



Convention on the Rights of the Child

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WRITTEN REPLIES TO THE LIST OF ISSUES (CRC/C/OPAC/CHL/Q/1) RECEIVED FROM THE GOVERNMENT OF CHILE BY THE COMMITTEE ON THE RIGHTS OF THE CHILD IN CONNECTION WITH ITS CONSIDERATION OF THE INITIAL REPORT PRESENTED BY CHILE UNDER ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

(CRC/C/OPAC/CHL/1)*

[Replies received on 5 December 2007]

Reply by Chile to the list of issues to be taken up in connection with the consideration of the initial report of Chile concerning the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CHL/1)

1. Please indicate whether there is any legal provision in the State party 's legislation which criminalizes compulsory recruitment or involvement in hostilities of a person under 18. Please clarify whether criminal responsibility of legal persons can also be established in the State party 's legal system in case of such recruitment.

There is no offence in either ordinary penal legislation or special legislation, that is, the legislation referred to in the Code of Military Justice, under which recruitment or compulsory involvement in hostilities may be penalized, so that it is not possible for a legal person to perform such acts. It should also be pointed out that the issue of recruitment is a matter of public law, under which only actions expressly authorized may be performed, as distinct from private law, under which all actions which are not expressly forbidden may be performed. In this case, since recruitment of minors is not expressly authorized, it is taken to be prohibited.

2. Please clarify what is meant in article 69 of the Armed Forces ' Recruitment and Mobilization 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 " .

It is true that article 69 of the Armed Forces Recruitment and Mobilization Act states 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".

This provision falls within the juridical context of the law to which it belongs, relating to military service, and hence should be interpreted as part of this organic whole. Consequently, as this Act lays down the minimum age for conscription for military service, which is 18, it follows that when article 69 authorizes the President of the Republic to call upon persons, it does so on the understanding that he or she is authorized to call only upon persons who satisfy this minimum age requirement for deployment to a combat zone. This provision, taken together with the fact that citizens aged over 18, whether or not they have completed their military service, pass into the military reserve, the first with training, the second without, means that it is they who will be mobilized.

3. Please provide detailed information as to whether Chile assumes extraterritorial jurisdiction in case of compulsory recruitment or involvement in hostilities of a person under 18 if committed outside Chile by or against a Chilean citizen.

As indicated in the first reply, since the offence of compulsory recruitment does not exist in ordinary penal legislation or in special legislation, Chile does not exercise extraterritorial jurisdiction in relation to such actions.

4. Please inform the Committee on the number of person s under 18 enrolled in military schools as well as in pre-military schools, e.g. the " Instituto Premilitar Lu í s Cruz Mart í nez " .

Two situations arise in this regard:

(a) Applicants for places in the armed forces schools and the schools in the law and order and security sector must be aged over 18 and must have completed their secondary education. Consequently, there are currently no minors in the defence and police

institutions;

(b) In the Instituto Luis Cruz Martínez, the total enrolment stands at 366, covering both primary education (grades 6 to 8 in the basic cycle) and secondary education (grades 1 to 4 of the middle-level cycle), for pupils aged between 12 and 18.

5. Please clarify whether military training of voluntary recruits under 18 includes training with any kind of arms.

In this regard it should be pointed out that in Chile there are no “voluntary recruits under 18”. Students in the Instituto Premilitar Luis Cruz Martínez receive training with special emphasis on discipline, which does not include training with firearms of any kind, or instruction in their use, or any type of instruction with any type of weapons, under the curriculum approved by the Ministry of Education and the syllabus of this pre-military institution.

More information may be found on the school’s website, www.institutopremilitar.cl.

6. Please provide disaggregated data (including by sex, age and country of origin) covering the years 2004, 2005 and 2006 on the number of unaccompanied asylum-seeking, refugee and migrant children coming to Chile from areas affected by armed conflict. In this respect, please provide information on measures adopted with regard to physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Chile who may have been recruited or used in hostilities abroad.

Disaggregated data (including by sex, age and country of origin) covering the years 2004, 2005 and 2006 on the number of unaccompanied asylum-seeking, refugee and migrant children coming to Chile from areas affected by armed conflict

According to available information, in the years in question there was only a single case of a 17-year-old boy of Colombian nationality, not accompanied by his parents, who lodged an application for asylum in 2005. His mother and a younger sister subsequently also applied for refugee status. This family group has now been granted refugee status.

In the general context, in the years for which information is requested, 15 requests for residence permits for children of Colombian nationality were registered in 2004, and 51 requests for residence permits for children of Colombian nationality and 2 for children of Congolese nationality were registered in 2005. Lastly, in 2007, 70 permits were requested for children of Colombian nationality and 1 for a child of Congolese nationality.

Measures adopted with regard to physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Chile who may have been recruited or used in hostilities abroad

There are no specific measures for the children described above. However, steps of a general nature have been taken in relation to management of migration and asylum, the target population being migrant and refugee children and young people living in Chile. These steps are taken regardless of their migration status (regular or irregular) and relate to regularization of the residence status of any child who is enrolled in an educational establishment recognized by the State.

In addition, initiatives are being pursued which will lead to:

(a) Regularization of foreign children aged under 18 to enable them to have access to the health systems nationwide on an equal footing with Chilean children, regardless of the migration status of their parents. In this area the Ministry of the Interior and the Ministry of Health are working jointly under a cooperation agreement;

(b) Access to preschool education for immigrant and refugee children. In this area the National Kindergartens Board and the Ministry of the Interior are coordinating their activities;

(c) Inclusion of asylum-seeking foreigners as beneficiaries in the benefits system of the National Health Fund. The Ministry of the Interior and the Fund are working together on this initiative.

7. Please explain how the access to arms is regulated within the State party. Please also provide information on the rules regulating the production, sale and distribution of small arms and other weaponry. Is there any domestic system of control for the sale of arms with respect to the country of final destination, e.g. whether children are/may be recruited or used in hostilities?

Access to weapons is regulated by the Arms Control Act, article 5 of which sets out the requirements to be met by individuals wishing to own, keep and carry a weapon, including that of being an adult (aged 18 or over). It also prohibits the issue of permits for owning or keeping weapons to persons who have been sentenced to afflictive punishments or to punishments for domestic violence. Under this Act, arms control in Chile is in the hands of the Ministry of Defence, through the Office of the Director-General for National Mobilization, who acts as the central coordinating authority for the implementing and supervisory authorities which correspond to the garrison commands of the Chilean armed forces and Carabineros.

The Carabineros (uniformed police) have the power to check that registered weapons are held only in the registered homes. Persons who hand over illegal weapons to the police or armed forces are released from criminal responsibility.

Production of any weapons by individuals must be authorized by the Ministry of Defence. The law prescribes severe penalties for persons carrying home-made weapons or traditional weapons whose serial number has been erased.

Exports of instruments of war must be authorized by the Ministry of Defence on the advice of the Ministry of Foreign Affairs. One of the factors to be borne in mind in such cases is that such weapons must not be exported to countries engaged in armed conflict.
