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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement submitted by Defense for Children,
a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[2 February 1987]

I. GENERAL SITUATION

According to various sources, including a report prepared by one of the sections of Defense for Children in Latin America, the situation in Chile has, for many years, been characterized by serious economic problems, such as unemployment, high inflation, the very low level of many salaries and the poverty of many persons from low-income population groups. In social terms, these problems often lead to idleness, the break-up of families, desertion of homes by unemployed fathers, prostitution as a means of subsistence and the use of drugs. It is in this context of overall collapse that the problem of the sale of and traffic in children with a view to their adoption by couples living abroad must be seen.

By exerting pressure from abroad, many western organizations (European and North American) take steps to meet the requirements of couples who have no children. Because Chile has a European-type population, these organizations are able to find children with the same physical characteristics as the adoptive parents.

In the absence of any proper legislative framework, the law of the supply of and demand for children in Chile operates virtually without restriction.

II. LEGISLATIVE FRAMEWORK

Chilean legislation provides for "simple adoption", without change of civil status (Act No. 7613 of 21 October 1943), and "full adoption" or adoptive legitimation (Act No. 16346 of 20 October 1965). These two texts, which define the conditions for and effects of adoption, do not, however, contain any rule which applies to international adoption. Only one provision deals with the departure of a child for another country: article 50 of the Minors' Act (Act No. 16618 of 8 March 1967), which reads:

"In cases where a minor has no legal representative or where his custody has not been entrusted to a particular person by the judge, the court may authorize his departure from the country for as long as it deems appropriate, taking into account the benefit which the minor may derive therefrom."

(Official Spanish text: "En aquellos casos en que el menor careciere de representación legal o no se hubiese encomendado su tuición por el juez a determinada persona, el tribunal podrá autorizar su salida del país por el tiempo que juzgue prudente y tomando en consideración el beneficio que ella pudiere reportar al menor")

These are temporary placements (and not adoptions), at the end of which the Chilean judge must be able to see the child again. However, according to information received by Defense for Children, this provision is regularly contravened and is applied so that children may leave the country for an indefinite period of time and join their guardians abroad. The courts do not know exactly where the children live and, except perhaps where a criminal complaint is filed, no attempt is made to find them (see "Specific cases" below).

III. TRAFFIC IN AND SALE OF CHILDREN

According to information received by Defense for Children, applications from abroad for the adoption of Chilean children go through two types of channels: one procedure is legal, but very drawn out, and many couples abandon it in favour of more direct and irregular methods. The traffic in children thus also originates with certain adoption agencies which keep central files on applications made abroad. The children are found mainly in hospitals, where the mothers have agreed to turn over their new-born children to agencies specializing in such traffic, and in institutions for undernourished and/or abandoned children, who are certainly not all orphans, but have been temporarily placed in these institutions by their parents or by social workers because of their families' financial difficulties. There is also a network of homes where unwed mothers are offered food and proper assistance in giving birth for the purpose of obtaining healthy new-born children.

Some minors' judges also use the law and the discretionary power it gives them to convince deprived mothers to place their children under court protection. The focal point of operations is, however, still the lawyer, who has to know the criteria on which judges base their decisions, as well as other factors involved in international placements.

According to the newspaper El Mercurio of 8 October 1984, "Each year, in our country, some 1,500 children are adopted legally and several thousand others are adopted clandestinely".

(Spanish original: "Anualmente en nuestro país, unos 1,500 pequeños son adoptados legalmente y otros miles en forma clandestina")

The price range is: \$US 13,000 (Las Ultimas Noticias, 30 March 1983), \$US 10,000 to \$US 15,000 (La Segunda, 7 October 1983), \$US 20,000 (figure quoted in the press in 1986). As far as the investigators know, no testimony indicates that needy mothers have received money in exchange for their children, but, at most, a few food packages given them by the traffickers.

The critical areas appear to be: (a) Concepción, Talcahuano, Tomé, Coronel; (b) Temuco; (c) Santiago; and (d) Chillán and San Fernando.

At the domestic level, these international placements, which are quite illegal, do not provide any real solution to the problem of the abandonment of children in Chile. They are, rather, the result of attempts by middlemen, some of whom exercise official functions, to obtain financial gains. It may, however, usually be said that what the adoptive parents are seeking is an adoption, not a means of obtaining children in order to exploit them sexually or put them to work.

IV. SPECIFIC CASES

Many complaints have been filed in San Fernando in connection with removals of children between 1982 and the first quarter of 1983. The complaints concern 50 children, none of whom has been brought back to Chile. The decisions were taken by a single judge, working in co-operation with two lawyers. These three persons left Chile after the complaints were filed.

Example: A.A.R.R., a child born on 5 October 1981, was given to couple V. living in the United States of America by a decision handed down in San Fernando on 24 January 1983. The judge, I.G., to whom reference is made above, based his decision, on the fact that the natural mother stated that she wished to put her child up for adoption because of her precarious financial situation and because she was pregnant again. The decision was taken pursuant to the Minors' Act and, in particular, article 50, but nothing in the operative part of the decision indicates that the placement is a temporary one. On the contrary, it gives foreigners custody of the child, authorizes him to leave the country with them and describes them as offering him "a secure future" ("un futuro asegurado") and as being loving parents ("padres carifiosos"). On 18 May 1983, the natural mother, R.R.R., filed a complaint against the judge on the grounds that her child was taken away from her. The child has not been returned.

According to information received by Defense for Children, articles which appeared in Santiago and Chillán newspapers from 19 August to 29 October 1986 reported that there had been 158 cases in which minors were sold (including 11 minors and 107 new-born children in Santiago).

V. INTERNATIONAL OBLIGATIONS

At present, there is no universal international convention that defines the conditions for international adoptions. Other instruments may, however, be cited to prove that Chile does not observe certain international principles. They include, for example, the 1959 Declaration of the Rights of the Child:

"The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form" (principle 9).

"The child ... shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother ..." (principle 6).

The International Covenant on Economic, Social and Cultural Rights (1966), to which Chile is a party, also proclaims the need to accord protection and assistance to the family and to take special measures of protection on behalf of children (article 10, paras. 1 and 3). The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956), which Chile has ratified, refers, in particular, to:

"Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, with a view to the exploitation of the child or young person or of his labour" (article 1 (d)).

In this connection, it is interesting to note that some members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities have expressed the view that the sale of children for adoption should be regarded as a form of slavery (see E/CN.4/Sub.2/AC.2/11, note by the Secretary-General on the sale of children) and that the Sub-Commission, the Commission on Human Rights and the Economic and Social Council have already raised the question of abuses in connection with international adoptions.

VI. CONCLUSIONS

In submitting this statement, the intention of Defense for Children is not to discredit either agencies that are actively involved in international adoption or adoptive parents, many of whom are quite sincere. Its purpose is, rather, to draw attention to abuses and violations of the rights of the child which may result from inadequate legislation and the lack of moral and legal scruples on the part of some officials (judges) and other persons (lawyers, social workers). Defense for Children thus very much hopes that, as a result of the adoption by the United Nations General Assembly of the Declaration on

Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally, the State in question and others will be in a position to change their legislation and practices in order to promote respect for the higher interests of the child. Acceptance of the draft adoption act that has been under discussion in Chile since 1984 might, moreover, make for more stringent procedures and Defense for Children recommends that every effort should be made to bring the draft act into force as rapidly as possible in order to ensure better protection for Chilean children.