

Santiago, Chile, March 2001

Committee on the Rights of the Child

United Nations, Geneva

To whom it may concern

Dear Sir/Madam,

The Initiative Committee for the Rights of the Child has completed the alternative report to that of the Chilean government. The report consists of information on the period between 1992 and 1997.

The following report was written in accordance with the guidelines given by The Committee on the Rights of the Child and is the result of a process of analysis of the official report of the Chilean government sent to you in February 1999.

From the analysis of the official report of the Chilean government, as well as from our own sources of information about the respect of the Rights of the Child in Chile, certain conclusions and recommendations become evident.

Conclusions:

1. The Chilean State has provided neither the legal conditions, nor the institutions necessary for carrying out the recommendations given by the Committee following their consideration of the first report of the State of Chile during the sixth session of the Committee on the 22nd of April 1994.
2. The involvement of politicians (parliamentarians, leaders of political parties) has decreased considerably during the past few years, resulting in a lack of concern, knowledge and commitments in the areas relevant to the respect and fulfilment of the Rights of the Child. The group of parliamentarians working for children, who played an important role in keeping the issue of children and adolescents on the agenda, was dissolved after the general elections of 1997.
3. There is no solid coalition of civil society organisations working for children capable of bringing the theme to the attention of the government and society and therefore no effective lobby for the rights of this age group.

Recommendations:

- a) To enforce the fulfilment of each and every recommendation made by the Committee after the review of the first report. Particular emphasis should be

- put on the creation of a general national mechanism with the mandate to guarantee the continuous supervision and evaluation of the enforcement of the Convention throughout the country. (See point 15 of the recommendations).
- b) Recommend that the reports of the State of Chile to the United Nations Committee on the Rights of the Child are discussed and approved in Congress, thus ensuring that all political groups are informed about the situation of children in the Country and of the advances and failures in the fulfilment of the rights of the child. In turn, this would obligate them to make public and international commitments in the area.
 - c) Reiterate that it is of utmost importance that the State reports are the result of a broad debate about the situation of children and of the respect for, and fulfilment of, the Rights of the Child. In this debate the presence and participation of children must be guaranteed and respected.

As the Initiative Committee on the Rights of the Child, which gathered the NGO's working for children and adolescents in Chile in order to put together this report, we would like to express our wish to participate in the meeting of the working group of the Committee in which the report of Chile will be discussed.

The following is a list of the members of the Initiative Committee for the Rights of the Child:

PIDDEE, ACHNU, OPCION, SEPADE, La CALETA Norte, SERPAJ, FUNCASE, Amnistía Internacional, ASPAUT, CEPPAC, FORJA, Casa de Juventud Carlos Casanueva, Fundación DEM, GENESIS, Hogar de Cristo, KAIROS, MOANI, SEDEJ, Vicaría Pastoral Social, Fundación Tierra de Esperanza, CEMURI, CERSONG, ONG-CEC.

**COMMENTS ON THE SECOND REPORT OF THE
CHILEAN STATE (1993-1998) ON THE MEASURES
ADOPTED TO MAKE EFFECTIVE THE
FULFILLMENT OF THE UN CONVENTION ON THE
RIGHTS OF THE CHILD.**

**NGO INITIATIVE COMMITTEE FOR THE RIGHTS
OF THE CHILD**

**COMMENTS TO THE SECOND REPORT OF THE CHILEAN STATE (1993-1998)
ON THE MEASURES ADOPTED TO MAKE EFFECTIVE THE FULFILLMENT
OF THE INTERNATIONAL CONVENTION ON CHILD RIGHTS. COMITÉ DE
INICIATIVAS POR LOS DERECHOS DEL NIÑO - CHILE**

The Committee of Initiatives for the Child Rights in Chile worked out the NGOs' report, alternative to that of the Chilean State, on the advances and implementations of the rights established in the International Convention on the Child Rights (ICCR), to be submitted, according to its article 45, to the United Nations Committee on Child Rights.

This report evaluates the legislative, administrative and programmatic measures undertaken by the Chilean State between 1992 and September 1997 in order to fulfill the provisions of the Convention, and presents recommendations. It was prepared according to the "General guidelines with respect to the forms and contents of the periodical reports" of the United Nations Committee for the Rights of the Child. The opinions and arguments here developed are supported by data, studies and antecedents enclosed in the original Comment of which the present report is the summary.

I GENERAL MEASURES OF IMPLEMENTATION.

12. Norms that safeguard the children's rights have been enacted in the period but, generally speaking, the legislation is characterized by its dispersion and presents deficiencies, gaps and contradictions; for instance, the coexistence of juridical norms inspired in the doctrine of the "minor, object of protection" (minor in irregular situation) and that of the "child subject of rights".

According to Article 5 of the Political Constitution, the rights of the child have constitutional rank. Notwithstanding, this has not meant a substantial modification of the

regulations applied in the courts of justice, and has not either improved the childhood condition.

The legal initiatives that are being approved favor essentially the rights to provision and protection, practically not considering the rights to participation.

The above situation confirms the importance of the pending institutional, legal and administrative transformation. Constitutional and legislative reforms are required, in order to harmonize the local law with that of the Convention, as well as the creation of an organism that may effectively warrant the child rights, provided with resources acceptable to the courts.

17 There does exist a National Childhood Plan, however it does not consider as part of its objectives: (a) the promotion of the kind of children participation which transforms boys and girls in subjects of rights; and (b) the sensitization of the society so that in daily life cohabitation it may respect the rights of boys and girls, and construct, at the same time, a new childhood category.

In Chile there is no national policy of childhood, since there is no sectorial coordination. Neither is there a national or regional entity to regulate, control and vouch for the child rights.

18 There is not any entity to coordinate the State policies and actions addressed to childhood.. A post of Defender of the Child Rights ought to be created. Concerning the inter - ministerial Work Group, the results are so far unknown to us.

19 The governmental and non governmental coordination and cooperation has been unsatisfactory and ephemeral. The progress of the Childhood National Plan has not been evaluated as a whole, and we ignore the results of “the creation of an instrument for the collection of indicators”.

The government disowns the role of the NGOs in the defense of the child rights, when stating that there are no independent organisms devoted to their promotion and protection.

20 As stated by the reports of international and local organisms, the Chilean economic growth has not produced changes in the distribution of the income, which is one of the most regressive in the world. The distribution of money income by deciles of homes has remained almost unchanged over the last decade: the poorer 10% receives around 1.5% of the total income while the richer decile gets about 42% (CASEN Survey).

The poverty indices have decreased in the last decade from 5.5 million in 1987 to 3.3 million in 1996. But this decrease has not been homogeneous for all regions, sectors and age groups. For instance, when measuring poverty against age groups, it is found that children under 15 years register poverty indices superior to those of the adult and juvenile population. According to the 1996 CASEN Survey, 56.8% of the children up to 15 years old fall in the quintiles of lowest incomes; if the third quintile is added, the percentage augments to 74.2%.

Moreover, the poor homes have a higher demographic density than rich homes and the presence of children is more frequent in homes of lower income. Eighty-two percent of the homes of the poorer quintile have children below 15 years old among their constituents; in the second quintile, 73.2% of the homes, while, in the quintile of higher income, only 39% have children among their members.

We conclude that the situation of poor children is harder than that of adults, due to the higher demographic density of poor homes, and that in our country there is a close relationship between childhood and poverty, since the poorer homes have a greater proportion of children.

Finally, in the context of the public spending, the social spending increased considerably: in 1970 it was 40%; in 1987 it reached 54%; from then on, until 1996, it has stayed relatively constant. However, there is no breakdown of the social spending, and it is not possible to determine the percentage destined to childhood. Assuming that the social spending is oriented toward the needy sectors, it does not appear to reach the poor children, this expense benefiting more, and more directly, the population of older age. We conclude then that the State is far from satisfying the economic, social and cultural rights of children and adolescents as established by the Convention.

II DEFINITION OF THE CHILD (Art. 1)

24 The State Report is either repeatedly ambiguous in its indications or omits others that are relevant to verify the deficit of the national legislation with respect to the Convention.

The difference in the definition of child is recognized in the permanent reiteration of the term “minors” in the State report. This concept, besides excluding the subject referred to, maintains the juridical connotation given by the doctrine of irregular situation: “at social risk”.

In relation to the acceptance of a job, without excluding dangerous work, it is not stated that children under 15 years may sign work contracts in the artistic field, according to art.16 of the Labor Laws

In Chile the system of measures of the “ Minors Law” (Ley de Menores) (16.618) is a disguised penal system lacking minimum guarantees, hence the exemption from penal responsibility is just formal. The Minors Law does not determine a minimum age for deprivation of liberty when establishing that any child in “material or moral danger” is under the protection of this law, which includes the undetermined deprivation of freedom.

Although the penalty of life imprisonment and the death penalty are contemplated, they are not applied, considering the norms of the penalty code.

III GENERAL PRINCIPLES

A Non discrimination (art 2)

25 All concepts that lessen the value of the person dimension, subject of rights, must be eliminated: for instance “minor” or the one of “dependent family”, as referred in the Labor Laws.

26 The most serious discrimination problems arise from the economic status of the child, especially with respect to the economic, social and cultural rights. A great percentage of the children are in a situation of inequality and disadvantage, not only as compared to the adults but also in relation to the less poor children.

Law 19.284 for the Full Social Integration of Disabled Persons - not specifically addressed to the children - benefits them indirectly because it allows them to claim before the court when there has been discrimination or a threat to the exercise of their rights. But the measure is insufficient due to the lack of programs for cultural change which would eliminate the discriminatory behavior and segregation.

The policy of acknowledgement and promotion of the ethnic populations is restricted to solve the problem of land acquisition. The National Program of Indigenous Fellowships for boys and girls of indigenous peoples and communities is limited by the clause that refuses fellowships to the youth “who may alter or infringe norms related to the public order”.

The educational system is discriminatory and exclusive. There are denunciations of racial discrimination and exclusion. Despite the policies destined to improve quality and equity in the education, there still persist deep differences between private and public education

(either municipalized or subsidized); in turn, this determines the difference of opportunities in the students integral development as well as in their social and labor insertion. The access to higher education is concentrated in the students of the quintile of larger income. The right to education was relativized by the creation of the voluntary system of shared funding, because it has allowed segregation according to the economic income of parents and tutors. The educational system lacks the adequate pedagogic instruments to meet the needs of the diversity of boys and girls, particularly in the fields of gender, ethnics and disability. There are still many obstacles for pregnant students who wish to continue their studies. The students are discriminated in account of their physical appearance. For instance boys are discriminated if they wear earrings or long hair. There is no entity to legally defend boys and girls who are seriously discriminated at school. Besides, the family has not been integrated in deliberations on school life.

The State deficits appear mainly in the right to education, for in the constitutional field the priorities are the right to free education and school autonomy. Generally speaking, the school system is not able to protect and warrant the school children's rights.

27 The slow process of decentralization implemented by the State, and the historical institutional practices of promoting exclusively sectorial policies, maintain a situation of discrimination and do not meet the children's needs, especially when comparing the Metropolitan Region to other regions, or the urban zones to the rural zones. The transversal issues like gender, ethnic groups, age or feminization of poverty, children prostitution and intra-familial violence, are not considered as worth of analysis, the State has no response to them, they are not solved subjects.

The increases in the budgets meant for regional administrations are still invested in the traditional sectors, which exclude girls, boys, women and youths. The Secretariats of

Regional Planning and Coordination mainly devote themselves to the economic and social evaluation of sectorial projects; the Plans for Community Development, do not consider the information and analyses on the groups of children and youths; and the Regional Plans for Childhood are just a “summing up” of the actions undertaken by each sector.

28 The perspective of gender, according to the Women’s Platform of Action agreed upon at the IV United Nations World Conference on Women, is not incorporated in the childhood and youth policies and programs.

According to the “Open Forum for Health and Reproductive Rights” of the NGOs, there exist multiple examples of discrimination by sex among boys and girls. For instance, as the study years increase, the number of women who gain access to them decreases, as well as their participation in higher education and in labor options. The curriculum concealed in the education system keeps a discourse that reproduces stereotyped roles and the women’s subordination. The school texts have a sexist vision of the roles; and the majority of the victims of violence and sexual abuse are girls and women.

B The best interests of the child (art 3)

The best interests of the child are not internalized as the leading criterion for decision making in the family, school, social life, planning and development policies and even less in budgetary assignments. The “minors justice” often uses these interests as an argument to support the judicial decision that takes the child away from his or her family, without considering the child’s opinion, and not fully understanding his/her rights.

D Respect for the views of the child (art. 12)

42 Neither the legislation nor the social practices have developed mechanisms to secure the expression of the children’ views and opinions. This is especially evident in administrative and legislative decision making.

44 There are judicial norms contrary to the children rights to be heard and considered in any judicial proceeding affecting them. The Civil Code grants the parents the faculty of deciding and choosing for the children, and that of correcting and controlling them: the Minors' Law points out that whenever possible, pubescent minors are to be heard, while prepubescent children shall be so only if and when the authority estimates it adequate.

45 Both by law and by culture, the protection of children who suffer discrimination and penalties due to the condition, activities or opinions of their parents is impracticable. The relevant law only protects the children that are in grave situation caused by their parents by taking them away temporarily. There is a high percentage of children discriminated due to their parents' condition of indigence, poverty or ethnical origin.

At school there are no adequate participation instances. The students centers have no true juridical existence, only regulations; those of secondary school are ruled by the teachers and in primary school such organizations are practically non existent.

IV CIVIL RIGHTS AND FREEDOMS (Arts.7, 8, 13-17 and 37 a)

Freedom of expression (art. 13)

55 A disciplinary and punitive educational system does not guarantee freedom of expression to the children.

D Freedom of thought, conscience and religion (art. 14)

56 These rights are neither recognized nor respected in Chile and no measures have been implemented to ensure them, despite being consecrated in art.19, Nr. 6 of the Constitution

E. Freedom of association and of peaceful assembly (art. 15)

58 Although it is enshrined in the Constitution (art. 19, N° 13-15) it is not guaranteed due to the level of interference of the adults in the existing institutions and organisms, the

administrative obstacles for their free development, and the imposition of legislative regulations which restrict them.

In primary school no measures are adopted to ensure the right to association. Children are legally disqualified to celebrate civil acts. Law N° 19.418 dealing with Neighbors' Associations and other community organizations, establishes in the paragraph "juvenile organizations", that only youths older than 15 years may participate in them. And they can vote since 18 years old.

F Protection of privacy (art. 16)

59 The State does not defend the children's right to not being subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor or reputation. This becomes manifest in some practices of the educational system, which normally interfere in all the ambits of the child private life; in the character of passive subject assumed by the children in the face of offences like slander, insults and defamation; and in the communicational forms adopted by the media to tackle subjects such as juvenile delinquency and situations of violation of rights, like ill treatment and sexual abuse.

60 The State lacks policies addressed to the propagation and communication of the Convention toward other State organisms and to the society.

H The right of not being subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37,a)

61 The law in force is imprecise, especially so with respect to persons aged 18 years who face situations linked to law infringement. The police force (Carabineros and Investigaciones) practice torture as a method to force information, to sanction or to provoke self inculpation; also, arrests without legal support are practiced. When such situations are

denounced , there are no consequences or sanctions for the responsible parties, who usually claim lack of proof. The courts of justice do not either respond to these denunciations. Children who are taken from the Minors' Assistance Centers, or from Police headquarters to the court or vice versa, are handcuffed or put in irons, and kept under the custody of armed guards.

At school, physical and psychological violence by the teachers is a frequent occurrence, as well as the concealed expulsion of children with behavioral problems.

The campaigns of sensitization in order to avoid cruel and degrading treatments have been promoted rather by the private sector than by the State, and are addressed to the families and not to the State organisms. There is a lack of vocational training and education for the personnel who directly deals with the children and for the teachers, as well as for the police and judicial sectors. At the legal level, protective measures are applied essentially in cases of children ill treatment in the inter familiar ambit.

V FAMILY ENVIRONMENT AND OTHER KINDS OF GUARDIANSHIP (Arts. 5, 18, 9-11, 19-21, 25, 27, 39)

A Parental direction and orientation.

The Chilean State has failed to address a massive campaign of propagation and education to the parents and adults in relation to the Convention, and the rights it promotes. There have been only some isolated initiatives directed to homes of low income or with significant problems.

B Responsibilities of the parents.

1 There has not been any compilation or systematization of the norms referred to childhood that are found scattered in different legal texts, and no code inspired in the Convention has been developed.

2 Although there exists a National Plan of Childhood, it has not been socialized regarding the rights fostered by the Convention. This restrains the community cultural changes needed to adopt the paradigm of the child as subject of right

C .Separation from the parents.

The efficacy of the fulfillment of this right is easier to control, since in Chile the children can only be separated from their parents through a judicial resolution issued by a competent court, for the motives described by law. The possibility of discussing this kind of decision has been gradually opened.

The child's right to maintain personal relations and direct contact with the parent who is not in charge of the child, has no exceptions in the current legislation, irrespective of the cause of the separation. In practice, if the separation occurs because the life, the health, or the physical integrity of the child are at risk, such visits are limited, restricted or even forbidden.

D Family reunification (art. 10)

The law does not consider this hypothesis, it only regulates the possibility that the "minors" leave the country, or are to be adopted abroad.

E Illicit transfers and illicit non-return (art. 11).

In this period no measures are known to impede illicit transfers or non-return. The State approved and published in 1944 the Convention of Civil aspects of International Children Abduction.

F Payment of alimony (paragraph 4 art. 27)

It is contemplated in law 14.908 on Abandon of the Family and Payment of Child Support.

G Children deprived of their family environment (art. 20). The same norms apply. The Minors Law, in case of physical or moral risk, empowers the judge to submit the child to

the regime of freedom under parole, to place him or her in special educational establishments; and to entrust him or her to a person who is willing to care for him or her. Such measures are applied without considering educational, ethnic, religious, cultural or linguistic variables.

H Adoption (article 21)

83 Adoption will only proceed if it offers advantages or benefits to the adopted child. However, when there are no relatives or interested parties, there is no institution to evaluate whether adoption does offer advantages or benefits to the child. Concerning the adoption of children by foreigners, the legality of the adoption processes carried out abroad is recognized according to the laws of the country of the adoptive parents. Nonetheless the Chilean judge may require from different entities antecedents, issued by professionals, with respect to the mental and physical health of the applicants. Although the Consul is the person who must respond that the adoption of the Chilean child is effected according to Chilean law, such norm does not regulate or sanction if the adoption is not transacted abroad.

The offences of children traffic, or undue payment for adoption are not included in our Penal Law, which makes it impossible to control these actions.

The approval by the National Congress of the Covenant of The Hague on Child Protection and the Cooperation in Matters of International Adoption, subscribed in 1993, is pending, as well as the Interamerican Convention on Legal Conflicts in the Matter of Minors Adoption, subscribed in 1984.

According to the law in force (18.703) simple or full adoption can be granted by judicial resolution, when the legal requisites are met and the proceedings established by law are

fulfilled. Also, Law Nr 7.613 on adoption of subjects over 18 years is constitutive of civil status and is granted by public deed, with the ordinary legal proceeding.

I Periodical examination of the internment conditions (art. 25)

86 The current law does not contemplate this right, neither is there any judicial control. There are administrative dispositions that safeguard the rights of interned boys and girls; the Minors National Service is responsible for the supervision of such provisions and for interposing legal resources in the juvenile courts (Tribunales de Menores).

J Abuses and neglect, including physical and psychological recovery and social reintegration (art. 39).

The Minors National Service has had to resort to administrative summary proceedings in order to investigate situations of physical or mental ill treatment used in some of the centers it supervises.

VI BASIC HEALTH AND WELFARE (arts. 6, 18, 23, 24, 26, 27).

A. Disabled children (art. 23).

Law 19.284, issued in 1994, recognizes the right to disability prevention and the right to rehabilitation or compensation. The Fondo Nacional de la Discapacidad (National Fund for the Disabled) finances projects in the areas of prevention and vocational training; however the most serious situations of the disabled are assumed by private entities.

In 1990, Decree 490 of the Ministry of Education allowed the integration of disabled children into primary school, granting a special subvention to establishments that adhere to it. Also the State grants pensions - which however do not fully meet their basic needs - to disabled persons older than 18 years with small income, or to the “mentally deficient” of any age.

B Health and sanitary services (art. 24)

95 There is no response in the governmental report concerning measures to avoid and strive for:

K The risks of environmental pollution. With respect to pesticides, 52% of the agricultural temporary workers are women who work accompanied by their children, and several studies have detected the prevalence in them of multiple malformations as compared to the national level. Tetra ethylic lead produced by vehicles exhaust is highly mutagenic. National studies have revealed higher lead levels in children who live in zones of high congestion, provoking sometimes irreversible neurophysiological deficiencies. In the city of Antofagasta there are lead deposits originated by the stocking of heavy metals. The regional Medical College found extremely toxic levels in the blood of the children examined, which are manifested in alterations of the central nervous system. Although there have been denunciations and protection appeals, the measures adopted are not sufficient and the problem persists. As to industrial waste, the Atacama desert is one of the world sites that developed countries use to get rid of noxious materials, contrary to the Basel Treaty which forbids the transfer of dangerous industrial residues from industrialized to developing countries. In two small settlements in Arica, built around waste deposits from a Swedish enterprise, urine tests revealed dangerous arsenic levels in 50% of the children.

W Measures adopted to prevent early pregnancies and specific situation of adolescents (timely provision of information and counseling)

According to the Women's National Service, in the last year there has been no variation - as compared with former years - in the number of newborns of mothers between 15 and 19 years old: 139 000 children, i.e., 15% of the total births. Abortions are estimated in at least 12 000 a year.

X Function accomplished by the educational system. In 1991 the Ministry of Education) recommended to allow pregnant students to complete the school year and authorized a special examinations agenda. This recommendation is not respected by all the schools, especially private ones. Pregnant adolescents and young mothers face multiple problems in their personal development as well as in that of their children. Forty percent of children who suffer ill treatment are the children of adolescent mothers

VII EDUCATION, RECREATION AND CULTURAL ACTIVITIES (Art. 28, 29 and 31)

A Education including professional training and orientation (art. 28)

105 The governmental report of 1996 expressed the political will to fulfill the provisions of the Convention within the Chilean educational system. At the end of 1999, only some of the results expected had been achieved.

106 The Report enounces the general principles of the Convention, however the State ensures this right only partially, since there is no legal safeguard in face of the arbitrary or unlawful refusal to the right to education - a safeguard that does exist with respect to freedom of education. Since this right is not covered by the protection resource, it is licit to expel a student from an educational establishment. Moreover, article 28.2 of the Convention is violated, because the exclusion from the system is mostly originated in sanctions for school indiscipline.

b The proportion of the general budget directed to the children and assigned to the different education levels. To pass from an investment of 4.9% to one of 7%, the State authorized private establishments with public funding or subvention to demand a payment from the families, which limits the accession of the poorer sectors to quality services of education.

107 With the passage of the school journey from half day to a full day, the 50,000 children who study and work shall be forced to opt between school and work, which will entail an important rate of school drop-outs. The State has not implemented measures to encourage school attendance; it is not likely that the children could be replaced by their parents in their jobs, since these are far too informal. Studies of the World Bank have shown that in Chile only 45% of the boys and girls in the age of secondary studies can complete them effectively. On the other hand, the results of the SIMCE (System of Measurement of the Quality in Education) indicate that there has not been any improvement either in the resources and conditions of the educational establishments, or in the processes and results of teaching and learning. The gap between public and private schools persists. Some promising results have been obtained however with the “900 schools program” implemented in the schools of the poorest children in the country.

B The objectives of the education (art.29)

112 a To promote the respect for the child’s personality, talents, and for his/her mental and physical ability to their fullest potential.

The lineaments and actions of the “Program of Improvement of Quality and Equity in High School, which includes direction and management among its components, have not been able to change the authoritarian style prevailing in the system, or the discriminatory practices contrary to the dignity of the children.

b Important gaps are observed as to “inculcating in the children the respect of the human rights and fundamental freedoms”. Although this issue is a transversal objective of education, it is not lived in practice inside the establishments. The budget assigned to specific programs of human rights is insufficient. In the country, the schools act as centers of social control and as “expellers” and the result is that each time more boys and girls

enter the informal labor market, thus contradicting the concept of education enshrined in art. 29 of the Convention.

113 c On the pertinent programs and the material used.

The State has invested important funds to provide for texts, libraries, didactic material and computers to schools. However this does not ensure the accession of the children to those elements.

e With respect to the mechanisms generated to augment the participation of the children in the decisions that affect them, the State shows as one of its greatest achievements the issuing of decree 524 on the organization and performance of the Students' Centers in secondary studies, but in fact these have existed ever since 1938. The current decree suggests to the directors that the student representatives be elected by their peers and not by the adults, a practice that still persists. To revert this situation, we suggest to enforce the law of juvenile association, which has been blocked in Congress since 1992. The practices that prevail in the Chilean educational system, together with the lack of protective legislation, conform a picture of transgression, particularly concerning the norms of the Convention (pointed out in paragraphs IV, 55, 58 and 59).

c Rest, leisure, recreation and cultural activities (art 31)

An Educational Reform is being implemented which allows important methodological innovations, but it does not consider the participation of the civil society in its design and application. The issue of equity is still a great weakness in education, since the economic model enhances social inequalities. Spaces for recreation and participation are lacking; there is no recognition by the State of the work of communitarian or non governmental organizations in the subject of leisure and recreation. Not all the municipalities have a communal office for childhood assistance. There is a lack of local articulation, re-creation

of the social tissue, reconstruction of social spaces and sense of community. The work done by the JUNAEB (Junta Escolar de Auxilio Escolar y Becas) in their contribution with alimentary rations, should be accompanied by a program of formative and recreational activities.

VIII SPECIAL PROTECTIVE MEASURES (Arts. 22, 38, 39, 40. 27 and 32 to 36.

A Children in irregular situation.

2 Children affected by an armed conflict (art. 38) including their physical and psychological recuperation and their social reintegration (art. 39): The State report did not consider the 17 years of military dictatorship as an armed conflict. Neither did it consider the serious, massive and systematic violations to the human rights that affected children in their development, causing an impact on their moral conscience, with sequels that are observed until today. The physical and psychological recovery was integrally assumed by the NGOs and by the church organisms in the period of the dictatorship.

3 The official figures register 183 cases of children under the age of eighteen in repressive situations with result of death, of which 39 suffered arrest and subsequent disappearance.

All these crimes remain unpunished, and are a new form of violation to the human rights

B Children in conflict with justice.

Administration of justice to minors (art. 40). The Minors' Law based on the Tutelary Law, which corresponds to the Doctrine of the Minor in Irregular Situation, is still in force and prevails in the justice courts over the Convention norms (cfr, I, 12; II, 24; IV, H, 61). In 1997 the Ministry of Justice worked out, in accordance with the Convention, an adequate Project of Law on Responsibility for Juvenile Infractions to the Penal Law, but it was never transacted. In any field, legislation and legal treatment fail to promote the value and the respect of the child's rights, and do not either guarantee the principles of the Convention.

133. The prevalence of law 16.618 over the Convention is reiterated, which sets the ground for applying justice without a due process. The child is not presumed innocent until proven guilty according to the law. The judges rule based on police, or professional reports and, without verifying the commission of the offence, apply any measure of the Minors' Law. While awaiting a verdict or the evacuation of the report, the child may be deprived of freedom for an indeterminate time, in a Diagnostic Center. Although the Code of Penal Proceedings establishes a maximum term of 15 days to issue the statement (declaration) of discernment, in practice this term is not respected, because it is often interpreted as a prognosis of the social dangerousness of the subject. For persons under the age of sixteen, there do not exist superior competent and impartial instances whereas, for persons older than 16 and younger than 18, there is a Court of Appeals. But if the subject is declared to have discernment, the adult penal law is applied.

It is confirmed that law 16.618 is still in force and it is said that the Parliament has not yet received from the Executive Power the preliminary draft of the Law on Responsibility for Juvenile Infractions to the Penal Law.

136 For the actors of the Minors' Law sector, the State conducts formative activities only about the legislation in force. The NGOs, UNICEF, and some universities, apply the doctrine of Integral Protection to Childhood.

137 The insignificant advances in the application of art. 40 derive from the government's indolence and from the viewpoint of the Doctrine of Citizen Safety claimed by the legislative power to assume the situation of childhood and youth.

2 Children deprived of freedom, including any form of arrest, imprisonment or internment in some establishment under custody (b, c, d, art.37).

138 No legislative laws are in force to prevent unlawful or arbitrary deprivation of liberty

in children. The arrest for suspicion is still practiced and boys and girls are detained, imprisoned or interned without proven legal reasons. It is of common occurrence to find children in rehabilitation systems for protective reasons or for an accusation that has not been duly confirmed, where the judge has ruled “in conscience”, according to the law in force. These situations affect solely poor and marginal children; those of higher strata are entrusted to their parents or tutors.

139 There exist particular measures privative of freedom, residential, ambulatory or of free environment, however they are not sufficient either in quantity or quality. The State does not provide the adequate funds or the public policies in accordance with the principles of the Convention.

Some efforts have been made in order to eliminate the permanence of children in the prisons by means of the law of “Minors’ Eradication from Adult Jails”, but since we lack adequate systems non privative of freedom the resource is to create special sections for minors in adult jails, and the Jail System is then applied. In the same way, the model “Comunidad Tiempo Joven” with armed gendarmerie guards and adult penitentiary system is, in fact, a children prison, and it is being implemented throughout the country.

140 There do not exist independent mechanisms to supervise the situation of children deprived of freedom, who have to face the provisions issued from the Minors Courts.

Although the legislation forbids all forms of physical or mental violence in private or public institutions, such practices still persist, particularly from State agents (cfr, Report of the Special Reporter Nigel Rodley, CDDHHNU, in the 52nd session period. Annex)

143 See Annex

151 b The performance of any kind of work that may be dangerous to the children, or interfere with their education, or can be harmful to their health or their physical, mental, spiritual, moral or social development.

The Labor Laws include a definition similar to that of Covenant 138 on dangerous work and some restrictions, but with a substantial difference: the latter indicates that norms should be applied in all the economic sectors; the former directs it exclusively to the children whose work is remunerated and under dependence or subordination. In this way the majority of the children who work are excluded. Concerning education, the labor law refers only the requirement of complying with the school obligation within the 14-15 years stretch. The Committee of Eradication of Children Work, created by the government, is tackling this problem and its objective is to eradicate it from the country. But the economic model increases the incorporation of adolescents to the labor world, in particular to the informal work, on the fringe of the law (annex),

153 a The establishment of a minimum age or ages to work.

Although there are norms that stipulate it in the Labor Laws, its applicability is doubtful (cfr 151-152) even in the formal economic sector, since there is no specialized supervision. According to the CASEN 96 Survey, 70.3% of the 15-17 year old salary earners have not signed a work contract. And the labor laws definitely do not prohibit work to children under 14 (cfr. II, 24; and annexes).

154 It is not effective that 15 years old is the minimum age for admission to an employment (cfr. II, 24; 151, 153). The labor laws are not “fully compatible” with OIT’s (IWO? Covenant Nr. 138 (cfr. 151, 152).

The lack of an instance to coordinate the Childhood policies hinders the advances dealing

with children work; further investigation is needed on the magnitude and characteristics of this phenomenon in the country.

2 The illicit use of drugs (art. 33)

155 Like in other countries the drug problem is serious, complex, dynamic and has multiple causes. The strategies implemented in Chile to face it, in particular the preventive ones, are not adequate to the dynamics of the problem. They do not cover the whole dimensions of the problem, nor guarantee the efficiency and optimum use of the available resources.

Concerning consumption, according to the official studies, persons under 18 years old are a highly vulnerable group, in risk with respect to the initiation of drug consumption, which begins each time at a younger age -- and presently, women are consuming as much as men.

With respect to traffic, particularly at the level of micro traffic which is one way of subsistence in many homes, partial studies confirm a rise in the number of children used in this activity. As to the legislation, the drug law which represses traffic and consumption is punitive, because it views the consumer as a delinquent, without his or her condition of subject of rights; it does not differentiate them adequately, and neither does it procure integral rehabilitation to those who need it.

3 Sexual exploitation and sexual abuse (art. 34)

158 a Generally speaking, there does not exist an inter sectorial and multidisciplinary coordination which may implement a national policy in this respect. Neither are there resources proportional to the magnitude of the problem, or studies allowing to better know it, in order to propose intervention methodologies, highlighting the priorities.

In relation to sexual offences, particularly those committed against persons under 18 years old, the Penal Code was adequately reformed: (1) It incorporates new sexual offences, typifies children pornography; specifies the violence, changing "dishonest abuse" by

“sexual abuse”; The “client” caught in relations with under age children is taken as responsible of rape . (2) It modified Proceedings: the judge values proofs according to “sound criticism”; witnesses acquire more weight; the Medical Legal Service is not the only one providing tests as proof of rape; it reduces the proceedings that are traumatic to children. (3) About the Types of Penalty: it augments the penalties for sexual abuse, penalizes others not formerly considered and it augments the possibilities to condemn sexual aggressors.

A Work Group was created, of 65 public and private institutions, in order to design a Plan of Action against Sexual Exploitation, and the government shall contribute to its funding