,6 % se inclinan por la alternativa de sus derechos; mientras que un 27,3 % lo plantean como una necesidad.

De acuerdo a la pregunta si el niño/a es escuchado en su hogar por adultos respecto de sus problemas. Un 19,5 % responde que solo a veces es escuchado en su hogar, un 11,7 % responde que NO. El total restante 67,5 % responde afirmativamente, es decir, SI es escuchado por los adultos de su hogar sobre sus problemas. (Gráfico n° 7).

En la pregunta sobre si es escuchado en sus problemas por los adultos de su colegio: un 36,4 % responde negativamente (NO); un 15,6 % responde A veces, mientras que un 46,2 % responde SI. (Gráfico n° 10).

En la pregunta si es escuchado en sus problemas por los adultos de su ciudad las respuestas son las siguientes: un 64,9 % responden que NO; mientras que un 13 % señalan que A veces son escuchados y solo el 18,2 % responde que SI. (Gráfico n° 12).

Cuando se les pregunta por la creencia de que deben movilizarse y manifestarse públicamente, en la calle con marchas, mítines u otras formas, las respuestas de los niños/niñas son las siguientes: No creen que deban expresarse públicamente un 18,2 %, un 14,3 % no lo sabe y un 67,6 % cree que si deben movilizarse públicamente. (Gráfico n° 24)

b) Sobre el derecho a la información.

Según la pregunta si han participado en talleres o charlas informativas sobre diferentes materias como SIDA, drogas o derechos juveniles. Un 20,8 % responde negativamente, un 76,6 % responde positivamente. (Gráfico n° 14).

Cuando son consultados si conocen qué son y qué hacen instituciones, como por ejemplo el INJUV, solo el 19,5 % responde que SI, respecto al CONASIDA responden afirmativamente un 29,9 %; respecto al CONACE un 23,4 %; y respecto de SENCE solo un 13 % responden que SI la conocen.

Cuando son consultados por su conocimiento sobre revistas o publicaciones para niños o jóvenes emitidas por el Estado: un 6,5 % No sabe si existen. El 75,3 % responde no conocer ninguna publicación y el 18,2 % responde SI conocer algunas publicaciones Estatales. Sin embargo, al revisar las respuestas nos podemos dar cuenta que la mayoría de las respuestas afirmativas corresponden a publicaciones o revistas que no pertenecen al Estado, si no que a entidades privadas como Icarito (La tercera) y Condorito, entre otros, lo cual revela una gran desinformación por parte de los niños y niñas sobre este Ítem. (Gráfico n° 23).

c) Sobre el derecho de Participación.

Cuando son consultados por su interés por participar en actividades del sector, de su colegio o de su ciudad, un 10,4 % responde que NO tienen interés, mientras que un 2,6 % responden que A veces tienen interés un 87 % responde que SI tiene interés de participar. (Gráfico n° 3).

Cuando son consultados por su conocimiento sobre las formas de participación tanto en su sector, como su colegio o ciudad un 6,4 % no responde, mientras un 28,6 NO conoce formas de participación y un 65 % SI conoce algunas formas de participación

Del total de respuestas positivas (65 %): un 36,4 % responde que SI sin especificar que formas de participación conoce. Mientras que un 10,4 % responde que SI mencionando talleres y actividades recreativas; un 11,7 % menciona al colegio como forma de participación y un 6.5 % señala conocer la participación mediante agrupaciones comunitarias. (Gráfico n° 4.2).

Cuando son consultados si han participado de alguna actividad organizada por los adultos de su sector, colegio o ciudad un 23,4 % responde que NO y un 75,3 % responde que si ha participado. Cuando son consultados si participan en algún grupo social de personas de su edad, el 19,5 % responde que No participa y un 78 % responde que SI participa. (Gráfico n° 13)

De este 78 % que Si participa, un 23,4 % no especifica en que tipo de grupo participa, un 13 % lo hace en alguna organización comunitaria, un 11,7 % lo hace en instituciones de la Red y un 29,9 % en actividades recreativas.

Por otro lado cuando se les pregunta su percepción sobre si es complejo participar un 24,4 % cree que si es complejo el participar. Un 7,8 % considera que a veces, mientras que el 63,9 % considera que no es complejo el participar. Frente a estas respuesta la pregunta por si los niños y niñas creen que vale la pena participar en 11,7 % señalan que No vale la pena la participación, un 2,6 % piensa que A veces vale la pena participar, y un 82,1 % cree que Si es importante el participar.

d) Sobre el criterio de Decisión.

Frente a la pregunta si han organizado alguna actividad para tomar decisiones sobre lo que pasa en su sector, colegio o ciudad, un 66,2 % responde que No y un 32,5 % responde que Si. Cuando son preguntados por lo específico de su hogar: si en este pueden participar en la toma de decisiones un 11,7 % responde que No, un 19,5 % responde que A veces y el 67,5 % responde Si.

En su colegio el 26 % no puede participar de la toma de decisiones, el 20,8 % sostiene que a veces y el 52 % sostiene que si puede participar de estas decisiones. (Gráfico n° 9)

En su ciudad el 71,4 % cree que no puede participar en la toma de decisiones, un 6,5 % cree que solo A veces puede hacerlo y solo un 15,6 % cree que Si puede participar. (Gráfico n° 11)

Interpretación de los Datos

El tema de la participación de la infancia en la sociedad podemos señalar que los niños y niñas está aún dentro de la perspectiva de *idea de* participación que de participación efectiva. Esto ya que los datos arrojan que existe interés de participar por parte de los niños/as y sienten que vale la pena hacerlo, además esta *idea de* también está presente desde la sociedad y sus instituciones hacia los niños/as, sin embargo no existen canales reales de implementación para la participación, ni formas efectivas de hacerlo. Por lo que podemos decir que no existe un *circuito de prácticas participativas*, que les permitan expresarse, informarse, decidir y con ello participar de manera integral.

De acuerdo a la interpretación por objetivos, en el tema del derecho a expresión podemos ver lo anterior en la alta importancia que los niños y niñas le otorgan a ser escuchados y a manifestar su opinión. Sin embargo sostenemos que existe una desinformación y desconocimiento por parte de ellos, porque la mayoría de las respuestas plantean que el ser escuchados y manifestar su opinión es hoy todavía una necesidad y no lo distinguen como un derecho. Por lo que el conocimiento sobre sus derechos sigue siendo un tema pendiente que obstaculiza la concreción de el cumplimiento de la Convención.

Refuerza esta concepción por nosotros planteada de *idea de* participación, más que de circuito de prácticas participativas el hecho de que a medida que nos desplazamos desde un micronivel relacional, como pueden ser los hogares de los niños/as a un macronivel urbano (ciudad) y sus instituciones disminuye el porcentaje de quienes creen que son escuchados y que les permiten manifestar su opinión. Frente a esta disminución de la capacidad de expresión en un macronivel, los niños/as creen que deben movilizarse y manifestarse públicamente. Sin embargo creen que las autoridades, en la mayoría de las oportunidades reaccionan mal frente a estas movilizaciones porque no los escuchan (es indiferente) y en otras oportunidades la reacción es agresiva y violenta. Esta contradicción entre *idea de* y circuito de prácticas participativas muestra la distancia que existe entre el discurso que existe a nivel social sobre la participación y la participación efectiva de la infancia en la sociedad.

En el tema de los derechos a la información, la situación se muestra tal vez más negativa, porque pese, a que gran cantidad de niños y niñas ha participado al menos una vez en charlas informativas sobre temas como drogas, SIDA, o derechos juveniles, no se puede decir o afirmar que los niños/as y jóvenes se encuentran informados de todos los temas que les competen ni de todo a lo que tienen derecho a acceder, debido a que la mayoría de ellos no sabe que son ni que hacen las instituciones que precisamente están encargadas de protegerlos a ellos y de beneficiarlos. El derecho a la información es fundamental para que la participación de los niños sea pertinente y tenga algún sentido. Resulta esencial que los niños dispongan de la información necesaria sobre las opciones que existen y las consecuencias de tales opciones, para que así puedan tomar decisiones con pleno conocimiento de causa y libremente. La información permite a los niños tener mayores aptitudes, confianza y madurez cuando se trata de expresar sus opiniones e influir en las decisiones.

Este planteamiento es aún más radical y adquiere mayor importancia al establecer que el 75,3% de ellos no conoce ninguna publicación ni revista infantil por parte del Estado, lo cual refleja una falta de interés por parte de este órgano hacia los niños/as y/o una falencia en el mecanismo de llegadas hacia las necesidades e inquietudes que ellos presentan.

Este desajuste es extremadamente peligroso para las pretensiones del gobierno de cumplir con la Convención, ya que conlleva no considerar a los niños, niñas y jóvenes como sujetos sociales de derechos, repitiendo el modelo tradicional de relación con la infancia y la adolescencia.

En cuanto a la participación el porcentaje de niños, niñas y jóvenes que participa es bastante alto, sin embargo es necesario establecer algunas distinciones de base para abordar el concepto de Participación propuesto en este informe. Lo primero es señalar que el tipo de actividad más recurrente, en la cual dicen participar los encuestados, se refiere a actividades de recreación y esparcimiento; no a instancias donde ellos puedan desplegar los otros derechos que contiene el concepto de participación: como el derecho a decidir, el derecho a expresarse y el derecho a estar informado. Por otro lado, complementando lo anterior, el concepto de participación visto desde este tipo de formas participativas reduce el concepto de participación, distanciándolo del concepto de participación integral propuesto en este escrito, donde la *idea de* prima más que la materialización de verdaderas relaciones de participación entre los niños (as), y entre estos y la sociedad. Por lo que, presentado de esta manera el concepto de participación se aleja del concepto de ciudadanía, alejándose a la vez de sus connotaciones más políticas-jurídicas vaciándolo de contenido beneficioso a la construcción ciudadana y democrática.

De esta manera la participación no puede ser genuina si los niños y niñas no disponen de la posibilidad de comprender las consecuencias y las repercusiones de sus opiniones; este tipo de participación no genuina esconde a menudo un acto de manipulación de los niños y niñas, más que de los jóvenes. La clave, entonces, de una participación integral es asegurar el respeto por la opinión de los niños. Además de facilitar y apoyar el circuito de prácticas participativas, resulta cada vez más importante considerar si se debe profundizar en las recomendaciones y preocupaciones de los niños y niñas, y también cómo hacerlo.

En cuanto al objetivo relacionado con la decisión podemos señalar principalmente dos puntos. Primero que un mínimo porcentaje de los encuestados se ha organizado alguna vez en actividades con el fin de tomar decisiones que los involucre y los ligue como ciudadanos. Esto profundiza en la brecha anteriormente señalada sobre el derecho de formar asociación y de celebrar reuniones pacíficas, donde quepa la posibilidad de expresar opiniones políticas, involucrarse en procesos políticos y participar en la toma de decisiones. Tanto el derecho de asociación, como el de celebrar reuniones pacíficas son fundamentales para el desarrollo de una sociedad democrática y la participación de los niños en el cumplimiento de sus derechos. Segundo, la posibilidad de tomar decisiones disminuye

significativamente desde el micronivel relacional del hogar hacia el macronivel de convivencia ciudadana. Esto se relaciona con lo expuesto anteriormente sobre la imposibilidad actual de participación integral de las niñas en circuitos de prácticas de participación, ya que prima hoy en día una concepción diferente, limitada y reduccionista de participación.

V.- Conclusiones

Para finalizar enunciaremos algunas conclusiones preliminares, que consideramos relevantes, para alcanzar los derechos establecidos por la Convención.

- Primero se establece que la participación observada en las encuestas se ajustan a las prácticas que Roger Hart⁵ rotuló como formas de no-participación de niños, niñas y adolescentes: *la participación simbólica, la participación decorativa y la participación manipulada*.
- La *participación simbólica* tiene lugar cuando niños y adolescentes participan de actividades organizadas por adultos, ejerciendo funciones de naturaleza puramente ceremonial u honorífica, actuando para una organización, una comunidad o una sociedad, como una metáfora que pone en evidencia su importancia. En estas ocasiones, los niños suelen aparecer como los representantes del futuro y no como personas de pleno derecho en una etapa particular de desarrollo.
- La *participación decorativa* tiene lugar cuando niños y adolescentes son llamados a adornar eventos con sus gracias y talentos. Sin embargo, ni éstos ni las múltiples manifestaciones de su creatividad trascienden o tienen impacto en la discusión y el tratamiento de las cuestiones que les competen.
- De las tres formas mencionadas de no-participación, aquella que produce más incomodidad es la *participación manipulada*. Esta tiene lugar allí donde grupos de niños y adolescentes "participan" como ventrílocuos o marionetas verbalizando ideas, haciendo gestos y tomando actitudes que reproducen fielmente la manera de entender y actuar de los adultos, sean éstos de derecha o de izquierda, pero que detrás de la escena mantienen el control de aquello que los niños dicen o hacen.
- Por su parte, la *participación auténtica* implica la creación de espacios y de mecanismos de escucha y participación de niños y adolescentes. Para ello, necesitamos concebirlas como fuentes y no como simples receptáculos o portavoces de aquello que los adultos dicen y hacen con relación a ellos. Esta última participación está excluida, al parecer, de los conocimientos y percepciones de los niños y niñas, pero fundamentalmente están fuera de las prácticas reales a las cuales están acostumbrados quienes respondieron al cuestionario.
- Por esto es necesario que seamos capaces de ir más allá de la mera *idea de* participación y avanzar en la construcción e implementación de circuitos de prácticas de participación de, desde, para niños, niñas y jóvenes. Sin embargo para poder implementar estos circuitos es importante romper con tres obstáculos fundamentales:
 - a. La evolución de las facultades del niño representa solamente uno de los términos de la ecuación: el otro es la evolución de las facultades de los adultos y su voluntad para escuchar y aprender de sus hijos, a comprender y tener en cuenta el punto de vista del niño y estar dispuestos a reexaminar sus propias opiniones y actitudes, y a contemplar soluciones que incorporen los puntos de vista de los niños. Para los

adultos, al igual que para los niños, la participación es un proceso de aprendizaje difícil que no puede reducirse a una simple formalidad. Para satisfacer el derecho del niño a la participación es necesario capacitar y movilizar a los adultos que viven y trabajan con los niños, a fin de prepararles para que ofrezcan a los niños la posibilidad de participar libremente en la sociedad y de aprender aptitudes democráticas. Los padres, las madres y otros miembros de la familia son las personas que obviamente pertenecen a este grupo, pero también lo son los profesores, los asistentes sociales, los abogados, los psicólogos, la policía y otros miembros de la sociedad en general.

- b. Añadiremos, además, que únicamente se creará una cultura de derechos en la medida en que los niños entiendan que no son solo parte de los problemas, sino que son parte fundamental en la solución de los mismos, que la democracia se construye con la participación de todos, que con sus opiniones pueden generar cambios en su entorno y, por último, que son considerados por los adultos como personas y no como objetos de protección o de asistencia.
- c. Por último resaltar la importancia de considerar a niños, niñas y jóvenes como sujetos sociales, que no son el futuro, sino que constituyen presente y deben ser considerados en tanto personas hoy con derechos y capacidades de aportar a la construcción de comunidades sociales más justas y solidarias, así como en la posibilidad de asumir responsabilidades en la búsqueda de soluciones a los problemas sociales que les afectan.

VI.- Recomendaciones.

De acuerdo a los resultados de la investigación podemos plantear las siguientes recomendaciones:

1. ***Sobre el derecho de libre expresión:*** El estado tiene que implementar programas destinados a favorecer la participación infanto-juvenil en las familias y establecimientos educacionales, pues los niños(as) y jóvenes los identifican como los principales núcleos donde pueden expresar su opinión y ser escuchados.
2. ***Sobre el derecho de libre expresión:*** Los niños(as) y jóvenes consideran importante que las autoridades tomen en cuenta su opinión. El estado debe crear los mecanismos y acciones para que estas sean canalizadas y traducidas en las decisiones finales en diferentes temáticas relacionadas con la construcción del país.
3. ***Sobre el derecho a la información:*** Los niños, niñas y jóvenes desconocen los distintos servicios del estado dirigidos hacia ellos. Se recomienda campaña de difusión destinadas a poblaciones específicas (Infanto-juvenil y adulta) respetando sus características y particularidades, pero bajo una perspectiva integrada considerando que esta diversidad forma parte de una misma sociedad.
4. ***Sobre el derecho a la información y libre expresión :*** El estado debe promocionar y resguardar espacios en donde los medios de comunicación consideren los distintos niveles de desarrollo de los niños(as) y jóvenes para que el derecho a la información y libre expresión sea cumplida en forma efectiva.

5. **Sobre el derecho a la participación:** Los niños(as) y jóvenes manifiesta interés y pertenecen a un grupo u organización. Sin embargo, no lo perciben como instancia de transformación a nivel individual y colectivo, suscribiendo esta participación mayoritariamente al área de la recreación. El estado debe asegurar la implementación de programas múltiples de participación donde los niños(as) y jóvenes puedan acceder y les permita distinguir las distintas formas existentes.
6. **Sobre el criterio de decisión:** Los niños(as) y jóvenes expresan que en sus familias y establecimientos educacionales pueden participar en la toma de decisiones, pero en su ciudad esta situación no ocurre. Debido a lo anterior, se recomienda al estado realizar acciones a nivel comunal que permitan a los niños(as) y jóvenes participar en la toma de decisiones con derecho a voz y voto en sus jjvv, unión comunal, concejos municipal, entre otros.

ANEXOS

Cuestionario

Querido amigo y amiga:

La **Mesa Regional de ONGs de Infancia y Juventud, 8ava Región** te invita a contestar estas preguntas para conocer tu opinión sobre los espacios de participación para las y los jóvenes y niños, niñas de nuestra región.

1. ¿Te parece importante se escuche y se pida la opinión de los menores de 18 años por las autoridades?

2. ¿Te parece importante que las personas puedan decidir sobre lo que las autoridades hacen para ellas?

3. ¿Te interesa participar en las actividades de tu sector, de tu colegio o de tu ciudad?

4. ¿Conoces formas en que puedas participar en las actividades de tu sector, de tu colegio o de tu ciudad?

5. ¿Has participado en alguna actividad organizada por adultos de tu sector, de tu colegio o de tu ciudad?

6. ¿Has organizado alguna actividad para tomar decisiones sobre lo que pasa en tu sector, colegio o ciudad?

7. ¿En tu casa, puedes participar en la toma de decisiones?

8. ¿Eres escuchado en tus problemas por los adultos de tu casa?

9. ¿En tu colegio, puedes participar en la toma de decisiones?

10. ¿Eres escuchado en tus problemas por los adultos de tu colegio?

11. ¿En tu ciudad, puedes participar en la toma de decisiones?

12. ¿Eres escuchado en tus problemas por los adultos de tu ciudad?

13. ¿Participas en algún grupo social, cultural, deportivo u otro de personas de tu edad?,
¿Cuál? y ¿Con qué frecuencia?

14. ¿Has participado en talleres, charlas o cursos sobre temas de Sida, drogas, trabajo o
derechos juveniles? ¿Sabes quién lo organizaba?

15. ¿Has participado en talleres, charlas o cursos sobre temas de Sida, drogas, trabajo o
derechos juveniles organizados por alguna autoridad? ¿Quién ?

16. Sabes qué son y qué hacen las siguientes instituciones: INJUV, CONASIDA,
CONACE, SENCE, JUZGADOS DE MENORES?

17. ¿Crees que es difícil participar?

18. ¿Crees que vale la pena participar?

19. ¿Conoces revistas o publicaciones para niños o jóvenes de tu edad editadas por el estado? ¿Cuáles?

20. ¿Crees que los niños o jóvenes deben movilizarse y manifestarse en la calle con marchas, mítines u otra forma? ¿Qué te parece la forma en que reaccionan las autoridades?

