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COMMITTEE AGAINST TORTURE

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

Fifth periodic reports of States parties due in 2005

Addendum

CHILE* **

[19 January 2007]

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* The initial report submitted by the Government of Chile is contained in document CAT/C/7/Add.2; for its consideration by the Committee, see documents CAT/C/SR.40 and 41 and the *Official Records of the General Assembly, Forty-fifth session, Supplement No. 44* (A/45/44), paras. 341-375.

The second periodic report submitted by the Government of Chile is contained in document CAT/C/20/Add.3; for its consideration by the Committee, see documents CAT/C/SR.191, 192, 191/Add.1 and 192/Add.2 and the *Official Records of the General Assembly, Fiftieth session, Supplement No. 50* (A/50/44), paras. 52 to 61.

The third and fourth periodic reports submitted by the Government of Chile are contained in document CAT/C/39/Add.5; for its consideration by the Committee, see documents CAT/C/SR.602 and 605, and document CAT/C/CR/32/5.

The annexes to the report submitted by Chile may be consulted in the secretariat's file.

** 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.

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Annex

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Introduction

1. The first part of the report provides information on the new measures and facts concerning implementation of the Convention in Chile since May 2004, when the Committee against Torture received information on implementation of the Convention during the period corresponding to Chile's third and fourth periodic reports.[1] The second part of this document refers in particular to implementation of the recommendations made by the Committee at that time.[2] The final part of the report consists of an annex containing statistical tables. To supplement the information contained in the present report we are providing the Committee against Torture with the text of the new Code of Criminal Procedure, the report of the National Commission on Political Prisoners and Torture and a document containing a summary thereof.

2. In the period covered by this report, further measures were implemented to protect the rights enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as described in the last report and in the State party's presentation to the Committee. New measures have also been implemented to this end, the most important of which are mentioned in the following paragraphs, and will subsequently be described in greater detail.

3. The report highlights the new system of criminal procedure in force throughout the country, and what it has meant in practice, with regard to the protection of the rights of the accused. The safeguards offered by the current adversarial system for investigating offences are based on various checks on the use of power by authorities representing the public interest that are involved in the conduct of judicial proceedings: the judge responsible for procedural safeguards, the Public Prosecutor's Office and the police. Each authority does not use its power in isolation but always in conjunction with the other two, which ensures ongoing monitoring of the lawfulness of their actions. Additional monitoring is provided by the other parties involved in the conduct of judicial proceedings and, owing to the public nature of these proceedings, by the general public.

4. A considerable number of victims of human rights violations under the military regime received reparation through the work of the National Commission on Political Imprisonment and Torture which in turn owed its origin - together with other initiatives - to the former President Ricardo Lagos's human rights proposal entitled "No future without a past".

5. The current Government has incorporated the aforementioned initiatives into its programme of action and is continuing with their implementation. It has given special emphasis to the prompt creation of the National Human Rights Institute, whose remit will be to protect

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[1] 10 and 11 May 2004, meetings 602 and 605 (CAT/C/SR.602 and 605).

[2] CAT/C/CR/32/5 of 14 June 2004.

and promote the human rights established in the Constitution, international human rights treaties, laws, humanitarian law and international human rights law. The legal initiative for the establishment of this institute is now awaiting approval by the National Congress, along with that for the establishment of an ombudsman.

6. Similarly, the Government's programme includes the intention to proceed with the pending task of ratifying important international human rights treaties and protocols. These include, in particular, the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention against Torture, both of which are now awaiting approval by the National Congress.

7. The entrenched authoritarian clauses in the 1980 Constitution were a long-standing obstacle to the capacity building of the democratic institutional system. Their elimination was achieved through a process of negotiation with the political sectors opposed thereto, under the constitutional reforms of August 2005.

8. In addition to the elimination of the entrenched authoritarian clauses, these reforms covered other areas; one meets the Committee's recommendation that the police should cease to be answerable to the Ministry of Defence, by establishing that both the carabineros and the Criminal Investigation Police - the forces responsible for order and security - would come under a future Ministry of Public Safety.

9. No agreement was reached with the political opposition regarding the binominal electoral system, despite the Government's willingness to change to a more representative system. Nevertheless, this reform is also part of the programme of the current Government, which is continuing its efforts to reach the necessary agreement.

10. With regard to another pending legal reform - the repeal of the Amnesty Decree-Law - Chile's democratic governments have been opposed to its implementation, but past attempts to have it repealed have failed, owing to lack of parliamentary support in dealing with a politically controversial issue. Nevertheless, the current Government has made known its wish to find a way to end the legal effects of this decree, taking into consideration its international commitments and, in particular, recent decisions of the Inter-American Court of Human Rights. To this end, and in order to make headway with this initiative, different legal possibilities are being studied in order to avoid impunity. Meanwhile, in the decisions they hand down, higher courts of justice have been declaring this amnesty to be inapplicable, invoking as a legal basis the implementation of the international human rights instruments ratified by Chile.

Visit to Chile by the Association for the Prevention of Torture (APT)

11. A considerable part of this report sets out responses to the recommendations made by the Committee after examining Chile's previous report. In this connection, from 8 to 11 May 2006 an international delegation from the Association for the Prevention of Torture (APT) visited Chile and met with various Government authorities. The issues discussed were: (a) the ratification by Chile of the Optional Protocol to the Convention against Torture, and (b) the measures taken by Chile in response to the recommendations made by the Committee against

Torture after consideration of the third (and fourth) periodic report. The Human Rights Department of the Ministry of Foreign Affairs helped to draw up the agenda for this visit.[3] On 9 May 2006 the APT delegates were received at the Human Rights Department of the Foreign Ministry, together with members of the Chilean delegation that had been involved in the Committee's consideration of Chile's third report. The aim of this meeting was to hold a dialogue concerning the measures being taken by Chile in response to the Committee's recommendations. The APT delegates expressed appreciation of this initiative in a letter dated 1 September 2006 to the Minister of Foreign Affairs, saying: "the meeting organized by the Ministry of Foreign Affairs with the Chilean delegation that submitted the third periodic report to the Committee against Torture in 2004, with the aim of discussing progress in the implementation of the Committee's recommendations, was particularly enlightening. It is the first time that an international meeting of this type has been held, and the APT commends it as a model to be followed by this and other committees".

NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION FOLLOWING THE ORDER OF ARTICLES 1 TO 16

Reparation for victims of torture under the military regime

12. With regard to the area of truth, justice and reparation for victims of human rights violations committed by agents of the State under the military regime, the former President of the Republic, Ricardo Lagos, published in August 2003 the human rights proposal "No tomorrow without yesterday", which contains new measures to extend the progress made in this area since the restoration of democracy in 1990. The proposal was drawn up after gathering the views of the country's churches and secular, social and political institutions.

13. This document calls for practical measures in relation to human rights violations committed in the past, such as draft legislation to: speed up judicial investigations of human rights violations and the provision of information; improvement of pensions, education allowances, inheritance-related problems and medical care for victims' relatives. It also provides for measures to promote such rights and for institution-building to ensure the realization of human rights in the future, for example through the establishment of a National Human Rights Institute, the ratification of human rights treaties and the strengthening of human rights education.

[3] Members of the delegation met with senior government officials from the Office of the Secretary-General of the Presidency and the Ministries of the Interior, Justice and Defence. They also met with the Foreign Affairs Committee and Human Rights Committee of the Chamber of Deputies; the Vice-President of the Senate; a high-level representative of the Supreme Court; and representatives of civil society - including universities - and the diplomatic community.

14. One outcome of the Presidential proposal mentioned above is the establishment of the National Commission on Political Prisoners and Torture, which fills a long-standing need in relation to truth and reparation for those who were arrested and tortured under the military regime and were not covered by the work of the Truth and Reconciliation Commission, which dealt only with persons who disappeared or were executed.

Constitutional reforms of August 2005[4]

Elimination of the entrenched authoritarian clauses in the 1980 Constitution

15. In the period covered by this report, the entrenched authoritarian clauses still contained in the 1980 Constitution were eliminated. As indicated in the last report, a number of constitutional provisions which jeopardized the full exercise of certain fundamental rights remained in force. The main areas of progress resulting from the constitutional reforms enacted in August 2005 concern, inter alia: new rules on constitutional states of emergency that are compatible with international human rights instruments, in particular the stipulation that in relation to specific measures which affect constitutional rights, the safeguard of appeal to the judicial authorities by means of the appropriate remedies will always exist;[5] the elimination of appointed senators and senators for life; the change in the membership and duties of the National Security Council, which was transformed into an advisory body, without decision-making powers and without the decisive role played in its decisions by the Commanders-in-Chief of the armed forces;[6] and the fact that the Constitutional Court has become more representative, with its members being appointed by the three State powers, without any involvement of the armed forces, and has been given the power to rule on actions of unconstitutionality, which was held by the Supreme Court before the reform.[7]

Other constitutional reforms

Guaranteed security of tenure for armed forces and Carabineros chiefs

16. Another constitutional reform was the abolition of the provision that the Commanders-in-Chief of the armed forces and the Director-General of the Carabineros could not be removed from office by the President of the Republic. Also, the function of "guarantors of the institutional order" assigned to the armed forces and security forces has been removed from the Constitution under the reform and entrusted to all the organs of State.

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[4] Act No. 20.050 of 26 August 2005.

[5] Article 45 of the Constitution.

[6] Articles 106 and 107 of the Constitution.

[7] Article 92 ff. of the Constitution.

Reforms relating to the executive, correctional and economic supervisory powers exercised by the Supreme Court over all military courts at times of war

17. The constitutional reforms of August 2005 introduced an important change by bringing the military courts under the authority of the Supreme Court, from which they had been excluded.[8] The effect of this reform will be to prevent the Supreme Court declaring in the future that the military courts are not under its supervision at times of war, as happened during the military regime, when it disregarded weighty arguments against this position. This situation meant that in times of war the military courts failed to adjust their activities to comply with the law and with the rules of criminal procedure in force at times of war, as determined by the Code of Military Justice.[9]

Reforms relating to international treaties

18. As regards international treaties, the constitutional reforms referred to above laid down a series of rules which clarify the gaps in Chilean legislation. The most important of these rules indicates that the provisions of a treaty may be set aside, modified or suspended only in the manner laid down in the treaty itself or in accordance with the general rules of international law, an area not regulated before this reform.[10] This reform is of the highest importance in terms of respect for international human rights law domestically, since it means that no international human rights standard which is binding on the State can be ignored or nullified by a domestic measure.

Optional Protocol to the Convention against Torture

19. The Optional Protocol was signed by Chile in June 2005. In October 2006 it was submitted to the National Congress for adoption, and was at the first stage of consideration in the Foreign Affairs Committee of the Chamber of Deputies.

Article 1

Definition of torture for the purposes of the Convention

20. Chile's third periodic report described how a reform of the Criminal Code characterized and laid down penalties for torture, and how another reform abolished the death penalty. *Paragraphs 80 and 81 of this report provide information in response to the Committee's recommendation concerning the definition of torture*.

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[8] Amendment of art. 79, para. 1, of the Constitution.

[9] Art. 82 of the Constitution.

[10] Art. 54, para. 1, of the Constitution.

Article 2

Effective legal measures to prevent acts of torture

Prevention of torture in the current system of criminal procedure

21. The previous report contained a review of the main legal measures adopted since 1991, following the restoration of democratic government, with the aim of preventing acts of torture; the report also analysed the impact of the reform of the system of criminal procedure in meeting this objective.

22. The reform of criminal procedure has enabled the requirements and imperatives of due process to be satisfactorily addressed; in our legal system today the presumption of innocence is the foundation of due process. In this context personal freedom is the rule and individual precautionary measures the exception; such measures must be applied for by the prosecutor in charge of the investigation on grounds which must be analysed by an independent court whose decisions are final. This regime has reached such a degree of effectiveness in terms of checks that it has been criticized by those who favour tougher treatment for persons accused of breaking the law. We will now comment on a number of aspects of the new system which improve the protection of the rights of the accused, followed by some statistics on accused persons in the current system of criminal procedure.

(a) Obligation to bring detainees promptly before the court

23. Under the new system of criminal procedure, whose overriding concern is respect for human rights and constitutional guarantees, the work of the police can be effective only if officers observe the laws and procedures in force, since it is only in this way that their expert opinions cannot be challenged during any court hearing.

24. When a person is detained not as a result of an order from a judge but because he or she was found in flagrante delicto, the arresting police officer or the person in charge of the place of detention must notify the Public Prosecutor's Office within 12 hours at most; the Public Prosecutor's Office may terminate the detention or order that the detainee be brought before a judge within 24 hours at most from the time of detention. If the prosecutor dealing with the case takes no action, the police must bring the detainee before the judge within the same time limit. When the detention is the result of an order from a judge, the police officer carrying out the order or the persons in charge of the detention facility must bring the detainee before the judge who ordered the detention within 24 hours at most.[11]

(b) Rights of detainees

25. As was indicated in the previous report, under the new Code of Criminal Procedure, accused persons enjoy various rights from the moment proceedings are initiated. One such right is the right "not to be subjected to torture or other cruel, inhuman or degrading treatment".[12]

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[11] Art. 131.

[12] Art. 93.

Under the new system of criminal procedure, a judge responsible for procedural safeguards who considers that an accused person is the victim of any of the acts that constitute the offences of torture or other ill-treatment may take the necessary steps to ensure that such acts cease immediately. Furthermore, the Code of Criminal Procedure provides for special *amparo* proceedings before this judge, which are described below.

(c) Supervision of detention (quasi-preventive protection)

26. In accordance with the above paragraph, without prejudice to the provisions on habeas corpus enshrined in the Constitution, under the new procedure, an effective check on detainees must without fail be carried out within a period of 24 hours following any arrest by the police, the basic purpose being to analyse the lawfulness of the grounds for the measure and its application; these checks in fact constitute a form of preventive protection, the operation of which is not subject to a prior action or remedy. Counsel or another person may apply for such protection to the local judge responsible for procedural safeguards or the judge who is hearing the case. When deprivation of liberty is the result of a court order, its lawfulness may be challenged only through the appropriate procedures in the court which issued the order.[13]

27. Where an unlawful act or a failure to lodge formal charges is identified, the detainee is immediately released and the official responsible is reported to the institution to which he or she belongs, so that the appropriate steps can be taken. In addition to this, checks are also provided by the fact that hearings are held in public. In any event, if at any time in the course of the investigation the detainee is prevented in any way from exercising his or her rights under the Constitution, laws or international treaties, the judge may take the necessary steps *proprio motu* or on the application of a party to enable the detainee to exercise such rights.[14]

(d) Incommunicado detention

28. Another example of the considerable progress achieved compared with the situation under the former system of criminal procedure is that the ability to modify the length of the period of detention, in response to an application from a detained accused person, is restricted to the courts - a measure based solely on procedural grounds, which in some cases may affect the relationship between the accused and counsel.

29. Although the court may, at the prosecutor's request and to ensure the success of the investigation, prohibit communication with detainees or prisoners for up to 10 days, it may not deny the accused access to their lawyers, to medical care and to the court; in such cases the court must issue instructions to the persons in charge of the detention facility or prison on how to conduct incommunicado detention, which under no circumstances may consist in confinement in punishment cells.[15]

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[13] Art. 95.

[14] Art. 10.

[15] Art. 151.

Data on the situation of accused persons in the new system of criminal procedure

Number of accused persons dealt with by the Office of the Public Defender

30. As at 30 September 2006, the Office of the Public Defender had dealt with 427,938 accused persons. The number of accused persons dealt with by the Office has been rising every year, in line with the gradual implementation of the reform. The new system of criminal procedure, together with the public criminal defence service, has been introduced in five stages, the most recent of which came into force in the Metropolitan Region in June 2005. This has considerably affected the volume of cases dealt with annually. See tables 1 and 2 in the annex.

High percentage of public criminal defence services provided free of charge

31. The law stipulates that criminal defence services shall be free of charge, except for persons who can afford to pay for them. Accordingly, 89.1 per cent of accused persons who have been referred to the Office of the Public Defender have benefited from the "zero fee" arrangement (*Arancel "AO"*), thus receiving free criminal defence services. Conversely, only 1.5 per cent of accused persons who have received this public service, or 6,069 persons, have paid for it in full. See annex, table 3.

Pretrial detention as compared with other precautionary measures for accused persons referred to the Office of the Public Defender

32. From the time the reforms entered into effect, and up to 30 September 2006, a total of 44,183 accused persons were placed in pretrial detention, a figure equivalent to 17.5 per cent of other types of procedural measures. This means that of all precautionary measures ordered since the introduction of the new criminal procedure, various procedural instruments other than pretrial detention have been applied in more than 80 per cent of cases, for the purpose of ensuring the appearance of the accused at hearings or the protection of victims. Of these, 74.3 per cent are defined as precautionary measures under article 155 of the old Code of Criminal Procedure and 8.2 per cent as other precautionary measures. *See annex, table 4*.

Accused persons in pretrial detention according to length of imprisonment

33. As at 30 September 2006, more than 80 per cent of accused persons being held in pretrial detention had been in that situation for a period of less than six months, while only 2.4 per cent of such persons had been subject to this precautionary measure for more than a year. *See annex, tables 5 and 6.*

Convictions according to type of penalty (custodial or non-custodial)

34. From the time the reforms entered into effect, and up to 30 September 2006, a total of 121,588 convictions were handed down against accused persons referred to the Office of the Public Defender. These represent 30 per cent of all forms of case resolution - the second largest

share after alternative outcomes to proceedings. Of all convicted persons, 50.2 per cent were sentenced to some form of non-custodial penalty,[16] while 49.8 per cent were sentenced to imprisonment. *See annex, table 7.*

Identity checks

35. Reference was made in Chile's previous report to the legal reform that abolished the practice of "arrest on suspicion", which was regulated in the old Code of Criminal Procedure. The provision was criticized on account of its vagueness, which, by allowing the police broad scope for interpretation, gave rise to situations that were not in keeping with the provisions of the Constitution and international legal provisions in force in Chile. The new Code of Criminal Procedure allows for identity checks on individuals, which may be carried out by police officers without a prior order by prosecutors; however, they are limited to situations warranting such action under a thoroughly regulated procedure.[17]

36. In 2004, the following amendments were introduced to the provision of the old Code of Criminal Procedure governing identity checks: such checks must henceforth be carried out by the Carabineros or the Criminal Investigation Police, whereas this was previously optional; it is a punishable offence for persons requested by the police to prove their identity to refuse to do so, to give a false identity or to conceal it. In such cases the police officer is required to inform the Public Prosecutor's Office of the situation immediately, and the standard procedure of bringing the detainee before the judge responsible for procedural safeguards within 24 hours is applied, although prosecutors may exercise their right to terminate the detention.[18]

Effective administrative measures to prevent acts of torture

37. The process of changing police attitudes, initiated with the restoration of democracy, with the aim of securing respect on the part of the police for human life and the freedom and security of the individual, as well as the rejection of torture, has been strengthened in order to supply the skills and characteristics required by the new system of criminal procedure. Clear internal regulations which lay down procedures and penalties when individual rights are violated by Criminal Investigation Police officers and Carabineros, together with codes of conduct, form a framework which helps to support behaviour on the part of the police that displays respect for individual dignity.

38. Under the new criminal procedure, the Criminal Investigation Police assist the Public Prosecutor's Office in investigations and take the necessary steps to perform the investigative functions stipulated in the old Code of Criminal Procedure, in accordance with instructions provided by the prosecutors. It also implements any enforcement measures which are prescribed.

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[16] Act No. 18,216 of 14 May 1983.

[17] Art. 85.

[18] Act No. 19,942 of April 2004.

Over the course of 2005, the Criminal Investigation Police conducted criminal investigations into 174,850 offences, and on the basis of these, carried out 28,333 expert appraisals and 24,933 specialized procedures; it also responded to 90,141 investigation orders issued by the Public Prosecutor's Office. The Carabineros also assist the Public Prosecutor's Office by performing the functions mentioned above when the prosecutor responsible for the case so orders.

Criminal Investigation Police

39. Beginning in January 2005,[19] the autonomy of the Criminal Investigation Police was strengthened by means of a legal amendment that placed its top leadership in the hands of its own members. As a result of this reform, the office of Director-General, which previously could be held by a person outside the institution, is a selection now entrusted exclusively to the President of the Republic, who appoints a Director-General from among the eight most senior police officials.

40. Reference was made in the previous report to the plan launched in the 1990s for modernizing the Criminal Investigation Police. In this connection, the strategic plan for institutional development was formulated in 2004 and is currently being implemented, having set 2010 as the deadline for reaching its goals. The modernization plan calls for instilling in members of the Criminal Investigation Police strict moral and professional ethics which reflect principles of institutional policy that must be respected in keeping with the law and human dignity, and in order to protect the rights derived therefrom.

Establishment of the Special Affairs and Human Rights Brigade

41. Reference was made in the previous report to a number of internal bodies whose activities contribute effectively to the prevention of torture, including those previously carried out by Department V on Internal Affairs attached to the Criminal Investigation Police. In that regard, it should be noted that a December 2004 institutional decision[20] provided for the establishment of a Special Affairs and Human Rights Brigade, which specializes, under the direction of the courts, in the judicial investigation of criminal human rights violations and is entrusted with cases that occurred during the military regime, for which the above-mentioned Department V had been responsible since 1992. This Brigade is also competent to conduct judicial investigations into any current criminal human rights violations. The establishment of this Brigade frees Department V of the above-mentioned human rights responsibilities, thereby enabling it to focus its efforts on investigating actions inconsistent with the proper performance of official duties, particularly those relating to individual and community service.

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[19] Act No. 19.987 of 12 January 2005.

[20] General Order No. 2030 of 1 December 2004.

Carabineros

42. The Carabineros, like the Criminal Investigation Police, have a code of ethics setting forth guidelines for the conduct of officers. Infringements of its rules may result in disciplinary sanctions ranging from a warning to dismissal. The Carabineros also have internal instructions concerning the protection of basic human rights. Any breach of these instructions incurs the appropriate administrative, criminal and civil liability and penalties. There is no possible justification for the use of ill-treatment or measures that are degrading to human dignity. Special care is taken not to commit, in any circumstances, acts that come under the prohibition against torture and the penalties therefor. Carabineros officers are duty-bound to protect the health of persons held in detention or victims allegedly involved in police procedures, and must take the necessary precautions to provide them with the medical care they require.[21]

Prison Service (Gendarmería)

43. Reference was made in Chile's previous report to a set of administrative measures adopted by the Prison Service (the institution responsible for the operation of prisons) with the aim of preventing torture. It should be noted that as from the entry into force of the new system of criminal procedure, the Public Prosecutor's Office may issue instructions to the Prison Service as part of investigations into criminal offences committed in prisons.

(a) Prison regulations: These regulations form the backbone of prison policy and promote respect for the fundamental rights of prisoners. They establish, inter alia, sanctions for prison service officials who engage in torture or cruel, inhuman or degrading treatment, whether verbal or physical, or unnecessary force against inmates. During the period under review, these regulations were amended in order to adapt them to the reform of criminal procedure and to the incorporation of new prison facilities.[22]

(b) Cooperation agreement to improve prison policy: Reference was made in Chile's last report to the fact that, with a view to ensuring greater compliance with international human rights standards, the Ministry of Justice and the British Embassy signed a cooperation agreement in 2000. The purpose of the agreement was for the Prison Service and the International Centre for Prison Studies in London to devise a strategic planning model that would help to improve the ability of the Prison Service to respect prisoners' rights, and to implement prison policy and the reform of criminal procedure. The agreement was ratified in 2003 and is currently in effect. With regard to the strategic planning and human rights programme, in 2005, a study was conducted of local and regional plans to be applied in prisons, and in 2006, departmental strategic plans were introduced.

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[21] Circular No. 1521 of 30 October 1998 issued by the Directorate-General of the Carabineros, reiterating instructions on "Official conduct in police procedures".

[22] Supreme Decree No. 1248, Ministry of Justice, 3 April 2006.

(c) Mechanisms for the internal oversight of prison officials: The Office of Administrative Oversight and the Officials' Assistance Unit have been strengthened. The former is now responsible, inter alia, for the most important proceedings in which prison officials are accused of acts inconsistent with the proper performance of their official duties, and the latter defends staff on trial for unlawful acts involving ill-treatment in the performance of their duties and seeks constitutional remedies against the institution concerned.

Effective judicial means of preventing acts of torture

The remedy of *amparo*

44. Without prejudice to the provisions on habeas corpus contained in the Constitution, which are currently in force, as indicated in paragraph 26 of the present report, the new Code of Criminal Procedure provides for recourse to the remedy of *amparo* before the judge responsible for procedural safeguards. In addition, an important constitutional reform, which has an impact on the applicability of this remedy during states of emergency, is included below.

No exceptional circumstances ... or any other public emergency, may be invoked as a justification of torture.

45. From March 1990 to the date of the present report, no President has declared a state of emergency. A state of emergency does not suspend the basic principles of the rule of law, and the acts of the administration remain subject to the Constitution and the law. The courts must hear appeals if the measures applied are not permitted under the prevailing state of emergency or were taken by an unrecognized authority, or if their adoption and implementation infringe on the basic guarantees contained in the Constitution.

46. One of the constitutional reforms enacted in August 2005 that is of major importance in protecting the rights of individuals affected by measures taken during states of emergency is the stipulation that, in relation to specific measures which affect constitutional rights, the safeguard of appeal to the judicial authorities by means of the appropriate remedies will always exist.

An order from a superior officer or a public authority may not be invoked as a justification of torture.

47. Paragraphs 96 and 97 address the Committee's recommendation concerning this provision of the Convention.

Article 3

No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

48. Reference was made in Chile's last report to regulations in the new Code of Criminal Procedure governing passive extradition. These had not undergone substantive changes with the entry into force of the new Code, except for an amendment stipulating that Supreme Court judges are now competent to consider requests for extradition at first instance, and not the President of the Supreme Court, as was previously the case.

Article 4

Acts of torture, including any attempt to commit torture, and complicity or participation in torture, shall constitute an offence under criminal legislation, and shall be punishable by appropriate penalties which take into account their grave nature.

49. A summary of the information provided on this subject in Chile's previous report is included below:

(a) The offence of torture and the corresponding penalties which take into account its grave nature did not exist in Chilean criminal legislation until the reform of the Criminal Code in July 1998.[23] Prior to this reform, the concept of torture was not included in Chilean criminal legislation. In order to punish acts constituting torture, recourse was had to article 150 of the Criminal Code, which punished persons who "order or unduly prolong the incommunicado detention of an unconvicted prisoner, cause him physical suffering or treat him with unnecessary severity", and also persons who "arbitrarily cause him to be arrested or detained in places other than those designated by law". These offences cover only physical injury and do not reflect the possibility that the offence of torture may be constituted by acts causing psychological injury;

(b) The above reform provided for the addition of article 150 A to the Criminal Code. This article specifically punishes the offence of torture, establishing severe penalties for public employees who engage in that practice. It covers physical and mental injury; punishes any person who orders or consents to the use of torture, as well as any person who, having knowledge of this situation, fails to prevent or terminate it when he or she has the power or authority to do so. Article 150 A increases the penalties to as much as 10 years' imprisonment for any public employee who, by means of torture, forces the victim or a third party to make a confession or provide information, and to as much as 15 years for any public employee who, as a result of torture, causes injury to, or the death of, a detainee, if these consequences are attributable to negligence or imprudence on the part of the employee;

(c) The reform of the Criminal Code also provided for the addition of article 150 B, which imposes penalties ranging from 61 days to 10 years on persons who, not having the status of public employee, commit the offences punishable under the above-mentioned articles 150 and 150 A of the Criminal Code;

(d) Article 150 of the Criminal Code was retained and provides penalties ranging from 61 days to 5 years of rigorous or ordinary imprisonment for persons who order or unduly prolong the incommunicado detention of a person deprived of liberty, treat him with unnecessary severity or cause him to be detained arbitrarily in places other than those established by law;

(e) Moreover, article 255 of the Criminal Code punishes by means of suspension of employment and a fine any public employee who in the course of his or her official duties engages in harassment or unlawful or unnecessary coercion of individuals;

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[23] Act No. 19.567 of 1 July 1998.

(f) Similarly, article 330 of the Code of Military Justice applicable to members of the armed forces and the Carabineros punishes those who, "in executing an order from a superior or in the exercise of his military functions, employs, or causes to be employed, without due reason, unnecessary violence in the execution of the acts which he is required to perform". It establishes penalties ranging from 41 days of short-term imprisonment to 540 days of rigorous imprisonment if no injuries are caused or if the injuries are slight, and from 5 years and 1 day to 15 years of rigorous imprisonment if the violence results in the death of the victim.

50. Paragraphs 80 and 81 of this report address the Committee's recommendation concerning the definition of the offence of torture, and paragraph 103 addresses its recommendation concerning the statute of limitations for this type of offence.

Article 5

51. There is no change with respect to what was indicated in the previous report.

Article 6

52. There is no change with respect to what was indicated in the previous report.

Article 7

53. There is no change with respect to what was indicated in the previous report.

Article 8

Passive extradition of the former President of Peru, Alberto Fujimori

54. When Alberto Fujimori arrived in Chile on 6 November 2005, the Government of Peru requested his detention for the purposes of extradition. The request was made under article VII of the 1932 extradition treaty between Chile and Peru and the "… international treaties governing actions to combat impunity in relation to crimes against humanity and acts of corruption …".

55. The Ministry of Foreign Affairs immediately transmitted the Peruvian Government's request to the Supreme Court of Justice, which appointed Judge Orlando Alvarez Hernández to examine it. On 7 November 2005 he ordered the detention of Mr. Fujimori. On 8 November 2005 Mr. Fujimori's counsel applied for release on bail, which was refused on the grounds that, since Mr. Fujimori was being detained in special circumstances, the request could only be granted once the extradition request had been formalized.

56. On 3 January 2006, the Government of Peru transmitted the request for Mr. Fujimori's extradition, based on his alleged liability for various crimes relating to human rights violations, including torture, grievous bodily harm and enforced disappearances, and to acts of corruption, perpetrated against a number of Peruvian citizens and the Peruvian State. The request was received on the same day, with all the background information on which it was founded.

57. On 18 May 2006 the Supreme Court of Justice granted Mr. Fujimori bail for the duration of the extradition proceedings. The investigation stage of the proceedings was closed in November 2006; judgement at first instance is still pending.

58. As was mentioned in Chile's previous report, extradition in Chile is a matter governed exclusively by court decision. The Government does not interfere in extradition proceedings and must abide fully by what the courts decide, i.e. by purely legal decisions taken on the merits of the proceedings. The ruling on a passive extradition request must come, at first instance, from the investigating judge of the Supreme Court of Justice and, on appeal, from the Supreme Court (Criminal Chamber), which must hear the appeal or, should there be none, advise on the case.

59. In settling extradition issues, judges must adhere to the international norms governing extradition, in this case, the bilateral treaty between Chile and Peru, and to domestic rules, in this case, the old Code of Criminal Procedure, which still applies to extradition for acts committed outside Chile prior to 16 June 2005. For matters not so regulated, they are required to follow the general principles of international law as they apply to extradition. Judges must determine whether the requirements for granting extradition have been met, such as the existence of dual criminal liability and a minimum penalty, as well as the requirement, on the part of the courts in Chile, unlike in other countries, that the record should show prima facie evidence that the person whose extradition is being sought committed the crimes of which he or she is accused as principal, accomplice or accessory.

Article 9

60. In Chile's previous report, reference was made to the process of internal approach of the 1992 Inter-American Convention on Mutual Legal Assistance in Criminal Matters. It should be noted that this treaty has been in force in Chile since 8 July 2004.

Article 10

Education and information regarding the prohibition against torture in the training of law enforcement personnel involved in the custody of any individual subjected to detention and imprisonment and medical personnel

Prison Service

61. As described in detail in Chile's previous report, the prison administration has strengthened the curricula of courses for trainee guards and cadets in the Prison Service College, in the subject "Human rights" and "Democratic culture". In these courses, students are taught about the various covenants, conventions and treaties signed by Chile as they relate to the day-to-day operation of the prisons, while the country's democratic institutional system is taught from the perspective of citizens' participation, rights and obligations.

62. With respect to the new Act concerning Juvenile Responsibility,[24] which enters into force in June 2007, the Prison Service, in an agreement with the Ministry of Justice and the National Service for Minors (SENAME), introduced a training programme that emphasizes the rights of young offenders and the responsibility to provide them with opportunities for reintegration into society. The above-mentioned agreement has initially been implemented in the Prison Service College and is to be extended to the Academy in a course consisting of 18 training sessions.

Carabineros

63. As described in detail in Chile's previous report, the subject of human rights is included in the curricula of the various training institutions for Carabineros personnel.

Criminal Investigation Police

64. As indicated in the previous report, the academic branch of the Criminal Investigation Police has played a key role in promoting attitudinal change in favour of strengthening scientific and team efforts, adopting new paradigms that reinforce the value of human dignity and updating police procedures in order explicitly to prohibit torture.

Article 11

Systematic review of interrogation rules, instructions, methods and practices as well as custody and treatment of persons subjected to detention or imprisonment

65. In the Criminal Investigation Police, provisions relating to interrogation and detention procedures are contained in internal instruments known as "General Orders". As to the periodic revision of these provisions, Department VII on Control of Police Procedures is responsible for conducting ongoing evaluation of police procedures with the aim of modifying or rectifying erroneous practices and methods.

66. In the Carabineros, regulations govern interrogation methods and the treatment of persons in detention, and define as serious misconduct any misuse of position that could be qualified as abuse of functions, provided that such actions do not go so far as to constitute an offence. Moreover, instructions are issued throughout the country to district headquarters, prefectures and police stations that stipulate strict observance of the rights of detainees and punishment for infractions.[25]

[24] Act No. 20.084 of December 2005 establishes a new system for the criminal responsibility of young people; among other objectives, it meets the need to abolish the outdated system requiring a declaration of discernment and replaces it with a more objective system, which is applicable to young people between the ages of 14 and 18.

[25] Carabineros disciplinary regulation No. 11.

Article 12

67. With regard to judicial investigations into offences of torture committed in the past, see paragraphs 162 to 170, which address the Committee's recommendation in that regard.

Article 13

The right of victims of torture to file a complaint with the competent authorities and protection of complainants and witnesses against ill-treatment or intimidation as a consequence of such complaints

68. Chile's previous report indicated which authorities were competent to conduct administrative and judicial investigations into complaints of torture and described the protection measures available to persons filing such complaints and those available to witnesses. Under the new criminal procedure in force in the country, the task of protecting victims and witnesses falls mainly to the Public Prosecutor's Office.[26] The law confers on judges responsible for procedural safeguards and the courts hearing oral proceedings the duty to guarantee the rights of victims and witnesses, which include their right to protection. It also confers on the police duties relating to the protection of victims of offences, such as providing assistance to the victim without a prior order by the prosecutor. With respect to the protection of persons who risk being retraumatized as a result of the legal process in cases involving sexual offences and child abuse, see paragraphs 155 to 161 of the present report which refer to the Committee's recommendation in this regard.

Article 14

Right to redress, compensation and rehabilitation for acts of torture

69. Reference was made in Chile's previous report to the manner in which the right to fair and adequate compensation for the victims of an offence is guaranteed in accordance with the general principles and provisions of the Chilean justice system.

National Commission on Political Prisoners and Torture

70. As was indicated in the introduction to this report, in the period under review, an important step was taken in terms of providing reparation to victims of acts of torture committed during the military regime, through the establishment of the National Commission on Political Prisoners and Torture[27] as an advisory body to the President of the Republic.

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[26] Art. 80 A of the Constitution of the Republic of Chile; art. 1 of the Constitutional Act relating to the Organization of the Public Prosecutor's Office (No. 19.640); various provisions of the old Code of Criminal Procedure (art. 6, para. 1; art. 78; art. 308, para. 2; art. 83); and art. 14 of the Courts Organization Code. Moreover, there are provisions in special criminal laws that grant broad powers of protection to prosecutors, such as the Drugs Act and the Terrorist Offences Act.

[27] Established by Supreme Decree No. 1040 of November 2003.

71. The duties of the Commission were:

(a) To identify persons who were subjected to deprivation of liberty and torture by agents of the State or persons in their service for political reasons during the period from 11 September 1973 to 10 March 1990; and

(b) To propose to the President of the Republic the conditions, characteristics, forms and modes of reparation that could be granted to persons acknowledged to have been political prisoners or torture victims who had not received any reparation on those grounds. The Commission launched its activities on 11 November 2003 in the Metropolitan Region, and on 10 December 2003 in the other regions and in Chilean consulates abroad. One year later it issued a report describing the historical context in which the torture had taken place, the conduct of the different State bodies in relation to this practice, the different periods and types of political imprisonment and torture in Chile, the methods of torture used, places of detention, the profile of the victims and the effects of this abuse on them.

72. In one year of activity the Commission received testimony from 35,868 people. Of these, testimony from 3,100 persons was received from abroad through Chilean embassies and consulates in 40 countries around the world, and 28,459 persons were registered as victims. After re-examining the testimony of the remaining persons, the Commission decided to register an additional 1,204 persons as victims. All the victims recognized by the Commission receive an annual pension and benefits from the Programme of Compensation and Comprehensive Health Care (PRAIS) and other benefits.

73. With regard to the Committee's recommendations concerning the National Commission on Political Prisoners and Torture, see the reply contained in paragraphs 124 to 143 of this report.

Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law

74. For several years, on the international scene, Chile was the driving force behind the resolution on this subject, which was adopted by consensus in 2005 by the United Nations General Assembly.

Article 15

A statement made as a result of torture cannot be invoked as evidence in any proceedings

75. The previous report described amendments to the Code of Criminal Procedure introduced between 1991 and 1998, which provided that statements made by detainees as a result of torture were not valid.

Invalidity of statements obtained under torture in the new Code of Criminal Procedure

76. As indicated in the previous report, prior to the entry into force of the new Code of Criminal Procedure, the reform that classified torture as an offence in the Criminal Code also amended the former Code of Criminal Procedure by providing that statements obtained from

persons held in detention are invalid if the officials responsible for the detention have failed to comply with the obligations listed in the Code. These include ensuring that detainees are not subjected to torture or cruel, inhuman or degrading treatment.

77. The new Code of Criminal Procedure, with regard to the investigation stage, states that any form of investigation or interrogation that undermines or restricts the freedom of accused persons to make a statement is totally prohibited. Accordingly, they may not be subjected to any form of coercion or threats. Any method that affects their memory or capacity to understand or control their actions, and in particular any form of abuse, threats, physical or psychological violence, torture, deceit or the administration of psychotropic drugs or hypnosis, is expressly prohibited.[28] This provision is supplemented by others that reinforce the impossibility of invoking as evidence a statement made as a result of torture. One article provides[29] that statements made by accused persons must be made voluntarily; another provides that the judge responsible for procedural safeguards shall exclude from the court hearing all evidence obtained from proceedings that have been declared invalid, as well as evidence that has been obtained in violation of fundamental guarantees. Similarly, at the stage of the court hearing, a series of provisions govern how flawed judicial proceedings[30] are to be declared invalid; and another provision gives as one of the grounds for invalidity of the court hearing or sentence the violation of rights and guarantees enshrined in the Constitution or in international treaties ratified by Chile and in force in the country.[31]

Article 16

Prohibition of other acts of cruel, inhuman or degrading treatment or punishment

78. There is no change with respect to what was indicated in the previous report.

COMPLIANCE WITH THE COMMITTEE'S RECOMMENDATIONS

Paragraph 7 (a): recommendation to adopt a definition of torture that - in conformity with article 1 of the Convention - covers all forms of torture

79. The legal provisions covering torture are aimed at prosecuting and punishing the use of violence in order to break the victim's will. Articles 150 A and 150 B of the Criminal Code provide for various possible situations of torture and ill-treatment, in which the perpetrator of the offence is either a public official (art. 150 A) or a private individual (art. 150 B). In accordance with the general provisions of the Criminal Code, attempts to commit this or other offences are punishable, as are concealment and complicity.

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[28] Art. 195.

[29] Art. 194.

[30] Arts. 159 ff.

[31] Art. 373.

80. With regard to the recommendation that all forms of torture should be covered, including torture inflicted with the aim of obtaining information or a confession from the victim or a third party, or punishing, intimidating or coercing the victim on discriminatory grounds, each of these elements should be considered separately, in the context of the types of conduct described:

(a) Under article 150 A, subparagraph 3, torture inflicted with the aim of "obtaining information or a confession", is considered to be an aggravated form of the acts of torture covered by subparagraph 1, since its purpose is, in fact, to obtain statements or confessions. Subparagraph 3 provides: "if by means of any of the acts described in subparagraph 1 the public official forces the victim or a third party to make a confession, make any kind of statement or provide any kind of information, the sentence shall be the maximum duration of medium-term rigorous imprisonment or the minimum duration of long-term rigorous imprisonment, and the corresponding accessory penalty [...]" (from 3 to 10 years);

(b) With regard to incorporating, in the definition of torture, torture that is inflicted "with the aim of punishing the victim", this aim is not mentioned explicitly, but is understood to exist implicitly, as some domestic legal writers have indicated.[32] In other words, despite this aim not being explicitly formulated, the legal definition of the act can only be understood as comprising an element of intention - the intention to punish the victim;

(c) There is no legal definition of torture inflicted with the aim of "intimidating or coercing the victim, on discriminatory grounds".

Paragraph 7 (b): recommendation to reform the Constitution to ensure the full protection of human rights, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment in conformity with the Convention, and to this end repeal the Amnesty Decree-Law

Enshrine in the Constitution the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

81. Article 19 (1) of Chile's Constitution guarantees the right to life and to physical and psychological integrity, providing in its final paragraph: "[...] The use of any ill-treatment is prohibited [...]". In other words, the use of torture or any other form of ill-treatment is prohibited by the Constitution, albeit not explicitly. According to legal writers, "[...] an authority which uses torture or physical or psychological violence is not only committing an offence but also violating the Constitution. Ill-treatment is totally prohibited. Because of the nature of the Constitution and the protected rights it enshrines - human life and dignity - no excuses or justifications of any kind shall be accepted [...]".[33] Although the terms used in the Constitution are not those used in the Convention, the same rights are protected in both cases.

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[32] In this regard, see Politoff, Matus and Ramírez, *Lecciones de Derechos Penal*, *Parte Especial, 2° edición actualizada, Editorial Jurídica de Chile*, 2005, p. 217.

[33] Evans de la Cuadra, *Los Derechos Constitucionales, Tomo I; Tercera Edición Jurídica de Chile*, 2004, p. 114.

Repealing the Amnesty Decree-Law

82. In the introduction to this report we stated that the current Government is studying the legal possibilities of ending the legal effects of this decree, and avoiding impunity, taking into consideration its international commitments in this area.

83. While efforts to bring about a legal reform have not been successful, the Government considers that it is for the courts to interpret this law. In the higher courts - the Courts of Appeal and the Supreme Court - this issue has given rise to considerable debate, gradually providing an increasing number of elements for the interpretation of this law, which will be briefly described below.

84. For years, the military courts responsible for trying cases of human rights violations applied the Amnesty Decree-Law without investigating or determining responsibility; when such cases were reviewed on appeal, the Supreme Court confirmed that interpretation of the law. In 1996 this Court, with only one judge voting against, rejected an application by the military prosecutor general to instruct Courts of Appeal, who were in turn to instruct judges within that jurisdiction, to extinguish liability on the grounds of amnesty, prescription or *res judicata* in cases of human rights violations under the military regime. The Court held that it was for judges to rule independently on the cases submitted to them. In 1997 the Public Prosecutor's Office again submitted a similar application to the Supreme Court, which again rejected it and simultaneously recommended that Chile's Courts of Appeal accelerate the hearing of these cases.

85. From 1998 the case law of the Supreme Court began to change. Although in Chile criminal cases are not interpreted by analogy, since 1998 this Court has overturned decisions that ended such judicial investigations by means of dismissal of proceedings on the grounds that the Amnesty Decree-Law applied. The military courts' order to end proceedings thus remained without effect, with the Supreme Court citing decisions in which the Decree-Law was found to be inapplicable with respect to the main international human rights and humanitarian law instruments that had been ratified by Chile and were in force in the country, which established that crimes against humanity were not subject to prescription or amnesty.[34]

[34] Judgement of the Seventh Chamber of the Santiago Court of Appeal of 27 June 2006, in case No. 14.058/2004, upheld the conviction at first instance of members of the air force and army for the crime of kidnapping resulting in the death of Juan Luis Rivera Matus. In its judgement the Court rejected prescription of the offence and application of the 1978 Amnesty Decree-Law, stating that the case investigated constituted a crime against humanity which must be investigated and punished in accordance with the following humanitarian law and international human rights provisions in force in the country: the customary principles and standards of international humanitarian law (art. 6 of the Charter of the International Military Tribunal and principle VI of the Principles of International Law Recognized in the Charter of the Nurenberg Tribunal and in the Judgment of the Tribunal, referred to in the relevant United Nations General Assembly resolution of 1950); 1949 Geneva Conventions (common art. 3); general principles of international law recognized by the international community - to which Chile

86. Another change in the Supreme Court's case law that has made it possible to continue pursuing judicial investigations concerns its interpretation of the situation of detained persons who disappeared and who were considered victims of kidnapping rather than of homicide. As kidnapping is, according to the writings of jurists, a continuing offence up to the time the victim is found, dead or alive, any application before that time for amnesty or prescription of the offence is considered premature.[35]

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belongs - which it must respect - which are enshrined in a great number of declarations, resolutions and treaties which form part of the body of international law. These include: the Convention on the Prevention and Punishment of the Crime of Genocide; the American Convention on Human Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture; the International Covenant on Civil and Political Rights; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the Inter-American Convention on Forced Disappearance of Persons (the judgement specifies that the two last-mentioned treaties - signed by Chile - are not yet in force in the country, but help to shape the principles of international law that do fully prevail in Chile); the Universal Declaration of Human Rights; General Assembly resolution 3074 (XXVIII) of 3 September 1973 on the "Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity"; Security Council resolutions of 25 May 1993 and 8 November 1994, which established the International Criminal Tribunals for the Former Yugoslavia and Rwanda, both of which are binding on Member States under articles 24 and 25 of the Charter.

The Court also held that the judgements of international tribunals and the resolutions of specialized bodies form part of these international principles and standards. In its judgement, it cites in that respect judgements of the Inter-American Court (of 29 July 1988 in the case of Velásquez Rodríguez v. Honduras, and 14 March 2001 in the case of Barrios Altos v. Peru), which refer, respectively, to the obligation to prevent, investigate and punish any violation of the rights recognized by the American Convention, and provide compensation for damages resulting from the violation, and to the inadmissibility of amnesty provisions and provisions on prescription in cases of serious human rights violations. It also refers to reports of the Inter-American Commission on Human Rights concerning Chile, which concluded that the self-amnesty law decreed in 1978 by the military regime was incompatible with the American Convention. It also specifies that in the concluding observations of the Human Rights Committee in 1999, concerning Chile, reference was made to the incompatibility of the amnesty laws with the provisions of the International Covenant on Civil and Political Rights.

[35] This important case law was established in case No. 2182-98, concerning the kidnapping of Miguel Angel Rodríguez Sandoval, where the Supreme Court held that kidnapping of detained persons who disappeared is not subject to prescription or amnesty, owing to its being classified as a continuing offence, and by virtue of international human rights treaties signed by Chile.

87. For its part, the Ministry of the Interior's Human Rights Programme - one of the functions of which is to provide legal assistance to victims of human rights violations committed under the military regime - has always maintained before the courts its opposition to the application of the Amnesty Decree-Law, considering that international human rights legislation takes precedence over domestic legislation.

88. In August 2006 the courts were handling five cases in which a final and binding judgement had been handed down in accordance with the above-mentioned case law on the continuing offence of kidnapping; 11 cases involving 37 detainees who disappeared, in which convictions for aggravated kidnapping had been upheld on appeal and which were the subject of applications for judicial review; and 9 cases involving 21 detainees who disappeared, in which the perpetrators had been convicted of aggravated kidnapping and which were the subject of appeals.

89. As for the number of State officials tried and convicted of human rights violations under the military regime as at 31 August, see tables 8, 9 and 10 set out in the annex.

Paragraph 7 (c): recommendation to transfer responsibility for the carabineros and the Criminal Investigation Police from the Ministry of Defence to the Ministry of the Interior and ensure that the jurisdiction of military courts is limited to crimes of a military nature. Responsibility for the carabineros and the Criminal Investigation Police

90. As part of the August 2005 reforms of the 1980 Constitution, aimed at eliminating the entrenched authoritarian clauses, changes were made concerning responsibility for the police. It was established that both the carabineros and the Criminal Investigation Police - the forces responsible for order and security - would report to a future Ministry of Public Safety. A draft law prepared by this ministry in September 2006 is at the first stage in the Senate, for report by the Senate Committee on the Constitution, Legislation, Justice and Regulations.

91. The amendment to the Constitution also provides that the armed forces shall be composed solely and exclusively of the army, the navy and the air force, which shall report to the Ministry of Defence.[36]

Jurisdiction of military courts

92. With regard to the Committee's recommendation to limit the jurisdiction of military courts to crimes of a military nature, this issue has been the subject of various legislative initiatives aimed at limiting the jurisdiction of military courts to those offences that are strictly of a military nature, committed by military officials. These initiatives are currently being examined by the National Congress.

93. A recent initiative in this area was the establishment - on 9 January 2006 - of a working group composed of representatives of the Ministry of Justice, Ministry of Defence and Ministry of Foreign Affairs, assessors from the three branches of the armed forces and the carabineros,

[36] Art. 101 of the Constitution.

and experts, whose task is to study ways of reforming the military courts in order to bring them into line with constitutional and international standards concerning due process. This group will examine the discrepancies that exist between military criminal procedure and the requirements of impartiality and independence in due process, which can be seen in the organization, jurisdiction and functions of the authorities responsible for conducting investigations and prosecutions, and the inquisitorial nature of these courts, which are inconsistent with the criminal procedure currently in force in the country.

94. In April 2006 the committee tasked with studying ways of reforming the military courts held its second meeting, at which it agreed to carry out a statistical study on the way the courts functioned, since the empirical data available were insufficient. It also agreed to invite to some extraordinary meetings a number of experts and judges from the Supreme Court who had served in the military appeals court. It also considered the possibility of financing a number of reports on the subject in each ministry. In view of the important and complex nature of the subject matter, the Ministry of Justice decided to commission an academic study to draw up a proposal on the analysis and reform of the jurisdiction and procedure of military courts. The current terms of reference for this study are geared to optimizing resources, specifying the requirements and focus of the study. The Ministry of Justice hopes to have a proposal for draft legislation on this matter in the second half of 2007.

Paragraph 7 (d): recommendation to eliminate the principle of due obedience, which may permit a plea of superior orders, from the Code of Military Justice to bring it into conformity with article 2, paragraph 3, of the Convention

95. There is to date no legal initiative to repeal articles 334 and 335 of the Code of Military Justice, to bring it into conformity with the said provision of the Convention. Nevertheless, the articles may be tacitly repealed in the case of crimes against humanity, since two draft laws directly concerning this matter are being examined by the National Congress. They are as follows:

(a) A motion presented by a group of deputies from the parties of Government on 30 August 2005, concerning an interpretative law, which consists of a single article intended to bring into force in Chile the principles of human rights and international humanitarian law concerning the impossibility of prescription and amnesty for war crimes and crimes against humanity.[37] In September 2006 this initiative was at the first stage in the Chamber of Deputies. Its single article provides: "Article 93 of the Criminal Code shall be interpreted in the sense that its provisions do not exonerate the State of Chile from its obligation strictly to comply with international legislation on war crimes and crimes against humanity, wherever and whenever they were committed; and to investigate these crimes in an appropriate and impartial manner. Persons who, on the basis of evidence, are believed to be guilty of the commission of such crimes shall be sought, detained, tried and, where found guilty, punished. Consequently, crimes that fall within these categories of war crimes and crimes against humanity shall not be subject to prescription, for the purposes of both bringing criminal proceedings and enforcing penalties; they

[37] Deputies Antonio Leal, Juan Bustos and Laura Soto. Official Bulletin No. 3959-07.

shall not be subject to amnesty; due obedience to superior orders shall not confer exemption from criminal liability; such crimes shall be dealt with in accordance with the usual procedures before the ordinary courts. For the purposes of this article it shall be understood that orders to commit genocide, torture, crimes against humanity or war crimes are manifestly unlawful.";

(b) A legal initiative submitted by Government senators on 7 April 2004, which proposes to criminalize acts of genocide, crimes against humanity and war crimes.[38] In September 2006 this initiative was at the first stage in the Senate. Article 161 L provides: "Any persons who have committed a crime established under this law in compliance with an order issued by a government or a superior, whether civil or military, shall be exempt from criminal liability if they were obliged by law to obey the said orders and did not know that the order was unlawful. There shall be no exemption from criminal liability if the order was manifestly unlawful. For the purposes of the present article, it shall be understood that orders to commit genocide, crimes against humanity and war crimes are always manifestly unlawful."

96. The requirement contained in the Committee's recommendation to bring the Code into conformity will be discussed by the committee tasked with studying ways of reforming the military courts, referred to in earlier paragraphs.

Paragraph 7 (e): recommendation to adopt all the necessary measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, and the provision of fair and adequate compensation for the victims, in conformity with the Convention

97. Under the current system of criminal procedure, prosecutors from the Public Prosecutor's Office must exercise, on their own initiative the public right of action, in respect of any offence that is not subject to a special rule, and must initiate criminal proceedings with the assistance of the police, when informed of an act having the characteristics of an offence. They must not suspend, interrupt or terminate these proceedings except where provided for by law.[39] Under the new Code of Criminal Procedure it falls to the victim to initiate civil proceedings.[40]

98. Within the context of reform of the system of criminal procedure, prosecutors from the Public Prosecutor's Office respect and promote fundamental rights in their work, thereby guaranteeing impartial treatment of all those involved in criminal proceedings, and the correct application of the law. The National Prosecutor has made the integrity of State officials, and the prosecution of offences that could impair this, an institutional priority. Accordingly, it has been established that investigation of this type of offence shall be undertaken by prosecutors who specialize, and are duly trained, in this area.

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[38] Senators Viera Gallo and Naranjo. Official Bulletin No. 3493-07.

[39] Arts. 53 and 166 of the Code of Criminal Procedure.

[40] Art. 59 of the Code of Criminal Procedure.

99. The Public Prosecutor's Office has a special unit that deals with the integrity of State officials, including offences committed by State officials or that affect the assets of the Treasury. The unit's main task is to cooperate with, train and advise prosecutors in its areas of expertise, including offences of ill-treatment committed by State officials.

100. The National Prosecutor has issued general instructions aimed specifically at making investigations of offences committed by State officials as effective as possible, covering areas such as: guiding prosecutors in effective prosecutions that ensure the success of criminal proceedings, thus helping to satisfy victims' expectations;[41] using reasonable investigation methods and submitting decisions to the Regional Prosecutor, even for offences not warranting afflictive punishment: this means that cases of this type may not be withdrawn automatically by a prosecutor, a comprehensive analysis of the facts being required;[42] cooperation between prosecutors and the State Defence Council concerning this type of offence, and assessing the ways in which this institution could contribute to a specific investigation;[43] analysis of the jurisdiction of military courts to try ordinary offences committed by officials of Chile's carabineros.[44]

Complaints of offences associated with torture received by the Public Prosecutor's Office

101. We will now discuss some statistics concerning these types of complaints:

(a) Between 2004 and the first half of 2006, the complaints received by the Public Prosecutor's Office, broken down by region and year, have resulted in proceedings relating to a total of 58 offences, 56 of which involved the causing of physical suffering, provided for under article 150 A of the Criminal Code, and 2 of which involved the offence of obtaining statements under duress, provided for under article 19 of the Investigative Police Organization Act. See table 11 set out in the annex;

(b) In the same period, the 58 offences complained of involved 86 victims, of whom only 5 are women, all aged between 18 and 27. The remainder are men: 8 aged under 18; 26 aged between 18 and 27; 32 aged between 28 and 37; and 11 aged over 37, according to the details of sex, age, region, offence and year provided. See tables 12, 13 and 14 set out in the annex;

(c) In the same period a total of 124 cases were concluded; in other words, they were finalized during the period examined, but may have been initiated at an earlier date. Of those that were concluded, 3 had judicial outcomes, 107 had a discretionary outcome and the

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[41] Memorandum No. 551, 13 November 2003.

[42] Memorandum No. 542, 1 July 2005.

[43] Memorandum No. 376, 1 July 2005.

[44] Memorandum No. 406, 12 July 2005.

remaining 14 had other outcomes, corresponding to investigations that were grouped together, broken down by offence, region, year and type of outcome. See Tables 15, 16 and 17 set out in the Annex.

Paragraph 7 (f) recommends considering the possibility of eliminating or extending the current 10-year statute of limitations for the crime of torture, taking into account its seriousness

102. This subject is currently under discussion in Congress. In August 2005 a group of deputies submitted a bill calling for the elimination of the statute of limitations for crimes against humanity, as indicated in paragraph 95 (a) of this report.

Paragraph 7 (g) recommends adopting specific legislation to prohibit extradition, return or expulsion to countries where a person may be in danger of being subjected to torture

103. As was pointed out in the previous report, the conditions under which passive extradition may be carried out are set out in regulations; such extradition is the prerogative of the Supreme Court. In addition to the relevant standards relating to procedure, our case law also applies the principles generally recognized by international law.

104. Despite the fact that there are no domestic standards expressly prohibiting a person's extradition, return or expulsion when there are reasons to believe the person may be tortured in the requesting State, it is important to bear in mind that article 5, paragraph 2, of the Constitution confers constitutional status on international human rights treaties that have been ratified and are in force in the country, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thus, no, specific standard is expressly required for compliance with article 3, which may be considered to be automatically enforceable.

Paragraph 7 (h) recommends clarifying, through legislation, the status of the Convention in domestic law to ensure that the provisions of the Convention can be applied, or adopting specific legislation incorporating the provisions of the Convention

105. As noted in the report to which this recommendation refers, the Convention is one of the sources of law in the domestic legal system, as it is a treaty ratified by Chile, promulgated, published and thus in force.[45] Thus, the Convention has been incorporated into domestic law, and its applicability is guaranteed by the system of legal sources.

106. It was also pointed out that some legal writers consider the rights, duties and guarantees provided by international human rights instruments to have the same constitutional status as the human rights enshrined in the Chilean Constitution, in accordance with the provisions of article 5, second paragraph, of the Constitution.[46] This provision affords current judicial law

[45] Article 5, second paragraph, of the Constitution, in relation to articles 32 (15) and 54 (1).

[46] The standard in question reads as follows: "... It is the duty of State bodies to respect and promote such rights, as guaranteed by this Constitution, as well as by the international treaties ratified by Chile which are in force ... .".

valuable opportunities for the defence of human rights. Other constitutional experts assign only legal value to the instruments in question, or an intermediate rank between the law and the Constitution. The latter position was reflected in one of the constitutional reforms of 2005, which established that: "The provisions of a treaty may only be subject to derogation, amendment or suspension in the manner provided for in the treaty itself or in accordance with the general standards of international law."[47] According to legal writers, this means that "... if such treaties are in force under international law, they shall become domestic law without ceasing to be international law; however, unlike domestically generated norms, they shall not be subject to unilateral derogation by the State, as they shall take precedence over domestic law, in accordance with the free and voluntary consent given by the State. This view was expressly endorsed by the Government and by the various sectors represented by the Senate at the first stage of consideration of this constitutional reform."[48]

107. As for the national case law regarding the hierarchy of international treaties dealing with human rights, which include the Convention, it has oscillated between according them the rank of a law and a rank above that of a law, but beneath that of the Constitution.

108. In an important ruling, the only one in which the Constitutional Court directly dealt with this subject, the Court found that international human rights treaties did not have a hierarchical rank equal to that of the Constitution, and referred to a doctrinal theory that essentially held that international human rights treaties "... have higher legal force than the law, without ceasing to be, from a formal point of view, at the same level ..." and that "... while treaties and laws have the same normative rank or hierarchy, in the application of both in a given case, the treaty shall have primacy over the law".[49]

109. Furthermore, the constitutional reform of 2005 centred responsibility for oversight of the constitutionality of laws in the Constitutional Court, modifying the constitutional system of jurisdiction that had previously assigned such oversight to the Supreme Court. Among the new functions of the Constitutional Court is the mandatory review of treaties that have an impact upon constitutional organization laws.

110. A bill is currently under consideration that would considerably amend the Organization Act Establishing the Constitutional Court so as to bring its provisions into line with the new constitutional jurisdiction established by this constitutional reform. The bill, launched by a

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[47] Article 54, paragraph 1, of the Constitution.

[48] Nogueira, Humberto. "Aspectos Fundamentales de la Reforma Constitucional de 2005 en Materia de Tratados Internacionales", in *Reformas Constitucionales*, Francisco Zúñiga, ed., LexisNexis, 2005.

[49] Constitutional Court ruling, docket No. 346. Cons. 75, citing the arguments put forward by the constitutional scholar Alejandro Silva Bascuñán.

message from the President of the Republic on 20 December 2005, makes the following points, in its explanatory introduction, regarding the ability to declare the standards of an international treaty as inapplicable or unconstitutional:

> "... The bill excludes the possibility of challenging the applicability of international treaties, on various grounds. Of course, treaties do not derive from the exercise of legislative power. The Constitution considers the adoption of treaties to be a function of the Plenary Congress (art. 54). Legislative power is exercised through the Chamber and the Senate, which work together to establish laws (art. 46). The Congress cannot exercise its full legislative powers in relation to a treaty, as it would in respect of a law, as it is only able to approve or reject the whole of the text negotiated by the President of the Republic. Further, treaties are not subject to all the same procedures as laws, but only, as established by the Constitution, to those which are relevant. For example, there is no third reading, no joint conference committee, and no opportunity to submit comments. The Constitutional Court itself has recognized that treaties are in an intermediate category between the Constitution and the law, and are thus not legal precepts, which can be found to be inapplicable. Furthermore, once a treaty is incorporated into the domestic legal order, it is the treaty itself, or international law, that sets out the forms in which it may be subject to derogation, amendment or suspension. That excludes the possibility for a national court to issue a ruling that the treaty is inapplicable in a specific case, as such a ruling would amount to a suspension of a treaty that is in force. In full harmony with these considerations, the Constitution limits itself to calling for intervention by the Constitutional Court only through mandatory prior review of treaties, and not through legislative oversight via findings of inapplicability or unconstitutionality. The former would result in the suspension of a treaty in force, while the latter would result in its derogation, which would clearly be at variance with the provisions of article 54 of the Constitution. That article established that the provisions of a treaty may be subject to derogation only in the manner provided by the treaty or by the rules of international law. Thus, the question is whether a domestic body may provide for the suspension or derogation of a norm that has been agreed with one or more States or international bodies. As a prudential rule, then, it has been considered more appropriate to exclude them from the scope of findings of inapplicability ...".

111. Thus, the single article of the bill amending the Organization Act Establishing the Constitutional Court, single article No. 43, provides that a new article 47 B should be incorporated, reading: "... In accordance with article 54 (11), treaties ratified by Chile that are in force shall not be subjected to a finding of inapplicability ...". This bill is currently in the Senate undergoing its second constitutional reading; it has already been approved by the Chamber of Deputies.

112. Consequently, and in the light of the foregoing, while there is no rule explicitly establishing the position of the Convention in the domestic legal order, it may be concluded without any doubt that:

(a) The Convention against Torture, together with the other ratified international human rights treaties that are in force, has been incorporated into the system of sources of domestic law;

(b) The Constitutional Court has held that the international human rights treaties are in an intermediate category between the Constitution and laws;

(c) Following the reform of August 2005, the Constitution prescribes that: "the provisions a treaty may be set aside, modified or suspended only in the manner laid down in the treaty itself or in accordance with the general rules of international law ...";

(d) The bill, currently under consideration, that introduces amendments to the Organization Act Establishing the Constitutional Court in order to bring its provisions into line with the constitutional reform of 2005, stipulates that ratified international treaties that are in force cannot be found to be inapplicable or unconstitutional.

113. This means that, from the point of view of incorporation into the system of sources of Chilean law, the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is guaranteed, without prejudice to the fact that this guarantee would be strengthened by the adoption of the bill mentioned above, currently before the Congress.

Paragraph 7 (i) recommends developing training programmes on the provisions of the Convention for judges, prosecutors and law-enforcement officials, including programmes on the prohibition of torture for military officials, police, and other personnel who may be involved in the custody or interrogation of persons at risk of torture, and ensuring that training programmes for medical specialists deal with the identification and documentation of torture

Training programme for officials of the Public Prosecutor's Office on the content of the Convention against Torture

114. The Judicial Academy was established in 1994[50] to provide training for the members of the judicial branch. Among its activities is a further training programme for active members of the judiciary, the aim of which is to ensure that they constantly keep up their continuing education so as to strengthen their knowledge and allow them to develop new skills with which to improve their performance. Every year, the Academy invites public and private institutions and individuals to give these further training courses. At the request of the Ministry of Justice, throughout 2006 a course was given for first- and second-level members of the judiciary on the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", along with another on "The Application of International Law by National Courts of Justice". The course on the Convention will once again be given in 2006.

[50] Act No. 19.346 of 18 November 1994 establishing the Judicial Academy as a public corporation.

115. The overall aim, specific objectives and contents of the course on the Convention are described below.

Overall aim

116. Train judges responsible for procedural safeguards and oral court judges so that they are knowledgeable about the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its scope and application, so that they can play a permanent role in effectively monitoring its implementation.

Specific objectives

(a) Analyse, study and gain knowledge of the various provisions of the Convention in relation to criminal procedure;

(b) Analyse the main problems and difficulties that arise in the application of the Convention at the trial stage and in the enforcement of sentences against perpetrators of torture;

(c) Develop judges' capacities and skills in the identification of cases of torture or other cruel, inhuman or degrading treatment or punishment in penitentiaries;

(d) Train judges responsible for procedural safeguards so that during weekly and quarterly visits to prisons and places of detention they establish whether inmates are being ill-treated;

(e) Instil in judges of oral criminal courts an understanding of the importance of the twice-yearly prison visits and of assessing the security situation, order, hygiene and sentence enforcement at such establishments, of hearing inmates' complaints and of implementing procedures for handling ill-treatment of inmates.

Content

(a) Analysis of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Application of the Convention and its relationship with other human rights conventions;

(c) Analysis of the Convention and the responsibilities stemming from its application;

(d) Role of judges responsible for procedural safeguards and oral court judges in criminal cases in ensuring observance of the Convention;

(e) Role of the judge and of others who take part in prison visits, prosecutors, defence attorneys and children's advocates in detecting ill-treatment of inmates and in the procedure for reporting such acts;

(f) Measures that judges responsible for procedural safeguards and oral court judges in criminal cases should take to avoid breaches of the Convention;

(g) Forced disappearances;

(h) Brief overview and presentation of the International Criminal Court.

Ensure that medical specialists receive training in the detection and documentation of torture

117. Health care at most of the country's prisons is the responsibility of qualified medical practitioners who respect the basic standards of medical ethics. Very rarely, specific complaints are received pertaining to some type of ill-treatment owing to poor medical practice or a violation of the inmates' rights in that area. This reflects sound basic university training, enabling these professionals to perform this kind of public service in a satisfactory manner.

118. As for the training of Prison Service medical staff, the prison administration has made it a point to ensure that they are knowledgeable about the United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such staff also take part in the strategic human rights planning exercise that is held in most of the country's regions, under an agreement between the Prison Service and the British Embassy.

Paragraph 7 (j) recommends that conditions in places of deprivation of liberty should be improved, urgent measures should be taken to address overcrowding in prisons and a system for monitoring conditions of detention should be introduced

Measures to address overcrowding in prisons

119. In most of the world's prisons the number of inmates exceeds actual capacity, and Chile is no exception. In Chile the number of inmates admitted to prisons has increased significantly in recent years, resulting in overcrowding. In 1980 the number of people serving custodial sentences (closed system) stood at 15,230; in 2005 the figure was 38,071, meaning it had risen by 262 per cent. The case histories of the prison population indicated that in 2005 53 per cent of the total population served by the Prison Service was in the custodial system, 46 per cent in the non-custodial system and 1 per cent in the semi-custodial system. Of the total prison population in the custodial system, 2,247 were female and 34,127 were male; the breakdown by type of proceedings was as follows: (a) on night arrest: 3 women and 161 men; (b) convicted: 1,352 women and 23,044 men; (c) accused or indicted: 877 women and 9,664 men; (d) detained: 24 women and 1,651 men.

120. To deal with and reverse the problem, since 2000 the Government has taken various initiatives aimed at improving conditions in prisons, as described below:

(a) A programme initiated jointly by the Ministry of Justice and the Ministry of Public Works is now being implemented to issue calls for tenders for the construction and management

of 10 prisons using private capital, with the State, through the Chilean Prison Service, remaining the party responsible for the basic and unassignable functions of security and surveillance. Altogether, the new facilities will have capacity for some 16,134 inmates. This project is composed of four phases: Phase I: Alto Hospicio, La Serena, Rancagua; Phase II: Concepción, Antofagasta; Phase III: Santiago 1, Puerto Montt, Valdivia; Phase IV: Santiago 2 and Region V, in the interior. By the end of 2005 the first phase was complete, and the prisons of Rancagua, Alto Hospicio and La Serena were already inaugurated and in operation, with capacity for some 5,000 inmates. The objective of this programme is to have an efficient prison system providing citizens with guarantees of security while making a genuine effort at rehabilitation, with constant observance of the basic rights of inmates; it is hoped that it will result in a real social integration programme. Architecturally, the units are designed for strict segmentation of the prison population by type of crime, so as to avoid the spread of criminal behaviour. The units consist of individual cells for all maximum- and high-security inmates, and shared cells (holding a maximum of three inmates) for medium- and low-security inmates, all with built-in sanitation. The compounds include work spaces with industrial and crafts workshops offering access to work and training. Each will be equipped with normal and technical classrooms, and will include sports facilities and drug and alcohol treatment centres. Involving private companies in the provision of such services will free up the prison service to focus its manpower on surveillance and detention. This will make it possible to generate new management models that can be replicated in the old system, thus making possible a significant overall improvement in prison standards;

(b) Four new prisons are to be built with direct and immediate State funding: Angol prison, Cauquenes prison, Punta Arenas prison complex and Santiago maximum-security prison, representing a total investment of US$ 19,121,340;[51]

(c) In 2003 an Act entered into force establishing a social integration system for inmates, based on good conduct.[52] It incorporates into the Chilean sentence enforcement system a new non-custodial penalty that makes it possible to reduce the time served, provided certain requirements are met, basically consisting in the prisoner's behaviour being rated as outstanding during each assessment period. Not only is this Act a tool that helps to control the prison population by providing incentives for good behaviour; it is also expected to reduce overcrowding, by reducing sentences. The Act's objectives have been met, as the inmates concerned have had their sentences reduced, and there has been a significant improvement in behaviour in the prisons. The Act has also helped to improve relations between inmates and guards. Its implementation in 2004 allowed 13,446 inmates who received outstanding assessments to apply for sentence reductions. In the first quarter of the year, a total of 2,619 inmates actually benefited from reduced sentences, 65 per cent of them in the custodial system, 32 per cent on parole and 3 per cent in the non-custodial system.

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[51] Exchange rate as at 24 November 2003.

[52] Act No. 19.856 of February 2003.

Measures to improve conditions in places of deprivation of liberty

121. Some of the measures to improve conditions in places of detention are the following:

(a) In 2002, the Prison Service made a detailed survey of the state of the prisons throughout the country. On the basis of that survey, an improvement plan was drawn up, implementation of which began the same year in the Metropolitan Region with funding of US$ 2,127,576.[53] Quarters were also set up with the appropriate hygiene, cleanliness, privacy and dignity for conjugal visits by spouses or partners for those inmates who requested them; currently, a working commission is drawing up national guidelines for such visits;

(b) In penitentiaries, a process is under way whereby inmates are separated by categories, in accordance with the new Code of Criminal Procedure. The process does not take into account the categorization of inmates by phase of legal procedure already applied under the Code to ensure that accused and convicted prisoners are held separately. Under the new regulations, minors are isolated from adults and first-time offenders are separated from the more dangerous inmates. Other more conventional criteria are also used, such as the sex and seriousness of the offence;

(c) As from 1999, a Prisoner Classification and Grouping Programme has gradually been introduced in various prisons in the country with the aim of grouping the prison population more effectively so as to avoid the spread of criminal behaviour, foster differentiated treatment in prisons, facilitate the work of the prison guards and make possible the reintegration of inmates in society. Under this programme, technical training has been given to over 50 civil servants, with 17 social science professionals under contract as regional coordinators responsible for implementation. The programme has also facilitated observance of the Standard Minimum Rules for the Treatment of Prisoners required by the United Nations and of the requirements for initiation of the criminal trial reform. Since its inception, 37 prison facilities in various regions have been included in this programme. This has resulted in improved infrastructure in each of these facilities' workshops, cells, storehouses and offices, and has also led to a criminological classification of the prison population, with computer records on each inmate. Approximately US$ 1,756,260 has been invested in these measures, which have made it possible to increase the capacity of these prison facilities by some 32 per cent.

Monitoring of conditions of detention

122. Pursuant to amendments made to the Courts Organization Code as part of the reform of the system of criminal procedure, it is the duty of the judge responsible for procedural safeguards, who is appointed by the panel of judges of the jurisdiction concerned, to pay a weekly visit to the prison or facility in which prisoners are being held to find out whether they are being subjected to improper treatment, their right to defence is being restricted or their case is being unlawfully prolonged. Prosecutors from the Public Prosecutor's Office, lawyers, legal representatives and

[53] Exchange rate as at 24 November 2003.

the parents or guardians of minors are entitled to accompany the judges on these visits.[54] As for cases still heard in the criminal courts because they relate to events which took place prior to the reform of the system of criminal procedure, visits are carried out by the criminal court judges on the last working day of every week.[55]

123. In addition, in towns where there are prisons, a judge from the Court of Appeal, a judge from an oral proceedings court and a judge responsible for procedural safeguards, accompanied by the secretary of the Court of Appeal, pay visits every six months to hear prisoners' complaints. The Supreme Court may appoint its president, a judge from the Court of Appeal and an authenticating officer to visit any prison in the country when it considers this necessary, to monitor compliance with regulations and the treatment of prisoners, and to hear their complaints.[56]

Paragraph 7 (k) recommends extending the term and mandate of the National Commission on Political Imprisonment and Torture to cover victims of all forms of torture, including victims of sexual violence

124. As mentioned above, the Commission received testimony from a large number of persons in a total of 35,868 cases. The testimony came from various parts of the country, including over 100 isolated localities, which were visited by professionals from the Commission. Testimony was also received from abroad.

125. As for the extension of the Commission's term, the bill establishing the National Human Rights Institute that is currently before Congress and that was adopted by the Chamber of Deputies on its first constitutional reading in August 2006 contains, among its transitional provisions, one that allows the Institute's council to "... classify cases of torture or political imprisonment that have not been presented to the National Commission on Political Imprisonment and Torture ...". That notwithstanding, the possibility of once again setting up a similar commission is also currently under consideration by the Government.

126. As for the Commission's mandate, it did not contain a definition that would have limited its remit in relation to torture, including sexual violence, which is described as a method of torture in the final report issued by the Commission (attached). Based on spontaneous statements by the victims, the Commission was not only able to describe in a special section of its report torture methods consisting in sexual violence; it was also able to cover the after-effects of such violence in a special chapter.

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[54] Act No. 19.665 of February 2000 amending articles 567 and 568 of the Courts Organization Code.

[55] Transitional article of Act No. 19.665.

[56] Act No. 19.665 amending articles 578, 580 and 582 of the Courts Organization Code.

Paragraph 7 (k) (i) recommends initiating measures to better publicize the work of the Commission, utilizing all media, and clarifying the definition of torture by including all forms of torture, including sexual violence, on the forms victims must complete

127. The Commission has carried out numerous dissemination activities through radio, television and the written press and by putting up posters in public places, as well as through organizations of former political prisoners and victims of other human rights violations, and press interviews that have helped to explain how it operates. Dissemination has also been carried out through Chilean consulates overseas, with testimony collected from 40 countries, as mentioned in the Commission's report. Regarding the extension of the Commission's mandate, it should be noted that in the course of its work the Commission received numerous petitions from victims' groups and individuals requesting that the procedure be expedited so that reparation measures could be implemented quickly; this was especially important in view of the advanced age and poverty of many of the victims.

128. The operational definition of torture used by the Commission is included in its report, and was based on the definitions contained in the Inter-American Convention to Prevent and Punish Torture and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

129. As for the inclusion of the various forms of torture including sexual violence in the forms completed by victims, as noted above, the Commission worked on the basis of a broad definition of torture which included sexual violence, as demonstrated in its report. The report makes it clear that those who made statements to the Commission heard the definition of torture that it had adopted, and described the acts to which they had been subjected. The fact that questions remained open on this matter was not a hindrance to the presentation of testimony.

Paragraph (7) (k) (ii) recommends ensuring that victims will be afforded privacy when registering with the Commission, and that persons in rural areas or otherwise unable to file in person can register

130. One of the Commission's main concerns was to work in a context of appropriate dignity, making it possible at the same time to collect testimony and to properly receive the victims. Testimony was collected through personal interviews following a registration procedure that avoided waiting times and queues, in offices that were set up specially for this purpose. Some offices had one, while others had two or more interviewers. A maximum of confidentiality was observed.

131. It is nonetheless possible, owing to the volume of work carried out and the diversity of the various locations covered, that the ideal conditions of privacy may not have been ensured in some cases. That notwithstanding, the overall impression of the interviewees and all the victims' organizations contacted by the Commission was that the work was carried out with high standards of professionalism and respect for personal dignity, and with consideration for the seriousness and personal nature of the acts that were reported.

132. As regards the reception of testimony from persons in rural areas, such persons were received by the provincial administrations. All those who called on such offices or who phoned the toll-free number to request interviews were received. For certain more isolated localities, the Commission's professional staff travelled to such locations to receive testimony.

Paragraph (7) (k) (iii) recommends including in the final report of the Commission data disaggregated by gender, age and type of torture

133. The Commission's report includes statistical data on the age and gender of persons recognized as victims, and also describes, and gives anonymous accounts of, the various methods of torture. However, the Commission considered that it would not be appropriate to provide statistical data on the methods described in the reports, as such information was neither verified nor verifiable. It did however report that 94 per cent of the persons recognized as victims of political imprisonment had said that they had been victims of torture.

Paragraph 7 (k) (iv) recommends that consideration be given to extending the Commission's mandate to permit investigations and, where warranted, the initiation of criminal proceedings against those allegedly responsible for the actions reported

134. The decision to set up the Commission was taken in response to calls by human rights organizations and victims' groups to determine the truth about cases of political imprisonment and torture and to provide for the corresponding reparation. From the outset, the purpose was to determine the facts underpinning recognition of these serious human rights violations, with the aim of helping to establish the historical memory of what had taken place and providing recognition and reparation for the victims, who had so far received no reparation. The process does not prejudice the possibility of obtaining justice through the courts.

135. For its part, the Commission considered that the information it received through victims' testimony was confidential because of the very personal nature of many of the statements, which contained accounts of torture and its consequences. Many of those interviewed did not want them to be made public. The people who made statements were informed of this policy.

136. The Commission, and later the co-legislative authorities, had to balance the need for publicity against the need to maintain confidentiality. It was thus decided to publicize the Commission's report so as to allow the country to learn about the facts in general terms, in their full magnitude and horror. Reading the report makes it possible to effectively find out what happened, and to understand the consequences for people's lives, while at the same time maintaining the privacy of the individuals' accounts. It is not a question of protecting those who may have perpetrated the acts; the Commission had no competence to investigate them. It was only competent to receive the victims' versions, and to ascertain that they had indeed been victims.

137. In order to protect the victims' personal privacy and honour, it was proposed to maintain the secrecy of the background information that was not included in the published report for a certain period considering the practice of other similar archives throughout the world. The law

issued on this subject[57] established that the testimony would remain secret for a period of 50 years, which does not prevent people from making their own accounts public or from bringing cases before the courts to determine the criminal liability of the perpetrators of such offences. Also, the reparation given to the victims was not made conditional upon their renunciation of the right to bring civil cases. They are free to use the justice system to certify the injury they have suffered and to request the corresponding compensation.

Paragraph 7 (l) recommends creating a system to provide adequate and fair reparation to victims of torture, including rehabilitative measures and compensation

138. The report of the National Commission on Political Imprisonment and Torture points out that during the transition to democracy, reparation not only fulfils an individual function for the victims who receive it; it also has important social, historical and preventive aspects. Indeed, the motivation for providing reparation for massive and systematic violations is related to the victims, but it is also a way for society to establish a basis for social harmony, rooted in respect for human rights. It offers the opportunity to reformulate historical perspectives so that everyone can feel respected, restored in his or her rights. In the final analysis, reparation helps to prevent a recurrence in the future of events that are rejected by society as a whole.

139. In concrete terms, the proposals and recommendations made by the Commission are based on:

(a) The State's obligation to provide reparation for acts of political imprisonment and torture;

(b) The consequences for the victims recognized by the Commission;

(c) The need for society to adopt preventive measures to ensure that such incidents do not occur again, and to ensure respect for human rights.

140. As for the consequences for the victims, the Commission, through individual interviews, was able to assess the after-effects of the reported incidents on the persons in question. In addition to their seriousness, they are of a special nature and magnitude, and no doubt have affected each person differently, depending upon personal characteristics, conditions of detention, socio-economic situation and opportunities for political and social rehabilitation. It is these after-effects that the Commission was addressing when it proposed the measures described below.

Individual reparation measures

141. These measures are proposed for persons whose names have been included in the list of victims contained in the report, which was published in order to ensure the transparency required for access to future entitlements. The measures that were proposed and eventually adopted relate to the law, financial matters, health, education and housing. They include:

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[57] Article 15 of Act No. 19.992 of December 2004.

(a) Reparation measures in the legal field, aimed at the rehabilitation of the rights infringed as a consequence of legal proceedings against the victims, many of whom lacked the minimum guarantees of due process;

(b) Reparation measures relating to financial matters, consisting in a life-long compensatory pension for the victims. The Commission proposed a single financial reparation amount for all persons recognized as victims, regardless of the length of imprisonment or the intensity of the torture. The first pensions were disbursed as from April 2005, or five months after publication of the report. All the victims recognized by the Commission receive an annual pension of 1,353,798 pesos if they are over 70; 1,480,284 pesos if they are between 70 and 75; and 1,549,422 pesos if they are over 75. The pension is paid in 12 monthly instalments, and is adjustable.[58] The reparation pension has been declared incompatible with the pensions granted to persons who were dismissed from the State administration, State enterprises or companies subjected to State intervention, which is another policy implemented in Chile for the reparation of victims of human rights violations. This provision is based upon the need to focus resources on those persons who have not received any other reparation. Furthermore, the Act stipulates that people may choose between the two types of pensions, receiving a one-off payment of 3 million pesos. In the cases of 50 persons who were neither political prisoners nor victims of torture, but whose mothers were detained while they were pregnant with the persons in question and whose mothers, once released, gave birth prematurely, or who as children were held with their parents and immediately released without undergoing any ill-treatment, a one-off award of 4 million pesos was granted, equivalent to 33 times the minimum monthly wage;

(c) Reparation measures in the field of health, consisting in the provision of remedial, comprehensive and free medical care addressing both physical and mental health, at establishments belonging to or associated with the National Health Service System, for victims of political imprisonment and torture who have been recognized by the Commission. This has led to the victims' gaining access to an already existing initiative which has only recently been legally institutionalized, the Compensation and Comprehensive Health Care Programme (PRAIS);

(d) Reparation measures in the field of education, that make it possible to complete elementary, secondary or university studies;

(e) Reparation measures in the field of housing, consisting in a special benefit for those victims who have not received a State housing subsidy, who need housing and who are in a precarious situation.

142. It must be borne in mind that it would be difficult for large-scale reparation dispensed through a process of this kind to comply with the standards of an individual compensation procedure defining benefits according to the harm or damage a particular victim has sustained.

[58] Act No. 19.992 of December 2004.

Having so many victims to assess makes it hard to determine precisely what suffering each has endured, all the more so where three decades have elapsed since the events. That was what the Commission meant when it acknowledged the complexity of the notion of "victim of political imprisonment and torture", which does not mean it has been demonstrated that each and every one of the victims was tortured, nor that the harm suffered by each of them has been precisely, individually evaluated. On the contrary, the reparation measures taken by the Government and approved by the National Congress are a solid admission by the State of its responsibility, it being understood nonetheless that the damage inflicted was such that reparation through a procedure of this type cannot be achieved. Through these measures, which were taken at the recommendation of the Commission, the State intended to make some redress for the suffering caused, aware that it was not possible to do so to the full extent, particularly given the country's resources and other obligations, especially in the social sphere. Moreover, the allowances finally awarded are equivalent to the pensions many people receive at the end of their working lives and a little higher than the minimum wage. The President of the Republic was careful to point this out and to curtail unrealistic expectations, describing the measures as austere and symbolic, especially in the light of claims for reparation put forward by human rights organizations and victim groups, which bore no relation to the country's capacities.

Symbolic and collective reparation

143. These measures are designed to provide moral redress, restore the personal dignity of the victims, allow victims to be recognized as such by the rest of society, and reinforce the national community's commitment to respect for human rights and their inviolability. They imply recognition of the fact that reparation is not just for victims considered individually or an obligation towards them that belongs exclusively to the State organs, rather it is an obligation binding upon society as a whole. The purpose of these measures is to ensure that the events described in the report are never repeated, and to help enable Chileans to live together in respect for the dignity of every individual:

(a) Guarantees of non-recurrence and preventive measures consisting of amendments to national legislation through the incorporation of standards of international human rights law that seek to guarantee that rights are not violated again. The objective is to establish legal safeguards that strengthen and institutionalize the promise that those painful events will not recur, but that human dignity will be respected. These measures call for an in-depth review of domestic legislation; some of them have been translated into legislative initiatives. For example, the National Congress has been asked to approve the ratification of the Rome Statute establishing the International Criminal Court, and the incorporation of the crime of forced disappearance into domestic legislation;

(b) Symbolic gestures of recognition and reconciliation, including the declaration of the main centres of torture as national monuments and the creation of memorials and remembrance sites for victims of human rights violations and political violence. Some of these initiatives are being developed through the human rights programme of the Ministry of the Interior, which has supported the construction of 18 memorials to the victims of human rights violations throughout the country and is working on the construction of 10 more;

(c) The dissemination, promotion and teaching of human rights in educational programmes, including the expansion of human rights training for the armed forces and the police;

(d) Institutional measures, such as the establishment of the National Human Rights Institute, which was mentioned in the introduction to the present report.

Paragraph 7 (m) recommends eliminating the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortions and reviewing convictions where statements obtained by coercion in such cases have been admitted into evidence

144. In Chile, induced abortion is an offence under the Criminal Code.[59] The Administrative Statute[60] places a general obligation on public officials to report to the justice system criminal acts or ordinary offences of which they become aware in the exercise of their duties. However, the obligation referred to above stands in contrast to another provision of the same article,[61] which confers on every official the duty to maintain secrecy in matters which are confidential under the law or regulations, or by their nature, or in accordance with special instructions.

145. In the same way, the Code of Criminal Procedure[62] expressly exempts from the duty to make such a statement, on grounds of confidentiality, persons who, by virtue of their status, profession or judicial function, have a duty to respect confidences which have been entrusted to them, citing doctors as an example. Consequently, the Chilean judicial system contains provisions that are somewhat contradictory, since while some provisions lay down a reporting obligation, others lay down a duty of confidentiality. At all events, none of the rules referred to prescribes or implies that health officials must question their patients or that they are authorized to investigate a possible criminal act or ordinary offence. Consequently, there is no rule in the domestic judicial system that makes the provision of health care conditional on the supply of information or a confession of participation in the commission of an offence or act of negligence. Still less does this apply in emergency cases.

146. Although the current legislative framework requires professionals in public and private health-care facilities to report cases of induced abortion, in practice, such reports are made in a minority of cases and on a discretionary basis. There are various reasons for this: for example, in cases of severe complications requiring highly complex and costly medical and surgical intervention, or in cases of death associated with such complications, efforts are made to avoid potential forensic problems for attending practitioners or for the health-care facility.

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[59] Art. 342.

[60] Act No. 18.834, art. 61 (k).

[61] Act No. 18.834, art. 61 (h).

[62] Art. 303.

147. Attending practitioners give priority to respect for the confidentiality of medical records, which is a clearly established principle in our legal system, utilizing any information provided by the patient concerning the circumstances of his or her condition as input to guide clinical procedure.

148. To sum up, although the Ministry of Health cannot issue regulations that contravene current legislation, it has not proceeded either to issue instructions on the "extraction of confessions" by health workers, an area falling clearly within the province of the police and the judiciary.

149. It should be borne in mind that with the very aim of preventing abortions, Chile has for almost 40 years been promoting family planning based on the concept of responsible parenthood, which results in pregnancies and births that are freely desired by both parents. In this regard, the Ministry of Health has laid down guidelines for the health services relating to female and male sterilization, under which the decision to undergo such sterilization is a personal one, based on an exercise of free will by the person requesting the operation, without this decision being subject to the approval of third persons, on the sole condition that those involved are adults in possession of their mental faculties.[63]

150. In this connection, among the National Health Objectives formulated by the Ministry of Health for the decade 2000-2010, the following have been defined as specific objectives in the area of reproduction: to reduce reproductive inequality attributable to gender inequality and the increased vulnerability of some population groups; to lower the incidence of induced abortion; and to reduce the number of unwanted pregnancies among adolescents, who require appropriate and unimpeded access to services.

Paragraph 7 (n) recommends that the application of the new Code of Criminal Procedure is promptly extended to the Metropolitan Region

151. This reform began to be implemented gradually in the country's various regions starting in 2000, following five years' discussion of the bill in Congress, to which it was transmitted by the Executive in 1995. The reform has been in force throughout the country since mid-2005, when implementation began in the Metropolitan Region. The period of 10 years that elapsed between the transmittal of this legal initiative to Congress by the Executive, in mid-1995, and its entry into force throughout the country, in mid-2005, was not excessive, bearing in mind the length of time needed for parliamentary discussion of novel and sensitive issues in the field of criminal procedure, which are expected to result in: changes in behaviour within the judiciary and the police, the training of officials in these two institutions, a set of complementary legal reforms and measures of adaptation to the new procedure, as well as the development of the physical infrastructure required for the operation of the new system throughout the country.

152. The total investment in infrastructure for all institutions involved in the reform, including the judiciary, the Public Prosecutor's Office and the Office of the Public Defender for criminal

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[63] Exempt resolution No. 2.326 of 2000.

cases, is approximately 186 billion pesos (roughly US$ 351 million),[64] for some 328 new and converted buildings. Of these buildings, 84 correspond exclusively to new courts; 39 of these had been built by December 2005, covering a total of 60,038 square metres, out of a total of 200,000 square metres constructed. In addition, 93 buildings have been temporarily converted for use by the judiciary.

153. With regard to human resources throughout the country, the reform provided for the training of 809 judges (413 judges responsible for procedural safeguards and 396 judges handling oral proceedings), 625 prosecutors and 423 public defenders (145 permanent officials and 278 private lawyers working under contract). In addition, over 5,500 support staff (professional and technical) for the three institutions (the judiciary, the Public Prosecutor's Office and the Office of the Public Defender for criminal cases) were trained for the new system, as were more than 31,600 Carabineros officers.

154. The reform of the criminal procedure involves a range of institutions, rules, procedures and complementary conditions that lead to the transition from an essentially written and secret inquisitorial criminal system to an oral and public accusatory system. The reform involves seven legal texts: the Constitution;[65] the Public Prosecutor's Office (Organization) Act;[66] the new Code of Criminal Procedure;[67] the Public Defender (Criminal Matters) Act;[68] and the Courts Organization Code.[69] Legal specialists, engineers, economists and various governmental, judicial and non-governmental experts participated in the design and introduction of the reform. Furthermore, a number of universities in Chile carried out various studies and provided advisory services, and international cooperation played an important role in implementing this new system.

Paragraph 7 (o) recommends introducing safeguards to protect persons experiencing possible retraumatization in connection with the prosecution of cases such as sexual offences and child abuse

Protection for victims of sexual abuse

155. The Specialized Unit for Sexual and Violent Offences attached to the Public Prosecutor's Office cooperates with and advises prosecutors responsible for leading investigations into sexual and violent offences. Noteworthy among its activities are the following:

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[64] United States dollars at the average rate for November 2005, as published by the Central Bank of Chile (http//www.bcentral.cl).

[65] Act No. 16.519 of 1997.

[66] Act No. 19.640 of 1999.

[67] Act No. 19.696 of 2000.

[68] Act No. 19.718 of 2001.

[69] Act No. 19.665 of 2000.

(a) Advising the National Prosecutor in the development of criteria for handling these matters;

(b) Collecting and systematizing the national case law of the Oral Criminal Courts; and

(c) Training and advising specialized prosecutors.

156. In order to ensure compliance with the obligation imposed by law on the Public Prosecutor's Office to provide care and protection for victims and witnesses, the Victim and Witness Support Division was established within the National Prosecution Service. This Division is made up of Victim and Witness Support Units[70] - in turn, comprised of teams of professionals, including lawyers, psychologists and social assistants - that are attached to each Regional Prosecution Service and provide support to prosecutors in all matters relating to the care and protection of victims and witnesses.

157. The activities of prosecutors and the Victim and Witness Support Units have, to a large extent, been facilitated by the establishment of a specific budget, the Financial Input Fund (FAE) for assisting victims of offences and protecting witnesses.[71] This Fund has enabled the units to purchase equipment needed to protect victims and witnesses during oral proceedings. This makes it possible not only to guarantee the life and physical integrity of victims but also to reduce the effects of secondary victimization that could result from their participation in the proceedings.

158. The Financial Input Fund maintained by the Public Prosecutor's Office[72] for victims and witnesses has been used to purchase equipment and to finance various initiatives and projects that give effect to the right of victims and witnesses to protection of their physical and psychological integrity and their privacy, as described below:

(a) All Victim and Witness Support Units have video cameras to record statements given by victims and witnesses;

(b) All regions have folding-screen panels to be used in oral courtrooms in order to prevent visual contact between victims or witnesses, on the one hand, and defendants and the general public, on the other. They are used especially to prevent the physical identification of the victim, to protect the victim's privacy and to facilitate the giving of testimony. When necessary, this procedure is accompanied by the use of voice distorters, which are in the process of gradually being acquired throughout the country's regions;

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[70] Act No. 19.640 of 1999.

[71] Regulations governing financial inputs made by the Public Prosecutor's Office for victims and witnesses, Decision No. 150 of 4 June 2002, issued by the National Prosecution Service attached to the Public Prosecutor's Office.

[72] Stipulated in Regulations governing financial inputs made by the Public Prosecutor's Office for victims and witnesses.

(c) All regions have disguises for victims and witnesses - when the risk is such that this is considered necessary - in order to avoid their physical identification when giving testimony during oral proceedings;

(d) All regions have closed-circuit television systems to be used in oral trials or in the production of evidence in pretrial proceedings, enabling victims and/or witnesses to give testimony in a room adjacent to the courtroom connected through a closed-circuit television and audio system in such a way that the camera can focus on the jury and/or on the victim and/or witness. In some cases, it is the jury that moves to an adjacent room. This measure is applied especially in cases in which the deponent is a child or an adolescent;

(e) Gessel cameras are gradually being introduced in the regions. These allow victims to be deposed in a separate room in the offices of the Prosecution Service and enable their testimony to be heard by other persons in an adjacent room, thereby affording them privacy;

(f) "Initial reception rooms for victims of sexual offences" have been set up in the country's regional hospitals as part of a joint project with the Ministry of Health. These rooms have private cubicles that are equipped primarily for taking samples from the victim and performing the required physical examinations. In addition, there is a private waiting area, where the victim and the person accompanying him or her may wait to be received with attention to the victim's particular needs. A bathroom with a shower, personal toiletries and a supply of clothing to change into, if needed, is available to the victim if he or she should wish to make use of these facilities. The victim is met in this area by the prosecutor from the Public Prosecutor's Office who is in charge of the investigation. He or she informs the victim of the proceedings that will take place and receives the victim's complaint, if considered necessary. Additionally, the prosecutor may request the assistance of a professional from the Victim and Witness Support Unit for conducting initial meetings with victims and helping them to manage their emotions;

(g) All prosecution services have equipment on hand to provide protection to victims and/or witnesses who need it, including cellphones and panic alarms;

(h) The assistance provided by professionals in the Victim and Witness Support Units is particularly important for devising self-protection strategies together with victims and witnesses;

(i) In the particular area relating to persons deprived of their liberty, the role of the Victim and Witness Support Units is to assist prosecutors in cases involving victims of threats, ill-treatment, sexual abuse and/or violence, and to develop protection strategies, together with judges and prison authorities, which consist, among other measures, of periodic visits to inmates and persons transferred to other prisons.

159. The National Prosecutor has issued a variety of general instructions to prosecutors and police officers concerning the types of protection to be afforded to victims and witnesses, noteworthy among which are:

(a) The instruction stipulating that prosecutors should refer to the Victim and Witness Support Units victims of serious offences, such as rape of an adult; rape of a minor; sexual abuse

involving molestation of a minor under age 18; sexual abuse of an adult, depending on the seriousness of the case; sexual abuse involving engaging in sexually explicit conduct in front of a minor under age 14 or using minors under age 18 for pornographic purposes; and frequenting a child prostitute. Child and adolescent victims or witnesses of offences should also be referred to the Units;[73]

(b) The instruction indicating various independent and judicial measures of protection that may be taken and/or requested by the prosecutor, including: the placement of the victim or witness in a reception centre, relocation of the victim or witness to a locality or domicile other than their own, provision of a cellphone and application to the court for individual precautionary measures;[74]

(c) The instruction concerning various forms of preferential treatment to be granted to child and adolescent victims of offences at the different stages of the proceedings, by both prosecutors and police,[75] including the following: priority attention to children filing a complaint; recording children's statements to avoid the need to repeat them; limiting face-to-face encounters as a means of evidence and establishing safeguards in exceptional cases, if applicable, such as using an audio-visual device to present the child's statement to the accused; and the requirement for police officers not to reveal the identity of children or adolescents filing a complaint;

(d) The instruction setting out specific instructions to prosecutors for affording protection and preventing secondary victimization, including the prosecutor's obligation to: coordinate on an ongoing basis with the Victim and Witness Support Unit throughout the entire criminal procedure; maintain confidentiality concerning identity as a measure of protection; personally take a victim's statement; avoid having victims repeat their statements by recording them whenever possible; restrict the use of face-to-face encounters as a means of evidence to cases in which this is strictly necessary and establish safeguards in exceptional cases, if applicable, such as the use of audio-visual devices to present the victim's statement to the accused.

160. With respect to physical examinations, and in non-urgent cases, the prosecutor may request a report from the Victim and Witness Support Unit concerning the existence of any prior conditions that may pose a threat to the victim's health or dignity. If the prosecutor determines that no such prior conditions exist, he or she shall request the victim's consent to carry out the examination, and failing this, shall request judicial authorization. The prosecutor must inform the Support Unit when a physical examination of the victim is to be carried out in the forensic service or in another health service. The professionals attached to the Unit may propose

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[73] Instruction No. 11, amended by Memorandum No. 337.

[74] Instruction No. 32.

[75] Memorandum No. 148 and Instruction Nos. 19 and 31.

measures to avoid or keep to a minimum any disturbance to which the victim may be subjected as a result of the official procedure, providing the victim with psychological counselling and guidance at such times. Both the Unit and the prosecutor should ensure that the health service affords the victim decent treatment and facilitates his or her participation as much as possible.[76]

Protection against child abuse and sexual abuse

161. The following government agencies are involved in this effort:

(a) The Ministry of Justice, which has promoted the development of specific projects relating to reparation, expert assessments, legal advice and representation of child victims of offences, implemented primarily through its departments: the National Service for Minors (SENAME), the Forensic Medical Service and the legal aid association. Since 1997, it has also coordinated the National Intersectoral Committee for the Prevention of Child Abuse, responsible for formulating policies, making recommendations and coordinating the public activities of the various sectors involved in the area of child abuse and sexual abuse. This Committee has developed important initiatives to prevent the secondary victimization of children in judicial proceedings and has coordinated various support services to prevent the excessive participation of children in proceedings. For this purpose, it coordinates, inter alia, the Office of the Public Prosecutor, SENAME, the Forensic Medical Service, the Ministry of Health and Ministry of Education. The Committee is currently preparing a "National Handbook of Technical Guidelines for Prevention and Care in Cases of Physical and Sexual Abuse of Children" for use by the staff of the health, education and judicial systems and SENAME, as well as updating a review of national and regional institutions providing care to victims of child sexual abuse. This handbook contains provisions to prevent the secondary victimization of children in administrative and judicial proceedings, specific standards of medical and psychological assessment, and standards to prevent secondary victimization in prevention programmes; it further provides guidance to all the administrative and judicial institutions on their role in the care provision system and the need to coordinate their activities;

(b) SENAME, which, in order to prevent the secondary victimization of child and adolescent victims of abuse or sexual abuse, particularly in the context of programmes for reparation and psychological treatment for child victims of offences, has developed 44 projects specializing in reparation for severe child abuse in all the regions of the country. These projects provide specialized psychosocial and legal support and strengthen the relationship between the child and a significant adult, to prevent family separation. From a legal standpoint, it intervenes specifically in the area of child protection, suggesting to the courts the most appropriate measures for the child. Regarding access of children and their families to legal services, in the majority of cases, with the permission of the judges responsible for procedural safeguards, SENAME provides legal representation for child victims of offences in criminal proceedings;

[76] Instruction No. 25, amended by Memorandum No. 80.

(c) The Forensic Medical Service, which performs expert assessments according to an internal protocol consistent with international guidelines on the credibility of testimony and extent of injury. The "Specialized Child Abuse and Child and Adolescent Psychiatry Unit" was set up within the Service, new standards were introduced for the forensic medical assessment of child abuse, and since 2003, new infrastructure has been developed, consisting of three rooms built specifically for expert assessment of child victims of sexual offences. Two of these rooms have an observation area with a one-way mirror and video recording system, in order to record the testimony of the child being assessed and to observe cases simultaneously. In this way, the assessment can be analysed more carefully and the product - a video recording - may be used as evidence in legal proceedings, thus reducing the number of statements which must be made by the child and preventing revictimization. The Forensic Medical Service prevents the duplication of assessments that have already been performed by other bodies and encourages assessments to be performed as early as possible to avoid interrupting the rehabilitation process;

(d) The Carabineros, which, with the support of the British Embassy, have set up a special room for interviewing child and adolescent victims of sexual offences and provided officials with specialized training to interview child victims. The room has a one-way mirror system and a recording system to record the child's testimony, so that the recording may be used in criminal proceedings;

(e) The Office of the Public Prosecutor, which has made significant progress in implementing procedures that prevent secondary victimization of children, such as: avoiding face-to-face confrontation or managing encounters with offenders by using closed-circuit television for children to testify from an adjoining room; speedy referral of child victims from local prosecutors' offices to the Victim and Witness Support Units of the Office of the Public Prosecutor, which have more specialized teams that can accompany and inform the child throughout the proceedings; cooperation between the prosecutor and the support units so as to provide support for child victims throughout the proceedings; providing the child with information to understand the reasons for his or her participation in the proceedings and listening to the child, as well as ensuring that he or she is dealt with in an appropriate environment; keeping down the number of interviews with children by making a video recording of their statements that can be used by the various participants in the proceedings, as is done in certain regions; and applying protective measures in coordination with the juvenile courts, with priority given to precautionary measures against the accused, in order to safeguard the child's rights;

(f) The Ministry of Justice, SENAME and the Office of the Public Prosecutor, which have coordinated their efforts within the framework of the new system of criminal procedure, with a view to establishing certain guidelines for public prosecutors to avoid the secondary victimization of children who have been victims of offences (e.g. confrontation with the offender, documentary evidence, coordination between services, and so forth). This joint effort led to the publication in 2003 of a directive on "The situation of child and adolescent victims of offences in the reform of criminal procedure" to guide prosecutors' action in this regard. The areas and rights covered by the directive include: the definition of children as active parties in the proceedings; the principle of gradual autonomy in the exercise of rights; the assignment of a guardian *ad litem* in cases where children's legal guardians are the perpetrators of the offence; opening of proceedings on the basis of a complaint and technical assistance from the Victim and

Witness Support Units in using the various mechanisms to protect child victims from secondary victimization, from the beginning of the investigation and in the course of the hearing. Such measures include using closed-circuit television for children to make their statement from an adjoining room, to avoid direct contact between the victim and the accused person and his or her family, and face-to-face confrontation between the victim and the accused person, as a means of protecting the child's identity, honour and privacy. The directive further establishes measures to limit the number of child interviews and minimize potential disturbance to the child at the beginning of the investigation. The directive provides that prior to the oral proceedings, the public prosecutor must request the participation of the child or adolescent in the psychological preparation programme for witnesses run by the Victim and Witness Support Units.

Paragraph 7 (p) recommends that updated information be provided to the Committee on the status of investigations into past crimes involving torture, including the cases known as the "Caravan of Death", "Operación Cóndor" and "Colonia Dignidad"

The "Caravan of Death" case (Antofagasta, Calama, Copiapó, La Serena, Curicó, Cauquenes and Valdivia cases)

(a) Principal Caravan file

162. On 16 March 2006, the trial judge, Victor Montiglio, reclassified the offences committed against 13 persons in Calama and 3 persons in Copiapó from aggravated kidnapping to aggravated homicide. On 6 June 2006, the Santiago Court of Appeal quashed the decision and upheld the classification of aggravated kidnapping in all 16 cases. As at November 2006, pretrial proceedings were still under way and 27 military officials were being prosecuted as perpetrators or accomplices in 16 aggravated kidnappings, 13 aggravated homicides and 59 aggravated kidnappings and homicides.

(b) Arica Caravan file

163. On 12 April 2006, Judge Montiglio handed down a judgement of acquittal at first instance for Sergio Arellano Stark, for non-participation in the offences, while establishing the responsibility of the other three accused persons for what happened and acquitting them under the Amnesty Decree-Law. This first instance verdict of acquittal was appealed by the victims' lawyers and as at November 2006, the procedure was pending in the Court of Appeal.

(c) San Javier Caravan file

164. On 15 April 2005, six former military officials were charged with four aggravated homicides; pretrial proceedings were then initiated and on 28 September 2005, another military official was charged with four kidnappings. On 15 May 2006, the trial judge, Victor Montiglio, handed down a sentence at first instance, establishing the responsibility of the six accused persons for the four aggravated homicides, then acquitted them under the Amnesty Decree-Law. As to the person accused of the four kidnappings, it was held that no punishable offence had been committed, thus resulting in an acquittal. This first instance verdict of acquittal was appealed by the victims' lawyers and as at November 2006, the procedure was pending in the Court of Appeal.

"Operación Cóndor" case

165. On 22 December 2003, charges were brought against three retired army officials: General Manuel Contreras, former director of the National Intelligence Directorate (DINA), Brigadier Cristoph Willeke and Colonel Pedro Espinoza, for the aggravated kidnapping of eight persons. In May 2005, Judge Victor Montiglio was appointed by the Court to deal with these cases. As at November 2006, pretrial proceedings were still under way and no significant decisions had been handed down.

"Colonia Dignidad" case

(a) Case 2182-98, Villa Baviera, Juan Maino and others (Elizabeth Rekas and Antonio Elizondo)

166. During the months of March and May 2005, charges were brought against five former officials of the National Intelligence Directorate and three members of *Colonia Dignidad* for three aggravated kidnappings, while another former colonel was prosecuted as an accessory. Thus, nine persons have been prosecuted. As at November 2006, pretrial proceedings were under way.

(b) Case 2182-98, Villa Baviera, Álvaro Vallejos

167. In September 2000, charges were brought against Gerhard Mucke, a member of Villa Baviera, and in March 2005, Paul Schaefer, the former leader of the settlement, was prosecuted for the aggravated kidnapping of Álvaro Vallejos Villagrán, who was an activist in the *Movimiento de Izquierda Revolucionaria* (MIR). As at November 2006, pretrial proceedings were under way.

(c) Case 2182-98, Villa Baviera, Weapons Control Act

168. On 28 August 2006, the trial judge, Jorge Zepeda, issued a judgement at first instance against the following members of Villa Baviera: Paul Schaefer (seven years of minimum long-term rigorous imprisonment), Kurt Schnellenkamp and Karl Van Der Berg (five years of maximum medium-term rigorous imprisonment), for violation of the Weapons Control Act, and Harmut Hopp, as an accomplice in the same offence (541 days of medium-term rigorous imprisonment). This first instance judgement was appealed by the accused persons. As at November 2006, the procedure was pending in the Court of Appeal.

(d) Case 2182-98, Villa Baviera, unlawful association

169. As at November 2006, pretrial proceedings were under way, without any major developments since April 2006, when the following retired military officials were prosecuted: Army General Manuel Contreras, Army Colonel Pedro Espinoza, Army Captain Armando Fernández Larios, and the following members of *Colonia Dignidad*: Renate Freitag (nurse), Matthias Gerlach, Fernando Gómez, Gisela Gruhlke, Harmut Hopp, Gerhad Mucke, Hans Riesland, Paul Schaefer, Rebeca Schaefer, Peter Schmidt, Kurt Schnellenkamp, Albert Schreiber, Gerd Seewald and Karl Van den Berg - altogether 17 persons.

(e) Case 12.293-05, Villa Baviera, Homicide of Miguel Ángel Becerra Hidalgo

170. In September 2006, the trial judge, Jorge Zepeda, tried the case of Paul Schaefer, former leader of *Colonia Dignidad*, accused of the aggravated homicide of Miguel Ángel Becerra Hidalgo, a former official of the National Intelligence Directorate, as well as Rudolf Colles and Kurt Schnellenkamp, as accessories to this offence. As at November 2006, pretrial proceedings were under way.

Paragraph 7 (q) recommends that detailed statistical data be provided, disaggregated by age, gender and geographical location, on complaints related to torture and ill-treatment, allegedly committed by law-enforcement officials, as well as the related investigations, prosecutions, and sentences.

171. Since the criminal procedure reform, judicial investigations into this type of offence fall within the competence of the Office of the Public Prosecutor when Prison Service (Gendarmería) officials and Criminal Investigation Police officers are prosecuted. As to law-enforcement officials of the Carabineros (uniformed police), military courts have jurisdiction over the offence of "using unnecessary violence", punishable under the Code of Military Justice.

Administrative inquiries conducted by the Prison Service (Gendarmería)

172. Altogether 68 administrative inquiries were launched in 2005 into alleged abuse - assault, verbal abuse, ill-treatment and sexual harassment - by prison officials of persons in their custody. By September 2006, 38 inquiries had been completed and 30 were still in progress. *See tables 18 and 19 in the annex.* Of the 38 cases on which inquiries were completed, 30 were dismissed, 2 resulted in acquittals, 4 resulted in fines, 1 resulted in a reprimand and 1 resulted in suspension. *See table 20 in the annex.* Some 24 administrative inquiries were launched between January and September 2006 into alleged abuse - assault, verbal abuse, ill-treatment and sexual harassment - by prison officials of persons in their custody. By September 2006, only two of these investigations had been completed by being dismissed. *See table 21 in the annex.*

Judicial proceedings against prison officials for unlawful coercion or causing bodily injury to prisoners

173. Eight judicial proceedings were initiated in 2005, of which three have been completed and five are pending. Under investigation are one case of alleged abuse, one case of alleged injury and unlawful coercion, two cases of slight injury, two cases of unlawful coercion, one case of causing physical suffering and unlawful coercion and one case of causing detainees physical suffering and injury. *See tables 22 and 23 in the annex.* Only one judicial proceeding was initiated between January and September 2006, against prison personnel of the Coyhaique prison, region XI of the country.

Complaints lodged with the Carabineros regarding allegations of torture and ill-treatment by Carabineros in 2005

174. Altogether 154 complaints were reported in 2005. The highest figures were displayed in the following regions, in descending order: Metropolitan region: 62 cases (corresponding to

40.3 per cent of complaints); Los Lagos region (region X): 36 cases (23.4 per cent of complaints); Araucanía region (region IX): 27 cases (17.5 per cent of complaints); and region I: 15 cases (9.7 per cent of complaints). The number of complaints reported in the other regions ranged from zero to three. *See tables 24 and 25 in the annex.*

175. Out of all 154 complaints, the number and percentage of complaints by commune was, in descending order: 53 cases (accounting for 34.4 per cent of complaints) in the Santiago commune; 20 cases (13 per cent of complaints) in the Puerto Montt commune; 11 cases (7.1 per cent of complaints) in the Temuco commune; 10 cases (6.5 per cent of complaints) in the Osorno commune; and 9 cases (5.8 per cent of complaints) in the Iquique commune. There were no more than five cases per year in the other communes. *See table 26 in the annex.*

176. For the 154 complaints received, there were 170 complainants - a difference accounted for by the fact that there is occasionally more than 1 complainant for a particular case. The complainants consisted of 111 male adults (65 per cent), 49 female adults (29 per cent), 10 male minors (6 per cent) and no female minors. *See table 27 in the annex.*

177. Of the 154 complaints, 138 were proven, dismissed, or lodged with the courts. No information on this subject was reported for the remaining 16 complaints. The figure of 138 comprised 18 cases that were proven, 116 that were dismissed and 4 that were lodged with the courts. *See table 28 in the annex.*

178. With regard to the administrative status of proceedings, 99 per cent of complaints were at the investigation stage. *See table 29 in the annex.*

179. Lastly, 97 per cent of accused personnel (253 individuals) were institutionally appointed personnel and 3 per cent (8 individuals) were senior personnel.

Complaints lodged with the courts regarding allegations of torture and ill-treatment by Carabineros in 2005

180. Altogether, 49 complaints were reported in 2005. The highest figure - significantly higher than the other figures - was recorded in the Araucanía region (region IX), with 24 cases (accounting for 49 per cent of complaints), followed, in descending order, by the Maule region (region VII) with 7 cases (14.3 per cent of complaints); Los Lagos region (region X) with 4 cases (8.2 per cent of complaints); the Antofogasta region (region II) with 3 cases (6.1 per cent of complaints); the Valparaiso region (region V), the Libertador Bernardo O'Higgins region (region VI), the Aysén region (region XI) and the Magallanes region (region XII) with 2 cases each (4.1 per cent of complaints); and the Atacama region (region III), the Bío Bío region (region VIII) and the Metropolitan region with 1 case each (2 per cent of complaints). Lastly, no complaints were lodged in the Tarapacá region (region I) and the Coquimbo region (region IV) in 2005. *See tables 31 and 32 in the annex.*

181. The 49 complaints lodged in 2005 were spread over a total of 20 communes. The highest figure was recorded in the Temuco commune, with 12 cases (accounting for 24.5 per cent of complaints), followed, in descending order, by the Angol commune with 6 cases (12.2 per cent

of complaints); the Constitución y Villarrica commune with 5 cases (10.2 per cent of complaints); the Taltal y Panguipulli commune with 3 cases (6.1 per cent of complaints); and the Punta Arenas commune with 2 cases (4.1 per cent of complaints). The other communes reported one case (2 per cent of complaints). *See table 33 in the annex.*

182. Of the total number of persons who reported the 49 cases, 36 were male adults (69 per cent), 12 were male minors (23 per cent), 1 was a female adult (2 per cent) and 3 were female minors. *See table 34 in the annex.*

183. Lastly, 98 per cent of accused personnel (121 individuals) were institutionally appointed personnel and 2 per cent (2 individuals) were senior personnel. *See table 35 in the annex.*

Internal investigations into unlawful coercion by Criminal Investigation Police officers

184. *See tables 36 and 37 in the annex*, which show the cases in which these investigations led to administrative inquiries and/or judicial proceedings in 2004 and 2005.
