



**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**

Addendum

**Replies of Chile to the list of issues\***

[Date received: 25 January 2019]

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



1. The present report responds to the list of issues submitted on 20 November 2018 to the Permanent Mission of Chile to the international organizations concerning the report submitted by Chile pursuant to article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance. The report was prepared by the Human Rights Section of the Ministry of Justice and Human Rights, with the participation of 14 institutions. As for subjects not dealt with at this time, Chile is committed to providing an appropriate response to the Committee during the constructive dialogue on 9 and 10 April.<sup>1</sup>

## I. General information

### Paragraph 1

2. Concerning the information in paragraph 8 of the State party report, the Human Rights Section has no information in addition to that already provided to the Committee, since the meeting of 20 November 2017 was the only activity undertaken in that regard.

### Paragraph 2

3. With regard to information requested from the National Human Rights Institute, the Institute informed the Human Rights Section<sup>2</sup> that, in keeping with its legal terms of reference,<sup>3</sup> it would itself provide the Committee with its input for the upcoming constructive dialogue.

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

### Paragraph 3

4. According to the Directorate General of Investigative Police, there were 8,429 persons reported missing in 2018, about 94 per cent of whom have been located.<sup>4</sup> The figures, disaggregated by sex, age and nationality, can be found in annex 2.

5. With regard to possible State involvement in cases defined as enforced disappearance, the Directorate General is looking into two cases that occurred prior to the entry into force of the Convention (referred to in the State report): José Gerardo Huenante Huenante, who disappeared on 2 September 2005,<sup>5</sup> and Víctor Hugo Arispe Carvajal, who disappeared on 14 January 2001.<sup>6</sup> There is also a case in Alto Hospicio involving the disappearance of José Antonio Vergara Espinoza, on 13 September 2015 following the

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<sup>1</sup> Annex 1 contains a glossary with the abbreviations used in the document.

<sup>2</sup> National Human Rights Institute, official letter No. 471 dated 31 December 2018.

<sup>3</sup> Article 3 of Act No. 20405, by which the National Human Rights Institute was established, provides that the Institute will be responsible in particular for:

8. Cooperating with the United Nations, regional institutions and competent national institutions of other countries, for the promotion and protection of human rights, reporting to the Ministry of Foreign Affairs.

<sup>4</sup> January–October 2018.

<sup>5</sup> Disappeared in the Mirasol district of Puerto Montt, where he had been socializing with some friends. After leaving them, he was involved in an altercation with police officers from the Fifth Puerto Montt Precinct and was put into a police car; there has been no trace of him since that time.

<sup>6</sup> On 11 January 2001, he was arrested in Arica by officers from the city's First *Carabineros* Police Precinct for being drunk in public. He was transferred to the First Criminal Court of Arica and, since he was unable to post bail, the judge ordered his detention for four days in the prison in Arica. Witnesses have stated that, on 13 January 2001, while he was in detention, he was placed in solitary confinement because of a brawl among inmates. There has been no further trace of him since 14 January 2001, when he was due to be released.

entry into force of the Convention. That case was classified as a case of enforced disappearance.<sup>7</sup> More details on the procedural status of these cases are provided in paragraph 14.

6. Regarding cases of “disappeared prisoners”, Forensic Medicine Service figures show that 302 victims had been identified as of January 2019. Information on the classification, cause and place of discovery is provided in annex 3.

#### Paragraph 4

7. States of emergency are strictly regulated in Chilean legislation. Regarding states of catastrophe and emergency, processes for the detention of those arrested by the military and their transfer to the custody of the authorities are sufficiently well regulated: ill-treatment or abuse of detainees is prohibited, and detainees must be provided with medical care, shelter and food. Article 45 (1) of the Constitution guarantees that, regardless of what kind of state of emergency is declared, it will always be possible to appeal to the judicial authorities against specific measures which affect constitutional rights. Chile has ratified the American Convention on Human Rights, which establishes that, even in times of public emergency, States cannot derogate from the obligation to maintain certain guarantees, such as the right to life. This limitation on the power to make derogations is fully applied in Chile. Together with constitutional and legal prohibitions, the State’s intention to strengthen the prohibition of enforced disappearances is reflected in a bill which is currently before the Congress. The draft legislation before Congress (BOL 9818-17) is intended to amend the Criminal Code with a view to categorizing enforced disappearance as a crime and also to amending the Code of Military Justice. The amended legislation would prohibit the military from citing the orders of a superior as a justification for enforced disappearance. It can therefore be affirmed that, in a state of emergency, there can be no restriction on or derogation from the prohibition in Chile of enforced disappearance as a crime against humanity, and the possibility of having recourse to the courts to safeguard rights set out in the Constitution will be assured.

#### Paragraph 5

8. The registry of the Supreme Court shows that, between 1 January 2002 and 31 October 2018, nine judgments of the Court relating to the crime of “disappearance” and one concerning a case of “detention/presumed misadventure” were reviewed.<sup>8</sup>

9. In six of those judgments, the Court was ruling on appeals on the merits submitted in cassation against appeal court judgments upholding lower court decisions in which cases of alleged disappearance during the dictatorship were dismissed. The Court reversed the decisions and ordered the investigations to continue. In those cases, the Supreme Court did not reach a finding on the characterization of the alleged offences, because the related investigations had not been concluded at the time the judgments were issued.<sup>9</sup> In three other judgments, the Court decided on the admissibility of claims for damages in respect of crimes that occurred during the years of the dictatorship (1973–1990) but did not rule on a definition of the crimes that gave rise to the damages, as that was a matter of civil, not criminal, law.<sup>10</sup>

<sup>7</sup> The victim was a young man with schizophrenia. Following his disappearance, the investigation was conducted by officers of the Homicide Brigade of Iquique. The case was initially classified as a missing persons case but, after the findings of the investigation came to light, three *carabineros* were arrested and charged with the kidnapping and forgery of a government document.

<sup>8</sup> Information from the Digital Historical Memory website, Library Department, Supreme Court. 2018. Available at: <http://mhd.pjud.cl/ddhh/pdf/resumen.pdf> (consulted on 31 December 2018).

<sup>9</sup> Judgments of the Supreme Court of 10 July 2002 (case No. 1379-2001); 28 August 2003 (case No. 2231-2001); 4 November 2003 (case No. 1134-2002); 11 November 2003 (case No. 2505-2002); 28 December 2015 (3783-2003); and 9 July 2007 (case No. 5131-2005).

<sup>10</sup> Judgments of the Supreme Court of 5 May 2014 (case No. 16331-2013), 9 December 2015 (case No. 11.208-2015) and 19 January 2016 (case No. 10775-2015).

10. Lastly, the Supreme Court, in a judgment of 21 January 2016 (case No. 13170-2015), ruled against a cassation appeal submitted on the merits by a representative of the Chilean Treasury. In this judgment, the Court cites the concept of enforced disappearance under international law as grounds for its rejection of an appeal by the Treasury for exceptions to be made to the rules on the statute of limitations and payment of compensation for damages arising from wrongful acts that had been found to have occurred.

11. Also of note is the judgment of 25 September 2018 (case No. 36731-17) in which the Supreme Court ruled that there were no grounds for granting parole to the applicants, as the act of aggravated kidnapping of which they had been convicted constituted a crime against humanity, as defined in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, among other rules of international law.<sup>11</sup>

## Paragraph 6

12. The draft legislation of 2014 referred to in paragraphs 39 and 44–46 of the report, namely, BOL No. 9818-17, amending the Criminal Code to criminalize enforced disappearance, is going through the second stage of constitutional review in the Senate Committee on the Constitution, Legislation, Justice and Regulations.<sup>12</sup> It should be noted that this initiative originated in a submission by parliamentarians.

13. This legislation, if approved as formulated, will define the crime of enforced disappearance such that “A public employee or a person who, with the authorization, support or acquiescence of the State, deprives a person’s liberty, followed by non-disclosure of information, refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the victim, shall suffer a penalty of a term of rigorous imprisonment in the intermediate category.”

14. The offence described contains relevant elements that reflect the content of the Convention (art. 2) and correspond to deprivation of liberty by a public employee or by someone who acts with the authority, support or acquiescence of the State (“an agent of the State”, under the Convention), accompanied by an absence of information or “refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the victim”.

15. The proposed penal sanction for the offence of enforced disappearance, in its basic legal definition, comes under the category of a serious crime, and is punishable by a term of rigorous imprisonment in the intermediate category.<sup>13</sup> The same penalty will be imposed on any public official who was aware that such acts were being committed and failed to prevent or stop them, despite having the capacity or authority to do so or being in a position to do so.

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<sup>11</sup> The Court stated as follows: “26. Regarding the other two persons punished as accomplices, José Enrique Fuentes Torres and Sergio Hernán Castillo González, even though they have not been previously imprisoned or convicted of minor offences, they will not be granted the alternative benefit of parole, as provided for in article 15 of Act No. 18216, and must serve their sentences in the appropriate detention facility, in view of the motive, nature and gravity of the offence of which they have been convicted, which is aggravated kidnapping by agents of the State. This offence is defined as a crime against humanity that is incompatible with the core human values set forth in the international instruments ratified by our country.

“Indeed, this is derived from the following instruments: (a) the Inter-American Convention on Forced Disappearance of Persons; (b) the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly on 20 December 2006, in New York, United States of America, [ ... ], and (c) the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 18 December 1992, in New York, United States of America, by its resolution 47/133, an international instrument explicitly cited in the preamble to the International Convention referred to in the previous subparagraph.”

<sup>12</sup> New article 148 (1) of the Criminal Code, contained in article 1, No. 2, Official Gazette No. 9818-17.

<sup>13</sup> In Chile, offences are subdivided into three basic categories, in decreasing order of severity: crimes, ordinary offences and misdemeanours.

16. Article 148 A, subparagraph 3, of the draft legislation provides that “If the deprivation of liberty continues for more than 15 days, or if it results in serious harm to the victim’s person or interests, the penalty will be a term of rigorous imprisonment in the intermediate to maximum categories.” The punishment associated with this offence falls under the highest category of penalty in the Chilean criminal system.

17. With regard to aggravating circumstances linked to the crime of enforced disappearance, the draft legislation provides for the addition to the Criminal Code of a new article 148 B which states that if the victim of the crime is a pregnant woman, a person aged under 18 or over 65, or a person with disabilities, this will be considered an aggravating circumstance. In such cases, the penalty will be increased by one degree.

18. The draft legislation provides for a new article 148 C to be included in the Code, stipulating that possible extenuating circumstances for the crime of enforced disappearance would be where the person makes an effective contribution to finding the missing person alive or provides substantial information to effectively solve a case of enforced disappearance; those involved would have their sentences reduced by two degrees in the former case and one degree in the latter.

19. The provisions of the Amnesty Law of 1978 have not been applied by the Chilean courts since 1998. Consequently, the Law’s formal (but inconsequential) presence within the legal system has not hampered the pursuit of truth and justice in cases of enforced disappearance which occurred between 1973 and 1990.

## Paragraph 7

20. Article 6 of Act No. 20.357 is reflected in the section of the Criminal Code relating to crimes against humanity and genocide and it lists elements that must be present to constitute an enforced disappearance. As a rule, the factual elements must include the circumstances set out in article 1 of the Act. The article defines crimes against humanity as a widespread or systematic attack against the civilian population by the State, its agents or armed or organized groups exercising de facto power leading to impunity for their actions,<sup>14</sup> as well as acts involving the removal of persons from the protection of the law, deprivation of their liberty and failure to respond to requests for information about the whereabouts of such persons, whether it be a refusal to provide information or the provision of false information. These elements reflect the definition of enforced disappearance set out in article 2 of the Convention.

21. Act No. 20.357, in its common provisions, prescribes the penalties that will be imposed on the authorities and military commanders for giving orders to commit any of the criminal acts listed in the Act or for giving orders that result in an act of omission or failure to prevent the occurrence of a crime. The Act specifically provides that criminal proceedings and the penalties associated with these kinds of crimes are not subject to any statute of limitations.

22. Under the provisions of Act No. 20.357, if the crime is committed, criminal proceedings will be launched to investigate the matter, identify those responsible for the unlawful conduct and convict them. The penalty for the crime is deprivation of liberty.

23. The penalties prescribed are rigorous imprisonment in any category, that is, from 5 years and 1 day to 20 years, pursuant to the provisions of article 5 of the Act and article 6 of the same instrument, and together with the penalties for simple and aggravated kidnapping set out in the last two subparagraphs of article 141 of the Criminal Code. These are a term

<sup>14</sup> Article 1. Crimes against humanity are defined as the acts referred to in this paragraph, when their commission includes the following circumstances:

1. The act was committed as part of a widespread or systematic attack directed against a civilian population.
2. That attack is due to a policy of the State or its agents, organized armed groups which exercise such control over a territory as to enable them to carry out military operations under orders, or organized groups having de facto power leading to impunity for their actions.

of rigorous imprisonment in the intermediate to maximum categories and rigorous life imprisonment without possibility of parole, respectively.

### **Paragraph 8**

24. Since enforced disappearance is not defined as an ordinary offence in the Criminal Code, the judiciary does not have any disaggregated information on cases involving acts defined in article 2 of the Convention or the alleged perpetrators.<sup>15</sup>

25. In view of the lack of a specific definition of the offence, the Public Prosecution Service drafted official letter 37 of 15 January 2019, issuing a general instruction to prosecutors on guidelines for dealing with offences of institutional violence. Along with the guidelines on dealing with offences of torture and other cruel, inhuman or degrading treatment or punishment, the official letter from the Public Prosecution Service has widened the definition of institutional violence to include cases of death in State custody and enforced disappearance. Thus, the official letter states that the offences applicable in cases of enforced disappearance are those of kidnapping, covered by article 141 of the Criminal Code, and illegal detention, as defined in article 148 of the Code.<sup>16</sup> While the Criminal Code does not yet contain a specific definition of the offence of enforced disappearance, the Public Prosecution Service has taken care to establish general criteria for its criminal prosecution.

### **Paragraph 9**

26. The legal definition of enforced disappearance established in the aforementioned draft legislation provides for the punishment of accomplices in generic terms, since the specific penalty for perpetrators, accomplices or accessories is defined in the domestic law of Chile. Article 148 A (2) of the draft text establishes criminal liability for any public employee who has knowledge of the facts and who, having the power or authority and being in a position to do so, fails to prevent or stop the crime.<sup>17</sup> The criminal liability of superior officers in cases of enforced disappearance is appropriately regulated in the corresponding draft legislation.

27. On this point, article 2 of the text contains an amendment to the Code of Military Justice providing for the elimination of language allowing orders from a superior to be invoked as a justification for committing enforced disappearance and crimes against humanity in general and establishing the right and duty of every person to refuse to carry out orders that call for, authorize or encourage the commission of such crimes.

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

### **Paragraph 10**

28. In its recent jurisprudence, the Supreme Court has held that acts constituting the aggravated kidnapping of persons during the dictatorship constitute crimes against

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<sup>15</sup> Nevertheless, the Directorate of Research of the Supreme Court will produce a new report, with the available statistical information on offences related to such conduct, which will be made available before the next dialogue with the Committee in April this year.

<sup>16</sup> In connection with this discussion, it must be considered that the crime of illegal detention committed by a public official is a special form of deprivation of liberty that obtains in cases where the crime is connected with the institutional system of deprivation of liberty. Conversely, in the absence of a specific definition of enforced disappearance as a crime, the crime should be legally defined as abduction.

<sup>17</sup> Agent of the State.

humanity, so it is not possible to apply the rules concerning statutes of limitation, as mandated under relevant international law.<sup>18, 19</sup>

29. The Supreme Court has stated that to entertain the notion of incremental time limits for prosecuting those guilty of crimes against humanity is contrary to the principle of proportionality of the penalty. Given the seriousness of the offences perpetrated with the involvement of State agents, the response to the perpetrator must be commensurate with the harm done to the legal interest and the culpability with which he or she acted. The Supreme Court has also held that the rules set out in the Criminal Code relating to the partial lapse of the statutory time limit (*media prescripción*) as an extenuating factor – articles 65 et seq. and 103 of the Code – only provide that the courts have the discretion, rather than an obligation, to reduce the penalty, even if there are several extenuating circumstances, all of which is not admissible under the cassation process.<sup>20</sup>

30. Lastly, the Supreme Court has consistently held, since 2011, that claims for civil damages arising from enforced disappearance are not subject to any statute of limitations. The Court's judgment of 21 January 2016 (case No. 13170-2015), pursuant to international human rights law, makes reference to the continuous nature of the harm arising from enforced disappearance.<sup>21</sup>

31. As for the bills referred to in paragraphs 83 and 84 of the State party's report, which were drawn up to establish that war crimes and crimes against humanity are not subject to statutory time limits, the bill to amend the Constitution to establish that war crimes, crimes

<sup>18</sup> Supreme Court judgment of 11 December 2018 (case No. 38766-2017).

<sup>19</sup> Supreme Court judgment of 25 September 2018 (case No. 36731-17): "The consistent jurisprudence of this criminal chamber has invoked two grounds for dismissing the appeal to which article 103 of the Criminal Code refers. On the one hand, the classification of the wrongful act as a crime against humanity makes it necessary to consider the rules of international human rights law, which exclude the application of both full statutory time limits and partial time limits in respect of prosecutions, taking those mechanisms as being subject to strict limitations at the fundamental level and their use being contrary to the rules of *jus cogens* in this area of international criminal law. These rules reject impunity and the imposition of sentences which are not commensurate with the intrinsic gravity of the offences, as has been established over the years. Nonetheless, it should also be emphasized that, however the basis of the legal precept under discussion is interpreted, the norms on which article 103 is based clearly only provide that the courts have the discretion, rather than an obligation, to reduce the penalty, even if there are several extenuating circumstances."

<sup>20</sup> Judgments of the Supreme Court of 20 March 2018 (case No. 35788) and 14 May 2018 (case No. 39732-17).

<sup>21</sup> "Secondly: that before the appeal is analysed, consideration should be given to the facts that judges have ascertained on the merits, namely, that Miguel Rojas Rojas, small farmer, married, seven children, a member of the Socialist Party, and his son Gilberto Rojas Vásquez, carpenter, married, two children, a Communist activist, were arrested in the early morning of 13 October 1973 in Parral. Their status was described in the report of the National Truth and Reconciliation Commission as 'disappeared detainees' resulting from action by Carabineros of the Catillo squad, who took that action alongside military personnel. Since their arrest, there has been no news of their whereabouts and it is not known whether they are alive or have died or been murdered. The wrongfulness and injurious impact of the above acts has continued over time, although their origin dates back to when the acts took place. The arrest of the victims was followed by a continuous crime of kidnapping which has continued to be perpetrated as long as there is no certainty that those wrongfully arrested and detained have regained their freedom.

"In accordance with international law, this situation can be described as an enforced disappearance affecting both victims, a wrongful act which constitutes a crime against humanity causing harm not only to the disappeared persons but also to their families and to humanity, as a corollary to the perpetration of an unjust act which is not subject to a statute of limitations. The responsibility of the State is not only in connection with the lack of service, but also its obligation to prosecute such unlawful acts and ensure that they are not repeated, and its duty of redress, which includes not only finding such persons but determining their individual situations and providing compensation to the victims and immediate family members. It is therefore not only a question of compensation for an ordinary offence, but a series of acts that continue to cause harm. Until they cease, it cannot be argued that there is a single and certain date from which the prescription period can be calculated. The State is responsible both for the conduct of its officials and for any failure to fulfil its obligations as a party to international human rights treaties."

against humanity and genocide may not be subject to statutory time limits or amnesties (BOL No. 9748-07), and the bill to amend criminal law as it relates to amnesties, pardons and statutory time limits for criminal proceedings and sentences, in the light of the provisions of international law on genocide, crimes against humanity or war crimes (BOL No. 9773-07) are both undergoing a preliminary constitutional hearing in the Senate Committee on the Constitution, Legislation, Justice and Regulations. The bill calling for ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the General Assembly of the United Nations, by resolution 2391 (XXIII) of 26 November 1968 (BOL No. 1265-10), is at the second stage of constitutional review in the Chamber of Deputies. However, pending the adoption of these bills, the national courts have not been prevented from prosecuting cases of enforced disappearance that occurred during the period of the dictatorship or punishing the perpetrators.

32. The Legal Aid Council of the Metropolitan Region is involved in defending the victims of enforced disappearance.<sup>22</sup> Although its competence to deal with these matters is not limited to enforced disappearances committed during the dictatorship, there are currently no criminal charges or civil claims relating to offences committed after that period.

## Paragraph 11

33. According to information from the judiciary, no cases have been identified in which the State has applied its jurisdiction over enforced disappearances under article 9 (1) (b) and (c). In case No. 17393-2015, the Supreme Court ruled on the requirements for universal jurisdiction in the field of human rights.<sup>23</sup>

34. As for information on cases of enforced disappearance in which the State party was requested to provide mutual assistance or made such a request itself, detailed information which may be relevant here will be provided in the response concerning paragraph 17.

35. Crimes committed within the jurisdiction of Chile can be prosecuted, in view of the principle of the territorial application of criminal law, including with respect to virtual territory.

36. Article 9 (2) of the Convention refers to the measures that the State must take to prosecute an offence of enforced disappearance committed outside its territory when the alleged perpetrator is present in any territory under its jurisdiction. In Chile, the principle of the territoriality of criminal law is applied. The Chilean courts therefore have sole jurisdiction over crimes committed by persons within their jurisdiction. Exceptions to the principle of territoriality are covered by article 6 of the Code on organization of the Chilean court system.<sup>24</sup> Apart from these cases, Chile does not have jurisdiction over acts

<sup>22</sup> For those enforced disappearances committed during the dictatorship, three types of cases must be distinguished. First, there are criminal cases heard by special judges, conducted before the courts of appeal of Santiago and San Miguel (five cases). Second, there are cases processed under Act No. 20377, concerning the Declaration of Absence by Reason of Enforced Disappearance (one case). Third, there are cases leading to civil claims against the State for damage suffered by the family of the victim. These may be heard in criminal or civil courts.

<sup>23</sup> The Supreme Court stated that “The authors of treaties agree that the implementation of universal law must be effected to recognize certain fundamental rules, such as that: the courts of another country can act only when those in the locality where the crime was committed fail to do so; jurisdiction and subsequent competence must emanate from a suitable source of international law; and the national legislation to be applied must not be contrary to international law” (third preambular paragraph).

<sup>24</sup> Article 6: The following crimes and ordinary offences committed outside the territory of Chile are subject to Chilean jurisdiction:

1. Those committed by a diplomatic or consular agent of Chile in the exercise of his or her functions;
2. The embezzlement of public funds, fraud and extortion, failure to ensure proper custody of documents, breaches of secrecy, bribery, where committed by Chilean public officials or by foreigners in the service of Chile, and bribery of foreign public officials by a Chilean national or a person whose habitual residence is in Chile;



committed outside its jurisdiction. Chilean legislation does not allow for the possibility of exercising universal jurisdiction, other than as has already been established in the recent jurisprudence of the Supreme Court.

37. On the other hand, article 6 of the Criminal Code provides that crimes or offences committed outside the territory of the Republic by Chilean or foreign nationals will not be punishable in Chile except in such cases as are determined by law (the aforementioned exception to the Code on the organization of courts, (art. 6)).

38. If the alleged perpetrator of an enforced disappearance is present in Chile, extradition proceedings may be initiated at the request of the State where the offence was committed. There are no impediments to extraditing perpetrators of this type of offence, as will be explained in paragraph 16.

39. If the request for extradition is rejected, under the *aut dedere aut judicare* principle Chile must prosecute the case. There are no restrictions in national legislation or practice that might prevent the application of this principle to specific crimes or offences.

40. As noted above, there is no definition in Chilean law of the offence of enforced disappearance. However, there are other definitions of offences, such as kidnapping, under which this type of act has been investigated. The Public Prosecution Service has reported that no international letters of request have been sent or received in connection with these kinds of offences.

41. In Chile, no distinction is made on the basis of nationality as regards the application of criminal law; criminal law applies to everyone equally. Under article 5 of the Criminal Code, Chilean criminal law is binding upon all inhabitants of the Republic, including foreign nationals. In keeping with the principle of the territoriality of criminal law, an offence committed outside the country's territorial jurisdiction does not fall within the competence of the domestic courts. If a crime of enforced disappearance is committed by a Chilean in a foreign country, the only exceptions are those provided for in article 6 of the Code on the organization of the courts. If a foreign national commits a crime outside its territory, Chile is not competent to be seized of the case, unless extradition is requested by the State where it was committed.

## Paragraph 12

42. Article 5 of Act No. 20968, which defines torture and cruel, inhuman and degrading treatment as crimes, amended article 1, paragraph 1, of Act No. 20477. It specifies that

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3. Offences against the sovereignty or the external security of Chile, whether committed by natural-born or naturalized Chilean citizens, and the offences enumerated in paragraph 14, title VI, section II, of the Criminal Code, where they endanger the health of inhabitants of Chile;
  4. Offences committed by Chilean or foreign nationals on board a Chilean ship on the high seas or on board a Chilean warship in the waters of another State;
  5. Forgery of the State seal, national currency or credit documents of the State, municipalities or public institutions, where committed by Chilean or foreign nationals in the territory of Chile;
  6. Offences committed by Chilean nationals against other Chilean nationals, where the perpetrator returns to Chile without having been tried by the authorities of the country in which the offence was committed;
  7. Piracy;
  8. Offences covered by treaties concluded with other powers;
  9. Offences under title I of Decree No. 5839 of 30 September 1948, establishing the final text of the Permanent Defence of Democracy Act, where such offences are committed by Chilean or foreign nationals in the service of Chile; and
  10. Offences punishable under articles 366 quinquies, 367 and 367 bis, No. 1, of the Criminal Code, where they endanger or harm the sexual freedom or physical integrity of a Chilean national or are committed by a Chilean national or a person who has his or her habitual residence in Chile. This also includes offences under article 374 bis, subparagraph 1, of the Code, where pornographic material which is the object of the offence has been developed using Chilean nationals who are under the age of 18 years."

civilians and minors who are victims or defendants will not be subject to the jurisdiction of military courts under any circumstances. Jurisdiction will always lie with ordinary courts that have competence in criminal matters. In compliance with this legal rule, the Supreme Court has resolved conflicts over jurisdiction in different fields, stating that the military courts do not have jurisdiction over cases involving civilians and minors as defendants or victims and referring such cases to the ordinary criminal courts.<sup>25</sup>

43. With regard to alleged cases of conduct related to enforced disappearance, at a plenary hearing of the Supreme Court on 2 October 2017, the Court decided to request a report from the due process court of Puerto Montt on the status of a case of abduction of a minor, José Huenante (AD 1571–2017), which had been referred to the military courts. On 12 June 2018, the Court, sitting in plenary, declared *ex officio* that the due process court of Puerto Montt was competent to hear the case of alleged abduction, regardless of the status, civilian or military, of the alleged perpetrators.<sup>26</sup>

44. Accordingly, the Public Prosecution Service is competent to deal with all investigations in which civilians, children or adolescents are victims or suspects. Prosecutors are therefore legally barred from declaring themselves to be incompetent to deal with such cases and from referring them to the military courts. They must also deny any requests from other parties to take action that runs counter to that rule and must appeal against any judicial decision that might involve accession to such requests.

## Paragraph 13

### Paragraph 13 (a)

45. If the alleged perpetrator of enforced disappearance abroad is present in Chile, the State where the crime was committed may request the person's extradition from Chile.

46. Within this process, the legislation of Chile allows for the possibility of requesting pretrial detention in the context of extradition proceedings. This possibility is recognized in article 442 of the Code of Criminal Procedure, which contains provisions on pretrial detention before a State makes a formal extradition request.

47. If the request is accepted, a Supreme Court judge may issue an arrest warrant and order that precautionary measures be taken *vis-à-vis* the person sought in order to ensure that the person attends the extradition proceedings in Chile and until such time as the person is handed over, if that is the decision, to the police delegation of the requesting State.<sup>27</sup>

48. There are no internal legislative measures in place to impose detention or travel restrictions on anyone who commits a crime abroad, unless a formal request is made by

<sup>25</sup> See annex 4.

<sup>26</sup> In particular, the Court specified that, in addition to the long period of time that had elapsed without significant progress on the whereabouts of the minor, Huenante, and in the light of the oversight powers that the Supreme Court holds with respect to all the country's courts, including the courts in peacetime, it needed to take action, on its own initiative, and move criminal case No. 7580-2015 of the due process court of Puerto Montt forward in order to give it a strengthened focus and ensure that absolute competence for hearing cases of abduction of a minor is fully rooted in the ordinary courts, in accordance with Act No. 20477, as amended by Act No. 20968. This it did in view of the young age of the victim.

<sup>27</sup> A "Red Notice" from Interpol is not sufficient in Chile, since orders concerning pretrial detention for the purposes of extradition can only be issued by a Supreme Court judge upon receipt of a request from the Ministry of Foreign Affairs of a foreign State. The request for pretrial detention should contain at least information about the following:

- (a) The identity of the accused;
- (b) The existence of a final conviction decision or an order to restrict or deprive the accused of personal liberty;
- (c) A description of the crime motivating the request and the place and date of commission; and
- (d) The formal declaration of the extradition request.

another State and there is compelling evidence to suggest that the person committed such a crime.

### Paragraph 13 (b)

49. Under international extradition treaties, and within the framework of international cooperation among States, a State that learns that a person present in its national territory is wanted by other States for committing crimes must bring the matter to the attention of the States concerned. This is done through official channels of the Ministry of Foreign Affairs, or by means of information provided by the National Central Bureau of the International Criminal Police Organization (INTERPOL) in Santiago. This is so that the State concerned can promptly make the request for pretrial detention and/or extradition.<sup>28</sup>

50. With regard to consular assistance, this information is present in the State's response. Chile strictly fulfils its obligation to facilitate the efforts of the relevant consulates when they need to provide legal assistance to foreign nationals that request it from the competent authorities.

51. As for the question as to whether or not the State intends to exercise jurisdiction, this must be indicated in the decision made on the extradition request. If the State decides to exercise it, the granting of extradition may be deferred until the accused discharges his or her responsibilities under criminal law or is acquitted in a criminal trial. If the act that gave rise to the exercise of jurisdiction is the same as that on which the extradition request is based, the *non bis in idem* principle will apply.

### Paragraph 13 (c)

52. Act No. 21080 establishes a provision to that effect.<sup>29, 30</sup> The declaration to be made to the Directorate General for Consular Affairs relates to situations that may arise involving Chilean nationals who are abroad and who are subject to the provisions contained in the Vienna Convention on Consular Relations (arts. 5 (a), (e), (g) and (j)). This is without prejudice to subparagraphs (a), (b) and (c) of article 36, ("Communication and contact with nationals of the sending State",) of that Convention.

## Paragraph 14

### Paragraph 14 (a)

53. Regarding the cases referred to in paragraph 48 of the State party's report, we wish to provide the following information:

- **José Huenante case:** following an application to the due process court of Puerto Montt, on 12 June 2018, the Supreme Court, sitting in plenary, declared of its own

<sup>28</sup> In its role as the central authority for international legal cooperation in criminal matters and as the representative of the interests of the requesting State when extradition from Chile is being sought, the Public Prosecution Service may notify third States in a timely manner of the arrest of an alleged perpetrator of enforced disappearance whenever it has reason to believe that those third States are interested in exercising jurisdiction. Consequently, when the Public Prosecution Service is informed of the concurrent interest of other States, through the legal assistance provided for in article 14 of the Convention, it can notify those States in a timely manner of the circumstances of the arrest and the proceedings taking place in respect of the wanted person so that they can exercise jurisdiction themselves.

<sup>29</sup> It amends various legislative instruments with a view to modernizing the Ministry of Foreign Affairs (2018).

<sup>30</sup> Article 15. "In the context of the work of the Ministry of Foreign Affairs, the following departments of the Office of the Undersecretary of Foreign Affairs have the functions indicated in each case and that are of particular importance to the functioning of the Ministry: 2. The Directorate-General for Consular Affairs, Immigration and Chileans Abroad is responsible for studying, designing, proposing, coordinating and implementing the policy of the Ministry of Foreign Affairs in consular and immigration matters and the protection of the rights and interests of Chileans abroad. It deals with immigration policies established by the authorities, ensures the functioning of Chilean consulates and supports the resident consular corps."

motion that that court is competent to hear the case of the alleged abduction of a minor, regardless of the status, civilian or military, of those who may be responsible for the crime. This is in the light of the changes resulting from Act No. 20477 and Act No. 20968, which place civilians and minors outside military jurisdiction.<sup>31</sup> Having received the information from the Supreme Court, the due process court of Puerto Montt ordered that the case should be submitted to the Public Prosecution Service so that the criminal investigation could continue.

- **José Vergara case:** on 28 September 2018, the Oral Criminal Proceedings Court of Iquique delivered its judgment, sentencing the four accused to four years' ordinary imprisonment in the maximum category, with the subsidiary penalties of perpetual, absolute disqualification from political rights and absolute disqualification from public office and public employment for the duration of their sentence. The defendants were convicted of kidnapping, which is punishable under article 141 (1), of the Criminal Code (having been initially charged with aggravated kidnapping), an offence they committed in the municipality of Alto Hospicio on the morning of 13 September 2015 against José Vergara Espinoza. The penalty of deprivation of liberty was replaced by one of intensive supervised release, with the requirement to carry out a programme of activities designed for their social reintegration in the personal, community and employment spheres, through individualized treatment.
- **Hugo Arispe case:** as indicated in 2017, this case is being dealt with under the former criminal procedure rules, because the investigation began before the entry into force of the criminal procedure reform. That is why it is not possible to gain access to information online on the status of the proceedings; there is only a record of a review appeal that the National Human Rights Institute submitted on 28 November 2018 to the appeal court of Arica. The appeal is pending (case No. 512-2018). A request will be made to the court of first instance to provide a report to supplement this information.

54. Regarding paragraph 103, concerning updated information on cases of grave human rights violations that took place during the dictatorship, 1,901 persons had been prosecuted as of October 2018, with 1,497 persons indicted and 968 convicted at first instance.

55. As of October 2018, a total of 1,346 cases were in progress at first instance courts throughout the country. As of that same month, 140 new cases had been initiated in 2018.<sup>32</sup> There is no disaggregated information on first instance cases relating to enforced disappearances during this period.<sup>33</sup>

56. As for Colonia Dignidad, the Directorate of Investigative Police looked into the events which occurred there during the dictatorship. It has been established that it was used as a detention centre for political prisoners.<sup>34</sup> The proof is that when a second mass search was carried out in 2005, a range of evidence was seized that demonstrated the link between Colonia Dignidad and the National Intelligence Directorate (DINA).<sup>35, 36</sup> As a result, in

<sup>31</sup> It underlines the desirability of a single investigation so that lines of inquiry emanate from a single prosecutor, without prejudice to whether he or she finds military or civilian persons liable, which has not occurred in this case.

<sup>32</sup> Statistics provided by the Office for the Coordination of Cases of Serious Violations of Human Rights, 1973–1990.

<sup>33</sup> Despite the above, the Directorate of Research will prepare a new report with the available statistical data on crimes related to the conduct referred to in article 2 of the Convention. The information will be available before the next dialogue with the Committee in April this year.

<sup>34</sup> A colony of German settlers located in Parral, on the banks of the river Perquilauquén.

<sup>35</sup> Specifically, in April 2005, following the aforementioned investigation into crimes which took place at the *Sociedad Benefactora Colonia Dignidad* and that were perpetrated by the German citizen Paul Shaeffer and his associates in DINA, access was obtained to the premises owned by the colony, revealing the presence of weapons caches, underground tunnels, remote monitoring systems, weapons of various calibres and the motors of vehicles that had belonged to detainees who disappeared. These were seized at the time of arrest. It was confirmed that political prisoners, many of whom are currently missing, were indeed kept on the premises, including Alfonso Chanfrau Oyarce, Álvaro Vallejos Villagrán and Juan Maino Canales.

<sup>36</sup> An intelligence service that operated in Chile between 1974 and 1977.

2006, Judge Jorge Zepeda of the Santiago Court of Appeal ordered that proceedings be brought against 18 persons, including Paul Schaefer and General Manuel Contreras, both now deceased.

#### **Paragraph 14 (b)**

57. Regarding the process that the authorities follow to establish the facts relating to an enforced disappearance committed outside the context of the dictatorship, in addition to cases that occurred during the dictatorship, the Directorate of Investigative Police investigates current cases of human rights violations, such as cases of torture, arbitrary violence and illegal detention.

58. The Directorate works closely with the Human Rights Programme Unit of the Ministry of Justice and Human Rights exclusively on cases of human rights violations committed during the dictatorship and with the Public Prosecution Service on current investigations into human rights violations.<sup>37</sup>

59. Regarding the human, financial and technical resources available for the investigation of enforced disappearance, the Public Prosecution Service has modified the terms of reference of the former Special Unit on Sex Offences and Domestic Violence to include issues of human rights and gender-based violence.<sup>38</sup> The main purpose of adding this new area of focus is to support prosecutors in the investigation of violent crimes committed by public officials. To that end, the Public Prosecution Service has established a system in which the role of human rights officer is given to special advisers in all regional attorney generals' offices to support the work of the regional attorneys general and other attorneys in their criminal investigations.

#### **Paragraph 14 (c) and (d)**

60. In January 2019, the Public Prosecution Service issued General Instruction No. 37, which provides guidelines on the conduct of investigations into cases of torture and other cruel, inhuman and degrading treatment, deaths of persons held in the custody of public entities (or private entities that perform a public function) and enforced disappearances.

61. Although enforced disappearance is not defined as a crime per se, given the particularities of the offence, the General Instruction could be applied to all issues relating to preliminary inquiries and the protection of victims and witnesses.

#### **Paragraph 15**

62. In 2018, there were no international letters rogatory or requests for international judicial assistance in criminal matters (sent or received) within the meaning of articles 14 and 15 of the Convention. There were no requests of that type either concerning other offences related to enforced disappearance.

63. Since 2018, the International Cooperation and Extraditions Unit of the Public Prosecution Service has been designated as the central authority responsible for matters relating to a number of treaties in this area.<sup>39</sup> With respect to the information contained in

<sup>37</sup> Under the authority of the Human Rights Section, the Unit has an annual budget for 2019 of 425,070,000 Chilean pesos (Ch\$).

<sup>38</sup> Resolution No. 2078 of October 2017.

<sup>39</sup> Among these are:

1. The Inter-American Convention on Mutual Assistance in Criminal Matters, adopted in Nassau on 23 May 1992 and its Optional Protocol, signed in Managua on 11 June 1993.
2. The Protocol on Mutual Legal Assistance in Criminal Matters among the member States of MERCOSUR, Bolivia and Chile (adopted in Buenos Aires in 2002);
3. The European Convention on Mutual Assistance in Criminal Matters, adopted in Strasbourg on 20 April 1959, its Additional Protocol of 17 March 1978 and its Second Additional Protocol of 8 November 2001.
4. The Inter-American Convention against Corruption (Caracas, 29 March 1996).

the State party's 2017 report, the Inter-American Convention on the Taking of Evidence Abroad (adopted in Panama in 1975) does not apply in criminal matters. Chile uses electronic means to transmit documents in exchanges of international assistance in criminal matters with Peru, Argentina, Brazil and the United States of America. This allows for much more expeditious processing.

64. Alongside formal processing of requests for judicial assistance, the judiciary maintains contacts with designated focal points in international cooperation and judicial assistance networks, allowing for smooth and rapid communication in the processing of letters rogatory (for example, with Eurojust, Genocide Network and IberRed).

65. Regarding victim assistance, the Public Prosecution Service has an obligation to protect victims and witnesses. There is the National Victim and Witness Assistance Division and there are regional victim and witness assistance units. These have the responsibility to take appropriate and effective measures to provide victims and witnesses with assistance ranging from protection to guidance in criminal proceedings. As part of the fulfilment of this obligation, assistance is provided to victims in the course of investigations into other types of offences. A quite successful network is in place which coordinates with the Ministry's Victim and Witness Assistance Division in arranging for repatriation and for protective and other measures for victims who are foreign nationals. These same types of measures and arrangements can be undertaken in cases involving investigations into these types of offences.

66. As for locating, releasing and searching for missing persons, the Public Prosecution Service works directly with INTERPOL, using the tools provided for in that Organization's regulations in an efficient and timely manner. This includes tools such as the notifications system, which has already been used successfully in other cases and could be used in investigations into these kinds of offences.<sup>40</sup>

67. The Public Prosecution Service also makes regular use of international cooperation mechanisms, which have served to grant protection measures to foreign victims and coordinate assisted returns among States.

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

### Paragraph 16

68. In cases where the State of Chile requests extradition, the procedure in place under the old system is regulated by the Code of Criminal Procedure and applies to events that occurred before the entry into force of the amended Code, as stipulated in articles 483 et seq.<sup>41</sup>

69. Where, as a result of a trial, an individual who is outside the national territory is implicated in a crime for which the law stipulates a custodial sentence exceeding one year, in any category, the trial judge will refer the details and documentation to the Supreme Court so that it can decide whether the extradition of the accused should be requested of the

5. The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (Washington D.C., 14 November 1997).

6. The United Nations Convention against Transnational Organized Crime, adopted in Palermo on 12 December 2000, and its Protocols.

7. The United Nations Convention against Corruption (New York, 14 December 2005).

8. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988).

9. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Paris, 15 February 1999).

<sup>40</sup> The tools include blue and yellow notices, relating to the search for persons in the context of criminal investigations for missing persons.

<sup>41</sup> Articles 635 et seq.

Government of the country where the person is currently located. Once the Supreme Court has received the details, these will be examined by the relevant judicial service to determine whether the extradition request should be made in accordance with treaties concluded with the country where the defendant has taken refuge or, failing that, in accordance with the principles of international law.

70. Once the report of the judicial service of the Supreme Court is complete, the background documentation will be passed on to the judges, who will read the documentation, the report of the judicial service and the relevant applicable treaties and decide whether or not extradition should be sought.

71. If it decides to proceed, the Supreme Court will contact the Ministry of Foreign Affairs, provide it with a copy of the documentation and request that it complete the necessary diplomatic formalities for extradition. In this proceeding, the guarantees recognized in the Constitution and the human rights treaties ratified by Chile must be upheld.

72. If the Supreme Court declares that the extradition should not proceed, or if the extradition request is denied by the authorities in the country where the accused is located, the case will be returned to the trial judge to proceed as determined by law. In cases where another State requests extradition, the procedure is regulated under the revised procedures governed by articles 440 et seq. of the Code of Criminal Procedure.

73. The guarantees which protect the accused in this procedure are enshrined in article 449 b).<sup>42</sup> The accused will not be extradited if the alleged crime is of a political, purely military or religious nature. The accused may be represented by a lawyer of his or her choosing. Otherwise, he or she will be provided with specialized defence counsel.<sup>43</sup>

74. The ruling given on the extradition request is subject to appeal or a petition for annulment.

75. If extradition is granted, the accused will be placed at the disposal of the authorities of the requesting State through the Ministry of Foreign Affairs and the actual handover will be carried out through INTERPOL to the counterpart from the requesting State.

76. In cases where the State of Chile requests extradition, the procedure is governed by articles 644 et seq. of the Code of Criminal Procedure.

77. In this process, once the investigation is declared closed, a decision is made as to whether or not the extradition request is admissible in accordance with treaties concluded with the requesting State or pursuant to the principles of international law, if there is no treaty.<sup>44</sup>

78. If a request for extradition is granted, delivery will take place according to the same procedure as in extraditions under the revised procedures.<sup>45</sup>

79. Even though the principle of non-refoulement is not explicitly enshrined in national legislation, given that Chile has ratified the Convention, the provisions of the Convention can be invoked and applied in an extradition procedure.

80. Diplomatic assurances as a condition for extradition are accepted in Chile. Before extraditions are carried out at its request, Chile has usually had to provide sufficient assurances, to the requested States as a condition for being granted extradition. Chile can

<sup>42</sup> Article 449 (b) "That the crime of which he or she is accused or for which the person has been sentenced are those that permit extradition under existing treaties or, in their absence, the principles of international law".

<sup>43</sup> Attached to the Office of the Public Defender.

<sup>44</sup> The sources used in this case are the Code of Private International Law and the 1933 Montevideo Convention on Extradition.

<sup>45</sup> Information provided by the Directorate of International Affairs and Human Rights of the Supreme Court.

also request assurances when granting extradition; article 16 of the Convention can be invoked as grounds for refusal.<sup>46</sup>

## Paragraph 17

81. Extraditions are regulated by internal rules, international extradition treaties or general principles of law. The review carried out is based on the requirements of the international treaties that are invoked. Every extradition process involves a comprehensive analysis that is conducted in the light of international extradition treaties and that meets the set standard.

82. On potential situations of danger or risks that a person may incur, accused persons are assisted by specialized defence counsel from the beginning of the extradition process. Counsel can request that security be provided for the accused.

83. In cases of extradition requests from other States, the Public Prosecution Service represents the interests of the requesting States. However, the function carried out must meet objective criteria, ensuring the correct implementation of the law.<sup>47</sup>

84. In 2018, there were two extradition requests by Chile relating to alleged cases of enforced disappearance:

(a) Case 8600-2018: Carlos Humberto Minoletti Arriagada is accused of committing kidnapping and aggravated homicide<sup>48</sup> and being a co-perpetrator of aggravated kidnapping (Criminal Code, art. 141, subpara. 1 and art. 391, 1), crimes that were carried out on 19 October 1973 in the Topater sector, Calama, Chile;<sup>49</sup>

(b) Case 11.990-2018: Armando Fernández Larios is accused of committing crimes of aggravated kidnapping (Criminal Code, art. 141, subpara. 1) on 19 October 1973 in the Topater sector, Calama, Chile.<sup>50, 51</sup>

## Paragraph 18

85. While the crime of enforced disappearance is currently not characterized as such in the Criminal Code, relevant elements of the crime can be found in article 6 of Act No. 20357.<sup>52</sup>

<sup>46</sup> No such cases have been reported.

<sup>47</sup> In a case where the Public Prosecution Service is aware that a person whose extradition is requested is at imminent risk of becoming a victim of enforced disappearance, or where there are any risks to that person's life, the Service is obliged to act objectively and apply all relevant safeguards, even if it is representing the interests of the requested State. In this regard, the principle of objectivity supersedes the obligation to represent the interests of the requesting States.

<sup>48</sup> Of Mario Argüelles Toro, Jorge Jerónimo Carpanchay Choque, Carlos Alfredo Escobedo Cariz, Luis Alberto Gaona Ochoa, Luis Alberto Hernández Neira, José Rolando Hoyos Salazar, Hernán Elizardo Moreno Villarroel, Milton Alfredo Muñoz Muñoz, Carlos Piñero Lucero, Fernando Roberto Ramírez Sánchez, Alejandro Rodríguez Rodríguez, Roberto Segundo Alcayaga and José Gregorio Saavedra González.

<sup>49</sup> Of Manuel Segundo Hidalgo Rivas, Domingo Mamani López, Daniel Ernesto Miranda Luna, Luis Alfonso Moreno Villarroel, Rosario Aguid Muñoz Castillo, Víctor Alfredo Ortega Cuevas, Sergio Moises Ramírez Espinoza, Rafael Enrique Pineda Ibacache, Jorge Rubén Yueng Rojas, Daniel Jacinto Garrido Muñoz, Bernardino Cayo Cayo, Carlos Berger Guralnik and Haroldo Cabrera Abarzúa.

<sup>50</sup> Ibid.

<sup>51</sup> Both extraditions were requested from the United States of America (information provided by the Directorate of International Affairs and Human Rights of the Supreme Court).

<sup>52</sup> Act Defining Crimes against Humanity and Genocide and War Crimes: "The same penalty shall apply to persons who, in the circumstances described in article 1 and with the intention to remove a person for a long period from the protection of the law, deprives that person in any way of physical liberty, without responding to a request for information as to the person's fate or whereabouts or who denies that request or provides false information."



86. There are no records of cases in which States, on the basis of the Convention, requested the extradition of a specific person for enforced disappearance. Nevertheless, the sources that have been applied in cases where there is no extradition treaty are the Code of Private International Law (Bustamante Code), the general principles of international law and, as a supplement, the Montevideo Convention of 1933.

87. Under the legislation, enforced disappearance carries a penalty of rigorous imprisonment in the intermediate to maximum categories (from 10 years and a day to 20 years). This is consistent with the requirement concerning the minimum penalty to grant extradition (deprivation of liberty for more than one year). If the extradition is requested by a State which is not a party to the Convention, it may still be possible to grant it if the requirement of dual criminality is fulfilled. Furthermore, Chile does not make extradition conditional on the existence of a treaty. Extradition is also possible in the absence of an extradition treaty with the requesting State, since the judicial authority is guided by the general principles of international law.<sup>53</sup>

88. There are no obstacles to extradition in the country's legislation, extradition treaties or agreements with third countries on enforced disappearance.

89. On the cases on which updates have been requested (para. 117), a request has been made for the extradition of Adriana Elcira Rivas González from Australia (Supreme Court case 8915-2013), as she is accused of the aggravated kidnapping of six persons.<sup>54</sup> The application is being processed with the relevant authorities in the requested State.<sup>55</sup>

90. Regarding the request for the extradition of Armando Fernandez Larios from the United States of America for the aggravated kidnapping of David Silberman Gurovich (Supreme Court case 5367-2005), the request was approved by the Supreme Court on 4 January 2006 but the requested Government did not accept it.<sup>56</sup> The extradition was prohibited under the terms of a judicial agreement between the accused and that Government.<sup>57</sup> Nonetheless, Chile has continued to request the extradition of Armando Fernández Larios from the United States of America for the kidnapping and/or aggravated murder of other victims.<sup>58, 59</sup>

91. Lastly, enforced disappearance is not defined as a political crime or a politically motivated crime.

<sup>53</sup> Among those principles, those of the minimum penalty and dual criminality are seen as essential.

<sup>54</sup> Aggravated kidnapping of Fernando Alfredo Navarro Allendes, Lincoyán Yalu Berrios Cataldo, Horacio Cepeda Marinkovic, Juan Fernando Ortiz Letelier, Héctor Véliz Ramírez and Reinalda del Carmen Pereira Plaza.

<sup>55</sup> The Office of the Australian Attorney General will decide on the admissibility of the request.

<sup>56</sup> Diplomatic note from the State Department of the United States of America dated 10 April 2015.

<sup>57</sup> An agreement concluded regarding the role of Fernández Larios in the assassination of the former Foreign Minister Orlando Letelier and his deputy Ronni Moffitt.

<sup>58</sup> For the aggravated homicide of Carmelo Soria Espinoza (Supreme Court case No. 19624-2016); for the aggravated homicide of Ronni Moffitt (Supreme Court case No. 49732-2016); for the aggravated homicide of Oscar Gastón Aedo Barrera and others (Supreme Court case No. 69674-2016); for the abduction and murder of Manuel Sanhueza Mellado (Supreme Court case No. 11474-2017); and for the aggravated kidnapping of Manuel Segundo Hidalgo Rivas, Domingo Mamani López, Daniel Ernesto Miranda Luna, Luis Alfonso Moreno Villarroel, Rosario Aguid Muñoz Castillo, Víctor Alfredo Ortega Cuevas, Sergio Moisés Ramírez Espinoza, Rafael Enrique Pineda Ibacache, Jorge Rubén Yueng Rojas, Daniel Jacinto Garrido Muñoz, Bernardino Cayo Cayo, Carlos Berger Guralnik and Haroldo Cabrera Abarzúa (Supreme Court case No. 11990-2018).

<sup>59</sup> Information provided by the Directorate of International Affairs and Human Rights of the Supreme Court.

## Paragraph 19

### Paragraph 19 (a)

92. Regarding articles 93 (b), 94 (h) and 135 of the Code of Criminal Procedure, concerning the time when the deprivation of liberty begins and possible exceptions to those articles, all the articles are applicable from the outset of deprivation of liberty.<sup>60</sup>

93. As for the communication of the right to consular assistance, there is an inter-agency agreement and a protocol whereby the police must inform the Ministry of Foreign Affairs of the arrest of a foreign national. This implies that the police must inform the person arrested of this right. The Public Criminal Defender Service has no record of complaints brought for failure to observe this requirement.

94. According to the records of the National Prison Service, there were no complaints from foreign nationals deprived of their liberty concerning violations of this right.

95. Act No. 20.084 and its regulations provide that the National Service for Minors (SENAME) must enforce any sanctions and measures ordered by a court in a judicial decision.<sup>61</sup> Article 31 of Act No. 20084 addresses the issue of arrests in flagrante delicto, establishing that adolescents deprived of liberty may always exercise the rights enshrined in articles 93 and 94 of the Code of Criminal Procedure and articles 37 and 40 of the Convention on the Rights of the Child. In addition, article 49 of Act No. 20084 enumerates rights that must be assured during the enforcement of custodial penalties and measures. It establishes the right to receive regular visits in person at least once a week (subpara. (i)) and to communicate regularly, and in private, with others, particularly lawyers (subpara. (iv)). These rights are also set out in the related regulations, notably articles 11 and 49 and paragraphs 4 and 5 of part V. The rules on exceptions are laid down in article 80, which deals with the suspension of visits. Regarding medical visits, article 49 (d) establishes that care must be provided to meet detainees' health needs as a matter of rights.

96. As for guaranteeing communications in compliance with article 94 (e) of the Code of Civil Procedure, National Service for Minors has a cooperation agreement with the National Prison Service on the basis of which parallel regulations have been issued for the two institutions.<sup>62, 63</sup> Guidelines for adolescents and young people in closed centres deal with the rights of adolescents in a cross-cutting manner.<sup>64</sup> A series of documents have been drawn up in this connection.<sup>65</sup>

<sup>60</sup> In that regard, the literal wording of article 135 states that the public official in charge of the procedure must inform the person concerned of the reason for his or her arrest at the time when it is carried out. That is, the implementation of this article and the guarantee enshrined therein necessarily imply that the arrest occurs so that, as a necessary condition, the article must be applied from the moment when the arrest begins. Article 93 (b) also states that assistance may be given to the person being held as soon as he or she is arrested. This implies that defence counsel may visit the police station in order to interview the person in custody. However, article 194 of the Code of Criminal Procedure permits a prosecutor to take a statement from the accused without the defence counsel being present, provided that it is a voluntary process. Article 94 (h) does not allow for visits to or communication with an accused person who is in a police station awaiting a custody review hearing. This article is designed for instances where the accused has been deprived of liberty by a decision of the court. Lastly, article 91 of the Code of Criminal Procedure also envisages the possibility that the police may contact the defence lawyer in the event that the police statement is verified. Although this is not clear from the wording of the text, this has been its interpretation in case law.

<sup>61</sup> Established by Supreme Decree No. 1378 of the Ministry of Justice and Human Rights.

<sup>62</sup> Resolution No. 1145 of 8 May 2014 of the National Directorate of SENAME.

<sup>63</sup> These include resolution No. 312/B of 7 June 2007 of the National Service for Minors, which governs visits and how they take place, inter alia. The director of each centre is responsible for establishing such guidelines as he or she sees fit, subject however, to meeting certain minimum standards. The technical committee established under article 65 of the regulations concerning the Act comprises the director of the centre, the technical chief, the head of the closed centre section in temporary detention centres and closed centres, and a representative of the programme for treatment of drug or alcohol addiction. The committee meets at least twice a month.

<sup>64</sup> Memorandum No. 681 of 24 August 2018.

<sup>65</sup> General rules on visiting rights: Circular letter No. 0020 of 7 June 2007.

97. Article 15 of the regulations concerning Act No. 20084 provides that, in the case of adolescents who are foreign nationals, reports concerning their admission to a centre or programme must be submitted to the consular authorities of their countries, if these young persons are habitually resident outside Chile or upon request. The National Service for Minors is not aware of any complaints or allegations concerning a breach of this right.

98. The current text of Act No. 18314, which defines terrorist acts and establishes the related penalties, does not place specific restrictions on the safeguards set out in article 17, subparagraphs (d), (e) and (f), of the Convention. The special measures which may be ordered during a proceeding are addressed in article 14 and will be taken during or after the formalization of the process if pretrial detention is ordered. These measures involve restrictions on visits or the interception or recording of telephone or electronic communications. They will in no case affect communications between the accused and his or her counsel. The relevant decision must be ordered by means of a reasoned court decision and is liable to appeal.

99. Act No. 18314 gives effect to the regulations established by article 236 of the Code of Criminal Procedure, regarding measures instituted without the knowledge of the person concerned. These must be authorized by a judicial decision where this is essential for the effectiveness of these measures. Similarly, article 182 of the Code provides for the possibility of keeping certain acts secret from the accused and other parties when necessary for the effectiveness of an investigation. In short, the law which defines and allows for action to counter-terrorism makes an exception to the general rules applicable to normal criminal proceedings in terms of special measures to be taken to deal with the accused in criminal investigations.

#### **Paragraph 19 (b)**

100. There are no limitations imposed by the National Prison Service on access by the relevant authorities and institutions to prisons under its management and supervision.

101. The National Human Rights Institute has access to any place where a person deprived of liberty is or may be located. In this respect, it can enter all prisons administered by the National Prison Service without having to request authorization.<sup>66, 67</sup> Circular No. 516 of the National Prison Service states that the staff of the institution must be deferential, responsive and open to collaboration with staff of the Institute.<sup>68</sup> In turn, every six months, the Institute will send the Unit for the Protection and Promotion of Human Rights of the National Prison Service a list identifying the officials who will carry out the visits.

102. With regard to adult prisons that have units for adolescents (Act No. 20.084), 16 such institutions have special sections for adolescents.<sup>69</sup>

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Specific regulations: Circular letter No. 15 of 23 May 2007 regulates the rights and duties of adolescents in pretrial detention.

Memorandum No. 804 of 30 December 2015 regulates the entry of lawyers to detention facilities and their registration.

<sup>66</sup> Prison enforcement centres; women's prisons; prison complexes; pretrial detention centres; labour and education centres, social rehabilitation centres and support centres for social integration. A list of all correctional facilities is annexed to this document.

<sup>67</sup> Article 4, paragraph 2, of Act No. 20405 of 10 December 2009, establishing the National Human Rights Institute.

<sup>68</sup> In an official note dated 17 December 2014, the National Director of the Prison Service gave instructions on supervision and cooperation in respect of visits to prisoners by the Institute's staff.

<sup>69</sup> According to the computer system, these centres are:

1. Arica
2. Antofagasta
3. Copiapo
4. La Serena
5. Valparaiso
6. Puente Alto

103. With regard to the direct administration of SENAME centres for adolescent offenders, admission is regulated under the Code on the organization of the courts. Articles 90 and 91 of the regulation concerning Act No. 20084 are applicable in particular.<sup>70, 71</sup> As for the Institute, general law is applicable in the absence of any special instructions on its admission to these custodial centres. That being said, point 2 VIII 1 of resolution No. 312/B, in which mention is made of admission of civil society groups, still applies.

104. With regard to restrictions on access to places of deprivation of liberty, the Public Criminal Defender Service has found some cases of specific difficulties in some prisons. To address this problem, the Service concluded an agreement with the National Prison Service in December 2018.

105. The draft legislation designating the Institute as the national mechanism for the prevention of torture was adopted by the Congress and submitted to the Executive on 8 January 2019 for the completion of the formalities for enactment into law.

106. The powers of the Institute continue to be those provided for in article 4 of Act No. 20405, relating to its authority to enter State premises where a person is or may be deprived of liberty.

107. To reinforce the idea that the two institutions will have the authority to enter places of deprivation of liberty, it is specified in article 3 (b) of the adopted draft text that the power of the national mechanism for the prevention of torture to make regular, unscheduled visits for the purposes of prevention and monitoring will be without prejudice to the Institute's own powers.

#### **Paragraph 19 (c)**

108. As for access to the records of persons deprived of their liberty, the internal computer system of the National Prison Service can be accessed only by staff of the institution who have received an access profile from the Prison Supervision Department of the Office of the Deputy Director for Operations.<sup>72</sup>

109. Regarding measures taken to ensure that all records are completed with all the information listed in article 17 (3) of the Convention and that they are updated, including with respect to monitoring actions, the National Prison Service has records pertaining to the following elements of article 17 (3):

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7. Rengo
  8. Cauquenes
  9. Chillan
  10. Concepcion
  11. Temuco
  12. Temuco women's jail
  13. Rio Bueno
  14. Puerto Monti
  15. Aysen
  16. Punta Arenas

<sup>70</sup> Since The National Service for Minors is responsible for sanctions and measures ordered against adolescents, only adolescents can be admitted to its centres, in accordance with article 34 of the regulations concerning the Act and based on a judgment of a competent court. Article 33 of the regulations provides that centres referred to under Act No. 20084 will be established, changed or closed by Supreme Decree of the Ministry of Justice; only the National Service for Minors has separate centres at the national level created by decree, and these are always administered directly. This is in accordance with article 43 of Act No. 20084.

<sup>71</sup> Mainly articles 567–571, 573–76 and 578–585 bis.

<sup>72</sup> Concerning access by entities outside the institution, the information is delivered in accordance with Act No. 20285 of 20 August 2008 on access to public information.

<i>The identity of the person deprived of liberty;</i>	<i>Yes</i>
The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;	The prison guards have the committal order issued by the competent court, which indicates the date and the authority ordering the deprivation of liberty. The time of entry to the prison is marked, but there are no records of the day, time or place of arrest or of the arresting authority.
The authority that ordered the deprivation of liberty and the grounds for it;	Yes
The authority responsible for supervising the deprivation of liberty;	Yes
The place of deprivation of liberty, the date and time of admission and the authority responsible for the place;	Yes
Elements relating to the state of physical health of the person deprived of liberty;	In order to safeguard the physical integrity of the person deprived of liberty, on arrival, steps are taken to place the person in a cell block based on the prisoner's offender category.
In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;	Details of a person who dies during detention are removed from the institution's computer system and the person is marked "deceased".
The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.	Yes

110. Such records are updated daily by event.

111. In connection with the sanctions provided for by the legislation, if a record is discovered to be missing or incomplete, an expedited investigation or administrative inquiry may be initiated to look into the administrative responsibility of the relevant official. If the official is found to be at fault, a disciplinary penalty of some kind may be imposed.<sup>73</sup> This is without prejudice to any criminal proceedings that may be undertaken.

112. The internal computer system does not record any information as to complaints that have been made.

113. The National Service for Minors maintains a computer system that records all admissions of adolescents to detention centres and/or programmes pursuant to a court-ordered measure or sanction.<sup>74</sup> This register is separate from the one maintained by the National Prison Service, in accordance with article 150 of the regulations concerning Act No. 20084. The penultimate paragraph of article 35 of the Act addresses the issue of who can access this register.<sup>75</sup> Circular letter No. 19 of 7 June 2007 provides instructions on the right to privacy and confidentiality of information on adolescents.

<sup>73</sup> Administrative Statute: censure, fine, suspension for a period of from 30 days to 3 months, and dismissal.

<sup>74</sup> Pursuant to article 36 of the regulations concerning Act No. 20084.

<sup>75</sup> Article 35. Record of enforcement (...)

The record of enforcement will be for the sole use of personnel authorized by the director of the programme or head of unit; defence counsel for the adolescent or the defence assistant under his or her responsibility has the right to access it in any event.

The sharing of information concerning personal data contained in the adolescent's file is a matter addressed in the provisions of Act No. 19628 on the protection of privacy.

114. On the sanctions provided for, the aforementioned general rule on responsibility as defined in the Administrative Regulation applies.<sup>76</sup> In this regard, when the system for follow-up to administrative inquiries was reviewed, it was noted that there have been no disciplinary cases involving the matter in question.<sup>77</sup>

115. Along with these measures, the computer system used for the management of criminal defence cases by the Public Criminal Defender Service contains information on any person who has been represented by a public criminal defender, tried for a crime and is serving a sentence of deprivation of liberty.

#### **Paragraph 19 (d)**

116. The Code of Criminal Procedure sets out the rights of accused persons who are deprived of liberty (art. 94). Taken in conjunction with the provisions on lawyers' rights (art. 96), this meets the standard required by article 18 (1) of the Convention. Information requested by relatives or other parties can be provided through the procedure established by Act No. 20285, on access to public information. This Act enshrines the right of every person to request and receive information from any administrative body of the State. Prison regulations also allow for the right to communicate and to be informed about some of the points referred to in the Convention.

117. Lastly, the right of recourse established in article 95 of the Code of Criminal Procedure, like the right set out in article 21 of the Constitution, meets the requirements of article 20 (1) of the Convention.

#### **Paragraph 19 (e)**

118. The Public Criminal Defender Service has no mechanisms to protect persons with a legitimate interest in a case. In the Code of Criminal Procedure, protection can be requested for witnesses (art. 308), and the defence counsel has the recognized right to exercise the authority conferred on him or her by law to obtain information while safeguarding its integrity.

119. In the case of any violation of the rights of adolescents in custodial centres, the National Service for Minors determines the action to be taken and informs the administrative authorities, the Public Prosecution Service and the police, if appropriate.<sup>78</sup>

#### **Paragraph 19 (f)**

120. For these purposes, the National Prison Service has various circulars that deal with release from custody.<sup>79</sup> The Public Criminal Defender Service is apprised of release

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<sup>76</sup> Ministry of Finance Decree-Law No. 29 of 2004, which sets out the revised, consolidated text of Act No. 18834, concerning the Administrative Statute, provides that any official (permanent or contractual staff) may bear administrative liability for an offence committed during the course of duty that is subject to a disciplinary measure. This must be determined by means of an expedited investigation or administrative inquiry.

<sup>77</sup> There is a summary dated 2014 for the presence of inconsistency in information on young people serving sentences in the Arica centre, specifically in the semi-closed system.

<sup>78</sup> Circular No. 2308 of October 2013 and Circular No. 2309 of October 2013.

<sup>79</sup> These include:

- Circular No. 356 of 12 September 2018, in which the Deputy Director for Operations issues instructions on the release of identity documents and discharges on weekends and holidays;
- Circular No. 169 of 28 April 2015, in which the Deputy Director for Operations restates the rules on supervision of persons discharged from prison units and provides related instructions;
- Circular No. 146 of 7 July 2009, in which the Deputy Director for Administration outlines the procedures for the admission of convicted prisoners;
- Circular No. 302 of 11 December 2012, in which the Deputy Director for Operations provides guidance on standardized procedures to be followed by the offices responsible for prison population registration, movements and monitoring. These instructions concern admission into a prison, define the actions to be performed by the prison population registration and movement

decisions through the National Prison Service notification that is automatically sent to the court. The manual of minimum requirements expected of the Prison Ombudsman specifies the obligation to report the reason why a person deprived of liberty could not be interviewed following release from custody.

121. The courts and the National Service for Minors are responsible for ensuring and supervising the release of adolescents in provisional custody. Regarding paragraph 158, the provisions of article 37 of the regulations concerning Act No. 20084 should be borne in mind.<sup>80</sup>

## Paragraph 20

122. The Directorate of Investigative Police does not have a specific programme of study on enforced disappearance. Nonetheless, and in line with the priorities identified in the first National Human Rights Programme for 2018–2021, the institution has updated content relating to the subject matter. In the case of enforced disappearance and the Inter-American Convention on Forced Disappearance of Persons, both subjects have been included in the courses entitled “Police Ethics, Police Procedures I, Introduction to Human Rights and Human Rights and Police Work”.

123. Since 2018, a core course on human rights has been run at Army, Navy and Air Force schools, consisting of a training programme on human rights education.<sup>81</sup>

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office to verify the legality of the admission measure and address the issue of prisoner discharge and release;

- Circulars Nos. 134 of 17 June 2013 and 169 of 28 April 2015, in which the Deputy Director for Operations give directions on the discharge of prisoners from prisons and courts and restates the supervision processes to be followed in this regard;
- Circular No. 501 of 4 December 2014, in which the Deputy Director for Operations provides instructions on the use of the relevant module in the internal system on travel to courts and restates the procedure for discharging prisoners. This circular describes the actions to be taken in case of inconsistencies in the release order and in cases of discharge ordered by the court;
- Exemption Resolution No. 10.182 of 2 October 2014, in which the National Director approves rules on prison furloughs and processing of release orders. In part II, details of the administrative procedure for the discharge of a person deprived of liberty can be found. The procedure includes an identity check of the person to be released;
- Circular No. 166 of 25 April 2016, in which the Deputy Director for Operations issues instructions on the use of identity checks to verify information about inmates who are to be released;
- Circular No. 323 of 17 August 2018, in which the Deputy Director for Operations describes the process for handling requests from inmates to be allowed to leave at 7 a.m. on the day following the completion of their sentence. The circular states that an inmate who asks to stay overnight in the prison may be allowed to do so on an exceptional basis as a means of safeguarding the person’s welfare.

<sup>80</sup> Article 37 deals with reporting the completion of a sentence or other measure. Upon completion of the sentence or measure, the programme or centre director, as the case may be, must notify the enforcement and send a copy of the notification to the Civil Registry and Identification Service and the defence counsel of the adolescent.

<sup>81</sup> The content includes a unit on the legal foundations of human rights that discusses international human rights declarations, principles and treaties. There are also units on human rights and criminal law which cover topics such as international criminal jurisdiction as it relates to human rights, individual criminal responsibility and command responsibility, crimes against humanity, war crimes and crimes of genocide.

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

### Paragraph 21

124. In the context of criminal investigations, in accordance with article 108 of the Code of Criminal Procedure, both the disappeared person and the members of their immediate families are considered as victims.<sup>82</sup>

125. In the absence of a legal definition of enforced disappearance in Chile, a number of international instruments are used to determine the content of the act. Thus, for example, in the cases of José Vergara and José Huenante, account was taken of the definitions of enforced disappearance contained in the Inter-American Convention on Forced Disappearance of Persons (art. II), the International Convention for the Protection of All Persons from Enforced Disappearance (art. 4) and, in particular, the recommendations of the Working Group on Enforced or Involuntary Disappearances.

126. To seek legal redress for victims of enforced disappearance (in cases that occurred subsequent to the end of the dictatorship), it is now possible to pursue all avenues with a view to suing for damages in criminal proceedings (Code of Criminal Procedure, art. 59). Cases can also be filed directly with the civil courts.

127. With regard to reparation mechanisms that can be used by the Civil Registry and Identity Service pursuant to Act No. 20377, concerning declarations of absence by reason of forced disappearance of persons, once a court decision has been issued declaring the absence of a person by reason of forced disappearance, the Service will issue a legal document transferring the assets of the disappeared person and dissolving the marriage at the express request of the spouse of the disappeared person. The Act provides legal recognition to the rights of family members in relation to the absent person's property and marriage; this is not applicable to criminal proceedings.

128. As for legislation on the legal situation of disappeared persons and their families, the Civil Registry and Identity Service, pursuant to Act No. 20377, is the institution that issues the deed of transfer of assets of the disappeared person.<sup>83, 84, 85</sup>

129. With regard to the list of identified victims provided by Human Rights Programme Unit of the Ministry of Justice and Human Rights, 174 persons have been declared by the courts, at the request of family members, as presumed dead. The related legal consequences in areas such as the dissolution of marriage, inheritance and others, have ensued.

<sup>82</sup> For the purposes of criminal proceedings, article 108 of the Code of Criminal Procedure defines a victim as the person aggrieved by the crime. The same article provides that, in crimes resulting in the death of the aggrieved person and in cases where that person is unable to exercise the rights granted under this Code, the spouse or civil partner and children will be considered as victims, as will ascendants, a live-in partner, siblings and the adoptive parents or adopted children of the victim.

<sup>83</sup> Although Act No. 20377 deals with the legal effects, on property and marriage, of the absence of a disappeared person, no notation is made on a birth register to indicate that the person is absent owing to enforced disappearance. The fact that a person classified as disappeared is not registered as deceased in the records of the Civil Registry and Identification Service has had consequences, for example, for the makeup of the electoral roll.

<sup>84</sup> Since 2010, there have been 90 deeds issued providing for the transfer of property owned by persons declared absent by reason of enforced disappearance and six marriages have been dissolved at the express request of the spouse of the disappeared person.

<sup>85</sup> There is a bill (BOL 9593-17) that is intended to provide for the establishment of a national register of victims of enforced disappearance. The main outcome envisaged is the creation of a database of persons declared and recognized by the State to be victims of enforced disappearance. This would allow for precise identification of these persons and, for example, prevent their names from being added to the electoral roll.



## Paragraph 22

130. The judiciary has no record of the compensation claims referred to in paragraph 176 or of the case numbers relating to judgments in which the Supreme Court reportedly rejected the claims. Nor does it know whether they have been reinstated.<sup>86</sup> However, with regard to injury arising from serious human rights violations committed under the dictatorship, the total amount of compensation awarded by the courts between 1 January 2002 and 31 October 2018, as reflected in Supreme Court replacement judgments (*sentencias de reemplazo*) and judgments confirming earlier rulings, is Ch\$ 53,288,000,000.<sup>87</sup>

## Paragraph 23

131. The draft legislation amending Act No. 19.992 is at the second stage of review in the Senate.<sup>88</sup> However, the obligation of secrecy provided for in the law has not been an obstacle to the prosecution of those responsible for crimes of torture during the dictatorship. In addition, in the case of *Maldonado et al v. Chile*, the Inter-American Court of Human Rights affirmed that the secrecy obligation was a proportionate measure.

132. The draft legislation amending Decree-Law No. 5200 of 1929, on preventing the destruction of files and background information by the Ministry of Defence, the armed forces and the forces responsible for security and public order, is currently at the second stage of review in the Senate.<sup>89</sup>

## Paragraph 24

133. The search for missing persons begins with the investigation by the Public Prosecution Service or the courts, when a complaint or case is filed by an individual or institution. The Public Prosecution Service and/or the courts involve auxiliary institutions, such as the Forensic Medicine Service, in such investigations. The Forensic Medicine Service has a special forensic identification unit staffed by a multidisciplinary team qualified to conduct searches and excavations and exhume biological and non-biological remains from victims of enforced disappearance. The team conducts analyses and identifications, prepares reports and deals with the return of the remains to families. The National Human Rights Programme for 2018–2021 includes a number of measures in this regard.<sup>90</sup> To facilitate the identification of victims who disappeared in Operation Condor, the Forensic Medicine Service concluded a scientific cooperation agreement with the Argentine Forensic Anthropology Team to share genetic information on victims and their families between Chile and Argentina.

<sup>86</sup> To identify them, it would be necessary to review all cases decided by the Supreme Court in this area in order to identify all claims that were dismissed by the Court. Then information would need to be gathered from all civil courts in the country and visiting judges who may have heard the cases at first instance in order to clarify whether claims for compensation for damages relating to the same events had been resubmitted. Owing to the time provided to prepare this response, it would be impossible to obtain this information and process it.

<sup>87</sup> Information from the Digital Historical Memory website, Library Department, Supreme Court, 2018. Available at: <http://mhd.pjud.cl/ddhh/pdf/resumen.pdf> (consulted on 31 December 2018).

<sup>88</sup> BOL No. 10883-17.

<sup>89</sup> BOL No. 9958-17.

<sup>90</sup> The Special Forensic Identification Unit is part of the inter-agency board to assist the justice system in the search for victims (described in paragraph 51 of the report) and the inter-agency board for Patio 29 (para. 52).

134. The unit maintains a database with details of reference samples and victims, the genetic profiles of skeletal remains of victims of the dictatorship and reference samples of blood and bone tissue from family members. These profiles are obtained from the analyses performed by international laboratories accredited under standard 17025. They are provided to Chile through an online repository that can only be accessed by members of the unit. They are constantly subjected to comparative analyses so that any matches can be reported to the courts in charge of these cases. The samples are obtained voluntarily or by court order, using standardized procedures established in the certification process. Genetic profiles are used solely for the identification of victims and are not held in the national DNA registry, where the profiles of relatives of missing persons and their families who may have been victims of enforced disappearance subsequent to March 1990 should be entered.

135. The remains and belongings of the victims are returned to the families pursuant to a court order. The Human Rights Programme Unit assists in this process. Account is taken of the families' wishes regarding the date, venue, participants, publicity and any other request that they may have. If the families so desire, the Special Forensic Identification Unit and the Human Rights Programme Unit will organize meetings with them prior to the return, listen to requests and report on the results of analyses conducted. This must all be done with prior judicial authorization.

## Paragraph 25

136. In the list of human rights judgments issued by the Supreme Court from 2002 to 26 December 2018, only two cases are registered as crimes of abduction of minors and one as a possible abortion or abduction of a minor, as detailed below:<sup>91</sup>

(a) Case No. 3587 of 2005, known as the "Parral episode", reviewed by visiting Judge Alejandro Solís Muñoz and decided by the Supreme Court on 27 December 2007;<sup>92</sup>

(b) Case No. 46483 of 2016 heard by the Supreme Court and concerning the abduction of Claudio Santiago Venegas Lazzaro, a minor, in September 1974, in the commune of Santiago;<sup>93</sup>

(c) Case No. 2182-98, concerning the abduction of Diana Frida Arón Svigilsky.<sup>94</sup>

137. As for ongoing investigations into the abduction of minors, 11 cases are in process nationwide. All of them are at the investigation stage, except for one that has gone to trial (plenary).<sup>95</sup>

138. While the legal system of Chile does not establish specific rules covering the wrongful removal of children who are victims of enforced disappearance, articles 41 and 42

<sup>91</sup> Information from the Digital Historical Memory website, Library Department, Supreme Court. 2018. Available at: <http://mhd.pjud.cl/ddhh/pdf/resumen.pdf> (consulted on 31 December 2018).

<sup>92</sup> This was a comprehensive investigation into the abduction of Claudio Jesús Escanilla Escobar as of 23 October 1973 and convictions were handed down in the case.

<sup>93</sup> Juan Manuel Contreras Sepúlveda, César Manríquez Bravo, Raúl Iturriaga Neuman, Gerardo Ernesto Urrich González, Alejandro Francisco Molina Cisternas and Risiere del Prado Molina Cisternas were sentenced to five years' imprisonment in the maximum category of penalty and ordered to pay costs and cover other liabilities, as the co-authors of the abduction of a minor in September 1974 in the commune of Santiago. For the same crime, Manuel de la Cruz Rivas Díaz and Hugo del Tránsito Hernández Valle were sentenced to three years' ordinary imprisonment in the medium category and ordered to pay costs and cover other liabilities.

<sup>94</sup> This case began with a report of presumed misadventure (case No. 11.844 of the Eighth Division of the Criminal Court of Santiago), to which were added case No. 1.830 of the Eleventh Division of the Criminal Court of Santiago and case No. 2.709-2002 of the Eighth Division of the Criminal Court, on the basis of a suit filed by Ana María Aron Svigilsky against all those responsible for the offences of abduction, causing bodily injury, unlawful association and suspected abortion or abduction of a minor in respect of her sister, Diana Frida Aron Svigilsky.

<sup>95</sup> Statistics provided by the Office for the Coordination of Cases involving Serious Violations of Human Rights, 1973–1990.

of Act No. 19620 contain two definitions of offences and penalties for receiving or handing over children outside of the procedures regulated by the Adoption Act.<sup>96, 97</sup>

139. Regarding the falsification, concealment or destruction of documents attesting to the true identity of the children and failure to carry out adoption processes according to the legal regulations, a distinction must be made between illegal adoption (where a crime has been committed or the legal rules in effect at the time of the adoption have been expressly violated) and irregular adoption (where there is no offence against the current legal provisions, but loopholes in the adoption process or the absence of applicable legal rules have been exploited).

140. Some situations classified as cases of illegal adoption are currently under investigation. These relate to events that occurred prior to the enactment of Act No. 19620, relating to the adoption of children in Chile and their departure from the country for the purposes of adoption.<sup>98</sup>

141. As for legal procedures to ensure that children and adults who believe they are the offspring of parents who were subjected to enforced disappearance are guaranteed the right to regain their true identities, the National Service for Minors is developing an origin search subprogramme to support adult adoptees who wish to know about their origins.<sup>99, 100</sup>

142. As for the cancellation of an adoption, this can be requested only by the adopted person when he or she is over the age of 18 and where the adoption has been obtained by illicit or fraudulent means.<sup>101</sup>

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<sup>96</sup> Act No. 19620 of 5 August 1999 establishes rules on child adoption:

Article 41. Any person who, by means of abuse of trust, deception, misrepresentation, falsification of identity and civil status or any other status, obtains the transfer of a minor for that person or a third party or in order to take the minor abroad, for the purposes of adoption, shall be sentenced to ordinary imprisonment in any degree and a fine of from 10 to 20 monthly tax units.

Article 42. Any person who solicits or accepts any type of reward for facilitating the delivery of a minor for adoption shall be sentenced to ordinary imprisonment in the low to medium categories and a fine of from 10 to 15 monthly tax units.

Any public official who takes part in any of the conduct described in the present article shall be subject to penalties in accordance with the previous paragraph, unless a higher penalty is applicable under paragraphs 4 and 9, part V, Section II of the Criminal Code.

<sup>97</sup> The adoption system in place provides for a process whereby the child to be adopted must be declared to be at risk, in a legal process designed to ascertain the child's status vis-à-vis the family of origin. This is intended to ensure compliance with the subsidiarity principle as it relates to adoption.

Persons wishing to adopt a minor must prove their suitability through an assessment and must meet the criteria set out in the law itself. Once they have been found to be suitable, their names will be added to a register of applicants who could provide an alternative family to a child.

Lastly, article 3 (3) of Act No. 19620 states that the procedures set forth therein must be applied with due regard to the best interests and views of the child, account being taken of the child's age and level of maturity.

<sup>98</sup> A confidential investigation carried out by Santiago Appeal Court Judge Mario Carroza.

<sup>99</sup> Technical standards of the origin search subprogramme, approved by Resolution No. 119 of 26 January 2018 issued by the National Directorate of SENAME.

<sup>100</sup> The first step is to request the Civil Registry and Identity Service to confirm whether the applicant is registered as adopted. If not, applicants are told that SENAME cannot intervene. If there are indications that an offence may have been committed, the person is advised to file a complaint and refer the case to Judge Carroza.

<sup>101</sup> Act No. 19.620, art. 38.