



Submission to the UN Committee against Torture for the adoption of the List of Issues prior to reporting

This submission is made jointly by the Child Rights International Network (CRIN) (www.crin.org) and the Survivors' Network (Red de Sobrevivientes) in Chile (www.redsobrevivientes.org), January 2021.

1. This submission addresses institutional sexual abuse and exploitation of children in Chile in institutions run by the State's National Service for Minors (SENAME) and the country's Catholic Church.

Scale of sexual violence against children in institutions

2. In recent years, Chile has seen a steady rise in the number of complaints of sexual abuse of children within the Catholic Church. In August 2020, Chile's Survivors' Network, which manages the country's only database of clergy abuse cases, announced that there had been 360 publicly made reports of alleged abuse committed within the Catholic Church.¹ Those accused include 186 priests, 27 bishops and four cardinals.²

3. The available statistics are widely considered a significant underestimate, as most cases of abuse go unreported.³ In response to the lack of data, Chile's Survivors' Network called on the country's President in August 2018 to establish a national inquiry into child sexual abuse within the Catholic Church in Chile.⁴ It has since called for a national inquiry to investigate child sexual abuse in all institutions, both church-run and state-run.

4. In December 2018, a report by Chile's Criminal Investigations Police (PDI) found reports of child abuse in all residential and custodial centres managed by the National Service for Minors (SENAME) which it had inspected, including reports of sexual abuse in 50 percent of institutions.⁵ The case-specific information gathered was passed to the Public Prosecutor's Office,⁶ yet it is not clear if any cases have been investigated further. The publication of the PDI's report had been delayed for months by the National Prosecutor, Jorge Abbot, and PDI's director, Héctor Espinoza, according to the investigative reporting organisation, CIPER Chile.⁷

5. We urge the Committee to ask the State:

- What data does the State hold on the scale of sexual violence against children within religious and State-run institutions?

¹ Survivors' Network in Chile, 'Map of sexual abuse and abuse of conscience incidents by priests and other clergy in Chile', August 2020. Available at: <https://bit.ly/3ohQMOE> [shortened link]

² Id.

³ BishopAccountability.org, 'Publicly Accused Priests, Brothers, Sisters, and Deacons in Chile'. Available at: <http://www.bishop-accountability.org/Chile/>

⁴ El Mostrador, 'Red de Sobrevivientes de Abusos Eclesiásticos planteó a La Moneda crear comisión de la verdad', 3 August 2018. Available at: <https://bit.ly/3iJZ9Br> [shortened link]

⁵ Investigative Police of Chile, 'Análisis del funcionamiento residencial en centros dependientes del Servicio Nacional de Menores', December 2018, p.187. Available at: <https://ciperchile.cl/wp-content/uploads/informe-emilfork4.pdf>

⁶ Id., p.228.

⁷ CIPER Chile, 'Jefatura de la PDI y Fiscalía Nacional entramparon durante meses el dramático informe sobre abusos en el Sename', 5 July 2019. Available at: <https://bit.ly/3sVYAZV> [shortened link]

- What evidence is there of undue delays at the Public Prosecutor's Office in its investigation of complaints of alleged child sexual abuse in the Catholic Church?
- What steps has the Public Prosecutor's Office taken in response to the PDI's report?
- What consideration has the State given to the petition to establish a national inquiry into child sexual abuse in state and religious institutions?

Prevention of torture and cruel, inhuman and degrading treatment or punishment

6. Ninety-six percent of SENAME's centres are operated by accredited partner agencies, including private and religious entities, many of which have faced child sexual abuse complaints, as addressed above. Forty-one percent of these facilities are operated directly by or affiliated with the Catholic Church.⁸ In one case, the residential centre Nido Amigó, which was managed by the Catholic organisation Fundación Padre Luis Amigó, was found to be sexually exploiting children living in its care in exchange for donations.⁹

7. Chile's Ombudsperson for Children's Rights has repeatedly denounced the systemic lack of child safeguarding training given to staff across SENAME's agencies.¹⁰ In 2020 SENAME's name was changed to the National Service for the Specialised Protection of Children and Adolescents, with the overseeing ministry switching from the Ministry of Justice to the Ministry of Social Development and Family. Even under a new name, however, the government continues to outsource SENAME's services, which human rights experts say is a neglect of its children's rights obligations.¹¹

8. With regard to mandatory reporting in Chile, members of specific professions, including police, prosecutors, public employees, medical professionals, and directors, inspectors and teachers of educational establishments have an obligation to report suspected child abuse. Failure to meet this obligation is a criminal offence, punishable with imprisonment or a fine.¹² It is not clear, however, whether or how effectively mandatory reporting is implemented across SENAME's partner agencies.

9. With regard to mandatory reporting in the Catholic Church, CRIN recommended in 2019 that Chile extend mandatory reporting to ensure that any professional working with children, including in church-run institutions, is required to report suspected abuse, including when disclosed to a religious leader during confession.¹³ The need for this was underlined by Chilean prosecutor Emiliano Arias who said in October 2018 that the country's Catholic Church had never voluntarily handed internal documents on child abuse complaints to civil authorities; this has only ever happened through court orders or raids of church offices.¹⁴

10. We urge the Committee to ask the State:

- What action is the State taking to ensure that effective child safeguarding policies and practices are in place within facilities in which children live, study and worship?

⁸ SENAME, 'Registro de Organismos Colaboradores', 31 December 2019. Available at: <https://www.sename.cl/web/index.php/registro-organismos-colaboradores/>

⁹ Ombudsperson for Children (*Defensoría de los Derechos de la Niñez*), 'Informe anual 2020: Derechos humanos de niños, niñas y adolescentes en Chile', November 2020, p.443. Available at: <https://bit.ly/3cfUSEV> [shortened link]

¹⁰ *Id.*, p.446.

¹¹ Radio Universidad de Chile, 'Una farsa: Trabajadores subcontratados del Sename acusan que nuevo servicio es más de lo mismo,' 4 June 2020. Available at: <https://bit.ly/39gC725> [shortened link]

¹² Children's Law, Law No. 16618, Article 66; Criminal Procedure Code, Article 175.

¹³ CRIN, 'Chile: Justice for sexual abuse of children', January 2020. Available at: <https://bit.ly/3p0v9Ug> [shortened link].

¹⁴ Cooperativa, 'Fiscal Arias: La conducta de guardar silencio de Ezzati es común en la Iglesia Católica', 8 October 2018. Available at: <https://bit.ly/368Evpv> [shortened link]

- What evidence does the State hold regarding the training of staff within SENAME's partner agencies on child safeguarding?
- What evidence does the State hold regarding the effective implementation of mandatory reporting of suspected cases of child sexual abuse and exploitation across SENAME's partner agencies?
- What consideration has the State given to extending mandatory reporting obligations regarding suspected abuse of children to all professionals working with children, including in religious institutions?

Complaints and prompt, thorough and impartial investigations

11. In March 2019, Chile's National Prosecutor's Office reported that there were 158 open investigations into sexual abuse or its cover-up by the clergy or employees of the Catholic Church, involving 219 accused and 241 alleged victims, 123 of whom were under the age of 18 at the time of the alleged abuse.¹⁵ This is the last published data on clergy abuse complaints by the National Prosecutor's Office, though in May 2019 the media reported that the number of complaints being investigated had risen to 166, with 131 alleged victims being minors at the time of the alleged abuse.¹⁶

12. In 2018, the Catholic Church in Chile created an office to receive complaints of alleged clergy abuse.¹⁷ These church-run bodies have opened in many other countries, but have been criticised for their lack of transparency and independence, often refusing to pass on investigation details to civil authorities.¹⁸ In April 2019, the Public Prosecutor's Office signed an agreement with the Catholic Bishops' Conference of Chile to cooperate in obtaining information for criminal investigations against accused clergy members.¹⁹ In response to the Catholic Church's poor record of providing internal documents to civil authorities, survivors' groups demanded that the agreement be annulled, which it was a week later.²⁰

13. In May 2019 the prosecutor handling clergy abuse complaints in Chile, Emiliano Arias, was suspended following a complaint against him alleging corruption (though unrelated to the clergy abuse cases²¹) of which he was eventually cleared.²² The suspension occurred on the same day that he approved an investigation of the Archbishop of Santiago, cardinal Ricardo Ezzati, over the alleged cover-up of child sexual abuse cases.²³ Despite later being reinstated, Arias was removed from the clergy abuse cases, and survivors' groups have publicly complained that progress in these cases has since stalled after they were transferred to the prosecutor Xavier Armendáriz.²⁴ Following multiple requests for an update on cases, which were ignored by Armendáriz's office, the Public Prosecutor's Office finally told

¹⁵ Agencia EFE, 'Aumentan a 219 los investigados por casos de abuso sexual en la Iglesia chilena', 22 March 2019. Available at: <https://bit.ly/3c6vUrm> [shortened link]

¹⁶ Agencia EFE, 'La Fiscalía chilena anula el acuerdo con la Iglesia para los casos de abusos sexuales', 7 May 2019. Available at: <https://bit.ly/3iNfk18> [shortened link]

¹⁷ FRANCE24, 'Chile: enviados del papa para investigar abusos finalizaron su misión', 20 June 2018. Available at: <https://www.france24.com/es/20180620-chile-enviados-papa-abusos-mision>

¹⁸ Los Andes, 'Abusos reavivan la polémica por acceso a la información', 14 July 2019. Available at: <https://www.losandes.com.ar/article/view/?slug=abusos-reavivan-la-polemica-por-acceso-a-la-informacion>

¹⁹ National Prosecutor's Office, 'Fiscalía y Conferencia Episcopal firman acuerdo para facilitar desarrollo de investigaciones penales', 30 April 2019. Available at: <https://bit.ly/2MnRCMu> [shortened link]

²⁰ Agencia EFE, 'La Fiscalía chilena anula el acuerdo con la Iglesia para los casos de abusos sexuales', 7 May 2019. Available at: <https://bit.ly/39fPqQs> [shortened link]

²¹ Reuters, 'Fiscal en casos de abusos Iglesia chilena es suspendido', 6 May 2019. Available at: <https://www.reuters.com/article/justicia-chile-fiscal-idLTAKCN1SC1WZ?edition-redirect=uk>

²² La Tercera, 'De regreso al Ministerio Público: así fue la primera mañana del fiscal Arias de vuelta a la Fiscalía de Rancagua', 3 February 2020. Available at: <https://bit.ly/2NBbpZJ> [shortened link]

²³ CIPER Chile, 'Estos son los casos de encubrimiento que dejaron al cardenal Ezzati al borde de la formalización', 17 December 2019. Available at: <https://bit.ly/3a5pLJp> [shortened link]

²⁴ La Discusión, 'Red laical admite preocupación por estancamiento de causas de abusos sexuales en la Iglesia', 25 July 2020. Available at: <https://bit.ly/2NzNPwp> [shortened link]

the Survivors' Network in September 2020 that the Covid-19 pandemic has further delayed the investigation of abuse cases. But the group reject this explanation, believing instead that the Office is chronically underfunded and therefore unable to carry out its work.²⁵

14. The delay within the justice system calls into question the State's compatibility with the Convention's article 13 on the right to complain and have the complaint promptly investigated.

15. We urge the Committee to ask the State:

- What measures is the State taking to ensure that the National Prosecutor's Office and other law enforcement entities have adequate resources and expertise to promptly investigate and prosecute cases of sexual violence against children in a child-friendly manner?
- What evidence can the State provide about how it engages with SENAME's partner agencies that face complaints of child sexual abuse?

Impunity

16. In July 2018, the Public Prosecutor's Office reported that 22 prosecutions for clergy abuse had resulted in convictions.²⁶ No updates have since been published. According to BishopAccountability.org, most reports alleging clergy abuse in Chile involve actions allegedly committed in the last 20 years and which were reported to law enforcement within just a few years of occurrence.²⁷ The organisation points out that, based on data on clergy abuse published in other countries, the relatively recent cases comprise only a small fraction of the total number of cases, most of which date back decades and remain unreported.²⁸

17. A major barrier to reporting historical abuse are limitation periods. In July 2019, Chile abolished limitation periods for an extensive list of sexual offences committed against children.²⁹ However, the reform only applies to offences committed after the law came into force. For offences committed before this date, complaints must be made within 10 years of a person's 18th birthday.³⁰ Survivors' groups worldwide say that such restrictions prevent many survivors of childhood sexual abuse from bringing their perpetrators to court, given that survivors on average first disclose their abuse more than 20 years after it took place.

18. The investigative reporting organisation, CIPER Chile, has documented several cases in which the Public Prosecutor's Office stopped investigating senior Catholic officials accused of child sexual abuse or its cover-up if the Catholic Church defrocked them.³¹ This includes the cases involving former bishops Cristián Precht Bañados and Francisco José Cox, the latter now deceased.³² The Survivors' Network also notes that the current Archbishop of Santiago, Celestino Aós Braco, is facing multiple complaints against him of abuse cover-ups, but the investigation is stagnant. Another example is that of the former Jesuit

²⁵ El Mostrador, 'Impunidad y pandemia: víctima de abusos sexuales acusa a la Fiscalía de "complicidad pasiva" en los crímenes de la iglesia Católica', 22 September 2020. Available at: <https://bit.ly/3qSggLU> [shortened link]

²⁶ National Prosecutor's Office, 'Informe sobre casos de delitos sexuales relacionados con la Iglesia Católica', 23 July 2018. Available at: <http://www.fiscaliadechile.cl/Fiscalia/noticiaPdf?noticiald=14941>

²⁷ BishopAccountability.org, 'Publicly Accused Priests, Brothers, Sisters, and Deacons in Chile'. Available at: <http://www.bishop-accountability.org/Chile/>

²⁸ Ibid.

²⁹ Senate of Chile, 'Destacan promulgación de Ley sobre imprescriptibilidad del abuso sexual contra menores: ¿cómo operará la nueva legislación?', 11 July 2019. Available at: <https://bit.ly/2MnKSOG> [shortened link]

³⁰ Ley No. 21.160 que declara imprescriptibles los delitos sexuales cometidos contra menores de edad.

³¹ CIPER Chile, 'Estos son los casos de encubrimiento que dejaron al cardenal Ezzati al borde de la formalización', 17 December 2019. Available at: <https://bit.ly/3a0e72u> [shortened link]

³² Ibid.

priest, Eugenio Valenzuela, who was accused in 2010 of alleged sexual abuse committed in 1995 and was defrocked in November 2019,³³ yet the Survivors' Network protests that the now-multiple complaints against him have not progressed. These are only some among many examples of inactive investigations.

19. We urge the Committee to ask the State:

- What consideration has it given to abolishing remaining criminal limitation periods for sexual offences committed against children, including for offences committed before July 2019?
- What consideration has the State given to extending civil limitation periods to enable survivors of child sexual abuse to access remedies?
- What evidence can the State provide showing that all reports of sexual abuse of children are promptly, thoroughly and impartially investigated, and that cases are referred to relevant law enforcement?

Redress

20. There have been notable cases in which financial compensation was awarded to survivors of clergy abuse. For example, in March 2019 an appeals court ordered the Archdiocese of Santiago to pay three survivors 100m Chilean pesos (US\$146400) each.³⁴ However, the Survivors' Network denounces a systemic inability to obtain redress experienced by most people who accuse the Church of being sexually abused as children. This applies to complaints made by survivors to both the Public Prosecutor's Office and the Catholic Church.

21. In cases that were reported to the Catholic Church, which conducted an internal investigation, claimants often say that they were given "take it or leave it" offers of compensation that did not amount to fair compensation.³⁵ Included among those issued by the Congregation of the Sacred Hearts of Jesus and Mary, for instance, are offers of financial compensation from which was deducted the cost of rehabilitation that the survivor has received so far.³⁶ Moreover, some written offers also state the dates on which the Church will cease to cover the costs of rehabilitation.³⁷ The Survivors' Network has also complained that the Church is unwilling to give compensation to survivors whose abusers die or to the families of abuse victims who die. In one case, a survivor, whose abuser died, was notified by the Church that their complaint would no longer be investigated.³⁸ Acceptance of compensation can also be dependent on non-disclosure agreements and agreements not to pursue legal action against the Church.³⁹

22. This situation calls into question the State's compliance with the Convention's article 14 on access to redress, fair and adequate compensation, and rehabilitation.

23. We urge the Committee to ask the State:

- What measures has the State taken to ensure that child survivors of sexual violence receive effective redress?

³³ See the chronology of his case by La Tercera, available at: <https://www.latercera.com/etiqueta/eugenio-valenzuela/>

³⁴ BBC, 'Abusos sexuales en la Iglesia católica en Chile: una corte ordena indemnizar por "daños morales" a tres víctimas del exsacerdote Fernando Karadima', 27 March 2019. Available at: <https://bbc.in/3ptxuHq> [shortened link]

³⁵ Meganoticias, 'Denunciantes de abusos sexuales acusan reparaciones insuficientes de Sagrados Corazones', 10 January 2021. Available at: <https://www.youtube.com/watch?v=n6O0TnGW0IY&feature=youtu.be>

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ The Survivors' Network has access to such offers of compensation, which are held on record.