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Human Rights Committee

Concluding observations on the sixth periodic report of Chile

Addendum

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

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* The present document is being issued without formal editing.



1. The Government of Chile hereby submits additional information on the recommendations contained in paragraphs 7, 15 and 19, as requested by the Special Rapporteur for follow-up to concluding observations. This document was drafted by the Office of the Under-Secretary for Human Rights, on the basis of input and background information provided by the Ministry of Justice and Human Rights, the Ministry for Women's Affairs and Gender Equality, the Ministry of Health, the Ministry of Education and the Judiciary.

Additional information on paragraph 7

2. The State is working on a new bill to replace Act No. 18314, which defines terrorist acts and establishes appropriate penalties. In October 2014, a committee of experts appointed by the President of the Republic conducted a technical assessment of the content of Act No. 18314 and submitted a set of recommendations, which formed the basis for the bill defining terrorist acts and the penalties related thereto, and amending the Criminal Code and the Code of Criminal Procedure (Bulletin No. 9692-07, merged with Bulletin No. 9669-07, submitted to the National Congress in September 2014). The aim of this initiative is to improve the legislation that defines terrorist acts, with a clear definition and appropriate penalties for terrorist offences. The aim of the proposed amendments is to highlight that terrorism is a global issue, which requires counter-terrorism legislation, while ensuring that the legislation does not target any specific social group and complies with international standards.

3. In terms of progress made in this regard, it should be noted that the bill has been discussed by the Senate Committee on the Constitution, Legislation, Justice and Regulations and is currently undergoing the first reading. Since January 2016, two bodies have been set up to make recommendations on amending the content of the bill. Both the Government and members of parliament have submitted proposals concerning various articles of the bill. As regards the issues raised by the Committee, it is worth noting the submission of two recommendations that seek to guarantee the principles of legal certainty and predictability, in order to comply with international standards on the definition of terrorism.¹ These proposals seek to ensure that the definition of terrorist acts does not refer to concepts that lack legal clarity, such as "public order", or that are excessively broad, such as "deprivation of fundamental rights", as these might lead to an arbitrary or generalized application of what should be a restrictive and exceptional offence such as terrorism.

4. The bill provides that the measure of protected witnesses will be used only at the investigation stage, for certain offences, on specific and well-justified grounds. The bill further provides that this measure must be applicable for a limited period of time only and subject to judicial review. Judicial supervision is crucial, in order to determine whether, given the circumstances of the case, the lives or physical integrity of witnesses or other persons who have participated effectively in the proceedings, or their relatives, are at risk or under serious threat.

5. As regards the application of the Counter-Terrorism Act, according to the judicial records of cases heard between 1 January 2014 and 28 June 2017, verdicts concerning offences under Act No. 18314 were handed down in only four cases.² Three of those cases were decided by the oral criminal court of Temuco and one by the oral criminal court of Puente Alto. The verdicts in question were handed down in 2014, in cases where the Public

¹ One proposal was to remove the words "y 6^o" (and 6) from the phrase "*del Código Penal y artículos 5^o, 5^o b) y 6^o de la Ley núm. 12927*" (of the Criminal Code and articles 5, 5 (b) and 6 of Act No. 12927), as well as the words "*alterar gravemente el orden público*" (seriously disrupt public order). The second proposal was to replace the phrase "*de pérdida o privación de los derechos fundamentales*" (of loss or deprivation of their fundamental rights) with "*afectando la vida, la integridad física, la libertad o la salud pública*" (affecting life, physical integrity, freedom or public health), preceded by a comma. Both proposals will be discussed and voted upon by the Senate Committee on the Constitution, Legislation, Justice and Regulations.

² Case Nos. 1300014341-8, 0910021481-1, 1300145684-3 and 0900033605-7.

Prosecution Service brought terrorism charges against individuals for the following offences: threats, arson, arson resulting in death, attempted voluntary manslaughter and placement of explosive devices. In all of those cases, the charges brought by the Public Prosecution Service were dismissed and the individuals were acquitted, except in one case where the person was convicted, because the court established that an offence had been committed and that the accused had participated in its commission. However, it should be noted that the court classified the offence as an ordinary offence, rather than an act of terrorism. Proceedings are currently under way in three cases, where individuals have been charged with offences under Act No. 18314; at the time of writing, the court has not yet reached a final verdict in those cases.³

6. Lastly, there is no record of the application of the Counter-Terrorism Act against persons exercising their right to freedom of expression or against the Mapuches, because the computer records of the Judiciary do not contain this type of information, identifying the ethnicity of the accused or the type of activity they were engaged in when they were arrested.

Additional information on paragraph 15

(i) Current status and content of the bill permitting abortion on three grounds, including changes to the initial proposal

7. The bill decriminalizing voluntary termination of pregnancy on three grounds (Bulletin No. 9895-11) *is currently under consideration by the legislature, which means that its content may change as a result of the parliamentary debate*. Nevertheless, at its current stage, having been approved by the Chamber of Deputies and by the Senate Health Committee and the Senate Committee on the Constitution, Legislation, Justice and Regulations but not yet by the Senate Treasury Committee and the full Senate, the bill retains the core components of the original proposal and continues to give priority to the will of the pregnant woman. Some of the key features of the bill that has been approved thus far are set out below.

8. *Regulation of the three grounds*: The bill regulates the three grounds outlined in the first paragraph of the new article 119 of the Health Code. This is the most important feature of the bill, for it will enable women in critical situations to decide how they wish to proceed, in accordance with their beliefs and life plans, instead of imposing on them, as the current legislation does, the excessive burden of maintaining the pregnancy for fear of incurring a prison sentence.

9. *Regulation of a special procedure for girls under the age of 14 years*: The bill establishes a special regulation to enable girls under the age of 14 to terminate a pregnancy, recognizing their progressive autonomy and allowing them to properly exercise their fundamental rights. Accordingly, the girl's decision will be subject to the authorization of her legal guardian. In addition, there are three scenarios in which a judgment must be sought from a family court, namely: if the girl has no legal guardian; if her legal guardian refuses to grant permission; or if the medical team considers that requesting consent from the legal guardian would place the child at risk. In court proceedings of this kind, the affair must be resolved without delay, but the legal guardian who has refused to grant permission may challenge the decision.

10. *Support programme*: The bill provides for a support programme, without any deterrent effect and taking full account of the woman's wishes. This programme, which is designed to provide biopsychosocial support, will be part of the social protection system and its main components will be set out in a decree issued by the Ministry of Health.

11. *Right to conscientious objection*: The bill governs conscientious objection by professionals working in surgical wings. It establishes that conscience is a personal attribute, which institutions lack; it also stipulates that the exercise of this right must not prevent women from accessing the medical procedure in question.

³ Case Nos. 1400674179-8, 1300701735-3 and 1600553093-1.

12. *Duty of confidentiality*: The bill stipulates that health professionals have a duty of confidentiality when treating a woman who has undergone an abortion in circumstances other than the three grounds on which it is permitted.

13. *Other relevant points*: As regards the procedure for authorizing an abortion on the second ground, the bill stipulates that the diagnosis must be confirmed by a doctor with the necessary special expertise. The draft currently establishes that, in order for the procedure to be carried out, two concurring diagnoses, made by two specialist doctors, are required.

14. The bill states that, if a woman seeking access to the support programme suffers discrimination, she may take action under Act No. 20609, which provides for measures to combat discrimination.

(ii) Reason for restricting abortion when a pregnancy is the result of rape, based on gestational age

15. Article 119 (3) of the bill provides that an abortion may be authorized by a surgeon when the pregnancy is the result of rape, provided that the woman is not more than 12 weeks pregnant. In the case of girls under the age of 14, the pregnancy may be terminated provided that the girl is not more than 14 weeks pregnant. These time frames were established in an effort to reconcile the right to life, as enshrined in the Constitution, with the right of women and girls to make their own decisions in life-changing situations such as those governed by this bill.

(iii) Nature of the restrictions relating to conscientious objection and any reporting obligations

16. Article 119 ter of the bill governs conscientious objection by professionals who work in surgical wings. It acknowledges that conscience is a personal attribute (which institutions therefore lack) and stipulates that conscientious objection must not prevent women from accessing the medical procedure in question and must not affect more than a limited number of persons. The bill approved thus far states that, if a health professional makes a conscientious objection, the health-care establishment must immediately assign another professional, who does not object, to take part in the procedure. It also states that the Ministry of Health must establish protocols governing the exercise of conscientious objection. These protocols must ensure that treatment is provided to patients who are in one of the three permitted cases and, as such, require access to an abortion. Lastly, the bill places two restrictions on conscientious objection. Firstly, it states that doctors cannot make a conscientious objection if the woman seeking an abortion on the first ground (life at risk) and requires immediate and urgent medical attention. Secondly, if a woman seeks the termination of a pregnancy resulting from rape, the doctor cannot enter a conscientious objection if the deadline allowed for the third ground is about to lapse.

17. The bill also establishes that health professionals have a duty of confidentiality when treating a woman who has undergone an abortion in circumstances other than the three permitted cases. It may be noted that, if the bill is enacted, the three grounds for which it provides must be subject to the general duty of confidentiality that applies to the doctor-patient relationship.

(iv) Measures adopted since the previous reply to ensure access to sexual and reproductive health for all women and adolescents throughout the country

18. One of the strategic objectives of the Ministry for Women's Affairs and Gender Equality is to enable women to enjoy physical autonomy. To that end, it is implementing the Healthy Sexuality and Reproductive Life Programme, which aims to help all persons, especially women, young persons and adolescents, to achieve self-fulfilment, through initiatives aimed at protecting sexual and reproductive rights for all.

19. Several programmes have been launched with a view to improving adolescents' access to sexual and reproductive health. One such initiative is the establishment of teen-friendly areas, as part of a unique strategy to improve access to comprehensive health care, through timely intervention to address risk factors and risky behaviour, encourage protective attitudes and reduce the incidence of pregnancy, sexually transmitted infections,

suicide and other health problems. The initiative consists of health promotion and prevention activities, focusing on sexual and reproductive health, in health centres and schools, with special time slots, dedicated waiting rooms where privacy, confidentiality and respect for diversity are ensured, and staff who are trained in adolescent health care. Over the last four years (2014-2017), the number of teen-friendly areas has been increased by 370 per cent (from 54 in 2008 to 254 by 2017).⁴ According to the information provided by the Ministry of Health, the preliminary assessment conducted this year under the national health programme for adolescents and young persons, showing the potential impact of teen-friendly areas, revealed a statistically significant decrease in pregnancies among girls in the 15 to 19 age group in communes equipped with a teen-friendly area, compared with communes where there is no such service.

20. In 2012, comprehensive health check-ups for adolescents were introduced, to ensure that health needs and problems were identified at an early stage. Most of these check-ups take place in schools; if there is a health risk or problem to be investigated, the adolescent is referred to the local teen-friendly area or health centre. In 2016, this programme benefited 12.7 per cent of the persons aged 10 to 19 years' old who were registered for primary care, marking an increase in coverage of 5.8 percentage points in four years. As from 2016, the programme was extended to the 10-14 age group.

21. In addition, under the public health system, 10 forms of contraception are available to adolescents of both sexes free of charge. Over the past decade, the use of birth control has steadily increased, both among the general population and among adolescents. According to statistics provided by the Ministry of Health, the number of teenage pregnancies has risen significantly since 2010, by as much as 130 per cent among girls under the age of 15 years⁵ and by 20.47 per cent among adolescents aged 15 to 19 years.⁶ In 2015, primary health care facilities provided 25,391 doses of emergency contraception, of which 4,718 (19 per cent) were for adolescents. The situation is a little different in the emergency services: in 2015, 8,854 doses were supplied, of which 4,136 (48 per cent) were for adolescents.

(v) Progress made by the Intersectoral Round Table on Teenage Pregnancy. Results of the pilot project to prevent repeat teenage pregnancies

22. Within the framework of the Intersectoral Round Table on Teenage Pregnancy, the Ministries of Education and Health and the Ministry for Women's Affairs and Gender Equality agreed to develop a National Intersectoral Strategy on Sexuality, Emotional Health and Gender, which is currently being piloted in some communes.

23. This strategy falls under the National Policy for Children and Adolescents 2015-2025, which was approved by the National Council for Children. The purpose of the strategy, which is aimed at children and adolescents aged between 10 and 19 who attend public schools, is to build an integrated network of health and education services in each commune, to ensure that children and adolescents receive appropriate help and support, focusing on a healthy approach to sexuality and emotional well-being and encouraging them to take responsibility for themselves and others. The strategy will be incorporated into the operating model and methodology of the "Well-being in School" component of the Ministry of Education's National School Socialization Policy, which is based on an intersectoral management model involving the Ministry of Health. The strategy will be implemented at several different levels (national, regional and communal) and will be

⁴ The goal established in the National Health Strategy is to set up a teen-friendly area in all primary care establishments (567 in total) by 2020. New teen-friendly areas will be set up on the basis of a prioritization grid that has been drawn up to identify communes with high rates of pregnancy and suicide, high scores on the school vulnerability index and where adolescents account for at least 25 per cent of the population.

⁵ There were 5,439 pregnancies among adolescents under the age of 15 in 2010, compared with 12,539 in 2016.

⁶ There were 159,571 pregnancies among adolescents in the 15-19 age group in 2009, compared with 191,043 in 2016.

included in one of the thematic areas covered by schools under the “Well-being in School” scheme.

24. The pilot project was carried out under a cooperation agreement between the National Service for Women, as it used to be known, and the municipality of San Bernardo, with technical support from the Ministry of Health through the national health programme for adolescents and young persons. Its aim was to help teenage mothers between 10 and 19 years old to develop life plans, so as to reduce the number of repeat teenage pregnancies. It involved extensive intersectoral work, home visits and counselling, to assess the risk factors associated with the women’s social and family environment and to strengthen protective factors through the provision of support, information and guidance on two main themes:

- Rights, health, sexuality and reproduction: alternative methods of contraception and timely access to local sexual and reproductive health services.
- Life plans relating to work or study.

25. The results were as follows:

- By the end of the programme, all the young women were using some method of contraception, in most cases (84 per cent) long-term methods.
- Of all the participants who were not enrolled in education at the start of the project, 16 per cent resumed their studies.

26. None of the participants dropped out of education during the pilot project.

(vi) Whether sex education should be a mandatory subject at school

27. As regards the inclusion of sex education in the mandatory curriculum, Health Act No. 20418, which sets standards for the provision of birth control information, guidance and services, was promulgated in 2010. Since 2014, steps have been taken to develop resources for all schools, promoting education on prevention and personal health care in school communities. In addition, in 2015 and 2016 a cooperation agreement was implemented between the Ministry of Education and the Chilean Family Protection Association to develop capacity-building activities and the systematization of experiences in school communities related to the preparation of sexuality and gender curricula.

Additional information on paragraph 19

28. In October 2016, the Inter-Agency Round Table for the Prevention of Torture was set up by the National Human Rights Institute, with the aim of furthering and promoting the fulfilment of Chile’s international obligations in that area. It is made up of representatives of the Judiciary, the Public Prosecution Service, the Ministry of the Interior and Public Security, the Ministry of Justice and Human Rights, the Ministry of Health, the Public Criminal Defender Service, the Prison Service, the Carabineros (police), the investigative police, the State Defence Council and the Forensic Medical Service. Although this coordination work is still at an early stage, various agreements have already been reached, on matters such as:

- (i) Objectives, content, methodologies and quality standards for training on human rights and torture prevention, provided for staff of the participating institutions, covering their initial training, further training and capacity-building;
- (ii) The design and implementation of intersectoral communication strategies on torture prevention;
- (iii) The organization of joint initiatives to achieve the aforementioned objectives, in accordance with the annual plan drawn up by the participating institutions.