

**CHILE'S ALTERNATIVE REPORT ON THE IMPLEMENTATION
OF THE OPTIONAL PROTOCOL TO THE CONVENTION
ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN,
CHILD PROSTITUTION AND CHILD PORNOGRAPHY**



ECPAT International



NGO Raíces



NGO Paicabí



Chile's National Network of NGOs on Children and Youth

June 2007

CHILE



1. Introduction

This report was produced by civil society organisations in Chile and complements the initial report on the Implementation of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* submitted by Chile in December 2006. It also refers to Chile's State Report and ECPAT International's monitoring report on Chile,¹ and includes experiences from the organisations involved in its drafting; discussion groups with professionals working with victims of commercial sexual exploitation (CSE); specific consultations with victims of commercial sexual exploitation who were assisted in rehabilitation programmes; statistics related to sex crimes, published by the Public Ministry and other organisations;² and surveys on the enforcement of sex crimes legislation.³

This report was compiled by ECPAT International, ONGs Raíces and Paicabí – members of the ECPAT network – and Chile's National Network of NGOs on Children and Youth. ONGs Raíces and Paicabí have vast experience in the prevention, awareness raising, research and rehabilitation of victims of commercial sexual exploitation (CSE); ONG Raíces also works with victims of trafficking. Chile's National Network of NGOs on Children and Youth comprises organisations that also have experience in the rehabilitation of child victims of commercial sexual exploitation, such as Cordillera - Centro Remolinos and Corporación Prodel - Centro Imagina.

ECPAT International is a global network of organisations and individuals working to combat the commercial sexual exploitation of children, child pornography and trafficking in children for sexual purposes. It encourages the world community to ensure that children everywhere enjoy their fundamental rights free from all forms of commercial sexual exploitation. ECPAT has 81 members in over 74 countries. Since 1997, ECPAT has published an annual monitoring report on the progress of the implementation of the Agenda for Action, which documents and analyses the initiatives by governments, NGOs and other social actors to eradicate the commercial sexual exploitation of children (CSEC). It also coordinates, together with local organisations, reports on the implementation of measures related to the *Optional Protocol on the sale of children, child prostitution and child pornography*,⁴ based on the experiences of civil society organisations working on these issues.

ONG Raíces, has been working with underprivileged youth, women, land rights activists and other active civil society organisations since 1991. The group began to focus on commercial sexual exploitation of children in 1998, when it became clear that it was an issue of high concern during a programme that they were running to assist teenage mothers. ONG Raíces has been active in tackling CSEC and trafficking in children since 2001 through advocacy work and prevention initiatives, training and sensitisation activities and rehabilitation for CSEC victims.

ONG Paicabí was established in 1996 and focuses on promoting and upholding the rights of children in the framework of the *UN Convention on the Rights of the Child*. It currently has seven specialised centres covering the Valparaíso and Coquimbo regions in Chile and addresses issues such as violence against children, sexual abuse and the commercial sexual exploitation of children. ONG Paicabí also focuses on prevention and awareness raising on the rights of children, periodically organising community campaigns, courses and training.

¹ ECPAT International (2006) Informe global de monitoreo de las acciones en contra de la explotación sexual comercial de niños, niñas y adolescentes. Chile.

² Public Ministry (2005). Perfil de Víctimas e imputados en causas ingresadas por delitos sexuales durante el año 2005. Santiago de Chile.

³ ILO, SENAME, Universidad Diego Portales (2007) Guía para el tratamiento jurídico de la explotación sexual comercial de niños, niñas y adolescentes. Santiago de Chile; UNICEF (Office for Chile and the Southern Cone), Universidad Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal. Informe Final. Santiago de Chile.

⁴ It will be referred to as the Optional Protocol.



Chile's National Network of NGOs on Children and Youth was created in 2001. It is recognised as a political and social actor whose mission is to play a critical and proactive role in society by promoting the protection of children's rights in order to create a rights-based culture. With this goal in mind, the NGOs that make up the network work jointly, support each other and share experiences. The Network's approach is decentralised and respects regional independence while emphasising common interests. In 2006, the Network had four member regions: Atacama, Bío Bío, Valparaíso and Metropolitana (II, VIII, V and XIII, respectively), with almost 60 NGO participants. In 2007, a process began to incorporate new regions, and two new ones were added: Arica (XV) and Araucanía (IX).

ONG Cordillera – a member of the Chile's National Network of NGOs on Children and Youth since its inception – coordinated the input for this report. Since 2005, it has been implementing a project focusing on the rehabilitation of CSEC victims in collaboration with other regional organisations, which drew on their experiences to share valuable information. These organisations include Centro Imagina, from Corporación Prodel; SERPAJ Arica and Valparaíso; Proyecto Aura; Centro Renacer, from Rancagua; Fundación Sottoilmonte; and Proyecto Rukalaf from Temuco.⁵

Special thanks must be extended to Mr. Hernán Fernández Rojas, a lawyer who regularly collaborates with ONG Raíces. His support in the analysis and understanding of the legal environment regarding the crimes mentioned in the Optional Protocol was essential.

A number of civil society organisations working on children's issues were invited to review and provide feedback on Chile's State Report. Among these were three organisations that also contributed to the compilation of this report: ONGs Raíces and Paicabí and Chile's National Network of NGOs on Children and Youth. This type of collaboration is a good practice that should be replicated by all key social actors in future activities.

Despite these types of initiatives, civil society is not always considered a valid actor (i.e., more than a consultative body) that can assist in the development and implementation of public policies, particularly child policies, based on its experiences. Different state bodies, civil society and international organisations need to work jointly and in coordination in order to adequately address the offences outlined in the Optional Protocol. This would constitute conjoining NGO experiences working with child victims; law enforcement knowledge in prosecuting crimes and protecting victims; technical input from international organisations; creativity and initiative from the private sector; and the administrative capacity and mobilisation of resources from the State. If coordinated appropriately, the help provided to child victims of the crimes outlined in the Optional Protocol will be more effective, less isolated and will avoid duplication of efforts.

With regard to commercial sexual exploitation and trafficking in human beings, most of the developments in visibility, prevention, research and awareness raising have been promoted by civil society organisations and implemented with the support of international organisations. Without their initiatives and technical and financial assistance, many developments would not have been achieved. Finally, it should be remembered that these crimes are complex and transnational; powerful criminal networks are frequently behind them. If Chile does not make a coherent and strong effort to join all the initiatives developed to protect children from commercial sexual exploitation, the country will not have the necessary capacity to deal with those crimes. Undoubtedly, the initiative to promote and coordinate this joint work should come from government bodies, which should maintain a receptive attitude to the requests for cooperation and collaboration by civil society.

⁵ All these organisations took part in a statistical approach related to CSEC for this report.



1.1. Terms and structure of the report

The term ‘commercial sexual exploitation of children’, or CSEC, is used instead of ‘child prostitution’. Although this term encompasses different manifestations (including child pornography, trafficking in children and child sex tourism), it will be used to refer to the definition of ‘prostitution’ in the Protocol (“*Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration*”). With regard to the sale of children, the concept is not part of the public or political agenda. The concepts of ‘illegal adoption’ and ‘trafficking in children’, which, though not much addressed or acknowledged, have become more relevant in the last few years, both in the media and in the development of policies and legislation. The *Optional Protocol* does not specifically mention trafficking, but it is addressed in the *Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (Palermo 2000). However, in the general guidelines revised by the Committee, trafficking in children as a form of sale has been included, involving other actions such as recruitment, transfer, harbouring and receipt of children apart from the material exchange (sale).

This report maintains the order assigned by the Committee on the Rights of the Child for Chile’s State Report. Thus, the structure is as follows:

1. Introduction
2. General observations
3. Scope of the problem
4. General measures adopted by Chile in order to implement the Optional Protocol
5. Preventive measures
6. Legislation and Justice
7. Conclusions and recommendations

For the presentation of the information to be coherent and to detail strengths and weaknesses in the implementation of policies to prevent, prosecute and punish criminals and protect victims of the related crimes (illegal adoption, sale of children, child pornography and CSEC), each chapter is divided into three parts: Sale of Children, CSEC and Child Pornography. The Sale of Children section includes illegal adoption and trafficking in children.

2. General observations

The organisations that were involved in compiling this report applaud the ratification of the Optional Protocol, as it focuses on issues that are difficult to address and identify. The sale of children and child prostitution (hereafter referred to as the commercial sexual exploitation of children, or CSEC) and child pornography in Chile are issues that are still understood and addressed under certain cultural perceptions that:

- Tend to stigmatise underprivileged and marginalised children;
- Overestimate the value of goods, socially justifying violent acts against the victim who has received something in return;
- Justify the abuse of power with discriminatory prejudice related to gender, ethnicity and social class;
- Consider children to be the property of adults; and
- Place some rights (such as the right to property or to privacy) above the child’s best interests.⁶

⁶ Eloquent is the news from *El Mercurio* -the most important national newspaper in Chile- on June 12, 2007, explaining a Supreme Court decision to dismiss a trial against a person charged with the sexual abuse of a 12-year-old girl and possession of pornographic material. “*The Supreme Court considered that the recovery of a CD with photos and videos of minors used by the Public Ministry as proof against the defendant violated his*



Generally, society pays little or no attention to or sensationalises (fostered by the media) the crimes outlined in the Optional Protocol. This apathy tends to view child victims as responsible for the situation they are in, with society's prejudicial and stigmatising justifications suggesting that the children benefited from the exchange or that they wanted to be in such an exploitative situation. However, some disagreeing voices emerge, and are sometimes echoed by the media and society.

The organisations that participated in the drafting of this report raise awareness about child sexual exploitation, the sale of children and child pornography, which constitute modern forms of slavery, and sensitise society about the fact that these children are victims of circumstances, often involving extreme abuse of power and violence. This puts them in a situation of vulnerability, for which they need special protection. This is also the approach of the Chilean Government.⁷ However, when implementing measures and policies, prejudice and cultural constructions are still worryingly prevalent. **Faced with this negligence, which discriminates against the most vulnerable sector of society, it is the State's duty, as it committed itself to international instruments such as the *Convention on the Rights of the Child*, the *1996 Stockholm Agenda for Action against CSEC* and the *Optional Protocol*,⁸ to develop a policy to ensure optimal conditions for child victims of CSEC, trafficking and pornography to restore their integrity so that they can enjoy their fundamental rights and to ensure that similar violations will be prevented. This policy must be coherent, integrated and regularly monitored, as it will address a complex problem with multiple causes. At the same time, it must include effective actions to raise awareness; prevent; detect; prosecute and penalise those responsible; protect victims; and ensure care and assistance for victims and reparation for the damage they have suffered.**

Although the abovementioned organisations acknowledge that, since 2004, significant achievements have been accomplished regarding policies on the sale and commercial sexual exploitation of children and child pornography, these issues do not receive sufficient attention within public policies and have not been prioritised yet.

The way in which the State has addressed these issues and its obligations after signing and ratifying the Optional Protocol lacks the following elements:

right to against unwarranted entry into his residence. This was considered so because the child victim's mother broke into the engineer's office to look for proof of the crimes reported by her daughter." (El Mercurio, June 12, 2007). Obviously, in this case, the defendant's right to privacy was prioritized over the child's best interest. There was no public reaction in the country about this decision, which certainly causes concern.

⁷ However, it should be noted that there are still forms that remind us of old concepts of childhood and adolescence, such as the use of the word "minor" to refer to a child. Moreover, the fact that the body whose function is to protect children, the National Service for Minors, belongs to the Ministry of Justice also shows that there is a tendency to consider child policies from the criminalization or victimization point of view, while other types of measures are implemented by other ministries, such as Health and Education. In its Paragraph 45, the Chile's State Report mentions the government's intention to separate the actions related to the protection of rights from those related to misdemeanors committed by teenagers. Finally, it should be warned that Minors Law 16618 is still in force, although it was reformed in May 2002 by Law 19806, which has not been revoked yet by the Protection Law.

⁸ Currently, the Protocols ratified by Chile are: the Convention on the Rights of the Child in 1990, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2003; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime (Palermo 2000) in 2003; Protocol against the Smuggling of Migrant by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime; the ILO Convention No. 182 on the Worst Forms of Child Labor in 2000; the Reciprocal Cooperation and Coordination Plan for Regional Security in MERCOSUR in 1999, and the Agenda for Action from the First World Congress on CSEC and Trafficking in Persons in 1996.



- **Efficient State leadership to address these issues (many of these achievements were the result of continuous advocacy work and support of international and civil society organisations);**
- **Effective implementation of initiatives - even though the establishment of goals and measures, both in the executive and the legislative context, shows an acceptable level of development; and**
- **Monitoring and assessment of policy development and implementation; this is an essential and urgent task.**

One of the core principles of the *Convention on the Rights of the Child* – the child’s best interest – is repeatedly violated due to a cultural system that makes children vulnerable, as is sometimes evident in the attitudes and actions of society, and in some cases, of professionals who provide services supporting the protection of children. The other CRC core principles, such as the right to survival and development; the right to non-discrimination; and the right to participation, are also neglected, particularly in the event of crimes and violations that seriously endanger the physical and psychological integrity of children.

3. Scope of the problem

It is important to note that at the time of writing, **reliable statistics on the issues described in this report that could reveal the real scope of the problem were unavailable.** Generally, it is quite difficult to obtain such information, especially considering the complexity of these phenomena, which are often socially rooted and difficult to detect. However, such a lack of data also reflects the fact that these issues have a low political priority. If compared to detailed surveys and studies related to crimes and security, it is clear that more resources are spent on studying the criminal behaviour of children than violations to their rights.⁹ **The necessity to quantify this type of information is essential if these issues are to be seriously addressed, as the assumption could be made that there is no in-depth knowledge regarding these topics and, thus, any efforts to address them will be partial.**

Although Chile’s State Report acknowledges the difficulty in obtaining data, it does not contain any proposals or intentions to solve the problem. The low number of qualitative and quantitative research studies on these issues also drew the attention of the Committee on the Rights of the Child when they analysed Chile’s State Report. **The Committee’s recommendation to conduct further research to study the real dimension of the problem is fully supported.** With regard to the studies already carried out, where qualitative research is prioritised, the significant initiative and support of civil society and international organisations should be emphasised, as well as that of the State, on several occasions, through the National Service for Minors (SENAME). These studies cover a range of topics related to the situation of child victims and the care provided to them.¹⁰

⁹ Fundación Paz Ciudadana has conducted several research studies on crimes. These studies also address topics with a more qualitative than quantitative dimension, such as violence in schools.

¹⁰ In the last few years, the following publications have studied the trafficking in persons and CSEC phenomena. **About trafficking:** IOM (2006) Estudio Exploratorio sobre Trata de Personas con Fines de Explotación Sexual en Chile, Santiago de Chile; Fundación Instituto de la Mujer y Corporación La Morada (2004) Informe Final del proyecto sobre Tráfico de Mujeres , Santiago de Chile; ONG Raíces (2001) Diagnóstico Descriptivo de Comercio y Tráfico Sexual Infanto-juvenil, Terre des Hommes Alemania, Santiago de Chile. **About CSEC:** Araya Castelli, Denisse et al. (2007) “Ya no tengo nada que esconder”. Experiencias de reparación con niños, niñas y adolescentes víctimas de explotación sexual comercial, CAFOD, UNICEF, ONG Raíces; SENAME, U. Católica de Valparaíso, PAICABI (2007) "Diagnóstico de la Situación de Abuso Sexual Infantil en la V Región"; ILO-IPEC, U. ARCIS (2007) “La demanda en la explotación sexual comercial de adolescentes: el caso de Chile, Santiago; PAICABI (2006) Los secretos del eclipse. Explotación sexual comercial infantil, Valparaíso; SENAME, ILO/IPEC (2005) Evaluación de impacto de las acciones desarrolladas desde la institucionalidad pública en explotación sexual comercial infantil; ILO, SENAME, U.



3.1. The term ‘sale of children’ is not defined within Chile’s legislation or in its policy design. Thus, the terms ‘illegal adoption’ and ‘trafficking in persons’, especially children will be used.

a. Illegal adoption

There is no statistical data about the extent of illegal adoption of children in and from Chile; however, information about specific cases is sometimes made public through the media. Also, as Chile’s State Report indicates (paragraphs 63 and 64), the police are aware of Internet networks that recruit and sell children for adoption purposes. These networks use fraudulent techniques and violate the laws on adoption. According to the State Report, other actions include children leaving the country with their mothers or pregnant women leaving the country to give birth. This was reported by SENAME, which also mentioned at least 25 cases that had been detected.¹¹ Further information on these cases was unavailable.

The issue of illegal adoption is mentioned in the State Report, but no initiatives to quantify the phenomenon are described. If there is no systematic approach to the extent of this problem in Chile, no efficient policies can be developed.

b. Trafficking in children

There are no official figures about trafficking in children; in fact, this problem has been underreported and misreported in different contexts for a long time. The fact that Chile’s State Report uses incorrect terms such as ‘tráfico de niños’¹² (paragraph 7), or ‘trata de blancas de menores de edad’¹³ (paragraph 38) shows the nonchalance with which the problem is addressed. **However, the Government of Chile, through SENAME, has made efforts to include this issue on its agenda** and is currently working with the International Labour Organization (ILO) on a research in the north of Chile on child labour and potential trafficking cases, which will be the first of its kind. It should be emphasised that the efforts being made to obtain more detailed information about the trafficking situation should have a greater scope and should also incorporate the knowledge generated by other agencies that are not linked to the State.

In recent months, the media has been featuring the dismantling of trafficking networks, mainly in the north of the country.¹⁴ The Public Ministry’s report on sex crimes also indicates that, during 2005, there were six trafficking cases: one of the victims was a teenage girl.¹⁵ Taking into account that these crimes are usually difficult to report, this small figure does not represent the actual number of occurrences, but is evidence that the phenomenon exists.

ARCIS (2004) Estudio de la Explotación Sexual Comercial infantil y adolescente en Chile”; ILO-SENAME-MINTRAB (2004) Trabajo infantil y adolescente en cifras. Síntesis de la primera encuesta nacional y registro de sus peores formas; ILO-IPEC (2002 y 2004) “Estudio de la problemática. Sensibilización social y prevención y atención a NNA víctimas de ESC”, Santiago; Araya Castelli, Denisse y Patricia Latorre Gaete (1997) Las hijas del desamor. Prostitución Juvenil, ONG Raíces, Santiago de Chile.

¹¹ (October 12, 2006; Radio Cooperativa):

http://www.cooperativa.cl/p4_noticias/antialone.html?page=http://www.cooperativa.cl/p4_noticias/site/artic/20061012/pags/20061012194907.html.

¹² In Spanish there has been a misuse of the word ‘tráfico’, which means ‘smuggling’ of migrants, as established by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo 2000). In some cases, there has been a literal translation of the English word ‘trafficking’ which should be translated as ‘trata’ in Spanish. Organisations working on this issue have insisted on the correct use of terminology.

¹³ This is an obsolete term which referred to women being trafficked for sexual purposes; it is no longer used.

¹⁴ In the city of Valparaíso, in 2007, a trafficking network was discovered and dismantled. They worked from a nightclub, and four female teenagers were involved.

¹⁵ Public Ministry (2005). Perfil de víctimas e imputados en causas ingresadas por delitos sexuales y violentos durante el año 2005, Santiago de Chile.



Several recent research studies funded by the International Organization for Migration (IOM) show that Chile is a sending, receiving and transit country for trafficking in persons.¹⁶ An exploratory study on trafficking in persons for sexual purposes in Argentina, Chile and Uruguay was conducted by IOM in 2006; 99 cases of trafficking were identified in Chile. Based on that information, the researchers contacted and interviewed 36 female victims of trafficking in persons for sexual purposes. The study states that "... men, women and children were identified as victims of trafficking in persons in the country".¹⁷

Despite the fact that the research did not specifically focus on trafficking in children, exploratory research currently being conducted by ONG Raíces and IOM shows that the number of cases of child victims, mainly of domestic trafficking, is increasing. This study complements a survey carried out in 2001 that managed to identify 17 cases of internal trafficking in children in only a few months. Although this was not a significant figure statistically, it showed that the problem exists in Chile when it had been previously unrecorded.

Migration is on the rise in Chile. Since 1996, there has been a significant increase in the number of immigrants, particularly from Andean countries.¹⁸ The immigrant population mainly comprises females (53 per cent), 18 per cent of whom are under 15, from Peru and Bolivia (approximately 10 per cent).¹⁹ According to figures provided by the Department of Migration, approximately 90 per cent of foreigners living in Chile are legal migrants authorised to live in the country and perform certain activities.²⁰ Children and women who have precarious jobs are among the most vulnerable groups of immigrants, according to the observations of organisations that support them.²¹

Trafficking in persons is a complex crime that involves the constant modification of its characteristics and routes, adapting itself to various situations. It is sometimes perceived as normal by the victims and by society. **For these reasons and due to the fact that it is an international problem, Chile should make extra efforts to conduct research on the extent and nature of trafficking in human beings so that it can be addressed through the design and implementation of appropriate policies.**

3.2. With regard to commercial sexual exploitation, it must be acknowledged that there is more information about its characteristics and the way in which it affects children in Chile.

Several studies have been sponsored, mainly by ILO, in order to:

- Gain a better understanding of the extent and characteristics of the phenomenon in Chile;
- Bring to light the characteristics of demand; and
- Identify the type of care that should be provided to victims.

¹⁶ Fundación Instituto de la Mujer y Corporación La Morada (2004) Informe Final del proyecto sobre Tráfico de Mujeres, Santiago de Chile.

¹⁷ IOM (2006) Estudio Exploratorio sobre Trata de Personas con Fines de Explotación Sexual en Chile, Santiago de Chile.

¹⁸ Considering the information from the 2002 Population and Housing Census and projecting a total of residency permits granted by Chile since then, over 50% of the total of immigrants currently living in Chile arrived in the country after 1996.

¹⁹ Document: Situación Migratoria en Chile: Análisis con Base en los Datos Censales y los Registros de Residencia del Departamento de Extranjería y Migración. Departamento de Extranjería y Migración. 2007.

²⁰ Ibid.

²¹ Instituto Católico Migrante (INCAMI); Servicio Jesuita Migrante, among others.



Several NGOs have systematised their own experiences while working on the rehabilitation of CSEC victims, conducting qualitative research detailing the situation of those affected.²²

These studies present the following overview about commercial sexual exploitation of children in Chile:

- a. **Estimated figures.** Statistics on the number of CSEC victims are only estimates or partial figures. A survey carried out by Universidad Arcis, ILO and SENAME presented the initial figures on CSEC for the country. The study covered three regions (I, VIII and Metropolitana), and a general figure was estimated: 3,719 children, 80 per cent of whom are girls. According to the study, the average age of these victims is 12 to 13, but there may be younger victims.

According to NGOs working in this field, CSEC is a usually hidden and generally tolerated phenomenon, for which the figure from this study is not representative of the scale of the problem and is probably lower than the actual number. However, since it is only an estimate, it is necessary to validate it with other types of regional, more limited research in order to understand its magnitude.

- b. **Partial figures.** The V Region's SENAME, working jointly with Universidad Católica and ONG Paicabí, conducted a study entitled '**Situational Analysis on Child Sexual Abuse in the V Region**'. It focused on describing the extent and characteristics of child sexual abuse and CSEC in the V Region of Valparaíso. It detected 582 cases, 481 of which were different forms of sexual abuse (rape, assault and statutory rape); and 101 were cases of sexual exploitation, especially child prostitution. 75.1 per cent were females and 24.7 per cent were males; 45.7 per cent of the victims were 11 to 15 years old; 31.4 per cent were six to 10 years old; 12.9 per cent were 16 to 17 years old; 9.8 per cent were one to five years old; and 0.2 per cent (1 case) were 18 years old. The average age was 11. This information is not disaggregated between commercial sexual exploitation and sexual abuse.

It must be noted, however, that the figures from this study correspond to children who were registered by SENAME as abuse or CSEC victims. In places where there are no centers dealing specifically with CSEC, cases related to this problem are not easily identified. Thus, it must be assumed that this is also a partial figure describing those cases that were known of and registered by SENAME, so they are not quantitatively representative of the phenomenon.

The Chile State Report also includes a figure from the Registry of the Worst Forms of Child Labor, an ILO initiative led by the Labour Ministry in which the police, SENAME and the Ministry of Education contributed. This Registry, as the Report indicates, mentions 1,515 cases of child victims, 22 per cent of which were victims of commercial sexual exploitation - that is, 303 children. Since 730 children are assisted by rehabilitation programmes for CSEC victims, this figure is partial and not very useful in understanding the extent of the problem.

Figures published by the Public Ministry regarding the number of sex crimes reported annually show that the situation is worrisome. In 2005, 12,871 sex crimes were reported with 10,765 victims, 9,207 of whom were women, which shows that gender violence is an important part of the problem. There is a larger number of victims under 18: 7,529 (6,242 were female) than adult victims: 3,230. Among the victims who were under 18, the greatest number were aged between seven and 18 years of age (5,241), an age group also over-represented among commercial sexual exploitation victims. The Public Ministry report²³

²² NGOs Raíces and Paicabí have conducted and/or participated in different studies on the subject (see footnote 10)

²³ Public Ministry (2005). Perfil de víctimas e imputados en causas ingresadas por delitos sexuales y violentos durante el año 2005, Santiago de Chile.



states that there were 90 victims in cases of ‘promotion or facilitation of child prostitution’. However, the law criminalises other types of offences, such as sexual abuse, rape or statutory rape, which are often used in place of commercial sexual exploitation, thus raising the figure to 2,175.

As seen, figures tend to be partial and deficient. The NGOs involved in drafting this report used the figure of 3,719 child victims of CSEC indicated in the ILO-SENAME study as a parameter.

Regarding the data collected by Chile’s National Network of NGOs on Children and Youth registry, out of a total of 239 cases in organisations working with child victims of commercial sexual exploitation throughout the country (specifically in the V, VI, VIII, IX, and XIII regions), 69 per cent of the victims were female and 31 per cent were male.²⁴

- c. **Qualitative information.** It is necessary to improve the existing knowledge of this phenomenon. Despite a recent ILO study on the way in which CSEC demand operates with under 18-year-olds and the ILO-SENAME study, most qualitative research is conducted by civil society organisations. These studies show, among other things, that the problem has multiple causes and that the victims have something in common: they were abandoned and had previous traumatic experiences (sexual abuse within the family being quite common) and that poverty and marginalisation are usually present. It is also clear that a significant number of children in this situation are not in school or are intermittently enrolled; have health-related problems that must be followed up, such as sexually transmitted infections; and/or live in the streets and are victims of drug abuse.

This qualitative knowledge, which extends beyond what is indicated here, has mainly been the result of initiatives by NGOs, which received funds from sources other than the State. **Once these studies were conducted, the State did not promote their use to disseminate information on the issues or improve policy design.** As there is not much qualitative research on this topic, it is worth noting that the State is not utilising the studies conducted by civil society organisations. The importance of joining forces to address these problems that seriously violate the rights of children, particularly where efforts are few or partial, must be emphasised.

More in-depth knowledge about the different qualitative aspects of commercial sexual exploitation (as well as trafficking and pornography) is essential for improving intervention practices and State policies.

3.3. Child pornography is largely disregarded. According to data from the Public Ministry, in 2005, there were 26 victims in cases related to the production and dissemination of child pornography.²⁵ Taking into account the networks that were uncovered by the police,²⁶ as well as the media attention of the issue, it is apparent that this figure is unrepresentative and therefore does not allow for a comprehensive understanding of the extent of this issue.

²⁴ This information was obtained through a survey conducted by the National Child and Youth NGOs Network with assistance projects for CSEC victims, considering a total of 238 children and teenagers assisted..

²⁵ Public Ministry (2005). Perfil de víctimas e imputados en causas ingresadas por delitos sexuales y violentos durante el año 2005, Santiago de Chile.

²⁶ Important Police operations concerning child pornography are “Operación Catedral” (1997) and “Operación Global” (2003), carried out in coordination with over 15 countries.



Child pornography is a manifestation of CSEC. The fact that prostitution and pornography offences are usually related has contributed to a lack of knowledge about the way in which abusers operate and on the impact of the crime on the victims. Teams working on assistance to child victims of commercial sexual exploitation, for instance, state that they do not receive any information, training or specific guidelines to address cases of exploitation through pornography.

3.4. The organisations that were involved in drafting this report consider that, regarding the information gathered and disseminated by Chile on the sale of children (illegal adoption and trafficking), CSEC and child pornography, there are some gaps:

- Lack of qualitative and quantitative knowledge concerning illegal adoption, trafficking in children and child pornography;
- Regarding CSE, although there are more studies and there is an intention to quantify the problem, existing figures are not part of a national, updated statistical registry, but are the result of partial registries or projections; and
- The State does not invest enough in obtaining information about these issues, nor does it promote the dissemination of data provided by NGOs.

Thus, we recommend that the Government of Chile should:

- **Develop and implement mechanisms to consolidate the data that is gathered by the police, courts, migrant organisations and other organisations on trafficking in children and child pornography as well as illegal adoptions and commercial sexual exploitation;**
- **Develop and implement a system to map CSEC areas in the different regions and to provide more realistic and updated figures regarding the problem; this can be done more precisely through the use of advanced technology; and**
- **Offer incentives for and support qualitative research on these issues by universities and the scientific community in general. Moreover, the State should promote mechanisms to disseminate the results of those studies, incorporating the lessons learned in the development, revision and modification of public policies to address these issues.**

4. General measures being taken by the Chilean Government to implement the Optional Protocol

The NGOs involved in the drafting of this report acknowledge that improvements have been made by the Government regarding actions taken to address the problems described in the Optional Protocol. It should be noted that most of these have focused on addressing CSEC in general and child prostitution in particular. Trafficking is slowly being incorporated into public policy design, though not specifically with regard to children. With regard to child pornography and illegal adoption, there are currently no measures taken by the Government to address them.

Despite the improvements being made, there are still some gaps in addressing these extreme violations to children's rights. These gaps will be outlined for consideration by the State to further improve the efforts towards protecting children in Chile; they include:

a. Lack of implementation of Plans of Action

Generally, policies on child issues designed in the last seven years are quite comprehensive. Chile has two plans of action through which goals to address violations on the rights of children are identified and actions to pursue these goals are designed.



They are the 2000-2010 National Plan of Action to Protect Children²⁷ and the Framework for Action against the Commercial Sexual Exploitation of Children, which was developed in 2000 under the Ministry of Justice, the Chilean Association for the United Nations, UNICEF, Fundación Margen and the Inter-American Child Institute initiative. These plans of action consider these violations holistically and follow recommendations made by international treaties and protocols. They acknowledge the need to fully address these issues, take multi-sectoral measures and put in place permanent monitoring mechanisms. Child pornography and trafficking in children are weakly addressed in these plans of action.

The *National Plan of Action to Protect Children* does not mention any specific measures to assist CSEC victims, however, it does mention the violation of CSEC victims' integrity (referred to as child prostitution) and "the emergent problem of sex trafficking, especially in girls"²⁸ in the targets for the "provision of special services for the integral protection of the rights of children, in cases where they are threatened or violated".

The Framework for Action against CSEC, which is more specific, describes actions in the five intervention areas defined in the Stockholm Agenda for Action. It involves universities, public institutions, ministries and international organisations, defining responsibilities in each line of action. ECPAT's global monitoring report²⁹ identifies some aspects that undermine the quality of the Framework; these are related to the necessary steps needed for its appropriate implementation. Thus, it observes that **no timeframes have been set and the disaggregation of the different manifestations of CSEC and of specific actions needed to intervene are limited.** Moreover, it does not have a budget for its implementation or a monitoring and coordination mechanism.

The information provided by Chile's National Network of NGOs on Children and Youth shows that 60 per cent of the institutions are aware of the *Framework for Action against CSEC*, and they highlight the lack of knowledge on improvements and the weak implementation of the plan.

Paragraph 11 of Chile's State Report acknowledges that **there has not been a systematic follow up of the Framework for Action against CSEC or coordination at the national level.** This also applies to the *Plan to Eradicate Child Labor*. It is important to know the extent of this phenomenon since, in practice there may be political will, but there is no coherent, coordinated policy to enforce the Protocol's provisions.

b. Lack of initiative and weak leadership by the State in addressing these problems

Many of the measures taken to prevent, prosecute and punish offenders and to help rehabilitate and protect the victims of the crimes described in the Protocol have been carried out by NGOs and international organisations. ILO has implemented several initiatives to raise awareness on CSEC prevention, conduct research and rehabilitate victims. Regarding trafficking, Save the Children Sweden and IOM have conducted research studies and developed pilot programmes to assist victims. ILO has also collaborated with SENAME in the I and II regions of Chile. ONGs Raíces and Paicabí and Chile's National Network of NGOs on Children and Youth have advocated for the Government to improve measures taken to address CSEC; ONG Raíces lobbied for trafficking in children to be included in the public agenda.

²⁷ Government of Chile. Política Nacional y Plan de Acción Integrado a Favor de la Infancia y la Adolescencia, 2001-2010.

²⁸ Ibid.; 56.

²⁹ ECPAT International (2006) Informe global de Monitoreo de Chile; 13.



Many of the actions reported in Chile's State Report are the result of the initiative of and, in many cases, the budget allocated by the aforementioned bodies and organisations. There should be a body responsible for coordinating and enforcing implementation of the initiatives.

4.1. The sale of children, trafficking in persons, is not incorporated, other than tangentially, in the Framework for Action. There is also no equivalent plan for this issue or for illegal adoption. This is reflected in the nature of the measures being taken regarding these problems, which are limited.

- a. **Illegal adoption is so far only addressed by the police and the judiciary. The police are trained to address this issue and Law 19620 on Adoption of Minors allows the judiciary to prosecute these types of cases. However, there is no policy to prevent illegal adoption or to implement administrative measures to support the prosecution and punishment of offenders or to protect and rehabilitate victims.**

The situations leading to the sale of children for adoption through illegal and fraudulent methods must be detected and addressed. If there is information about the sale of children via the Internet (State Report, paragraph 63) or about mothers who sell their children in foreign countries (*Ibid.* paragraph 64), it is important to take specific preventive measures within vulnerable sectors. In Chile, a significant percentage of mothers live in complex situations, where they raise their children in underprivileged environments,³⁰ including crime-ridden areas. Measures must be taken to prevent illegal adoptions, warning about the risks the child is exposed to and suggesting alternative solutions to young women other than selling their children. A sexual education policy (State Report, paragraph 23) is important for the prevention of risks associated with sexual health. However, the issue of illegal adoption requires more specific actions targeted at the population at risk.

- b. **Trafficking in children.** Although there are no policies on this issue in the National Plan or in the Framework for Action, there has been a considerable improvement in State actions over the last three years.
 - It is worth noting the increasing efforts between the **Investigative Police** and Chile's Carabineros to address this issue. **They recognize the importance of dealing with this problem because** they are directly involved. They have received training by organisations such as Save the Children Sweden, which have helped to sensitise them. In June 2007, as a result of the training, the Investigative Police launched a campaign to prevent trafficking in persons, which was the first State campaign on this issue. Some examples of the training sessions include:
 - In 2005 and 2006, Save the Children Sweden organised a training session with ONG Raíces for Carabineros and Investigative Police throughout the country addressing the issue of trafficking.
 - In 2006, Save the Children Sweden conducted geographical and social mapping to detect potential border areas that could be used for the purposes of trafficking. This activity was coordinated by ONG Raíces and included personnel from Investigative Police, Carabineros and the Department of Migration throughout the country.

³⁰ According to the figures from the latest Casen survey, 13.7% of the population is poor or underprivileged. 37.2% of poor or underprivileged households are led by a woman. Mideplan (2006) Encuesta de caracterización socio-económica Casen 2006. Also, the media report that in 2004 there were 34,413 children born whose mothers were 19 years old or under that age and, according to figures from the Casen survey, 74% of them belong to the two fifths with the lowest income (*La Tercera* newspaper, September 6, 2006).



- Several improvements have been made in the area of **legislation**. Following an analysis of the existing legal gaps regarding trafficking in persons, Representative María Antonieta Saa proposed a **Bill to criminalise the smuggling of migrants and trafficking in persons**. This proposal was supported by nine representatives from different parties and by different organisations and institutions through lobbying activities organised by ONG Raíces, the British Embassy, Save the Children Sweden, ILO and IOM. The Bill was passed unanimously by the House of Representatives in April 2007. It is currently being studied by a Senate commission.
- With regard to **public policies** on trafficking in persons, the following measures taken by the State are worth noting:
 - Agreement between the Chilean Government (through the Ministry of the Interior) and Save the Children Sweden (2005) to implement an information technology (IT) system to search for missing people: www.chilenosdesaparecidos.org, which is part of the www.latinoamericanosdesaparecidos.org network. The system will contribute to the prevention of potential trafficking cases, especially in children. Carabineros, Investigative Police and SENAME will maintain the website data and photographs of missing persons. This instrument is coordinated by a Multi-sectoral Task force led by the Ministry of the Interior through the Citizen Safety Division. Carabineros, Investigative Police, the Department of Migration, SENAME, the Public Ministry, the Ministry of Justice, the Legal Medical Service and ONG Raíces are all involved. A proposal by this Task force for the design of multi-sectoral commitments for the prevention and investigation of trafficking in persons is expected to be issued in 2007.
 - As Chile's State Report indicates, IOM, working with SENAME, implemented a pilot plan, the Mar'kaza project, in the province of Los Andes, to assist child victims of CSEC, including trafficking (State Report, paragraph 8) in 2006. Project implementation has included training for professionals to work on these issues. The Mar'kaza project will end in 2007, but will later be carried out by other organisations.
 - In April 2006, Mr. Felipe Harboe, Under-Secretary of the Interior, created a Multi-sectoral Commission against Trafficking. This initiative shows that the Government is aware of the fact that this problem must be addressed holistically through a multi-sectoral strategy. However, concrete results from this Commission are not as yet known, but a proposal for the design of policies on this issue is set to be delivered. The Commission held a series of meetings from October 2006 to January 2007, comprising only State bodies. **The Government is willing to resume the work of the Commission and incorporate civil society organisations. This is extremely important as most actions so far taken on this issue have resulted from NGO initiatives.**
 - Chile actively participates in the Ministers of Justice or General Prosecutors from the Americas Meeting. Its mandate is to accept the conclusions and recommendations by the Organization of American States (OAS) meeting on Isla Margarita; keep the trafficking in persons issue on the agenda; and urge States to consider the signing and ratifying of or adherence to international instruments related to the fight against trafficking in persons, especially the *Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. They also urge States, as a first step of its implementation, to criminalise trafficking in persons according to the provisions in those instruments. The Chilean Government, within the framework of the MERCOSUR and associated countries' Ministers of the Interior Meeting, drafted the General Plan for Reciprocal Cooperation and Coordination for Regional Security in MERCOSUR in 1999. In 2000, it adhered to the *Protocol to Supplement the*



General Plan for Reciprocal Cooperation and Coordination for Regional Security Regarding Trafficking in Minors, which serves to promote coordinated action to fight trafficking. The Government has also signed technical cooperation agreements with the Bolivian Government to fight trafficking. Further information on these initiatives was unavailable at the time of writing.

Trafficking in persons is beginning to be considered in State policies. The awareness raising process regarding this issue by different institutions (mainly the police and SENAME) can be said to be positive, but **it is essential for the State to create a policy to prosecute and punish the crime and to protect the victims in a more effective and coordinated way.**

4.2. Commercial Sexual Exploitation of Children

Chile's State Report indicates that there have been important improvements, mainly concerning an increase in the coverage that programmes assisting CSEC victims provide. **One of the most significant achievements is that, from 2001 to 2007, coverage increased from one programme to 17 programmes throughout the country.** Most of the NGOs involved in drafting this report coordinated these types of rehabilitation projects. As a result, several gaps were detected, which could undermine the quality of service provided for the protection and rehabilitation of victims.

4.2.1 Insufficient coverage. Despite an increase in the number of specialised programmes, and taking into account the 3,719 CSEC victims in the country, **the rehabilitation projects only cover 19.7 per cent of that figure (730 cases).** Considering that the State Report mentions this lack of coverage (paragraph 15), it is of concern that no effective measures have been taken to change the imminent reduction of between 10 per cent and 20 per cent of resources, which will apply after the SENAME subsidy law takes effect. This reduction is already in place in the case of new projects being bid for and, if the situation is not modified, will also apply to the four Santiago projects in 2008. This budget cut, though there is no reduction in the number of children being assisted, will have a significant impact on the quality of the services provided. Also, according to data sent to Chile's National Network of NGOs on Children and Youth, 60 per cent of the organisations working on CSEC victim rehabilitation cannot cover the total costs of the project with the funds currently being provided by SENAME. Thus, the State must urgently take measures to avoid a reduction in the budget for the already limited coverage provided to victims.

4.2.2. Inadequate multi-sectoral coordination. Rehabilitation of CSEC victims involves both psychological care and analysis of the different circumstances that are reflected in the abandonment and lack of protection they experience: family problems, possible drug or alcohol abuse, legal situation, dropping out of school, lack of proper health care and so on.

When addressing these topics, care professionals encounter multiple difficulties. Support and jointly-coordinated work in the areas of health care, education and law with other NGOs assisting vulnerable children is often difficult and laden with negative attitudes and prejudices that undermine the best interests of the child victims. The following are some references to each of these areas:

- **Health:** CSEC victims have numerous health problems, some more serious than others, not only related to their sexual health but also to general health, due to the fact that most of them do not have proper adult supervision.



There is no specific policy to meet the needs of CSEC victims or to adequately provide for underprivileged children. Consequently, the ability to provide appropriate care is a challenge for the professionals who work to rehabilitate CSEC victims. Some of these challenges include:

- **Arbitrary care provision regulations.** As the State does not permanently monitor policies affecting children and as there is no specific policy for children in complex social situations, many measures related to health care are decided by counties (in cases of medical offices), hospitals or center directors or the same professionals who are in charge of assisting the children. Sometimes CSEC victims are referred from one center to another because they are some centers do not cover children between 14 and 18 years of age (children's hospitals cover under 14s and adult hospitals cover over 18s). Other times they have to wait for hours or assistance is denied. Evidently, the Health Ministry does not promote these measures. **It is essential to promote the implementation of assessment and monitoring mechanisms regarding these issues, either by the Health Ministry or by SENAME.**
- **Low quality of assistance.** This is a problem for most of the population that utilises the public health care system. They must wait for hours to be assisted; the information provided in cases of gynecological diseases or sexually transmitted infections is sometimes unclear; and they are not treated with respect. This clearly deters children from asking for medical assistance. Some centers specialising in sexual health do provide adequate services.
- **Lack of proper psychological care.** Figures drawn from the work of the Chile's National Network of NGOs on Children and Youth, state that 32 per cent of children assisted by the organizations involved in drafting this report show signs of psychiatric pathology. Fifteen per cent of these cases are severe.³¹ By the end of 2006, there were very few alternatives for child assistance, either in psychiatric outpatient or residential care. In 2007, SENAME signed an agreement with certain doctors and clinics, but the care provided was still inadequate as they were not specialised in assisting CSEC victims. SENAME is currently looking for an alternative solution.
- **Lack of assistance for CSEC victims living with HIV/AIDS.** There are no centres to appropriately counsel, treat or follow up on these children. They need special support, as they do not have the sufficient resources to look after themselves. Their behavior is frequently disruptive and careless and they put their lives and the lives of others in danger.
- **Inadequate assistance for CSEC victims with drug addictions.** There are no residential programmes for girls in the metropolitan region and there is a significant lack of adequate residential centres to rehabilitate drug-addicted CSEC victims. According to data collected by Chile's National Child and Youth NGOs Network, 58 per cent of the CSEC victims who received assistance provided by specialised projects suffered from drug addiction.³²

These situations have a major impact on CSEC victims. On the one hand, general deficiencies in the health care system affect them more frequently, because they do not have a family or a responsible adult supervision. On the other hand, the system's inadequacies prevent them from seeking assistance.

³¹ This information was obtained through a survey carried out by the Chile's National Network of NGOs on Children and Youth with projects providing assistance to CSEC victims, considering a total of 238 children assisted.

³² Data from an internal survey, National Child and Youth NGOs survey.



It is a serious challenge to maintain a regular check up and health care culture within a population that has never embraced this concept, particularly if they are frequently faced with obstacles that make the process more tedious and complicated.

Professionals working on rehabilitation projects often face these obstacles, while trying to deliver greater and faster assistance to children. Through word of mouth, networks and links are generated to facilitate the provision of assistance. However, the result is limited and depends on the ability or capacity to reach the different city neighborhoods or counties in the region and on the continuation of such efforts by the people with whom those links were established.

If there is no policy to carefully address, implement and monitor these problems affecting CSEC victims, health care will continue to be insufficient and the rehabilitation process will come to a standstill.

- **Education.** A significant percentage of CSEC victims have dropped out of school.³³ Their schooling level is very low and the grade to age ratio is alarming.
 - In general, it is difficult to find schools for the children to enroll in. They will need to enroll in classes with younger children, frequently with a big age difference (for example, 15-year-olds in the same class as eight-year-olds). A possible solution is to place them in schools for children with special needs, but they do not easily adapt and often drop out. Evening classes or adult classes are also a limited solution, as they only allow those over 15 to take primary school level classes and those over 18 to take high school level classes.
 - If a child can be placed in a class with the same age children, school headmasters are sometimes reluctant to include them as they are perceived as disruptive.
 - Reintegrating CSEC victims in the school system is often difficult and if not done properly could have a serious impact on the child and this could lead them to lose interest in education.
 - The experience of professionals in rehabilitation projects indicates that the State's efforts are insufficient and inefficient. In 2003, there were 197,000 children out of the school system in Chile who had not completed 12 years of schooling. Under the constitutional reform, a Multi-sectoral Re-schooling Programme was created in 2004. This inter-ministerial initiative includes the Ministry of Education, the Ministry of Justice (through SENAME), the Ministry of the Interior (through CONACE and the Citizen Security Division), MIDEPLAN (through FOSIS) and UNICEF. The programme's goal is to explore and offer education alternatives to vulnerable children who are outside the school system. Its implementation depends on local institutions, NGOs and municipal programmes, which prepare students for exams in an attempt to reintegrate them into the regular school system at a later stage.
 - **Despite the fact that the initiative has an apparently efficient design, it has had problems in practice that have reduced its potential**

³³ As an example, according to data from the NGO Raíces' Rehabilitation Project, assisting approximately 50-55 CSEC victims per year, by June 2007 44% were out of the school system. In a survey conducted by the National Child and Youth NGOs Network, considering 238 cases, 61% were dropouts.



- effectiveness, such as delays in** available resources, thereby preventing the implementation of the tasks they are supposed to help fulfill. These programmes were not beneficial to professionals working on the rehabilitation of CSEC victims as they were not informed of them by SENAME, which was leading these initiatives. In addition, there is no multi-sectoral policy to meet the needs of CSEC victims during their rehabilitation.
- Rehabilitation projects and personal links and networks that have been established are the only means available; however, as is the case with health care, their scope is limited and inefficient, and depends mainly on the commitment of actors such as headmasters and teachers, etc.
- **Vocational training.** The need to generate income is essential for most CSEC victims. The provision of vocational training is an important part of their rehabilitation process and can assist in their gaining employment.
- There are no vocational training services specifically for CSEC victims. It depends on the vocational training schools to offer that type of training, and most of those that do are private. CSEC victims undergo prejudice and stigmatisation, which prevents them from attending classes.
 - Training is also provided for children over 16, as long as they finish up to the eighth grade, but many of them do not.
 - All necessary action must be taken for children in the country to finish 12 years of schooling. However, there is a large number of teenagers who do not meet the necessary requirements, so they do not have the opportunity to access vocational training services, for which their reintegration and rehabilitation is undermined.

The NGOs involved in the drafting of this report recognise the improvements made in these areas, particularly the building of a more receptive institutional attitude toward this problem. It is important for the State to take into account the obstacles faced by civil society organisations, especially in the programmes and projects on the care and assistance of CSEC victims. The State must create mechanisms to ensure that protection and support provided to CSEC victims is implemented holistically and in coordination with all key stakeholders.

4.3. Child pornography

At the time of writing, there were no specific policies to address child pornography. However, **as is the case with trafficking, improvements have been made in the prosecution of child pornography due to the actions of the Cybercrime Brigade and the enactment of *Pornography Law 19927*.**

Professionals working on the rehabilitation of CSEC victims have indicated that they have not been specifically trained to work with child pornography victims. Sometimes the problem is linked to trafficking for sexual purposes; and there is no clear methodology for working on this issue. It is thus recommended **that the issue be more explicitly included in the *Framework for Action* and be addressed as systematically and with the same severity as the other issues.**

4.4. Measures taken by the Chilean Government to enforce the Optional Protocol should be reassessed, together with the different bodies working on the problem, including NGOs, international organisations, different State institutions and the private sector, so that there is a coordinated and



multi-sectoral approach to address the problem. The State should take proactive leadership of this issue.

Having a policy design within the Framework for Action provides an opportunity to efficiently plan specific interventions and follow-up mechanisms taking into account the current CSEC situation in Chile. This recommendation reflects observations contained in Chile's State Report that the Framework for Action has gaps and is not being properly monitored. The State must take greater initiative and leadership as far as these problems are concerned; State institutions should have greater competencies and power regarding children. It is therefore recommended that the State create an institution to address all aspects of children's rights issues as well as develop mechanisms to allocate necessary resources.

5. Preventive Measures

Article 9 of the Optional Protocol emphasises the preventive measures that States Parties must take, including legal, administrative and political measures, as well as social programmes and awareness raising campaigns for the public at large.

Chile's State Report mentions several actions showing the State's interest in implementing actions to put these measures in place, for instance, the *National Plan for Kind Treatment of Children* (paragraph 10), campaigns against sexual abuse (paragraph 26) such as the *Campaign for Kind Treatment* or sexual education programmes such as the *Programme for Responsible Sexuality; Education Plan on Sexuality and Affection*. The increase in the number of reports on sexual crimes (from 11.5 reports every 100,000 inhabitants in 1993 to 37.1 reports every 100,000 inhabitants in 2003)³⁴, for instance, could be linked to these prevention and awareness efforts.

Nevertheless, these activities only address these issues tangentially. Since there is an economic transaction involved, the situations in which the child is abused are interpreted by society in a different way. **The State should make a greater effort to develop a specific prevention and sensitisation policy addressing targeted prevention; training for professionals and staff from different institutions on recognising situations of exploitation; making necessary administrative measures so that all stakeholders can work together more effectively; sensitising the community using a rights-based approach.**

5.1. Although the issues of **illegal adoption and trafficking** for sexual purposes have been addressed from a law enforcement perspective and some knowledge about vulnerable groups has been gained, there is no policy focusing on addressing those vulnerable groups (see note 24), or on trafficking in persons. Groups at-risk of trafficking should be informed of the way traffickers operate and the risks involved.

Any preventive measures involving vulnerable groups must be accompanied by the development of a series of measures facilitating the prosecution of the crime. **Guidelines and protocols should be developed for the Border Police to be able to detect and register potential trafficking in persons cases and to act in such a way that the victim is protected and they can investigate the crime.**

Another important factor in prevention is the training of professionals who work in health care and education facilities, as well as in centers to assist child victims (from SENAME, for example) in recognizing and dealing with trafficking situations. SENAME indicated that, in 2004, together with

³⁴ UNICEF, Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 25.



IOM, they trained 103 professionals working on CSEC. **Continuation of the training and incorporation into regular training curricula is recommended.**

Due to the increase of social awareness raising campaigns and initiatives, the issue of trafficking has become more visible. However, these actions are usually isolated and are often targeted for the same group of professionals and are usually carried out by international and civil society organisations. The campaign against trafficking recently launched by the Investigative Police should be highlighted; its impact should be monitored and assessed. The Ministry of the Interior also allocated resources to the Department of Migration for preventive and sensitisation measures on trafficking, which should begin in mid-2007.

5.2. The situation of CSEC is similar to that of trafficking, but the phenomenon is more visible and there are more prevention and sensitisation actions. This has been influenced by of the exposure of pedophile networks in the media, such as Red Paidos (mainly involved in pornography) and the network led by entrepreneur Claudio Spiniak.

In the case of vulnerable groups, prevention of commercial sexual exploitation is an urgent task. Due to research conducted and through experiences from rehabilitation projects, the dynamics that lead children to exploitative situations are now known. They include sexual abuse, abandonment, early pregnancy, living in the streets and drug abuse, among other risk factors. However, there are no specific programmes to address these causes. Chile's State Report indicates that the Offices for the Protection of Rights (OPDs), which are under SENAME and local authorities, are responsible for the prevention aspect. In the last two years, SENAME and ILO implemented 15 prevention projects, carried out by OPDs, Child and Youth Centers and some local authorities.

Apart from this specific initiative, which had a limited duration, OPDs are not very familiar with this issue. CSEC is difficult to detect, so cases are frequently unaddressed. Of the institutions consulted by Chile's National Child and Youth NGOs Network, 60 per cent believe that OPDs do not play a preventive role, as there has been an over-demand for their services after their implementation; some of them are not adequately staffed and are not operational in many cities and towns in the country. Regardless of the OPDs' function, prevention should not be the aim of local authorities exclusively. Some communities have higher numbers of CSEC cases, but there are no structures in place to combat it. **Thus, specific and long-term prevention programmes should be developed. The experience of the projects carried out by SENAME and ILO can be used as a good example.**

Training staff from the different State services is essential, since they need to be able to detect situations of sexual exploitation early and refer them in a timely manner. Chile's State Report mentions specific training, particularly related to the worst forms of child labor.

Regarding events and campaigns to sensitise and bring these issues to the public agenda, the State Report lists seminars, mainly for professionals working on these or related issues, which serve to strengthen links and combine efforts; however, they should be held more regularly. In some cases, long-term working groups could be established. Regarding awareness raising efforts, in 2003 SENAME, together with ILO, led a campaign to highlight the CSEC situation in Chile. In 2006, ILO led a campaign comprising over 50 institutions, including SENAME. **These types of campaigns should also be initiated by the State, since they must show the country's position on the subject, as they do with family violence and HIV/AIDS.**

5.3. With regard to child pornography, only a few prevention and sensitisation activities have been conducted. Focused prevention activities could also be carried out with activities addressing CSEC as some of the at-risk groups are similar. There are also specific prevention initiatives related to Internet access by teenagers, who could be enticed to consume or be involved in the production of



pornography. The Institute of Cultural Affairs (ICA Chile) statistics show that Chile has the highest number of Internet users in the region, most of whom are school students. Creative and effective initiatives must be developed in order to prevent sex crimes. Some initiatives are currently being led by Microsoft and supported by SENAME and Representative Patricio Walker, who proposed a Bill to regulate Internet cafés. Microsoft developed a program called Child Exploitation Tracking System (CETS) which was successfully implemented in Canada. It works by tracking words or symbols related to child sexual abuse and commercial sexual exploitation as well as images distributed on the Internet and data about their origin. Microsoft has also contributed to the training of the Chilean Police in the use of this tool, and organised seminars to disseminate the information.

Training for early detection of child pornography victims is infrequent and needs to be regularised. Caregivers state that they are not trained to deal with child pornography victims.

5.4. Prevention is essential to address these crimes efficiently. The Chilean Government must develop a coherent policy, reassessing what is established in the *Framework for Action against Commercial Sexual Exploitation of Children* and ensuring its implementation, monitoring and assessment. Behavioural change initiatives must be implemented in order to eliminate the discrimination and abuse that is often faced by vulnerable groups.

In order to contribute to the development of mechanisms to prevent the sale of children, child pornography and CSEC, the Chilean Government must:

- **Establish permanent training mechanisms for professionals working in institutions where protection of children is provided (health, education and legal issues);**
- **Develop specific prevention programmes for vulnerable populations and invest resources for their implementation; and**
- **Promote sensitisation campaigns on trafficking in children, child pornography and CSEC to generate a change in attitudes to reduce stigmatisation.**

6. Legislative Measures

The NGOs involved in drafting this report recognize that there have been improvements in the last few years. As of now, there are laws covering most of the offences mentioned in the Optional Protocol.

- *Adoption Law 19620*, regulating adoptions by nationals and foreigners (including punishment of crimes related to illegal adoption);
- In April 2007 a Bill was passed by the House of Representatives which criminalises trafficking in persons and the smuggling of migrants. It still needs to be passed by the Senate.
- In 2004,³⁵ *Law 19927* modified the Criminal Code and the Criminal Procedure Code with regard to child pornography. This law also includes new crimes and considerably increases punishments for sex crimes against children.

However, the above mentioned organisations are aware of serious challenges in the implementation of those laws and in punishing offenders.

Although the implementation of the Criminal Procedure Reform and the use of oral proceedings have brought about an increase in the number of sentences, the number of sex crimes cases which are

³⁵ The law was passed because there was an urgency to do so after two cases prominent in the media shocked the public in 2002 and 2003: Paidos and Spiniak.



actually prosecuted is still very small.³⁶ From 2000 to 2004, approximately 22.4 per cent of cases involving sex crimes against children were prosecuted, while 77.6 per cent had a provisional procedure, mainly 'provisional archiving'³⁷ (43.3 per cent of the total cases in 2004). 16.8 per cent of the 2004 cases were not prosecuted because of 'lack of legal competence'.³⁸ 9.7 per cent of all cases prosecuted resulted in a conviction and, in 8.3 per cent of the cases, the offender was acquitted.³⁹ Regarding cases involving 'prostitution of minors', from 2000 to 2004, a period when the Criminal Procedure Reform was implemented, 79.1 per cent of the cases were provisionally settled and only 20.9 per cent were tried. Only 3.5 per cent of this figure resulted in a conviction, while 16.5 per cent of cases were dismissed.⁴⁰ The 'prostitution of minors' crime had the greatest percentage of 'provisional archiving' (57.4 per cent), vis-a-vis 23.3 per cent in cases of 'rape of a minor'.⁴¹ This is not because reports are few; Public Ministry figures show that most sex crimes involve victims aged between 13 and 17. As previously mentioned, out of a total of 10,765 victims, 7,529 are under 18 and 5,241 are aged between seven and 18 years old.⁴² This situation is confirmed by professionals working in rehabilitation projects who witness the difficulties faced during the prosecution of child pornography and CSEC cases.

The low conviction rate of CSEC offenders has multiple causes, including:

- The nature of the crimes, which require greater investigative efforts;
- Lack of knowledge about this issue by law enforcement personnel, particularly in the judiciary;
- A cultural system justifying or tolerating demand for sex with children, which is reflected in the under-reporting of these crimes and the lack of cooperation during investigations; and
- A culture of discrimination and stigmatisation.

The following section focuses on the laws related to Article 1 of the Optional Protocol, which describe the mandate to prohibit the sale of children, child prostitution and the use of children in pornography, as well as the way in which those laws are being implemented and how the Chilean Government protects child victims in all stages of the process.

6.1. Child prostitution, child pornography and the sale of children

In recent years there have been significant improvements in the legislation. Laws are comprehensive but there are still challenges in their enforcement. Thus, mechanisms should be established to control the activity of criminal justice officials and to improve their selection and training, to ensure the exercise of the victims' rights and guarantee and reduce impunity

³⁶ UNICEF, Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 35.

³⁷ When the Public Ministry considers that the background provided is not enough for an investigation to find out what happened. Ibid.; 35, 38

³⁸ This refers to the fact that the prosecutor may decide not to investigate crimes which are outside his competence. Ibid; 35

³⁹ Ibid.; 35

⁴⁰ Ibid. 37. Having the case dismissed means that the process ends before the oral proceeding can take place when an investigated deed is found not to be a crime, or when the innocence of the offender is proved, or when the offender is free from criminal accountability, or when the legal responsibility has expired or has been ended (Ibid.; 35). This is different from cases where the defendant was found not guilty.

⁴¹ Ibid. 38

⁴² Public Ministry (2005). Perfil de víctimas e imputados en causas ingresadas por delitos sexuales y violentos durante el año 2005, Santiago de Chile.



6.1.1. Regarding the sale of children

The sale of children as considered by the legislation and in public policy constitutes illegal adoption and trafficking in persons. With regard to illegal adoption, Law 19620 regulates the ‘adoption of minors’. This law includes a series of guarantees protecting the child from being sold, insists on the importance of considering the child’s opinion according to their age and maturity and states that its core principle is the child’s best interest. However, some aspects should be strengthened to prevent offenders from selling a child and disguising it as an adoption.

- Article 42 of the Adoption Law establishes that a person who “solicits or accepts any kind of remuneration for giving a child for adoption” will receive a minimum to medium sentence (61 days to three years). Just as the State Report indicates in paragraph 65, this Article does not include actions prior to the adoption, such as ‘care’. Thus, there is a gap that might allow for illegal adoption to go unpunished, for instance, when the adoption of a child is facilitated in exchange for money with the consent of both parents as in cases of care without the intent to adopt.
- This provision only punishes the person who solicits or receives the payment, but not the person who pays. Consequently, the ‘buyer’ is not punished.
- Moreover, sentences for this type of offence seem extremely low, particularly if we take into account that the severity of the sentence is usually reduced as a result of mitigating factors.

Trafficking in persons is included in Article 367b of the *Criminal Code*. This Article has serious gaps since domestic trafficking is not included, because it states, as a requirement, the exit from and entry into the country. Furthermore, the only purpose for trafficking considered is ‘prostitution’; thus, other purposes, such as forced labor or practices similar to slavery, are not included.

This crime has been addressed in a very limited, non-effective way. Also, the provisions in the Palermo Protocol, signed and ratified by Chile in 2003, are not taken into account. In order to improve this situation, in January 2005 Representative María Antonieta Saa Díaz, with the support of nine representatives from other parties, proposed a Bill to criminalise the trafficking in children and adults and establish regulations for its prevention and more effective criminal prosecution. The Bill was finally debated in March 2007 by the Commission on Family Matters during several sessions, involving individuals and organisations working on the issue. A final draft version was passed in April 2007; it still needs to be debated and passed by the Senate.

This Bill criminalises smuggling and trafficking in persons, according to the conceptual frameworks suggested by the Palermo Protocol. Moreover, it establishes special means for the investigation of those crimes, as well as special regulations for the protection of victims and witnesses. This Bill must urgently be passed by the Senate, since victims are not being adequately protected, especially children.

6.1.2. Commercial sexual exploitation of children is not criminalised in Chile. However, the new *Law 19927* on pornography includes significant improvements in the criminalisation of crimes related to CSEC. The law:

- Increases the legal age of consent for victims;
- Punishes the facilitation of child prostitution. Abuse of power or trust needed to be proved for the offender to be punished before Law 19927 was passed. As of now, these are aggravating factors (Article 367);



- Punishes “soliciting sexual services from persons over 14 but under 18 years of age in exchange for money or any type of remuneration” (Article 367). This means that child prostitution is recognised and the client is punished. If the child is under 14, the crime is considered rape or abuse (Articles 361 and 366);
- Punishes the vaginal, anal or oral penetration of objects and the use of animals or objects as an aggravated form of sexual abuse (Article 365 b);
- Applies the principle of extraterritoriality for the prosecution, in Chile, of the production and distribution of child pornography, the facilitation of child prostitution and the trafficking in children for prostitution (Article 10, No. 9 of the Code of Trial Procedure).

Although the types of crimes established by this law to punish CSEC offenders are quite comprehensive, it still has certain gaps and does not provide appropriate protection to children:

- Many victims of CSEC in the country are over 14, so they fall into an age group where the age of consent can be applied (except in cases of procuring sexual services in exchange for money or other in kind payment, in cases of facilitating the prostitution of a child or in cases of statutory rape).
- It is highly probable that a victim over 14 who testifies during a CSEC trial will not be perceived as a victim of rape or statutory rape, the crimes which have the highest punishments. For the crime to be considered a rape, it is necessary to prove that there was use of force or threat of violence, that the victim could not resist or is mentally incapable. To be considered statutory rape, it must be proved that the victim is mentally handicapped or the fact that the offender took advantage of the victims’ dependency or situation of abandonment or his or her ignorance and sexual dependency or that he or she was deceived (Article 361). Evidently, these considerations do not always apply to child victims of CSEC, for example, in the case of ‘abandonment’, many children involved in CSEC actually live with their family. The misperception of the issue is probably the cause of the low rate of conviction in cases involving the ‘prostitution of minors’ (only 3.5 per cent of cases have a definite conviction).⁴³
- In order for a ‘client’ to be convicted, it is necessary to prove that there was a transaction or a request for transaction even if there is no sexual contact. Considering that there are cases of CSEC where victims are between six and 13 years old, this provision cannot be applied and could result in a legal gap to punish attempts and unsuccessful crime. Even when victims and witnesses report these crimes, during the recruitment or ‘negotiation’ phase when behaviors cannot be considered rape or sexual abuse, nothing can be done. This situation must urgently be revised.

6.1.3. Law 19927 on pornography also includes significant improvements for the punishment of child pornography crimes. For instance, the production, distribution, purchase and storage of pornographic materials are criminalised. Extraterritoriality in this law is also important, since it punishes Chileans who commit these types of crimes abroad and foreigners who commit these crimes in Chile, as well as foreigners who reside in Chile but commit the crime in another country (Article 10, No. 9, Code of Trial Procedure).

6.2. Punishments under Law 19927 on pornography, although higher than those in previous legislation, are still too low. For example, production is punished with between three years and one

⁴³ UNICEF, Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 37.



day to five years in prison; distribution or smuggling of child pornography is punished with between 541 days to five years in prison and malicious purchase or storage is punished with between 541 days and three years in prison. These types of punishments can be exchanged with conditional suspension of the procedure or implementation of punishments with the benefit of a conditional pardon or supervised parole.

6.3. With regard to the possibility of filing a complaint, the Penal Procedure Reform, being gradually implemented in Chile since 2000, incorporates a prosecutor, who investigates the case but is not in charge of the trial procedure itself. Moreover, the accused has a defense attorney. However, the victim does not have an attorney, because according to the criminal system, the prosecutor promotes the criminal proceedings but does not represent the victim.

The victim has the opportunity to be an accuser in the procedure, which is important because it means that he or she can request special investigations or adequate precautionary measures and make complaints before the prosecutors' superiors or procedural appeals before the Court of Appeals; however, in the case of victims under 18, this right must be exercised by their legal representatives. Before the reform, SENAME could also do this in cases where there was no adult to represent the child. With the new Penal Procedure Reform, the paragraph in Article 111 of the Penal Procedure Code that authorised any person to file a complaint in socially relevant cases has been eliminated.

Thus, some children cannot be defended or file complaints, mainly those who have no family to support them, such as most children involved in CSEC, where it is often the case that their parents are involved in their exploitation. There should be a *guardian ad litem* in the criminal court to defend children under these circumstances.

6.4. With regard to the protection of victims during the trial process, Article 8 of the Optional Protocol refers to victim protection during all stages of the process. With the Penal Procedure Reform, specific measures were taken for this purpose, as Chile's State Report indicates. The Public Ministry, the report says, addresses all issues related to children based on the *UN Convention on the Rights of the Child*, so it adopts the necessary mechanisms to protect victims, preventing their secondary victimisation and their integrity and safety (Chile's State Report, paragraphs 47 to 58). Despite the evidence provided by the figures related to legal procedures (see above), the daily experiences of professionals accompanying victims to the courts, and what the victims and sometimes their families say, the report does not reflect the actual situation, which is far from adequate, according to the parameters described in the Optional Protocol.⁴⁴

Protection of children during criminal procedures or protection in general is clearly far from satisfactory. The existing experience refers mainly to child pornography or CSEC trials (CSEC includes 'prostitution of minors', but it can also include 'rape of a minor', 'child sexual abuse' or 'statutory rape'), and only one legal procedure related to trafficking took place in the country after the Penal Procedure Reform was enforced; in that case, the victim was an adult woman.

The reporting of a crime and the trial are key moments in the process of rehabilitation for CSEC victims. Difficulties, such as emotional or material dependence and the complex relations surrounding the situation (for example, families profiting from the child or emotional dependence on the exploiter), make the decision to report the crime and not withdraw the charges particularly difficult for the victim. That is why any obstacle or victimisation will seriously endanger the legal procedure, as well as the rehabilitation and reintegration process of the victim. The legal procedure is the same for victims of CSEC in any of its manifestations: CSEC, child pornography or trafficking in children.

⁴⁴ We only found one brief reference to the result of cases in paragraph 15 of the State Report.



6.4.1. Recognising the vulnerability of child victims and implementing child-friendly procedures, including their special needs when testifying

A study conducted by UNICEF and Universidad Diego Portales and the experiences of professionals working on the protection of victims show that **child victims of sex crimes are forced to testify on several occasions.**

The study further indicates that: "*In general terms, the testimony is a key moment for the investigation, since it can be used as evidence during the trial. As it is so important, it has to be repeated many times during different stages of the legal procedure, even if it becomes an obstacle in the child victim's rehabilitation process*"⁴⁵. The same study adds that "*The actors in the system usually say that, even if in formal terms the number of interviews with the victims has decreased after the Criminal Procedure Reform was enforced, child victims still need to testify many times and are forced to re-live their experience.*"⁴⁶

It is possible to tape the victim's testimony to avoid repetition. Some police stations have facilities for this purpose (Chile's Carabineros' 48th Family Affairs Police Station and stations in the Metropolitan Region and Valparaíso, built by Brisexme with their own resources). Although Carabineros and Investigative Police point out that this method is being used, the professionals working in the organisations involved in drafting this document note that the use of these types of facilities is not widespread. The abovementioned study also states that: "*During the interviews, neither police officials nor prosecutors talked about the possibility of taping the victim's testimony to prevent them from having to re-live the violence exerted on them.*"⁴⁷ Evidently, this contradicts paragraphs 53 and 55 of Chile's State Report. **This aspect must be revised immediately.**

Moreover, it is thought that the child's testimony is not enough. "*According to what the officials said during interviews, in cases of sex crimes against children the importance of testimonies as proof is quite reduced.*"⁴⁸ This is evidence of a series of violations to the rights of the child:

- Children's opinions are not considered. There is a cultural attitude that discourages not only child participation (one of the pillars of the Convention) but also the possibility of children being listened to; there is also a general tendency to disbelieve what they say; and
- Testimonies by the professionals who are in charge of guiding the children through the rehabilitation process (if any) are undermined.

6.4.2. Informing child victims of their rights, roles and the case process

The UNICEF/Universidad Diego Portales study and what the experiences of the professionals working on rehabilitation processes confirm that victims and their families often claim that the information provided about the process is insufficient and inaccurate.⁴⁹ They are usually not informed of their right to file a formal complaint. Filing a formal complaint is sometimes difficult, because it is prevented by a lack of precise information given to victims and their

⁴⁵ UNICEF, Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 63.

⁴⁶ Ibid.

⁴⁷ Ibid.; 71

⁴⁸ Ibid.; 72

⁴⁹ UNICEF, Universidad Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 107.



families by the prosecutor or the Victims and Witnesses Unit and a lack of clear instructions given by Public Ministry officials.

6.4.3. Allowing the presentation and consideration of the child victims' opinions, needs and preoccupations in proceedings that affect their personal interests in a way that is compatible with the national legislation's procedural regulations.

It is apparent that there is a tendency by adults to undermine child victims' opinions. In the case of child victims of the crimes described in the Optional Protocol, this worsens due to the characteristics that Chilean society attributes to the victims, which stigmatises their actions, decisions and opinions.

Child victims of commercial sexual exploitation are frequently underprivileged and live in a marginalised environment characterised by drugs and crime. Moreover, they frequently display aggressive behaviours, street socialisation and low tolerance to frustration. This causes further aggression and fearful reactions, thereby preventing people from considering them as individuals and victims of extreme violations, thus confirming the general perception that they are responsible for their situation.⁵⁰ There is also increasing prejudice against the migrant population, in the case of victims of smuggling. The discrimination experienced by migrant children in health care services and schools is a major problem that has not been addressed seriously.

CSEC victims are highly sensitive to any doubts about their testimonies. Professionals working on rehabilitation with children victims of these crimes report how difficult it is for CSEC victims to project their situation adequately, in light of the prejudice against them that justify the demand of sex with under 18s.⁵¹ The UNICEF/Universidad Diego Portales study also states that the prosecutor adds the victim's testimony to the procedure only if it is useful as evidence. This means that the child victim could end up having his or her testimony questioned.⁵²

In cases related to CSEC, the Family Courts undertakes the process, regardless of where the claim was made. Each Family Court has an advisory team comprising social workers and psychologists, who support the judge in his or her decisions. In order to receive and give appropriate advice so that the kind of prejudice mentioned above can be overcome, such professionals should be familiar with the special characteristics of this problem, and how this situation affects the child. However, professionals working in this field say that technical advisors are not usually trained on this issue and do not know typical child victim behaviors. When organisations develop links, training and collaboration with the courts, an important positive change in how victims are treated can be seen. Thus, it is essential to strengthen and replicate this type of training.

6.4.4. Providing child victims with appropriate assistance during the process

⁵⁰ The investigation of the crimes committed by entrepreneur Claudio Spiniak in 2003, which became a huge media scandal, showed how easy it was for the public opinion to discredit the testimony of marginalised children. For months the press, lawyers and politicians tried to prove that the testimony of one of the alleged victims was false. The victim was already an adult when requested to give testimony. Whether her testimony was true or false, this undermined the testimony of the other child victims in the procedure.

⁵¹ A recent study published by ILO shows how a cultural system of justifications works as a factor fostering and allowing the demand for sex with teenagers.

⁵² UNICEF, Universidad Diego Portales (2006) Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal; 69.



Chile's State Report highlights the implementation of a Victims and Witnesses Unit (VWU) after the Penal Procedure Reform was enforced. This is an important element that needs to be promoted and supported. However, the assistance provided by the VWU to child victims of sex crimes has not been optimal. This is due to the fact that the cases they receive are directly referred by the prosecutor; it is up to the prosecutor to make this decision. Although the number of victims referred is not the same as the total of cases, VWUs lack the capacity to provide assistance to all those who seek it.

Some children consulted by the organisations involved in compiling this report complained about the discriminatory treatment they received when arrested by Carabineros (usually for stealing, not for crimes related to CSEC) and during the trial. Although Carabineros has improved significantly and has trained its personnel in these issues, their behavior is rooted in cultural patterns that are still hard to overcome. Permanent supervision is necessary for the adequate protection of children under any circumstances.

6.4.5. Appropriately protecting the privacy and identity of child victims

Paragraph 43 of Chile's State Report states that the Press Law, in its Article 33: "*prohibits the dissemination of information on the identity of minors who have committed a crime or are accomplices, accessories or witnesses of a crime.*" Unfortunately, this right has been violated many times. Although the media may not provide all the child victim's information, they tape his or her testimony and publicly show it. They are re-victimising the child and putting them in jeopardy since experience indicates that precautionary measures, such as transforming the face or the voice of the victim, does not prevent people who know the child from recognising him or her.

Moreover, professionals working with victims say that sometimes in the Family Courts the social report on the child is read as part of the indictment hearings or oral proceedings. This is a serious violation of the child's right to privacy and has dire consequences for the victim's rehabilitation, since the information is confidentially delivered by the child to the professional accompanying him or her during the rehabilitation process.

6.4.6. Ensuring the safety of child victims as well as their families and favorable witnesses in cases of threats and retaliation

Protective measures tend to be insufficient and not immediately implemented. Restraining orders protecting child victims and witnesses are not enforced particularly if we take into account the fact that the abuser may be part of the family or have indirect access to the family. This might lead to the child withdrawing charges. Also, in most cases, during the investigation process, the offender is not under custody, and the Ministry of the Interior does not appeal such decisions.

6.4.7. The organisations that drafted this report state that **very little attention is given to the protection of CSEC and child pornography victims.** If this situation is not addressed, it could also affect child victims of trafficking, if there were jurisprudence on it.

- The seriousness of this problem, which is common to many legal procedures, especially those involving child victims of sex crimes, worsens because child victims of CSEC easily withdraw charges, have difficulties admitting what happened, may be near their exploiter, do not trust institutions, do not have family support and sometimes their parents are accomplices;



- Children are victimised repeatedly (either through the repetition of their testimony or its public reading during oral proceedings in Family Courts); their identity, integrity and safety are not well protected; their testimonies are doubted; and they have limited access to a defense;

These issues are related to the following facts, which should be urgently addressed:

- **Judicial and advisory personnel must be trained to understand the complexity of this issue;**
- **A guardian ad litem must be made available to the victims in cases where they do not have adequate representation; and**
- **Cultural prejudice on which behaviors and decisions are based must be eliminated.**

7. Conclusions and recommendations

The organisations involved in the drafting of this report would like to contribute to the improvement of the prevention of the offences addressed in the Optional Protocol; the prosecution and punishment of offenders and the protection and assistance provided to the victims.

Efforts made by the Chilean Government to move forward in combating CSEC, trafficking in children and child pornography show that greater attention is being given to these issues.

The observations and recommendations by the abovementioned organisations include:

- **The importance of strengthening initiatives to generate cooperation** among State bodies and institutions (ministries, police, etc.), international organisations, civil society organisations and the private sector. Their experiences and fields of action are complementary and their coordination is essential in addressing these complex and ever-changing issues. Although such efforts are already being implemented, their coordination is insufficient and irregular. Civil society organisations, which promote many initiatives in the fight against these crimes, are still under recognised. Therefore, it is recommended that:
 - **The State must develop mechanisms for consultation and cooperation among the different institutions that are involved in addressing the crimes described in the Optional Protocol;**
 - **Include civil society organisations, in a more systematic and continuous way, into working groups and actions to address these issues; and**
 - **Disseminate documents, research and other information materials from public and private institutions which could be of help to combat the sale of children, child prostitution and child pornography.**
- **The need to generate quantitative and qualitative information** regarding the sale of children, CSEC and child pornography. Information regarding these phenomena is scarce, and the information available is sometimes imprecise and incomplete. As far as commercial sexual exploitation is concerned, there are State and international organisations initiatives to bridge this gap. However, they are not the result of joint, coordinated planning, so they are not comprehensive. Several civil society organisations have also conducted their own qualitative research, based on their practical experience. There are, however, few instances to share existing knowledge, detect gaps and design strategies to gain comprehensive knowledge on these issues, so that intervention can be more effective.

Our recommendations are for the Chilean Government to:



- Foster and contribute to the development of a methodology to quantify the phenomena described in the Optional Protocol;
 - Foster and generate qualitative research in universities and from within the scientific community; and
 - Foster and promote mechanisms for the dissemination of research results, incorporating the lessons learned to the development, revision and modification of public policies to address these issues.
- **The need to strengthen coordination among measures designed to implement the Optional Protocol provisions.** Although the State has significantly improved the design and implementation of actions to address these issues, they are sometimes isolated initiatives of limited duration that do not complement one another. The Framework for Action against Commercial Sexual Exploitation of Children, which contains the design of a system of research, prevention and victim assistance measures, must be revised and updated, taking into account:
 - **The incorporation, with their own measures and implementation mechanisms, of all forms of CSEC, including trafficking and pornography, as well as child sex tourism, which has not been addressed as yet. Also, the implementation of specific measures to prevent and address illegal adoption must be considered.**
 - **The development of a prevention policy focusing on vulnerable groups, a training policy for early detection, and a sensitisation policy to reduce cultural prejudice affecting the children involved.**
 - **A multi-sectoral policy to address the prevention and rehabilitation of victims of CSEC holistically.**
 - **Set timeframes and develop an appropriate budget.**
 - **Develop monitoring, coordination and assessment mechanisms.**
 - **Certain measures must urgently be taken to improve the assistance and rehabilitation offered to CSEC victims.** This is one of the areas that most measures taken address, but there are gaps that seriously undermine the rehabilitation process. Therefore, the Chilean Government must:
 - **Provide adequate health care, education, vocational training and legal assistance to child victims of CSEC through the coordination of all stakeholders involved; and**
 - **Increase the current coverage without reducing the quality of the care services provided by allocating an appropriate budget.**
 - **Adequate protection for child victims of sex crimes during legal procedures,** particularly those related to commercial sexual exploitation is required, as well as the establishment of mechanisms to ensure that:
 - **Secondary victimisation of the child is avoided during the procedure;**
 - **The special characteristics of victims of CSEC, trafficking and pornography are considered, since there is a possibility that they could withdraw the charges;**
 - **The position of *guardian ad litem* to represent child victims as accusers before the Criminal Justice system should be created;**
 - **Provide regular training for law enforcement personnel, including judges, technical advisors, prosecutors and so on; and**
 - **Revise the existing legislation in order to strengthen the protection of child victims.**



BIBLIOGRAPHY

Araya Castelli, Denisse et al (2007) “*Ya no tengo nada que esconder*”. *Experiencias de reparación con niños, niñas y adolescentes víctimas de explotación sexual comercial*, CAFOD, UNICEF, ONG Raíces;

Department of Migration. (2007) *Documento: Situación Migratoria en Chile: Análisis con Base en los Datos Censales y los Registros de Residencia del Departamento de Extranjería y Migración*.

ECPAT International (2006) *Informe global de monitoreo de las acciones en contra de la explotación sexual comercial de niños, niñas y adolescentes. Chile*.

Fundación Instituto de la Mujer y Corporación La Morada (2004) *Informe Final del proyecto sobre Tráfico de Mujeres*, Santiago de Chile;

Chilean Government. Política Nacional y Plan de Acción Integrado a Favor de la Infancia y la Adolescencia, 2001-2010

Mideplan (2006) *Encuesta de caracterización socio-económica Casen 2006*. Santiago de Chile

Public Ministry (2005). *Perfil de Víctimas e imputados en causas ingresadas por delitos sexuales durante el año 2005*. Santiago de Chile.

Ministry of Justice, Chilean Association for the United Nations, UNICEF, Fundación Margen and the Inter-American Child Institute (2000) *Marco para la Acción contra la Explotación Sexual Comercial de Niñas, Niños y Adolescentes*, Santiago de Chile.

IOM (2006) *Estudio Exploratorio sobre Trata de Personas con Fines de Explotación Sexual en Chile*, Santiago de Chile;

ILO, SENAME, Universidad Diego Portales (2007) *Guía para el tratamiento jurídico de la explotación sexual comercial de niños, niñas y adolescentes*. Santiago de Chile;

ILO-IPEC, U. ARCIS (2007) “*La demanda en la explotación sexual comercial de adolescentes: el caso de Chile*”, Santiago;

ILO, SENAME, U. ARCIS (2004) *Estudio de la Explotación Sexual Comercial infantil y adolescente en Chile*; Santiago de Chile.

ONG Raíces (2001) *Diagnóstico Descriptivo de Comercio y Tráfico Sexual Infanto-juvenil*, Terre des Hommes Alemania, Santiago de Chile.

PAICABI (2006) *Los secretos del eclipse. Explotación sexual comercial infantil*, Valparaíso;

SENAME, U. Católica de Valparaíso, PAICABI (2007) “*Diagnóstico de la Situación de Abuso Sexual Infantil en la V Región*”

UNICEF (Office for Chile and the Southern Cone), Universidad Diego Portales (2006) *Niños, niñas y adolescentes víctimas de delitos sexuales en el marco de la Reforma Procesal Penal. Informe Final*. Santiago de Chile.