United Nations CCPR/C/CHL/Q/6/Add.1

International Covenant on Civil and Political Rights

Distr.: General
8 May 2014
English
Original: Spanish

Human Rights Committee
111th session
7–25 July 2014
Item 5 of the provisional agenda
Consideration of reports submitted by States parties under article 40 of the Covenant

List of issues in relation to the sixth periodic report of Chile

Addendum

Replies by Chile to the list of issues*

[Received: 4 December 2013]

* This document has not been formally edited.

Contents

** The annexes may be consulted in the files of the secretariat.

Constitutional and legislative framework (arts. 1 and 2)

Reply to paragraph 1

1. With respect to the current procedure for implementing the Views adopted by the Committee pursuant to the Optional Protocol, the State of Chile is represented by the Human Rights Directorate in the Ministry of Foreign Affairs before the treaty-monitoring bodies. Therefore, when Views are adopted by the Human Rights Committee, the Directorate is responsible for transmitting them to the relevant State bodies and monitoring their implementation.

Reply to paragraph 2

2. In December 2009, Act No. 20,405[1] established the National Human Rights Institute (INDH), in accordance with the Paris Principles, as an autonomous body under public law, with legal personality and its own assets.

3. INDH has a broad mandate under article 3 of this Act, which states that its tasks include proposing measures to the public authorities that in its view should be adopted to encourage the protection and promotion of human rights, seeking the harmonization of national legislation, regulations and practice with international human rights instruments and principles, and promoting their effective implementation.

4. It must also promote the approval, signature and ratification of international declarations, treaties and conventions on human rights submitted for discussion or approved by specialized bodies or committees of the United Nations, the Organization of American States (OAS) and other regional institutions.

5. INDH is also mandated to take legal action in court and to file complaints in response to acts constituting genocide, crimes against humanity, war crimes, torture, enforced disappearance, smuggling of migrants and trafficking in persons. It may also take constitutional proceedings for protection and *amparo*, in accordance with articles 20 and 21 of the Constitution.

6. In order to perform its duties, INDH may request help from various State bodies, and may receive evidence or documents needed to consider situations that fall within its jurisdiction. To that end, article 4 of the Act allows the INDH Board, Director and personnel to enter public premises holding persons deprived of their liberty. In turn, all of the Institute's proceedings and resolutions, as well as its statues and procedures, are available to the public, except where restricted or confidential under article 8 of the Constitution.

7. Article 13 of the Act establishing the National Human Rights Institute states that the Institute's assets shall consist of the following: annual allocations under the national budget; any movable or immovable property transferred to the Institute, however acquired, and the usufruct thereof; contributions from international cooperation of any kind, in furtherance of the Institute's objectives; gifts and legacies, including any individual bequests that may be accepted by the Institute's Council.

[1] See Act No. 20,405 at www.leychile.cl/Navegar?idNorma=1008867&buscar=20.405.

8. It should be noted that INDH received the highest rating (A) for compliance with the Paris Principles at the 26th annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Reply to paragraph 3

9. With regard to constitutional recognition of indigenous peoples, the proposed constitutional reform to recognize the existence of the indigenous peoples and to grant them political participation in the State (Bulletin 2360-07) and the bill to establish an Indigenous Peoples' Council (Bulletin 6743-07) are currently in first reading in the Chamber of Deputies.

10. Measures taken to uphold the right of indigenous peoples to their ancestral lands include land transfer mechanisms. In 2010, a procedure for land purchase was put in place and a list of communities with land claims was drawn up based on the age of the claims and the State's existing obligations.

11. The following table is a summary of the area (in hectares) of land acquired through the National Indigenous Development Corporation (CONADI) from 2010 to the first half of 2013.

Table 1
Land acquired by CONADI (2010–first half of 2013)

Year	*Under article 20 (a)*	*Under article 20 (b)*	***Total (hectares)***
2010	-	3 305	**3 305**
2011	3 683	10 334	**14 017**
2012	3 756	15 989	**19 745**
2013 (until August)	3 343	2 579	**5 922**
Total	**10 782**	**32 207**	**42 989**

12. It should also be noted that land has been purchased on the original sites or in nearby areas to avoid socially and culturally uprooting and dividing the community, so that the communities can move around and adapt to their lands, and inhabit and make use of them in accordance with their social and cultural circumstances.

13. The Indigenous Peoples Act establishes two mechanisms whereby land may be purchased for communities. The first relates to claims or demands for restitution of lost land and the second is a selective process for land awards to vulnerable, socially at-risk families, who apply annually and qualify as vulnerable. Additionally, a list of the communities was drawn up, assigning priority based on objective criteria set by the CONADI Land Commission, so as to ensure that the communities would be considered in the appropriate order.

14. Between 2010 and 2012, 151 designated "sites of cultural significance" were purchased for or transferred to indigenous communities as part of the process to preserve their culture and ancestral traditions. For more information, please see paragraphs 51 to 58 of Chile's comments on the concluding observations of the Committee on the Elimination of Racial Discrimination.[2]

[2] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno

Reply to paragraph 4

15. In March 2011, the Government began consultations on a mechanism for indigenous consultation based on the standards in International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). This officially concluded with a National Indigenous People's Congress on 7–9 August 2013. This process allowed the Government and the indigenous communities in the round table for consensus to reach an agreement on 20 issues, which included the repeal of Supreme Decree No. 124, in order to establish new standards and procedures for indigenous consultation. For more information, please see paragraphs 30 to 50 of the comments to the Committee on the Elimination of Racial Discrimination.

Non-discrimination, equal rights between men and women, and violence against women (arts. 2, 3, 7 and 26)

Reply to paragraph 5

16. According to article 5 of Act No. 20,609 of 2012, victims of discrimination must file a complaint in court within 90 days of the occurrence of the discriminatory act or omission or the moment at which the victim became aware of the discriminatory event or act. The complaint must be made in writing, but in urgent cases may be given orally, in which case the secretary of the relevant court will take a statement.

17. Article 7 of the Act states that, at any point in the proceedings, the complainant may request a temporary suspension of the contested action. The court will grant a suspension of action when, over and above the prima facie evidence, execution of the action would render the proceedings moot or make it extremely difficult or impossible to restore the status quo ante.

18. As for protective measures and compensation mechanisms, the Act states that the discriminatory act may be struck down. In other words, the court will order that the act should not be repeated, or order the omitted act to be performed, setting a reasonable time frame for performance. It may also issue any other orders it deems necessary to ensure that the victim receives proper protection.

19. Where arbitrary discrimination is established, the court will also fine those directly responsible for the discriminatory act or omission between 5 and 50 monthly taxation units (UTM),[3] payable to the public exchequer.

20. With respect to the submission of evidence during proceedings, article 10 of Act No. 20,609 states that any form of credible evidence obtained by lawful means is admissible. No witness or expert may be excluded, without prejudice to the right of each party to explain why, in their opinion, credence should not be given to a particular statement.

21. Turning to equality between women and men, and whether gender is identified as an attribute that may give rise to discrimination, article 2 states that discrimination may be based on sex, sexual orientation or gender identity. The definition used in this Act covers all forms of discrimination, without listing them all specifically.

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[3] The value of the monthly taxation unit (UTM) varies and is set monthly. Its value in November 2013 was Ch$ 40,731 or approximately US$ 96, based on an exchange rate of US$ 1/Ch$ 418.

Reply to paragraph 6

22. The Public Prosecution Service, which is responsible for criminal prosecution, does not have any disaggregated data on the offence described in article 373 with respect to either the contents or the application of this article.

Reply to paragraph 7

23. As to the request for updated information on the stage reached by parliament in its consideration of the bill to amend the Civil Code and other laws regulating the community of property regime (Bulletin No. 7567-07), which would grant wives the same power as their husbands to administer their joint property, the bill is now in second reading in the Chilean Senate.

Reply to paragraph 8

24. Please see the following table for information on the number of cases in the past seven years in which abortions have given rise to criminal prosecution and on the penalties imposed.

Table 2
Outcomes in cases involving crimes related to articles 342 to 345 (abortion) by year[4]

Outcomes	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	***Total***
Acquittal		8	1			1	4		**14**
Conviction	12	17	20	21	14	13	19	9	**125**
Offence reclassified			1						**1**
Case referred	7	21	8	8	8	9	10	4	**75**
Discretion exercised by the Attorney-General	7	10	4	3	4	6	5	5	**44**
Alternative sentence	10	19	15	22	16	25	28	10	**145**
Case dismissed	6	6	7	5		4	3	7	**38**
Proceedings suspended						1	6	2	**9**
Total	**42**	**81**	**56**	**59**	**42**	**59**	**75**	**37**	**451**

Reply to paragraph 9

25. With respect to paragraph 9 and the steps taken to adopt a law on violence against women, it should be noted that article 5 of Act No. 20,066, which has been in force since 2005, defines domestic violence as “any ill-treatment that affects the life or physical or mental integrity of a person who is or has been the spouse or partner of the perpetrator, or is a relative of the perpetrator or of their spouse or current partner, by blood or affinity, in the entire direct line or up to and including the third degree in collateral line. Domestic violence is also committed when the conduct mentioned in the preceding paragraph occurs between parents of a common child or is directed against a minor, an older adult or a person

[4] Information provided by the Public Prosecution Service.

with disabilities who is under the care of, or dependent on, any member of the family group." This definition clearly covers every type of violence and all the areas described in the list of issues.

26. As for steps taken to classify sexual harassment as an offence in all circumstances and not just when it occurs in the workplace or when a minor is a target, article 366, paragraph 1, of the Chilean Criminal Code states that "any person who abusively engages in a sexual act[5] other than intercourse with a person over the age of 14 shall be sentenced to maximum medium-term rigorous imprisonment when the abuse occurs in any of the circumstances described in article 361".

27. Similarly, with a view to strengthening the measures to eliminate violence against women, the Chilean Government introduced a bill in March 2013 to amend the Domestic Violence Act in order to sanction violence between partners or people in a relationship. This bill is in first reading in the Chamber of Deputies Commission on the Family.

28. This amendment, which improves the Act, seeks to reinforce and include other forms of domestic violence, such as those affecting a person's sexual liberty and integrity or their economic security.

29. As requested at the end of paragraph 9, the following are descriptions of several measures taken by the National Service for Women (SERNAM) to provide access to justice for women in cases of domestic violence. SERNAM offers Centres for the Comprehensive Care of Victims and the Prevention of Domestic Violence, consisting interdisciplinary teams that provide free, specialist psychosocial and legal support for women victims of domestic violence.

30. Since 2010, the amount of legal aid provided by lawyers from the Centres has gradually increased. According to the following data, legal aid rose by 34 per cent between 2009 and 2012.

Table 3
Legal aid for women in court cases

Year	*No. of beneficiaries*
2009	6 714
2010	6 883
2011	9 652
2012	8 994
Total	**32 243**

31. To date, 6,525 women have received legal aid. Based on projections, the final figure for this December should exceed the figure reached in 2011 when 9,652 women received legal aid. It should be borne in mind that all women who suffer from physical violence and seek assistance receive aid. The same applies to the women using the shelters described below.

32. Another measure to ensure access to justice for victims of violence has been the creation, in 2011, of a special office by SERNAM and the Legal Aid Agency of the

[5] A sexual act is any act of sexual significance or relevance that involves physical contact with the victim, or that affects the genitals, anus or mouth of the victim, even if there has been no physical contact with that person.

Ministry of Justice. This joint office works with the family courts in Santiago, and specifically with the Protective Measures Centre attached to the Supreme Court in Santiago. According to the rules of procedure, judges who receive a complaint from a woman victim of violence should not only initiate proceedings and adopt protective measures where necessary, but should also refer the victim to the SERNAM office, where a female psychologist from SERNAM and a female lawyer from the Legal Aid Agency will attend to her. The purpose of this is to support the victim during the legal proceedings to ensure that she does not retract her complaint. Since the office opened, assistance has been provided to 2,809 female victims of violence, who filed complaints with the Protective Measures Centre in Santiago and were referred to SERNAM.

Table 4
Assistance for female victims of violence

Year	*Beneficiaries*
2011 (May to December)	404
2012	885
2013 (to date)	1 520
Total	**2 809**

33. Another initiative in this area has been the establishment of the Shelter for Women Victims of Trafficking with the entry into force of Act No. 20,507, on the smuggling of migrants and trafficking in persons, in April 2011. This crime is one of the most serious forms of gender-based violence, in which 80 per cent of victims are women or girls. Since the Shelter was launched in 2012, 17 women who are staying or have stayed at the Shelter for protection have been helped. This form of assistance involves a specialist lawyer who works with various officials, all of whom are members of the intersectoral panel on trafficking in persons that brings together more than 40 public and private institutions.

34. Moreover, in August 2013, Centres for Victims of Sexual Assault for women victims and survivors of this type of violence were established in order to ensure access to justice for these crimes, were not subject to the statue of limitations. Each of the three authorized Centres in the main regions of the country has a specialist lawyer dedicated to assisting victims. Three hundred women will have received this type of assistance by the end of 2013.

35. Furthermore, in order to strengthen support networks for women who report or suffer from violence, to ensure that they do not withdraw or drop their complaints, which in most cases blocks or puts an end to the legal proceedings, a strategy to raise awareness in the community is being implemented in all regions. This initiative consists of talks and workshops that provide people in the woman’s circle of trust with tools to ensure that they support her in the complaints procedure, to prevent impunity. It was launched in August 2013 and the goal for December is for at least 5,200 women to have attended 175 workshops throughout the country. The same strategy is being used to raise awareness among community leaders so that they can spot violent situations in their neighbourhood at an early stage and support the victim in court proceedings. The purpose of these talks is to raise awareness amongst 10,000 local community leaders through 40 events. This initiative is being taken with help of the Community Organizations Department (DOS) of the Office of the Minister and Secretary-General of Government.

36. In addition, in 2010 the Violence Helpline, a telephone service with operators who are specifically trained to guide and support victims of violence, was created. This type of remote assistance and guidance complements the in-person, on-site legal support provided by SERNAM through third parties.

37. The Violence Helpline is a free, round-the-clock service that guides victims through all the steps involved in filing a complaint and accessing the legal system. Approximately 42,000 callers have been helped since the line was opened.

38. As a result of an agreement between SERNAM and the Carabineros (police), the Helpline provides telephone follow-up for all complaints filed with the Carabineros by assaulted women. When a complaint is made, the police officer taking the statement will ask the complainant if she wishes to be contacted by SERNAM; if so, the Helpline will call her up to three times in order to locate her, guide her through the procedure, and encourage her to seek help and go to her local SERNAM Centre for support during the process. Moreover, every week a list of complainants is sent to the relevant local Women's Centre, which should locate victims who do not use SERNAM. Five thousand complaints are processed every month, which gives a yearly total of 60,000 complaints of domestic violence against women. Since the service was launched, 125,000 women have been contacted.

39. With respect to access to justice for indigenous women, attention is drawn to the main measures adopted by the Government. Firstly, there is the Mobile Intercultural Centre in Araucanía, which, as its name suggests, is being introduced in the region of Araucanía, home to most of the rural Mapuche population living in remote areas. The purpose of the Centre is to help reduce violence against women at the local level, especially violence between couples, through a comprehensive approach to assistance with group and individual support for women who live far from the Women's Centres in the cities. The Mobile Intercultural Centre provides assistance primarily in rural areas that are difficult to access and are not yet covered by Women's Centres. Assistance takes intercultural factors into account, which means it can be tailored to the needs of this group throughout the entire process (diagnosis, assistance and subsequent follow-up). The team consists of three people who work in social services: a psychologist, a social worker qualified to act as cultural mediator, and a lawyer.

40. The objectives of the Centre are: (a) to raise awareness of domestic violence in order to prevent and respond to violence against indigenous women; (b) to improve the investigation and detection of cases of domestic violence, and referrals, assistance and follow-up; (c) to offer shelter and protection to indigenous women who are experiencing violence; (d) to provide guidance and legal aid to indigenous women victims of domestic violence; (e) to take intercultural factors into account in the analysis and the assistance provided in the territories; and (f) to encourage cultural changes to existing models of assistance in domestic violence.

41. Secondly, there was the assistance provide to Pehuenche women in Alto Biobío, which came about in the context of the state of emergency declared in the south of Chile when it looked as though the volcano Copahue might erupt. Serious signs of violence against Pehuenche women were observed in the area, in cases which had not been reported or registered in the State protection system or with justice officials (Carabineros, investigative police, family courts, prosecutors' offices or SERNAM).

42. This violence primarily affects women from Pehuenche communities who live in rural mountain areas that are very difficult to access. To deal with this situation, a fairly systematic approach has been adopted. First of all, there are 11 communities along two strips that follow the Queuco and Biobío Rivers, and work with these communities will be done in phases, starting with Cauñicu, El Barco, Quepuca Ralco and Ralco. Second, in

order to implement the strategy in the field, monitors living in the area and belonging to the indigenous communities have been hired and trained on violence-related issues. Third, graphic material and bilingual Spanish/Chedungun pamphlets on preventing domestic violence are being produced.

43. Lastly, as part of violence prevention research, the SERNAM Prevention of Violence against Women Unit is working on a study on the application of ILO Convention No. 169 with regard to gender relations and violence in the Mapuche community.

44. This study was launched because for about two years, the Araucanía region Guarantees Courts and Court of Appeal have been issuing rulings that apply Convention No. 169 and take account of the specificities of indigenous culture, accepting for example, on an exceptional basis, reparatory agreements made before tribal chiefs as an alternative means of settling disputes.

45. SERNAM believes that this is a very serious violation of the fundamental rights of both Mapuche women and other victims of domestic violence, inasmuch as it leaves them in a situation of impunity and excludes them from the protected status afforded by Act No. 20,066. Reparatory agreements can be valid only if the parties to the dispute are equal, which is not so in cases of domestic violence, where the women is in a position of vulnerability, subordination and dependence vis-à-vis the aggressor.

46. In light of the above, the Government believes that accepting conciliation or reparatory agreements in cases of domestic violence is at odds with domestic legislation, which defines such violence as an offence. Moreover, the Convention itself addresses the issue of when it may be legitimately applied. According to article 1, paragraph 2, self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention may apply. Thus the surname alone would not be sufficient grounds for applying the Convention to a given person. Lastly, article 8 of the Convention clearly states that customs and ancestral institutions shall be respected, where these do not undermine fundamental rights defined by the national and international legal system, such as the right to life and to physical and mental integrity, etc. The purpose of this research is to put an end to court decisions that violate the human rights of Mapuche women who report violence to the Chilean legal system.

Reply to paragraph 10

47. In connection with disaggregated information on the types of work that women do, their working conditions, access to employment contracts and other benefits, eight tables prepared by the Ministry of Labour and Social Security are provided.

Table 5
Total population aged 15 or older by situation in the workforce

Sex	*15 or older*	*Workforce*	*Employed*	*Unemployed*	*Inactive*
Women	7 065 963	3 334 143	3 124 094	210 049	3 731 820
Men	6 823 832	4 876 343	4 614 467	261 875	1 947 489

Table 6
Unemployment, participation and employment rates by sex

	Female	*Male*	*National*
Unemployment rate	6.3%	5.4%	5.7%
Participation rate	47.2%	71.5%	59.1%
Employment rate	44.2%	67.6%	55.7%

Table 7
Employed women by job sector

Job sector	*Women*	*Percentage*
Agriculture, stock raising, hunting and forestry	111 254	3.56
Fisheries	3 084	0.1
Mining and quarrying	18 598	0.6
Manufacturing	251 824	8.06
Electricity, gas and water	10 948	0.35
Construction	44 625	1.43
Wholesale and retail trade	769 090	24.62
Hotels and restaurants	163 683	5.24
Transport, storage and communications	103 069	3.3
Financial services	94 279	3.02
Real estate, contracting	194 824	6.24
Public administration and defence	154 138	4.93
Education	442 863	14.18
Social and health services	246 544	7.89
Other community services	116 309	3.72
Households with domestic services	398 339	12.75
Organizations and institutions abroad	625	0.02
Total	**3 124 094**	**100**

Table 8
Women in employment by job category

Job category	*Women*	*Percentage*
Employer	82 197	0.03
Self-employed	631 694	0.20
Private-sector employee	1 590 382	0.51
Public-sector employee	433 750	0.14
Live-out domestic worker	265 731	0.09
Live-in domestic worker	55 654	0.02
Family member or unpaid staff	64 687	0.02
Total	**3 124 094**	**100**

Table 9
Women with employment contracts in writing

Signed employment contract	*Women*	*Percentage*
Yes	1 948 702	83.08
No	396 815	16.92
Total	**2 345 517**	**100**

Table 10
Women by type of contract

Type of contract	*Women*	*Percentage*
Fixed term	596 418	25.43
Indefinite	1 749 098	74.57
Total	**2 345 516**	**100**

Table 11
Women with contracts in writing by job category

Job category	*Yes*	*No*	***Total***
Private-sector employee	1 376 664	213 718	**1 590 382**
Public-sector employee	420 583	13 167	**433 750**
Live-out domestic worker	102 622	163 110	**265 731**
Live-in domestic worker	48 834	6 820	**55 654**
Total	**1 948 702**	**396 815**	**2 345 517**

Table 12
Women with indefinite term contracts by job category

Job category	*Fixed term*	*Indefinite*	***Total***
Private-sector employee	375 703	1 214 678	**1 590 382**
Public-sector employee	180 080	253 670	**433 750**
Live-out domestic worker	37 875	227 856	**265 731**
Live-in domestic worker	2 760	52 894	**55 654**
Total	**596 418**	**1 749 098**	**2 345 517**

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment, and the fight against impunity (arts. 2, 6 and 7)

Reply to paragraph 11

48. The Amnesty Decree-Law has no practical application in Chile, inasmuch as the country's courts uniformly do not invoke it in relation to crimes or ordinary offences that violate human rights. Currently pending is a bill that, in its sole article, seeks to properly

define the grounds for the discharge of criminal liability established in article 93 of the Criminal Code that is, amnesty, pardon or statutory limitations to prosecution and punishment. The understanding is that those grounds shall not be applicable to the crimes and ordinary offences that, under international law, constitute genocide, crimes against humanity or war crimes. The bill is now in its second reading in the Senate.

Reply to paragraph 12

(a) On measures taken to expedite judicial proceedings for human rights violations

49. On 20 June 2001, as noted in decision AD-17.137-2001, the Supreme Court appointed 51 specialized judges to investigate cases relating to human rights violations, including 114 cases of enforced disappearance of persons. Those appointments, according to the Court, were intended as an effective way of making significant progress in those cases, thereby putting an end to the ongoing grief endured by the victims' families.

50. Subsequently, in May 2009, for the first time, the full bench of the Supreme Court appointed one of its members national coordinator of the judges handling cases of human rights violations in Chile. The role of the coordinator is to conduct administrative review of progress in the trials, and they are not empowered to intervene in the judicial aspect, which is the domain of each judge. The coordinator also liaises between such agencies as the Forensic Medical Service, the Human Rights Programme, the Civil Registry and Identity Service and the police forces, with a view to expediting the procedures requested by the judges investigating those cases.

51. On 1 June 2010, to expedite pending cases and rationalize their passage through the Courts of Appeal, as well as to try any new cases or complaints that might arise — and acknowledging the advisability of assigning the cases to a limited number of judges in each court, given the interconnection between the accused and victims of the crimes involved and the evidence to be adduced as proof — the Supreme Court, by decision No. 81-2010, appointed certain judges from the country's Courts of Appeal to try and rule on cases of human rights violations involving deaths and disappearances, where the acts occurred or were initiated in the respective court's jurisdiction. A further nine judges, from the Santiago and San Miguel Courts of Appeal, were appointed later and were assigned their cases on 11 January 2012.

52. Lastly, on 12 September 2013, at a special session, the full bench of the Supreme Court decided that the judges investigating human rights violations would work solely on those cases. The judges will thus be able to devote themselves entirely to these investigations, which had been curtailed by their excessive workload and the obligation to attend Court sessions.

(b) On the number of State officials convicted of human rights violations and/or crimes against humanity during the period 1973–1990 who are currently serving custodial sentences, the number who have had their sentences reduced and have received prison privileges, and the number who have been given accessory penalties in the form of disqualification from public office or duties

53. Documentation referring to the situation of the State officials convicted of human rights violations during the period 1973–1990, and now serving sentences in Punta Peuco Prison (information received in September 2013) is annexed herewith.

(c) On the change in Supreme Court case law mentioned in paragraph 3 of the second addendum to the State party's report, dated 25 August 2010, according to which a partial statute of limitations has begun to be applied to crimes against humanity

54. The first of a long series of rulings in which the Supreme Court, applying the partial statute of limitations provided for in article 103 of the Criminal Code, appreciably reduced the sentences of those convicted of crimes committed in violation of human rights, was issued on 30 July 2007.

55. In that judgement, handed down in case No. 3808-2006 for the aggravated abduction of Juan Luis Rivera Matus from 16 November 1975 to 13 March 2001, the Supreme Court stated that the partial lapse of the statutory time period, provided for in Chilean law, was a circumstance mitigating criminal liability that was not affected by the international law that prohibits applying statutory limitations that extinguish liability. This is because they are separate concepts, "with differing premises and consequences". The ruling adds that "the statute of limitations is grounded on the assumption that the offence has been forgotten, on procedural considerations and on the need not to punish the conduct, which leads to the crime going unpunished. The mitigating circumstance, on the other hand, which also has a humanitarian rationale, is based on the idea that it is meaningless to impose such a harsh sentence for events that occurred a long time ago but that must be punished, with the result being a lighter sentence."

56. The application of partial statutory limitations in the case mentioned meant a reduction of the final sentences imposed on those convicted, such that three out of the four were entitled to non-custodial alternatives. In early 2012, the Supreme Court upheld the notion of applying partial statutory limitations in cases in which the crimes to be tried were crimes against humanity. It proceeded thus in the final judgement handed down for the aggravated abduction of Jaime del Carmen Espinoza Durán (judgement, case No. 10434-11 of 26 January 2012) and in the final judgement in case No. 2182-98, the José Barrera Barrera incident (judgement, case No. 5720-10 of 7 March 2012). In both instances, the Supreme Court stated that "in view of the nature of the events investigated, we concur in finding that the matter is what the legal conscience has resolved to call crimes against humanity"; it established that the crimes of the case were committed in a context of gross systematic human rights violations perpetrated by agents of the State, with the victims constituting an instrument in a general policy of exclusion, harassment, persecution or extermination of a large group of citizens, who were accused of ideological affiliation with the ousted Government. These crimes, went on the Supreme Court, were committed by perpetrators who enjoyed impunity conferred by the State itself, which, at the time, precluded the possibility of obtaining justice. The opinion offered by the Court takes into account the basic elements that international law has recognized as a component of crimes against humanity.

57. The Supreme Court went on to assert unequivocally that the non-applicability of statutory limitations to such crimes, the impossibility of granting amnesties for them and the establishment of circumstances discharging liability, which attempt to prevent the investigation and/or punishment of those responsible, are of constitutional rank and consequently take precedence over the domestic legal order. Nonetheless, in stating its opinion on partial statutory limitations, it noted that the non-applicability of statutory limitations to crimes against humanity does not cover partial statutory limitations, whose application is not limited by international treaty law or by *jus cogens*; as a result, since this is a public policy doctrine, it must be applied. For the rest, the Supreme Court went on, this concept has premises and effects different from those of the statute of limitations, inasmuch as the latter "rests on the assumption that the offence has been forgotten, on procedural considerations and on the need to keep the social peace, whereas the rationale for the mitigating circumstance is the idea that it is meaningless to impose such a harsh sentence

for events that occurred a long time ago but do not, for all that, cease to deserve punishment, and ultimately it affects only the length of the sentence".

58. In the final judgement handed down for the aggravated abduction of Rudy Cárcamo Ruiz (judgement, case No. 288-2012 of 24 May 2012), the Supreme Court also stated that, in view of the nature of the act investigated, the case involved a crime against humanity, repeating the opinion given in the José Barrera Barrera case and others. However, in discussing the application of partial statutory limitations, the Supreme Court, for the first time, changed its approach, stating that "in considering the application of statutory limitations to criminal proceedings — whether total or partial — account must necessarily be taken of the type of offence in terms of degree of completion, i.e., whether the crimes involved are complete or continuing, since that will determine when the period of limitation begins". The Supreme Court then concluded that, as it was dealing with an ongoing crime — abduction — the period of limitation for criminal proceedings did not start to run until the ongoing effects of the offence had come to an end, which in the case in question, in which the victim's whereabouts had not been established and he had not been proven dead, had not occurred. Accordingly, it was not possible to set a moment in time from which to calculate the period of limitation, either total or partial. That is, the Supreme Court considered that the statute of limitations did not apply, not because it was a crime against humanity but because it was an ongoing offence.

59. In the final judgement in the case of the aggravated abduction of Héctor Patricio Vergara Doxrud (judgement, case No. 12.566-11, the Héctor Vergara Doxrud incident, of 18 June 2012), the Supreme Court stated that it was a crime against humanity that "must, with no doubt whatsoever, be covered by international humanitarian law", the logical consequence of which, continued the Court, was that prosecution was unavoidable and the statute of limitations therefore did not apply, and "also that the partial statutory limitations under article 103 of the Criminal Code do not apply". In the final judgement handed down for the aggravated abduction of Eduardo González Galeno (final judgement, case No. 10665-11 of 25 June 2012), the Supreme Court maintained the approach used in the Rudy Cárcamo case, stating that, owing to the ongoing effects of the abduction, it was impossible to calculate a partial period of limitation. However, in the final judgement concerning the aggravated abduction of Grober Hugo Venegas Islas (judgement, case No. 3573-12 of 22 November 2012), the Supreme Court again adopted the approach used in the case of the disappeared detainees José Barrera Barrera and others, stating that applying partial statutory limitations was not a breach of international laws pertaining to crimes against humanity.

60. In the Supreme Court's final judgement for the aggravated abduction of José Hipólito Jara Castro and Alfonso Domingo Díaz Briones, committed between 13 and 16 September 1974 (judgement, case No. 2.661-12 of 5 July 2012), it recognized that the unlawful activity could be categorized as an abduction, which is defined as a continuing crime; that is, a crime whose completion continues over time. Consequently, since the cessation of the ongoing effects of the crime was not established in this case, "a partial period of limitations for criminal proceedings can hardly be calculated without evidence of the cessation of the crime, either through the release of the victims or through the existence of positive and accurate evidence of the whereabouts of their remains and the date of their deaths, if indeed death has occurred".

61. In the final judgement handed down by the Supreme Court for the homicide of Gloria Ana Stockle Poblete (judgement, case No. 2200-12 of 21 September 2012), committed on the night of 29 January 1984, the Court applied partial statutory limitations in favour of the convicted persons and did not rule on whether the offence was a crime against humanity.

62. In the final judgement for the aggravated homicide on 10 November 1981 of Juan Ramón Soto Cerda, Luis Nelson Fernando Araneda Loaiza, Luis Pantaleón Pincheira

Llanos and Jaime Cuevas Cuevas (judgement, case No. 3841-12, the Juan Soto Cerda incident), the Supreme Court upheld the decision of the lower court judges, who equated the concepts of total and partial statutory limitations and rejected mitigating circumstances under article 103 of the Criminal Code.

63. In the final judgement for the homicide of Luis Almonacid Arellano on 16 September 1973 in the commune of Rancagua (judgement, case No. 1260-2013 of 29 July 2013), the Supreme Court did not rule on the applicability of partial statutory limitations in cases involving a crime against humanity.

(d) On the fact that a statute of limitations of 10 years continues to apply to offences of torture

64. Chile has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture. In both conventions, the Chilean State has committed to ensuring that all acts of torture are offences under its criminal law. Article 150 (a) of the Chilean Criminal Code has established a crime akin to torture, referring to unlawful physical or mental coercion but without categorizing the offences in the terms required by international instruments. The Optional Protocol, moreover, creates an obligation to set up or maintain one or several independent bodies for the prevention of torture at the national level, an obligation that has fallen to INDH.

65. The Chilean State has also signed the Geneva Conventions of 1949, article 3 of which, common to the four conventions, prohibits humiliating and degrading treatment, as well as torture, and the first and second Protocols additional to the Geneva Conventions, relating to the protection of victims of international armed conflicts and to the protection of victims of non-international armed conflicts.

66. Lastly, it should be noted that the statute of limitations will not apply to the crime of torture or, rather, it will be subject to the general rules for the time-barring of criminal action, depending on whether the act of torture involves all the elements necessary to consider it a crime against humanity.

Reply to paragraph 13

67. In response to the request for statistics on complaints received of torture or inhuman and degrading treatment inflicted by members of the Carabineros, the investigative police and the Prison Service, the situations covered by the offences defined in articles 150 (a) and 255 of the Criminal Code have been recorded, as shown in the following table:[6]

Table 13
Complaints of ill-treatment, coercion and abuse

Year received	*Ill-treatment and coercion by public officials (art. 150 (a))*	*Abuse (art. 255)*	***Total***
2006	13	5	**18**
2007	35	7	**42**
2008	63	30	**93**

[6] Information provided by the Public Prosecution Service.

Year received	*Ill-treatment and coercion by public officials (art. 150 (a))*	*Abuse (art. 255)*	***Total***
2009	65	400	**465**
2010	52	322	**374**
2011	108	377	**485**
2012	121	301	**422**
Total	**457**	**1 442**	**1 899**

Reply to paragraph 14

68. Those providing private security services are either natural or legal persons offering such services as an economic activity.

69. The Carabineros, as a State institution, in accordance with the provisions of Constitutional Act No. 18,961, is responsible only for supervision and oversight of private surveillance and security activities, and so must ensure that such activities keep to the relevant legal framework. The State, consequently, is not the agent providing private security; rather, its role, which is assumed by the Carabineros, is to oversee such activities.

70. In this respect, it should be noted that the Department of Private Security (O.S. 10) has not received any complaints from indigenous communities for alleged abuses committed by employees of private security companies.

Reply to paragraph 15

71. Under the Optional Protocol to the Convention against Torture, INDH, together with the Ministry of Justice, is setting up the national mechanism for the prevention of torture, which will be the body responsible for making periodic visits to places of detention, in accordance with the provisions of article 20 of the Optional Protocol.

72. Although this mechanism is only in an implementation phase, INDH has made visits to correctional institutions.

73. The applicable provisions are found in the Prison Regulations, article 25 of which states: “Inmates shall not be subjected to torture, to cruel, inhuman or degrading treatment, in word or in deed, nor shall they be subjected to unnecessarily harsh application of these Regulations.” Furthermore, and with a view to safeguarding this right, article 9, paragraph 1, of the Regulations states that in defence of their rights and interests, inmates may address the competent authorities to file the relevant complaints and petitions using legal remedies.

74. In addition, the Courts Organization Code confers powers sufficient to prevent and punish cruel and inhuman treatment through a legal regime of visits by judiciary officials, regulated under articles 567 ff. These rules define, among other things, who is required to make visits and who should be present, the purpose of the visits, their frequency or regularity, who has the right to take part, the powers conferred on the judges to fulfil that obligation and the way in which visits should be recorded.

75. These visits are classed as either special or ordinary, and ordinary visits may be weekly or half-yearly. Weekly visits take place the last working day of the week and half-yearly visits at least once during the first half of the year and once during the second. Special visits may take place at any time, in accordance with article 581 of the Code, and may be undertaken by judges and prosecutors of various ranks and in connection with aspects provided for by law. A visit covered by article 581 of the Code shall be made by the

President of the Supreme Court and by a judge designated by that court, to any of the State's prisons or correctional facilities.

76. The half-yearly visits are made by an appeals court judge, a criminal trial judge and a judge responsible for procedural safeguard, in any commune where there is a court and prisons or correctional facilities; the aim is to obtain information about the inmates' security, disciplinary and hygiene situation and to hear their complaints.

77. After hearing individual complaints from the inmates, the judge in charge of the visit shall take the measures they consider advisable to remedy the deficiencies or — if, on examination of the prison director's registers or for other reasons, they determine that an individual has been detained unlawfully — issue the orders to rectify the abuse. If the remedy is not within the judge's power, they shall immediately brief the appropriate senior official.

78. The judges who undertake these visits must take written testimony of complaints involving undue harassment, restriction of the freedom of defence or unwarranted prolongation of trial proceedings. This testimony is then written up in a statement drawn up for that purpose, with a certified copy submitted the same day to the respective Court of Appeal so that it may take the appropriate measures. If the content of the statements exceeds the powers of the courts of justice, the Court will ask the competent administrative authority to take the necessary steps. As to prosecutors, they shall report their findings and any complaints to the Public Prosecution Service, which will assess the need to inform the Ministry of Justice and the Prison Service.

79. Lastly, it is worth mentioning that the Chilean Prison Service now has a human rights unit, which is authorized to make visits and interview inmates.

Elimination of slavery, servitude and forced labour, and measures to protect children (arts. 8 and 24)

Reply to paragraph 16

80. The Act on Trafficking in Persons, mentioned above, was promulgated on 8 April 2011. To implement it, an intersectoral panel made up of various representatives of the State and civil society was created.

81. In 2012, with a view to formulating an implementation plan, the executive secretariat of the intersectoral panel distributed a questionnaire on the State's response to trafficking in persons, which formed the basis for an analysis of the subject, of the capacity of the various State units and offices to provide victims with an effective and efficient response, and of the degree of prior knowledge and awareness of the issue.

82. On the basis of this analysis, the first national plan of action on trafficking in persons was completed and agreed on, the aim being to establish a comprehensive plan for action to prevent, prosecute and punish trafficking in persons, as well as to protect and offer effective assistance to victims; and to encourage the participation of civil society in the search for effective remedies for the victims of this crime, through the promotion and improvement of the standards of victim care and protection.

83. The Plan of Action takes a comprehensive approach to this scourge and includes concrete objectives, targets and indicators for implementation, such as the training of labour inspectors (for cases of trafficking for labour exploitation), the drafting of a protocol on care for trafficking victims and the development of media publicity and awareness campaigns.

84. Lastly, it is expected that in November 2013 the Plan will be made formal government policy by means of a decree or resolution and that, at the same time, a framework agreement will be signed including various intersectoral commitments, among them the intersectoral protocol on the care of victims of human trafficking, which the Victim Care Network is working on.

Right to liberty and security of person and the rights of persons deprived of their liberty (arts. 9 and 10)

Reply to paragraph 17

85. Two tables providing statistics on the number of cases in which the disciplinary measure known as solitary confinement has been imposed, and the duration of the measure, are displayed below.

Table 14
Solitary confinement

Year	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Cases of solitary confinement	10 795	15 150	14 945	16 894	20 211	21 739	25 089	26 389	29 848	28 594
Average duration of the punishment (days)	12	11	11	9	8	8	8	8	8	7

86. The following table provides statistical data on the mortality rate in prisons in the custodial and semi-custodial subsystems over the last seven years, 2006–2012.[7]

Table 15
Mortality in the custodial and semi-custodial subsystems

Year	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Deaths	119	114	125	141	253	166	138
Average population of the custodial and semi-custodial subsystems	38 447	42 466	47 449	51 417	53 161	52 078	50 083
Mortality rate per 1,000 prisoners	3.10	2.68	2.63	2.74	4.76	3.19	2.76

Reply to paragraph 18

87. The various steps taken by the State to reduce overcrowding and improve conditions in detention centres are described below.

88. *Eleven-point plan.* In order to provide decent general conditions for the prison population in Chile, measures were adopted to:

(a) Provide and replace mattresses, blankets and bunks in prison facilities;

(b) Improve the quality and distribution of food for convicts and accused;

[7] *Source:* Prepared by the Statistics Unit using information from the Prisoner System and the General Prison Statistics Unit. Persons subject to enforcement measures and those on supervised release are excluded from the average population in the statistics presented here.

(c) Improve the sanitation and lighting systems in prisons;

(d) Increase inmates' time spent outside cells;

(e) Improve the plan for health care in emergency situations within prisons;

(f) Improve the procedure for body searches in relation to inmates;

(g) Review and improve the prison visits system;

(h) Support inmates' religious and spiritual guidance;

(i) Improve release conditions for convicted persons;

(j) Strengthen the operation and infrastructure of education and employment centres;

(k) Implement a plan to improve security conditions within prisons.

89. *Infrastructure*. The earthquake of 27 February 2010 caused varying amounts of damage to the Prison Service facilities and grounds in the affected area, with some facilities becoming unusable. In the absence of an adequate structural survey of the buildings, it was decided to close eight prison units and transfer the inmates so as to ensure their physical safety and maintain control and custody measures. It was ultimately decided to optimize the use of the existing prison infrastructure and increase capacity in the prison system.

90. *Management of capacity in the private system*. Based on the experience of private prisons beginning in 2000, the State has embarked on a process of review and optimization of the model that, roughly speaking, has reduced overcrowding levels from 57.5 per cent in 2010 to less than 23 per cent in 2013 (national averages). Further reductions are expected by March 2014. This gradual reduction — which has improved prisoners' dignity significantly by not only reducing overcrowding, but also reducing exposure to possible ill-treatment and high-risk situations — is only the first step towards further improvements.

91. This has made it possible to take on board the definitions and methodological suggestions of international experts, who have advised the Ministry of Justice as it redoubles its efforts to make comprehensive changes in the way convicted prisoners are reintegrated, especially low-risk prisoners who make it clear that they want to change.

92. *Prison safety*. Safety in prisons, particularly where a disaster causes damage, is a vital part of any prison policy that respects human rights. Therefore, from 2010 to 2013, the Prison Service received additional budgetary resources of 24,512,044 Chilean pesos (Ch$) (approximately US$ 47,320)[8] in order to provide prisons with safety measures and equipment, and for infrastructure. Similarly, the dry and wet riser system was renovated at a cost of Ch$ 17,524,964 (approximately US$ 33,830) and safety supplies and equipment for fire brigades were acquired at a cost of Ch$ 3,469,230 (approximately US$ 6,697). To these amounts should be added Ch$ 3,517,850 (approximately US$ 6,791), for the 11-point plan to improve prison conditions, mentioned above.

93. A measure aimed at rationalizing the use of prisons and encouraging social reintegration for persons serving custodial sentences was the approval of Act No. 20,603, amending Act No. 18,216 to establish a new system of alternative sentences to deprivation or restriction of liberty. This regulation is intended to prevent recidivism and support the social reintegration of convicted persons through timely and effective psychosocial

[8] The values are expressed in the national currency, Chilean pesos, and converted to United States dollars using the November 2013 average exchange rate of 518.48 pesos to the dollar. *Source*: http://www.sii.cl/pagina/valores/dolar/dolar2013.htm.

intervention for those with drug or alcohol problems, and making specialist provision for those convicted of domestic or sexual violence.

94. In the case of convicted persons serving non-custodial sentences, provision has been made for the use of electronic monitoring devices that can report on compliance with sentences, while guaranteeing victim protection.

95. As part of measures to reduce overcrowding in the prison system and create conditions for the serving of sentences that allow reintegration programmes to be developed, a package of four bills has been drawn up and is under consideration by the legislature, as follows:

(a) Changes to the parole system (Act No. 20,587), guaranteeing the granting of parole according to objective criteria;

(b) Changes in the penalties for failure to pay fines (Act No. 20,587), the main objective being to prevent imprisonment for those who fail to comply with financial penalties, using a punitive measure that ties in with socialization of the offender;

(c) The Act on the commutation of sentences (General Remission of Sentence, Act No. 20,588), granting a general remission of sentence to convicted persons who have served a significant part of their sentences, provided that their release does not compromise public safety;

(d) Alternative options for serving sentences of less than 300 days (new proposal, Act No. 18,216), which establishes a new penalty of community service, a smart response to the custodial crisis and particularly with regard to short sentences.

96. Regarding the request for information on the stage reached by parliament in its consideration of the bill on pardons, the types of circumstance under which such pardons could be granted and their practical and legal implications, it should be noted that parliament has concluded its consideration of the bill, which has now become Act No. 20,588, as mentioned above, and was published in the *Official Gazette* of 1 June 2012. This regulation allows persons who have served two thirds of their sentence to apply for remission of the remainder. Women with children aged under 2 are deemed to have met this requirement if they will have served two thirds of their sentence within six months and in addition have displayed outstanding behaviour during the previous six months, under the provisions of Act No. 19,856, which creates a social reintegration system for convicted persons based on good behaviour and personal commitment to non-recidivism.

97. Additionally, a general remission is granted to convicted persons who, on the date of entry into force of this law, had obtained supervised release and were serving night-time confinement sentences.

Reply to paragraph 19

98. The procedure for arrest is governed by the Constitution, which states a person may be detained only when there is a prior court order, or in flagrante delicto.

99. In accordance with article 19, paragraph 7, of the Constitution, arrest warrants must be issued by a public official who has been expressly authorized by law. Article 127 of the Code of Criminal Procedure states that this public official shall be a judge, that the warrant shall be written and that it shall contain the information required under article 154 of the Code, i.e., the name and surname of the person to be detained or apprehended or failing that, any identifying features or characteristics; the reason for the detention and instructions as to whether they shall be taken directly to court, to prison or to a given public place of detention, or remain at home.

100. In accordance with article 79, paragraph 2, of the Code of Criminal Procedure, an arrest warrant is to be executed by Carabineros or investigative police officers. When executing a warrant, the law permits the Carabineros to search public or private premises, subject to the authorization of the relevant public official or responsible person.

101. In a case of in flagrante delicto involving an adult, arrest is regulated by article 130 ff. of the Code of Criminal Procedure. The accused person shall be transferred to a police station, whose staff shall inform the duty prosecutor of the Public Prosecution Service of the detention. The duty prosecutor may decide that the detainee shall be brought before the criminal court to establish the legality of the detention, or that they will be summoned to appear before the prosecuting body.

102. The right of an accused person to the assistance of a defence lawyer is expressly recognized in articles 8 and 102 of the Code of Criminal Procedure, where it is indicated that the accused person shall have the right to legal assistance from a lawyer from the beginning of proceedings against them; furthermore, the State shall provide a lawyer for any accused person who does not have one or who cannot afford one. This is an inalienable right of accused persons.

103. As regards the definition of the offence of disorderly conduct contained in article 269 of the Criminal Code, it is important to note the protected legal right and definition contained in that regulation, which specifies a serious disturbance of the public peace affecting the order and safety of the community. For these purposes, the public peace is defined as “peaceful coexistence, free from aggression and danger, and based on respect and normality under the law”.

104. The protection of the criminal law covers a general atmosphere of peace and security in human activity, in other words, tranquillity and peace so that the community may go about its business normally.

105. Public demonstrations, then, are not considered disorderly conduct, those that exceed the limits of legality. It is serious disturbances of public order, which generally occur on the periphery of the demonstration as such, that are punished.

Reply to paragraph 20

106. With regard to the measures adopted to prevent, prosecute and punish cases of police violence, a special forces operations manual was created by General Order of the Directorate-General of the Carabineros No. 2125 of 2 October 2012. This manual standardized the measures and procedures used by the special forces to maintain law and order. By Electronic Document No. 9122521 of 17 December 2012, the Directorate-General of the Carabineros then ordered a review of procedures based on the following principles: respect for the dignity of persons; the use of force subject to legal principles; necessity and proportionality; the need to treat persons deprived of their liberty humanely and fairly, in accordance with their age and sex; and, lastly, the professional responsibility of heads of operations.

107. That review was carried out jointly with the Human Rights Department of the Carabineros, which had been created with the aims of promoting the integration of human rights into the organization, contributing to education on those rights, facilitating inter-agency cooperation and supporting police administration (General Order of the Directorate-General of the Carabineros No. 2038 of 11 November 2011).

108. The review was carried out with advice from the International Committee of the Red Cross (ICRC), and the opinions of a panel of experts from civil society and human rights bodies (the United Nations Children’s Fund (UNICEF), the National Human Rights

Institute (INDH) and the Regional Center for Human Rights and Gender Justice) were taken into consideration. It first checked to ensure consistency with the national provisions governing the maintenance of public order,[9] and with the international standards set in the 10 main international regulations of the universal and inter-American system applicable to police duties.[10] These standards were then incorporated into police operations.

109. This exercise identified five police procedures for maintaining public order during demonstrations and marches: defence of the right to demonstrate; restoring of public order; ejections; procedures involving offenders; and work with INDH, civil society representatives and organizations, and the media. In turn, each of these procedures has a series of protocols, 29 in all, that describe the sequence of expected steps in the planning and execution of police operations and that incorporate the principles mentioned previously. The procedure is firstly identified by a name and number, followed by the protocol for police action. The underlying international and legal standards that determine how each protocol should be executed are then identified, and lastly, a description is given of the sequence of actions to be taken to ensure the proper execution of police operations, duly applying the principles mentioned above. Using these evaluations, the Carabineros adopted a model for the use of force based on the three basic universal principles of "legality, necessity and proportionality" (Directorate-General of the Carabineros Circular 1756 of 13 March 2013).

Table 16
Model for the use of force by Carabineros

Level	*Resistance/ aggression*	*Characteristics of the resistance/ aggression*	*Force to be applied*	*Measures to overcome resistance/aggression*
1	Cooperation	Compliance with instructions.	Verbal	Preventive. Physical presence and dialogue.
2	Passive resistance	Non-compliance with instructions. Inert attitude, negative body or verbal language.	Verbal	Preventive. Persuasion, negotiation, orders.
3	Active resistance	Refusal to follow orders. Complete unwillingness to move, or attempts to escape.	Physical control	Reactive. Restraint to overcome force and immobilize.
4	Active aggression	Attempts to cause injury so as to resist or escape control. Not life-threatening.	Use of non-lethal weapons	Reactive. Defensive tactics to constrain aggression.

[9] Constitution (art. 101, para. 2), Act No. 18,961 of 1990, Constitutional Act on the Carabineros (arts. 1 to 4), Supreme Decree (Interior) No. 1086 on public meetings of 1983 and Supreme Decree (Defence) No. 327 of 1993 approving the regulations on the organization of the Carabineros (art. 4).

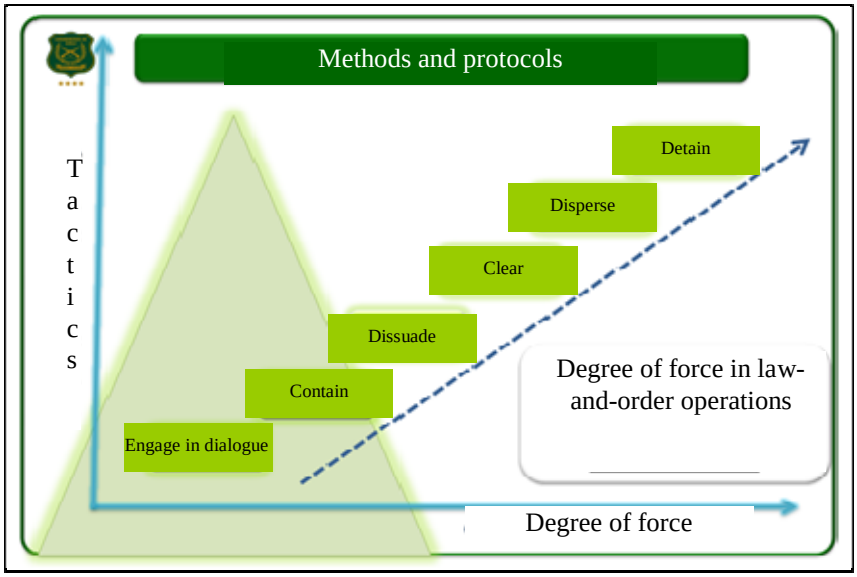
[10] Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; American Convention on Human Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Code of Conduct for Law Enforcement Officials and Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Level	*Resistance/ aggression*	*Characteristics of the resistance/ aggression*	*Force to be applied*	*Measures to overcome resistance/aggression*
5	Lethal active aggression	Premeditated attack with weapons or seriously harmful or potentially lethal tactics.	Use of firearms	Reactive. Potentially lethal force to control the aggressor and defend life.

Source: Directorate-General of the Carabineros Circular 1556 of 13 March 2013 (*Official Gazette* No. 4479 of 18 March 2013).

110. This model, and its variations, is also applicable to maintaining public order. While levels 1 and 2 correspond to legal demonstrations, level 3 corresponds to a violent illegal demonstration and levels 4 and 5 to violent and aggressive illegal demonstrations. The differentiated and increasing degrees of force used in these cases encompasses tactics involving dialogue, containment, dissuasion, clearance, dispersion and detention (see graph below).

Graph 1
Differentiated and gradual use of force in law-and-order operations



111. As to internal oversight of the Carabineros and the detection of irregularities, three forms of monitoring are used: (a) the control and discipline exercised by senior police officers. For law-and-order operations, a new command and control unit has been created, the Santiago Area Law and Order and Operational Command Centre. This unit is led by an officer of general's rank and its missions includes the directing, planning, coordination and monitoring of this type of operation; (b) oversight of internal affairs, to which end a Department of Internal Affairs was recently set up in the Inspectorate-General; and (c) video monitoring of the transfer of detainees. The Directorate-General of the Carabineros has issued a manual on the use of CCTV cameras inside staff buses and vehicles transferring detainees or accused persons. If a case of excessive force does not constitute an offence, the facts and responsibilities are established by an administrative investigation and the use of disciplinary sanctions. If, however, an offence has been committed, the Carabineros are legally obliged to report it under article 175 (a) of the Code of Criminal Procedure.

112. There are established administrative procedures for the receipt of victims' complaints, the opening of internal investigations and the punishment of improper conduct. In order to expedite these processes, in 2009 a large number of administrative prosecution departments were created in all the country's police administrative divisions as autonomous bodies to investigate disciplinary offences. An efficient complaints mechanism that is easily accessed by victims has also been introduced through the Carabineros Internet platform.

Reply to paragraph 21

113. The bill on migration and aliens (Bulletin No. 8970-06) is in its first reading in the Chamber of Deputies.

114. Regarding the request for information on the number of migrants detained for violating migration laws and on the length and condition of their detention, 206 migrants were detained in 2011, 96 in 2012 and 174 in 2013. In each case, there were expulsion orders in force, issued before detention.

115. With regard to the length and conditions of detention, as of 9 March 2013 and in accordance with the ruling by the Ninth Chamber of the Santiago Court of Appeal in Remedy of *Amparo* No. 351-2013 of 25 February 2013, these deprivations of liberty may not exceed 24 hours. The detention of foreigners under expulsion orders complies with the provisions of article 176 of the Regulation on Aliens (Supreme Decree No. 597 of 1984), which authorizes the investigative police to place the individual under any restriction or deprivation of liberty that may be strictly necessary to fully comply with the administrative authority's provisions regarding decrees, and, if an expulsion order exists, to require the foreigner to sign in periodically at a police station.

116. Regarding the provision in the Aliens Act authorizing the confiscation of a migrant worker's identity documents when the worker is not in compliance with the migration laws, and that provision's contents and compatibility with article 12, paragraph 3, of the Covenant, it should be noted that article 165 of the Regulation on Aliens authorizes investigative police officers to take a statement from the migrant, confiscate any identity documents on their person and require them to remain in a particular place and report to the local police station. This regulation should be viewed in the context of articles 5 and 7 of the Organic Act on the Investigative Police, which provide that, for those powers to be exercised, an order from the relevant authority is required. They are therefore used only when assisting the administrative authority in executing its orders, in accordance with the migration regulations in force, which provide that all foreigners caught in violation of the law shall be reported, thereby bringing these powers into line with the provisions of article 12, paragraph 3, of the Covenant.

Fair trial and procedural guarantees (art. 14)

Reply to paragraph 22

117. The application of Act No. 18,314, identifying acts of terrorism and establishing appropriate penalties, has been extremely limited. In fact, in the last 10 years the Ministry of the Interior and Public Security has brought a total of eight cases for terrorist offences.

118. Between 2010 and 2013, three cases being prosecuted as terrorist offences were reclassified as ordinary offences. There are currently three terrorism cases brought by the Ministry of the Interior and Public Security pending, of which only one is against a person

from the Mapuche community. That case is under investigation; no conviction has yet been made.

119. Regarding the measures taken to ensure that the Act is not applied in a discriminatory manner to members of the Mapuche community or on political, religious or ideological grounds, training programmes on human rights and good police practices have been developed and implemented so that the police will use force proportionately and act in accordance with the provisions of their codes of ethics, regulations manual and, for the safe use of weapons, the Arms and Ammunition Regulations. A comprehensive strategy for human rights training was implemented in 2010 in all police education institutions with the technical assistance of the Inter-American Institute of Human Rights. This is in addition to senior officers' oversight of police officers in the performance of their duties and the administrative prosecution of any breaches.

Reply to paragraph 23

120. Article 5, paragraph 1, of the Code of Military Justice provides that "military offence" is understood to refer only to the offences "set forth in this Code". Regarding the application of this provision and military courts' jurisdiction and measures in cases involving civilians, it should be noted that Act No. 20,447, published on 30 December 2010, removes civilians from the jurisdiction of military courts. In accordance with the Act, and in application of transitional article 2, within 60 days 2,195 criminal prosecutions of non-military personnel, including 65 from the Navy courts and 8 from the Air Force courts, had been transferred. Disaggregated data is provided in the annex.

Reply to paragraph 24

121. In Chile a total of 14,162 adolescents (1,495 female and 12,667 male) are serving some form of criminal sentence. Of the total, 12.9 per cent (5.6 per cent of the total number of females and 12.3 per cent of the males) are serving their sentence in a custodial or semi-custodial centre, while the remaining 81.1 per cent are serving their sentence outside prison.

122. On 18 June 2007, Act No. 20,084 came into force, creating a System of Adolescent Criminal Responsibility for infractions of the criminal law, to make special provision for adolescent offenders. This law has resulted in significant progress in the recognition of adolescents' rights through its safeguarding of the guarantees of equality before the law and due process. It has also established a system of penalties and measures whose purpose is not only to make adolescents take responsibility for the offences that they have committed, but also to emphasize their social reintegration and end their criminal trajectories.

123. In 2012, as part of the effort to strengthen reintegration, the Act on Adolescent Criminal Responsibility was amended so as to allow adolescents to leave custodial centres for education, work or training. Mention should also be made of the implementation of the 11 measures of the Plan for Youth, which is designed to improve living conditions during deprivation of liberty, and of the increase to the budget assigned for training young persons serving a sentence either in custody or otherwise, from Ch$ 195 million (approximately US$ 376,447) in 2012 to Ch$ 826.85 million (approximately US$ 1,596,235) in 2013.

124. Furthermore, training has been provided for staff working directly with adolescents, i.e. a total of 539 persons from all the country's custodial centres.

Freedom of thought, conscience and religion (arts. 18 and 26)

Reply to paragraph 25

125. Regarding the request for information on the measures adopted by the State to fully recognize the right to conscientious objection to military service, there have been no changes to the information provided in the sixth periodic report presented by Chile to the Human Rights Committee on 25 May 2012.

Freedom of opinion, expression and peaceful assembly (arts. 19, 20 and 21)

Reply to paragraph 26

126. For information on the strategy adopted to protect human rights during demonstrations, please see the reply contained in paragraph 20 of this document.

127. The offence of disorderly conduct occurs if the following criteria are met: (a) public order is disturbed; (b) the disturbance is serious; and (c) the disturbance is intended to cause injury (damage) or other harm to an individual, or has any other unlawful purpose. This means that the offender must cause a *serious* disturbance, through acts of certain magnitude, to the peaceful coexistence of the community, it being understood that that peace is the foundation of public security and order. At the heart of the offence is the disturbance of the public peace, and its seriousness depends on the place, time, occasion, persons involved and circumstances in which the offence took place. The purpose of the disturbance is to cause injury or other harm to an individual, or to pursue some other unlawful end; the intention is to cause harm, injury, damage, or there is some other malicious intent.

128. The limitations to this offence are that it should not involve contempt or minor disturbances, which are sanctioned as misdemeanours. Penalties for the offence of disorderly conduct do not preclude penalties for damages or other harm caused.

129. In response to the protests seen in recent years, the bill on public order (Bulletin 7975-25) was drafted and is now in its second reading in the Senate's Constitutional Commission.

130. The bill is intended to circumscribe the actions of particular groups who, during protests, threaten the right of assembly and freedom of expression, destroy public and private property, create chaos and fear among the population and endanger individuals' physical integrity and lives. The bill has therefore been brought into line with the standards of the Inter-American Commission on Human Rights, in accordance with article 15 of the American Convention on Human Rights, and with article 21 of the International Covenant on Civil and Political Rights.

131. This is consistent with the standards mentioned above inasmuch as it sets limits on the exercise of the rights of assembly and freedom of association in order to protect law and order, public security and the rights and freedoms of all. The bill attempts to establish a regulatory framework that does not impose greater restrictions or conditions on the right of assembly, but rather seeks to tighten the penalties applicable to those who violently disrupt or impair that right while concealing their identity.

Dissemination of information about the Covenant and its optional protocols (art. 2)

Reply to paragraph 27

132. The Human Rights Department in the Ministry of Foreign Affairs is the Government body responsible for drawing up State reports on compliance with human rights treaties in force in Chile. It does this in coordination and collaboration with the various public bodies responsible for the fields and rights addressed by each of these international conventions, in accordance with the treaty bodies' guidelines and parameters for the proper discharge of this international commitment.

133. An event was held on the dissemination of information about the Covenant and its optional protocols, attended by representatives of 26 civil society NGOs, and at which general information was provided on the International Covenant on Civil and Political Rights and the obligation to report on implementation to the Committee. This was followed by an explanation of the stages of the process and the envisaged time frame for the submission and consideration of the reports on compliance with the Covenant by the State of Chile. Detailed information was then given on the consultation mechanism established by the Human Rights Committee and open to civil society and national human rights institutes.

134. At this meeting, it was explained that the sixth report of Chile on the implementation of the Covenant is a reply to the concluding observations made after consideration of the last report, covering the period from then (14 and 15 March 2007) to February 2012.