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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fifth periodic report

CHILE* ** ***

[7 February 2006]

* This document contains the fifth periodic report, due on 28 April 2002. For the fourth periodic report and the summary records of the meetings at which the Committee considered that report, see documents CCPR/C/95/Add.11, CCPR/C/SR.1733 and 1734 and CCPR/C/SR.1740.

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*** Annexes can be consulted in the files of the secretariat.

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I. INTRODUCTION

1. Responses relating to the areas of concern and recommendations contained in the concluding observations on the fourth periodic report of Chile[1]

Paragraph 7

1. Since March 1990, the democratic Governments have considered the Amnesty Decree-Law to be unlawful, but political opposition in the National Congress has prevented its repeal. It is the courts which decide whether or not to enforce the amnesty. As indicated in paragraphs 114-117 below, the practice of the Supreme Court in recent years has been not to apply the amnesty, so as to put an end to the cases relating to human rights violations committed under the military regime.

Paragraph 8

2. As explained in paragraphs 43-50 below, with the exception of the binominal system, the entrenched authoritarian clauses in the 1980 Constitution, including the powers formerly enjoyed by the National Security Council, have been eliminated.

Paragraph 9

3. As indicated in paragraph 231 below, an inter-ministerial expert working group began work in January 2006 to reform the system of military justice.

Paragraph 10

4. Considerable progress has been made in respect of the areas of concern raised by the Committee in paragraph 10 of its concluding observations. As indicated in paragraphs 126-133 and 159-163 below, the regulation applicable to torture and unlawful pressure has been amended; a new system of criminal procedure has been instituted which replaces the former inquisitorial system by a speedy and easily accessible procedure in order to encourage the initiation of investigations; such investigations are the responsibility of the Office of the Public Prosecutor, a constitutionally independent body. Under the new procedure, an obligatory and effective check on detainees is carried out within a period of 24 hours following any arrest by the police, and is designed essentially to analyse the lawfulness of the grounds for the measure and its application; these checks constitute a veritable system of quasi-preventive protection which operates without waiting for the initiation of proceedings or a remedy; 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 all this, checks are implicit in the fact that hearings are held in public.

Paragraph 11

5. As can be seen from various parts of this report, the reform of criminal procedure was introduced throughout the country, including the Metropolitan Region, from 16 June 2005.

Above and beyond the scale of this exercise, this step resulted in equal access for all inhabitants to a model of criminal procedure which is compatible with the basic rules of due process.

Paragraph 12

6. As mentioned above, the reform of criminal procedure means that the requirements and imperatives of due process can be satisfactorily addressed. In this context personal freedom is the rule and individual precautionary measures the exception, even within a criminal investigation. In our legal system today the presumption of innocence is the foundation of due process. Consequently, under the current system, precautionary measures are subject to an exceptional regime, and must in addition 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.

7. One of the main problems involved in the inquisitorial procedure which was replaced under the reforms in criminal procedure was the excessive duration of trials, which undermined the right to be tried in a reasonable time. For this reason, pretrial detention could be extended for periods which were themselves excessive. This problem has been successfully addressed in the new system of criminal procedure, in which the average length of time required to settle all matters placed before prosecutors is no more than nine months, enough to complete over 85 per cent of cases they handle.

Paragraph 13

8. In this area too, considerable progress has been achieved compared with the situation under the former system of criminal procedure. Under the current procedure, 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.

9. Efforts are under way to study and analyse a complete reworking of the system for monitoring the enforcement of criminal sanctions. This also encompasses the treatment of prison regimes, including persons in pretrial detention. This body is considered appropriate to conduct the recommended analysis.

Paragraph 14

10. In most of the world's prisons, the number of inmates exceeds the official capacity, and Chile is no exception. In our country, the number of prisoners entering penal institutions has risen substantially in recent years, leading to overcrowding. Since 2000 the Government has introduced various initiatives to tackle this problem, which are described in paragraphs 179-181 below.

Paragraph 15

11. In Chile induced abortion is an offence under the Criminal Code.[2] The Administrative Statute[3] places a general obligation on public officials to report to the justice system 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,[4] which confers on every official a duty to maintain secrecy in matters which are confidential under the law or regulations, or by their nature, or in accordance with special instructions.

12. In the same way, the Code of Criminal Procedure[5] 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 which 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 lays down or implies that health officials must question their patients or that they are authorized to investigate a possible offence. Consequently, there is no rule in the domestic judicial system which 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.

13. 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 in relation to female and male sterilization, under which the decision to undergo such sterilization is a personal one, stemming from free will manifested by the person requesting the operation without its being subordinated to the approval of third persons, the sole requirement being that those involved are adults in possession of their mental faculties.[6]

14. Lastly, it should be mentioned that the Chilean Institute of Public Health[7] has authorized the sale of the product Postinor-2, manufactured using 0.75 milligrams of the active principle Levonogestrel, which is designed for use in emergencies, specifically the day following unprotected sexual relations. This decision was challenged in the courts by the Ages Youth Centre, and in November 2005 the Supreme Court rejected all the appeals which had been lodged in this regard, so that the sale of this emergency contraceptive is now fully authorized.

Paragraph 16

15. A bill to amend the Civil Code and additional laws relating to joint property or community of property, conferring equal rights and obligations on husband and wife, was approved in the first stage in the Chamber of Deputies and is now at the second stage in the Senate. This bill introduces amendments, inter alia, in the Civil Registration Act, the Commercial Code and the Mining Code as regards the principle of equality.

Paragraph 17

16. Divorce was introduced by the Civil Marriage Act of May 2004, as indicated in paragraph 279 (b) below.

Paragraph 18

17. The Act amending the Labour Code by making sexual harassment at work an offence entered into force in March 2005, as indicated in paragraph 58 (f) below.

Paragraph 19

18. Progress in the participation of women in the political sphere is reported in paragraphs 61-66 below.

Paragraph 20

19. In this regard it should be mentioned that the provision of the Criminal Code criminalizing sodomy between consenting adults has been deleted.[8]

Paragraph 21

20. The new Civil Marriage Act of May 2004 raised the minimum age for marriage, for both sexes, to 16, as indicated in paragraph 279 (d) below.

Paragraph 22

21. In relation to the concern expressed over hydroelectric and other projects which might affect the way of life and rights of persons belonging to the Mapuche and other indigenous communities, it is important to note that Chile has reached an amicable settlement which settled a complaint lodged at the Inter-American Commission on Human Rights by a group of families belonging to the Ralco-Lepoy Pehuenche Mapuche community in the upper Bío-Bío, Region VIII . The complaint was based on alleged violations of the rights set out in articles 4, 5, 8, 12, 17, 21 and 25 of the American Convention on Human Rights, in connection with the implementation of the Ralco hydroelectric power plant project. Under the agreement referred to above Chile undertook, inter alia, to adopt arrangements binding on all State bodies to prevent the installation of megaprojects, especially hydroelectric projects, on indigenous land in the upper Bío-Bío; it was agreed to take appropriate steps within the framework of the rule of law for the protection of indigenous land; the Government confirmed its willingness to preserve the lands of the upper Bío-Bío, for which purpose it will make use of all the instruments and measures authorized by Chile's judicial system; specifically, the Government will facilitate the amendment of the planning order in question so that the indigenous lands in the upper Bío-Bío are classified as protected areas, in which no construction will therefore be permitted, or as areas in which construction will be subject to restrictions. All these measures are designed to prevent or restrict the construction of future megaprojects.[9]

Paragraph 23

22. In March 2005 a bill to combat discrimination was tabled in Congress, as indicated in paragraph 306 below.

Paragraph 24

23. As explained in paragraphs 243-246 below, the Religions Act entered into force in October 1999. The Act grants public-law status to all churches which so wish, lays down that all churches are equal and puts an end to the special situation enjoyed by the Roman Catholic Church.

Paragraph 25

24. As clearly indicated in paragraph 231 of Chile's fourth periodic report, civil servants were granted trade union rights under a 1994 Act.[10]

2. Progress in the full enjoyment of rights protected under the Covenant

(a) Reform of criminal procedure

25. In the context of the modernization of the system of justice in Chile, the major change which took place during the period covered by this report was the reform of criminal procedure, involving a range of institutions, rules, procedures and additional conditions which foster the transition from an essentially written and secret inquisitorial criminal system to an open and public accusatory system. The reform involves seven legal texts: amendment of the Constitution;[11] the Public Prosecutor's Office (Organization) Act;[12] the new Code of Criminal Procedure;[13] the Public Defender (Criminal Matters) Act;[14] amendment of the Courts Organization Code.[15] Legal specialists, engineers, economists and various governmental, judicial and non-governmental experts participated in the design and introduction of the reform. A number of universities in Chile carried out various studies and supplied advisory services, and international cooperation played an important role in introducing this new system.

26. 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. It has led to an improvement in a range of rights and safeguards set out in the Covenant, in accordance with the provisions of this instrument relating to the corresponding articles. In paragraph 11 of its concluding observations on the fourth periodic report of Chile, the Committee expressed concern that the new Code of Criminal Procedure would not come into force for a long time. In fact, the period of 10 years which elapsed between the time when this legal initiative was passed to Congress by the executive, in mid-1995, and the moment when it was in force throughout the country, in mid-2005, was not excessive, bearing in mind the length of time needed for parliamentary discussion of such novel and sensitive issues in the field of criminal procedure, which would result in changes in behaviour in the judicial and police apparatus, the need to train officials in these two areas, the need for a set of complementary legal reforms and measures of adaptation to the new procedure, as well as the creation of the physical infrastructure required for the operation of the new system throughout the country.

27. The total investment in infrastructure for all the institutions involved in the reform in the judiciary, the Public Prosecutor's Office and the Office of the Public Defender for criminal cases is approximately 186 billion pesos (roughly US$ 351 million),[16] for around 328 new and

modified buildings. Of these buildings, 84 are used exclusively for 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 modified for use by the judiciary.

28. As regards human resources, provision was made countrywide for 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 contracts). In addition, over 5,500 support staff (professional and technical) for the three institutions (judiciary, Public Prosecutor's Office and Office of the Public Defender for criminal cases) were trained for the new system, as well as over 31,600 *Carabineros* (uniformed police) officers.

29. The fundamental change brought about by this initiative was replacement of the former inquisitorial criminal procedure, in which the functions of investigation and making a ruling were the task of a single judge, by a procedure in which investigations are carried out by a prosecutor from the Public Prosecutor's Office with the help of the police. This procedure meets the requirements of due process, by means of an oral, public and adversary hearing in a collegiate court which evaluates the evidence and reaches a verdict. This system grants the Public Prosecutor's Office broad powers during the investigation; these are circumscribed by the individual rights of the person concerned, which are protected by the courts if they are violated.

30. Under the new criminal procedure, the investigative police assist the Public Prosecutor's Office in investigations, and take the necessary steps to perform the investigative functions stipulated in the Code of Criminal Procedure, in accordance with instructions provided by the prosecutors. It also implements any enforcement measures which are prescribed. The *Carabineros* also assist the Public Prosecutor's Office by performing the functions mentioned above when the prosecutor responsible for the case so orders. Independently of this rule, the Public Prosecutor's Office may also give instructions to the prison service in the case of investigations into incidents which have occurred inside the country's prisons.

31. 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. Of key importance in this regard, for example, was training provided for the investigative police, which fostered a change in attitudes designed to boost teamwork and the scientific approach, the search for new models which highlight the value of human dignity, and the revision of police procedures to expressly rule out torture. Clear internal regulations which lay down procedures and penalties when individual rights are violated by investigative police and *Carabineros* officers, 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.

32. As indicated, the reform was introduced gradually and progressively over time by groups of regions and finally in the Metropolitan Region. When the draft constitutional reform which led to the setting up of the Public Prosecutor's Office was being discussed in the Senate's Constitutional Commission, some wondered whether this situation would jeopardize the right to equality before the law. The reply given was that the principle would not be violated because the

reform was to be implemented in a gradual manner not for arbitrary reasons but for reasons of implementation, both as regards the economic resources required for the reform and as regards the training of the persons involved. This is why neither Congress nor the Constitutional Court objected to the gradual nature of its implementation. Furthermore, the Constitution itself allows parliament to stipulate a gradual approach for the entry into force of the reform,[17] so that it cannot be held to be unconstitutional. This same argument applies to the continued validity of the former Code of Criminal Procedure, which is applied by the courts to situations which arose before the reform, and which will progressively cease to be applied as the cases in question are completed.

(b) Other reforms in judicial procedure

33. Other reforms involved in the process of modernizing the system of justice in Chile relate to the family, with the establishment of family courts, as well as changes in the procedure governing labour disputes and in the procedure governing cases involving minors. A working group on reform of the military justice system has recently begun work; this is an issue still pending in the process of bringing the domestic machinery into line with international instruments on human rights.

(c) Elimination of the entrenched authoritarian clauses in the 1980 Constitution

34. Another significant step towards putting an end to hangovers from the past which hindered the full enjoyment of rights set out in the Covenant was the elimination of entrenched authoritarian clauses which had remained in the Constitution. This was effected by means of the constitutional reforms enacted in August 2005. The most important steps forward as regards the rights set out in the Covenant involved new rules relating to constitutional states of emergency which are compatible with the international instruments on human rights. Particularly noteworthy are: 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; the elimination of appointed senators and senators for life; new composition and duties of the Constitutional Court; the end of reporting to the Ministry of Defence by *Carabineros* and the investigative police, who will now report to the future Ministry of Public Safety; 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 Chile; the change in the membership and duties of the National Security Council; and the extension of *jus sanguinis*, which settled the problem of stateless children.

(d) Reforms relating to international treaties

35. As regards international treaties, the constitutional reforms referred to above laid down a series of rules which clarify the gaps in our legislation relating to the exclusive role of Congress in approving or rejecting international treaties submitted to it by the President prior to ratification. 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. 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.

(e) Progress in the field of truth, justice and reparation

36. As regards efforts to secure truth, justice and reparation for the victims of human rights violations committed by agents of the State under the military regime, new measures have built on the achievements secured since the return of democracy in 1990. Especially important is the human rights proposal known as "No tomorrow without yesterday" drawn up by President Ricardo Lagos after gathering the views of churches and secular, social and political institutions and made public in August 2003. This proposal contains a set of measures designed to throw further light on human rights violations committed under the military regime, and to improve the social reparation to which the victims are entitled. It provides not only for practical measures in relation to human rights violations committed in the past, but also for measures for the promotion of human rights in the future, including the establishment of an Institute of Human Rights.[18]

37. 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.

(f) Legislative changes which have enhanced protection of the rights set out in the Covenant

38. A number of legislative changes which are referred to in this report have led to major progress in protection of the rights set out in the Covenant. Regarding equality between men and women in the enjoyment of civil and political rights, mention should be made of the substantial step forward represented by the fact that this equality has been granted express recognition at the constitutional level, as well as the law on sexual harassment at work. Regarding equal rights for children, the Filiation Act. Elsewhere the democratic Governments have continued to eliminate shortcomings in the exercise of freedom of expression. Examples are the entry into force of the law on freedom of opinion and information and the profession of journalism, announced in the previous report, and the abolition of the offence of contempt and of censorship in the cinema. The death penalty has been removed from the Criminal Code and replaced by rigorous imprisonment for life subject to special conditions for the offences for which it was applicable. A new Act eliminates existing differences in the rights of holders of different religious beliefs.

(g) Signature and ratification of international instruments

39. Chile has signed the Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty and the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty; both are in the process of gaining approval in the National Congress. Chile has also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as well as the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has also been ratified and is in force in Chile.

II. INFORMATION RELATING TO THE ARTICLES

Article 1

40. As indicated in the previous report and in the core document,[19] Chile, in accordance with its Constitution, is a unitary and democratic republic in structure in which sovereignty essentially rests with the people. It is exercised by the people through regular elections and by the authorities established by the Constitution. In Chile the institutions operate under the organizational and operational framework laid down by the Constitution and the law. During the period covered by this report, presidential, parliamentary and local elections have taken place regularly, and no objections have been raised by any individual or group of citizens as to their validity or the full exercise of the right to self-determination.

Free determination of political status

41. As explained in the previous report, the right to self-determination was seriously restricted under the military regime which took power in September 1973. In the regime's final stages, on the basis of an agreement among various opposition forces, the rules laid down in the Constitution which the regime had enacted in 1980 were accepted. In accordance with the Constitution, a plebiscite was held on 5 October 1988 to endorse or reject the appointment of General Augusto Pinochet as President of Chile for the period of transition to democracy, which under the Constitution was to last until 1997. Those opposing this proposal secured an absolute majority in a ballot marked by a very high turnout, the abstention rate reaching only 2.47 per cent. It was also indicated that a set of reforms designed to democratize the 1980 Constitution were approved by 85.70 per cent of the population in a plebiscite held on 30 July 1989.

42. On 14 December 1989 the first presidential and parliamentary elections for 19 and 16 years respectively were held. Since 11 March 1990, three Presidents have been elected through a popular vote, and four elections of deputies and senators to the National Congress have been held, as well as four municipal elections.

Constitutional reforms of 2005[20]

43. Despite the reforms of 1989, some institutional aspects of the 1980 Constitution continued to constitute an obstacle to self-determination. As indicated in the previous report, these obstacles related to the binominal electoral system, the nature and operation of the National Security Council, the existence of appointed senators and senators for life, the membership of the Constitutional Court, and the fact that the Commanders-in-Chief of the armed forces and the Director-General of the *Carabineros* could not be removed from office.

44. With the aim of overcoming the above-mentioned institutional shortcomings, the three democratic Governments which have been in office since March 1990 sent various proposed constitutional reforms to Congress, designed to change the situations described above, without securing the agreement of the political opposition, until 16 August 2005, when the Congress in plenary session approved the constitutional reforms listed below.

(a) National Security Council[21]

45. The decision-making powers of this body were cancelled, together with the decisive role played in its decisions by the Commanders-in-Chief of the armed forces. It was transformed into an advisory body to the President in matters relating to national security, and the power it had to "convey" its comments to public bodies was abolished. It is chaired by the head of State and composed of the Presidents of the Senate, the Supreme Court and the Chamber of Deputies (whose membership was the result of the reform), the Commanders-in-Chief of the armed forces, the Director-General of the *Carabineros* and the Controller-General of the Republic. It can no longer convene its own meetings, but meets only when convened by the President. The proceedings of the Council are public, unless a majority of its members decide otherwise.

(b) Appointed senators and senators for life[22]

46. These positions were abolished by the reform. The Senate is henceforth composed only of members elected by direct suffrage in senatorial constituencies based on the country's regional structure. From 11 March 2006 onwards, the upper chamber will be composed of 38 members elected by popular vote.

(c) Constitutional Court[23]

47. The Court has become more representative. The way in which its members are selected has been changed, and its membership raised from 7 to 10. Its members are now appointed as follows: three lawyers appointed by the President of Chile, three lawyers appointed by the Supreme Court from among its members, two lawyers appointed directly by the Senate and two others also appointed by the Senate on the basis of names put forward by the Chamber of Deputies. The armed forces, in the form of the National Security Council, no longer have any role in these appointments.

48. The Constitutional Court was given the power to rule on actions of unconstitutionality, which was held by the Supreme Court before the reform. Any legal provision on which a particular action is intended to be based and which is contrary to the Constitution may be declared unconstitutional by the Court, of its own motion or on the application of a party. Following the declaration of unconstitutionality, the proposed action may also be declared unconstitutional if the number of votes stipulated in the reform is obtained.

(d) Removal from office of the Commanders-in-Chief of the armed forces and the Director-General of the *Carabineros* - Position of the various corps of police in the hierarchy[24]

49. Under the reform, the President may, by means of a decree setting out the grounds for his decision, and subject to prior notification to the Senate, order the retirement of the Commanders-in-Chief of the army, the navy and the air force or the Director-General of the *Carabineros* before they have completed the normal term, without seeking the consent of the National Security Council. This means that these officials are no longer exempt from removal from office. 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. The amendment of the Constitution 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. Meanwhile the security forces, composed of the *Carabineros* and the investigative police, will report to a future Ministry responsible for public safety.

50. As for the binominal system of elections, change in this regard remains pending as no agreement has been reached with the political opposition, notwithstanding the political will of the Government. However, the constitutional reform under discussion removed the reference to the binominal electoral system from the Constitution, and any future change in this regard will have to be effected by amending the Constitutional Act on Popular Votes and Vote Counts.

Self-determination for the indigenous peoples

51. In Chile's view, this concept of self-determination is defined in accordance with the relevant provisions of ILO Convention No. 169, in relation to the wording of article 3 of the Constitution, which lays down that Chile is a unitary State. In this regard, the democratic Governments have helped to create conditions in which the indigenous peoples can participate in setting their own priorities, which entails granting a degree of recognition to their organizations and full respect for the rights of association, assembly, expression and petition which their members enjoy under the Constitution. In short, in matters of public policy relating to indigenous people, self-determination is related to a right to administrative self-government of geographical areas and autonomy for their communities, members and families, in the planning, development and pursuit of their traditional economic or any other activities, guaranteeing the full enjoyment of their own means of subsistence and development.

Right to economic development and the free use of natural wealth and resources

52. In this regard see the material relating to article 1 of the International Covenant on Economic, Social and Cultural Rights in the third periodic report of Chile on the implementation of the International Covenant on Economic, Social and Cultural Rights.[25]

Article 2

53. As regards efforts to guarantee the rights set out in the Covenant without discrimination, this report indicates the set of legal, administrative and policy measures relating to this commitment on the part of the State. On matters relating to article 26 of the Covenant, various specific measures in the area of non-discrimination are indicated in this document (paras. 304 ff.).

Protection of the rights set out in the Covenant in the Chilean system of justice

54. The Constitution provides for the following means of ensuring effective protection of these rights:

- The Constitutional Court has the power (held by the Supreme Court prior to the constitutional reforms of 2005) to rule, by a majority of its current members, on the unconstitutionality of a legal provision whose application in any action pursued in an

ordinary or special court is contrary to the Constitution, and to rule by a four-fifths majority of its current members on the unconstitutionality of a legal provision which has been declared inapplicable in accordance with the above;

– Any judge has the power to disregard a regulation or decree which is already in force but which is contrary to the Constitution by means of the simple application of the principle of the hierarchical order of the rules of law. Between the application of a constitutional rule and that of a legal provision of a lower order, the judge must opt for the former;

– Any court has the power to disregard a legal instrument which has been tacitly or expressly repealed by a new Constitution or new constitutional provisions;

– Any court has the power to declare null and void official acts falling outside the functions expressly stipulated by the Constitution or the law;[26]

– The appeal courts have the power to hear *amparo* applications and take steps to protect individual freedom, either for preventive or for remedial purposes;[27]

– The appeal courts have the power to restore the rule of law, through the application of the remedy of protection, when a person suffers deprivation of, interference with or threats to the rights and safeguards laid down in the Constitution as a result of acts which are arbitrary or unlawful, or both;[28]

– It is the duty of the courts to exercise their authority even in the absence of a law by means of which a dispute can be resolved. This provision further safeguards the rule of law;

– It has been laid down that "*any judgement of an organ which exercises jurisdiction must be reached on the basis of prior proceedings conducted in accordance with the law. It will be the task of the legislature always to establish guarantees of a rational and fair procedure*".[29] Certain decisions of public authorities are essentially judicial acts, since they create, restrict, abolish or deny rights. This is the case for certain regulatory bodies such as superintendents' offices, whose decisions must, in order to be valid, satisfy a requirement of rationality in the proceedings, guaranteeing the alleged offender a hearing and a defence, which alone prevents arbitrary measures from being taken;

– The guarantee contained in the Constitution relating to the laws which regulate or complement constitutional rights cannot affect the essence of the rights or impose conditions, obligations or requirements which hinder their free exercise.[30] If the legislature faces such a categorical obstacle to arbitrary actions or abuses, the more so will the administration and its officials, since they are subject to the laws and the Constitution;

– Added to the above is an article which is of major importance for judicial protection of constitutional rights, and whose future application in the actions of the judiciary is as yet unknown: "*Respect for the essential rights which stem from the nature of*

human beings is recognized as placing a limitation on the exercise of sovereignty".[31] This is no programmatic aspiration in the Constitution but a mandatory precept which places the inviolability of these rights above the letter and the supremacy of the Constitution. In pursuance of this rule, current case law offers valuable opportunities for the protection of human rights.

Effective remedies for violations of the rights set out in the Covenant

55. It was explained in the previous report that the Chilean legal system guarantees to all the country's inhabitants judicial and administrative remedies that will protect their rights which have been violated. Special reference was made to the rights safeguarded by means of the remedy of protection and the remedy of *amparo* (habeas corpus).

56. Reference is made below to some of the remedies of protection granted recently to protect rights set out in the Chilean Constitution and the Covenant.

(a) Right to life

Decision of the Antofagasta appeal court, 29 July 2005.

The court ordered that an arsenic abatement plant owned by the municipality of the commune of Sierra Gorda, Antofagasta, should be brought into operation to eliminate excess arsenic in the water. The operation of this plant had been halted by decision of the municipality, placing the inhabitants at great risk, as they were consuming water with a high arsenic content.

(b) Non-discrimination

Decision of the Santiago appeal court, 6 January 2005.

A civil registry official was ordered to marry a woman of Swedish nationality and a Chilean man. This wedding had been prevented as a result of a circular issued by the National Director of Civil Registration, who argued that the bride was present in Chile unlawfully. The court considered it inadmissible that an administrative circular should outweigh the constitutional norms relating to equality before the law and equality between Chileans and foreigners in the acquisition and enjoyment of civil rights.

(c) Due process

Decision of the Supreme Court, 26 July 2005.

The court annulled administrative fines imposed on a business by a labour inspector, holding that he had claimed judicial powers which he did not possess.

(d) Right to privacy and honour

Decision of the Santiago appeal court, 29 January 2003.

The court ruled that pictures of a young woman which were linked with drug-taking should be removed from a web page belonging to a television channel, as they had been published without the woman's consent and violated her right to her image and her honour.

(e) Right of association

Decision of the San Miguel appeal court, 26 December 2003.

The court cancelled the suspension of the right to speak and the right to vote imposed on a member of a trade union association who had not breached the association's rules.

Article 3

Legal reforms

57. Thanks to a number of legislative changes, considerable progress has been made in guaranteeing equal enjoyment by men and women of their civil rights. Constitutional recognition of equality between men and women is especially important in this respect. Progress has also been made in the area of criminal law, particularly in the legal definitions of sex offences, which used to reflect a view of women that tended to lead to serious cases of discrimination. Changes to the legal definitions of rape, statutory rape and indecent assault, as well as other changes, have been very important from women's point of view. However, despite the significant progress made, there are still situations in which women are placed in a position of inferiority with respect to men, reflecting the failure to implement legal proposals such as the proposal to establish a new property regime to replace the joint-property marital regime, which discriminates against married women.

58. The following legal reforms have led to greater equality between men and women in the enjoyment of their rights:

(a) Constitutional reform:[32] this expressly establishes equality between men and women, stating that "persons" (not "men", as before) are born free and equal in dignity and rights; another article adds that "men and women are equal before the law";

(b) Amendment to the Constitutional Act on Municipalities:[33] this empowers municipalities to perform tasks related to, among other things, the promotion of equal opportunities for men and women;

(c) Amendment to the Constitutional Act on Education:[34] this enshrines the right of pregnant or breastfeeding students to attend educational establishments. The amendment is designed to ensure that such students not only have access to these establishments but also remain in them, by providing the necessary facilities in school. To be fully effective, the amendment will require the longer-term consolidation of social support networks in other sectors of society: both the educational establishment and the National Service for Women (SERNAM) are working with such networks;

(d) Amendment to the definition of rape and other sexual offences: this gives a new definition of rape according to which both men and women can be victims.[35] The rape of a virgin (*rapto*) has been abolished as a separate offence. The legal definition of statutory rape has

been adjusted to eliminate discriminatory references, such as the requirement that the victim be a girl of "good reputation".[36] The concept of "indecent assault" has been replaced by that of "sexual abuse". Anyone who uses a child in the production of pornography is liable to punishment. Marital rape is expressly established as an offence, and marrying the victim no longer exonerates the aggressor from criminal responsibility. From a procedural viewpoint, the range of individuals who can report sexual offences is extended, face-to-face confrontations between the victim and aggressor are abolished, and the evidentiary value of any medical certificate is heightened;[37]

(e) Amendment regarding maternity protection:[38] this prohibits making a woman's access to employment, mobility, promotion or contract renewal dependent on her not being pregnant. It abolishes the exception for women domestic workers, who were denied the right to maternity leave. It extends nursery provision to enable working mothers to exercise their right to it;[39]

(f) Amendment regarding sexual harassment at work:[40] this criminalizes and punishes with dismissal the sexual harassment of workers of either sex by a person threatening to harm their employment prospects. If it is the employer who behaves in this manner, the worker can end the employment contract and demand legal compensation, in addition to any compensation for pain and suffering awarded by a court.

Draft legislation

59. It is proposed to replace the joint-property marital regime with a new regime of "deferred community of acquisitions" which would eliminate the notion that the husband is the "head of the conjugal partnership" and thus entitled to administer the wife's property.[41] The bill would also put an end to the "reserved property" system, which was conceived as a form of compensation to the wife for the husband's administration of her property, and which no longer makes sense if the woman administers everything that belongs to her.[42] The bill was adopted on first reading by the Chamber of Deputies in November 2005, and is now going through its second reading in the Senate.

Pro-women policies

60. The following policies are designed to help women:

(a) *Plan and Council of Ministers on equal opportunities*. Reference was made in Chile's last report to the 1994-1999 plan for equal opportunities for women, which set out the need to make gender a cross-cutting issue in all public policies and which led to progress at both the legislative level and in actions and measures involving various public bodies. The National Service for Women prepared a second plan on equal opportunities for men and women for the period 2000-2010 in a bid to consolidate gender policies in public institutions. It has also drawn up plans for implementation at the national, regional and municipal levels which adapt the general guidelines to the characteristics and particularities of each region or locality. The establishment of the Council of Ministers for Equal Opportunities was a significant step forward

in this respect; it was set up to incorporate specific policies with a gender dimension in the work of various ministries and State services and enterprises.[43] This implies tackling gender issues from a broader perspective as matters of State, and involving different public agencies in the implementation of such policies;

(b) *National policy on citizen participation*. It was recognized in a Presidential instruction issued in 2000 that citizen participation is fundamental to any democratic system, as it helps ensure that legally established rights and duties are effectively recognized and exercised.[44] One of the guiding principles behind this policy is equality of opportunities for participation, which requires government departments to devise mechanisms that embody the principle of equal opportunities for men and women in order to guarantee that women are involved in public policies and programmes. As part of this policy, government bodies have agreed to take a range of measures to put the policy into practice. For example, the National Service for Women has undertaken to set up forums for dialogue with civil society (in the rural, employment and academic sectors, with women's organizations, etc.) and to involve the users of its programmes in the planning and monitoring phases of the programmes. This policy is intended to help create a relationship of cooperation and mutual respect between the State and citizens, and also to help strengthen civil society and give greater legitimacy to public policies;

(c) *Mainstreaming a gender-based approach in public policy*. While changes in the running of State bodies have been introduced gradually over the past few years, since 2000 these changes have been more far-reaching, in a clear sign that a gender-based approach is being integrated into the main instruments of public policy.[45] At this moment in time, the availability of gender-specific information is very important in the design of public policies, which is why a process has been initiated to modernize procedures in the statistical departments of public organizations so as to provide such information. This has involved a number of actions, including: the development of a national system of gender indicators; the disaggregation by sex of public statistics; the establishment of a statistical database; the dissemination of information on women and men in Chile; and the development of management indicators in the financial system. In 2002 and 2003, accordingly, the budget department of the Ministry of Finance planned and prepared for the mainstreaming of a gender-based approach in the strategic output of governmental policy, such as the Public Sector Budget Act, performance indicators, the comprehensive management review, the evaluation of government programmes and impact assessments.

Women's access to public office

61. The discrepancy between the full participation of Chilean women and their limited access to top positions has a long history. Women have become involved in politics but have constantly come up against obstacles. From a constitutional viewpoint, there are no legal impediments to, or restrictions on, women's participation or their right to vote or stand for election, but there are de facto inequalities in their access to power. Moreover, the electoral system does not guarantee equal participation of men and women.

62. There are few women in positions of power; in particular, very few women win seats in national elections. In 2005, women made up 11 per cent of Congress - only 5 per cent of the upper house and 13 per cent of the lower house.[46]

63. The percentage of women in the judiciary increased from 1992 to 2002 but they are still less well represented than men. In 2002, women occupied 20.7 per cent of the posts in the Supreme Court and 25.5 per cent of those in the Court of Appeals.[47] However, in both courts, women occupy a higher proportion of the posts with less decision-making authority. The most significant development, and a milestone in the history of the judiciary, was the appointment in 2001 of two women to the Supreme Court, one as a judge and one as a legal counsel.

64. The participation of women in senior positions in the executive, both in the national cabinet and in regional governments, increased significantly in 2005 as compared to previous years. The percentage of women ministers rose from 5 per cent in 1991 to 17 per cent in 2005, while the percentage of women under-secretaries rose from 12 per cent to 23 per cent in the same period. In the case of senior positions in regional government, the percentage rose from zero in regional governors' offices and 8 per cent in provincial government offices in 1991 to 8 per cent and 23 per cent respectively in 2005.

65. The National Service for Women has carried out a number of studies and analyses to determine the reasons for women's low level of participation in national politics.[48] Their conclusions lend strong support to the arguments in favour of a quota law and have helped clarify the legal steps that would have to be taken to introduce one.[49] In 2001, the National Service for Women held a number of seminars in every region in the country to boost women's political participation, inviting prominent male and female politicians to attend, in order to raise public awareness of the need for a quota law in Chile.

66. As far as affirmative action is concerned, parliamentary representatives have put forward proposals to guarantee more equal participation by men and women. Two legislative proposals for a quota system, put forward in 1997 and 2002, stand out: the 1997 proposal was resubmitted by a larger number of parliamentarians at the beginning of 2003 to reopen the debate.

Access to justice, equal legal protection before the courts and non-discrimination in the criminal justice system

67. In the area of women's access to justice, it should be pointed out that 70 per cent of users of the country's system of free legal assistance are women seeking advice or acting on behalf of themselves, their families or their partners. Most of these users are housewives and 42 per cent of them have not completed their primary education. Of the most frequently asked questions, 42 per cent concern family matters such as child support or filiation proceedings, and are mostly posed by women.

68. The National Service for Women has established formal links with the Ministry of Justice and its departments. The Ministry, through legal assistance associations and the Access to Justice Programme, promises to provide a quality service which explicitly deals with situations that particularly affect women, such as domestic violence and treatment for victims of sexual offences.[50] Institutions working in this field have made equity of access and outcome - in terms of age, ethnicity, demography and gender - an integral part of their work.

69. With regard to the reform of criminal procedure, which is under way throughout the country, the National Service for Women has been working to have a gender-based approach adopted by the new institutions and applied in the implementation of new procedures. It has

pursued these efforts in conjunction with the Public Prosecutor's Office and has focused particularly on the Victims and Witnesses Unit's initial reception of women victims of crimes and on supporting the teams in the unit. In the regions, links and work agreements have been established between these units and the National Service for Women's centres for the comprehensive care of victims and the prevention of domestic violence, with the intention of providing the victims and witnesses of serious domestic violence with adequate assistance and therapeutic support.

70. In the prison system, initiatives have been taken in coordination with the Chilean prison service to prevent or put a stop to discrimination against women. More specifically, the Department of Rehabilitation has been promoting training on gender issues for officials working with women, children and families and has been trying to improve the way women prisoners are looked after. The Prison Regulations provide that "prison wardens may authorize visits by family members or conjugal visits, where conditions in the establishment permit, for inmates who are not entitled to leave the prison and who have requested a visit in advance". Until 2002, the Women's Prison, which houses over 95 per cent of the women in prison in the Metropolitan Region, did not have the infrastructure necessary for conjugal visits. Since earlier this year there has been a special room for this purpose that complies with the standards of hygiene needed to prevent the sexual transmission of diseases.[51] In addition, the Chilean prison service is implementing a programme called "Know your child", the main aim of which is to support the development and exercise of the formative role of fathers and mothers in their children's growth, acquisition of values and spiritual development. It also runs a programme for breastfed babies, to provide physical protection, emotional and psychomotor stimuli and food so that the babies and children of women prisoners can live with their mothers in much the same way as in the world outside. In 1999, in coordination with the Integra foundation, nurseries were opened in the women's wings of prisons. They are staffed by trained personnel and follow a structured educational programme that involves the participation of the mothers.

Cooperation with the international system of protection

71. Chile has not yet ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, because of resistance from opposition senators. The Government has not pressed ahead with the ratification process because of the strong likelihood of failure. It is waiting for better political, electoral or ideological conditions to make ratification more feasible. The main arguments of conservative opponents to ratification of the Optional Protocol are that it would transfer sovereignty to an international organization and pave the way for the decriminalization of abortion in Chile.

Article 4

Legal reform

72. The constitutional reform of August 2005 made the following changes regarding states of exception in Chile:[52]

- The Constitution establishes that the exercise of the rights and guarantees provided for in the Constitution may only be altered in the following states of exception: a state of alert, in the event of external war; a state of siege, in the event of internal war

or disturbances; a state of emergency, in serious cases of disturbance of the peace and harm or threat to national security, whether from internal or external causes; and a state of catastrophe, in the event of a public disaster. Before the reform, the Constitution did not specify what was understood by these situations of exception: the reform introduced the phrase "when they seriously affect the normal workings of State institutions";

- With regard to the state of alert, the reform abolished the President's authority to suspend or restrict freedom of information or opinion, restrict the right to form or join a trade union, and impose censorship on correspondence or communications. As a result of the reform, the President is authorized only to suspend or restrict personal freedom and the right to freedom of assembly and work; to restrict the right to freedom of association and to order the interception, opening or recording of documents and communications of all kinds; and to order the requisition of property and limit the right to own property;

- With regard to the state of siege, the reform abolished the President's authority to have individuals transported from one place to another and to restrict the exercise of freedom of information and opinion. As a result of the reform, the President may restrict freedom to travel and have individuals arrested in their homes or in such places as are determined by law, and may also suspend or restrict the right to freedom of assembly;

- With regard to the state of catastrophe, the reform abolished the President's authority to restrict the movement of persons, the transport of merchandise, labour rights and freedom of information and opinion. As a result of the reform, the President may restrict freedom to travel and freedom of assembly, requisition property and limit the right to own property. The President may take any extraordinary administrative measures necessary for a prompt return to normality in the area concerned;

- Before the reform, the assent of the National Security Council was required to declare a state of alert or state of siege; in the case of the latter, the assent of Congress was also required. As a result of the reform, the National Security Council no longer has any say in the matter, and the President needs the assent of Congress in both situations. The deadline by which Congress must accept or reject the President's proposal has been reduced from 10 to 5 days. If Congress gives no answer before this deadline, it is taken to have approved the declaration of a state of exception;

- While Congress is preparing its opinion on the declaration of a state of alert or state of siege, these may take effect immediately, although in the case of a state of siege only the right to freedom of assembly may be restricted until it has given its opinion. The measures taken during this period are open to review by the courts, which can even, in exceptional cases, evaluate the reasons and de facto circumstances invoked by the authorities to decree the situations of exception referred to above. Before the reform, a situation of siege was put into effect immediately with the agreement of the National Security Council;

- Before the reform, a state of siege was declared for a period of 90 days and the President could seek an extension, but Congress could, at any time, decide by an absolute majority not to give effect to a state of siege that had been approved. The reform reduced this period to 15 days, but the President may request its extension. A state of alert remains in force for as long as the external war persists, unless the President decides to suspend it earlier;

- Before the reform, the President declared a state of catastrophe with the agreement of the National Security Council, whereas since that time, although the President still declares it, he or she is required to notify Congress of the measures taken by virtue thereof, and Congress can refuse to give effect to the declaration after 180 days if the reasons for making it have definitively ceased to apply. The assent of Congress is needed to extend a state of catastrophe for more than one year;

- A state of emergency is declared by the President, but he or she is required to notify Congress of the measures taken by virtue thereof; the President can decree such a state for a maximum period of 15 days, which can be extended by a further 15 days; any further extensions require the agreement of Congress;

- The reform requires that states of exception be regulated by a constitutional law governing their declaration and the implementation of the requisite legal and administrative measures. The law will set out what is strictly necessary for a prompt return to constitutional normality and will not alter the tasks or functioning of constitutional bodies or the rights and immunities of their heads.

Protection of rights during states of exception

73. Since democratic government resumed in 1990, no President has declared a state of exception. A declaration of a state of exception 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 state of exception concerned or were taken by an unauthorized authority, or if their adoption and implementation infringes on the basic guarantees contained in the Constitution.

74. Under the above-mentioned reforms, courts may evaluate the reasons or de facto circumstances invoked by the authorities to decree a state of exception only during the period in which Congress is preparing to give its opinion on the declaration of a state of alert or siege. However, where particular measures affect constitutional rights, the right to seek the appropriate remedy from the judicial authorities is still guaranteed; this is of paramount importance for the protection of the rights of the persons affected by measures taken during a state of exception. Before the reform, the lodging and processing of an appeal for *amparo* and constitutional protection did not suspend the effects of the measures decreed in states of exception, regardless of the final outcome of the appeal.

Article 5

75. As was pointed out in Chile's previous report, the Constitution expressly guarantees that the norms regulating or complementing fundamental rights cannot alter the essence of those rights or impose conditions, obligations or requirements that would impede their free exercise; rulings of the Constitutional Court on the interpretation of this constitutional provision were cited in this respect.

Article 6

76. It was pointed out in the previous report that the right to life is guaranteed by the Constitution, which covers, inter alia, the right to life of the unborn child and the protection and preservation of the environment. Attempts on life are punishable under the Chilean Criminal Code.[53]

Responsibility and punishment of law-enforcement officials for violations of the right to life

77. The 1980 Constitution devotes a special chapter to the armed forces and the forces of law and order, making a clear distinction between them. The forces of law and order - the "public security force" - consist of the *Carabineros* and the investigative police - uniformed and plain-clothes police respectively. Their task is to guarantee law and order in the country and to assist the Public Prosecutor's Office and the courts in enforcing judicial decisions, since these bodies have no means of their own to do this. It has already been pointed out in this report that the constitutional reform of August 2005 established that these two police corps will be reporting to the future ministry of public safety.

78. Both the investigative police and the *Carabineros* have internal mechanisms to control or monitor the activities of their officers. These mechanisms are fully operational and help protect the life and integrity of persons.

79. The administrative responsibility of *Carabinero* officers for conduct defined as an offence against the life and physical integrity of persons is investigated by means of the relevant administrative procedures ordered by the institutional authorities empowered to do so.[54] In administrative investigations, the role of prosecutor is taken by a law-enforcement officer of the *Carabineros* who is of higher rank or seniority than the officer under investigation. If the investigation finds that some of the misdemeanours provided for in the *Carabineros*' disciplinary rules have been committed,[55] the punishment ranges from a warning to separation from service for officers, or dismissal for misconduct for personnel appointed by the institution itself.

80. As far as legal liability is concerned, if a *Carabinero* officer injures or kills someone in carrying out an order, the officer is guilty of the offence of "using unnecessary violence", as defined in article 330 of the Code of Military Justice, and is liable to a prison term ranging from 5 years and a day to 15 years. Military courts have jurisdiction over this offence; appeals against their decisions are heard by a court martial.

81. In the investigative police, the Office of the Inspector-General, which reports directly to the director-general of that police force, examines police procedures and prosecutes any infringements of legal, administrative or regulatory standards. Since 1992, a long-term plan to

gradually modernize this police force has been implemented, and has reviewed and reformulated its regulations and structure. This process has involved a number of internal measures that effectively help to protect the life and integrity of persons, as described below:

- Since 1990, the role of the Internal Affairs Department (No. V) has been redefined to enable it to receive complaints from individuals, whether they are victims or third parties, over violations of the rights of individuals by investigative police officers. Their complaints can lead to an administrative investigation or, where appropriate, a judicial complaint;

- In 1993, the Higher Council on Police Ethics was established. This is a collegiate body that advises the Director-General of the investigative police, analyses officers' behaviour and institutional arrangements, and proposes specific decisions that can and do lead to the discharge of officers who stray from the correct pattern of behaviour;

- Also in 1993, the Department for Oversight of Judicial Procedures (No. VIII), which reports to the Office of the Inspector-General, was established to take a critical look at the performance of officials and to improve the way the police work, proposing specific procedures to identify any irregularities or official responsibilities, which can also give rise to administrative investigations or judicial complaints;

- A code of professional ethics containing the principles governing the conduct of officers in this police force has been in effect since 1995. Article 4 of the code states that police officers are responsible for "the physical and psychological health of the detainees in their custody, and shall ensure their full protection and take immediate action to secure medical attention for them when necessary". The code is inspired by the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials, and requires their implicit and explicit ethical provisions to be integrated in command structures and in the training of aspiring detectives. It is a set of standards considered by the institution to be the ultimate expression of current thinking on officers' conduct. Compliance with these standards is compulsory and violations of them can lead to sanctions for police officers, including their expulsion from the police. The text of the code is on public display in all barracks of the investigative police.

82. All activities of members of the investigative police that could be considered offences under national legislation, irrespective of any administrative responsibility that might be established, fall within the jurisdiction of the criminal courts under the old or new Code of Criminal Procedure. Any public officials who use torture on a prisoner, causing the person injury or death, are liable to a penalty of up to 15 years' imprisonment, in addition to a lifelong ban on holding a public position or office.[56]

83. With regard to the use of firearms by the police, the principle of proportionality is strictly applied to both the investigative police and the *Carabineros*.[57]

84. The National Department of the Prison Service, which is staffed by public officials and reports to the Ministry of Justice, is responsible for running prisons. It is responsible for the care and custody of detainees in pretrial detention and convicted prisoners. The Prison Regulations guarantee inmates' rights and an administrative statute sets out the sanctions for infringements of those rights by prison officers. Since the entry into force of the amended criminal procedure, the criminal courts and the Public Prosecutor's Office have been the bodies authorized to investigate attempts on life and physical integrity committed by prison officers (see paragraphs 166-175 below).

Education and other measures for the protection of human rights in relation to law-enforcement officials

Investigative police

85. Three institutions provide training for the investigative police: the School for Investigative Police, which trains future investigative police officers and awards the "police investigator" diploma; the Higher Academy for Police Studies, which trains future police chiefs and provides in-service training; and the Professional Training Centre, which reviews courses and curricula and provides continuous training for police personnel in the various departments and categories through professional specialization programmes.[58]

86. The investigative police acknowledges ethnic diversity and non-discrimination, offering the Huelén scholarship for Mapuche children and scholarships for foreign students. It also recognizes religious diversity - there are Catholic and evangelical chaplains in the School for Investigative Police - and gender issues (conditions in the school are the same for women and men).

87. Since 1992, as part of efforts to modernize the investigative police, an in-depth analysis and evaluation has been carried out of education and initial and advanced training for police personnel with the aim of producing a professional scientific and technical police force. As a result, courses and curricula in all the above-mentioned educational establishments have been revised. In June 1993, the Office of the Director-General of the investigative police made it obligatory to include the subject of "police ethics" in all courses given within the institution.

88. In April 1996, the Educational Ethics Council was established under the chairmanship of the Director-General and is composed, inter alia, of teachers of the subject of ethics. The council's functions include: updating the objectives, content, methodology and course books of institutional programmes on ethics; studying student behavioural problems that jeopardize institutional principles; and studying ethical problems relating to education.

89. In the light of the rise in educational standards in the training institutions of the investigative police as a result of the new approach taken in this area, the 1998 amendment to the Constitutional Act on Education authorized the School for Investigative Police to award State-recognized university-level vocational degrees, and also authorized the Higher Academy to award postgraduate degrees, masters' degrees and doctorates in its specialist field.

Carabineros

90. The professional training of all *Carabineros* personnel is the responsibility of that institution's Education Department, the academic section of which is responsible for five-year reviews of the courses and curricula mentioned below. *Carabineros* fall into two categories: officers and personnel appointed by the institution. The training of personnel from each of these categories is carried out by different teachers. Officers are taught in the School for *Carabineros* and the Police Sciences Academy. Personnel appointed by the institution are taught in the Police Training School and School for Non-Commissioned Officers.[59]

91. In addition to regular courses, a distance-learning strategy covering the whole country has been implemented to offer career-long training for *Carabineros*. In 1987, the idea of continuous training was introduced with the advanced course for promotion from junior officer to second lieutenant. Human rights questions are covered within the area of law. Since July 2001, there has been an advanced course for sergeants second class and master corporals responsible for order and security, which will be offered throughout Chile in the next few years to all personnel appointed by the institution. Human rights issues are covered on the course.

92. General Order No. 1052 of 11 March 1995, entitled "Core rights derived from human nature", was intended to bring the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the United Nations on 17 December 1979, to the attention of all *Carabineros*. The order provides for the inclusion of these instruments in ordinary and advanced training courses for staff and also in the examination topics for personnel seeking promotion.

The death penalty and life imprisonment

93. The death penalty has been abolished[60] and replaced by qualified life imprisonment, which involves deprivation of liberty for life under a special regime governed by provisions in the Criminal Code stipulating that prisoners are ineligible for parole until they have served 40 years of their sentence, all the requirements for parole must be met before it can be granted, and prisoners may not be granted any of the privileges provided for in the Prison Regulations or any other legal instrument that would permit their release, even temporarily. However, they may be allowed out of prison, under appropriate security arrangements, if their spouse or one of their parents or children dies or is in imminent danger of dying.

94. Prisoners are not eligible for amnesty or general pardon unless the relevant law specifies otherwise. A personal pardon for reasons of State is permissible if they have a duly certified serious or terminal illness from which they could die at any time or a physical disability so serious that it prevents them from taking care of themselves. Pardons must be granted in accordance with the legal rules governing them.

95. Life imprisonment is applicable to offenders over the age of 18. Pursuant to article 72 of the Criminal Code, persons aged over 16 but under 18 who have been declared capable of discernment and thus criminally responsible cannot be sentenced to life imprisonment; in the case of such persons the punishment applicable to the offence must always be reduced. Consequently, as life imprisonment has been the stiffest punishment on the statute book since the

abolition of the death penalty in May 2001, under the above-mentioned article 72 individuals under the age of 18 found to be criminally responsible cannot be sentenced to life imprisonment.

96. Under the law on juvenile criminal responsibility that will come into effect in mid-2006 (see paragraphs 228-230 below), the age of criminal responsibility will be lowered: the law will apply to young persons who, at the moment of commencement of the offence, were aged over 14 and under 18, and who are considered by law to be "adolescents". The maximum custodial or semi-custodial sentence for adolescents may not exceed 5 years if the offender is under 16, or 10 years if he or she is older.

97. The death penalty is retained for certain offences under the Code of Military Justice but only for unlawful acts committed in times of war.

The crime of genocide

98. Congress is examining a bill to incorporate into the domestic legal system the crime of genocide, crimes against humanity and war crimes as set forth in the Rome Statute of the International Criminal Court. The bill has already received general approval in the Senate.

Measures relating to violations of the right to life committed under the military regime (update on the measures described in Chile's fourth periodic report, with regard to clarification of violations of the right to life, reparation for victims and their families, judicial investigations into violations of the right to life and the amnesty decree-law)

99. Since March 1990, Chile's democratic governments have been committed to taking legal and administrative measures to establish the truth and provide justice and reparation for the victims of human rights violations committed under the military regime. Such measures began to be implemented virtually from the moment President Patricio Aylwin took office, through the work carried out in 1990 by the National Commission on Truth and Reconciliation and the publication of its report in February 1991.

100. At the international level, Chile was an active member of the working group that drafted the International Convention for the Protection of All Persons from Enforced Disappearance, which establishes that the systematic practice of enforced disappearance constitutes a crime against humanity under international human rights law, with all the consequences of such a classification, namely, that it is not subject to prescription or amnesty.

Truth[61]

(a) National Commission on Truth and Reconciliation

101. This document makes recommendations for compensating victims for material losses and suffering, preventing future violations of human rights and consolidating a culture of respect for human rights. In the years when the Reparation Act[62] - which was based on these recommendations - was in force, thousands of relatives of victims received compensatory allowances and their children received educational benefits, at considerable cost to the public purse.[63]

(b) National Office for Returnees

102. The National Office for Returnees was established in 1990 to assist with the reintegration of exiles. In four years of operations, it took care of 52,577 persons.[64]

(c) People dismissed for political reasons

103. Three laws were passed to entitle people dismissed for political reasons between 11 September 1973 and 10 March 1990 to non-contributory survivors' pensions and ex gratia pension credits.[65]

(d) Forum for Dialogue

104. In 1998, the Government of President Eduardo Frei set up the Forum for Dialogue to bring the armed forces into the national dialogue on human rights violations under the military regime, in order to involve them in the search for the truth about the fate of detainees who disappeared and were executed.

Reparation

105. It was pointed out in Chile's fourth periodic report on its implementation of the Covenant that the Reparation Act established allowances and educational and health benefits for the spouses, mothers and children of victims. A total of 3,195 principals were recognized (2,772 victims of human rights violations and 423 victims of police violence, of whom 160 were members of the armed forces). The situation with regard to these benefits in 2003 is described below.

(a) Compensatory allowances for the relatives of victims recognized by the National Commission on Truth and Reconciliation

106. A total of 5,099 persons have obtained a compensatory allowance: as at June 2003, 1,287 spouses, 1,187 mothers/fathers, 252 mothers of children born out of wedlock, 244 children and 133 children with disabilities were in receipt of the allowance. At the heart of President Lagos' human rights proposal, "No tomorrow without yesterday", is legislation increasing the current amounts by 50 per cent and raising benefits for the mother or father of a child born out of wedlock from 15 to 40 per cent. In addition, the father was named as a new beneficiary in the event of the death of the mother or her relinquishment of the benefit, and a one-off payment of 10 million pesos (US$ 18,872) was introduced for children born in or out of wedlock who had never received an allowance; those who had received something received a lower payment. For those who had a relationship with the victim but did not qualify as a beneficiary under the law, a fund was set up to cover 200 ex gratia allowances.[66]

(b) Educational benefits for the relatives of victims recognized by the National Commission on Truth and Reconciliation

107. Educational benefits consist of the payment of tuition and enrolment fees and a monthly grant for students in secondary, technical or university education up to the age of 35. The number of beneficiaries was as follows: 1,049 in 1998, 995 in 1999, 918 in 2000, 843 in 2001, 854 in 2002 and 760 up to June 2003.

108. These benefits were improved by a law that extended them to cover completion of the student's thesis, through continued payment of the monthly grant and the fees charged by the educational institution for a further period of up to one year. Effective administrative measures were also taken to make continued funding of studies contingent on passing certain academic examinations.

(c) Compensatory allowance for victims recognized by the National Commission on Political Prisoners and Torture

109. All the victims recognized by this commission (see paragraphs 143 and 144 below) receive an annual allowance of 1,353,798 pesos if they are under the age of 70; 1,480,284 pesos if they are over 70 and under 75; and 1,549,422 pesos if they are over the age of 75. This allowance is payable in 12 monthly instalments and is adjustable.[67]

(d) Health benefits

110. In fulfilment of a recommendation by the National Commission on Truth and Reconciliation that all victims should be compensated for harm to their physical and mental health, the Ministry of Health established the Programme of Compensation and Comprehensive Health Care (PRAIS) in 1991.[68]

111. On the basis of President Lagos' "No tomorrow without yesterday" proposal, the medical benefits currently provided under this programme for torture victims and others affected by human rights violations have been regulated by law. This measure means that the future of the programme, which was one of many run by the mental health unit of the Ministry of Health and was in danger of being eventually abolished or changed, is now assured. Under the regulations, existing health services throughout the country must have a specialized PRAIS team consisting of at least a doctor, a psychologist, a psychiatrist, a social worker and a secretary.[69]

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

112. For several years Chile sponsored a resolution on this subject that has just been adopted by consensus at the General Assembly of the United Nations and constitutes a major step forward for international human rights law.

Justice

(a) Trials relating to detainees who disappeared

113. There has been no let-up in the pursuit of justice in cases of human rights violations committed during the military regime. In recent years, this work has been boosted by improvements in the courts as a result of, among other things, the new membership of the courts since 1997 and the appointment of special judges to deal with such cases. As at November 2005, 387 trials - concerning 1,234 victims - were under way in the courts of justice, and 430 State officials were on trial or had been convicted for human rights violations committed under the military regime.

(b) Amnesty decree-law

114. With regard to the trial and punishment of State officials responsible for serious human rights violations under the military regime, Chile's democratic governments have opposed the implementation of the amnesty decree-law, which unfortunately could not be repealed for lack of the necessary parliamentary majority. The Government of President Lagos holds that it is for the courts to interpret the decree-law.

115. 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. However, the practice of the Supreme Court began to change in 1998, and some of its rulings have overturned decisions by the military courts to terminate trials on the basis of the decree-law.

116. Another change in Supreme Court practice 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 legal scholars, 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.

117. In November 2005, the courts were handling one case 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; 7 cases involving 30 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 14 cases involving 35 detainees who disappeared, in which the perpetrators had been convicted of aggravated kidnapping and which were the subject of appeals.

Measures to improve conditions conducive to enjoyment of the right to life

(a) Reducing child mortality, malnutrition and epidemics

118. For more on these aspects of enjoyment of the right to life, see the material on the right to health presented in Chile's third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights.[70]

(b) Reducing environmental pollution

119. The Constitution guarantees everyone the right to live in a pollution-free environment, which indirectly safeguards the right to life. Under the Constitution, the State has a duty to ensure that this right is not jeopardized and to promote the conservation of nature. The Constitution also provides for the imposition by law of specific restrictions on the exercise of certain rights or freedoms in order to protect the environment. It stipulates that the right to own property is subject to restrictions and obligations deriving from its social function, that is, the general interests of the nation and concerns of national security, public utility and health and the preservation of the environment.[71]

120. In Chile, as in other developing countries, environmental management has been in the hands of the country's institutions for just over a decade, since democracy was established in 1990. During this period, successive Chilean Governments have made progress in the design and implementation of environmental policy. One major step forward was the introduction of modern environmental legislation and institutions. Chile's environmental policy is based on the concept of sustainable development, which seeks to combine economic growth and environmental protection. In recent years, since the legal framework was established, substantial progress has been made in environmental management, and is reflected in a better quality of life and greater commercial opportunities for producers.

121. The Environment (Framework) Act establishes environmental management instruments and institutions to guide action by the State, the private sector and the general public in this field. These instruments include environmental education and research; environmental impact assessments; citizen participation; management plans; environmental quality and emissions standards; and the Environmental Protection Fund. The institution responsible for putting them into practice is the National Commission on the Environment (CONAMA) and its affiliated bodies: its board of directors, executive management, advisory boards and regional environmental commissions.[72]

(c) Water pollution

122. As far as sanitation is concerned, drinking-water coverage for the urban population of Santiago rose from 99.8 per cent at the beginning of the 1990s to 100 per cent in the second half of the decade, and to 99.3 per cent in all urban centres in the country. Coverage by the sewerage system was also increased, to 97.3 per cent of that population and 91.6 per cent of the population as a whole. These figures put Chile among the leading Latin American countries in this area.

123. The gradual construction of wastewater treatment plants is making it possible to recycle a large proportion of the country's freshwater resources. This is important since liquid household waste is the main source of water pollution in Chile. Construction is on schedule and about 35 per cent of wastewater is being treated. Investment by the sanitation companies made it possible in 2002 to treat 60 per cent of wastewater, and the intention is to reach 93.8 per cent by 2010.

(d) Waste management

124. At the beginning of the 1990s, Chile already had coverage of 98 per cent in the collection of solid household waste in urban areas. However, final disposal of the waste took place on sites with no environmental certification, so that there was no way to control or mitigate the effects of its final disposal on the environment. Since 1997, when new projects were first required to have environmental certification after an environmental impact study had been carried out, the treatment and disposal of solid waste in Chile has been visibly modernized. This is mainly the result of building landfill sites that have to meet high technical and environmental requirements. In 2000, as a result of this change, 50 per cent of the waste produced in Chile was taken to landfill sites, up from only 13 per cent in 1996. The country has now embarked on a major campaign to further improve waste management by cutting down on waste and recycling it, so as to reduce the amount of waste produced.

(e) Air pollution

125. In 1990, the problems of air pollution associated with emissions from various sources of pollution had been building up for several decades. They were mainly concentrated in the capital, Santiago; the centre and north of the country, as a result of mining activities; and towns and cities in the south, owing to the widespread use of firewood. In the present decade, great progress has been made in clearing up air pollution in Santiago, which was minimal by 2005. Against a background of constant economic growth, the country has acquired crucial experience in developing monitoring mechanisms, introducing new technology in transport and industry, and developing rules and financial tools.

Article 7

Offence of torture and penalties[73]

126. The offence of torture together with penalties commensurate with its gravity did not exist in Chilean criminal legislation until the reform of the Criminal Code in July 1998.[74] Prior to this reform, torture was not a criminal offence. 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 unconvicted prisoners, cause them physical suffering or treat them with unnecessary severity", and also persons who "arbitrarily cause them to be arrested or detained in places other than those designated by law". These offences cover physical harm only and do not provide for the possibility that torture may involve acts causing psychological harm.

127. As a result of the reform, article 150 A was added to the Criminal Code, laying down specific punishments for the offence of torture by establishing appropriate penalties for public employees who practise it. The provision covers physical and mental harm and punishes anyone who orders torture, consents to its use or, being aware of the situation, does not prevent or put a stop to it when he or she has the power to do so. It provides for harsher penalties (up to 10 years' imprisonment) for public employees who, by means of torture, oblige victims or third parties to confess or provide information, and for penalties of up to 15 years for employees who cause the injury or death through torture of persons deprived of their liberty, where such acts may be attributed to their negligence or carelessness.

128. The reform of the Criminal Code also resulted in the addition of article 150 B, which imposes penalties ranging from 61 days to 10 years for persons other than public employees who commit the offences punishable under articles 150 and 150 A mentioned above. Article 150 of the Criminal Code was retained: it imposes penalties ranging from 61 days to 5 years of rigorous or ordinary imprisonment for persons who order or unduly prolong the incommunicado detention of persons deprived of their liberty, cause them physical suffering or treat them with unnecessary severity, or arbitrarily detain them in places other than those designated by law. In addition, article 255 punishes with dismissal and a fine public employees who in the discharge of their duties resort to unwarranted harassment or unlawful or unnecessary pressure against persons.

129. Article 330 of the Code of Military Justice, which is applicable to personnel of the armed forces and the *Carabineros*, punishes all such personnel who "in executing an order from a superior or in the exercise of their military duties employ, or cause to be employed, without due

reason, unnecessary violence in the execution of the acts which they are required to perform". It lays down penalties ranging from 41 days of short-term imprisonment to 540 days of rigorous imprisonment if no injuries are caused or 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.

130. Attempted torture and involvement in the offence of torture as an accomplice or accessory are also punishable under the general provisions of the Criminal Code. In such cases the court generally imposes a punishment one or two steps lower down the scale.[75]

Prevention of torture

(a) Safeguards for detainees under the new Code of Criminal Procedure

131. Under the new Code of Criminal Procedure, accused persons enjoy various rights from the moment proceedings are initiated (see paragraphs 151 and 158 below). One such right is the right "not to be subjected to torture or other cruel, inhuman or degrading treatment". Under the new system of criminal procedure, a judge responsible for procedural safeguards who considers that an accused person is the victim of some 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 to protest against action taken by non-judicial authorities affecting the freedom of an individual, enabling the judge to examine, by the simplest and swiftest method, the conditions suffered by the person who has been detained arbitrarily or treated improperly.[76]

132. Other safeguards provided under this procedure which are connected with the right not to be tortured include questioning and other investigative procedures conducted by the Public Prosecutor's Office with the assistance of the police, and the reduction of police custody to a maximum of 24 hours. In addition, 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.[77]

(b) Invalidity of statements obtained under torture

133. Prior to the entry into force of the new Code of Criminal Procedure, the reform that classified torture as an offence 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. Other provisions of the Code stipulate that the confession must be made freely and in full awareness of the situation; prisoners may retract their confessions if they prove unequivocally that the confession was made by mistake, under coercion or because they were not in full possession of their faculties at the time it was made. Judges have an obligation to take steps to assure themselves that detainees have not been tortured or threatened with torture before making a confession, which is consistent with the provision that categorically prohibits the use of coercion or threats in order to induce accused persons to tell the truth. The failure of judges to

protect detainees is considered a "serious breach of duty", and incurs the appropriate penalty.[78] With regard to the investigation stage, the new Code of Criminal Procedure 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.[79]

(c) Regulation of police activity

134. The activities of members of the Investigative Police are regulated by the Investigative Police Organization Act and its Code of Professional Ethics. The former provides that any act of violence for the purpose of obtaining statements from detainees is prohibited and lays down penalties in the event of the death of victims or serious, moderate or light bodily harm to them. It also provides that a medical examination shall be carried out, at the request of the detainee or a third party, and the medical certificate shall be issued by a forensic physician, with a copy sent to the judge and the Public Prosecutor's Office. Furthermore, officials who wilfully fail to state the truth in accounts of their activities are liable to criminal penalties.[80]

135. The Code of Professional Ethics requires police officers, in carrying out their activities, to display full respect for and safeguard the dignity of all persons and the rights deriving therefrom. On the basis of this ethical premise, the Code explicitly states: "In no case may the investigating officer inflict, instigate or tolerate any form of physical or psychological ill-treatment against persons with a view to obtaining information or confessions to elucidate offences. Ill-treatment, inhuman or degrading treatment or torture shall not be accepted under any circumstances".[81]

136. In September 2000, the Human Rights Department of the Ministry of Foreign Affairs submitted to the Investigative Police the text of the principles contained in resolution 2000/43 adopted on 20 April 2000 by the United Nations Commission on Human Rights, entitled "Torture and other cruel, inhuman or degrading treatment or punishment". In October 2000, the Investigative Police Department issued General Order No. 1762, which states: "The officers of the Investigative Police of Chile, and in particular the chiefs of units and divisions, the General Inspectorate, the Internal Affairs Department (No. V), the Department for the Oversight of Police Procedures (No. VIII), prosecutors in charge of administrative proceedings; the directors of the School for Investigative Police, the Higher Academy for Police Studies and the Vocational Training Centre and teachers of human rights or similar subjects shall bear in mind the aforementioned principles in their respective spheres of competence." The fact that this resolution was included as part of the regulations shows the continuing interest of the Investigative Police in the prevention of torture.

137. The *Carabineros*, like the Investigative 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. Pursuant to these instructions, the principal concern of the *Carabineros* in their work is to ensure respect for the rights to life, to physical and psychological integrity, to the freedom of individuals, their honour

and that of their families, as well as respect for the home, property and in general all the rights and freedoms that derive from human nature. 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, under 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 involved in police inquiries, and must take the necessary precautions to provide them with the medical care they require.[82]

(d) Monitoring of interrogation methods and practices

138. The rules governing the interrogation and detention procedures of the Investigative Police are contained in internal regulations entitled "General orders". As for the periodic review of these regulations, the Department for the Oversight of Police Procedures (No. VII) is responsible for the continuous assessment of police procedures with a view to rectifying inappropriate methods and practices.

139. The *Carabineros* have regulations governing methods of questioning and the treatment of detainees, which describe as serious misconduct any actions that might qualify as abuse of authority while not constituting an offence. In area headquarters, prefectures and precincts throughout the country instructions are issued which stipulate strict observance of the rights of the detainees, with penalties for any infringement.[83]

Administrative and judicial investigations into acts of torture

140. The information provided on articles 6 and 10 of the Covenant (paras. 77-83 and 173) describes the procedures and competent bodies which ensure that members of the Investigative Police, *Carabineros* and the Prison Service are held administratively and legally responsible for their involvement in alleged acts of ill-treatment or torture.

Right to effective redress, compensation and rehabilitation for the victims of torture and other ill-treatment

141. The right to fair and adequate compensation for the victims of torture is guaranteed under the general provisions and principles of Chilean legislation. Every offence is followed up by criminal proceedings in order to investigate the punishable act and punish the persons responsible for it, as well as civil proceedings to provide redress for the civil consequences of the offence. Such civil proceedings, one of the purposes of which may be to seek compensation for damage caused, may originate in the criminal proceedings themselves. In conformity with the general provisions of Chilean law, the victim of torture, certain family members and the heirs of a person who has suffered torture and died as a consequence may initiate civil proceedings to seek compensation.[84]

Redress for victims of political imprisonment and torture during the military regime

142. The President's proposal on human rights "No tomorrow without yesterday" expressly states that Chile owes a debt to those persons who suffered unfair and humiliating deprivation of liberty during the military regime, often accompanied by torture, and who have not been recognized as the victims of repression nor been granted any compensation.

National Commission on Political Prisoners and Torture[85]

143. As a result of the President's proposal, the National Commission on Political Prisoners and Torture was established as an advisory body to the President. Its functions were (a) to classify persons who suffered deprivation of liberty and torture on political grounds during the period between 11 September 1973 and 10 March 1990, and (b) to propose to the President the conditions, characteristics, forms and methods of compensation that could be granted to persons recognized as political prisoners or victims of torture who had not already received any benefits by way of compensation on those grounds.

144. The Commission launched its activities on 11 November 2003 in the Metropolitan Region, and on 10 December 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 attitude of the different State bodies 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. In a year of activity the Commission received testimony from 35,868 people, of whom 28,000 residents in Chile and abroad were classified as victims; the remaining 7,000 testimonies were reviewed by the Commission, which classified a further 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) (see paras. 110 and 111 above).

Child abuse

145. For information on the right of children not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, on child abuse and on the measures and plans for the physical and psychological rehabilitation and social reintegration of children included in the National Plan on the Prevention of Child Abuse in Chile (2000-2006), see paragraphs 66-68 and 109-141 of the third periodic report of Chile under the Convention on the Rights of the Child.[86]

Prohibition of the conduct of medical or scientific experiments without the consent of the person concerned

146. In January 2001, the National Health Research Council was established, which advises the Ministry of Health on national policy concerning scientific research in the area of health. The same year a process of accreditation of the country's scientific ethics evaluation committees was launched with a view to setting up a national network of committees for the evaluation and follow-up of clinical trials. This process is coordinated by the Bioethics Unit of the Human Health Division of the Ministry of Health, which also includes hospital ethics committees that are responsible for problems of this kind arising in clinical practice.

147. Also in 2001, the regulations governing clinical trials using pharmaceutical products on human beings were approved;[87] they set forth the basic principles that have been under discussion in the field of bioethics since the publication of the *Belmont report*. They draw a

distinction between the different stages of clinical studies using pharmacological agents on human beings and stipulate how to uphold the principles of respect for the individual and the quest for goodness and justice, which in bioethical terms correspond to the principles of autonomy, beneficence, non-maleficence and justice.

148. However, Chile does not yet have a specific legal framework for research on human beings that does not involve unregistered drugs or drugs for unregistered uses. Accordingly, a bill is currently before the National Congress, based on a parliamentary motion, designed to set down basic rules for scientific research on human beings and to establish a national bioethics commission to advise the Government on such matters.

Article 8

Prohibition of slavery, servitude and forced or compulsory labour

149. Chile abolished slavery in 1823. Article 19.2 of the Constitution expressly states that "There are no slaves in Chile, and those who tread its soil shall be free". The 1926 Slavery Convention, the 1953 Protocol to it and the 1956 Supplementary Convention on the Abolition of Slavery were approved on 20 June 1995 and Chile's documents of accession were deposited with the United Nations on 7 November 1995.

150. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime was ratified by Chile in December 2004 and entered into force on 16 February 2005.

Article 9

The rights of detainees

151. Prior to the entry into force of the new Code of Criminal Procedure, following the reform of the former Code, a set of rights which arresting officers have a duty to notify orally to persons being arrested had already been established. Under these legal provisions the judge dealing with the offence must ensure compliance with these obligations; non-compliance results in a disciplinary investigation of the officer concerned and invalidation of any statements obtained from an accused person under such conditions. Violation of the rights of accused persons is punishable by suspension from duty and a prison sentence ranging from 61 days to 3 years.[88]

152. The former Code of Criminal Procedure was also amended, with pretrial detention limited to fewer cases, namely, those where it is required for the success of the investigation and where the judge considers that accused persons may obstruct the investigation by destroying, concealing or falsifying evidence or may induce third parties to be reticent or give false testimony in court. Specific circumstances were listed (severity of the penalty, number of charges, other cases pending) to which the judge, in a reasoned decision, must give special consideration with a view to determining whether the release of the accused would pose a danger to public safety.[89]

153. One of the general principles laid down in the new Code of Criminal Procedure with respect to the rights of accused persons is that the provisions of the Code allowing for the restriction of liberty or other rights must be interpreted restrictively and may not be applied by analogy.[90]

154. According to the new Code, accused persons have the following rights: to be informed of the charges against them and their rights under the Constitution and laws; to be assisted by a lawyer from the start of the investigation; to remain silent and to make a statement without being under oath; not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; to request the prosecutors to take steps which will clear them of the charges against them; to request a meeting with the judge in order to make a statement on the matters under investigation, with or without the presence of their lawyer; to request that an investigation be expedited and to be informed of its contents, with the exception of, and for the duration of, investigations that have been declared secret; to request that the case be dismissed and to appeal against any decision refusing the dismissal; not to be tried in absentia, without prejudice to situations where an accused person is in default.[91]

155. Accused persons who have been deprived of their liberty also have the following rights: to be notified of the ground for their detention; to be shown the arrest or detention order and to be informed of their rights; to be brought promptly before the court that ordered the arrest or detention; to request the court that they be released; to inform their family or a person they designate of the ground for and place of their detention; to meet their lawyer in accordance with the rules of the detention facility in question; to receive visits and communicate in writing except during incommunicado detention, in which case they may request the judge dealing with the case to authorize a visit by a minister of their religion and provide them with means of communication such as letters or telegrams.[92]

Obligation to bring detainees promptly before the court

156. 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.

157. 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.[93]

158. When the detainee appears before the judge responsible for procedural safeguards, a "detention review hearing" takes place, during which the judge verifies once again that the

detainee has been duly informed of his or her rights and in general that the detention is lawful. 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.[94]

Pretrial detention

(a) When is it appropriate?

159. The application of the new Code of Criminal Procedure represented a great step forward for the effective exercise of personal liberty and security. The Code provides that interim measures shall be taken against persons only when absolutely essential in order to serve the purpose of the procedure concerned, and shall last only for as long as is necessary. It also provides that those measures shall be ordered by a judge, who must substantiate them.[95] Such measures against a person include various types of restriction, which are appropriate when the charges relate to offences that are not punishable by the deprivation or restriction of liberty, and do not impinge on the liberty of the accused, pretrial detention and other interim measures listed in the Code, all of which entail varying degrees of restriction of the liberty of accused persons.[96]

(b) An exceptional measure

160. Under the new system of criminal procedure, pretrial detention is the exception, since the system is founded on the presumption that accused persons should remain at liberty throughout the investigation and trial. Pretrial detention is inappropriate when it appears disproportionate in terms of such factors as the gravity of the offence, the circumstances in which it was committed and the likely penalty. The new Code lays down that everyone has the right to personal freedom and individual security, and that pretrial detention is appropriate only when other interim measures are inadequate to serve the purposes of the procedure in question.[97]

(c) Duration

161. When a period of time has elapsed equivalent to half the custodial sentence that could be imposed, the judge in the case must convene a hearing to consider the extension or termination of the detention.[98] For information on the length of deprivation of liberty under the new system of criminal procedure, see tables 1, 2 and 3 in the annex.

Incommunicado detention

162. At the prosecutor's request and to ensure the success of the investigation, the court may prohibit any communication with the detainee or prisoner for a maximum of 10 days, but this shall not prevent access to a lawyer, medical care and the court. In such cases the court must issue instructions to the persons in charge of the detention facility or prison concerning the conditions of the incommunicado detention, which may in no circumstances involve confinement in a punishment cell.[99]

Remedy of *amparo*

163. Without prejudice to the provisions on habeas corpus enshrined in the Constitution, the new Criminal Code provides for the remedy of *amparo* before the judge responsible for procedural safeguards. This remedy is important since it gives all persons deprived of their liberty the right, without needing to apply for a court ruling, to be brought promptly before this judge so that the conditions and lawfulness of their deprivation of liberty may be examined. Counsel or another person may initiate *amparo* proceedings before 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.[100]

Identity checks

164. The fourth periodic report of Chile mentioned the existence of draft legislation to eliminate "arrest on suspicion", which was regulated in the former 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. Under the reform of the Code, the provision that granted the police the powers to carry out such arrests was revoked. 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.[101]

165. Recently the following amendments have been introduced to the provision of the Code of Criminal Procedure governing identity checks: such checks must now be carried out by the *Carabineros* or Investigative 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, give a false identity or 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.[102]

Article 10

New prison regulations

166. As indicated in the previous report, the Prison Regulations govern matters relating to prison policy and the conduct of the staff in charge of these institutions. The Regulations, which were amended in 1998,[103] embody the principles of international law according to which prison policy must be underpinned by respect for the prisoner's fundamental rights. They prohibit torture and arbitrary discrimination and guarantee the ideological and religious freedom of prisoners, their right to honour, to be called by their own name, to privacy, information, education, access to culture and the full development of their personality and the right to submit petitions to the authorities, under the conditions established by law and in accordance with the Prisons Organization Act.

167. The Standard Minimum Rules for the Treatment of Prisoners adopted by the Economic and Social Council of the United Nations, together with the International Covenant on Civil and Political Rights, the Convention against Torture and the Universal Declaration of Human Rights, served as the theoretical framework for the Prison Regulations. Their provisions regulate the care and custody of and assistance to persons held in pretrial detention and serving sentences, and the educational measures required for their social reintegration. They are based on the guiding principle that prisoners' relationship with the State is governed by the law, insofar as, apart from the rights forfeited or curtailed through their arrest, pretrial detention or prison sentence, their legal status is identical to that of citizens at liberty. Prison staff are under the obligation to treat all prisoners with respect for the dignity of the human person: any harassment or abuse of authority is duly punished in conformity with the laws and regulations in force that lay down penalties for prison staff who infringe prisoners' rights.

168. There are also new mechanisms for the internal supervision and oversight of prison guards: the Office of Administrative Oversight, which, among other things, is now responsible for the most important proceedings in which prison guards are accused of unlawful acts, and the Officials' Assistance Unit, which defends staff on trial for cases of ill-treatment in the performance of their duties and is responsible for seeking remedies against the institution concerned.

Education and training of prison staff

169. Since 1998, the School for Prison Guards has incorporated a human rights course in the curricula for trainee prison guards and trainee officers lasting one semester and two semesters respectively, with two hours of classes per week. The aims of the course are to familiarize students with the various agreements and treaties signed by Chile from the standpoint of the real situation in prisons.

170. Likewise, in 2001, a course on the culture of democracy lasting two semesters with two hours' classes per week was included in the curriculum for trainee officers. Participants learn about and discuss Chile's democratic institutions, from the standpoint of participation by and the rights and obligations of citizens. There are also other courses relating to respect for human rights, such as the course on the treatment of prisoners, which includes a unit on the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Universal Declaration of Human Rights, as well as a course on ethics and morals, a unit on constitutional law and a unit on institutional regulations, which covers the prison regulations. Generally speaking, subjects relating to respect for human rights cut across the whole programme of studies.

171. A human rights training manual for Chilean Prison Service staff, published in 1997, as a result of coordination between the Chilean Prison Service and the Chilean Human Rights Commission, an NGO, has been distributed to all prison facilities throughout the country.

172. 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 will help to improve the ability of the

Prison Service to implement prison policy and the reform of criminal procedure. The agreement was ratified in 2003. Early in 2006, the strategic planning and human rights programme will be extended to all Chilean prisons.

Administrative and judicial supervision of the activities of prison staff

173. All persons deprived of their liberty in prison, whether detained, on trial or serving a sentence, may independently or through another person file a complaint alleging that they have suffered verbal or physical torture or cruel, inhuman or degrading treatment, or have been treated with unwarranted severity. This may give rise to an investigation. Internal investigations are the responsibility of a prison officer, who must be of a higher rank than the prison guards allegedly involved, and must be able to exercise the necessary impartiality vis-à-vis the victims and the persons allegedly responsible. If the gravity of the incident so warrants, the Prison Service will order a pretrial investigation or administrative proceedings, in accordance with the provisions of the Administrative Statute.[104] During these proceedings, the prosecutors undertaking the administrative proceedings may order the suspension of the staff member in question; the National Director of the Prison Service is empowered to order the staff member's temporary removal from duty. Where appropriate, the authorities impose the corresponding official penalties, which may extend to dismissal of the guilty party, without prejudice to any criminal penalties that may be imposed by the courts. If the ill-treatment constitutes a criminal offence, the Prison Service officials must report the incident to the ordinary courts within 24 hours of learning of them.[105] Following the reform of the system of criminal procedure, the criminal courts and the Public Prosecutor's Office are competent to investigate such offences, which may result in prison sentences of up to 15 years if they cause bodily harm to or the death of the victim.

External oversight of prisons

174. Pursuant to amendments to the Courts Organization Code[106] under 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 visit 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 the parents or guardians of minors are entitled to accompany them on these visits.[107] With regard to cases that are to be heard in the criminal courts because they concern events which took place prior to the reform of the system of criminal procedure, the visits are carried out by the criminal court judges on the last working day of every week.[108]

175. 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 the 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 deems necessary, with a view to monitoring compliance with regulations and the treatment of prisoners and hear their complaints.[109]

Legal reforms

(a) Creating a system of social reintegration for convicted prisoners on the basis of good conduct[110]

176. This legislation adds a new provision in the arrangements for the serving of sentences, allowing for a reduction in the length of the sentence if certain conditions are met - basically that the behaviour of the convicted prisoner is graded as outstanding in each evaluation period. The legislation in question is not only a means of controlling the prison population through rewards for good behaviour; it is also expected to reduce overcrowding through shorter sentences.

177. The objectives of the legislation were fulfilled insofar as the inmates who took advantage of it had their sentences reduced and there has been a significant improvement in the conduct of offenders. The legislation also helped to improve relations between prisoners and prison guards. As a result of its application in 2004, a total of 13,446 convicted prisoners were graded as having outstanding behaviour, enabling them to apply for a reduction of their sentence. The number of beneficiaries whose sentences were in fact reduced stood at 2,619 for the first quarter of 2004, 65 per cent of whom were in closed regimes, 32 per cent on parole and 3 per cent in an open prison regime.

(b) Establishing alternatives to the deprivation or restriction of liberty[111]

178. The previous report mentioned this proposal, which has now become law. It is now possible to suspend night-time confinement or order alternative measures in the event of pregnancy, post-partum care, illness, disability or extraordinary circumstances which prevent the application of such confinement.

Steps to overcome overcrowding in prisons

(a) Cooperation between the State and the private sector

179. One innovation is the programme launched by the Ministry of Justice together with the Ministry of Public Works to invite tenders for the construction and administration of 10 prisons using private capital, with the State, through the Prison Service, retaining the basic functions of security and surveillance which cannot be delegated. The new facilities will have a total capacity for approximately 16,134 prisoners. It is planned to carry out the programme in four phases.[112] By the end of 2005, the first phase had already been completed: the Rancagua and Alto Hospicio prisons have already been opened and are operational, the one at La Serena will be shortly. The aim of the programme is to have an efficient prison system that provides society with guarantees of security and makes a real effort to rehabilitate prisoners while respecting their basic human rights; it is hoped that it will be conducive to a genuine programme of social reintegration. The architectural design of the units strictly observes the principle of separating prisoners according to their criminal profile so as to avoid the spread of crime. It consists of individual cells for all maximum and high-security prisoners and shared cells (maximum of three prisoners) for medium and low-security prisoners, all of which have their own bath. The facilities have a work area with industrial and craft workshops so as to ensure access to work and training. All institutions will have normal classrooms and training workshops, recreational areas and therapeutic facilities for drug addicts and alcoholics. The recruitment of private employees

to provide these services will enable the Prison Service to focus its human resources on surveillance and custody, and this will make it possible to create new management models that can be replicated in the old system, thereby ensuring the steady overall improvement of prison standards.

(b) Direct State funding

180. 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.[113]

Other measures to improve prison conditions

181. In 2002, the Prison Service conducted a national survey of prisons on the basis of which an improvement plan was developed and launched in the same year in the Metropolitan Region; the plan represents an investment of US$ 2,127,576.[114] Facilities are also being set up which comply with hygiene and health standards and provide a discreet and dignified setting for prisoners to receive conjugal visits at their request. A working group is currently drafting national guidelines on conjugal visit rooms.

Separation of convicted and unconvicted prisoners

182. As indicated in the previous report, the former Code of Penal Procedure stipulated that unconvicted prisoners undergoing trial proceedings should be separated from convicted prisoners, but that in practice the situation was not the same in all Chilean prisons. The new Criminal Code does not cover the category of unconvicted prisoners undergoing trial proceedings, as a result of which prisoners in Chile are separated according to the criterion laid down in the Code, namely taking into account their status as unconvicted prisoners before trial or convicted prisoners. In addition, in accordance with this new provision, minors are separated from adults, and first offenders from more dangerous prisoners. More traditional criteria such as sex and criminal record are also considered.

Prisoner Classification and Grouping Programme

183. Since 1999, 37 prison facilities from different regions have joined this Programme. This has meant that the infrastructure of all prisons has been upgraded and a proper grouping of prisoners made. Approximately US$ 1,756,260 has been invested in the Programme, increasing the capacity of the institutions concerned by approximately 32 per cent. In all 17 professionals were hired as regional classification coordinators to implement the Programme.

Rehabilitation and social reintegration measures

(a) Social welfare service for prisoners

184. The entire prison population of Chile benefits from this service, irrespective of whether they are convicted or unconvicted prisoners. In 2005, the social welfare service had a national staff complement of 136 professionals employed to give a timely response to the needs of the prison population in the various institutions. In 2005, a computerized registration and statistics system was set up to assess the quality of the care provided to individuals and groups.

(b) Including the Prison Service in the Sexual Equality Programme promoted by the National Service for Women (SERNAM)

185. The overall objective of this initiative is to improve the surveillance and care of, assistance to and social reintegration of the prison population and ex-prisoners through activities that take account of sexual equality in the main products and services provided by the Prison Service[115] (see paragraph 70 above).

(c) Study programmes

186. Since 1999 an education policy has been pursued in Chilean prisons, with educational plans and programmes for adults. Chilean prisons offer inmates access to basic education, with a bias towards technical and elementary education, and secondary education with the accent on technical vocational training.

187. In 2002, the first prisoners with technical vocational qualifications graduated from Valparaíso prison, 32 with a specialization in metalwork and 22 as electricians. There are education facilities at 91 prisons; in 62 of them inmates have been able to follow secondary school courses. There is one secondary school specializing in sciences and the humanities in Colina prison, and there are three technical and vocational secondary schools in prisons in Valparaíso since 2001, Concepción since 2002 and Arica since 2004. In other prisons there are courses run in association with local secondary schools. For information on the prison population engaged in study, see table 4 in the annex.

(d) Cultural programmes

188. Through the joint efforts of the Prison Service and the recently established National Culture Council, cultural and artistic workshops are organized in prisons; one noteworthy event is entitled "Free art", at which public exhibitions are held to promote prisoners' works of art.

(e) Prison labour programme

189. Prison labour plays a significant role in the rehabilitation and social reintegration of ex-prisoners in the outside world when they have served their sentences. The Prison Service has devised a labour programme for closed and semi-open prisons, whose purpose is to assist the social reintegration of prisoners through productive labour, vocational training and psychosocial training. The programme was launched in 1993, with a total of 3,872 beneficiaries. Since then the number of beneficiaries has increased by over 210 per cent and the programme is now run in virtually all Chilean prisons.

190. The different types of prison labour are as follows:

- *Work for external private companies*: This is an official policy of the Ministry of Justice and the Prison Service intended to open up an alternative for prisoners that more closely resembles employment in the outside world and offers them greater opportunities for joining the labour market when they have served their sentences. Businesses may join the programme in three different ways: companies which use their own machines, tools and equipment on premises provided free of charge by the

Prison Service; individuals or companies that have direct contact with prisoners and entrust them with specific tasks (complete or partial manufacture of goods, fittings, repairs, cleaning, framing and other services); or companies which contract out to the Prison Service jobs or services to be performed by prisoners.

– *Work in educational and labour centres run by the Prison Service*: These are workshops for work, production and training run by suitably qualified staff. There are 31 closed educational and labour centres within conventional prisons, and 21 semi-open centres which are run under less strict surveillance, featuring better living conditions and relations of trust and self-regulation. They are intended for prisoners from certain closed institutions who are due to be released shortly and of whom more is expected.

– *Microentrepreneurs*: Prisoners may become microentrepreneurs after they have done craft or trade work and reached a certain level of production and marketing skills.

– *Self-employed artisans*: This is the most traditional and widespread form of work among the prison population, which covers a wide range of categories and products, utilitarian, decorative and artistic, from the most basic products to items of real artistic and commercial value.

– *Internal services within prisons*: There is a need to meet the various demands for "domestic" services within prisons, such as preparing food, serving in canteens and dining rooms, cleaning and general hygiene services, maintenance of and repairs to basic infrastructure (electricity, gas, water, etc.). For information on the working population in prisons, see table 5 in the annex.

Situation in juvenile units in prisons

191. Juveniles are girls and boys aged 16 and 17 years who are deemed to have been capable of discernment when they committed various offences and who have been accused, charged or convicted by the competent courts. They may also be detained because the National Service for Minors has no observation and diagnostic centre in the detention facility. For information on juvenile units, see table 6 in the annex.

Administrative measures relating to juveniles in prison

192. Between 1999 and 2004, the following initiatives were launched to provide minors in prison with the necessary care:

– Entry into force in 2002 of the regulations applicable to juveniles placed in institutions run by the Chilean Prison Service,[116] which govern the functioning of special units for juveniles aged under 18 who are in conflict with the law.

– The appointment of Prison Service staff for duties at the national level, regional coordinators and chiefs of units in order to improve the way juvenile units are run; these officials are specially trained to attend to the needs of this sector of the prison population.

- National infrastructure and equipment programme for 43 juvenile units carried out in 2003 in juvenile units in all Chilean prisons, with a view to improving living conditions and security; this programme is expected to have a total cost of US$ 628,592 million.[117]

- SENAME care and annual subsidy programme carried out since 2001 under agreements between the Prison Service and SENAME. This programme provides guidance and technical advice for inmates and funding for each young person who receives daily care in juvenile units. For information on the amount of the subsidies provided by SENAME, see table 7 in the annex.

- Psychosocial support and legal defence projects implemented by institutions cooperating with SENAME: in 2003, US$ 403,217 was invested in the former and US$ 889,998 in the latter.[118]

Article 11

193. The Chilean legal system complies strictly with this rule of the Covenant. Such acts do not constitute criminal offences, nor may precautionary measures be ordered against individuals in actions relating to contractual obligations.

Article 12

Freedom of movement and residence

194. In Chile's previous report, it was noted that the rights to reside freely and move freely throughout the country and freely to enter and leave its territory were enshrined in the Constitution. The right to move freely throughout the country and freely to choose their place of residence is guaranteed to all inhabitants of the country, in the terms established by the Human Rights Committee,[119] namely, without distinction between men and women or between citizens and aliens who are legally residing in the country. Under the constitutional reforms carried out in August 2006, the power previously accorded to the President to move persons from one place to another within the country during a state of siege declared at times of civil war or internal disturbance or to restrict the movement of persons during a state of emergency in the event of a public disaster has been removed and, in both circumstances, the President is now only able to place limits on freedom of movement.

Restrictions on the freedom to enter and leave the country

195. Chile applies no restrictions on entry into the country on grounds of race, religion or nationality. Entry fees are charged to visitors under reciprocity arrangements with countries which apply such charges to Chilean citizens. Restrictions on entering and leaving the country are, as a rule, applied to persons sought for the commission of ordinary offences or are necessitated by phytosanitary restrictions which have no connection with the individual concerned.

Restrictions on freedom of movement and residence within the country

196. Chilean legislation contains no requirements for registration or restrictions on temporary or permanent movement anywhere within the country, nor does it include any controls on travellers or restrictions on entry into or departure from specified areas, except for private properties or military areas or during states of emergency.

197. Notwithstanding the conditions outlined above, certain residence requirements are placed on such persons as judges and other judicial officials, who are required to reside permanently in the city or town where the courts in which they are serving are situated. In addition, the Chilean Constitution specifies that only persons resident in the constituency in which they are standing as candidates may be elected as deputies and senators to the National Congress.[120]

Situation of aliens

198. Where the situation of aliens in Chile is concerned, arrangements regulating their place of residence depend on the need not only to protect their constitutional rights, but also to safeguard other constitutionally protected property or interests; for this reason, aliens entering Chile are required to comply with conditions laid down by law and with the country's immigration policies, if they wish to remain in the country.

199. The only restrictions placed on the entry of aliens into Chile are those specified in the Aliens Act,[121] which sets out both compulsory and optional provisions prohibiting the entry of foreign citizens into Chilean territory. The prohibitions are applied on the grounds of internal security, to prevent the entry of persons who have been convicted or are under prosecution for ordinary offences; for reasons of social security, to prevent the entry of persons who are unable to support themselves in Chile without becoming a social burden; and they are also applied to certain persons who have failed to comply with the legislation on the status of aliens. Entry into Chile may also be denied to persons who have been expelled from the country by government order, to persons who have been expelled from other countries and to minors who are travelling to Chile without the necessary authorization.

200. Any differences in the way that Chilean citizens and aliens are treated, in terms of restrictions placed on the freedom of movement of aliens, are consistent with international standards. The relevant provisions contained in article 2 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live[122] are scrupulously observed, the only restriction being the tourist visa requirement; this provision has been adopted on grounds of international reciprocity and consists in the obligation incumbent on citizens of countries with which Chile does not have diplomatic relations to register with the appropriate Chilean consulate prior to entering the country.

Article 13

Expulsion procedures and grounds for expulsion

201. In Chile's previous report, it was noted that aliens enjoyed the same rights as Chileans, except for certain restrictions on their political rights. The report also listed the grounds on

which expulsion may be ordered, the authorities which may order it and the procedures applicable under Chile's immigration legislation, which is described further below.

202. Application of expulsion may be obligatory or optional for the authority in question, and in both cases must comply strictly with the specific legal requirements. The Ministry of the Interior is the competent authority in expulsion matters, except in the case of aliens present in the country with valid tourist permits or extending their visits on the basis of such permits, in whose case expulsion is the responsibility of the relevant regional governor, the highest political authority in each region of the country. In the case of expulsions ordered by the Ministry of the Interior, the legality of the order is subject to constitutional review by the Office of the Controller-General. In any event, the order or resolution ordering this measure must be notified in writing to the person concerned.

203. The immigration authorities are responsible for implementing expulsion orders, once criminal liability has been established, in the event of serious ordinary offences and other specific offences set out in the immigration legislation, in particular those relating to trafficking in drugs, terrorism, physical violence, sexual abuse, clandestine entry into or departure from Chile and the use of false or forged documents. Implementation of the penalty ordered is the responsibility of the Investigations Police and, in their absence, the *Carabineros*.

204. In the case of lesser offences, misdemeanours or breaches of the immigration laws, while under law the administrative authorities have the powers to expel the offender, government policy in Chile favours regularizing the situation of the alien immigrant in question, in particular those whose situation is irregular but who have prospects of finding work and becoming integrated in society.

Number of expulsions

205. In 1996, there were 1,067 expulsions; in 1997, 843; in 1998, 1,073; in 1999, 1,130; in 2000, 959; in 2001, 1,159; and in 2002, 903, making a total of 7,134. The 7,134 expulsion orders issued over the period 1996-2002 should be seen in the context of a total of 169,602 temporary residence permits granted over the same period. In addition, 58,976 permanent resident permits were granted and a total of some 6 million persons crossed the Chilean frontier every year. Furthermore, figures from the 2002 census show that the number of aliens in the country grew by 75 per cent over the period 1992-2002, the highest increase in the last 100 years.

Effective remedy

206. Under the Chilean legal system, foreign citizens on whom expulsion orders have been served have the right to seek both administrative and judicial remedies, as outlined below.

(a) Administrative remedies[123]

207. These consist in a process of reconsideration, application for which is submitted, either in person or through the agency of any another person or a lawyer, to the authority which ordered the expulsion. Initiation of this procedure has the effect of suspending application of the measure, which can only be put into effect once the application has been resolved. The

application may be submitted to the offices of the international police, the provincial government, the regional authorities or the Ministry of the Interior and, abroad, to the country's diplomatic and consular offices.

(b) Judicial remedies

208. Provision is made for the following actions:

- Remedy provided in the Aliens Act,[124] which stipulates that, where an expulsion has been ordered by the Ministry of the Interior, the persons concerned may submit appeals to the courts, either in person or through any family member, within a period of 24 hours from the moment at which they were notified of the expulsion order;

- *Amparo* (habeas corpus);

- Protection remedy, which, once initiated, has the effect of suspending implementation of the expulsion order.

Safeguards applicable to the expulsion of illegal aliens

209. Although the protection provided under article 13 applies to foreign citizens who are lawfully present in the country, there are no discriminatory provisions in Chilean law which could infringe the rights of those aliens whose immigration situation is irregular; once the penalty of expulsion has been ordered against such persons by the authorities, they are subject to procedures similar to those applicable to aliens lawfully resident in the country.

Article 14

Reform of criminal procedure

210. As indicated in detail in the previous report, there are a number of provisions in the Constitution and in Chilean law which recognize and uphold the judicial system, equality before the law, the independence of the judiciary and the impartiality of the courts. The courts may not be relieved of their duty to exercise their function, even in the absence of a law applicable to the case in question.

211. The same document refers to the guarantees of due process which, under the Constitution and the former Code of Criminal Procedure, are enjoyed by any persons charged with an offence, namely: presumption of innocence, the right to be informed of the charge, the right to free legal defence if the defendant lacks the means to pay for such defence, the right to be tried without significant delay, the right not to testify against themselves, the right to review the evidence, the right to appeal against a sentence to a higher court, the right to be compensated for any judicial error and other rights.

212. The previous report also outlined the shortcomings in the former criminal procedure followed in Chile, noting that a radical reform process was under way, with the consideration in Congress of a new draft criminal procedure code and a number of associated legal reforms. As pointed out in the introduction to that report, since mid-2005, the revisions made to the Code of Criminal Procedure have been in full effect throughout the country, with the result that the kinks

in the country's previous criminal procedure are now being ironed out. The report also explained that the former Code of Criminal Procedure remained in force and was being applied by criminal courts in cases relating to offences committed before the revisions became effective and the new Code of Criminal Procedure entered into force.

213. Notwithstanding the differences between the previous and the new criminal procedure regarding protection of the rights of defendants, it should be borne in mind that, in this situation, problems will gradually fall away as the terms of pretrial detention and custodial sentences of persons whose cases were handled by the criminal courts all come to an end. In any event, under the former criminal procedure, in the exercise of the powers accorded to criminal courts, the resolutions of such courts were subject to top-down review by the appeal courts, which guaranteed, in all cases, that these resolutions would be neither arbitrary nor unlawful; to that end, the procedure allows extensive scope to parties to make appeals. In practice, some criminal courts under the former system used to apply more lenient rules which are now enshrined as general principles in the new Code of Criminal Procedure and apply, in particular, to juvenile offenders. In any event, Congress is currently considering a draft "bridging law" designed to speed up the processing of cases still under the previous system, offering a range of incentives to judges dealing with such cases to ensure that the cases are resolved speedily.

Right of all persons charged with offences to be heard in public by an impartial court and with minimum guarantees of due process

214. Under the new procedure, a separation has been made between the functions of investigation and prosecution, which were previously of an inquisitorial nature and were both under the responsibility of the judge, who conducted the investigation - which could be kept secret - and handed down the verdict. In the new system, the trial is conducted orally, in public and following an adversarial process and is entrusted to a collegiate court which considers the evidence and hands down a verdict on the basis of investigations carried out by a prosecutor from the Public Prosecutor's Office with the collaboration of the police. The Public Prosecutor's Office is accorded broad powers during the preliminary investigation, limited only by individual human rights, which can be upheld by the courts if they are violated. The judge responsible under law for procedural safeguards decides on any prior judicial authorization requested by the Public Prosecutor's Office for action to remove, restrict or interfere with the exercise of rights guaranteed by the Constitution.

215. The new code establishes all the minimum safeguards for due process mentioned in the Covenant:

- *Public nature of proceedings*: this is one of the basic principles of the new criminal procedure, set forth in its first article. Proceedings are conducted orally and in public, with very limited exceptions when necessary to protect the privacy, honour or safety of any party to the proceedings;[125]

- *Presumption of innocence*:[126] this too is a fundamental principle of the new procedure;

- *Trial without delay*: the investigation shall continue for no longer than two years from the day on which it was formally initiated until its dismissal, the rendering of a

decision not to proceed for lack of evidence or the preferment of charges; if charges are preferred, the judge calls all the parties within a period of 24 hours to a hearing to prepare for the oral proceedings; the judge then has between 15 and 60 days from the holding of this preparatory hearing to summon the parties to the oral proceedings themselves; the oral proceedings may last one day or longer, in successive sessions, until they are concluded; once the legal arguments have been heard, the court deliberates in private, after which, in the same hearing, it hands down its final verdict of innocent or guilty; in exceptionally complex cases, these deliberations may continue for up to 24 hours; the period during which the sentence is drawn up and the punishment determined may take up to five days;[127]

- The new Code also enshrines the rights of persons charged with offences not to testify against themselves, to be made aware of the charges against them, to be tried in their own presence, and, where necessary, to have the services of an interpreter;[128]

- *Right to qualified and free defence*: persons charged with offences have the right to assistance from a lawyer from the moment the investigation is initiated. That right notwithstanding, if they prefer to defend themselves in person, the court shall only authorize such action if it does not compromise the effectiveness of the defence, failing which, the court shall appoint qualified counsel, without prejudice to the right of the accused to submit views and claims themselves. If the defendants do not themselves designate lawyers, public criminal defence lawyers are assigned to them. This service is always free and, in exceptional cases, may be extended for part or all of the defence of persons standing trial who have their own means.[129]

Office of the Public Defender[130]

216. The previous report explained that this agency was to be created under the process of reforming the criminal procedure. It started operating in 2001, initially in areas where the revised criminal procedure was being followed. The cases referred to the Public Defender's Office represented only a portion of the total number of cases being handled by the Public Prosecutor's Office. Accordingly, the figures cited below do not reflect the operation of the entire system of criminal prosecution, only that of the Office of the Public Defender. By 30 November 2005, 215,889 cases, involving 259,980 persons charged with offences, had been referred to the Office, representing an average of 1.2 accused persons per case since the initiation of this reform.

217. The areas with the largest number of cases and persons charged with offences are those of La Araucanía and El Maule, accounting for 13.6 per cent and 13.3 per cent, respectively, of all such cases to date. The Metropolitan Area is, however, the region with the largest monthly intake of cases, with 36.5 per cent of the national total, followed by region V, with approximately 9 per cent. By December 2005, 232,110 offences had been reported to the Public Defender's Office, the most common of these being theft, with 14.8 per cent; offences under the Traffic Act (drink driving), 12.4 per cent; bodily harm, 9.8 per cent; and robbery without violence (theft of State property, robbery from uninhabited premises, etc.), 9.2 per cent. Of all the cases referred to its attention by December 2005, 84.4 per cent were actually taken up by the Office of the Public Defender. Of this total, 94.1 per cent were concluded and 5.9 per cent were referred elsewhere, primarily to a private lawyer or to the juvenile court.

218. As a rule, the percentage of resolved cases is higher in areas where the reforms have been in effect for longer, when set against the total number of all cases. This can be seen from a comparison between those regions where the reforms are in their second stage (regions II, III and VII), which have an average closure rate of 89.5 per cent, and the Metropolitan Region, where the closure rate for November 2005 was 63.8 per cent, slightly higher than in October, with 60.6 per cent.

219. Of those cases in which criminal charges are brought against the suspects, the majority - 62.8 per cent - are dealt with in ordinary proceedings, while 35.8 per cent are handled under a simplified procedure.

220. Some form of precautionary measure has been applied against 35 per cent of the suspects referred to the Office of the Public Defender. Among the measures applied, the most widespread are summons before a judge or other authority, representing 35.9 per cent. These are followed by preventive detention, at 18.4 per cent, and restricted residence orders, at 17.9 per cent. A comparison of preventive detention cases with those involving alternative (non-custodial) precautionary measures shows that 18.4 per cent of the measures handed down involve preventive detention, while alternative measures account for 74.6 per cent and other precautionary measures, such as various types of restriction, arrest and fines, for 7 per cent.

221. Over the period during which the reforms have been in effect, up to December 2005, alternative sentencing has been the most widely applied form of resolving cases, accounting for 35.4 per cent of all resolved cases. Of the total of such alternative sentences, 72.6 per cent consist in suspended sentences and the remainder in so-called “reparatory agreements”. Convictions represent the second most widespread form of resolution, with 29.5 per cent since the reforms entered into effect. Most convictions are handed down in simplified proceedings, which account for 70.2 per cent of all convictions (18.6 of all resolved cases). These are followed by convictions in summary proceedings, representing 7.7 per cent of all resolved cases. Acquittals account for 1.3 per cent of all resolved cases. Most acquittals - 54.5 per cent - are granted in private actions, while 13.5 per cent are granted in oral proceedings.

Legal aid corporations

222. As stated in the previous report, in those cases which were still regulated by the previous Code of Criminal Procedure, free legal aid was provided through the system of legal aid corporations. To put right imperfections in the system, work was launched in 1990 to upgrade those corporations, with a steady increase in their budget, which grew from US$ 915,641 in 1990 to US$ 11,050,967 in 2003.[131]

223. As a parallel process, a legal aid programme was launched in 1993, under the Ministry of Justice, and is currently being implemented in 52 communes, with the basic aim of developing a new model for free legal aid.

224. The draft legislation on a national legal aid service, mentioned in the previous report, was rejected by Congress. Currently, a new bill is being studied, based on experience gained in upgrading the legal aid corporations and the legal assistance programme of the Ministry of Justice, referred to above.

Other reforms to the judicial procedure

(a) Family courts[132]

225. As stated in the previous report, the creation of these courts was one of the key undertakings in the plan to upgrade the country's judicial system. The aim was to reform the family justice system in terms of both its organization and its procedure. Where the procedure was concerned, this is now oral, flexible, focused and based on the principle of direct contact between the judge and the parties, and includes an alternative system for the settlement of conflicts, involving mediation, which is conducted in an agency separate from the courts and the judiciary. This agency is competent for dealing with issues relating to marriage, legal separation, annulment and divorce, childcare, the right to maintain a permanent and direct relationship with children, adoption, domestic violence, child abuse, child support, filiation proceedings, parental authority, separation of assets, declaration of legal incapacity, etc.

226. It is hoped that these courts will be in operation in 2007, under new judges and spread throughout the country, and able to draw on a multidisciplinary team of specialists, including psychologists and social workers, who will advise the judges and help them reach an understanding of the issues and conflicts under their consideration.

(b) Labour law[133]

227. Under the labour law reforms, a new procedure is being developed for the hearing of labour cases, which are to be oral and transparent in nature and settled promptly, with the judge present throughout the hearings, and conducted without cost to plaintiffs who lack the funds to file suits. In addition, a specific model is being developed to ensure the protection of constitutional rights within companies, and the fines for anti-trade union practices are being stiffened. This procedure will be in place in the labour courts from March 2007. Together with the doubling of the number of labour judges and the creation of specialized courts to deal with labour and social security issues, the acts will constitute a fundamental reform of the country's labour law, designed to ensure prompter and more effective protection of the rights of workers, who are currently often loath to appeal to the courts because of the extensive and costly proceedings involved.

(c) Juvenile justice[134]

228. A new system has recently been developed to establish the responsibility of young people for breaches of criminal law, designed to serve their best interests and based on recognition of and respect for their rights. The system includes a special procedure for investigating and establishing the responsibility of young people committing offences, defining the offences under criminal law and the associated rights and guarantees and determining the corresponding custodial and non-custodial penalties. Among the aims of the new system are the following: to do away with the obsolete system of declaration of legal capacity, replacing it with objective criteria developed for young people aged between 14 and 18; introducing all the criminal and procedural safeguards established for adults in the new criminal procedure system; applying alternative social and educational measures for less serious criminal offences - which, where juvenile offenders are concerned, constitute the majority - and thereby making it possible to provide penalties tailored to the offenders and to build into such penalties labour activities

conducive to their subsequent social rehabilitation; to reserve deprivation of liberty for extreme cases which are categorized as serious offences; and to monitor implementation of the measures applied.

229. The new law will be effective from mid-2006, and will apply to young people who, at the moment of commencement of their offence, were aged over 14 and under 18, and who are defined by law as "adolescents". If commission of the offence continues beyond the offenders' eighteenth year, they will be liable under the law applicable to offenders of majority age. The investigation and prosecution of adolescents for breaches of criminal law will be governed by the provisions contained in the new law and by the rules of the new Code of Criminal Procedure. The judges responsible for procedural safeguards and judges from the oral proceedings court, and also deputy prosecutors and public criminal defence lawyers assigned to adolescent cases, will have to be properly qualified in the theory and criminology related to the commission of such offences, conversant with the Convention on the Rights of the Child, aware of the specific features of the relevant stage of adolescence and familiar with the system for the enforcement of penalties established under the juvenile law. The statute of limitations for criminal proceedings and for penalties for adolescents will be two years, except in respect of activities constituting serious offences, in which case the prescribed limit shall be five years, and for minor offences, when it will be six months.

230. During the enforcement of the penalties set out in this act, the various rights of adolescent offenders will be duly upheld: these include the right to be treated in a manner designed to strengthen their respect for the rights and freedoms of other persons, while protecting their development, dignity and social rehabilitation; to be informed of their rights and obligations vis-à-vis the persons and institutions which have them in their charge; to know the internal rules and regulations of the institutions and programmes to which they have been assigned; to know the grounds on which disciplinary action can be taken against them or the reasons why a penalty is deemed not to have been fully discharged; to submit applications to any competent authority and to receive a prompt response; to request the review of their punishment in accordance with the law; to report threats against or violations of any of their rights to the court; and to have the constant assistance of a lawyer. Adolescents subject to custodial measures shall have the right: to receive regular visits, of a direct and personal nature, at least once per week; to personal security and privacy; to receive education; to be able to communicate regularly and in private, in particular with their lawyers.

Military courts

231. On 9 January 2006, a working group was set up, comprising representatives of the ministries of justice, defence and foreign affairs, assessors from the three branches of the armed forces and from the *Carabineros* and experts, whose task is to study ways of reforming the military justice system to bring it into line with constitutional and international standards in this area. The group will examine existing discrepancies between military criminal procedure and the requirements for impartiality and independence in due process, as manifested in the organization, competence and roles assigned to the authorities in charge of conducting investigations and prosecutions and the inquisitorial nature of these tribunals. In addition, the group will undertake an analysis of the way in which specifically military offences are categorized.

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

232. 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 prior to the reform.[135] 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 under 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.

Judicial Academy[136]

233. As stated in the previous report, this body entered into operation in 1995. Since that date, it has played a vital role in training members of the judiciary and preparing them for their judicial careers. Its essential purpose is the preparation of candidates for the junior levels of the judiciary. Creation of the Academy has fulfilled a long-cherished aspiration of the Chilean judiciary for the country to have at its disposal a body specially designed for the training of future judges, equipped to meet the particular needs of this office and able to impart the specific skills required by the judicial profession. In addition, the Academy runs training programmes covering the entire range of functions performed by the judiciary. In these programmes, special attention is given to the role the judiciary has played in the procedural reforms on criminal, family and labour law.

Article 15

234. As noted in the previous report, both principles have long been enshrined in the country's Constitution.

Article 16

235. In its first article, the Chilean Constitution states: "People are born free and equal in dignity and in rights." In the country's previous report, it was stated that individuals are subjects of law and incur rights and responsibilities by the mere fact of existing. The Civil Code declares that "the legal existence of every person begins at birth" and that the law protects the life of the unborn child, and that "the rights devolving upon the unborn child, if the child is born and survives, shall be suspended until such moment as the birth takes place". The Code draws a distinction between individuals and legal entities and regulates the rights and obligations of legal entities, when they meet the requirements laid down for the attainment of legal personality under law.

Article 17

236. As stated in the previous report, the Constitution guarantees protection of private life, the family and the honour of all persons, the inviolability of the home and of all forms of private communication, and sets out the legal limits to these rights. Protection against encroachments on these safeguards is currently to be found in a number of legal instruments, such as the Freedom

of Opinion and Information and Journalism (Professional Exercise) Act, and in the Criminal Code, under the provisions on the offences of injurious behaviour and calumny. In 1995, a new paragraph 5 was inserted in the Criminal Code, governing breaches of the obligation to respect and protect the private and public life of individuals and their families; the Code sets out penalties for violations of privacy or intrusion without due authorization into places which are not accessible to the public and for the procurement by any means of documents, conversations or communications of a private nature for the purposes of reproduction, recording, filming and dissemination. The Code also prescribes penalties incurred by anyone gaining money, property or engaging in any conduct which has not been legally sanctioned involving the acts listed above. The Freedom of Opinion and Information and Journalism (Professional Exercise) Act (see paragraph 251 (b) below), in its paragraph 3, on offences committed through communications media, ensures protection of the rights enshrined in this article of the Covenant, under the provisions on the offences of injurious behaviour and calumny committed through any means of communication, penalties for which are laid down in the Criminal Code.

Legal reforms

237. The Protection of Privacy and Personal Data Act[137] sets out general rules on personal data which were previously lacking; the Act defines the term "personal data" as all data containing any information pertaining to individuals already identified or capable of being identified; it reverses the principle which previously governed this area, and stipulates that "the processing of personal data may only be effected when the law or other legal provisions so authorize or the owner of the data expressly consents to such processing". The Act also rules that any person who divulges conversations, communications, documents, instruments, images and facts which have not been obtained with due authorization shall be punished.

Article 18

238. As noted in the previous report, the freedom of conscience, the expression of any belief and the free exercise of any form of worship not inconsistent with public morals or order are constitutionally guaranteed. Exercise of the freedom of conscience and of belief is safeguarded through the remedy of protection established by the Constitution.

239. Currently, where their assets are concerned, churches and religious faiths and institutions of every denomination enjoy rights which are granted and recognized under the law currently in force. Religious premises and their facilities intended exclusively for worship are exempt from any kind of tax. In addition, the freedom of religious education is guaranteed. Information was also contained in the country's previous report on the regulations pertaining to religious instruction in educational establishments.

Court ruling on freedom of religion and on non-discrimination

240. By a ruling of 4 March 2002, the Concepción appeals court found in favour of an application for protection based on Ministry of Education regulation No. 924, on religious instruction in educational establishments, filed against the municipality of San Pedro de la Paz and the director of its municipal education office by the organization Evangelio y Educación para Chile (Evangelical Education for Chile - Eveduchile).[138] The reason for the application was that the authorities in question had not taken the necessary measures to provide religious

education for Evangelical pupils. In its ruling, the court stipulated that the authorities had to adopt the necessary measures to ensure that all municipal educational establishments in San Pedro de la Paz conducted Evangelical religious education classes for pupils belonging to this religion; this ruling was upheld by the Supreme Court.

241. Just as the ordinary courts of justice have been unanimous in their decisions relating to situations where religious equality was under threat, other agencies outside the judicial sphere - notably, the National Television Council, the body responsible for overseeing the proper operation of television services - have also received complaints from various Evangelical churches relating to the display on television of material whose content seriously offended the dignity of the Evangelical religious community.[139]

Religions in the country

242. In Chile, most inhabitants profess a religion. The 2002 national census recorded the following figures for the number of Chileans practising or professing a belief or religion: Apostolic Roman Catholic - 69 per cent; Evangelical - 15.14 per cent; Jehovah's Witnesses - 1.06 per cent; Jews - 0.13 per cent; Mormons - 0.92 per cent; Muslims - 0.03 per cent; Orthodox Christians - 0.06 per cent; other religions - 4.39 per cent; no religion or agnostic - 8.30 per cent.

Legal reforms

Religions Act, setting down rules on the legal constitution of churches and religious organizations[140]

243. In Chile's previous report, mention was made of the Churches and Religious Organizations Bill, which was designed to remove the remaining elements of discrimination in this area, in particular the interpretation of the Constitution which accorded the Catholic Church a status as a public-law entity, as distinct from the other churches and religious organizations, which were considered private bodies and whose establishment was subject to the requirement for prior authorization; this bill became law in 1999, as further explained below.

244. In essence, the Act establishes the equality under law of all forms of religious expression, according the status of legal entities under public law to all those organizations which request such status and have complied with the necessary formalities therefor, which in certain cases entail a detailed check of their doctrine or beliefs; the Act also permits such organizations to establish their own rules independently, including the possibility of registration of legal entities for the purposes of setting up such establishments as houses of worship, theological and doctrinal study centres, charities and other such facilities.

245. The Act has been fleshed out with the elaboration of four sets of regulations, governing the registration of religious organizations under public law;[141] religious services in prisons and other detention facilities; religious services in hospitals, clinics and other physical and mental health establishments; and religious services in facilities of the armed forces and the police. Taken as a whole, the regulations promote attitudes and procedures which respect the equality of all religious beliefs, and also the equal treatment of religious representatives, irrespective of their faith or denomination. The last of the four sets of regulations is still being developed, while the first three are already being applied.

246. As on 13 November 2005, under the provisions of the recent Religions Act, 822 religious bodies had been accorded the status of public-law entities, while a further 1,000 were considered private legal entities. Those with public legal personality, granted on conditions of equality, included the Apostolic Roman Catholic Church, various Protestant and Evangelical churches, in particular the Pentecostal Methodist community, the Lutheran Evangelical Church, the Orthodox Church, various Buddhist communities, the Church of Jesus Christ of Latter-Day Saints, the Jewish community and the Islamic community.

Legal recognition of religious faiths

247. There are two forms for the legal recognition of religious faiths:

- When a church or religious organization is duly constituted as a legal entity under public law, in terms of the 1999 Religions Act and its regulations referred to above. Under these rules, the religious organization submits an application with its statutes to the Ministry of Justice; the application is posted in a public register; over the following 90 days the Ministry may make observations on the request; once this period has expired or a response has been made to the observations, details of the organization are published in the Official Gazette, whereupon it is automatically granted the status of a legal entity under public law. Should the application be rejected, the organization concerned may appeal against the decision by the Ministry of Justice to the Court of Appeal;

- The second form is that provided for non-profit organizations and foundations under the Civil Code.

Forms of supervision applied to persons professing certain religions or beliefs

248. Churches with private-law status must submit six-monthly reports and balance sheets to the Ministry of Justice on their management, and must also submit copies of the minutes of their general meetings and the elections of their governing bodies, in compliance with the rules set out in the Civil Code for the granting of legal personality under private law to non-profit organizations. Churches with public-law status are subject to scrutiny by the authorities when they commence the procedure for acquiring legal personality under public law, in the course of which their statutes are reviewed by the Ministry of Justice.

Conscientious objection to military service

249. Under a recent Act, exemptions and exclusions have been allowed to the obligation to perform military service.[142] Ministers of religion belonging to churches, faiths and religious institutions with public-law status are exempt from performing military service so long as they remain in their respective functions and provided that they demonstrate their status by means of certificates issued by their respective religious organizations. In addition, the provisions for exclusion from military service have been extended, to include blood descendants (as specified in the Act) of the victims of violations of human rights or political violence. In general, under the new Act, conscientious objectors are not exempted from military service, which is

compulsory for all persons over the age of 18. During the process of consideration of the Act, a parliamentary motion was tabled to include conscientious objection as one of the grounds for exemption from compulsory military service, but, while the initiative was supported by the Government, it was rejected by Congress.

Article 19

250. As noted in the previous report, the freedom to express opinions and to convey information without censorship is constitutionally safeguarded and, although the freedom to receive information is not safeguarded, pursuant to a ruling by the Constitutional Court of 1995, this right "is implicit in the freedom of opinion and the freedom to convey information". The constitutional reforms of August 2005 did away with the powers of the President to suspend or restrict such rights during a state of alert in the event of a foreign war, a state of siege in the event of civil war or internal disturbance, and a state of emergency in the event of a public disaster.

Legal reforms

251. The previous report also noted that domestic law in Chile previously made provision for film censorship, thereby limiting freedom of expression, and that draft legislation was under consideration on freedom of opinion, information and exercise of the profession of journalism. As indicated below, film censorship has been scrapped, while the legislation is already in force with the amendments indicated, with the significant effect of abolishing the criminal offence of *desacato*, or contempt of authority:

(a) Constitutional reforms abolishing film censorship and safeguarding the freedom of artistic creation:[143] the provision in the Constitution which states: "a system of censorship shall be established under law for the exhibition and advertising of cinematographic works" has been replaced by "a system of certification shall be regulated under law for the exhibition of cinematographic works". The law also safeguards "the freedom to create and disseminate artistic productions, as well as the rights of authors over their intellectual and artistic creations of whatever kind, for the period set out under law, which shall not be shorter than the lives of the authors themselves". In order to give full effect to this constitutional reform, the Cinematic Productions (Certification) Act[144] has been promulgated and the associated regulations have been approved;

(b) On freedom of opinion and information and exercise of the profession of journalism:[145] this governs the right to convey information and to express opinions, protecting the exercise of the profession of journalism with a view both to improving the quality of reported information and to establishing penalties for offences committed through a public medium of communication, and sets aside the provision of the State Security Act[146] which makes contempt of authority an offence, by stipulating that persons defaming, insulting or slandering senior State officials are committing an offence against public order; this provision was not consistent with the functioning of a modern democratic State, since in addition to restricting freedom of expression, it undermined equality before the law, unjustifiably favouring certain categories of people; it also sets aside the provisions of the State Security Act which gave judges the power to seize books and printed publications;

(c) Removal of the offence of contempt of authority from the Criminal Code and from the Code of Military Justice:[147] notwithstanding the reforms described above, rules could still be found in these legal instruments on contempt of authority; this offence has been completely banished from Chile's statute books through the reform process.

Media outlets in Chile in 2004

252. Radio broadcasting:[148]

Number of licensed radio broadcasters by type of transmission:
Amplitude modulation (AM) - 123; frequency modulation (FM) - 1,005; total: 1,128

Radio listenership figures:
Regular listeners: 90.6 per cent; only listen to radio, with no other media: 97.9 per cent.

Number of radio broadcasters who indicated in their response to the radio survey that they were transmitting over the Internet:
Of a total of 463 broadcasters, 106 were thus operating and 357 not thus operating.

Total number of licensed radio broadcasters possessing an Internet website:
Of a total of 1,128 licence holders, 526 have websites and the other 602 do not.

253. Internet:[149]

Total number of Internet cafés in the country: 752;

Total number of dedicated and switched-access Internet lines in the country: 805,315;

Internet coverage (percentage of people who have used the Internet): 41.2 per cent;

Homes with functional Internet connections:
Telephone connection - 15 per cent; broadband - 11.4 per cent;

Preferred places for Internet use:
Work or office - 32.4 per cent; home - 28.6 per cent; Internet café - 19.9 per cent; friends' or relatives' home - 9.9 per cent; college or university - 8.8 per cent; other - 0.4 per cent;

Activities most commonly performed on the Internet:
Sending and receiving emails and chatting - 43.1 per cent; searching for information - 40.6 per cent; downloading music - 7.3 per cent; using Internet services (electronic banking and other activities) - 4.7 per cent; downloading software - 1.6 per cent; reading news, journals, books - 1.3 per cent.

254. Television:

Total number of television channels in the country (national, regional and local): 46 open broadcast TV channels, 68 cable channels, 11 using both: total - 125.

255. Newspapers and magazines: see tables 8, 9 and 10 in the annex.

Article 20

Prohibition of war propaganda

256. As stated in the previous report, in establishing freedom of opinion and information, the Constitution also states that liability may be incurred for offences and abuses committed in the exercise of these freedoms, identifying situations categorized as offences under the Criminal Code and the State Security Act involving the propagation or instigation of war against Chile, the propagation of civil war or the propagation by means of the spoken or written word of theories conducive to the violent overthrow of the social order. In addition, in establishing the right of association, the Constitution states: "Parties, movements and other organizations whose objects, acts or conduct do not respect the basic principles of the democratic and constitutional order and which work for the establishment of a totalitarian system are deemed to be unconstitutional, as are all those which employ violence, propagate the use of violence or incite people to its use as a form of political action. The Constitutional Court shall declare all such acts unconstitutional."

Prohibition of incitement to religious hatred

257. In the section above relating to article 18 of the Covenant, the present report confirms that freedom of conscience, the expression of any belief and the free exercise of any form of worship not inconsistent with public morals or order are constitutionally guaranteed, and refers to the rights granted and recognized in respect of the various churches operating in the country, in particular under the recent Religions Act. This Act recognizes the equality of religions and, in addition to the remedy of protection of freedom of conscience and religious belief, makes provision for legal complaints to be filed to remedy any arbitrary acts prompted, for example, by religious hatred. Activities which infringe the exercise of religions permitted in Chile, damage religious property or threaten or injure ministers of religion in the performance of their ministry are punishable under the Criminal Code.[150]

Article 21

258. As noted in the previous report, the Constitution safeguards the right of all persons to assemble peacefully, without prior authorization and without arms, for political, religious, social or any other purposes, with the exception of meetings held for the purposes of violence or terrorism. It also stipulates that meetings or demonstrations held in streets, squares and other public places shall be governed by the general police regulations. This right may be suspended or restricted by the President during a state of alert in the event of a foreign war or a state of siege in the event of civil war or internal disturbance, and may also be restricted during a state of emergency in the event of a public disaster.

Intervention by the public authorities in the exercise of the right of assembly

259. As also stated in the previous report, the exercise of the right of assembly can be limited in accordance with the duty of the authorities to ensure the safety and freedom of the public, harmonious coexistence and respect for the use and preservation of public property. The rules applicable to exercise of the right of assembly take into consideration whether the meetings are of a private or public nature, which is determined by the venue for the meeting, irrespective of

whether or not it was called publicly. In determining the scope of the expression "public venue", the courts have supported the interpretation that the expression refers to State property used by the public, such as roads, streets, squares and bridges, but not to public establishments such as restaurants, cafés, hotels and theatres, which are privately owned properties. Private meetings are not placed under any restrictions, and persons wishing to hold peaceful meetings without the use of arms may do so without obtaining prior authorization.

260. In the case of demonstrations or meetings held in streets, squares and other public places, in order to ensure public order, the organizers are required to submit an application, with due notice, to the authorities or the regional or provincial governor. This application, to be submitted together with the details of the organizers, for the purposes of establishing civil liability in the event of any damage to public property or the property of third persons, must contain information on the organization of the meeting or demonstration, indicating its route, its starting point, the speakers, etc. The governors have the power not to authorize the holding of demonstrations in heavily used streets, or demonstrations which will disturb public transport, or meetings in squares and avenues at times when these are customarily used by the public as places of leisure, or in parks, etc. In order to ensure that the right of assembly is not thereby threatened, the authorities usually endeavour to suggest alternative venues, alternative routes or other arrangements for the meeting or demonstration in such cases.

Intervention by the police

261. The police may prevent or break up a demonstration or meeting if it is not held in compliance with any of the requirements set out above, for example, when meetings are being held in places that have not been authorized by the authorities, when those attending them are bearing arms or implements which may be used as weapons and are not surrendered on demand, or in other circumstances justifying such action.

Protection of the right of assembly

262. The Criminal Code lays down penalties for public officials who arbitrarily prohibit or prevent peaceful legal meetings or demonstrations or order such meetings to be broken up or called off. Exercise of the right of assembly is safeguarded by the remedy of protection.

Article 22

263. As indicated in the previous report, the Constitution guarantees every individual the right to freedom of association, without prior authorization. It provides the legal mechanisms to ensure the effective enjoyment of this right and establishes the corresponding restrictions. The right to freedom of association may be restricted only during a state of alert in the event of a foreign war. The Constitution also guarantees political pluralism, as indicated in the previous report. The right to freedom of association, together with other constitutional rights and freedoms, such as freedom of opinion, freedom of assembly and freedom of information without prior censorship, are evidence of a constitutional system that recognizes pluralism as a means of social coexistence.

264. In accordance with the Constitution, the exercise of the right to freedom of association enables individuals to enjoy a sense of security in forming organizations without prior authorization for the purpose of pursuing and achieving lawful objectives. The essence of this right is the ability to form, join, remain in or withdraw from organizations freely, and to do so without prior authorization or any requirements other than those that are willingly accepted when undertaking the activities mentioned.

265. The restrictions related to public order, morals and the security of the State that are placed on the exercise of this right by constitutional provisions point to an inherent feature of the right of association, which is that the objectives or motives of the association must be lawful. These restrictions are consistent with the principles of international human rights instruments, which stipulate that no restrictions may be placed on the freedom of association other than those which are prescribed by law and which are necessary in the interests of national security, public safety or public order, the protection of public health or morals or the protection of the rights and freedoms of others.

266. The right to freedom of association is a constitutional right. This means that everyone has the right to organize, but no one may be compelled to belong to an association. It also means that membership in a trade union shall always be voluntary, and that no law or directive issued by a public authority may require membership in any organization or association as a condition for undertaking a particular job or activity, or require renunciation of membership as a condition for remaining in a particular job or activity.[151] As indicated in the previous report, professional bodies are considered to be voluntary professional associations, and under reforms carried out by the military regime[152] they could not monitor the ethical behaviour of their members. Through the constitutional reforms introduced in 2005, the professional bodies regained the capacity to monitor the ethics of their members' professional behaviour, although it is still not compulsory to belong to these associations, as it was prior to the military regime.

Procedures governing the establishment of associations

267. The Constitution draws a distinction between freedom of association and legal personality and stipulates that the law shall determine how this personality, which enables any corporate body to act as a subject of law in civil matters,[153] may be acquired. The law prescribes the various ways in which civil-society organizations in Chile may acquire legal personality, as follows:

(a) The system for granting legal personality to corporations and foundations allows public authorities a high degree of intervention and the power to confer or not to confer such status. This is an administrative procedure that culminates in the issue of a supreme decree by the Ministry of Justice, which it signs "by order of the President of the Republic".

(b) At the same time, the law establishes other systems for obtaining legal personality that allow organizations to be officially constituted in a freer and more flexible manner. In these systems, legal personality is obtained by judicial means, without an administrative decision. This is used for churches and religious organizations that have not already been granted legal personality, and which may, pursuant to the 1999 legislative reform, obtain legal personality under public law by registering or filing their statutes (see paragraph 247 above).

(c) Other organizations, such as trade unions, professional associations, community-based organizations and sports associations, which are regulated by law, are subject to a registration system that establishes certain requirements, compliance with which cannot be assessed a priori by the authorities. Rather, it is assessed following the acquisition of legal personality, in an effort to prevent this formality from posing an obstacle to starting up the organization.[154]

(d) In the particular case of trade unions and union representative organizations at a higher level, the principle that legal personality is acquired through a legal decision is recognized at the constitutional level.[155]

Rights of associations

268. Associations are granted a set of rights under the Constitution. The State has the duty to recognize the existence of associations as entities distinct from their members, while at the same time allowing them sufficient scope for action and autonomy. This autonomy is exercised, in practice, through the members' freedom to establish their own internal organizational or institutional structures, without undue interference from outside. Generally speaking, this autonomy may be considered to exclude any intervention on the part of the authorities that is not aimed at correcting an unlawful action undertaken by the association. With regard to this point, the courts have determined that "*it is an intrinsic characteristic of an association that has been granted legal personality that its decisions cannot be reviewed or amended by the public authorities*".[156] One expression of the autonomy of associations is their ability to establish broader or high-level associations, such as federations or confederations.

Effective remedy

269. The right to freedom of association is safeguarded by the remedy of protection. This constitutional protection may be viewed from two perspectives: that of the individual member and that of the association. The courts have traditionally received complaints from persons subjected to unfair actions on the part of associations towards their own members. Nevertheless, they have not developed a solid argument to protect members on the basis of the right to freedom of association, resorting instead to other principles, such as the right to be tried in the competent court, the right to own property, the right to honour, the right to due process, etc.

270. Without prejudice to the statutory rules that are binding on members of associations and the administrative bodies of associations, the ordinary courts are competent to rule in the event of a dispute between the two parties. Such protection is particularly justified from the standpoint of the individual member bearing in mind the power embodied in the association.

Judicial practice

271. The Constitutional Court has had occasion to rule on matters related to freedom of association when carrying out the precautionary review of certain items of proposed legislation. One of the most important rulings is that which concerns the Constitutional Act on Political Parties.[157] In its ruling, the Court defined freedom of association as "*the ability of all persons to join with others in a voluntary and, to a certain extent, permanent fashion, in order to achieve a particular aim*". Perhaps more important than the foregoing is the wording used by the

Constitutional Court in its ruling on freedom of association under the Chilean Constitution when it stated that, in the light of analysis of the provisions of article 19, paragraph 15, "*it clearly follows that the Constitution regulates three legal institutions to which it attributes different degrees of scope, despite their close relationship. These are*: *the general right to freedom of association; associations that wish to exercise legal personality; and political parties*".[158]

Right to establish associations for the promotion of human rights

272. These associations may obtain legal personality in accordance with the general rules and may be constituted as corporations or foundations.[159] As indicated in the previous report, specific legislation also exists aimed at facilitating the establishment of non-governmental development organizations, including those working in the area of human rights.[160] The community of human rights defenders includes a considerable number of NGOs - some registered with legal personality and others in the process of establishment - in a variety of areas. These include: relatives of victims of human rights violations committed under the military regime; safekeeping of documents and information linked to human rights violations committed under the military regime; social, legal and medical assistance for individual and group victims of human rights violations and promotion of human rights; mental health and human rights; health and sexuality; promotion and protection of the rights of women; promotion and protection of the rights of young people; promotion and protection of the rights of sexual minorities; promotion and protection of freedom of expression; associations for assistance to and protection of victims of sexual offences and domestic violence; HIV/AIDS prevention, etc.

Right to form and join trade unions

273. As indicated in the previous report, the Constitution recognizes the right to form trade unions in the cases and manner prescribed by law, and stipulates that membership in them shall in all instances be voluntary. Likewise, the Labour Code recognizes that private-sector and public-sector workers have the right to form such trade union organizations as they see fit, without prior authorization, with the sole condition that such workers should comply with the law and the statutes of the organizations.[161] Civil servants are not prohibited in any way from establishing professional associations, as was clearly indicated in paragraph 231 of Chile's fourth periodic report. The constitutional reform of August 2005 eliminated the possibility of restricting this right during a state of alert in the event of a foreign war, the only circumstances in which it could be restricted.

Legal reforms

(a) Establishment of a Trade Union Modernization and Development Fund[162]

274. The sole purpose of the Fund is to finance training, education and advisory services for the members of trade union organizations at any level[163] and in any economic sector, as well as professional associations of micro and small enterprises. The latest project allotment was in 2003. The activities financed by this Fund are aimed at promoting technical progress, thereby strengthening the organizations concerned by helping them achieve their objectives and improve the quality and fairness of labour relations at the enterprise level. The Fund is administered by the Ministry of Labour and Social Security, through the Office of the Under-Secretary for Labour, and operates with resources allocated to it annually under the Appropriations Act.

For the number of courses, beneficiaries and amounts allocated to this Fund, see table 11 in the annex

(b) Labour reform[164]

275. The main purpose of the labour reform is to lay the foundation for labour relations based on cooperation and dialogue between workers and employers. The reform introduces major changes aimed at strengthening the autonomy of workers' organizations and protecting workers wishing to establish unions. It offers workers greater scope to engage in collective bargaining and expands safeguards to enable such bargaining to be conducted on a more equal footing. The reform implies a commitment to the long-term development of workers' organizations and efforts to bring Chilean labour legislation into line with ILO Conventions Nos. 87, 98 and 135 relating to trade unions, which were ratified by the Government of Chile between 1999 and 2000. The main aspects of this reform are indicated below.

- *Expansion of the right to form trade unions*: The restrictive approach of the Labour Code, which formerly tied the establishment of trade unions to the types of workers who were members, has been amended. In this regard, the right of workers to organize themselves in whatever manner best suits their interests has been expressly recognized in terms of both the type of trade union and its structure and objectives. It is therefore now possible to form trade unions on the basis of territorial divisions (commune, province, region, etc.), trades or activities, and so on.

- *Facilitation of the establishment of trade unions by reducing the minimum number of workers required*: The general rule applicable to the establishment of any trade union is that at least 25 workers, with no percentage specified, are required. In enterprises with fewer than 50 workers, at least 8 workers, with no percentage specified, are required to form a trade union. In enterprises with more than 50 workers, at least 25 workers, representing at least 10 per cent of the total number of workers in the enterprise, are required. For workers who perform their jobs in a single location, a quorum of 20 workers, representing at least 30 per cent of the total number of workers in the enterprise, is required.

- *Extension of the scope of unionization*: The civilian staff of enterprises that fall under the remit of the Ministry of National Defence may form trade unions.

- *Strengthening of the efforts of trade unions*: This is accomplished by stipulating that, within three months prior to the start of collective bargaining, any trade union or bargaining unit shall have the right to request the employer to supply the balance sheets, financial information and total labour costs for the preceding two years. Likewise, the employer is required to furnish pertinent information that may have a bearing on the future investment policy of the enterprise, provided that such information is not confidential. The reform thus establishes the mechanism of collective bargaining as the primary instrument for developing strategic alliances within the enterprise and improving working conditions. This is based on the notion that the common goals of growth, prosperity and employment will have a better chance of being met through the active cooperation of all persons involved in productive activity. The provisions enhance the mechanisms for bargaining, both

regulated and unregulated, and access to information pertaining to the enterprise in order to promote the success of the bargaining process while protecting the confidentiality of such information. The reform also provides post-bargaining immunity for all workers involved in the collective bargaining process for a period of 30 days following the signing of the agreement or the arbitral settlement.

– *Anti-union practice*: Failure to provide the bargaining committee with the information necessary to enable it to discharge its obligations fully is considered to be an anti-union practice.

– *Expansion of the scope for collective bargaining*: This is accomplished by facilitating the signing of collective agreements between agricultural enterprises and trade unions of casual and temporary workers. Such bargaining is carried out on a voluntary basis by one or more trade unions with one or more employers. Future conditions are negotiated which will enter into force during the next season or for the next specific job; strikes and the obligation to hire the workers concerned are ruled out.

– *Establishment of an obligation concerning trade union officials*: Trade union officials are required to submit an annual statement concerning resource management.

– *Provision concerning the electoral system for trade unions*: The electoral system for trade unions should follow the rules pertaining to a democratic society and ensure proper representation of majorities and minorities.

– *Simplification of mechanisms for establishing and joining higher-level organizations and amending their statutes*: This is accomplished by eliminating the presence of an authenticating officer.

– *Establishment of provisions for the protection, development and strengthening of trade unions*: With respect to anti-union practices, immunity is provided for the protection of all workers involved in the establishment of a trade union; it begins 10 days prior to the date of the workers' assembly and lasts until 30 days after the setting up of the organization, for a maximum period of 40 days, without prejudice to the immunity provided to protect trade union officials. The provisions grant the Directorate of Labour an active role in investigating alleged instances of anti-union practice, lodging complaints and, where appropriate, taking part in proceedings before the competent court. They severely punish dismissals that the labour courts have found to constitute anti-union practices and enable the workers concerned to be reinstated in their jobs or to accept the dismissal with additional compensation. The provisions confer enforceable status on the copy of the record of the assembly certified by the Labour Inspectorate containing the decision to affiliate with a high-level trade union, which facilitates the collection of dues. The provisions establish the employer's obligation to withhold and pay directly to the high-level organization the amounts corresponding to trade union dues. They establish mechanisms that enable the high-level body or multi-enterprise union to advise its

affiliates in the context of enterprise-level bargaining. They establish as a general rule the prohibition against hiring replacement workers, except in prescribed cases, and increase the cost of the option of hiring replacement workers through the payment of a replacement voucher. This increase is credited to the group of workers involved in the strike. It is calculated on the basis of the number of replacement workers, and is paid at the end of the dispute.

Ratification of ILO Conventions relating to the right to organize

276. By ratifying Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, Convention No. 98 concerning Application of the Principles of the Right to Organize and to Bargain Collectively[165] and Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking,[166] the Government has pledged to give effect to these conventions - in this case, through the enactment of labour reforms. As mentioned above, these reforms provide for greater trade union freedom, while at the same time providing greater protection and tools for collective bargaining.

Article 23

277. As indicated in the previous report, the Constitution establishes the State's obligation to protect the family and to take measures to strengthen it. The law recognizes the right to found a family, the right to enter into marriage with free and full consent, and the equality of the rights and responsibilities of the spouses both during the marriage and in the event of its dissolution.

Different types of families

278. The latest Population and Housing Census[167] registered an increase in the number of nuclear households and female-headed households. In the previous census of 1992, nuclear households accounted for 64.3 per cent of all households; in 2002, that percentage rose to 69.4 per cent, excluding "households without a nucleus". Female-headed households account for 85.1 per cent of single-parent households. There has been a significant increase in the number of households listing a woman as the head of the household, from 25.3 per cent in 1992 to 31.5 per cent in 2002. Currently, 23.4 per cent of all households are extended households, defined as nuclear households plus a relative of the head of household, and 3.4 per cent are composite households, defined as nuclear or extended households plus relatives and non-relatives. Single-parent households make up 11.6 per cent of all households in the country, of which 54.8 per cent are headed by males and 45.2 per cent by females. The participation of women in the workforce, which rose from 32.4 per cent in 1990 to 39.3 per cent in 2000, has had a significant impact on family dynamics in recent years.

Legal reforms

Civil Marriage Act[168]

279. Chile has a new Civil Marriage Act, which addresses the following topics:

(a) Marriage

- The term "family" is understood to mean a human and social group which has the intention of being permanent or stable over time, consisting of the union of a man and a woman with the legal capacity to make a commitment to one another or to share their lives, and on that basis, to make a home with their biological or adopted children.

- The term "marriage" is understood to mean the legalization, in the presence of an official from the Civil Registry, of a heterosexual union which is intended to be permanent. Civil marriage, in this sense, consists of the joining together of a couple to create a human institution, out of which arise obligations and rights between the spouses, with respect to their children, and consequently with respect to society, and those of society with respect to them. These rights and obligations are recognized, protected and regulated by law. Notwithstanding the participation of a government official from the Civil Registry, it is assumed that the bride and groom establish the union themselves and, as the case may be, dissolve it.

- The Civil Marriage Act makes civil marriage more compatible with those unions to which the bride and groom attach religious significance, within the definition of marriage contained in the Civil Code. The new Act makes it possible to choose from a variety of alternatives for restructuring interpersonal relations on the basis of respect for the deepest convictions of individuals. Because these relations are also regulated by law, they enable individuals to approach more closely the ideal of desirable behaviour prescribed by moral, social or religious norms that they accept as their own and as binding. Without prejudice to the foregoing, it is assumed that the significance of civil marriage is inherently of great importance, while at the same time constituting the only way of establishing a union with the most desirable characteristics for society when the lives of the individuals concerned lack a religious dimension.

- Ways and means of addressing problems that may arise and options for solving them in the event of the break-up of the relationship are left primarily to the discretion of the spouses themselves, except for situations involving the public interest, as in the particular case of children.

- The Act recognizes as basic and essential elements of marriage both the mutual advancement of the spouses and the responsibility for conceiving, accepting and raising biological or adopted children. The practical application of the Act requires the shared intention to procreate, even when that is not possible for reasons beyond the control of the spouses. Parents' obligations towards their children include raising them in accordance with the parents' abilities. The mutual advancement of the spouses requires the full commitment of both partners; sexual exclusivity; the lending of support and assistance during difficult life situations; and natural companionship in the events that enrich the life of the couple and the family. Recognition of these characteristics as marital objectives facilitates a proper assessment of individuals' desire to form a marital bond, as opposed to any other.

- With respect to the sexual life of the couple, persistent and incurable impotence has been revoked as grounds for nullity, given the couple's right to determine the scope of their intimacy and the fact that scientific and technological progress has rendered obsolete the practical evaluations on which that incapacity was formerly based. In practice, before this reform, knowledge of such incapacity was kept private by the couple, which is why the now revoked provision was almost never applied.

- The Act recognizes the role that civil society must play in adequately informing and preparing individuals wishing to enter into marriage regarding their rights and obligations. The important role granted to religious organizations operating under public law and other civil-society institutions of recognized moral standing in the areas of mediation and responsible preparation for marriage are evidence of the State's determination to involve them actively and responsibly in efforts to promote successful marriages and united and strong families. This is accomplished through the cooperation of professionals and experts who bring their particular vision to the solution of the various problems and challenges facing individuals, couples and families.

- The Act also contains provision for compensation for a spouse who is in a weaker social and economic situation. It provides ways and means of properly reconciling the rules governing the break-up of the marital relationship with the rights recognized in the national policy in favour of children and adolescents, which, in turn, strictly complies with the Convention on the Rights of the Child (see paragraph 286 (b) below). The Act provides for the right of children to express their opinion freely in all matters concerning them, particularly emphasizing the obligation to give due consideration to their opinions depending on their age and maturity. It also provides for the right of children to maintain a personal relationship and direct contact with both parents on a regular basis, to be cared for by them, and generally to maintain family relations in conformity with the law. By means of non-contentious procedures, it encourages management of the effects of separation, while avoiding actions which may deepen the breach in family relations.

- The Act restricts the exercise of the right to contract marriage by taking into account particular factors relating to mental capacity and relationship. Persons deprived of reason and those suffering from mental abnormalities may not enter into marriage. Such conditions must be the subject of a reliable diagnosis and must constitute a total incapacity to create the shared life that marriage involves.

(b) Divorce

The most significant innovation of the Civil Marriage Act is the fact that it introduces the possibility of divorce with dissolution of the marriage, which until now was lacking in Chilean legislation. The new legislation provides for the three types of divorce found in comparative law: divorce on the grounds of the fault of one of the spouses, divorce by mutual consent and divorce at the request of only one of the spouses.

Divorce on grounds of fault takes into account instances of improper conduct, which include neglect of marital duties. These, in turn, constitute the grounds for divorce, and include: domestic violence; adultery; grave or repeated breach of the obligations to provide assistance and protection; behaviour seriously at variance with the objectives of marriage; and the permanent abandonment of the common home without justification.

Divorce by mutual consent requires: proof of the cessation of cohabitation for a period of more than one year, agreement between the spouses and with the children on a system of common obligations, and demonstration of a wish to proceed.

Divorce at the request of one of the spouses is subject to the above-mentioned requirements, with an increase in the period of non-cohabitation to at least three years.

(c) Broadening of the system of annulment

The new Act incorporates the grounds for annulment of marriage currently found in comparative law, especially those relating to consent, so as to exhaust all possibilities of the existence of essentially null and void marriages and ensure that any legal ruling in respect of the termination of a marriage takes into prior consideration the possible existence of grounds for annulment. The grounds may include incapacity based on kinship, morals or the lack of free and spontaneous consent. The new Act also considers undue influence to be grounds for annulment.

(d) Minimum age of marriage

The Civil Marriage Act raises the marriageable age, which was previously 12 for girls and 14 for boys, to 16 for both sexes, without distinction.

Other reforms

280. In relation to other legal reforms designed to protect the family: the law on domestic violence mentioned in the previous report has been amended so as to remedy shortcomings in the original law by instituting an improved procedure and more appropriate penalties for specific behaviour;[169] family courts have also been also set up (see paragraph 225 above).

Draft legislation

281. A new property regime has been established to replace the system of joint property between spouses (see paragraph 59 above).

Ratification of international instruments

282. Ratification in 1999 of International Labour Conventions 103 and 156 concerning maternity protection for women workers and prevention of efforts to restrict opportunities for men and women workers to prepare for, enter, participate in and advance in economic activity.[170]

Family-friendly policies

283. Mention should be made of the following:

(a) Interministerial Commission on Families

This is coordinated by SERNAM and is designed to ensure that the various governmental bodies pursuing initiatives in favour of families adopt a common approach; activities include fostering educational initiatives for the development of skills for family life; promoting equality between husbands and wives; fostering legal and other initiatives to accommodate men's and women's working and family lives; and stimulating responsible parenthood.

(b) SERNAM campaigns

In the year 2000 SERNAM conducted a campaign entitled "*Women with rights, women as citizens*" in order to publicize legislation enacted in recent years, including the law on domestic violence. In 2001 it conducted a campaign entitled "*Don't let violence strike your relationship*" to prevent domestic violence among young couples. In 2002 it conducted a campaign entitled "*Protective network*" on prevention of domestic violence and the abuse of children, so as to focus the attention of various public agencies and civil society on these issues.

(c) Policy for participation by parents and guardians in school

Campaigns have been organized to strengthen civic involvement by parents in schools with the aim of transforming the relationship between families and schools; to work for recognition of the various types of family by educational units; and to involve both parents in each child's education so as to ensure that education is a task for both parents and not only mothers.

(d) National policy and integrated action plan for children and young people

This contains actions for strengthening the family (see paragraph 286 (b) below).

(e) SERNAM gender equality plan (see paragraph 60 (a) above)

Article 24

Protection of children

284. The current legal framework governing individual care for and raising of children within the family contains provision for intervention by the State by means of special courts whose role is to deal with children needing special care, as explained below.

(a) Children whose rights have been violated

The law governing the system of care for children is the Minors Act,[171] which is centred on the role of juvenile court judges. Their tasks are to take decisions on the future lives of children when this is required for the child's welfare and requested by the child's parents,[172] and to hear all cases involving minors whose rights have been seriously violated or endangered. They have the following powers:

- To order minors, their parents or persons caring for them to participate in support, reparation or orientation programmes to address and overcome crisis situations, and to furnish appropriate guidance;

- To order the admission of minors to Transit or Distribution Centres, foster homes or residential institutions.

(b) Child offenders

Children accused of an offence, if they are aged under 16, must be taken to a specialist Transit and Distribution Centre, and the juvenile court judge must be informed immediately. Young people accused of an offence who are aged between 16 and 18 are taken to the Observation and Diagnosis Centres of the National Minors Service (SENAME) so that their capacity for discernment can be assessed. A judge who finds that the child has committed an offence without due discernment may take the following measures: return the minor to his or her parents, guardians or other persons in charge of the minor, with a warning; place the minor under surveillance; place the minor in a special transit centre; or place the minor in the care of a person living with his or her family whom the court considers fit to supervise the minor's upbringing. The duration of these measures is determined by the judge, who may revoke them or modify them if the circumstances change; in some cases the judge may order the placement of a person aged under 18 in a prison for adults.

285. From mid-2006 onwards a new law on the criminal responsibility of minors has been in force in the country (see paragraphs 228 and 229 above).

Official policy for the protection of children

286. Mention should be made of the following:

(a) Role of the National Minors Service (SENAME)

This is a State agency, reporting to the Ministry of Justice, whose task is to protect and promote the rights of children whose rights have been violated and also to ensure that young people who have broken the law are integrated into society. The agency carries out measures within the remit of the juvenile court judge, offering special programmes in coordination with public or private stakeholders. There are 11 systems of assistance for children who need special protection from the State, offering the juvenile court judge options available under the law. These systems may be grouped in four areas: observation and diagnosis; protection; behavioural rehabilitation; and prevention. In terms of short-term and medium-term objectives, SENAME is engaged in the following activities:

- Restructuring to put into effect the principle of separate treatment, thus helping to reduce the present institutional abuse which results from confusion between social policy and penal policy;

- Starting from 1991, it set up and funded, for implementation by cooperating agencies, a variety of specialist programmes, mainly in the non-residential and community spheres; these help to broaden the availability of programmes for children whose

rights have been violated, in areas such as non-residential diagnosis, serious ill-treatment and sexual abuse, drug addiction, commercial sexual exploitation of children, and street children. Of particular note are the Offices for the Protection of Children's Rights, which seek to make a significant contribution to removing children's problems from the judicial sphere, changing the practice of institutionalizing children whose rights have been violated and strengthening families and social and community services networks for the protection of children's rights;

– Progressive establishment of small homes for the most complex cases, in which personalized care is provided in a friendly family-style environment;

– Improvement of programmes of care in families, reintegration in the family and development of programmes to combat serious rights violations.

(b) National Policy and Integrated Action Plan for Children and Young People, 2001-2010

A Council of Ministers for Children and Young People has been established to implement this policy.[173] The policy covers various initiatives which are currently under way, with the following goals: to ensure equality and non-discrimination among children, in terms of their rights to participation, survival, equal opportunity, education, health, leisure and culture; to protect children whose rights have been violated and who have been deprived of a family environment; to protect them against economic exploitation, ill-treatment, sexual exploitation and the illegal use of narcotics and psychotropic substances; and so on.

Legal reforms

287. These are the following:

(a) Action to separate the procedures applicable to children accused of an offence from those applicable to children whose rights have been endangered or violated[174]

(b) Filiation[175]

It was indicated in the previous report that a bill had been prepared on this subject. This law eliminates existing differences between children born within and outside wedlock (legitimate, natural and illegitimate children) which entailed discriminatory treatment as regards kinship, the right to maintenance, paternal authority and inheritance; it enables investigation of paternity or maternity, including the right to claim filiation as a right which cannot be time-barred and cannot be renounced; this reform acknowledges the obligations of parents vis-à-vis their children and equality in the exercise of parental rights and responsibilities, setting forth the duty of society to protect all children without any distinction based on legitimacy; it contains major reforms as regards paternal authority which remedy the difficulties formerly arising in family life, especially when custody rights, which were usually exercised by the mother, clashed with those stemming from paternal authority, which was held exclusively by the father; under this law the general rule is that paternal authority is a right which must be shared between the two parents. The new Filiation Act lays down that a father or mother who is not caring for a child personally shall not be deprived of the right or be released from the duty to

maintain a direct and regular relationship with the child; in short, it is recognized that the higher interests of the child demand this direct and regular relationship and not mere visits, which possess an occasional character that is incompatible with the full realization of the child's rights.

(c) Child adoption[176]

Lays down equal rights for adopted children, eliminating existing differences between full and simple adoption; lays down that Chilean couples who display a wish and an ability to adopt shall be given preference over foreigners; stipulates a prior and separate stage of the procedure for declarations of abandonment, with a subsequent stage for formalization of the adoption, in which no provision is made for opposition by third parties; lays down grounds for applying for a declaration that a child is available for adoption; criminalizes the act of improperly seeking payment for the handing over of a child for adoption; and so on.

(d) Leave in adoption cases[177]

Grants one year's leave to widowed or single men and women who declare to a court their wish to adopt a child in accordance with the Adoption Act.

(e) Sex offences[178]

Broadens the definition of sex offences; lessens the burden of proof; speeds up the provision of medical attention; provides better protection to victims and eliminates the need for them to face their attackers; bearing in mind that most incidents of sexual abuse are committed against children under 12, the Act imposes the severest penalties on offences against under-age victims and provides for stricter penalties for offences committed by persons known to the victims.

(f) Efforts to facilitate reporting of sex attacks and improve investigation of such offences[179]

(g) Child pornography and the use of children for prostitution[180]

Creates new offences against minors - that of acting as a client in child prostitution and that of acquiring pornography featuring children; punishes the encouragement of non-habitual prostitution; raises the age threshold for sex offences against boys and girls from 12 to 14 years; lays down an additional punishment for persons responsible for sex offences against minors, namely a ban on performing regular work with children for 3 to 10 years following completion of the sentence, and lays down the manner in which appropriate institutions can confirm the existence of such a ban; increases the fine applicable to the offences of engaging in the white slave trade and statutory rape.

(h) Use of children in pornographic films[181]

Imposes penalties on participation in this type of film production when use has been made of children aged under 18, as well as the showing, import, distribution or marketing of such material.

(i) Pregnancy and maternity in educational establishments

See paragraph 58 (c) above.

(j) Regulation of the right to visit children in the custody of one of their parents[182]

Seeks to ensure the full and timely exercise of the right of parents who are not living with their children to have a direct and regular relationship with them.

(k) Maintenance payments[183]

Its purpose is to guarantee timely and fair maintenance payments and the effective discharge of this obligation; it establishes a minimum payment which is equivalent to 40 per cent of the minimum income; if the respondent has more than one minor child, he or she must pay 30 per cent of the minimum income for each child; in the case of wage-paid or salaried workers, the court must specify deduction by the employer as the form of payment, that is, the employer must deduct the maintenance payment from the worker's wage or salary and pay it directly to the recipient; the obligation to indicate the respondent's place of residence in the application has been removed, and the courts have been authorized to take all necessary steps to locate him or her; overnight detention is prescribed where the maintenance payment has not been paid, and a woman married under the system of joint property is given an opportunity to make use of joint assets exceptionally, and with the permission of the court, in order to fund the maintenance payments owed; the courts have an obligation to order provisional maintenance payments and to set the payment in cash terms, but are authorized, at the request of the respondent, to charge specific payments on housing, health, education, etc. made by the recipient against the maintenance payment.

(l) Sports[184]

Recognizes that children and young people enjoy priority as subjects of rights in having access to all physical and sports activities, which the State is committed to develop through a national sports policy.

(m) Consumption of alcohol in public[185]

Obliges the police to take any children found in this situation to the police station or their homes in order to return them to their parents or the person responsible for their care, provided that that person is an adult.

(n) Obligatory and free secondary education[186]

Amends article 19, paragraph 10, of the Constitution, so that the State has a duty to finance a system of free secondary education.

(o) Civil marriage

Changes the minimum age of marriage (see para. 279 (d) above).

(p) Family courts

See above, paragraphs 225-226.

Ratification of international instruments

288. The following international instruments have been ratified:

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified on 6 February 2003; entered into force for Chile on 6 September 2003;

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified on 1 July 2003; entered into force for Chile on 17 December 2003;

- Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, signed in August 1999; entered into force for Chile on 4 October 1999.

Draft legislation on protection of children's rights

289. The Ministry of Justice has proposed the following legislative amendments, which are currently before Congress, in order to bring domestic law into line with the Convention:

(a) Draft law on reform of the system of protection of the rights of children and young persons

This draft legislation was announced by the Government in 2000; priority in the matter of protection is given to care for children within their families and the community. Once adopted, it will replace the Minors Act currently in force. It specifies the grounds for separating a child from the family, a measure to be applied only temporarily and as a last resort. The preliminary provisions establish, inter alia, parents' responsibility for the upbringing and care of their children and the obligation of the State and institutions to respect the rights and duties of parents and anyone else appointed by law or by the courts to take direct charge of children. Due account must also be taken of the habits and customs of children's families and communities, in accordance with the law. The law will establish rights for specially protected children: the right to live with their parents; the right of children living in residential centres or foster families to remain in contact with both parents; and the right of children removed from their original family by court order to special protection from the State - in such a situation they will retain all their rights under this law, in particular the right to an identity, to be treated with respect and dignity, not to be subject to interference with their privacy or correspondence, to freedom of association and expression, to seek, receive and impart information of all kinds, including the right to be regularly informed of the reasons for the imposition or extension of any measure affecting them and of its scope, duration, purpose and nature.

(b) Draft law on the SENAME system of care and subsidies

The aim of this draft legislation is to apply major changes to the current system, improve the quality of care and make children's integration into the family and society the focus of policy on children.

Age of majority in civil and criminal matters; minimum age of employment

290. The following ages apply:

(a) Civil matters

Under Chilean law, the age of majority in constitutional and civil matters is 18, the age at which a person acquires the status of citizen, which confers the right to vote and to seek elected office subject to the law.

(b) Criminal matters

Persons aged under 16 are exempt from all criminal liability. Any prosecution brought against a person in this situation must be definitively dismissed, without prejudice to its transfer to the juvenile court, which can adopt appropriate measures for his or her protection as prescribed by law. Persons over 16 but under 18 are generally exempt from criminal responsibility, unless they are found by the juvenile court to have acted with due discernment. If they are found to have acted without due discernment, the case must be definitively dismissed, and the same rules applied as for persons under the age of 16.[187] Where the person is found to have acted with discernment, the Criminal Code generally applies, but with extenuating circumstances.[188] As indicated above (paras. 228-230), new legislation in this regard will enter into force in mid-2006.

(c) Labour matters

For purposes of labour law, the age of majority and the age at which persons may freely contract out their services is 18 years. Persons aged under 18 but over 16 may enter into employment contracts provided they have the express authorization of their father or mother. Failing that, they need the authorization of their paternal or maternal grandfather, or of the guardians, persons or institutions who have custody of the minor. Failing all those, the appropriate labour inspector may deliver the required authorization. Minors are not, however, allowed to work underground, or on tasks requiring excessive effort, or in any activities which may be hazardous to their health, safety or morals. In no event may under-18s work more than eight hours a day, and their work time may not be extended through overtime. Children under the age of 16 but over the age of 15 may contract out their services provided that they have been duly authorized as indicated above and that they have fulfilled their educational obligations. They may only undertake light work which is not prejudicial to their health and development, and which does not prevent them attending school or taking part in educational or training programmes. Like the previous group, in no case may they work more than eight hours a day. Persons under the age of 21 may not be contracted to undertake any underground mining work unless they have been subjected to an aptitude test. Any employer contravening this rule will be liable to a fine. Under the Labour Code, children under the age of 18 cannot be employed in

cabarets or similar establishments, or places where alcoholic drinks are sold for consumption on the premises. In certain specific cases, with the authorization of their legal representative or the juvenile court, children under the age of 15 may be permitted to sign a contract of employment with individuals or bodies involved in the theatre, the cinema, radio, television, the circus or similar activities.

Right to registration of birth and name; measures taken to ensure immediate registration of births in Chile

291. Under the Civil Registration Act, register entries may not be altered or modified other than by an enforceable court decision. This Act also allows individuals to request a new register entry or an amendment to their entry. In addition, under Chilean law the appropriation of another person's name is a punishable offence.

292. Children's homes and care institutions have a duty, inter alia, to preserve the nationality and name of the children in their care.

Measures to ensure that every child has a nationality at birth

293. Anyone born on Chilean territory is Chilean, except children whose parents are in Chile in the service of their Government and the children of foreigners who are temporarily resident, who can in any case choose Chilean nationality upon reaching the age of 21.[189] Since nationality is a basic human right, the Constitution provides that, where the two exceptions are concerned, the conditions must be met by both parents. For the same reason, in the absence of any legal definition of "temporarily resident", the term has been interpreted restrictively, to cover tourists, illegal tourists and foreigners whose application for residence has been rejected and who are not requesting a review of that decision.

294. Children born abroad to a Chilean father or mother are Chilean if at the time of the birth either parent is currently in the service of the Republic. Where *jus sanguinis* is applied in this way, it is deemed to have the effect of *jus solis*, since they are considered to all intents and purposes to have been born on Chilean territory; this is important for their exercise of the right to be elected President of the Republic.

295. The constitutional amendments of August 2005 abolished the year's residence requirement that children born abroad to a Chilean father or mother used to have to fulfil in order to acquire Chilean nationality; now they can acquire it simply by establishing residence in Chile, with no minimum time requirement.

Article 25

The right to take part in the conduct of public affairs, directly or through freely chosen representatives

296. Chile's previous report indicated that, according to the Constitution, the right to vote and to seek elected office, and other rights under the law or the Constitution, belong to those who have the status of citizens, that is, Chileans who have reached the age of 18 and have not been sentenced to afflictive punishment (more than three years' imprisonment). It also described the requirements to be met by foreigners in order to exercise the right to vote.

297. Under the Constitution, the following are grounds for suspending a citizen's rights of suffrage: being disqualified by reason of insanity; being charged with an offence carrying an afflictive penalty or defined by law as a terrorist act; being charged with drug trafficking, a ground added by the constitutional amendment discussed below; being sentenced by the Constitutional Court for membership of parties or organizations declared by the Court to be unconstitutional.

Measures to ensure genuine periodic elections by universal suffrage and secret ballot, guaranteeing the free expression of the will of the electors

298. The previous report also explained that the Constitution provides for a system of personal, equal and secret suffrage and a general election system regulated by constitutional Acts governing the electoral registration system and Electoral Service, general elections and vote counts, and the Electoral Commission.

(a) The Electoral Service[190]

The Electoral Service is an autonomous body whose task is to maintain a register of all citizens who have the right to vote and of those who are disqualified, and to monitor compliance with electoral regulations. Every commune in Chile has registration boards responsible for registering Chileans and non-Chileans who are entitled to vote.

(b) General Election and Vote Count Act[191]

This Act regulates all aspects of election preparations, registration of candidates, the ballot itself, procedures guaranteeing a secret ballot, a public count of the votes, and dispute procedures. It also covers the special formats used to enable the visually impaired to vote and the facilities provided to enable older people and people with disabilities who cannot enter the voting booth alone to cast their ballots outside the booth but unaided.

(c) The Electoral Commission and the regional electoral courts[192]

These are autonomous bodies with overall responsibility for counting the votes cast in elections, which announce the names of those elected and resolve any disputes. Any voter may appeal to the regional electoral courts on irregularities in the selection of election officials or on the use of bribery, force or violence during the elections, or to correct arithmetical errors or oversights in the count. The court has five days to investigate such claims and must then submit any information obtained to the Electoral Commission.

Situation regarding these rights

299. During the reporting period there have been regular presidential, legislative and local elections. In the sole case where irregularities were reported, the legal and institutional dispute resolution mechanisms functioned satisfactorily. That situation arose in the October 2004 mayoral elections in the commune of Talcahuano, in Region VIII, where the irregularities found at eight polling stations led to a rerun of the ballot.

Legal reforms

Constitutional reform of August 2005

300. With regard to the suspension of civic rights and the qualifications for election to public office, the August 2005 constitutional reform established that:

- All persons receiving an afflictive sentence (more than three years) from a court forfeit their status as citizens for the duration of the sentence; once their criminal liability is extinguished they regain their rights without further condition. Before the reform these rights could be recovered only following rehabilitation by the Senate. Similarly, anyone convicted of offences which are defined in law as terrorist acts or are related to drug trafficking and carry an afflictive sentence also forfeits his or her civil status and can regain it only on approval by the Senate of an application for rehabilitation; this no longer requires a law passed by a qualified majority (absolute majority of sitting deputies and senators), as was the case before the reform.

- To stand for President a person must be a citizen with the right to vote; the reform lowered the minimum age for Presidential candidates from 40 to 35.

- To become a deputy or senator, a person must be a citizen with the right to vote; the reform lowered the minimum age for Senate candidates from 40 to 35.

Grounds and procedures for removing holders of elected office

301. The grounds and procedure for removing the President, deputies or senators from office are established in the Constitution.[193] Grounds for recall include entering into contracts with the State, acting as agent or attorney against the Treasury, attempting to sway administrative or judicial authorities in favour of workers or employers in labour negotiations, travelling abroad without the authorizations required under the Constitution, incitement to disturb the peace, etc. Impeachment proceedings may be brought against the President and other members of the Government such as regional governors and ministers, where actions by their administration seriously compromise national honour or security, or for violation of the Constitution and law; the procedure is conducted by both houses of Congress as part of their oversight functions.

Access, on terms of equality, to public service in Chile - suspension or removal of public officials

302. The Constitution provides, as a constitutional guarantee,[194] for "access to all public services and employment subject only to the provisions of the Constitution and the law", and stipulates that no authority may differentiate on arbitrary grounds.[195] The Administrative Statute regulates the procedure for appointment of civil servants in order to ensure equality of opportunity; candidates are selected by open competition, on technical criteria and taking account of their suitability, qualifications and experience. The Statute prohibits any act of discrimination in access to public positions: "... all acts of discrimination resulting in exclusion or preferment on grounds of race, colour, sex, age, civil status, trade union membership,

religious or political conviction, descent or social origin, with the aim of eliminating or affecting equality of opportunities or treatment in employment, are prohibited."[196] The Statute also covers the administrative mechanisms for suspension or removal of public officials.[197]

Legal reform

303. The Administrative Integrity Act[198] applies to the State's administrative bodies. It contains explicit provisions recognizing the public nature of such bodies and their actions and documents and placing an obligation on the leadership of public services to respond to individuals' requests for information within a certain time. The principles underlying the Act are the citizen's right to information, as mentioned above; the declaration of any interest on the part of certain agents of the State by disclosing their professional and financial activities in order to facilitate monitoring of their actions; regulation of exclusions and incompatibilities in respect of public service; and definition of serious misconduct within the civil service, such as influence-peddling, improper use of confidential information, acceptance of gifts, etc.

Article 26

304. As indicated in the previous report, the Constitution explicitly establishes the rule of non-discrimination by stipulating that "everyone is born free and equal in dignity and rights". It also provides, as a constitutional guarantee, that "in Chile there are no privileged persons or groups ... Neither the law or any authority may establish any arbitrary differences", recognizes equal protection for individuals in the exercise of their rights, and guarantees the exercise of those rights in the courts of justice.[199]

Legal reforms

305. There is no framework law containing provisions on discrimination in general. Chile's democratic governments have, however, promoted various legislative initiatives and public policies aimed at ensuring equal protection in law for sectors traditionally vulnerable to discrimination. The following are some of the laws passed to protect specific sectors and also aimed at increasing equality before the law:

- Constitutional reform on the equality of men and women (see above, paragraph 58 (a)).
- Laws entitling people dismissed for political reasons to ex gratia pension credits[200] (see above, paragraph 103).
- Filiation Act amending the Civil Code to establish equality between children conceived within and outside wedlock (see above, paragraph 287 (b)).
- Act regulating the legal status of churches and religious organizations, making all churches public-law entities, a status that had previously applied only to the Catholic Church (see above, paragraphs 243-246).
- Act on full social integration of persons with disabilities.[201] In this regard see Chile's third periodic report on the International Covenant on Economic, Social and Cultural Rights.[202]

- Act amending the Labour Code to explicitly define as discriminatory any distinction, exclusion or preferment on grounds of race, colour, sex, age, civil status, trade union membership, religious or political conviction, nationality, descent or social origin, with the aim of eliminating or affecting equality of opportunities or treatment in employment.[203]

- Act on non-discrimination against persons living with HIV/AIDS and establishing a tax credit for terminal illness. The Act states that, whether in the public or the private sector, the hiring of workers, the continuation or extension of their employment and their promotion may not be conditional on the results of a test designed to detect the presence of the human immunodeficiency virus, and that such a test may not be required. Similarly, admission to an educational establishment and students' continuation or promotion may not be conditional on whether they are affected by HIV, and they may not be required to carry out, or submit the results of, such a test. Similarly, no health-care establishment, public or private, where treatment is requested in accordance with the law, may deny admission or care to persons carrying or affected by the human immunodeficiency virus, or make such admission or care conditional on the performance, or the submission of the results, of such a test.[204]

Draft legislation

306. The following draft legislation is currently before Congress:

- A bill penalizing acts of racial discrimination: it establishes violations of protected rights, defined as rights guaranteed under the Constitution. Sent to Congress on 3 March 1998.

- A bill prohibiting discrimination against students at educational establishments on grounds of physical appearance, ill-health, financial situation or pregnancy. Sent to Congress on 14 October 1998.

- A bill enabling Chilean nationals resident abroad to vote in elections to public office. Sent to Congress on 15 January 1991.

- A bill instituting measures to combat discrimination: it establishes the State's obligation to develop policies and take action to ensure that individuals are not subject to discrimination in the enjoyment and exercise of their rights; it establishes the concept of arbitrary discrimination, a complaints procedure before the courts for arbitrary discrimination, and the motive of discrimination as an aggravating circumstance in the commission of an offence. Sent to Congress on 22 March 2005.

- A draft bill partially incorporating the results of a study carried out by the anti-discrimination forum organized by the Public Interest Programme of the Law Faculty of the Diego Portales University and comprising academics and organizations representing groups susceptible to discrimination; the study led to the drafting of a preliminary bill containing measures aimed at strengthening the right to equality and eliminating all forms of discrimination against individuals.

Public policies

307. The following policies are contributing to the elimination of discrimination:

- The National Plan to Overcome Discrimination in Chile is now at the validation stage (carried out by various ministries using a mechanism for consultation, discussion and approval); it aims to create a network of ministries to draw up public policies embodying the principles of tolerance and non-discrimination in government. The Plan is coordinated and implemented by a specialist unit of the Community Organizations Department of the Office of the Minister and Secretary-General of Government and includes approaches based on a number of international instruments to which Chile is party.

- National Policy and Integrated Action Plan for Children and Young People, 2001-2010 (see above, paragraph 286 (b)).

- Equal Opportunities Plan for Women 2000-2010 (see above, paragraph 60 (a)).

- New Deal Policy for the Indigenous Peoples 2004-2010 (see below, paragraph 318).

Article 27

Chile's ethnic minorities

308. In its previous report Chile provided census data from 1992. According to data obtained from the 2002 census, the indigenous population comprises a total of 692,192 individuals who identify themselves as belonging to an indigenous people. Of these, 87 per cent identify themselves as Mapuche and the remaining 13 per cent as belonging to other indigenous peoples. The indigenous peoples account for 4.6 per cent of Chile's total population of 15,116,435.

309. A breakdown of the indigenous population by membership of specific peoples gives the following figures: Mapuche, 604,349; Aymara, 48,501; Atacameño, 21,015; Quechua, 6,175; Rapa Nui, 4,647; Colla, 3,198; Alacalufe, 2,622; Yámana, 1,685. Thus the largest ethnic group in Chile is the Mapuche people, followed by the Aymara (7 per cent) and the Atacameño in third place (3 per cent).

Protection and exercise of indigenous rights

310. Since the restoration of democracy, the Government and the indigenous peoples have made significant progress on indigenous rights, as reflected in the entry into force of the Indigenous Peoples Act, the establishment of public institutions to deal specifically with this sector, and the implementation of public policies on the restitution and protection of land and waters, development of production and the affirmation of indigenous culture and education.

311. The Indigenous Peoples Act[205] establishes the institutional framework created by the State of Chile to enable the effective exercise of the rights of the country's various ethnic groups. As described in the previous report, the Act introduces a special indigenous status and, recognizing the State's obligation to take appropriate measures in this area, establishes the

National Indigenous Development Corporation (CONADI) under the Ministry of Planning and Cooperation, as a public service responsible for promoting, coordinating and implementing action by the State to encourage the full development of indigenous individuals and communities.

312. Steady and systematic progress has been made as a result of the application of this Act, as described below:

- As of 2004, more than 2,500 communities and more than 1,000 indigenous associations had been granted legal status.

- As of 2004, six Areas of Indigenous Development had been established in various regions; these are social and geographical units to which the State channels resources for the implementation of plans and programmes.

- Between 2000 and 2004, 230,804 hectares of land were transferred to the indigenous communities and title to a total of 133,916 hectares of land regularized, using the various mechanisms at the State's disposal: land purchase or subsidy, transfer of State property and restructuring of State land holdings. It is estimated that, with an allocation of 12,345,637,000 pesos (US$ 23,298,929)[206] from the 2005 budget, it should be possible to transfer a total area of 31,318 hectares, to bring the nationwide total up to 262,177 hectares in 2006.

- More than 190 billion pesos (US$ 358,571,752) was invested between 2000 and 2004 in infrastructure projects in the communes with large concentrations of indigenous inhabitants (counting only Ministry of Public Works highway projects and funds from the Office of the Under-Secretary for Regional Development).

- More than 21.6 billion pesos (US$ 40,763,946) was invested by CONADI's Development Fund and Indigenous Education and Culture Fund between 1994 and 2003.

- An annual total of 4 billion pesos (US$ 9,304,922) has been invested in scholarships for 28,000 indigenous students. Subsidies to university residences for rural indigenous students have risen by more than 360 per cent in recent years, to reach 800 million pesos (US$ 1,509,775).

- More than 3.4 billion pesos (US$ 6,416,547) was allocated to 11,264 indigenous families in 2004 under the *Chile Solidario* welfare scheme; these families accounted for 7 per cent of the total of 51,362 persons covered.

- More than 2.5 billion pesos (US$ 4,718,049) was allocated to bilingual intercultural education between 1999 and 2003; 365 schools are registered in this programme, which also focuses on the conservation and development of indigenous languages through codification, standardization and modernization, and on rescuing endangered languages.

- Allocations of 6 billion pesos (US$ 11,323,318) have been made available for work with vulnerable groups such as the Kawésqar and Yagán peoples.

- More than 520 national monuments and sites of historical indigenous value have been proclaimed and protected since 2002.

State investment in indigenous affairs since 2000

313. Between 2000 and 2005, around 30 billion pesos (US$ 56 million) a year was channelled through sectoral budgets to investment in communes with large indigenous populations. The investment came chiefly from the Ministry of Public Works, the Office of the Under-Secretary for Regional Development, the Ministry of Agriculture and the Ministry of Labour.

314. Through the special programmes of direct investment for the indigenous peoples, an average of just over 27 billion pesos (US$ 50 million) a year was invested between 2000 and 2005. This direct investment comes chiefly from CONADI and the Comprehensive Development Programme for Indigenous Communities ("Origins" Programme), both part of the Ministry of Planning; the special agreements signed by the National Institute for Agricultural Development (INDAP) with CONADI and the "Origins" Programme; the special programmes of the Ministry of Labour's National Training and Employment Service (SENCE); the Ministry of Education's Bilingual Intercultural Education Programme; the programme of indigenous grants, formerly run by the Ministry of Education and now run by the National Schools Support and Scholarships Board, the special kindergartens programme of the Fundación Integra and the National Kindergartens Board; and the Ministry of Health's indigenous peoples health programme.

Principal measures to protect the identity of minorities and the rights of their members to enjoy their culture and language and to practise their religion with other members of their group

315. The Government of President Lagos has taken various steps to meet the demands of the indigenous peoples, within a framework of respect for the rights and guarantees recognized under the Constitution and international instruments. Preference has been given to institutional approaches, and the use of force or violence to secure these rights will not be tolerated. In cases where violence has been used by indigenous people or by organizations espousing the indigenous cause as a means of applying pressure in order to achieve their ends, the Government has taken action through the courts to prosecute and punish the offenders.

Indigenous Peoples' Working Group

316. In order to lay the foundations for a new deal between the State, society at large and the indigenous peoples, President Ricardo Lagos, on his Government's third day in office in March 2000, called on indigenous, State and business organizations and the churches to form an Indigenous Peoples' Working Group to prepare a plan of action to step up efforts by society and the State in support of all Chile's indigenous peoples. On the basis of a paper produced by the Working Group in May 2000, the President announced a set of 16 concrete measures to boost the development of the indigenous peoples, chief among them being the Historical Truth and New Deal Commission, pressing ahead with the restitution and protection of lands, implementation of

the "Origins" Comprehensive Development Programme and the assignment of responsibility for coordinating indigenous policies and programmes to the Office of the Under-Secretary of the Ministry of Planning and Cooperation.

Historical Truth and New Deal Commission

317. The Commission's task was to advise the President on the indigenous peoples' perspective on historical events in Chile and to make recommendations leading to a State policy for a "new deal" that would facilitate progress towards a new relationship between the indigenous peoples and the rest of Chilean society. The Commission was set up in January 2002 and delivered its final report in 2004. Many of its proposals have contributed to a reorientation of policy in indigenous affairs.

New Deal Policy

318. On the basis of the recommendations contained in the report of the Historical Truth and New Deal Commission, the President announced the New Deal Policy 2004-2010 in April 2004; its three principal components are as follows:

(a) Indigenous peoples' rights

As well as creating the Historical Truth and New Deal Commission, the Government also confirmed its commitment to constitutional recognition of the indigenous peoples and, as a matter of urgency, ILO Convention No. 169 concerning indigenous peoples. The Government has submitted draft legislation to Congress since the early 1990s on both these matters, which have a direct bearing on the development and exercise of ethnic minorities' rights, without managing to rally the support of the Opposition. As yet the Constitution accords only indirect recognition to ethnic minorities,[207] inasmuch as the State recognizes and protects the intermediate groupings through which society is organized and structured, guaranteeing them sufficient independence to achieve their particular objectives. The Constitution[208] also recognizes freedom of conscience, the expression of any conviction and the practice of any religion that does not offend morality or public order. In the international sphere, Chile supported the establishment of the United Nations Permanent Forum for Indigenous People; it has also advocated adoption of the drafts of the United Nations and inter-American declarations on the rights of indigenous peoples. Following an invitation from the Government, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people made a lengthy visit to Chile in 2003 and produced a report acknowledging the Government's work in indigenous affairs and suggesting improvements in certain areas.

(b) Development with identity

The Government promised to transfer 50,000 hectares of land to the indigenous peoples, a target that was exceeded towards the end of the third year of President Lagos's term of office, 160,000 hectares having been transferred; in addition, 1,500 hectares were handed over to the Pehuenche families of the upper Bío-Bío. To establish a linkage between land transfer and development of production, it was decided to extend and enhance the "Origins" Programme (see below).

(c) Strengthening the institutional framework for indigenous affairs

In this context, CONADI is being reorganized, and in March 2002 the Under-Secretary of the Ministry of Planning and Cooperation was designated coordinator of indigenous policies and programmes.

Comprehensive Development Programme for Indigenous Communities ("Origins" Programme)

319. The Government has signed a loan agreement for US$ 133 million with the Inter-American Development Bank (IDB) in order to implement the two phases of the "Origins" Programme. The first phase of the Programme was launched in September 2001 with the aim of improving living conditions and promoting "development with identity" among the Aymara, Atacameño and Mapuche peoples in rural areas, particularly in the economic, social, cultural, environmental and legal spheres.

320. Since its launch and up to 2005, with the first phase nearing completion, the Programme has invested around 25 billion pesos (US$ 47,180,493) in some 4,100 projects directly benefiting these communities, under the central components of the Programme, namely production, strengthening, intercultural education, culture and intercultural health.

Draft legislation to establish the indigenous peoples' marine and coastal zone

321. The Indigenous Peoples Act places value on the life of the indigenous peoples, their integrity and development, their customs and values. It places an obligation on society in general and on the State in particular to protect and promote indigenous peoples' development, their cultures, families and communities, and to take appropriate measures in order to do so; specifically, indigenous lands require protection and arrangements to ensure their proper use, ecological balance and further expansion.

322. In the light of the above and the fact that Chile's legal order must take account of the ancestral riches that are an integral part of indigenous peoples' existence, and after having considered a number of situations raised repeatedly and with various authorities by the Lafkenche communities, the purpose of this draft legislation is to establish a new administrative concept, the indigenous peoples' marine and coastal zone, as a means of granting recognition to coastal areas that the indigenous peoples have traditionally used. As stated in the Presidential Message introducing the bill, this administrative concept rests on several principles: exclusive rights, voluntary participation, community organization, transfer without payment and respect for established rights.

Spheres of indigenous participation

323. One of the main forums for indigenous participation is established in the Indigenous Peoples Act, which created the National Indigenous Development Corporation (CONADI). The Corporation is run by a National Board, of mixed composition, comprising eight indigenous members and eight government representatives. The Board debates and takes decisions on a

range of subjects relating to the main demands and concerns of the indigenous peoples and the Government's position on these, in a running dialogue aimed at achieving consensus. The Board's regional offices also include indigenous representatives.

324. The "Origins" Programme mentioned above also allows for various forms of community involvement in the design of local projects and plans as well as in their approval and implementation. The Programme also offers forums for regional discussion with indigenous representatives and, at the national level, the National Coordinating Committee has three indigenous advisers.

325. Other areas of participation are: indigenous associations, which are functional, voluntary participatory groups with legal status, such as the Council of All Lands and the Arauco Malleco Coordinating Committee; traditional structures such as the Huilliche people's *cacicado* (chiefdom) system and the Rapa Nui Council of Elders; and the involvement of indigenous communities in the management of protected forests.

326. The biggest difficulties in terms of full participation and access to natural resources by indigenous organizations arise from the fact that the majority of them have had no training in preparing and implementing development projects; the fact that the Constitution does not recognize indigenous peoples; and the persistence of discrimination of various kinds against indigenous peoples in a number of social spheres.

327. Once constitutional recognition of indigenous peoples has been approved, progress will be possible in various aspects of indigenous peoples' political rights, and it will be possible to establish an Indigenous Peoples' Council as a representative body whose prime function will be to contribute to the definition and implementation of public policies affecting indigenous peoples.

Notes

[1] CCPR/C/79/Add.104.

[2] Art. 342.

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

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

[5] Art. 303.

[6] Exempt resolution No. 2326 (year 2000).

[7] Resolution No. 7224 (year 2001), ISP register F8527/01.

[8] Criminal Code, para. 365, repealed by Act No. 19.617 of 1999.

[9] Application of article 34 of the Indigenous Peoples Act.

[10] Act No. 19.296 of 14 March 1994.

[11] Act No. 16.519 of 1997.

[12] Act No. 19.640 of 1999.

[13] Act No. 19.696 of 2000.

[14] Act No. 19.718 of 2001.

[15] Act No. 19.665 of 2000.

[16] United States dollar average rate in November 2005, as published by the Central Bank of Chile, http://www.bcentral.cl.

[17] Constitution, transitional article No. 36, para. 1.

[18] The proposals include: the appointment of special judges to hear human rights cases; draft legislation designed 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; institution-building to ensure the realization of human rights in the future through the ratification of human rights treaties and the strengthening of human rights education.

[19] HRI/CORE/1/Add.103 of 12 February 1999.

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

[21] Constitution, arts. 95 ff.

[22] Constitution, arts. 45 ff.

[23] Constitution, arts. 81 ff., as amended.

[24] Constitution, arts. 90 ff.

[25] Document E/1994/104/Add.26, of 14 July 2003, paras. 51-54.

[26] Art. 7, last paragraph.

[27] Art. 20.

[28] Art. 21.

[29] Art. 19, No. 3, para. 5.

[30] Art. 19, No. 26.

[31] Art. 5, para. 2.

[32] Constitution, arts. 1 and 19.2, para. 1.

[33] Act No. 19.602 of 25 March 1999.

[34] Act No. 19.688 of 5 August 2000.

[35] Whereas in previous legislation rape was restricted to vaginal penetration by a man, it now covers penetration (carnal access) of the vagina, anus or mouth of any person.

[36] It is now defined as the performance of the sexual act where the aggressor takes advantage of the victim's inexperience or abuses a position of authority, and where the victim is a person of either sex between the ages of 12 and 18.

[37] Act No. 19.617 of July 1999, amending the Criminal Code, the Code of Criminal Procedure and other legislation.

[38] Act No. 19.591 of November 1998, amending the Labour Code.

[39] The requirement to make a nursery available no longer depends on a particular establishment having 20 or more female workers but on the size of the company as a whole: thus, if there are at least 20 women working in the company's various shops or premises, they are entitled to this benefit.

[40] Act No. 20.005 of March 2005, amending the Labour Code.

[41] The wife's own property is the property she brings to the marriage or acquires during it as a result of an inheritance, bequest or gift.

[42] The concept of "reserved property" allows a woman working separately from her husband to freely administer property acquired as a result of her work and not to place it under joint ownership upon termination of the regime if she agrees to renounce any claim on the property acquired by her husband in his capacity as administrator of the conjugal partnership.

[43] Presidential instruction No. 15 of 24 March 2000.

[44] Presidential instruction No. 30 of 7 December 2000.

[45] The Basic Investment Statistics System (SEBI), the Management Improvement Programme (PMG), the 2 per cent Sinking Fund and the Government Programme Follow-up System.

[46] *Source*: Electoral Service. Only senators elected by popular vote are taken into account.

[47] *Source*: Ministry of Justice.

[48] "Experience of women's participation (implementation of quotas) in Chilean political parties", December 1998; "Study on the feasibility of implementing a quota law in the Chilean legal system", March 2000; "Views of political and social leaders on the quota law: substance and feasibility", December 2000; "Political parties and electoral opportunities for women", May 2001.

[49] It would be possible to introduce a law on quotas for parliamentary elections by amending the Constitutional Act on Popular Votes and Vote Counts and for mayoral and municipal elections by amending the Constitutional Act on Municipalities.

[50] The main services provided in the area of legal assistance are related to out-of-court procedures, information on rights and duties, alternative forms of conflict resolution, with the emphasis on mediation, and centres for the comprehensive care of the victims of violent crime.

[51] This privilege is available only to convicted female prisoners, not those awaiting trial.

[52] Amendments to art. 39 ff. of the Constitution.

[53] The following offences are among those involved in attempts on the life and physical integrity of an individual (regardless of age) and constitute the legal framework for the protection of a person's right to life:

- Homicide: punishable under art. 391.2 of the Criminal Code. The killing of another person that does not constitute parricide, murder or infanticide;

- Murder: punishable under art. 391.1 of the Criminal Code. The "deliberate killing of another person" in circumstances provided for in this clause, but excluding parricide and infanticide;

- Parricide: defined in art. 390 of the Criminal Code, where the killer is aware of his or her kinship with the victim, provided that it is one of the degrees of kinship set out in the legal definition;

- Infanticide: the last of the categories in the fundamental definition of the "killing of another person". It is defined in art. 394 of the Criminal Code as the killing of a child or descendant by the father, mother or other ascendant within 48 hours of birth. It is considered exceptional, like parricide; if the "killing of another person" takes place more than 48 hours after the birth, the penalty will be higher.

- Counter-Terrorism Act: if the offence of homicide is committed in any of the circumstances provided for in art. 1 of Act No. 18.314 on terrorist conduct, the offence is classed as terrorist conduct and is punishable under art. 3 of the Act, i.e., with a punishment three steps higher up the scale than the punishment prescribed for homicide.

[54] Regulations on Administrative Investigations of the *Carabineros* of Chile, No. 15, art. 3, Supreme Decree No. 118 of the Ministry of Defence.

[55] Supreme Decree No. 900 of the Ministry of the Interior.

[56] Criminal Code, art. 150 A.

[57] Investigative police: Code of Professional Ethics, Arms and Ammunition Regulations, Safety Manual and Investigative Police Organization Act. *Carabineros*: Weapons Control Act, Criminal Code and Code of Military Justice.

[58] The School for Investigative Police is currently offering training courses on the prevention of torture. The courses include Police Ethics I and Police Ethics II (Human rights), in the second and third year respectively. The Higher Academy for Police Studies offers courses on human rights, police ethics and the ethics of police authority.

[59] (a) In the School for *Carabineros*, individuals who have completed the two pre-university education cycles receive three years of training to reach the rank of *Carabinero* law-enforcement and administration officer. The course and curriculum covers professional ethics in the third semester and human rights are studied over two semesters, during which issues relating to the Convention against Torture are covered. (b) In the Police Sciences Academy, two-year advanced courses are provided for officers with 16 years of service, and are a requirement for promotion. The fundamental rights of the individual, including the rights enshrined in the Convention against Torture, are taught for one semester. (c) In the Police Training School for *Carabineros*, which trains 1,500 *Carabineros* every year in 10 locations around the country, there is a human rights module in the "civic education" course, lasting for one semester. (d) The School for Non-Commissioned Officers offers a course on professional ethics. In early 2001, the advanced course and curriculum for graduate non-commissioned officers, including the aforementioned course, was revised to include modules on the fundamental rights of the individual, lasting for two semesters.

[60] Act No. 19.734 of June 2001.

[61] The dollar figures in paras. 101-110 refer to United States dollars at the November 2005 exchange rate published by the Chilean Central Bank at www.bcentral.cl.

[62] Act No. 19.123 of 1992.

[63] Up to 2003, 5,099 persons had benefited from the Reparation Act. As at the date, the Institute for Social Security Standardization (INP) had paid out 90,506,394,000 pesos (US$ 170,805,000) on compensatory allowances. The Act also grants educational benefits to the children of victims, in the form of payment of tuition and enrolment fees and a monthly grant to students in secondary, technical or university education up to the age of 35. In 2002, spending on educational benefits totalled 11,289,200,000 pesos (US$ 21,305,000).

[64] Laws were passed to allow these persons to import their possessions duty-free and to recognize foreign professional qualifications and courses followed abroad. International cooperation agencies also provided programmes and funding for their reintegration into the workforce. The return programme was carried out with the cooperation of the Chilean Government, international cooperation agencies and some specialized non-governmental organizations.

[65] The amount paid between 2000 and June 2003 to people who had been dismissed was 251,697,107,000 pesos (US$ 475,007,000); total expenditure since 1993 amounts to 305,756,362,000 pesos (US$ 577,029,000). As at November 2005, 103,608 persons had been recognized as having been dismissed for political reasons. Of these, 50,301 are receiving non-contributory pensions, 35,063 have been given ex gratia pension credits, and 1,696 widows have ex gratia non-contributory survivors' pensions.

[66] Act No. 19.980 of November 2004.

[67] Act No. 19.992 of December 2004.

[68] At the end of 2002, there were 110,453 people registered on this programme. Health benefits have mitigated to some extent the suffering of victims and many family members. The programme was set up with the aid of a US$ 600,000 grant from the Inter-American Development Agency.

[69] Act No. 19.980 of November 2004.

[70] E/1994/104/Add.26, of 14 July 2003, para. 624 ff.

[71] Arts. 19.8 and 24, para. 2.

[72] Act No. 19.300 of 1994.

[73] For more detailed information see the third periodic report of Chile under the Convention against Torture (CAT/C/39/Add.5), paras. 50 ff.

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

[75] Criminal Code, arts. 50-54.

[76] Arts. 93 and 95.

[77] Art. 151.

[78] Arts. 248, 323, 481 and 483 of the Code of Penal Procedure.

[79] Art. 195.

[80] Investigative Police Organization Act, arts. 19, 29 and 22.

[81] Code of Professional Ethics of the Investigative Police, arts. 1, 2 and 3.

[82] DIGCAR circular No. 1521 of 30 October 1998 concerning the conduct of officers in the context of police procedures.

[83] *Carabineros* Disciplinary regulation No. 11.

[84] Examples: (a) compensation of 215 million pesos (US$ 316,000) which the courts ordered the Chilean Treasury to pay Carmen Gloria Quintana for the burns caused by Army Captain Fernández Dittus on 2 July 1986; (b) compensation of 264 million pesos (US$ 388,000) which the courts ordered the Treasury to pay to the five children of Mario Gilberto Fernández López, who died as a result of torture by State agents on 18 October 1984.

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

[86] Submitted to the Committee on the Rights of the Child in 2005.

[87] General Technical Standard No. 57, exempt resolution No. 952.

[88] Act No. 19.567 of 1 July 1998 amending article 284 of the Code of Penal Procedure.

[89] Act No. 19.661 of February 2000.

[90] Art. 5.

[91] Art. 93.

[92] Art. 94.

[93] Art. 131.

[94] Art. 10.

[95] Art. 122.

[96] Arts. 123, 124, 125 ff., 139 ff. and 155.

[97] Arts. 139, 140 and 141.

[98] Art. 152.

[99] Art. 151.

[100] Art. 95.

[101] Art. 85.

[102] Act No. 19.942 of April 2004.

[103] Approved in May 1998 by Supreme Decree No. 518 issued by the Ministry of Justice.

[104] Act No. 18.834 of 1989, arts. 120 and 122 ff.

[105] As far as judicial proceedings under the new criminal procedure are concerned, since December 2004 the Coyhaique local prosecutor's office has been conducting an investigation into the offence of torture under the Criminal Code involving Prison Service officials. Proceedings against the director of the Lautaro Prison for the same offence resulted in his conviction.

[106] Act No. 19.665 of March 2000.

[107] Amendments to arts. 567 and 568 of the Courts Organization Code.

[108] Transitional art. 7.

[109] Amendments to arts. 578, 580 and 582 of the Courts Organization Code.

[110] Act No. 19.856 of February 2003.

[111] Act No. 19.802 of April 2002.

[112] Phase 1: Alto Hospicio, La Serena and Rancagua. Phase 2: Concepción and Antofagasta. Phase 3: Santiago I, Puerto Montt and Valdivia. Phase 4: Santiago II and region VII.

[113] Dollar exchange rate as at 24 November 2003.

[114] Dollar exchange rate as at 24 November 2003.

[115] In 2003, the following activities were organized: seven regional workshops and two interregional seminars in the metropolitan region with the emphasis on gender-based training for security staff; preparation of a special classification file for women describing their criminological characteristics, according to their criminal record; preparation of a module for therapeutic communities at Arica prison; regional and national instructions were issued to include a gender-based focus in professional assistance programmes; promotion of occupational development among women under various arrangements offered by the Prison Service; approval of labour projects for women using budget funds.

[116] Supreme Decree No. 553 of June 2002.

[117] Dollar exchange rate as at 24 November 2003.

[118] Dollar exchange rate as at 24 November 2003.

[119] General comment No. 27 (1999) of the Human Rights Committee.

[120] Courts Organization Code, arts. 311 and 474, and Constitution, arts. 44 and 46.

[121] Decree-Law No. 1094 of 19 July 1975.

[122] United Nations General Assembly resolution 40/144 of 13 December 1985.

[123] Based on the right of petition guaranteed by the Constitution (art. 19, para. 14), on the State Administration Organization Act (art. 8) and on international treaties and agreements signed by Chile.

[124] Art. 89.

[125] Art. 289.

[126] Art. 4.

[127] Arts. 4, 93, 202, 260, 247, 281, 282, 343 and 344.

[128] Arts. 93, 260, 285 and 291.

[129] Code of Criminal Procedure, arts. 8, 93 and 102, and Office of the Public Defender Act, arts. 35 and 36.

[130] Act No. 19.718 of March 2001.

[131] Exchange rate (selling): US$ 1 = 569 pesos (22 January 2004). *Source*: Ministry of Justice.

[132] Act No. 19.968 of August 2004.

[133] Acts Nos. 20.087 of December 2005 and 20.022 and 20.023 of May 2005.

[134] Act No. 20.084 of December 2005.

[135] Revision of article 79, paragraph 1, of the Constitution.

[136] Act No. 19.346 of 1994.

[137] Act No. 19.628 of 1999.

[138] Case of *Torres Acuña, Aliro and others v. the Municipality of San Pedro de la Paz and others*.

[139] E.g., complaint No. 368 received by the Council on 28 July 2000.

[140] Act No. 19.638 of October 1999.

[141] Decree 303 of the Ministry of Justice.

[142] Act No. 20.045 of September 2005.

[143] Act No. 19.742 of August 2001, amending article 19, paragraphs 12 and 25, of the Constitution.

[144] Act No. 19.846 of January 2003.

[145] Act No. 19.733 of June 2001.

[146] Art. 6 (b).

[147] Act No. 20.048 of August 2005.

[148] National Statistical Institute (INE) annual radio survey; National Culture and Arts Council (CNCA)-INE cultural and leisure activities survey.

[149] Figures from the Communications Section (Subtel), the CNCA-INE cultural and leisure activities survey and the National Television Council (CNTV).

[150] Arts. 138, 139 and 140.

[151] Constitution, art. 19, para. 15 (3), 16 (4) and 19.

[152] Executive Order No. 2.757 of 1979.

[153] Art. 19, para. 15 (2).

[154] Professional associations are governed by Decree-Laws No. 2757 of 1979 and No. 3163 of 1980, as amended; residents' committees and other community organizations are governed by Act No. 19.418 of 1995, and sports associations by Act No. 19.712 of 2001.

[155] Art. 19, para. 19 (2).

[156] Supreme Court ruling of 12 May 1992 in *Revista de Derecho y Jurisprudencia*, vol. 89, part 2, sect. 5, pp. 121-126, quoted by Manuel A. Núñez, op. cit., p. 233.

[157] Constitutional Court ruling No. 43 of 24 February 1987 on the draft Constitutional Act on Political Parties. This draft became Act No. 18.603 on 23 March 1987.

[158] Ruling No. 43, eleventh introductory paragraph (see previous footnote).

[159] Ministry of Justice supreme decree No. 110 of 1979, taken together with title XXXIII of the Civil Code.

[160] Supreme decree No. 292 of 19 March 1993.

[161] Art. 212.

[162] Act No. 19.644 of November 1999.

[163] The expression “trade union organization at any level” refers to the fact that the Fund is aimed at both trade unions and trade union federations or confederations.

[164] Act No. 19.759 of October 2001.

[165] Ministry of Foreign Affairs supreme decree No. 227 of 12 May 1999.

[166] Ministry of Foreign Affairs supreme decree No. 649 of 29 April 2000.

[167] XVII Population Census and VI Housing Census carried out on 24 April 2002.

[168] Act No. 19.947 of May 2004.

[169] Act No. 20.066 of October 2005.

[170] Decree No. 1.907 of 3 March 1999.

[171] Act No. 16.618 of 1967.

[172] Civil Code, art. 234, para. 3.

[173] Supreme decree No. 114, of 17 July 2002, formalizing the initiation of this policy through the establishment of a Council of Ministers for Children and Young People.

[174] Act No. 19.806 of May 2002, relating to adaptation to the reform of criminal procedure and amendment of the Minors Act.

[175] Act No. 19.585 of October 1998.

[176] Act No. 19.620 of 1999.

[177] Act No. 19.670 of April 2000.

[178] Act No. 19.617 of 1999.

[179] Act No. 19.874 of May 2003.

[180] Act No. 19.927 of January 2004, amending the Criminal Code and the Code of Criminal Procedure (Código de Procedimiento Penal and Código Procesal Penal).

[181] Act No. 19.846 of January 2003.

[182] Act No. 19.711 of January 2001.

[183] Act No. 19.741 of July 2001.

[184] Act No. 19.712 of 2001.

[185] Act No. 19.814 of July 2002, amending the Alcohol, Alcoholic Drinks and Vinegars Act.

[186] Act No. 19.876 of May 2003.

[187] Old Code of Criminal Procedure, art. 408 (4); new Code of Criminal Procedure, art. 250 (c).

[188] Art. 72.

[189] Supreme decree No. 5142 of the Ministry of the Interior establishes the relevant procedure.

[190] Constitution, art. 18; Constitutional Act No. 18.556 of 1 October 1986.

[191] Constitutional Act No. 18.700 of May 1988.

[192] Constitution, art. 84; Constitutional Act No. 18.460 of 1985.

[193] Arts. 52, 53 and 60.

[194] Art. 19, para. 17.

[195] Art. 19, para. 2 (2).

[196] Art. 17.

[197] Articles 119 ff. of the Administrative Statute regulate the procedures for investigating misconduct on the part of civil servants and for holding them liable by imposing the following disciplinary measures: written censure, fine, suspension or dismissal. There are two investigative procedures, the summary investigation and the administrative inquiry, of which only the second may lead to dismissal; an investigator (in the first case) or a prosecutor (in the second) formulates charges at the conclusion of the investigation. The subject of the inquiry has the opportunity to mount a defence and submit evidence. The file is transmitted to the head of the service for a decision, which in turn may be subject to an application for review and annulment by the head of the administration.

[198] Act No. 19.653 of December 1999.

[199] Arts. 1 and 19, paras. 2-3.

[200] Act No. 19.234 of 12 August 1993; Act No. 19.350 of 14 November 1994; Act No. 19.881 of 26 June 2003.

[201] Act No. 19.284 of 14 January 1994, which regulates the full social integration of persons with disabilities.

[202] E/1994/104/Add.26 of 14 July 2003, paras. 72-74.

[203] Act No. 19.759 of 5 October 2001.

[204] Act No. 19.779 of 5 December 2001.

[205] Act No. 19.253 of May 1993, on the protection, promotion and development of the indigenous peoples in Chile.

[206] This and the following figures correspond to the observed average rate for the American dollar for November 2005, as published by the Central Bank of Chile (www.bcentral.cl).

[207] Art. 1, para. 3.

[208] Art. 19, para. 6.
