



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

CHILE

1. The Committee considered the third periodic report of Chile (CAT/C/39/Add.5 and Corr.1) at its 602nd and 605th meetings, held on 10 and 11 May 2004 (CAT/C/SR.602 and 605), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Chile, due in 1997, which was prepared in accordance with the Committee's guidelines, but regrets the lateness in submission of the report.

3. The Committee welcomes the supplementary information provided by the State party and the extensive and constructive written and oral replies to the questions posed by the Committee both prior to and during the session. The Committee also appreciates the large and highly qualified delegation of representatives that was present for the consideration of the report, and the full and in-depth discussion of the obligations under the Convention that their presence facilitated.

B. Positive aspects

4. The Committee notes the following positive developments:

- (a) The introduction of the offence of torture in domestic criminal law;
- (b) The comprehensive reform of the Code of Criminal Procedure, and in particular the changes aimed at improving the protection of detainees;
- (c) The establishment of the Office of the Public Criminal Defender, and of the Office of the Public Prosecutor;
- (d) The abolition of provision for arrest on suspicion;
- (e) The reduction in the period of detention in police custody to a maximum of 24 hours;
- (f) Assurances by the representatives of the State party that the Convention is directly applicable by the courts;
- (g) The establishment of the National Commission on Political Imprisonment and Torture to identify persons who were deprived of freedom and tortured for political reasons during the military dictatorship, and the assurances by the representative of the State party that its tenure would be extended to permit it to complete its work;
- (h) Assurances by the representatives of the State party that mechanisms have been created to ensure that any testimony obtained under torture will not be admissible in court, and their recognition of the serious problem of coercing confessions from women who seek life-saving treatment in public hospitals after illegal abortions;
- (i) Confirmation that non-governmental organizations are allowed regularly to visit places of detention;
- (j) The declarations under articles 21 and 22 of the Convention, enabling other States parties (art. 21) and individuals (art. 22) to submit complaints concerning the State party to the Committee;
- (k) Notification by the representatives of the State party that the process of ratification of the Optional Protocol to the Convention against Torture has been initiated.

C. Factors and difficulties impeding the application of the Convention

5. The constitutional arrangements made as part of the political agreement that facilitated the transition from military dictatorship to democracy jeopardize the full exercise of certain fundamental human rights, according to the State party's report. While being aware of the political dimensions of these arrangements and their shortcomings, and noting that several Governments have previously submitted constitutional amendments to the Congress, the Committee stresses that internal political constraints cannot serve as a justification for non-compliance by the State party with its obligations under the Convention.

D. Subjects of concern

6. The Committee expresses concern about the following:

(a) Allegations of continued ill-treatment of persons, in some cases amounting to torture, by carabineros (uniformed police), policía de investigaciones (civil police forces) and the gendarmería (prison guards), and reports of failure to conduct thorough and independent investigations into such complaints;

(b) The fact that certain constitutional provisions jeopardizing the full exercise of fundamental human rights remain in force, including, in particular, the Amnesty Law, which prohibits prosecution of human rights violations committed from 11 September 1973 to 10 March 1978 and which entrenches the impunity of those responsible for torture, disappearances and other serious human rights violations during the military dictatorship and the lack of reparation for the victims of torture;

(c) That the definition of torture in the Criminal Code does not comply fully with article 1 of the Convention, and that it does not fully incorporate the purposes of torture and the acquiescence of public officials;

(d) The continued subordination of the carabineros and the civil police forces to the Ministry of Defence, one result of which is that the competence of the military jurisdiction remains excessively broad;

(e) Reports that some officials accused of torture-related crimes during the dictatorship have been appointed to high office;

(f) The absence of internal legal provisions that expressly prohibit extradition, return, or expulsion when there are grounds for believing the person may be subjected to torture in the requesting country, and the absence of internal provisions regulating the implementation of articles 5, 6, 7, and 8 of the Convention;

(g) The limited mandate of the National Commission on Political Imprisonment and Torture aimed at identifying victims of torture during the military regime and the conditions for obtaining reparation. In particular, the Committee notes with concern:

(i) The short time period in which alleged victims can register with the National Commission, resulting in fewer persons registering than anticipated;

(ii) The lack of clarity as to which acts the Commission defines as torture;

(iii) The reported rejection of claims not filed in person, notwithstanding, e.g., the disability of the person(s) involved;

(iv) The failure to permit persons to register who may have received reparation for other human rights violations (disappearance, exile, etc.);

- (v) That “austere and symbolic” reparation is not the same as “adequate and fair” reparation as set forth in article 14 of the Convention;
- (vi) That the Commission does not have the competence to investigate allegations of torture in order to identify those persons responsible, so that they may be prosecuted;
- (h) Severe overcrowding and other inadequate conditions in places of detention and reports of failure to conduct systematic inspections of such places;
- (i) The continued provision, in articles 334 and 335 of the Code of Military Justice, of the principle of due obedience, notwithstanding provisions affirming a subordinate’s right to protest against orders that might involve committing a prohibited act;
- (j) Reports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions. Such confessions are reportedly used subsequently in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention;
- (k) That the introduction of the new Code of Criminal Procedure in the Metropolitan Region has been delayed until late 2005;
- (l) That few cases of disappearances have been clarified by the military, despite the Government’s efforts to establish a dialogue;
- (m) The absence of disaggregated data on complaints, the results of investigations, or prosecutions related to the provisions of the Convention;
- (n) The insufficient information on the application of the Convention to action by the armed forces.

E. Recommendations

7. The Committee recommends that the State party should:

- (a) Adopt a definition of torture in conformity with article 1 of the Convention, and ensure that it covers all forms of torture;
- (b) Reform the Constitution to ensure the full protection of human rights, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment in conformity with the Convention, and to this end abolish the Amnesty Law;
- (c) Transfer responsibility for the carabinieri and the civil police forces from the Ministry of Defence to the Ministry of the Interior and ensure that the jurisdiction of military courts is limited to crimes of a military nature;

- (d) Eliminate the principle of due obedience, which may permit a plea of superior orders, from the Code of Military Justice to bring it into conformity with article 2, paragraph 3, of the Convention;
- (e) Adopt all the necessary measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, and the provision of fair and adequate compensation for the victims, in conformity with the Convention;
- (f) Consider eliminating or extending the current 10-year statute of limitations for the crime of torture, taking into account its seriousness;
- (g) Adopt specific legislation to prohibit extradition, return, or expulsion to countries where a person may be in danger of being subjected to torture;
- (h) Clarify, through legislation, the status of the Convention in domestic law to ensure that the provisions of the Convention can be applied, or adopt specific legislation incorporating the provisions of the Convention;
- (i) Develop training programmes on the provisions of the Convention for judges and prosecutors as well as other law-enforcement officials, including programmes on the prohibition of torture and cruel, inhuman or degrading treatment, for military officials, police, and other law-enforcement personnel and others who may be involved in the custody, interrogation or treatment of persons at risk of torture; ensure that training programmes for medical specialists specifically deal with the identification and documentation of torture;
- (j) Improve conditions in places of deprivation of liberty to meet international standards and take urgent measures to address overcrowding in prisons and other places of detention; introduce a system for monitoring the conditions of detention, the treatment of inmates and prisoner-on-prisoner and sexual violence in prisons;
- (k) Extend the term and mandate of the National Commission on Political Imprisonment and Torture to enable victims of all forms of torture, including victims of sexual violence, to file complaints. To this end:
- (i) Initiate measures to better publicize the work of the Commission, utilizing all media, and clarifying the definition of torture by including a non-exhaustive list specifying various forms of torture, including sexual violence, on the forms victims must complete;
 - (ii) Ensure that victims will be afforded privacy when registering with the Commission, and that persons in rural areas or otherwise unable to file in person can register;
 - (iii) Include in the final report of the Commission data disaggregated by gender, age, type of torture, etc;

(iv) Consider extending the Commission's mandate to permit investigations and, where warranted, the initiation of criminal proceedings against those allegedly responsible for the actions reported;

(l) Create a system to provide adequate and fair reparation to victims of torture, including rehabilitative measures and compensation;

(m) Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State party should ensure immediate and unconditional treatment of persons seeking emergency medical care;

(n) Ensure that the application of the new Code of Criminal Procedure is promptly extended to the Metropolitan Region so that it can be fully operational throughout the country;

(o) Introduce, as part of the reform of the criminal justice system, safeguards to protect persons experiencing possible retraumatization in connection with prosecution of cases such as child abuse, sexual abuse, etc.;

(p) Provide updated information to the Committee on the status of investigations into past crimes involving torture, including the cases known as the "Caravan of Death", "Operación Cóndor" and "Colonia Dignidad";

(q) Provide detailed statistical data, disaggregated by age, gender and geographical location, on complaints related to torture and ill-treatment, allegedly committed by law-enforcement officials, as well as the related investigations, prosecutions, and sentences.

8. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraph 7, subparagraphs (k), (m) and (q) above.

9. Considering that Chile has provided information concerning the implementation of the Convention during the period covered by the third and fourth periodic reports, the Committee recommends that the State party submit its fifth periodic report by 29 October 2005.
