



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CHL/CO/5
23 June 2009

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE
Forty-second session
Geneva, 27 April-15 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

CHILE

1. The Committee considered the fifth periodic report of Chile (CAT/C/CHL/5) at its 877th and 879th meetings, held on 4 and 5 May 2009 (CAT/C/SR.877 and 879), and adopted the following concluding observations at its 891st meeting (CAT/C/SR.891).

A. Introduction

2. The Committee welcomes the fifth periodic report of Chile and expresses its appreciation for the constructive dialogue it has had with the high-level delegation and for the frank and clear written replies provided to the questions raised by the Committee.

3. The Committee notes with satisfaction that in the period since its consideration of the fourth periodic report of the State party, the latter has ratified:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force for the State party on 11 January 2009; and

(b) The International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) on 15 September 2008.

4. The Committee welcomes the efforts being made by the State party to amend its legislation and adapt its legal system to guarantee application of the principles contained in the Convention. The Committee also welcomes the Government's commitment to preparing a new criminal code that will include an improved definition of the offence of torture.
5. The Committee also takes note with appreciation of the constitutional reforms introduced in 2005 and welcomes the full application of the new Code of Criminal Procedure throughout the country.
6. The Committee also welcomes the efforts made to date by the State party to establish the truth and secure reparation and access to justice in relation to the serious human rights violations committed in the country during the dictatorship.
7. The Committee welcomes the news that the Convention is being invoked directly before national courts in numerous complaints concerning offences such as the use of torture which have been lodged by victims of political imprisonment and torture by the dictatorship.
8. The Committee also welcomes the news that in 2008 the Forensic Medical Service created a unit within its Human Rights Programme devoted to the implementation of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).
9. The Committee also welcomes the decision taken by the State party to extradite former Peruvian President Alberto Fujimori to Peru.

C. Principal subjects of concern and recommendations

Definition, punishment and imprescriptibility of torture

10. Notwithstanding the State party's assertion that the Chilean Criminal Code punishes all acts that can be described as torture within the meaning of article 1 of the Convention, the Committee remains concerned that, despite its previous recommendations, the definition of torture in the State party is still not fully in line with the provisions of article 1 of the Convention. The Committee also considers that the Criminal Code fails to encompass all of the acts defined as punishable in the Convention, such as attempted torture. Furthermore, given the grave nature of the offence of torture, the Committee is concerned, as already mentioned in its previous concluding observations, that the 10-year statute of limitations for that offence has not been extended or abolished. While appreciating the proposal for a bill to provide an interpretation of article 93 of the Criminal Code, regarding grounds for exemption from criminal liability, the Committee is concerned that the proposal has not been accepted (arts. 1 and 4).

The State party should take the necessary steps to ensure that all acts of torture referred to in articles 1 and 4 of the Convention are classified as offences in its domestic criminal legislation and that appropriate penalties are applied in each case, taking into account the grave nature of such offences. The Committee also urges the State party to abolish the statute of limitations currently applicable to the offence of torture.

Punishment of international crimes

11. The Committee welcomes the bill which would define crimes against humanity, genocide and war crimes as offences, and particularly welcomes article 40 of the bill, which would establish the imprescriptibility of all such crimes. However, the Committee is concerned at the delay in adopting the bill (art. 2).

The Committee urges the State party to pass into law the bill establishing the imprescriptibility of the above-mentioned crimes.

Amnesty Decree-Law No. 2.191

12. The Committee notes that the Chilean courts, and in particular the Supreme Court, are handing down judgements in which they rule that the Amnesty Decree-Law (under which people who committed human rights violations between 11 September 1973 and 10 March 1978 cannot be punished) is inapplicable, citing international human rights instruments as the legal basis for that finding. Nonetheless, the Committee feels that, in line with the ruling of the Inter-American Court of Human Rights in the case of *Almonacid Arellanos y otros* of 26 September 2006, the fact that this decree-law remains in force leaves the application of the amnesty up to the judgement of the domestic courts. The Committee has learned of recent Supreme Court decisions that appear to take the existence of that decree-law into account, particularly in reducing the applicable penalties for serious crimes committed during the dictatorship (art. 2).

The Committee recommends that, in keeping with its earlier recommendations, the State party abrogate the Amnesty Decree-Law. The Committee draws the State party's attention to paragraph 5 of its general comment No. 2 on the implementation of article 2 of the Convention by States parties, wherein it considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee also recommends that all necessary steps be taken to ensure that cases of torture and other cruel, inhuman or degrading treatment or punishment be thoroughly and promptly investigated in an impartial manner, that the culprits be subsequently tried and punished, and that steps be taken to compensate victims in accordance with the Convention.

Allegations of torture

13. The Committee is concerned about continuing allegations that serious crimes have been committed by on-duty police officers and regrets that efforts to publicize such acts are subject to legal restrictions, which are a contributing factor to the failure to punish such crimes (arts. 2 and 12).

The Committee recommends that the State party introduce legislative reforms relating to supervision of the police force as soon as possible with a view to ensuring that no action on the part of the police force that is contrary to the Convention goes unpunished and that the investigations of such acts are effective and transparent. The State party should reinforce educational programmes in order to ensure that all law enforcement personnel are fully aware of the provisions of the Convention.

The Committee also recommends that the State party continue to expedite the measures required for the creation of the Ministry of Public Security, which would oversee the Carabineros and the Investigative Police Force.

Reform of military justice

14. The Committee is concerned about the delay in the State party's adoption of the reform of the Code of Military Justice, which the Committee has repeatedly recommended (art. 2).

The Committee recommends that the State party expedite the adoption of reforms to the Code of Military Justice which will limit the material and personal jurisdiction of military courts. The Committee reaffirms its recommendation that the State party expurgate the principle of due obedience from the Code of Military Justice.

Records of complaints

15. While the Committee takes note of the system used in the Public Prosecutor's Office for recording reports and procedures relating to crimes of torture, the Committee is concerned that the system does not contain disaggregated information on victims and that it is therefore not possible to arrive at a determination regarding reports of and convictions for torture of women (art. 13).

The Committee recommends that the State party develop a record-keeping system that provides information on crimes of torture that is disaggregated by, inter alia, the victim's sex and age.

Creation of a national human rights institute

16. The Committee notes that the bill to create a national human rights institute defines that body's duties as including the preservation of the memory and history of what took place in the State party in terms of human rights violations. Given the fact that the original bill was submitted in 2005, however, the Committee is concerned about the delay in securing passage of this bill, which is still being reviewed by the Joint House of Deputies/Senate Commission (art. 2).

The State party should take the necessary steps to expedite passage of the bill to create a national human rights institute. The Committee also recommends to the State party that this body be established in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), which are annexed to General Assembly resolution 48/134, in order to ensure its autonomy, independence, pluralistic nature, stability, competence and representative character.

Purview and actions of the Commission on Political Prisoners and Torture

17. The Committee notes and welcomes the State party's efforts regarding recognition of the State's responsibility for the crimes of torture which occurred during the dictatorship. The Committee values the work of the National Commission on Political Prisoners and Torture (Valech Commission), but feels that its initial objective has not been fully attained. In this

connection, the Committee is pleased that the bill to create a national human rights institute provides for recommencement of the work done to classify cases involving victims of torture and political prisoners (art. 13).

The Committee urges the State party to reopen the Commission on Political Prisoners and Torture or to promptly set up another body to take up the Commission's mandate. In order to fulfil the requirement that victims of torture during the dictatorship receive compensation, the Committee recommends that:

(a) Effective action is taken to publicize the mandate and work of the Commission or the body to be created for the same purpose so that everybody who was a victim of torture during the dictatorship will be aware of its existence, particularly those who are in remote or underprivileged areas or are not in the country. The Committee urges the State party to make use, inter alia, of the media and consular offices in countries where former Chilean exiles reside in order to accomplish this;

(b) Sufficiently ample deadlines are set so that all people who believe they have been victims of torture can present their cases;

(c) All cases corresponding to the definition of torture set forth in article 1 of the Convention are included;

(d) The determining criteria are reconsidered, especially with regard to all victims who were tortured when they were minors or while outside national territory or who reside outside the State party;

(e) Sexual violence is included as a form of torture.

Programme of Compensation and Comprehensive Health Care

18. The Committee takes note of the fact that, in the State party, torture victims have access to the Programme of Compensation and Comprehensive Health Care (PRAIS) system and is pleased that this programme has been extended to cover the entire country. The Committee also welcomes the programme's cooperation with such organizations as the Centro de Salud Mental y Derechos Humanos (Centre for Mental Health and Human Rights) (CINTRAS), the Corporación de Defensa de los Derechos del Pueblo (Committee for the Defence of the People's Rights) (CODEPU), the Instituto Latinoamericano de Salud Mental y Derechos Humanos (Latin American Mental Health and Human Rights Institute) (ILAS) and the Fundación de Ayuda Social de las Iglesias Cristianas (Christian Churches Social Aid Foundation) (FASIC). It is, however, concerned that victims of torture living outside the country do not have the benefit of this programme (arts. 14 and 16).

The Committee recommends that the State party take into consideration the obligation to ensure redress for all victims of torture and that it consider concluding cooperation agreements with countries where they reside so that they may have access to the kind of medical treatment required by victims of torture.

The Committee further urges the State party to take steps to ensure the necessary funding so that each team from PRAIS or another organization can give effective care to all those entitled to it. The Committee urges the State party to incorporate a gender policy encompassing training and awareness-raising for the officials responsible for dealing with the cases of victims of assault or sexual violence. The Committee recommends that the State party increase its efforts in regard to reparation, compensation and rehabilitation so as to ensure fair and appropriate reparation for all victims of torture.

Impunity

19. The Committee is concerned at the continuing impunity of those who perpetrated the crime of torture under the dictatorship and at the fact that suitable measures have not been taken to prosecute and sentence them (arts. 2 and 12).

The State party should take the necessary steps to investigate, prosecute and impose appropriate punishments on those who have committed human rights violations, including torture. The Committee urges the State party to provide the courts with all relevant information at its disposal in order to help them administer justice. The Committee also urges the State party to repeal the provision contained in Act No. 19.992 under which information on the practice of torture during the dictatorship is to remain classified for 50 years.

Istanbul Protocol

20. The Committee welcomes the establishment by the Forensic Medical Service of a unit devoted to the implementation of the Istanbul Protocol. It also welcomes the activities undertaken by the State party to publicize the Protocol. The Committee is, however, concerned that, according to some reports, such initiatives have not covered all medical personnel involved in dealing with cases of torture and that due importance has not been placed on medical examinations carried out in accordance with the Istanbul Protocol (arts. 10 and 12).

The Committee recommends that the State party redouble its efforts to ensure that all medical personnel involved in the detection of cases of torture are aware of the content of the Istanbul Protocol and are trained in its application. The Committee also recommends that the State party take the necessary steps to ensure that reports prepared in accordance with the Protocol are widely disseminated among medical professionals dealing with cases of torture.

Conditions of detention

21. The Committee notes the efforts made by the State party to improve conditions in prisons, especially in respect of infrastructure, including the construction of new facilities. The Committee is, however, concerned about reports it has received regarding the persistence of shortcomings in the prisons, particularly with regard to material conditions, overcrowding, and mistreatment and the use of unjustified punishments in enforcing the disciplinary regime (art. 16).

The State party should:

- (a) Adopt effective measures to improve material conditions in the prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty;**
- (b) Establish a national prevention mechanism that is authorized to carry out periodic visits to detention centres in order to fully implement the Optional Protocol to the Convention against Torture;**
- (c) Establish security measures that are in keeping with respect for the dignity of persons deprived of their liberty, which entails doing away with isolation cells.**

Deprivation of liberty in the case of adolescents

22. The Committee takes note of the efforts that the State party has made to improve the regime governing the deprivation of liberty in the case of adolescents. Nevertheless, the Committee is concerned about some shortcomings in centres where adolescents are held, such as serious overcrowding, the failure to separate different categories of inmates and an inadequate supply of basic services. The Committee is also concerned by reports of excessive use of force and the use of isolation as a punishment in such centres (art. 16).

The State party should:

- (a) Take the necessary steps to ensure that adolescents are deprived of their liberty only as a measure of last resort;**
- (b) Ensure that adolescents deprived of their liberty have access to workshops and training courses and to an adequate supply of basic services, especially as regards health care. It should also ensure that adolescents deprived of their liberty are provided with proper legal aid when they need it;**
- (c) Eliminate any possibility that disciplinary measures, especially measures amounting to isolation, might be applied without due process;**
- (d) Take steps to combat overcrowding in these centres;**
- (e) Ensure that the law on the criminal responsibility of adolescents requires that the treatment they receive is in accordance with international standards and principles.**

Indigenous peoples

23. The Committee takes note of the text of the constitutional amendment now before Congress which accords recognition to indigenous peoples. The Committee also welcomes the establishment of an ombudsman's office for indigenous peoples specializing in criminal matters. Nevertheless, the Committee is concerned by the many reports that it has received regarding the continuing commission of abusive acts by police officers against members of indigenous

peoples, especially members of the Mapuche people. The Committee is particularly concerned by the fact that the victims of these acts include women, children and older persons. The Committee also notes with concern that the State party has on occasion applied the Counter-Terrorism Act to members of indigenous peoples in connection with acts of social protest (art. 16).

The State party should:

(a) Take all necessary steps to carry out prompt and effective investigations into abuses committed against members of indigenous peoples and to bring to trial and punish any police officers who commit such abuses;

(b) Provide detailed statistics, with breakdowns by age, sex and geographical location, on all complaints of acts of torture or ill-treatment committed by law enforcement officers against members of indigenous peoples, as well as on the corresponding investigations, trials and convictions;

(c) Provide detailed data on the cases involving indigenous persons in which the Counter-Terrorism Act has been applied.

24. The Committee is concerned about reports indicating that a number of people who were imprisoned during the dictatorship, tortured, and later forced to leave the country continue to be deprived of the possibility to return (art. 16).

The Committee recommends that the State party reconsider the status of these people and give serious consideration to the possibility of permitting them to return to Chile.

Reparation

25. The Committee takes note of the information provided to it concerning the compensation paid by the National Commission on Political Prisoners and Torture to persons recognized as having been victims of torture during the dictatorship. The Committee is, however, concerned that not all the victims have enjoyed the right to fair and adequate reparation. The Committee considers that the fact that some victims do not reside in the State party should not constitute an impediment to their access to reparation (art. 14).

The Committee reaffirms the State party's obligation to ensure that all victims of acts of torture have the right to fair and adequate reparation. The State party should ensure that all persons who were victims of acts of torture during the dictatorship, including those not currently in the State party, can have access to adequate reparation commensurate with the gravity of the crime committed against them.

26. The Committee requests the State party to include detailed information in its next periodic report on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee recommends to the State party that it should take all appropriate steps to implement these recommendations, including their conveyance to the members of the Government and Congress for consideration and adoption of the necessary measures.

27. The Committee recommends that the State party widely disseminate the reports it submits to the Committee, together with these conclusions and recommendations, in, inter alia, the indigenous languages, through the media, official websites and non-governmental organizations.
28. The Committee requests the State party to inform it within one year of the steps taken in pursuance of the recommendations contained in paragraphs 12-14, 18 and 25.
29. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/GEN/2/Rev.5).
30. The State party is invited to submit its sixth periodic report by 15 May 2013 at the latest.
