



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Chile under article 29 (1) of the Convention*

I. General information

1. In relation to the information provided in paragraph 8 of the State party's report (CED/C/CHL/1), please provide additional information on consultations between the Government and national institutions for the promotion and protection of human rights, organizations of relatives of victims, human rights defenders working on the issue of enforced disappearance, non-governmental organizations and other stakeholders in the preparation of the report.
2. Please provide detailed information on the mandate of the National Human Rights Institute in matters of enforced disappearance and on the activities undertaken by the Institute in relation to the Convention. Please also provide information on the complaints of enforced disappearance considered by this body.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

3. Please provide up-to-date statistical information, disaggregated by sex, age and nationality, on the number of disappeared persons in the State party, specifying the date of their disappearance and how many of them have been located and identified, and on the number of cases in which there may have been some form of State participation within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. Please also indicate the number of cases of alleged enforced disappearance that occurred before the Convention entered into force and in which the fate of the disappeared person has not been clarified, as well as the number of cases of "disappeared prisoners" identified by the National Truth and Reconciliation Commission (the Rettig Commission), the National Reparation and Reconciliation Board, the National Commission on Political Prisoners and Torture (the Valech I Commission), and the Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture (the Valech II Commission) (arts. 1, 2, 3 and 12).
4. In relation to the information provided in paragraph 40 of the State party's report, please provide detailed information on legislative or other measures taken to ensure that the prohibition of enforced disappearance is non-derogable and cannot be restricted by invoking exceptional circumstances (art. 1).

* Adopted by the Committee at its fifteenth session (5–16 November 2018).



5. Given that enforced disappearance is not classified as a separate offence, please specify how the “refusal to acknowledge the deprivation of liberty” or the “concealment of the fate or whereabouts” of a disappeared person would be punished under Chilean law. In this connection, please clarify how the State party applied the definition established in article 2 of the Convention in the 10 cases mentioned in paragraph 103 of the State party’s report and explain what criterion was used to categorize these cases as enforced disappearances, as distinguished from the 176 cases of abduction and the 16 cases of unlawful or arbitrary detention. Please also explain how the current penalties for the offences applied in cases of enforced disappearances, regardless of how these are classified under criminal law, are appropriate and take into account the extreme seriousness of the offence (arts. 2 and 7).

6. In relation to the 2014 bill mentioned in paragraphs 39 and 44 to 46 of the State party’s report, which would amend the Criminal Code and make enforced disappearance a separate offence, please provide up-to-date information on the status of the bill and the complete text of the proposed definition of enforced disappearance, explaining how this definition is consistent with article 2 of the Convention. Please also explain how the proposed sanctions for the offence are commensurate with its extreme seriousness. In addition, please indicate whether there are any initiatives to establish mitigating or aggravating circumstances for the offence of enforced disappearance, in accordance with article 7 (2) of the Convention. In relation to the information provided in paragraphs 75 and 76 of the report, please explain how the concept of the partial lapse of the statute of limitations, as provided for in article 103 of the Criminal Code, and the Amnesty Decree-Law of 1978 are consistent with article 7 of the Convention (arts. 2, 4, 5 and 7).

7. Please explain how article 6 of Act No. 20.357 on crimes against humanity, which, according to the State party, defines the offence of enforced disappearance as a crime against humanity, is consistent with the definition of enforced disappearance established in the Convention. Please also provide information on the legal consequences of committing this offence and describe the applicable sanctions (arts. 5, 7 and 8).

8. Please provide additional information on the steps taken to investigate actions carried out by persons or groups acting without the authorization, support or acquiescence of the State, as defined in article 2 of the Convention, and to bring those responsible to justice. In doing so, please include statistical data disaggregated by age, sex and the type of offence used to prosecute such acts (arts. 3 and 12).

9. With regard to the information provided in paragraphs 58 to 68 of the State party’s report, please indicate whether measures have been taken to expressly recognize in domestic law the criminal responsibility of all persons mentioned in article 6 (1) (a) of the Convention and the criminal responsibility of a superior within the meaning of article 6 (1) (b) of the Convention, including when enforced disappearance is considered to be a separate offence. Please also indicate whether any legislative initiatives have been taken to introduce into domestic law the explicit prohibition of invoking the orders of a superior, including orders from military authorities, as a justification for enforced disappearance, in accordance with article 6 (2) of the Convention (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. In relation to the information provided in paragraphs 81, 82 and 85 of the State party’s report, please explain how the State party ensures that the offence of enforced disappearance is treated as a continuing offence in domestic legislation, including in cases that occurred before the entry into force of the Convention and in cases considered as crimes against humanity that occurred before 2009. Please also provide information on the status of the bills mentioned in paragraphs 83 and 84 of the report, which are intended to establish the non-applicability of statutory limitations to war crimes and crimes against humanity. Please explain how the statute of limitations set out in the Criminal Code is consistent with article 8 (1) (a) and (b) of the Convention. In relation to the information provided in paragraph 87 of the report, please provide information on measures taken to

ensure that victims can exercise their right to an effective remedy during the term of limitation for criminal, civil and administrative proceedings (art. 8).

11. In relation to the information provided in paragraphs 89 and 90 of the State party's report, please provide information on measures taken by the State party to exercise its jurisdiction over the offences of enforced disappearance described in article 9 (1) (b) and (c) and provide examples of cases in which the State has established its jurisdiction over such offences. Please also indicate whether the Chilean courts could exercise jurisdiction over offences of enforced disappearance committed abroad, including in States that are not parties to the Convention, irrespective of the nationalities of the victim and alleged offender, in accordance with article 9 (2) of the Convention. Please provide information on cases involving the offence of enforced disappearance in which assistance was requested by or from the State party, including the result of the request. Please also describe measures in place to ensure that the standards of evidence required for prosecution and conviction apply equally whether the alleged offender is a national of the State party or a foreigner who committed acts of enforced disappearance abroad (arts. 9 and 11).

12. In relation to the information provided in paragraphs 96 to 98, 108 and 109 of the State party's report, please provide information on measures taken to ensure that all complaints of enforced disappearance allegedly committed by military personnel are investigated by the civil authorities from the outset, and also on the competence of the ordinary courts in such matters. Please also provide information on measures in place to ensure fair treatment and a fair trial for persons being investigated or tried for the offence of enforced disappearance (art. 11).

13. In relation to the information provided in paragraphs 91 to 93 of the State party's report, please provide information on:

(a) Domestic legal measures relating to the detention of individuals who are suspected of having committed an act of enforced disappearance and who are present in the territory of the State party, as well as measures intended to ensure they are brought before the authorities of the State party;

(b) The legal provisions in place to notify other States that may also have jurisdiction of the arrest of an alleged offender, as well as of the circumstances of the arrest and the intention of the State party to exercise its jurisdiction or not;

(c) The procedures in place to guarantee that all persons investigated for having allegedly committed acts of enforced disappearance can receive consular assistance (art. 10).

14. With regard to investigations into alleged enforced disappearances:

(a) Please provide, in relation to the information provided in paragraphs 48, 49, 99, 100, 103 and 104 of the State party's report, statistical data disaggregated by sex, age and nationality, regarding: (i) the total number of complaints of alleged enforced disappearances received, including complaints about cases that occurred before the entry into force of the Convention and in which the fate and whereabouts of the disappeared person have not been clarified; (ii) the total number of investigations carried out and their results, including the sentences handed down to the perpetrators and the number of investigations that were initiated ex officio. In both cases, please provide information on the Colonia Dignidad case (art. 12);

(b) Please provide, in relation to the information provided in paragraphs 55, 105 and 107 of the State party's report, additional information on the process followed by the authorities to shed light on and establish the facts relating to an enforced disappearance committed outside the context of the dictatorship, as well as information on the measures taken to ensure that the search for individuals allegedly subjected to enforced disappearance begins immediately and that the various authorities involved in the search for disappeared persons and the investigation of cases of enforced disappearance cooperate effectively. In this connection, please explain the role of the Special Affairs and Human Rights Brigade of the Investigative Police and its relationship and interaction with the Public Prosecution Service and the Human Rights Programme Unit in the investigation of alleged enforced disappearances. Please also clarify whether the Unit only investigates cases relating to the

dictatorship or also investigates cases that occurred after the dictatorship. In addition, please describe the human, financial and technical resources provided to these entities to enable them to conduct investigations effectively, including access to relevant documentation, and indicate whether the officials working for them receive appropriate training in the investigation of enforced disappearances (art. 12);

(c) Please provide, in relation to paragraphs 107 and 112 of the State party's report, additional information on the mechanisms available to individuals who allege that a person has been subjected to enforced disappearance to report the facts and ensure that their complaint is investigated quickly and impartially, as well as information on any restrictions on their ability to do so. Please provide information on the measures provided for by law to prevent the alleged perpetrators of an enforced disappearance from influencing investigations or threatening those involved in them, including suspension from duty during an investigation when the alleged perpetrator is a State official (military or civil), and indicate whether there are any mechanisms in place to exclude a law enforcement or security force from the investigation into an enforced disappearance if one or more of its members are accused of committing the offence. Please also indicate what remedies are available to complainants in the event that the authorities refuse to investigate their case (art. 12);

(d) Please provide, in relation to paragraph 113 of the State party's report, further detailed information on mechanisms to ensure that complainants, witnesses, relatives of the disappeared person and his or her legal representatives – as well as persons participating in the investigation, the prosecution and the trial, including lawyers, prosecutors and judges – are protected from ill-treatment and intimidation, as well as information on the procedures for accessing such protection mechanisms. Please provide disaggregated statistical information on the number of persons linked to cases of enforced disappearance who have benefited from protection measures under these mechanisms (arts. 12 and 24).

15. In relation to the information provided in paragraphs 118 and 119 of the State party's report, please provide information on judicial cooperation and requests for mutual legal assistance under articles 14 and 15 of the Convention. Furthermore, please provide up-to-date information on any examples of cooperation under articles 14 and 15 of the Convention. Please also provide information on measures taken to secure cooperation and mutual assistance in efforts to help victims, as well as in searching for, locating and securing the release of disappeared persons (arts. 14 and 15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

16. Please provide information on the mechanisms and criteria used in expulsion, return, surrender and extradition procedures to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please specify whether decisions on expulsion, return, surrender or extradition can be appealed, and, if so, with which authorities an appeal can be filed, what the applicable procedures are, and whether the decisions on appeals are final or whether other authorities can challenge their implementation. Please describe any other measures taken to ensure strict compliance with the principle of non-refoulement established in article 16 (1) of the Convention. Please also indicate whether the State party accepts diplomatic assurances where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance (art. 16).

17. Please describe the current expulsion, return, surrender and extradition procedures, explain how often these procedures are reviewed and indicate whether, before such procedures are initiated, a thorough individual assessment is conducted to determine whether the person concerned is in danger of being subjected to enforced disappearance (art. 16).

18. Please clarify whether domestic legislation establishes enforced disappearance as an extraditable offence, including when it is considered as a separate offence, in all the treaties concluded by the State party with other States, whether or not they are parties to the Convention. In the absence of an extradition treaty, please clarify how the Convention serves as a legal basis for extradition. Please also describe any potential obstacles to

extradition that might exist under national legislation, extradition treaties or agreements concluded with third countries with regard to the offence of enforced disappearance. Please provide up-to-date information on the cases mentioned in paragraph 117 of the State party's report. Please also clarify whether enforced disappearance is regarded as a political offence, as an offence connected with a political offence or as an offence inspired by political motives (arts. 9, 13, 14 and 16).

19. With regard to deprivation of liberty:

(a) Please indicate whether the legal provisions mentioned in paragraph 125 of the State party's report, on prompt notification and on having access to and receiving visits from a lawyer, a physician, a family member or any other person chosen by the person deprived of liberty, apply from the moment of deprivation of liberty, and whether any exceptions are permitted. In this connection, please clarify how article 151 of the Code of Criminal Procedure is consistent with article 17 of the Convention and how article 94 (e) of the Code ensures that persons deprived of liberty can communicate with the person of their choosing. Please also provide information on any legal provisions to ensure that foreign nationals deprived of liberty, including foreign minors, are promptly put in contact with the relevant consular authority. Please indicate whether there have been complaints or allegations regarding failures to observe these rights and, if so, please provide information about the proceedings initiated and their outcomes, including any sanctions imposed. Please also explain how Act No. 18.314 respects the fundamental safeguards established in article 17 (d), (e) and (f) of the Convention (arts. 10 and 17);

(b) Please indicate whether there have been cases of deprivation of liberty in places that are not officially recognized or inspected, particularly on Mapuche territory. Indicate whether the competent authorities and institutions, including the National Human Rights Institute, are in any way restricted in their access to places where individuals are deprived of liberty. Moreover, please specify which of the places of deprivation of liberty classified as "public prisons" are accessible to the National Human Rights Institute and clarify whether these places include the centres established by Act No. 20.084. In relation to paragraph 130 of the State party's report, please clarify whether the National Human Rights Institute must also seek authorization from the Prison Service to inspect detention facilities. With regard to paragraph 131 of the report, please provide information on the current status of the bill introduced in May 2017 designating the National Human Rights Institute as the national mechanism for the prevention of torture and clarify whether the Institute's prerogative to visit places of deprivation of liberty derives solely from its mandate as the national preventive mechanism, not from its mandate as the national human rights institution (arts. 12 and 17);

(c) Please clarify whether the registration system mentioned in paragraph 141 of the State party's report contains information on all persons deprived of liberty in all places of deprivation of liberty in Chile and, if not, indicate whether other records of cases of deprivation of liberty exist. Please indicate who may access the records of persons deprived of liberty and provide information on measures, including monitoring measures, taken to ensure that all such records contain all the items of information listed in article 17 (3) of the Convention and are kept up to date. Please also provide information on the sanctions provided for by the law in cases where an official fails to register an act of deprivation of liberty or registers incorrect or inaccurate information. Indicate whether there have been reports of any such cases and, if so, what sanctions were imposed and what measures were adopted to prevent their recurrence;

(d) Please provide information on the legal and other provisions that guarantee the right of any person with a legitimate interest to access the information referred to in article 18 (1) of the Convention and indicate whether access to this information is in any way restricted. Please also provide information on the availability of a prompt judicial remedy, as provided for in article 20 (2) of the Convention (arts. 17, 18, 20 and 22);

(e) With regard to paragraph 144 of the State party's report, please provide additional information on measures taken to ensure that the persons mentioned in article 18 (2) of the Convention are protected from ill-treatment, intimidation and sanctions (art. 18);

(f) Please provide, in relation to paragraphs 157 to 159 of the State party's report, additional information on any measures in place to verify that, once an order has been given to release a person, that person is actually released, not only from prison but from any place of deprivation of liberty, and to guarantee their safety, physical integrity and ability to fully exercise their rights (art. 21).

20. With regard to paragraphs 163 to 172 of the State party's report, please indicate whether the State party plans to introduce training programmes that specifically address enforced disappearance and the Convention, particularly the prevention and investigation of acts of enforced disappearance, for all military and civilian personnel in the law enforcement and security forces, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of liberty (art. 23).

V. Measures to provide reparation and to protect children from enforced disappearance (arts. 24–25)

21. Please explain how the definition of "victim" contained in article 108 of the Code of Criminal Procedure or in other legislation is in line with the definition contained in article 24 (1) of the Convention. Please provide information on the criteria and procedures for victims of acts of enforced disappearance that occurred outside the context of the dictatorship to be recognized as such and indicate whether it is necessary to initiate criminal proceedings for that purpose; indicate whether access to reparation is contingent on a criminal conviction; and provide information on measures in place to guarantee that reparation is provided to the victims of acts of enforced disappearance that occurred after the military dictatorship. Please provide information on current legislation pertaining to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in areas such as social welfare, financial matters, family law and property rights, regardless of when the enforced disappearance occurred (art. 24).

22. Please also indicate whether the victims of enforced disappearance identified by the Rettig Commission and the National Reparation and Reconciliation Board include persons recognized as victims under article 24 (1) of the Convention. In this regard, please indicate whether the State party intends to establish a permanent classification body to ensure that the victims of acts of enforced disappearance that occurred during the dictatorship who have not taken part in any prior process can be recognized as such and can exercise the corresponding rights to reparation. Please also provide information on the status of the bill mentioned in paragraph 180 of the State party's report, which would allow disappeared prisoners identified by the truth commissions to be legally recognized as victims of enforced disappearance. Please also clarify whether the reparations established by Acts Nos. 19.123, 19.980, 19.992 and 20.405 and made available to victims recognized by the truth commissions include every form of reparation established in article 24 (5) of the Convention, and provide information on the progress made in promoting the rights to truth, justice, reparation and guarantees of non-repetition in relation to the cases of these victims. Please also clarify whether the applications for compensation mentioned in paragraph 176 of the report that were rejected by the Supreme Court have now been admitted (art. 24).

23. Please indicate whether there are mechanisms in place to guarantee the right of victims to be informed of the progress and results of investigations and to participate in the proceedings, including for acts of enforced disappearance that occurred outside the context of the dictatorship. In this regard, please clarify the status of the bill that would amend Act No. 19.992 to allow the judicial authorities to access the documentation compiled by the Valech I Commission and the status of the bill that would repeal Act No. 18.771 to prevent the destruction of documentation belonging to the Ministry of Defence and the Armed Forces (arts. 12 and 24).

24. Please indicate whether there is a system for starting an immediate and urgent search for disappeared persons. If not, please indicate whether the State party plans to establish and operate such a system. Please explain how the genetic databanks mentioned in paragraphs 149 to 155 of the State party's report are used when investigating the cases of, searching for and locating disappeared persons. In relation to the information provided in

paragraph 175 of the report, please indicate whether there are plans to establish protocols for returning the remains of disappeared persons (arts. 19, 22 and 24).

25. Please provide information on legislation, including any sanctions, relating to the wrongful removal of children subjected to enforced disappearance, children whose parents were subjected to enforced disappearance and babies born in captivity to women subjected to enforced disappearance, as well as the falsification, concealment or destruction of documents attesting to the true identity of those children. Please also provide information on legal procedures in place to guarantee the right of disappeared children and adults who suspect that they are the children of parents subjected to enforced disappearance to have their true identity established, as well as to review and, if necessary, annul any adoption, placement or custody of children that originated in an enforced disappearance, including information on possible limitations, if any, on the annulment of such adoptions, placements or custody. Please also provide information on the procedures in place to guarantee families their right to search for child victims of enforced disappearance and indicate what measures have been taken and what mechanisms exist to search for and identify, at their own initiative, disappeared children, and what domestic legal procedures and tools such as DNA databases are in place to return them to their families of origin. Please provide information on the State party's efforts to engage in international cooperation in the search for and identification of the children of disappeared parents. Lastly, please explain how, in all these procedures, the best interests of the child are taken into account and due weight is given to the views of the child (art. 25).
