



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

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## Committee against Torture

### List of issues prior to submission of the seventh periodic report of Chile\*

#### Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations

##### Issues identified for follow-up in the previous concluding observations

1. In its preceding concluding observations (CAT/C/CHL/CO/6, para. 56),<sup>1</sup> the Committee requested that the State party provide it with information on the follow-up given to the Committee’s recommendations on the establishment or designation of a national mechanism for the prevention of torture (para. 17); deaths of minors and allegations of torture, ill-treatment and sexual abuse in residential protection centres belonging to the National Service for Minors network (para. 37 (a) and (b)); and ill-treatment of persons with disabilities and older persons (para. 39). Bearing in mind that, on 14 August 2019, a response was received in relation to the information requested (CAT/C/CHL/CO/6/Add.1) and to the letter of 29 November 2019 from the Rapporteur for follow-up to concluding observations, the Committee considers that the recommendations contained in paragraphs 17, 37 (a) and (b) and 39 of the previous concluding observations have only been partially implemented.

##### Articles 1 and 4

2. With reference to the Committee’s previous concluding observations (paras. 10 and 11), please indicate the measures taken to bring the content of article 150 A of the Criminal Code into line with article 1 of the Convention to expressly cover acts of torture committed for the purpose of intimidating or coercing a third party. Please also indicate the measures taken by the State party to ensure that these offences are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention. Please also indicate whether the legislation on the statute of limitations for the offence of torture has been amended.

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

3. With reference to the previous concluding observations (paras. 12 and 13), please provide detailed information on measures taken to ensure that all detainees are afforded, in

\* Adopted by the Committee at its seventieth session (26–28 April 2021).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

<sup>2</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee’s 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 under article 16 (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



law and in practice, all fundamental safeguards against torture and ill-treatment from the moment of arrest, in accordance with international standards. In that regard, please provide information on any disciplinary measures taken, since the consideration of the State party's previous periodic report, against law enforcement officials who have not immediately allowed persons deprived of liberty to benefit from these safeguards.<sup>3</sup> Please also provide information on the steps taken to ensure that free, good-quality legal assistance is available to detainees.

4. In the light of the previous concluding observations (paras. 16 and 17) and the State party's follow-up replies,<sup>4</sup> please provide information on the concrete measures that have been adopted to ensure that the National Human Rights Institute has the necessary resources to operate as the national preventive mechanism in accordance with the Optional Protocol to the Convention. Please indicate whether the national preventive mechanism enjoys financial and operational autonomy in the performance of its functions. Please also indicate whether the appointment of its members has been completed and describe the selection process followed for their appointment.

5. With reference to the previous concluding observations (paras. 14 and 15), please provide updated information on any progress made in the reform of the military justice system.

6. In the light of the previous concluding observations (paras. 24 and 25), please provide updated information on the legislative or other measures taken during the period under review to combat gender-based violence, especially those cases involving actions or omissions by the authorities of the State party or other entities that engage the international responsibility of the State party under the Convention.<sup>5</sup> In particular, please indicate the status of the bill on the right of women to a life free of violence.<sup>6</sup> Please provide updated information on the protection and support services available to victims of gender-based violence in cases involving actions or omissions by the authorities of the State party. Please include comprehensive statistical data, disaggregated by age and ethnic origin or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and judgments recorded in cases of gender-based violence since the consideration of the State party's previous periodic report. Please provide updated information on the measures taken to improve mandatory training programmes for judicial and law enforcement officials on the prosecution of gender-based violence and to expand public awareness-raising campaigns concerning all forms of violence against women.

7. With reference to the Committee's previous concluding observations (paras. 54 and 55), please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and judgments recorded in cases of trafficking in persons since the consideration of the State party's previous periodic report.<sup>7</sup> Please also provide information on:

(a) Any new legislation or measures that have been adopted to prevent or combat trafficking in persons;<sup>8</sup>

(b) Measures taken to ensure that victims of trafficking have access to effective remedies and reparation;<sup>9</sup>

(c) Measures taken to improve referral mechanisms and to ensure that non-custodial accommodation is provided, with full access to appropriate medical and

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torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also section V of the same general comment.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of the Mission to Chile, 30 October–22 November 2019", 13 December 2019, paras. 89–95.

<sup>4</sup> CAT/C/CHL/CO/6/Add.1, paras. 2–7; letter dated 29 November 2019 from the Rapporteur for follow-up to concluding observations.

<sup>5</sup> CEDAW/C/CHL/CO/7, paras. 24–25.

<sup>6</sup> *Ibid.*, paras. 24 (b) and 25 (b); A/HRC/41/6, paras. 125.168 and 125.184.

<sup>7</sup> CEDAW/C/CHL/CO/7, para. 26 (b) and (c).

<sup>8</sup> *Ibid.*, paras. 26–27; A/HRC/41/6, paras. 125.93–125.96.

<sup>9</sup> CEDAW/C/CHL/CO/7, para. 26 (d).

psychological support, for potential victims of trafficking while identification processes are carried out;

(d) Agreements signed with the countries concerned to prevent and combat trafficking in persons.<sup>10</sup>

### **Article 3**

8. In the light of the previous concluding observations (paras. 42 and 43), please elaborate on measures taken during the period under review to ensure that no person is returned to a country where he or she would be at risk of torture. In this connection, please clarify the status of the bill (Bulletin No. 8970-06) on migration and aliens, which would extend the time limit for filing an appeal against an expulsion decision. Please indicate how, in practice, the State party ensures effective access to the refugee status determination procedure. Please provide detailed information on the measures adopted to identify vulnerable persons seeking asylum in the State party, including victims of torture or ill-treatment, trauma or trafficking, and to ensure that their specific needs are taken into consideration and addressed in a timely manner, including by providing access to medical services. Please also indicate whether all persons in respect of whom an order of expulsion, return or extradition has been issued are informed of their rights to seek asylum and to appeal a decision authorizing an expulsion, and clarify whether such appeals have suspensive effect. Please provide information on how the State party ensures that asylum seekers have access to free legal assistance and interpretation services during the asylum procedure. Please provide updated information on the number of asylum applications received during the period under review, the number of successful applications and the number of cases in which asylum was granted because the applicant had been tortured or might be tortured if returned to his or her country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide details regarding the grounds on which these measures were taken, including a list of the countries to which the persons concerned were sent. Please indicate whether the State party has established mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their return.

9. Please indicate how many returns, extraditions and expulsions have been carried out by the State party during the period under review on the basis of the acceptance of diplomatic assurances or equivalent guarantees, and the number of cases in which the State party has offered such diplomatic assurances or guarantees. Please also provide details of the measures that have been taken in such cases with regard to subsequent follow-up.

### **Articles 5–9**

10. Please provide information on the legislative and other measures taken by the State party during the period under review to implement article 5 of the Convention, in particular to establish its jurisdiction over cases of torture where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her. Please also provide information on any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please clarify what treaties or agreements on mutual judicial assistance the State party has entered into with other entities, such as countries, international tribunals or international institutions, and whether those instruments have resulted, in practice, in the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

### **Article 10**

11. With reference to the previous concluding observations (paras. 40 and 41), please provide updated information on the training programmes on human rights and the prohibition of torture developed by the State party to ensure that all public officials, particularly law

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<sup>10</sup> Ibid., para. 27 (e).

enforcement and public security officers, members of the armed forces, prison staff, border guards and medical personnel employed in prisons, are well acquainted with the provisions of the Convention and the absolute prohibition of torture and are fully aware that offences will not be tolerated and will be investigated and that the perpetrators of those offences will be prosecuted.<sup>11</sup> Please indicate whether law enforcement officials receive adequate training on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>12</sup> Please indicate whether the State party has reviewed its rules of engagement or regulations on opening fire to ensure consistency with international law. Please provide information on the programmes used in the training of police officers and other law enforcement officials in non-coercive investigation techniques. Please indicate in each case the number, institutions and percentage of public servants that have benefited from such training programmes. Please also indicate whether the State party has considered establishing a methodology for evaluating the effectiveness and impact of its training programmes in reducing the number of cases of torture and ill-treatment. If so, please provide information in this regard. Please provide information on the measures taken to give effect to the provisions of article 10 (2) of the Convention.

12. Please also provide updated information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with persons deprived of liberty to enable them to detect and document the physical and psychological sequelae of torture. Please indicate whether these programmes include specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

#### **Article 11**

13. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on interrogation rules, instructions, methods and practices or arrangements for custody, especially those adopted or revised since the consideration of the State party's previous periodic report. Please also indicate the frequency with which they are reviewed.

14. With reference to the previous concluding observations (paras. 28 and 29), please describe the measures taken by the State party to improve conditions of detention, including those aimed at reducing prison overcrowding and promoting the use of alternatives to deprivation of liberty, both before and after trial.<sup>13</sup> Please provide statistical data, disaggregated by sex, age and ethnicity or nationality, on the numbers of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention. Please also indicate the measures taken to improve the sanitary facilities and the heating, lighting, ventilation and cleaning systems in prisons and to ensure that the human and material resources needed to provide prisoners with proper medical and health care are allocated. Please clarify whether women's prisons provide obstetric and gynaecological care for pregnant prisoners.<sup>14</sup> Please also provide information on measures taken during the period under review to ensure that body searches of persons deprived of their liberty and visitors are not degrading. Please provide information on the regulations governing invasive body searches.

15. In the light of the previous concluding observations (paras. 28, 29 (d), 32 and 33), please provide information on the steps taken by the State party to meet the special needs of women and minors in detention.<sup>15</sup> Please provide details on the measures taken to alleviate overcrowding and to prevent violence among inmates in juvenile detention centres. Please indicate whether protocols are in place to meet the needs of other groups of prisoners with special needs, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons.

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<sup>11</sup> A/HRC/41/6, para. 125.58.

<sup>12</sup> *Ibid.*, paras. 125.55–125.57 and 125.59.

<sup>13</sup> *Ibid.*, paras. 125.65–125.67 and 125.69–125.70.

<sup>14</sup> CEDAW/C/CHL/CO/7, paras. 48–49.

<sup>15</sup> A/HRC/41/6, para. 125.68.

16. With reference to the previous concluding observations (paras. 30 and 31), please provide information on the steps taken by the State party to ensure that its legislation and practices on the use of solitary confinement are in line with international standards.

17. With reference to the previous concluding observations (paras. 34 and 35), please provide statistical data on the number of deaths of persons deprived of their liberty during the period under review, disaggregated by place of detention, sex, age, ethnic origin or nationality of the deceased and cause of death. Please describe how these deaths were investigated, the outcome of the investigations and the measures taken to prevent similar cases in the future. Please indicate whether, in any of these cases, the relatives of the deceased received compensation. Please provide information on acts of inter-prisoner violence, including cases involving possible negligence by prison officials, and on the number of complaints filed in that regard and the results of investigations into those complaints. Please indicate what preventive measures have been taken in this regard. Please provide information on the measures taken during the period under review to ensure security inside prisons. Lastly, please provide information on persons deprived of their liberty who went on hunger strike during the reporting period, indicating their current state of health and whether they were or are currently being fed against their will.

18. Please provide updated data on the number of asylum seekers and immigrants in an irregular administrative situation who are deprived of liberty in the State party. Please indicate any measures taken by the State party during the period under review to ensure that detention of asylum seekers and immigrants in an irregular situation is only used as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to the deprivation of liberty.

19. Bearing in mind the previous concluding observations (paras. 38 and 39) and the State party's follow-up replies,<sup>16</sup> please provide detailed information on any investigations that have been conducted during the period under review concerning allegations of ill-treatment or sexual abuse of persons with disabilities and older persons placed in residential institutions and sudden deaths in these centres. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities. Please also describe the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other outpatient treatment programmes.

20. Please indicate what measures have been taken to ensure that all places of detention are regularly visited by the national preventive mechanism and other bodies responsible for their monitoring and inspection. Please provide information on the visits to places of detention carried out by the mechanism during the period under review and on the measures taken by the State party in response to the recommendations made by the mechanism. Please clarify whether non-governmental organizations are authorized to carry out activities inside detention centres to verify and monitor respect for the rights of persons deprived of their liberty.

### Articles 12–13

21. Taking into account the previous concluding observations (paras. 20–27, 32 and 33), please provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on allegations of torture, ill-treatment and excessive use of force during the period under review, including allegations related to incidents that occurred during demonstrations or social protests.<sup>17</sup> Please provide information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions imposed. Please provide examples of relevant cases or judicial decisions.

<sup>16</sup> CAT/C/CHL/CO/6/Add.1, paras. 30–39. See also the letter dated 29 November 2019 from the Rapporteur for follow-up to concluding observations.

<sup>17</sup> A/HRC/41/6, paras. 125.54 and 125.72–125.80; OHCHR, “Report of the Mission to Chile, 30 October–22 November 2019”, and “Chile: UN experts condemn excessive use of force and acts of violence in recent protests”, 8 November 2019.

22. With reference to the previous concluding observations (paras. 36 and 37) and the State party's follow-up replies,<sup>18</sup> please provide detailed information on any progress made in investigating the numerous cases of deaths of minors in the network of residential centres managed by the National Service for Minors and its partner agencies that occurred between January 2005 and June 2016. Please also provide updated information on the investigation of alleged incidents involving the torture, ill-treatment and sexual abuse of children in these centres and the prosecution of alleged perpetrators, and on existing monitoring and complaint mechanisms. Please also provide information on the measures taken to remedy any deficiencies in the administration, management and internal functioning of the centres and in their medical and health-care services.

23. With reference to the previous concluding observations (paras. 44 and 45), please indicate any progress made in the investigation of serious human rights violations, including cases of torture and ill-treatment, enforced disappearance and extrajudicial execution, that occurred during the dictatorship, and the prosecution of those responsible.<sup>19</sup> With regard to the previous concluding observations (paras. 46–49), please clarify the status of the following bills and policy proposals and include information on steps taken to ensure that they are in line with the provisions of the Convention: (a) the bill (Bulletin No. 4162-07) providing for the annulment of Amnesty Decree-Law No. 2191 of 18 April 1978; (b) the constitutional reform promoted by the Government to prevent the use of amnesty laws in judicial proceedings concerning past human rights violations (Bulletins No. 9748-07 and No. 9773-07); (c) the bill (Bulletin No. 10883-07) amending the provisions of Act No. 19992 of 17 December 2004 that regulate the handling of the information gathered by the National Commission on Political Prisoners and Torture.

#### **Article 14**

24. With reference to the previous concluding observations (paras. 52 and 53), please provide information on redress and compensation measures, including means of rehabilitation, ordered by the courts and effectively provided to victims of torture or their families since the consideration of the previous periodic report.<sup>20</sup> This information should include the number of requests for compensation submitted, the number of requests accepted and the amounts awarded and actually disbursed in each case. Please also provide information on ongoing reparation programmes, including those providing for the treatment of trauma and other forms of reparation provided to victims of trauma and ill-treatment, and on the material, human and budgetary resources allocated to these programmes to ensure their effective functioning. Please indicate the scope and degree of implementation of the Comprehensive Vision Rehabilitation Programme, announced in November 2019 by the Ministry of Health, providing for free care from the Ocular Trauma Unit of El Salvador Hospital for persons with serious eye injuries resulting from being hit by rubber bullets during demonstrations. Please also provide information on steps taken since the adoption of the previous concluding observations to ensure that the Reparation and Comprehensive Health-Care Programme for victims of acts of torture that occurred during the dictatorship has specialized staff and the material resources that it needs to function properly. Please also indicate whether the range of benefits and services provided for under this programme has been expanded. In the light of the previous concluding observations (paras. 50 and 51), please indicate whether the State party has considered establishing a permanent mechanism for the identification and recognition of victims of human rights violations committed during the dictatorship.<sup>21</sup> Please also provide information on the implementation of the judgment of 29 November 2018 of the Inter-American Court of Human Rights in the case of *Órdenes Guerra et al. v. Chile*, in which the Court attributed international responsibility to Chile for failing to provide judicial access to civil reparations to the relatives of victims of crimes against humanity.

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<sup>18</sup> CAT/C/CHL/CO/6/Add.1, paras. 8–33. See also the letter dated 29 November 2019 from the Rapporteur for follow-up to concluding observations.

<sup>19</sup> CED/C/CHL/CO/1, paras. 16, 17, 26, 27, 30 and 31; A/HRC/41/6, paras. 125.81 and 125.83–125.85.

<sup>20</sup> A/HRC/41/6, para. 125.212.

<sup>21</sup> A/HRC/41/6, para. 125.82; CED/C/CHL/CO/1, paras. 24–25.

**Article 15**

25. With reference to the previous concluding observations (paras. 20 and 21), please provide information on the specific measures adopted to ensure respect in practice for the principle of the inadmissibility of evidence obtained through torture. Please provide examples of cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained by means of torture or ill-treatment.

**Article 16**

26. Please describe the steps taken by the State party to prohibit the corporal punishment of minors in all settings.<sup>22</sup>

27. Please indicate whether the State party has revised its legislation in order to permit the voluntary termination of pregnancy in cases of incest or when there is a risk to the physical or mental health of the pregnant woman.<sup>23</sup>

**Other issues**

28. In the light of the previous concluding observations (paras. 18 and 19), please provide information on the steps taken by the State party in response to terrorist threats. Please indicate whether these measures have affected human rights safeguards in law and in practice and, if so, in what manner. Please also explain how the State party has ensured that the measures are compatible with its obligations under international law, especially the Convention.<sup>24</sup> Furthermore, please indicate what training is given to law enforcement and public security officers in this area; how many persons have been convicted under counter-terrorism legislation; the legal remedies and safeguards available to persons subjected to counter-terrorism measures in practice; and whether there have been any complaints of terrorism and, if so, what the outcome of these complaints was.

29. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement, such as in homes for older persons, hospitals and institutions for persons with intellectual or psychosocial disabilities.

**General information on other measures and developments relating to the implementation of the Convention in the State party**

30. In the light of the constitutional process initiated after the referendum of 25 October 2020, please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the preceding periodic report to give effect to the provisions of the Convention or the recommendations of the Committee. This may include information on institutional developments, plans or programmes and, in particular, information on resource allocations and statistical or any other data that the State party considers relevant.

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<sup>22</sup> A/HRC/41/6, paras. 125.199, 125.202, 125.203, 125.207 and 125.211.

<sup>23</sup> Ibid., para. 125.134.

<sup>24</sup> Ibid., paras. 125.62, 125.237 and 125.244.