



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to Chile undertaken from 4 to 13 April 2016:
observations and recommendations addressed to
the State party**

Report of the Subcommittee*

Addendum

Replies by Chile**

* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the State party on 27 June 2016. On 26 December 2016, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.

** The present document is being issued without formal editing.



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Chapter 1

Introduction and methodology

1. Torture is a wholly unacceptable practice that cannot be justified under any circumstances. A number of international instruments have been adopted in the fields of international humanitarian law and international human rights law with the aim of requiring States to take all necessary measures to investigate and punish acts of torture. Beyond reactive State obligations, these international treaties also establish proactive obligations, with a view to ensuring that States identify critical areas in which torture is a particular problem, so as to tackle those hotspots and prevent acts of torture. Both approaches are necessary in order to eradicate this practice, which is condemned in the strongest terms by the international community.

2. It is precisely in the field of prevention that significant progress has been made in international law in recent years, as States have agreed on the importance of establishing both internal and external institutions to prevent torture. Unlike law courts, these institutions seek to assist States in the elimination of torture and thus play more of a collaborative role than an accusatory one. Consequently, as a general rule, most of their work is confidential.

3. One such institution is the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and mandated to conduct unrestricted visits to any places where persons are or may be deprived of their liberty, and their installations and facilities, and to access any information that it needs in order to fulfil its mandate.¹ The Subcommittee on Prevention of Torture is also mandated to advise States parties on the establishment, designation and functioning of national preventive mechanisms, to interpret the provisions of the Optional Protocol and to examine the legislative, administrative, judicial and other preventive measures adopted by States at the local level.

4. Pursuant to that mandate, on 14 December 2015, the Subcommittee informed the Chilean Government that it planned to visit that country from 4 to 13 April 2016. Once the Government had been notified, it prepared for the Subcommittee's visit by establishing an interministerial working group composed of representatives from the Ministry of the Interior and Public Security, the Ministry of Health, the Ministry of Defence, the Ministry of Social Development and the Ministry of Justice and Human Rights, under the coordination of the Ministry of Foreign Affairs. The working group was responsible for coordinating arrangements for the Subcommittee's visit by ensuring, for example, that access would be granted to places of detention, statistics on places of detention, national legislation on torture and any information needed to enable the Subcommittee to fulfil its mandate.

5. After its visit, the Subcommittee sent a report containing its observations and recommendations to the Government on 27 June 2016, setting a deadline of six months for the submission of replies to its recommendations.² In order to draft these replies, the Government convened further meetings of the interministerial working group composed of focal points from various ministries which had been set up to prepare for the visit in April.³

¹ See article 11 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

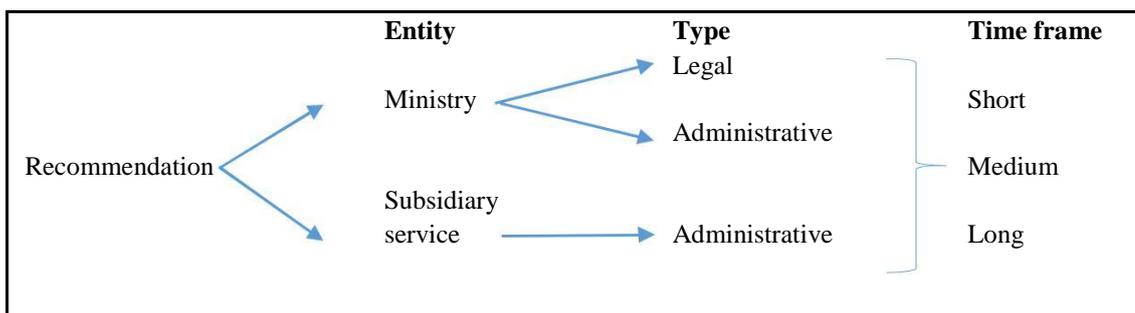
² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Chile undertaken from 4 to 13 April 2016: observations and recommendations addressed to the State party, CAT/OP/CHL/1. In paragraph 8, the Subcommittee requests the Chilean authorities to provide a detailed account within six months of the report's transmission of the measures taken to act upon the recommendations contained therein.

³ The interministerial working group was led by the Ministry of Foreign Affairs and included representatives from the Ministry of Justice and Human Rights, the Office of the Minister and Secretary General of the Presidency, the Ministry of the Interior and Public Security, the Ministry of Social Development, the Ministry of Health and the Ministry of Defence.

1.1 Report methodology and structure

6. Given the diversity of the Subcommittee’s recommendations and the range of State actors involved in their implementation, when drafting the State’s replies it was important to work systematically and to follow a clear methodology, organizing the information that was gathered and coordinating the measures that would be taken to implement the recommendations. With that in mind, the recommendations were classified on the basis of three criteria: the entity responsible (ministry or service), the type of recommendation (legislative or administrative measures) and lastly, the time frame for implementation: short term,⁴ medium term⁵ or long term⁶ (see chart).

Chart 1
Classification of recommendations
 (Prepared by the author)



7. The present report is a workplan that sets forth the measures being taken in response to the Subcommittee’s recommendations. Since the work consists of short-term, medium-term and long-term measures, it will not end with the submission of this report; the interministerial working group will therefore take steps to establish a body to monitor the fulfilment of these commitments, especially the long-term ones.

8. The report covers recommendations of the Subcommittee that call for legal measures to be taken (second chapter) and recommendations that mainly require the adoption of administrative measures (third chapter). It is worth mentioning that, owing to the general nature of the recommendations made by the Subcommittee, the interministerial working group sometimes found it difficult to determine which ministry or service should be charged with implementing a particular recommendation. Bearing in mind that the recommendations concern human rights and should therefore be interpreted in the light of the *pro persona* principle, a distinction was made between general recommendations that could be implemented by more than one service and recommendations that needed to be implemented by a single service because of the context in which they were made or because they specifically referred to a given service.

9. Another difficulty was that the recommendations concern situations that call for a multidisciplinary approach, which requires not only the expertise of a specific service or ministry but also action at the interministerial level. In this regard, it is worth highlighting the collaboration between the Ministry of Health, the Ministry of Justice and Human Rights and some of the services attached to the latter on the implementation of a number of measures.

10. The efforts made by the Government through these different bodies demonstrate its commitment to complying fully with the Subcommittee’s recommendations, which represent another step forward in the prevention of torture. Although these efforts show that the Government has tried to respond to the vast majority of the recommendations, that is not to say that solutions have been found to all of them. The Subcommittee’s report poses significant and, in many cases, complex challenges, so this report should be viewed as an

⁴ Measures implemented by 27 December 2016.

⁵ Measures to be implemented by July 2017.

⁶ Measures to be implemented from the second half of 2017 onward.

initial step towards implementation of the Subcommittee's recommendations. With that in mind, the Chilean Government wishes to echo the Subcommittee's observation that this marks "the beginning of a constructive dialogue ...focusing on the fulfilment by the State party of its obligations under the Optional Protocol and the achievement of the shared goal of preventing torture and ill-treatment."⁷

11. In addition, these efforts are framed by an international context in which Chile is playing a key role in the prevention of torture. As one of the five countries leading the Convention against Torture Initiative, it has defined torture as an offence (in Act No. 20968 and established protocols for action against torture in some services. Furthermore, it has tabled a bill designating the National Human Rights Institute as the national preventive mechanism, it has amended the Prison Regulations, and it has decided to make the report of the Subcommittee public, as requested by the Subcommittee in its recommendations.⁸

1.2 Justice Sector Round Table

12. In view of the role played by the Ministry of Justice and Human Rights in a number of areas directly related to the mandate of the Subcommittee, this Ministry was charged with establishing and coordinating a Justice Sector Round Table, made up of representatives of the Public Criminal Defender Service,⁹ the Prison Service¹⁰ and the National Service for Minors (SENAME).¹¹ In particular, the Ministry and the associated services were responsible for finding solutions to approximately 30 of the Subcommittee's recommendations. The Round Table was coordinated primarily by the Human Rights Unit of the Ministry and composed of members of the Social Reintegration Division of the Ministry, SENAME, the Prison Service and the Public Criminal Defender Service.¹²

13. The Justice Sector Round Table held three coordination and follow-up meetings between October and November 2016, during which a workplan was drawn up, specifying the time frames and persons responsible for each of the measures to be taken by the different services.¹³ Meanwhile, the Human Rights Unit met with the individual services and noted that the implementation of some recommendations would require collaboration with the Ministry of Health. A health subcommittee, involving the Ministry of Justice and Human Rights, the Ministry of Health, SENAME and the Prison Service, was therefore set up. The following diagram shows the coordinating bodies involved:

⁷ Subcommittee on Prevention of Torture Visit to Chile undertaken from 4 to 13 April 2016: observations and recommendations addressed to the State party, CAT/OP/CHL/1, para. 132.

⁸ Subcommittee on Prevention of Torture. Visit to Chile undertaken from 4 to 13 April 2016: observations and recommendations addressed to the State party, CAT/OP/CHL/1, paras. 10 and 133.

⁹ According to article 2 of Act No. 19718 establishing the Public Criminal Defender Service, the purpose of the Service is to "defend persons who have been charged with or accused of a serious, ordinary or minor offence that is within the jurisdiction of a guarantees court or a criminal court that holds oral proceedings and the respective appeals courts and who do not have a lawyer".

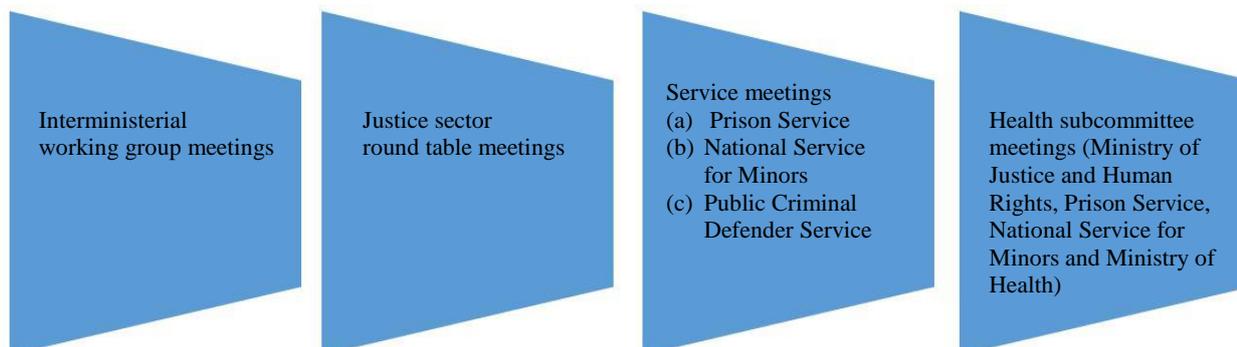
¹⁰ According to article 1 of Decree-Law No. 2859 establishing the Organic Act on the Prison Service, the latter is "a public entity attached to the Ministry of Justice whose mandate, in addition to other functions defined by law, is to facilitate, promote and monitor the social reintegration of persons who, by decision of the competent authorities, have been detained or deprived of their liberty".

¹¹ According to article 1 of Decree-Law No. 2465 establishing the National Service for Minors (SENAME) and the related Organic Act, this Service is "an entity attached to the Ministry of Justice that is responsible for helping to protect and promote the rights of children and adolescents whose rights have been violated and facilitating the social reintegration of young offenders".

¹² Although there are other services attached to the Ministry of Justice and Human Rights, they were not required to participate, owing to the nature of the Subcommittee's recommendations. The services involved established their own working groups to address the recommendations.

¹³ These meetings were held at the Ministry of Justice and Human Rights on 3 October, 24 October and 14 November 2016.

Diagram 1
Coordinating bodies
 (Prepared by the author)



14. To ensure that each service involved in the Justice Sector Round Table had access to the necessary information, a fact sheet was produced for each measure that needed to be taken in order to comply with the Subcommittee's recommendations. Each fact sheet indicated the recommendation concerned, the steps to be taken, the units responsible for taking those steps within each service and the time frame for implementation.¹⁴

Chapter 2

Recommendations to be implemented by ministries

2.1 Legal measures

15. Some of the Subcommittee's recommendations refer specifically to legal reforms that would have a direct impact in terms of torture prevention. The progress and commitments made in this regard are set forth below.

2.1.1 National preventive mechanism

16. Paragraph 20: *The Subcommittee urges the State party to comply swiftly with its international obligation to establish a national preventive mechanism, along with the specific guarantees such national mechanisms should have. In particular, it is important for the State party to make provision for the funding required for that purpose in the 2017 financial year. The Subcommittee reiterates its readiness to cooperate with the State party and to provide any guidance and support required in respect of the commitment made by the Government during the Subcommittee's visit to submit a bill for the establishment of a national preventive mechanism.*

17. Paragraph 17: *The Subcommittee recommends that, in order to guarantee the functional independence of the national preventive mechanism, it should not be subordinate in any way to the National Human Rights Institute. The organizational hierarchy of the Institute should reflect the requirements set forth in the Optional Protocol, namely that the national preventive mechanism should have operational autonomy as regards its resources, programme of work, findings and recommendations and a direct and confidential means of maintaining contact with the Subcommittee.*

18. Paragraph 110: *The Subcommittee recommends that the State party ensure that all detention centres and alternative care facilities for minors are subject to a system of regular, unannounced monitoring visits.*

19. When Chile ratified the Optional Protocol in 2008, it took on the international obligation to maintain, designate or establish, within a period of one year, one or several independent national preventive mechanisms for the prevention of torture, pursuant to

¹⁴ One fact sheet was drawn up for each measure, which means that some recommendations correspond to more than one fact sheet.

article 17 of that instrument.¹⁵ The Government subsequently indicated that the National Human Rights Institute would be designated as the national preventive mechanism.¹⁶ Accordingly, the Ministry of Justice and Human Rights has drafted a bill that designates the National Human Rights Institute as the national preventive mechanism, in compliance with this obligation. In the drafting of the bill, close attention was paid to the Subcommittee's recommendations that the mechanism should enjoy financial and functional autonomy and be able to follow its own programme of work, operate confidentially and have its own body of staff that is independent of the National Human Rights Institute. Its duties will certainly include conducting unannounced visits to places where persons are or may be deprived of their liberty.

20. The bill stipulates that the national preventive mechanism will be implemented gradually and provided with an adequate budget each year. The Ministry of Justice and Human Rights and the Office of the Minister and Secretary General of the Presidency are currently finalizing the draft, which will be shared with the Budget Department of the Ministry of Finance and the National Human Rights Institute, before being submitted to the National Congress in the coming weeks.

2.1.2 Definition of the offence of torture

21. Paragraph 24: *The Subcommittee reiterates the recommendations made by the Committee against Torture in 2009 and those made in the second universal periodic review of Chile in 2014 and urges the State party to bring the definition of the offence of torture fully into line with international law and, in particular, with article 1 of the Convention against Torture. The Subcommittee calls on the State party to harmonize its legislation and, in particular, to repeal articles 150A and 150B of the Criminal Code, as well as article 19 of Decree-Law No. 2460. Lastly, the Subcommittee recommends that penalties for other cruel, inhuman or degrading treatment not constituting torture should be incorporated into the law.*

22. With the promulgation, on 22 November 2016, of Act No. 20968, which defines the offence of torture and cruel, inhuman or degrading treatment, Chile brought its domestic legislation into line with the relevant international standards. In so doing, it fulfilled not only the Subcommittee's recommendations but also those made by the Committee against Torture in 2009 and in the second universal periodic review of Chile in 2014. The offence of torture, as defined by the Act, replaces the offence of unlawful physical or mental coercion, and the penalty provided for in articles 150A and 150B of the Criminal Code prior to their amendment has been increased.

23. Under the new Act, section 4 of title III, book II of the Criminal Code has been amended to include torture, cruel, inhuman or degrading treatment and other violations of constitutional rights by public officials, so that provisions on all these offences are contained in a single section. In addition, the penalties for these offences have been significantly increased under the new legislation.

24. In accordance with the relevant international conventions, notably article 1 of the Convention against Torture, the new definition of torture includes the following components: (i) the intentional infliction of severe pain or suffering on a person; (ii) the existence of a concrete aim or purpose (coercion, punishment or discrimination); and (iii) the involvement of a public official who commits, instigates or consents to the act of torture.¹⁷ The provisions also extend to private individuals who commit acts of torture while

¹⁵ Article 24 (2) of the Optional Protocol provides that States may request twice to postpone the implementation of some of their obligations under the instrument, including the obligation to maintain, designate or establish a national preventive mechanism, for periods of three years and two years respectively.

¹⁶ See Human Rights Committee, Sixth periodic report of Chile, CCPR/C/CHL/6, 12 September 2012, para. 52.

¹⁷ Article 150A, as amended, reads as follows:

“Any public official who abuses his or her position or role by inflicting, instigating or consenting to the infliction of torture shall be sentenced to the minimum duration of long-term rigorous imprisonment. The same penalty shall be imposed on any public official who was aware that such

acting in an official capacity or at the instigation of or with the consent or acquiescence of a public official.

25. This new definition of torture is also innovative insofar as it includes severe pain or suffering of a sexual nature. In this way, it incorporates the gender perspective, taking into account issues that have been raised in international forums, such as the fact that sexual violence cannot be classed as purely physical or mental abuse and is generally committed against women.

26. Lastly, the new legislation provides for a severe penalty, commensurate with the nature of this offence, which is considered internationally to be one of the most serious crimes, and increases the period of limitation, in accordance with the recommendations of the Committee against Torture. The Government considers, however, that the non-applicability of statutory limitations and amnesty provisions should remain limited to torture as a crime against humanity or a war crime, as provided for in Act No. 20357, and should not be extended to ordinary offences.

27. Article 150B has also been amended to include the offence of aggravated torture, which is defined as torture committed alongside the offences of murder, rape, aggravated assault, castration, mutilation, serious injury, very serious injury and injury that constitutes a quasi-offence, and provides for penalties that are proportional to the gravity of the offences in question.

28. Articles 150D, 150E and 150F, concerning unlawful coercion and other cruel, inhuman or degrading treatment, have also been added.¹⁸ The new provisions seek to punish those who are complicit in such offences and establish a higher penalty for offences committed against particularly vulnerable persons. The Act also amends article 255 of the Criminal Code, removing all references to unlawful coercion so as to avoid confusion between the offences concerned.

acts were being committed and failed to prevent or stop the infliction of torture, despite having the capacity or authority to do so or being in a position to do so.

The same penalty shall apply to any private individual who commits the acts referred to in this article, while acting in an official capacity, or at the instigation of or with the consent or acquiescence of a public official.

Torture shall mean any act by which severe pain or suffering, whether physical, sexual or mental, is intentionally inflicted on a person for such purposes as obtaining information, a statement or a confession from him or a third person, punishing him for an act he has committed or is suspected of having committed, or intimidating or coercing him, or for any reason based on discrimination, on grounds such as ideology, political views, religion, beliefs, nationality, race, ethnicity, social group, sex, sexual orientation, gender identity, age, filiation, personal appearance, state of health or disability.

Torture shall also mean the use of methods intended to obliterate the personality of the victim or to diminish his will or his capacity to make judgments or decisions, for any of the purposes mentioned in the previous paragraph. These acts shall be punishable by the maximum duration of medium-term rigorous imprisonment.”

¹⁸ Article 150D reads as follows:

“Any public official who abuses his or her position or role by inflicting, instigating or consenting to the infliction of unlawful coercion or other cruel, inhuman or degrading treatment which does not amount to torture shall be sentenced to medium-term rigorous imprisonment, of medium to maximum duration, and the corresponding accessory penalty. The same penalty shall be imposed on any public official who was aware that such acts were being committed and failed to prevent or stop the infliction of unlawful coercion or other cruel, inhuman or degrading treatment, despite having the capacity or authority to do so or being in a position to do so.

If the offences described in the previous paragraph are committed against a minor or a person in a vulnerable situation on account of disability, illness or old age, or against a person who is under the care, custody or control of the public official, the penalty shall be increased by one degree.

Discomfort or suffering arising only from, inherent in or incidental to lawful sanctions, or arising from a legitimate act of authority, shall not be considered unlawful coercion or other cruel, inhuman or degrading treatment.

Without prejudice to the above provisions, if the acts constitute one or several offences of a more serious nature, the penalty applicable to those offences shall apply.”

29. Another important development relating to the Subcommittee's recommendation in this area is the amendment, under Act No. 20968, to the second paragraph of article 19 of Decree-Law No. 2460, the Organic Act on the Investigative Police, establishing that the new legislation also applies to police officers. This amendment solves the problems of interpretation and legal uncertainty arising from comparison between this legislation and similar provisions in general criminal legislation; it also prevents fragmentation of the law and sets the Investigative Police on the same footing as other public officials.

30. Lastly, the changes go beyond the Subcommittee's recommendation by restricting the jurisdiction of military courts to cases that concern the military. Under Act No. 20968, the first paragraph of article 1 of Act No. 20477, modifying the jurisdiction of military courts, has been amended to include the phrase "whether victims or defendants", thus preventing military courts from hearing any cases that involve civilians or minors, whatever their role in the proceedings. Such cases will therefore always fall within the jurisdiction of ordinary criminal courts. This change marks a huge step forward in the reform of the military justice system in Chile. The Government is working towards implementing the other changes that are needed in this area.

2.1.3 Court for the execution of sentences

31. Paragraph 38: *The Subcommittee recommends that the State party establish a system in which responsibility for monitoring and overseeing the execution of prison sentences is assigned to a specialized judicial body.*

32. Although there is no court for the execution of sentences in Chile, articles 567 et seq. of the Courts Organization Code provide that the judge responsible for procedural safeguards may visit the prison or establishment where detainees or prisoners are being held in order to determine whether they are being subjected to improper treatment and whether their right to defence is being restricted or their cases are being unlawfully prolonged. Article 569 further provides that all detainees and inmates who have been remanded by the court and those whose detention has not yet been notified to the court must be present during the visit if they so request.

33. The rules laid down by the Courts Organization Code and some provisions of the Code of Criminal Procedure¹⁹ have been criticized by national and international human rights organizations and prison expert bodies.²⁰

2.1.4 Legal framework for the prison system

34. Paragraph 40: *The Subcommittee recommends that the State party adopt a comprehensive legal framework for the prison system that is in conformity with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), to govern regulate the use of force and the disciplinary sanctions applied by prison officers. This regulatory framework should also provide for the possibility of prison sentence reductions and parole.*

35. Paragraph 42: *The Subcommittee recommends that, as part of the reform of prison legislation, systems of privileges, including parole, be brought into line with rule 95 of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) on*

¹⁹ In particular, article 466 of the Code of Criminal Procedure, concerning participants in hearings, provides that during the execution of the sentence or the security measure, the only persons entitled to be heard by the competent due process judge shall be the public prosecutor, the defendant, his or her defence counsel and the officer responsible for overseeing the execution of a non-custodial penalty of community service, probation or intensive probation, as appropriate.

²⁰ Including the Rapporteurship on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights after a visit to Chile in 2008, the National Human Rights Institute (2010 and 2011 annual reports on the human rights situation in Chile) and the Prison Reform Council (2010).

humanitarian grounds so that cases involving lengthy sentences do not become a kind of advance death penalty.

36. Paragraph 89: *The Subcommittee recommends that the State party adopt a cross-cutting approach to gender mainstreaming in its incarceration and rehabilitation policies.*

37. Paragraph 93: *The Subcommittee recalls that, under rule 23 of the Bangkok Rules, disciplinary sanctions for women prisoners should not include a prohibition of family contact, especially with their children.*

38. In promulgating Act No. 20968, which defines the offence of torture, the President of the Republic mandated the Office of the Under-Secretary for Human Rights to amend Decree No. 518, which established the country's prison regulations, in order to incorporate a human rights perspective, particularly in view of the events of October 2016, when Lorenza Cayuhán Llebul, an indigenous woman deprived of her liberty, was shackled several times during childbirth.

39. Events of that kind led the Supreme Court to uphold an application for *amparo* in December 2016 and to rule that the Chilean Prison Service should review its protocols for transfer to outside hospitals and bring them into line with the international instruments ratified by Chile regarding pregnant or breastfeeding women deprived of their liberty and the eradication of all forms of violence and discrimination against women.²¹

40. As ordered by the President of the Republic and the Supreme Court, new regulations incorporating a human rights perspective are currently being drafted; these regulations reaffirm the State's duty to act as guarantor and place the focus on persons deprived of their liberty, so as to ensure that deprivation of liberty does not result in the unlawful restriction of other fundamental rights. This approach requires that the gender perspective be taken into account, not only in the regulations themselves, but also in their implementation, to ensure that there is an improvement in prison practices. In addition, a series of cross-cutting principles have been drawn up which apply to the Prison Regulations as a whole, such as respect for the right to equality and non-discrimination and respect for the principle of cultural sensitivity.

41. As regards disciplinary sanctions, the new regulations provide for a new disciplinary procedure designed to reduce opportunities for abuses, and applicable sanctions have been reviewed and modified in order to apply the principle of proportionality and restrict the use of solitary confinement. The new regulations should enter into force during the first half of 2017.

42. The Prison Service is aware of the importance of preserving the bond between mothers deprived of liberty and their children, and the Procedures Unit of its Operations Subdirectorate is therefore working on a comprehensive proposal to bring internal protocols and regulations into line with human rights standards by ensuring that detainees cannot be deprived of contact with their families as a disciplinary sanction. In this regard, the heads of unit of the custodial subsystem will have a limited framework for action when punishing breaches of internal regulations; this framework will also be applied in the regulations for visits to persons deprived of their liberty, which will be finalized in July 2017.

43. Meanwhile, SENAME has acknowledged the importance of strengthening the emotional ties between teenage mothers and their children and introduced regulations to that end in 2007 which remain fully in force today. Under these regulations, adolescents in the criminal justice system²² cannot be deprived of family contact and, more specifically, teenage parents whose children are not with them are entitled to receive daily visits from them.²³

44. Under the protection system, there are seven residential centres for pregnant teenagers and teenage mothers and their children whose rights have been violated. These centres are located in six regions of the country and can accommodate a total of 230

²¹ Supreme Court, case No. 92.795-16, judgment of 1 December 2016, operative paragraph 3.

²² Exempt resolutions Nos. 0321/B and 0224/B, supplemented by Circular No. 15 of SENAME, remain in force.

²³ Right No. 9, paragraph 2 of Circular No. 15 of SENAME, dated 23 May 2007.

persons. The aim of the centres is to avoid separating children from their mothers and thus to help strengthen the emotional bond between them.

2.1.5 Changes to military jurisdiction

45. Paragraph 26: *The Subcommittee urges the State party to amend its legal order to ensure that military jurisdiction is restrictive and is applied only to members of the armed forces whose conduct is in breach of military order and discipline and that under no circumstances may it be extended to cover the commission of ordinary offences against civilians.*

46. *In addition, the State party should ensure that, in cases involving officials of Carabineros, suspected offenders are investigated and tried by the ordinary courts. The State party should also guarantee access for victims of human rights violations to effective remedies under ordinary law, including comprehensive redress, rehabilitation, measures of satisfaction and guarantees of non-repetition.*

47. Under Act No. 20968 of 22 November 2016, which defines the offence of torture and cruel, inhuman and degrading treatment, the Code of Military Justice was amended to ensure that cases involving civilians or minors, whether victims or defendants, no longer fell within the jurisdiction of military courts. This amendment fulfils the Subcommittee's recommendation that, in cases of torture, military jurisdiction should be restrictive and should apply only to members of the armed forces.

48. As regards structural changes to the military justice system, the executive branch is working on the development of new legislation that meets the standards established by the Subcommittee in this area.

2.1.6 Use of special legislation against the Mapuche people

49. Paragraph 119: *The Subcommittee recommends that the application of special criminal laws to individuals belonging to the Mapuche people should cease immediately. It further recommends that counter-terrorism legislation should be applied only to terrorist offences, using a restrictive interpretation of such offences, and should not be applied to acts of social protest by any group, including the Mapuche people.*

50. International human rights bodies have recommended that the Chilean Government apply counter-terrorism legislation restrictively, particularly when it comes to acts of social protest by the Mapuche people. In her Government agenda, President Michelle Bachelet Jeria established the Government's firm commitment to ensuring that charges are not brought against members of indigenous peoples under the Counter-Terrorism Act in connection with social demands.²⁴

51. As regards the application of the Counter-Terrorism Act and other special legislation, according to the Ministry of the Interior and Public Security, since 11 March 2014, 18 complaints have been filed for offences under the Counter-Terrorism Act, and 50 complaints have been filed for offences under the State Security Act; none of those complaints were attempts to criminalize indigenous peoples' assertion of their rights. It is worth noting that a bill amending the current legislation on terrorist offences and bringing it into line with the relevant international standards was put forward in November 2014 (Bulletin No. 9692-07). That bill is currently in its first reading in the Senate.

52. In its report, the Subcommittee also addresses the issue of complaints of torture committed by the forces responsible for maintaining public order and security. In this regard, it should be noted that measures have been adopted to prevent and eradicate police violence. These include regulating the methods that are generally used to maintain public order by establishing protocols on that subject for Carabineros de Chile, and including international human rights standards in the training provided for both police forces. With respect to training, it should be noted that Carabineros joined the Latin American Network for Genocide and Mass Atrocity Prevention in 2014. Within this framework, with support from the Auschwitz Institute for Peace and Reconciliation and taking into account the

²⁴ Programa de Gobierno de la Presidenta Michelle Bachelet Jeria, p. 174.

Subcommittee's recommendations, a series of educational activities on the prevention of torture and other human rights violations were organized in 2016. For example, a seminar on the role of police in preventing human rights violations was held on 27 July 2016, and in October 2016, 22 officers and non-commissioned officers who were attending the sixth course for human rights instructors received training on prevention of torture and mass atrocities as part of the module on human rights in the context of policing.

53. The Government can confirm that, as regards the excessive use of force against the Mapuche people in the context of territorial claims, the protocol followed by the Carabineros for maintaining public order contains a special protocol for the treatment of indigenous children and adolescents who have broken the law. These protocols are publicly available, allowing for greater public oversight.

54. In addition, the Carabineros have defined torture and other inhuman, cruel and degrading treatment as abuses that are in violation of the law and police ethics (Protocol 4.5 of General Order No. 2287 of 14 August 2014). Moreover, the institution has identified approved techniques for apprehending, searching and transporting suspects which are compatible with Carabineros policy on the use of force by police (Circular No. 1756 of 13 March 2013).

55. Furthermore, a series of measures have been adopted for the prosecution and punishment of police violence that may constitute torture or other ill-treatment. For all complaints of excessive use of force (unnecessary violence, unlawful coercion and any other cruel, inhuman or degrading treatment) involving children and adolescents, the Mapuche people in the context of territorial claims or vulnerable groups in the context of criminal proceedings, the Ministry of the Interior and Public Security has requested that the Carabineros and the Investigative Police provide information on any proceedings or administrative investigations that have been conducted in order to determine whether the alleged events had actually occurred and what sanctions had been imposed as a result.

56. The Chilean Government is aware that it faces major challenges in this area and that there is still work to be done. However, those challenges should not detract from the efforts and the progress that have been made so far, including the definition of the offence of torture and the steps taken to bring the protocols of Carabineros in line with human rights standards.

2.1.7 Gender identity legislation

57. Paragraph 130: *The Subcommittee calls upon the State party to adopt legislation recognizing and providing protection for the right to gender identity, in line with international standards.*

58. In May 2013, a bill that "recognizes and protects the right to gender identity" was submitted to the National Congress (Bulletin No. 8924-07). This bill is in its first reading in the Senate and has been actively examined by the legislature, not only because the Government is eager for it to be approved promptly but also because of the nature of the proposal, which has given rise to heated debates, in the spirit of deliberative democracy.

59. According to the latest information provided by the Government during the second half of 2016, in addition to defining gender identity, the bill sets out a list of rights and provides for the exercise of the right to identification in accordance with the right to gender identity, establishing administrative and judicial procedures that differ depending on whether the applicant is an adult or a minor.

2.2 Administrative measures

2.2.1 Juvenile criminal justice

60. Paragraph 113: *The Subcommittee recommends that the authorities bear in mind that the education and social reintegration of offenders should be the primary aims of the juvenile criminal justice system, and speedy procedures and socioeducational measures should therefore be put in place. In addition, efforts should be made to reduce the*

stigmatization associated with criminal charges and sanctions. Hearings should not be held in public, and the names of adolescents in conflict with the law should remain confidential.

61. In terms of legislation, Act No. 20084, specifically article 20, stipulates that “the penalties and consequences provided for in this Act are intended to give effect to the responsibility of adolescents for any offences that they commit in such a way that the penalty becomes part of a comprehensive socioeducational intervention aimed at achieving their full social reintegration”. The Act’s custodial and non-custodial penalty regimes therefore include a socioeducational perspective. With regard to non-custodial penalties, article 11 stipulates that community service “consists of performing unpaid activities for the benefit of the community or of persons in a precarious situation”.²⁵

62. As a means of implementing the aforementioned legal provisions, SENAME, which is responsible for imposing these penalties directly or through accredited partners, coordinates and conducts the relevant socioeducational programmes. Moreover, during the current year, under the auspices of the Interministerial Committee on Juvenile Criminal Responsibility, which is coordinated by the Ministry of the Interior and Public Security and the Ministry of Justice and Human Rights, a number of actions intended to grant juvenile offenders access to a wide range of socioeducational services have been undertaken jointly by the Ministry of Education, the Ministry of Labour and Social Security, the Ministry of Sport and the Ministry of Social Development.

63. As to the stigmatizing effect of criminal penalties, article 59 of the aforementioned Act amends Decree-Law No. 645 of 1925, which established the National Convictions Register, by providing that details of prosecutions or convictions involving minors shall only be recorded in certificates issued for the purpose of being admitted into the Armed Forces of Chile, Carabineros de Chile, the Prison Service, the Investigative Police or for the purposes set out in the first paragraph of the present article.

64. A proposed amendment to the regulations implementing Act No. 20032 (on subsidies for SENAME) that would extend socioeducational services to adolescents residing in an open institution, which are currently only available to juveniles deprived of their liberty, is under consideration. The proposed amendment would help prevent young people from falling behind at school, as the absence of educational development, illiteracy resulting from lack of practice and disenchantment with the school system are issues which need to be addressed through socioeducational programmes, in addition to the psychosocial issues that are already dealt with through the imposition of the penalties provided for in Act No. 20084. These amendments, which are regulatory in nature and do not entail changes to the legislation, will enter into force in July 2017.

65. As to adolescents with serious mental health problems, the Ministry of Health has agreements with several institutions that are part of the child protection and juvenile criminal responsibility systems. These include:

(1) The agreement between the National Service for Prevention of Drug and Alcohol Use and Rehabilitation of Users, the Ministry of Health, SENAME and the Prison Service: The purpose of this cooperation agreement is to support implementation of the Mental Health Programme of the Ministry of Health through the country’s health centres

²⁵ Similarly, articles 13 and 14, which relate to the penalties of probation and special probation, underline the importance of offenders adhering to a personal development plan structured around programmes and services designed to promote their social integration and attending intensive socioeducational and community-based social reintegration programmes that will allow them to participate in formal education and employment training, having access to treatment for drug abuse and rehabilitation programmes and strengthening links with their families or responsible adults, respectively.

Articles 16 and 17, which set out the custodial penalties of imprisonment in either a semi-open or closed institution, provide for allowing offenders to engage periodically in training, socioeducational and group activities, both inside and outside the institution, and fully guarantee their right to continue with basic, secondary, or specialized studies, including through their return to school, and to participate in socioeducational, training, job training and personal development activities.

and the public and private health-care centres regulated by the Ministry in order to treat drug abuse among child and juvenile lawbreakers and assist in their rehabilitation.

(2) The agreement between the Ministry of Health and SENAME: The purpose of this agreement was to establish channels of mutual cooperation in order to afford children and adolescents housed in administrative centres that are under the direct supervision of SENAME prompt access to any health services necessary for their normal and comprehensive development. The following measures have been adopted under the agreement in view of the current situation of children and adolescents in the care of SENAME:

(i) An inter-agency coordination mechanism has been established to provide care by mental health specialists to 182 children and adolescents identified by the teams in the residential centres operated by SENAME. The children and adolescents have begun to receive care and treatment, and public health-care establishments where they could be hospitalized are being identified. Of the total number of children and adolescents, 44 have been hospitalized and 123 are receiving specialist care.

(ii) The ongoing coordination between the residences of SENAME and the primary health-care centres assigned to them throughout the country has been strengthened to improve the delivery of general health-care services and medical examinations to the children and adolescents in those residences. In order to strengthen this link and to ensure the availability of up-to-date information, visits have been conducted to the 161 residences, including those under the direct authority of SENAME and those run by third parties, to check the state of health of 8,377 children and adolescents, who accounted for 98.06 per cent of those present in the residences.

(iii) The results of screening tests and data cross-checked with the record of waiting times kept by the Ministry of Health were used to identify 2,011 children and adolescents requiring different types of specialist treatment. These children receive priority care at each of the country's 29 health-care centres; as patients in need of specialist and/or surgical treatment, receive a weekly check-up from a professional case manager specializing in the health of children and adolescents in the care of SENAME.

(iv) Furthermore, additional resources have been earmarked in the 2017 national budget with the aim of improving the comprehensive health care delivered by six health-care centres, with a focus on mental health care.

(3) The framework cooperation agreement between the Ministry of Justice and Human Rights, the Ministry of Health, the Prison Service, the National Health Fund and the Office of the Superintendent for Health: The Ministry of Health has just concluded this agreement as a means of guaranteeing persons deprived of their liberty in detention facilities the exercise of their right to protection of health.

66. It should also be mentioned that implementation of a comprehensive health-care programme, with a focus on the mental health of children and adolescents whose rights have been violated and/or who are subject to the Act on Juvenile Criminal Responsibility, will begin in 2017. The programme will be launched at six health-care centres, and is expected to be gradually extended to cover the entire public health network (the remaining 23 health-care centres) in the next few years.

2.2.2 Public policy on prisons

67. Paragraph 76: *The Subcommittee recommends that the State party take measures, as a matter of urgency, to address overcrowding by making greater use of non-custodial sentences in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).*

68. Paragraph 68: *The Subcommittee recommends that modifications be made, as a matter of urgency, in the policy governing criminal prosecution and the administration of*

criminal justice in order to reduce the number of persons deprived of their liberty and reverse the rise in the prison population.

69. Following the fire in San Miguel prison in 2010, the Government was reminded of the importance of addressing the situation in Chilean prisons and has undertaken a process of legal and administrative reform to that end. Six years after the tragic event, changes inspired by the Subcommittee's recommendations have been introduced.

70. An example of this has been the publication of Act No. 20587, which modifies the parole regime and introduces the possibility of replacing the custodial penalty associated with non-payment of a fine with the non-custodial penalty of community service. Furthermore, the Parole Board, which is composed of members of the judiciary, has been empowered to decide whether to grant parole in accordance with objective criteria. Since the entry into force of the Act in June 2012, significant changes have been made:

Table 1
Total number of cases in which parole was granted (2010–2016)

2010	2011	2012	2013	2014	2015	2016*
795	1 204	2 276	3 561	3 352	2 276	2 258

Source: Department for Prison Oversight, Prison Service.

* First half of 2016 only.

71. In this connection, it is also worth mentioning Act No. 20588, which granted a general commutation to persons deprived of their liberty who had served part of their sentences, provided that their release did not pose a threat to public safety.²⁶ Thus, 4,008 people (460 women and 3,548 men) benefited from the commutation. Lastly, Act No. 20603, of June 2012, establishing new non-custodial penalties, introduced a system whereby convicts could serve their sentences outside of prison, provided that they did not represent a danger to society and enrolled in reintegration programmes and who could potentially be monitored remotely by means of technologies used by developed countries.

72. In recent years, the public policy on prisons has had a positive impact from a human rights perspective, having brought about a reduction in the population of custodial institutions and an increase in the population who benefit from non-custodial sentences.

Table 2
Convicted population in a custodial system vs. an open system (2010–2016)

Type of population	2010	2011	2012	2013	2014	2015	2016*
Convicted population closed system	42 868	43 006	40 734	37 059	34 180	32 406	27 877
Convicted population open system	54 872	53 434	51 420	50 150	50 773	56 060	58 946

Source: Prison Service.

* The data for 2016 cover the period ending 31 October.

73. Thus, as requested by the Subcommittee, from 2010, the rise in the number of persons deprived of their liberty in custodial institutions has been reversed, which is in keeping with the measures mentioned above. This is a dynamic process, however, in which different actors are involved. Accordingly, the executive branch will continuously monitor statistics in this area, primarily to study the possible impact on the prison system of Act No. 20931, which facilitates the enforcement of penalties established for the crimes of theft,

²⁶ The initiative covered women who, at the time of publication of the Act, had been convicted and deprived of their liberty and who had exhibited good behaviour and met other requirements; persons deprived of their liberty who, at that time, were serving a sentence with the right to supervised release; persons deprived of their liberty who were serving a sentence through night-time confinement; and lastly, foreign nationals deprived of their liberty. With regard to this last category, it should be noted that deprivation of liberty was replaced by special deportation to their country of origin.

robbery and receiving stolen property and improves criminal prosecution of those offences.²⁷

74. SENAME is carrying out a number of actions to address the overcrowding caused by the increasing number of children and adolescents entering the juvenile justice and child protection systems. In the case of juvenile justice, in the Metropolitan Region, the referral system operating in the different centres run by SENAME was revamped to relieve the pressure on the San Joaquín temporary detention centre, which is currently overcrowded. In this connection, the San Bernardo centre is now receiving adolescents referred to it by supervisory courts in application of the interim measure of temporary detention.

75. The Department for the Protection of Rights has adopted the following strategic measures:

- It has introduced the directly administered Foster Family Programme in the Metropolitan Region and in the regions of Biobío and Valparaíso: This programme provides a new means for deinstitutionalizing children under three years of age who are referred to directly administered specialized remedial centres for infants and preschool children from those regions by ensuring that they remain in a family setting until contact is made with their birth family with a view to reintegrating the children into the family unit.
- It has decided, for technical reasons, that any new directly administered centres to be opened should be smaller than the ones currently in operation (20 places for boys and 20 for girls).
- It has adopted new technical guidelines for the directly administered, specialized remedial centres, which are currently under review.
- It has improved the design of infrastructures, in addition to technical areas, in keeping with a new model.

76. Efforts are under way to reduce reliance on residential centres administered by partner organizations and to establish an infrastructure that will give children and adolescents the opportunity to live in a family environment as a means of avoiding mass care. The sustained decrease in the number of children and adolescents being placed in residential care²⁸ has also led to a gradual reduction in reliance on residential centres, which

²⁷ Act No. 20931 incorporates the duty of the Carabineros, the Investigative Police and the Public Prosecution Service to systematize information on the application of these measures, as set out in the eighth and ninth paragraphs of article 12 ter of Act No. 19665, amending the Courts Organization Code. Those paragraphs provide that:

“In order to analyse the evolution of the system of criminal procedure, make any necessary improvements and increase the effectiveness of criminal prosecution, the Attorney General of the Public Prosecution Service, the Director-General of Carabineros de Chile and the Director-General of the Investigative Police of Chile shall forward to the Coordinating Committee and the National Council for Public Security, prior to the regular meetings of the Committee and the Council held in May and October of each year, an analysis of the progress made towards the fulfilment of their institutional purposes as they relate to criminal prosecution.

“According to the information available to each institution, the analysis shall contain, at the very least, statistics on the number of complaints received by category of principal offence, convictions, temporary suspensions, decisions not to proceed, charges brought, arrests made, pending arrest warrants, temporary suspensions of proceedings, plea bargaining, stays, decisions ordering pretrial detention, accused persons in pretrial detention and persons subject to a pending arrest warrant for non-compliance with provisional measures. These statistics shall contain any additional information necessary to promote a better understanding of the data provided, including an explanation as to how they demonstrate the fulfilment of the institutional purposes of the reporting entities.”

²⁸ The proportion of the population in alternative residential care has been declining. In 2009, the programme benefited 17,855 children and adolescents, while in 2015, the number dropped to 10,630. Data provided by SENAME.

has been bolstered by the strengthening of the foster family model²⁹ by means of an action plan.

Chapter 3

Administrative measures of the services

3.1 Administration of justice

3.1.1 Pre-hearing interviews with persons deprived of their liberty

77. Paragraph 28 (a): *Since the Subcommittee considers the Public Criminal Defender Service and the Attorney General's Office to be institutions that play a critical role in the detection of torture and ill-treatment, the Subcommittee recommends that the State party: guarantee the availability, from the very outset of a person's detention, of effective and appropriate assistance from the Public Criminal Defender Service and ensure that interviews with persons deprived of their liberty always take place in advance of court hearings and that they are of a sufficient duration and cover what is required in order to make certain that a proper defence can be provided and that instances of torture or ill-treatment are detected on a systematic basis.*

78. In compliance with the recommendation, the Public Criminal Defender Service carried out a satisfaction survey of persons deprived of their liberty during the last quarter of 2016 in order to assess detainees' opinions of the work of defence counsels at the first hearing. In particular, it is hoped that this will make it possible to determine whether defendant detainees, upon leaving the detention review hearing, believed that the legal assistance provided by the defence counsel was satisfactory. Consultations will be carried out on the quality of the information received by the counsel, the transfer time from the place of detention to the court, the treatment received, and whether the lawyer's requests to the court were suited to the defendants' requirements.

79. The findings of this survey will allow the Public Criminal Defender Service to consider the next steps to be taken in this area based on reliable data, where coordination with other institutions (for example, the Carabineros and/or the Prison Service) can be requested, to ensure timely contact with the defendant detainee.

3.1.2 Protocols on torture

80. Paragraph 28 (b): *Since the Subcommittee considers the Public Criminal Defender Service and the Attorney General's Office to be institutions that play a critical role in the detection of torture and ill-treatment, the Subcommittee recommends that the State party: establish suitable standard operating procedures for the Public Criminal Defender Service and the Attorney General's Office with a view to ensuring the proper detection and reporting of acts of torture and ill-treatment and the punishments of the perpetrators of such acts. The standard operating procedures should also ensure proper record-keeping on all cases identified or reported by victims; the corresponding records should include information on the prosecution of those cases and the decisions handed down.*

81. The definition of the offence of torture creates a series of challenges for judicial officials, including adapting its procedures to the investigation and defence of the crime, and establishing information systems that enable statistical monitoring.

82. In that regard, both the Public Criminal Defender Service and the Public Prosecution Service hold seats on the Torture Prevention Committee set up by the National Human Rights Institute in October 2016. The aim of the Committee is to create an environment to encourage State institutions to comply with their international obligations in that regard. One of the working groups will focus on cases of torture, which involves establishing protocols for both institutions when dealing with such cases. In addition, the Public

²⁹ Meanwhile, the number of children and adolescents benefiting from the foster family system has been increasing; in 2009, it benefited 3,598 children and adolescents, while in 2015, it benefited 6,028.

Criminal Defender Service, the Public Prosecution Service and the Ministry of Justice and Human Rights will hold meetings to identify the various aspects of torture that require the development of joint instruments, such as protocols. These policy documents will be in effect by mid-2017.

3.1.3 Training on the Istanbul Protocol

83. Paragraph 28 (c): *Since the Subcommittee considers the Public Criminal Defender Service and the Attorney General's Office to be institutions that play a critical role in the detection of torture and ill-treatment, the Subcommittee recommends that the State party: train all relevant justice officials to ensure the proper application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) at all times and at all stages of criminal proceedings.*

84. The recommendation states that judicial officials should receive training on the Istanbul Protocol. The Ministry of Justice and Human Rights believes that the training programme should be extended beyond judicial officials to officials of the Public Criminal Defender Service, which is part of the justice sector.

85. The Public Criminal Defender Service has therefore decided to incorporate specific training in this area into its 2017 Annual Training Plan. Every year, the Public Criminal Defender Service holds four workshops for defence counsels on general criminal defence, two general workshops, one workshop on juvenile criminal defence, one on prison defence and one on the defence of defendants from indigenous communities, as well as regional and/or thematic training sessions. In 2017, at least one module on the origin, foundation, functioning and procedures of the Istanbul Protocol will be included in each of the workshops included in the 2017 Annual Training Plan. The specific dates of these 2017 training sessions will be established in the respective annual training plan.

86. For delivering these modules, the Public Criminal Defender Service does not rule out requesting collaboration from other services in the justice sector, such as the Forensic Medical Service, the institution that applies and deals with the Protocol.

3.1.4 Use of plea-bargaining procedures

87. Paragraph 31: *The Subcommittee recommends that the State party undertake a thorough evaluation of the use of plea-bargaining procedures, ensure that the rights to defend oneself in court and to due process are effectively enforced and ensure that no pressure of any kind is exerted on accused persons to convince them to plea bargain.*

88. The Public Criminal Defender Service will gather information in order to conduct a diagnostic analysis of plea-bargaining procedures. This will mainly be done by supplementing statistical information from the Public Criminal Defender Service itself with information requested from the judiciary, which will allow for a diagnostic analysis to be made of all cases resolved in this manner. The Public Criminal Defender Service will use the diagnostic analysis to draw up a work plan for addressing the issues brought to light by the information gathered.

3.1.5 Use of the prosecution support system

89. Paragraph 34: *The Subcommittee recommends that the Attorney General's Office instruct prosecutors to refrain from using information from the prosecution support system in a manner that violates due process.*

90. As this matter is under the exclusive competence of the Public Prosecution Service, the recommendation was brought to its attention so that, within its powers and remit, it could assess the merits of the recommendation. The Government reiterates that, although international human rights obligations fall on the State, this does not mean that the fulfilment of such obligations cannot be organized in such a way as to respect the separation of powers and autonomy granted to the Public Prosecution Service by the Constitution.

3.1.6 Restrictive use of deprivation of liberty for purposes of psychiatric evaluation

91. Paragraph 36: *The Subcommittee recommends that the State party call upon all justice officials to limit the use of deprivation of liberty for the purpose of psychiatric evaluation and to ensure that they comply strictly with the legally permissible time frames when determining that deprivation of liberty for such purposes is required.*

92. Regarding the Subcommittee's observations and recommendation concerning the use of psychiatric records in considering exemptions from criminal responsibility, and the advice that all actors in the administration of justice should use deprivation of liberty restrictively, the Government reports that measures will be adopted to accelerate expert procedures and minimize restriction of liberty for psychiatric evaluation in establishing criminal liability.

93. The judiciary was formally notified of this recommendation, on the understanding that although compliance with the recommendations is a State obligation, domestic arrangements to that end are part of a political and legal structure based on the separation of powers. The judiciary will therefore be in charge of weighing the merits of this recommendation, as the executive branch does not have the power to interfere in such decisions.

3.2 Health

94. International human rights law provides that one of the implications of the Government's role as guarantor of the rights of persons deprived of liberty is the duty to guarantee respect of their human rights, including the right to health. This involves the Government taking all necessary measures; in this regard, attention should be drawn to the framework cooperation agreement concluded in August 2016 between the Ministry of Justice and Human Rights, the Ministry of Health, the Prison Service, the National Health Fund and the Office of the Superintendent of Health, the purpose of which is to provide a general framework for inter-agency coordination and work with a view to gradually improving the sanitary conditions of prisons and the health of persons deprived of their liberty.³⁰ For its proper implementation, the agreement establishes a technical working group composed of one representative from each of the signatory parties.

95. The objectives of the working group are: (a) to maintain the level of inter-agency communication needed to implement the agreement; (b) to report on the need to establish and update the baseline(s) for the measures to be adopted by each signatory institution in the context of its functions and powers; (c) to propose the measures and programmes of action deemed necessary to the respective authorities; (d) to report to the authorities of the signatory institutions on all matters relevant to implementation of the agreement; and (e) draw up and submit to the parties an annual progress report on the measures implemented and the outcome thereof.

96. Paragraph 53: *The Subcommittee recommends that, following their arrest, all detainees be given medical examinations in a public health institution as a matter of course. The examination should take place in private, and the health record should be filled in by health-care staff. It also recommends that: standard operating procedures be established for these examinations, with particular emphasis being placed on the proactive detection of injuries, in accordance with the Istanbul Protocol; that there be a written attestation of the detainee-patient's consent; and that the report, in accordance with the need to preserve confidentiality, be delivered in a sealed envelope addressed to the judge responsible for procedural safeguards. The health-care system is also urged to keep a record of injuries identified as being compatible with torture and ill-treatment and of allegations made by persons deprived of their liberty who have been examined.*

97. In the context of the aforementioned framework agreement, work is under way on a rule for examining the injuries of persons deprived of their liberty, based on the Istanbul Protocol. The rule regulates the procedure from the moment when law enforcement

³⁰ The framework cooperation agreement was signed on 1 August 2016 and has an indefinite duration.

personnel bring the persons deprived of their liberty to the health centre until they are transferred from the centre and brought before the Prison Service for prosecution. Recording this procedure would comply with the inter-agency protocol for health examinations of persons detained in criminal proceedings, which regulates the health examination process and has been in force since 2013.

98. In addition, the framework agreement allows for the establishment of working groups to bring forward measures for protecting the right to privacy and medical confidentiality, and to limit the time spent on examining injuries, thereby avoiding situations that might undermine the integrity of the person deprived of liberty.

99. Paragraph 58: *The Subcommittee recommends that, in all cases, attention should be paid to the proper completion of all medical documentation. Furthermore, treatment in the above-mentioned specialized areas, among others, should be provided at the prison hospital. If this is not possible, the State should ensure that prompt and effective coordination is undertaken to deal with the various pathologies concerned. The Subcommittee believes that an independent observer, such as the representative of a national preventive mechanism, could provide suitable follow-up in such situations.*

100. Through the above-mentioned framework cooperation agreement, the institutions party thereto recognize, within the scope of their respective competence, the importance and necessity of strengthening the development of intersectoral policies that seek to safeguard the right to health care. The purpose of this framework agreement is to coordinate inter-institutional work between the entities specified in the agreement with a view to progressively improving the sanitary conditions of prisons and the health of the general prison population.

101. With regard to the recommendation, the Santiago prison hospital is a specialized care centre not outsourced by the Prison Service which provides specialized care. This centre provides dental care, emergency services and services in psychiatry, surgery, internal medicine, nutrition and physiotherapy. In addition, midwife care is available in prisons with a female population. In November, the number of hours of psychiatric care was increased to 33.

102. Furthermore, the following specializations are available in outsourced units: emergency services, psychiatry, dental care and internal medicine. Gynaecologists, midwives and paediatricians are available in prisons with a female population.

103. A unified health card has been rolled out nationally for managing the medical information of all persons deprived of their liberty. An electronic medical card is available at the South Santiago Pretrial Detention Centre, and a pilot plan is being put under way at the prison hospital, with the aim of extending this initiative nationwide.

104. For its part, SENAME will enter into a cooperation agreement with the Ministry of Health which will include specialized care and treatment. The Service will work on the agreement with the aim of having it in place after the first half of 2017.

105. Paragraph 61: *The Subcommittee recommends that a register be set up for use in scheduling appointments on a regular basis and that steps be taken to ensure that no discrimination of any kind is practised by officials or dentists themselves.*

106. With regard to the concern expressed by the Subcommittee regarding the dental care of persons deprived of their liberty, the Prison Service has 45 infirmaries³¹ delivering this type of care within prisons, since dental care is considered primary care. In addition, the prison hospital³² provides specialized maxillofacial and orthodontic care. There are also radiological systems with which to conduct dental examinations upon imprisonment, which also serves as a means of identification. The equipment is repaired and replaced regularly to ensure that it is fit for purpose. The amount of equipment is expected to be gradually

³¹ The Prison Service has 84 medical units nationwide, and 54 per cent of the infirmaries located within the centres run by the Prison Service provide dental care.

³² The hospital is located in the metropolitan region of Santiago.

increased in different regions of the country in order to achieve national coverage or to ensure the necessary coordination with the corresponding health services.

107. With regard to the Subcommittee's recommendation, the Prison Service has stated that all health care should be assessed on the basis of urgency and continuity of dental treatment through the registration system that includes a record of appointments and shows whether or not the patients received care.

108. Furthermore, while the recommendation is expressly addressed to the Prison Service, SENAME will include dental care and special treatment for children and adolescents subject to protection and the adolescent criminal system, in the context of the agreement being drawn up with the Ministry of Health, to ensure that they receive appropriate dental care without discrimination.

109. Paragraph 63: *[T]he Subcommittee recommends that particular attention be paid to the provision of medication to people with HIV, other chronically ill patients and other prisoners who require treatment. In all cases, a register should be signed by prisoners to confirm that they received their medication. The Subcommittee recommends that prison health services adapt their protocols and facilities to ensure that persons deprived of their liberty who wish to do so can use traditional knowledge and medicines as an alternative or supplement to the treatments that the health services normally dispense.*

110. In April 2016, the Prison Service and the Ministry of Health entered into a cooperation agreement to provide preventive care and comprehensive treatment to prisoners living with HIV/AIDS.³³ The agreement allows them access to antiretroviral treatment. It also provides for education programmes focused on HIV prevention targeted at officials and persons deprived of their liberty, as well as the handing out of condoms.

111. In addition to the above, with the aim of providing timely care to prisoners living with HIV/AIDS, regulations on performing HIV tests on persons deprived of their liberty were published in March 2016.³⁴ In addition covering the procedure for taking samples, the regulations stipulate that prisoners who test positive cannot be discriminated against or segregated within the prison, the outcome of the test must remain confidential, and the test must be taken voluntarily.³⁵ They also lay down the conditions under which tests are to be conducted.

112. With regard to the provision of medicines, medications brought in to prisons by family members are now monitored. Medicines supplied by the Prison Service are recorded on the bin card.³⁶ Work is currently under way on a pilot project to automatically record medicine stocks through software installed in the central pharmacy, which will be rolled out nationwide when the necessary IT support system is in place.

113. While the recommendation is focused on centres run by the Prison Service, it should also be noted that an inter-agency cooperation agreement is in effect between SENAME and the Ministry of Health.³⁷ The aim of the agreement is to promote sexual health and to prevent and control HIV/AIDS and sexually transmitted infections (STIs) in a context of non-discrimination. In that regard, the role of both institutions is to help achieve the health objectives in terms of promoting sexual health and preventing and controlling HIV/AIDS

³³ Exempt resolution No. 123 of 5 April 2016, adopting a cooperation agreement between the Ministry of Health and the Prison Service.

³⁴ Decree No. 927 of the Ministry of Justice and Human Rights, published on 3 March 2016.

³⁵ The regulations establish three exceptions to voluntary testing. The test is mandatory for prisoners who donate blood or who undergo a transfusion; those who are exposed to medical treatment in the workplace that may allow the virus to spread between prisoners and prison officers and, finally, victims of rape or sexual abuse.

³⁶ A manual medicine stock record and dispensing system which has been used nationwide for more than 20 years.

³⁷ Exempt resolution No. 05415, of 27 November 2013, approving the inter-agency cooperation agreement between SENAME and the Ministry of Health, for the promotion of sexual health and the prevention and control of HIV/AIDS and sexually transmitted infections in a context of non-discrimination.

and STIs. The agreement guarantees timely access to the health-care network by children and adolescents who use SENAME.

114. Moving beyond the Subcommittee's recommendations, both institutions will work, within the context of the health subcommittee set up to prepare this report, on a regulation concerning HIV/AIDS tests for adolescents under the age of 18 who are in the juvenile criminal responsibility system. In addition to this, they will establish a treatment protocol for patients with HIV/AIDS and STIs, explicitly preventing discrimination within centres directly administered by SENAME. It is hoped that both rules will come into effect during the second half of 2017.

115. Paragraph 66: *The Subcommittee recommends that particular attention be devoted to the examination of patients exhibiting injuries and that specialized training be provided in this area.*

116. On this point, the Government is in the process of updating the regulations for admission to psychiatric hospitals, instructions for conducting physical examinations and writing clinical record cards in order to detect injuries on persons forcibly admitted by the authorities. In addition, the Ministry of Health will send instructions to expedite the evaluation processes that allow the judicial authorities to expedite suspension of psychiatric hospital admissions. These instructions will be distributed no later than 30 March 2017.

3.3 Conditions of detention

3.3.1 Infrastructure

117. The Government is focused on improving living conditions in places of deprivation of liberty. The Prison Service has responded to the Subcommittee's recommendations by drafting proposals to improve the situation in this regard.

118. Paragraph 78: *The Subcommittee recommends that urgent measures be taken to improve the unacceptable conditions in Valparaíso Prison and the South Santiago Pretrial Detention Centre. In the latter facility, it is recommended that the State party relocate the detainees in a manner that is in keeping with their status as persons charged with a first offence and dismantle the precarious annexed structure in view of the inhuman conditions that it affords.*

119. The Prison Service is taking concrete steps to upgrade the infrastructure at its custodial facilities, focusing mainly on the improvement and expansion of employment workshops. To address this issue, it has prepared several technical reports³⁸ which provide an overall picture of the state of infrastructure at Valparaíso Prison and South Santiago Pretrial Detention Centre.

120. A total of 859,049,930 pesos³⁹ has been invested in the Valparaíso Prison Complex since the Subcommittee's visit in April 2016. This investment covered the following repairs and works:

- Expansion of employment workshops (National Fund for Regional Development) by installing mezzanine levels in two work centres, creating space for specialized workshops and offices.
- Repairs to Unit 109, including repair of sanitation systems in cells' shared bathrooms, repair of discharge pipes, electrical repairs and painting.
- Repairs to Unit 113.
- Electrical repairs in Units 104, 114 and 115, including replacement of sockets and light fittings in cells and light fittings in corridors and staircase. This work was carried out by the inmates.

³⁸ Information provided by the Prison Service is from November 2016.

³⁹ Equivalent to approximately US\$ 1,273,856 (23 November 2016).

- Replacement of toilets in inmates' cells: replacement of toilet bowls in cells in several units, carried out by inmates.

121. Regarding the South Santiago Pretrial Detention Centre, the Prison Service issued a technical report⁴⁰ describing current conditions at the facility and recommending that certain urgent actions to be taken. The work will cost 12,413,248 pesos⁴¹ and will be implemented by the facility's maintenance unit with the cooperation of inmates. Funding for repairs to Cell Block No. 9 has been approved and the necessary materials have been purchased, with repair work due to be carried out on floors, walls of the central corridor and inmate cells and bathrooms in the cell block.

122. Finally, in October and November 2016, more than 1,600 inmates at South Santiago Pretrial Detention Centre were relocated in order to optimize segregation and improve conditions for first-time detainees.

3.3.2 Food and essential goods

123. The Government still needs to rectify a number of shortcomings in relation to food and the supply of essential goods. Accordingly, and in response to the recommendations of the Subcommittee, the authorities have taken the actions described below.

124. Paragraph 81: *In view of the fact that food is an essential component of good health, the Subcommittee recommends that the State party ensure that prison facilities provide regular, good-quality meals that are well prepared and served and offer sufficient nutritional value. Similarly, the health-care team should monitor every stage in the production and delivery of food to inmates and ensure that a record is kept of food deliveries.*

125. Paragraph 83: *The Subcommittee recommends that, in accordance with the Nelson Mandela Rules (rule 22), the State party ensure that every prisoner is "provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served". No detainee should need to depend on third parties for food. The Subcommittee recommends that the prison system be allocated enough funding to provide all persons deprived of their liberty, including those held in privately run prisons, with sufficient food. With respect to the provision and distribution of food, medicine, toiletries and clothing, it is recommended that regular procedures should be implemented to ensure that these articles reach their intended recipients, in accordance with the Nelson Mandela Rules (rules 18 and 19).*

126. The Prison Service employs professional nutritionists who plan four meals a day,⁴² which in traditional prisons are served taking the following criteria into account:

- The nutritional value of the food served, which meets the nutritional recommendations developed for the Chilean population under Ministry of Health guidelines.
- The weekly consumption frequency table, drawn up in accordance with healthy eating guidelines of the Ministry of Health.
- The availability of resources for developing a food distribution system.
- The security arrangements of the correctional facility concerned.

127. Nutritional value is regulated by standardizing the weight in grams of each dish, in accordance with a manual on food planning and healthy eating and additional instructions. This is done under the supervision of the prison director, the administrative director or the professional nutritionist responsible for the facility.

⁴⁰ On 5 October 2016, the Prison Service visited the facility to inspect the living conditions and the state of the infrastructure in Cell Block No. 9 and the "Colo-Colo" sleeping quarters. On 9 November 2016, a further visit took place in a comprehensive survey was made of all cell blocks in order to prepare an architectural design and a budget for the planned interventions.

⁴¹ Equivalent to approximately US\$ 18,407 (23 November 2016).

⁴² Breakfast, lunch, dinner and supper, all of which are evaluated by a professional nutritionist.

128. The prison's technical council selects inmates to prepare meals under the instruction of food service professionals. In terms of distribution, food is mostly prepared in bulk, transported to the prison yard in thermal cooking pots and rationed according to the internal regime of the unit. In units with canteens, food is served on individual trays in the amount corresponding to each prisoner.

129. In addition, prisons operated under the concession system must adhere to the terms of the contract awarded in a competitive bidding process, which specify the nutritional value and frequency of meals, as well as the manner in which they are to be served.

130. There is no budget allocation for the supply of toiletries to inmates. The resources available for this item are used by the prisons to purchase the toiletries and other supplies that they require. Nevertheless, in response to the Subcommittee's recommendation, the logistics department of the Prison Service will order the development and introduction of a register to confirm receipt of food and medicine, thus ensuring that essential goods are effectively delivered to persons deprived of their liberty. This register will be in place beginning in July 2017.

131. Meanwhile, SENAME aims to carry out two specific actions in response to the Subcommittee's recommendations:

- Its health unit will develop guidelines for the design of menus for directly administered centres that are part of the child protection and juvenile justice systems. It is expected that these menus will be made available to centres and utilized beginning in the second half of 2017.
- It will develop an operational guide and a protocol for the delivery of toiletries so that the receipt of those materials is recorded. It is envisaged that the guide and the protocol will be in use during the second half of 2017.

3.4 Groups deprived of their liberty who are considered to be especially vulnerable

132. The situation of persons deprived of liberty in Chile is not homogeneous. Although the deprivation of liberty tends to create vulnerability, places of detention house different groups with different vulnerabilities, which the State must address in a targeted manner. This was noted by the Subcommittee during its visits, and in response to its recommendations, both the Prison Service and SENAME have drawn up proposals for action whose ultimate aim is allow for a more dignified life for all men and women living in places of detention.

3.4.1 Women

133. About 3,050 female prisoners are held at 38 correctional facilities throughout the country. Women account for less 10 per cent of persons deprived of their liberty in the closed system. The fact that they represent a small percentage of the prison population does not mean that they are immune to the gender discrimination or stereotyping that occurs outside of correctional facilities. The Government should seek to improve living conditions and provide services and targeted programmes in response to their demands.

134. Paragraph 85: *The Subcommittee reminds the State party of the principle of the best interests of the child and rule 58, on pretrial and sentencing alternatives for women, of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).*

135. With regard to the above recommendation, the Prison Service is constant in its concern for the best interests of the child, and for that reason, it created the Programme of Assistance for Pregnant and Nursing Women, which aims to help strengthen the relationship and the attachment between mothers and children by provided a separate space

that is especially adapted for that purpose.⁴³ Through this programme, pregnant women and women with children up to 2 years of age receive the support of dedicated professionals whose work involves addressing criminological issues so as to reduce the risk of recidivism, as well as managing the children's needs for protection. During 2016, assistance was provided to 181 women⁴⁴ in mother and child units throughout the country.

136. Furthermore, since 2004, the Prison Service has implemented the *Conozca a su Hijo* ("Know Your Child") programme, which is geared towards enhancing training for parents deprived of their liberty in relation to their children, as well as encouraging learning and development of children participating in the programme. The ultimate goal is to generate better opportunities for the comprehensive development of these children, and to strengthen the emotional bonds between parents deprived of their liberty and their families.

137. Paragraph 91: *The Subcommittee recommends that, in line with rule 16 of the Bangkok Rules, the authorities, in consultation with the mental health and social welfare services, develop and implement strategies to prevent suicide and self-harm among women prisoners.*

138. In this regard, the Prison Service updated its general operational guidelines for the prevention of suicide among inmates of both sexes, for the whole prison population, which include the following measures:

- I. Evaluation actions:
 - (a) Health examination upon arrival
 - (b) Continuous monitoring for prevention of incidents
 - (c) Suicide risk assessment
 - (d) Referral to professional care
- II. Technical and operational coordination:
 - (a) Training on the warning signs of suicide

139. In 2016, a document containing operational guidelines to prevent suicide among persons deprived of their liberty in the closed subsystem⁴⁵ was drafted; this document includes instructions issued in previous documents and draws on experiences in the regions. Moreover, a number of operational measures were introduced to allow prisoners who have attempted suicide to receive adequate care and to prevent such actions during detention.

140. In March 2016, the health department of the Prison Service launched a mental health-care pilot plan at Colina I Prison and Santiago South Pretrial Detention Centre. This programme, which is due to end in December 2016, consists in group psychotherapy workshops (to date, 726 cases of treatment provided). Individual psychological care is provided in parallel and has been implemented at the Puente Alto and Santiago South Pretrial Detention Centres and the Colina I and Punta Peuco Prisons. There is a need to extend this plan to the whole of the Metropolitan Region and to other regions.

⁴³ The Programme of Assistance for Pregnant and Nursing Women has been implemented gradually in prisons since 2001. Under an agreement with SENAME, the Temporary Shelter Programme for Infants was launched in 1998 and implemented until 2005 with the aim of providing comprehensive care for infants aged 0 to 2 years of women prisoners. These infants were able to spend time and to strengthen their emotional bond with their mothers, to be breastfed, to receive adequate food in accordance with their development needs, to have access to primary health care and specialized medical referrals, to receive clothing and to benefit from a safe, caring and hygienic environment. Fifty places were subsidized as part of the agreement with SENAME. From 2005 until 2014, the initiative was known as the Temporary Residence Programme and had capacity for 110 infants. In 2015, the Prison Service assumed the challenge, directly funding the programme from its own resources, pursuant to Exempt Resolution No. 12713 of 10 December 2014.

⁴⁴ As of November 2016, the Programme was providing assistance to 62 pregnant women and 118 women with infants aged 0 to 2 years.

⁴⁵ Paper prepared by the Research Unit of the Office of the Deputy Technical Director of the Prison Service.

141. The annual suicide rate in the custodial system has fallen during 2016. The rate for 2015 was 16.58 per cent,⁴⁶ as compared with 4.62 per cent for the period between January and September 2016.⁴⁷ Nevertheless, any achievements resulting from the guidelines on suicide prevention and timely mental health care will need to be the subject of a more rigorous analysis at a later date.

142. SENAME will continue to develop national training programmes and courses on suicide prevention, focusing on gender and in particular on the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, for officials of the directly administered centres and regional offices in its network. In December 2016, the health unit of SENAME will develop a similar national training course for professionals and officials of the directly administered centres and regional offices in its network, focusing on gender and in particular, on the LGBTI community.

143. In addition, SENAME and the Ministry of Health will establish a joint committee on suicide prevention which will attempt to define a protocol on the issue for directly administered centres. SENAME will work to bring the protocol to fruition during the first half of 2017.

144. Paragraph 96: *The Subcommittee recommends that the State party ensure that, in accordance with rule 12 of the Bangkok Rules, women prisoners with mental health-care needs have access to individualized healthcare and rehabilitation programmes which are both comprehensive and gender-sensitive.*

145. Recognizing the need for mental health care and for comprehensive gender-sensitive health-care programmes for women, the Prison Service will work with the Ministry of Health to develop plans in response to the Subcommittee's recommendation. It is expected that mental health care and gender-sensitive health-care programmes for women will be in place after the second half of 2017.

146. In conjunction with these efforts, the Prison Service has taken steps to ensure the health of women prisoners. Accordingly, women's prisons operating under the concession system are contractually obliged to maintain sanitary conditions suitable for the provision of services to women, such as gynaecological care. Traditional prisons must also provide services for women through referral systems.

147. Under an agreement between the Ministry of Justice and Human Rights and the Ministry of Health, mental health care must be provided for persons remanded in custody, and if deemed necessary, a psychiatric evaluation must be carried out by a Ministry of Health technical team at the temporary forensic psychiatric unit of the place of detention. Once the expert report has been drafted, the court determines whether the accused is criminally responsible for the offence.

148. SENAME also intends to include in a planned agreement with the Ministry of Health a section on mental health treatment for children and adolescents in juvenile detention centres. SENAME considers that this type of measure requires long-term implementation, which is expected to be scheduled for the second half of 2017.

149. Paragraph 98: *In line with the Bangkok Rules, the Subcommittee recommends that the State party ensure that nursing mothers and their children, including those in the Antofagasta prison, have adequate space, daily exposure to natural light and appropriate ventilation and heating for the weather conditions of the place of deprivation of liberty.*

150. The Prison Service conducted a survey of the living conditions in all facilities provided for nursing mothers at the national level under the Programme of Assistance for Pregnant and Nursing Mothers. It was found that care facilities for pregnant and nursing

⁴⁶ National suicide rate per 100,000 inmates in the custodial system. Data provided by the Statistical Unit of the Office of the Deputy Technical Director and the Operational Analysis Unit of the Office of the Operations Subdirector of the Prison Service, 2016.

⁴⁷ The projected annual rate at December 2016 should be no higher than 12.5.

mothers were generally rated as regular or good⁴⁸ and therefore did not require immediate intervention.

151. However, it was found that the need for infrastructure improvements was greater in some regions, primarily in regard to sanitation facilities (poor condition of bathrooms and drainage systems); malfunctioning or non-existent heating; inadequate or non-existent recreational spaces and the lack of spaces affording basic living conditions. In this regard the facilities requiring urgent intervention are:

- Vallenar Pretrial Detention Centre, Atacama Region
- Valparaíso Prison Complex, Valparaíso Region
- Rancagua Prison Complex, O'Higgins Region
- Coyhaique Prison, Aysén Region
- Valdivia Education and Labour Centre, Los Ríos Region
- Santiago Women's Prison, Metropolitan Region
- San Miguel Women's Prison, Metropolitan Region
- Antofagasta Women's Prison, Antofagasta Region

152. As a specific measure to improve conditions for delivery of the Programme of Assistance for Pregnant and Nursing Mothers, the National Directorate of the Prison Service will write a letter to the regional directorates instructing them to prioritize projects for improving the spaces made available to breastfeeding mothers and their infants, to ensure that such facilities have enough space, receive natural light and have the necessary ventilation and heating for the geographical location of the centre.

153. Women's prisons in the Metropolitan Region are already undertaking projects to improve the conditions in which the Programme of Assistance for Pregnant and Nursing Mothers is implemented. It is envisaged that 51,168,207 pesos⁴⁹ will be invested in the repair and improvement of bathrooms in the mother and child unit at San Miguel Women's Prison; this project is under way and due for completion in February 2017. At Santiago Women's Prison, it is estimated that 993,680,000 pesos⁵⁰ will be invested in the expansion and refurbishment of the mother and child unit, with work commencing in February 2017 and due for completion in December 2017.

154. Paragraph 100: *In line with rules 19 and 20 of the Bangkok Rules, the Subcommittee urges the State party to take effective measures "to ensure that the dignity and respect of imprisoned mothers are protected during body searches" and "to replace strip searches and invasive body searches" with alternative methods of inspection, such as the widespread use of scanners.*

155. With regard to non-invasive inspection methods, the Prison Service reports that body-scanning equipment has been installed at the following three establishments of the custodial system:

- Colina I Prison
- South Santiago Pretrial Detention Centre
- The Special High Security Unit

156. The regional directorate of Arica y Parinacota recently awarded a contract for the supply of this equipment⁵¹ to the region's prison, with funding from the National Fund for

⁴⁸ The assessment covered the 18 women's prisons that implement the Programme. The ratings were developed by regional heads of infrastructure.

⁴⁹ Equivalent to approximately US\$ 75,466 (25 November 2016).

⁵⁰ Equivalent to approximately US\$ 1,465,540 (25 November 2016).

⁵¹ The cost of the equipment is put at between US\$ 225,000 and US\$ 300,000 (as at 5 December 2016). A surface area of 9 square metres is required for installation.

Regional Development.⁵² It is also considering the procurement of new specialized equipment to expand the coverage of specialized equipment for non-invasive body searches. Moreover, the design of the new correctional facilities under construction in Chile requires the integration of this type of technology to prevent violations of the rights of detainees and their families. All of these measures should be implemented by July 2017.

157. SENAME has reported that while control of admission to its youth detention centres is the responsibility of the Prison Service,⁵³ it has the technology in place to conduct non-invasive inspections and has stipulated that checks and searches of visitors should only be carried out using hand-held or walk-through metal detectors. Manual searches are carried out only in exceptional cases by an official of the same sex as the person entering the centre.⁵⁴

3.4.2 Children and adolescents in conflict with the law

158. The promotion and protection of the rights of children and adolescents is a topic that is firmly established on the public agenda. Authorities such as SENAME play a key role in this regard and have been the subject of criticism from political circles and civil society organizations working with children. As a result of this public dialogue, the Government has taken several steps to improve certain aspects of children's and adolescents' rights, including the protection and promotion of those rights, in order to guarantee that the deplorable acts of the past cannot be repeated.

159. In October 2016, the President of the Republic presented the Plan of Action of SENAME, which includes, notably: (i) an increase in the financial resources allocated (an extra 2.5 billion pesos in 2016 and an extra 16.5 billion pesos in 2017); (ii) improvements in infrastructure, such as through the transfer of property; (iii) the division of SENAME into two separate agencies, i.e., a criminal offences unit and a child protection unit; (iv) continuous monitoring of centres operated by SENAME, and (v) consolidation of a deinstitutionalization policy.

160. Paragraph 108: *The Subcommittee expresses its great concern at the removal of the former director of the centre from her post in 2014 as a disciplinary measure allegedly connected to the ill-treatment of minors in detention. The Subcommittee urges the State party to conduct an independent and impartial investigation and to protect the witnesses and victims in the case.*

161. With regard to the Subcommittee's concern at the disciplinary action involving the removal of the director of the San Joaquín temporary detention centre from her post, and in relation to the investigation of the alleged facts, SENAME is awaiting the findings of an ongoing summary investigation process. Subject to the outcome of that investigation, the appropriate administrative and disciplinary measures will be taken if administrative liability is determined.

3.4.3 Mapuche

162. One of the challenges facing States that are based on the rule of law and which act in accordance with international human rights standards is that of treating persons deprived of their liberty with dignity. This challenge is even greater in cases of structural discrimination, where multiple factors converge to increase the vulnerability of an individual or a group. This is the case with Mapuche detainees, a group that has not been absent from public discussions. For this reason, concrete steps have been taken to prevent the recurrence of situations in which they have been vulnerable. In particular, in the case of Lorenza

⁵² The Fund is administered by the Office of the Under-Secretary for Regional and Administrative Development of the Ministry of the Interior and Public Security.

⁵³ Article 139 of Act No. 20084 on Juvenile Criminal Responsibility.

⁵⁴ Circular No. 016 of 4 August 2008

Cayuhan⁵⁵ President Bachelet instructed the Office of the Undersecretary for Human Rights to amend the Prison Regulations by incorporating a human rights perspective.⁵⁶

163. Noting the Subcommittee's concern for the situation of Mapuche detainees, the Government responded to its recommendations through the actions set out below:

164. Paragraph 121: *The Subcommittee recommends that the State party take the necessary measures to ensure that Mapuche detainees can observe their cultural traditions and customs in accordance with international standards in this area, in the same manner that other specific groups of detainees are allowed to practice their religions freely.*

165. The Prison Service has entered into a cooperation agreement with the Catholic University of Temuco for the provision of Mapuche medicine kits to correctional facilities in the Araucanía Region. These medicine kits, which are already in use at the Nueva Imperial and Collipulli prisons, are intended to provide access to health from the perspective of the Mapuche worldview and to provide guidance and training in ancestral healing methods for detainees and Prison Service personnel. This initiative is complementary to intersectoral health services; once a primary health assessment is carried out at the detainee's request, he or she is then referred to the South Araucanía or North Araucanía health services, which implement a Mapuche health programme and have specialized facilities such as Nueva Imperial Intercultural Hospital and Makewe Hospital, both of which treat Mapuche prisoners. These actions benefit all Mapuche detainees, in particular the inmates of correctional facilities with large Mapuche populations, such as the Nueva Imperial and Temuco prisons and the Villarrica and Angol pretrial detention centres.

166. Furthermore, an agreement is being drafted with the Mapuche Language Academy whereby training in Mapuche culture and medicine in the urban context will be provided to officials and detainees. It is expected that this agreement will enter into force by July 2017, with courses in the Mapuche language and world view to be delivered at correctional facilities in Santiago for officials who deal directly with prisoners, especially personnel of indigenous origin. The courses will also underscore the importance of respecting Mapuche cultural traditions and festivities.

167. In 2009, SENAME published a study⁵⁷ that highlighted a lack of experience or knowledge concerning intercultural relations and respect for the cultural rights of indigenous children and adolescents. In response to that assessment, SENAME updated its technical guidelines⁵⁸ for directly administered centres and partner entities to include certain aspects relating to freedom of religion and traditional practices in the framework of its interventions for children and adolescents, as a way to promote social reintegration. These guidelines are included in the competitive bidding process whereby partner organizations are awarded contracts to operate residential centres, in accordance with Act No. 20032 of 2005, so that technical recommendations are provided to ensure respect for the world view and identity of children and adolescents of indigenous heritage.

⁵⁵ A Mapuche woman sentenced to 5 years and one day of imprisonment for robbery, who gave birth while shackled to her bed and in the presence of prison guards at the Sanatorio Alemán clinic in Concepción.

⁵⁶ In a speech of 11 November 2016 marking the adoption of the Act establishing criminal penalties for torture and cruel, inhuman and degrading treatment, President Bachelet said: "I wish to refer to the case of Lorenza Cayuhan, a member of the Mapuche community who reported being subjected to a humiliating situation during the birth of her child. This complaint should be thoroughly investigated in order to ascertain the truth of what happened. Precisely because we must ensure that no one is subjected to humiliating or degrading situations, I have instructed the Office of the Undersecretary for Human Rights to draw up new prison regulations with a human rights approach, so that not only women but all persons deprived of their liberty are treated with dignity." Full speech available at: <https://prensa.presidencia.cl/discurso.aspx?id=43740>.

⁵⁷ *Estudio: La realidad de niños, niñas y adolescentes de pueblos indígenas residentes en centros para mayores del SENAME* (Study: The Situation of Indigenous Children and Adolescents Residing in Adult Centres of SENAME). SENAME/University of La Frontera (2009).

⁵⁸ *Orientaciones Técnicas: Residencias de protección para madres adolescentes con programa de protección especializado de intervención residencial* (Technical Guidance: residences for the protection of adolescent mothers with a specialized protection programme of residential intervention) (2016).

168. Paragraph 122: *The Subcommittee also recommends that health-care protocols and facilities be adapted to ensure that detainees who wish to use ancestral knowledge and medicine as an alternative or in addition to regular treatment may do so.*

169. The health of Mapuche detainees is a topic that is addressed by the agreement between the Prison Service and the Catholic University of Temuco. In this regard, the two institutions should agree on specific cooperation activities in the area of health, favouring the integration of Mapuche intercultural health or complementary health care into the planning of activities to be carried out at Prison Service facilities in the Araucanía Region.

170. In this context, the Catholic University of Temuco delivers kits or cases containing Mapuche medicinal inputs.⁵⁹ It is committed to replenishing these medicinal inputs and to providing training for the health personnel of the establishments participating in the agreement.⁶⁰

171. SENAME and the Ministry of Health will establish a working group to develop a protocol for the inclusion of ancestral medicine among the interventions of the health units of directly administered centres. Moreover, the plan is for officials in the region to receive training on General Administrative Regulation No. 16 on Intercultural Health Services, Exempt Resolution No. 261 of 2006. Both actions are due to be implemented after the second half of 2017.

3.4.4 Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons

172. The Subcommittee expressed concern about persons deprived of their liberty who are discriminated against because of their sexual orientation or gender identity. For that reason, the authorities in the justice sector have pursued efforts to respond to the Subcommittee's recommendations and thus ensure decent treatment for LGBTI detainees.

173. Paragraph 126: *The Subcommittee reiterates that solitary confinement, isolation and administrative segregation are not appropriate methods of maintaining security and can be justified only if used as a last resort, under exceptional circumstances, for the shortest possible time and in combination with adequate procedural safeguards.*

174. Work is under way to draft new prison regulations, as requested by the President of the Republic. In this regard, one point stressed has been that of ensuring that the disciplinary regime does not exceed the limits set by international human rights standards.

175. In October 2016, the Prison Service carried out a survey to ascertain how many LGBTI persons were being held in isolation. Six cases were found in the following regions:

- Arica and Parinacota Region: 1 person
- Metropolitan Region: 2 persons
- Maule Region: 2 persons
- Araucanía Region: 1 person

176. The justification for such measures, as given by LGBTI persons and prison administrators, were, on the one hand, the desire to avoid transferring detainees away from the institutions in which they were established, and on the other hand, the lack of suitable facilities for LGBTI persons at the regional level.

177. The Prison Service adopted two specific measures to put an end to this situation. Firstly, it ordered that individuals held in isolation should be immediately relocated, and secondly, that their living conditions should be improved. The first measure has already been carried out, and the second is due to be implemented by July 2017.

⁵⁹ The kits contain drops or creams based on Mapuche medicinal plants, which are used for common ailments such as heartburn, irritable bowel, headaches and sore throats.

⁶⁰ The following correctional facilities are located in the Araucanía Region: Lautaro, Nueva Imperial, Temuco, Victoria and Collipulli prisons; Angol, Curacautín, Pitrufquén, Traiguén and Villarrica pretrial detention centres and Temuco Women's Prison.

178. Moreover, SENAME⁶¹ will amend and update its internal regulations to make explicit reference to members of the LGBTI community and the measures adopted for their protection. The health unit of SENAME will train officials on the proper treatment of LGBTI persons and on the prevention of suicides among this group. It is envisaged that these actions will be carried out during the first half of 2017.

179. Paragraph 130: *The Subcommittee recommends that the State party prevent the ill-treatment and marginalization of LGBTI persons deprived of their liberty, in particular by ensuring that they have access, without discrimination, to education, workshops, employment and recreational activities. The Subcommittee also recommends that training be provided to all prison staff and law enforcement officials on how to communicate in an effective and professional manner with LGBTI detainees. They should also be made aware of the international human rights rules and principles regarding equality and non-discrimination, including in relation to sexual orientation and gender identity.*

180. On 30 March 2016, the Prison Service announced its Strategic and Functional Human Rights Plan, which is aimed at carrying out activities to promote awareness of international human rights standards in prison work among officials who work directly with persons deprived of their liberty.

181. The training provided in this context addresses topics such as sexual diversity and vulnerable groups in the prison environment and is geared towards improving the treatment of persons deprived of liberty by prison officials.

182. The training was provided to 1,147 staff members at 43 correctional facilities during 2016.

183. A cooperation agreement between the Prison Service and the Homosexual Movement of Integration and Liberation⁶² remains in effect and has led to efforts aimed at developing a framework for mutual cooperation in the education and training of officials. Other activities in the common interest have been carried out, including projects, training sessions, workshops, courses, seminars and academic research.

184. SENAME has scheduled training on the treatment of LGBTI children and adolescents for staff of directly administered juvenile justice and protection centres. It is expected that the training will be implemented during the first half of 2017.

3.5 Repercussions of the visit

185. Paragraph 131: *In accordance with article 15 of the Optional Protocol and the Subcommittee's working paper on reprisals, the Subcommittee calls upon the Chilean authorities to ensure that there are no reprisals following its visit. The Subcommittee requests the State party to provide detailed information in its reply on what it has done to prevent reprisals against anyone who was visited by, met with or provided information to the Subcommittee during the course of its visit.*

186. With regard to article 15 of the Optional Protocol, which prohibits reprisals against persons who might communicate with the Subcommittee, the National Director of the Prison Service, in Official Letter No. 85 of 4 February 2016, issued instructions to all regional directorates concerning the visits that the Subcommittee would be making to the premises of the Prison Service. Paragraph 5 of the letter explicitly mentioned the prohibition of sanctions and/or reprisals, with reference to article 4 of the Optional Protocol. The regional directors were tasked with disseminating the instructions contained in the letter by visiting the different correctional facilities located in their region.

⁶¹ In relation to the serving of custodial sentences under Act No. 20084 on Juvenile Criminal Responsibility, the internal regulations of SENAME govern the application of a group separation measure, stipulating that said measure "under no circumstances may be used as a punishment for adolescents [...] nor may it entail isolation of an adolescent." The equitable application of these regulations to LGBTI persons is guaranteed by the legal recognition of the right to equality and non-discrimination.

⁶² Signed in April 2014.

187. The instructions were reiterated in Official Letter No. 118 of 24 March 2016, which described the nature of the Subcommittee's visit and stated that, in the event of interviews with officials and/or detainees, the detainees should not, under any circumstances or for any reason or pretext, be subjected to reprisals, threats or punishment.

188. The instructions provided in the two letters were also explained to the regional directors in a videoconference presented by the Deputy Director of Operations, Col. Maurice Grimald and the Head of the Human Rights Protection and Promotion Unit, Mr. Pedro Pablo Parodi, for the purpose of reiteration and for clarification of queries.

189. SENAME carried out similar activities, sending Memorandum No. 229 to all the regional directors and to directly administered centres in order to provide information about the Subcommittee's visit, the legal context and the following specific details:

- The definition of torture according to the Convention.
- The powers of the Subcommittee.
- The prohibition of sanctions and reprisals, as follows: "It is strictly forbidden for any staff member of SENAME or of its partner organizations to take reprisals of any kind against those who cooperate with the Subcommittee under the terms of this memorandum. In the event of such conduct, the competent authorities should take urgent action to protect all parties, and should adopt disciplinary measures to determine the responsibility of the officials involved."
- Privileges and immunities of the members of the Subcommittee.
- Obligations of Chile as a State party to the Optional Protocol.

Monitoring

190. The report of the Subcommittee reminded the Government, once more, of the debt that it owes in the sphere of torture prevention. The work undertaken after receiving the Subcommittee's report will not end with the preparation of these replies; rather, the Government plans to actively follow up on the process of improving the living conditions of persons deprived of their liberty.

191. By allowing the competent authorities to set the time frame for implementing the measures described in this report, the Government's aims were to more realistically describe the actions being taken and to give continuity to the interministerial working group as a body charged with coordinating and monitoring compliance with the workplan developed jointly for the fulfilment of the recommendations.

192. In this context, the health subcommittee will continue its work with the aim of developing, during 2017, a framework agreement with SENAME similar to the existing agreement between the Ministry of Justice and Human Rights, the Ministry of Health, the Prison Service, the National Health Fund and the Office of the Superintendent of Health. This will allow all necessary efforts to be channelled to the provision of health care for the most vulnerable children and adolescents.

193. The Office of the Under-Secretary for Human Rights will assume its functions in January 2017 and will be responsible for preparing a national human rights plan,⁶³ which should include the promotion of human rights education and training for all public officials as a minimum requirement. Such education and training programmes are vitally important in changing entrenched cultures in State institutions and among officials, making it possible

⁶³ Article 14 bis (d) of Act No. 20885, establishing the Office of the Under-Secretary for Human Rights and amending the Ministry of Justice Act, refers to: "the promotion of education and training on human rights at the nursery, primary, secondary and tertiary levels of education and in the training, education and development programmes of all authorities and officials of State bodies, including the Public Prosecution Service and the Public Criminal Defender Service, members of the armed forces, the Carabineros, the Investigative Police, the Prison Service and the municipalities".

to eliminate barriers that make it difficult for persons deprived of their liberty to exercise their rights.

194. Lastly, it should be noted that this report represents an effort by the Government to meet its international human rights obligations. It is not easy for States parties to fully respond to the recommendations put forward by the Subcommittee, but Chile is making a serious and rigorous effort to do so, while accepting that further challenges lie ahead. States that incorporate a human-rights approach understand that human rights are not fixed targets but dynamic horizons that constantly present new challenges. In that sense, the prevention of torture is no exception.
