



**ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE OPTIONAL
PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON
THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS**

Network of Child and Youth NGOs, Chile

Chilean Conscientious Objectors Network

Article 1

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

In the case of an armed conflict, the participation in hostilities of persons under the age of 18 years is a situation that could occur in Chile, since currently there are no institutional or legal guarantees that would proscribe this.

Currently there are persons under the age of 18 years in Armed Forces' academies. Even though some academies require students to have successfully graduated from high school, in some cases it is possible to do so before turning 18. On the other hand, these academies offer other forms of admission that do not require prospective students to be high school graduates. This is specified in the academies' admission information, as well as in their regulations.

It is also possible that volunteers can be enlisted into national military service, even though they are under the age of 18 years. This is demonstrated in the reworked text of Decree Law N° 2,306 of 1978 *"guidelines for recruitment and mobilisation of the armed forces"*, modified in 2005 by the Compulsory Military Service reform, Law 20,045. Article 32 of this latter law, states that the State National Mobilisation Office (henceforth referred to as the State Office) can authorise anticipated military service, therefore, the State Office has several ways of allowing persons under the age of 18 years to enlist in military service.

According to the prevailing legislation in Chile, persons under the age of 18 years in the armed forces could be mobilised in case of hostilities. This is demonstrated in Article 69 of the Armed Forces' Recruitment and Mobilisation Law mentioned above, which states that **"In times of war, the President of the Republic can call upon all persons, regardless of sex or age limit, to be employed in the different services that the nation requires"**.

Given this situation, it is imperative that the State implements measures so that persons under the age of 18 years that are enlisted in the Armed Forces do not participate in hostilities, and furthermore are given a special status because they are under age. It is also important to clarify the age limit for involvement in mobilisations and "services that the nation requires", since the aforementioned Article 69 does not do so and, in fact, opens up the possibility of using persons under the age of 18 years indiscriminately. This should be clarified in addition to that expressed in the Convention on the Rights of the Child, and there should be recognition of the right to Conscientious Objection of persons under the age of 18 years who refuse to be mobilised, a right which is enshrined in the many agreements and human rights instruments that Chile has signed and ratified. A legislative reform recognising Conscientious Objection to Compulsory Military Service is currently being considered by the National Congress (Parliament), but this right, if it were to be recognised, would not be applicable in times of war, times in which the Chilean State could mobilise all persons regardless of sex or age limit, as is stated in the prevailing legislation.

According to the recommendations of the Committee on the Rights of the Child, the Chilean State should create an Office of the Defender of Children and Adolescents, independent and with sufficient resources, which would supervise, among other things, the situation of persons under the age of 18 years enlisted in the Armed Forces, as well as those under age persons recruited in times of war. It is also recommended that the State extend the powers of the Recruited Soldier Office, created under Law 20,045 (Compulsory Military Service Reform, 2005). This office should be independent of the Armed Forces and administered by civilians in coordination with the corresponding military bodies, in this way assuring an improved performance in response to complaints by soldiers enlisted in Compulsory Military Service, regarding human rights violations and abuses within military compounds.

Article 2

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

Compulsory conscription only exists for persons over the age of 18 years, but this can change according to the country's situation. According to Article 69 of the Armed Forces' Recruitment and Mobilisation Law, the President of the Republic, in times of war, can call upon all persons, regardless of sex or **age limit**, to be employed in the different services that the nation requires.

In Chile the majority of enlistment vacancies for persons over 18 years are filled through the voluntary inscription process, because conscription is actively encouraged, above all in the poorest sectors of society. We live in a militaristic society, which is expressed culturally, for example, in schools, which reinforce in symbolic terms: the possibility of conflict with neighbouring countries; the superiority of military institutions over civilian state bodies; national superiority in comparison with neighbouring countries¹; discrimination and rejection of cultural diversity, etc. All of this helps to stimulate the voluntary conscription of 18 year old or under age young people from low income sectors. As well, there is the economic aspect of this militarism, reflected in a disproportionate government budgetary allocation, far above that allocated to areas such as education and health. The repercussions of this are that there are strong incentives and material benefits from enlisting in military service, which are not found in any other State department.

For the aforementioned reasons, it is necessary and urgent to create mechanisms so that persons under the age of 18 years, who are and could be enlisted in the Armed Forces, be entitled to special protection.

¹ As an example of this, in 2004 UNICEF carried out a study of the prejudices of Chilean schoolchildren. This study showed that 46% of persons under the age of 18 years believed that other nationalities were inferior to Chileans. Among the most cited as inferior were Peruvians, Bolivians and Argentineans. This tendency has increased in recent years.

Article 3

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

The prevailing legal regulations in Chile do allow for the participation of persons under the age of 18 years in academies and in Military Service (MS). Both the Armed Forces' academies and MS allow persons under the age of 18 years to take part in their contingents. Furthermore, up until 2005, according to available information, there were programmes explicitly aimed at persons under the age of 18 years enlisting in MS, for example, approximately 5,000 young people annually enlisted as voluntary recruits in the "Pampa Germania" Battalion and the "Manuel Rodríguez" Company of the Military Academy.

It is also explicitly possible to undertake MS, by regular admission, before attaining 18 years of age and this information is openly publicised by the State to the population through the mass media. Having become aware that there are persons under the age of 18 years completing MS and enrolled in academies, the State Office (in charge of recruitment etc) was formally requested to supply information about the age of recruits and students in academies and those currently active in MS. Nevertheless, this information was not supplied to us. It is suggested that the Committee request such information from the Chilean State.

It is important to take into account the recommendations of the various community organisations involved in this issue regarding the extension of powers of the Recruited Soldier Office. Nevertheless, in order to be able to effectively monitor the situation of persons under the age of 18 years, mainly in institutions of the armed forces, it is necessary – as was pointed out by the Committee on the Rights of the Child in its recommendations to the Chilean State – to establish an independent organisation capable of overseeing the implementation of the rights enshrined in the Convention and its Optional Protocols. To date neither an Ombudsman nor an Office of the Defender of Children and Adolescents exists in Chile.

Article 4

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

Although it is true to say that in Chile military (paramilitary) groups separate to the Armed Forces do not exist, it is important to point out that children are used by “armed” groups of drug traffickers, who, on many occasions, utilise these children as shields in clashes between them and the militarised State Police Force (Carabineros de Chile). They are also used as a nexus in trafficking and robberies. There are also persons under the age of 18 years involved in the clashes between the uniformed Police (Carabineros) and the Mapuche indigenous people.

Although the aforementioned article cannot be directly applied to the organised armed groups of drug traffickers mainly present in the country’s capital, it is important to consider that these groups are the justification for the design, planning and implementation of policies regarding public security and police control.

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

Recommendation

Chilean legislation does not include measures that criminalize, prohibit or sanction adults who recruit children or adolescents into organised drug trafficking groups.

It is important to note that in Chile children who are utilised by these armed groups of drug traffickers are subject to laws and criminal punishment (new Juvenile Criminal Responsibility Act), in which they are not considered as victims, but rather as delinquents, whereas the practice of recruiting persons under the age of 18 years is not criminalized and therefore is not sanctioned.

There are no programmes aimed at supporting the social reintegration of children that have been recruited by drug traffickers.

Article 3

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

In Chile, both for the Armed Forces' academies and military service, it is not required in all cases that an applicant be over 18 years of age or have graduated from high school in order to be accepted into the academies administered by the Armed Forces. This is applied in the case of voluntary enrolment of persons under the age of 18 years.

On the other hand, military training is not only provided in schools run by the Armed Forces. There are also pre-military schools, such as the Luís Cruz Martínez Institute, ORION Pre-Military School and PRECHT Pre-Military School, which are not administered by the National Defence Ministry, despite the fact that they provide military training and, in doing so, openly contravene Article 15 of the aforementioned Law, which states that military duty can only be carried out in the Army, the Navy or the Air Force and that institutes, schools or organisations that provide pre-military training can only exist and operate as a direct dependency of the National Defence Ministry.

As an example, the ORION school is backed by the Chilean Black Berets and the Tactical Divers Group, who approved ORION's Pre-military Educational Project and are their sponsors. The instructors and teachers of this pre-military school belong to the Tactical Divers, Commandos, Green Berets and Black Berets of the Armed Forces.

Moreover, there are records of places administered under a military regime in which not only military but also weapons training has been provided. Adolescents who were in the military boarding school Children's Home of Complete Formation, which was administered by the military in Barracks N° 3 of the San Bernardo Infantry School, received weapons training from military personnel. This has been corroborated by the testimony of a person who was directly in charge of looking after the children, as well as the confidential account of an adolescent who lived in that home.

It is necessary that, on the one hand, schools and pre-military institutes operate as dependencies of the National Defence Ministry, which is not the current situation in Chile and, on the other, that an Office of the Defender of Children and Adolescents is established to protect children who study and/or live in pre-military schools.

Article 6

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

As was pointed out in relation to Article 3, there is no independent mechanism that can monitor the implementation of the Protocol, let alone demand its implementation.

It is recommended that the non-government organisations that work on this issue be included not only in promoting the Protocol, but also in monitoring and demanding its implementation. At the same time, an Office of the Defender of Children and Adolescents needs to be urgently established.

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

To date, no national campaign promoting the Protocol has been undertaken. There is no mandate to include promotion of the Protocol in the education system.

APPENDIX 1

Partial register of child victims of armed conflicts between drug traffickers in the city of Santiago, Chile.

Name	Age	Date	Sector of Santiago	Medical Situation	Information Source
O. A. V. O.	15 years	20 April 2007	Villa Francia	Wounded	www.cooperativa.cl
A. F.	16 years	19 April 2007	La Pintana	Killed	http://teletrece.canal13.cl
J.C.M	13 years	Wed. 13 July 2005	Puente Alto	Wounded	www.cooperativa.cl
C. M.	8 years	2005	La Pintana	Wounded	www.cooperativa.cl
J. A.	5 years	5 October 2005	La Granja	Killed	http://teletrece.canal13.cl
---	12 years	6 August 2006	Nuñoa	Wounded	http://noticias.tvn.cl
J. T. V.	13 years	2005	Población Alianza, Cerro Navia	Killed	http://www.risolidaria.cl
C. A.	12 years	January 2005	Villa Esperanza 1, Maipú	Wounded	http://diario.elmercurio.com
J.C.V.	3 years	2006	Pedro Aguirre Cerda	Wounded	http://teletrece.canal13.cl
	7 years	2005	Pedro Aguirre Cerda	Wounded	http://noticias.tvn.cl
T. F. B.		12 September 2006	Villa Pacífico Sur, Puente Alto	Wounded	http://www.redclinica.cl/
V. V. F. L.	14 years	4 September 2006	Villa Pudahuel Sur	Wounded	www.cooperativa.cl
Y. P.V.	5 years	30 November 2006	Renca	Wounded	http://noticias.tvn.cl
D. F. C.	14 years	04-02-18	Conchalí	Wounded	www.cooperativa.cl
E.C.A.S	12 years	25 October 1996	Villa Arco Iris 2, Puente Alto	Wounded	www.cooperativa.cl
C. M.S.	15 years	2005	La Cisterna	Wounded	www.cooperativa.cl
A.M.N.	9 years	2006	Población Yungay, La Granja	Wounded	www.cooperativa.cl
S.F	15 years	2004	Población La Legua, San Joaquín	Wounded	S.M.S.
C.M.	16 years	2006	Población La Legua, San Joaquín	Wounded	S.M.S.

APPENDIX 2

Testimony of an adolescent boarder of the military boarding school Children's Home of Complete Formation (FIN Home), Barracks N° 3 of the San Bernardo Infantry School, Chilean Army.

I was in the FIN Home about 6 years. It was a very big boarding school; there were lots of children of different ages, from 5 to 18 years old. They had us divided up by age.

That place was very violent. They made us march back and forth all day, formed in two lines from the smallest to the tallest. If anyone made a joke, talked or, as the soldiers said, "behaved badly", they'd punish all of us, either with physical endurance punishments, or with punches, kicks, or with sticks and belts. It was very rough treatment, excessive, total disrespect for basic freedoms, no respect for human rights. In that place, the word rights did not exist, only the word duty: duty to obey, duty to remain silent, duty to endure blows and violations.

In the FIN Home, violent relationships were very common and normal. That's how they taught us to behave. Abuse of the smaller children by the bigger ones was justified by force, by the fact that they were able to do it. It was a sad and traumatic time in my life.

In the home they not only treated us as if we were soldiers, but also occasionally they took us to Chena Hill, which at the time was Barracks N° 2, if I remember correctly, of the San Bernardo Infantry School. They took us to the hill in "tanquetas", which were military vehicles that could transport large numbers and, once we were there, they gave us guns so that we could shoot at the targets that they had put there for us. They taught us to shoot, obviously, to hold the weapon, and how to fire "good shots". They gave us that "power", they made us feel pleasure using the weapons. It's very extreme that, being children at the time, they taught us or gave us the chance to use weapons, although it was only for a moment. Even though power abuse and violations were common and normalised in the context of the extreme violence we experienced in the FIN Home, the fact that they give you weapons is overwhelming, it drives you crazy, apart from the danger that it implies.

Also, the people who looked after us had weapons, but not all of them. It was common.

I remember that weapons that we possessed, which we used to play with, hunting weapons, many times wounded other children who by accident or intentionally, were fired on as part of the game.

It was definitely an awful time.

Luís Venegas Navarrete, was a boarder in the FIN Home from 1995 to 2001, from when he was 11 until when he was 17. He is now 23, is studying Philosophy at the University of Chile, and works for the respect and promotion of human rights.

APPENDIX 3

Network of Child and Youth NGOs, Chile

The Chilean National Network of Child and Youth NGOs was founded in 2001. Our objective is to work collaboratively, within the specialisation that we share, and create supportive links, transferring experiences and knowledge so that, in the hopefully not too distant future, we become a Voice and a Model, Responsible and Authoritative, from the community sector, in regards to child and youth issues.

Over the years we have managed: to work in a decentralised way, based on a fundamental respect for regional autonomies, that moreover allows each institution to make input from their own specific context; to produce material from the member organisations themselves, theoretical and practical tools that serve as the basis for new network proposals; and we are legitimised as an advocate before state authorities, the Council of Ministries for Children and other community organisations.

At the present time, the Network is active in the following regions: Arica, Atacama, Bio Bio, Valparaíso, Santiago Metropolitan, and Araucanía. The Network has 64 member organisations.

Even though Network achievements have been significant, there is still a long way to go before we will be able to exert a relevant influence on the community, and in the creation of public policies in accordance with the *Convention on the Rights of the Child (CRC)*.

The Chilean State has not adapted its legislation to the principles of the CRC, nor has it made all the structural modifications that this Convention requires. The Network must become stronger in order to exercise the pressure necessary for these transformations to occur.

MISSION

The Chilean National Network of Child and Youth NGOs, as a social and political force, recognised by children and adolescents; plays a critical and propositive role in society, promoting Defence and Respect for the Rights of the Child in order to build a human rights culture in Chile.

VISION

The Chilean National Network of Child and Youth NGOs aims, towards 2010 (bicentenary of Chile's independence), to be a part of the generation of legal, political and social conditions that guarantee respect for and effective implementation of Child and Youth Rights, defended by society as a whole.

STRATEGIES

Skills training.

Coordination of joint actions.

Strengthening of strategic alliances with key players.

Creating spaces for the participation of children and adolescents.

Constant promotion of the Network's activities.

APPENDIX 4

Chilean Network of Conscientious Objection to Compulsory Military Service (ROC-Chile)

The Chilean Network of Conscientious Objection (ROC-Chile) brings together a number of community organisations that support the right of Conscientious Objection to Military Service. The Network fights for the recognition of this right in Chilean law, and works in solidarity with young people who are conscientious objectors to military service.

The reasons for taking up this issue are diverse and complementary. The organisations in the network are united by the conviction that Conscientious Objection is a human right, based on Articles 3 and 18 of the Universal Declaration of Human Rights. (United Nations' Session 43/1987)

Members of ROC-Chile:

- Amnesty International, Chilean Section
- Organisation of Education for Peace, "PEACE & ACTION"
- "Diego de Medellín" Ecumenical Centre
- Pope John XXIII Community
- Chilean Commission for Adolescent Rights, CODEJU
- Christian Church Confraternity
- Corporation for Citizen's Rights, SEAL
- Corporation for the Promotion and Defence of People's Rights (CODEPU)
- Corporation Peace and Justice Service, SERPAJ-Chile
- Department of Justice Peace and Ecology, CONFERRE
- Youth Pastoral of the Evangelical Lutheran Church of Chile
- Social Pastoral Vicariate and Worker's Pastoral Vicariate of the Archbishopric of Santiago