

ACCESS TO JUSTICE FOR CHILDREN: CHILE

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Chile signed the CRC on 26 January 1990 and ratified it on 13 August 1990.

On 27 September 1990, the CRC was implemented into Chilean law and has since formed part of the country's national laws.

Article 5 of the Chilean Constitution (the "Constitution") states: "The exercise of sovereignty recognises as a limitation the respect for the essential rights which emanate from human nature. It is the duty of the organs of the State to respect and promote those rights, guaranteed by this Constitution, as well as by the international treaties ratified by Chile and which are in force."¹

B. Does the CRC take precedence over national law?

The CRC takes precedence over other national laws because of its status as an international treaty. According to the Constitution, all Chilean institutions must respect all civil rights enshrined in the Constitution and in addition all rights enshrined in international treaties which Chile has ratified.²

C. Has the CRC been incorporated into national law?

The Decreto No 830 of 27 September 1990 (the "Decree") incorporated the CRC into Chilean Law.³ The Decree expressly states that the CRC is incorporated as an Act. The Parenthood Act dated 26 October 1998 (Ley N° 19.585)⁴ expressly adopted the Chilean Civil Code ("Código Civil")⁵ in order to guarantee all children's rights enshrined in the CRC.

D. Can the CRC be directly enforced in the courts?

As the CRC forms part of Chilean law it can be directly enforced in the national courts.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

¹ Constitution of the Republic of Chile (1980 with reforms through 2010), available at: <http://pdba.georgetown.edu/Constitutions/Chile/vigente.html>.

² Article 5 Constitution.

³ Available at: <http://www.leychile.cl/Navegar?idNorma=15824>.

⁴ Available at: <http://www.leychile.cl/Navegar?idNorma=126366>.

⁵ Available at: <http://www.leychile.cl/Navegar?idNorma=172986>.

The Supreme Court of Chile has previously applied the CRC, but it is not applied methodically throughout all courts and has been interpreted in a manner inconsistent with the Convention. The Supreme Court, for example, applied the CRC and the concept of “best interest of the child” in its decision dated 31 May 2004.⁶ In this decision, the Supreme Court interpreted Articles 3 and 9 of the CRC in a way which was considered highly controversial. In this case, a divorced couple tried to establish custody rights over three children. Since the mother was living with another woman in a lesbian relationship, the Court, interpreting the general interest of the child under Article 3 of the CRC, held that it was legitimate to separate the children from their own mother in order to guarantee for the children a “structured family within the traditional framework”. By doing so, the Supreme Court used the CRC to separate children from their mother, thereby opening the gates for a tribunal to intervene in the child’s life on grounds to “normalise” his family.

This interpretation of the CRC by the Supreme Court has been said to have contradicted Article 2 of the CRC,⁷ which states that States shall respect and ensure the rights set forth in the 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.⁸

Recently, the Chilean courts have ruled favourably when interpreting the Convention. In a landmark decision by the Court of Appeals of Punta Arenas on 22 December 2014, which was upheld by the Supreme Court on 21 April 2015, the Court held that a variety of family types can promote the best interests of the child, including same-sex parenting.⁹ It was the first time that the highest court in the country has decided in favour of sexual diversity. The court refused to give an order to ban the distribution of a book presenting same-sex parenting to children in kindergarten, and held that there is no set definition of a family in the Constitution, and that the CRC accepts the existence of a variety of family types in order to promote the best interests of the child.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children’s rights?

⁶ *Atala Riffo and daughters v. Chile*, Decision Fourth Room Supreme Court of Chile (Corte Suprema de Justicia de Chile), 31 May 2004 (Annex to the claim, Volume V, annex 22, pages 2669 - 2677); a summary of the subsequent decision in this case by the Inter-American Court of Human Rights is available at: <https://www.crin.org/en/library/legal-database/atala-riffo-and-daughters-v-chile>.

⁷ Francisco Zúñiga Urbina, *Comentario Crítico a la Sentencia Atala Riffo y Niñas vs Chile*, *Revista de Derecho*, Escuela de Postgrado No 2, December 2012, pp. 239-250, available at: <http://www.revistas.uchile.cl/index.php/RDEP/article/view/31007>.

⁸ Article 2 CRC.

⁹ *Flavio Ugenin Hernández Márquez y otro con Junta Nacional de Jardines Infantiles*, Causa n° 435/2014 (Proteccion), Resolución n° 15475, de Corte de Apelaciones de Punta Arenas, 22 December 2014, decision available at: <http://www.movilh.cl/documentacion/2015/Resolucion-Nicolas-Corte-Suprema.pdf>, CRIN case summary available at: <https://www.crin.org/en/library/legal-database/flavio-ugenin-hernandez-marquez-y-otro-con-junta-nacional-de-jardines>.

Children through their representative can bring complaints in front of all courts in Chile, including criminal complaints, civil claims and constitutional challenges. Please see response in section III.A. below for further details.

- B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Under Chilean law, an infant is any person under seven years of age whereas a child is any person under 18.¹⁰ A child cannot bring a civil claim against a third party unless he is either authorised or represented by both or one of his parents¹¹.

Should any or both parents deny their consent or no longer have the right to provide such consent, the judge may appoint a guardian ad litem for the child.¹² The guardian ad litem's role is to represent the child's interests in any legal proceedings.

In civil claims against a child, the plaintiff will have to seek consent from one of the parents of the child defendant to authorise or represent the child during any proceedings.¹³ If the parents refuse to give their consent, the judge may again appoint a guardian ad litem. Such parental authorisation is not required for criminal proceedings against a child.¹⁴ Children who seek to bring legal action against one of their parents must request permission from the judge who will appoint a representative.¹⁵

- C. In the case of infants and young children, how would cases typically be brought?

As described above under II.B., any infant or minor depends on their parents to bring cases on their behalf or on the appointment of a guardian ad item by a judge who can then bring cases for the child.

- D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Any parent who is involved in judicial proceedings with his or her child (either as claimant or defendant) will be under the obligation to bear the child's legal costs, as regulated by the court which will take into account the importance of the matter and the financial capacity of the parents.¹⁶

Article 19(3) of the Chilean Constitution states that all people have a right to free legal assistance, as a victim and as an accused. It also states that "[a]ll persons have the right to legal defense in the manner indicated by law and no

¹⁰ Article 26 Civil Code.

¹¹ Article 264 Civil Code.

¹² Article 264 Civil Code.

¹³ Article 265 Civil Code.

¹⁴ Article 266 Civil Code.

¹⁵ Article 263 Civil Code.

¹⁶ Article 263 Civil Code.

authority nor individual may impede, restrict or perturb the due intervention of an attorney, should it have been sought".¹⁷

Pursuant to this constitutional mandate, Chile has an organised service of free legal aid that covers a number of situations. The service is called Corporación de Asistencia Judicial.¹⁸ It is regulated by the Judicial Assistance Act¹⁹ which states in its Article 2 that the aim of the entities regulated by this Act is to provide free legal aid to individuals who lack financial means to bring judicial actions. Generally, the eligibility criteria is based on economic factors. However, children who are victims of a criminal offence are automatically eligible. The services include legal representation and general assistance to victims.

The Chilean Ministry of Justice has developed the Minors National Service ("Servicio Nacional de Menores")²⁰ which is very active providing assistance to children. For example, it has established effective means to report anonymously any abuse of children, report child pornography, provides information on adoption, provides special programmes for complex situations involving children and their families, etc. This service is inspired by the CRC and aims to assist vulnerable children and protect their rights. Pursuant to the Children's Assistance Act,²¹ the Minors National Service may also grant financial assistance to those individuals and entities that cooperate with the different programmes in place.

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There are no further limitations and parents do not have to agree to a case being brought. Children can bring legal action against their own parents, but must first request permission from a judge who will then appoint a representative.²²

III. How can children's rights violations be challenged before national courts

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitution expressly establishes that all institutions of the Chilean State must respect and protect the rights guaranteed under the Constitution as well as in all international treaties ratified by Chile.²³ Accordingly, any citizen has the right to seek protection from the courts if he or she perceives a violation of any of the rights under constitutional protection ("Recurso de Protección").²⁴ A claim for protection of constitutional rights can be brought regardless of the origin of

¹⁷ Article 19(3) Constitution.

¹⁸ Website at: <http://www.cajmetro.cl>.

¹⁹ Available: <http://www.leychile.cl/Navegar?idNorma=29425>.

²⁰ Website at: <http://www.sename.cl/wsename/index.php>.

²¹ Available at: <http://www.leychile.cl/Navegar?idNorma=240374>.

²² Article 263 Civil Code.

²³ Article 5 Constitution.

²⁴ Article 19 Constitution.

the alleged breach.²⁵ Among the rights included in this category of specially protected constitutional rights are: (i) the right to life and to the physical and psychological integrity of the individual; (ii) equality before the law; and (iii) equal protection under the law in the exercise of rights. When the right damaged, limited, modified, or threatened affects physical liberty, or in case of an illegitimate worsening of procedures or conditions of detention, or of forced missing of persons, the action of habeas corpus ("Recurso de Amparo") can be filed by the party concerned or by any other person on his behalf, and the judge shall immediately make a decision even under state of siege.²⁶ Without prejudice to other courts, claimants who believe that one or several of their rights have been violated may bring a case before the Chilean Court of Appeal.²⁷

Under the Chilean Criminal Procedure Code ("Código Proceso Penal"), criminal complaints may be brought as a matter of public interest or privately by the victim.²⁸ Under Chilean law, prosecution may be brought publicly or privately. It is public when, in addition to the victim, the prosecutor is entitled to file a criminal claim.²⁹ This can be done in respect of a number of criminal offences. Private prosecutions may only be brought by the victim in respect of certain offences, such as offences against the honour or reputation of an individual.³⁰

In addition, the Family Courts ("Tribunales de Familia") hear all civil cases relating to children, such as cases regarding parental responsibility or payment of sustenance.³¹

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³² on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.³³ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.³⁴ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the

²⁵ Article 20 Constitution.

²⁶ Article 21 Constitution; Sergio Endress Gómez, *Essential Issues of the Chilean Legal System*, November 2005, available at: <http://www.nyulawglobal.org/globalex/Chile.htm>.

²⁷ Article 20 Constitution.

²⁸ Available at: <http://www.leychile.cl/Navegar?idNorma=176595>.

²⁹ Article 53 Code of Criminal Procedure.

³⁰ Article 53 Code of Criminal Procedure.

³¹ Article 8 Law 19968 of 2004.

³² The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, *Pact of San Jose, Costa Rica*, Chapter VII, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³³ American Convention on Human Rights, Article 44.

³⁴ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

petitioner wishes to remain anonymous and the respective reasons.³⁵ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³⁶ When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁷ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³⁸ The Court’s judgments are legally binding on the State against which they are made.

Finally, once all domestic remedies have been exhausted, complaints against violations of children’s rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,³⁹ which Chile has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.⁴⁰ The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict⁴¹ and must have occurred after the entry into force of the Protocol on 1 December 2015.⁴² Anonymous complaints are inadmissible and so are complaints not made in writing.⁴³ In addition, only complaints made in one of the working languages of the UN will be accepted.⁴⁴ After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.⁴⁵

B. What powers would courts have to review these violations, and what remedies could they offer?

The Chilean Court of Appeal has the power to grant immediate injunctions as well as long-term measures in order to guarantee the exercise of the rights

³⁵ Ibid., Article 28.

³⁶ Ibid., Article 23.

³⁷ Ibid., Article 45.

³⁸ Article 63 American Convention on Human Rights.

³⁹ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

⁴⁰ Ibid., Article 5.

⁴¹ Ibid.

⁴² Ibid., Article 7(g).

⁴³ Ibid.

⁴⁴ Office of the United Nations High Commissioner for Human Rights, ‘23 FAQ about Treaty Body complaints procedures’, available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

⁴⁵ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

enshrined in the Constitution.⁴⁶ The protection appeal has proved to be a very popular way to protect rights in Chile.⁴⁷ What defines this appeal is its “interim nature”, that is, the ability of the Court to grant interim measures. The Court of Appeal may adopt any measure in order to protect the exercise of a basic right.

In addition, the Family Courts have extensive powers to order specific measures, such as: determine, suspend or annul parental responsibility, establish any pension in favour of the mother of the child, impose the payment of any grant in favour of a child. Another example would be the order of admittance of a child to a special centre in order to be protected from his or her parents in cases of parental abuse or temporary stay with another family.⁴⁸

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It does not appear to be possible to bring a challenge without naming individual claimants or victims. According to the the Code of Civil Procedure (“Código de Procedimiento Civil”),⁴⁹ all persons are required to appear in court proceedings on their own behalf or through a legal representative.⁵⁰

Where a legal representative appears in court on behalf of another person, the representative must act in performance of a mandate or exercise of a position requiring special appointment by the individual(s) pursuing the claim.⁵¹ There needs to always be a guarantee given that the person concerned who is bringing the claim approves of what is being done in his or her name.⁵²

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

While judges have the power to combine cases to offer clear and consistent pronouncements of the law,⁵³ group action is generally not a possibility. Only one exception exists under the Chilean Consumer Protection Act⁵⁴ which allows class actions if initiated by either the Consumer Protection Agency, a consumer association or a group of at least 50 consumers.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

⁴⁶ Article 20 Constitution.

⁴⁷ In 2011, the Court of Appeal accepted around 75% of the appeals that it received, totalling 5,000 cases approximately. For an explanation of the protection appeal, *Vid.* in Spanish, Navarro Bertrán, Enrique, 35 años del recurso de protección, *Notas sobre su alcance y regulación normativa*, Estudios Constitucionales Año 10, No 2, 2012, pp.617-642, available at: http://www.cecoch.cl/docs/pdf/revista_10_2_2012/35_anos_Navarro.pdf.

⁴⁸ Articles 8, 13 Law 19968 of 2004.

⁴⁹ Available at: <http://www.leychile.cl/Navegar?idNorma=22740>.

⁵⁰ Article 4 Code of Civil Procedure.

⁵¹ Article 6 Code of Civil Procedure.

⁵² *Ibid.*

⁵³ Article 94 Code of Civil Procedure.

⁵⁴ Available at: <http://www.leychile.cl/Navegar?idNorma=227543>.

Research suggests that NGOs cannot bring or intervene in court cases in Chile.

IV. **Practical considerations.**

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases alleging violations of the rights enshrined in the Constitution must be filed in front of the Court of Appeal.⁵⁵ All civil cases relating to children, such as cases regarding parental responsibility or payment of sustenance, are brought in front of the Family Courts.⁵⁶

Private prosecutions must be brought in the Criminal Court, and any Family Court may also defer any case to a Criminal Court if a crime appears to have been committed.⁵⁷ A private prosecution may be brought at any time before the prosecutor has finished any investigation.⁵⁸

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

In all cases that fall within the scope of family law, the judge will ensure that children are duly represented by appointing them a lawyer from either a public body or a private institution.⁵⁹ Please see response in section II.D. above for further details. While the right to legal counsel is constitutionally guaranteed, indigent defendants have been said to not always receive effective legal representation.⁶⁰

In addition, the Ministry of Justice operates four entities called ‘Corporaciones de Asistencia Judicial’ which provide free legal assistance to indigent claimants and offer a broad range of related services.⁶¹

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

⁵⁵ Article 20 Constitution.

⁵⁶ Article 8 Law 19968 of 2004.

⁵⁷ Article 90 Law 19968 of 2004.

⁵⁸ Article 112 Code of Criminal Procedure.

⁵⁹ Article 19 Family Courts Act (*Tribunales de Familia*) Ley 19968, available at: <http://www.leychile.cl/Navegar?idNorma=229557>

⁶⁰ Freedom House, *Freedom in the World 2014: Chile*, available at: https://freedomhouse.org/report/freedom-world/2014/chile#_VW3Td9ZcpKQ.

⁶¹ For a report on legal aid including Chile, please see Patricia Canales and Virginie Loiseau, *La Asistencia Jurídica Gratuita en la legislación de Chile, Alemania, España, Francia, Italia y Suecia*, Biblioteca del Congreso Nacional de Chile, available at: http://www.bcn.cl/bibliodigital/pbcn/estudios/estudios_pdf_estudios/nro293.pdf.

Pro bono legal services are available to claimants in Chile. A list of lawyers offering pro bono services is available through the British Embassy in Santiago, Chile.⁶² Free legal advice is also available through civil society organisations, such as Fundación Pro Bono.⁶³

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The general rule regarding the statute of limitation for crimes regarding sexual violence against children was changed in 2007 by Act 20.207.⁶⁴ The period to bring action as a result of sexual abuse now does not commence to run as of the date of the offence but as of the date the victim turning 18. This is now reflected in the Code of Criminal Procedure.⁶⁵ There are no further special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The following are types of evidence expressly recognised by the Code of Civil Procedure: (a) any documents; (b) confession or statement by one of the parties; (c) personal inspection by the court itself; (d) technical reports; and (e) presumptions.⁶⁶

In civil law cases, children under 14 are not required to make any witness statements or declaration⁶⁷ although children's statements may be used by the court in order to establish a presumption where they have sufficient judgement or maturity.⁶⁸

Under the Code of Criminal Procedure, in cases of rape or sexual abuse, if requested, children can give their statement through an intermediary.⁶⁹ Also, if the child must attend the courtroom, it will need to be equipped with all the resources to assist him.⁷⁰ No further description of these resources is provided which gives the judge absolute discretion to ensure the child is accompanied or advised by trained psychologists, therapists, etc. and also to apply measures to protect the child from seeing his aggressor (room dividers or witness declaration by a CCTV). In criminal law cases, children are not exempted from providing a witness statement⁷¹ although this may be done only to the president of the court

⁶² See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415923/List_of_Lawyers_Santiago2015.pdf.

⁶³ See: <http://www.probono.cl/>.

⁶⁴ Available at: <http://www.leychile.cl/Navegar?idNorma=264243>.

⁶⁵ Article 369 Code of Criminal Procedure.

⁶⁶ Section 341 Code of Civil Procedure.

⁶⁷ Section 357 Code of Civil Procedure.

⁶⁸ Section 357 Code of Civil Procedure.

⁶⁹ Section 191 Code of Criminal Procedure.

⁷⁰ Ibid.

⁷¹ Section 302 Code of Criminal Procedure.

and questions must be made by an intermediary.⁷² Children under 18 of age are not required to testify under oath.⁷³

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Research suggests that the Chilean court system is efficient and that decisions are generally handed down within a reasonable time.⁷⁴ The Chilean courts have “an impressive clearance rate despite the high demand of filed cases per judge”.⁷⁵ The average duration of a case in the courts is sixteen months.⁷⁶

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Two different types of appeals exist:

- Nullity appeal (*recurso de nulidad*): if there have been breaches of law, i.e. the court has no jurisdiction, procedural rights guaranteed by the Constitution were not observed, the court ruling is missing essential aspects, the defense was not allowed to exercise all their rights, etc.⁷⁷
- Legal appeal (*recurso de apelación*): the law has been erroneously applied.⁷⁸

The basic structure of Chile’s judicial system is as follows: At the bottom of the judicial system there are the basic courts, of which there are approximately 484 in the country, and which can be specialised courts, i.e. family, civil, employment, or criminal courts. Appeals of decisions by the basic courts must be brought to the Court of Appeal, which is divided into 17 branches across Chile. The Supreme Court (“*Corte Suprema*”) is the final court of appeal. Separately, the Constitutional Court (“*Tribunal Constitucional*”) may rule in cases involving constitutional issues.⁷⁹

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Chile is among the most free countries in terms of civil liberties and political rights in Latin America and has significant civil society engagement. Public protests against unjust decisions are common and widely accepted by the government.⁸⁰ The Constitution provides for an independent judiciary, and the courts are generally free from political interference.⁸¹

⁷² Section 310 Code of Criminal Procedure.

⁷³ Section 306 Code of Criminal Procedure.

⁷⁴ Freedom House.

⁷⁵ Maria Dakolia, *Court Performance Around the World: A Comparative Perspective*, Yale Human Rights and Development Journal, 1999, p. 12, 26, available at: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1009&context=yhrdlj>.

⁷⁶ Maria Dakolia, p. 18.

⁷⁷ See e.g.: Title IV. Code of Criminal Procedure.

⁷⁸ See e.g.: Sections 158 & 253 Code of Criminal Procedure.

⁷⁹ Article 93 Constitution.

⁸⁰ Freedom House.

⁸¹ Freedom House.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

No particular challenges in enforcing positive legal decisions were identified. Court decisions are widely respected and enforced.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Incorporation of the CRC

Since the implementation of the CRC into Chilean law, the Chilean legal system has undergone many changes in order to adapt national laws to the provisions of the CRC. However, the provisions applying to children could be described as “hybrid” since pre- and post CRC legislation are currently both in place.

Independent complaints mechanism

There is currently no independent institution in Chile with a mandate to receive complaints by children and their representatives about children’s rights violations. In Chile’s latest report to the UN Committee on the Rights of the Child, the Chilean authorities confirmed plans to establish an independent institution with a mandate to protect children’s rights with the help of UNICEF, but that this process was still ongoing.⁸²

Discrimination

Approximately 1 million Chileans identify themselves with indigenous ethnic groups, many of whom belong to the Mapuche. While they still experience societal discrimination, their poverty levels are declining, aided by government scholarships, land transfers, and social spending.⁸³

LGBT people continue to face societal bias, despite a 2012 anti discrimination law that covers sexual orientation and gender identity. Violent attacks are still reported each year, and authorities have allegedly failed to pursue the cases energetically.⁸⁴

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁸² *Combined fourth and fifth periodic reports of Chile to the UN Committee on the Rights of the Child*, CRC/C/CHL/4-5, 27 October 2012, para. 21, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHL%2f4-5&Lang=en.

⁸³ Freedom House.

⁸⁴ *Ibid.*