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**COMMITTEE ON THE RIGHTS OF THE CHILD**

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

**Initial reports of States parties due in 2005**

**CHILE\***

[19 January 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## **INTRODUCTION**

1. This report fulfils the obligation assumed by the State of Chile on ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, under article 12, to provide information on the measures taken to implement the provisions of the Protocol. The Protocol was signed by Chile on 28 June 2000 and entered into force on 6 March 2003.

2. As regards commercial sexual exploitation of children and trafficking in children, covered by the Protocol, the Ministry of Justice is the body principally responsible for formulating policies on criminal prosecution for all forms of these offences, especially those relating to the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. It also sees to legislative adjustments regarding protection of the rights of children and adolescents. Through the National Service for Minors (SENAME) and the Forensic Medical Service, the Ministry carries out programmes for protecting children's rights when these are violated, covering expert evaluation, awareness-raising, research, rehabilitation and legal representation. It is also coordinating the preparation and implementation of the Framework for Action against the Commercial Sexual Exploitation of Children and Adolescents. Coordination in the specific area of sexual abuse of children falls to the National Intersectoral Committee for the Prevention of Maltreatment of Children, under the authority of the Ministry of Justice.

3. The preparation of this report involved analysis of information provided by governmental institutions, which was compared and expanded with information from non-governmental organizations (NGOs) that specialize in the area. The Ministry of Foreign Affairs and the Ministry of Planning held a workshop on 13 October 2006 which was attended by representatives of the governmental institutions that had provided the background material for this report, the United Nations Children's Fund (UNICEF) and the following NGOs, recognized for their involvement in children's issues: Network for Children of Non-Governmental Organizations (including the Fundación Anide and ONG Cordillera), Chilean Association for the United Nations (ACHNU), Corporación Opción, ONG Raíces and Corporación Paicabí.

4. On the basis of this experience, concerns raised were duly considered and addressed by the various institutions that provided information, and written observations were collected which enriched the final report. The meeting also provided an opportunity to dispel some doubts about the importance of the protocols.

5. The Ministry of Planning was responsible for coordinating the work and collating the material for this report, which is to be circulated jointly with the Ministry of Foreign Affairs.

### **I. PROGRAMME ADVANCES IN THE AREAS COVERED BY THE PROTOCOL**

6. The following describes the main programme advances in addressing commercial sexual exploitation of children in Chile since it ratified the Optional Protocol. Such exploitation is classed as an offence and as one of the worst forms of child labour.

7. As mentioned above, the Government formulates policies on criminal prosecution for offences and carries out programmes for protecting children's and adolescents' rights when these are violated, through services under the authority of the Ministry of Justice, SENAME and the Forensic Medical Service. It is also coordinating the preparation and implementation of the Framework for Action against the Commercial Sexual Exploitation of Children, a significant advance in dealing with commercial sexual exploitation of children in Chile, including trafficking in children for sexual purposes.

8. These activities have been boosted by the signing of various agreements, including International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, on children and adolescents under the age of 18 who are victims of exploitation by adults, in economic activities that cause them physical, psychological and moral harm, including the sale of and trafficking in children for the purposes of commercial sexual exploitation. Likewise, an agreement with the International Organization for Migration (IOM) has provided support for devising and implementing a pilot care scheme for child and adolescent victims of all forms of commercial sexual exploitation, including trafficking for sexual purposes. This agreement has also led to the creation of conditions and methodologies for rehabilitation and the development of a training programme for professional and technical staff in the governmental sphere and in institutions working with SENAME. Another support agreement, between Save the Children, the Ministry of the Interior, the Public Prosecutor's Office, the Carabineros, the criminal investigation police and SENAME, aims to implement the "Disappeared Chileans Programme" for establishing a central register of missing persons, with systematized information, to help solve reported cases swiftly and to encourage family reunification using a computer system linking 21 countries in the region. Focused studies on the subject are also being carried out.

9. Regarding care for children and adolescents affected by commercial sexual exploitation, specialized programmes are currently under way that are coordinated by private institutions working with and funded by SENAME, which provide care, rehabilitation and legal representation for child and adolescent victims. The preventive role in this regard is performed by the Offices for the Protection of the Rights of Children (OPDs) throughout the country, and by the free telephone helplines to SENAME and the Carabineros for reporting these offences.

10. Within the framework of the National Plan for Decent Treatment of Children, 2000-2006, carried out by the National Intersectoral Committee for the Prevention of Maltreatment and Sexual Abuse of Children, the Government has programmatically addressed the issue of commercial sexual exploitation of children through the following actions:

(a) In 1999, the First National Conference on Violence against and Commercial Sexual Exploitation of Children and Adolescents was held, organized by the Ministry of Justice, UNICEF, the Inter-American Children's Institute, ACHNU and the Margen Foundation;

(b) Between 1999 and 2000, the Government and the institutions mentioned above formulated the Framework for Action against the Commercial Sexual Exploitation of Children and Adolescents, an important working tool for progress on devising coordinated policies and actions on the subject. Its main lines of action cover the areas of research (social, legal and criminal), intervention (promotion and secondary and tertiary prevention), social-policy reforms and legislative reforms.

11. Although actions have been carried out on the subject by some actors in particular, there has been no systematic follow-up to the actions proposed in the Plan or coordination at the national level; the same is true of the National Plan for the Prevention and Progressive Eradication of Child and Adolescent Labour.

12. In the area of social research, the Government is conducting a joint project involving SENAME, the Ministry of Labour and Social Security and ILO to create a central, progressive system for registering the worst forms of child labour, as part of a nationwide study to assess child labour and to identify its worst forms.

13. The study led to the creation of a register of cases between the police, the SENAME support network and the Labour Department, with the aim of identifying and following up on cases and taking into account children's and adolescents' views regarding their needs in order to formulate more appropriate policies for rehabilitation. As part of this research, a qualitative study was carried out in 2003 to find out how children and adolescents themselves perceived their living conditions and economic exploitation.

14. With funding from the ILO International Programme on the Elimination of Child Labour (IPEC), a programme entitled "Commercial sexual exploitation of children and adolescents: study of the problem, social awareness, prevention and support for victims" was carried out from 2002 to January 2004. The project included a nationwide assessment of the prevalence of the problem, an awareness campaign and the opening of a centre for specialist support, applying a model of rehabilitative action. The research consisted in a quantitative and qualitative assessment of the current extent and nature of commercial sexual exploitation of children and adolescents in Chile and specifically their use for prostitution. The study demonstrated the need to formulate intersectoral policies and programmes involving the justice, health, education and labour sectors.

15. There has been a gradual increase in resources earmarked for rehabilitation and care of child and adolescent victims of sexual exploitation. There are currently 16 projects throughout Chile to support child victims of commercial sexual exploitation, reaching 730 child victims in the regions most affected, which corresponds to 19.7 per cent of the estimated total nationwide. Although this marks progress, it means that only one fifth of the target population has been reached, and some children receive no support after offences are reported. This situation is challenging the State and civil society organizations to formulate new methodologies and to extend and improve management of existing resources. Significant unresolved challenges have also been identified in terms of creating mechanisms for intersectoral agreements and coordination in order to address the problem, which is complex and has many causes, and to provide an effective, concerted response to problems including health, education and future work prospects.

16. SENAME acts as legal representative for children in criminal proceedings and has set up a special telephone helpline for reporting sex offences against children.

17. As part of the SENAME/IPEC Programme on the Prevention and Elimination of Commercial Sexual Exploitation of Children, 2002-2004, a study was conducted to assess the impact of action taken by State institutions against commercial sexual exploitation of children, including legislative advances. Continuing efforts to place the issue on the public agenda, the Second National Conference on the Commercial Sexual Exploitation of Children was held at the end of 2004.
18. On 8 August 2005, a meeting was held in preparation for a meeting of Latin American Ministers of Tourism, between the Brazilian Ministry of Tourism and Sustainable Tourism and Children programme and Chile's National Tourism Service and Ministry of Justice, in order to agree on future strategies for addressing child sex tourism and preventing commercial sexual exploitation of children.
19. The Ministry of Labour and Social Security is addressing the problem of commercial sexual exploitation as one of the worst forms of child labour (intolerable forms of child labour and work of a dangerous nature or that is carried out in dangerous conditions) and is running projects in social research, victim care and legislative reform.
20. In order to comply with international conventions and to strengthen national policy on child labour and the worst forms of child labour, the Chilean Government and IPEC signed a memorandum of understanding in June 1996, which was renewed in 2002.
21. Also in 2002, the National Advisory Committee for the Prevention and Progressive Eradication of Child Labour was set up by presidential decree. As part of its remit, in 2001 the Committee formulated the National Plan for the Prevention and Progressive Eradication of Child and Adolescent Labour in Chile, which is enshrined in the National Policy and Integrated Plan of Action in favour of Children and Adolescents, 2001-2010.
22. In order to progress towards the goal of eradicating child labour and, in particular, the worst forms of child labour, a series of actions and projects have been carried out, including seminars, awareness campaigns, training activities and studies on the subject. These have involved the Government, employers, workers, civil society and international organizations such as UNICEF and ILO.
23. In the area of education and specifically sex education in Chile, the Ministry of Education is running a programme entitled "Towards Responsible Sexuality", coordinated by the National Service for Women, the Ministry of Health and the Ministry of Education, with the aim of addressing sex education in State schools. Over the last two years, the programme has included large-scale training schemes for teachers in preventing maltreatment and sexual abuse of children. In connection with this measure, in 2004 the National Committee for the Prevention of Maltreatment of Children produced a support manual for teachers, entitled "Protecting our Children's Rights - Preventing Maltreatment and Sexual Abuse of Children in the School Environment". This manual is currently being updated to 2006, as a result of the entry into force in Chile of the criminal procedure reform, the implementation of the Family Courts Act, the entry into force of the new Domestic Violence Act and the promulgation of the Adolescent Criminal Responsibility Act.

24. In 2005, the Ministry of Education included the prevention of sexual abuse of children in its 2005-2010 plan for education on sexuality and emotional health.

25. The specific task of preventing maltreatment and sexual abuse of children and providing support in Chile has since 1996 been the responsibility of the National Intersectoral Committee for the Prevention of Maltreatment and Sexual Abuse of Children, responsible for formulating policies, making recommendations and coordinating action in the public sphere by the various sectors involved. Regional committees have also been formed since 1997, which are the same in nature. As part of the action carried out by the National Intersectoral Committee, seven nationwide and regional awareness campaigns have been conducted by the Government since 1997 under the slogan “For decent treatment of children”, in order to develop awareness and knowledge about the rights of the child and the prevention of maltreatment of children. Two of these campaigns focused on preventing sexual abuse of children and disseminating information on new legislation in the area.

26. The fifth campaign (2003) was entitled “Preventing sexual abuse of children: your presence matters ... Listen to children, look at them, take them seriously”, and aimed to promote social visibility of sexual abuse of children and to introduce the subject into national discussion and dialogue from an educational and prevention perspective (“Decent treatment”), avoiding approaches that were alarmist and/or encouraged distrust in relations between adults and children. The sixth campaign (2004), entitled “Preventing sexual abuse of children: I believe you, I am listening to you ... If we don’t believe them, how can we protect their rights?”, had as its core concern the secondary prevention of sexual abuse of children, aiming to encourage commitment from adults and the school community, especially families and teachers, regarding sexual abuse of children. It also highlighted the importance of early detection and reacting positively, listening to children in these situations and believing them, as well as encouraging responsible reporting of offences. This campaign targeted adults in charge of bringing up and educating children.

27. The eighth campaign was conducted in 2006 and focused on children’s right to be heard and to have their views taken into consideration in the context of justice, health, education and the family.

## **II. LEGISLATIVE ADVANCES IN THE AREAS COVERED BY THE PROTOCOL**

28. A significant advance in the legislative sphere in dealing with the commercial sexual exploitation of children and its criminal prosecution was the promulgation of Act No. 19,927 of 2004, which amended the Criminal Code, the Code of Criminal Procedure and the Code of Criminal Trial Proceedings in respect of sexual offences against children. The Act severely sanctions paedophilia and child pornography and web-based paedophile and pornography rings, and regulates more fully the various sexual offences of which children and adolescents are victims, especially any form of commercial sexual exploitation of children and adolescents, by establishing new criminal offences. Among other matters, the Act increased the penalties for most sexual offences against children and adolescents; it raised the minimum age of sexual consent from 12 to 14, thereby protecting the sexual safety, development and integrity of persons under the age of 14; and it created a special offence penalizing anyone who obtains the sexual services of a minor (a person under the age of 18) in exchange for money or other form of

consideration. That offence marks the first time that the law has punished clients of children and adolescents in a situation of commercial sexual exploitation, specifically the use of children over 14 and under 18 years of age for prostitution, which will help discourage this practice. It extended the scope of the offence of encouraging the prostitution of persons under the age of 18 to include anyone who promotes or facilitates it, even if not on a habitual basis or with abuse of authority or trust, as stipulated in the earlier classification. It also expanded offences linked to child pornography to encompass its distribution and sale and its acquisition and storage with malicious intent. The Act further created a new penalty in the form of a temporary and total ban on engaging in work involving children and established a child sex offenders register.

29. On the jurisdictional side, it empowers the national courts to try specific offences committed outside the territory of the Republic. Regarding procedure, it allows investigation measures such as intercepting or recording telecommunications, taking photographs, filming or using other means of reproducing images that help clarify events, recording of communications, and the use of undercover agents. The foregoing applies to the offences of producing and distributing child pornography, encouraging the prostitution of persons under the age of 18, patronizing child prostitutes and trafficking in individuals for purposes of prostitution. In addition, it establishes a new penalty whereby the court may order establishments or premises used to commit offences with the owner's or manager's knowledge to be closed down.

30. Therefore, the offences punishable following the promulgation of Act No. 19,927 in January 2004 include that of patronizing child prostitutes or procuring the sexual services of a minor in exchange for money or other form of consideration. That offence punishes "anyone who obtains the sexual services of persons over 14 and under 18 years of age in exchange for money or other consideration of any sort, without the existence of the conditions for the offences of rape or statutory rape, by ordinary imprisonment of a maximum term".

31. In the case of encouraging the prostitution of persons under the age of 18 (procuring), even if not on a habitual basis or with abuse of authority or trust, "anyone who promotes or facilitates the prostitution of minors to satisfy the desires of another" may be punished by ordinary imprisonment of a maximum term. If there is abuse of authority or trust, deceit, or habitual behaviour involved, the sentence may rise to that of rigorous imprisonment of any term and a fine of between 30 and 35 monthly taxation units (MTU<sup>1</sup>).

32. Encouraging trafficking in individuals, of any age, for purposes of prostitution is made a criminal offence, thereby punishing "anyone who facilitates or promotes entry into or departure from the country of persons to work as prostitutes in the country or abroad" with ordinary imprisonment of a maximum term and a fine of between 20 and 30 MTU. This offence may be both ordinary and aggravated. Some of the factors that aggravate the offence are: if the victim is a minor; if violence or intimidation is used; if the agent acts by deceit or through abuse of authority or trust; if the perpetrator is an ascendant, descendant, spouse, common-law spouse,

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<sup>1</sup> One MTU is equivalent to 61.3 dollars, in accordance with the amounts fixed by the Central Bank of Chile at [www.bancocentral.cl](http://www.bancocentral.cl) on 14 November 2006.

sibling, tutor, guardian or person responsible for the care of the victim; if the agent takes advantage of the financial distress of the victim; or if the conduct of the agent is habitual. In such cases, the penalty of rigorous imprisonment of any term and a fine of between 30 and 35 MTU may be imposed.

33. The current age in Chile to be able to give valid sexual consent, as previously stated, is 14 years. For this reason, rape is established as carnal access of the vagina, anus or mouth of a person under the age of 14, without requiring the existence of the conditions for defining rape in the case of persons over that age, which are the use of force or intimidation, the victim being unconscious or incapable of resisting, or taking advantage of the victim's mental derangement or impairment. The offence of rape of persons over the age of 14 (rape) is punishable by rigorous imprisonment of a minimum to medium term. The offence of rape of persons under the age of 14 (statutory rape) is punishable by rigorous imprisonment of any term. The protected legal asset of persons under the age of 14 is therefore their sexual integrity (their consent is irrelevant) as opposed to persons over the age of 14, where the law protects their sexual freedom.

34. In the event of carnal access with a person over 14 and under 18 years of age, it is established as statutory rape if the conditions constituting a position of advantage or abuse are met: abuse of the victim's mental abnormality or disturbance (less severe than mental derangement or impairment), abuse of the victim's dependent relationship (employment, educational or care relationship), abuse of the victim's severe distress, or the practice of deceit by taking advantage of the victim's sexual inexperience or ignorance.

35. The Chilean Criminal Code also establishes the offence of sodomy, punishing "anyone who carnally knows a person aged under 18 of the same sex, without the existence of the conditions constituting the offences of rape or statutory rape", with ordinary imprisonment of a minimum to medium term.

36. The offence of sexual abuse consists of performing a sexual act other than carnal knowledge on a person: when the victim is over the age of 14 (and under the age of 18) and when the conditions for rape or statutory rape are met, it is punishable by ordinary imprisonment of a maximum term. When the victim is under the age of 14 years, in all cases and regardless of the conditions involved, it is punishable by ordinary imprisonment of a maximum term to rigorous imprisonment of a minimum term. The offence of aggravated sexual abuse consists of the sexual act of inserting objects of any sort into the vagina, anus or mouth, or the use of animals. Aggravated sexual abuse is punishable by rigorous imprisonment of a minimum to medium term when the conditions for rape are met; ordinary imprisonment of a maximum term to rigorous imprisonment of a minimum term when the conditions for statutory rape are met; and rigorous imprisonment of any term when victims are under the age of 14.

37. The Chilean Criminal Code establishes the offences of statutory sexual abuse (also known as the offence of exposing minors to acts of a sexual nature or corruption of minors), and the use of minors for the production of pornographic material, in addition to penalizing anyone who sells, imports, exports, distributes, disseminates or exhibits pornographic material in which minors have been used. In addition, it punishes the acquisition and storage with malicious intent of this type of material. Such offences are understood to have been perpetrated in Chile when they are committed by means of telecommunications systems to which there is access from the country.



38. As previously stated with regard to the extraterritoriality of sexual offences, in the jurisdictional sphere following the promulgation of Act No. 19,927, national courts are empowered to try specific offences committed outside the territory of the Republic, provided that the following conditions are met:

(a) For the offences of producing child pornography, and encouraging prostitution and white slavery among minors, when: they endanger or violate the sexual integrity or freedom of any Chilean; and were committed by a Chilean or by a person habitually resident in Chile;

(b) For the offence of distributing or selling child pornography, when the pornographic material in question has been produced using Chileans under the age of 18.

39. In addition, with regard to the seizure and confiscation of materials, assets and other means used to commit or facilitate the commission of the offences referred to in the Protocol, Act No. 19,927 included a provision enabling technological devices, such as computers, image and sound players and similar, to be handed over to SENAME or departments of the corresponding police authorities specializing in this field, when seized in relation to the offences of producing pornographic material involving children and its sale, importation, exportation, distribution, dissemination and exhibition. In addition, the Act establishes that productions seized as evidence of those offences shall be stored in a restricted registry.

40. In addition to the new procedural measures introduced by Act No. 19,927, the reform of criminal procedure undertaken recently in Chile improves the general manner in which offences against children and adolescents are dealt with.

41. With regard to penalties for improperly inducing a person to give consent for adoption, the Adoption Act No. 19,620 of 1999 expressly lays down the principle of the exceptional nature of international adoption and prevents Chilean children from illegally leaving the country and going abroad, giving preference to Chilean married couples with the will and ability to adopt in order to avoid uprooting children from their country and ethnic origins. It provides that international adoption must take place in Chile, meaning that the child must leave the country as the son or daughter of the foreign adoptive parents following a judicial decision. Lastly, it designates as an offence the wrongful receipt of payment for the delivery of a child for purposes of adoption.

42. Article 42 of this Act punishes “anyone who requests or accepts any form of consideration for facilitating the transfer of a minor for adoption with ordinary imprisonment of a minimum to medium term (61 days to 3 years) and a fine of 10 to 15 MTU”. Moreover, this penalty shall be increased if the offence is committed by a person in authority, public employee, attorney-at-law, physician, matron, nurse, social worker or any person who has custody of the minor if that person performs the act in question by making wrongful use of his or her office, post or profession.

43. It should also be mentioned that article 33 of the Press Act, No. 19,733, prohibits the disclosure - by any public medium of communication - of the identity of minors who are the authors, accomplices, accessories or witnesses in offences, or of any other information pointing

to it, as it also does with regard to the victims of some offences covered by Title VII of Book II of the Criminal Code, “Crimes and ordinary offences against the family order and public morality”, which include sexual offences and offences relating to commercial sexual exploitation of children and adolescents.

44. The Minors’ Act, No. 16,618, amended by Act No. 19,806 of May 2002, principally refers to the system of protective measures applicable in situations of commercial sexual exploitation of children. It establishes sanctions for anyone who employs minors in the activities that it lists. This Act amended various statutes as part of the implementation of the reform of criminal procedure in Chile by raising the age of victims from 16 to 18 years. Therefore, penalties currently apply to: anyone employing persons under the age of 18 in jobs or occupations that require them to be in bars, brothels or gaming houses; the employer, owner or agent of public spectacles in which minors exhibit their agility, strength or similar for profit-making purposes; and anyone who employs minors in night work, i.e. work performed between 10 p.m. and 7 a.m. Act No. 19,806 created a distinction between the types of measures applicable to offenders, on the one hand, and to cases where rights are seriously threatened or violated, on the other. This distinction also appears in the family court regulations, although broader reform remains necessary in order to ensure that the traditional guardianship model is left behind once and for all.

45. Protecting rights, both in preventive actions and actions for the support, care, rehabilitation, reintegration and social promotion of child victims, involves establishing more comprehensive systems that are closer to families and communities. To this end, the Government of Chile is encouraging reform of the current system for the protection of rights and justice for children and adolescents, which involves establishing a different State response in protecting the rights of children and adolescents than in dealing with criminal offences committed by adolescents.

46. The repeal of the current Minors’ Act and its replacement with a Children’s Rights Protection Act, on the substantive side, and the entry into force of the family courts system, on the procedural side, will make it possible, where children’s rights have been seriously violated, to provide care in the family and the community. This bill is currently being discussed by Congress, and hence its specific provisions, as well as the time frame for its entry into force, should it be approved, remain uncertain.

### **III. MEASURES TAKEN TO PROTECT VICTIMS DURING CRIMINAL PROCEEDINGS**

47. In the new criminal proceedings system, the functions of investigating and laying charges are separated from that of trying a case, thereby effectively protecting the rights of all persons involved in criminal proceedings.

48. The Public Prosecutor’s Office is exclusively responsible for directing the investigation into the offence, laying charges against the alleged perpetrator, bringing the case to trial and providing protection to victims and witnesses.

49. When the victim of an offence is a child or adolescent, the guiding principles that inform the actions of the Public Prosecutor's Office arise out of the Convention on the Rights of the Child: gradual autonomy, in the sense of ensuring the autonomous exercise of children's rights by recognizing development of the life cycle; the right to express their views and be heard; the best interests of the child, requiring identification of which is the right of the child in conflict with that of the other person, and seeking solutions to enforce the child's specific right; children as subjects of rights; their status in court proceedings: and specific protection for their rights.

50. The Public Prosecutor's Office has transformed these guiding principles into specific actions based on the following three aims: providing due care, taking protective action and reducing secondary victimization in new criminal proceedings and preparation for oral proceedings.

51. These steps are being taken with the support of the Victims and Witnesses Units (URAVIT) attached to the Public Prosecutor's Office. These units are teams of professionals, comprising attorneys-at-law, psychologists and social workers who work in each Regional Prosecutor's Office and who support the Public Prosecutor's Office in all matters relating to the care and protection of victims and witnesses.

52. In terms of care, they provide reception, crisis intervention, accompaniment and network referral, in addition to social, psychological and legal support. They provide care and advice for the child and his or her family about their situation and ensure that the child has the information necessary to understand the reasons for his or her participation. They listen to the child with regard to his or her own interest and ensure that he or she is cared for in a suitable place.

53. In terms of preventing secondary victimization, they avoid unnecessary repetition of the child's statement about the punishable act and ensure that he or she is not subject to unsuitable treatment likely to constitute victimization by officials in the criminal law system, or the State social network. The team avoids the child's participation in unnecessary formalities and proceedings and coordinates the various persons involved in the criminal proceedings. Lastly, it ensures that the child is accompanied by a specialist during the trial and prohibits disclosure of the child's identity by the media.

54. With regard to protective actions, the aim is to secure a speedy and thorough risk and vulnerability assessment and to ensure, as comprehensively as possible, that the child is protected from new offences and threats by making the relevant referrals (family courts protective measures).

55. Protective measures for oral proceedings include the transfer of the child from his or her home to the court, entrance into the court building separately from the public, a separate waiting room and a closed-circuit television link from an adjoining room in the court building for the child to testify.

56. Lastly, with regard to the child's participation in the oral proceedings, he or she is prepared with the help of a special educational team. Guidance is offered to the child's family and the order for giving evidence is prepared. The child is accompanied by an adult or support person, is removed from the room after giving evidence and subsequently receives further support.

57. In 2003, the Public Prosecutor's Office published guidelines for prosecutors regarding child victims of offences as part of the reform of criminal procedure and has made substantial progress in implementing procedures that prevent secondary victimization of children, such as:

- (a) Avoiding or managing encounters with their aggressors by using closed-circuit television for children to testify from an adjoining room;
- (b) Providing the child and his or her family with information about the trial and their rights;
- (c) Speedy referral of child victims from local prosecutors' offices to the Public Prosecutor's Office's URAVIT system, which has more specialized teams that can accompany and inform the child throughout the proceedings;
- (d) Cooperation between the prosecutor and URAVIT so as to provide support for child victims throughout the proceedings;
- (e) Keeping the number of interviews with children down by making a video recording of their statements that can be used by prosecutors and judges;
- (f) Temporary protective measures for children (such as admission to shelters) that do not involve extended separation from their family;
- (g) Trials in camera; and
- (h) Specialized wards in hospitals.

58. While significant progress has been made in this field, the challenge remains of establishing better mechanisms for coordination between family courts and the prosecutor's office in applying the protective measures, particularly in situations where the family or local environment of the child or adolescent facilitates commercial sexual exploitation.

#### **IV. RELEVANT STATISTICAL DATA**

59. It is difficult to obtain detailed information on the scale of the issue, since the available information refers to cases dealt with by an institution of the protection or judicial network. With regard to the number of cases that have been brought for sexual offences, trials, convictions and the percentage of cases dismissed and terminated, according to the information obtained from the statistical bulletin issued by the Public Prosecutor's Office, between 1 January and 31 December 2005, 12,521 sexual offences were recorded by the office, equivalent to 1.7 per cent of the total number of offences recorded. In the same period, 8,266 cases of sexual offences were terminated in the country as a whole, equivalent to 65 per cent of offences recorded. Over the same period, 434 oral proceedings were held for sexual offences, equivalent to 13 per cent of total oral proceedings during that time.

60. With regard to termination of proceedings per category of offence, for sexual offences, there were a total of 9,194 cases terminated during 2005 (including offences previously recorded), broken down as follows: temporary suspension (44.1 per cent or 4,058 cases), principle of discretion to prosecute invoked (0.2 per cent), conviction (10.5 per cent), decision

made not to proceed with inquiries (6 per cent), outside the court's jurisdiction (14.3 per cent), dismissal (11.9 per cent), suspended sentence and one compensation agreement (1.9 per cent), acquittal (1.1 per cent), stay of proceedings (1.1 per cent), administrative annulment (0.6 per cent), merged with another case (7.9 per cent), closed for other reasons (0.2 per cent) and suspended for other reasons (0.1 per cent). This means that between those cases resulting in conviction and those resulting in acquittal, there was a broad area of uncertainty with regard to the existence of the offence and its prosecution. The evidence adduced to establish that an offence has been committed and that criminal involvement exists is not always accepted by the judiciary according to the rules of sound judgement, particularly in long-standing criminal courts, thus bringing about a significant number of stays of proceedings that can mean impunity for aggressors.

61. With regard to the data supplied by the Public Prosecutor's Office, there were 9,295 cases of sexual offences between 2003 and 2004, of which 57 per cent involved persons under the age of 18. In terms of the sex of the victims, 84 per cent were females and 16 per cent males (76 cases). This body must be included in the proposed central progressive register of the worst forms of child labour in order to have access to more reliable information on the matter in the future.

62. In the country's register of the worst forms of child labour 1,515 cases were recorded between June 2003 and March 2005: 67 per cent involved girls and 33 per cent boys. In general terms, 57 per cent of this population did not go to school, 36 per cent performed work in dangerous conditions and 20 per cent carried out work of a dangerous nature. Furthermore, 22 per cent were victims of commercial sexual exploitation and 20 per cent participated in illicit activities.

63. Lastly, a troubling reality is that there are brokerage networks operating over the Internet that seek to obtain children in order to transfer them to couples or persons living in the country or even abroad for purposes of adoption. To do this, they employ various fraudulent devices by which they deceive both the biological mother and those interested in the adoption, making them believe that it is a legal procedure, when in fact the conditions breach the adoption regime governed by the country's legal order.

64. The activities of these networks include bringing children out of the country accompanied by their mothers in order to hand them over abroad. Pregnant women also leave the country with the objective of handing over their children once they have been born, and mothers even offer their children over the Internet in exchange for money, which would constitute a sale.

65. With regard to children being offered over the Internet by their mothers, this offence can currently be punished only under article 42 of Act No. 19,620, according to which: "Anyone who requests or accepts any form of consideration for facilitating the transfer of a minor for adoption shall be punished with ordinary imprisonment of a minimum to medium term and a fine of 10 to 15 monthly taxation units." Nevertheless, it is troubling that the provision establishes such conduct as constituting an offence only when it is carried out for purposes of adoption, since, in practice, all the persons involved - whether the biological mother or other intermediaries, in addition to the persons receiving the child in this way - have to do is state that the transfer of the child was simply a transfer for personal care and not really for adoption, meaning that the acts no longer constitute an offence.

66. It should be pointed out that in Chile, trafficking in persons is not currently established as an offence with the exactness of article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). This refers to the act, means and purposes of the exploitation in question.

67. Prior to the Palermo Protocol, some significant advances had been made, such as Act No. 19,409, which introduced into the Criminal Code penalties for anyone who facilitates or promotes entry into or departure from the country of persons to work as prostitutes in the country or abroad. Nevertheless, the only purpose recorded by the legislator as an element of the offence is engaging in prostitution. Trafficking in persons under the age of 18 within the country for purposes of prostitution is regulated by the Criminal Code, but there remain legal loopholes regarding trafficking in persons, since a requirement or element of the offence under the article is entry into or departure from the country, which means that it excludes activities carried out without crossing borders or domestic trafficking in persons, and only considers trafficking for the purpose of engaging in prostitution, thereby excluding other purposes such as forced labour or services or slavery-like practices.

68. With regard to illicit trafficking in migrants, there is no specific offence of illicit trafficking in persons, the only applicable rules being those punishing the falsification of documents. These rules punish “a foreigner who enters or attempts to leave the country by making use of falsified or fabricated documents, or documents issued in another person’s name ...” (Legislative Decree No. 1094 of 1975); consequently, they punish only an illegal immigrant or emigrant. There is therefore a need for reform of the legislation on migration, which currently focuses solely upon the victim, with a view to punishing the networks and/or traffickers, in addition to establishing bodies to regularize the migration status of victims of illicit trafficking in migrants or trafficking in persons.

69. With regard to the other purposes of exploitation regulated by article 3 of the Protocol, Chilean criminal law includes in the Criminal Code the general offences of kidnapping, abduction of minors and illegal detention by a public employee, given that there are no specific rules covering trafficking in persons for those other purposes. In cases involving deceit, fraud, abuse of power or a vulnerable situation, or where payments are made to obtain the person’s consent, for purposes of exploitation other than prostitution, no criminal law is applicable, and these forms of conduct would not be classified in Chile. In cases in which organs are removed, or in which harm is caused for purposes of exploitation, Chilean criminal law applies the general offence of injury regulated under the Criminal Code.

70. Moreover, in the legislation on foreigners, Legislative Decree No. 1,094 prohibits entry into the country by foreigners who “are involved in the illicit trade or trafficking of drugs or weapons, contraband, white slavery, and, in general, those persons who commit acts contrary to public morals and decency”. The term “white slavery” should be replaced by “slavery”.

71. In this respect, situations such as those described make it clear that there is an urgent need to amend the current classification of criminal conduct that could constitute trafficking in children. There are two bills currently in the pipeline:

(a) The January 2005 bill providing for the offence of trafficking in children and adults and establishing rules for its prevention and more effective criminal prosecution. This bill addresses various legal loopholes in the field, establishing as offences the sale of children and trafficking in human beings, in addition to laying down rules for the care and protection of victims. It also introduces special investigation techniques, such as effective cooperation. The bill is currently before the Chamber of Deputies; and

(b) The bill amending Act No. 16,618 in order to prevent the departure from the country of minors for illicit purposes and to ensure their return to the country.

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