

CHILE

CAT A/45/44 (1990)

341. The Committee considered the initial report of Chile (CAT/C/7/Add.2) at its 40th and 41st meetings, on 23 November 1989 (CAT/C/SR.40 and 41).

342. The report was introduced by the representative of the State party, who pointed out that Chile was in the final stages of a complex and difficult process of democratization. The first landmark in the democratization process had been the adoption of the Constitution. The second had been the plebiscite of October 1988, in which the people had decided that the President should be chosen by direct and competitive elections, which were due to take place on 14 December 1989. The third landmark had been the referendum of 31 July 1989, which had helped to bring about a consensus between the Government, its supporters and the opposition on constitutional changes designed to limit the powers of the executive in periods of constitutional emergency.

343. The representative also stated that his Government was determined to remedy the mistakes that had been made in the field of human rights. He added that, despite the many problems it faced, his Government had never ceased to co-operate with international human rights bodies on condition that Chile should be considered under established procedures and not as a special case. He regretted that the General Assembly and the Commission on Human Rights had not yet accepted that condition.

344. Members of the Committee expressed the view that the report was instructive and thorough concerning the legislative and regulatory provisions that had been adopted in Chile for the prevention and prohibition of torture. However, it remained to be ascertained whether the Chilean Government had the will and the capacity to enforce that legislation. They pointed out that they had received reliable information from a number of non-governmental organizations which indicated that torture had continued even after Chile's ratification of the Convention in September 1988, and that further information would be necessary on how individuals could be protected in practice from acts of torture perpetrated by public officials.

345. In that connection, members of the Committee wished to know what was the legal mechanism by means of which the Convention was incorporated in Chilean legislation, how many police or military officers had been prosecuted for torture-related offences in the past five years, how many had been found guilty and what penalties they had received, how many applications had been made under the procedures of amparo and protection during the past five years, how many of those applications had been accepted, what was the role that the executive played in the appointment of judges, and how judges could be disciplined or dismissed.

346. Furthermore, it was noted from the report that in Chile there was a time-limit of 15 days for lodging an application with the court of appeal in whose jurisdiction the act or arbitrary or unlawful omission causing the injury had allegedly been committed or occurred, and it was asked to what body a person could apply after 15 days had elapsed.

347. In connection with article 1 of the Convention, reference was made to the reservation of Chile according to which the Chilean Government would apply the Inter-American Convention to Prevent

and Punish Torture in Cases where there was incompatibility between the provisions of that instrument and the United Nations Convention against Torture. It was observed that, under article 1, paragraph 2, of the Convention, a State could give preference to another international instrument only when that instrument contained provisions of wider application, and that the reservation of Chile therefore did not appear admissible.

348. With reference to article 2 of the Convention, members of the Committee referred to the Advisory Commission set up by the Chilean Ministry of the Interior, which dealt, *inter alia*, with guarantees for the treatment of prisoners, and asked whether the Commission also had jurisdiction over military detainees, how many complaints of violations of fundamental rights had been received by the Commission, whether complainants and witnesses were protected against ill-treatment or intimidation as a consequence of complaints or evidence given, and to what body the Commission was answerable. Clarification was also requested on the terms and conditions of incommunicado detention.

349. Members of the Committee referred also to the reservation made by Chile to article 2, paragraph 3, of the Convention, in so far as that provision modified the principle of “considered obedience” established in Chilean domestic legislation. It appeared from that reservation that a superior officer would be the only person accountable for acts of torture whenever his order manifestly leading to perpetration of such acts was confirmed by him in response to a query by a subordinate, and it was asked how many superior officers had been prosecuted in recent years, and how many subordinates for that matter. It was observed that the principle of “considered obedience” in Chilean law seemed to be designed to protect individuals and especially members of the armed forces from the consequences of their actions, and not to protect society. Clarification was therefore requested on this principle and on the relevant legal provisions, which appeared to be incompatible with the Convention.

350. Furthermore, members of the Committee noted that Chile had also expressed a reservation in respect of article 3 of the Convention because of the “discretionary and subjective” manner in which it was drafted, and they wished to know exactly what the Government had meant by that remark and whether it intended not to apply article 3 at all or to apply it only in a limited way.

351. With regard to article 4 of the Convention, it was observed that the penalties established by the Chilean Penal Code for torture involving mutilation or bodily injuries seemed to be adequate; however, it was not clear whether that was so in the case of acute suffering that did not entail bodily injuries, mutilation or inability to work, or whether the infliction of acute mental suffering was expressly prohibited under the Penal Code. It was observed also that the Code of Military Justice, while it established penalties for members of the armed services who used violence against persons under arrest or detention in order to obtain information from them, did not mention penalties for using violence for other reasons, such as punishment.

352. In connection with articles 5 and 7 of the Convention, it was asked whether Chile could confirm that it had established its jurisdiction over all the offences mentioned in the Convention except those covered in the articles from which Chile had expressly derogated. It was asked, in particular, whether a foreign national who was alleged to have committed acts of torture in another State and had been arrested in Chile would be prosecuted by the Chilean authorities if, for some

reason, he could not be extradited. Information was also requested on legal provisions which, in addition to the Bustamante Code referred to in the report, could ensure full compliance by Chile with article 5, paragraph 2, of the Convention.

353. Similarly, in connection with article 9 of the Convention, it was asked whether the necessary legal basis existed in Chile to give the greatest measure of assistance in respect of criminal proceedings to all States parties to the Convention and not only to those bound by the Bustamante Code.

354. With regard to article 10 of the Convention, information was requested on what was being done in Chile to educate law enforcement personnel and doctors about the prohibition against torture and to make public opinion aware of provisions of the Convention.

355. With reference to article 11 of the Convention, members of the Committee welcomed the co-operation of the Chilean Government with the International Committee of the Red Cross (ICRC) in the improvement of prison conditions, and they asked for more information in that respect, as well as on the regulations governing conditions of detention. They also wished to know whether a systematic review of places of detention by magistrates existed in Chile and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were accepted and incorporated in Chilean legislation.

356. With regard to article 12 of the Convention, members of the Committee referred to reported allegations of cases of torture and asked whether offenders had always been properly prosecuted, whether it was true that all secret files of the National Information Agency were about to be destroyed, what disciplinary measures could be taken or criminal charges brought against officials guilty of ill-treating detainees, and whether statistics existed on the number of such officials.

357. Turning to article 14 of the Convention, members of the Committee wished to know whether in Chile the State was legally as well as morally responsible for acts of violence committed by public officials against its own citizens, and whether it was the offender or the State that had to provide compensation to the victim. They also asked how many persons had been convicted under article 410 of the Penal Code establishing compensation to be provided by the offender to the victim, how many persons had been compensated in accordance with that article, whether the last part of that article meant that a torture victim who had enough money would not receive compensation, apart from medical expenses, even if he was disabled as a result of the torture and whether a victim could obtain compensation for moral injury or mental disturbance resulting from torture.

358. With reference to article 15 of the Convention, members of the Committee noted from the report that only a confession made before a judge was admissible as evidence in Chile and that such a confession must comply with all legal formalities. In that connection, they asked whether the same was true of cases tried by military courts, whether the examining magistrate was present in such cases, whether any evidence obtained under coercion could be accepted by the courts, what was the mechanism by means of which evidence was obtained, what was the length of pre-trial detention, what was the procedure followed from the time of arrest of a suspect, throughout preliminary inquiries and investigations to sentencing, and what guarantees were available to persons suspected, charged and sentenced. It was also noted that Police Department officers were forbidden to engage

in acts of violence intended to obtain statements from a detainee, and it was asked whether military officers were subject to the same regulations and whether persons detained by the military were immediately brought before a judge, in the same way as those detained by the police.

359. In his reply, the representative of Chile referred to a series of complementary measures taken by his Government to reinforce and make effective the application of legal provisions for prohibition and punishment of unlawful acts. Those measures included the ratification and incorporation in domestic legislation of several international human rights instruments, the Government's co-operation with the Special Rapporteur of the Commission on Human Rights, who had made six visits to Chile, the establishment of the Advisory Commission under the Ministry of the Interior following a recommendation by the Special Rapporteur, and co-operation with the ICRC in respect of conditions in detention places. The representative also provided details of the Chilean legal framework and referred, in particular to article 19 of the Constitution of Chile, which dealt with the constitutional safeguards applicable to all inhabitants of Chile, and to the provisions of article 150 of the Penal Code, dealing with penalties applicable to acts of torture. He pointed out that, in two recent cases, a police official and a security officer who had been tried and convicted of acts of torture which had caused death had been sentenced to capital punishment, which had been carried out in both cases. As for the results of proceedings instituted against those who had perpetrated the offences covered by the Convention, he informed the Committee that, out of the 130 trials held, there had been a final decision in 32 of them, including 4 death sentences; 80 cases were still pending and in 18 the accused had been discharged.

360. The representative then described the process of incorporation of international instruments in Chilean domestic law. By that process, those instruments acquired the same status as national laws and had priority over ordinary legislation. An amendment to article 45 of the Constitution of 30 July 1989 made it obligatory for the organs of the State to respect and promote rights guaranteed by the Constitution and by international instruments ratified by Chile. The Convention against Torture therefore had constitutional status and could be directly invoked before the courts. Moreover, Chilean law made provision for a whole series of judicial remedies. In the case of some of them, their exercise had been restricted or suspended during states of emergency, but the powers conferred upon the executive during states of emergency and all remedies without exception were now freely available. The representative also provided information on the structure of the judiciary and the composition of the courts in Chile. The highest judicial body was the Supreme Court; its members were chosen by the executive from among the judges of the courts of appeal.

361. The military courts formed an integral part of the general judicial system and were subject to the jurisdiction of the Supreme Court in the same manner as civil courts. The jurisdiction of the military courts had been broadened because the number of offences punishable under the Code of Military Justice had increased in accordance with certain laws. The increased workload of the military courts had detracted from their effectiveness, thereby giving rise to a grave problem. In general, judges were responsible for the acts performed by them in the exercise of their functions, and those who failed in their duties were therefore liable to punishment.

362. The representative pointed out that the time-limit of 15 days had been set for the application of the remedy of protection, a procedure which had a summary character; however, on expiry of that time-limit, the applicant could have recourse to other remedies, such as amparo.

363. In connection with article 1 of the Convention and the reservation made by Chile concerning its application of the Inter-American Convention to Prevent and Punish Torture, the representative explained that it had been agreed among the American States that, in case of incompatibility, the rules embodied in regional instruments prevailed over those of international instruments. Nevertheless, since the provisions of the Inter-American Convention and those of the United Nations Convention were essentially identical, the reservation formulated by the Government of Chile was purely theoretical.

364. With regard to all the reservations formulated by Chile to the Convention, the representative pointed out that they had been lodged by the Chilean Government partly for reasons of substance, partly for procedural reasons, and partly also because the present government of Chile was about to be replaced by another government to which it wished to leave the entire responsibility of deciding whether it agreed to be bound by all the provisions of the Convention and thus to withdraw the reservations.

365. Referring to article 2 of the Convention, the representative stated that the Advisory Commission of the Ministry of the Interior consisted of independent persons chosen for their special knowledge or abilities, who made recommendations to the Ministry, to which the Commission was answerable. The Commission could also propose measures of assistance to possible victims. Its reports could be made available to the Committee. The representative further explained the terms of incommunicado detention which could be ordered by the examining magistrate for a period not exceeding five days, or 10 days for certain grave offences such as terrorist acts. In order to avoid abuse, the examining judge could order further incommunicado detention only with the consent of the court of appeal. A law would soon be promulgated which would specify that a prisoner in incommunicado detention could at all times be visited by doctors or representatives of the ICRC.

366. With regard to questions raised in connection with the reservation of Chile to article 2, paragraph 3, of the Convention, the representative explained the difference between “duty of obedience”, meaning that a subordinate who obeyed an order from a superior was always exonerated from criminal responsibility, and “considered obedience”, established in Chilean law, meaning that a subordinate who received an order manifestly leading to the perpetration of an offence had both the right and the duty to query that order. If the superior confirmed the order, the subordinate had to carry it out, but he could no longer be held responsible. With regard to torture, it was an offence for which there was always a person responsible, and that was why the Chilean Government had formulated a reservation, in order to reconcile the principle of exoneration of responsibility established in its domestic legislation with the obligations arising from the Convention.

367. With regard to the reservation of Chile to article 3 of the Convention, the representative stated that, in the view of his Government, no State was entitled to pass judgement on the internal situation of another country and to assume that a person who had been the subject of an order of expulsion, refoulement or extradition ran the risk of being tortured. However, the Chilean Government had formulated only a formal reservation and had never declared that it would not apply in substance the provisions of article 3 of the Convention.

368. Turning to article 4 of the Convention, the representative explained that the basic penalty laid down in article 150 of the Penal Code was supplemented by a penalty whose gravity was

proportional to the effects of the act committed.. Thus, if the offence resulted in serious bodily injury, the penalty specified in article 150 of the Penal Code had to be supplemented by another penalty corresponding to the type of injury caused, in accordance with the principle of non-concurrence of penalties.

369. With regard to articles 5 and 7 of the Convention, the representative referred to the relevant provisions of the Convention on Private International Law known as the Bustamante Code to which Chile was a party, and stated that, in case of incompatibility between the provisions of the Convention against Torture concerning extradition or prosecution of a person alleged to have committed acts of torture and the provisions of the Bustamante Code, Chile had opted for applying the provisions of the Code, which constituted an obligation contracted earlier.

370. In respect of article 10 of the Convention, the representative stated that all the international and national legal provisions concerning human rights, as well as the question of torture, received wide publicity in his country. They were brought to the attention, in particular, of law enforcement officials.

371. With reference to article 11 of the Convention, the representative provided detailed information on the activities carried out in Chile by ICRC to protect detainees and improve their conditions of detention. Appropriate proceedings had been instituted on the basis of reported ill-treatment. However, the number of such allegations was decreasing and concerned only isolated cases. Visits to detainees by the ICRC applied to prisoners tried and sentenced by military courts and to prisoners held incommunicado under certain conditions. In addition, the representative referred briefly to disciplinary punishments within the prison system which were subject to the control of the competent court. Physical punishment was forbidden. Provisional release during the proceedings could be granted to an accused person except in the case of certain types of offence. A system of semi-liberty had also been recently introduced. The Ministry of Justice supervised conditions of detention with the assistance of the Directorate-General of the Prison Service. Periodic inspections were organized by the Ministry of Justice, the Supreme Court, the Court of Appeal and the ICRC.

372. In connection with article 12 of the Convention, the representative referred to the co-operation of his Government with the Special Rapporteur of the Commission on Human Rights in respect of allegations of torture in Chile. He stated that he would transmit to his Government any information available to the Committee concerning concrete facts and he would ask his Government to investigate those cases. Furthermore, a law providing for the dissolution of the National Information Agency would be promulgated shortly. The Agency's archives would not be destroyed, but would be handed over to the competent authority. Part of the archives, in particular those relating to national defence, would remain confidential.

373. With regard to article 14 of the Convention, the representative referred to article 19 of the Chilean Constitution providing for reparation to be granted by the State to any person who had suffered material or moral injury from erroneous or arbitrary trial or sentence. Compensation was assessed by a judicial decision. In respect of coercion or torture, the responsibility of the State and the direct responsibility of the perpetrator of the act were involved. Two types of action emerged from such an offence: a criminal action to punish the perpetrator and a civil action to obtain

reparation of the injury suffered, which could be either material or moral. In addition to monetary compensation, the victim would be entitled to assistance for rehabilitation, including medical assistance.

374. With regard to article 15 of the Convention, the representative pointed out that confessions obtained by coercion had no value as evidence and that the legal rules governing the question of proof and the weighing of evidence were the same for the civil and military courts.

375. In concluding the consideration of the report, the members of the Committee thanked the Government of Chile for the dialogue that had just taken place and expressed the hope that it would continue, if possible, in the coming year. They also welcomed the co-operation established between the Chilean authorities and the ICRC as well as the statement to the effect that the reservations formulated by Chile could be reconsidered at a later stage. They pointed out, however, that the situation in Chile was not yet satisfactory, since cases of torture continued to occur. In that connection, they wished to draw the attention of the Chilean Government in particular to allegations of torture in Chile reported to the Committee by non-governmental organizations, such as Amnesty International and the World Organization against Torture. Furthermore, pursuant to rule 67, paragraph 2, of its rules of procedure, the Committee wished to obtain an additional report from the Chilean authorities containing, *inter alia*, complete data and statistics on recent cases of persons subjected to torture, on the proceedings initiated against the perpetrators and on compensation granted to victims. In addition, the members of the Committee expressed concern at the fact that the military courts were finding it difficult to deal with all the cases referred to them, and they observed that the situation with regard to information and training of Chilean public officials in the matter of prevention of torture was still unsatisfactory. Finally, the Committee welcomed the offer of the Chilean representative to provide them with some of the reports prepared by the Advisory Commission on the Ministry of the Interior.

CAT A/46/46 (1991)

237. The Committee considered the additional report of Chile (CAT/C/7/Add.9) at its 77th and 78th meetings, on 24 April 1991 (CAT/C/SR.77 and 78).

238. The report was introduced by the representative of the State party, who explained that the current report had been submitted in order to complete and rectify the report that had been submitted by the former Government (CAT/C/7/Add.2) and which had provided a distorted picture of the then-prevailing situation with regard to torture. Between 1973 and 1990 torture had become an institutionalized practice, applied systematically to put pressure on the political opposition. Since the installation of the constitutional Government in 1990 a number of measures had been taken notably with regard to the protection of detainees, which have led to a considerable decrease in the number of cases of torture. He said that at present torture in Chile could be considered as residual, not as institutional.

239. The representative further noted that his Government had withdrawn all of the reservations to the Convention made by the former military Government and that a number of legislative and other measures had been taken since the submission of his Government's additional report. These included measures aimed at the abolition of the death penalty, which had been retained for five serious crimes. Furthermore, two laws had been adopted providing for guarantees for persons held in detention. Under these laws, a significant number of offences that had been dealt with by the military tribunals were brought under the jurisdiction of the civil courts. The representative said solitary confinement could only be applied as a disciplinary measure in penitentiaries. Persons in pre-trial detention had access to a lawyer and in case the detention was prolonged, were to be examined by a physician. With regard to confessions made in cases before the military tribunals under the former regime, judges were obliged to hear a new declaration by the accused and to make sure that statements had not been obtained through torture or other forms of ill-treatment. In addition, the Government had taken measures to investigate complaints and punish acts of torture. The representative drew attention to a programme of police training in the field of police ethics and human rights. Finally, he mentioned the termination of the mission of the International Committee of the Red Cross in his country, which indicated that this body no longer viewed the situation in Chile with the same degree of concern.

240. The members of the Committee welcomed the report and the additional information provided by the representative of Chile in his introduction, in particular with regard to the withdrawal by the Government of the reservations to the Convention. The report provided an unusual and detailed analysis of the systematic use of torture under the former regime and gave evidence of radical changes in the Chilean legal framework. However, in the view of members of the Committee it was necessary to provide more detailed information with regard to the implementation of individual articles of the Convention as well as on the actual structure of the organization of the police, the carabineros and the military, including their relation to the civil Government, and to indicate whether any reforms were envisaged in this respect. Members of the Committee inquired whether the Convention had been incorporated into domestic law. They also wished to know whether an official State body had been charged with the coordination of the struggle against torture and whether measures had been taken to encourage the population to denounce acts of torture. In

particular, it was asked whether the Chilean population had been made aware of the existence of the Committee against Torture and whether the population had been informed of the inaccuracy of the report submitted by the former Government.

241. In connection with article 1 of the Convention, members of the Committee wished to know whether the definition of torture given in that article had been incorporated into Chilean law.

242. With reference to article 2 of the Convention, members of the Committee sought information on measures taken to prevent and punish acts of torture, especially with regard to the participation of doctors and acts of violence committed by carabineros. They wished to know what provisions applied to detention in a state of emergency and whether any new provisions had been adopted to give effect to paragraph 3 of this article relating to orders from a superior. It was also asked whether the remedy of habeas corpus was available under the current constitutional system.

243. With regard to article 3 of the Convention, members of the Committee asked what the position was of the Chilean Government with regard to the issues of expulsion and non-refoulement.

244. Referring to article 4 of the Convention, members of the Committee asked whether torture as such was considered as a punishable offence. In particular, they wished to know whether ill-treatment would be regarded as torture resulting in injury if psychological sequelae could be proven without any trace of physical torture. They also wished to know whether any measures of amnesty were envisaged and, if so, whether they would apply to both civil and penal claims. Information was requested on whether officials responsible for torture at the highest level of authority in the dictatorial regime, including judges of the Supreme Court, were being prosecuted. It was also asked what measures had been taken to prosecute those having taken part in acts of torture, especially with regard to doctors and carabineros.

245. In view of articles 5, 7 and 8 of the Convention, members of the Committee wished to know whether Chilean courts were competent to hear cases of torture committed by foreigners abroad who were arrested on Chilean soil. It was also asked what the position was of the Chilean Government with regard to mutual judicial assistance.

246. With regard to article 10 of the Convention, members of the Committee sought information concerning the training of the military, medical personnel, and officials in the judiciary and in penitentiaries.

247. With reference to article 11 of the Convention, members of the Committee wished to know for what reasons persons could be held in incommunicado detention for a period up to 10 days and whether further measures had been taken since the submission of Chile's initial report in 1989 to ensure implementation of this article.

248. With reference to article 14 of the Convention, members of the Committee wished to know whether victims of torture had been compensated and, if so, under what conditions.

249. Turning to article 15 of the Convention, members of the Committee wished to receive information with regard to the admissibility as evidence in legal proceedings of statements which

had been obtained through torture or other forms of coercion.

250. In his reply, the representative of Chile pointed out that the situation with regard to the implementation of the Convention was much the same as described in the initial report submitted in 1989 by the previous Government (CAT/C/7/Add.2), although the political conditions were now very different. He explained that laws which had been passed before the military coup of September 1973 had been ignored or distorted, but not repealed by the military dictatorship. Laws passed during the period of military dictatorship were still in force and were now being changed by decisions of Parliament. The additional report now under consideration focused on legislation adopted since the accession of the new Government in March 1990. With regard to the status of the Convention under Chilean law, the representative stated that the Convention had the full force of domestic law; in case of a conflict between domestic law and the Convention, it was the Convention which prevailed.

251. Replying to questions concerning the organization of the judiciary and of the investigative authorities, the representative said that a bill was being prepared for submission to Congress with the aim of ensuring a truly independent judiciary. The jurisdiction and composition of the military courts were also under review. It was noted, however, that progress in this field was hindered by the fact that the majority of members of the Constitutional Court were still identified with the previous regime. The representative informed the members of the Committee of the creation of the office of ombudsman, which would have prime responsibility for the processing of torture cases. With regard to the organization of the police, the representative said that a decision had been taken to revert to the traditional system, under which the carabineros and the criminal investigation department now under the responsibility of the Ministry of Defence would come under the responsibility of the Ministry of the Interior.

252. In connection with article 1 of the Convention, the representative said that the concept of torture was defined in the Criminal Code, which dated from 1875.

253. Turning to the implementation article 2 of the Convention, the representative explained that the state of exception had been lifted. With regard to superior orders invoked as a justification of torture, the representative stated that according to the Chilean Military Code of Justice a subordinate was not held responsible for an act of torture if he had queried the order and a superior officer had confirmed the order. As a result of the withdrawal of the reservation concerning article 2 (3) of the Convention, a subordinate was henceforth responsible for acts of torture carried out under orders from a superior. It was noted, however, that this provision was not retroactive. The representative further noted that the rule of habeas corpus was long established in Chilean law but that it had been suspended during the period of rule by the military junta.

254. Referring to the withdrawal of the reservation concerning article 3 of the Convention, the representative said that no special legislation was necessary to establish the principle of non-refoulement in Chilean law, since the Convention itself had the full force of domestic law.

255. With regard to article 4 the Convention, the representative stated that all acts of torture were considered as offences under criminal law by virtue of the incorporation of the Convention in domestic law. It was accepted that injuries resulting from torture could be both physical and mental

in character. The punishment for torture under the Criminal Code of 1875 was a prison sentence of up to five years, depending on whether or not it resulted in injury or death. He explained that a physician who connived at acts of torture bore a criminal responsibility for the connivance. In addition, professionals such as physicians and lawyers were also answerable to their professional associations. However, there had been little success in the campaign to prosecute physicians who had connived at acts of torture. With regard to the matter of amnesty, the representative drew attention to Decree Law No. 1978 promulgated by the junta with the aim of procuring an amnesty for its own human rights offenders. In this connection, he explained that the political situation in Chile was such that there was insufficient political will to bring about the repeal of the Decree Law.

256. In connection with articles 6, 7 and 8 of the Convention, the representative said that the Chilean authorities would not detain or extradite an alleged torturer unless they had received a request from the State where the torture was alleged to have taken place. If Chile refused the extradition request for any reason it would try the alleged offender in its own courts. Acts of torture were considered extraditable offences for the purposes of extradition treaties with other States.

257. In his reply concerning article 10 of the Convention, the representative stated that he did not have detailed information regarding the training given to the armed forces and the carabineros. However, there were plans to improve the training of members of the Police Department. Medical schools provided training in medical ethics, including the subject of torture. Furthermore, physicians taking part in the questioning of suspects were now attached to the Police Department and shared in the human right training of that service.

258. In connection with article 11 of the report, the representative elaborated on measures taken to limit the use of solitary confinement. Solitary confinement was permissible only as an additional punishment for a recidivist and as a procedural measure to prevent the detainee from contacting criminal accomplices. Solitary confinement was limited to 15 days but could be extended. Detainees had the right to a daily visit from their lawyer and to regular examinations by a physician. No further legislation had been passed on the matter. A group of experts with extensive knowledge of the work of the United Nations in that field was currently engaged in the preparation of a new prison code.

259. In respect of articles 12 and 13 of the Convention, the representative said that the courts were currently investigating over 35 complaints of torture under the military dictatorship but that no verdict had been reached in any of them.

260. Turning to the question of compensation for the victims of torture covered by article 14 of the Convention, the representative drew the attention of members of the Committee to provisions of a permanent nature according to which torturers were considered to bear a civil responsibility for their actions if they had been convicted of torture in a criminal court. In some cases, the State was deemed to bear civil responsibility for the criminal acts of its agents. A bill was currently before Congress with the aim of providing compensation for the victims of torture, disappearance or summary execution, or for their relatives.

261. With reference to article 15 of the Convention, the representative stated that confessions elicited under torture were not considered valid, although the onus was on the accused to prove that

torture had been applied. In general, a confession would have value as evidence if other evidence confirmed participation in the offence. In retrials in civil courts of cases heard originally in military courts the judge was specifically required to evaluate the confession of participation in an offence and a subsequent retraction in order to determine whether the confession had been obtained under duress.

Concluding observations

262. In concluding the consideration of the report, members of the Committee commended the Government of Chile for its efforts to comply with the Convention and wished it success in overcoming the obstacles that it confronted in restoring full democracy in the country. Members of the Committee noted, in this connection, that not all State organs had made equal progress. With regard to legislative measures, it was suggested that a separate crime of torture providing for appropriate penalties should be established in the Chilean Penal Code. Furthermore, it was stressed that the concepts of civil and criminal liability were very different; in the absence of a criminal conviction, the State might still be held liable to compensate a victim of torture for the acts committed. Members of the Committee also said that in accordance with article 6 of the Convention, a person accused of an act of torture abroad should be detained in order to give other States time to submit a request for extradition. In conclusion, members of the Committee expressed the hope that the second periodic report to be submitted by the Government of Chile would reflect the practical progress achieved in the area of legal and organizational reform.

CAT A/50/44 (1995)

52. The Committee considered the second periodic report of Chile (CAT/C/20/Add.3) at its 191st and 192nd meetings, held on 8 November 1994 (CAT/C/SR.191 and SR.192 and Add.2), and adopted the following conclusions and recommendations.

A. Introduction

53. The Committee thanks the Government of Chile for the timely submission of its second periodic report and for the frank and constructive clarifications provided by the Chilean delegation in its oral report.

54. In general, the report is in conformity with the guidelines laid down by the Committee for presenting reports.

B. Positive aspects

55. The Committee takes due note of the political will of the Government of Chile to guarantee respect for human rights in the context of the transition from a dictatorship to a democratic regime.

56. The Committee notes with satisfaction that the Government is promoting a series of important changes, both in procedure and in the basic legislation, which will help to prevent the practice of torture.

57. It also regards as positive the implementation of programmes aimed at fully compensating those who have suffered from violations of human rights.

C. Subjects of concern

58. The Committee notes with concern the existence of a considerable number of complaints of torture and ill treatment at the hands of various law enforcement services, especially the Carabineros and the Investigatory Police, which have not met with an effective response, with the authors of these acts being duly brought to trial.

59. The Committee also considers that some aspects of the legislation in force, such as the rules of the criminal prosecution system and the subjection of civilians to military jurisdiction, are not helpful as far as the prevention of torture is concerned.

D. Recommendations

60. In a spirit of collaboration, the Committee suggests the adoption of the following measures:

(a) An in-depth review of procedure, especially as regards police powers of detention and the right of the detainee to free access to and communication with family members and legal advisers and a physician whom he trusts;

(b) The advisability of explicitly abolishing those rules, such as automatic obedience, which are not compatible with the Convention;

(c) Making the security forces subordinate to the civil authorities responsible for public safety and the abandonment of all vestiges of the legislation enacted by the military dictatorship;

(d) The advisability of making special provision for the offence of torture, as described in article 1 of the Convention, and making it punishable by a penalty appropriate to its seriousness;

(e) The possibility of withdrawing the existing reservation to the Convention and making declarations to the effect that the State party recognizes the competence of the Committee in the circumstances described in articles 21 and 22 of the Convention.

61. The Committee again expresses its appreciation to the Government of Chile for its readiness to engage in dialogue and in the search for solutions and is grateful for the supply of the legislation which has been enacted and that which will be enacted in the future.