



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

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## Committee against Torture

### List of issues to be taken up prior to the submission of the sixth periodic report of Chile (CAT/C/CHL/6) as approved by the Committee at its forty-eighth session (7 May–1 June 2012)\*

#### Specific information on the implementation of articles 1 to 16 of the Convention, particularly with regard to the Committee's previous recommendations

##### Articles 1 and 4

1. With reference to the Committee's previous recommendations (para. 10),<sup>1</sup> please inform the Committee of any steps taken by the State party to adopt a definition of torture such that all acts of torture are criminalized and appropriate penalties for such acts (including instigation to torture, attempted torture and complicity and participation in torture) are prescribed in line with articles 1 and 4 of the Convention.
2. Please indicate what measures have been taken by the State party to establish the non-applicability of statutory limitations to the offence of torture.
3. With reference to the Committee's previous recommendations (paras. 11 and 19), please indicate whether Act No. 20357 of July 2009, which criminalizes crimes against humanity, genocide and war crimes, applies to offences committed prior to the adoption of the Act. Please provide information on the current status of the bill under which statutory limitations would be inapplicable to crimes against humanity and indicate what steps have been taken to ensure that those who committed crimes of torture under the dictatorship are prosecuted and sentenced. Please indicate whether the State party has repealed the provision contained in Act No. 19992 under which information on the practice of torture during the dictatorship is to remain classified for 50 years. Please indicate whether it establishes the inadmissibility of pardons and amnesties in order to prevent impunity for

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\* The present list of issues was adopted by the Committee at its forty-eighth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists of the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the Committee's concluding observations regarding the fifth periodic report of Chile (CAT/C/CHL/CO/5).

crimes against humanity, genocide and war crimes, including those committed prior to the entry into force of Act No. 20357, in line with the international standards applicable to such international crimes.

4. With reference to the Committee's previous recommendations (para. 12), please provide the Committee with information on the implementation and effectiveness of the corresponding legislation. Please also provide information on the current status of the bill which would repeal Amnesty Decree-Law No. 2191 and indicate whether the State party has considered declaring the law unconstitutional or repealing it because it runs counter to international law. Please also indicate whether any legal initiative has been undertaken regarding the phased application of the statute of limitations provided for under article 103 of the Criminal Code in relation to crimes against humanity, genocide and war crimes.

#### **Article 2<sup>2</sup>**

5. With reference to the Committee's previous recommendations (para. 13), please indicate the current status of measures to abolish the Office of the Undersecretary for the Police Force (Carabineros) and the Office of the Undersecretary for the Investigative Police Force (Policía de Investigaciones) within the Ministry of Defence and to transfer, for statutory, regulatory and contractual purposes, responsibility for the supervision of the law enforcement agencies to the Office of the Undersecretary for the Interior in the Ministry of the Interior and Public Security.

6. Please provide updated information on the measures taken by the State party to prevent and combat violence against women, including domestic violence, rape and sexual harassment, as well as protection measures for victims. Please inform the Committee about legislation on violence against women, in particular domestic violence, including Act No. 20066.<sup>3</sup> Please comment on allegations that police officers have committed acts of sexual violence against girls, adolescents and women during peaceful demonstrations. Please provide information on current legislation, institutions and practice aimed at protecting the rights of sexual minorities (LGBT) from discrimination on the grounds of sexual orientation and gender identity. The Committee wishes to receive information on the steps taken to investigate the violent death of Daniel Zamudio following a fatal homophobic attack on 27 March 2012 in Santiago and to identify those responsible.

7. With reference to the recommendations made by the Committee in its previous concluding observations (para. 14), please provide information on the reform of the Code of Military Justice following the adoption of Act No. 20477, which maintains the jurisdiction of military courts over offences committed by uniformed personnel, whether police or military, including human rights violations, and which draws no distinction between ordinary offences and offences committed in connection with the performance of military duties. Please provide clarification regarding the referral of allegations of acts of police brutality amounting to torture or other cruel, inhuman or degrading treatment to the military courts. Kindly also indicate whether or not progress has been made in introducing amendments whereby serious human rights violations, including torture and ill-treatment,

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<sup>2</sup> The issues raised under article 2 may also relate to different articles of the Convention, including article 16. As is stated in paragraph 3 of general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

<sup>3</sup> See CEDAW/C/CHL/Q/5-6, para. 5.

whether committed by military personnel or civilians, would be subject to the jurisdiction of the ordinary justice system in order to ensure that the corresponding proceedings are impartial and that effective investigations are carried out promptly.

8. Please indicate the current status of bill No. 18216 on alternative measures to deprivation of liberty and provide statistics on the current use of pretrial detention, which may undermine the right to presumption of innocence, as opposed to non-custodial measures. Please also provide information on the number of migrants arrested and held in custody for violating migration laws and on the length and conditions of their detention.<sup>4</sup>

9. Please provide information on the number of minors in pretrial detention. Please also comment on the increase in the number of minors in pretrial detention and provide information on the use of non-custodial measures. Please provide information on the practice, length and regime of incommunicado detention and on the use of solitary confinement as a disciplinary measure in prisons.

10. With reference to the Committee's previous recommendations (para. 23), please:

(a) Indicate what measures have been taken regarding reports of ill-treatment and abuse of members of indigenous peoples, in particular the Mapuche peoples, by the police during police raids and other operations.<sup>5</sup> Also please indicate what steps have been taken in response to allegations of the excessive or unjustified use of force, including torture and ill-treatment, against thousands of persons during student protests in 2011 in, inter alia, police vehicles and during the subsequent detention of some of those persons, which in some cases amounted to the arbitrary detention of young people and children;

(b) Indicate whether those acts have been investigated and the perpetrators prosecuted and punished and, if so, indicate their number and provide information on the penalties imposed on those persons, disaggregated by age, sex and geographical location, as well as any redress, compensation and rehabilitation provided to victims;

(c) Provide detailed information on the definition of terrorism contained in the Counter-Terrorism Act (No. 18314) and its application to indigenous persons, which has made it possible to bring charges of terrorism against members of the Mapuche community for participating in protests or demanding that their land rights be defended;<sup>6</sup> and

(d) Provide updated information on the investigation into the murder, on 12 August 2009, of José Facundo Mendoza Collio, a 24-year-old member of the Mapuche community, who was killed by police gunfire.

11. Please provide information on the steps taken by the State party to decriminalize abortion when a pregnancy is the result of rape or endangers the life of the mother. Please also provide information on the adoption of legislative or other measures to safeguard women's sexual and reproductive rights. Please also comment on allegations of forced sterilization of HIV-positive women and indicate whether there is a system for lodging complaints in cases of involuntary sterilization; please describe the redress and compensation measures, including rehabilitation measures, provided for victims. Please also indicate whether any investigations have been carried out and, if so, their outcome.

12. Please provide information on the steps taken by the State party to combat people-smuggling and trafficking in persons under Act No. 20507 of 1 April 2011.<sup>7</sup> Please provide information on the number of complaints, investigations, prosecutions, convictions and

<sup>4</sup> CMW/C/CHL/CO/1, para. 26.

<sup>5</sup> CERD/C/CHL/CO/15-18 (para. 19).

<sup>6</sup> CERD/C/CHL/CO/15-18 (para. 15).

<sup>7</sup> CMW/C/CHL/CO/1, para. 46.

sentences imposed in cases involving trafficking in persons and describe the mechanisms in place for the identification of the victims and perpetrators of trafficking. Please indicate whether training is provided to public officials on how to handle such cases. Please also indicate what services are available to the victims of trafficking and how they can access such services; please provide statistics on the number of victims currently benefiting from services.

13. With reference to the Committee's previous recommendations (para. 16), please provide information on the steps taken to bring the National Human Rights Institute into line with the Principles Relating to the Status of National Institutions (Paris Principles) and to ensure its autonomy, independence, plurality, stability, competence and representative character. Please also provide information on the status of the bills for the creation of the Office of the Ombudsman and the establishment of special units to protect the rights of women, indigenous peoples and migrants.

14. With reference to the Committee's previous recommendations (para. 21 (b)), please indicate whether the State party has established a national preventive mechanism that would arrange for visits to detention centres in order to fully implement the Optional Protocol to the Convention against Torture; that mechanism should have been established in December 2009, but has not yet entered into operation.

### **Article 3**

15. Please indicate how many persons have been returned, extradited or expelled since the consideration of the State party's fifth periodic report. Please provide details of the grounds on which they were sent back and a list of the countries to which individuals were returned. Please provide detailed information on the types of appeal mechanisms that exist, on whether any appeals have been lodged and, if so, on their outcome. Using the international obligations assumed by Chile as a framework, please provide information on the cases of people who were exiled during the dictatorship, who have been in exile abroad for over a decade and who are still prevented from returning to Chile because they lack authorization from the courts to do so. Please indicate to what extent the sentences issued during the dictatorship remain in force.

16. Please indicate how many refoulements, extraditions and expulsions have been carried out by the State party during the reporting period on the basis of its acceptance of diplomatic assurances or the equivalent thereof. Please also indicate the number of cases in which the State party has offered such diplomatic assurances or guarantees. What are the minimum standards with regard to the contents of any such assurances or guarantees, whether given or received, and what arrangements for subsequent monitoring have been made in such cases?

17. Please indicate what measures have been taken by the State party to ensure that migrant workers can appeal against expulsion decisions and, in particular, to extend the time limit for lodging appeals against such decisions.<sup>8</sup>

### **Articles 5 to 9**

18. Please indicate what legislative or other measures have been taken to implement article 5 of the Convention. Under national law, are acts of torture considered offences over which universal jurisdiction may be exercised, wherever they occur and whatever the nationality of the perpetrator or victim? Please provide relevant examples of any such prosecutions.

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<sup>8</sup> Ibid., para. 27.

19. Please inform the Committee what extradition treaties have been concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in those treaties.

20. Please clarify what mutual judicial assistance treaties or agreements Chile has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have actually led to the transfer of any evidence in connection with offences related to torture or ill-treatment. Please provide examples.

#### **Article 10**

21. With reference to the Committee's previous recommendations (paras. 13 and 20), please indicate what advances have been made in strengthening educational programmes to ensure that all law enforcement officials are fully aware of the provisions of the Convention and the absolute prohibition of torture. Please also indicate whether the State party has developed a methodology to assess the effectiveness and impact of training programmes in terms of the reduction of cases of torture and ill-treatment and, if so, please provide information on the content and implementation of that methodology.

22. Please provide information on efforts to ensure that all medical personnel involved in the detection of cases of torture are familiar with the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol) and are trained in its application; please indicate the steps taken to implement the Protocol. Please also indicate the role and powers of the Department of Human Rights of the National Police Force (Carabineros).

23. Please provide detailed information on the training and awareness-raising programmes provided for law enforcement personnel and other officials who come into direct contact with victims of gender-based violence. Please provide statistics on different forms of violence against women and the number of decisions handed down against the perpetrators of such acts by the courts, the number of convictions and the corresponding penalties.

24. Please indicate whether any steps have been taken to modernize the judicial system and train judges in order to expedite the administration of justice. Please describe those steps in detail.

#### **Article 11**

25. With reference to the recommendations made by the Committee in its previous concluding observations (para. 21) and in light of the June 2009 report of the Advising Attorney (Fiscal Judicial) of the Supreme Court, please indicate what steps have been taken to improve prison conditions, including in respect of infrastructure, in order to ensure that the basic needs of all persons (including young persons) deprived of their liberty are met and that those conditions are in line with international human rights standards regarding, inter alia, ventilation, lighting, increased time spent outside cells, legal assistance, education, training, and sports, work, rehabilitation and social reintegration activities. Please also indicate what specific steps have been taken to reduce chronic overcrowding, which is exacerbated by the slow pace of judicial proceedings and the excessive use of pretrial detention<sup>9</sup> and which is a problem in all the country's prisons. Please comment on

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<sup>9</sup> See the press release of 7 February 2012 of the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights [<http://acnudh.org/2012/02/la-oficina-regional-para-america-del-sur-de-naciones-unidas-derechos-humanos-expresa-preocupacion-por-la>]

the adoption of alternative non-custodial measures and improvements in access to basic services, such as the provision of adequate space, drinking water, food, medical care and basic sanitary and hygiene conditions.<sup>10</sup>

26. Please provide the Committee with information on the occupancy rate in all the State party's prisons.

27. Please provide information on the measures taken to do away with isolation cells and on the measures taken under the programme to improve and adapt the structural conditions of disciplinary cells. Please also comment on the alleged practice of holding prisoners in isolation cells as punishment without regard for the proper procedures and standards regarding conditions of detention.

28. Please provide statistics on the deaths in custody that occurred during the reporting period, disaggregated by the place of deprivation of liberty, sex, age, ethnic origin and nationality of the deceased and the cause of death. Please provide detailed information on the results of the investigations into these deaths and on the measures taken to prevent the reoccurrence of similar cases. Please indicate whether, in any of the cases, relatives received compensation. In particular, please provide detailed information on investigations and prosecutions relating to the 81 people who died as a result of inter-prisoner violence on 8 December 2010 in a fire at the San Miguel prison in Santiago, where the number of prisoners was nearly double the capacity and only four members of the prison staff were present at the time. Please also indicate what steps have been taken to eradicate brawling and prison violence and prevent deaths in detention centres caused by such violence; please indicate the impact and effectiveness of these measures.

### **Articles 12 and 13**

29. Please provide statistics on allegations of torture and ill-treatment and the findings of investigations into such complaints, as well as related prosecutions, convictions and the type of disciplinary sanction or punishment imposed on the perpetrators of such practices.

30. With reference to the Committee's previous recommendations (para. 15), please provide information on the development of a record-keeping system that provides information on the commission of crimes of torture, disaggregated by, inter alia, the victim's sex and age, so that it will be possible to determine how many reports of and convictions for the crime of torture there have been in which the victims were women, minors, indigenous people, persons with disabilities or persons who are HIV-positive. Please indicate how many complaints, investigations, convictions and sentences there have been in cases of violence against women (including sexual violence), minors, indigenous people, persons with disabilities and persons who are HIV-positive which have occurred during the suppression of demonstrations or in places of detention since 2009, as well as the preventive measures taken in this regard.

31. Please provide detailed information on the measures taken by the State party to ensure that victims of torture and ill-treatment are not dissuaded from lodging a complaint for fear of reprisals. What specific safeguards are in place to protect complainants from reprisal, and how does the State party ensure that these safeguards are enforced? Please also comment on reports that police officers have threatened to bring serious criminal charges against persons who, following their arrest during demonstrations, refuse to sign an exculpatory statement regarding their ill-treatment.

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reciente-ola-de-muertes-y-violencia-en-las-carceles/].

<sup>10</sup> Ibid.

32. With reference to police violence, please inform the Committee about the measures taken to address the excessive use of force and to prevent, prosecute, punish and eradicate police brutality, including any investigations and prosecutions, as well as about the types of sanctions imposed.

33. Please indicate how many complaints, investigations, convictions and sentencings there have been in cases of violence against women, including sexual violence, which have occurred during the suppression of demonstrations or in places of detention since 2009, as well as the preventive measures taken in this regard.

34. Please provide updated information on the investigation into the death of a person being held in pretrial detention who was shot in the head on 29 January 2012 when trying to escape from the Talagante prison.<sup>11</sup>

35. With reference to the previous recommendations of the Committee (paras. 17 and 25), please elaborate on the short lifespan of the advisory commission that was established to ensure the recognition of the status of political prisoners who disappeared and were executed and the victims of political imprisonment and torture. (The commission was created under Act No. 20405 and its mandate extended until 17 August 2011 under Act No. 20496.) Please also indicate whether any other body has taken over the functions of the commission, whether there is any procedure for reviewing rejected applications and whether there is any body with the authority to examine the commission's conclusions or lodge appeals. Please provide updated information on the criteria used to determine people's status and indicate whether they cover the torture of minors, individuals living outside the country and the use of sexual violence as a method of torture. Please indicate what follow-up has been given to the work of the Valech Commission and the advisory commission. Please also provide information for the period 2009–2013 on access to fair and adequate compensation for the victims of torture, including those persons not currently in the State party, that is commensurate with the seriousness of the offence.

#### **Article 14**

36. Please provide information on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families since the consideration of the fifth periodic report in 2009. This information should include the number of claims lodged, the number granted and the amounts ordered and those actually provided in each case.

37. Please inform the Committee about the steps taken to provide redress, compensation and rehabilitation for victims of police brutality.

38. With reference to the Committee's previous recommendations (para. 18), please provide updated information on the measures taken to maintain access to the Compensation and Comprehensive Health-Care Programme (PRAIS) and on the number of torture victims benefiting from the services provided, disaggregated by region, including victims living outside Chile. Please also provide information on the number of cooperation agreements entered into, the countries with which they have been concluded and the number of beneficiaries in each case. Please indicate whether a gender policy has been adopted on care for the victims of sexual violence and, if so, provide information on its coverage and the type of care provided.

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<sup>11</sup> Ibid.

**Article 15**

39. Please indicate the steps taken to ensure that, in practice, information obtained by torture cannot be invoked as evidence in any proceedings, in accordance with article 15 of the Convention. Indicate which provision in the Criminal Code applies and provide the relevant text. Please provide examples of any cases where courts admitted evidence obtained by torture and other ill-treatment and indicate what reasons they provided for so doing.

**Article 16**

40. Please inform the Committee of the number and types of cases involving excessive or unwarranted use of force by the police, in particular during peaceful demonstrations and public protests, including cases involving persons with disabilities. Please also provide information on any investigations and prosecutions relating to the death of Manuel Gutiérrez, aged 16, who was shot in the chest in August 2011, allegedly by the police.<sup>12</sup>

41. Please comment on the measures adopted by the State party to make corporal punishment unlawful and to enforce that prohibition in all settings, including the home and other care settings.

42. Please provide information on the measures taken to protect women domestic workers and to ensure a greater and more systematic involvement of labour inspectors in monitoring the working conditions of such women. Please also indicate whether women domestic workers have effective access to mechanisms for bringing complaints against employers and whether all abuses, including ill-treatment, are investigated and sanctioned as appropriate.<sup>13</sup>

43. With reference to the Committee's previous recommendations (para. 24), please provide information on the current status of people who were imprisoned during the dictatorship, tortured, and later forced to leave the country. Please indicate whether they have been given the opportunity to return to Chile.

**Other issues**

44. Please provide information on the legislative, administrative and other measures undertaken by the State party to respond to the threat of terrorist acts. Please indicate whether these measures have had an impact on human rights safeguards in law and practice and, if so, what that impact has been. In this respect, the Committee would like to recall Security Council resolutions 1373 (2001), 1456 (2003), 1535 (2004), 1566 (2004) and 1624 (2005), all of which reiterate that States must ensure that any measure[s] taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law. Please describe the training that is given to law enforcement officers in this connection, indicate the number and types of convictions handed down under such legislation, specify what legal remedies are available to persons subject to antiterrorist measures, indicate whether there have been reports of non-observance of international standards, and describe the outcome of any such complaints.

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<sup>12</sup> See "Con velatones piden justicia por asesinato de Manuel Gutiérrez", Radio.uchile.cl, 27 August 2011 [<http://radio.uchile.cl/noticias/120357/>].

<sup>13</sup> See CMW/C/CHL/CO/1 (para. 37).

**General information on the human rights situation in the State party, including information on new measures and developments relating to the implementation of the Convention**

45. Please provide detailed information on any new developments since the submission of the fifth periodic report concerning the legal and institutional framework within which human rights are promoted and protected at the national level, including any relevant court decisions.

46. Please provide detailed information on any new political, administrative or other measures taken to promote and protect human rights at the national level since the submission of the previous periodic report, including information on any national human rights plans or programmes, the resources allocated thereto, and the corresponding means, objectives and results.

47. Please provide any other information on new measures undertaken and any other developments in connection with the implementation of the Convention and the Committee's recommendations since the consideration of the fifth periodic report in 2009, including the corresponding statistics, as well as information on any other events that may have occurred in the State party which are relevant under the Convention.

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