



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 279th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 9 April 2019, at 3 p.m.

Chair: Ms. Janina

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Chile

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Chile (CED/C/CHL/1; CED/C/CHL/Q/1 and CED/C/CHL/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Chile took places at the Committee table.*
2. **Ms. Recabarren Silva** (Chile), introducing the initial report of Chile (CED/C/CHL/1), said that, during the military dictatorship that had governed Chile from 1973 to 1990, more than 3,000 persons had been subjected to enforced disappearance or political execution; regrettably, the fate of some 1,000 of those victims was still unknown. In preparing its initial report, the Chilean Government had decided to include information on the events that had occurred under the military dictatorship, even though they predated the adoption of the Convention and were therefore not covered by it. The reason for doing so was to place into context the actions taken by the Government, following the restoration of democracy, to investigate and punish violations and provide reparation to victims.
3. Throughout the transitional justice process, the Government had sought to strengthen democracy and reconciliation. It had established three national truth commissions: the National Truth and Reconciliation Commission (Rettig Commission), in 1990; the National Commission on Political Prisoners and Torture (Valech I Commission), in 2003; and the Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture (Valech II Commission), in 2010. The courts had handed down more than 2,500 convictions related to enforced disappearance and other human rights violations committed during the dictatorship; 1,340 such cases remained pending.
4. Chile had made significant efforts to compensate the victims of political violence and the families of victims of enforced disappearance and political execution. While financial reparations would never be sufficient to make up for the pain suffered, Chile had been recognized internationally for its efforts to further the causes of truth, justice and reparation for the victims of the human rights violations that had occurred between 1973 and 1990. Since the restoration of democracy, the successive government administrations of Chile had demonstrated their commitment to advancing those policies. Currently, the Ministry of Justice and Human Rights was preparing a report on all the actions taken by the State between 1990 and 2018 as part of the transitional justice process.
5. The systematic practice of enforced disappearance had ended in 1990. Since then, there had been just four cases of enforced disappearance, three of which involved incidents that had occurred prior to the State's ratification in 2010 of both the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. The fourth case had been investigated by the Public Prosecution Service and tried in court under the new Code of Criminal Procedure. Where it had been proved that an act of enforced disappearance had been committed, the State either had convicted the perpetrators or was continuing its investigations in order to properly identify and punish those responsible.
6. As from the restoration of democracy, there was no impunity in Chile, nor would there ever be impunity for any person who committed an act as appalling as enforced disappearance. To that end, Chile continued to amend its legislation: for example, in 2009, it had ratified the Rome Statute of the International Criminal Court, which defined enforced disappearance in certain contexts as a crime against humanity. That same year, Congress had adopted Act No. 20.357, which established crimes against humanity, genocide and war crimes as separate offences. Article 6 of the Act prescribed the penalties to be imposed for acts involving the removal of persons from the protection of the law, depriving such persons of their liberty and failing to respond to requests for information about their whereabouts, whether that meant a refusal to provide information or the provision of false information. A draft amendment to the Criminal Code, which would establish an act of enforced disappearance as a separate offence, was at the second stage of statutory review before Congress. Chile was committed to promoting and pursuing the adoption of that bill.

7. The adoption of a new Code of Criminal Procedure in 2005 had marked another milestone in the prevention of enforced disappearance. The oral adversarial procedure introduced under the new Code, which also provided for an autonomous Public Prosecution Service, free defence counsel and the legal review of any restriction of liberty, significantly contributed to safeguarding the rights of persons involved in criminal investigations or proceedings.

8. Human rights training was provided to the law enforcement and security forces, the armed forces and prison personnel, with a view to preventing human rights violations. The Government was committed to modernizing the country's police institutions. In that connection, a National Human Rights Directorate had been established, and the training curriculum for the Carabineros (police) was being revised. Another major step towards preventing enforced disappearance was the adoption of legislation in 2018 that provided for the establishment of a national preventive mechanism for the prevention of torture.

9. In addition to legislative challenges, Chile also faced institutional challenges with regard to the prevention of enforced disappearance. Specifically, it was critical to improve the conditions in prisons and in centres where children and adolescents were held, so as to ensure the protection of those in the custody of the State. To that end, in 2018, the President of Chile had set up a task force on children, bringing together representatives of all political sectors, academia and civil society. Another ongoing challenge was the need to provide human rights training to civil servants. The provision of such training and the incorporation of a human rights perspective across all public policies were the main focus of the Office of the Undersecretary for Human Rights and contributed to the strategic objective of the Ministry of Justice and Human Rights to promote and protect human rights.

10. Owing to the tragic events that had occurred in Chile between 1973 and 1990, Chileans had a deep understanding of the terrible consequences of enforced disappearance, which affected not only the victims and their families but society as a whole. Today, despite the challenges it faced, Chile was committed to preventing acts of enforced disappearance, and if they nevertheless reoccurred, to investigating them, punishing the perpetrators and compensating the victims and their families. The political consensus around that policy reflected the strength of the democratic system and rule of law in Chile, as well as the will to continue nurturing a culture of human rights in the country.

11. **Mr. Figallo Rivadeneyra** (Country Rapporteur), noting that the State party's initial report had been prepared by the human rights branch of the Ministry of Justice and Human Rights with the participation of 14 institutions, said that he would like to have more information on those institutions, as well as details on the State party's communication with civil society regarding the report.

12. Statistics were helpful only to the extent that they could be used to develop meaningful indicators and effective policy. He would therefore welcome additional disaggregated, up-to-date statistical information on disappeared persons in the State party. As for the 3,000 victims mentioned in the State party's opening statement, it would be useful to know how many such cases had been investigated, prosecuted and resolved. Similarly, it would be helpful to have more detailed information on the 1,340 cases that had been reported as pending.

13. The Committee had received information according to which a national plan to clarify the whereabouts and fate of disappeared detainees had been developed by the Office of the Undersecretary for Human Rights of the Ministry of Justice. He would like to know more about that plan, including how civil society had been involved in its development. The Committee had also received information on five cases of enforced disappearance involving acts that had occurred after 1990, whereas the statement made by the head of the delegation referred to only four such cases. He would appreciate clarification of that matter. He would also welcome details on the cases of José Vergara, Hugo Arispe, José Huenante and Ricardo Harex González. He asked whether some of the disappeared persons in those cases had been found.

14. Noting the Government's stated intention to support the adoption of a draft amendment to the Criminal Code that would establish an act of enforced disappearance as a separate offence, he asked whether the Government intended to amend that draft prior to

pursuing its adoption. According to information received by the Committee, the sentences for persons convicted of acts relating to enforced disappearance varied greatly, ranging from a few days to 20 years of imprisonment. Moreover, such persons often benefited from early parole, or had their sentence reduced on the basis of “irreproachable prior conduct” – the case of José Vergara was a clear example in that regard. He would appreciate it if the delegation could describe the predominant case law corresponding to such cases, given that the crime of enforced disappearance was not classified as a separate offence, and explain how such sentences were proportionate to the crimes committed. An update on the status of Bill No. 10.696-07 would also be welcome.

15. He requested more detailed information about the legislation that applied when the concept of due obedience was used as a defence in criminal trials. He would also like to have an update on the amendments to article 335 of the Code of Military Justice and any other applicable legislation. Referring to the State party’s jurisdiction over offences committed outside its territory, he noted that article 6 of the Courts Organization Code was not in line with the Convention, given that the Code provided that such jurisdiction could be exercised only when both the victim and the alleged offender were Chilean nationals, whereas under article 9 (1) (b) and (c) of the Convention, only one of the two had to be a national of the State party in question. He would welcome the delegation’s comments on the matter. Lastly, he wished to know whether Chilean legislation barred military tribunals from exercising jurisdiction over cases of enforced disappearance.

16. **Mr. Ravenna** (Country Rapporteur) said that he would appreciate having more detailed information on the mechanisms for ensuring the protection of complainants. According to information received by the Committee, lawyers working for the Human Rights Programme had reported being subjected to degrading treatment, which in turn had led to administrative proceedings against the head of the Programme. He would appreciate receiving an update on those proceedings.

17. Under article 12 of the Convention, States parties were required to rapidly exclude from an investigation any person suspected of having committed an offence of enforced disappearance, so that he or she would not be in a position to influence the progress of the investigation. Such suspension from duties was meant to be temporary, at least until the investigation had been completed and the perpetrators had been identified. He asked how that article was applied in practice in the State party and whether there had been any cases in which sanctions had been brought against persons who engaged in acts intended to hinder an investigation.

18. He welcomed the State party’s openness and transparency in being willing to include in its report information about acts of enforced disappearance that had been committed under the military dictatorship. Notwithstanding, the Committee had received information that, as of 2018, the Government had stopped receiving new complaints about such acts. Clarification of that matter would be appreciated, as would a detailed explanation of the concept of the “partial lapse of the statute of limitations”. Enforced disappearance was defined as a continuous crime, which meant that the statute of limitations was understood as beginning when a body was found and a homicide was declared.

19. He requested further information regarding the mandatory period of confidentiality imposed under Act No. 19.992 vis-à-vis the documents, testimonies and background information compiled by the Valech I Commission. In particular, he was interested to know whether the period of confidentiality was intended to protect victims and whether the State party had evaluated whether the application of that rule could undermine or inhibit the progress of related investigations and prosecutions. In addition, he wished to know whether the State party had considered repealing Decree-Law No. 2191, and he would be grateful for further information on the application of non-custodial measures, such as monitored parole, in cases concerning offences perpetrated during the dictatorship.

20. **Mr. Huhle** said that he wished to know how many requests for extradition in relation to enforced disappearance had been submitted by Chile to other States. With regard to the confidentiality of the documents compiled by the Valech I Commission, he would be interested to know whether victims could request the declassification of documents concerning them. Lastly, he would be grateful for further information on any investigations

into enforced disappearances associated with Colonia Dignidad and any convictions resulting from those investigations.

21. **Ms. Galvis Patiño** said that she would like to know what steps were being taken or might be taken to repeal Decree-Law No. 2191. For example, it would be interesting to learn whether the judgments of the Inter-American Court of Human Rights that called into question the Decree-Law's compatibility with the American Convention on Human Rights could be used to that end, or whether the International Convention for the Protection of All Persons from Enforced Disappearance could be invoked directly in specific cases of enforced disappearance, as a means of invalidating the Decree-Law.

The meeting was suspended at 3.55 p.m. and resumed at 4.15 p.m.

22. **Ms. Chevesich Ruiz** (Chile) said that, in 2010, the Supreme Court had decided that – apart from those cases that fell within the remit of a jurisdictional judge – cases of grave human rights violations committed by agents of the State between 11 September 1973 and 10 March 1990 would be tried and judged by special investigating appeal court judges, with a view to expediting their processing. There were currently 13 appeal court judges assigned to those cases.

23. In April 2010, the Office of the National Coordinator for Cases of Human Rights Violations had been established under the authority of a judge of the Supreme Court for the purpose of updating existing databases in respect of those cases and coordinating the work of the judges assigned to them. It was important to recall that the procedure used in such cases was governed by the old Code of Criminal Procedure, which operated under the inquisitorial system. As of 10 January 2019, a total of 1,340 cases were in progress, of which around 76 per cent were in the preliminary investigative phase.

24. With regard to cases of kidnapping, illegal detention, torture and disappearance, 834 cases were currently being processed. Of those, some 78 per cent were in the preliminary investigative phase, roughly 8 per cent were in the trial phase and first-instance court decisions had been handed down in the remaining 14 per cent. Appeals filed against those decisions were currently pending before the appellate courts or the Supreme Court. Of the 245 cases registered in 2018, 44 per cent involved kidnapping, torture or illegal detention. Also in 2018, 57 decisions on committal for trial had been issued, 109 stays of proceedings had been ordered and a total of 72 indictments had been brought, implicating 322 persons.

25. As far as resolved cases were concerned, in the past five years, 2,570 convictions had been secured in courts of first instance, including 2,052 in 2018. Between 2002 and 2018, the Supreme Court had handed down a total of 447 judgments, including 54 in 2018, of which 55 per cent related to kidnapping, torture, illegal detention or disappearance. The Court had also issued 217 rulings on compensation for damages, which totalled 81 million dollars. Of those rulings, 91 related to kidnappings, in relation to which some 40 million dollars in compensation had been awarded. To that figure must be added the amounts of compensation awarded by the appellate courts.

26. Article 78 of the old Code of Criminal Procedure provided that, in general, the preliminary investigative stage of such cases was confidential. However, the judges hearing those cases submitted the case file to the complainants and the accused once the case had proceeded to trial. Case files relating to the unlawful exhumation of victims' remains remained confidential in order to protect the victims' dignity and their relatives.

27. Under articles 141 et seq. of the Criminal Code, the penalty for aggravated abduction ranged from 5 years and 1 day to 20 years of imprisonment. There had been cases in which the mitigating circumstance provided for under article 11 (6) of the Criminal Code, namely the "irreproachable prior conduct" of the accused, had been applied. In such cases, the accused was usually sentenced to the minimum applicable penalty.

28. Criminal proceedings for crimes against humanity were not subject to a statute of limitations. While it was true that, in the past, a partial lapse of the statute of limitations had been applied in certain cases in accordance with article 103 of the Criminal Code, under the Chilean system of procedure, the courts were not bound by precedent. Furthermore, since the Supreme Court and the courts of appeal were collegiate courts, decisions could vary according to the composition of the individual court.

29. In recent years, the Supreme Court had issued 20 judgments in relation to cases of aggravated abduction that had taken place between 1973 and 1990, in which the persons convicted had requested the application of a partial lapse of the statute of limitations. Of those requests, 19 had been rejected on the ground that, in cases involving crimes against humanity, in accordance with the rules of international law, the passage of time could not be invoked as justification for reducing the severity of the sentence. Moreover, in such cases, the granting of a partial lapse of the statute of limitations would compromise the principle of proportionality, given that, in view of the seriousness of the offences perpetrated, the penalty must be commensurate with the harm done and the degree of culpability of the perpetrator. Articles 65 et seq. of the Criminal Code provided merely that the courts had the discretion, rather than an obligation, to reduce the penalty, even if there were several mitigating circumstances.

30. Monitored parole was provided for under Act No. 18.216 and could be applied in cases where the sentence imposed was a term of imprisonment of less than 5 years. In certain cases, following the application of mitigating circumstances, the sentences imposed had been reduced to under 5 years' imprisonment, and monitored parole had been ordered. The position of the Supreme Court was that parole was a right and a benefit to which all convicted persons were entitled, provided that they met the requirements established under Decree-Law No. 321, including the completion of half their sentence. Parole had been granted to nine persons serving sentences for crimes against humanity. However, under Act No. 21.124 amending Decree-Law No. 321, which had been adopted in 2019, the Supreme Court could no longer grant parole in such cases. Under the amended Decree-Law No. 321, parole was no longer a right, but was merely a benefit that could be granted to convicts, provided that they met the relevant legal requirements.

31. As recognized by the Supreme Court in its judgment of 12 June 2018 in the case of José Huenante, Act No. 20.477 stipulated that civilians and minors, whether they had the status of victim or accused, must always be subject to the jurisdiction of the civilian courts. The cases of military officers who committed an offence under the ordinary law with regard to another officer were also heard in the civilian courts. A preliminary bill was being prepared in order to make that practice a legal requirement.

32. With regard to due obedience, in the previous five years, the Supreme Court had received 50 requests for the application of the mitigating circumstance provided for under article 214 of the Code of Military Justice, read in conjunction with article 10 (10) of the Criminal Code. Of those requests, 49 had been rejected for lack of evidence. In its rulings, the Supreme Court had established that the prerequisites for the application of mitigating circumstances in respect of due obedience were the following: that the accused had received an order from a superior to perpetrate a criminal act in the exercise of his or her official duties as a member of the armed forces, that the accused had declared his or her objection to the order and that the superior had then insisted on its execution.

33. Regarding irregular adoptions, 17 cases of irregular adoption and kidnapping of minors, involving 341 victims, were currently under way; all were in the preliminary investigative phase. Of the victims, 279 were children who had been kidnapped between 1973 and 1990, 44 had been kidnapped prior to 1973 and 18 had been kidnapped or irregularly adopted after 1990. As the cases were in the preliminary investigative phase, all information regarding them remained confidential.

34. The Chilean Supreme Court had submitted a request to the Australian Government for the extradition of Adriana Elcira Rivas González, who was being investigated for the crime of abduction of six victims. She had been arrested on 19 February 2019 pending legal proceedings concerning her extradition. She had submitted a petition for release on 28 February 2019, and the competent court had decided on 12 April 2019 to issue its ruling between 24 and 27 May 2019.

35. The Chilean Government had submitted a request on 27 September 2006 to the United States of America for the extradition of Armando Fernández Larios, who had been convicted in Chile of the abduction and aggravated homicide of 17 victims. The United States Government had rejected the request, owing to an agreement between the accused and the competent prosecutor.

36. A request for the extradition of Carlos Alberto Fernando Herrera Jiménez had been submitted to Argentina on 28 August 2013. Mr. Herrera Jiménez had been held criminally responsible for the abduction and aggravated homicide of a leader of the Communist Party on 3 November 1993. His extradition was pending, and the Ministry of Foreign Affairs had submitted the most recent request on 17 January 2019. Requests for the extradition of Carlos Humberto Minoletti Arriagada, who had been charged in two cases with aggravated abduction of 26 persons, had been submitted to the United States on 9 November 2017 and 9 July 2018.

37. **Mr. Fernández González** (Chile) said that the amendments to the rules governing release on parole were related to a bill that had been submitted by a group of parliamentarians in May 2016, which had provided, *inter alia*, for additional preconditions for the release on parole of persons deprived of their liberty for the commission of crimes against humanity between 1973 and 1990. Consensus had been reached on the application of international legal standards, including the right to enjoy prison benefits, but under more stringent conditions than those applicable to persons serving prison sentences for other offences.

38. If approved by Congress, the bill would contain more stringent standards than those enshrined in the Rome Statute of the International Criminal Court, since convicts would have to have confessed to their involvement in the case, to have provided evidence relating to other similar criminal cases and to have shown repentance in public for the harm that they had inflicted on the victims and their relatives. In addition, release on parole could not be granted if there was a risk that doing so would undermine public security. The Constitutional Court, on considering the proposed amendments, had ruled that the requirement of a public declaration of remorse was disproportionate and unconstitutional and that an obligatory public statement would undermine human dignity. The law had been promulgated on 18 January 2019 and had entered into force.

39. During the period from 1960 to 1998, adoption had been regulated by a law that failed to specify a procedure or affiliation links for adoption. The current Adoption Act had been promulgated in 1999 in order to align the country's legislation with the Convention on the Rights of the Child. No child could be adopted under the Act without a court ruling and the participation of the National Service for Minors, or another accredited body, as a sponsor. All minors and interested parties involved in adoption procedures must be registered on a list that was regularly updated.

40. A bill to amend the Adoption Act, which was currently being considered, provided for procedures to combat irregular adoption. In particular, it would require a lawyer to be appointed to represent all children or adolescents involved in an adoption procedure, without which the procedure would be deemed null and void. The bill also provided for the right of minors to be heard. It would prohibit granting an adoption to anyone who had been convicted of an act of domestic violence or child abuse, as well as the receipt by a person, institution or authority involved in the adoption procedure of economic, material or other benefits.

41. The aim of the bill on alternatives to deprivation of liberty on humanitarian grounds was to enable persons over the age of 75 years who had served half their sentence, persons with terminal illnesses and persons with other types of disabilities to have their sentences replaced by house arrest. The bill aligned domestic legislation with international standards, including the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas adopted by the Inter-American Commission on Human Rights, and the Inter-American Convention on Protecting the Human Rights of Older Persons. According to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, a key objective of the deprivation of liberty was the rehabilitation of convicted persons and their reintegration into society.

42. **Mr. Navarro Brain** (Chile) said that there was currently no definition of the offence of enforced disappearance in Chilean legislation, but a bill had been drafted for that purpose. Furthermore, Chile had signed the Rome Statute of the International Criminal Court, and Supreme Court judgments had clearly recognized enforced disappearance as a crime. Act No. 20.357 of 2009 defined enforced disappearance as a crime against humanity

and Chile had ratified the Inter-American Convention on Forced Disappearance of Persons in 2010.

43. The bill defining the offence of enforced disappearance provided for the prosecution of public officials who, with or without the acquiescence of the State, had deprived persons of their liberty, without revealing their fate or whereabouts. More severe penalties would be imposed in cases of lengthy deprivation of liberty and if the victims were pregnant women, minors, older persons or persons with disabilities. Mitigating circumstances were also recognized in line with article 7 (2) (a) of the Convention. Officers who received an order to commit an offence of enforced disappearance or any other crime against humanity were required to disobey.

44. A bill amending Act No. 19.992, which would allow courts to have access to information that identified victims and was provided by the Valech Commission, had been adopted by the Chamber of Deputies in 2016 and had been referred to the Senate Human Rights Committee. The Committee had proposed the addition of an article requiring non-disclosure of the identity of victims pending the termination of proceedings. No final decision had yet been taken on that bill.

45. In May 2006, the Senate had proposed declaring Decree-Law No. 2191 of 1978 null and void, on the ground that it violated the Constitution, since it granted an amnesty for persons who had committed crimes between 1973 and 1989. No action had yet been taken on the proposal. Agreement had been reached on accession to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The fact that Chile had not yet ratified the Convention had not impeded its compliance with the principle enshrined therein.

46. **Mr. Candia Falcón** (Chile), referring to the bill amending the duty of confidentiality set forth in Act No. 19.992, said that article 15 of Supreme Decree No. 1040 establishing the Valech Commission stipulated that victims' documents, testimony and case history were to remain confidential for 50 years. Since no persons, groups, authorities or judges were to have access to such data, victims of torture could share information with the Commission in full confidence. Victims were not prevented from providing their statements to third parties and could, if they so wished, present testimony against perpetrators to the courts or authorize the presentation of testimony in other cases.

47. The Inter-American Court of Human Rights had stated, in its judgment concerning the case of *Omar Humberto Maldonado et al. v. Chile*, in 2015, that the duty of confidentiality laid down in the Act concerning the Valech Commission was legitimate, reasonable and proportional. It found that the restriction of access to the information mentioned in article 15 of Act No. 19.992 was proportional, inasmuch as the sacrifice inherent in the restriction was not excessive or immoderate when compared with the advantages that accrued from the restriction, in terms of achieving the desired goal. Accordingly, the duty of confidentiality did not impose a restriction conducive to impunity. A bill aimed at repealing the 50-year duty of confidentiality had been introduced in the Chamber of Deputies and adopted in 2016. Discussions of the bill had begun in the Senate in 2017, and in 2018 the Government had underscored the urgency of the debate. However, its urgent status had subsequently been withdrawn.

48. The courts had ceased to implement the Amnesty Decree-Law from 1998 onwards because the enforced disappearances that had occurred between 1973 and 1990 were deemed to constitute crimes against humanity and, as such, were not eligible for amnesty. The courts thus acted in accordance with international legal norms. The Supreme Court had ruled that cases of enforced disappearance were not covered by the Amnesty Decree-Law but by the Geneva Conventions of 1949. The urgency of the bill seeking to declare the Amnesty Decree-Law null and void had been recognized by President Bachelet in 2014, and its urgent status had been withdrawn in 2015. It was therefore still pending in the Chamber of Deputies. However, the courts had refrained from implementing the Decree-Law for more than 20 years.

49. **Ms. Ortiz Pulgar** (Chile) said that when the Public Prosecution Service had charged three police officers in 2009 with unlawful detention, the Military Prosecutor's Office had claimed jurisdiction over the matter. However, in 2012 the Military Appeal Court had

announced that it lacked jurisdiction to deal with a case involving a 16-year-old minor, and the Supreme Court had ruled in 2018 that the case should be referred to the ordinary criminal justice system. It was currently being investigated by the Public Prosecution Service.

50. In 2015 the family of José Vergara Espinoza, a 22-year-old individual who suffered from schizophrenia and alcohol addiction, had requested police support in resolving problems they had encountered; the police officers had arrested him, and he had disappeared. The Public Prosecution Service had charged several officers with aggravated abduction in 2017, and in September 2018 the criminal court of Iquique had sentenced four police officers to a four-year prison term for abduction. Their unblemished record had been taken into account as a mitigating circumstance. Nobody had been detained in the case of Ricardo Harex González because the only evidence had been the presence of a police vehicle in the area where he had disappeared. Steps had been taken since 2017 and, in particular, in January 2019, to align investigative procedures with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

51. **Mr. Ravenna** said that it would be helpful to know whether the 2,570 persons convicted of offences of enforced disappearance that had been perpetrated between 1973 and 1990 included both direct and indirect perpetrators. He had been surprised to learn that, in Chile, the partial lapse of a statute of limitations was recognized as a mitigating circumstance that might lead to the imposition of a lesser sentence. To recognize the statute of limitations that related to acts of enforced disappearance as such, particularly when the latter constituted crimes against humanity, would run counter to the spirit and letter of the Convention. The statute of limitations relating to acts of enforced disappearance should be substantial enough to avoid giving the impression that the State party lacked the will to punish the perpetrators of those acts.

52. In the past, numerous Latin American military dictatorships had attempted to use codes of military justice to exercise special jurisdiction over perpetrators of ordinary crimes, thereby violating their right to equality before the law. The sanctions prescribed by codes of military justice should be imposed only on military personnel.

53. He asked whether the 279 children referred to in the report mentioned by the delegation had been abducted or had been born in captivity, and whether the State party considered there to be sufficient evidence to suggest that those abductions had been part of a systematic plan. He also wished to know whether Chilean law prohibited the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he or she might be subjected to enforced disappearance.

54. He would appreciate it if the delegation could confirm whether excavations were still taking place in Colonia Dignidad and describe what firm action, if any, had been taken under the cooperation agreement that the State party had signed with Germany. Noting that there were plans to auction off land in and around Parral, he asked what measures the State party envisaged taking in order to protect the remains of any disappeared persons buried there and to prevent the land containing those remains from falling into the hands of private landowners.

55. **Mr. Figallo Rivadeneira** said that it would be helpful to receive a copy of the text of the various bills to which the delegation had referred and a compilation of the copious statistical information it had provided on the different sets of criminal proceedings that were currently under way. It was his impression that a complex set of legal issues, many of which stemmed from the recognition of various mitigating circumstances, was affecting the State party's ability to impose penalties that were proportional to the seriousness of the crime of enforced disappearance, whether it constituted an ordinary crime or a crime against humanity. He asked what the minimum sentence imposed on a perpetrator of enforced disappearance had been. He feared that, if that situation was not remedied, cases could arise in which persons convicted of an offence of enforced disappearance could simply be released. He invited the delegation to clarify the impact of the principle of the presumption of innocence on the severity of the penalties imposed for the crime of enforced disappearance and the scope of the mitigating factor of "irreproachable prior conduct".

56. Noting that the aim of Bill No. 9818-17 was, inter alia, to amend the Code of Military Justice in order to prohibit military personnel from citing the orders of a superior as a justification for enforced disappearance, he asked to which specific categories of military personnel that prohibition would apply. It was also his understanding that only civilian courts were competent to try perpetrators of offences of enforced disappearance, even when the perpetrators in question were military personnel. He asked whether that was indeed the case.

57. It would be helpful to know whether, despite the provision in article 95 of the Criminal Code that the statute of limitations began to run from the day on which the crime had been committed, the crime of kidnapping and other crimes related to enforced disappearance were still considered to be continuous crimes. The Committee had received reports that the Carabineros had refused to acknowledge that students arrested during a protest had, in fact, been deprived of their liberty and to enter the required information in their register, and that they had also refused to inform the families of persons arrested on Mapuche lands of those persons' whereabouts. He invited the delegation to comment on the veracity of those allegations.

58. **Mr. Decaux**, noting that the bill to criminalize enforced disappearance in ordinary law had been adopted in May 2017, then amended substantially, debated and replaced, asked when it would finally be passed into law, what the scope of its provisions would be and what obstacles, if any, might prevent its promulgation.

59. **Mr. Huhle** said it was his understanding that investigating judges appointed under the previous legal system often spent years investigating a single case of enforced disappearance in total secrecy, which could entail a violation of the right of the victims to truth and justice. Noting that the State party expected that the transition to a new legal system would address that concern, he asked whether it had envisaged taking steps to expedite the transition process in order to forestall violations of victims' rights.

60. **Ms. Recabarren Silva** (Chile) said that article 4 of Act No. 20.430 on the protection of refugees prohibited the expulsion or return of foreign nationals who had applied for refugee status in Chile to a country where their life or personal liberty would be in danger.

61. **Ms. Chevesich Ruiz** (Chile) said that the 2,570 persons convicted of offences of enforced disappearance included the leaders of the former National Intelligence Directorate (DINA) and, its successor, the National Information Centre (CNI), as well as direct perpetrators. It was true that the Supreme Court and a number of courts of first and second instance had, in some cases, invoked article 103 of the Criminal Code, which recognized a partial lapse of a statute of limitations as a mitigating circumstance, in order to reduce sentences. While it might appear contradictory to recognize a statute of limitations as a mitigating circumstance in cases involving crimes to which such a statute ought not to apply, the purpose of doing so was to take account of the time that had elapsed since the crimes in question had been committed. Although the Supreme Court and other courts of first and second instance had recognized that mitigating circumstance in the past, in keeping with the constitutional principle of the independence of the judiciary, they were not bound by precedent and were under no obligation to do so in the future.

62. Article 55 et seq. of the Criminal Code set out the rules governing the application of penalties. The crime of kidnapping carried a minimum penalty of 5 years and 1 day. The penalties established in those provisions could be reduced if one or more of the mitigating circumstances provided for in article 11 of the Criminal Code were found to apply. The recognition of the partial lapse of a statute of limitations as a mitigating circumstance could result in the convicted person receiving a prison sentence of 61 days or even a conditional sentence. Under Act No. 18.216, which provided for the possibility of replacing a prison sentence with an alternative form of punishment, irrespective of the crime committed, a convicted person who had received a prison sentence of less than 5 years could be released on probation.

63. The recognition of a wide range of mitigating circumstances could indeed affect the State's ability to impose penalties that were proportional to the seriousness of the crime of enforced disappearance, particularly when the latter constituted a crime against humanity. The principle of the presumption of innocence could be considered as a mitigating factor in

cases where an accused person had been tried and sentenced but could still be acquitted. If that mitigating factor was found to be the only one applicable and the accused person was not acquitted, the minimum applicable penalty would normally be imposed.

64. The Code of Military Justice was applied only when a member of the armed forces invoked due obedience as an exculpatory or mitigating circumstance. The 279 children referred to previously had been either abducted or illegally adopted. There was no evidence to suggest that they had been born in captivity. She could neither confirm nor deny whether those abductions had taken place as part of a systematic plan, as the related criminal proceedings were still ongoing. Additional information on the situation in Colonia Dignidad would be provided in due course. The crime of abduction was always considered to be a continuous crime.

65. Although the investigating judges appointed under the previous legal system, which was inquisitorial in nature, were required to work in secret during pretrial proceedings, a summary of the charges being brought against the accused was provided to their family and lawyer. That practice provided the accused with an opportunity to cooperate in pretrial investigations with a view to expediting the processing of his or her case. The lengthy duration of pretrial proceedings under the inquisitorial system was largely attributable to a lack of assistance from accused persons in clarifying the facts of the case.

66. Many of the cases brought against military personnel that had been dismissed owing to the lapse of the applicable statute of limitations had been reopened following the restoration of democracy in the country. However, for legal reasons, those cases still had to be processed under the inquisitorial system. Although the Supreme Court had taken a number of measures to expedite the handling of those cases, it could not intervene directly in or exert any influence over them.

67. **Ms. Recabarren Silva** (Chile) said that the delegation would, in due course, send the Committee a copy of the text of the bills to which it had made reference during the interactive dialogue. The institutions that had been involved in drafting the initial report of Chile included the Carabineros, the Public Prosecution Service, the Public Criminal Defender Service, the Ministry of Justice and Human Rights, the judiciary, the Ministry of Foreign Affairs, the Ministry of the Interior and Public Security, legal assistance agencies, the Civil Registry, the National Directorate of the Prison Service, the National Service for Minors, the Forensic Medical Service and the Office of the Minister and Secretary General of the Presidency.

68. On 20 November 2017, staff from the Office of the Undersecretary for Human Rights met with organizations of relatives of victims of the dictatorship and former political prisoners to inform them of the contents of the State party's report to the Committee. The Government recognized that ensuring the adequate involvement of civil society in the drafting of reports to be submitted to the human rights treaty bodies remained a challenge. Accordingly, it was stepping up its efforts in that area.

69. There had been no suspension of judicial proceedings in 2018. Of the two complaints that had been brought before the courts, only one had been taken forward. Despite the fact that the Human Rights Programme Unit now formed an integral part of the Office of the Undersecretary for Human Rights, it still had the budget of a programme and not of an administrative unit. Although the majority of the Unit's staff were contractors and not civil servants, during the period 2018–2019, seven contractors had been promoted to that status. It was true that the Unit's budget had been reduced, but the resources in question had been redistributed within the Office of the Undersecretary for Human Rights. The budget of all State entities had been reduced by 4 per cent as a result of the austerity measures that had been applied in 2019.

70. The Human Rights Programme Unit was currently handling the cases of around 3,200 victims, 1,100 of whom were arrested persons who had subsequently disappeared. Following the broadening of its legal mandate, the Unit could now bring an action before the courts on behalf of the victims that it represented. There were currently 355 victims in respect of whom judicial proceedings had not been instituted on the grounds that they had not taken part in the programme or for other reasons. The situation of those victims would

be reviewed and the possibility of instituting judicial proceedings on their behalf explored in 2019.

The meeting rose at 6.05 p.m.