Report of the Chilean Civil Society to the United Nations Committee against Torture, presenting the Fifth Periodical Report on the State of Chile regarding the application of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

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I. Introduction: Torture and other cruel, inhuman, or degrading treatment or punishment as a consequence of police activity[1]

Nineteen years after the end of the military regime, we observe with concern the persistence of multiple situations of abuse, unnecessary use of force and brutality by State police agents, resulting in torture or cruel, inhuman, and degrading treatment of persons. Such situations affect, in general,

[1] *La violencia policial en Chile (Police violence in Chile)*, Observatorio Ciudadano et al., 2008, available online at www.altoahi.cl. Report prepared with the active participation of Amnesty International Chile, Observatorio Ciudadano, American Association of Jurists, CODEPU – Corporación de Defensa de los Derechos del Pueblo (Corporation for the Defence of the People's Rights), OPCIÓN Corporation, Ethical Commission against Torture, CINTRAS - Centro de Salud Mental y Derechos Humanos (Centre for Mental Health and Human Rights), Red de ONGs Infancia y Juventud Chile (NGO Network Infancy and Youth in Chile). It was also signed by Fabiola Letelier, Juan Guzmán Tapia, Hugo Gutiérrez, Nelson Caucoto, Helmut Frenz, Adolfo Millabur, Mayor of Tirúa, and Luis Astorga, Human Rights Coordinator of the Professional Associations of Chile.

members of vulnerable population sectors, particularly indigenous peoples, workers, children etc. Such acts occur not only when these people attempt to exercise their rights of freedom of speech and peaceful assembly, recognised by Chilean Law and the international instruments of Human Rights ratified by Chile, but also very often in their communities, neighbourhoods and homes, where they are subject to police raids, sometimes without appropriate warrants, or are victims of discriminatory treatment by members of Carabineros (uniformed Police) or Policía de Investigaciones (Police detectives).

The illegal and abusive practices of policemen, which in the years following the end of the military regime were attributed to the legacy of their authoritarian training, has not only persisted under democracy but has intensified.

According to a report by FLACSO Chile, between 1990 and 2004 a total of 6,083 cases of police violence imputed to Carabineros were entered into the military justice system in the IV, V, VI and Metropolitan Regions alone. According to the same entity such accusations, averaging 405 cases per year, have increased from 164 cases in 1990 to 476 cases in 2000, reaching a total of 585 cases in 2004[1]. Various organizations report the persistence of these police practices in recent years. Thus for example the Presidential Advisory Commission for the Protection of People's Rights in its quarterly reports for 2007 and 2008 reports an increase in accusations of police abuse by the population in the last year.[2]

The 2008 annual report on Human Rights by the Diego Portales University in Chile speaks with concern of the recrudescence of situations of the abusive use of the forces of law and order, in particular as a means of repressing social mobilisation, as have occurred during the period covered by the report in the cases of students and workers. This Report claims that: "*In Chile, the general rule appears to be that protests end with serious incidents and with abuses by State agents, abuses which are neither punished nor compensated through the established mechanisms*".[3]

We furthermore observe that some of these acts of violence imputable to Carabineros and Policía de Investigaciones fit the description of torture as defined by Article 1 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter the Convention).

This reality has been proved by various treaty organizations of which Chile is part. Thus the Committee against Torture, in its conclusions and recommendations to the State of Chile in 2004, expressed its concern for "a) *The accusations of the persistence of maltreatment of persons, in some cases equivalent to torture, by Carabineros, Policía de investigaciones, and Gendarmería (Prison Guard Force), and the fact that no complete, impartial investigation of these accusations is made;"* (Para. 6).

To address this reality, the Committee proposes to the State of Chile a series of measures, prominent among which are:

"e) To adopt all the measures necessary to guarantee that the investigations of all the accusations of torture and other cruel, inhuman, or degrading treatment or punishment are investigated exhaustively, promptly and impartially; that the authors are duly tried and punished; and that just and appropriate compensation is paid to the victims, as laid down in the Convention;
i) To prepare training programmes for judges, prosecutors and functionaries responsible for seeing that the law on the contents of the Convention is complied with. These programmes should

include the prohibition of torture and cruel, inhuman, or degrading treatment and be directed towards personnel of the armed forces, the police and other agents of law and order and persons who in any way participate in the arrest, interrogation, or treatment of persons likely to be subjected to torture.
q) To provide detailed statistical data, broken down by age, gender, and geographical location, of the accusations presented for acts of torture and maltreatment supposedly committed by agents of the forces of law and order, together with the corresponding investigations, trials and sentences." (Para. 7)

In recent years this situation has been verified by other United Nations treaty organisations. Thus the UN Human Rights Committee in its report on progress in the enjoyment of the rights recognised in the UN's International Covenant on Civil and Political Rights by the Chilean State in 2007 expresses its concern for this situation, indicating: *"The Committee observes with concern that cases of maltreatment by the forces of law and order continue to occur, principally at the moment when arrests are made, against the most vulnerable persons, including the very poor. (Articles 7 and 26 of the Covenant)"* (Para. 10).

To address this situation, the Committee recommended the State of Chile "*…to take immediate, effective measures to put a stop to these abuses, to be vigilant, to investigate and, when appropriate, to try and punish police personnel who commit acts of maltreatment against vulnerable groups. The State should extend the courses on human rights to all the members of the forces of law and order."* (Para. 10).

The United Nations Committee on the Rights of the Child in its last report on Chile, for the year 2007, expresses its concern about the existence of situations of police brutality in which the victims are children. Thus it states:

"*The Committee is concerned that children continue to be the object of cruel, inhuman, and degrading treatment at the hands of the agents of law and order, including in detention centres. Furthermore the Committee, while it observes that some functionaries have been punished for abuses committed against students, expresses its concern about reports which speak of the excessive use of force and arbitrary arrests by the police during student demonstrations in 2006".* (CRC/C/CH//CO/3, para. 38).

In the same report (para. 73) it reiterates this concern, with particular reference to Mapuche children, urging the Chilean Government to put an end to this situation through both preventive and corrective action.

The persistence of this situation to date shows that the State of Chile has not fulfilled its treaty obligations, not only under the Convention which concerns us here, but also under the UN's International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, nor has it followed the recommendations made by these treaty organizations.

Some of the sectors most affected by State police violence in violation of the Convention are:

A. Indigenous peoples

Persons who are members of indigenous groups, in particular the Mapuche people, have during recent years been among the principal victims of abusive and disproportionate treatment by State

police forces, resulting in the violation of the Convention rights. It should be stated that in general the victims of abusive acts by the police have been defenders of the human rights of the Mapuche people, that is, persons acting to protect their internationally recognised human rights[4].

The abusive acts of State police agents have habitually occurred during operations to dislodge occupants from disputed territory and during raids on communities to capture suspects and obtain evidence, as well as during public demonstrations in cities in the Araucanía Region, especially Temuco. They have affected not only the leaders of the Mapuche people but also old people, especially their traditional authorities (*lonkos* and *machis* etc.), and women and children.

The first cases occurred in 1999 in Temulemu, the home community of one of the *lonkos* convicted in a court trial of "threatening a terrorist fire", and in 2000 in the neighbouring community of Temucuicui, both in the Commune of Ercilla, Malleco Province.

Various accusations of cases of physical maltreatment and verbal abuse by members of Carabineros during arrest operations against Mapuches in the communities have been made in subsequent years. Two cases which should be mentioned are those of the José Millacheo Levio community, Cherkenko sector, Ercilla, and the Aylla Varela community, Caillín sector, in the Araucanía Region. The use of firearms against members of communities in police operations to dislodge Mapuches who have occupied disputed territory, in circumstances where this was not justified, have also been frequent. On three occasions the use of firearms by the police has resulted in the death of members of Mapuche communities: the case of Alex Lemún Saavedra, a young Mapuche aged 17 who was defending his ancestral land from appropriation by forestry companies and died in 2002 as a consequence of a round fired by Carabineros; the case of *lonko* Juan Collihuín, who died in his community in Nueva Imperial, Araucanía Region, as a consequence of being shot by Carabineros on 28 August 2006, in circumstances in which members of the police entered his property without a court order to arrest a member of his family, and completely without provocation; and the case of Matías Catrileo, a young Mapuche university student who died on 3 January 2008 when shot in the back by the Special Forces of Carabineros de Chile in the district of Vilcún, near Temuco. The authors of these acts are not only at liberty, but on active service in Carabineros.

In these cases, as in many others, it is remarkable that the use of public force by State agents is quite out of proportion with the force used by the defenders of the rights of the Mapuche peoples. As indicated by international principles on the subject of the use of public force by law enforcement officials to fulfil their functions, such force should be necessary and proportional to the requirements of the situation and the object pursued, (Code of Conduct for Law Enforcement Officials, General Assembly of the UN, Res. 34/169 of 17 December 1979), which has not been true of the majority of the cases reported here.

Police abuses against Mapuche defenders involved in claiming the rights of their communities, and against community members in general, have intensified in recent years. During the last three years (2006, 2007 and 2008) the Observatory on the Rights of Indigenous Peoples has found an average of 20 cases per year of maltreatment of Mapuche persons and communities by State police forces, with proof of raids, dislodgements, and incursions of unauthorised police vehicles into Mapuche communities, among other events, with serious consequences for the physical and psychological integrity of their members. The most serious case is that of the community of Temucuicui in Malleco, which has been raided repeatedly by police forces (Carabineros and Policía de Investigación), on several occasions without a warrant.

In one raid, verified on 30 November 2006, Carabineros, with helicopter support, searched the dwellings of community members, beating various persons including a pregnant woman who opposed the search. In the same month of November 2006 the civil police fired, from an unmarked car, on a group of members of the same community who were peacefully assembled, wounding one in the leg. Similar events recurred on 7 December, when during a violent police operation on the outskirts of the town of Ercilla, 10 Mapuche community members suffered gunshot wounds, one of them with bullets in both legs. The police, who acted without any provocation by the victims, were supposedly on the trail of the Mapuche leaders of the community of Temucuicui.

Again in Temucuicui, in a raid by Carabineros on 17 February 2007, the leader (*werken*) Jorge Huenchullan was arrested, being kicked and beaten, including on the soles of his bare feet, and suffering serious injuries.

On 20 June 2007 the same leader Jorge Huenchullan was the object of attempted homicide by the son of the owner of a neighbouring farm (Mr. Urban), who was driving at high speed in a motor vehicle, accompanied by a Carabinero, on the public road linking the community with the town of Ercilla. On that occasion, Jorge Huenchullan suffered serious injuries while trying to avoid the vehicle whose driver attempted to run him down. The case was reported to the justice system for investigation, and also to the Ministry of the Interior.

On 29 June 2007, Mapuche children in the community of Ranquilco, district of Collipulli, were interrogated by Carabineros in the school of Villa Chihuaihue, which they attend. The minors were interrogated about the activities of their fathers by police functionaries, who threatened to raid the community if the children did not talk, saying that if they did their fathers and brothers would be alright, but otherwise they would be arrested.

On 15 September 2007, in the early hours of the morning, a strong police contingent entered the community of Temucuicui and started to take livestock belonging to community families towards the neighbouring property of Mr. René Urban. A delegation of community members and leaders went to ask Carabineros for explanations and demand the court order, and the return of the animals. The Carabineros refused to show the court order, offering racist and discriminatory epithets, and subsequently drove the community members away with shots. Action taken in the Ministry of the Interior halted the operation.

On Tuesday 30 October 2007, in a new case of police violence affecting the community, Carabineros using anti-riot shotguns shot a ten year-old child in the back, Patricio Queipul Millanao, who at that time of the afternoon was looking after his family's animals in the land belonging to the Ignacio Queipul Millanao community. On this occasion Carabineros de Chile, in the context of an incursion by a contingent into community land, shot at him at least twice, without any justification. As a result of this illegitimate attack, the minor was seriously wounded with at least seven projectiles in the body. His family were obliged to take him to the First Aid Post in Ercilla, where it was decided to refer him to the Hospital in Victoria.

On 23 November 2007, around 04:30 pm Carabineros raided various dwellings without a warrant. Mrs. Verónica Millanao Cañio, who was recovering from recent surgery, was pulled violently from her bed, causing a serious haemorrhage and the reopening of her wounds.

Numerous cases of violations of the Convention affecting *Mapuches*, imputable to State police

agents, were recorded in 2008. On 3 January, various lots belonging to Mapuche families in the Yeupeco sector, close to where young Matías Catrileo was murdered, were raided by Carabineros, mobilised to search for participants in incidents which had occurred early that morning. On this occasion, the policemen entered their dwellings and plantations, without the order of a competent authority, causing damage and taking away Articles of their property. The raids were carried out by strong police contingents, of up to one hundred, travelling in buses, armoured vehicles, and helicopters, with manifest violence and lack of proportion. In the operations the Carabineros used racist epithets, such as "hand over the delinquent Indians", etc.

The same day, in the Mariano Lleuful community, the home of Héctor Canio Quidel was raided by a strong police contingent from Carabineros four times between 9:00 am and 8:00 pm Carabineros acted brutally, bursting into the building, knocking down doors, breaking windows, turning everything upside down, including a bed where a one year-old child was sleeping. On this occasion they beat Héctor Canio's wife, Inés Tralcal Llanquinao, kicking her down. The same occurred to his old mother, Francisca Quidel Painemil. The home of Mario Tralcal and Josefina Quidel, old people aged around 70, was also violently raided by Carabineros, who broke down fences and threatened them with sub-machine guns, pushing and shoving them with racist epithets. In the Juan de Dios Quidel Córdoba community, Mr. José Tralcal Coche also reported a raid by Carabineros on his house at 9 am on the same day. His wife, María Lleuful, was seized violently by the arm and struck in the back with a rifle butt. Carabineros entered the house, where their four children aged from 5 to 18 were still asleep, and proceeded to search it, throwing objects over without any respect. The children were treated brutally and obliged to identify themselves. On this occasion Carabineros destroyed the fences on the property, entering with armoured vehicles and destroying the food crops sown there. They returned four times between then and 8 pm, taking away a rucksack with children's clothes.

On 2 February in the town of Ercilla, Araucanía Region, members of Carabineros, while making arbitrary arrests of Mapuches, molested them physically and verbally, acts which amount to torture under the Convention. On this occasion, in the context of a community party which was being held in the town, a total of eight Mapuches from various communities were arrested by Carabineros, including Víctor Colihuinca, a boy of 15 from the Ankapi Ñancuhew community. In the cell in the Collipulli police station, Juan Huenchullan was sprayed in the face with tear-gas, without any kind of help being given him by Carabineros personnel. Jorge Huenchullan Cayul, Víctor Calhueque Millanao, Henry Queipul Morales, and Marcelo Villanueva Nahuel were tied to a post between a passage in the police station and another building, and left in that state all night. The arrested persons remained in the police station for more than 13 hours, being questioned and beaten by Carabineros. The next day they were taken to the Collipulli Supervisory Court for post-arrest procedures. Here charges were formalised against them for public disorder and a case was opened before the military justice system, accusing them of the offence of attacking members of Carabineros, with precautionary measures being applied.

On 21 June, two young members of the Cacique José Guiñon Community, district of Ercilla in the Araucanía Region, were injured as a consequence of a Carabineros operation. Luís Marileo Cariqueo, a young boy, suffered a broken jaw after being struck with a shotgun butt by a policeman, while Jorge Mariman Loncomilla had his left arm broken and was hit in the feet by several shotgun pellets. The attack by Carabineros occurred without any kind of provocation by the victims and without a warrant issued by a competent authority.

On 29 July 2008, three buses of Carabineros, with a water-cannon truck and a gas-discharger truck,

raided homes in Temucuicui with a court order from the Purén Supervisory Court. In this operation, close to a country road, Carabineros arrested Patricio Queipul Millanao (aged 13) who was made to get into a police vehicle where he was interrogated. When he resisted, he was violently beaten and kicked. He was insulted and asked about animals of which he knew nothing, where the fugitives were hidden and whether they had arms. This was the third time that this minor reported that he had been victim of police maltreatment. The last event recorded in this community occurred on 24 August 2008, when attacks against women and children were reported.

One of the most serious consequences of police violence in Mapuche communities is the psycho-social impacts which they produce in the families and in the minors. A public study prepared in 2004 by the Araucanía North Health Service tells of the disturbances to physical and psychiatric health generated in the families, particularly in minors, in the Mapuche communities which are subjected to the actions of the State agents described above (Araucanía North Health Service, 2004).

B. The case of the students

The start of the "*penguin revolution*" (student mobilisation) in 2006, not only made public the dissatisfaction of secondary school and university students with the Chilean model of education, but also triggered numerous mobilisations throughout the country. In many cases these provoked violent police repression with mass arrests (in some cases for simply being in school uniform), and student leaders being observed and monitored.

An important fact, which became very clear in the second phase of student mobilisations in 2008, were the repeated expressions of the authorities who, at a national level, indicated publicly that unauthorised marches would not be tolerated; that the students should be in class and not in the street, and which linked violence with the peaceful occupation of educational premises. Although there were acts of violence and some cases of destruction, they were very few in relation to the number of students taking part in the protests of the last two years. At the same time, the authorities called on the directors of educational establishments to apply internal sanctions and have recourse to the courts to clear occupied premises.

The massive scale of the arrests made was supposed to be a method to dissuade and prevent student mobilisations. On 25 April 2008, the "Diario Austral" newspaper of Valdivia ran the headline "National record for arrests", referring to the 187 persons arrested in the protests which had occurred in two schools in the city on the previous day. According to the testimony of arrested persons, many of them were arrested elsewhere, when the protest had already broken up. Wearing a school uniform was sufficient to trigger the police to surround and arrest them.

Carrying out identity checks was also a method used to arrest students who were in the central area of the city hours before the start of a pre-announced protest. One case of abduction was reported in the capital and affected a female student of the "Confederación Suiza" school in Santiago, who after having her identity checked was put in a police vehicle, verbally abused, and abandoned in another part of the city.

Observation and filming by Carabineros were reported on days when there were student protests and working meetings, which were public knowledge. The leaders of the assembly of the Austral University held some private meetings, and Carabineros personnel also appeared at these and

moved around the area, thus showing that they were under police observation.

One of the most dramatic situations occurred on 16 June 2008 and confirmed an aspect which was made clear by the numerous reports and images of the protests published in the media: the use of gases and a mixture of chemicals in the water discharged from the police water-cannon trucks known as “guanacos”. Around 1:00 pm on that day, while a group of 50 persons, teachers and students, were in the main square of Valdivia, a “guanaco” discharged a small flow of water on the street; but the toxicity of the liquid was such that all the people had to leave the square with symptoms similar to those produced by tear-gas bombs. The same police vehicle moved to another sector of the city, where a march of university students was taking place. Carolina Angulo, fleeing from the smell emanating from the liquid, suffered a cardio-respiratory arrest. The students reported that Carabineros did not provide the necessary assistance to the young woman, who was lying on the ground, and that the water-cannon truck passed close by Carolina, discharging liquids with toxic gases, as can be corroborated in a video filmed on the spot.[5]

An Article in the electronic newspaper “El Mostrador” publicised the lack of information on the substances contained in these chemicals and their effects on human health. The substances normally used to break up demonstrations are not authorised by the health authority and it is not known who handles these elements and under what criteria.[6]

The numerous demonstrations throughout the country were a graphic display of the violence with which trained police arrested students. Many of those arrested presented bruises and other minor injuries to the neck, arms and scalp, resulting from the way in which they were grasped when they were arrested.

An illustration is the case of María Música Sepúlveda (14 years old), who was arrested by Carabineros in Santiago in June 2008 and whose injuries to both arms, resulting from the brutality with which she was arrested, are recorded in a legal accusation.

C. The case of the workers

The government of President Michelle Bachelet has faced worker mobilisation resulting from frustrated expectations related to higher salaries and the government's promise to face up to the ever clearer evidence of the social inequalities produced by the current model of economic development. As already proven, the percentage of social mobilisations and protest events recorded under this government has been the highest since the start of the transition to democracy in 1990.

Workers' mobilisations have brought with them an increase in accusations of police violence, in which greater physical and verbal brutality can be noted. This situation would appear to correspond more to an order than mere police excess. Verbal aggression against protesters, as well as against journalists covering the events, is also an attitude in which an increase has been noted. The repression of workers, like that of students, presents new schemes of operation. The uniformed police today have more and better technologies and procedures, which have been presented publicly as acquisitions to control delinquency.

One of the most serious events affecting workers occurred on 3 May 2007. On that day, forestry worker Rodrigo Cisternas Fernández (26 years) died of gunshot wounds when Carabineros attacked workers who had cut Route 160, linking Concepción with Arauco. Rodrigo Cisternas was hit by various shots fired by policemen at point-blank range. This fact shows a type of action by the

uniformed police which, as a militarised body, tolerates and accepts in training the lethal use of firearms.

Reacting to the death of Cisternas, the Deputy Secretary of the Interior, Felipe Harboe, without previous investigation, placed the blame for the acts of violence on the striking workers, evidence of a political tendency to criminalize social protest. This is also an incentive to legitimise the violent actions of the police.

The argument of safeguarding the state of law and public order has meant that the safety and lives of persons who raise their discontent over social injustice may be seriously affected. The recent mobilisations of workers from public services and the private sector show signs of the unaccustomed violence which may accompany the "public control" to which the authorities refer. Another case is that of the mobilisations of the workers of the Santander Banefe Multinegocios Bank, which on 14 July 2008 occupied the front of the bank's head office and public pavements in the capital, being violently repressed, as a result of which a complaint was filed against Carabineros.

On 20 August 2008, at kilometre 54 of Route 24 to Chuquicamata, there was a legal strike by workers of the San Felipe S.A construction company. There were only 15 persons, who were attacked by a group of more than 50 heavily-armed Carabineros, some with M16 rifles. Carabineros launched more than 30 tear-gas bombs against this small group and the water-cannon truck destroyed the camp which the workers had set up. They then pursued, beat and arrested four unionised workers, one of whom, Leonel Báez Orellana, ended with injuries, including fractures, to an arm, wrist and ribs.

These are only a few facts of police brutality which are in open violation of the Convention and which have been made public, because the persons affected and their union organizations have filed complaints.

Other more serious events include practices which may be regarded as torture. This is the case, for example, of José Moil Paredes (29 years) a worker in the Aguas Claras Union, from Calbuco in the Los Lagos Region. In February 2008, in a demonstration during a legal strike, the workers occupied the premises of the plant and faced an operation involving more than 200 police who proceeded to dislodge them. José Moil was arrested and kicked and beaten with batons by six or seven policemen. He was taken into a room and thrown into a cement pit, where he was made to squat with his hands up while an officer ordered him to be stoned: "*in a few seconds I began to be hit by stones on the body, the head, and the shoulders. They were throwing stones at me furiously… they threatened to shoot me".*

In this brief summary of selected cases it is noticeable that the tolerance of the authorities and a discourse concentrating on "public control" legitimise violent actions by the uniformed police.

Conclusion

The facts reported here have occurred in the last few years. This demonstrates that the Chilean State has not taken into consideration the recommendations made by the United Nations treaty organizations, including the Committee against Torture (2004), to put a stop to these situations which violate human rights recognised by international treaties to which Chile is a signatory, among them the Convention.

The determining factors in the police practices referred to here are many. Of particular concern are the limitations of the country's legal ordinances to allow proper internal and external inspection of police actions, or to ensure the exercise of constitutional rights such as the freedom of assembly, thus facilitating situations of abuse, unnecessary use of force or brutality by State police agents against the civil population.

As will be examined later in this report, particular gravity attaches to the legislation relating to the military justice system, which determines that military courts continue to impose their exclusive jurisdiction over abuses such as torture, homicide or the unjustified use of force by Carabineros, if committed while on duty or on military premises. According to the information available between 1990 and 2004, more than 90 % of the cases of police violence imputable to Carabineros personnel heard by the military justice system ended in a stay of proceedings. This contrasts with the 3% in which police personnel were convicted of their criminal acts[7]. The information available for 2007 and 2008 indicates that these trends have been maintained. Thus the recent report on Human Rights by the Diego Portales University in Chile 2008 states that in 2007 the Courts Martial heard 1,105 cases, 298 of which were for offences of unnecessary violence and 62 for assault by policemen. Up until September 2008, the total number of cases heard by the said Court was 563, of which 417 were unnecessary violence and assault by policemen.[7]

Another area of concern is the lack of political will that government authorities have shown to adopt all the measures in their power, including administrative measures and legal action, with a view to making it possible to investigate and sanction this type of conduct, which conflicts with human rights recognised in the Political Constitution and in the international Human Rights instruments ratified by Chile, among them the Convention. Finally, the lack of will to present, and/or the delay in presenting, legislative initiatives to allow the establishment of a legal framework which will prevent the continuation of this situation in future is a source of concern.

II. Questions of interest to the Committee according to the list of questions which it issued

Article 1

1. According to some information, the definition of torture contemplated in Chilean legislation is not fully in agreement with the definition established by Article 1 of the Convention, principally because Chilean legislation limits the potential victims of torture to persons deprived of their liberty, and the fact that the 10 year time-bar is still maintained for crimes of torture. Likewise, please clarify whether attempted torture is covered by current criminal legislation.

In this area, Chile still does not comply with the standards of the Convention due to the inadequacy of its legislation. Indeed, as indicated by the Alternative Report presented to this commission in 2004, Article 150A of the Criminal Code, which defines the crime of torture, does not comply with the standards.[8] The problems detected in the existing legislation are as follows:

- It establishes that the crime can only be committed against persons deprived of their liberty and does not include all attempts to commit torture.

- The drafting of our internal legislation when the active subject of the crime of torture is a uniformed police officer does not translate into any practical effect since, in such cases, the criminal act falls under the Military Justice system and the terms of Article 330 of the Military Justice code are applied. This defines and sanctions the crime of unnecessary violence, which bears no relation whatever to the definition of torture contained in the Convention.[9]

- The crime of torture continues to be time-barred after 5 years in cases where it is exercised to terrorise or punish. This has been raised to 10 years in cases of torture inflicted to obtain a confession or information and when the victim suffers death (see Articles 21 and 94 of the Criminal Code).

- The slight punishment assigned to the crime of torture. In other words, this is not "*appropriate punishment which takes its gravity into account*", as required by the Convention. As highlighted in the previous alternative report presented to the Committee, "*in Chile a sentence of up to three years imprisonment may translate into the mere obligation to sign once a week in a specified place ('punishment remitted'). Thus a policeman who applies severe torture in the simple desire to terrorise or punish, and who does not cause severe injuries to his victim, may receive a sentence which does not imply so much as a single day in prison. At the same time, to establish that a policeman, who after atrocious torture leaves an arrested person to die over a period of days, cannot be sentenced to more than 15 years imprisonment (which, if he registers good conduct in prison may translate into his release on probation after seven and a half years) is repugnant to every concept of justice and stands in blatant contradiction of internal Chilean legislation, which sanctions the most serious cases of homicide with punishments of up to life imprisonment (…)"* (pages 41-42).

Recommendation: The State of Chile is recommended to alter its current legislation, in particular Article 150A of the Code of Criminal Procedure, to meet the standards set by Article 1 of the Convention. This should additionally be accompanied by the structural reform of the military justice system, which today makes it unlikely that the crime of torture will be properly investigated and tried.

Article 2

2. Please indicate whether there is a national register to collect information from the country's courts on cases of torture and maltreatment which have occurred in the party State.

The statistical information available does not provide a register broken down by crime which would make it possible to determine the number of complaints filed for torture, and the number of accusations and convictions. It is therefore impossible to determine the prevalence of the crime of torture or other types of cruel, inhuman, or degrading treatment committed in Chile. In addition, there is no broken down information on the victims, so that it is impossible to evaluate the complaints filed and convictions for torture of women. However there are testimonies of women reporting situations of torture and cruel, inhuman, and degrading treatment by State agents which show a close relationship with their gender.

Recommendation: The State of Chile should make available information on the filing of criminal complaints, broken down by the crimes in the Criminal Code; the National Prosecutor's Office should provide information broken down by crime on investigations, formalizations, accusations

and convictions; the Ministry of Justice should provide information on convictions, broken down by crime committed and the gender and age of actor and victim.

3. Please provide information on legislation and practice with regard to:

a) Who carries out the registry of an arrested person and when, who has access to the record and how much time elapses before he is brought before a judge.

According to the Code of Criminal Procedure (CPP), the general rule is that nobody can be arrested except by an officer authorized by the order of a competent judge, unless he is caught *in flagrante delicto*, and then only in order to be brought before the corresponding judicial authority. Flagrancy also authorises civilians to arrest anyone surprised in the commission of a crime, but only in order to hand him over as soon as possible to the National Prosecutor's Office or a competent authority. The CPP provides an extremely broad definition of flagrancy (art. 130) since it considers the immediate time of the commission of the crime to be 12 hours following perpetration.

Those arrested by the police in compliance with a court order must be brought immediately before the judge who gave the order. If this is not possible because it is out of office hours the arrested person may remain in police premises for a maximum of 24 hours. In the case of flagrancy, the police must report the arrest, within a maximum period of 12 hours, to the National Prosecutor's Office, which will decide whether the arrested person should be released or brought before a judge within the time stipulated above (Art. 131 CPP).

Article 89 of the CPP authorizes the examination by the police of the arrested person's clothing (by persons of the same sex), his personal effects and vehicle, so long as there are indications which suggest that objects of importance for the investigation are hidden there.[10] The police may only question the arrested person in the presence of his defender. Apart from this they are only authorized to question him about his identity, or at his own request with the authorization of the Prosecutor (Art. 91).

At present the National Prosecutor's Office provides a statistical report on its official activity every six months, which is available on its website (www.ministeriopublico.cl). However it does not contain information on the average time which the police take to bring arrested persons before a court. Amnesty International, Observatorio Ciudadano and the Diego Portales University Human Rights Centre sent a letter to the National Prosecutor, Sabas Chahúan, requesting this information on 31 March this year. We are presently awaiting a reply.

b) What is the percentage of persons arrested without being charged?

The National Prosecutor's Office does not provide broken down information on this subject in its annual statistical report. However it is possible to make an approximate deduction based on the statistical data by subtracting the total figure for persons charged from the number of persons subjected to arrest controls. It must be taken into account that not all persons arrested are subjected to arrest controls, which creates an unknown degree of distortion in the value of this statistical exercise. Carabineros de Chile does not give information in its web page (www.carabineros.cl) on the number of arrests made.

Figure N° 1. Broken down statistics of arrests and formalizations

Total Hearings for Arrest Controls for period 2000-2008	Total Hearings for Formalization of Charges for period 2000-2008	Persons whose arrest was controlled by the courts and against whom no charges were presented
479,543	325,381	154,162

4. Please indicate whether the legal initiative to create a National Institute of Human Rights has been approved by the National Congress and whether such an Institute would conform to the Paris principles.[11]

The original project was presented by the Executive Power during the government of Ricardo Lagos (2005). It has suffered a very unusual legislative process, in that it was approved with (interesting) modifications by the Chamber of Deputies and was then approved again with new (and deplorable) modifications by the Senate, which resulted in the rejection of these modifications in the Chamber of Deputies. The project therefore had to go to a mixed commission, made up of Deputies and senators, where it is currently under discussion.

As to the content of the project approved so far, it is far from complying with the standards established by the Paris principles.

Problems:
- Its independence is not constitutionally recognised, meaning that in practice it would function as a decentralised public service. In other words, although it would have its own legal identity and property, it would be subject to the supervision of the President of the Republic through the corresponding Ministry. The fact that it would be established as an independent corporation has no particular significance since in practice, if there has to be a Ministry which defines the budget for its promotion, and when certain acts must be dictated, a special relationship must exist with a Ministry.

- The mixed commission will restore the active legitimacy which had been suppressed by the Senate's modifications. Specifically, it is granted the faculty to *"deduce legal actions before the courts within the area of its competence"*. The only indications which have been given so far show a deliberate intention to keep the scope of this faculty ambiguous, without including the presentation of actions against discrimination. At the same time, fundamental questions remain open, such as the nature of these actions (could it present civil actions? criminal? constitutional? all three?), (against whom could it proceed? - only against the State or also against individuals?). It is important to have answers to these questions in order to evaluate its appropriateness, since if it can act only against the State, it could be no more than an observer in the face of the various forms of infringements of human rights which occur in the private world, one of which is precisely discrimination. Similarly, if it can only present civil actions, it will not have the dissuasive power of a penal response. By the same token, if it cannot present constitutional actions, it will have no access to the resource of an especially agile process for the prompt remedy of situations of the infringement of human rights.

As a result of the various problems which existed in the approval of the project in the Senate, this initiative has lost popular and political support. Indeed, in the negotiation process between the Minister Secretary General of the Presidency and the opposition senators, the Institute lost the faculty to present claims for violations of human rights, which meant that the project lost the support of the Group of Relatives of Arrested and Disappeared Persons (Agrupación de Familiares de Detenidos Desaparecidos). Likewise the governing coalition has indicated, through some of its members, that the creation of this Institute will lose political support if it is not supported by the above association.

As things are, although Chile is a member of the United Nations Human Rights Council, it lacks a genuine national human rights institution.

Recommendation: The State of Chile is recommended to establish a Human Rights institution which conforms to the Paris Principles. To do this it must not only speed up the process of forming this institution (presently before a mixed parliamentary commission), but also adapt the contents of the projected legislation to meet the corresponding standards: to guarantee the independence of the institution, it requires constitutional recognition; likewise it must be granted competence to deduce judicial actions, with its range of action being established clearly and unambiguously.

Article 2

5. Entry into force of the Optional Protocol of the Convention against Torture.

The Optional Protocol was approved by the National Congress, as recorded in minute Nº 7,699 of 15 September 2008 of the Honourable Chamber of Deputies.

On 12 December 2008 the Instrument of Ratification of the Optional Protocol was placed before the Secretary General of the United Nations. Consequently it came into force for Chile on 11 January 2009.

On 18 December 2008 it was promulgated by Decree 340, being published in the Official Gazette on 14 February 2009. It is not known what measures have been adopted to make it effective.

Recommendation: The State of Chile is recommended to inform what measures are being adopted to ensure the entry into force of the Optional Protocol.

6. Please provide more detailed information on the recent creation of the National Commission on Political Imprisonment and Torture with respect to those persons who were arrested and tortured during the dictatorship and who were not included in the work done by the Truth and Reconciliation Commission (CAT/C/CHL/5, § 14).

The National Commission on Political Imprisonment and Torture created in 2003, known as the Valech Commission[12], recognised 27,153 persons as victims, a figure which includes those minors who were arrested and imprisoned independently from their parents. An annex included in the Commission's report contained the cases of 102 persons "*born in prison or arrested together with their parents*". This was an attempt to resolve an aspect which had not been foreseen in the original design of the Commission's work, that is, the fact that political repression was also applied to under-age persons in a wide variety of situations:

- cases of mothers who were pregnant when they were arrested and tortured
- children born in prison
- children who were conceived as a result of the rape of women, used as a form of torture
- children arrested in their homes, or who suffered interrogation and mistreatment in raids on their homes
- children abducted from their homes or schools as a means of pressuring their parents to give themselves up
- children tortured in front of their parents as a means of pressuring them to give information.

There were various differing criteria in the Commission as to whether or not to include these cases in the list of victims. There was an idea that these were "indirect" victims of repression, and differences of opinion as to whether the statements of their parents were sufficient or whether these persons needed to give their testimony directly. In view of these differences and omissions, a national group of "Ex under-age victims of political imprisonment and torture" (Ex-menores víctimas de prisión política y tortura) was formed.

After the process for re-qualifying cases, opened between January and March 2005, only 1,201 persons were added to the 7,000 who sought recognition as victims, including 87 cases of ex under-age victims, bringing the total of these to 189. The lack of a clear, uniform criterion was again felt in this process. Thus some members of the Commission sustained that in the case of persons who had not appeared directly to make their statements it could be concluded that "*they did not feel that they were victims of imprisonment or torture*", and therefore the criterion predominated of including them only if they had been mentioned in the statements of their parents (the figure of the 87 new cases obeys this criterion). Furthermore it was even stated that "*it could not be considered that the children were deprived of liberty when this occurred in order to maintain the mother-child link as occurred in the women's prisons*".[13]

According to the indications of the group of Ex under-age victims, at least 200 cases remained without official recognition.

Although the work of the Valech Commission represents a significant development in the recognition of state responsibility in the crime of torture, practiced massively and systematically during the Pinochet dictatorship, this process was marked by omissions and failings which have not been resolved.

As the Committee against Torture observed in its Conclusions and Recommendations on Chile in 2004, among its motives for concern was the fact that the Valech Commission had limited functions and attributes.

It applied a restrictive interpretation to the crime of torture by excluding both those who were arrested and mistreated in public demonstrations – as frequently occurred in the peaceful actions of the "Sebastián Acevedo" Movement against Torture – and those who were arrested and tortured during the raids carried out by State agents in poor housing quarters. Another serious failing was the limited publicity and the short time allowed for the receipt of the testimonies of the victims who sought to be accredited as such. Despite the fact that the Commission functioned for a year, the period open for the receipt of testimonies was only six months, while the other six months were devoted to the preparation of the report.

At the same time it is important to consider that the Commission failed to incorporate the perspective of gender in its work. Although there were two women on the commission[14], they lacked knowledge and experience in gender issues. This absence of a gender view was reflected in the absence of training for the functionaries who received denouncements and testimonies. Apart from this, women also preferred not to talk about sexual violence, with the result that this particular form of violence did not emerge adequately in the Commission's Report, despite the inclusion in the chapter on Methods of Torture of a heading on sexual aggression and violence and a special section referring to sexual violence against women.[15]

In view of the above, the CAT recommended the State to extend the Commission's mandate and faculties in order to allow all victims of torture, including sexual aggression, to formulate their complaints.

Victims rejected by the Valech Commission, and others who did not submit their testimony, have insisted on the need to reopen the Commission. Of particular note is the situation of those persons resident outside Chile who were tortured outside the country for their work opposing the dictatorship in Chile, particularly in Argentina as part of Operation Cóndor. Despite the insistence and the recommendation of the Committee against Torture, the government has not reopened the period for the receipt of complaints and has denied a significant group of persons the possibility of being recognised as victims. One aspect included in the projected legislation on the Human Rights Institute is the reopening of the work of qualifying the victims of political imprisonment and torture, but consideration has not been given to the modification of the criteria for the inclusion of those who were rejected. In any case, as indicated in previous paragraphs of this report, this projected legislation has not been approved, with the result that a huge number of victims, who for one reason or another were not able or willing to come forward during the six months for the receipt of testimonies by the Commission, have so far not had a second opportunity to do so. This omission is the more serious considering that many of them are of advanced age and that their health was seriously damaged by the traumatic experience which they suffered.

Recommendation: The State of Chile should reopen the Commission on Political Imprisonment and Torture as soon as possible and reconsider the criteria for qualification, especially in relation to those persons who suffered this traumatic experience when under age. The reopening should be widely publicised and include actions aimed at offering information on sexual violence as a form of torture.

7. In order to follow up the concern expressed by the Committee in its previous final observations (CAT/C/CR/32/5, para. 6 (d) and 7 (c)), please indicate whether the Ministry of Public Security has been established to supervise the field of action of Carabineros and Policía de investigaciones.

The Ministry of Public Security, the creation of which was proposed by the constitutional reform of 2005, has not been established to date. The project in question was presented by the Executive to the National Congress in June 2006. In March 2009 it was still in the first constitutional process in the Senate. The delay in the creation of this ministry is determined by the existence of a double dependency of Carabineros and Policía de Investigaciones, which makes it more difficult to control internally the acts of their functionaries.

In the case of Carabineros, article 1 of their Organic Constitutional Law (N° 18-691 of 7 March 1990) defines the institution as: "(*a) technical, police institution, military in character, which is part of the Public Force and exists to enforce the law; its purpose is to guarantee and maintain*

public order and internal security throughout the territory of the Republic and to fulfil the other functions extended to it by the Constitution and the law of Chile. It will be directly dependent on the Ministry of National Defence, to which it will be linked for administrative purposes through the Sub-secretariat of Carabineros".

In the case of Policía de Investigaciones, Decree Law 2460 of 1979 states that it "…*is a professional, technical and scientific Police Institution, part of the Forces of Law and Order, dependent on the Ministry of National Defence, whose personnel will be subject to a hierarchical regime with strict discipline. it will be linked to the said Ministry for administrative purposes through the Sub-secretariat of Investigaciones*."

According to the terms of item 2 of article 101 of the Political Constitution, reformed in 2005: "*The Forces of Law and Order and Public Security consist solely of Carabineros and Investigaciones. They constitute public force and exist to enforce the law and to guarantee public order and internal security in the manner determined in their respective organic laws. They are dependent on the Ministry responsible for Public Security*".[21]

From this it may be deduced that operationally Carabineros and Investigaciones would be dependent on the Ministry of the Interior, since that Ministry is responsible for "*guaranteeing public order and internal security*".

However the seventeenth temporary provision of the Constitution states that: "*The Forces of Law and Order and Public Security shall continue to be dependent on the Ministry responsible for National Defence until a new law is dictated to create the Ministry responsible for Public Security"*.[22] As already stated, this Ministry has not yet been created, and Carabineros and Investigaciones continue to be dependent for administrative purposes on the Ministry of Defence, to which they are linked through the corresponding Sub-secretariats.

As a consequence of the above, Carabineros is presently under a regime of double administrative dependence. On the one hand it is dependent for administrative and budgeting purposes on the Ministry of Defence; on the other it is dependent on the Ministry of the Interior, which determines its operational activities. All of this makes it difficult to define the extent of its relationships with its two political dependencies.

This ambiguity does not help in proper inspection or internal control of the acts of its functionaries, in particular with respect to acts of police violence committed in the exercise of its functions, as we have seen in practice in recent years.

Recommendation: It is recommended that the Chilean Congress speed up the legislative process for the creation of the Ministry for Public Safety. It is recommended that the Government adopt the administrative measures that are recommended further down in this report (Articles 6 & 7, point 154) in order to allow adequate oversight of Carabineros and of Investigaciones Police, while these police forces remain under separate subordination.

8. Please report the current procedural stage of the law proposal submitted to Parliament, which aims to declare that Decree Law 2.191 is null and void, and whether the State party has considered the possibility of declaring this law unconstitutional or of declaring the law null and void because it contravenes international law. Has the State considered declaring that said law is inapplicable?

In Chile, the Decree Law on Amnesty enacted by Pinochet in 1978 has not been annulled or rescinded. Apart from that, the majority of the examining magistrates who have been assigned full-time to cases involving crimes against humanity are complying with international norms on human rights, which exclude the application of amnesty, prescription, due obedience, or res judicata, as mechanisms which prevent justice from being carried out.

Various Courts of Appeal have followed the same line of reasoning. An example of this is the case of Juan Luis Rivera Matus (Case Nº 14058/2004), referred to by the Chilean State in the Addendum to its Fifth Periodic Report, footnote on page 343, concerning paragraph 85 of the Report. Said trial is a case of abduction resulting in death, in which the Santiago Court of Appeals upheld the examining magistrate's verdict of guilty, on the basis of international norms of human rights.

However, the Chilean State's report to the CAT, issued on 21 August 2007, fails to point out that on 30 July of that same year, the Supreme Court reduced the sentences that had been handed down to three of the main defendants in that trial (members of the Army and of the Air Force), from 10 years imprisonment to 3 years, and further granted them the benefit of remission, allowing them to remain in liberty. Only one of the accused, who was already in prison for other crimes of lese humanity, will remain in prison. The argument put forward by the Supreme Court is that it would be pointless to apply severe sentences to crimes committed a long time previously. In other words, the passing of time justifies impunity.

It is troubling to realize that this Supreme Court sentence is not an isolated case, rather, it seems to inaugurate a new era in Chilean jurisprudence. The Supreme Court followed a similar line on 27 December 2007, in the case known as the Parral Episode (Case Nº 2.182-98: qualified abduction of 26 persons, including a child, in the locality of Parral), when it handed down a sentence which overturned a previous sentence by the Santiago Court of Appeals and reduced the sentences of the main defendants, from 17 and 10 years incarceration to 5 and 4 years respectively, and granted each of them the benefit of liberty. This sentence, which amounts to impunity, is particularly repugnant in light of the fact that the persons responsible for the crime did not cooperate with the judicial process, and refused to provide information on the eventual location of the victims, as a result of which their relatives have been unable to find the bodies, and to provide proper burial to the remains of their loved ones.

Additionally, the outlook for determining the truth - the facts of the case – and for realizing justice decrease by the day, because in May 2005 the Chilean justice system eliminated the category of full-time examining magistrate for cases involving lèse humanité, in spite of the fact that more than half of the cases have not been investigated.

Recommendations: It is imperative that full-time examining magistrates be brought back and that sufficient number of magistrates be named to cover the totality of victims. At the same time, the Chilean State must abstain from enshrining impunity through the application of the Decree Law on Amnesty or of any other legal mechanism.

9. Please provide more-detailed information about the setting up in January 2006 of a working group made up of members of the Ministries of Defence, Justice, and Foreign Affairs, whose purpose is to study changes to Military Justice, in order to bring it into line with constitutional standards on due process. Also, please provide information on the contents of the law project on the reform of, and procedures governing military justice.

Current legal regulations of the Chilean State concerning the jurisdiction of military criminal justice structurally contravene international standards on human rights, in such relevant aspects as the right to be heard by a competent, independent, and impartial magistrate or Court, and in accordance with procedures which guarantee due process. As a result, in a case which reached the Inter-American Court of Human Rights, the Chilean State was required to adapt its body of laws concerning the jurisdiction of military criminal justice, to international standards. It is necessary to point out that the verdict of the I/A Court H.R. was delivered in 2005 and at present - four years later - the Chilean State has still not complied with it. Specifically, what is being required of the Chilean State is that, if it considers it necessary to maintain a Military Justice jurisdiction, it must establish limits to the material and personal jurisdiction of the military courts, so that under no circumstances will a civilian be subject to the jurisdiction of these courts.

In 3 July 2007, a law project was submitted to Parliament to modify the Military Justice Code and change the jurisdiction of military courts. Until December 2007, the law proposal was in the category of "simple urgency" legal obligation. Beginning in 2008, it had no immediate urgency at all to compel the Senate to consider it, as it is in the first legislative procedural stage. The simple urgency has currently been re-instated but the law project is still in the first legislative procedural stage. As for the current national Government's legislative agenda, it is important to remember that, according to information provided by the Ministry of Justice this bill is one of the Government's priorities.

Regarding the contents of the law Project submitted by the Executive Branch, we must point out that the proposal is insufficient and clearly does not reflect the jurisprudence of the I/A Court H.R. nor existing international precepts on the matter. Indeed, the new Article Three being proposed, states that "*The Republic of Chile's Military Tribunals have jurisdiction over military personnel, to examine matters covered by military jurisdiction in Chilean territory, without prejudice of the exceptions set out in the present Code*". This exception allows the possibility of civilians being judged. The only way to counteract this would be the inclusion of a constitutional prohibition on the matter. In a similar vein, the new proposed Article Five states that "*Military Tribunals have the competence to examine: 1-Military offences, meaning such offences as are characterized in the present Code, when they are committed by military personnel"*. Therefore, the formal and fictitious concept of military offence is maintained, which contravenes the international obligations of the Chilean State, in view of the fact that the majority of the items of book III of the Military Justice Code concern offenses in common law, which do not cease to be offenses in common law when they are committed by military personnel. Furthermore, and this is the most serious defect of the project, the same proposed Article Five grants Military Tribunals competency to judge civilians. Thus, clause 5, subsection 2 of the Military Justice Code states that said Courts: "*will also be competent to examine all offences listed in Articles 416, 416 bis, 416 ter, and 417 of this Code"*. These Articles deal with offences of threats, injuries and homicide as such, which when committed by civilians are to be examined by military courts. The social relevance of this situation derives from the fact that, in practice, these are relatively common offences, especially threats and injuries to Carabinero personnel in the context of public demonstrations repressed by the police 23.

Furthermore, military courts are also competent to examine "*offenses characterized in the Aviation Code, committed either by civilians or military personnel*". (Article 5, n. 6 of the proposed law).

In light of the above, the terms of the law bill currently being considered by Parliament are far from complying with international standards on the matter. Indeed, military courts can judge not only military personnel accused of offenses in common law (which do not involve any special legal rights), but also civilians accused of offenses characterized in the military penal code.

Recommendation: It is recommended that the Chilean State effect the necessary changes to the terms of the proposed law reforming military justice, in order to place the greatest possible limitations on the material and personal jurisdiction of military tribunals, so that no civilian may be judged by these courts. It is recommended that the Chilean State limit military justice to offenses of an essentially military nature, which affect special legal rights. Additionally it is recommended that the Chilean State invite civil society to participate in the reform of this very sensitive sphere.

Article 3

10. Questions concerning refugees and asylum-seekers.

a) *How does the State party guarantee compliance with Paragraph 1 of Article 3 of the Convention, in cases involving expulsion, refusal of entry, or extradition?*

In 1972, Chile ratified the Convention on the Status of Refugees and the 1967 Additional Protocol. Chile is also a member, along with another 75 States, of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), which annually approves the UNHCR programs, its operating guidelines, and its budget.

This matter is governed by Decree Law 1,094 of 1975, modified by Law 19,476 of 1996 . This convention states that any foreigner has the right to request asylum under the terms of the 1951 Convention. It also establishes the right not to be deported to the country of origin and not to be punished for illegally entering Chilean territory, provided the person immediately contacts Chilean authorities and presents a written application as a refugee within 10 days after contacting the authorities.

b) *Is there an established procedure to evaluate the risk of the applicant being tortured in the country to which he/she is returned?*

There is no specific procedure aimed at evaluating the consequences of the possible return of the person applying for refuge or asylum in the country. However, there is a general procedure for evaluating requests for recognition of the status of refugee in Chile, which is governed by the above-mentioned regulations. According to these regulations, it is the Minister of the Interior who must decide the matter, prior consultation with a Recognition Commission made up of representatives of the Ministry of the Interior's Departamento de Extranjería y Migración (Department of Immigration and Citizenship) and the Ministry of Foreign Affairs. This Commission is empowered to request information from any Government agency.

The UNHCR is informally represented in said Commission through the participation of the

Catholic Church's Vicarage of the Pastoral Social, which is the agency that implements the UNHCR's programs in Chile. This participation does not include the right to vote.

There is no established time-frame for studying the applications or for making a decision on the matter. Each case is individually discussed in the meetings of the Recognition Commission. During the analysis of their petition, the applicants do not receive any identification documents from the authorities.

According to current legislation, if a person is recognized as a refugee, he/she is entitled to a two-year residency visa which is stamped on the person's passport, and later may apply for an identification card for foreigners. If the refugee has no valid passport, the Registro Civil (Civil Registry Office) may issue a Travel Document that lets the person leave and re-enter the country for the duration of the visa. Upon expiration, the two-year residency visa may be extended for an indefinite period, or it may be replaced by permanent residency if the person meets the requirements of the Immigration Law.

c) Please state whether the immigration officers or the authorities having the power to refuse entry receive any training concerning political asylum and the requirements of Article 3 of the Convention.

No information on the matter.

d) Please state whether, in practice, foreigners have access to free legal aid and the services of an interpreter in case they wish to appeal a deportation order.

There is no adequate institutional structure that provides these services to asylum-seekers. In practice, the applicants and/or the refugees resort to the implementing agency for the UNHCR in Chile, that is, the Vicarage of the Pastoral Social, which has offices in Santiago. In fact, when an applicant contacts the authorities directly, the latter direct the applicant to the Vicarage of the Pastoral Social's offices for advice and assistance. At the Vicarage, all applicants are individually and confidentially interviewed by the legal advisor, who issues a non-binding recommendation to be reviewed by the Regional Office of the UNHCR in Buenos Aires. This recommendation is copied to the members of the Recognition Commission when each case is being individually evaluated. During this procedure, the applicants are also interviewed by members of the Interior Ministry's Immigration Department. If the application is turned down, there is no formal appeal or review procedure under current legislation.

Article 4

11. Law project that introduces the imprescriptibility of crimes against humanity.

This law project was submitted on 11 June 2008 by senators Soledad Alvear, Camilo Escalona, Guido Girardi and José Antonio Gómez (of the governing Concertación block of political parties). According to the introductory message, the bill proposes to adopt recent progress made in Human Rights, especially the inadmissibility of amnesty for, and the imprescriptibility of offences involving genocide, war crimes, and lese humanity; to resolve jurisdictional disputes that arise when judging abuses and infringement of a person's fundamental rights; and to comply with the mandate of the Inter-American Court of Human Rights embodied in the sentence handed down in

the Almonacid case, with a view to excluding the 1978 Amnesty Decree Law from Chile's body of laws.

To that end, it proposed the following interpretation of Article 93 of the Penal Code:

"Article one.- *The true meaning and scope of the grounds for expiration of penal responsibility, as set out in Article 93 of the Penal Code, are hereby defined: it will be understood that amnesty, pardon, and prescription of the criminal action and of the penalty will not be applicable to crimes and to simple offenses that constitute genocide, crimes of lese humanity, and war crimes envisaged in international treaties which have been ratified by Chile and which are still in force.*".

On 18 March 2009, the Senate voted 2 votes to 9 against the law project in its first constitutional procedure. As a result the bill was filed away.

Recommendation: The Executive Branch should re-submit the law project in the next legislative period. It is recommended that the Law Courts, in accordance with international Human Rights law, recognize the inadmissibility of amnesty, and the imprescriptibility of crimes which constitute genocide, war crimes, and crimes of lese humanity in the cases they examine.

12. Please state whether the Convention has been directly invoked before the Chilean Law Courts. If so, please provide examples.

The Convention has been invoked in numerous cases examined by the Courts, especially in relation to violations of fundamental rights during the recent military dictatorship (1973-1990). The higher courts have accepted the applicability of this international instrument to the internal legal framework but, on several occasions, they have restricted the scope of Article 14 of the Convention, in declaring the prescription of the indemnity demand. As an example, we quote an extract of Whereas clause Seventeen of the sentence in the case of Marta Lorena Montiel Oyarzún against the State of Chile, handed down on 30 September 2008 (Case Nº 1852-2007):

*"The above is proof of the fact that, by conforming their sentence to the terms of said precept (*Article 2332 of the Civil Code, which establishes a period of four years after the commission of an offence as the prescription term for legal actions aimed at claiming non-contractual tort*), the lower court magistrates have not contravened the internal ordinances, as claimed by the party which filed the appeal; and similarly, it may be added that the Magistrates have not contravened the terms of international treaties which have been incorporated into the Chilean legal system, as mentioned in rationale clause Six (Article 14 of the Convention), because they enshrine the obligation of State parties to assume responsibilities derived from violations of Human Rights perpetrated by their agents; because the sentence being appealed – by repeating arguments Ten to Thirteen of the first-instance sentence - has acknowledged that this kind of responsibility did in fact affect the State as a result of the prejudicial actions of its agents towards the victim; and if it did, in the end, reject the plaintiff's request for compensation, the reason was that the legal recourse aimed at a legal recognition of the responsibility had lapsed due to prescription; there being no specific mention of this latter point in the text of the international treaties which are claimed by the appellant to have been contravened".*

It is necessary to point out that the application of this doctrine by the upper courts is not uniform, and that decisions depend on the make-up of the particular court examining the lawsuit.

On the other hand, there exists some upper court jurisprudence in which, on the basis of constitutional recognition of the enabling power of international treaties, the Convention has been applied. There have been two innovations in related jurisprudence which have applied the terms of the Convention. In the first place, the courts have argued that during the dictatorship, in view of the internal state of war claimed by the authorities at the time, the Geneva Convention on War Crimes was applicable. In the second place, in cases concerning detainees whose date of death cannot be determined, some upper courts have dogmatically developed the concept of qualified abduction. This consists of assigning the burden of proof to the accused, for as long as the date of death of the disappeared person is not certified. On the basis of these two developments in jurisprudence, the upper courts have had the chance to apply the Convention. Following are some extracts of sentences which will serve as examples:

"*It has been said that penal law does not define the meaning of torture or undue coercion, which seem to be synonymous; it therefore becomes necessary to consult the treaties signed by Chile. One of these treaties is the American Convention on Human Rights, adopted and ratified on 21 August 1990, and published in the Diario Oficial (Official Gazette) on 5 January 1991. Under the title "Right to Personal Integrity", Article 5 states: 1. "Every person has the right to have his/her physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." There is also the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, and was published in the Diario Oficial on 26 November 1988. Article 1 of the Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.* (Whereas clause twelve, Supreme Court, sentence on an appeal for annulment, Case 5468-2005; these arguments are repeated, almost word for word, in Whereas clause Twenty-eight of the Supreme Court sentence, Case Nº 3808-2007; in the Whereas clause Eleven of the Appeals Court, Case Nº 1579-2007; and in Whereas clause Four of the Santiago Appeals Court, Case Nº 11801-2006; all these sentences are available at www.lexisnexis.cl).

"Additionally, that the obligation to prosecute and penalize this kind of offense; and the prohibition of self-exoneration of these offenses, derive from general principles of international law which were in force at the time, and were later sustained and reaffirmed; which have been recognized by the international community of which Chile is a member, and are enshrined in numerous declarations, resolutions, and treaties; which today are embodied in the legal norms of international law, and which under no circumstances may be disregarded by the Chilean State or by this Court.

In this respect, and in the conventional order, the following may be taken into account: the 1948 United Nations Convention on the Prevention and Punishment of Genocide, in force in Chile since 1953; the 1969 American Convention of Human Rights, internationally binding for Chile since 1990; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in force in Chile since 1988; the 1966 International Covenant on Civil and Political Rights, ratified by Chile in 1972 and, as is well-known, although the text was published only in 1989, Chile was bound by its terms since the date of ratification.

We should also mention the 1968 convention which establishes the imprescriptibility of war crimes and crimes against humanity, and the 1994 Inter-American Convention on the Forced Disappearance of Persons: although neither is in force in Chile as a treaty, they help to shape the principles of International Law, which are fully in effect in Chile.

In the sphere of resolutions and agreements, the following should be considered in particular: the 1948 Universal Declaration of Human Rights, and United Nations General Assembly Resolution N. 3,074, of 3 September 1973 "Principles of International Cooperation for the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity", which states: "War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment." (Whereas clause 11, Supreme Court sentence on an appeal for cassation in the form, Case 1528-2006, available at www.lexisnexis.cl).

Articles 6 and 7

13. Please state the role of the National Commission on Truth and Reconciliation and the National Commission on Political Imprisonment and Torture (CNPPT) in the identification of persons responsible for extra-legal executions, forced disappearances and torture.

National Commission on Truth and Reconciliation (Rettig Commission) was created by Supreme Decree N. 355 in April 1990, with a mandate of qualifying cases of Human Rights violations resulting in death during the Pinochet dictatorship, and of issuing a report on the matter. This Report (Informe Rettig) did not include the names of the perpetrators of the crimes, even in cases in which they were fully identified, because the Commission's mandate did not include the investigation of the responsible parties. However, the information that was obtained was handed over to the justice system in order to contribute to the judicial investigation of these crimes and the eventual punishment of the responsible parties, in accordance with the law.

These proceedings have continued for these many years; the prosecution is being assisted by lawyers from the Human Rights Program financed by the government. In spite of the efforts of the Human Rights lawyers, only in a few cases, especially those which are considered to be "emblematic" due to their notoriety, has a condemnatory sentence been handed down.

The National Commission on Political Imprisonment and Torture (CNPPT), created by Supreme Decree N. 1,040 in November 2003, was also lacking in a mandate to investigate responsibilities for crimes of lese humanity (in this case, the crime of torture), and it failed to identify them in its report (Informe Valech). The worst of the matter is that, unlike the Rettig Commission, it did not hand over the information gathered to the law courts, rather, on the contrary, by means of Law N. 19,992 of December 2004 "the Reparation Law", silence was imposed for a duration of 50 years on all the documentary material provided by the survivors of torture; this material is in the keeping of the Ministry of the Interior, meaning that even the law courts have no access to it (Article 15). Therefore, the State has not complied with its obligation to ensure that justice is done in cases of torture, rather, it has imposed on the very victims the burden of initiating legal proceedings; the persons who have chosen to do so, are obliged to testify once more, causing them to bring back to consciousness the traumatic experience, in many cases causing them to re-experience the trauma.

Until now, not a single case has led to a definitive conviction.

Recommendation: The three branches of government should take the necessary steps to see that justice is done in all cases of crimes of lese humanity perpetrated during the civil-military dictatorship.

14. There is some information to the effect that investigations have been carried out within the Carabinero and Gendarmería forces, in order to learn about supposed cases of torture or cruel treatment in the context of police detention and inside the prison system. Please report on the status of the legal proceedings against officers from each of the above institutions.

The regulations that govern the operations of Carabineros are seriously flawed in the area of internal controls over the actions of members of the force. The internal control system of Carabineros is set out in the corresponding Constitutional Organic Law (LOC) (N. 18,691 of 7 *March 1990) and in the institution's own regulations 24. Article 36 of the LOC states:*

"The power to discipline (members of Carabineros) will be exercised by the corresponding authorities of the institution, by means of a fair and rational administrative procedure. Members of the force who infringe their duties or obligations will incur administrative responsibilities according to the terms of the Regulations on Discipline, without prejudice of possible civil or penal responsibilities".

Said power to discipline is defined in Carabineros of Chile's Regulations on Discipline, N. 11 25. One of the areas covered by these regulations is the grading of infringements, and disciplinary penalties and their execution. Other areas are disciplinary competence, appeals, and the Director General's authority to review cases. In accordance with the regulations, the competence for examining matters of discipline corresponds to the highest-ranking Officer under whom the offender is serving. That officer must determine, by means of an administrative summary proceeding (which proceeding is governed by Regulation N. 15), the corresponding administrative responsibilities 26.

These summary proceedings may only be begun due to, among other causes: ascertainment that the person has a degree of responsibility in serious disciplinary offenses, provided that this responsibility and participation in the matter has not been indisputably proved by other means; and the authorities' awareness that members of the institution are responsible for an offense which is of the competence of Military Justice or of the regular Courts of law (Regulation N. 15, Article 5).

Concerning the offenses covered by Regulation N. 11, it should be noted that these offenses are basically related to matters of institutional probity and the obedience of orders issued by superior officers. There is an exception, which concerns the "abuse of authority". Regulation N. 5 of Article 22, states that the following will be considered an abuse of authority: "*any transgression or excess, either against subordinates or against the public, as well as any other action which may be qualified as an abuse of duties, provided it cannot be characterized as a criminal offense".*

Finally, Regulation N. 8 27, which defines the yearly evaluation process undergone by members of the Carabinero police in order to determine promotions, is also an internal control mechanism. This is because, at the moment of the evaluation, any sanctions appearing in the Carabinero's personal record may even lead to administrative dismissal.

One of the most serious problems with this system of internal controls is its lack of transparency. As pointed out by existing studies on the matter, it is possible that said mechanisms are sufficient, but the criteria used in the operation of the system are not known to the public, nor the number of cases examined, or the results of investigations carried out 28. A recent report coordinated by FLACSO Chile about the performance and behaviour of police in Latin America, claims that in the line of command of Carabineros de Chile, there is a General Inspectorate in charge of discipline within the force. The study reports that none of the institution's legal norms or regulations provides information on the General Inspectorate. Nor does the Institution make public any reports about its operations, disciplinary processes that are carried out, their causes, or resulting punishment.

It is supposed that information on Carabineros' disciplinary processes is not made public because Article 436 of the Military Justice Code states that all matters related to Armed Forces and Carabineros personnel constitute information having a bearing on national security, national defence, public order, and the security of persons, and is therefore confidential.

This interpretation coincides with that of Human Rights organizations, including the Observatorio Ciudadano (Citizens' Observatory) and the Human Rights Office of the Legal Assistance Corporation of the Metropolitan Region. These institutions, in spite of having requested information from Carabineros about administrative summary processes of Carabineros personnel involved in acts of police violence, have either not received it or, when they have received it, it does not mention the penalties applied.

All the above is proof of the deficiencies of the internal control systems over Carabinero personnel in relation to acts of police violence in which they may be involved. In light of the Institution's highly hierarchical internal structure and the legal constraints that prevent public knowledge of its actions, the disciplinary infractions committed by members of Carabineros when using unnecessary violence end up being covered up by the institution, resulting in impunity.

Along with insisting on internal control of the acts of police violence which have been denounced, the authorities could become parties to the litigation processes that are initiated to prove the criminal responsibility of police officers in these acts of violence, which constitute criminal offenses. Unfortunately, they have not done so, though there are no legal impediments to such an initiative.

This passive attitude not only openly disregards the recommendations made to the State of Chile by the Human Rights Committee in its 2007 Report on these matters, it is also in sharp contrast with the active role that the Government, especially the Interior Ministry, has been playing in the prosecution of penal responsibilities of civilians taking part in acts of social protest or who are accused of violence against the police or against private property.

Recommendation: Introduce legislative reform aimed at the control of police actions with a view to creating a more effective and transparent system of internal and external accountability of police activity, and at guaranteeing that these activities are in line with international Human Rights guidelines, especially the above-mentioned directives established by the United Nations to that end. It is proposed that such guidelines become incorporated into the ethics code of the police forces. Some of the main aspects that should be considered, if this reform is to lead to adequate internal accountability, are the following:

- Establishing a clearly defined chain of command within the police forces and an effective

oversight system to maintain discipline and control, and to prevent impunity, thus preventing violations of Human Rights.
- Establishing procedures for the presentation of reports on the part of police officers, about arrests, detention, searches, and use of force or firearms.
- Establishing mechanisms for receiving and processing accusations made by civilians concerning the violation of Human Rights by police agents.
- Establishing strict and impartial disciplinary procedures for slight infractions committed by police personnel in the exercise of their duties, including violations of Human Rights that do not constitute criminal offenses. Said procedures should be transparent, and the public should be able to access the results of the procedure.

Until such legislative reforms are carried out, it is suggested that reforms of an administrative nature be undertaken, so that the government agencies to which the police forces are accountable will urge them to carry out their duties in accordance with Human Rights. To achieve such a goal, it is proposed that such public policies be pursued as will result in police forces that:

- Are receptive and accountable to the communities which they serve;
- Are representative of the communities they serve, and are well-tuned to the needs of socially-vulnerable sectors of the community;
- Are able to combine effectiveness and legitimacy;
- Guarantee the carrying out of basic police functions, i.e. the prevention and detection of criminal activities, maintaining public order, and serving the population;
- Work in accordance with the law, including international norms on Human Rights, and use means that are proportionate to the goals they seek to achieve.

Creating, within Carabineros and Investigaciones police forces, mechanisms for receiving accusations about acts of violence against civilians committed by members of the police, and establishing accessible points for receiving these accusations in all of Chile's regions, including a system for receiving accusations by telephone or Internet, to facilitate the presentation of the accusations.

Publishing the results of investigations undertaken on the basis of these accusations and the result of steps taken through the police force's internal control mechanisms.

Promoting actions on the part of the State tending to make the State a party in the prosecution of serious criminal offenses perpetrated by police agents in the execution of their duties and affecting civilians.

Article 10

18. Please state whether the Istanbul Protocol is one of the subjects included in the training curriculum of medical personnel, for identifying cases of torture.

Up to the present time, medical personnel in Chile does not receive training on the contents and application of the Istanbul Protocol, the manual prepared by the United Nations for the adequate investigation and documentation of cases of torture and other cruel, inhuman or degrading treatment or punishment.

The Centro de Salud Mental y Derechos Humanos CINTRAS (Centre for Mental Health and Human Rights) has carried out a training program for its clinical team, which has enabled it to respond to the requests made by some law courts for the application of the Protocol to victims of grave violations of Human Rights who have initiated lawsuits against the State of Chile. In general, these requests by the courts have come about as the result of a petition by the plaintiff's lawyer which has been accepted by the examining magistrate. However, it should be pointed out that this is not common practice, rather they are isolated cases.

Recommendation: The Ministries of the Interior (Human Rights Program), of Health (PRAIS Program), and of Justice should make a common and coordinated effort to ensure that all medical personnel involved in identifying cases of torture become familiar with and capable of applying the Istanbul Protocol.

Article 11

20. Information about national entities or mechanisms which monitor all centres of detention, and make regular visits with no prior notice to said detention centres.

These mechanisms of protection consist mainly of legal instruments known as "visits". They can be carried out by Supervisory Judges who, in view of the absence of Sentence-Implementation Magistrates 29, may personally inspect the conditions for the execution of the prison sentence. This legal instrument has been used by some Supervisory Judges, especially magistrates with links to "New Justice" 30, whose members are part of the Asociación Nacional de Magistrados (National Association of Magistrates).

These visits may also be made, without notice, by the Supreme Court National Prosecutor's Office, and by the Courts of Appeal.

Also of interest is the visit made in 2006 by the Inter-American Commission on Human Rights. A delegation from the Commission visited and evaluated Chile's prison system, and found some positive aspects but also observed an excessive use of force, systematic physical abuse, including the use of isolation measures in subhuman conditions, overcrowding, unsanitary conditions, precarious infrastructure, lack of adequate separation of inmates by category, and lack of specialized medical attention 31.

The majority of these reports are channelled to the Executive Branch through the Ministry of Justice, but no appropriate corrective measures are taken as a result of the suggestions or recommendations made in these reports. These diagnostic reports usually contain descriptions of serious failings in matters of Human Rights as a result of prison conditions.

Finally, although some efforts in that direction have been made, conditions simply do not exist for non-governmental organizations to jointly implement control measures.

Recommendation: It is recommended that the State of Chile allow all members of the judicial system to freely enter prison facilities to oversee conditions; also, these visits should increase in frequency. Furthermore, it is recommended that responsible and independent civil society organizations be allowed to enter these facilities, in order to cooperate in the supervision of the observance of Human Rights inside the prisons.

21. Please report on measures taken to put an end to abusive controls and inspections of visiting relatives of prisoners, which are applied as measures of intimidation and punishment.

No information on the matter.

23. Detailed information on progress made in initiatives aimed at improving prison conditions, initiated by the Government in 2000. Have the four new prison facilities mentioned in the Report been built?

In fact, almost a decade after a report on prison conditions was presented by a Parliamentary investigative commission in 1993, a penitentiary reform was begun with a view to putting an end to the serious failings of prison conditions, especially regarding infrastructure 32. The project envisioned the construction of ten new penitentiaries which would also serve to house a prison population that was rapidly growing as a result of the inauguration of a new penal processing system. Of the ten penitentiaries promised in the 2004 and 2005 Public Accounts, only six have been finished and are operating. At present, one of the prison facilities is deserted (Antofagasta); a new call for tenders has just been issued for the re-construction of El Manzano 2; and prison Group N. 4 (which includes 2 new facilities: the high-security facility for Santiago 2 prisoners, planned for 2,500 convicts; and the medium-security facility for the VII Region, planned for 1,400 inmates) is at a standstill 33.

Concerning the older penitentiaries, the Chilean State has tried, unsuccessfully, to improve prison conditions, either by upgrading infrastructure or improving access to medical attention, job training, and other benefits.

Of the measures taken by Gendarmería, some are aimed at building up the community centres and the work centres. It is estimated that only a very small percentage of the prison population has access to work that will be useful in terms of resocialization. At present, the Gendarmería website provides no information on the number of inmates with access to the Education and Work Centres.

Regarding the budget, there has been a marked increase of funds devoted to Gendarmería as the public agency in charge of operating the prison system. This budget increase has not been matched by a corresponding increase in funds for social re-adaptation programs. We quote some figures provided by the Circle of Relatives of Common Prisoners: “Since the beginning of the 1990’s, the budget assigned by the State to re-adaptation programs has decreased sharply, which no doubt has had negative social consequences; the lack of investment in re-adaptation programs within penitentiaries has led to a marked increase in recidivism, which currently exceeds 75%” 34.

Concerning relevant legislation, a commission set up by the Ministry of Justice’s Social Defence Division completed its work in November 2005. This commission was charged with writing the preliminary draft of a law project to be called “Ley de Ejecución de Penas” (Penal Sentence Implementation Law). More than two years later, this draft, though complete, is still “sleeping” somewhere in the Ministry of Justice.

One of the current priorities of the Ministry of Justice is the following: *“(the Ministry) will carry out studies for the preliminary drafting of a law project to regulate the implementation of penal sentences, and for establishing an effective system of administrative and judicial control of sentence implementation. The preliminary law draft must establish the principles and norms for the*

implementation of penal sentences, security measures, and personal preventive measures involved in the privation or limitation of personal liberty". This confirms that the preliminary law project has had to be re-written, with a view to finally improving the effective judicial protection of prisoners. Once again, legislative inefficiency and ineffectiveness have dashed hopes for a better future in this regard.

Meanwhile, as pointed out by many experts on these matters 35, in Chile the implementation of penal sentences is governed in practice by a set of Regulations which can be changed at will by the current government in charge of the Executive Branch. Therefore, till now, the judicial phase consisting of the implementation of the penal sentence still seriously contravenes the legal principle of *nulla poena sine lege (no penalty without a law)*, which is embodied in various international Human Rights legal instruments.

Recommendation: It is recommended that the Chilean State assume the observations made by the Chamber of Deputies' Special Investigative Commission on Prisons under Concession. Similarly, it is recommended that the policy of granting concessions for the operation of detention centres not be converted into an exportable model, without having previously solved the grave problems that have plagued the process until now. It is also recommended that conditions be improved in State-run detention centres, to avoid the existing inequalities in relation to conditions in facilities under concession. Finally, it is recommended that the judicial stage of implementation of penal sentences be governed by a law (principle of legality), thus avoiding the discretionary nature of the administrative faculties of governments.

24. Please report what measures are being taken by the State party in order to reduce or put an end to overcrowding in prisons, especially as a result of the constant increase of the prison population.

In order to put an end to overcrowding, the Executive Branch has decided to launch a construction program for six new detention centres, and for expanding and improving another eight prisons, to be completed in 2013; these construction projects are supposed to start this year 36. This set of prison facilities is in addition to the four new facilities in Antofagasta, Concepción, Talca, and Santiago 2 included in the Programme of Concessions for Detention Centre Facilities which was begun by the government of Ricardo Lagos. Let us recall that out of the facilities proposed in this programme, and due to a variety of reasons, there are only 6 prisons in operation out of the 10 that were promised in the original Concessions Programme. To quote the 2008 report on Human Rights prepared by Diego Portales University: "*in the first analyses made of the construction of the prison facilities under concession, it was estimated at that time that the deficit of prison space was approximately sixteen thousand places, which would be covered by the ten new facilities. In December 2007, with over 60% of the new prisons in operation, the deficit has not changed substantially. According to figures published by Gendarmería, the prison system has a real capacity or thirty one thousand places distributed in one hundred and three facilities and, with a prison population of forty five thousand inmates, there is an over-population of approximately fourteen thousand inmates*" 37. At present, the deficit is greater still, because the prison population is currently fifty one thousand inmates 38. It is recommended that the Commission examine those prison facilities that are in critical condition, as listed in the 2008 report on Human Rights prepared by Diego Portales University 39.

The problem with these measures is that, in view of the current rate of growth of the prison population, which is estimated at one thousand two hundred and fifty convicted persons entering the prison system each year, the deficit would become more critical over the next few years 40. It

is surprising then, that this situation, which gives cause for alarm, is disputed by State agencies, such as the Ministry for Planning.

Additionally, one must also take into account the absence of penal policies that are coherent with the specialized studies on crime that are currently available. In fact, in spite of a large body of evidence that calls into question the effectiveness of imprisonment in the fight against crime, the prison population continues to grow exponentially. To quote a prominent expert: "*the constant increase in the number of detainees in Chile, along with the increasing severity of criminal policies – which has not resulted in lower crime rates – show that the traditional crime-fighting strategies implemented by the authorities, have failed"* 41. In this regard, if real changes are to be obtained, such simple measures as the following could be adopted: establishing the requirement that law projects which increase the duration of penal sentences, or which characterize new criminal offences, must be accompanied by expert studies which would allow authorities to infer the manner in which these instruments will contribute to lower crime rates.

Judging from all the above, it seems unlikely that the construction of new prison facilities can be the only means used to solve overcrowding. While it is true that efforts have been made to modernize the justice system and to increase the range of available options in the implementation of sentences, statistics point the other way. An example of this is the implementation of the criminal procedural reform: *"far from a decrease in the number of inmates as a result of the greater use of "alternative options", and of the principle of opportunity, the evolution of the figures show persistent growth"* 42. For these reasons, one must ask about the real rate of imprisonment in Chile. In fact, "if the current trend continues, which sees a doubling of the imprisonment rate every 20 years, half way through this century Chile will have imprisonment rates similar to those of the United States" 43. Also, according to several international studies, these imprisonment rates contradict evaluations to the effect that Chile is THE most secure country in Latin America 44. This leads us to ask the following question: Why, if Chile is a safe country, does it have the second-highest imprisonment rate in Latin America? 45. It would seem that the construction of new prisons is not THE solution to overcrowding.

Recommendation: It is recommended that the State of Chile adopt a comprehensive penal policy which, in a non-violent country such as Chile, does not depend exclusively on the construction of new prison facilities to solve the problem of overcrowding. It is recommended that public policies be adopted that are in accord with the nature of the offense (poverty, drug addiction, marginality, etc.) and with international standards.

25. Please provide detailed information on developments concerning policies for the construction and privatization of prison facilities. Also, report on how responsibilities are divided among the public and the private sectors.

The Concessions Programme for Prison Infrastructure began to be implemented in 2005, and consists of the construction of 10 prison facilities in different parts of the country, with a capacity for 1,300 to 2,000 inmates each. Over 16,000 new places for inmates will be created, with over 350,000 m2 of new construction, and involving total investments of US$260 million. Some of the objectives of the programme were: greater control of the self-perpetuating "crime contagion", improvement of work conditions for Gendarmería personnel, improvement of conditions for work/vocational programmes and re-adaptation and re-insertion programmes and, finally, optimization of maintenance and operation of prison infrastructure. All this would bring about an

improvement in the observance of detainees' fundamental rights. Under this programme, the management of the prison facility is handed over to the concession-holder, while security, which cannot be delegated, remains in the hands of Gendarmería. Food and laundry services, educational programmes for social re-adaptation, skills training, medical attention, and infrastructure maintenance are handed over to the concession-holder.

In spite of its high objectives, the programme's results have been unsatisfactory, and so much so, that a Chamber of Deputies Special Investigative Commission was set up in early 2008 to look into the prison concessions process. 46. Although there have been some positive aspects, the process has had various problems which seriously compromise the initial objectives. Some of the problems that have been identified are the following:

- The consequences that ensued from the financial losses suffered by small and medium-sized companies that took part in the various stages of construction of the prison facilities: improvisation in the implementation of the contract.
- The State of Chile has had to pay millions in compensation to the concession holders;
- Ineffectiveness of the control systems and procedures involving Inspectors assigned by the Ministry of Public Works. As an example, it has been determined that the facilities in Iquique, Valdivia and Puerto Montt were granted final acceptance, though there were observations outstanding. This contravened the terms of the tender process, which had been approved by the competent authorities. It is also important to note that the government-appointed inspectors are not public employees, meaning that they can only be prosecuted in civil courts, which complicates the matter considerably. As a result, the Investigative Commission has determined the responsibilities of the former Ministers of Justice and Public Works:

- Indetermination in requests for extensions of the construction of prison facilities, especially those in Antofagasta and Concepción. As a result, the State has had to pay more than the initial cost of the constructions;
- Political responsibilities: making decisions in an impulsive manner, absence of planning in applying public policies regarding the prison system. As pointed out by the report: "*the above-described situations show that the implementation and the operation of the prison concession process was not based on technical criteria, as corroborated by the Office of the State Comptroller which has stated that audits were omitted and that internal oversight controls did not work adequately*"47. The investigative commission has determined that some political responsibilities must be assumed by ex-President Ricardo Lagos.
- Problems related to safety within the detention centres and to public safety with regard to the new prison facilities: personnel was not adequately trained, in view of the radical nature of the proposed changes. As stated by the Commission: "*the model that was applied by our country's authorities in this respect, was copied from the French experience, which took approximately twenty years to be implemented, as there existed a number of socio-cultural and technical transformations that had to be effected, regarding both the prison population and the supervisory procedures followed by Gendarmería*"48. It must be remembered that the original project envisaged a number of prison facilities for a certain prison population; the fact that the Antofagasta and Concepción prisons have not been built, both belonging to Group 2, and the inexistence of Group 4, means that the prison population which was going to be housed in these facilities, is now confined in other overcrowded facilities, or has simply been released".49. One must also consider the extreme inequality before the law of detained persons, even those from the same regions of the country: some are living in conditions having a high standard of quality, while others are overcrowded in the subhuman conditions that prevail in State-run facilities.

Another matter is the high number of suicides that have taken place in the new prison facilities under concession, subhuman treatment, and problems accessing medical attention 50. Finally, it is important to point out that "*at present it is impossible to foresee with any degree of certainty whether the inmates in privately-run prison facilities will successfully readapt to society*" 51.

Based on all the above, one may conclude that the public policy of granting concessions in the prison system, in spite of efforts aimed at improving the standard of protection of the rights of detainees, has in fact done a disservice to their rights, and created conditions that are favourable for the perpetration of acts and situations of torture and other cruel, inhuman or degrading treatment.

Recommendation: It is recommended that the State of Chile solve the problems in the design of policies concerning prison concessions, and that it define clear distinctions between the responsibilities of public and private agents. To that end, and in relation to possible conflicts that may occur, conflict-resolution processes must be expedited. Similarly, it is recommended that unnecessary expenses be avoided in the construction of facilities and in paying compensations derived from non-compliance of regulations.

26. Please state whether the State party has provided special protection to certain vulnerable groups inside the detention centres, especially to minors, women, native peoples, the handicapped, the elderly, the mentally-ill, foreign nationals (especially illegal immigrants), and those infected with HIV.

Along with the increase of the prison population in Chile, there has been an increase in the number of women in detention centres. According to Gendarmería, which is a public agency subordinate to the Ministry of Justice and is responsible for the prison system, at 28 February 2009 there were 4,100 women in detention centres, representing 7.95% of the total number of inmates. Women make up 10% of simple detainees, 14.5% of indictees, 11.45% of the imputed, and 5.68% of the convicted. As for women who have received sentences that are alternatives to detention, they make up 13.6% of the total (7,039 women) 52.

It can be asserted that in detention centres, there is no special protection granted to indigenous people. What is more, by virtue of Law N. 19.970 enacted on 10 September 2004 and published on 6 October of that same year, and which creates the national DNA database, the Attorney General's office through the agency of Gendarmería, has begun to create said registry, and has been intimidating Mapuche persons who have been convicted or imputed in the context of their territorial claims and demands, to report to the corresponding authorities to undergo the process which will enter their DNA into the National Registry of Convicts, which was created by virtue of this law.

The fact that this law is being applied preferentially to Mapuche People who have been convicted or imputed in the context of their territorial demands, constitutes a serious breach of Human Rights, as it violates their right to privacy, the principle of equality before the law, due process, and their physical and mental integrity.

Concerning special facilities for the detention of minors, the following are the main existing problems:

- *The excessive use of temporary internment*. According to official figures, for every minor

condemned to reclusion, eight are in temporary internment. Thus, out of the total number of minors detained in closed centres at 7 November 2008, only 14.6% (146 minors) were serving a sentence, and 85.3% (850 minors) were there by virtue of preventive measures involving temporary internment 53.

- *Sustained increase in the number of detained minors*. Before the current law was enacted, the daily average number of detained minors was approximately 900. The first evaluation of the working of the new system, published in December 2007, states that at 2 December of that year, there were 1,012 minors detained in closed centres, and 128 in semi-closed centres, for a total of 1,140 detained minors. But in comparison with the old system, the terms of internment are now much longer (consisting either of internment during trial, or after a sentence has been delivered). In early November 2008, the total number of minors detained was 1,701; 1,352 were in closed centres, and 349 were in semi-closed centres. Out of the 1,352 minors in closed centres, 950 were there under temporary internment, and only 402 were serving a sentence.
- *The system of Detention centres for minors is in crisis.* In 2006, it was decided that the start of the new penal system for minors would be delayed for a year, due to the lack of adequate infrastructure. In 2007 the possibility of again postponing the new system was discussed once more, but the Government assured Congress that the necessary conditions did in fact exist. It should be stressed that in both cases, a Commission of Experts, which had been created by law to advise the authorities on the implementation of the new system, had recommended that the start of operations be postponed.

Various reports, as well as the Inter-Institutional Supervision Commissions created by the Adolescent Criminal Responsibility Law have confirmed these deficits in infrastructure, and it may be said in truth that the detention-centre system for minors was born and continues to be in crisis. A eport by UNICEF Chile – one of the member entities in the above Commissions – titled "Principales nudos problemáticos de los Centros Privativos de Libertad para Adolescentes y Secciones Penales Juveniles" (Main Problem Areas in Detention Centres for Minors and Juvenile Penal Divisions), concludes that: "*Many of the centres do not comply with the requirements of basic living conditions, nor with the regulations that govern their operation. What is more, there are many factors present which negatively affect the development of the detained minors, or simply harm them directly"* 54.

Following the August 2008 visit of the Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas, which was commissioned by the Organization of American States, Florentín Menéndez, the Rapporteur, came to the following conclusions in his report on the situation of minors deprived of liberty:

a. a high level of overcrowding in the San Bernardo juvenile centre, which has a precarious infrastructure and unsanitary conditions.
b. deficient provision of basic services, particularly in the area of education and health care, as well as recreation, sports, and social re-adaptation programs.
c. There is no appropriate separation of inmates by category.
d. Poor treatment, excessive use of force, and the use of isolation as punishment, still persist.
e. It was observed that the Adolescent Criminal Responsibility Law does not have a corresponding specialized judicial and institutional system and that SENAME does not have an adequate budget.

Subsequently, the Office of the State Comptroller made the results known of the audit practiced on

the Servicio National de Menores- SENAME (National Youth Service), through the Final Report Nº 132 dated 31 December 2008. In said process, officers of the Comptroller's Office visited 10 closed detention centres and 11 semi-closed centres administered directly by the SENAME. From this Report the following should be mentioned in relation to the detainment conditions for adolescents:

- Insufficient staff to develop the different technical, administrative, and safety activities contained in the LRPA (Adolescent Criminal Responsibility Law).
- Inadequate legal advice for detained adolescents, which violates the right to legal assistance and maintenance of direct and ongoing communication with their lawyers, found in Article 11 of the LRPA Regulations.
- Lack of courses and workshops to train adolescents. There are no ongoing programs for job training and education; lack of physical space and specialized staff, so there is little participation of adolescents in workshops. Many closed centres do not have high school education programs (in violation of Article 51 of the Regulations).
- Lack of internal regulations and discipline. In general, the internal regulations of the centres do not have any formal control and there is no due process for the application of disciplinary sanctions. The situation of the San Bernardo Detention Centre is explained in detail, where there is a "transitory separation" home where adolescents with behaviour problems are left for up to 7 days, in isolation, without programmatic attention or participation in the centre's daily activities. It should be pointed out that the capacity of this centre is for 150 detainees, but it usually receives about 250.
- Overpopulation, lack of space for recreation and sports activities as well as for providing attention to the adolescent. The absence of adequate separation by age, gender (a case is reported of an adolescent who got pregnant during her detainment), and legal status (there are centres where the convicted are imprisoned together with provisory detainees subject to precautionary measures).
- *Isolation sanction*. A particularly sensitive subject is that of the application of "separation from the group", as a disciplinary sanction, for up to 7 days, included in Article 75 of the LRPA Regulations, and which, as revealed by the Comptroller Office's report, in its practical may cover up or conceal an isolation measure, prohibited internationally (Regulations for the protection of detained minors) as well as by the LRPA.

Recommendation: The Chilean government should modify the LRPA (Adolescent Criminal Responsibility Law) and adopt all the necessary measures to ensure that the detainment of adolescents effectively operates as a measure of last resource. Instead of continuing building new juvenile jails, it must guarantee that the conditions, under which the detainment takes place, provide the adequate protection for right to life and physical and psychological integrity, and prioritize measures tending towards social reinsertion before retributive punishment. Moreover, it must impede the permanent entry of armed prison guards to these facilities and eliminate the possibility of application disciplinary measures without due process and, especially, the measures that objectively and materially constitute isolation.

27. Please inform if the Government has taken measures to remedy the supposed disciplinary breaches and the supposed lack of safety which were brought to light after the uprising that occurred in the Puerto Montt SENAME Behavioural Rehab Centre, denominated "Tiempo de Crecer" ("Time to Grow"), in October 2007, in which 10 adolescents lost their life. Likewise, inform if preventative measures have been taken to avoid this type of incident and if the investigation of the causes which gave rise to this incident have been carried out.

On October 21, 2007, five months after the new penal system for adolescents was applied, in SENAME's Provisional Juvenile Detention Centre, called "Time to Grow", located in the city of Puerto Montt, an uprising took place due to the fact that a group of adolescents wanted to continue watching television and did not want to go to bed. This ended up in a fire, as a consequence of which 10 adolescents died, resulting from burns and/or asphyxia. From the start it was quite clear that there was severe disorganization and erroneous decisions taken by a series of persons and authorities, which had an influence on the fatal results. In terms of what occurred after said events, as a follow up, the following aspects must be pointed out:

-*Internal preliminary hearing*. The results of the internal preliminary hearing, headed by Fanny Pollarolo, Director of SENAME's Department of Juvenile Rights and Responsibility, have not been made public. According to the media, the information is in the hands of the National Director of said service, Eugenio San Martín. At that time, some parliamentary members questioned that, in her position as senior director who must ensure the conditions of these reclusion centres, Pollarolo is both "judge and party" in this investigación[55]. (*UDI Deputies question the objectivity of Pollarolo for heading the SENAME hearing*, El Mercurio Newspaper, October 26, 2007).

-*Penal responsibilities*. Until this time, six officers of the Centre have been formalized for the crime of unintentional homicide. In this regard, Jaime Gatica, prosecuting lawyer for the victims, has criticised the fact that the responsibilities are persecuted only at the lowest levels: "*it is the responsibility of senior authorities, we want the investigation to go up in the ranks, since the deficiencies were warned by the officers …The Government is responsible for this"*[56] (Quoted in the *Annual Report on Human Rights in Chile 2008 – 2007 Events*-, Human Rights Centre, Universidad Diego Portales, page 115).

- *Investigating Commission of the Cámara de Diputados (Chamber of Deputies).* On November 6, 2007, a special commission of the Chamber of Deputies was created, presided over by Marisol Turres, in charge of determining, among other things, "*the degree of administrative and political responsibility that SENAME's senior authorities and the Minister of Justice have in these events*". This commission's final report was concluded on October 8, 2008, but it hasn't been voted on in the Chamber of Deputies. Three situations are alluded to in the conclusions:

a) In terms of the start up of the LRPA, it is indicated that "*the diagnosis elaborated by the Ministry of Justice, which served as the basis for the consideration of the National Congress, was erroneous. Likewise, the minimal objective conditions stated by the Minister were not complied with, thereby implying responsibility of the Ministry of Justice, Mr. Carlos Maldonado Curti, and SENAME's National Director at that time, Ms. Paulina Fernández*".

b) In regard to the Puerto Montt events, the Commission points out the infraction to Article 74 of the LRPA Regulations, that makes an Emergency Plan mandatory: "*At the time of the events in the Puerto Montt Centre, this mandatory regulation had not been complied with. From this, direct operational responsibilities can be derived for the following authorities:*

-The National Director of the SENAME, Ms. Paulina Fernández Fawas, who, although at the date of the events no longer held the position; she had the responsibility of having complied with said obligation (…)
-The Regional Director of the SENAME, Mr. Carlos Navarro Pérez.
-The Director of the "Tiempo de Crecer" Centre, Ms. Lorena Navarro Vargas.

-The Regional Secretary of the Ministry of Justice, Ms. Lebby Barría Gutiérrez, who had the obligation of supervising the start up in the area of her jurisdiction".

c) Finally, the Commission made a statement about the "*current state of the centres"*. Their situation, 14 months after the tragedy, is qualified as dangerous and serious. The following problems are summarized:

1. Inadequate facilities that impede segregation by age and legal process situation.
2. Overcrowding.
3. Lack of minimum elements such as blankets or polycarbonate in the windows and unsanitary conditions in the bathrooms.
4. Existence of flammable materials inside the facilities.
5. Low number of SENAME officers and Guards and training for the latter to adequately comply with their corresponding role.
6. Lack of rooms for the Guards to adequately cover their system of work shifts.
7. Lack of systematic educational courses.
8. Unsafe and risky conditions for imprisoned minors and for the officers who work there.

For this reason, it is recommended, "*for the Government, and especially for the Minsters of Finance and Justice to make available, as soon as possible, the economic and human resources necessary for an adequate implementation of the law, as well as progress rapidly in the institutional redesign of the SENAME, agreed upon, in the framework of the public safety agenda, by the Government and all political parties*", and for the director of the SENAME to adopt "*the corrective measures necessary to rectify the deficiencies observed during the work of the Investigating Commission*".

In addition, it should be mentioned that during 2008 two suicides of adolescents occurred in SENAME centres.

- *Legal reforms*. Through the Bulletin Nº 5458-07 dated October 29, 2007, the Executive power presented a LRPA legislative modification proposal in Congress. One of the modifications introduced consists in the authorization to have internal guards from the Gendarmería in these facilities (until now the LRPA authorizes an external guard in Provisional Detention Centres and Closed Detention Centres, who, in accordance with Article 43 of the LRPA, "*shall remain outside of the facilities, but shall be authorized to enter in case of a riot or in other situations of serious risk to the adolescents and to check their rooms with the sole purpose of avoiding said situations"*). In the presidential message this measure is justified by "*the need to ensure the safety of detained adolescents and of the officers inside these centres"*.

This measure, which legitimacy has been precisely created as a response to the Puerto Montt tragedy, attempts against the specialty of the adolescent penal system, by introducing an armed institution into the centres which belongs to the adult penal system. In addition, it infringes the United Nations Regulations for the protection of detained minors, which are very clear on this point, indicating that "*in all centres where there are detained minors, the personnel must not be allowed to carry or use arms*" (Regulation Nº 65).

Recommendation: The Chilean Government must guarantee that the penal as well as political and administrative responsibilities are carried out at all corresponding levels, and adequately indemnify the families of the victims. Moreover, they should adopt all necessary measures for improving the conditions in the adolescent reclusion facilities and apply the international standards in the matter,

avoiding the assimilation of the adolescent penal system with the adult system.

28. The Committee would like information on the number of legal processes filed against police officers or prison guards for torture.

No Information available. Missives were sent to the National Director of Gendarmería and to the Deputy Minister of Police for the purpose of obtaining this information.

Article 12

29. The Committee would like information on the scope of the apparently existing practice, that courts require medical reports as proof of allegations of torture.

Some Human Rights lawyers who litigate civil complaints against the Chilean Government for cases of forced disappearance (illegal detention and qualified abduction in accordance with Chilean legal definition) or of homicide for political reasons, asks the examining magistrate to request a medical-psychological evaluation to accredit psychological, moral, and social damage in the families for whom compensation is being demanded. Habitually, the judge accepts this petition and requests in writing from one or various organisms that work in the area of mental health and human rights (CINTRAS, CODEPU, FASIC, ILAS) to carry out the corresponding evaluation. Based on the clinical report – in those cases in which the claimant had already been treated as a patient in the institution- or based on several evaluation sessions realized by psychologists, se an individual report is made for each claimant family member and its is remitted to the examining magistrate. In various cases the judges have set compensation amounts to be paid by the Government, but these rulings are always impugned by the State Defence Council. Only in some cases considered "emblematic" or that have had international repercussion, such as the murder of Orlando Letelier in Washington or the United Nations Officer, Carmelo Soria, the Government has finally agreed to grant compensation to the direct family members. CINTRAS does not know if these types of medical-psychological reports have been requested in civil complaints filed by torture survivors, since up until now they have not been requested from the institution. It should be indicated in this regard that, in general, the civil complaints filed by this group of victims have not been accepted for processing by the judges.

Recommendation: If it is proven that a claimant has been the victim of a crime of lese humanity, the accreditation of the damage suffered by means of a medical report should not be a requirement for granting government compensation.

Article 14

30. Please indicate if the Integral Health Care Reparation Program has been reinforced for those affected by human rights violations (PRAIS) with the aim of providing assistance to the victims of torture practiced under the military regime.

Currently, in each one of the country's 14 regions there is at least one PRAIS team (Programa de Reparación y Atención Integral en Salud y Derechos Humanos) (Human Rights and Integral Health Care Reparation Program), which operates in hospitals of the respective cities; in the Metropolitan Region six PRAIS teams operate that cover different sectors of this region.

In reality these diverse teams are very unequal in terms of the number of members (doctors, psychologists, psychiatrists, social workers) and in terms of their specific training in regard to the particularities of bio-psychosocial damage caused by torture and of the models of approach and

treatment that have been developed, which obviously affects their efficiency and efficacy. There are a few teams integrated by professionals with many years of experience in the matter and with a great personal commitment with this specific subject, who do valuable work, often in contact and ongoing interchange with the NGOs specialized in this area of healthcare. However, in the majority of the teams there is a frequent rotation of the staff, with young professionals without specific knowledge or training and often without interest in regard to this sensitive subject, so that the work realized does not satisfy the urgent and serious needs of survivors of torture who request medical-psychological care.

Aware of this reality, the National Health Service and specifically the Vice Ministry of Networks, upon which the PRAIS Program depends, has proposed a series of training workshops to be held in the year 2009, for which it has summoned a contest of professionals from the NGOs who work in the area (CINTRAS, CODEPU, FASIC, ILAS). All of them coincided in the need to carry out a previous evaluation as well as gather the expectations stated by each team, with the aim of realizing training in accordance with the individual reality and thereby the most effective possible. This proposal was rejected by the authorities, who have conceived the same basic training for all teams, which must be imparted in two working days in four zones of the country (north, centre/metropolitan, south, and far south), grouping the PRAIS teams from the nearby regions.

We value the PRAIS team training initiative done by the Health Service, but, at the same time, we are sorry that, due to a bureaucratic decision, this will not be done in the best possible manner. Our perception is that, once again, the Chilean Government formally complies with a requirement, but without the ethical commitment needed to take the necessary steps to guarantee good rehabilitation and repair to torture survivors.

We are also concerned that, in accordance with the plan of self-financing imposed on the public health services, "performance and efficiency" are also being demanded from the PRAIS teams, which implies providing care to a maximum number of patients in a minimum amount of time, thereby often impeding meeting the individual needs of each case.

Recommendation: The PRAIS Program should have the necessary financing so that each PRAIS team has sufficient adequately trained staff to provide effective medical- psychological healthcare to all patients who require it.

31. Please provide information about cases decided upon by Chilean authorities involving torture victims. In how many cases was compensation granted and what quantities were given? In particular, the Committee would like information on compensation to victims recognized by the Valech Commission.

As indicated in Article 2, point 6 of this report, referring to the National Commission on Political Imprisonment and Torture, a total of 28,354 persons were recognized as victims, as well as, on a separate list, 189 persons had been detained along with their parents as minors or were born in prison.

Through the Ley de Reparación Nº 19.992 (Law of Reparation) of December 2004, a compensatory pension was assigned to accredited persons which President Lagos, in his document "No hay mañana sin ayer" ("There is no future without a past"), had already announced would be "austere and symbolic" and not fair and adequate as required by the Convention. In fact, the monthly amount of this pension (equivalent to approximately 200 euro) is only a bit more than a third of that received by others affected by crimes of lese humanity such as relatives of detained disappeared and murdered for political reasons and is less than the minimum salary, so that it constitutes

discrimination against this group of victims, disregarded for such a long time.

For the 189 persons who were detained together with their parents, compensation was determined of a single payment of four million pesos (about 5,800 Euros), not recognizing that the situation they suffered as minors also signified an act of torture.

Another clause of the Law of "reparation or compensation" which caused pain, anger, and frustration in the families of torture survivors, is that which refers to the deceased victims. For 2,558 personas registered by the families and accredited as victims already deceased (9% of the total) and another 288 deceased prior to receiving the pension, the compensation is annulled, in spite of the fact that it has been proven that the experience of torture does not affect the individual alone but rather the entire family group. Since the Law of Reparation determined that the pension shall not be inheritable, it did not heed what the National Commission of Political Imprisonment and Torture recommended: "*A lifelong pension to the persons recognized by the Commission as victims, that is transferable for life, in a percentage no less than 75%, to the spouse, or partner with whom they have had children, whether the direct victims have deceased prior to or after having given their testimony to the Commission*" (*Informe de la Comisión Nacional sobre Prisión Política y Tortura*, Santiago, 2005, pages 523-524).

On the other hand, up until now no civil suit filed by torture survivors against the Government has had positive results. An extreme case exemplifying this attitude of the Chilean Government is constituted by the case of Luis Plaza González, who in October 1973 survived the so called "Bulnes Bridge slaughter" in Santiago, due to that fact that the bodies of his companions fell on top of him and protected him from the impact of the bullets that hit him. Innumerable scars on his body remained as testimony of this dramatic experience. The Fourth Room of the Santiago Appeals Court, on January 31, 2007, ordered the Chilean Government to pay him compensation of 75 million pesos (about 100,000 Euros). This sentence was impugned by the State Defence Council, which, as usual in these cases, privileged the protection of fiscal resources, achieving that the Supreme Court in a definitive sentence determined that he should not receive any compensation whatsoever.

Recommendation: All torture victims, including those who suffered this traumatic experience together with their parents, tortured and imprisoned by State agents, should receive a fair an adequate compensation, that is, a lifelong pension allowing them a dignified life and which amount be, at least, comparable to that granted to other victims of crimes of lese humanity. This pension should be inheritable by the spouse or partner with whom they have had children.

Article 16

32. Please comment on the presumed practice of detaining prisoners in isolation cells as a form of punishment without respecting the adequate procedures and for prolonged periods of up to 15 days.

In effect, as verified by diverse reports by the National Prosecutor of the Supreme Court, as well as "2008 Human Rights Report" by the Universidad Diego Portales the practice of shutting prisoners up in isolation cells continues to exist. In spite of the fact that the Chilean Gendarmería have participated in international seminars which, among other good practices, conclude that the isolation cells should no longer exist, this continues to be a practice used in the majority of penal facilities 55. A Chilean expert in prison matters states that, "*the isolation cells are pigsties in terribly poor conditions, with no bathroom. In summer they are extremely hot and in winter extremely cold, and they lock up more than ten people in a room with a capacity of three to five people. The punishment cell is applied arbitrarily and in itself infringes against fundamental rights.*

*The International Court of Human Rights has obliged governments to suspend the use of this sanction, but in our country it continues to be applied."*56.

Among other problems, the isolation cells constitute one of the places where uprisings start, which in general end up with injured people (officers and prisoners). In effect, and as seen in some events that occurred in 2008, the uprisings start when the prisoners refuse to enter isolation cells. During 2008, this occurred in Female penitentiary centres in Copiapó and Temuco 57.

Another problem is related to certain vulnerable groups inside the prisons. As denounced by a member of the "Vivo Positivo" Group, a prisoner in Aysén, whose HIV exam was positive, was shut up in an isolation cell as a form of discrimination: "*Other prisoners were told about this case and he was removed from his work in the prison bakery, and was obliged to remain in isolation cells used for punishment, full of excrement and without heating of any kind, not even a blanket, clearly violating Human Rights and only due to the fact that he was HIV positive"*58.

This practice has not been so hidden since some television programs have been given access, with the Guard's authorization, to the isolation cells. In effect, in the first chapter out of 13 in the program 'Prisons' [that will be aired this year], the animator, Leo Caprile, spent an hour enclosed in an isolation cell. "*The sensation of suffocation was overcome with the support of other prisoners, who sent him wall to wall messages"*59.

Finally, it is important to remember that Article 4º of Decree Law Nº 643 (year 2000), which approves the regulation about visits of lawyers and other pertinent people to the penitentiary establishments, indicates that visits realized by persons in charge of their legal defence may not be prohibited, even when they are in isolation cells. In effect, and as verified by one of the members that participated in the preparation of this alternative report during their professional practice in Gendarmería, the officers denied visits to prisoners when they were in the isolation cell.

Recommendation: It is recommended for the Chilean Government to definitively eradicate isolation cells, establishing security measures in accordance with the respect for the dignity of persons deprived of freedom.

33. Please inform on measures being taken to remedy the presumed serious deficiencies in prison conditions such as lack of access to basic services, deficient and unhealthy hygiene and poor quality and insufficient food ; and

34. According to certain information, various penitentiary centres in Chile have revealed cases of beating by Gendarmería officers with fists, boots, batons and sables. Please comment.

These problems can be understood as structural in respect to the Chilean penitentiary system. As indicated in the latest human rights report of the US Department of State on Chile, "*the conditions of prisons are poor in general. They are overpopulated, old, and have poor sanitary conditions (…) the jails are crowded and offer deficient services in terms of health, cleanliness, food, and medical assistance; the same report also describes cases of abuse of the prisoners and excessive use of force. There have been isolated cases of death of prisoners due to lack of clear prison procedures and due to the lack of medical resources. According to prison officers, there have been 63 avoidable deaths during the year, compared to 48 in 2007. Up until the month of December, 48 prisoners were murdered by other prisoners; 15 more committed suicide. It is alleged that prisoners infected with HIV/AIDS and mentally incapacitated prisoners do not receive adequate medical care*"60. These affirmations coincide with the results of the "2008 Human Rights Report" by the Universidad Diego Portales.

A visit made by the Inter-American Commission realized at the end of August 2008, verified these same problems. In fact, it took note of excessive use of force, systematic physical abuse, among which includes isolation in inhuman conditions, overcrowding and anti-hygienic conditions, deficiencies in infrastructure, and the lack of due separation between prisoners and specialized medical assistance.

In regard to information about beatings by the prison guards, it is difficult to have access to figures that can provide an accurate diagnosis of the problem. Gendarmería, in these cases, is both judge and party, so that the establishment of a new law of penitentiary operation becomes an imperative. Only by guaranteeing the impartiality of those who judge and the security of those who denounce can we reach the real dimension of this serious problem.

As we can derive from these three sources of renowned prestige, these types of problems are not isolated case s.

Recommendation: It is recommended for the Chilean Government to guarantee that the operation of penitentiary facilities is developed under adequate human rights standards. For this purpose, the quick approval of a law is requested that regulated the actions of Gendarmería, so as to respect the principle of legality in the stage of execution of the sentences, guaranteeing due process in denouncements against Prison due to maltreatment and abuse. It is also recommended to provide adequate meal, health, and hygiene services. For this, the medical and hospital care must be increased in prisons, as well as guaranteeing a wider coverage. On the other hand, the hygiene of the penitentiary facilities must be improved, guaranteeing minimal acceptable levels of dignity.

Other Matters

35. Regulations on prohibition of production and commercialization of torture equipment.

As the result of the so called "Rocha case " (where a well know businessman contracted the services of private detectives and used an electric artefact purchased at the "Casa del Espía" store to cause the death of a senior citizen, Fernando Oliva), legal actions took place which made evident certain insufficiencies in the national legislation in these matters.

The Arms Control Law Regulations, in Articles 198 and following, refer to the "elements of personal defence or self-protection", including "electric batons or electroshock (sic)". In the case of these elements, Article 206 gives the Banco de Pruebas de Chile (Chilean Testing Unit) the responsibility of providing the Dirección General de Movilización Nacional (General Office of National Military Mobilization) with the technical characteristics of the products that will be authorized for their sales: Notwithstanding, it is indicated in the same Article that "*these must only be products that allow stopping the aggressor by temporary loss or decrease of his senses, and should not ever have mortal effects"*. On the other hand, Resolution 9.080 of said General Office, of 1999, has established detailed technical specifications of said products for importation and commercialization purposes. Among other things, it indicates that the maximum output voltage should be 100,000 volts.

In the pertinent trial it was shown that the "Casa del Espía" had imported and had 91 electric batons in stock which exceeded said limit reaching up to 500,000 volts. The death of Jaime Oliva was caused by one of these artefacts. With charges of infraction of the Arms Control Law, Dante

Yutronic was sanctioned with a fine of 300,000 pesos (approximately 500 dollars), and a conditional suspension of the sentence was applied to his wife and partner, María del Pilar Opazo.

In regard to other arms and elements regulated by this norm, during 2008 some press reports and actions of ecological groups made it clear that there is a deep lack of knowledge about the exact composition of the strong tear gas used by the police, and the authorization and control procedures are not known about its use and long terms effects 61.

It should be added that in the report "*Campaña Alto Ahí: Basta de violencia policial"* ("Put an end to Police violence Campaign"), the use of tear gas inside police vehicles as a deliberate form of maltreatment of people detained in street manifestations is brought to light.

Recommendation: It is necessary for the Chilean Government to amend the legislation on arms control so that the prohibitions adjust to the Convention and become clearly established at that level and not by means of excessively ample references to resolutions and powers of administrative authorities.

36. Please indicate if the application of the Antiterrorist Law 18.314 has affected some legal and practical guaranties in human rights issues.

The Law N° 18.314 that *"determines terrorist conduct and sets its sanctions"*, promulgated on May 16, 1984, was elaborated during the military government to drastically sanction any type of insurrection against said regime. This law was partially reformed by the National Congress on two occasions after the return to democracy; the first time in 1991 during the Aylwin government, through Law N° 19.027, one of the so-called "Cumplido Laws" relative to human rights, and the second time in 2002 under the Lagos administration, through Law 19.806, to adapt it to the new penal process system.

By virtue of this law it is possible to keep secret certain aspects of the investigation of the related crimes (Article 16); it eliminates the possibility of applying other precautionary measures during the process, alternative to preventive prison; it allows the restriction of visits and interception of communication from the accused (Article 14). The same law increases the sanctions that the ordinary penal legislation has for the crimes to which it refers 62 (Article 3). This law, also, has special instruments so that the officers in charge of enforcing the law deal with the terrorist crimes. The detained can be imprisoned up to ten days before appearing before a judge or before being formally accused. This is one week more than the time allowed for people arrested for ordinary crimes, although in this period the detainee may receive the visit of a lawyer. If the prosecutor or legal counsel believes that the physical safety of witnesses is in danger, evidence can be held in secret for a maximum of six months.

The protection of witnesses established in this law has brought about the practice of using faceless witnesses in the related processes. This seriously weakens the capacity of the defence to refute the evidence presented by the accusation, since the identity and the conduct of the witnesses has direct relevance for its credibility. The witnesses themselves may have penal records or personal quarrels or political animosity with the accused. Moreover, in the case of malicious testimony, the defence cannot accuse witnesses of perjury if they can't be identified. In addition, in extreme circumstances, the witnesses can simply lie with impunity.

In this regard, it should be pointed out that Article 14(3) (e) of the International Pact on Civil and Political Rights establishes that the accused shall have the right "*to interrogate the prosecuting witnesses or have them interrogated and to obtain the appearance of defence witnesses and that*

they be interrogated under the same conditions as the prosecuting witnesses". According to the General Observation 13 (21), - which is an authorized interpretation of the Pact- the purpose of this provision is "*to guarantee to the accused the same legal power to oblige witnesses to appear and to be able to interrogate them and ask them again about the accusation*". The application of this principle of equal procedures in all legal processes is a fundamental principle of fair trial.

Under the administration of President Lagos (2000-2006) this legislation was invoked by the Ministerio Público (National Prosecutor's Office), as well as by the government through the Ministry of the Interior, on more than twenty occasions against defenders of human rights of the Mapuche people for events of social protest about reclamation of their territorial rights. The crimes for which accusations have been made and legal processes filed by virtue of this law are terrorist threat and fire, illicit terrorist association, tossing of bombs or explosive artefacts. As well as complying with the specific type of penal law, the categorization included in number 1 of Article 1 of the Antiterrorist Law was attributed to these crimes.

The National Prosecutor's Office and the government have argued that with the ordinary laws the prosecutors have difficulty in obtaining sufficient evidence to condemn the authors of these incendiary attacks, partly due to the reticence of witnesses to declare due to intimidation or fear of retaliation.

In the legal processes followed against Mapuche people, the restrictive powers of the aforementioned right to due process have been employed, including on several occasions the use of faceless witnesses. Said processes have resulted in convictions of ten Mapuche defenders of human rights with sentences oscillating between five years and a day and ten years and a day.

The application of this legislation against defenders of human rights of the Mapuche peoples for events of social protest has been condemned by both national and international human rights organisms. Among the latter we can highlight the UN Special Rapporteur for Indigenous Rights (2003), The UN Committee on Economic, Social and Cultural Rights (2004), and The UN Human Rights Committee (2007)63.

As a consequence of the pressure of imprisoned Mapuches condemned by the antiterrorist law, who in 2006 held a prolonged hunger strike to demand their freedom, President Bachelet promised in May 2006 not to apply this legislation against Mapuches, stating that "*the ordinary justice has enough strength to act* ". On the other hand, the President, through the Ministers of Justice and Interior, presented in July 2006 an initiative in the Senate for its modification, which purpose, more than modifying the law, was basically to obtain freedom for Mapuche prisoners. This initiative was not passed.

Since then, to date, no new initiatives have been presented for its modification and adaptation to the provisions of the International Pact on Civil and Political Rights as recommended by the UN Human Rights Committee in March 2007. Moreover, President Bachelet has broken her promise, in view of the fact that the Minister of the Interior, through the attorney of the Gobernación Provincial de Cautín, Doris Tello, presented in the month of February 2009 a criminal complaint before the Supervisory Court of Lautaro, in the Araucanía region, invoking the law 18.314 in the case underway for arson and theft on a farm in the same region occurring last January 12, in which several Mapuches were imputed 64. The application of this law to the imputed Mapuches was also requested by the National Prosecutor's Office (Attorney General's Office).

Currently, being prosecuted by this law are the following Mapuche persons or persons linked to the defence of their rights:

- Fénix Delgado and Jonathan Vega, Anthropology students of the Universidad Católica de Temuco, and the minor Rodrigo Huechipán, who are charged with “frustrated terrorist arson ", for an alleged attempt to set a fire on 30 October 2008 on the highway in Temuco. The process is currently under the investigation stage and all the above are under precautionary measure of total domicile arrest, during the 8 month investigation under the Antiterrorist Law.
- Mauricio Huaquilao Huaiquilao: charged with "terrorist arson, simple arson, attempted homicide, and threats" for an attack on the properties of Eduardo Luchsinger on 16 August 2008, as well as “frustrated terrorist arson", for events occurring on 30 October 2008 on the highway in Temuco. The process is currently under investigation and he is being held in the Temuco jail.
- Miguel Tapia Huenulef: charged with incendiary attack, damages and injuries, all of a terrorist character, to the San Leandro fundo in Lautaro, owned by Pablo Hardener, last January, imputations filed at the Lautaro Supervisory Court. He is also charged with illegal arms possession at the Temuco Supervisory Court. The process is currently under the investigation and he is being held in the Valdivia jail.
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- Andrés Gutiérrez Coña: charged with incendiary attack, damages and injuries, all of a terrorist character, to the San Leandro fundo in Lautaro, owned by Pablo Hardener, last January, filed at the Lautaro Supervisory Court. The process is currently under the investigation and he is being held in the Valdivia jail.
- Edgardo José Hernández Lucero: charged with participation in a series of bombings committed in the Araucanía Region. The Antiterrorist Law was also applied. The process is currently under the investigation and he has under parole.

Far from there being progress in the revision of this legislation, the Chilean government, through the National Prosecutor’s Office and the Ministry of the Interior, have gone back to using it against the Mapuches for events related to social protest.

Recommendation: In relation to the application of the Antiterrorist Law, we think the Committee should take into consideration the recommendations realized on these matters by various United Nations organisms over the past few years, which are still applicable. We consider especially important the recommendations formulated by the UN Special Rapporteur on the situation of human rights and fundamental liberties of indigenous peoples, Mr. Rodolfo Stavenhagen, in his report on his mission to Chile in 2003:

“69. Under no circumstance should legitimate protest or social demand activities of the indigenous organizations and communities criminalized or penalized.

70. Accusations of crimes taken from other contexts (‘terrorist threat’, ‘criminal association or conspiracy’) should not be applied to events related to the social struggle for land and legitimate indigenous claims.”

Equally relevant are the final observations on Chile by the Committee on Economic, Social and Cultural Rights of 2004:

“34. The Committee recommends that the State party not to apply special laws such as the State Security Law (Nº 12.927) and the Antiterrorist Law (Nº 18.314), to acts related to the social struggle for land and legitimate indigenous claims.”

We also emphasize the final observations on Chile by the Human Rights Committee of 2007:

"7. The Committee expresses its concern about the definition of terrorism found in the Antiterrorist Law 18.314, which may be too broad or far reaching. The Committee is also concerned that this definition has allowed members of the Mapuche community to be accused of terrorism for acts of social protest or demand, related to the defence of rights over their lands. The Committee also observes that the procedural guaranties, in compliance with N° 14 of the Pact, are limited under the application of this law. (Art. 2, 14, and 27 of the Pact).
The State should adopt a more precise definition of terrorist crimes so as to ensure that individuals are not indicated for political, religious, or ideological reasons. Said definition should be limited to crimes that deserve being compared to the serious consequences associated to terrorism and ensure that the procedural guaranties established in the Pact are respected.

The State party should:

b) Modify the law 18.314, adjusting it to Article 27 of the Pact and revise the sectorial legislation which contents may enter into contradiction with the rights announced in the Pact."

37. Please inform what measure the Government has taken to include a vision of gender in the legislation that prohibits torture. Also indicate what effective measures have been taken to prevent acts of sexual violence. Please provide statistics on the number of investigations carried out and their results.

In Chile, abortion continues to be prohibited and is punishable in all cases, even when the mother's life is in danger. Abortion is typified in Articles 342 to 345 of the Criminal Code, under the title of crimes that attempt against families and public morality. The punishment assigned to this crime is of 3 years and a day to 5 years for women who abort, lowering to 541 days to 3 years, if the women aborted to conceal her disgrace. In spite of this, women continue aborting in a clandestine manner, often in condition that put their health and even their life at risk.

Clandestine and unsafe abortion constitutes a threat to women's health and the laws which criminalize it oblige women to attempt dangerous self provoked methods or they seek the aid of untrained persons to do it. Even when those who practice abortions have the ability and knowledge to do so, women fear being processed and they often avoid seeking medical help until the last minute when the risk to their health is imminent. The consequences of the practice of abortion under illegal conditions can produce permanent damage in the sexual and reproductive health of women 65.

On the other hand, in Chile healthcare professionals have the duty to denounce women when they observe in their body or corpse signs of having committed a crime 66. Women, who go to a healthcare professional due to complications caused by an abortion, run the risk of being denounced. The obligation to denounce which weighs upon healthcare professionals is a serious attack against the doctor-patient relationship. There are women who do not seek medical care due to their fear of being denounced thereby running serious risks to their health and life 67. In the treatment of women due to complications derived from a clandestine abortion, it is fundamental that women feel free to inform the doctor of complications of the latter. The privilege of confidentiality exists as a way to ensure that doctors can treat patients based on correct information, as well as ensuring patients medical care. In the situation of these women, said information may be essential in saving their lives68.

The norms must be interpreted in view of the obligation of maintaining doctor-patient confidentiality and of giving priority to the adequate treatment of said patient, without concern

about whether she is involved in activities which are defined as criminal. It is evident that the fear of being denounced keeps women from seeking medical care in a timely fashion and affects the doctor's ability to learn the background information required for adequate treatment. Doctors and healthcare professionals should never be put in a position of conflict between their professional obligation and their legal obligation. The criminal sanction should not justify in any case that medical care be delayed or impeded in favour of an interrogation in the course of said treatment 69 .

Based on the above, the Committee against Torture expressed its concern about this matter and recommended the Chilean State to eliminate the practice of extracting confessions as a requirement for receiving medical treatment and make it very clear that the right to doctor-patient confidentiality is a priority over the general duty to denounce 70. To date this recommendation has not been put in to practice.

Recommendation: The Chilean State must guarantee the right to doctor-patient confidentiality and its prevalence over the duty to denounce crimes such as abortion.

38. Please indicate if the Criminal Code takes into account any typification for public officers who, in the exercise of their functions, know about events of torture without denouncing them.

In current penal legislation on the matter, there is an Article which concedes to these events the character of offense. That is, out of the three categories of events (crimes, simple misdemeanours, and offenses), it corresponds to that which deserves the lowest penal reproach. This is found in Article 177 of the Code of Criminal Procedure, which indicates the following: "*The persons indicated in Article 175 who did not denounce known acts of torture as prescribed in said Article, shall incur in the punishment indicated in Article 494 of the Criminal Code, or in that indicated in special corresponding provisions. The punishment for the crime in question shall not be applicable when the person who did not make the denouncement risked personal legal persecution, or that of a spouse or mate, parents, offspring, or brothers or sisters"*.

In that remission to special provisions, we can understand the incorporation of the second paragraph of Article 150 A in the year 1998 (through law 19.567). In effect, the latter prescribes that: "*The public employee who should apply torments or illegitimate physical or psychological torture to a person deprived of liberty, or who orders or gives permission for its application, shall be punished with a prison sentence or medium–term imprisonment in its degrees of medium to maximum and the corresponding additional sentence* (that is, from 541 days to 5 years).

The same sentence, decreased by one degree, shall be applied to the public employee, who, knowing about the conduct typified in the preceding paragraph, should not impede or put an end to it while having the necessary power to do so".

In accordance with the decrease of one degree within the scale of sanctions, the officer who does not denounce events of torture which, in compliance with the Article, should not "impede it or put an end to it", shall be susceptible to a sanction that runs from 61 to 540 days of reclusion. This sanction is, in effect, too low to inhibit an officer from breaking the frequent "pacts of silence" that permeate the institutions.

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1. FLACSO Chile (Álvarez, Gonzalo and Claudio Fuentes), “Denuncias por actos de violencia policial en Chile 1990-2004”, Observatorio Nº3, June, 2005, available at http://www.flacso.cl/flacso/biblos.php?code=1245
2. Available at http://www.comisiondefensoraciudadana.cl
3. Human Rights Centre, Universidad Diego Portales, 2008 Annual Report on Human Rights in Chile, Producciones Gráficas Ltda. Santiago, 2008, p. 72-73.
4. This is an activity protected and promoted by the United Nations in the Declaration on the right and duty of individuals, groups and institutions to promote and protect human rights and universally recognized fundamental freedoms (Resolution of the General Assembly 53/144 dated 8 March 1999), as well as by the Inter-American Commission on Human Rights in its report regarding the Situation of Defenders of Human Rights in the Americas (OEA/Ser/l/II.124 7 March 2006).
5. Data contained in report realized by CODEPU in the city of Valdivia.
6. The “State secret” on tear gas bombs, Urquieta, Claudia, El Mostrador, 9 July 2008.
7. Human Rights Centre, Universidad Diego Portales, 2008 Annual Report on Human Rights in Chile, Producciones Gráficas Ltda. Santiago, 2008.
8. Available at http://www.cintras.org/textos/Informe_alternativo_cat.pdf. [visited 31 March 2009]
9. See Martín Besio, 2005, “Tortura y Legislación Chilena, un tema pendiente”, 31 January 2005, Diario El Mostrador. Available at web. http://www.udp.cl/derecho/noticias/tortura_legislacion.pdf [visited l 3 April 2005].
10. Paradoxically, the police can realize these exams in regard to persons randomly submitted to identity control even when there are no indications leading them to believe that they are hiding important objects (Art. 85 incise 2° CPP).
11. The following answer is based on the chapter ‘Instituciones Nacionales de Derechos Humanos”, from the 2008 Human Rights Report, Universidad Diego Portales. Available at: http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/Instituciones_nacionales.pdf [visited 31 March 2009].
12. Presidency of the Republic, Ministry of Interior, Executive Decree No.1040 of 2003.
13. Universidad Diego Portales, Law School. 2006 Annual Report on Human Rights in Chile. Events in 2005, page 286.
14. Maria Luisa Sepúlveda Edwards and Elizabeth Lira Kornfeld.
15. See Human Corporation, Centro Regional Centre of Human Rights and Justice of Gender, Without Truce, Reparation policies for female victims of sexual violence during dictatorships and armed conflicts, Santiago, April 2008, pages 83-85.
16. Presidency of the Republic, Ministry of Interior, Executive Decree No.1040 of 2003.
17. Conclusions and recommendations of the Committee against Torture: Chile. June 14, 2004. UN Doc. CAT/C/CR/32/5, Par. 6 g,
18. Conclusions and recommendations of the Committee against Torture: Chile. June 14, 2004. UN Doc. CAT/C/CR/32/5, Par. 7.k.
19. Maria Luisa Sepúlveda Edwards and Elizabeth Lira Kornfeld.
20. See Human Corporation, Centro Regional Centre of Human Rights and Justice of Gender, Without Truce, Reparation policies for female victims of sexual violence during dictatorships and armed conflicts, Santiago, April 2008, pages 83-85.
21. Article incorporated after 2005 constitutional reform through Law N° 20.050 dated 26 August 2005.
22. Ibid.
23. See 2008 Human Rights Report, Law School, Universidad Diego Portales, chapter ‘Libertad de Expresión’, pp. 25 and following.
24. Modified by Law 20034 dated 15 July 2005.
25. Decree Nº 900 of the Ministry of the Interior, dated 20 June 1967, published in the Diario Oficial N° 26.794 on 17 July 1967.

26. Regulation for administrative proceedings of Carabineros Nº 15, Ministry of Defence, Deputy Secretary of Carabineros.- Decree Nº 118.- Santiago, 7 April 1982.
27. Ministry of the Interior.- Nº 5.193.- Santiago, 30 September 1959.
28. Fuentes, Claudio, 2001 in Arias, Patricia and Liza Zuñiga, Police control, discipline and social responsibility: doctrinarian and institutional challenges in Latin America, Flacso Chile, Santiago, 2008.
29. The penitentiary administration judges could be an efficient tool to effectively control the compliance of prisoner rights. There is currently a project underway in Congress to guarantee the principle of legality in the administration stage. As we can see in the following points, this initiative is absolutely paralyzed in the National Congress.
30. "Nueva Justicia" (New Justice) is an entity made up by young judges, who stand out for their attempt to democratize the judicial system, pursuant to improving the protection of human rights.
31. Extracted from the Human Rights Report realized by the U.S. Department of State. Available at http://santiago.usembassy.gov/OpenNews/asp/pagDefault.asp?argInstanciaId=1&argNoticiaId=4468. [visited 28 March 2009].
32. Special Commission to investigate the country's prison problems (Chamber of Deputies), 1993, which report appears in the book 'El Sol en la Ciudad' by the Chilean HR Commission, ed. by Fernando Escobar Aguirre, Stgo., 1993, pages 243 and following.
33. Report of the Special Commission to investigate Prison Conditions, December 2008, Chamber of Deputies, available at www.bcn.cl.
34. Available at website : www.confapreco.cl
35. See Jorge Alfred Stippel, "Las cárceles y la búsqueda de una política criminal para Chile", 2006, LOM editions, Stgo.
36. See website of the Ministry of Justice. http://www.minjusticia.cl/Comunicados/2008/oct/13_10_08.pdf. [visited 28 March 2009].
37. 2008 Human Rights Report, Universidad Diego Portales Law School, chapter II, "Condiciones Carcelarias", p. 81.
38. See website of Gendarmería de Chile (Prison Guard Force). www.gendarmeria.cl. [visited 29 March 2009].
39. You can consult online at: http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/Cond_carcelarias.pdf.
40. See, Gustavo Jimenez, 2007, "El funcionamiento de la cárcel como exclusión en Chile", Studies Division, Ministry of Planning. www.mideplan.cl. [visited 28 March 2009].
41. Jorg Stippel, 2006, "Las cárceles y la búsqueda de una política criminal para Chile", Lom Editions, Santiago, p. 134.
42. Ibid. p. 33.
43. Ibid. p. 34.
44. See the 2008 report of the Global Peace Index. www.visionofhumanity.org/gpi/results/rankings.php. [visited 28 March 2009]. Likewise, the United States government indicates in its website on trips to Chile that US citizens need not be concerned: "Crime rates are low to moderate throughout Chile and are moderate in Santiago, Valparaiso, and other major cities. American citizens visiting Chile should be as careful in cities as they would be in any city in the United States". http://travel.state.gov/travel/cis_pa_tw/cis/cis_1088.html. [visited 28 March 2009].
45. In effect, according to the International Centre for Prison Studies: King's College of London, in Chile there are 279 people in prison for every 100,000 inhabitants, only surpassed by Surinam, with356. www.latercera.cl/contenido/24_7052_9.shtml. [visited 28 March 2009].
46. This report is available at the website: http://www.camara.cl/pdf.aspx?prmID=92&prmTIPO=INVESTIGAFIN. [visited 28 March 2009]. The majority of the following arguments come from reading this report.
47. Ibid. p. 99.
48. Ibid, p. 102.
49. Ibidem.
50. 2007 Human Rights Report, Universidad Diego Portales Law School, pages 44 and following. http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_07/condiciones_carcelarias.pdf.

[visited 28 March 2009]. An important local newspaper indicated in December 2008: “Six inmates committed suicide in the first year of the new prison of Rancagua and eight in the first months of the Santiago 1 prison. These are the crudest and unforeseen figures of a system, which –although suicides doubled in occurrence- everyone celebrates for having improved the life inside the country’s penitentiaries.” See sitio web of El Mercurio. www.emol.cl [visited 30 March 2009].

51. Report by the Special Investigating Commission of the Chamber of Deputies on the process of prison concessions, p. 102.
52. Gendarmería de Chile, www.gendarmeria.cl (visited 31 March 2009)
53. In the adult criminal system the situation is inverse: in spite of the fact that there is an explosive growth of the adult criminal population , which doubled between 1985 and 2007 surpassing today 46,000 prisoners, since the Penal Procedure Reform initiated in 2000 , the proportion of prisoners without a sentence has been considerably reduced. Today there are approximately 7 sentenced inmates for each inmate without a sentence.
54. “The youth do basic manual activities which are merely for recreational purposes: Christmas ornaments, crafts in wicker or leather, mosaics, and computer games”, but “there are no workshops that provide real job training to prepare youth for life”.
55. Conclusions of the Latin American Seminary on Good Penitentiary Practices, Buenos Aires, Argentina, 12 -16 November 2007, presented at the Second meeting of authorities responsible for penitentiary and prison policies of the OEA (OAS) State members, 26 -28 August, Valdivia, Chile. Available at website of Gendarmería. www.gendarmeria.cl. [visited 31 March 2009].
56. Words of Alvaro Castro, year 2006. Available at: http://www.radio.uchile.cl/notas.aspx?idNota=31555. [visited 31 March 2009].
57. See website of Radio Cooperativa, 3 January 2008. www.cooperativa.cl [visited 31 March 2009]. In addition, for the case occurring in Temuco, See website of La Tercera newspaper, 15 July 2008. www.latercera.cl. [visited 31 March 2008].
58. Available at website of the newspaper: El Divisadero, 17 March 2009. http://www.eldivisadero.cl/noticias/?task=show&id=17168 [visited 31 March 2009].
59. See the news “Leo Caprile tells his hard experience as confessor of the inmates”, available at the website of La Segunda newspaper, 19 March 2009. www.lasegunda.cl. [visited 31 March 2009]. We transcribed part of the news “What you feel is a sensation of suffocation, of drowning", recalls Caprile. "It was in the middle of the summer (when it was filmed). Image the heat. It was very intense. Then there was the dramatic fact of the people enclosed in there and who spoke to me. They showed solidarity with me". It drew attention when you got locked up in an isolation cell. How as that? “Yes, it was a strong experience and I wasn’t even there for more than an hour. Just imagine: spending ten days in these conditions, it is very moving and makes a mark on you. Just think: there are people closed up under these punishment conditions every day".
60. Available at website: http://santiago.usembassy.gov/OpenNews/asp/pagDefault.asp?argInstanciaId=1&argNoticiaId=4468. [visited 31 March].
61. “El secreto de estado que pesa sobre las bombas lacrimógenas” (The state secret about tear gas) and “Ecologistas exigen información sobre composición de gases lacrimógenos” (Ecologists demand information about the composition of tear gas), El Mostrador, 9 and 10 July 2008, respectively. In the first report it is concluded that there are no authorities “either from the Defence sector or the Health sector that take responsibility for the affect of the use of these compounds on the population’s health”.
62. Article 2 refers to the crimes of: homicide, injuries, abduction, fire and illicit association among others.
63. The latter Committee expressed its concern in 2007 about “the broad definition of terrorism found in the Antiterrorist Law 18.314, which has allowed members of the Mapuche community to be accused of terrorism for acts of social protest or demand, related to the defence of the rights over their lands”. In regard to the latter Law, the Committee observes that “the procedural guaranties, in conformance with Article 14 of the Pact, are limited under the application of this law”. To deal with this situation, it recommends to the Government “to adopt a more precise definition of terrorist crimes so as to ensure that individuals are not indicated for political, religious or ideological reasons”. It adds that “said definition should be limited to crimes that deserve to be compared to the serious consequences associated to terrorism and to ensure that the procedural guaranties established in the Pact be respected and followed”.
64. In this regard, the Ministry of the Interior stated on 12 February: "In this case all the information points to the configuration of a terrorist organization or an attempt at creating a terrorist organization. Consequently,

we are going to apply all corresponding measures, in fact, we are going to invoke the application of the Antiterrorist Law". http://blogs.elmercurio.com/cronica/2009/02/13/el-gobierno-invocara-la-ley-an.asp?Ant=1. In addition, in October 2008 the National Prosecutor's Office invoked this law against two Anthropology students from the Universidad Católica de Temuco, Félix Delgado and Jonathan Vega, both 21 years old, for events related to the Mapuche protest in the Araucanía Region.

65. World Health Organization, Unsafe Abortion 3 (1998).

66. Criminal Procedure Code, Article 84.

67. Lagos, Claudia. Abortion en Chile. LOM ediciones. Santiago, April 2001. Page 100.

68. The legislative project regarding patients' rights continues in process in the National Congress.

69. Lagos, Claudia. Abortion en Chile. LOM ediciones. Santiago, April 2001. Page 100.

70. Conclusions and recommendations of the Committee against Torture: Chile. June 14, 2004. UN Doc. CAT/C/CR/32/5, Par.7.m.