



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

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Committee against Torture

Concluding observations on the sixth periodic report of Chile

Addendum

**Information received from Chile on follow-up to the
concluding observations***

[Date received: 14 August 2019]

* The present document is being issued without formal editing.



Introduction

1. This report sets out the follow-up actions taken by Chile in compliance with the recommendations made by the Committee Against Torture in August 2019 as part of the constructive dialogue relating to the country's sixth periodic report. These actions relate to the establishment or designation of a national torture prevention mechanism; deaths of minors [sic] and allegations of torture, ill-treatment and sexual abuse in residential centres managed by the National Service for Minors network; and ill-treatment of persons with disabilities and older persons.¹ If the Committee deems it appropriate, the State of Chile is willing to provide more information about any matter addressed in the present report.

Follow-up information relating to paragraph 17 of the concluding observations (CAT/C/CHL/CO/6)

2. In accordance with the commitment made by Chile in 2008 when it ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, a bill² designating the national human rights institution as the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment was passed with broad parliamentary support on 8 January 2019 and published in the Official Gazette on 25 April 2019 as Act No. 21.154.³

3. From an organizational standpoint, the mechanism will consist of seven experts, who will make up the Committee on the Prevention of Torture, and support staff to assist the Committee in its work.⁴ This new institutional structure will be established gradually, under the direction of the national human rights institution.

4. As a first step, the Act will enter into force on 25 October 2019, six months after its publication in the Official Gazette, thus triggering the actual implementation process, which will begin with the appointment of the Committee experts.

5. Then, the first four experts will be appointed within six months of the entry into force of the Act, i.e. by 25 April 2020. Subsequently, within nine months of the entry into force of the Act, i.e. by 25 July 2020, the national human rights institution must modify its statutes and regulations so that a distinction is made between its functions and those of the national mechanism for the prevention of torture. Lastly, within 18 months of the entry into force of the Act, i.e. by 25 April 2021, another three experts will be appointed.⁵

6. The Act provides for regulations to ensure that the funds allocated to the two bodies are clearly differentiated. During the first year, the budget allocated to the national human rights institution by the Budget Directorate will be adjusted so as to specify separately the amounts assigned to the national mechanism for the prevention of torture and those assigned to the national human rights institution. In subsequent years, the budget will be assigned in accordance with the general rules.⁶

7. Act No. 21.154 contains provisions to safeguard the mechanism's functional autonomy, impartiality and independence, in accordance with the Optional Protocol. Article 3 of the Act defines the remit of the Committee, which is different from that of the national

¹ In response to paragraphs 17, 37 (a) and (b) and 39 of the concluding observations.

² In Bulletin No. 11245-17.

³ <https://www.leychile.cl/Navegar?idNorma=1130871>. The full text of the law is contained in annex II.

⁴ The Office of the Under-Secretary for Human Rights has informed the national human rights institution and the Civil Service that it is willing to assist with the establishment of the mechanism, if required. Nevertheless, the national human rights institution, the body designated as the mechanism, is responsible for the latter's establishment; accordingly, the executive branch will not interfere in its work so as to safeguard its independence.

⁵ These measures mean that the national mechanism for the prevention of torture will have a full committee in place by April 2021.

⁶ These rules apply to all agencies that receive State funding, in accordance with the public sector budget act for the year in question.

human rights institution and is exercised separately.⁷ In accordance with articles 18 and 21 of the Optional Protocol, Act No. 21.154 guarantees independence, impartiality and functional autonomy in the following areas:

- Internal organization: the Committee will determine its internal organization in accordance with the provisions of the Act and the regulations it adopts to that end, in terms of both its operations and the delegation of functions and powers. The Committee will be responsible for recruiting its own staff, who may not perform duties that are specific to the national human rights institution.
- Prohibitions on the authorities of places of deprivation of liberty: no authority or official of a place of deprivation of liberty may prevent a visit by the Committee. In exceptional, compelling and urgent situations, it will be for the Committee's experts to decide whether or not to go ahead with a visit.⁸
- Prohibition of reprisals: no authority or official of a place of detention may order, apply, permit or tolerate reprisals against the experts in connection with the performance of their duties or against any person for having provided the members of the Committee with information on torture.⁹
- Confidentiality: to protect the Committee in the exercise of its mandate, the information gathered during its visits and interviews will be confidential, including with respect to the national human rights institution.
- Exceptions to reporting: to safeguard the objectives of the Committee, experts and support staff will not be required to report serious or ordinary offences brought to their attention in the performance of their functions during preventive visits, unless such offences pose a vital threat to persons deprived of their liberty or concern cases of torture, in which case they must report the offences to the Public Prosecution Service.
- The duty of other bodies to cooperate: the relevant authorities must engage in dialogue with the Committee on measures to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- Selection of experts: experts are to be appointed by open competition, with special attention being given to gender balance, a multidisciplinary approach and representation of the country's indigenous peoples and ethnic and minority groups.¹⁰
- Termination of office: strict legal provisions govern the valid grounds for the termination of the office of experts, which are resignation, unfitness or incompatibility, and removal.¹¹
- Ineligibility and disqualification: to ensure the Committee's transparency and independence, persons who have held certain posts as authorities or officials¹² in the previous two years are barred from appointment to the Committee. Membership of the Committee is also incompatible with any other professional, commercial or employment activity, except teaching.

⁷ For this reason, Act No. 21.154 stipulates that the act on the establishment of the national human rights institution will be modified to make clear that the institution's power to enter an establishment where a person deprived of his or her liberty is or may be held is without prejudice to the mechanism's mandate, since the two bodies pursue different objectives.

⁸ Anyone who fails to comply with this regulation will be held administratively and criminally liable.

⁹ Ibid.

¹⁰ The National Consultative Council, formed by representatives of social and academic bodies involved in promoting and safeguarding human rights, will be able to take part in defining candidate profiles.

¹¹ The latter ground is to be applied by the Supreme Court in accordance with the legally established procedure.

¹² Such as national human rights institution advisers, deputies, senators, mayors and public prosecutors.

Follow-up information relating to paragraph 37 (a) of the concluding observations (CAT/C/CHL/CO/6)

8. With regard to inter-agency policies, and in order to coordinate the State's response to deaths occurring under its control, custody or care, an inter-agency agreement was signed in May 2019 making the intersectoral early warning protocol for deaths of persons placed under the control, custody or care of the State legally binding.¹³ Under the protocol, psychiatric hospital services, Carabineros (police), the investigative police, the national prison service, the forensic medicine service and the National Service for Minors are required to report all deaths, whether certified by a physician or not.

9. In addition, the Public Prosecution Service is required to investigate deaths to establish the facts surrounding the death, including whether it was caused deliberately or as a result of negligence by persons responsible for the control, care or custody of the deceased.

10. The first step towards reducing the number of deaths occurring in the custody of the State is to ensure that such deaths are reported and investigated promptly, with a unified national register being used to keep a record of their number.

11. In its official communication on institutional violence,¹⁴ the Public Prosecution Service has included a section on its investigative duties in respect of deaths of persons under the control, custody or care of the State. It has also produced informational material for distribution.

12. The Attorney General passed a resolution¹⁵ designating the regional prosecutor of Los Lagos to lead criminal investigations into the circumstances surrounding the deaths of children and adolescents at centres run by the National Service for Minors and partner agencies, provide protection for victims and witnesses and bring criminal proceedings, if appropriate. The National Service for Minors was therefore required to provide information on the number of deaths between January 2005 and June 2016. It reported that there had been 245 deaths of children and adolescents in residential homes or centres for young offenders run directly by the Service or an accredited partner agency. In total, 1,313 persons died in all the Service's areas of activity¹⁶ over the same period of time, of whom 866 were children or adolescents (see table).

13. Regarding the deaths reported by National Service for Minors in Official Communication No. 297:

- Of the 245 reported cases of children and adolescents reported as having died in residential homes and centres for young offenders directly run by the Service:
 - 119 were cases in which the Public Prosecution Service had begun criminal investigations, of which:
 - 15 cases were still ongoing in July 2016
 - 104 cases had been concluded according to the Public Prosecutor Support System and had been reviewed by the Regional Prosecution Service of Los Lagos

¹³ A copy of the protocol is provided in annex III.

¹⁴ No. 037/2019.

¹⁵ Resolution No. 1333-2016 of 12 June 2016.

¹⁶ Article 3 of Act No. 20.032 defines the lines of action of the National Service for Minors, indicating that "pursuant to the provisions of this Act, the National Service for Minors may subsidize activities carried out by authorized partners as part of the following action lines:

- (1) Offices for the protection of children's and adolescents' rights;
- (2) Residential facilities;
- (3) Programmes; and
- (4) Assessment."

- 126 were cases in which a criminal investigation had been instituted but was not being led by the Public Prosecution Service.

14. In all the cases being investigated by the relevant authorities, copies of background information were requested and investigations continued, led either directly by the specialized team or by local prosecutors assisted by the team. In the cases that had been closed, the investigations made by the Public Prosecution Service, the police and support bodies have been reviewed – and continue to be reviewed – as investigations into a death under the care and protection of the State, thanks to which it will be possible to determine whether persons performing public duties (caring for children and adolescents) were involved.

15. Of the 245 cases involving children and adolescents in the context of National Service for Minors' lines of action relating to protection and young offenders, whether in facilities run directly by the Service or by an accredited partner agency, the specially designated team was directly responsible for reviewing, investigating and concluding 116 cases nationwide, with support from the coordinating public prosecutor in each region.

16. Of the 129 ongoing cases, many of which are in the final stages of investigation, investigations have been formalized in 6 cases, and in 4 of these charges have been brought and the pretrial hearing is pending.

17. Of the 621 cases of children and adolescents reported as having died in the context of the Service's other lines of action, whether in residential homes or detention centres:

- 456 were cases in which criminal investigations had been opened by the Public Prosecution Service
- 165 were cases in which a criminal investigation had been opened but was not being led by the Public Prosecution Service.

18. In all the cases investigated by the relevant authorities, copies of background information were requested and investigations continued, led either directly by the specialist team or by local prosecutors assisted by the team. In the cases that have been closed, the investigations carried out by the Public Prosecution Service, the police and support bodies have and continue to be reviewed.¹⁷

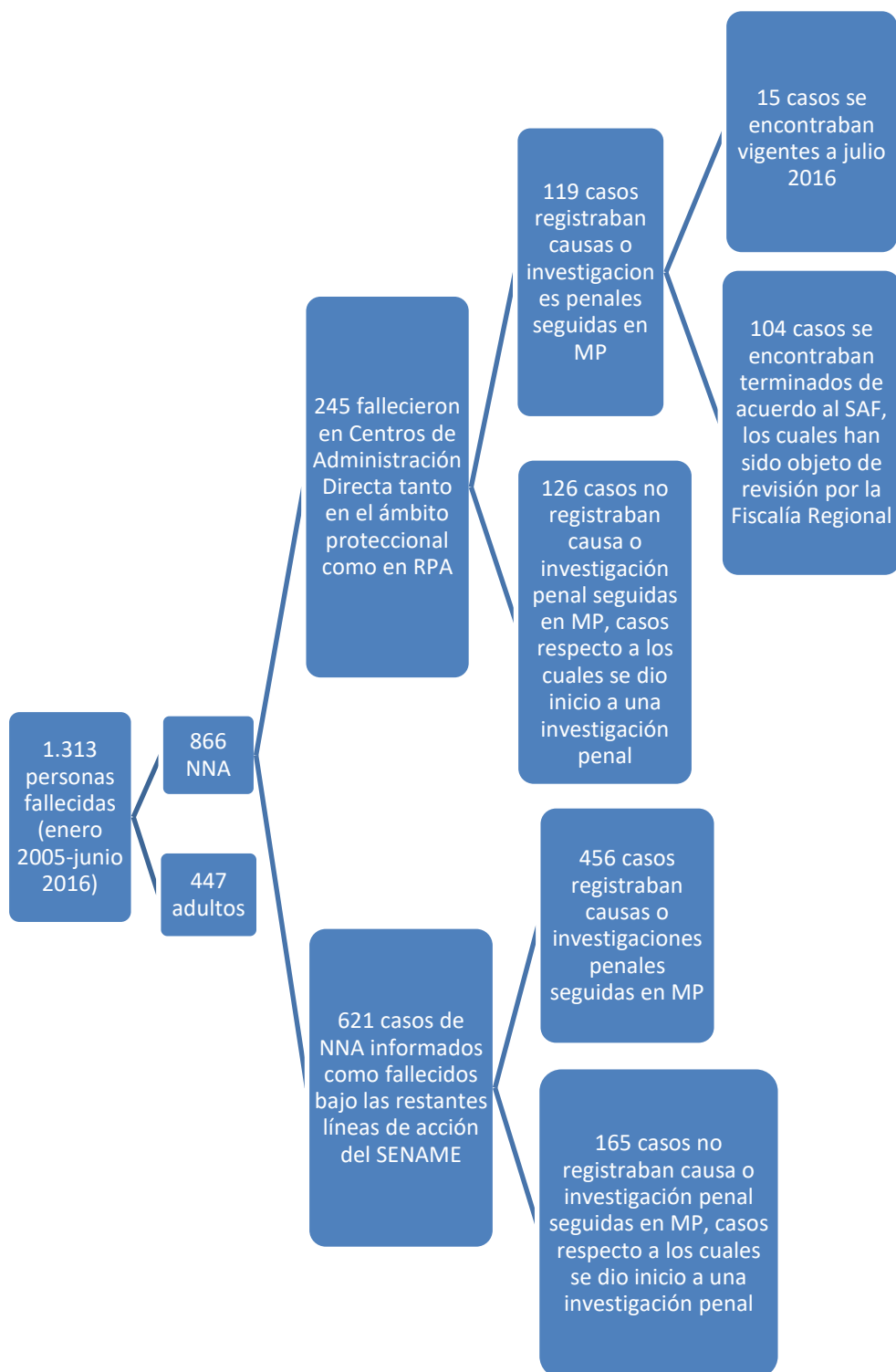
19. Of the 621 cases of persons reported as having died in the context of the Service's other lines of action relating to protection and young offenders,¹⁸ the specially designated team was directly responsible for reviewing, investigating and concluding 111 cases nationwide, with support from the coordinating public prosecutor in each region.

20. Of the 510 ongoing cases, many of which are in the final stages of investigation, investigations have been formalized in 2 cases, and in 1 of these criminal charges have been brought and the trial is pending.

¹⁷ As in the previous case mentioned in 1.2, these reviews were conducted as investigations into a death under the care and protection of the State, thanks to which it will be possible to determine the possible involvement, whether wilfully or through negligence, of persons performing public duties (caring for children and adolescents).

¹⁸ See footnote 16.

Table
Summary of deaths in the National Service for Minors' network



21. In addition, the National Service for Minors implemented circular No. 3 of 19 January 2018 (attached), on the procedure to be followed in response to the death of a child or adolescent who was accommodated in a residential facility of the network or involved in one of its programmes. The circular also sets the time limits within which project directors, regional directorates and the technical departments of the national directorate must submit information to the Public Prosecution Service.¹⁹

22. The National Service for Minors is currently amending circulars Nos. 2308 and 2309 on the procedures to be followed by accredited partner organizations and centres directly run by the Service respectively, in response to incidents that might constitute a criminal offence or physical or psychological abuse of a child or adolescent. The following modifications are to be included in new circulars to be finalized shortly:

- Act No. 20.968,²⁰ Act No. 21.013²¹ and Act No. 21.140²² are to be incorporated into the circulars.
- Reporting possible crimes and abuse²³ to the Public Prosecution Service in writing²⁴ will become mandatory.
- The public role of partner organizations in caring for children, as established in Act No. 20.032, will be acknowledged.²⁵
- The role of National Service for Minors with regard to the persons it attends to will be specified in circular No. 2309, which will provide a breakdown of its role for each line of action covered by the regulations (Rights' Protection and Juvenile Justice).
- A set of basic guidelines will define what ill-treatment is, but not in order to determine what constitutes an offence.
- Complaints against officials. The observations made by the National Association of Officials of the National Service for Minors²⁶ suggested that the procedure should

¹⁹ The circular aims to ensure: that professionals at the different institutions report violations to the relevant authorities, inform the Public Prosecution Service and inform the court dealing with the case opened on behalf of the child or adolescent or the judge who issued the sentence in the criminal trial; that the child or adolescent is removed from the National Service for Minors' system; that the incident is reported to the appropriate regional office of the Service; that technical reports are drafted for submission to the regional directorate along with the necessary documents proving that all the stages mentioned in the circular were followed; and that the technical departments take responsibility for compiling all the background information and drafting the official report to be sent to the Ministry of Justice and Human Rights, thus complying with the legal mandate provided for in the Budget Act, as set out below.

²⁰ Act No. 20.968, which makes torture and cruel, inhuman and degrading treatment an offence: <https://www.leychile.cl/Navegar?idNorma=1096847>.

²¹ Act No. 21.013, which defines a new offence of ill-treatment and increases protection for persons in special situations: <https://www.leychile.cl/Navegar?idNorma=1103697>.

²² Act No. 21.140, amending Act No. 20.032, which establishes a support system for children and adolescents through the National Service for Minors' network of partners, together with applicable subsidy arrangements: <https://www.leychile.cl/Navegar?idNorma=1128371>.

²³ As a result of a ruling by the Comptroller-General's Office (Decision No. 19.571 of 2 April 2013), the current circulars allow the director of the project or line of action (circular No. 2308) or the director of the centre (circular No. 2309) not to report certain incidents to the competent authority for criminal matters if he or she believes that the incident is not a criminal offence. The new proposal removes the option of not reporting the incident.

²⁴ Although current regulations require public officials and staff at partner organizations to report certain incidents, they do not specify how or to whom they must do so, stating merely that they must do so "before the competent authority for criminal matters". It was therefore deemed necessary to state that such incidents should be reported in writing to the Public Prosecution Service, as the independent, impartial body responsible for investigations. This is without prejudice to the matter being referred to Carabineros and the investigative police, if necessary.

²⁵ Article 4.

²⁶ As part of a round-table discussion informing participants about changes to circulars 2308 and 2309 proposed by both technical departments.

include informing such officials when they have been reported to the authorities for alleged acts constituting an offence.²⁷

- The Single Case Follow-up File is to be eliminated and a reportability module is to be added to the official National Service for Minors database.²⁸

23. Lastly, since records of the deaths of children and adolescents in State custody need to be improved to ensure that Chile complies with its obligation to investigate such deaths by reporting them promptly to the relevant authorities, an institutional target²⁹ on child deaths in the National Service for Minors' network was incorporated into the Service's Collective Performance Agreement for 2018 and 2019 and tied to the quarterly report that the Ministry of Justice and Human Rights must submit to Congress concerning the deaths of children within the Service's network, including information on the place of death, the cause of death and any complaints lodged.³⁰ Implementation of this target has improved the Service's performance and reaction in response to such regrettable and serious events as the death of a child or adolescent.³¹ Under this procedure, the Service sends an official note to inform the Ministry that a child or adolescent served by the network has died,³² and the Ministry uses that information when compiling its quarterly reports for Congress.³³

²⁷ The following paragraph regarding incidents reported to the authorities would be added: "In cases where it is deemed that an official at the centre might be individually responsible for an act that might constitute an offence, the official shall be informed for the sole purpose of making him or her aware of the situation; all efforts shall be made to handle the information in a way that ensures that order is maintained within the centre".

²⁸ This measure aims to expedite the actions that must be carried out if an incident constituting an offence occurs. It also aims to generate a single report.

²⁹ The target is for centres under the responsibility of the technical departments.

It should be noted that these targets are envisaged in Act 19.553, which grants modernization payments and other benefits to the permanent and temporary civil servants specified in the Act. In particular, in article 3 (c) and article 7 (c) it is stated that "each head of service shall set pertinent and relevant management targets and objectives for their teams, units or areas of activity that genuinely contribute to improving institutional performance, together with suitable indicators, weighting adjustments and verification mechanisms."

³⁰ To this end, the National Service for Minors prepared a report with a view to the Ministry of Justice and Human Rights providing Congress with the information required on a quarterly basis. The requirement to produce such information was maintained in the 2018 and 2019 budget acts. In view of the foregoing, and in view of the need to improve the Service's information and reporting processes in response to situations that could constitute serious violations of the rights of children and adolescents served by the network and to establish clear and sufficiently timely internal procedures for action – both for staff at partner organizations and for officials of the Service – that would allow incidents to be reported to the relevant authorities, to the Public Prosecution Service and to the courts, the Collective Performance Agreement target of reporting to the Ministry all deaths of children and adolescents involved in a programme, whether residential or non-residential care, was adopted for 2018 and 2019 at the request of the ministerial authority.

³¹ This has made it possible to create mechanisms for coordination with other State services in order to ensure the accuracy of the information reported. One such mechanism is the agreement of 3 January 2017 with the Civil Registry and Identification Service to implement the Integrated Platform of State Electronic Services, allowing information in the National Service for Minors' official database to be cross-checked against the Civil Registry and Identification Service.

³² This has been maintained in the 2019 Collective Performance Agreement target.

³³ Based on the inclusion of Note No. 5 in the 2017 Budget Act, which expressly states: "On a quarterly basis, the Ministry of Justice and Human Rights shall provide the Chamber of Deputies Committee on the Constitution, Legislation and Justice and the Senate Committee on the Constitution, Legislation, Justice and Regulations with information on children who have died while under the direct or indirect care of the Service for Minors or accredited partner organizations, including the place of death, the cause of death and any complaints lodged. Non-compliance, partial compliance or late compliance with the above shall constitute a serious breach of integrity."

Follow-up information relating to paragraph 37 (b) of the concluding observations (CAT/C/CHL/CO/6)

24. In January 2019, the Attorney General issued General Instruction No. 37 of 15 January 2019 on the criteria for prosecutors to follow when investigating torture and other cruel, inhuman and degrading treatment or punishment, as well as other forms of institutional violence.³⁴

25. Attached to that general instruction was an annex³⁵ containing information on cases investigated by the regional public prosecution service for the Western Metropolitan Region. The regional service was operating nationwide as the specialist team for cases involving the commercial sexual exploitation of children and adolescents who are, or who have been, in the care or custody of the National Service for Minors in one of its residential centres run directly by the Service or by a partner organization, as well as for all cases of sexual crimes affecting children and adolescents committed at directly administered specialized remedial centres or centres run by partner organizations by officials employed by those centres.

26. When cases of torture, ill-treatment and sexual abuse in the National Service for Minors' network are reported, the procedures contained in Circulars Nos. 2308 and 2309 apply.³⁶

27. Regarding the administrative investigation of such cases, the National Service for Minors³⁷ created, in 2014,³⁸ the Internal Prosecution Unit³⁹, which the Budget Act, 2019⁴⁰ strengthened.⁴¹ Under our legal system, administrative liability⁴² is restricted to public officials, and does not include staff at partner organizations in the private sector,⁴³ notwithstanding indicated measures that such organizations must adopt.

³⁴ The General Instruction applies to acts constituting torture or other cruel, inhuman or degrading treatment or punishment committed by public officials in the performance of their duties or by persons acting either in an official capacity or at the instigation of or with the consent or acquiescence of a public official, with special emphasis on vulnerable groups such as children and adolescents who have been deprived of their liberty by being placed in rights protection centres or in young offenders' centres.

³⁵ See annex VII.

³⁶ As stated in the reply to paragraph 37 (a), no distinction is made between deaths and ill-treatment of children.

³⁷ Exempt Resolution No. 2.875 of the National Directorate of the National Service for Minors, of 7 October 2014.

³⁸ At that time, the resources available were only sufficient to assign functions to a coordinating lawyer, who was already a staff member at the Service.

³⁹ The unit is formed by a group of qualified professionals who act both as prosecutors and as investigators during preliminary proceedings, are specialized in juvenile law, especially in the context of the Convention on the Rights of the Child, and act as active guarantors of children's and adolescents' rights.

⁴⁰ Act No. 21.125 on the public sector budget for 2019, published on 28 December 2018 in the *Diario Oficial* of the Republic of Chile.

⁴¹ The Act provides for funding to hire six persons per year (five lawyers and one administrative professional) and resources to cover travel expenses, operating expenses, furniture and software licences. This represents a major effort by the State to ensure that our officials conduct preliminary investigations into allegations of ill-treatment and aggression against our children and adolescents promptly, exhaustively and impartially. To date, only three lawyers and one administrative professional have been hired, as the open competition procedure was declared void for two of the posts. New procedures for those two posts are currently at the psychological assessment stage.

⁴² It should be noted that, in accordance with the Administrative Charter, "Officials will bear administrative liability if their failure to comply with their administrative duties and obligations is subject to disciplinary action. Such action must be supported by preliminary investigations or an administrative inquiry (article 119 (2) of Law-ranking Decree No. 29 (2004) of the Ministry of Finance, which establishes the revised, consolidated text of Act No. 18.834 on the Administrative Charter).

⁴³ It is important to recall that, in accordance with the provisions of Act No. 21.140, which amended Act No. 20.032, the National Service for Minors has the power to send specific instructions to its

28. According to the National Service for Minors' institutional database, 534 preliminary proceedings for "ill-treatment/aggression" were instituted between 1 January 2014 and 30 April 2019. This category refers to all forms of physical or mental violence, injury, neglect or negligent treatment, ill-treatment or exploitation, including sexual abuse, affecting a child or adolescent, regardless of who is responsible for the ill-treatment or aggression. Of these, 312 are still being processed and 222 have been completed, with disciplinary measures implemented in 43 of these cases.

29. Another notable development, undertaken as part of the reorganization of the residential homes run directly by the National Service for Minors, has been the permanent closure of the directly administered specialized remedial centre in Playa Ancha⁴⁴ on 13 March 2019; the children and adolescents concerned were rehoused in four newly opened family residences.

Follow-up information relating to paragraph 39 of the concluding observations (CAT/C/CHL/CO/6)

30. The National Service for Older Persons has long-stay establishments for older persons. A total of 14 such establishments are currently open,^{45, 46} with a further 8 being built or implemented.⁴⁷ Through its regional coordination bodies, the Service monitors the centres monthly and provides ongoing support and technical assistance. It also maintains infrastructure and facilities to ensure the quality of the care provided to and the welfare of the older persons living there.

31. Currently, the regional ministerial offices of the Ministry of Health are responsible for overseeing long-stay establishments for older persons and reporting health violations.⁴⁸

accredited partner organizations, which are obliged to adopt the measures indicated. The Service does not, however, have the power to request the dismissal of one of the partner organization's staff members; the measures it requests must be related to execution of a line of action. Nevertheless, partner organizations have sometimes carried out internal investigations and adopted certain measures, including relieving staff members of their duties, to restore to a child or adolescent in alternative residential care any rights that may have been violated.

⁴⁴ This measure is also part of Precautionary Measure PM 975/17, entitled "Children and adolescents of the SENAME Playa Ancha" and adopted by the Inter-American Commission on Human Rights, dated 24 April 2018.

⁴⁵ Long-stay establishments for older persons are for persons aged 60 and over who, for physical, psychological or social reasons, need a protected environment and differentiated care. The purpose of differentiated care is to prevent disease and maintain health, promote functional maintenance and stimulation, and develop capacities. The facilities provide long-term care for vulnerable older persons who are physically or cognitively dependent in line with a rights-based approach aimed at offering health and social services for residents, enhancing their capacities and other aspects that reinforce their identity and independence.

⁴⁶ Located in the communes of Arica, Antofagasta, Puente Alto, Huechuraba, Licantén, Curicó, Cauquenes, Coronel, Hualpén, Cusco, Melipeuco, Loncoche, Puerto Montt and Punta Arenas.

⁴⁷ In Arica, Pozo Almonte, Copiapó, La Serena, Valparaíso, Rengo, Valdivia and Coyhaique.

⁴⁸ Decree No. 14/2010 of the Ministry of Health.

32. As part of the protocols for long-stay establishments for older persons (2016), the National Service for Older Persons drew up a protocol on preventing and dealing with agitation in older persons,⁴⁹ which aims to “provide guidance on preventing and dealing with agitation among older people based on a non-restraint approach, taking into account the right to life without violence”. The establishments record any use of physical or pharmacological restraint using a form;⁵⁰ further details are contained in an annex.⁵¹ Training has been provided on the protocol as part of the long-stay establishment programme (100 caregivers in June and July 2019) and the home-care programme (50 caregivers in July 2019).

33. With respect to deaths at long-stay establishments for older persons, since death can occur naturally and suddenly with advancing age, under the intersectoral early warning protocol for deaths of persons placed under the control, custody or care of the State,⁵² a death is treated as suspicious if it occurs as a result of an action or omission by a person who has a duty of care for the older person and to whom fault or negligence may be attributed. A death not certified by a doctor would also be treated as suspicious. In 2019, there have been no such reports of suspicious deaths and/or no formal complaints have been lodged regarding the deaths of persons under the care of the National Service for Older Persons.

34. Sixteen complaints of ill-treatment or sexual abuse within long-stay establishments for older persons were recorded between the start of 2017 and June 2019 (see annex VIII). Appropriate action was taken in all cases.

35. In terms of challenges related to care for older persons, the National Service for Older Persons recognizes the need to improve how it collects and follows up on information on applying the aforementioned protocols,⁵³ to request a report from its Human Rights and Good Treatment Unit every six months, and to continue to provide training on Protocol No. 17, on complex care, and more specifically on the protocol on preventing and dealing with agitation in older persons.

36. With regard to persons with disabilities, the National Service for Persons with Disabilities created the Autonomy and Dependency Department (in April 2019) to design, implement, coordinate and supervise the technical and administrative work required to create the Care Homes Programme⁵⁴ to support persons with disabilities aged over 18 who

⁴⁹ The protocol is part of the Quality Standards for Long-Stay Establishments for Older Persons and is available at http://www.senama.gob.cl/storage/docs/Estandares_Calidad-ELEAM_WEB.pdf.

⁵⁰ The form is contained in annex 2 of the Protocol.

⁵¹ The form detailing the adverse event is attached to the older person’s medical record, which is held by the long-stay establishment and is treated as sensitive information by teams in the primary and secondary health-care network. See annex VIII.

⁵² According to this document, deaths at long-stay establishments for older persons would be classified as deaths under the care of the State.

⁵³ By way of example, future agreements with non-profit long-stay establishments for older persons that receive subsidies or direct funding from the Service should gradually incorporate clauses requiring such establishments to systematically provide certain information: the number of times the protocol on preventing and dealing with agitation has been applied; the number of suspicious deaths or other breaches, along with a report; and the follow-up measures taken in such situations.

⁵⁴ Care homes provide accommodation for persons who, for a number of reasons, cannot live alone or with their families and need support, care or ongoing, comprehensive, cross-disciplinary assistance that enhances their independence and self-sufficiency. The homes are supposed to follow a rights-based, people-centred approach, taking each person’s life history and unique attributes into account. The organizations that provide residential facilities funded by the State in Chile are as follows:

- The National Service for Minors, which manages a range of residential facilities through various partner organizations for persons aged under 18.
- The National Service for Older Persons, which awards contracts for the running of long-stay public establishments to various non-profit institutions. The facilities are intended for persons aged 60 and over.
- The Ministry of Health, which provides sheltered accommodation for persons aged over 18 with a range of mental-health problems. The facilities are run by non-profit organizations.

were previously accommodated by the National Service for Minors' network. This measure was in line with the National Service for Minors' action plan, in which a number of lines of action were agreed, including the transfer of adults aged 18 to 59 with disabilities to the care of National Service for Persons with Disabilities. The transfer of these persons began in earnest in August 2019. Once the Care Homes Programme is in place, it will be possible for the National Service for Persons with Disabilities to have direct knowledge of any acts constituting abuse and/or a criminal offence committed against persons with disabilities in care homes. Currently, because it does not have supervisory powers, the National Service for Persons with Disabilities is only made aware of such acts when they are reported by third parties.⁵⁵

37. Pursuant to Act No. 20.422 and in response to the need to provide free legal advice and assistance when rights have been violated and persons have been discriminated against because of their disabilities, which requires specialist knowledge in the field, the National Service for Persons with Disabilities has entered into agreements with the four legal assistance agencies in Chile to run the Access to Justice Programme for persons with

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- The National Service for Persons with Disabilities, which has a programme called Residential Models for Adults with Disabilities. The aim of the programme is to provide residential facilities and services, including staff recruitment, environmental adaptations and training. The programme is for adults aged 18 to 59 registered with the National Service for Minors and will be run at partner residential facilities, since, unlike the National Service for Minors and the National Service for Older Persons, the National Service for Persons with Disabilities does not have centres that it runs directly or that third parties run. The target population for the National Service for Persons with Disabilities is persons previously supported by the National Service for Minors, so coverage cannot yet be expanded or consideration given to persons with residential needs who are not included on the aforementioned registers.

⁵⁵ Currently, the National Service for Persons with Disabilities can learn of acts constituting abuse or a criminal offence and affecting persons with disabilities accommodated in residential homes through several channels, including: (i) claims or complaints lodged with the Comprehensive Citizen Support System or through the platform of the Office of the President of the Republic; (ii) court records, especially those of family and criminal courts, in which it is requested that the Service intervene by conducting assessments, preparing social reports and/or coordinating action with other public services; (iii) complaints made through the press and social media; and (iv) the records of other public and private institutions that become aware of such acts and inform the Service because the acts concern persons with disabilities.

Although the National Service for Persons with Disabilities can lodge formal complaints before the authorities and take appropriate legal action, to date it does not have supervisory powers; accordingly, it does not have direct knowledge of acts that might constitute abuse and/or criminal offences committed against persons with disabilities in care homes, but only learns of such acts through complaints lodged by third parties through the channels described above.

The Inclusion Advocacy Department of the National Service for Persons with Disabilities records this information in a manual register containing all alleged breaches of rights affecting persons with disabilities that it has reported, both those breaches that constitute criminal offences (in which case they are reported to the Public Prosecution Service, the police or the criminal courts) and those that, while not criminal in nature, might constitute discrimination under Act No. 20.609 of 2012 on anti-discrimination measures, or other types of rights breaches under Act 20.422 of 2010, the Equal Opportunities and Social Inclusion of Persons with Disabilities Act. Consequently, the aforementioned manual registration is generic and thus covers all types of complaints lodged by the National Service for Persons with Disabilities with public and private bodies regarding rights breaches that may or may not be criminal offences and may or may not have taken place in residential homes, provided that they have come to the attention of the central office, in the Metropolitan Region. Cases that have taken place or may take place in the other regions are therefore not recorded.

It is also important to note that, although the register contains data on complaints lodged since 2010, it does not show a high number of complaints relating to ill-treatment and/or offences committed against persons with disabilities in residential homes. The register contains four records of complaints lodged by the National Service's central office between 2013 and 2019 concerning acts constituting ill-treatment against persons with disabilities living in State and private-sector homes and residential care.

disabilities.^{56, 57} In May 2019, work began⁵⁸ to make the National Service for Persons with Disabilities a permanent member of the Victim Support Network.⁵⁹

38. As noted in the previous point, the complaints procedure for the National Service for Minors and internal investigations are covered by the information relating to paragraph 37 (a) and (b), with no distinction made between children with and without disabilities who die or are victims of ill-treatment.⁶⁰

Final note

39. Lastly, there is the challenge of compiling unified statistics on cases of torture and other cruel, inhuman and degrading treatment or punishment. Doing so will make available enough statistical data to monitor such cases.

⁵⁶ Through this programme, the National Service for Persons with Disabilities provides resources to the legal assistance agencies based in Tarapacá, Valparaíso, the Metropolitan Region and Biobío, which hire a lawyer specializing in the rights of persons with disabilities for each region within their jurisdiction, thus covering the entire country. These lawyers work exclusively on matters covered by the programme, providing free legal advice and assistance to persons with disabilities. They also disseminate information about and promote rights within their own institution, among other public services and bodies and among civil society.

⁵⁷ These agencies, together with the legal clinics of some universities and non-governmental organizations (NGOs) (Central University, University of San Sebastián, University of Talca, Alberto Hurtado University, Fundación Pro Bono, Defensoría de la Discapacidad), form a network of partners who are experienced in providing legal advice and specialize in the rights of persons with disabilities. No resources are transferred to the universities or NGOs; the National Service for Persons with Disabilities only signs partnership agreements with them, and unlike the legal assistance agencies, they have no obligation to work exclusively on matters covered by the agreement.

⁵⁸ On 19 July 2019, the National Director of the National Service for Persons with Disabilities, by Official Note No. 1056, informed the Office of the Under-Secretary for Crime Prevention at the Ministry of the Interior and Public Security that she fully agreed with the Service's becoming a permanent member of the Victim Support Network in order to help create the conditions to guarantee that persons with disabilities who are victims of crime and persons who acquire a disability as a result of wrongful act, wherever it occurs, can fully exercise their rights.

⁵⁹ The Victim Support Network currently consists of the Public Prosecution Service, the Ministry of Justice and Human Rights, the Forensic Medical Service, the National Service for Minors, the National Service for Women and Gender Equity, the Ministry of Health, the investigative police, Carabineros, the National Service for Older Persons, the judiciary and the Ministry of the Interior and Public Security.

⁶⁰ Notwithstanding the foregoing, the rights and guarantees that must be enforced for all adolescents who receive a penalty or are subjected to precautionary detention measures, irrespective of whether they are persons with disabilities, are regulated by Act No. 20.084 and its regulations, which state, among other things, how alleged ill-treatment or other offences should be reported.