



## Convention on the Rights of the Child

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### COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-seventh session

### SUMMARY RECORD OF THE 1306th MEETING

Held at the Palais Wilson, Geneva,  
On Monday, 28 January 2008, at 3 p.m.

Chairperson: Ms. AIDOO

(Vice-Chairperson)

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The meeting was called to order at 3.15 p.m.

In the absence of the Chairperson, Ms. AIDOO, Vice-Chairperson, took the Chair.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 5) (continued)

Initial report of Chile under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/CHL/1; CRC/C/OPSC/CHL/Q/1 and Add.1 (continued))

1. At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.
2. Ms. VUCKOVIC-SAHOVIC asked how the sale of children, child prostitution and child pornography were defined in Chilean legislation. The title of the National Plan for Decent Treatment of Children indicated an approach to the protection of children which was somewhat condescending and not rights-based.
3. Mr. PURAS said that during its consideration of the State party's third periodic report on the application of the Convention the Committee had already expressed concern about the large number of street children in Chile. He was astounded by the scale of that phenomenon in a country known for the vigour of its economic growth and the quality of its education and social policies. He would therefore like the delegation to spell out the measures taken to reduce the number of street children while at the same time improving their situation, especially the ones working as prostitutes. The delegation should indicate whether the authorities were aware that the commercial sexual exploitation of young boys was increasing.
4. Mr. POLLAR asked how the police treated victims of sexual exploitation and, more generally, how judges and specialist police officers were trained and the extent of their knowledge of the provisions of the Optional Protocol.
5. The CHAIRPERSON, noting that paragraph 67 of the initial report (CRC/C/OPSC/CHL/1) indicated that the offence of trafficking in minors existed only with respect to the crossing of borders, said that the Committee had information that the trafficking in Chilean children was largely an internal activity, a situation which called for action, including legislative measures.
6. Mr. ATEAGA (Chile) said that two bills were before Parliament: one, emanating from a popular initiative, designed to create the post of mediator; the other, originating in the Executive, dealing with the creation of a national human rights institution.
7. Mr. MARTABIT (Chile) said that the Parliamentary discussion of the bill on a human rights institution was proving lengthy and had not yet been completed, owing to the Legislature's wish to ensure that the institution was in conformity with the Paris Principles on all points.
8. Mr. ESTRADA (Chile) said that under the Chilean Constitution the two Optional Protocols to the Convention, like all the other treaties ratified by Chile, had constitutional status; in other words, they took precedence over Chile's other laws. Although the Optional Protocols had entered into force too recently to have been invoked before the courts as yet, examples of jurisprudence relating to the Convention itself were available to the Committee.
9. Mr. KOTRANE pointed out that it was not sufficient for the Optional Protocol to take precedence over domestic law: that did not allow for the punishment of the acts in question, for

the Protocol did not specify penalties. If the acts condemned by the Optional Protocol were to be punished, the State party would have to take specific action; that was why the Committee was so insistent that all domestic legislation must be brought fully into line with the provisions of the Optional Protocol.

10. Mr. ESTRADA (Chile) agreed that domestic legislation must be aligned with the provisions of the Optional Protocol and said that several draft texts on that matter were currently under consideration, in particular the bill on trafficking in persons.

11. Mr. CITARELLA asked how, in the event of the sale of a child, the guilty party could already be prosecuted, pending the adoption of that bill.

12. Mr. ESTRADA (Chile) said that the sale of children was already a criminal offence under the Adoptions Act.

13. Ms. COVARRUBIAS (Chile) said that in civil matters Chile's domestic legislation was essential in conformity with the Convention, which was moreover applied directly. Although domestic law seemed at first sight to authorize corporal punishment, it was made perfectly clear that the punishment imposed on children must not harm either their physical or their mental health. If it did, the courts could intervene and seek the opinion of a technical assessment committee made up of child specialists, including psychologists.

14. To the best of her knowledge, no cases of the sale of children had ever occurred in Chile. Recently, a pregnant teenager had tried to put her unborn baby up for sale, but the National Service for Minors (SENAME) had immediately informed the family court in the region where the girl lived. Since she could not afford to raise her child, she had been placed in a care home for teenage mothers; she had thus been able, with the assistance of the whole support network, to keep her child, which had been acknowledged by the father. Thus Chile had in fact known one single case of the offer of a child for sale, but the sale had not in the end taken place.

15. Mr. KOTRANE said that he understood that the sale of children *stricto sensu* did not exist in Chile; however, the Optional Protocol provided that the forced sale of a child and the illegal adoption of a child in return for payment should also be classified as the sale of children.

16. Mr. POLLAR added that State parties assumed, by the sole fact of ratification, an obligation to align their legislation, if only as a precautionary measure.

17. Ms. MARÍN (Chile) said that SENAME was a public body attached to the Ministry of Justice; it had offices in the country's 15 regions. Its function was to protect children's rights and promote the social reinsertion of children in conflict with the law. It collaborated with 500 foundations and non-governmental organizations (NGOs), which were implementing about a thousand field projects in various sectors.

18. The 105 Offices for the Protection of the Rights of Children covered more than 50 per cent of the country's communes. In collaboration the municipalities they carried out campaigns to promote the rights of the child, as well as prevention and awareness-raising campaigns, and played a leading role in publicizing and disseminating the Optional Protocol. The State party had also established a confidential 24-hour telephone hotline.

19. There were 10 projects for street children, run mainly in the regional chief towns, where street children were most numerous. Those projects enabled the children to form a relationship with supportive adults and to have access to health and education.
20. A study carried out in 2003 by the University of the Arts and Social Sciences, with technical advice and financial assistance from the International Labour Office (ILO), had reported a total of about 3,700 child victims of sexual exploitation in Chile. Twenty-five per cent of those children were boys.
21. Mr. FILALI (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked which ministry was responsible for the 105 Offices for the Protection of the Rights of Children, how they cooperated with the SENAME regional offices, and whether they had sufficient resources to train staff members and enable them to work in the field.
22. Ms. VUCKOVIC-SAHOVIC said that she would like to know whether the very large number of missing children in Chile was connected to the sale and trafficking of children or other criminal activities.
23. Mr. INOSTROZA (Chile) said that a very large number of children were reported missing but 99 per cent of them were children who had run away from home and had come back within 24 hours. A special missing persons unit was responsible for finding children who had not returned to their families within that time.
24. Mr. FILALI (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked for clarification about the prosecutions for illegal adoption. He was concerned about the frequency with which such cases were dismissed for lack of evidence and about the failure to carry out detailed investigations.
25. Ms. COVARRUBIAS (Chile) said that it was legally impossible for parents to have their child adopted under the simple pretext of entrusting custody to a third person. Any contract concluded for the purposes of such a transaction was illegal. If the parents lacked the capacity to look after their child, the court could withdraw custody from them and award it to members of their immediate family. If that solution was impossible, the child could be entrusted to an outsider following social and psychological checks. Before any legal adoption could take place the child had to be declared available for adoption. SENAME then presented candidate couples, and the judge, assisted by technical advisers, chose the couple which appeared to offer the best prospects.
26. Mr. MARTABIT (Chile) said that Chile was not a country of emigration and was therefore spared the problem of emigrating parents being obliged to leave their children in the care of third persons.
27. Mr. INOSTROZA (Chile) said that possession of child pornography was not a crime in Chile and that only the stocking of such material was punishable by law. That situation could give rise to differences of interpretation, for some judges considered that “stocking” meant possession of a sufficient quantity of material for it to be marketed; but most of the verdicts handed down by the courts were consistent with the interpretation of the Public Prosecutor’s Office, i.e. that possession alone, be it merely of a single image, already amounted to stocking.
28. The only form of trafficking punishable under Chilean law was international trafficking in persons for purposes of prostitution, an offence deemed aggravated if the victim was a minor. On

the other hand, internal trafficking, i.e. trafficking involving neither entry into or departure from the national territory, was not an offence. The complaints, which were becoming fewer, related chiefly to the port of Valparaíso and the north of the country, at the frontiers with Peru and Bolivia. One of the main difficulties encountered by the justice system was to make victims aware of their status and persuade them to collaborate in the criminal proceedings by denouncing the traffickers.

29. Sexual violence offences were subject to a statute of limitation of five to 10 years. In order to prevent minor victims, who often had some relationship with their attacker, from refusing to enter complaints, Chile intended to introduce a period of limitation which would not start to run until the victim's eighteenth birthday.

30. The Victims and Witnesses Units of the Public Prosecutor's Office were responsible for the protection of victims, establishing the harm which they had suffered and any risks to which they were exposed, and offering them counselling. They were also responsible for explaining their rights and obligations in the context of criminal proceedings.

31. Mr. INOSTROZA (Chile) said that the Code of Criminal Procedure provided that minor victims of sexual violence were subject to protection measures at the stage of the preliminary investigation in order prevent them being confronted by their alleged attacker and suffering further distress. Furthermore, children were questioned in a separate hearing, in the sole presence of the magistrate in charge of the preliminary proceedings. Once the preliminary investigation had been completed and the evidence against the alleged perpetrator of the offence had been collected, the magistrate could initiate a prosecution.

32. Ms. COVARRUBIAS (Chile) said that the fact that an alleged perpetrator had not been convicted for lack of prosecution evidence did not affect the maintenance of the protection of the young victim, including the removal of the alleged perpetrator from the victim's circle, in particular when the perpetrator was a family member.

33. Ms. ORTIZ (Alternate Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked about the age up to which children enjoyed the protection of the family courts and whether the State party intended to criminalize the possession of child pornography, in order to put an end to that scourge.

34. She wished to know why only 10 per cent of the cases of commercial sexual exploitation of children led to convictions and whether the bill banning trafficking in persons which was currently under consideration criminalized that practice in Chilean territory and, if so, whether the State party had based the bill's wording on the Optional Protocol.

35. She also asked whether the new children's unit in the missing persons service, which had been created in the police in 2003 in order to fight cyber-crime, was collaborating with Casa Alianza-Costa Rica, which had estimated that Chile had 13 paedophile rings, and, if so, what results that collaboration had produced.

36. Mr. KOTRANE said that it was regrettable that the national courts were empowered to try certain criminal offences committed outside Chile only when a double condition was satisfied: that the sexual integrity or freedom of a Chilean had been endangered and that the perpetrator of the offence was a Chilean or a person habitually resident in Chile (para. 38 of the report); he would therefore like to know whether the Chilean courts intended to extend their jurisdiction to

acts committed against children of a nationality other than Chilean and acts committed abroad, for that would be means of combating sex tourism.

37. Ms. ALUOCH asked whether child victims of the acts covered by the Optional Protocol were confronted by their attacker, not at the stage of the preliminary investigation but during the trial itself.

The meeting was suspended at 4.45 p.m. and resumed at 5 p.m.

38. Mr. INOSTROZA (Chile) said that the fact that only 10 per cent of child pornography cases led to convictions was due not to any malfunction of the justice system but usually to the lack of prosecution evidence.

39. A specialized unit to combat cyber-crime, consisting of detectives with qualifications in psychology or information technology, tracked potential paedophiles on the Internet and tried to identify children at risk of falling into the hands of procurers. The unit had recently hauled in a good catch, which had led to the conviction of six persons.

40. The Chilean authorities had made contact with their counterparts in Peru and Bolivia with a view to harmonizing their legislation criminalizing trafficking in persons.

41. The marketing, stocking and dissemination of pornographic material had been under the universal jurisdiction since 2004.

42. Ms. CASTILLO (Chile) said that as part of the process of institutional modernization a department had been created to investigate, by means of its 21 teams established country-wide, all acts of indecency as well as all sexual offences against minors.

43. Ms. ORTIZ (Alternate Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked for additional information on the “Pokemon” craze and on the “in” places where teenagers went in the early evening to dance and where they often took photos of each other, sometimes naked, on their mobile phones. Were those young people alerted in some way or another to the psychological harm which might result from the publication of compromising images on the Internet?

44. Mr. ESTRADA (Chile) said that “Pokemon” craze had arrived from Japan, where the Internet and new technology such as mobile phones played a big role. It did not constitute any particular danger for young people, but the authorities continued to monitor the phenomenon closely in order to prevent it getting out of hand. The operators of the Internet sites in question knew that criminal prosecution was a possibility and that they might be investigated in the event of trouble. They therefore checked the content of their sites to prevent young users being targeted by prostitution or pornography rings.

45. Ms. MARÍN (Chile) said that a campaign had been launched to draw the attention of young people and of their parents and teachers to the mistakes to be avoided when using the Internet, such as posting a photo or video or revealing one’s telephone number or address.

46. Ms. COVARRUBIAS (Chile) said that, during criminal proceedings in respect of sexual abuse, special protection was accorded to children under 18 and to persons with mental disabilities. Child victims and witnesses of offences were questioned by a judge, who was the only person to address them, in the presence of defence counsel and a prosecutor. Such

questioning took place in a room equipped with an audiovisual recording system; thus children did not come into contact with their attackers. They could be accompanied by their parents, who did not however have the right to speak. The Public Prosecutor's Office tried not to call children during trials.

47. Ms. ORTIZ (Alternate Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked whether the Children's Observatory might act as coordinator of all the activities for the application of the Convention and the Optional Protocol and whether all child victims of the offences covered by the Optional Protocol enjoyed the support of the Chile Solidario programme, which was aimed essentially at street children.

48. The CHAIRPERSON asked whether awareness-raising and information campaigns were carried out on the themes of sexual exploitation and trafficking in persons and whether there were any programmes aimed specifically at parents to help them to discharge their parental responsibilities and make them aware of the provisions of the Convention. She also asked what the State was doing to encourage child victims of trafficking to lodge complaints.

49. Ms. FERNANDEZ (Chile) said that the Children's Observatory, which had been set up in 2007, had a steering committee composed of representatives of the public and private sectors, vocational training establishments and civil society. Its chief function was to formulate recommendations on the drafting of public policy in conformity with the provisions of the Convention.

50. The Chile Solidario programme was designed to support vulnerable families and to detect cases of child labour and, from January 2008, cases of sexual exploitation of children and child pornography. Awareness-raising materials had been produced for those purposes, with the assistance of the United Nations Children's Programme (UNICEF).

51. The Chile Crece Contigo programme (Chile is growing with you), launched in 2007 and operated at the grass-roots level, was designed to help parents to discharge their parental duties. Home visits and seminars for new parents had been carried out since December 2007.

52. Ms. CASTILLO (Chile) said that many steps had been taken to prevent sex offences and child pornography. During their last year of training future teachers and social workers learned how to prevent and detect sexual abuse.

53. The criminal investigation police collaborated with sex workers in their efforts to prevent trafficking in persons. A national awareness-raising campaign on trafficking had also been carried out, using posters, leaflets and other printed information materials. It was hoped that that initiative, which had been well received by the public, would be repeated in 2008 and 2009.

54. Ms. MARÍN (Chile) said that a study had been carried out to determine the profile of devotees of child prostitution and learn more about the way in which they operated. A campaign entitled "No hay excusa" (There's no excuse) had also been carried out to make the public at large aware of the reality of the commercial sexual exploitation of children. Special dispensaries had been established to offer assistance to child victims. If a child had to be separated from his or her family, the case was submitted to a family court, which decided whether such a measure was appropriate. Special care homes had been opened to provide a safe haven for victims. Efforts had also been made to work with foster families, but it was proving difficult to find suitable families

to take care of such vulnerable children. A number of NGOs also provided special reception centres.

55. Mr. FILALI (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked whether the State party had the necessary legal weapons to fight sex tourism.

56. Mr. INOSTROZA (Chile) that sex tourism, although not a separate legal category, was liable to prosecution at all stages of the chain. Anyone who promoted child prostitution was punished, and the penalties were heavier if the offence was repeated. Clients of prostitution services, whether Chilean or foreigners, were also prosecuted if the victim was aged between 14 and 18 and were liable to imposition of the penalties for rape if the child was under 14.

57. It was very difficult to prove the charges, especially if the victim did not attend the hearing. However, the Public Prosecutor's Office was going to try to introduce a system under which the statements of the police officers who had taken down the victim's testimony during the preliminary investigation would be taken into consideration. That new method, which required the amendment of legislation, ought to make it possible to spare child victims an additional ordeal.

58. Mr. POLLAR said that he was worried about the fact that newspapers published advertisements offering businessmen the services of girl escorts.

59. Mr. MARTABIT (Chile) said that all the world's newspapers published advertisements of the services of "escort girls". However, such activities were strictly controlled, and anyone could report the involvement in them of minors, whether Chilean or foreigners.

60. Ms. ORTIZ (Alternate Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) congratulated the delegation of Chile on the efforts made to apply the Convention and the two Optional Protocols and civil society organizations on their lead role in launching very useful programmes. In its recommendations the Committee would encourage the State party in particular to continue its efforts to incorporate in its legislation all the offences covered by the Convention and the Optional Protocols with a view to bringing the perpetrators of those offences to justice. It would also urge the State party to conclude agreements with neighbouring countries on the harmonization of the relevant legislation. And it would recommend that the State party should continue its collaboration with ILO, the International Organization for Migration and UNICEF and would invite it to ensure that tourism professionals were involved in the prevention of sex tourism.

The meeting rose at 5 p.m.

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