



Convention on the Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 8
(1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE
CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT****Initial reports of States parties due in 2005****CHILE***

[19 January 2007]

1. The present document is being submitted pursuant to the commitment under article 8 to draw up a report following the entry into force of this Protocol, so as to provide information on the measures taken to implement its provisions. The Protocol was signed by our country on 15 November 2001, and entered into force on 31 August 2003.

2. In the drafting of this report, background information provided by the Ministry of Defence was used, as processed by the Ministry of Planning. This information was reviewed in accordance with the comments made by non-governmental organizations (NGOs) known for their work on children's issues. To this end, on 13 October 2006 the Ministry of Foreign Affairs and the Ministry of Planning held a workshop which was attended by representatives of the Ministry of Defence, the Ministry of Justice, the United Nations Children's Fund (UNICEF) and the following NGOs: the Network of NGOs for Childhood, including Fundación Anide and ONG Cordillera, the Chilean United Nations Association (ACHNU), Corporación Opción, ONG Raíces and Corporación Paicabí.

3. This workshop was prepared jointly by the Ministry of Foreign Affairs and the Ministry of Planning. Based on this, concerns were expressed, duly dealt with and addressed by the various reporting institutions, and written observations were received, enhancing the final report. This meeting also made it possible to dispel certain doubts concerning the importance of the protocols.

4. The legal standards commented upon in this report are those set out in Decree Law No. 2,306 of 12 September 1978 on the recruitment and mobilization of the armed forces, as recently amended by Act No. 20,045 of 10 September 2005 on the modernization of compulsory military service. The main change made by this Act related to the preference given to the selection of persons volunteering for military service; only if there are too few such volunteers to constitute the force required is compulsory recruitment used.

Article 1

States parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

4. Under the regulations applicable to the Chilean armed forces, no such situation can occur. One of the requirements for entry into the military schools is that the person must have completed the fourth year of secondary education; this is equivalent to the final level of compulsory education, which is generally completed at the age of 18. In some cases the age requirement of 18 years for entry into these schools is set out explicitly. In any event, the study courses last two to five years, which means that the students are not minors when they graduate.

5. In any case, under the provisions in force, persons under the age of 18 may not be mobilized when they are performing military service. This means that they may in no circumstances take part in an armed conflict or state of emergency

6. decreed by the President of the Republic in accordance with the Constitution.

Article 2

States parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

7. In Chile, compulsory enlistment exists only from the age of 18, and applies to men. For women, enlistment is always voluntary.

8. Under article 18 of the Decree Law on the recruitment and mobilization of the armed forces, "All Chileans attaining the age of 18 shall be included in the Military Register, which shall be updated by the Department of National Mobilization with the information provided annually by the Civil Status and Identification Service, in accordance with the provisions of article 3."

9. Under article 21 of the same Act: "The conscription base shall consist of all persons subject to the obligation to perform military service. It shall be drawn up every year by the Department of National Mobilization and published in the form established by the regulations. The conscription base shall comprise males included in the Military Register for the current year"

10. Chilean law has no provisions allowing the authorities to reduce the minimum age for recruitment in exceptional circumstances (for example, during a state of emergency).

Article 3

1. States parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

11. As explained above, the legal provisions in force in Chile do not allow persons under the age of 18 to perform compulsory military service or to enter the armed forces schools.

12. The recruitment process for the armed forces has as a guiding principle that preference should be given to selecting persons who have taken the decision to serve on a voluntary basis. Only if there are too few volunteers to constitute the force required is the missing number made up by compulsory means with non-volunteers, through a lottery system (art. 29). This lottery process was first used in 2006, after the legal reform introduced by Act No. 20,045 of 2005. It covers men over 18 years of age included in the Military Register, as mentioned in paragraph 8 of this report.

2. Each State party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

13. In the case of the Chilean armed forces, the intention to volunteer must be expressly and formally indicated by the person in question, appearing at the respective recruitment office, a provision applicable to both men and women. It must also be demonstrated that the legal, regulatory and health requirements have been met (art. 29A).

(b) Such recruitment is done with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

14. Information on the rights and duties of persons performing military service is amply disseminated every year through the media (daily newspapers, television and radio) and by the recruitment offices throughout the country.

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

15. In order to volunteer it is necessary to appear in the conscription base, and thus to be 18 years of age. The only provision in the recruitment law envisaging the possibility that a person of 17 years of age may perform military service as a volunteer calls for the person in question to make a specific request, and prohibits that person from being mobilized before reaching the age of majority. Article 32 sets out that: "The Department, at the request of the person in question, may authorize the person to begin military service up to one year early, as a volunteer, following the procedures of ordinary conscription. In any event, such persons shall not be mobilized before they reach the age of 18." This provision means that, in any case, persons under 18 cannot take part in an armed conflict or a state of emergency decreed by the President of the Republic.

16. The selection and recruitment process for those who perform compulsory military service and those who volunteer for it is the same, and is governed by the following texts:

Decree Law No. 2,306, as amended by Act No. 20,045, governs the entire "recruitment process". This process is covered by chapter II ("Selection"), paragraph I ("Selection control") and paragraph II ("Troop selection process");

The Regulations regarding troop selection for the armed forces, which in the selection process covers presentation and verification of citizens' identity, recording of personal particulars, analysis and evaluation of socio-economic and academic problems, a medical examination and assignment of recruits to a barracks.

17.As for medical examinations for troop selection purposes, rules are established as follows:

The medical examination is carried out solely by medical officers or professionals from the armed forces, who record the results in the respective medical files;

The medical examination includes: an eye test, an examination of the muscular and skeletal system, an examination of the cardiovascular, peripheral vascular and circulatory systems, a general check-up and a dental examination;

On the basis of the examination, citizens are classified into three categories: able-bodied, deferred and rejected;

Able-bodied citizens who are selected for assignment are given the following tests: x-ray or abneugraphy; blood test; urine test; AIDS test.

18.As regards the minimum length of military service and the conditions for early discharge, article 35 stipulates that "Military service shall be for up to two years in the army, navy or air force." The drafting of persons to perform military service takes place by supreme decree, which must indicate the length of service. In special cases, a supreme decree may reduce the period of military service established in the draft, or provide for such service to be performed at intervals, in specified periods.

19.The armed forces offer incentives to encourage citizens of military service age to volunteer, as described below:

Training programmes: with the participation of the National Training and Employment Service, the Private Development Corporation and other regional bodies and companies in Chile, training courses are offered in various areas, including technical specialties such as computing, electrical work, plumbing, catering, automotive mechanics, bricklaying and other fields;

Completion of studies: the possibility of completing basic and secondary education for recruits who have not finished their schooling;

Ministry of National Defence study grants: these are intended for those recruits who during their military service are awarded the "18 September" prize, which is given to the outstanding soldier in each unit;

Points toward a housing subsidy: a programme which gives all citizens who perform military service a number of points towards obtaining such a subsidy;

The opportunity to enter the armed forces, police bodies and private security agencies;

Free medical and dental coverage, and free social assistance;

Transport programme: a benefit for soldiers performing military service in isolated areas of the country. They are given air or surface travel tickets to allow them to visit their family;

Workforce reintegration programme: this involves setting up an employment exchange that maintains a register of discharged soldiers at the recruitment centres, where companies can seek qualified workers.

4.Each State party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5.The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

20.Regarding schools operated by or under the control of the armed forces, it should be noted that it is a requirement for entry into the military schools to have completed four years of secondary education (the final level of the 12 years of compulsory education) and to have reached the age of 18.

21.Under the national education regulations, primary education begins at the age of 6, and compulsory primary and secondary education lasts for 12 years, meaning that graduation from secondary education generally takes place at the age of 18. It is possible, albeit exceptional, that a student in the first year of studies at an armed forces school may initially be under the age of 18 if a child was accepted for primary education at the age of 5 and some months instead of 6.

22.The recruitment of children is not possible under the Chilean system, as only persons over 18 years of age can perform military service or enter armed forces schools.

23.In Chile, military instruction takes place only at armed forces schools. In this respect, it should also be mentioned that there are cases in Chile such as that of the Luis Cruz Martinez Military Preparatory Institute, which has no administrative relationship with the Ministry of Defence. Like any other educational establishment, it is supervised by the Ministry of Education.

24.The plans and curricula of this Institute are based on the decrees issued by the Ministry of Education, and take into account the educational reform for primary and secondary programmes. Its curriculum comprises two hours per week devoted to preparatory military training: this is compulsory, and basically includes aspects related to discipline and exercises such as formations, parades, salutes, ranks and emblems of the armed forces. There is no shooting practice or instruction in the use of weapons.

25.It is important to note that at military schools and military academies of higher learning of the Chilean armed forces, and also at the Joint Training Centre for Peacekeeping Operations, courses in human rights and humanitarian law, as appropriate, are included in the

curriculum. The courses reflect the nature of the students at each institution.

26. As explained above, the armed forces schools generally have no students under the age of 18; for this reason, they are not concerned with matters of disciplinary measures in relation to criminal responsibility of young persons under that age, or with special judicial procedures for such persons. This notwithstanding, there are general standards which apply to respect for the dignity and rights of the individual in any procedure.

27. Students at the schools are not members of the armed forces. Only certain provisions of the Staff Rules of the Armed Forces (DFL No. 1 of 1997) apply to them. The students always have the right to drop out, and every year there are cases of voluntary withdrawal owing to physical or academic demands, problems in adjusting to the boarding system or personal reasons.

28. As regards respect for the rights of the child as a victim and a witness in legal proceedings in the event of a conflict, the new criminal justice system, which is applicable in all circumstances, affords special protection in this area. It applies generally to persons who have attained their majority, and extends further protection to minors.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

29. Given the fact that there are no armed groups other than the armed forces in Chile, this article does not apply.

Article 6

1. Each State party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. States parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

30. This report will be disseminated to the public through the web pages of institutions, and will be circulated directly to the NGOs that assisted in drafting it.

3. States parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

31. This does not apply to the situation in Chile.
