

UNEDITED VERSION

1 February 2008

CRC/C/OPSC/CHL/CO/1

COMMITTEE ON THE RIGHTS OF THE CHILD

47th session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 12(1) OF THE OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

Concluding observations: Chile

1. The Committee considered the initial report of Chile (CRC/C/OPSC/CHL/1) at its 1036th meeting (see CRC/C/SR.1036), held on 28 January 2008, and adopted on 1 February 2008, the following concluding observations:

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 involvement of children in armed conflict, contained in CRC/C/OPAC/CHL/CO/1.

I. General Guidelines

A. Positive aspects

4. The Committee welcomes the numerous legislative, administrative and other measures taken by the State party in areas of relevance for the Optional Protocol, including:

(a) Law N° 19,927 of 14 January 2004 modifying the Penal Code and the Code of Criminal Procedure whereby, *inter alia*, new crimes in the areas covered by the Optional Protocol have been introduced;

(b) Law N° 20,032 of 25 July 2005, which establishes a support system for children and adolescents;

- (c) Law N° 20,207 of 31 August 2007 whereby the period of limitations for sex offences against children will run from the day on which the child in question has attained the age of majority;
 - (d) the 2000-2006 National Plan of Action for the Decent Treatment of Children;
 - (e) the Framework for Action against the Commercial Sexual Exploitation of Children and Adolescents;
 - (f) the 2002-2004 SENAME/IPEC Programme on the Prevention and Elimination of Commercial Sexual Exploitation of Children;
 - (g) the National Plan of Action for Children and Adolescents 2000-2010.
5. The Committee also welcomes the ratification by the State party of:
- (a) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 21 March 2005;
 - (b) the Optional Protocol on the Involvement of Children in Armed Conflict on 31 July 2003;
 - (c) ILO Convention n° 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 17 July 2000.
6. The Committee further welcomes the information that the State party's report is the result of a consultative process which involved different stakeholders, including non-governmental organizations.

II. Data

Data collection

7. The Committee notes that the State party's report provides some statistical data on sexual offences, and welcomes the efforts of SENAME to collect information on economic exploitation of children. It also notes that further statistical data have been provided on the issues covered by the Optional Protocol in the replies to the list of questions. However, the Committee regrets that sufficient data on the extent of sale of children, child prostitution and child pornography and on the number of children involved in these activities is still limited, mainly due to the absence of a comprehensive data collection system as well as to prevailing taboos in the society surrounding these issues.
8. **The Committee recommends that a comprehensive data collection system on the implementation of the Protocol is established in order to ensure that data, disaggregated, *inter alia* by age, sex, minority group, socio-economic background and geographical area are systematically collected and analysed as they provide essential tools for measuring policy implementation. Data should always include**

information on the number of prosecutions and convictions for such offences, disaggregated by the nature of the offence. The State party should seek the assistance of UN agencies and programs, including UNICEF, in this regard.

III. General measures of implementation

Legislation

9. The Committee, while welcoming the adoption in 2004 of Law N° 19,927 modifying the Penal Code and the Code of Criminal Procedure, is concerned at the fact that full harmonization between the national legislation and the provisions of the Optional Protocol has not been completed, especially with respect to the criminalization of all the offences covered by the Protocol in national legislation.

10. The Committee recommends that the State party continue and complete the process of harmonization of its national legislation with the Optional Protocol in order to make effective and adequately implement the provisions contained therein, in particular by defining and criminalizing all the offences covered by the Protocol and providing for appropriate penalties taking into account their grave nature (see also *infra* paragraphs 22 and 23).

National Plan of Action and coordination

11. The Committee, while welcoming the adoption of several plans, programs and studies in the areas covered by the Protocol, is concerned at the inadequate coordination, implementation and follow-up thereto.

12. The Committee recommends that the State party improve coordination among all actors working in the areas covered by the Optional Protocol and among all activities related to its implementation. It also recommends a systematic evaluation of these plans and programs with the participation of relevant actors, including civil society and the children affected.

Dissemination and training

13. The Committee notes with appreciation numerous awareness-raising and training activities in the fight against commercial sexual exploitation of children, including the SENAME led campaigns “In Chile Commercial Sexual Exploitation of Children Exists” and “No Excuses”.

14. The Committee recommends that the State party:

(a) continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups;

(b) strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, through school curricula and appropriate material specifically for them;

(c) in cooperation with all relevant actors of civil society and in line with article 9(2) of the Protocol, promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of all the offences referred to in the present Protocol, including by translating into local languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in such information and education and training programmes.

Allocation of resources

15. The Committee welcomes the increase in the budget allocation to programs and projects in the area of physical and psychological recovery and social reintegration of child victims of sexual exploitation, but is concerned that there is still a large segment of victims left unattended.

16. The Committee recommends that the State party, taking in due account the Committee's recommendations following its 2007 Day of General Discussion on article 4 of the Convention:

(a) provide more systematized information on the budget allocations for the implementation of the Optional Protocol;

(b) provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention, protection, physical and psychological recovery and social reintegration of victims and investigation and prosecution of the offences covered by the Protocol;

(c) adopt a human rights approach to its budgeting with particular focus on children, including in the development and implementation of poverty reduction strategies and policies.

Independent monitoring

17. 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.

18. The Committee recommends that the State party expedite the process of 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.

IV. Prevention of the sale of children, child prostitution and child pornography

Prevalence of the acts covered by the Optional Protocol

19. The Committee, recognizing the State party's efforts to combat commercial sexual exploitation of children, is concerned about:

- (a) the low level of awareness about the existence of child pornography in the State party;
- (b) an increase in prostitution of the boy child;
- (c) an increase in the incidence of sex tourism within the country.

20. **The Committee recommends that the State party:**

- (a) **continue to take measures to tackle the offences covered by the Optional Protocol, *inter alia* by strengthening awareness-raising campaigns containing specific messages on child rights and on the existing sanctions on child abusers;**
- (b) **take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and intensifying its control over these unlawful activities. To this end, the State party should also, through the relevant authorities, cooperate closely with travel operators, NGOs and civil society organizations in order to protect children from commercial sexual exploitation in travel and tourism;**
- (c) **take appropriate measures aimed at combating the use of boys in prostitution;**
- (d) **intensify its efforts to effectively prohibiting the production and dissemination of material advertising the offences described in the Protocol, in accordance with article 9(5).**

Root causes

21. The Committee, while noting the efforts made by the State party aimed at identifying vulnerable sectors of the population which could be at particular risk of being subject to the offences covered by the Protocol, is concerned at the increase of poverty and child sexual abuse, and consequently at their impact on the increase of commercial sexual exploitation in the State party.

22. **The Committee recommends that the State Party continue giving adequate attention, including allocation of resources at financial level, to projects aimed at addressing the root causes, such as poverty, underdevelopment and**

cultural attitudes, contributing to the vulnerability of children to sale, prostitution, pornography and sex tourism, including at the local level. The Committee further recommends that the vulnerable groups identified by the State party be involved in the overall preventive efforts, including the measures aimed at strengthening the families.

V. Prohibition and related matters

Existing criminal or penal laws and regulations

23. The Committee, while having noted (see *supra*, paragraph 3) certain progress in the areas covered by the Optional Protocol, notes with concern that:

- (a) Sale of children is not fully covered yet under Chilean criminal law;
- (b) the existing legal framework may not be sufficient to address cases of adoption of a child in violation of applicable international legal instruments on adoption;
- (c) not all forms and types of trafficking (e.g. trafficking for forced labour and internal trafficking) are prohibited under article 367 (b) of the State party's Criminal Code;
- (d) While 'storage' of child pornography for its commercialization is criminalized, the possession of child pornography is not prohibited and punished in conformity with article 3 (1)(c) of the Protocol;

24. **The Committee recommends that the State Party:**

- (a) **ensure that sale of children is fully covered in the State party's criminal law and prohibited in all cases listed under article 3 (1)(a) of the Protocol.**
- (b) **adopt and implement specific legislation adequately defining and punishing child pornography, including its possession, in accordance with articles 3 (1) (c) of the Protocol;**
- (c) **define and criminalize improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption in conformity with article 3 1 (a)(ii) of the Protocol;**
- (d) **pass the Bill which is currently before the Senate aimed at criminalizing trafficking in children in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the 2000 United Nations Convention against Transnational Organized Crime;**

(e) **ratify the Inter-American Convention on International Traffic in Minors.**

Jurisdiction

25. The Committee, while noting the information provided by the delegation that that the number of convictions and sentences related to the offences covered in the Protocol has increased after the changes in the criminal law and procedure in 2004, it is concerned that the system of judicial follow-up given to all allegations of sale of children, child prostitution and child pornography has yet to improve.

26. **The Committee recommends that the State party continue to strengthen its efforts to promptly investigate, and when appropriate, try and adequately punish, all allegations of sale of children, child prostitution and child pornography within its jurisdiction, according to article 4 of the Protocol. It also recommends that the State party ensure that all child victims of the offences described in the Protocol, have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.**

27. The Committee, while welcoming that the State party may exercise extra-territorial jurisdiction in some of the cases listed in article 4 of the Protocol, is concerned at the information that the exercise of this jurisdiction is actually limited to only some of the offences covered by it and when the author or the victim of the offence is Chilean.

28. **The Committee recommends that the State party take all necessary measures to establish its jurisdiction over all the offences referred to in the Protocol in conformity with article 4.**

VI. Protection of the rights of child victims

Child victims and witnesses of crimes in the criminal justice process

29. The Committee welcomes the measures taken with the amendment of the criminal law and procedure to protect the rights and interests of child victims and witnesses in the criminal justice process. However, the Committee is concerned that this legislation is not always adequately implemented and that children who are used in prostitution and pornography are not always perceived as victims but might be considered as delinquents.

30. **The Committee recommends that the State party:**

(a) **ensure that child victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children;**

(b) **continue to take all necessary legislative and enforcement measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Protocol, they are**

considered as victims and not as offenders; and that the best interests of the child be a primary consideration, in accordance with article 8 (3) of the Protocol;

(c) ensure that professionals make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process;

(d) in light of article 8 (1) of the Protocol, ensure the protection of child victims and witnesses at all stages of the criminal justice process. The State party should be guided in this respect by the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20).

Recovery and reintegration of victims

31. The Committee welcomes the numerous measures taken by the State party in the area of recovery and reintegration of victims, including the project “Mar’kaza” of SENAME in cooperation with OIM providing recovery and rehabilitation to children victim of commercial sexual exploitation as well as the comprehensive programs (Programas de Intervención Integrada Especializada) aimed at a wide range of child victims of different forms of exploitation. It also notes the Bill on Children’s Rights Protection which aims to strengthen the care given to child victims with a human rights approach. However, the Committee is concerned at the lack of systematic and coordinated mechanisms at national level which could address the rights and needs of child victims in a more comprehensive and coordinated manner.

32. **The Committee recommends that the State party:**

(a) increase its efforts to ensure that adequate services are available throughout the country for all child victims, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9 (3) of the Protocol; in this respect, the State party should continue to work with relevant organizations of civil society, including by strengthening its support to their activities;

(b) provide for a systematic evaluation of these services with the participation of relevant actors, including the child victims;

(c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Protocol;

(d) ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Protocol;

(e) ensure a speedy adoption of the Children’s Rights Protection Act.

33. The Committee, recalling that some children victims of the offences covered by the Optional Protocol, such as children trafficked for the purpose of sexual exploitation, may be eligible for refugee status under the 1951 Convention, is concerned that the lack of adequate legislation in accordance with international obligations for refugee protection may jeopardize the possibility for these children to be adequately protected (see also CRC/C/CHL/CO/3, paragraphs 63 and 64).

34. **The Committee recommends that the State party, taking into account its General Comment n° 6 (2005) on the “Treatment of Unaccompanied and Separated Children Outside their Country of Origin”, 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 victims of trafficking, prostitution and child pornography and have a well-founded fear of persecution in their country of origin.**

35. **The Committee further wishes to reiterate in this respect its recommendation to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Helplines

36. The Committee, while welcoming the setting up of two free helplines by SENAME and “Carabineros” tasked with receiving calls from child victims of commercial sexual exploitation, is concerned at the level of follow-up given thereto.

37. **The Committee recommends that adequate follow up is given to calls received by child victims of the offences covered by the Optional Protocol. The Committee further recommends that the existing helplines be toll free, 3-digit and available 24 hours in order to have an outreach component for the most marginalized groups, including in less accessible areas.**

VII. International assistance and cooperation

38. The Committee notes the creation of a Chile/Bolivia Border Committee dealing with smuggling, trafficking and sexual exploitation of children and adolescents as well as the development of a joint strategic plan between the two countries aimed at eliminating trafficking and the worst forms of child labour in their border areas. In this respect, the Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements - such as Niñosur - for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

39. The Committee also encourages the State party to continue its cooperation with UN agencies and programs –including interregional programs - and non-governmental organizations, in the development and implementation of measures aimed at an adequate application of the Optional Protocol.

VIII. Follow-up and dissemination

Follow-up

40. 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 relevant Government Ministries, the National Congress and to local authorities, for appropriate consideration and further action.

Dissemination

41. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, community leaders, media personnel and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

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