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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1997

Addendum

CHILE*

[18 February 2002]

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* For the initial report submitted by the Government of Chile, see CAT/C/7/Add.2; for its consideration, see CAT/C/SR.40 and 41, and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44), paras. 341-375. An additional report (CAT/C/7/Add.9) was submitted by the Government of Chile and considered by the Committee. See documents CAT/C/SR.77 and 78, and Official Records of the General Assembly, forty-sixth session, Supplement No. 46 (A/46/44), paras. 237-262.

For the second periodic report, see CAT/C/20/Add.3; for its consideration, see CAT/C/SR.191 and 192, and Official Records of the General Assembly, fiftieth session, Supplement No. 44 (A/50/44), paras. 52-61.

The information submitted in accordance with the consolidated guidelines for the initial part of reports of States parties is contained in document HRI/CORE/1/Add.103.

The annexes to the present report submitted by the Government of Chile may be consulted in the secretariat files.

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I. INTRODUCTION

1. The second periodic report of the State of Chile to the Committee against Torture on measures adopted to give effect to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/20/Add.3) was submitted in February 1994. The Committee considered that report in November of that year (CAT/C/SR.191 and 192) and suggested the adoption of a number of measures. Subsequent to the adoption of the Committee's recommendations, several initiatives have been taken with the aim of bringing Chile's domestic legal system into line with the obligations established in the provisions of the Convention. The present report describes the background to these legal reforms, other governmental measures and developments relating to the implementation of the Convention in Chile from 1994 to 2001.

Legal and political framework

2. Chile's core document (HRI/CORE.1/Add.103) contains information relating to the country's political structure and the overall legislative framework for the protection of human rights. As part of this information, the document describes the rights which the Chilean Constitution ensures to all persons in its article 19, the first paragraph of which establishes "the right to life and to the physical and mental integrity of the individual" and explicitly prohibits "any unlawful coercion". The document goes on to state that the constitutional and legal provisions protect these fundamental rights through judicial and administrative remedies which are fully in force, and that the courts of justice are competent to investigate cases of violation of the rights of persons; that article 1, fourth subparagraph, of the Constitution stipulates that the aim of the State is to be "at the service of the individual", for which purpose it must "contribute to creating the social conditions which permit each and every member of the national community to achieve the greatest possible spiritual and material fulfilment, with full respect for the rights and guarantees established by this Constitution"; and that, under the Constitution (art. 5, first subpara.), "The exercise of sovereignty recognizes as a limitation respect for the essential rights deriving from the nature of man".

3. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, like the other international human rights treaties to which Chile is a party, has the rank of a legal instrument forming part of the domestic legal order, with the special value conferred by the Constitution on such treaties in article 5, second subparagraph, which stipulates: "It is the duty of the organs of the State to respect and promote these rights as guaranteed by this Constitution, and by the international treaties which have been ratified by Chile and are in force." Through this provision, the range of human rights protected by the Constitution is broadened, and so it must be understood that the fundamental rights, duties and guarantees forming part of the Convention - which has been ratified and is in force in Chile - have the same constitutional status as the fundamental rights established in article 19 of the Constitution. There is, however, no provision within the Chilean legal system which expressly stipulates that, in the event of a conflict of provisions, those of the human rights treaty shall prevail. The continuing debate in Chile about the violation of human rights during the military regime has made it difficult to reach a firm consensus on doctrine and jurisprudence relating to the constitutional standing of these conventions. It should nevertheless be emphasized that the rulings of the

Supreme Court during recent years have recognized the importance of the international treaties relating to human rights and humanitarian law, giving effect to their provisions and drawing attention to their value in a number of cases.[1]

4. As stated in Chile's second report to the Committee, on 11 March 1990 Mr. Patricio Aylwin Azócar, who had been democratically elected for a term of four years, became Head of the Chilean Government and President of the Republic. That Government has subsequently been succeeded by the Governments of President Eduardo Frei Ruiz-Tagle and President Ricardo Lagos Escobar, who were similarly elected for constitutional terms of six years. Mr. Ricardo Lagos Escobar became President in March 2000. In March 1990, the National Congress was also formally installed and there began a process of re-establishment of the democratic institutional system, which had been destroyed by the military regime. Both the members of Congress and the municipal authorities are periodically elected by popular ballot and exercise their functions in accordance with the parameters of the rule of law which, since the above-mentioned date, has been characterized by its normal functioning. During these 10 years, no states of constitutional emergency restricting the fundamental rights and freedoms guaranteed in the Constitution have been declared.

5. Notwithstanding the above, constitutional provisions which jeopardize the full exercise of certain fundamental rights remain in force. These provisions relate to the following areas: binominal system of election of public authorities, which does not permit adequate proportional representation of majorities and minorities, favouring the second electoral force and eliminating minority groups, which are thus left without parliamentary representation unless they conclude electoral pacts; existence of nine senators who are not elected by popular ballot but are appointed by the members of the Supreme Court, the National Security Council and the President of the Republic; decisive character and functioning of the National Security Council, which enables decisions to be taken by absolute majority and to be heavily influenced by the Commanders-in-Chief of the armed forces and the Director-General of the Carabineros (four out of the eight members of the Council); non-removable character of the Commanders-in-Chief of the armed forces (army, navy and air force) and the Director-General of the Carabineros; the President of the Republic cannot exercise his constitutional power to remove them from their posts without a proposal to that effect by the senior command of the military or the Carabineros. Presidents Aylwin and Frei submitted to Congress constitutional amendments designed to change this situation, but the political opposition has repeatedly refused to lend them its support. During the present Government of President Lagos, discussions are again being held about the above-mentioned constitutional reforms, on the basis of a Constitutional Reform Bill formulated by the Senate Commission on the Constitution, Legislation, Justice and Regulations.

6. The systematic practice of torture ended completely with the installation of the democratic Governments. As stated in the report on the visit to Chile in 1995 by Sir Nigel S. Rodley, Special Rapporteur on torture, submitted at the fifty-second session of the Commission on Human Rights: "… torture is not practised in Chile either systematically or as a result of government policy …" and a profound difference in relation to the period of the military regime "… was the real commitment of the civilian Governments to human rights and, in particular, to the need to eliminate the perpetration of torture or cruel, inhuman or degrading treatment or punishment by officials of the State" (E/CN.4/1996/35/Add.2, paras. 10 and 71).

7. The Special Rapporteur also says that, in order to deal with cases of torture which still occur, the State's rejection of torture must be reflected in the adoption of specific measures, and ends his report with a number of recommendations on this question. Many of these have been put into effect through legal and other initiatives taken during the past few years. Not only have the mechanisms for the prevention of torture been considerably improved, but also practical steps have been taken to prevent it from occurring, through the reform of legislation intended to prohibit and punish it. Consequently, following the conclusions and recommendations of the report on his visit to Chile, and after receiving from the Chilean State considerable information on these advances, in his report to the fifty-third session of the Commission on Human Rights (E/CN.4/1997/7, para. 54), the Special Rapporteur thanked the Government of Chile: "… for the very detailed response and the extensive information, indicating its continuing serious and constructive approach to cooperation with the Special Rapporteur and the Commission" and he commended "the Government on its efforts to amend the Penal Code and reform the Code of Criminal Procedure". He went on to suggest that "the Government and Congress consider acting with special expedition towards the adoption of the bill amending the existing Code of Criminal Procedure and the Penal Code in respect of detention and introducing rules for strengthening the protection of civic rights". All these suggestions by the Special Rapporteur have been put into effect through the measures described in the present report.

Situation and functions of law enforcement officials within the criminal justice system

8. The 1980 Constitution devotes a special chapter to the armed forces and the forces responsible for order and public security, drawing a clear distinction between the armed forces, on the one hand, and the forces of order and public security, on the other. The two latter forces are made up of the Carabineros and the Investigaciones Police (uniformed and civil police forces respectively), which together made up the "forces of law and order". These forces have the specific duty to guarantee internal public order and security and to assist the courts of justice in the execution of judicial decisions, since the courts have no enforcement bodies of their own; the Investigaciones Police also have the duty to monitor the entry and departure of persons into and from Chile and to represent Chile in Interpol. In 1974, with the promulgation of Decree-Law No. 444 during the military regime, responsibility for the Carabineros and the Investigaciones Police, both of which had formerly been subordinate to the Ministry of the Interior, was switched to the Ministry of Defence, and specifically the Carabineros and Investigaciones Under-Secretariats respectively. Although Carabineros officers have the necessary legal powers to take action in crime control, in the matter of public order - in practice and without this implying mandatory authority - they receive instructions and guidance from the Ministry of the Interior, since the Ministry of Defence has no powers in that respect. This relationship between the Ministry of the Interior and the Carabineros is also given effect by the fact that this Ministry is responsible for coordination with the other ministries in matters involving public security. Despite their common dependency, there are differences between the two police forces. While the Director-General of the Carabineros cannot be removed from office, the Director-General of the Investigaciones Police may be appointed and dismissed at the discretion of the President of the Republic. The members of the Carabineros are subject to military justice while members of the Investigaciones Police, like any other civilians, may be tried in the ordinary courts. The

Constitution grants the armed forces and the Carabineros the character of armed corps, excluding in that respect the Investigaciones Police, whose members are nevertheless authorized to use firearms under the institutional law establishing that force.

9. With the aim of ending the dual nature of the answerability of the above-mentioned forces responsible for order and security, the Executive, in early November 2001, submitted to Congress a constitutional reform bill which will transfer responsibility for the Carabineros and the Investigaciones Police from the Ministry of Defence to the Ministry of the Interior.

10. As regards the National Gendarmería, this body is subordinate to the Ministry of Justice and is composed of public officials responsible for the operation of prisons. It is their responsibility to deal with and guard untried and convicted prisoners, and to take the necessary educational action to bring about the social reintegration of prisoners.

11. In the context of the return to a democratic institutional system, a process of upgrading law enforcement officials to comply with the parameters of the rule of law is beginning. The Special Rapporteur's report states that one feature of the measures taken by the civilian Governments to combat torture "has been the initiation of a purge and a change of attitude in the police forces", and that "the changes are proving fairly successful" in the Investigaciones Police (E/CN.4/1996/35/Add.2, para. 39).

12. The Investigaciones Police, the Carabineros and the Gendarmería all possess internal control mechanisms to supervise the performance of their officers; these mechanisms are fully operational and are helping to prevent torture (see paragraphs 38-44, 89-92 and 97-104 below).

13. In addition, the bodies mentioned above have made changes in the curricula of the educational institutions responsible for providing ordinary and further training for their members, and the subject of human rights has been incorporated in courses (see paragraphs 75-86 below).

14. Furthermore, the external control mechanisms available to victims of torture or ill-treatment, through applications for amparo or complaints addressed to the courts in connection with offences committed by police officers, are fully operational and have been used by victims or put into practice through investigations initiated ex officio by the competent courts (see paragraphs 105-109 below).

15. Since March 1990, control of the legality of detentions has been exercised without restrictions through the proper handling of amparo applications (habeas corpus) by the Chilean courts. The attitude of the courts has changed in that they have repeatedly recognized in their decisions the rights granted by the constitutional and legal order to detained persons, while at the same time applying the provisions intended to protect detainees and prevent torture.

16. In addition to the corrective supervision of the Supreme Court, which consists of the authority to impose penalties and adopt measures in order to ensure that judicial officials comply with the provisions regulating their conduct, there are specific provisions which enable the judges to monitor police activity in relation to detainees, such as articles 272 bis and 323 of the Code of Criminal Procedure (see paragraph 29 below).

17. The measures referred to, together with the protection of the right not to be tortured - which has been given effect through the legal reforms described below - have resulted in a gradual decrease in the number of individual cases of this violation of human rights which may possibly occur in Chile, as indeed is the case in any democratic society.

New measures taken to prevent and punish torture

A. Reform of the system of criminal procedure - New Code of Criminal Procedure

18. Specifically with regard to the legal framework and measures to prevent and punish torture and other cruel, inhuman or degrading treatment or punishment, a process of modernization of justice is currently under way with the aim of bringing all institutions involved in the administration of justice into line with the processes of political and economic development which have occurred in Chile over the past two decades. While the justice system in Chile was basically designed and established in the middle of the nineteenth century and has remained unchanged until the present day, Chilean society has changed profoundly since that time. Now that there has been a return to a situation of democratic coexistence in which systematic and massive violations of human rights have been brought to an end, it is in the system of criminal procedure that the greatest abuses of authority may occur. Consequently, the aim of the Government is to transform this procedure in order to guarantee the everyday enjoyment of these rights more effectively.

19. The reform of criminal procedure constitutes the first substantive step towards the reform of the criminal justice system as a whole. The relevant bill was sent to Congress on 9 June 1995 and promulgated as a law of the Republic on 12 October 2000. Its provisions are being implemented in two regions of the country. Implementation will gradually be extended to the rest of the country until it is in effect nationwide by the year 2004. The degree of political consensus relating to this reform enabled it to be carried out within the time limit set. The reform of criminal procedure is made up of a set of enactments which, in addition to the Code of Criminal Procedure, include:

(a) The constitutional reform establishing the Public Prosecutor’s Office, Act No. 19,519, in force since 16 September 1997;

(b) The Constitutional Act relating to the Organization of the Public Prosecutor’s Office (No. 19,640), in force since 15 October 1999;

(c) The amendments to the Courts Organization Code, which establish the judges responsible for guarantees or supervision of pre-trial proceedings and the Oral Court (Act No. 19,665), in force since 9 March 2000;

(d) The Office of the Public Criminal Defender, established by Act No. 19,718 of 10 March 2001;

(e) The bill relating to provisions adapting various laws to the new system of criminal procedure which, has reached the second constitutional stage in the Senate.

20. One of the general principles underlying the proposed system, as stated in the Presidential Message introducing the Bill relating to the new Code of Criminal Procedure, consists of the "direct application of the relevant constitutional and international human rights provisions regarding to the regulation of criminal procedure". The Message goes on to say "that the basic parameters used in the design of the Bill have been the Constitution and the international human rights instruments binding on the country, special account having been taken, among the latter, of the American Convention on Human Rights and the International Covenant on Civil and Political Rights". This position is in keeping with the need to strengthen the notion that criminal procedure is organized on the basis of the development of the general principles of the legal order which regulate the relationship between the State and citizens, and which are incorporated in these normative instruments. In this connection, an effort is being made to emphasize the importance of these principles over and above the specific procedural mechanisms established in law. The judges will have to integrate the procedural provisions with those of a constitutional and international character, interpreting and applying the former so that they give effect to the requirements contained in the latter. This Bill provided for substantive changes in order to guarantee the protection of detainees, changes which affect the prevention of torture (see paragraphs 31 and 32 below).

B. Characterization of the offence of torture, abolition of arrest on suspicion and establishment of rights of detainees (Act No. 19,567 of 1 July 1998)

21. A further important step in the prevention and punishment of torture has been taken with the adoption of this Act, which reforms a number of legal instruments with the aim of characterizing the offence of torture, improving the rights of detainees and abolishing arrest on suspicion. The Act originated in a motion submitted by a group of deputies to the Chamber of Deputies on 27 January 1993. This motion to amend the Code of Criminal Procedure and the Penal Code as regards detention and provisions for the protection of citizens' rights was supported and supplemented in the course of its consideration by the Executive, which wanted to include in it characterization of the offence of torture and the abolition of the offence of vagrancy and begging. On 10 April 1996, when the Executive provided supplementary information relating to the above-mentioned Bill to the Chamber of Deputies, it stated that, as part of the process of modernization of the criminal justice system in Chile, a number of reforms of the prosecution system had been submitted to Congress with the aim of increasing the efficiency of the justice system and, at the same time, protecting the guarantees of every person charged with an act having the characteristics of an offence, thereby giving effect to the fundamental rights contained both in the Chilean Constitution and in the international treaties ratified by Chile and in force, as provided for in article 5 of the Constitution. The objective of the Bill which gave rise to Act No. 19,567 lay in the above-mentioned process of change aimed at further strengthening the guarantees which must exist with regard to every detention, and which are also established in the new Code of Criminal Procedure. The importance of this Act as an instrument for eradicating torture lies not only in the characterization of torture as an offence, but also in the broadening of the rights of the detainee - an important means of preventing acts of torture. As

regards the characterization of torture as an offence, the reform adopts the parameters established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, laying down penalties appropriate to the seriousness of this offence.

C. Abolition of the death penalty

22. This penalty was abolished in Chile on 5 June 2001 with the entry into force of Act No. 19,734 (see paragraph 28 below).

D. Modernization of the Investigaciones Police

23. In Chile's second report to the Committee against Torture, information was given on changes in the Investigaciones Police. These have been extended in recent years with the continuation of the process of professional modernization which, with adequate financial support, has incorporated new methodologies for reinforcing its investigative function using scientific-technical means based on an explicitly defined doctrine with regard to human rights and ethical professional behaviour. This has become a reality through the reformulation of training courses at the various Investigaciones colleges, the establishment of internal mechanisms for the supervision of the actions of its officers and the review of procedures for ensuring that officers remain within the bounds of these ethical standards and respect for human rights (see paragraphs 44 and 82-86 below).

E. Withdrawal of reservation

24. Through Supreme Decree No. 1,562 of 22 September 1999, published in the Diario Oficial of 23 December 1999, Chile withdrew the reservation it had made to article 30, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment when ratifying the Convention in September 1988. This withdrawal was notified to the Secretary-General of the United Nations by Note 114/99, dated 3 September 1999, from the Permanent Mission of Chile to the United Nations.

F. Contribution to the United Nations Voluntary Fund for Victims of Torture

25. Since April 1997, Chile has increased its voluntary contribution to this Fund, which was established pursuant to General Assembly resolution 36/151 of 16 December 1981. It has done so in the context of the concern of democratic Governments to cooperate in the protection of the fundamental rights of individuals and in the light of the special attention which has been given in Chile to the compensation of the victims of violation of these rights.[2]

G. Additional Protocol to the Convention against Torture

26. In the context of international cooperation, attention should also be drawn to Chile's active participation in the formulation of the Additional Protocol to the Convention against Torture.

II. FIRST PART: INFORMATION ON MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION

Article 1

27. Following a recent reform of the Penal Code, the Chilean domestic legal order has characterized and laid down penalties for torture pursuant to the definition contained in article 1 of the Convention (see paragraphs 54-56 below).

28. In Chile, there is no physical penalty as a punishment for the perpetration of offences. As to the death penalty, in 1990 the Executive submitted to Congress a bill to abolish this punishment in the case of all offences for which it was established. The bill was partially rejected by the political opposition, but the death penalty was abolished for 39 offences, in other words, over half of the offences to which it applied. Its applicability was reduced to 37 offences, most of which can only be committed in time of war (27 characterized in the Code of Military Justice, 2 in the State Security Act and 8 in the Penal Code). Since 1990, this penalty has not been carried out since it has been commuted by the President of the Republic in the three cases in which it was imposed. On 13 July 2000, supplementary information from the Executive was sent to the Senate concerning the bill relating to the new Code of Criminal Procedure, intended to abolish the death penalty. After its consideration by Congress, the death penalty in Chile was in fact abolished. By Act No. 19,734 of 5 June 2001, this penalty has been removed from all ordinary criminal legislation. It is still in effect as the supreme penalty for criminal offences under the Code of Military Justice committed during a state of war or in the presence or face of the enemy. The possibility of a future multidisciplinary review and updating of the Code of Military Justice is not excluded.[3]

Article 2

29. In Chile's second periodic report mention was made of the legal measures taken to prevent acts of torture following the restoration of democratic government. Among the most important measures emphasis was given to the reform of criminal procedure, which has been in force since February 1991. One of the laws making up this reform, Act No. 19,047, amended the Code of Criminal Procedure with the aim of establishing rights benefiting detainees, who had been in a weak position. This fact increased the possibility of being tortured, given that the practical legislation in force during the military regime permitted periods of incommunicado detention on police premises during which detainees had no rights and could not even be visited by their lawyer. The above-mentioned reform established several measures to protect them from physical and mental injury through: a medical examination during exceptional periods of detention (art. 272 bis); the obligation on the judge to take measures to ensure that detainees have not been subjected to or threatened with torture in order to make a confession (art. 323); the impossibility of extending incommunicado detention beyond the legal limits established (art. 299); and limitation of the severity of incommunicado detention, allowing the daily presence of a lawyer when the detainee is in a prison or police premises before being made available to a judge, or has been brought before a judge in order that incommunicado detention

may be terminated once he has been placed at his disposal (arts. 293 and 303). This legislation is fully in force and any infringement by persons responsible for detention has been confronted through applications for amparo, which are dealt with normally by the courts of appeal.

30. As stated in the introduction, subsequent to the submission of the second report, a process of modernization of justice has been put in train with the aim of reforming the criminal procedure system as a whole. As of November 2001, the new Code of Criminal Procedure was fully operational in the Second, Third, Fourth, Seventh and Ninth Regions of Chile. The old Code remains in force in the rest of the country. Gradually, the application of the new Code will be extended to the rest of the country until it culminates in its application in the Metropolitan Region in 2004. In addition, with the aim of bringing forward in practice the provisions of this new Code relating to detention and detainees' rights, on 1 July 1998 Act No. 19,567 entered into force.

New Code of Criminal Procedure[4]

31. The fundamental change in this initiative consists in replacing the current Chilean inquisitorial procedure by a criminal procedure system which meets the requirements of an oral, public and adversarial trial, under the responsibility of a collegiate court which will weigh the evidence and pass sentence, and of investigations by a prosecutor from the Public Prosecutor's Office with the cooperation of police officers. It is hoped that the separation of the functions of investigation, on the one hand, and trial, on the other, will permit more diligent, complete and technical police investigations based on a variety of methods of evidence-gathering, avoiding the possibility of coercing the accused in order to obtain his confession as a means of support for the prosecution. According to a number of studies,[5] this situation was liable to occur under the old Code of Criminal Procedure in view of the wide powers and autonomy enjoyed by the police during the first stage of criminal investigation. In the new procedural system, the judge is freed of the task of undertaking the investigation; he will be able to devote himself to ensuring that it remains within legal bounds and supervising observance of the rights of the persons involved. This system grants broad powers to the Public Prosecutor's Office during the pre-trial proceedings, powers which are limited by the individual rights of the person concerned. These rights are protected by judicial intervention if they are infringed.

32. The new Code contains substantial changes in order to guarantee the protection of the detainee, changes which affect the right not to be tortured. Among these changes reference may be made to:

(a) Recognition of various rights of the accused as from the first act in the procedure against him: the right of the detainee to be informed of the reason for his detention and of his other rights; his right not to be obliged to make a statement or not to make it under oath if he agrees to make a statement; and his right to be assisted by a lawyer as from the initiation of the investigation (arts. 93, 94 and 135). Through the entry into force of Act No. 19,567 of 1 July 1998 (see paragraph 33 below), these rights of the detainee already formed part of the legislation in force aimed at preventing acts of torture;

(b) Reduction in the period of police detention to a maximum of 24 hours on police premises (art. 131). The old Code stated that this period could, by a substantiated decision of the judge, be extended to 5 days and up to 10 days in the case of the investigation of terrorist offences;

(c) Interrogation and other investigation procedures to be carried out by the Public Prosecutor's Office with the help of the police, who will do their work under the direction, and in accordance with the instructions, of that Office (arts. 77, 79 and 80). The old Code granted the police, during the periods mentioned, powers of investigation in relation to detentions ordered by the judge, including interrogation of the accused and witnesses;

(d) At the request of the prosecutor and with the aim of ensuring the success of the investigation, the court may prohibit communications by the detainee or prisoner for up to 10 days, but this will not preclude access by the accused to his lawyer, medical attention or the court (art. 151).

Reforms of the old Code of Criminal Procedure introduced by Act No. 19,567[6]

(a) Abolition of arrest on suspicion

33. Article 260 of the old Code was amended by abolishing arrest on suspicion, which authorized the police to arrest "Any person wearing a disguise or other means of concealing his true identity or avoiding recognition, and refusing to give his identity" and "Any person found at an unusual time or in places or circumstances giving reasonable grounds for believing that he may be acting with criminal intent if his explanations of his conduct do not dispel suspicion". The vague nature of this provision gave the police a wide margin of discretion and gave rise to situations which went beyond the constitutional framework and the framework of the international instruments in force in Chile. Article 270, which gave the police powers of arrest in the above-mentioned cases, was repealed. Article 260 bis was added to the Code of Criminal Procedure; this article gives the police the power to check identity in cases where they have grounds for doing so; identity may be established by any means. If identity cannot be established, the person concerned is taken to a police station where, after being ordered to appear at the competent court and after verification of domicile or payment of bail, he will be released. Article 266 was replaced by provisions to the effect that the officer responsible for the police station to which a person charged with a flagrant offence carrying a light penalty is taken must release him after he has been summoned to appear at the earliest court hearing if he establishes his domicile or furnishes bail.

(b) Rights of the detainee

34. Substantial progress in preventing torture or similar action has been achieved through the establishment, by means of this Act, of the obligation on the arresting officer to inform the detainee of his rights and the reason for his arrest at the time of arrest or immediately after his arrival at the police station. Before the adoption of the legal amendments listed below, the arresting officer was only obliged to show the arrest warrant and hand a copy to the detainee. As a result of the reform, the following requirements have been added to article 284: obligation on the police officer at the time of the arrest verbally to inform the arrested person of the reason for

his arrest and of his rights, which must be displayed in every police detention centre; obligation on the officer responsible for the first place of detention to which the detainee is taken to provide the same information; obligation to display in a clearly visible place in every detention centre a separate placard showing the rights of the detainee, whose text and format were established by supreme decree of the Ministry of Justice. The placard must mention the following rights:

(1) To be informed of his rights and the reason for his arrest;

(2) To remain silent in order to avoid incriminating himself;

(3) To be taken immediately to a public place of detention;

(4) The right of a relative or a person named by him to be informed, in his presence, of his arrest, the reason for the arrest and the place where he is being held;

(5) The right not to be subjected to torture or cruel, inhuman or degrading treatment;

(6) The right to request the presence of his lawyer in order to speak to him;

(7) The right to receive visits, unless he is being held incommunicado by court order;

(8) The right to legally defend himself by means of a lawyer;

(9) The right to be placed at the disposal of a court;

(10) The right to have, at his expense, facilities compatible with the regime of the detention establishment.

35. The reform establishes the effects which ensue from non-compliance with these duties for officers responsible for detention and for the relevant judicial procedure, since the judge will regard as null and void statements made by the detainee before arresting officers who fail to comply with the above-mentioned duties, and will send a report to the competent police unit for the purpose of the application of the corresponding disciplinary penalties.

36. The enforcement of the above-mentioned provisions will result in the effective prevention of torture. Firstly, if the police officer fulfils his obligation to inform the detainee of his right to remain silent, it will be contradictory for him at the same time to exert any type of pressure on the detainee in order to obtain a statement from him. In addition, if the detainee is not informed of this right, any extrajudicial statement by him is regarded as null and void; consequently, it would be absurd for a police officer to try to obtain through coercion a statement that will be completely valueless.

37. An amendment was made to article 293, regulating the right of a detainee, including a detainee held incommunicado, to notify his situation to persons named by him in a much more expeditious and peremptory manner than that required before the reform. Officers failing to comply with this obligation are liable to punishment.

Gendarmería

38. In the area of prison policy, the Prison Establishment Regulations[7] approved in 1998 (Supreme Decree No. 518 of the Ministry of Justice), which superseded the regulations of December 1992 (Supreme Decree No. 1,771 of the Ministry of Justice), are in force. The regulations have been updated with the aim of incorporating the principles of the relevant international instruments, establishing as the basis for prison policy respect for the fundamental rights of the prisoner and laying down penalties for any Gendarmería officer found guilty of torture, cruel, inhuman or degrading treatment by word or deed, or the use of unnecessary force on the person of the prisoner. The regulations guarantee the prisoner ideological and religious freedom, the right to honour, the right to be designated by his own name, and the right to privacy, information, education and access to culture, the aim being the full development of his personality. Provision is also made for the right to transmit requests and, as stipulated in the international principles relating to prison policy, the regulations establish the duty of the State to ensure the prisoner's life, person and health. Furthermore, the regulations recognize as a guiding principle of prison activity the prisoner's public-law relationship with the State, with the result that, apart from the rights forfeited or curtailed through his arrest or pre-trial or post-conviction imprisonment, his legal status is identical to that of a free citizen. The principle of innocence is also established. Consequently, Chilean legislation in this respect reflects current trends in the area of criminal prosecution and prison policy, and incorporates the principles established by the relevant international instruments. In Title III of the regulations, "The rights and obligations of prisoners", recognition is given to the right to medical attention, communications, information, visits, education, training, prison work and basic living conditions, and the right to make requests. The Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations Economic and Social Council, together with the International Covenant on Civil and Political Rights, the Convention against Torture and the Universal Declaration of Human Rights, have served as the theoretical framework for these regulations.

39. As a result of joint work by the Chilean Gendarmería and the Chilean Human Rights Commission, a non-governmental organization, a "Human rights training manual for Gendarmería officers" was published in 1997. It has been distributed to all Chilean prisons.

40. On 23 November 2000, the Ministry of Justice concluded a cooperation agreement with the British Council for the study and preparation of a strategic planning model aimed at increasing the ability of the Gendarmería to meet the requirements of human rights, prison policy and the reform of criminal procedure under way in Chile. In this context, teams of Gendarmería officers visited the Prison Service, Probation Service and Prison Service Training Institution in the United Kingdom. In addition, officials from these bodies have travelled to Chile to train Gendarmería personnel, particularly in the Fifth Region, which has been designated a pilot region for the purposes of the implementation of this agreement.

Carabineros

41. Since January 1989, the "Institutional Doctrine and Code of Ethics" has been in force.[8] This text lays down the main guidelines for the conduct of officers in the performance of police work. It contains provisions governing the work of a police officer, among them article 14, which stipulates: "He shall fulfil his obligations as guardian of public order, rationally applying

the legal powers conferred on him by the Constitution and the law, and avoiding any abuse of functions, excess of zeal in their performance and, in general, any arbitrary action". Failure to comply with the provisions of the Code by members of the Carabineros may give rise to internal penalties which range from reprimand to dismissal.

42. General Order No. 1,052, of 11 March 1995, which is entitled "Essential rights deriving from the nature of man", is intended to publicize among all Carabineros personnel the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979. It stipulates that the Universal Declaration should be included in courses for staff undergoing ordinary or further training, and among the subjects covered in competitive examinations leading to promotion.

43. Instructions relating to the legal reforms of the Penal Code and the Code of Criminal Procedure effected by Act No. 19,567, which abolished arrest on suspicion, established new rights for the protection of detainees and characterized the offence of torture:

(a) Order No. 445 of 26 June 1998 issued by the Directorate for Order and Security, giving specific instructions concerning the rights of detainees, the Rights of Detainees Bill and other documents;

(b) Communication No. 473 of 30 June 1998 from the Directorate for Order and Security, reiterating instructions relating to the "Legal amendments to detention and protection of citizens' rights";

(c) Official Message No. 216 of 1 July 1998 issued by the Directorate for Order and Security, giving instructions about the publication of Act No. 19,567 in the Diario Oficial;

(d) Circular No. 1,513 of 3 July 1998 issued by the Carabineros personnel department, giving instructions about "Provisions for the protection of citizens' rights and legal amendments to detention";

(e) Circular No. 1,521 of 30 October 1998 issued by the Directorate-General of the Carabineros, reiterating instructions on "Official conduct in police procedures".

Investigaciones Police

44. From 1992 until the time of writing, a sustained and expanded modernization plan has been under way in this police force; under the plan, the force's regulations and organization have been revised and reformulated. As part of this process, the following internal measures, inter alia, have been taken with the aim of contributing effectively to the prevention of torture:

(a) Guidance given to the already existing Department V on Internal Affairs, which, since the above-mentioned date, has been cooperating actively in judicial investigations relating to cases of human rights violations, and has received complaints from private individuals, whether victims or third parties, relating to violation of the rights of individuals by Investigaciones Police officers;

(b) Establishment, in May 1993, of the Higher Council on Police Ethics, a collegiate advisory body to the Director-General of the Carabineros, which examines the behaviour of officers and institutional structures, proposing concrete decisions which may result, or have resulted, in the dismissal of officers who have deviated from correct practice;

(c) Establishment, in December 1993, of Department VIII on Control of Judicial Procedures, subordinate to the Inspector-General's Office and responsible for critically reviewing the actions of officers and thereby improving working methods. In addition, when necessary, it reviews specific procedures for establishing irregularities or officers' responsibilities in the procedures in question, which may result in administrative inquiries or judicial complaints;

(d) Issuance, in September 1995, of the "Code of Professional Ethics",[9] through an internal decision (General Order) of the Investigaciones Police. This is a set of standards considered by this force as the highest expression of current thinking on standards of official behaviour. The Universal Declaration of Human Rights, the international human rights treaties and the Code of Conduct for Law Enforcement Officials form part of its underlying theses. Its provisions are binding in character and their infringement may result in the imposition of penalties on police officers, which may even include expulsion from the force. The text of this Code is framed and publicly displayed in every Investigaciones Police station;

(e) Issuance, on 17 October 2000, of General Order No. 1,762 to the effect that the principles contained in Commission on Human Rights resolution 2000/43, of 20 April 2000, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", should be considered as an integral part of the force's regulations for such purposes as may be appropriate. Section 2 of this General Order states that "Officers of the Chilean Investigaciones Police, and in particular chiefs of units and districts, the Inspector-General's Office, Department V on Internal Affairs, Department VII on Control of Police Procedures, prosecutors in administrative inquiries, directors of the Police Investigations College, the Higher Academy for Police Studies and the Professional Training Centre, and Investigaciones teachers engaged in education in human rights or related subjects shall bear the above-mentioned principles in mind, in their respective spheres of competence". The issuance, in October 2000, of the above-mentioned General Order is the immediate response which the Directorate-General of the Investigaciones Police made on receiving from the Human Rights Department within the Ministry of Foreign Affairs, in September 2000, the text of Commission on Human Rights resolution 2000/43. Incorporating this resolution within the Investigaciones Police regulations highlights the constant interest of this police force in the prevention of torture.

45. It has been stated in the introduction to this report that, since 1990, the remedy of amparo has regained its normal force as an effective safeguard of individual freedom and means of verification of the legality of arrests.

46. For its part, the remedy of protection, which is also established in the Constitution, is aimed at safeguarding most of the fundamental rights guaranteed in the Constitution, including the right to life and the right to protection from physical and mental injury.

47. In addition, the courts of justice have tried and convicted persons responsible for cases of torture following investigations initiated ex officio or through proceedings brought by victims or their relatives.[10]

48. Since March 1990 no state of constitutional emergency has been declared in Chile, and consequently the fundamental rights guaranteed in the Constitution have not been suspended or restricted.

49. The regulations relating to states of emergency were amended in 1989. One of the changes made through the constitutional reform of that year permitted applications for amparo (habeas corpus), which ensures the protection of the detainee, and applications for protection, which safeguards a person's right to protection from physical and mental injury, during states of alert and states of siege, the first relating to situations of external war and the second to internal war or internal disturbances.

50. On ratifying the Convention, the military Government entered a number of reservations. One of them rendered the provisions of article 2 inapplicable. As stated in Chile's second periodic report, on 7 September 1990 the instrument withdrawing the reservation was deposited with the United Nations Secretariat. However, there remains within internal legislation article 334 of the Code of Military Justice, according to which the right, granted by laws or regulations, to protest against acts ordered by a superior does not obviate the requirement of due obedience. Article 335 of the Code stipulates that, in specific cases, the subordinate to whom the order is given may defer or modify its execution but, if the superior officer maintains the order, it must be carried out.

Article 3

51. The Code of Criminal Procedure regulates passive extradition in articles 664 et seq. In conformity with these provisions, when the Government of a foreign country asks the Government of Chile to extradite persons located on Chilean territory, the Ministry of Foreign Affairs will transmit the request and relevant information to the Supreme Court. The President of the Supreme Court will consider the request for extradition at first instance, and a division of the same Court will take it up at second instance. In the Supreme Court's decision agreeing to or refusing extradition, the applicable international treaties and the principles of international law have to be taken into consideration. However, there are no internal provisions which expressly prohibit extradition when there are substantial grounds for believing that the person in question would be in danger of being tortured in the requesting country. And there are no internal provisions which prohibit return or expulsion in this situation.

52. As regards expulsion, Chilean legislation on migration expressly establishes the grounds on which this measure may be adopted, and also the authorities which may order it and the procedure which must be followed. The adoption of an expulsion order may be obligatory or optional for the authority concerned, in both cases in strict conformity with the grounds specifically enunciated in the law in question. In addition, both administrative and judicial mechanisms are provided for to enable the person in question to appeal against this sanction. In

any event, when expulsion is ordered, the person is not necessarily returned to his country of origin; he may opt to travel to any country willing to receive him. It is important to emphasize that, in the case of asylum, the Chilean provisions establish and faithfully respect the principle of the non-return of a person who has been granted refugee status.

53. There are no internal provisions for determining the existence of a consistent pattern of gross, flagrant or mass violations of human rights in order to refuse the expulsion, return or extradition of a particular person.

Article 4

54. The offence of torture defined in accordance with the parameters of article 1 of the Convention, and carrying appropriate penalties which take into account its grave nature, did not exist in Chilean criminal legislation until the reform effected by Act No. 19,567 of 1 July 1998.[11] Prior to this reform, the concept of torture was not included in Chilean criminal legislation. In order to punish acts constituting torture, recourse was had to article 150 of the Penal Code, which punished persons who "order or unduly prolong the incommunicado detention of an unconvicted prisoner, cause him physical suffering or treat him with unnecessary severity", and also persons who "arbitrarily cause him to be arrested or detained in places other than those designated by law". These offences cover only physical injury and do not reflect the possibility that they may be constituted by acts causing psychological injury.

55. Act No. 19,567 has introduced the following amendments:

(a) It maintains the above-mentioned article 150 of the Penal Code, but with penalties ranging from 61 days to 5 years of rigorous or ordinary imprisonment for persons who order or unduly prolong the incommunicado detention of a person deprived of liberty, treat him with unnecessary severity or cause him to be detained arbitrarily in places other than those established by law;

(b) It adds to the Penal Code article 150 A, which specifically punishes the offence of torture, establishing special penalties for public employees who practise torture causing physical or mental injury, in the terms indicated below:

(i) The penalties range from 541 days to 5 years of rigorous or ordinary imprisonment for any public employee who practises against a detainee unlawful physical or mental oppression or who orders or who consents to such oppression (first subparagraph);

(ii) The same penalties reduced by one degree will be imposed on any public employee who, having knowledge of the above-mentioned conduct, fails to prevent or terminate it when he has the power or authority to do so (second subparagraph);

(iii) Aggravated penalties ranging from 3 to 10 years of rigorous or ordinary imprisonment will be imposed on any public employee who, by means of the above-mentioned conduct, forces the victim or a third party to make a confession, make any type of statement or provide information (third subparagraph);

(iv) Aggravated penalties ranging from 5 to 15 years of rigorous or ordinary imprisonment will be imposed on any public employee who causes serious injury to, or the death of, a detainee as a result of the above-mentioned conduct if this result is attributable to negligence or imprudence on the part of the public employee (fourth subparagraph);

(c) It also adds to the Penal Code article 150 B, which imposes penalties ranging from 61 days to 3 years of rigorous or ordinary imprisonment on persons who, not having the status of public employee, commit the offences punishable under articles 150 and 150 A (first subparagraph); penalties ranging from 541 days to 5 years of rigorous or ordinary imprisonment on persons who, not having the status of public employee, commit the offence punishable under 150 A (second subparagraph); penalties ranging from 3 years and 1 day to 10 years of rigorous or ordinary imprisonment on persons who, not having the status of public employee, commit the offence punishable under the final subparagraph of article 150 A.

56. All these penalties are applicable to the perpetrator of each of the unlawful acts mentioned in the case of a committed offence. In accordance with the general provisions of the Penal Code, it is also possible to punish an attempt to commit an offence of torture and also involvement in the offence as an accomplice or accessory. In such cases and as a general rule, the penalty is reduced by one or two degrees (Penal Code, arts. 50-54).

57. Article 330 of the Code of Military Justice applicable to members of the armed forces and the carabineros punishes any such member who "in executing an order from a superior or in the exercise of his military functions employ, or causes to be employed, without due reason, unnecessary violence in the execution of the acts which he is required to perform". It establishes penalties ranging from 41 days of short-term imprisonment to 540 days of rigorous imprisonment if no injuries are caused or the injuries are slight, and from 5 years and 1 day to 15 years of rigorous imprisonment if the violence results in the death of the victim.

Article 5

Chilean jurisdiction over offences of torture

Offences committed in territory under Chilean jurisdiction

58. In Chile, the governing principle is the territoriality of the law, with certain exceptions. In this connection, the Penal Code states: "Chilean criminal law is binding on all inhabitants of the Republic, including foreigners" (art. 5). The concept of territory for the purpose of the application of criminal law covers:

(a) The land area included within the natural and conventional limits;

(b) The territorial sea comprising the maritime area from the base lines to points 12 nautical miles out to sea;

(c) The airspace over the land and maritime territory;

(d) The subsoil existing beneath the land and maritime territory.

59. In addition, the criminal law applies to:

(a) Ships (except warships of another Power) when located in Chilean territorial waters or anchored in ports on the Chilean coast; any Chilean ship on the high seas and Chilean warships anchored in waters of another Power. The Chilean courts may give effect to criminal responsibilities in a subsidiary fashion if offences committed on Chilean ships in waters subject to another jurisdiction go unpunished (Navigation Act, art.3);

(b) Chilean or foreign aircraft located in Chilean territory or airspace, Chilean military aircraft wherever they are located, and Chilean civilian and State aircraft when they travel in airspace not subject to sovereignty. Offences committed in these aircraft when they are in the airspace of another Power are subject to that jurisdiction, but if they are not tried by that jurisdiction, Chilean jurisdiction also applies (Aeronautical Code, arts. 2-5);

(c) The territory occupied by Chilean armed forces during or as a result of a war (Code of Military Justice, art. 3 (1)).

Offences committed by Chilean nationals abroad

60. Chilean legislation also provides for exceptions to the principle of territoriality which are established in the Courts Organization Code, the Penal Code and the Code of Military Justice, inter alia. Among these exceptions, and for the purposes relating to article 5 of the Convention, mention should be made of the following:

(a) When the alleged offender is of Chilean nationality and has committed an offence abroad against another Chilean, he is subject to the jurisdiction of the Chilean courts if he returns to Chile without having been tried by a court in the country where he committed the offence (Courts Organization Code, art. 6 (6)). In this case, the victim of the offence must also be a Chilean national;

(b) In addition, in conformity with the Bustamante Code (art. 345), Chile is obliged to try a national who commits an offence abroad if, when this person is in Chile, an extradition request by the State in which he committed the offence is refused.[12]

Offences committed abroad against a Chilean national

61. The above-mentioned article 6 (6) of the Courts Organization Code applies to this situation when the alleged offender is also a Chilean national and he returns to Chilean territory without having been tried in the country in which he committed the offence.

Jurisdiction over offences of an international character

62. Lastly, it should be pointed out that Chilean jurisdiction also applies to offences of an international character covered by treaties concluded with other States, such as, for example, the International Convention for the Suppression of the White Slave Traffic and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

63. If extradition is not granted, domestic legislation does not contain an obligation in the terms established in article 5, paragraph 2, of the Convention. Consequently, in order to give effect to that provision at the present time, the Convention would have to be applied directly by the Chilean courts, without prejudice to the express incorporation of that obligation in the internal legal order.

64. In internal Chilean law, there are no special provisions relating to the exercise of criminal jurisdiction over the offences provided for in the Convention. Consequently, in order to determine whether any of these offences is within the competence of the Chilean courts, the above-mentioned internal provisions, the Bustamante Code when appropriate and the relevant provisions of the Convention itself would have to be applied. There are no judicial precedents for the application of these provisions.

Article 6

65. In Chile, there are no internal enactments which expressly regulate the implementation of the provisions of article 6, paragraphs 1 and 2. Nevertheless, their implementation is perfectly possible in conformity with the procedural provisions which regulate detention and guarantee the rights of the detainee. This procedure is the responsibility of the criminal courts. As regards the obligations established in paragraphs 3 and 4 of article 6, it should be stated that the international conventions signed by our country are fully applicable, in particular the Vienna Convention on Consular Relations (art. 36 (1) (b) and (c)). These subparagraphs relate to the right of persons in prison, custody or detention to communicate with the consular post of their country of origin and the duty to inform the consular post of the above-mentioned circumstances.

Article 7

66. The internal legislation regulating passive extradition does not contain an obligation in the terms of article 7, paragraph 1, of the Convention. On the other hand, article 655 (2) of the Code of Criminal Procedure establishes that, if the Supreme Court refuses extradition, the court shall proceed to release the detainee. Consequently, in order to give effect to that provision of article 7, at the present time the Convention would have to be applied directly by the Chilean courts, without prejudice to the express incorporation of that obligation in the internal legal order.

67. Any person, whether Chilean or of foreign nationality, tried by a Chilean court is subject to procedural legislation in equal conditions with regard to the provisions of article 19 (2) of the Constitution (equality before the law) and article 1 of the Code of Criminal Procedure (the Chilean courts exercise jurisdiction over Chileans and over foreigners for the purpose of trying offences committed in Chilean territory).

68. Every person tried by a Chilean court is protected by the guarantees of due process, in conformity with the provisions of article 19 (3) of the Constitution ("Equal protection under the law in the exercise of rights") and various provisions of the Code of Criminal Procedure, the Penal Code and the Courts Organization Code.

Article 8

Inclusion of offences under article 4 of the Convention in extradition treaties concluded by States parties

69. Pursuant to this obligation, Chile has included in bilateral extradition treaties which have been concluded or have entered into force since 1994 clauses in which offences relating to torture are incorporated as extraditable offences. These treaties are listed below:

(a) Extradition treaty between the Republic of Chile and the Eastern Republic of Uruguay, signed on 19 August 1996 (it has not yet entered into force). In article 5, the treaty excludes extradition for political offences, which will not include "genocide, war crimes or crimes committed against peace and the security of mankind, in violation of the provisions of international law";

(b) Treaty on extradition and judicial assistance in criminal matters between the Republic of Chile and the Kingdom of Spain, which was concluded on 14 April 1992 and entered into force in January 1995. In article 5, this treaty excludes extradition for political or related offences, which will not include "war crimes and crimes committed against peace and the security of mankind, in conformity with international law";

(c) Extradition treaty between the Republic of Chile and Australia, which was signed on 6 October 1993 and entered into force in January 1996. In article IV relating to exceptions to extradition, the treaty excludes extradition for political offences, among which "war crimes and crimes committed against peace and the security of mankind, in conformity with international law" are not included.

70. All these treaties also include a generic clause, providing that "offences included in multilateral conventions to which both countries are parties" are extraditable. These conventions include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Possibility of considering the Convention as a necessary legal basis for extradition for crimes of torture in relation to States which make extradition subject to the existence of a treaty

71. This provision has not been regulated in internal law and no specific cases relating to it have arisen.

Recognition of offences provided for in the Convention as extraditable offences between States which do not make extradition conditional on the existence of a treaty

72. This provision has not been regulated in internal law and no specific cases relating to it have arisen.

For the purposes of extradition, such offences shall be treated as if they had been committed not only in the place in which they occurred, but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1

73. This provision has not been regulated in internal law and no specific cases relating to it have arisen.

Article 9

74. Chile is a State party to various multilateral and bilateral treaties on mutual judicial assistance. Among the former reference may be made to the 1928 Convention on Private International Law, which includes as an annex the so-called "Bustamante Code", whose Titles V and VII in Book IV relate to letters rogatory and evidence, the 1975 Inter-American Convention on the Taking of Evidence Abroad and the 1975 Inter-American Convention on Letters Rogatory. The 1992 Inter-American Convention on Mutual Legal Assistance in Criminal Matters is in the process of internal approval. As to bilateral treaties, Chile has concluded agreements with Colombia, Uruguay, Spain and Mexico. The various bilateral agreements on extradition to which Chile is a party also include provisions on mutual legal assistance.

Article 10

Gendarmería

75. In this institution staff training is the responsibility of the Gendarmería College. Within the courses of study offered to trainee guards and cadets, mention may be made of the following subjects relating to respect for human rights and the prohibition of the ill-treatment of persons deprived of their liberty:

(a) The subject "Prison treatment", which includes the unit entitled "Standard Minimum Rules for the Treatment of Prisoners" and the 1948 Universal Declaration of Human Rights;

(b) The subject "Ethics and morals", which includes "The death penalty", "Torture", "Justice", "The common good" and "Human rights";

(c) The subject "Law", which comprises two units: the "Constitutional law" unit, which relates in part to the fundamental rights established in the Constitution, and the "Institutional regulations" unit, which includes the Prison Establishment Regulations.

76. In addition, matters relating to respect for human rights and the prohibition of ill-treatment exist transversally throughout the programme of studies, covering practically all the subjects taught, such as the branches of prison procedure, prison development workshops, self-defence and prison instruction.

77. Since 1998, the Gendarmería College has included in its curricula the subject of human resources in ordinary and further training courses for staff and in courses for cadets and guards. These courses cover, inter alia, international conventions on human rights, and basic principles and recommendations of the United Nations for law enforcement officials.

Carabineros

78. There are two categories of Carabineros officers, senior officers and personnel appointed by the institution itself. The training of personnel in each of these categories is the responsibility of different institutions. Members in the senior officer category receive their training at the Carabineros College and the Academy for Police Sciences, while personnel appointed by the institution itself are educated at the Police Training College and at the College for Non-Commissioned Officers.

(a) At the Carabineros College, persons who have completed the two cycles of pre-university education are trained for three years in order to attain the rank of Carabineros officers responsible for order, security and management. The curriculum and programme of studies comprise the subject entitled “Professional ethics” during the third academic semester and have incorporated the subject of “human rights”, which is taught for two semesters and covers questions relating to the Convention against Torture;

(b) At the Academy for Police Sciences, courses are given for two years to train officers with 16 years of, service as a prerequisite for seeking promotion. For one semester they are taught the subject “Fundamental rights of the individual”, which includes the rights established in the Convention against Torture;

(c) The Carabineros Police Training College, which has 10 branches up and down the country, trains a contingent of 1,500 carabineros every year. Within the subject “Civil education” the college teaches the segment “Human rights” for one semester;

(d) At the College for Non-Commissioned Officers, a course is given on “Professional ethics”. At the beginning of 2001, the curriculum and study programmes within the further training course for qualified non-commissioned officers were amended to include in the above-mentioned subject the segment “Fundamental rights of the individual”, which is taught for two semesters.

79. In addition to the continuing courses already mentioned, a distance-learning strategy has been initiated, providing broad coverage throughout the country. It is based on the concept of education throughout the carabineros’ period of service. In 1997, this idea of continuing education was first put into effect with the “Further training course leading to promotion of junior officers from the rank of sub-lieutenant to captain”, which was attended by 1,386 officers.

Human rights questions are covered within the area of law. In the same context, since July 2001 the "Further training course for second sergeants and first corporals responsible for order and security" has been in operation, the initial stage being attended by 486 officers. During the next few years it will be extended to all carabineros-appointed personnel throughout the country. The course includes the subject of human rights.

80. Training for all Carabineros personnel is handled by the Carabineros Directorate of Education which, through its Academic Department, is responsible for reviewing every five years the courses and curricula of the above-mentioned educational institutions.

81. In annex 2 of "Internal Bulletin of Instructions No. 446" of February 1995, which is distributed to all Carabineros personnel, General Order No. 1,052 of 11 March 1995 provided for the distribution of the Universal Declaration of Human Rights, and also the Code of Conduct for Law Enforcement Officials, which was adopted by the United Nations in 1979. The order added that those instruments should be included in the courses of the training institutions and in the curricula to be studied for examinations leading to promotion.[13]

Investigaciones Police

82. There are three training institutions within this police force: the Police Investigations College, which trains future police officers and awards the "police investigator" diploma; the Higher Academy for Police Studies, which trains future police chiefs and provides further training for senior officers; and the Professional Training Centre, which reviews study programmes and curricula and provides continuing training for police personnel in the various departments and categories through professional specialization programmes.

83. At present in the Police Investigations College training courses relevant to the prevention of torture are being given. Among them, mention may be made of Police Ethics I and Police Ethics II (Human Rights) in the second and third years of the course. And at the Higher Academy for Police Studies the subjects of human rights, police ethics and ethics of police authority are taught.[14]

84. Since 1992, as part of the experience of modernization of the Investigaciones Police, far-reaching analysis and evaluation of the education, training and upgrading of police personnel have begun with the aim of making a professional technical and scientific police force a reality. In consequence, study programmes and curricula have been revised in all the above-mentioned training institutions. In June 1993, the Directorate-General of the police force made it obligatory to include the subject of "police ethics" in all courses given within the training institutions.

85. In April 1996 the Educational Ethics Council was established under the chairmanship of the Director-General and is composed, inter alia, of teachers of the subject of ethics. The Council's functions include: updating the objectives, contents, methodology and bibliography of institutional programmes on ethics; studying behavioural problems of trainees which compromise institutional principles; studying ethical problems relating to education.

86. As a result of the improvement in the educational standard of the Investigaciones Police teaching institutions, with the new approach developed in this area, the 1998 amendment of the Constitutional Organization Act relating to Education recognized the capacity of this police force to award, through its college, professional university-level degrees recognized by the State and also authorized the Higher Academy to award post-graduate degrees through master's and doctorate courses within its specific fields of competence.

Doctors

87. Between 1973 and 1981, the senior members of the Chilean Medical Association - the doctors' professional organization - were appointed by the military regime. In 1981, this regime issued the Decree-Law on Professional Associations, which removed important powers from these bodies, such as compulsory membership, the ethical supervision of members and the right to participate in the formulation of national health policy. Nevertheless, the Decree-Law permitted the holding of elections by these associations, and as a result the Medical Association acquired a new leadership elected by doctors united in opposition to the military regime. From that time onwards, the Medical Association adopted, as part of its activity, the defence of human rights and, in particular, a firm stand against torture, which was reflected, together with other measures, in the organization of inquiries by the Association into the involvement of some of its members in acts of torture perpetrated during the military regime. As a result of these investigations, in 1984 a doctor was punished by being suspended for one year; in 1986 two doctors were struck off and a third suspended for six months; in 1987 one doctor was struck off and another suspended for six months. In April 1987, the Human Rights Department, which was intended to collaborate with the General Council of the Medical Association, was established with the specific objective of securing the medical, individual and social realization of fundamental rights in the exercise of the medical profession. The Department has taken a number of initiatives, including a 1997 survey in the faculties of medicine concerning the teaching of human rights in these faculties. The conclusion reached from the responses of the university authorities consulted was that, in six of Chile's seven faculties of medicine, medical ethics are taught as a compulsory subject. The subject of human rights is taught occasionally in two of these faculties.

Gendarmería

88. The Prison Establishment Regulations (see paragraph 38 above) provide that "no prisoner shall be subjected to torture or cruel, inhuman or degrading treatment, whether verbal or physical, nor to unnecessary severity in the application of the present Regulations". They further state that "the Prison Administration shall ensure the life, integrity and health of prisoners and permit the exercise of rights compatible with their procedural situation" (art. 6). The Chilean Gendarmería Staff Rules (Law-Ranking Decree (DFL) No. 1,791 of 1979) state that it is the duty of personnel "To accord decent treatment to persons under their responsibility who are deprived of freedom or whose freedom is restricted". Prison staff who work in direct contact with prisoners constantly receive, from the National Directorate of the Service, the Regional Directors and the Governors in charge of each prison establishment, instructions relating to strict respect for the rights of prisoners, especially those relating to their physical and psychological integrity.

Carabineros

89. The behaviour of Carabineros officers is regulated by a Code of Ethics. Article 14 of this Code states that a Carabineros officer: "shall perform his duties as guardian of public order, applying rationally the legal powers conferred on him by the Constitution and the law, and avoiding any abuse of functions, any excess of zeal in their performance and, in general, any arbitrary action in his behaviour". From the legislative standpoint, the Carabineros Police are governed not only by the relevant constitutional and legal provisions, but by three sets of regulations:

(a) Disciplinary Regulation No. 11, approved by Supreme Decree No. 900 of 1967, article 22 (5) of which establishes as misconduct "any abuse of powers, whether against subordinates or against members of the public, or any act which may be characterized as an abuse of functions, provided that it does not constitute an offence";

(b) Service Regulation No. 7 for Chiefs and Officers responsible for Order and Security, approved by Supreme Decree No. 639 of 1968, which, in article 57 (1) and (5), establishes as obligations of the guard officer vis-à-vis detainees those of "visiting police cells where detainees are being held, whenever possible, placing on record any matters he considers worthy of note" and "in no circumstances allowing a detainee to be ill-treated or harassed; he shall immediately take appropriate preventive measures and submit a written report to the unit chief on any abuse committed";

(c) Service Regulation No. 10 for Institutionally Appointed Personnel, approved by Supreme Decree No. 1,818 of 1967, which in various provisions refers to the treatment of detainees:

(i) Article 14 (10) (2), which establishes as a duty of the junior officer or sergeant on guard to give priority attention to "persons visiting the station asking for information or enquiring about a detainee";

(ii) Article 15, which provides that these officers shall, in general, "treat detainees with consideration, tact and care, preventing personnel from using violent or abusive methods or procedures against them, without distinction as to the social condition of the detainees";

(iii) Article 16 (2), which establishes as a duty of guard personnel "not to ill-treat or allow to be ill-treated any detainee who arrives or is already in the police station";

(iv) Article 18 (4), which establishes as one of the duties of the cell supervisor "to deal with requests by detainees and not allow them, while they are in his custody, to be ill-treated or harassed. In addition, he shall prevent any fighting or disorder among detainees".

Investigaciones Police

90. Article 19 of the Investigaciones Police Organization Act "prohibits Investigaciones officers from perpetrating any act of violence intended to obtain statements from the detainee". Infringement of this provision is punishable by custodial penalties ranging, as for the offence of unnecessary violence punishable under the Code of Military Justice, from 41 days, if no injuries are caused or any injuries are slight, to 15 years if the death of the victim is caused.

91. As stated earlier (para. 44 (d) above), since 1995 the Code of Professional Ethics has been in force. These are regulations which are binding on Investigaciones Police officers. Article 3 of the Code states: "In the performance of their duties, Chilean Investigaciones Police officers shall respect and protect the dignity of persons and human rights. In no circumstances may the police investigator inflict, instigate or tolerate any type of physical or psychological ill-treatment of persons with the aim of obtaining information or confessions in order to clarify offences. Unlawful, inhuman or degrading treatment or torture may not be accepted in any circumstances. No person shall be considered guilty of an offence until his responsibility is legally established."

92. The information relating to article 12 of the Convention (see paras. 97-110 below) describes the investigations undertaken in the Gendarmería, the Carabineros and the Investigaciones Police pursuant to the above-mentioned regulations.

Doctors

93. One of the measures taken by the leaders of the Medical Association elected in 1981, in the framework of its concern for the promotion and protection of human rights, was to revise and improve the Code of Medical Ethics, incorporating therein international declarations originating from the United Nations, the World Medical Association and other organizations, relating to the defence and protection of persons and to the improvement of the exercise of the profession. The Code highlighted in particular the 1975 Tokyo Declaration on Torture by the World Medical Association. This Declaration serves as a basis for article 25 of the Code, which specifically relates to the subject. In March 1985, ethical provisions relating to the medical care of detainees were added to the Code.[15]

94. Another important initiative taken by the Medical Association, at the behest of its Human Rights Department, has been the publication of a poster entitled "Recommendations of the Chilean Medical Association to emergency services doctors who are called upon to issue reports on bodily injuries", in connection with possible cases of unnecessary police violence and family violence. This poster was made available to hospitals in December 1997.[16]

Article 11

95. Through a legal reform of the "Courts Organization Code",[17] article 567 of the Code established the duty of every criminal court judge to visit, with his secretary, the criminal establishment situated in the locality where the court operates, with the object, inter alia, of ascertaining whether detainees or unconvicted prisoners in trials conducted by him are being

subjected to improper treatment. In the case of detainees or prisoners held in prisons situated outside the locality where these courts operate, the court of appeal will establish rotas for the judges required to make visits in order that they may visit the prisoners in question and officially inform the judge in charge of the relevant proceedings of any complaints received. Without prejudice to these provisions, every judge is required to visit, at least once every three months, the prison in which detainees or prisoners are held. The prisoners' lawyers and prosecutors have the right to accompany the judge on these visits, and also the parents or guardians of young offenders (Code, art. 568). All detainees and prisoners must be made available to the judge making the visit (ibid., art. 569).

96. In the Investigaciones Police, the provisions relating to interrogation and detention procedures are contained in internal instruments known as "General Orders". As to the periodic revision of these provisions, Department VII on Control of Police Procedures is responsible for conducting ongoing evaluation of police procedures with the aim of modifying or rectifying erroneous practices and methods.

Article 12

Gendarmería

97. Any person held in a prison establishment, whether under arrest or as an unconvicted or convicted prisoner, may himself or through another person lodge a complaint if he has been subjected to torture or cruel, inhuman or degrading treatment, in word or deed, or treated with unnecessary severity. The complaint may give rise to the consequent investigations. Internal investigations are the responsibility of a prison officer, who must be of a higher rank than the officers alleged to be involved, and must be able to exercise the necessary impartiality vis-à-vis the possible victim and the officer alleged to be responsible. If the gravity of the incident so warrants, the Gendarmería will order a summary investigation or an administrative inquiry, in accordance with the provisions of the Administrative Statute (Act No. 18,834, arts. 120 and 122 et seq., of 1989). During the investigations, the prosecutors undertaking the administrative inquiry may order the suspension of the officer in question; for his part, the National Director of the Gendarmería is authorized to order the officer's temporary retirement (DFL No. 2 of 1968). Where appropriate, the authorities will impose the corresponding official penalties, which may extend to dismissal of the officer responsible, without prejudice to any criminal penalties that may be imposed by the courts of justice. If the ill-treatment constitutes a criminal offence, the Gendarmería officers are obliged to report the incident to the ordinary courts within 24 hours of learning of them (Code of Criminal Procedure, art. 84 (2)). In accordance with their legal obligations, these officers are required to provide as soon as possible any medical attention required by persons who may have been victims of torture or similar ill-treatment, to take the necessary protective measures, such as taking the victim to a Gendarmería hospital or external hospital, and to order any measure that may be required in order to ensure the life or physical or mental integrity of the persons held in the establishment in question.

Administrative inquiries undertaken by the Gendarmería into alleged ill-treatment by its officers of persons in their custody

98. Listed below are the administrative inquiries undertaken since 1995.

Period 1995-1997

(a) A total of 39 inquiries were ordered by the competent authorities concerning events which might have constituted ill-treatment of persons in the custody of the Gendarmería;

(b) Of these inquiries, two were ordered by the National Directorate of the Gendarmería. The others were ordered by the Regional Directorates in the following regions: nine in the Metropolitan Region, six in Tarapacá, five in Antofagasta, four in Valparaíso, three in the Libertador Bernardo O'Higgins region, three in Maule, one in Araucanía, two by the General Carlos Ibáñez del Campo Directorate in Aysén, and one in Magallanes and the Chilean Antarctic;

(c) In some of these proceedings administrative responsibility was established and the corresponding disciplinary measures were taken; in others there was found to be no administrative responsibility, and proceedings were dismissed or the officer in question acquitted;

(d) As of February 1998, the cases could be broken down in statistical terms as follows: of the 39 inquiries initiated during the period, 4 were still under way. In the 35 inquiries completed by the above-mentioned date, 59 officers were involved or mentioned. The following action was taken with respect to them:

Measures adopted	
Dismissal	5 officers
Fine	20 officers
Reprimand	5 officers
Proceedings dismissed	24 officers
Acquittal	5 officers

(e) In most of the administrative inquiries, the events investigated involved physical ill-treatment of prisoners. One case concerned a report of rape and indecent assault against a woman prisoner in Iquique prison. This is one of the cases in which investigations were continuing in February 1998.

1998

(a) In 1998, a total of 20 administrative inquiries were conducted concerning ill-treatment by Gendarmería personnel of persons in their custody. The cases investigated involved physical, verbal or psychological ill-treatment or sexual harassment;

(b) As of November 1999, 3 inquiries were still under way and 17 had been completed. In the latter, the measures taken were as follows:

Measures taken	
Fine	6 officers
Reprimand	2 officers
Proceedings dismissed	9 officers
Acquittal	3 officers

Date of decision	Region	Reason for inquiry	Disciplinary measures	Date of decision	Stage of proceedings
02.02.98	I	Assault	5% fine	14.05.99	Completed
06.07.98	I	Assault	Proceedings dismissed	10.11.98	Completed
22.10.98	I	Physical ill-treatment			Under way
07.04.98	V	Unnecessary violence	Proceedings dismissed	08.06.98	Completed
20.04.98	V	Assault	Acquittal	20.10.98	Completed
21.04.98	V	Assault	Proceedings dismissed	10.08.98	Completed
23.03.98	VI	Assault	Proceedings dismissed	05.05.98	Completed
26.02.98	VIII	Irregularities involving conditional release	Proceedings dismissed	10.07.98	Completed
06.04.98	VIII	Surgical operation suspended	20% fine	31.03.99	Completed
17.07.98	VIII	Improper confiscation of identity card	Proceedings dismissed	01.07.99	Completed
11.08.98	VIII	Verbal abuse	Proceedings dismissed	15.03.99	Completed
02.02.98	IX	Psychological ill-treatment	Fine 10%	22.06.99	Completed
14.02.98	R.M.*	Ill-treatment and harassment			Under way
09.04.98	R.M.	Lesbian activities			Under way
14.04.98	R.M.	Improper release	Reprimand	08.07.98	Completed
14.05.98	R.M.	Confiscation of 325 dollars	5% fine, 20% fine and acquittal	01.04.99	Completed
12.06.98	R.M.	Assault	Proceedings dismissed and acquittal	14.06.99	Completed
04.08.98	R.M.	Confiscation of 100 francs	Reprimand	17.12.98	Completed
01.09.98	R.M.	Assault	Proceedings dismissed	22.01.99	Completed
23.09.98	R.M.	Sexual harassment	15% fine	25.02.99	Completed

* R.M.: Metropolitan Region, i.e. Santiago.

1999

(a) In 1999, there were a total of 21 administrative inquiries into events constituting improper conduct by Gendarmería personnel against persons in their custody. The cases investigated involved assault, physical ill-treatment, unlawful coercion, verbal and psychological ill-treatment, and sexual harassment.

(b) As of November 1999, 17 inquiries were still under way and 4 had been completed. In the latter, the measures taken were as follows:

Measures taken	
Fine	1 officer
Reprimand	2 officers
Proceedings dismissed	1 officer

Date of decision	Region	Reason for inquiry	Disciplinary measures	Date of decision	Stage of proceedings
18.01.99	I	Assault			Under way
22.02.99	V	Firing service weapon			Under way
23.03.99	V	Assault			Under way
27.04.99	VIII	Physical ill-treatment			Under way
02.06.99	VIII	Death of former prisoner			Under way
14.06.99	VIII	Verbal ill-treatment			Under way
14.07.99	VIII	Ill-treatment, unlawful coercion			Under way
13.08.99	VIII	Unlawful coercion			Under way
06.07.99	IX	Death of former juvenile prisoner			Under way
01.03.99	X	Acts of sodomy	Proceedings dismissed	18.04.99	Completed
07.05.99	X	Assault	15% fine	18.08.98	Completed
12.01.99	R.M.	Improper handling of release	Reprimand	08.06.99	Completed
24.02.99	R.M.	Sexual harassment	Reprimand	16.07.99	Completed
18.03.99	R.M.	Assault			Under way
22.03.99	R.M.	Assault			Under way
21.04.99	R.M.	Authorization to visit welfare centre refused			Under way
25.05.99	R.M.	Prisoner held for 11 months after completion of sentence			Under way
16.07.99	R.M.	Harassment and psychological ill-treatment			Under way
22.07.99	R.M.	Death of former prisoner			Under way
24.08.99	R.M.	Assault			Under way
26.03.99	National Director	Death of former prisoner			Under way

Carabineros

99. In order to carry out their police work, the Chilean Carabineros employ approximately 34,000 officers who, in the course of their official duties, on average handle over 75,000 cases a month; given the characteristics of police work, these cases sometimes give rise to the use of force, which results in the lodging of complaints against the personnel involved. In this connection it should be noted that in the year 2000 the Carabineros arrested a total of 703,133 persons for various types of offence and transmitted 1,410,058 complaints to the courts of justice. Abuses and/or acts of violence attributed to Carabineros officers are investigated through two procedures: an external procedure consisting of a complaint against the Carabineros by persons who feel that they have been victimized by police action, and an internal procedure conducted ex officio by the Carabineros to investigate abuses or violent behaviour in the performance of police duties.

100. Carabineros Regulation No. 15 on Administrative Inquiries establishes the procedures which must be followed in the course of these investigations. Article 2 states that parties to any inquiry are the personnel concerned and "the persons who, in general, have initiated the inquiry, either through a complaint or other type of submission". These procedures may originate from a police report, letters containing complaints, records of information given verbally, etc. (art. 22). Article 3 lists the officers who are authorized to order the inquiry, while article 4 indicates the officers that do not have such authority. When the latter learn of events which may give rise to inquiries, they are required to report them to their respective senior officers as soon as possible. The purposes of an inquiry include: determining the degree of responsibility for serious misconduct in which Carabineros personnel appear to be involved, and "assessing in administrative terms the responsibility of Carabineros officers accused of a criminal act, whether this be within the competence of military or ordinary justice" (art. 5 (c) and (d)). A Carabineros prosecutor carries out the inquiry procedures established in various articles of this Regulation.

101. Carabineros Regulation No. 11 on Discipline states that "Learning about and resolving misconduct by subordinates is an official duty specific to the role or post discharged by Carabineros Officers responsible for Order and Security" (art. 9). Misconduct is considered to be "Any abuse of powers, whether against subordinates or against members of the public, or any act which may be deemed an abuse of functions, provided that it does not amount to a criminal offence" (art. 22 (5)). The disciplinary penalties which may be imposed on Carabineros officers range from reprimand to dismissal in the case of senior personnel, and from reprimand to dishonourable discharge in the case of institutionally appointed personnel.

Official proceedings instituted following the excessive use of force or unnecessary violence which determined some degree of administrative responsibility on the part of Carabineros personnel

	1998	1999	2000	2001*
Investigations	69	111	132	91
Inquiries	10	12	9	1

* First six months.

102. As indicated above, when the Carabineros establish some degree of administrative responsibility on the part of officers in events constituting excessive use of force or unnecessary violence, they adopt disciplinary measures as provided for in Regulation No. 11 on Discipline.

Disciplinary measures imposed on Carabineros officers for excessive use of force or unnecessary violence

	1998	1999	2000	2001*
Disciplinary penalties	99	97	55	42
Removal from post or dismissal	24	26	22	9

* First six months.

Investigaciones Police

103. A detainee may leave on record his complaint about any ill-treatment by Investigaciones Police officers in the statement which the officers take from him; this statement will be investigated by Department V on Internal Affairs, which is responsible for dealing with complaints by detainees or members of the public about erroneous procedures, unethical or dishonest conduct or infringements of the rights of persons under the responsibility of police officers. These complaints may give rise to the relevant administrative inquiry and, where appropriate, a criminal complaint. In addition, Department VII on Control of Police Procedures, in investigating and evaluating these procedures, has the possibility of ordering the initiation of administrative inquiries or criminal complaints if it considers that official misconduct has occurred.

Administrative inquiries held by the Investigaciones Police concerning its officers following alleged violations of the right to protection from physical injury

Period 1995-1999

104. During this period the Investigaciones Police conducted 20 administrative inquiries throughout the country, as indicated below:

(a) In 1995, six administrative inquiries were held. In three of them the following disciplinary penalties were imposed on six police officers: one officer sentenced to four days' detention in a police station; two officers sentenced to three days' detention in a police station; two officers sentenced to two days' detention in a police station; three officers sentenced to three days' detention in a police station. In the three other inquiries, proceedings against the officers charged were dismissed since they were found not to have incurred administrative responsibility in the incidents under investigation;

(b) In 1996, six administrative inquiries were held, in which the figures were the same as those for the previous year. In other words, six officers received the following disciplinary penalties in three of the inquiries: one officer sentenced to ten days' detention in a

police station; one officer sentenced to eight days' detention in a police station; one officer sentenced to three days' detention in a police station; two officers sentenced to two days' detention in a police station; one officer sentenced to one day's detention in a police station. One officer was "separated" from the force for infringing the Investigaciones Police Organization Act and its Code of Professional Ethics. In the three other inquiries, proceedings against the officers charged were dismissed since they were found not to have incurred administrative responsibility in the incidents under investigation;

(c) In 1997, one administrative inquiry was held, as a result of which four officers received an official reprimand;

(d) In 1998, one administrative inquiry was held, as a result of which four officers were ordered to take retirement by the Higher Council on Police Ethics;

(e) In 1999, two administrative inquiries were initiated and these are still under way. However, one of the four officers involved took voluntary retirement from the force.

Year 2000

No administrative inquiries were held.

105. As regards torture the judicial authorities competent to deal with the relevant complaints are:

(a) The ordinary criminal courts in the case of the offences of torture, ill-treatment or causing bodily injury (Penal Code, arts. 150, 150-A, 150-B and 255) (see paragraphs 55 and 56 above and 116 below) committed by officers of the Gendarmería or the Investigaciones Police. The decisions of these courts are reviewed at second instance by the courts of appeal;

(b) The military courts in the case of the offence of unnecessary violence punishable under article 330 of the Code of Military Justice, committed by Carabineros officers (see paragraph 57 above). The judicial decisions of these courts are reviewed at second instance by the Court Martial.

Gendarmería

Judicial proceedings instituted against Gendarmería officers for the offences of ill-treatment or causing bodily injury to prisoners (situation as at October 2000)

106. Between 1995 and 2000 in the various regions of the country, 11 judicial proceedings were instituted against Gendarmería officers, as indicated below:

Region	Offence	Result of proceedings
I	- Physically ill-treating a prisoner	- Proceedings dismissed
	- Physically ill-treating a minor	- Officer given suspended sentence of 61 days' imprisonment
	- Rape of female prisoner	- Proceedings dismissed
	- Assault	- Proceedings dismissed
II	Ill-treatment	Female officer sentenced to 61 days' suspension and fine of 5 UTM
III	Causing bodily injury	Case under way
IV	None	
V	None	
VI	Ill-treatment	Case under way
VII	- Causing bodily injury	- Officers acquitted
	- Causing bodily injury	- Case closed, no prosecution
VIII	Homicide and bodily injury (during attempted escape)	Case under way; six officers prosecuted
IX	None	
X	Causing bodily injury	Officer given suspended sentence of 541 days' imprisonment at first instance. Appeal under way
XI	None	
XII	None	
Metropolitan Region	None	

107. Two of these cases ended with the following sentences: one officer given a suspended sentence of 61 days' imprisonment for physically ill-treating a minor (First Region); one female officer suspended for 61 days and fined for ill-treatment (Second Region). Two of these cases, for the offence of causing bodily injury, ended with the acquittal of the officers concerned (Seventh Region). In three cases, for the offences of physically ill-treating a prisoner, physically ill-treating a minor and assault, proceedings were dismissed (First Region). As at October 2000, four cases were still under way: for the offence of causing bodily injury (Third Region); ill-treatment (Sixth Region); homicide and bodily injury during attempted escape (Eighth Region), six officers prosecuted; and causing bodily injury (Tenth Region). In the latter judicial investigation, the defendant was given a suspended sentence of 541 days' rigorous imprisonment at first instance.

Carabineros

108. The army and Carabineros prosecutors, the naval prosecutors and the air force prosecutors are the officials responsible for exercising, at first instance, the public right of action through the initiation of proceedings in the context of military jurisdiction (Code of Military Justice, art. 25). For the purposes of the enforcement of the Code of Military Justice, members of the armed forces are considered to be "persons who are included in the legal complement or establishment of the army, the navy, the air force and the Carabineros". The final decisions at first instance are handed down by the institutional judges (military judges, naval judges and air force judges), and reviewed, as indicated above, on the basis of appeal or automatic review, by the courts martial as courts of second instance.

Judicial proceedings against Carabineros personnel initiated in the military prosecutors' offices in the Metropolitan Region for the offence of employing unnecessary violence against detainees (situation as at September 2000)

Metropolitan Region						
First Military Prosecutor's Office						
Year	Number of cases	Inquiries	Courts	Proceedings dismissed	Prosecutions	Convictions
1998	12	2	4	5	7	1
1999	1	0	0	1	4	0
2000	14	13	1	0	0	0
Total	27	15	5	6	11	1
Second Military Prosecutor's Office						
Year	Number of cases	Inquiries	Courts	Proceedings dismissed	Prosecutions	Convictions
1998	19	11	5	3	6	0
1999	26	24	2	0	2	0
2000	15	14	1	0	0	0
Total	60	49	8	3	8	0
Fourth Military Prosecutor's Office						
Year	Number of cases	Inquiries	Courts	Proceedings dismissed	Prosecutions	Convictions
1997	20	10	5	5	3	0
1998	27	20	5	2	2	0
1999	32	29	3	0	2	0
2000	6	6	0	0	0	0
Total	85	65	13	7	7	0
Sixth Military Prosecutor's Office						
Year	Number of cases	Inquiries	Courts	Proceedings dismissed	Prosecutions	Convictions
1998	27	7	18	2	0	0
1999	26	18	6	0	0	2
2000	14	14	0	0	0	0
Total	61	39	24	2	0	2

Investigaciones Police

Judicial proceedings instituted against Investigaciones Police officers for the offence of ill-treatment, committed against detainees (situation as at December 2001)

109. Listed below are the judicial proceedings initiated throughout the country since 1996:

Period 1996-1997

(a) Maipo-Buin Criminal Court (Metropolitan Region). Proceedings for ill-treatment initiated against two police officers. Pre-trial proceedings under way with committal order. The officers concerned have retired from the force.

(b) La Ligua Criminal Court (Fifth Region). Proceedings for ill-treatment initiated against one police officer. By a decision of September 1999, the committal order was rescinded. Proceedings were dismissed in conformity with article 409 (1) of the Code of Criminal Procedure, and the case was closed.

(c) Coquimbo Third Criminal Court (Fourth Region). Proceedings for ill-treatment against four police officers were dismissed, and the case was closed.

(d) San Miguel Eighth Criminal Court (Metropolitan Region). Proceedings for ill-treatment initiated against one police officer. The defendant was sentenced, at first instance, to 540 days of rigorous imprisonment, suspended. The sentence was appealed and the case is pending before the San Miguel Court of Appeal.

(e) Santiago Fifteenth Criminal Court (Metropolitan Region). Proceedings for ill-treatment against 11 police officers were dismissed, and the case was closed.

(f) San Miguel Ninth Criminal Court (Metropolitan Region). Proceedings for ill-treatment initiated against one police officer, who has not been prosecuted.

Period 1998-1999

Three judicial proceedings were initiated against members of the Investigaciones Police for alleged violation of the right of detainees to protection from physical injury. In the course of the investigations no officers have been prosecuted.

Article 13

110. The courts of justice have competence to receive complaints about the violation of the rights of persons. During the years covered by this report, the courts have handled, ex officio or, on the basis of an information or a complaint by private individuals,[18] the investigations relating to alleged acts of torture, in accordance with the characterization and penalties established in the country's legal order. In paragraphs 97-109 above, statistics are given concerning judicial proceedings initiated against Gendarmería, Investigaciones and Carabineros officers for the alleged commission of the offences of ill-treatment and unnecessary violence.

111. Paragraphs 105-109 above indicate the authorities competent to undertake internal investigations of an administrative character within the Investigaciones Police, the Carabineros and the Gendarmería, and give statistics concerning these investigations.

Measures protecting the victim and witnesses against ill-treatment or intimidation

112. In this respect, the general provisions of the Code of Criminal Procedure are applicable. In the case of the victims of an offence, the provisions stipulate that the alleged offender may be refused bail, inter alia, when his release on that basis would endanger the "security of the victim". As regards witnesses, following a 1991 amendment of the Code,[19] the concealment of their identity may be maintained for the duration of the confidential pre-trial proceedings or, in serious or aggravated cases, special measures may be adopted in order to protect their security for a reasonable period as ordered by the judge. These measures may be extended whenever necessary. With the same aim in view, the remedy of protection - established in the Constitution - is applicable. In conformity with this remedy, the courts of appeal are required to take such measures as they consider necessary in order to ensure the due protection of the person concerned.

Article 14

113. As stated in the second report, in 1991 the Ministry of Health introduced the Programme of Full Health Care (PRAIS) for victims of human rights violations during the military regime. This programme, which was set up following recommendations made in the report of the National Commission for Truth and Reconciliation, provides physical and psychological care to relatives of detainees who have disappeared or been executed, torture victims and exiles, within the context of the State Health Services. The number of PRAIS teams has been increased from the original 7 to 12, in addition to an initial care team in Punta Arenas. At present the teams are functioning throughout the country, mostly under the aegis of the Health Services' mental health units. In 1997, the "Metropolitan Corporation of PRAIS Beneficiaries" was established. This body is composed of beneficiaries in the capital, enabling them to make organized representations to the authorities relating to their concerns and interests and to impress on the authorities the need to maintain this programme. In response to the Corporation's requests, the Under-Secretary of Health expressed the view that it is necessary to "undertake an evaluation of performance in the 13 health services where this programme is being undertaken" and "to extend the operation of PRAIS indefinitely"; he further stated that "within this Ministry the political will exists to maintain its continuity".[20] According to figures reported by PRAIS, on 31 May 1999 the number of registered beneficiaries of these programmes nationally was 31,102, of whom 12,630 were direct victims or direct relatives of victims of human rights violations. In the year 2000, the provisions relating to the "Care of PRAIS beneficiaries" were formulated. This document has served to strengthen the existing teams and to encourage the health services to devote attention to the mental health of registered beneficiaries, and to form initial care teams comprising two specialists for the vetting and care of beneficiaries.

Number of registered and approved beneficiaries of the PRAIS programme throughout the country in the years 2000 and 2001

Teams	Number of beneficiaries 2000	Number of beneficiaries 2001
Iquique	1 015	1 102
Antofagasta	1 696	2 508
Coquimbo	2 953	3 441
Valparaíso	3 223	3 349
South-East Metropolitan Region	4 036	5 572
Western Metropolitan Region	4 487	4 919
Southern Metropolitan Region	10 710	12 492
Maule	5 092	6 756
Concepción	6 980	8 444
Southern Araucanía	2 764	3 310
Osorno	724	1 008
Llanchipal	1 052	1 605
Totals	44 732	54 506

Comparative table showing number of persons joining the PRAIS programme throughout the country in 1999 and 2000

Teams	No. of persons joining in 1999	No. of persons joining in 2000	Percentage increase
Iquique	11	32	191%
Antofagasta	23	468	1 935%
Coquimbo	108	158	46%
Valparaíso	74	207	180%
South-East Metropolitan Region	315	591	88%
Western Metropolitan Region	577	2 834	391%
Southern Metropolitan Region	295	783	165%
Maule	365	255	-30%
Concepción	331	661	100%
Southern Araucanía	419	843	101%
Osorno	51	136	167%
Llanchipal	223	210	-6%
Totals	2 781	7 146	157%

Number of specialized mental health consultations in the first quarter of 2000 and in the first quarter of 2001

Teams	Number of consultations, first quarter of 2000	Consultations, first quarter of 2001	Percentage increase
Iquique	109	324	197%
Antofagasta	122	104	-15%
Coquimbo	278	174	-37%
Valparaíso	201	345	72%
South-East Metropolitan Region	492	825	68%
Western Metropolitan Region	1 091	1 213	11%
Southern Metropolitan Region	1 259	1 259	0%
Maule	416	909	119%
Concepción	497	700	41%
Southern Araucanía	686	913	33%
Osorno	459	415	-10%
Llanchipal	352	448	27%
Totals	5 962	7 629	28%

114. The right to fair and adequate compensation for the victims of torture is guaranteed in accordance with the general principles and provisions of the Chilean justice system. Every offence gives rise to criminal proceedings to investigate the punishable act and sanction those responsible for it, and criminal indemnity proceedings to provide redress for the civil effects of the offence. The purpose of civil indemnity proceedings may be, inter alia, to provide compensation for the injuries caused. In accordance with article 10 of the Code of Criminal Procedure, criminal indemnity proceedings may be brought within the criminal proceedings themselves. In conformity with the general rules of Chilean law, the criminal indemnity action claiming appropriate compensation for injuries caused may be brought by the victim of the torture and certain relatives and heirs of a person who has been subjected to acts of torture and has died in consequence thereof.[21]

Article 15

115. In accordance with the recent amendment of Act No. 19,567 of 1 July 1998, it was established, in article 284 of the Code of Criminal Procedure, that statements by a detainee obtained through infringement of the duties listed by this provision for officers responsible for the detention are not valid. One of these duties is to ensure that the detainee is not subjected to torture or cruel, inhuman or degrading treatment. Other provisions of the Code also relate to this question. In regulating the probatory value of a confession, article 481 provides that this must be given freely and consciously. Article 483 establishes the possibility for the prisoner to withdraw his confession if he proves unequivocally that he gave it by mistake, under coercion or because he was unable to freely exercise his judgement at the time when he made it. Article 323, in its second subparagraph, added by Act No. 19,047 of February 1991, establishes the obligation on

the judge to take measures to ensure that the detainee has not been tortured or threatened with torture before making his confession. This is consistent with the provision contained in the first subparagraph of this article, which categorically prohibits the use of coercion or threats in order to induce the defendant to tell the truth. Negligence on the part of the judge in the protection of the detainee is considered to be a "serious infringement of his duties" and renders him liable to the appropriate penalty (Courts Organization Code, art. 324).[22]

Article 16

116. The amendment of Act No. 19,567 (see paragraph 55 (a) above) maintained the text of article 150 of the Penal Code, which establishes penalties of 61 days to 5 years of rigorous or ordinary imprisonment for any person ordering or unduly prolonging the incommunicado detention of a prisoner or treating him with unnecessary severity, and also for anyone who arbitrarily causes a prisoner to be arrested or detained in places other than those designated by law. Thus, certain forms of cruel, inhuman or degrading treatment or punishment which do not amount to torture are provided for and punished in the old article 150 of the Penal Code. In addition to the new article 150 A, which punishes the offence of torture as such, this amendment added to the Penal Code article 150 B, which is applicable to private individuals participating in the offences characterized both in article 150 and in article 150 A (see paragraph 55 (c) above). In addition, article 255 of the Penal Code establishes the penalties of suspension from employment and a fine for any public employee who, in the course of his duties, perpetrates ill-treatment or unlawful or unnecessary coercion against an individual.

117. Chile is a party to the following other international instruments which prohibit cruel, inhuman or degrading treatment or punishment: the International Covenant on Civil and Political Rights of 1966 (art. 7); the American Convention on Human Rights ("Pact of San José, Costa Rica") of 1969 (art. 5); and the Inter-American Convention to Prevent and Punish Torture of 1985 (art. 6). Article 13 of the latter Convention contains provisions relating to extradition and expulsion.

III. SECOND PART: ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE DURING ITS CONSIDERATION OF THE PREVIOUS REPORT

118. During the consideration of Chile's second periodic report on 8 November 1994 (see CAT/C/SR.191), the members of the Committee mentioned a number of questions relating to the situation of torture in Chile. The present report represents a response to many of these concerns, especially with regard to:

(a) The post-1989 legal amendments of the Constitution and, in particular, criminal procedure. These amendments have had an impact on the prevention of torture by establishing provisions which have improved the guarantees during the initial hours of detention, have abolished arrest on suspicion and have reduced the length of time during which detainees remain in the charge of the police. All this is fully established with the entry into force of the new Code of Criminal Procedure, which completely transforms the procedure for investigating an offence, for the benefit of the rights of the individual (paras. 27-32);

(b) The value of the Convention in the internal legal order and related judicial decisions (para. 3);

(c) Organizational responsibility for the uniformed and civilian police forces (paras. 8 and 9);

(d) Characterization of the offence of torture in accordance with the parameters established by the Convention (paras. 50 and 51);

(e) The retention in the Code of Military Justice of the provisions on "due obedience" (para. 46);

(f) Abolition of the death penalty (para. 28);

(g) Human rights education given to public officials responsible for detained persons (paras. 70-80);

(h) Medical care for detained persons (paras. 29 and 32);

(i) Guarantees during the initial hours of detention (paras. 34-37);

(j) Establishment of the responsibility of doctors for acts of torture (para. 81).

IV. THIRD PART: COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

119. The changes which have been put into effect with the advent of the new Code of Criminal Procedure since October 2000, and the changes under way following the adoption of Act No. 19,567 of 11 July 1998 (see paras. 16, 20, 21, 30-37, 54 and 55 above), represent a response to the first and fourth recommendations made by the Committee against Torture after its consideration of Chile's second periodic report on compliance with the Convention (CAT/C/20/Add.3) at its meetings held on 8 November 1994 (CAT/C/SR.191 and 192).

Notes

[1] In this connection, mention may be made of the Supreme Court ruling of 9 September 1998 on the application for judicial review in case No. 468-98 (disappearance of Pedro Enrique Poblete Córdova), in which it stated "In these circumstances omitting to apply these provisions [of the Geneva Conventions of 1949 and the International Covenant on Civil and Political Rights] constitutes an error in law which must be rectified by means of this application, particularly bearing in mind that, in accordance with the principles of international law, international treaties must be interpreted and complied with in good faith by States; from this it is inferred that domestic law must be brought into line with them and the legislature must harmonize the new provisions which it enunciates with these international instruments, avoiding infringement of their principles, failing prior denunciation of the instruments in question."

[2] Chile is up to date with its annual contributions, having paid US$ 10,000 in March 2000.

[3] The appended annex I contains the list of offences for which the death penalty was abolished and offences under the Code of Military Justice for which it remains in effect, in accordance with the amendment of Act No. 19,734 of 5 June 2001.

[4] The text of the New Code of Criminal Procedure is appended in annex II.

[5] See F. González Morales, "Role and supervision of the police in Chilean criminal procedure", First National Congress on the Reform of Criminal Procedure, Diego Portales University, Cuaderno de Análisis Jurídico, No. 39, Santiago, 1998.

[6] The text of the articles of the old Code of Criminal Procedure amended by Act No. 19,567 of 1 July 1998 is appended as annex III.

[7] The text of the Prison Establishment Regulations is appended as annex IV.

[8] The text of the "Institutional Doctrine and Code of Ethics" of the Carabineros is appended as annex V.

[9] The text of the "Code of Professional Ethics" of the Investigaciones Police is appended as annex VI.

[10] The death of the taxi driver Raúl Osvaldo Palma Salgado on 12 January 1998, following a beating during his detention on premises of the Carabineros Police Investigations Section, prompted an immediate reaction by senior Carabineros officials who, within nine days and after an internal administrative inquiry, dismissed the four officers alleged to be responsible for this incident. On the very day of the death, the competent military court took action of its own motion, initiating a judicial investigation which led to the trial of the four persons allegedly responsible, who have been sentenced at first instance to 10 years and 1 day of rigorous imprisonment for the offence of inflicting unnecessary violence resulting in death. This offence is punishable under the Code of Military Justice.

[11] The text of the amended article and the articles added to the Penal Code by Act No. 19,567 of 1 July 1998 is appended as annex VII.

[12] The so-called "Bustamante Code" is the Code of Private International Law annexed to the Convention on Private International Law, which was signed by Chile on 20 February 1928 and ratified on 14 June 1933. It has been in force in Chile since April 1934. This Convention, including the Code annexed thereto, has been ratified by, in addition to Chile: Bolivia, Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela.

[13] The text of the above-mentioned annex 2 of Carabineros "Bulletin of Instructions No. 446" is appended as annex VIII.

[14] The text of "Study programmes, academic year 1999 - General Order No. 1,652 of 21 January 1999 issued by the Directorate-General of the Investigaciones Police is appended as annex IX. This order establishes study programmes for that year and curricula up to 2003.

[15] The text of the Code of Medical Ethics is appended as annex X.

[16] A copy of the poster is appended as annex XI.

[17] Act No. 19,535 of 24 November 1997.

[18] A person reports an offence (lays an information) when he informs the justice system or its officers of the act constituting the offence and, in general, the name of the offender or the characteristics identifying him, not with the aim of being a party to the proceedings, but of informing the court in order that it may initiate the relevant proceedings (Code of Criminal Procedure, art. 82). By means of a complaint (*querella*) a person capable of appearing in court himself exercises the public right of action. The person lodging the complaint is accordingly a party in the criminal trial and may intervene as such at all stages of the criminal proceedings (ibid., art. 93).

[19] Act No. 19,077 of 1991.

[20] Ordinario 4/C No. 6,072 of 22 December 1998.

[21] This is the case with: (a) compensation in the amount of 215 million Chilean pesos which the Exchequer will have to pay, by court order, to Ms. Carmen Gloria Quintana for the burns she suffered at the hands of Army Captain Fernández Dittus on 2 July 1986; (b) compensation in the amount of 264 million pesos which, by court order, the Exchequer had to pay to the five children of Mr. Mario Gilberto Fernández López, who died as a result of torture by State agents on 18 October 1984.

[22] In its ruling of 11 March 1995 on a criminal conviction at first instance, the Santiago Court of Appeal decided to attach no procedural value to an extrajudicial statement by the prisoner establishing his involvement in the offence, because it had probably been obtained through unlawful coercion. The decision states that this practice is prohibited in international treaties, such as the American Convention on Human Rights, the International Covenant on Civil and Political Rights and others, which have effect in internal law under article 5 (2) of the Constitution and are binding on judges, forming as they do an integral part of the right to due and rational criminal procedure.

Annexes

I. List of offences for which the death penalty was abolished and offences under the Code of Military Justice for which it remains in effect, in accordance with the amendment of Act No. 19,734 of 5 June 2001.

II. Text of the new Code of Criminal Procedure.

III. Text of the articles of the old Code of Criminal Procedure amended by Act No. 19,567 of 1 July 1998.

IV. Text of the Prison Establishment Regulations.

V. Text of the Carabineros "Institutional Doctrine and Code of Ethics".

VI. Text of the Investigaciones Police "Code of Professional Ethics".

VII. Text of the amended article and the articles added to the Penal Code by Act No. 19,567 of 1 July 1998.

VIII. Text of annex 2 of Carabineros "Bulletin of Instructions No. 446".

IX. Text of study programmes, academic year 1999, Investigaciones Police.

X. Text of the Code of Medical Ethics.

XI. Copy of the poster entitled "Recommendations of the Chilean Medical Association to emergency services doctors who are called upon to issue reports on bodily injuries".

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