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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-seventh session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 8 OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF
CHILDREN IN ARMED CONFLICT**

Concluding observations: Chile

1. The Committee considered the initial report of Chile (CRC/C/OPAC/CHL/1) at its 1305th meeting (see CRC/C/SR.1305), held on 28 January 2008, and adopted, on 1 February 2008, the following concluding observations:

A. Introduction

2. The Committee welcomes the submission of the State party's initial report as well as the detailed replies provided in the responses to its list of issues. The Committee also appreciates the frank and constructive dialogue held with a high-level and cross-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's third periodic report on 2 February 2007 contained in CRC/C/CHL/CO/3 as well as those adopted on 1 February 2008 on the State party's initial report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, contained in CRC/C/OPSC/CHL/CO/1.

B. Positive aspects

4. The Committee welcomes that, according to Chilean legislation (Decree Law No. 2,306 of 12 September 1978 on the recruitment and mobilization of the armed forces as amended by Law n° 20,045 on the modernization of compulsory military service) children below 18 cannot participate in hostilities and compulsory recruitment starts only from the eighteenth year of age.

5. The Committee also welcomes the ratification by the State party of:

- (a) the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography on 6 February 2003;
- (b) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 21 March 2005;
- (c) ILO Convention no 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 17 July 2000.

I. General measures of implementation

Dissemination and training

6. While noting that the curriculum of the training course for the armed forces and the police include human rights, the Committee is concerned that the State party has not taken any measure to disseminate the Optional Protocol to the public at large and children in particular.

7. **The Committee encourages the State Party to provide training activities on the Optional Protocol to members of armed forces and certain groups of professionals dealing with children, such as teachers, the media, authorities working for and with children coming from countries affected by armed conflict, lawyers and judges, armed forces, police and military personnel. Furthermore, it recommends that the State party make the Optional Protocol widely known to the public at large and in particular to children and their parents through, *inter alia*, school curricula and human rights education.**

National Human Rights Institution

8. The Committee reiterates its concern expressed upon consideration of the third periodic report of Chile to the Convention (CRC/C/CHL/CO/3, paragraphs 14 and 15) about the lack of an independent national human rights institution through which children may be able to access a complaint and redress mechanism.

9. **The Committee recommends that the State party expedite the creation of an independent national human rights institution, in light of its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child and the Paris Principles (General Assembly resolution 48/134, Annex). This institution should have expertise in children's rights, extend its presence nationwide and be provided with well-trained staff capable of dealing with complaints in a child-sensitive manner; and should ensure that all children have easy access to this independent complaints mechanism in case of violations of their rights, including the rights covered by the Protocol.**

II. Prevention

Military schools

10. The Committee notes that it is a requirement for entry into military schools to have completed four years of secondary education. However, it is concerned that children as young as 12 may be enrolled in pre-military schools.

11. **The Committee recommends that the State party add, to the existing requirement for entry into military schools of the completion of the secondary education, also the age requirement of 18 years. With respect to pre-military schools, the Committee recommends that the State party ensure through the Ministry of Education that their curricula and practice are monitored and do not include military training or training with weapons of any kind. The Committee also recommends that adequate follow-up is given to any allegation of abuse or ill-treatment in these schools.**

Peace education

12. **The Committee recommends that the State party strengthen its programmes and activities with a view of creating an environment of tolerance, peace and understanding, *inter alia* by introducing human rights education and, in particular, peace education in the curricula of all schools.**

III. Prohibition and related matters

Compulsory recruitment

13. The Committee, notwithstanding the State party's explanation in this regard, continues to be concerned by article 69 of the Armed Forces' Recruitment and Mobilisation Law stating that: "In times of war, the President of the Republic can call upon all persons, regardless of sex or age limit, to be employed in the different services that the nation requires".

14. **With reference to article 69 of the Armed Forces' Recruitment and Mobilisation Law, the Committee recommends that the State party ensure that persons who have not attained the age of 18 years cannot be compulsorily recruited into their armed forces, in compliance with article 2 of the Protocol, regardless of a status of war or any public emergency. To this end, the State party may wish to consider expressly clarifying in the above-mentioned law that this provisions only applies to persons over 18 years.**

Voluntary recruitment

15. The Committee notes that, according to the declaration entered by the State party ex article 3 of the Protocol, the minimum age for the voluntary recruitment of persons into its national armed forces is 17 or 18 years, and on an exceptional basis persons who have attained 16 years of age and meet certain criteria may participate in such

programmes for shorter periods with the prior approval of the Director-General of the General Directorate for National Mobilization of the Ministry of National Defence and with the due consent of the parents or legal guardians.

16. The Committee, considering that the great majority of States parties to the Protocol do not permit voluntary recruitment of children, encourages the State party to raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard.

Criminal legislation and jurisdiction

17. The Committee welcomes the Law 20,045 of September 2005 which modernizes the compulsory military service. However, it notes that the State party does not provide in its legislation for the criminalization of the acts of compulsory recruitment and/or use in hostilities of children nor for the possibility of establishing extra-territorial jurisdiction for those crimes.

18. In order to strengthen international measures for the prevention of the recruitment of children and their use in hostilities, the Committee recommends that the State Party:

(a) ensure that the violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly criminalized in the State party's legislation;

(b) consider establishing extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State Party;

(c) ensure that military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol;

(d) consider ratifying the Rome Statute of the International Criminal Court.

Military Justice

19. The Committee welcomes the Bill of 3 July 2007 reforming the Code of Military Justice, which would limit the jurisdiction of military tribunals over civilians.

20. The Committee recommends that the State party ensure a speedy adoption of the reform of the Code of Military Justice, in conformity with international standards of international humanitarian law and human rights law, including the Protocol.

IV. Protection, recovery and reintegration

Assistance for physical and psychological recovery

21. The Committee welcomes the information that the State party has implemented a resettlement programme as a tool to ensure protection to Colombian refugees, as well as its commitment to receive Palestinian refugees coming from Iraq, including children affected by armed conflict. It also notes with appreciation the projects aiming at the regularization of all children entering into the State party's territory, irrespective of the migratory status of their parents, in order to guarantee access to education and health to them on an equal footing as Chilean nationals. However, the Committee notes that no specific measures have been taken to identify children who may have been recruited or used in hostilities abroad and that no specific programmes are available for their recovery and reintegration.

22. The Committee recommends that the State party identify and assess the situation of children entering Chile who may have been recruited or used in hostilities abroad, and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6 (3) of the Protocol.

23. The Committee reiterates its concern (CRC/C/CHL/CO/3, paragraphs 63 and 64) that the State party has still not adopted adequate legislation in accordance with international obligations for refugee protection. In particular, it is concerned that the lack of adequate legislation may jeopardize the possibility for children who may have been recruited or used in hostilities abroad to be adequately protected in the State party.

24. The Committee recommends that the State party adopt a comprehensive refugee law, in line with international human rights and refugee law, in order to ensure adequate protection and effective access to Refugee Status Determination (RSD) to foreign children who may have been involved in hostilities abroad and have a well-founded fear of persecution in their country of origin. The Committee also invites the State party to take into account its General Comment n° 6 (2005) on the "Treatment of Unaccompanied and Separated Children Outside their Country of Origin" in this respect.

25. The Committee further wishes to reiterate its recommendation to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

V. International assistance and cooperation

26. The Committee welcomes the information that arms export from the State party is not authorized towards a country in state of conflict.

27. **The Committee recommends that the State party further strengthen its normative framework by considering introducing a specific prohibition with respect to the sale of arms to countries where children have been known to be, or may potentially be, recruited or used in hostilities.**

28. **The Committee further recommends that the State Party, in accordance with article 7 of the Protocol, strengthen its cooperation in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the provisions of the Protocol, including through technical cooperation and financial assistance.**

VI. Follow-up and dissemination

29. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the National Congress, the Defence Ministry and to local authorities, where applicable, for appropriate consideration and further action.**

30. **The Committee recommends that the initial report submitted by the State Party and concluding observations adopted by the Committee be made widely available to the public at large in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

VII. Next report

31. **In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 12 September 2012.**
