Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Chile - 5th Session - 2009
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National Report

38. The new juvenile criminal justice system came into operation in 2007, and introduced a special trial procedure for juvenile offenders. The new procedure is highly specialized, and has quite different outcomes and proceedings from those that apply to adults. It offers real opportunities for social reintegration through State-run programmes and applies the principle of proportionality to punishments, keeping deprivation of liberty as a last resort. The implementation of this reform has not been problem-free. The Government is therefore committed to making continuous, gradual improvements to the conditions in which young people are deprived of their liberty, by strengthening inter-institutional coordination through the establishment of working groups, using trained specialists and building 10 new high-quality centres, which will shortly be operational.

66. In 1990 Chile ratified the Convention on the Rights of the Child, and subsequently signed and ratified the optional protocols to the Convention. To implement these instruments, the law has been amended so as to protect children and young people, especially those whose rights have been violated and the victims of ill-treatment, sexual abuse or other forms of exploitation or violence.

67. One remaining challenge is to repeal the 1967 Minors Act, which is based on the premise of the “irregular situation of the child” and which makes no clear distinction, as far as judicial procedures and treatment are concerned, between children in need of care and protection and those in conflict with the law. The Presidential Advisory Council on Reform of Child Policies is working to produce a set of rules in line with international standards.

68. At the same time, public policies on children and young people have been drawn up with a view to implementing programmes embodying the obligations arising under the Convention and its two optional protocols. There has been a gradual move away from a “welfare-based” approach and practice based on the “irregular situation of the child” towards a system of rights-based social protection. The system has been a work in progress since 1990, peaking in 2000 with the establishment of the “Chile Solidario” scheme.

69. Under the Government of President Bachelet, the comprehensive child protection scheme “Chile Crece Contigo” (“Chile Grows with You”) was established. The scheme marks a qualitative leap forward as compared with previous policies, taking an intersectoral and multidisciplinary approach that is unprecedented in Chile. It has wide territorial coverage and protects children from the moment of conception.

70. The improved living conditions for children and young people in Chile have been achieved by reducing poverty in households with children under the age of 18 (from 51 per cent to 21 per cent between 1990 and 2006) and increasing support for the educational system by 15 per cent between 1990 and 2006, to the benefit of children of all ages but especially pre-nursery and nursery school children. In the same period, the gap in educational coverage between the poorest quintile and the richest quintile narrowed from 10.5 per cent to 6.9 per cent, while the number of children falling behind in school fell by 9.3 per cent. Also in this period, there was an increase in the proportion of young people in full-time education, from 77.5 per cent to 88.2 per cent, a fall in the proportion of young people in full-time work, from 8.4 per cent to 2.3 per cent, and a fall in the proportion of young people neither studying nor working, from 14.5 per cent to 6.8 per cent.

71. The National Service for Minors is drawing up a proposal to redefine its areas of work, in line with the recommendations of the Committee on the Rights of the Child. Meanwhile, it has the ongoing task of improving the dissemination of the Convention to children and their parents, by systematically including human rights issues in the curriculum at every level of education, with the cooperation of civil society and other bodies, as well as guaranteeing that young people have access to sexual and reproductive health services and sex
education in schools.

75. All foreigners and refugees whose situation has been regularized have the same access as nationals to health care in Chile. Nevertheless, in some cases where the health of certain vulnerable groups of irregular migrants is concerned, the Ministry of Health, together with the National Health Fund and the Aliens Department, has run special programmes, including programmes for all pregnant women and for children under the age of 18. Similar measures have been taken to guarantee access to education.

92. In Chile, educational coverage is virtually universal and the challenge is to improve the quality of education and fairness within the education system; a national agreement designed to make progress on both fronts is in place. In the 1990s, a far-reaching educational reform was rolled out gradually in primary and secondary schools. Measures have been taken to progressively increase coverage and to promote equality, fairness and non-discrimination in access to education. Illiteracy has been reduced, the average number of years of schooling has been increased, the proportion of students completing each cycle of education has been increased, and significant progress has been made in preschool education.

93. Spending on education as a percentage of total public spending increased from 11.8 per cent in 1990 to 15.7 per cent in 2008. The literacy rate in the population group aged between 15 and 24 is around 98 per cent, that is, almost the entire group. The net enrolment rate in basic education (children aged between 6 and 13) in the past decade has tended to hover around 90 per cent; according to the figures for 2006, 93.3 per cent of first-graders reached fifth grade. The net enrolment rate in secondary school (children aged between 14 and 17) was 71 per cent in 2006, nine percentage points higher than in 2000. As for the retention rate, almost 85 per cent of pupils who entered secondary school between 2001 and 2006 reached the last grade.

94. The 2003 constitutional reform made secondary education compulsory and free, giving the State responsibility for guaranteeing access to such education for all Chileans up to the age of 21, and for guaranteeing that they receive a minimum of 12 years of schooling. In addition, under the Complete Education Plan, a grant to encourage children to stay on at school has been introduced. Since 2003, this grant has been provided to the schools attended by the poorest children to encourage the latter not to drop out but to complete 12 years of schooling; under the same plan, efforts have been stepped up to prevent teenage pregnancies and child labour and to standardize courses.

95. The constitutional reforms of 1999 and 2007 established the duty of the State to promote nursery education and to guarantee free access and government funding at the nursery and pre-primary levels. The enrolment rate for 4- and 5-year olds increased from 40 per cent to 74.6 per cent in this period. Since 2006, the Government has endeavoured to bring more children from the poorest 40 per cent into the educational system from the earliest age. Coverage by crèches increased by 240 per cent between 2005 and 2007.28

96. In order to comply with the guarantees set forth in the Constitution and in the treaties signed and ratified by Chile, the Constitutional Act on Education was amended to provide for financial penalties for schools that expel or deny access to pregnant girls or teenage mothers.29 The Act was also amended in such a way as to avoid discrimination in the selection procedures for pupils, stipulating that they must be objective, transparent and respectful of the dignity of pupils and their families.

Compilation of UN information

8. CRC welcomed, inter alia, the National Plan of Action for Children and Adolescents (2001-2010)21 and the reorganization of the National Service for the Protection of Minors.22 In 2007, the ILO Committee of Experts on the Application of Conventions and Recommendations noted the adoption of a Plan for the Prevention and Progressive Elimination of Work by Children and Young Persons in Chile.23

14. In 2003, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people indicated that the majority of indigenous people suffer from high levels of poverty and low levels of human development as a result of their long history of discrimination and social exclusion, particularly during the military dictatorship.46 Concerns were expressed by CRC in 2007 at the de facto discrimination that indigenous children continue to face, in particular in the areas of education and health.47

15. CRC recommended increasing efforts to review, monitor and ensure implementation of legislation guaranteeing the principle of non-discrimination, and adopting a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any other grounds and against all vulnerable groups throughout the country.48

20. In 2007, CRC was alarmed about the high number of children exposed to dangerous and/or degrading work and recommended that Chile continue and reinforce efforts to prevent and combat economic exploitation through the effective implementation of the National Action Plan.62 The ILO Committee of Experts noted in 2007 that indigenous children and street children are particularly affected by the worst forms of child labour. It indicated that, according to the SENAME, over 6,500 children are reported to be living in the street.63

25. CRC reiterated its concerns about the high number of children prosecuted in the adult criminal justice system. It was also concerned that new legislation regarding juvenile justice allows for deprivation of liberty for up to five years for adolescents between 14 and 16, and the application of penal responses for children under 14 in certain circumstances.76

26. Both CEDAW and CRC urged Chile to further review legislation with a view to establishing the minimum age for marriage at 18 years of age, for both boys and girls.77 CRC also recommended that Chile provide further support to families in order to prevent separation of children, e.g. in the form of counselling, parenting and financial allowances.78

27. CRC expressed concern about reports that indicated excessive use of force and arbitrary detentions by police during student demonstrations in 2006.79 In 2005, the Special Representative on the situation of human rights defenders and the Special Rapporteur on the right to freedom of opinion and expression sent a communication to Chile regarding the excessive use of force by the police during a...
peaceful demonstration by an indigenous community, as well as the detention of two human rights defenders on charges of desórdenes públicos and amenaza a Carabineros en servicio.80 The Special Representative thanked Chile for its response and requested further information clarifying the facts of this case.81

37. CRC noted that further efforts needed to be undertaken in order to ensure access to health services in practice among indigenous peoples, low-income and rural population.101 According to the 2006 CCA report, some ethnic groups have infant mortality rates that are 40 points higher than the national average, as reflected in a life expectancy at birth that is 10 years less than the average. Mapuche children are more likely to die from bronchopneumonia and the Aymara mortality rate from tuberculosis is double the national average.102 CRC recommended, inter alia, that Chile continue to provide further resources for the AUGE health system, and enhance the access to medical services in rural areas among low-income families and indigenous peoples. It also recommended strengthening strategies to promote the use of indigenous traditional medicine.103

40. A 2004 UNESCO highlighted that public expenditure on education more than tripled between 1990 and 2003 and that social assistance has been improved, enhancing the enrolment of poorer children.112 CRC made similar observations in 2007 and welcomed the fact that the Constitution enshrines the right to free education for twelve years in school.113

41. The ILO Committee of Experts noted in 2007 that the illiteracy rate was 10 per cent for indigenous people as compared to 4.4 per cent for non-indigenous people.114 CRC expressed concern that access to education for indigenous peoples, refugees and children living in poverty and rural areas is still inadequate.115 It recommended, inter alia, that Chile continue to increase budget allocations to the educational sector; focus on an overall improvement in the quality of education provided, in particular in rural areas; and ensure the expansion of the bilingual intercultural programme for indigenous peoples.116 CESCR further recommended that Chile continue to strengthen efforts to address the issue of dropouts, including by securing adequate support for teenage mothers to continue their education.117

42. CRC also noted with concern that the resources available for children with disabilities are inadequate, in particular in order to guarantee their right to education.118 It recommended that Chile pursue its efforts to ensure that children with disabilities may exercise their right to education to the maximum extent possible.119

46. While welcoming the amendments to the Constitution which seek to eliminate statelessness for children born to Chileans abroad, CRC was concerned that children of foreigners without legal residence in Chile may remain exposed to statelessness.129

Summary of Stakeholder Compilation

23. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) stated that in Chile, corporal punishment is lawful in schools and that there is no explicit prohibition of corporal punishment of children in alternative care settings.38

Final Report

24. Sweden recommended (a) continuing and strengthening efforts to find a solution that respects the land rights of indigenous groups and ensures legal protection of their human rights. Noting that the Committee on the Rights of the Child had urged Chile to review its complete criminalization of abortion, it recommended (b) furthering efforts to ensure that the abortion laws are brought into line with Chile’s human rights obligations. Welcoming proposals for a new law against discrimination, Sweden recommended (c) that discrimination on the grounds of sexual orientation and gender identity be prohibited by law and included in equality programmes and policies.

33. Austria recommended that Chile (a) intensify efforts to demarcate and restore land and to systematically consult with indigenous people before granting licenses for economic exploitation; (b) introduce new legislation to further strengthen the rights of indigenous peoples. Austria raised its concerns about penal sentences for children aged below 16 and even 14 and recommended to (c) take all necessary steps to ensure that persons below the age of 18 are under all circumstances tried by a specialized juvenile justice system and that the best interests of the juvenile offenders are given the highest priority so they can successfully be reintegrated into society. The deprivation of a child’s liberty should only be used as a last resort.

39. Turkey asked for more information on the legislative actions that need to be taken in order to repeal the current joint marital property regime. Taking note of the views expressed by the Committee of the Rights of the Child on access to education for indigenous peoples, Turkey encouraged Chile to increase budget allocations to education with a view to overcoming this problem. Turkey asked about progress in establishing a human rights mechanism in conformity with the Paris Principles.

59. Corporal punishment of children is forbidden in Chile and the Civil Code stipulates that discipline must be exercised in conformity with the law and CRC.

73. Uzbekistan recommended that Chile (a) take appropriate measures to prevent torture and ensure that all allegations of torture are properly and independently investigated, and ensure that the law adopted to define torture is in accordance with article 1 of CAT; (b) thoroughly investigate all forms of human rights violations particularly of those who were arrested in the course of police operations; (c) take proper legal and administrative measures and adopt the national plan of action to ensure full observance for rights of indigenous peoples; (d) appropriately fight and eradicate the worst forms of child labour; (e) ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; (f) establish a NHRI in accordance with the Paris Principles.

84. Ecuador emphasized Chile’s efforts and political commitment to allocating resources to health, education and poverty reduction programmes, such as Chile Solidario and Plan AUGE. It asked about the actions taken regarding the recommendation of CRC to guarantee to child refugees, asylum seekers and migrants the immediate processing of their registration and identification documents so
that they would not be deprived of access to health services and education.

85. Slovenia welcomed, inter alia, the improved social assistance and enhanced enrolment of poorer children. Slovenia recommended that Chile continue to increase budget allocations to the educational sector, focus on overall improvement in the quality of education, particularly in rural areas, and ensure the expansion of the bilingual intercultural programme for indigenous peoples.

Conclusion and Recommendations

50. Take all necessary steps to ensure that persons between the age of 14 and 18 are under all circumstances tried by a specialized juvenile justice system, that the best interests of the juvenile offenders are given the highest priority so they can successfully be reintegrated into society, and that deprivation of liberty of children is used only as a measure of last resort (Austria);

53. Appropriately fight and eradicate the worst forms of child labour (Uzbekistan) and further tackle the problem of street children and child labour, as well as discrimination against indigenous children (Azerbaijan);

56. Further guarantee effective access to education for all children, especially those from indigenous communities, refugee children and children whose families live in rural areas or below the poverty line and take effective measures to fight against the factors behind their exclusion from the educational system (Algeria);

71. Approve its draft refugee law to ensure full realization of refugees' rights, in particular protection of the principle of non-refoulement, and pay special attention to measures aimed at protecting vulnerable groups such as women at risk, victims of torture and unaccompanied children (Czech Republic).