

National Laws

Legislation of Interpol member states on sexual offences against children

Chile - Chili - Chile

Santiago

The information on this page is up to date as of spring 2006

The following text is based on a survey conducted by the National Head Office for Crimes against the Family from the Investigative Police of Chile concerning sexual offences against minors.

1. (i) Does your country have any legislation penalizing individuals who have sex with minors (under 16 years old)?

Yes. The Chilean Penal Code, under articles 361 and following, penalizes several active forms of sexual contact with minors

Rape

This offence consists in the vaginal, anal and/or oral penetration of an individual older than 14 years old, when the following circumstances are present:

1. When the aggressor uses force or intimidation;
2. When the victim is unconscious or is unable to oppose resistance;
3. When the victim's mental alienation or derangement is abused.

The Chilean legislation makes a distinction in the minor's age since it considers sexual indemnity until the age of 14. This means that up to the age of 14, the minor's self-determination to give his or her consent to engage in any sexual contact is null and legally invalid. Therefore, even if a minor of that age gives his or her consent to engage in any sexual contact, our legislation considers it a rape, notwithstanding the absence of the above described circumstances.

Rape of a minor

This offence consists in the vaginal, anal and/or oral penetration of a person older than 14 years old but younger than 18, when the following circumstances are present:

1. When the aggressor takes advantage of the victim's mental disturbance, which is not constitutive of mental alienation or derangement, even if temporal.
2. When there is a dependency relationship of the victim towards his or her aggressor, i.e. when the aggressor is responsible of the victim's custody,

education and/or care or when the aggressor has a laboral link with the victim.

3. When the aggressor takes advantage of the victim's sexual inexperience and/or ignorance.

Proper or direct sexual abuse

The proper or direct quality of this offence refers to the fact that our legislation demands physical contact between the aggressor and his or her victim. It consists in the performance of a sexual act, different from the sexual penetration, knowingly "any relevant sexual act performed by means of physical contact with victim or that has involved the victim's genitalia, anus or mouth, even without physical contact with him or her."

The indirect sexual abuse contemplates four alternative conducts:

1. To force a minor under 14 years old to witness sexually driven conducts
2. To force a minor to perform such conducts
3. To force a minor to listen to and/or to watch pornographic material
4. To use minors in the elaboration of pornographic material

Child pornography

The Acquisition, storage, distribution, commercialization, import, export, dissemination or exhibition of pornographic material, whatever its technical support might be, is penalized by our legislation.

(ii) Does your legislation penalize individuals who have sexual relations with minors (under 16 years old) when they are abroad, that is to say, outside your country?

(iii) Does your legislation penalize individuals who organize or assist in the organization of tours/trips for individuals to engage into sexual activities with minors (under 16 years old) such as sex tours?

Yes. Our legislation defines as illegal conducts, the promotion and/or facilitation of prostitution of minors (under 18 years old). Likewise, our legislation also considers as an offence the promotion and/or facilitation of the entry or exit to or from our country of individuals to engage into prostitution within our national territory or abroad; this offence is aggravated when victims are under aged individuals.

2. **a. How are violations to the child sex legislation enforced in your country?**

Penalties:

Rape – From 5 years and 1 day up to 20 years of imprisonment

Rape of minor – From 3 years and 1 day up to 10 years of imprisonment

Proper or direct sexual abuse – From 3 years and 1 day up to 10 years of imprisonment

Improper or indirect sexual abuse – From 541 days up to 5 years of imprisonment

Promotion and/or facilitation of prostitution – From 3 years and 1 day up to 5 years of imprisonment. Fine of 31 to 35 UTM (1 UTM = 30,825 Chilean Pesos).

Traffic of human beings for sexual purposes – From 3 years and 1 day up to 20 years. Fine of 20 to 30 UTM.

Client of child prostitution – From 3 years up to 5 years of imprisonment.

b. How many such cases have been reported, arrested, prosecuted, and convicted annually in 2003 and 2004?

Sexual offences investigated by the Investigative Police of Chile:

Total 2003: 6, 211

Total 2004: 7,968

% variation in 2003/2004: 28.3%

First quarter 2005: 1,893

Persons arrested by the investigative police of Chile for sexual offences:

Total 2003: 918

Total 2004: 1,064

% variation in 2003/2004: 15.9%

First quarter 2005:

3. What are the problems/difficulties encountered when enforcing the investigation offences on child sex?

Until January 2004 the Chilean legislation on sexual offences was extremely weak. It considered certain penal types, particularly those related to pornography, and it contemplated very short term sentences. Likewise, the age limit for sexual indemnity however, the amendments introduced to our legislation through law Nr. 19.927 from 14, 2004, imply the following changes:

The age limit for sexual consent was raised from 12 to 14 years; the penal types of child pornography were extended; new forms of sexual abuse were considered; minimum penalties for rape, rape of a minor, and sexual abuse were raised and,

most importantly, the police was granted with new powers when investigating these crimes such as telecommunication interception, use of undercover agents, and deliveries under surveillance, as well as the creation of a registry containing pornographic material.

These amendments have been very useful when investigating such crimes, and specifically, when dismantling criminal organizations and/or networks; however one of the difficulties is the lack of technology to detect and investigate child pornography networks and communities through internet, which have solid informatics' resources.

4. What is the positive impact of enforcing the legislation on child sex?

When the juridical framework is respected and the state institutions act in accordance with the faculties granted by law, the community believes and trusts the system. On the contrary, when an accused person results "favoured" notwithstanding the fact society believes he or she should be penalized with harder measures than the ones contemplated in the legislation, the consequence is that community tends not to believe in justice criteria to solve a judicial case.