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CHAPTER 6.

**THE RIGHT TO IDENTITY AND FAMILY
COEXISTENCE IN THE FACE OF
ABDUCTIONS AND IRREGULAR
ADOPTIONS OF CHILDREN AND
ADOLESCENTS.
CHILDREN IN CHILE**

1. BACKGROUND

In 2014, public opinion became aware of the so-called irregular adoptions¹ that took place in Chile from the 1960s onwards, when a CIPER investigation revealed information about Chilean newborns who were adopted by foreign families through a network that allegedly involved members of the Catholic Church, hospital officials, the judiciary, among others². From that year onwards, civil organisations dedicated to the search for truth, justice and family reunification were formed, and later judicial processes were opened which, as a whole, have contributed to understanding the magnitude and scope of these adoptions.

For its part, in 2019 the INDH filed the first complaints for forced disappearance of children from public hospitals, in various circumstances, between the mid-1970s and the late 1980s.

After almost ten years since cases of irregular adoptions began to make headlines in the country, it is appropriate to analyse the various human rights violations involved, especially the right to identity and family cohabitation, and the actions that the State has taken to address them. Thus, the research that underpins this chapter focuses on the period between 1960 and 2000 because, according to press reports and reports from civil society organisations working on the issue, most of the complaints fall within this time frame³. In turn, the available background information comes from the actions undertaken by the various actors who have been involved in tackling the problem in its different aspects.

An important part of the knowledge about so-called irregular adoptions derives from journalistic investigations by national media - such as CIPER - and international media, such as *Deutsche Welle*⁴ and Radio France International⁵, which have provided information about the procedures used in these cases.

¹ The terms "abductions" and "irregular adoptions" are used because the thousands of reported cases are referred to as such in the press and in society.

² Through multiple notes such as *Congregación del cura Joannon confirma su participación en las adopciones irregulares; Silencio y complicidades: No revuelvas el pasado, harás daño a otras personas; El historial de adopciones irregulares que esconde un orfanato de monjas en Curicó; Adopciones irregulares III: New testimonies reveal names of doctors and clinics that violated the law; Irregular adoptions II: Matías Troncoso speaks, another of the babies given up for adoption by Dr. Monckeberg; The children given up for dead that the priest Gerardo Joannon gave up for adoption, and Yo les hacía el contacto a las familias con el doctor; Congregación de los SS.CC. Congregation appoints Salesian canonist to investigate priest Joannon; CIPER has denounced the so-called irregular adoptions. This material is collected in CIPER's Adoption Archive located at <https://www.ciperchile.cl/tag/adopcion/>.*

³ Ibid.

⁴ Chile will search for victims of illegal adoption during the Augusto Pinochet era (11 January 2022). *Deutsche Welle*. <https://www.dw.com/es/chile-bus-car%C3%A1-v%C3%ADctimas-de-adopci%C3%B3n-ilegal-en-era-de-augusto-pinochet/a-60384277>; Dannemann, V. (31 March 2021). Chile and child trafficking: the lost generations. *Deutsche Welle*. <https://www.dw.com/es/chilenos-v%C3%ADctimas-de-tr%C3%A1fico-de-ni%C3%B1os-la-b%C3%BAscueta-de-la-familia-biol%C3%B3gica/a-57065974>; Dannemann, V. (31 March 2021). Finding the biological family is a right. *Deutsche Welle*. <https://www.dw.com/es/adaptados-chilenos-en-el-extran-jero-encontrar-a-la-familia-biol%C3%B3gica-es-un-derecho/a-57066027>

⁵ Forced adoptions between Chile and France: the long search for mothers and children (14 September 2021). *Radio France International*. <https://www.rfi.fr/es/programas/grandes-reportajes-de-rfi/20210914-adopciones-forzadas-entre-chile-y-francia-la-larga-b%C3%BAscueta-de-madres-e-hijos-1>; Chile: thousands of irregular adoptions during the Pinochet dictatorship investigated. *Radio France International* (26 June 2018). *Radio France International*. <https://www.rfi.fr/es/americas/20180628-chile-investigan-miles-de-adopciones-irregulares-durante-la-dictadura-de-pinochet>; Forced adoptions in Pinochet's Chile, a diplomatic and social control strategy (4 November 2021). *Radio France International*. <https://www.rfi.fr/es/programas/noticias-de-am%C3%A9rica/20211104-las-adopciones-forzadas-en-el-chile-de-pinochet-una-estrategia-diplom%C3%A1tica-y-de-control-social>

The adoption process, the intervention of agencies and individuals, and the origin and destination of the children concerned⁶.

Reports, series and documentaries have been shown on free-to-air television and paid platforms. In 2023 Televisión Nacional premiered *Adoptados, la historia que nos falta* about the search for identity of the victims of illegal adoptions abroad; *Traficantes de niños* from Informe Especial, denounced the networks of trafficking and illegal adoption through express procedures that allowed the adoption of between ten thousand and seventy thousand Chilean minors, and in 2013, the same programme showed the report *Los niños de Paul Schäfer* that tells how Schäfer appropriated and abused infants. On digital platforms, the series *Colonia Dignidad: A German sect in Chile* (2021) and *Los sobrevivientes. Colonia Dignidad* (2022) show the appropriation of children inside the former Colonia.

On the other hand, among the civil society organisations working on the issue, the NGO *Nos Buscamos*⁷ dedicated to family reunification warns that between the 1950s and 1990s "around 50,000 Chilean children and newborns were forcibly separated from their mothers and irregularly given up for adoption"⁸ and adds that "all these irregular adoptions took place through a network of doctors, midwives, social workers, judges and lawyers, who orchestrated the collection of the children and their subsequent delivery to adoptive families". According to their records about 70% of mothers who have searched for their children state that they were stolen.

This NGO and the organisation Hijos y Madres del Silencio⁹ have collected testimonies from women who relate a similar procedure regarding the disappearance of their children and point out that in most of the cases they know of, the victims were single mothers, young and poor, from rural areas, mainly in the south of Chile, many of them indigenous and illiterate, who were told that their children had died or were very ill, even though the newborns had been offered for adoption before their birth. They also know of cases of children who were taken from day care centres and irregularly placed for adoption. In August 2022, this group asked the government, among other requests, for the creation of a Truth, Justice and Reparation Commission and the implementation of a genetic fingerprint bank (through the Forensic Medical Service, SML) to enable family tracing and reunification¹⁰.

⁶ Irregular adoptions have also been addressed in plays: *El traje del novio* (2023) about the reunion of a woman from Concepción with her son, who was abducted at birth and illegally adopted in Italy; and *Duelo* (2023), a monologue about pregnant women who were detained and disappeared during the dictatorship.

⁷ For more information: <https://nosbuscamos.org/quienes-somos/>

⁸ The estimated figure derives from a calculation made by the PDI using international entry and exit records for the period, which indicates that fifty thousand children officially left Chile but never re-entered.

⁹ For more information <https://hijosymadresdelsilencio.cl/sobre-nosotros/>

¹⁰ Palma, N. (22 August 2022). Agrupación de Hijos y Madres del Silencio demandó "urgent" measures from the government to move forward in cases of illegal adoptions. *Diario Uchile*. <https://radio.uchile.cl/2022/08/22/agrupacion-de-hijos-y-madres-dres-del-silencio-exigieron-al-gobierno-medidas-urgentes-para-avanzar-asos-de-adopciones-ilegales/#:~:text=Seg%C3%BAn%20inform%C3%B3%20la%20organaci%C3%B3n%20que,al%20nacer%20y%20luego%20luego%20entregados>

On the other hand, the Judiciary is currently investigating the facts expressed in the complaints and denunciations of these illegal abductions and adoptions of children in Chile. Due to the dates on which the events under investigation occurred - prior to the criminal procedure reform that gradually came into force in the country in 2000 - the cases are governed by the old criminal procedure, are secret and are initiated at the request of the victims (except when, during the investigation, the justice system has noticed that the child involved had a sibling who was also adopted, in which case the court acts *ex officio* and instructs a summary and forms a separate case file⁽¹¹⁾).

Following CIPER's report on child abductions and irregular adoptions in 2014, in 2017 the then Minister of the Court of Appeals of Santiago, Mario Carroza, began an investigation under case number 1044 -2018, with nearly 500 cases under his jurisdiction and indicated that there could be 20,000 cases of irregular or illegal adoptions¹². On 19 October 2018, the minister ordered a period-by-period breakdown of the pieces of the process entitled "child abductions and illegal adoptions", identified by the **above-mentioned** case number. This in order to provide a better and expeditious processing and investigation of the facts, giving rise to the formation of four separate judicial processing notebooks associated with the same role number. Minister Carroza was in charge of notebook A and Minister Jaime Balmaceda of notebooks B, C and D¹³. In this procedural framework, and according to what Minister Carroza pointed out in an interview with La Tercera, there were several *modus operandi* to carry out the adoption abroad.

Normally, they would come to a mother who was pregnant or about to give birth, talk to her and ask her what her situation was and whether she could give up her child for different reasons. Subsequently, they would take custody of the child and process the adoption or the sending of the child abroad in the juvenile courts and then the adoption would be processed outside Chile and here¹⁴.

In this regard, in September 2019, Minister Balmaceda told CIPER that the hospitals and juvenile courts, as well as the judicial archive and the Investigative Police (PDI) have provided the required documentation, despite its age, which has "served to explain the *modus operandi* of many of the cases"¹⁵.

11 Balmaceda, J. (2019). *I am ashamed that there could be officials of the Judiciary involved in illegal adoptions* / Interviewed by Nicolás Sepúlveda. CIPER. <https://www.ciperchile.cl/2019/09/27/me-averguenza-que-pueda-haber-funcionarios-del-poder-judicial-involucrados-en-adopciones-ilegales/>

12 Reencuentros después de más de 36 años: Las historias detrás de las adopciones irregulares en dictadura (September 9, 2019). CNN Chile. https://www.cnnchile.com/pais/reencuentros-36-anos-adopciones-irregulares-dictadura_20190909/

13 File A: complaints and lawsuits for child abductions and illegal adoptions linked to persons deprived of liberty and security or uniformed bodies, in the period between 11 September 1973 and 11 March 1990. Cahiers B, C and D: referring to the investigation of complaints and lawsuits on child abduction and illegal adoptions filed for acts related to the period between 11 September 1973 and 11 March 1990 without the participation of persons linked to security or uniformed bodies; for acts reported prior to 11 September 1973 and after 11 March 1990 until the entry into force of the Criminal Procedural Reform.

14 López, A. (19 February 2018). Adoptions: The American Adoption Agency is linked to 206 inquired cases. *La Tercera*. <https://www.latercera.com/hacio-nal/noticia/adopciones-the-american-adoption-agency-esta-ligada-206-casos-indagados/72157/>.

15 Balmaceda, J. (2019). At <https://www.ciperchile.cl/2019/09/27/me-averguenza-que-pueda-haber-funcionarios-del-poder-judicial-involucrados-en-adopciones-ilegales/>

At the same time, in the Legislative Branch, the Chamber of **Deputies**, in the use of its supervisory powers, instructed in November 2018 the creation of a *special Commission of Inquiry into the acts of State bodies, in relation to possible irregularities in the adoption and registration of minors, and control of their departure from the country* (hereinafter the Investigation Commission), which sought to specify the acts of the State that deny the exercise of the right to identity as well as the magnitude of the damage caused in the framework of irregular adoptions, which to date involve not providing the information requested by the victims. In July 2019, this Commission of Inquiry published its report¹⁶ which it concluded:

(...) it is a certain fact that in Chile hundreds of children were taken from their parents to be given up for adoption, especially abroad, an incontrovertible truth that was reinforced by the testimonies of all the persons who were invited to participate in the hearing. That none of the interveners were able to question the fact of the disappearance of children at birth, as a recurrent practice throughout the 20th century due to hospital shortages, the lack of optimal birth registration and the presence of groups that acted in coordination to snatch minors, especially in the case of vulnerable women. That the reality of child disappearances was certainly in the case of women who were victims of poverty or who had no support networks throughout the country. The different organisations that presented to the Commission (...) agreed that the victims tended to be in a large percentage single women, (...) with many children and from rural areas. The methods of action were diverse. The most recurrent method was to make the mother believe that the child had died, so that there would be no subsequent claims, as the mother was convinced that it was an irreversible and unquestionable fact, and the body of the newborn, proof of birth, birth registration or death certificate were not handed over to them. The scheme, it was explained, involved many people, including medical and paramedical personnel, civil registry and organisations that operated in coordination outside the hospital premises to then hand over the abducted children to the families who would become the future parents of the children. Thus, public and private organisations participated jointly in this operation¹⁷.

The PDI reported that, in order to respond to the proceedings requested by the judiciary, it set up a special working group, led by the Human Rights Crimes Investigation Brigade (Brigada Investigadora de Delitos contra los Derechos Humanos). The Ministry of Justice indicated that, together with the Forensic Medical Service (SML), they conducted a technical, legal and resource analysis, which concluded that it was feasible to have a genetic fingerprint database that would make it possible to identify blood relationships in cases where it is considered that there could be possible irregularities in adoption processes, even if they have not been brought before the courts. The Ministry of Health committed its availability to continue receiving requests for inquiries,

16 The report draws on testimonies of victims, interventions from academia and civil society, and information from state administration bodies.

17 The Investigating Commission reinforced this idea with a specific case: "[...] the first testimony received was that of a woman (who) in 1992 arrived at the San Borja Arriarán hospital to give birth. [...] That this testimony was the first of many that were received and that they have the common pattern that there are always organised groups to act [...]. That those affected by the disappearances told the Commission about the many problems they have had in locating their children or vice versa. The search for documents is increasingly difficult [...]" P. 132 of the *Report of the Commission of Inquiry*.

It also put forward the idea of developing a new file aimed at adults who are looking for their mothers and the commitment - for cases in which no information is found - that hospitals and/or services will provide a document with the background information, so that the victim will have the means to take legal action.

Before the Commission of Inquiry, the NHRI stated that:

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and entails the consequences provided for by applicable international law. This is no exception, considering that it is a practice that has been prolonged over time, outliving the governments in power.

That the forced disappearance of persons violates multiple essential rights and, for this reason, the State of Chile should be called upon to continue taking all necessary measures to help thousands of Chileans who are still searching for their origin, or who simply need to recover the child that was taken from them by force and against their will¹⁸.

In this regard, the Commission of Inquiry concluded that no other public or private organisation contested the position regarding the existence of "a systematic violation of human rights by the State" and that

It has been accredited that, over the years, State agents participated at various moments and instances in the process of the illegal surrender of children. These agents [...] were mainly found in health establishments, who, by means of deceit and fraud, misappropriated children, violating various rights of both the children and their parents. [It was noted that the conduct of these agents led to the forced disappearance of persons. Similarly, the right to identity was totally violated. [...]. It should be borne in mind that the victims of these crimes [...] do not appear in most cases, to this day¹⁹.

Regarding the opinion of the PDI, the Investigation Commission held that:

There was a "common pattern" of conduct which, once the investigation had begun, became increasingly evident on an unsuspected scale. [The PDI estimated that thousands of cases needed to be investigated. This shows that [...] there was a violation sustained over time due to systematic and permanent negligence on the part of the State which, knowing that it was happening, acted with omission of its duties²⁰.

¹⁸ Chamber of Deputies (2018). Report of the Special Commission of Inquiry into the actions of State bodies in relation to possible irregularities in the adoption and registration of minors, and control of their departure from the country. Pp. 134 and 135.

¹⁹ Ibid. P. 136.

²⁰ Ibid. P. 137.

Finally, it should be noted that based on the cases heard **first-hand**, the Commission of Inquiry pointed out that child stealing is a practice that goes beyond the historical context and does not only refer to the period of the dictatorship (1973-1990)²¹.

As for the executive branch, on 10 January 2022, the Ministry of Justice and Human Rights announced a pilot plan to address irregular adoption and registration cases that involves the SML, the judiciary and civil society organisations working together. According to the announcement, the initiative was intended to "reduce the difficulty that exists today to carry out all kinds of procedures with a view to reuniting a family member who is living in another country, making it easier for those living in remote places and with precarious means of contact to have access to a possible DNA sample collection; and (...) to speed up and collaborate in both the computer and economic processes"²².

As has become evident, so-called irregular adoptions have aroused the reaction and intervention of various actors, some of which will be analysed in this chapter. To this end, the State's obligations and international human rights standards related to the right to identity and family cohabitation, among other affected rights, will be referred to. Next, the national normative framework that regulates adoptions will be outlined, followed by information and data analysis that allow us to point out various human rights violations that could arise from the situations described. Finally, it will indicate the existing gaps in the way in which the State has addressed its obligations in this area and which allow the NHRI to formulate its recommendations.

2. INTERNATIONAL HUMAN RIGHTS STANDARDS

The International Human Rights Treaties of the Universal System, as well as the Regional Human Rights System, are the instruments that determine the obligations of the State in relation to the rights that must be safeguarded for children and families in the context of adoption processes, as well as the rights of women and access to justice for victims of enforced disappearance and other inhumane acts.

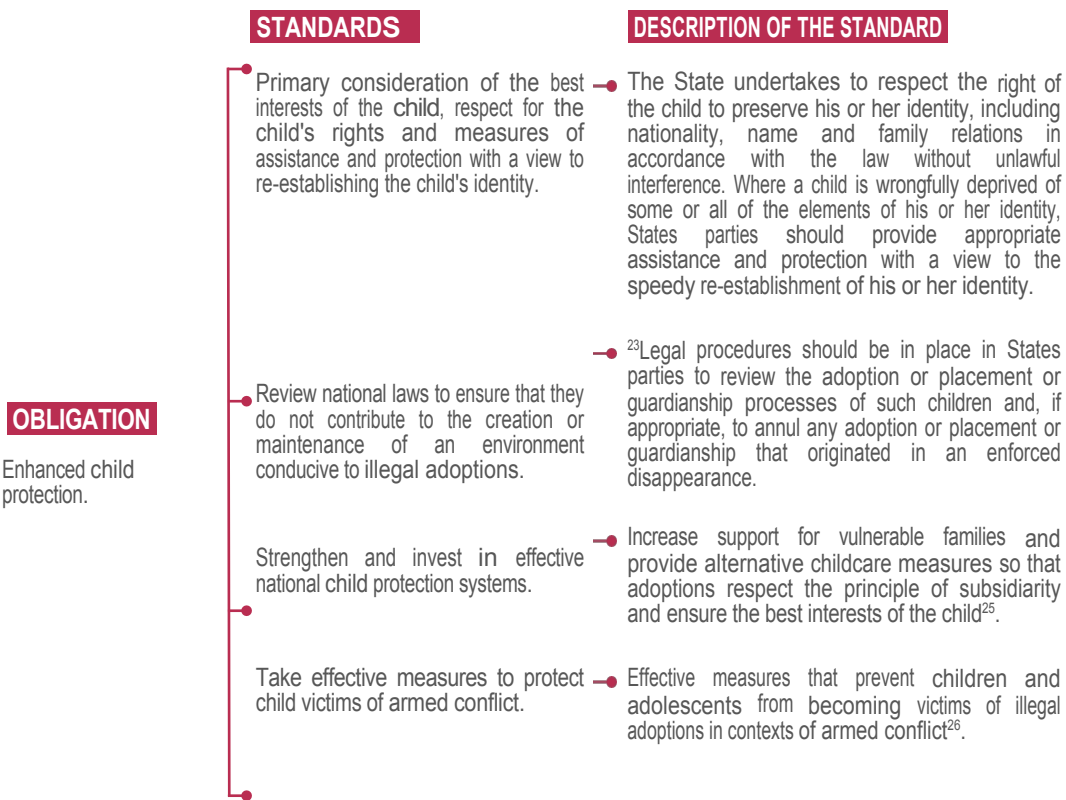
The following is a systematisation of the obligations and standards in this area.

²¹ Ibid. P. 132.

²² Government of Chile (10 January 2022). *Ministry of Justice and Human Rights announces Pilot Plan to deal with irregular adoption and registration cases*. <https://www.gob.cl/noticias/ministerio-de-justicia-y-derechos-humanos-announce-pilot-plan-to-confront-irregular-adoption-and-registration-cases/>

Diagram 1

OBLIGATIONS AND STANDARDS RELATING TO CHILDREN'S AND FAMILY RIGHTS AND ADOPTION PROCESSES



Source: Own elaboration based on the cited conventions.

23 *Convention on the Rights of the Child*. Art. 8. 20 November 1989 <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-rights-child>

24 *International Convention for the Protection of All Persons from Enforced Disappearance*. Art. 25. 23 December 2010 <https://www.ohchr.org-es/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

25 *Convention on the Rights of the Child*. Art. 18.

26 International Committee of the Red Cross, ICRC (1949). *IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*. Art. 24. <https://www.icrc.org/es/doc/resources/documents/treaty/treaty-gc-4-5tdkyk.htm> and International Committee of the Red Cross, ICRC (1977). *Protocol Additional II to the Geneva Conventions*. Art. 4. <https://www.icrc.org/es/doc/resources/documents/misc/protocolo-ii.htm>

Continued outline no. 1

OBLIGATIONS AND STANDARDS RELATING TO CHILDREN AND FAMILY RIGHTS AND ADOPTION PROCESSES

OBLIGATION:	STANDARDS	STANDARD DESCRIPTION
Respect the child's right to preserve his or her identity, including nationality, name and family relations in accordance with the law without unlawful interference.	The State must ensure that the child is not separated from his or her parents against their will, except as determined by the authorities.	<ul style="list-style-type: none">● If separation is necessary, it should be in consideration of the principle of the best interests of the child and measures should be taken to combat wrongful retentions and transfers of children abroad, by promoting agreements or accessions to existing agreements on the subject²⁷. <p>Information about the child's origin, especially information concerning his or her medical history and the identity of his or her parents, should be preserved and thus be accessible to the child or his or her representatives²⁸.</p>
	<ul style="list-style-type: none">● Adopt appropriate regulations on procedures and guarantees in respect of domestic and intercountry adoptions²⁹.	<ul style="list-style-type: none">● ²⁸Such regulation should include, in relation to the determination of adoptability, effective mechanisms for monitoring adoption processes, especially with regard to the verification of the background of any child who is declared an orphan³⁰.
	<p>The collaborating bodies, which together with the State process intercountry adoption, should not pursue profit motives³¹.</p>	<ul style="list-style-type: none">● They must be managed and staffed by persons qualified in moral integrity and in terms of their training or work experience in the field of intercountry adoption, and be subject to State supervision with respect to their composition, functioning and financial situation³².

Source: Own elaboration based on the cited conventions.

27 *Convention on the Rights of the Child*. Art. 11.

28 Hague Conference on Private International Law (1993). *1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 16. https://www.oas.org/dil/esp/Convenio_Haya_Proteccion_del_Nino_Cooperacion_en_Materia_Adoopcion_Internacional_Espana.pdf

29 *Ibid.* Art. 1.

30 *Ibid.* Art. 4.

31 *Ibid.* Art. 32.

32 *Ibid.* Art. 11.

Continued outline no. 1

OBLIGATIONS AND STANDARDS RELATING TO CHILDREN'S AND FAMILY RIGHTS AND ADOPTION PROCESSES

OBLIGATION

Respect the child's right to preserve his or her identity, including nationality, name and family relations in accordance with the law without unlawful interference.

STANDARDS

Establish mechanisms to address the concerns of adopted persons, adoptive parents and birth parents.

DESCRIPTION OF THE STANDARD

Address concerns regarding the circumstances of an adoption and facilitate tracing of origins and seeking redress where appropriate

OBLIGATION

Criminalisation of the offence of irregular adoption.

STANDARDS

Adopt legislation to prohibit and criminalise illegal adoption, sale and trafficking of children resulting in illegal adoptions, with penalties that reflect the seriousness of the offences.

DESCRIPTION OF THE STANDARD

Incorporation into domestic law of the offences of offering, delivering or accepting a child for the purpose of sexual exploitation, profiting from his or her organs and forced labour, as well as improperly brokering consent for the adoption of a child in violation of international legal instruments on adoption³⁴.

Source: Own elaboration based on the cited conventions.

33 Ibid. Art. 30.

34 Ibid. Art. 30.

Outline 2

STANDARDS AND OBLIGATIONS RELATING TO WOMEN'S RIGHTS IN THE FACE OF DISCRIMINATION OR STATE VIOLENCE

OBLIGATION:	STANDARDS	DESCRIPTION OF THE STANDARD
The State must protect women's rights.	Take special measures to protect maternity.	States Parties shall ensure appropriate services in relation to pregnancy, childbirth and the post-natal period, providing free services where necessary



The number of affected children, now adults, estimated by civil society organisations is higher than the 1,000 cases prosecuted under case number 1044-2018.

Source: Own elaboration based on the documents cited.

35 Convention on the Elimination of All Forms of Discrimination against Women. Art. 12. 18 December 1979 <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

STANDARDS AND OBLIGATIONS RELATING TO WOMEN'S RIGHTS IN THE FACE OF DISCRIMINATION OR STATE VIOLENCE

	STANDARDS	DESCRIPTION OF THE STANDARD
<div>OBLIGATION</div> <div>Take measures to eliminate discrimination, violation of rights and situations of violence against women.</div>	The State and its institutions must not discriminate against or violate women.	The State must refrain from engaging in acts or practices that discriminate against women and ensure that the authorities and public institutions to act in accordance with this obligation ³⁶ .
	Pursue by all appropriate means and without delay a policy of eliminating discrimination against women.	Include in domestic legislation the necessary criminal, civil and administrative norms to prevent, punish and eradicate violence against women ³⁷ .
	Establish fair and effective legal procedures for women victims of violence.	States must adopt measures for protection, timely trial and effective access to such procedures, as well as provide effective access to redress, reparation or other just and effective means of redress ³⁸ .
	Recognition of the competence of the Committee on the Elimination of Discrimination against Women ³⁹ .	Receive and consider communications from or on behalf of individuals or groups of individuals within the jurisdiction of the State claiming to be victims of a violation of any of the rights set forth in the Convention ⁴⁰ .

Source: Own elaboration based on the cited documents.

36 Ibid. Art. 2.

37 *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*. Art. 7. 1994 <https://www.oas.org/juridico/spanish/tratados/a-61.html>

38 Ibid. Art. 7.

39 *Convention on the Elimination of All Forms of Discrimination against Women*. Art. 17. <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

40 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*. Art. 2. 6 October 1999 <https://www.ohchr.org/es/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms>

OBLIGATIONS AND STANDARDS RELATING TO ACCESS TO JUSTICE AND THE RIGHTS OF PERSONS WHO ARE VICTIMS OF ENFORCED DISAPPEARANCE OR OTHER INHUMANE ACTS

OBLIGATION	STANDARDS	DESCRIPTION OF THE STANDARD
Prevent and punish enforced disappearance.	<ul style="list-style-type: none">• The State must take the necessary measures to prevent and criminally sanction the abduction of children subjected to enforced disappearance.• Make the crime of enforced disappearance punishable by appropriate penalties, taking into account its extreme seriousness.• Adopt the necessary measures to search for and identify child victims of enforced disappearance and return them to their families of origin in accordance with legal procedures and applicable international agreements.	<ul style="list-style-type: none">• Enforced disappearance shall be criminalised in the domestic legal order⁴¹.• The State shall consider aggravating circumstances, in case of death of the disappeared person, or for those guilty of enforced disappearance of pregnant women and minors⁴².• The State shall ex officio take steps to locate the whereabouts of child victims of enforced disappearance⁴³.
Guarantee access to justice.	<ul style="list-style-type: none">• Ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation was committed by persons acting in an official capacity.	<ul style="list-style-type: none">• Justice and the victims of enforced disappearance should be provided with the greatest possible state resources to ensure that judicial investigations proceed with due diligence⁴⁴.

Source: Own elaboration based on the above-mentioned documents.

⁴¹ *International Convention for the Protection of All Persons from Enforced Disappearance*. Art. 4.

⁴² *Ibidem*. Art. 7.

⁴³ *Ibid*. Art. 25.

⁴⁴ *Inter-American Convention against Forced Disappearance*. Art. 10. <https://www.oas.org/juridico/spanish/tratados/a-60.html>

OBLIGATIONS AND STANDARDS RELATING TO ACCESS TO JUSTICE AND THE RIGHTS OF PERSONS WHO ARE VICTIMS OF ENFORCED DISAPPEARANCE OR OTHER INHUMANE ACTS

OBLIGATION	STANDARDS	DESCRIPTION OF THE STANDARD
Investigate, prosecute and punish human rights violations	The State shall take the necessary measures to criminally punish the appropriation of children subjected to enforced disappearance, as well as the falsification, concealment or destruction of documents proving the true identity of child victims of enforced disappearance ⁴⁵ .	● Criminalisation of human rights violations in domestic legislation, such as enforced disappearance of persons and other inhumane acts of a similar nature that intentionally cause great suffering or serious injury to body or to mental or physical health.
	● Effectively investigate contexts of human rights violations even if the violation was perpetrated by agents of the State or by persons acting in an official capacity ⁴⁶ .	● These investigations should focus on identifying common patterns in order to detect the existence of possible criminal networks and the participation of civilian actors with a high degree of influence.
	Obligation to conduct a comprehensive search for disappeared persons.	● States should adopt a comprehensive strategy to search for newborn child victims of enforced disappearance, taking into account that their identity documents may have been altered and that they may have been taken from their families and given up for adoption under false identities to childcare institutions or to other families. These victims must be traced, identified and their identity restored ⁴⁷ .

Source: Own elaboration based on the above-mentioned documents.

45 *International Convention for the Protection of All Persons from Enforced Disappearance*. Art. 25.

46 *International Covenant on Civil and Political Rights*. Art. 2. 16 December 1966. <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

47 OHCHR (28 August 2029). *Guiding Principles on the Search for Missing Persons*. Principle 8. <https://www.ohchr.org/es/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons>

OBLIGATIONS AND STANDARDS RELATING TO ACCESS TO JUSTICE AND THE RIGHTS OF PERSONS WHO ARE VICTIMS OF ENFORCED DISAPPEARANCE OR OTHER INHUMANE ACTS

	STANDARDS	DESCRIPTION OF THE STANDARD
OBLIGATION Investigate, prosecute and punish human rights violations.	● Participation of victims and relatives.	● The right of victims and their families to participate in all stages of the judicial process must be protected, which includes knowing the actions taken and the results of the search and investigation. In addition, they should receive adequate orientation on their rights and mechanisms for the protection of those rights ⁴⁸ .
	● Prioritisation mechanisms as a possible limitation on access to justice.	● The prioritisation of certain cases of human rights violations considered as serious cannot limit access to justice for other victims of human rights violations ⁴⁹ .
	● Cooperation between States in the search for, identification and location of child victims of enforced disappearance.	● Pursue, prosecute and punish those who may be responsible for serious crimes against the ● those who may be responsible for serious crimes under international law, regardless of the place of commission of the crime or the nationality of the perpetrator ⁵⁰ .

48 *Inter-American Convention against Forced Disappearance*. Art. 11.

49 NHDR. (2021). *Annual Report on the Human Rights Situation in Chile*. P. 206.

50 *Geneva Convention IV relative to the Protection of Civilian Persons in Time of War*. Art. 146.

Continued outline no.3

OBLIGATIONS AND STANDARDS RELATING TO ACCESS TO JUSTICE AND THE RIGHTS OF PERSONS SUBJECTED TO ENFORCED DISAPPEARANCE OR OTHER INHUMANE ACTS

	STANDARDS	DESCRIPTION OF THE STANDARD
OBLIGATION Establish the truth.	<ul style="list-style-type: none">● Create truth commissions as extrajudicial mechanisms of transitional justice, aimed at clarifying the facts.● Search for the whereabouts of child victims of enforced disappearance.	<ul style="list-style-type: none">● These commissions are the mechanisms generally used by States to clarify the facts. In order to fulfil this objective, access to information must be unrestricted; the participation of victims and experts in the field must be encouraged; there must be adequate procedures for appointing members that guarantee impartiality and independence in the development of their work; there must be cooperation between states with respect to their archives; among other considerations⁵¹.● The search mechanisms must include a communication strategy with the relatives, agreeing on a framework for coordinated action, to ensure their participation, knowledge and presence in the development of their work⁵².

OBLIGATION	STANDARDS	DESCRIPTION OF THE STANDARD
Establish comprehensive reparation measures.	<ul style="list-style-type: none">● Full and effective reparation, appropriate and proportional to the gravity of the violation and the circumstances of each case.	<ul style="list-style-type: none">● Reparation measures should aim at restitution, compensation, rehabilitation, satisfaction and non-repetition of gross human rights violations⁵³.

Source: Prepared by the author based on the documents cited.

51 American Commission on Human Rights (2021). *Compendium on truth, memory, justice and reparation in transitional contexts*. <https://www.oas.org/es/cidh/informes/pdfs/CompendioJusticiaTransicional-en.pdf>

52 Inter-American Convention on Forced Disappearance of Persons. Art. 11.

53 OHCHR (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Principles 20 and 21. <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

3. NATIONAL LEGISLATION

3.1. Regarding adoption

Adoption in Chile was first regulated in 1934. Since then, various laws have been in force. The following table presents the main characteristics of the adoption regulations that have been part of the domestic legal system.

Table 1

Domestic legislation on adoption

Source: Own elaboration based on the laws indicated.

Law	Main characteristics
Law 5.343 of 1934	<ul style="list-style-type: none">- Introduced for the first time the figure of "classic" or "contractual" adoption.- This figure granted the quality of adopted child.-The information of the biological family was safeguarded, without breaking the link of origin.-The actors involved were civil courts and notaries' offices.
Law 16.346 of 1965	<ul style="list-style-type: none">- Incorporated the figure of "adoptive legitimation", which constituted the civil status of the child, breaking the link of origin.- It established the principle of secrecy of the adoption, which ordered the destruction of the antecedents that could link the adoptee with his or her filiation of origin.- The actors involved were the juvenile courts and the Civil Registry and Identification Service.

Continued table 1

Internal adoption regulations

Law	Main characteristics
Law 18.703 of 1988	<ul style="list-style-type: none">- Repealed Law 16.346.- It regulated three types of adoption: 1) simple adoption, a kind of protective measure that lasted only until the age of 18 and did not confer the civil status of child; 2) full adoption, which constituted the civil status of child, broke the adoptee's link of origin (however, the records remained in the custody of the Civil Registry) and changed the principle of secrecy to that of reserve; 3) procedure for children leaving the country for the purpose of adoption. Adoption took place abroad, with the identity of origin remaining in Chile.- For the first time, adoption-related offences such as disclosure of confidential information and fraudulent procurement and relinquishment of children for the purpose of adoption were criminalised.
Law 19.620 and its 1999 regulation (currently in force).	<ul style="list-style-type: none">- It repealed Law 18.703.- Establishes a single model of adoption, constitutive of filiation.- It expressly distinguishes whether the adoption is national or international.- It contemplates two specific procedures: one, prior to the adoption, aimed at declaring the susceptibility of adoption, and the other, the adoption procedure itself.- Attributes to the National Service for Minors (Sename) the obligation to keep national registers of children eligible for adoption.

3.2. Criminalisation and responsibilities

The Penal Code has been in force in the national legal system since 1874 and includes relevant articles.

Table 2
Penal Code and child abduction

Source: Prepared by the authors.

Article	Type of offence
Article 142 ⁵⁴	"The abduction of a minor under 18 years of age shall be punishable: 1. By maximum imprisonment for life, if it is carried out to obtain a ransom, to impose demands, to force decisions or if it results in serious harm to the person of the minor. 2. With rigorous imprisonment in the medium to maximum term in all other cases".
Article 142a ⁵⁵	"If the participants in the offences of kidnapping of a person or abduction of a minor, before fulfilling any of the conditions required by the kidnappers to return the victim, return the victim free from harm, the penalty assigned to the offence shall be reduced by two degrees. If the return is made after any of the conditions have been fulfilled, the judge may reduce the penalty by one degree to that indicated in the two previous articles".
Article 148	"Any public employee who illegally and arbitrarily banishes, arrests or detains a person shall suffer the penalty of rigorous imprisonment and suspension from employment in its minimum to medium degrees. If the arrest or detention exceeds thirty days, the penalties shall be reclusion menor and suspension in its maximum degrees."

Source: Compilation based on the laws indicated.

54 Article replaced by Law 19.241 of 28 August 1993.

55 Article incorporated by Law 19.241 of 28 August 1993.

Continued Table 2
Penal Code and child abduction

Article	Type of offence
Article 355	"Whoever, being in charge of the person of a minor, does not present him or her to his or her parents, guardians or the authorities, at the request of his or her other relatives or ex officio, or does not give satisfactory explanations about his or her disappearance, shall be sentenced to a minimum term of imprisonment in the medium degree.
Article 356 ⁵⁶	"Anyone who, being responsible for the upbringing or education of a child under ten years of age, hands it over to a public institution or to another person, without the consent of the person who has entrusted it to him or her or of the authority in its absence, and this results in serious harm, shall be punished with minor imprisonment to the medium degree and a fine of six to ten monthly tax units".

Source: Own elaboration.

⁵⁶ Article amended by Article 1(d) of Law 19.450 published on 18 March 1996.

4. CONTEXTS AND CIRCUMSTANCES OF VIOLATIONS OF THE RIGHT TO IDENTITY AND FAMILY LIFE OF MINORS BETWEEN 1960 AND 1990.

Within the framework of the human right to identity and family coexistence, different types of actions committed and actors involved were identified in relation to the modality of capturing minors and their subsequent irregular adoption. Based on primary and secondary sources from civil society organisations, the judiciary, the legislature and the press, five contexts and circumstances were identified in relation to abductions that occurred between the 1960s and 1990s in Chile:

1. **Newborns**, boys and girls irregularly given up for adoption abroad.
2. Newborns irregularly given up for adoption in Chile.
3. Children appropriated by the leaders of Colonia Dignidad.
4. Minors victims of forced disappearance during the dictatorship.
5. Pregnant women victims of forced disappearance, detained under the dictatorship.

It is relevant to review each case separately, as they involve the participation of state and private agents, with different groups being affected; furthermore, both the mechanisms for carrying out the abductions and the development of the investigations carried out by civil society organisations to reunite families have been different. As for the number of cases, there is no consensus on the number of abductions in the country; in the judiciary there are one thousand judicial cases, while the organisation Nos buscamos has 5,496 search records.

4.1 NEWBORNS, CHILDREN IRREGULARLY ADOPTED ABROAD

The number of newborns, boys and girls abducted between the 1960s and 1990s in the framework of an alleged adoption abroad, at the time was close to 20,000 cases⁵⁷. In this regard, Commissioner Roberto Gaete of the Human Rights Brigade of the PDI stated before the Commission of Inquiry that it was possible to know how many children had actually left the country, but not the reason for their departure⁵⁸.

In an interview with the INDH, Minister Mario Carroza reiterated that "there was a massive abduction of children, with a *modus operandi* [...] that was more or less similar in various parts of the country". The first step in carrying out the abductions was to identify mothers with certain socio-economic, cultural and family characteristics, in this sense, Commissioner Gaete points to "young women of limited resources with obviously a precarious economic situation, normally, hopefully from the south and alone".

⁵⁷ According to the figures estimated by minister Mario Carroza, at the start of the investigations into case 1044-2018. In: *Reencuentros después de más de 36 años: Las historias detrás de las adopciones irregulares en dictadura* (9 September 2019). *CNN Chile*. https://www.cnnchile.com/pais/reencuentros-36-anos-adopciones-irregulares-dictadura_20190909/

⁵⁸ *Report of the Investigative Commission*. Pp. 51 et seq.

The mechanisms used considered three factors: the places where the events took place; the professionals who "captured" or chose the women victims; and the bureaucratic resources used⁵⁹ to carry out the irregular adoption⁶⁰. Based on these three factors, three ways in which the abductions were carried out can be distinguished:

a. Health establishments and maternity hospitals

The organisations Nos Buscamos and Hijos y Madres del Silencio agree that one of the most common ways of abducting children between the 1960s and 1990s was from health establishments. From the information gathered, it can be inferred that the mechanism required the complicity of several actors who acted in coordination to commit the crimes: social workers, midwives, doctors, nurses, civil registry officials and international police officers of the PDI.

Everything began with the identification of "suitable" women for the abduction of their children. Commissioner Gaete told the Commission of Inquiry that "mainly minors were chosen, who arrived alone at the hospitals, and at that time there was a person who acted as a recruiter". This person was usually a social worker, who assessed the woman in labour in terms of her socio-economic and family situation and her degree of vulnerability at the time. According to the victims' testimonies, during delivery care, irregularities by the health team occurred, such as the use of general anaesthesia instead of partial anaesthesia; care in hospital corridors and negligent post-delivery procedures⁶¹.

"They told me that he was dead", the report of the Commission of Inquiry states that women throughout the country went to health establishments to give birth between the 1960s and 1990s, but their children were taken away from them, given up for adoption abroad, while they returned home without any document certifying the death⁶². (62) Paula Araya, director of the Department of Gender and Human Rights of the Ministry of Health, told the INDH in an interview. The same report states that in this scenario, the task of informing and calming the patients fell to the nurses, who resorted to different discursive elements, emotional manipulation, verbal violence or the administration of drugs so that the mother would not insist on seeing her child, the body or the death register.

59 The Argentinean case can be studied in the research of Sabina Regueiro (2010), with respect to the inscriptions as one's own children that present the bureaucratic consummation of the disappearance of minors. Irregular adoptions during the military dictatorship in the trans-Andean country demonstrate the use of legal and illegal procedures to carry out the bureaucratic consummation of the adoption or abduction of minors, such as registration and adoption. Hence, the use of bureaucratic resources is in line with the use of legal procedures to legitimise the crime.

60 In an interview with the INDH, historian Karen Alfaro raised the concept of "forced mechanisms of adoption" of children as a state policy, which considers the lack of consent during the adoption process and all the ways used by the state to force a family to voluntarily or involuntarily give up a child. These forced mechanisms are legal and respond to the institutional role of public officials in using legitimate and illegitimate mechanisms of power to make adoptions possible.

61 *Report of the Commission of Inquiry*. Pp. 87 and 130.

62 *Report of the Special Commission of Inquiry*. Pp. 23, 84, 88, 91, 93 and 121.

Other women were sedated immediately after the birth so that they would sign the documentation that would allow the subsequent adoption of the newborn abroad. Analía Quintana, national secretary of the Chilean Association of Social Workers, in an interview with the INDH, pointed out that it was in the health centres to which the social workers of the time were mostly linked that they took advantage of the context of fragility of the women in labour to induce them to give their newborn children up for adoption⁶³.

The two most commonly used methods for the departure of minors abroad were: through the handing over of guardianship of the minor to a third party by the Juvenile Court of the time, so that he or she could leave the country, and then the adoption was consummated under the laws of the adopting country. Liliana Latorre, in charge of the Human Rights Coordinating Unit of the Civil Registry, told the INDH that this authorisation document was not an adoption as such, but an authorisation to leave the country, which is why the abducted person still has a Chilean identity document and another from the State where he or she was adopted. The second method of irregular departures from the country was the registration in the Civil Registry of a false death certificate of the minor, so that the adoptive parents could then register him/her as their own child in their country; or, failing that, by directly registering the adoptive parents as biological parents through a falsified birth certificate or the declaration of two false witnesses.

In 2019, CIPER published an article in which nearly 700 cases of children sent abroad whose birth certificates listed hotels in Santiago as their place of residence. A review of more than 600 birth certificates made it possible to map child abductions from hotels, lawyers' offices, guardians' homes and public offices. These certificates also identify the owners of those addresses and the number of children irregularly registered through certificates issued by the Civil Registry⁶⁴.

63 According to the *Informe pericial de sistematización y análisis de Antecedentes incautados* prepared by María Cecilia Erazo Venegas, judicial expert of the Court of Appeals of Santiago, as cited in Bustamante, V. *La sustracción de menores por agentes del Estado en el contexto de la dictadura cívico-militar chilena: a crime against humanity? Analysis of a typical case*; among the establishments involved in these practices are the hospitals Sótero del Río, Paula Jaraquemada, San Juan de Dios, San José, Regional de Concepción, Higuera de Talcahuano, Barros Luco, Clínico de la Universidad Católica, and the hospitals located in the localities of: Chillán, Lirquén, Los Ángeles, Lota, Ancud, Talagante, Achao, Angelmó, Buin, Castro, Nacimiento, Parral, Quilpué, Rancagua and Yumbel (P. 12).

64 Sepúlveda, N. (30 July 2019). *Illegal adoptions II: the trafficking route of children sent abroad*. CIPER. <https://www.ciperchile.cl/2019/07/30/adopciones-ilegales-ii-la-ruta-del-trafico-de-ninos-enviados-al-extranjero/>.

b. State-run protective homes

"He was malnourished, so the child was taken away from them and taken to this home. The mother could not go to visit him, so they told her 'when he gains weight, we are going to give him to you' and they never saw their children again", and hundreds of stories like this one have reached the organisation Hijos y Madres del Silencio from women who agree that their children were abducted from state-run child protection homes⁶⁵.

Between the 1960s and 1990s, Juvenile Courts ordered the placement of a newborn child in a State home or protection centre on the basis of a psychosocial report prepared by a professional from the court's social area, which determined the need for State intervention with respect to the child. Analía Quintana notes that each professional used different criteria to assess the condition of "moral risk", a variable that affected a child's susceptibility to placement. For its part, according to Commissioner Gaete, there was an organised structure dedicated to the search for children who were in this condition of vulnerability, so that they could be the object of a protection measure involving their internment, by judicial order, in order to subsequently achieve the adoption of the child abroad.

According to the research of historian Karen Alfaro, institutions that focused on care and policies of prevention and coordination of vulnerable children were linked to these irregular adoptions. It is presumed that hundreds of them were carried out by the Casa Nacional del Niño⁶⁶ and the Corporación por la Nutrición Infantil (CONIN)⁶⁷.

Esmeralda Quezada, a social worker who participated in these irregular adoption processes, told the newspaper *La Tercera* that once the children were recovered in the protection centres, the mothers did not want to take care of them. From there, in coordination with the Swedish Society for International Child Welfare (better known as the Swedish Adoption Centre), dozens of irregular adoptions were processed abroad⁶⁸. According to Commissioner Gaete, the religious congregations were also a relevant actor in this abduction channel, especially due to their presence in rural areas, as administrators of these protection homes.

The commissioner explains that the procedure used was initiated by the court's granting of the protective measure of "temporary custody" to a married couple.

⁶⁵ Institutions dedicated to the care of children have always been linked to situations of material and/or parental vulnerability. For this purpose, the State has set up repair centres, family residences or highly specialised centres, with the aim of fulfilling the roles of care and rehabilitation. The reasons for ordering admission to these centres have varied. However, historically, they have historically been based on reasons of parental negligence, domestic violence, abuse, abandonment, among others.

⁶⁶ The institution was opened in 1961. Until 1979 it was managed by Sename, then by the Corporación de Ayuda al Menor (Cordam), in 1990 it was again managed by Sename.

⁶⁷ Founded in 1975 with the mission to eradicate malnutrition and recover children from zero to three years of age with primary or secondary malnutrition, according to the investigations of Dr. Fernando Monckeberg, brother of the doctor Gustavo Monckeberg mentioned by CIPER as one of the articulators of irregular adoptions within Chile.

⁶⁸ Blanco, M.J. (25 February 2018). "Captadora" in case of irregular adoptions: "We saved all those children, they are alive and with a family". *La Tercera*. <https://www.latercera.com/nacional/noticia/captadora-caso-adopciones-irregulares-salvamos-todos-ninos-estan-vivos-familia/79387/>

foreigner in respect of a minor who had previously been admitted to a State protection centre. Once outside Chile, the adoption was finalised in the other country, a fact that was generally not reported to the Chilean State, so that the child continued to appear with the identity initially assigned by the Civil Registry and Identification Service (Servicio del Registro Civil e Identificación). This protective measure of "temporary custody" was associated with an authorisation to leave the country, also granted by the Juvenile Court, and therefore, before the International Police, the procedure was apparently legal and regular.

c. Private residences through police force and unfavourable social reports

The organisations Hijos y Madres del Silencio and Nos Buscamos are aware of several cases of abduction of children by police force, in which social workers, together with the Carabineros, went to the homes of families in localities (mainly rural) in the south of the country to take their children away. They materially carried out the abduction through police force and then abduction by means of unfavourable social reports which then enabled the Juvenile Court to hand over custody to a third party⁶⁹.

On the basis of press reports, women whose children had been abducted by the police began to inquire about their whereabouts. It is estimated that, a priori, it is not possible to rule out a high number of cases of abduction through this route, where most of the victims were women from rural areas who have not had and do not have access to information or justice.

The organisation Hijos y Madres del Silencio (Sons and Mothers of Silence) claims that this reality constitutes about 80 per cent of the 1,200 search cases they have on record and maintain that many of the social reports on which the judicial measure ordering admission to the state protection centre was based, presented a standard account in which only the names of the biological family and of the child to be adopted abroad were changed. Analía Quintana's statement about the situations of poverty, parental neglect and customs that represented, in the opinion of the social worker of the Juvenile Court, a "moral risk" for the minors, is corroborated in these reports.

Based on the identification of these mechanisms, it is understood that the irregular or illegal adoptions of children outside the country could not have taken place without the existence of a counterpart abroad, or with the presence in Chile of agents from adoption centres in other countries who, in collusion with agents of the Chilean State and private individuals, managed the departure from Chile to countries such as Sweden, the United States, Italy, Belgium, Peru, Germany, Holland, France, Spain, Argentina, Denmark, Australia, the Netherlands, New Zealand, among others⁷⁰.

⁶⁹ The *Report of the Investigation Commission* contains accounts of cases, especially in the Araucanía region, in which, through police brutality, children were abducted from communities or rural camps.

⁷⁰ Investigation by the PDI's Human Rights Crimes Investigation Brigade; databases of the NGO *Nos Buscamos*; information provided by the Ministry of Foreign Affairs to the Investigation Commission and the press.

At all times, while this network operated, there was a health team in charge of the woman in labour, made up of midwives, doctors, nurses, an official from the Civil Registry and Identification Service, a judge for minors, a social worker, an official from the home or state protection centre, an official from the Carabineros and the International Police of the PDI. Thousands of testimonies collected during this time by the civil society organisations *Nos Buscamos* and *Hijos y madres del Silencio* attest to this. These would not therefore be isolated crimes.

4.2 NEWBORNS IRREGULARLY ADOPTED WITHIN CHILE

In 2004 and 2005, CIPER uncovered revelations about girls who had been presumed dead at birth, but were in fact the children of single mothers who had been illegally given up for adoption, deceiving their biological mothers and fathers:

(...) there were several babies born to unmarried and pregnant girls who, in the 1970s and 1980s, were irregularly given up for adoption to other families. Sometimes by deceiving the biological parents, making them believe that the baby was stillborn; sometimes by convincing the single mother that this was the best option for the future of the newborn⁷¹.

The priest Gerardo Joannon confirmed the veracity of the facts in court⁷². These adoptions involved the participation of at least ten gynaecologists and the families of the young pregnant women. In this adoption system, the priest made the contact between the gynaecologists and the families, within the framework of the friendship that united them because they shared the same beliefs⁷³. (73) Joannon turned to "well-known gynaecologists of the time (...) when a family approached him for help because their unmarried daughter had become pregnant". In the words of the priest, the first thing he did was to persuade the young pregnant woman and try to convince her to hide the last months of her pregnancy, and then, once her child was born, to give it up for adoption. However, if she did not accept the pressures of the priest and the family, at the moment of giving birth to her son or daughter, she was deceived, being told that she was stillborn or dead.

These newborns, who were forcibly or not taken from their mothers, were irregularly registered in the Civil Registry as biological children of the adoptive parents, under one of the three forms of birth registration: proof of birth, declaration of two witnesses or by judicial resolution.

In accordance with CIPER's publication, the book by Constanza del Río, director of *Nos Buscamos*,

71 Villarrubia, G. (10 April 2014). Los niños dados por muertos que el cura Gerardo Joannon entregó para adopción. *CIPER*. <https://www.ciperchile.cl/2014/04/11/los-ninos-dados-por-muertos-que-el-cura-gerardo-joannon-entrego-para-adopcion/>

72 Ibidem.

73 In its reports, CIPER gives the names of various actors who claimed that everything had happened "many years ago" and that the facts are covered by a "Christian decision" and the secrecy of confession. The Congregation of the Sacred Hearts was summoned to collaborate in the framework of the investigation that supports this chapter, however, they refused.

The report of the Commission of Inquiry details at length the way in which this irregular adoption mechanism operated⁽⁷⁴⁾, which was detailed by Mans Wikström in the report of the Commission of Inquiry:

The other form [of irregular adoption] is national, that is to say, the children who remain in Chile are captured by deception or many times the mothers give them up voluntarily out of social shame, in this case, they are generally women of high social class, from Santiago and the main cities of Chile, who prefer to give up their children rather than suffer the shame of a pregnant teenager without being married; the child is given directly through the doctor or midwife to the new adoptive parents in Chile; these new parents register the child through false witnesses or through a false birth certificate given by the doctor; subsequently, the Civil Registry Service registers them and for the State they remain as legitimate and biological children of their adoptive parents. This is the *modus operandi* they have caught so far.

To date, the number of persons adopted irregularly within Chile is unknown, however, it is estimated that the volume is much lower than the number of adoptions abroad.

At the end of July 2014, Priest Joannon testified before Minister Carroza in the framework of an investigation into his responsibility for the illegal surrender of children for adoption; in February 2015 he was dismissed partially and definitively on the grounds that his criminal responsibility was time-barred.

With regard to the situations described, it is considered that there was a network made up of private individuals and State agents (members of the Catholic Church, doctors, nurses, obstetricians from private clinics and public hospitals, and civil registry and identification officials), who by action in some cases and by omission in others, allowed the materialisation of a still uncertain number of illegal or irregular adoptions of newborns within Chile.

4.2.1 The extent of cases of illegally adopted newborns, boys and girls abroad and within Chile

Since 2017, the Chilean justice system has been investigating the case of child abductions and illegal adoptions, case number 1044-2018, currently under the jurisdiction of the Minister of the Court of Appeals of Santiago, Mr. Jaime Balmaceda, with exclusive dedication.

According to information provided to the NHRI by the Office for the Coordination of Human Rights Cases of the Supreme Court, as of April 2023, the case has 1,000 cases in court, of which 757 are still being processed (756 in a state of initiation of the investigation or investigation, and one case at the stage of closing the investigation or investigation). The remaining 243 cases are concluded, 188 by temporary dismissal, 24 by definitive dismissal, 7 by non-initiation, 4 by incompetence of the court and 20 by accumulation. To date, there are no convictions establishing criminal liability or sanctions.

74 Del Río, C. (2019) *Nos buscamos, Una historia sobre adopción y tráfico de niños en Chile*. Santiago, Chile. Editorial Planeta

Table 3
General status of the child abductions and illegal adoptions case.

STATUS CASE	REASON	TOTAL PARTIAL	TOTAL FINAL
IN PROCEDURE	INITIATED	756	757
IN PROCEDURE	CLOSURE OF SUMMARY	1	
IN PROCEDURE	IN CONSULTATION	0	243
CONCLUDED	TEMPORARY DISMISSAL	188	
CONCLUDED	DEFINITIVE DISMISSAL	24	
COMPLETED	NO START	7	
CONCLUDED	INCOMPETENCE	4	
CONCLUDED	ACCUMULATION	20	
TOTAL		1000	1000

Prepared by the Office for the Coordination of Human Rights Cases of the Supreme Court.

The number of affected children, now adults, estimated by civil society organisations to be more than a thousand. As of June of this year, the database of the NGO Nos Buscamos contains 5,496 cases of searches initiated by relatives or adoptees⁷⁵. Registration on the Foundation's platform starts with the distinction of the search group, i.e. whether it is the adoptee who seeks to know his or her origin, true identity and biological family, or whether it is the mother or father (or other relative) who is looking for the abducted child.

⁷⁵ The database of the NGO Nos Buscamos is updated until 12 June 2023.

Table 4

Searches by Nos Buscamos Foundation

Adopted	2670
Families	2810 ⁷⁶
Without data	16
Total	5496

Source: Own elaboration with data from the organisation Nos Buscamos.

Of the total number of cases they have registered, 2,670 are possible irregular adoptions and 2,810 are relatives who are searching, and there are 16 registered cases of searches without information on who is doing the searching. The director of the Foundation pointed out the difficulty that the victims of illegal adoption, residents of non-Spanish speaking countries, have in carrying out the judicial procedures, therefore, one hypothesis is that it is due to a language barrier of the people who carry out the search⁷⁷.

The following two tables show the details of the number of searches carried out. In the first one, by the families, according to the localities where the abducted children were born; the second one, corresponds to the searches carried out by the adopted persons with respect to the localities of registration of their birth:

76 One of the searches carried out through the organisation *Nos Buscamos* corresponds to a family from whom a child born in 1987 in Parral was abducted. They detail in the search box that the professionals involved are two nurses and the doctor from the former Colonia Dignidad, Hartmut Hoop. There is another search initiated by relatives, who establish Parral as the place of birth in 1980; however, it cannot be established with certainty that the birth and subsequent abduction took place in the hospital of the former Colonia Dignidad.

77 The search carried out by the foundation begins with the collection of as much background information as possible, such as date and place of birth, place of birth registration, professionals involved in the operation, among others. It should be noted that all the information provided by those who were irregularly adopted is based on birth registrations that are mostly false or on social reports prepared in bad faith, therefore, these victims have little information about their true origin. The information provided by the searching relatives is often based on memories or suspicions they may have about the events.

Table 5

Families: Searches of families by place of birth

Place of birth	N° of families	Place of birth	N° of families
Foreign	18	Maule Region	83
Arica and Parinacota Region	15	Ñuble Region	77
Tarapacá Region	12	Biobío Region	213
Antofagasta Region	46	Araucanía Region	107
Atacama Region	16	Los Ríos Region	59
Coquimbo Region	42	Los Lagos Region	94
Valparaíso Region	268	Region of Aysén del General Carlos Ibáñez del Campo	18
Metropolitan Region	1432	Magallanes and Chilean Antarctica Region	10
Region of Libertador General Bernardo O'Higgins	76	Don't know/ No answer	224
Total		2810	

Source: Own elaboration with data from Nos Buscamos organisation.

Table 6

Adoptees: Searches for adopted persons according to place of registration

Locality of registration	N° of adopted persons	Location of registration	N° of persons adopted
Foreign	56	Ñuble Region	13
Region of Arica and Parinacota	11	Biobío Region	110
Tarapacá Region	8	Araucanía Region	65
Antofagasta Region	28	Los Ríos Region	36
Atacama Region	12	Los Lagos Region	57
Coquimbo Region	27	Aysén del General Carlos Ibáñez del Campo Region	6
Valparaíso Region	145	Region of Magallanes and Chilean Antarctica	19
Metropolitan Region	566	No Registration	4
Region of Libertador General Bernardo O'Higgins	44	Multiple registrations	4
Maule Region	36	Don't know/ No answer	1423
Total		2670	

Source: Own elaboration with data from the organisation Nos Buscamos.

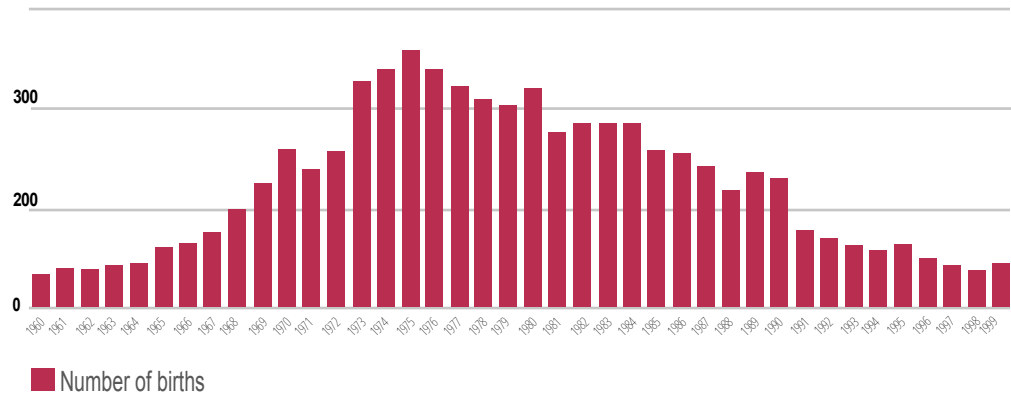
Both tables coincide in the concentration of registrations and births in the Metropolitan, Valparaíso, Biobío and La Araucanía regions, and these data are consistent with the research carried out by the organisations themselves and other actors who have contributed to our knowledge of these crimes.

Regarding the localities of registration of the **newborns**, the number of people who do not know/do not answer is considerably high. Constanza del Río points out that an important factor in the search and prosecution of cases is the involvement of the adoptive parents. Law 19.620, which currently regulates adoption procedures, establishes that when the adopted person requires a copy of the adoption decree and/or its antecedents, the adoptive parents must be previously summoned. Because of this, it is that in many cases adopted persons decide to initiate searches without informing or involving the adoptive parents, hence the lack of information.

From the data collected by the foundation it is possible to determine the distribution of cases according to the year of birth of the adopted persons.

Graph 1
Number of persons looking for their families or being looked for by their families, according to their year of birth⁷⁸

Source: Own elaboration based on data from the organisation Nos Buscamos.



Although the years of birth of illegally or irregularly adopted children reported in the searches entered into the Foundation's system refer to a period spanning just over six decades, most of the reported cases are concentrated between 1973 and 1990, with a peak in 1975 and a sharp decline since 1989.

78 Of the total of 5,496 searches registered in the database of the organisation Nos Buscamos, 4,968 correspond to the period between 1960 and 1990 (covered by the present investigation) and in 164 cases they do not know or do not answer the date of birth of children subsequently abducted.

A similar trend can be observed in the expert report on the systematisation and analysis of seized records prepared by the Chilean justice system for the purposes of the judicial investigation that supports the investigation of these cases, where most of them are concentrated in the 70s and 80s

Table 7

Number of illegally adopted minors, by decade and type of procedure

Decade of birth	Guardianship and authorisation and authorisation to	Adoptive guardianship and legitima- Adoptive	Full adoption	Indeterminate cause da	Total
1950 - 1959	0	6	0	0	6
1960 - 1969	2	36	0	0	38
1970 - 1979	50	15	0	1	66
1980 - 1989	403	17	1	0	421
1990 - 1999	40	2	5	0	47
2000 - 2009	0	0	1	0	1
Total	495	76	7	1	579

Source: Prepared by the authors with data from the Office for the Coordination of Human Rights Cases of the Supreme Court.

The motivations surrounding these irregular or illegal adoptions could be diverse, but the organisations Hijos y Madres del Silencio and Nos Buscamos state that, with regard to the irregular adoptions that took place within Chile, there were payments to all parties involved, financed by the adopting parents. For its part, in the cases of illegal adoptions abroad, Fundación Nos Buscamos warns of the existence of documents that would prove that there were indeed state officials and private agents who received payments for the delivery of these newborns, boys and girls. But in order to prove this, it would be necessary to access the bank accounts of those possibly involved, however, the judicial investigations are confidential and it is not possible to know if such actions were ordered.

Regarding illegal adoptions abroad, specifically during the years of the dictatorship, there is research that suggests that these processes were covered by the National Children's Policy of the time. In this sense, during the dictatorship, the policies regarding the

79 Expert report on the systematisation and analysis of the seized records of María Cecilia Erazo. P. 25. As cited in Bustamante Aguirre, V.

In the early years, the institutions that intervened in childhood were framed within the framework of rationalisation and targeting of social spending under four main axes: mothers' centres, protection of the elderly, children with disabilities and child protection. In those years, the institutions that intervened with children were primarily the National Kindergarten Board (JUNJI), the National Service for Minors (Sename) and the Community Aid Foundation (Funaco), all of which had a policy of encouraging international adoptions. Through, for example, public policies such as the National Plan for Minors of the Dictatorship (1978-1982), which established among its objectives the expansion of the number of adoptions, accompanied by a communication campaign that reinforced the message of international adoptions as a way to deal with children in irregular situations⁸⁰.

In historical terms, the introduction of the regulation of adoption in the national legal system was mainly based on "the need to protect (...) underprivileged children". However, "over and above the legal situation, there were people who took children from orphanages or asylums and cared for them as their own children, even giving them their surname and testating in their favour", which was seen "as a reasonable and altruistic solution to the problem of orphanhood and abandonment"⁸¹. In this sense, it is not possible to rule out that in certain circumstances there may have been a charitable or altruistic motive, at least in the 1950s and 1960s. Even so, these motivations imply a violation of a series of human rights of minors and their families, especially their mothers. In this respect, the report of the Commission of Inquiry is illustrative:

(...) the cases mentioned before the Commission of Inquiry demonstrate that the paradigm of the violated child, which protects and informs public policy towards children, is experiencing a long-standing crisis related to the very conception of the moment and motive of State intervention. The fact that until 1988 there was no obligation of the State in terms of adoption, evidences the lack of a normative framework that guarantees rights (and) allows us to affirm that the institutional fragility and precariousness was the propitious and principal environment to execute this set of irregular adoptions. (...) the above does not exempt the State from responsibility, since its agents were the executors of such processes. However, the public officials involved, together with numerous private actors in extensive networks, took advantage of the paradigm or doctrine of the violated child protected by the State. In fact, the legal relationship between persons involved in the adoption process was private and contractual in nature. Despite this, the mothers, in general, were not informed of the "adoption", which takes away any private nature of the adoption process and the abduction operates as a result of the public position or function that certain persons fulfil, which gives them the power or trust to illegally take possession of the child. In doing so, they take advantage, with their malice, of the doctrine of the child in an irregular or vulnerable situation. If it is considered that they could have promoted the adoption with consent as the first and only alternative, it will be understood why there is malice. And, similarly, being the

Alfaro, K. and Morales, J. L. (2021). *Chilean children adopted by Swedish families. Diplomatic proximity in times of Cold War (1973-1990)*.

81 Rojas, J. (2010). *Historia de la infancia en el Chile republicano, 1810-2010*. Santiago, JUNJI. P. 361.

The public administration, a key part of the scaffolding that allowed these abductions, cannot exempt itself from responsibility because its officials/agents were the main actors in these crimes⁸².

4.4 CHILDREN APPROPRIATED BY THE HIERARCHS OF COLONIA DIGNIDAD

Since its installation in 1961, the history of the former Colonia Dignidad - an enclave of German immigrant population on 16,000 hectares located in the foothills of Parral in the Maule region - has been marked by secrecy and a repressive system of life denounced both by the German settlers themselves and by Chileans who suffered political repression there during the dictatorship⁸³. Paul Schäfer, the founder and leader of the colony, was convicted of various crimes, including the rape and sexual abuse of minors who attended or lived there⁸⁴.

The former Colonia Dignidad operated from its beginnings as a corporation, under the name "Sociedad Benefactora y Educacional Dignidad", until 1990, when President Patricio Aylwin Azócar cancelled its legal status. Once it was dissolved, the Colonia changed its name to Villa Baviera, and transferred its assets to commercial companies, one of which was responsible for the hospital and school, which for years was attended by inhabitants of nearby towns.

The testimonies of mothers who were victims of the abduction of their children give an account of the mechanisms used by Schäfer to appropriate them, kidnap them and then enslave and sexually abuse them. "The poor families of the area found unimaginable benefits in the colony: a first-class hospital, a boarding school, sports and recreational activities, all free of charge. The façade of a charity was Paul Schäfer's mechanism [...] to attract children in order to continue abusing them"⁸⁵.

82 Report of the Commission of Inquiry. P. 137.

83 For more information, *Asociación por la Memoria y los Derechos Humanos Colonia Dignidad*. <https://www.coloniadignidad.cl/quienes-somos/>

84 It was established that Schäfer "ordered the forced psychiatric treatment of healthy patients [...] these acts were classified as crimes of serious and less serious injury [...] it was considered that the crimes met the definition of torture, and were classified as crimes against humanity; it was also proven that, between 1974 and 1976, the retention, torture and forced disappearance of victims belonging to political groups opposed to the civil-military dictatorship was carried out, which was classified by the courts as simple and aggravated kidnapping, and several hierarchs were convicted as perpetrators, accomplices and accessories to these crimes, which were also classified as crimes against humanity; The existence of collaboration between Colonia Dignidad and the intelligence services of the civil-military dictatorship in the commission of the crimes was confirmed, among other illicit acts". In Rojas Illanes, Magdalena. *Persecución penal de los delitos vinculados a la colonia dignidad en Chile*. Repositorio Facultad de Derecho de la Universidad de Chile.

85 Dannemann, V. (17 November 2021). Mothers of Colonia Dignidad victims: "We are still fighting". *Deutsche Welle*. <https://www.dw.com/es/madres-de-ni%C3%B1os-abusados-en-colonia-dignidad-todav%C3%ADa-seguimos-luchando/a-59840175>

In relation to the affectation of the right to identity and family coexistence in Colonia Dignidad, three realities can be identified:

- a. Children abducted and brought from Luxembourg, who arrived with Paul Schäfer and his followers to settle in the German enclave.
- b. Children who were irregularly adopted by German leaders of the former colony between the 1960s and 1970s.
- c. People who filed criminal complaints against Schäfer and the Dignity hierarchy⁸⁶ because they were victims of sexual abuse and forced labour in the 1990s, when they were minors.

a. German children brought to Chile from Luxembourg

Paul Schäfer's first case of child abduction occurred prior to his arrival in Chile. In 1961 he was denounced before the Court of Siegburg (Germany) for sexual abuse committed against two minors during the years 1959 and 1960; in February 1960 an arrest warrant was issued against him, despite this, Schäfer escaped from Luxembourg to Chile, together with dozens of his followers and 150 minors, many of them taken from their families by deception, with the aim of obtaining permission to leave the country or, failing that, falsifying the signatures of parents and/or guardians, among other illicit acts. Dieter Maier, a German researcher on Schäfer and the former Colonia Dignidad, maintains that this abduction "was a breach of trust and at the same time the largest child abduction of the German post-war period"⁽⁸⁷⁾.

Once settled in Chile, it received groups of settlers in 1963, 1966 and 1973⁸⁸. The life and daily activities of its inhabitants were controlled and organised by subdividing them into different groups according to sex and age, so it is not known whether during those waves of migration, the children were reunited with their fathers and mothers.

86 The hierarchy of the former Colonia Dignidad includes Paul Schäfer Schneider, Gerhard Wolfgang Mücke Koschitzke, Kurt Schnellenkamp Nelaimischkies, Willi Malessa Boll, Hartmut Wilhem Hopp Miottel, Günther Schaffrik and Reinhard Doring Falkenberg, all indicted or convicted for crimes and gross human rights violations.

87 Cervio, R. (director) (2022). *Los Sobrevivientes: Colonia Dignidad*. Prime Video [Miniseries].

88 Association for Memory and Human Rights Colonia Dignidad. <https://www.coloniadignidad.cl/quienes-somos/>

b. Chilean children adopted irregularly in the 1960s and 1970s

This second case refers to some fifteen Chilean children, sons and daughters of very poor peasants, inhabitants of the localities near the former Colonia, who were taken by their parents to be treated in the hospital of the former Colonia, where they were hospitalised, but were prevented from leaving and then separated from their families.

Once inside the colony, their original names and surnames were changed to German names and surnames⁽⁸⁹⁾ a change of identity that was carried out in three ways:

- By means of an illegal adoption, through a public deed before a notary, which the illiterate mothers signed without knowing that they were giving up their sons or daughters for adoption to the settlers of the Colony.
- By means of adoption trials, in which minors were adopted by German settlers through a procedure before the Parral Court, and in accordance with the adoption legislation of the time, information about the child's biological filial relationships was crossed out and the files were then destroyed.
- A parallel registration was made, which registered a new birth. According to lawyer Winfried Hempel, this was the most typical form of adoption in the colony. These children were never told that they were adopted and were led to believe that they were the biological sons and daughters of the German settlers. Today there are victims who still do not know their true identity.

Until today, Chilean law allows the possibility (in the absence of a birth certificate from a health institution) that the birth can be proved by two birth witnesses. In the past, it was very common to register births in this way, especially in rural areas of the country. Making use of this legislation, the Civil Registry Service in Parral carried out parallel registrations that allowed new births to be registered. The system consisted of a child who already had a birth registration made by his or her biological parents being given a parallel birth registration by means of two false birth witnesses. This new registration, which gave an account of the birth in another place, with another date and to settler parents, therefore there is no way of tracing the past identity⁹⁰.

89 In an interview with the NHRI, Winfried Hempel, lawyer for victims of the former Colonia Dignidad, pointed out that there are victims of illegal adoptions who are in the process of changing their names, but not their filiation, which can no longer be changed.

90 In the documentary series *Colonia Dignidad: A German sect in Chile* (Netflix, 2019), in its fourth and sixth chapter a former Chilean inhabitant of the Colonia, states that "(it was known that) an official of the Civil Registry [...] gave Schäfer adoption documents for children who had received medical treatment at the hospital of the Colonia"; while another victim indicates. "[...] I was never returned to my parents, I was adopted, it was a kidnapping".

C. Individuals who filed criminal complaints against Schäfer and the Dignity hierarchy because they were victims of sexual abuse and forced labour during the 1990s, when they were minors.

In 1990, after the legal status of the former colony had been revoked, Schäfer and the enclave hierarchy threatened to close the hospital and school. In response, the local people, mostly poor peasants, organised themselves into committees to prevent the closure of both institutions. They held various demonstrations and for about eight years kept what they called a permanent vigil. German settlers and Chilean locals began to meet inside the colony, and from these meetings, the "Youth of the permanent vigil" was organised.

Of the hundreds of minors who came to the colony every weekend, Schäfer selected a group of about 15 who, under various excuses, began to stay at the colony during the week. Although the youngsters in this group were never adopted because their parents maintained the filial bond, the colony managed to get the mother and/or father to hand over guardianship before a notary to a German settler couple. For this group of children, a space called the Intensive Boarding School was organised, which functioned as a kind of school, without legal status, where the classes were taught by the settlers themselves, who were not teachers, and where there was no record of grades or attendance. These minors lived there between 1994 and 1997 without contact with their biological families. Lawyer Hempel points out that they lived under a very strict regime of schooling, child labour and separation from their parents under a formally agreed guardianship. When their parents tried to visit them or remove them from the place, they were prevented from doing so.

This group of children allowed the cases of sexual abuse committed by Schäfer to become public knowledge when, in 1997, one of them managed, through a cousin, to send a letter to his mother in which he described the abuse to which he was being subjected. The mother stayed at the Colonia until she managed, after much insistence, to have her son released to her. A doctor certified the abuses and with this background she filed the first complaint in 1996⁹¹.

According to lawyer Winfried Hempel, it was officials from the Internal Affairs Department of the PDI who went to the area, contacted the Parral Court and warned about the irregular situation of the child and the boarding school. The victims reported that they had been persecuted and intimidated in their homes or at work. Some settlers watched and followed the children and threatened their families. "They persecuted us, they went to watch when they left school, they sent me messages with a Chilean couple, that if I continued to insist on recovering [my son] something bad would happen to me or they would burn down my house"⁹².

91 Deutsche Welle (2021). Mothers of Colonia Dignidad victims: "We are still fighting".

92 Ibid.

The cases of abuse against these children were prosecuted by lawyer Hernán Fernández in criminal proceedings, and then ended in a civil suit that was continued by lawyer Winfried Hempel: "It was only last year [2022] that they finished paying the compensation"⁹³.

After the first arrest warrant was issued by Judge Jorge Norambuena in June 1996, Schäfer went into hiding and fled to Argentina, which led to the opening of the former Colonia Dignidad. Schäfer was located and arrested in Buenos Aires in 2005, convicted in Chile for several crimes, and died in prison in 2010.

4.5 MINORS VICTIMS OF ENFORCED DISAPPEARANCE IN DICTATORSHIP

It is documented that during the dictatorship there were minors who were abducted by State agents⁹⁴ and to this day remain as disappeared detainees. In this regard, international experience has shown that the context of the crime of enforced disappearance constitutes a propitious scenario for illegal adoptions or appropriations of minors⁹⁵. An example of this situation is the case of Pablo Germán Athanasius Laschan, born in October 1975, who was kidnapped when he was six months old, together with his parents Frida Laschan and Ángel Athanasius, in an operation within the framework of Operation Condor, in Buenos Aires. He was then taken by a married couple with close links to the military regime. In August 2003, when he was 18 years old, Pablo was notified by the National Commission for the Right to Identity of Argentina (Conadi) about his true identity and was able to access information about who his biological parents were⁹⁶.

Currently, the Human Rights Programme in charge of the Plan for the Search for Disappeared Detainees of the Under-Secretariat for Human Rights reports 204 victims of forced disappearance during the dictatorship who were under 21 years of age at the time of their disappearance, including children and adolescents. Of these 204 victims, 153 victims are still missing without identification⁹⁷.

For its part, in the report updating the figures on victims of the civil military dictatorship, the Undersecretariat for Human Rights warns that in the search for victims of enforced disappearance that occurred between 1973 and 1990, the country follows the so-called judicial model, whereby the entire investigation process is based on determining whether an accused person is legally responsible for the

93 Court rejects appeal and orders to continue paying compensation to victims of Colonia Dignidad. Clarín de Chile. https://elclarin.cl/archivo/2017/03/16/corte-rechaza-recurso-y-ordena-seguir-pagando-indemnizaciones-a-victimas-de-colonia-dignidad/?utm_source=rss&utm_medium=rss&utm_campaign=court-rejects-appeal-and-orders-to-continue-paying-compensations-to-victims-of-colonia-dignidad

94 Report of the Rettig Commission, Report of the National Corporation for Reparation and Reconciliation and Report of the Valech II Commission.

95 Vanyó, R. (2019). The enforced disappearance of 'stolen children' in the Spanish State: Lessons from International Law, in the struggle for truth, justice and reparation. *Anuario de los Cursos de Derechos Humanos de Donostia-San Sebastián*, vol. 19. Pp. 353-410; Gacitúa, A. (6 September 2016). *The enforced disappearance of minors in Europe and Latin America. Serie Minutas No 80-16. Library of the National Congress of Chile.*

96 Son of Frida Laschan, Chilean, and Angel Athanasius, Argentinean. The kidnapping occurred in April 1976, from the hotel in Buenos Aires, Argentina, where the three lived. The Laschan and Athanasius families filed several complaints to find the whereabouts of the disappeared youths and their son, and searched unsuccessfully in prisons, asylums and orphanages. In 1982, Grandmothers of Plaza de Mayo denounced the disappearance of the minor. In April 2003, with the collaboration of the Human Rights Directorate of the Argentinean Ministry of Security, Pablo Germán was genetically sampled and in August of the same year he was notified by the National Commission for the Right to Identity (Conadi) that he was the son of Frida Laschan and Angel Athanasius. At the age of 38, Pablo Germán died. The Argentinean press published about the possible causes of his death, a suicide on 25 November 2017. For more information we suggest you check <https://memoriaviva.com/nuevaweb/detenidos-desaparecidos/desa-parecidos-lilaschan-mellado-frida-elena/>; <https://www.infobae.com/2015/04/12/1721759-se-suicido-el-nieto-recuperado-numero-109/>

97 Information provided by the Human Rights Programme Unit of the Under-Secretariat for Human Rights to the INDH on 12 September 2023. The other 51 disappeared victims, under the age of 21 at the time of their disappearance, were identified by the SML or the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense - EAAF).

commission of an enforced disappearance according to evidence given in accordance with the procedural rituals of a trial, whereby the search for the disappeared person is often an ancillary objective to the prosecution of legal responsibility⁹⁸.

The United Nations Guiding Principles for the Search for Missing Persons⁽⁹⁹⁾ (hereinafter the UN Guiding Principles for the Search) are relevant to this reality, in terms of the differential approach that the search for children and adolescent victims of enforced disappearance should have, which in this case, 50 years having passed since the coup d'état, these victims, if still alive, would already be adults. The UN Guiding Principles guide the entities in charge of the search to design and implement actions and plans that take into account the situation of extreme vulnerability of this age group, training public officials in this regard, and warning that, in the absence of certainty about the age of the victim of enforced disappearance, it should be assumed that it is a child.

4.6 PREGNANT WOMEN VICTIMS OF FORCED DISAPPEARANCE DETAINED UNDER THE DICTATORSHIP

The Report of the National Commission for Truth and Reconciliation (CNVR Report) recognised as victims of forced disappearance by the dictatorship nine women detainees who were pregnant¹⁰⁰, "for whom it has not been possible to know if any of the babies were born, and if so, what their fate was"¹⁰¹.

A 1990 study by the Committee for the Defence of People's Rights (Codepu) established that only one of them had no known militancy, the other eight were militants of the Communist Party, the Socialist Party and the Revolutionary Left Movement (MIR)¹⁰². More than four decades have passed and we still do not know the truth about what happened to these nine women or to their children who may have been born in captivity¹⁰³. The Codepu study concluded, among other things, the following:

98 Based on the Report on the Update of the List of Victims of Enforced Disappearance, classified in the Reports of the National Truth and Reconciliation Commission, the National Corporation for Reparation and Reconciliation, and the Presidential Advisory Commission for the classification of Disappeared Detainees, Politically Executed and Victims of Political Prisoners and Torture of the Human Rights Programme of the Ministry of Justice and the Undersecretariat for Human Rights.

99 Principles approved by the United Nations Committee on Enforced Disappearances in 2019. Although they are a set of good practices systematised in a *soft law* instrument, they imply a roadmap for any State that intends to implement a public policy on the search for disappeared persons.

100 The CNVR register recognises nine pregnant women detained or abducted and then disappeared under the dictatorship between 1974 and 1977: Cecilia Labrin Sazo; Gloria Lagos Nilsson; Cecilia Bojanic Abad; Jacqueline Drouilly; Michelle Peña Herrerros; Nalvia Mena Alvarado; Elizabeth de las Mercedes Rekas Urra; Reinalda del Carmen Pereira Plaza; Gloria Delard Cabezas.

101 *Report of the Rettig Commission*. Pp. 745.

102 Rojas, P. and others (1990). Todas íbamos a ser reinas (We were all going to be queens). http://www.archivochile.com/Derechos_humanos/Tex_sobre_repre/ddhntextrepre00002.pdf

103 Carmona, A. (27 August 2013). Pregnant women made to disappear by the dictatorship. *El Mostrador*. <https://www.elmostrador.cl/noticias/pais/2013/08/27/las-mujeres-embarazadas-que-hizo-desaparecer-la-dictadura/>

The Chilean judiciary, with its indifference, obsession, deceit and submission to military power, has definitively closed the doors to all the legal instances requested to know the truth about what happened to them and their children and, what is more serious, even in the midst of the transition to democracy, not only has it not taken any initiative, but it continues to deny the possibility of investigating. In other words, justice has not only failed to do its job, but has prevented the citizens of this country from knowing the truth, leaving us with minimal information, **sometimes** distorted, which, far from clarifying the facts, generates doubts, mistrust and scepticism.

The UN Guiding Principles on Searches expressly state that the search for a disappeared person should be carried out under the presumption that he or she is alive, regardless of the circumstances and date of the disappearance, and regardless of when the search begins; it also establishes a differential approach and pays special attention to cases of missing children, due to their extremely vulnerable situation, as well as to cases of missing women. In this sense, it calls for all stages of the search to be carried out with a gender perspective¹⁰⁴.

In accordance with these principles, the Human Rights Programme of the Under-Secretariat for Human Rights currently has a database of ten pregnant women who were victims of forced disappearance during the dictatorship. The tenth victim (whose name has not been made public) was detained in Argentina and although her judicial process is being processed in that country, she is recognised as a victim despite the fact that her case does not have a final and enforceable sentence.

Marcelo Acevedo, coordinator of the Sites of Memory Network, said in an interview with the INDH that information is currently being gathered about women who entered political prison pregnant and possible newborns who may have been born in captivity, in physical spaces that are now sites of memory, and who were later lost, abducted or illegally adopted in Chile or abroad. He points out that the missing pregnant women were mostly at full term. In his opinion, the newborns are victims of enforced disappearance because "first their identity was stolen, effectively, they made them disappear, not perhaps by executing them, but they did disappear from the country, so they fall into the category". In this regard, comparative experience indicates that political imprisonment and enforced disappearance are scenarios of appropriation or illegal adoption of newborns in captivity¹⁰⁵.

104 UNHCR (2019). *UN Guiding Principles for the Search for Missing Persons*.
<https://www.ohchr.org/es/documents/guiding-principles-search-disappeared-persons>

105 The evidence is the work of organised civil society in Argentina, through the Mothers of Plaza de Mayo and later, Grandmothers of Plaza de Mayo, and the National Commission for the Right to Identity of the Argentinean Ministry of Justice and Human Rights, whose original objective is the search for and location of children who disappeared during the last military dictatorship.

5. HUMAN RIGHTS VIOLATIONS ARISING FROM IRREGULAR ADOPTIONS

In the following, we seek to identify those human rights that are affected in the context of illegal adoptions and other criminal offences. First, the rights that would be affected in the five situations described in section 4 of this chapter are reviewed. Then, it identifies the criminal offences through which it would currently be possible to seek access to justice for the violations identified.

5.1 WHAT HUMAN RIGHTS ARE VIOLATED?

In order to identify the human rights violations involved in the aforementioned situations, we present a compilation of the jurisprudence of the Inter-American Court of Human Rights, whose instrument par excellence for the basis of its rulings is the American Convention on Human Rights, which describes a series of human rights that are understood to have been violated.

From the point of view of human rights, it is necessary to determine the impact on guarantees, which derives from the obligation of the States to respect and guarantee the rights enshrined in the different international human rights standards to which they have subscribed, and which have been addressed by different judgments of the IACHR Court in cases similar to those described in this chapter. In this way, the right to personal integrity, life, recognition of legal personality, family and its protection, identity, special measures for children, name, nationality and personal liberty, among others, have been affected¹⁰⁶.

¹⁰⁶ Articles 10, 18 and 31 of the Vienna Convention on the Law of Treaties, which establish the obligation not to frustrate the object and purpose of a treaty before its entry into force and set out the rules of interpretation, make sense in this respect. These rules make it possible to situate the State of Chile as a guarantor of the human rights enshrined in the American Convention on Human Rights since May 1969, the year in which the State of Chile signed the aforementioned regional Human Rights Treaty, despite having promulgated it in May 1981. This, given that the "signature" of a Treaty, which is subject to ratification, acceptance or approval by the State, does not establish consent to be bound, also constitutes a means of authenticating the Treaty, and therefore expresses the will of the signatory State to continue with the procedure whose purpose is the conclusion of the Treaty. Thus, the "signature" gives the State the capacity to ratify, accept or approve the Treaty, and at the same time creates the obligation to refrain in good faith from acts that would frustrate the object and purpose of the signed Treaty. In this sense, paras. 112 and 117 of *Contreras v. El Salvador* (I/A Court H.R.) and *What is the difference between signature, ratification and accession to a UN treaty?* Dag Hammarskjöld Library. <https://ask.un.org/faq?gid=605&qid=65354>

Diagram 4

Human Rights and IACHR Court Jurisprudence

Law	IACHR Court Jurisprudence
Right to life moral, psychological and social	<ul style="list-style-type: none">- Illegal abduction from biological parents puts at risk the life, survival and physical, mental, spiritual, life, survival and physical, mental, spiritual, moral, psychological and social development of children.- The failure to investigate what happened represents a violation of the duty to guarantee to every person the inviolability of life and the right not to be arbitrarily deprived of it.right not to be arbitrarily deprived of life¹⁰⁷.
Right	Jurisprudence of the Inter-American Court of Human Rights
Right to identity	<ul style="list-style-type: none">- Set of attributes and characteristics that allow for the individualisation of the person in society.- It is linked to the person in his or her specific individuality and private life, both of which are based on historical and biological experience, and in his or her relations with others, through the development of ties at the family and social level.- Identity is of particular importance during childhood, as it is essential to a person's development. However, it is constantly under construction and the interest in maintaining and preserving identity does not diminish as the years go by.- Removing a minor from his or her family and cultural environment, illegally retaining him or her, subjecting him or her to acts of violence and rape, registering him or her under another name, changing his or her identification data to false data and raising him or her in a different cultural, social, religious, linguistic environment, keeping him or her ignorant of these data, constitutes an aggravated violation of the prohibition of interference in a person's private and family life, as well as of his or her right to preserve his or her name and family relations, as a means of personal identification (108).means of personal identification¹⁰⁸.

107 I/A Court H.R. Contreras et al. v. El Salvador. Series C No. 232. para. 90.

108 Ibid. paras. 113 and 116; I/A Court H.R., Case of Gelman v. Uruguay. Case of Gelman v. Uruguay. Series C No. 221. para. 122; I/A Court H.R., Case of Fomerón and Daughter v. Argentina. Fomerón and Daughter v. Argentina. Series C No. 242. para. 123.

Continued outline nº4

Human Rights and IACHR Court Jurisprudence

Law	IACHR Court Jurisprudence
Right to protection of the family and the right to live in the family	<ul style="list-style-type: none">- The State is obliged to provide for and directly implement measures for the protection of children and to promote, in the broadest sense, the development and strengthening of the family unit.- The adoption of special measures for the protection of the child is the responsibility of the State as well as of the family, the community and the society to which the child belongs.¹⁰⁹
Law	Jurisprudence of the IACHR Court
The right of women victims of acts of state violence	<ul style="list-style-type: none">- The State has the duty to guarantee the right of access to justice in accordance with the specific obligations imposed on it by the specialised conventions on the prevention and punishment of torture and violence against women.- Investigations into acts of state violence against women require the state to take the necessary gender perspective.- Investigations in matters such as those described must be initiated ex officio and without delay¹¹⁰.
Right	Jurisprudence of the IACHR Court
Right to recognition as a person before the law	<ul style="list-style-type: none">- The crime of enforced disappearance is violated because it leaves the victim in a situation of legal indeterminacy that makes it impossible, hinders or nullifies the possibility of the person to be the holder or to effectively exercise his or her general rights (111). effective exercise of his or her rights in general ¹¹¹ .

109 Gelman v. Uruguay. Case of the Pacheco Tineo Family v. Plurinational State of Bolivia. Series C No. 272. Para. 217, 226-228; Fornerón and Daughter v. Argentina. Para. 45.

110 Tres Erres Massacre v. Guatemala. Series C No. 211. paras. 137, 140 and 141.

111 Gelman v. Uruguay. Para. 92.

Human Rights and IACHR Court Jurisprudence

Law	IACHR Court Jurisprudence
Right to a name	<ul style="list-style-type: none">- It constitutes a basic and indispensable element of the identity of each person, without which he or she cannot be recognised by society or registered with the State.- Name and surname are essential to formally establish the link between the different members of the family.- The State must ensure that the person is registered under the name chosen by him or her or his or her parents, depending on the time of registration. Once a person has been registered, the possibility of preserving and re-establishing his or her possibility of preserving and restoring his or her name and surname¹¹².
Law	Jurisprudence of the IACHR Court
Right to nationality	<ul style="list-style-type: none">- It is the legal link between a person and a State, which is a prerequisite for the prerequisite for the exercise of certain rights.- It entails the duty of the state both to provide the individual with a minimum of legal protection in all relations, and to protect him against the arbitrary deprivation of his nationality and the totality of his political and civil rights based on it. <p>¹¹³</p>
Right	IACHR Court Jurisprudence
Right to personal liberty	<ul style="list-style-type: none">- This right implies the possibility of every human being to self-determination and to freely choose the options and circumstances that give meaning to his or her existence.- In the case of children, who exercise their rights progressively as they develop a greater level of personal autonomy, in their early childhood they act in this sense through their families. Thus, the separation of a child from his or her family necessarily implies an impairment in the exercise of his or her liberty. <p>exercise of their liberty¹¹⁴.</p>

Source: Own elaboration based on the jurisprudence of the Inter-American Court of Human Rights.

¹¹² Ibidem. Para. 127.

¹¹³ Ibidem. Para. 128.

¹¹⁴ Ibidem. Para. 129.

Continued in Scheme No. 4

Human Rights and IACHR Court Jurisprudence

Law	IACHR Court Jurisprudence
Right to know the truth historical memory, the clarification of facts, and the	<p>- States may establish truth commissions, which contribute to the construction and preservation of</p> <p>States may establish truth commissions that contribute to the construction and preservation of historical memory, the clarification of facts and the determination of institutional, social and political responsibilities. However, such bodies do not complete or replace the State's obligation to establish the truth through judicial processes that establish criminal responsibility.</p> <p>- It contains a collective dimension whose satisfaction requires the procedural determination of the fullest possible historical truth, including the judicial determination of the patterns of joint action and of all the persons who in various ways participated in those violations and their corresponding responsibilities.</p> <p>- Judges and bodies involved in the administration of justice have the obligation to exercise ex officio a control of conventionality between domestic norms and the American Convention on Human Rights (ACHR).</p> <p>Human Rights (ACHR).¹¹⁵.</p>
Law	Jurisprudence of the IACHR Court
Duty to adopt domestic law provisions	<p>- The adaptation of domestic legislation to the parameters established in the American Convention on Human Rights (ACHR) implies the elimination of norms and practices that violate the guarantees provided for in the ACHR or that do not recognise the rights recognised therein or hinder their exercise, and the issuance of norms and the development of practices conducive to the effective and the development of practices conducive to the effective observance of those guarantees⁽¹¹⁶⁾.</p> <p>observance of those guarantees¹¹⁶.</p>

¹¹⁵ Contreras et al. v. El Salvador. Para. 135; Tres Erres Massacre v. Guatemala. Paras. 149 and 151; Gelman v. Uruguay. Paras. 192, 193 and 243.

¹¹⁶ Fomerón and Daughter v. Argentina. Paras. 130, 131, 138 to 140.

Continued outline nº4

Human Rights and IACHR Court Jurisprudence

Law	Jurisprudence of the IACHR Court
Right of access to information	<ul style="list-style-type: none">- The authorities must act in good faith and diligently carry out the necessary actions to ensure the effectiveness of access to information.- Authorities are obliged to cooperate in the collection of evidence in order to achieve the evidence to achieve the objectives of the investigation and to refrain from acts that obstruct the progress of the investigative process.- The State cannot rely on the lack of proof of the existence of the requested documents; on the contrary, it must justify its refusal to provide them.- In cases of human rights violations, state authorities cannot invoke mechanisms such as state secrecy or confidentiality of information, or reasons of public interest or national security, to avoid providing the information requested by the authorities in charge of the investigation. <p>authorities⁽¹¹⁷⁾.</p>

The following table summarises the jurisprudence of the Inter-American Court of Human Rights in relation to the right to justice in relation to abductions, enforced disappearances and adoptions of children that the IACtHR has upheld in this regard.

117 Contreras et al. v. El Salvador. Paras. 170 and 171.

Diagram 5

Access to justice and jurisprudence of the IACHR Court

Law	Jurisprudence of the IACHR Court
Due diligence in criminal investigations	<ul style="list-style-type: none">- It requires the effective determination of the facts under investigation and the corresponding criminal responsibilities within a reasonable time.- Prolonged delay alone may constitute a violation of judicial guarantees.- The passage of time is directly related to the limitation or impossibility of obtaining evidence and/or testimony, making it difficult and ineffective to carry out evidentiary procedures in order to clarify the facts under investigation, identify possible perpetrators and participants, and determine possible criminal responsibilities.- The State must provide the corresponding authorities with the logistical and scientific resources necessary to collect and process evidence, and with the powers to access the relevant documentation and information to investigate the reported facts and obtain indications or evidence of the location of the victims.- The investigating authorities have a duty to ensure that in the course of their investigations they assess the systematic patterns that enabled serious human rights violations to be committed. human rights violations ¹¹⁸ .
Law	Jurisprudence of the Inter-American Court of Human Rights
The duty to investigate is an obligation of means and not an obligation of result.	<ul style="list-style-type: none">- The State must assume the investigation as its own legal duty and not as a mere formality condemned in advance to be fruitless, or as a mere management of private interests, which depends on the procedural initiative of the victims or on the private submission of evidence¹¹⁹.

118 Contreras et al. v. El Salvador. Paras. 145 and 146. Gelman v. Uruguay. Para. 112; Fornerón and Daughter v. Argentina. Paras. 66 and 69.

119 Gelman v. Uruguay. Para. 184; Fornerón and Daughter v. Argentina. Para. 74; Tres Erres Massacre v. Guatemala. Para. 104.

Continued outline no. 5

Access to justice and IACHR Court jurisprudence

Law	IACHR Court Jurisprudence
Administrative and judicial procedures	<ul style="list-style-type: none">- Proceedings concerning the protection of the human rights of minors, particularly those related to the adoption of children in early childhood, must be handled with exceptional diligence and speed.- The mere passage of time in child custody cases can be a factor favouring the creation of ties with the custodial or foster family. Therefore, further delay in the proceedings may determine the irreversible or irremediable nature of the de facto situation and render any decision on the matter detrimental to the interests of the children and their biological parents (120) . prejudicial to the interests of the children and their biological parents ¹²⁰ .

Source: Own elaboration based on the jurisprudence of the IACHR Court.

120 Fomerón and Daughter v. Argentina. Paras. 50 and 51.

5.2 CONFIGURATION OF UNLAWFUL ACTS ARISING FROM HUMAN RIGHTS VIOLATIONS

The CNVR report recognises nine pregnant women as victims of forced disappearance and it is not known whether their children were born. However, there is a tenth victim (whose judicial process is still ongoing in the Argentinean justice system) included in the Search Plan of the Human Rights Sub-Secretary's Human Rights Programme (Programa de Derechos Humanos de la Subsecretaría de Derechos Humanos). Also, in the Search Plan, 153 minors under 21 years of age have been recognised as victims of forced disappearance without identification to date.

The cases of the victims of child abductions and illegal adoptions within Chile, abroad and in the former Colonia Dignidad, i.e. newborns, children and their biological families, especially their mothers¹²¹, could be classified into different criminal types, depending on the rights violated, taking into account the political, socio-economic, cultural, geographical and historical contexts in which the violations were committed, as well as the mechanisms used and the recurrent patterns in the reported facts.

In the case of child abduction and illegal adoptions, Minister Mario Carroza observed elements constituting crimes against humanity when he was the examining magistrate in that case¹²². Meanwhile, former Minister Alejandro Solís warned of the crime of permanent execution of child abduction. The latest report of the UN Committee on Enforced Disappearances, in the section on measures of reparation and protection of children against enforced disappearances, calls them "child appropriations", while the Directorate of Consular Affairs of the Ministry of Foreign Affairs calls them "forced or irregular adoptions"⁽¹²³⁾.

In this way, according to the circumstances and characteristics of the reported facts, the criminal offences that could be associated with the affectation of the right to identity and family coexistence¹²⁴ are: abduction; sale, trafficking and smuggling; sexual abuse and exploitation; forced disappearance; other inhumane acts; and illegal adoption. These are: abduction; sale, trafficking and smuggling; sexual abuse and exploitation; forced disappearance; other inhumane acts; and illegal adoption.

121 Through the case of Contreras et al. v. El Salvador in para. 120; in the same sense Gelman v. Uruguay in para. 133, the IACHR has considered in numerous cases that the relatives of victims of human rights violations can be, in turn, victims.

122 Bustamante, V. (2017). *The abduction of children by State agents in the context of the Chilean civil-military dictatorship: a crime against humanity? Analysis of a typical case.* <https://repositorio.uchile.cl/handle/2250/182289>

123 Ministry of Foreign Affairs (11 August 2023). *Minuta Adopciones forzadas o irregularidades en adopciones.*

124 In this regard, the IACHR Court in Gelman v. Uruguay, in para. 225, has established that "amnesty provisions, statutes of limitation and the establishment of exclusions of responsibility that seek to prevent the investigation and punishment of those responsible for serious human rights violations are inadmissible [...]".

Criminal offences

Criminal type	Jurisprudence of the IACHR Court
<p>Child abduction</p> <p>her custody to a different place without legal justification.</p>	<ul style="list-style-type: none"> - In order to constitute child abduction, it is required that the offender removes the child from his or her custody to a different place without legal justification. This offence affects the freedom of the child and the set of rights of which he/she is deprived during the time of the abduction. - Once the abduction has been completed, the stage of retention of the child begins, that is to say, that for a more or less prolonged period of time the perpetrator prevents the parents or legal guardians from exercising their powers of guardianship, by depriving the child of his or her liberty (125). <p>of the minor¹²⁵.</p>
Criminal type	Jurisprudence of the IACHR Court
<p>Trafficking, trafficking and sale¹²⁶</p>	<ul style="list-style-type: none"> - The Guide to Good Practice for the implementation of the Convention The Hague Convention describes how child trafficking could lead to illegal adoption and "the removal or sale of a child for the purpose of adoption" could be a one-off event. For such an abduction or sale to be considered child trafficking for adoption, it would have to be part of an organised and systematic operation. - The UN Special Rapporteur, Maud de Boer-Buquicchio, states that illegal adoptions violate multiple child rights norms and principles, including the best interests of the child, the principle of subsidiarity and the prohibition of improper financial gain. <p>improper financial gain¹²⁷.</p> <ul style="list-style-type: none"> - Trafficking in children would only have two mandatory elements: an act (recruitment, transportation, transfer, harbouring or receipt of persons) and a purpose (exploitative purposes), as due to their particular vulnerability, the means used to carry out the act of trafficking (which are required to constitute trafficking in adults) would be considered irrelevant.

125 Solís, A. (16 June 2014). Illegal or irregular adoptions constitute a permanent crime. *CIPER*.
<https://www.ciperchile.cl/2014/06/16/las-adopciones-ilegales-o-irregulares-constituyen-un-delito-permanente/>

126 For David M. Smolin "trafficking" and "sale" of children would be in a gendered relationship of sorts, in that trafficking generally refers to the buying and selling of children. Although the term would have greater application when the sale of the child involves the child being transported over a significant distance, particularly across a border, any sale should be sufficient to qualify as a form of trafficking. Therefore, the sale of a child would be a form of child trafficking. In *"Crimes of Trafficking and Sale of Children in the Framework of Adoption International Comparative and National Law"*.
https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/28294/2/BCN_Trata_y_adopcion_2020_VF_pdf.pdf

127 Report presented during the 34th session of the Human Rights Council in March 2017.
<https://www.ohchr.org/sites/default/files/Documents/Issues/Children/Submission/Opinions28April2017.PDF>

continued outline no. 6
Types of criminal offences

Law

Sexual abuse and exploitation
following



IACHR Court Jurisprudence

The Committee on the Rights of the Child understands sexual abuse and exploitation to mean the

(i) the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (ii) the use of a child for the purpose of commercial sexual exploitation; (iii) the use of a child in the production of images or sound recordings of child sexual abuse; and, (iv) child prostitution, sexual slavery, sexual exploitation in tourism and the travel industry, trafficking (within and between countries) and the sale of children.
for sexual purposes"¹²⁸.

¹²⁸ General Comment No. 13 (2011). *Right of the child to be free from all forms of violence, of the Committee on the Rights of the Child*. Para. 25.

Continued outline no. 6

Criminal types

Criminal Type	IACHR Court Jurisprudence
Enforced disappearance	<ul style="list-style-type: none">- According to the UN General Assembly it is "the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge the deprivation of liberty or to give information on the fate or whereabouts of such persons, with the intention of removing them from the protection of the law for a prolonged period of time"(129).period of time⁽¹²⁹⁾".- The IACtHR considers the forced disappearance of minors as a multiple and continuous violation of human rights and has "been a precursor to the consolidation of a comprehensive perspective of the gravity and the continuous or permanent nature of the figure of forced disappearance of persons, in which the act of disappearance and its execution begin with the deprivation of the person's liberty and the subsequent lack of information about his or her fate, and continues until the whereabouts of the disappeared person are known and his or her identity is determined with certainty". This violation is particularly grave when it forms part of "a systematic pattern or practice applied or systematic pattern or practice applied or tolerated by the State"⁽¹³⁰⁾.- The IACHR Court points out that the effects are twofold: the impossibility of searching for biological identity and the family of origin, and the impediment to the exercise of legal remedies to re-establish biological identity and family ties and to end the deprivation of liberty¹³¹.- Along with systematicity, it is important to consider the cross-border dimension, which is why the investigation requires the necessary inter-state cooperation(132).necessary inter-state cooperation⁽¹³²⁾".

Source: Own elaboration based on the Penal Code, Good Practice Guide for the implementation of the Hague Convention, Report of the UN Special Rapporteur on the sale and sexual exploitation of children, Committee on the Rights of the Child, Rome Statute, Inter-American Court of Human Rights and the Office of the United Nations High Commissioner for Human Rights.

129 International Criminal Court. *Rome Statute*. Art. 7, no. 1. [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)

130 A peremptory norm of international law of obligatory compliance, which does not admit of proof to the contrary on the part of States and which can only be modified by a subsequent norm of international law of the same nature.

131 Case of Contreras et al. v. El Salvador. Para. 89; Case of Gelman v. Uruguay. Paras. 65 and 72-75.

132 Gelman v. Uruguay. Para. 234.

Criminal types

Criminal types

Jurisprudence of the IACHR Court

Other inhumane acts



- The "other inhumane acts" clause included in the Rome Statute⁽¹³³⁾ sets out the following requirements Statute⁽¹³³⁾ sets out the following requirements:

i) The perpetrator has by an inhumane act caused great suffering or serious injury to body or to mental or physical health.

ii) The act was similar in nature to any other act constituting a crime against humanity¹³⁴.

iii) The perpetrator was aware of the factual circumstances that determined the nature of the act.

iv) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

v) The perpetrator knew that the conduct was part of a widespread or systematic attack directed against a civilian population or intended that the conduct was part of such an attack (135).
part of such an attack¹³⁵.

¹³³ Rome Statute. Article 7(k).

¹³⁴ Werle, G. and Jessberger, F. (2017). Treatise on International Criminal Law. As cited in Bustamante, V.

¹³⁵ Van Der Wolf, W. Crimes against humanity. As cited in Bustamante, V. (2017). P. 25.

Criminal types

Criminal offences	Jurisprudence of the IACHR Court
Other inhumane acts children, fraud in declaring adoptability, falsification of official documents, or coercion	<p>- The UN has held that, "adoptions resulting from crimes such as abduction, sale and trafficking of such as the abduction, sale and trafficking of children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any other unlawful activity or practice, such as lack of consent of the birth parents, improper financial gain by intermediaries and associated corruption, constitute illegal adoptions and must be prohibited, criminalised and sanctioned as such"¹³⁶.</p> <p>- For its part, the IACHR Court established that "the abduction of children and/or girls, carried out by State agents to be illegitimately handed over in foster care to another family, modifying their identity and without informing their biological family of their whereabouts [...] constitutes a complex act that implies a succession of illegal actions and violations of rights to cover it up and prevent the re-establishment of the link between the abducted children and their families"(137).</p> <p>the re-establishment of the link between the abducted children and their families"¹³⁷.</p>

Source: Own elaboration based on the Penal Code, Good Practice Guide for the implementation of the Hague Convention, Report of the UN Special Rapporteur on the sale and sexual exploitation of children, Committee on the Rights of the Child, Rome Statute, Inter-American Court of Human Rights and the Office of the UN High Commissioner for Human Rights.

¹³⁶ On the 2017 thematic report on illegal adoptions presented during the 34th session of the Human Rights Council. Weidenstaufer, C. and Trufello, P. (January 2020). *Crimes of trafficking and sale of children in the context of adoption. International, comparative and national law*. Library of the National Congress of Chile. https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/28294/2/BCN_Trata_y_adopcion_2020_VF_pdf.pdf

¹³⁷ Gelman v. Uruguay. Para. 120.

6. RESPONSES FROM THE STATE OF CHILE

The Chilean state's responses to the violations of rights that occur in the different situations described in this chapter have been limited, considering the various human rights violations they entail. In particular, the responses of the State are observed in relation to the affectation of the right to identity and family coexistence. The following review describes the measures proposed or implemented by the State¹³⁸.

6.1. Judiciary

6.1.1 With regard to irregular adoptions on national soil and abroad, the case of child abduction and illegal adoptions is under the jurisdiction of Minister Jaime Balmaceda and includes events from October 1965 until the beginning of the Criminal Procedure Reform, with and without the participation of State agents. The Minister has modified the procedural criteria of the case by bringing all the cases under the national adoption regulations applicable to each period¹³⁹.

¹³⁸ The realities not mentioned are understood to be because there has been no progress.

¹³⁹ Modification made by Minister Jaime Balmaceda, in use of the powers granted to him by the plenary of the Supreme Court when appointing him as a full-time minister in the processing of case 1044-2018. The information reported corresponds to the two-month period March-April 2023.

Table 8
STATUS OF CASE ROL 1044-2018 SEPARATED BY NOTEBOOKS AT THE CLOSE OF THE TWO-MONTH PERIOD

LAW N°	PERIOD OF VALIDITY	NOTEBOOK	STATUS	CASE CASES
16346	20-10-1965	I	IN PROCEDURE	645
	to		IN CONSULTATION	0
	09-05-1988		CONCLUDED	209
			TOTAL CASES	854
18703	10-05-1988	II	IN PROCEDURE	105
	to		IN CONSULTATION	0
	04-08-1999		CONCLUDED	31
			TOTAL CASES	136
19620	05-08-1999	III	IN PROCEDURE	6
	at the start of the Reform		IN CONSULTATION	0
	Criminal		COMPLETED	3
			TOTAL CASES	9
Main file			IN PROCEDURE	1
CASE ROL 1044-2018			IN PROCEDURE	757
			IN CONSULTATION	0
			CONCLUDED	243
			TOTAL CASES	1000

Source: Office for the Coordination of Human Rights Cases of the Supreme Court.

Currently, of the 854 cases prosecuted under domestic adoption laws in force between 1965 and 1988, 645 are being processed and 209 have been concluded.

Of the 136 cases prosecuted under domestic adoption legislation in force between 1988 and 1999, 105 are being processed and 31 have been concluded; of the nine cases prosecuted under domestic legislation in force since 1999, six are being processed and three have been concluded. Regarding this third notebook, Minister Balmaceda chose to use the beginning of the Criminal Procedure Reform as a criterion to focus the period to be investigated. To date, there are still no convictions.

In this case, the NHRI has filed 31 complaints, nine of which have been temporarily dismissed; the rest of the complaints are in the summary stage, closed or filed¹⁴⁰. On the other hand, under the jurisdiction of Minister Vicente Hormazábal of the Court of Appeals of Coquimbo, cases of child abductions and irregular adoptions are also being investigated, in which case the NHRI has filed nine complaints, five of which have been temporarily dismissed, the other four complaints are in the summary investigation stage¹⁴¹.

6.1.2 In 2013, the Supreme Court ordered Villa Baviera to pay compensation to the victims of sexual abuse of minors committed by Paul Schäfer and other leaders of the former Colonia Dignidad between 1994 and 1997, in respect of the victims of abductions, abductions, illegal or irregular adoptions at the former Colonia Dignidad. According to lawyer Winfried Hempel, the last compensation payments will be paid in the first quarter of 2023. Case No. 55.070 of the Civil Court of Parral against Harmut Hopp and others for infringement of the Adoption Law ended with an acquittal¹⁴².

6.1.3 With regard to minors who were victims of forced disappearance under the dictatorship, the Ninth Court of Appeals of Santiago, in a unanimous ruling handed down last August, decided to try former DINA agents Miguel Krassnoff Martchenko and Rolf Wenderoth Pozo for their responsibility in the crime of kidnapping with serious harm to a minor who was three years old at the time the crime was committed in April 1975¹⁴³.

6.2. Legislative Power

6.2.1 In April 2011, Law 20.507 was enacted, which defines the crimes of smuggling of migrants and trafficking in persons, incorporates the crime of trafficking into the Criminal Code, and establishes special protection for underage victims, which does not require the concurrence of coercive means for the configuration of the crime¹⁴⁴. This aspect is especially relevant because Law 19.620 on the adoption of minors typifies criminal offences that can occur in the framework of the adoption of children and adolescents, related to child trafficking and intermediation for profit. However, it punishes them with lower penalties than those contemplated for the crime of trafficking in persons¹⁴⁵.

¹⁴¹ Roles of the complaints 19-2017; 6-2018/9-2019; 1-2019/6-2019; 7-2019/10-2019; 11-2019; 12-2019; 18-2019; 20-2019; 21-2019. To date, the INDH has filed two complaints with Minister Hormazábal (roles 16 -2019 and 17-2019) and in both cases the victim was advised to continue with the processing of the case through a private lawyer.

¹⁴² Chamber of Deputies (2005). Draft agreement: *Adoption of measures recommended by the Chamber of Deputies in relation to Colonia Dignidad and compliance with the Decree of Dissolution*. <https://www.bcn.cl/laborparlamentaria/participacion?idParticipacion=1308187>

¹⁴³ Judicial Branch (16 August 2023). *Santiago Court puts DINA agents on trial for kidnapping of three year old girl in 1975*. <https://www.pjud.cl/prensa-y-comunicaciones/noticias-del-poder-judicial/97104>

¹⁴⁴ Art. 411 quáter, inciso 2°.

¹⁴⁵ According to the combined fourth and fifth report of Chile to the Committee on the Rights of the Child, the first sanctions correspond to simple criminal penalties (up to 5 years imprisonment), the second, assigned to the crime of trafficking with a minor victim, correspond to the penalty of crime up to 15 years in its middle degree. In 2015, the Committee on the Rights of the Child recommended that Chile expressly criminalise the sale of children, reiterated the recommendation on the establishment of a comprehensive system of information disaggregated by nature of the crime, age, sex, ethnic group, nationality, socio-economic status and geographical area, number of investigations, prosecutions and convictions; and again urged the State to strengthen its efforts to promptly investigate, prosecute and try all allegations of such crimes and to provide adequate support and reparation measures for victims. See Committee on the Rights of the Child, <https://ddh.minjusticia.gob.cl/media/2020/02/CRC-2015.pdf>.

6.2.2 In March 2022, Law 21.430 on Guarantees and Comprehensive Protection of the Rights of Children and Adolescents, which establishes, through the right to identity, that every child has the right to have a name, a nationality, a language of origin and to be registered in the Civil Registry and Identification **Service**, without delay, to know the identity of their parents and/or mothers, their biological origin, to preserve their family relations in accordance with the law, to know and exercise the culture of their place of origin and, in general, to preserve and develop their own identity and idiosyncrasy, including their gender identity, in accordance with the legislation in force.

With regard to adopted persons, it establishes that they have the right to seek and know their origins. It also establishes the right to live in a family, preferably in the family of origin, and thus complete their adequate development. And it establishes as an obligation of the State the adoption of all necessary measures to prevent and combat the illicit transfer and retention of minors abroad.

6.2.3 The Report of the Investigation Commission of the Chamber of Deputies (2019) formulated a series of proposals¹⁴⁶, the state of progress of which is presented below:

Outline No. 7

Proposals of the Commission of Inquiry and their state of progress

Proposal	
Presence of elements referring to guaranteeing the right to know the origin of filiation and access to information in the discussion of the bill that modernises and establishes a new adoption system in Chile.	<div><div></div><div>The bill has been before the Senate for four years in the second constitutional procedure¹⁴⁷.</div></div>

Source: Own elaboration based on the Report of the Investigative Commission of the Chamber of Deputies and information compiled by the INDH.

146 Deputies Sandra Amar, Ximena Ossandón, Natalia Castillo and Erika Olivera, and Deputies Boris Barrera, Álvaro Carter, Carlos Abel Jarpa, Luis Rocafull and Raúl Soto voted in favour. Deputy Gustavo Sanhueza abstained.

147 Entered through Boletín 9119-2018.

Proposals of the Commission of Inquiry and their state of progress

Proposal	Status of progress
Exclude the participation of private entities in national and intercountry adoption processes.	<div>●</div> Private entities continue to participate in national and intercountry adoption processes.

Proposal	Status of progress
Provide more resources to the judiciary and to the different state bodies that collaborate in cases of abductions and irregular adoptions, in order to make judicial investigations more effective and efficient.	<div>●</div> The PDI's Human Rights Crimes Investigation Brigade still has six officers. There are no convictions in the case of child abductions. There is no public and official information on possible family reunions and/or recovery of the victims' true identity. The number of cases prosecuted is one thousand and not the eight thousand projected by the Commission of Inquiry.

Proposal	State of progress
Establish a direct link between the organisation Sons and Mothers of Silence with the Ministry of Health (Minsal) and the Civil Registry.	<div>●</div> As reported by the three bodies mentioned in an interview with the NHRI, such liaison has not yet taken place.

Proposals of the Commission of Inquiry and their state of progress

Proposal

Creation of a Truth and Reparation Commission to find and determine the truth of what happened; to effectively repair the losses suffered by the families and child victims of the abduction; and to establish the responsibilities of all those who participated in the commission of the events.

State of progress

- To date, neither this Commission nor any other similar body has been created.

Proposal

While the Truth and Reparation Commission is being set up, the already established coordination of the relevant Ministries, i.e. Health and Justice, should be maintained, together with the officials designated by the PDI and the Ministry of Social Development and Family, in order to continue receiving complaints and reviewing background information.

State of progress

- Preliminary coordination between ministries is observed. Coordination and joint work between the Judiciary and the PDI, the Origins Programme, the Civil Registry and the SML is evident in the case of abductions led by Minister Balmaceda.

Proposals of the Commission of Inquiry and their state of progress

Proposal	State of progress
Strengthen the Origins Programme to make it easier for holders to exercise their right to search, adjust deadlines and allow for prosecution in certain cases of well-founded suspicion of illegal child abduction.	According to what was reported by the Origins Programme in an interview with the INDH, they are not dedicated to the search for the identity or family reunification of illegally adopted newborns and children.
Proposal	State of progress
Establishment of a DNA fingerprint bank to keep a register of those searching for their family members.	Such a bank has not been set up, nor has a similar state body.
Proposal	State of progress
That Chilean adoptees have the right to the nationality of their parents of origin and can inherit this status to their children.	There is no information about any State initiative in this matter.
Proposal	State of progress
Creation of a national and international dissemination campaign on illegal child abductions and adoptions within Chile and abroad.	There is no information on this issue.

Source: Own elaboration based on the Report of the Investigation Commission of the Chamber of Deputies and information compiled by the INDH.

6.3 Executive Power

6.3.1 National Plan for the Search for Disappeared Persons

On the occasion of the International Day of the Disappeared Detainees, 30 August 2023, President Gabriel Boric Font presented the National Plan for the Search for Disappeared Detainees, which includes the search for the 153 missing detainees under 21 years of age who disappeared without identification, the ten missing women detainees who were pregnant, as well as their children who may have been born in captivity and whose whereabouts are unknown.

6.3.2 In relation to the cases of minors who were abducted and irregularly or illegally adopted by Schäfer and the hierarchy of the former Colonia Dignidad, the governments of Chile and Germany signed a Memorandum of Understanding in 2017 on the creation of a Joint Commission with representatives of both States to address the historical memory of Colonia Dignidad and the integration of the victims into society¹⁴⁸.

However, the Commission's functions do not include achieving truth, justice and reparation for the cases of minors who were abducted and irregularly or illegally adopted by Schäfer and the hierarchy during different periods of time in which the former colony operated¹⁴⁹.

6.3.3 Pilot plan between the Forensic Medical Service, the judiciary and civil society organisations.

Former Justice Minister Hernán Larraín announced in January 2022 a pilot plan for a joint project between the SML, the judiciary and civil society organisations to help reunite families. The Nos Buscamos Foundation was awarded the tender (for 16 million pesos) to buy DNA kits from the MyHeritage bank, which were to be delivered to the SML, who, by means of an official letter from Minister Jaime Balmaceda, would take DNA samples from those ordered by the court. However, although the kits were purchased, the director of the Foundation indicates that they were never requested by the SML.

¹⁴⁸ On the Chilean side, the Joint Commission is co-chaired by the Director of Human Rights of the Ministry of Foreign Affairs, with the technical assistance of the Head of the Protection Division of the Under-Secretariat for Human Rights; on the German side, by the Regional Director for Latin America and the Caribbean of the Federal Foreign Office.

¹⁴⁹ The functions of the Commission are: (i) the establishment of a documentation centre; (ii) the creation of a place of memory; (iii) cooperation to verify, preserve and evaluate traces and documents of the crimes perpetrated; and (iv) support in the processes of preservation of historical memory and diagnosis of assets, companies and enterprises arising from the former Colonia Dignidad. To date, the Commission has met on eleven occasions, nine of which have been confidential.

6.3.4 Genetic Data Bank of Victims and Families of Irregular and Illegal Adoptions of the Forensic Medical Service Project

In 2019, the Human Rights Unit of the SML developed the project of a database to collaborate in the search for children and their parents in the context of irregular adoptions that occurred in Chile between the 1960s and 2010, but especially during the military dictatorship. The database would provide services both for those who had filed a complaint or denunciation and for those conducting a non-judicial search. A communications launch was to take place in March 2022, but the Covid-19 health emergency put plans on hold and the project has not been taken up again.

6.3.5 Coordination and demarches in the field of external relations

The General Directorate of Consular Affairs of the Ministry of Foreign Affairs updated the instructions for the care of those seeking their families of origin in Chile, after being forcibly and irregularly adopted. To this end, it incorporated recommendations regarding the consideration of cultural, emotional and vulnerability factors. Currently, the collaborative technical committee composed of the Ministry of Foreign Affairs, the Ministry of Justice and Human Rights, the National Service for the Specialised Protection of Children and Adolescents, the Civil Registry and Identification Service and the Human Rights Crimes Investigation Brigade of the PDI is in the process of drafting the first consular care protocol on forced or irregular adoptions, of an operational nature, whose objective is to provide a standard and guide for consular care.

For its part, the Human Rights Division, through the consular network, is gathering information on the number of adopted persons of Chilean origin in their country of residence, the investigations carried out in those other countries and their results, among other matters. From a political point of view, they have addressed the issue of these adoptions in the framework of bilateral and multilateral consultations with various interested countries, such as the XI Dialogue on Human Rights between Chile and the European Union; Political Consultations Chile - Netherlands; and Political Consultations Chile - Sweden.

7. FINAL CONSIDERATIONS

The State's responses are presented below in the light of the international human rights standards referenced, with the aim of assessing whether the human rights recognised in these instruments have been duly guaranteed by the State of Chile.

1. Regarding the reinforced duty that the State has towards children, it is considered that the Chilean State has made progress with the enactment of Law 21.430 on Guarantees and Integral Protection of the Rights of Children and Adolescents, which establishes the right to identity and to live in a family. However, in spite of the realities of newborns, boys and girls who were illegally adopted between the 60s and 90s, within Chile, in the former Colonia Dignidad, and abroad, the State has not recognised them as victims of violations of various human rights: the right to identity and to live with their family of origin; the right to personal integrity, to life, to recognition of legal personality, to a name, to nationality, to personal liberty, to justice and to information. The state has delegated the search for truth and justice to organised civil society, within the framework of its limited possibilities.

2. With regard to the State's duty to establish and implement a single adoption process, Law 19.620 of 1999 effectively enshrined a single adoption model, constitutive of filiation, which expressly distinguishes whether the adoption is national or international, and regulates in a delimited manner the process prior to adoption, aimed at declaring the susceptibility to adoption and the adoption itself. However, it is necessary to modernise these processes within the framework of the principle of the best interests of the child and the subsidiarity of adoption, eliminating those environments that allow irregular or illegal adoption processes to go ahead, and providing greater guarantees of access to information and speed in the processes, especially for those who doubt about the legality of their adoption, their true identity and biological origin. In this sense, the bill that seeks to comprehensively reform the adoption system in the country is in its second constitutional procedure before the Senate since 8 October 2019.

3. In relation to the State's obligation to take all effective measures to prevent minors from becoming victims of illegal adoptions in contexts of armed conflict, the events of the 1960s and 1990s cannot be ignored. On the contrary, given the evidence, they must be investigated and established as a historical truth within the framework of international human rights law. In this sense, the State of Chile has not advanced in the establishment of instances that allow it to assume these facts, which occurred mainly during the dictatorship, and to this day there is an uncertain number of victims, who as minors were removed from their family sphere and illegally given up for adoption - by means of fraud - outside and inside the national territory, affecting their human rights to this day.

4. With regard to the State's obligation to bring its domestic legislation into line with the human rights treaties ratified and in force in the domestic legal system, in 2015, the Committee on the Rights of the Child recommended that Chile expressly criminalise the sale of children and reiterated the recommendation to establish a general system of information disaggregated by nature of the offence, age, sex, ethnic group, nationality, socio-economic status and geographical area, number of investigations, prosecutions and convictions relating to this criminal offence or related offences; It further urged the State to redouble its efforts to promptly investigate, prosecute and try all allegations of such crimes, and to provide adequate support and reparation to the victims. These recommendations of the Committee have not been taken up by the State.

In relation to the recommendation of the Committee on Enforced Disappearances to criminalise this offence of enforced disappearance, a recommendation made by the Committee on Enforced Disappearances to the State of Chile in May 2019, the draft law has been in the second constitutional procedure in the Senate since August 2017. The State of Chile is also obliged to consider the death of the disappeared person and the enforced disappearance of pregnant women and minors as aggravating circumstances.

5. Regarding the State's obligation to establish mechanisms to address the concerns of those who have been adopted, adoptive parents and biological parents about the circumstances of an adoption and to facilitate the search for origins and request for reparations, it is considered that, although the Chilean State has had the Search for Origins Programme in place since 1995 (initially based in Sename, today in Mejor Niñez), it was not designed to attend to the victims of illegal abductions and adoptions that occurred between the 1960s and 1990s. Currently, when enquiries related to this issue are received, they are referred to the respective court case, leaving the victims without attention at the administrative level.

Similar deficiencies are observed in terms of access to information in relation to the search for the origin or truth of what happened, given that DNA samples are taken by the SML only at the request of the court, and once the SML has the result, it informs the court and not the victims.

6. Regarding the State's duty to suppress practices and situations of violence against women, establishing legal, fair and effective procedures that provide both protection and a timely trial as well as compensation for the victims, it is considered that the State of Chile could eventually respond to the obligation to investigate discriminatory acts or practices against women through the case investigating child abductions and illegal adoptions, although it is not known whether the investigation by Minister Jaime Balmaceda incorporates this gender focus prescribed by international human rights law.

In the legislative branch, on the one hand, the laws enacted protect victims of trafficking, especially minors; and on the other hand, they provide guarantees and comprehensive protection for children and adolescents. However, nothing is established regarding the protection of women and maternity. None of the State's initiatives develop regulations to protect women whose rights have been violated, from which it could be inferred that women's status as victims of the abduction and illegal adoption of their children is made invisible.

7. Regarding the State's obligation to create truth commissions as mechanisms aimed at clarifying the facts regarding child abductions, with the objective of guaranteeing unrestricted access to information, favouring the participation of victims and experts and cooperation between States, with respect to the archives that complement the investigations. It is considered that despite the proposal of the Report of the Investigation Commission of the Chamber of Deputies (2019), the State has not complied with that obligation nor has it generated other extrajudicial instances of truth-seeking.

8.. In relation to the State's duty to adopt the necessary measures to search for and identify child victims of enforced disappearance and return them to their families of origin in accordance with legal procedures and applicable international agreements, only last August 30, for the first time, the State of Chile assumed its responsibility for the disappearances of thousands of people during the dictatorship, and committed itself to searching for them, a task that, for almost 50 years, was in the hands of organised civil society.

It is considered a step forward that the ten pregnant women detained and whose whereabouts are still unknown, and that the 153 minors detained and disappeared during the dictatorship have been included in the current government's Search Plan. However, in view of the uncertain number of newborns, boys and girls, who in the context of a series of criminal offences, were finally given up for illegal adoption in Chile and abroad, it is considered that the Chilean State has not carried out, ex officio and with due diligence, the processes to locate their whereabouts, to restore their true identity and to allow them to be reunited with their families of origin.

9. In order to comply with the State's obligation to pursue, prosecute and punish those responsible for serious crimes against international law, there should be due cooperation between States to search for, identify and locate child victims of enforced disappearance or irregular adoptions. However, according to the Ministry of Foreign Affairs, this cooperation between the States that adopted Chilean minors between the 1960s and 1990s and the Chilean State,

has not contributed to the establishment of the truth or to the reunion of families or to the recovery of their true identity, name, nationality, among other human rights. To date, the achievements made by the victims of illegal adoptions within the former Colonia Dignidad or within or outside the national territory have been left to the will and initiative of the victims themselves, not to the State, in breach of international obligations in this regard.

8. RECOMMENDATIONS

1. It is recommended that the Judiciary continue in an efficient and diligent manner with the investigations underway, as well as to open those necessary to identify, judge and sanction those responsible. In particular, it is recommended that the courts that deal exclusively with cases of child abduction and illegal adoptions continue to process them in order to establish criminal responsibility in accordance with international human rights law and to make reparation for the human rights violations caused to the victims and their families. Specifically, it is recommended that in order to make progress in the search for persons who, as minors, were removed from their family spheres of custody, through the aforementioned mechanisms, and who are still missing, they take into account the UN Guiding Principles on the Search for Detained and Disappeared Persons, which present a guide on how to undertake and execute the search for those whose whereabouts are unknown when the fact of their disappearance has to do with state responsibility. In this sense, it is necessary to include a gender perspective in the investigation, as it gives due relevance to the victim character of the women whose children were taken from them.

2. In accordance with the proposal of the Investigation Commission of the Chamber of Deputies, it is recommended that a state body be created to enable victims to obtain truth and justice, recover their identity and achieve family reunion, within the framework of the necessary reparation. This institution should be set up as soon as possible, and should have broad powers to access information and summon the different State agencies and bodies involved, as well as key actors and experts on the issue; it should also have a budget that allows it to project its work over time in a sustained and effective manner.

Specifically, it is recommended that the design of the aforementioned institutional framework be led by the Sub-Secretariat for Human Rights of the Ministry of Justice and Human Rights. Likewise, the relevant bodies of the Ministry of Women and Gender Equality, the Ministry of Health, the Ministry of Foreign Affairs, the SML and the Civil Registry and Identification Service should be convened. To avoid duplication of tasks or inconsistencies in mandates, it is recommended that the Human Rights Brigade of the PDI be convened, as well as officials from the Judiciary who are involved in the processing of case number 1044-2018, as well as cases related to child abductions and illegal adoptions that are being processed in other regions of the country; finally, it is suggested that officials from the Search for Origins Programme be convened.

3. In line with the proposal of the Commission of Inquiry, it is recommended to develop a national and international dissemination campaign that calls on possible victims of abduction and illegal adoption to provide information with the aim of finding out the truth, discovering their true identity, being reunited with their families of origin and gaining access to justice and reparation.

4. Once the truth of the facts has been established, the State should make full reparation to the victims, especially to the women whose children were illegally abducted and adopted, providing them with the corresponding restitution, compensation, rehabilitation and satisfaction. In this sense, the State should compensate the victims for material and non-material damages, provide the corresponding legal, medical, psychological and social care aimed at re-establishing the physical and psychological conditions of the victims, as well as carry out a public act of recognition at national and international level, which implies assuming State responsibility for the facts.

5. It is recommended to the Ministry of Justice and Human Rights to resume, as soon as possible, the Project of the Genetic Data Bank of Victims and Families of Irregular and Illegal Adoptions of the SML with presence throughout the national territory and with permanently updated information. It is recommended that the project be guided by the Guiding Principle of Search, which proposes an interdisciplinary design, in which the authority administering the databank has an adequate regulatory framework to ensure that it operates under exclusively professional criteria.

6. It is recommended that the Ministry of Foreign Affairs, through its consular bodies, activate available diplomatic mechanisms with the objective of establishing bilateral cooperation with the States in which a still uncertain number of illegal and irregular adoptions of newborns and children of Chilean nationality have taken place.

7. It is recommended that the Executive and the Legislature present a bill to criminalise the sale of children, in line with the suggestion of the Committee on the Rights of the Child, so that the act of handing over a child in exchange for payment or other compensation, in whatever form or for whatever purpose, constitutes a criminal offence, in accordance with international standards.

Likewise, it is recommended that progress be made in the modification of Law 19.620 that regulates adoption, which seeks to modernise and technify adoption processes in order to safeguard the rights of those involved.

8. In accordance with the proposal of the Commission of Inquiry, it is recommended that the Executive and the Legislature present a bill that would allow adopted persons of Chilean origin to have the right to the nationality of their biological parents and to inherit this status to their children; the same in the case of those whose parents of indigenous descent can legally obtain recognition of this status within the framework of the current respective legislation.

9. It is recommended that the State adopt, as soon as possible, all relevant measures to guarantee technical and systematised access to information on serious human rights violations committed during the dictatorship, as well as those that occurred during democracy, related to criminal offences committed against minors and their families, especially their mothers. This will allow information to be broken down by nature of the crime, age, sex, ethnic group, nationality, socio-economic status and geographical area, number of investigations, prosecutions and convictions referred to, in order to make progress in the investigation and prosecution of all reports of this type of crime and to offer support and reparation to the victims.



Currently, of the 854 cases prosecuted under domestic adoption regulations in force between 1965 and 1988 - a period of time that coincides with the 17 years of dictatorship - 645 are still being processed and 209 have been concluded.

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