CHILE

Concerns on Torture and other cruel, inhuman or degrading treatment Implementation of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

General Introduction

On 10 and 11 May 2004 the United Nations Committee Against Torture met in Geneva to examine Chile's third period report (CAT/C/39/Add.5) on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the State of Chile, at its 602nd and 605th meetings. Conclusions and recommendations were subsequently adopted by the Committee (CAT/C/CR/32/5(FUTURE).

UN treaty bodies, such as the Committee Against Torture (the Committee) hold governments directly accountable for compliance with their obligations under international human rights treaties, in this case the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) which Chile ratified in September 1988.

Amnesty International presented a submission on its concerns relating to torture and ill-treatment for consideration before the Committee. The submission outlines concerns at the repeated reports of torture and ill-treatment of people arrested mainly by *Carabineros* (uniformed police) and the *Gendarmería* (prison guards), the lack of thorough, independent and conclusive investigations into such complaints, reports of punishments to recruits who are undergoing compulsory military service, that amount to torture and ill-treatment. Concerns were also submitted regarding the lack of an effective solution to the legacy of human rights violations committed during the years of military government (1973-1990). This included the systematic use of "disappearances", extrajudicial executions and torture, including the use of the Navy training ship "Esmeralda" as a detention and torture centre in 1973, following the military coup.

The submission outlines Amnesty International's concern that despite the adoption of legislative measures and procedural reforms in the *Código Procesal Penal*, Criminal Procedure Code, Amnesty International has continued to receive reports of torture and ill-treatment, including of political prisoners, by members of the prison guard. In all cases Amnesty International's concerns have been submitted to the relevant Chilean authorities. However, Amnesty International has received no information indicating that the complaints have been investigated. The organization believes that the failure to thoroughly investigate

reports of torture and ill-treatment breeds a climate of impunity which allows these practices to continue.

This Amnesty International external document provides the full text of Amnesty International's submission to the Committee Against Torture for its examination in May 2004 of the third periodic report submitted by the Chilean State. It also includes in Appendix I the full text of the Conclusions and Recommendations of the Committee Against Torture[1], and in Appendix II the chapter on Chile from the Follow-up Report by the Special Rapporteur, Theo van Boven[2].

The Committee session

The Committee Against Torture sessions held on 10 and 11 May to consider the third periodic report of Chile were attended by a delegation of 10 representatives from the Chilean government, headed by the Permanent Representative of the Permanent Mission to the United Nations at Geneva and including the Director of the Human Rights Office of the Ministry of Foreign Affairs; the Head of Social Defence Division of the Ministry of Justice; high ranking officials of *Carabineros* and lawyers from the Attorney General's Office, the Ministry of Foreign Affairs and *Gendarmería*.

Representatives from Chilean non-governmental human rights organizations, including the women's rights organization La Morada, the Mental Health and Human Rights Centre (CINTRAS), the Association of Relatives of Disappeared Detainees (AFDD) and the Committee for the Promotion and Protection of the Rights of the People (CODEPU) were present at the sessions and submitted alternative reports for the consideration of the Committee.

Conclusion and Recommendations of the Committee

At the end of May the Committee made public its conclusions and recommendations.

a) Conclusion and Areas of Concern

The Committee welcomed Chile's third periodic report, which it considered to be prepared in accordance with the Committee's guidelines, and all the supplementary information provided.

[1] Conclusions and Recommendations of the Committee Against Torture, Chile, Thirty-second session, 3 May -21 May 2004 (CAT/C/CR/32/5/(FUTURE)). Available in English and Spanish.
[2] Un Doc. E/CN.4/56/Add.3. Civil and Political Rights, including the questions of torture and detention, Torture and other cruel, inhuman or degrading treatment or punishment. Report of the Special Rapporteur, Theo van Boven. Addendum, Follow-up to the recommendations made by the Special Rapporteur visits to Azerbaijan, Brazil, Chile, Mexico, Romania, Turkey and Uzbekistan. (See Chile: Paras.101 to 136. Available only in Spanish).

However, it regretted the lateness of submission which, although due in 1997, was only submitted in 2002.

The Committee underlined a number of aspects that it noted as positive developments. These included the comprehensive reform of the Code of Criminal Procedure where changes are aimed *inter alia* at improving the protection of detainees, abolishing the arrest on suspicion without due cause, assurances by the representatives of the State party that the Convention can be made directly applicable by the national courts of justice and that mechanisms have been created to ensure that any testimony obtained under torture will not be permitted in court. The Committee also considered as a positive step the declarations under articles 21 and 22 of the Convention, enabling other state parties and individuals to submit complaints concern the State party to the Committee.

In its areas of concern the Committee underlined 15 points. These included the constitutional provisions which remain in force and jeopardize the full exercise of "fundamental human rights […] in particular, the Amnesty Law". The Committee highlighted that prohibition by the Amnesty Law of prosecution of human rights violations committed between 11 September 1973 and 10 March 1978 "entrenches impunity of those responsible for torture, disappearances and other serious human rights violations".

The Committee established in its areas of concern that the definition of torture, as stated in Chilean legislation, "does not comply fully with Article 1 of the Convention" and it does not "fully incorporate the purposes of torture and the acquiescence of public officials".

The Chilean Constitution in its article 19.1, prohibits the use of any unlawful coercion ("*apremio ilegítimo*"). Article 150A of the Penal Code (*Código Penal*) establishes punishment for public officials who use or allow torture or unlawful coercion physical or mental or who order or consent to them against a detainee. However, the definition of torture in the Convention is broader. Article 1 of the Convention Against Torture states: "For the purposes of this Convention, the term torture, means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. […]."

In relation to the mandate of the National Commission on Political Imprisonment and Torture, created to identify victims of torture during the military government and the conditions of their reparation, the Committee noted with concern:

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

(ii) the lack of clarity as to forms of torture included in the Commission's purview;

(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 crimes (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.

The Committee also stated its concern at the severe overcrowding and inadequate conditions of detention; the provisions in Articles 334 and 335 of the Code of Military Justice regarding the principle of due obedience "notwithstanding provision affirming the right to protest against orders to commit any prohibited acts" and the coercion of confessions by public officials to women seeking medical care for health complications after prohibited abortions, to use such confessions in legal proceedings against the women and/or third parties.

b) Recommendations

The Committee recommended *inter alia* that Chile should:

- adopt a definition of torture in conformity with Article 1 of the Convention and ensure that it covers all forms of torture;
- reform the Constitution and abolish the Amnesty Law;
- eliminate the principle of due obedience;
- adopt the necessary measures to ensure impartial, full, and prompt investigations into all allegations of torture, the prosecution and punishment of the perpetrator and the provision of fair and adequate compensation for the victims;
- improve conditions in places of detention and address the overcrowding in prisons;
- extend the term and mandate of the National Commission on Political Imprisonment and Torture;
- eliminate the practice of extracting confessions for prosecution purposes from women seeking medical care as a result of prohibited abortions as well as investigate and review conviction where such statements have been admitted into evidence taking measures to nullify conviction which are not in conformity with the Convention.

Considering that Chile has provided information concerning the implementation of the Convention during the third and fourth periodic reports, the Committee recommended that the State of Chile submit its 5th period report by 29 October 2005.

Follow up by the UN Special Rapporteur on Torture

In February 2004, Mr. Theo van Boven, UN Special Rapporteur on Torture, issued his Follow-up report *Civil and Political Rights, Including the Questions of Torture and Detention*[3] related to the follow-up measures to the recommendations made in 1996 by the then Special Rapporteur Sir Nigel Rodley to the Government of Chile, following his visit to the country in August 1995[4].

The Follow-up report provides the information supplied by the Government of Chile by letter dated 10 September 2003 and it notes previous relevant information provided by the Chilean Government. The previous replies by the Government have been reflected in reports by the Special Rapporteur published in January1997[5] and January 2000[6].

The follow-up report includes the 21 recommendations placed by the Special Rapporteur in 1996 together with the relevant replies provided by the Chilean government since then. Some of the recommendations have been complied with by the Chilean Government, but a number of them are still to be implemented in reality. For instance, recommendation (a) states that "The uniformed police (*Carabineros*) should be brought under the authority of the Minister of the Interior, rather than the Minister of Defence. They should be subject to ordinary criminal jurisdiction only, and not to military jurisdiction. As long as the military criminal code continues to apply to them, acts of criminal human rights violations, including torture of civilians, should never be considered as an 'act committed in the course of duty' (*acto de servicio*) and should be dealt with exclusively by the ordinary courts."

The Government has replied indicating that in November 2001 a bill was submitted to Congress to reform the Constitution placing the uniformed police under the Ministry of Interior. The Government also stated that a number of bills are being considered to reform the Constitution regarding military courts and restricting their jurisdiction. However, the relevant legislation has not been passed and these two areas of concern remain pending and are included in the Committee's latest recommendations.

[3] UN Doc.E/CN.4/2004/56/Add.3, 1 February 2004. Civil and Political Rights, including the questions of torture and detention, Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Theo van Boven, Addendum, Follow-up to the recommendations made by the Special Rapporteur visits to Azerbaijan, Brazil, Chile, Mexico, Romania, Turkey and Uzbekistan. (See Chile: Paras.101 to 136)
[4] UN Doc.E/CN.4/1996/35/Add.2
[5] UN Doc.E/CN.4/1997/7, Paras.44 to 53
[6] UN Doc.E/CN/4/2000/9/Add.1, Paras.2 to 19

Amnesty International's Recommendations

Amnesty International calls on the Government of Chile to take all necessary steps, including at executive and legislative level, to implement the recommendations formulated by the Committee, thereby ensuring that positive progress is made to prevent and eradicate torture in the Republic of Chile. Equally, Amnesty International expects that Chile will submit its 5th periodic report, by 29 October 2005 as requested by the Committee.

CHILE
A SUMMARY OF AMNESTY INTERNATIONAL'S CONCERNS
with regard to the Chilean Government's implementation of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

I. Introduction

Amnesty International is submitting this summary of its concerns relating to torture and ill-treatment in Chile so that it can be considered by the Committee against Torture during its examination, in May 2004, of the third periodic report submitted by the Chilean State concerning implementation of the provisions of the *United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (Torture Convention).

The Constitution of the Republic of Chile, which was adopted under military rule, confers constitutional status on international treaties ratified by Chile[7]. Legally speaking, this means that any lower-ranking norms, such as laws, regulations and other rules, are only applicable if they are compatible with the content and scope of such treaties (if they are not, the requirements of the treaties are applicable and must be enforced). It also means that all decisions by the Chilean authorities must comply with the provisions of such treaties. Article 19, paragraph 1, of the Constitution refers to "the right to life and the physical and mental integrity of the person" and prohibits "all ill-treatment".

i) International Treaties

Chile ratified the Torture Convention in September 1988 but with reservations to articles 2.3, 3, 20 and 30. Following the return to civilian government in 1990 in the wake of 17 years of military rule, in 1991 Chile withdrew the reservations it had made to articles 2.3, 3 and 20. In September 1999, it also withdrew the reservation to article 30, thereby accepting that, in the event of a dispute between States concerning interpretation or application of the Torture Convention, the matter could be discussed, submitted to international arbitration and, if necessary, referred to the International Court of Justice.

[7] Article 5(2) of the Chilean Constitution reads: "The exercise of sovereignty recognizes that it is circumscribed by respect for the fundamental rights that emanate from human nature. It is the duty of the organs of the State to respect and promote such rights, which are guaranteed in this Constitution as well as in any international treaties that Chile has ratified and are in force".

In the 14 years since the return to civilian rule, Chile has ratified several international instruments and been an active participant in the human rights sphere at an international level. For example, in December 1990, under the civilian government of President Patricio Aylwin Azócar, Chile recognized the competence of the Human Rights Committee, in compliance with article 41 of the International Covenant on Civil and Political Rights, and, in August 1992, it ratified the Optional Protocol allowing the Committee to also examine specific cases of torture and other cruel, inhuman or degrading treatment or punishment within the framework of article 7 of the International Covenant on Civil and Political Rights. In 1990, Chile also withdrew the reservations it had made to the Inter-American Convention to Prevent and Punish Torture of the Organization of American States[8].

In 1994, under the government of President Eduardo Frei Ruíz-Tagle, Chile co-sponsored a draft resolution submitted by Italy calling for the universal suspension of the death penalty with a view to achieving its complete abolition by the year 2000. Chile was actively involved in drafting the Inter-American Convention on Forced Disappearance of Persons and signed it in June 1996. The National Congress is at present considering its ratification. In September 1998, Chile signed the Rome Statute of the International Criminal Court but has so far not ratified it. The Rome Statute recognizes torture as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population (art. 7.1 (f)).

In recent years the Chilean authorities have introduced several initiatives that seek to protect human rights and there is currently openness towards the idea of incorporating international human rights instruments into the Chilean system of law. As this document shows, this extends to the issues of torture and cruel, inhuman or degrading treatment.

ii) Reform of domestic legislation

Several amendments to domestic legislation, including abolition of the death penalty, have been proposed since the return to civilian rule. Under the current administration of President Ricardo Lagos, who came to power in March 2000, the death penalty was abolished in ordinary criminal legislation as a result of Law No. 19734 of 5 June 2001. However, it is still applicable under the *Código de Justicia Militar*, Code of Military Justice. Amnesty International is unreservedly opposed to the death penalty on the grounds that it is the ultimate cruel, inhuman and degrading treatment and a violation of the right to life. The Committee against Torture has stated that the uncertainty experienced by many people who have been sentenced to death constitutes cruel and inhuman treatment in violation of article 16 of the Convention.

As far as the legal framework and measures seeking to prevent and prohibit torture and other forms of cruel, inhuman or degrading treatment or punishment are concerned, reform of the

[8] In an instrument dated May 18, 1990, the Government of Chile withdrew the reservations it had made to Article 4 and to the final paragraph of Article 13 of the Convention.

criminal system got under way with a law dated October 2000. A reform of criminal procedure, involving replacement of the existing inquisitorial system by the accusatorial model, came into effect in December 2000 and has been gradually introduced in the regions. Certain aspects of the new system would appear to make it easier for the use of torture and ill-treatment to be prevented and for the individual safeguards due to the accused to be respected. For example, it is hoped that, by separating the investigation and trial functions, fuller, more diligent and evidence-based police investigations will be carried out, thereby making it difficult for torture or ill-treatment to be used as a means of obtaining confessions, as it has been in the past. Appropriate institutions have also been strengthened or new ones set up, such as the *Ministerio Público*, Public Prosecutor's Office, and the *Defensoría Penal Pública*, Office of the Criminal Defender. It is hoped that the new *Código Procesal Penal*, Criminal Procedure Code, will come into effect in the metropolitan area of Santiago towards the end of 2004, thereby completing its implementation throughout the country. Torture has been a punishable offence under Chilean domestic law since the *Código Penal*, Criminal Code, was amended in 1998, articles 150, 150A and 150B of which stipulate penalties of between 541 days' and 15 years' imprisonment[9].

iii) Past violations

Despite the measures taken by the three civilian governments that have governed the country over the past 14 years, no solution has been found to how to remove the stigma that remains from the human rights violations committed during the military government of General Augusto Pinochet (1973 – 1990). When civilian government was restored, President Patricio Aylwin Azócar ordered two official Chilean bodies to be set up to address the issues involved: the *Comisión Nacional de Verdad y Reconciliación*, National Truth and Reconciliation Commission, and the *Corporación Nacional de Reparación y Reconciliación*, National Reparation and Reconciliation Corporation[10]. The combined findings of the two commissions included 3,197 cases de "disappearance", extrajudicial execution and deaths from torture. Neither of the two bodies included the cases of torture victims who had survived or investigated cases of torture which did not result in death.

[9] Law No. 19567 which was published in the *Diario Oficial*, Official Gazette, on 1 July 1998.

[10] Following the re-establishment of civilian government in 1990, two bodies were set up, one after the other, with the task of gathering information that would help to establish the truth about "disappearances", extrajudicial executions and deaths resulting from torture attributed to representatives of the Chilean State. The National Truth and Reconciliation Commission was set up through Supreme Decree No. 355 which was published in the *Diario Oficial*, Official Gazette, on 9 May 1990. Upon the recommendation of the Commission, a draft bill was submitted to Congress with the aim of setting up a successor body. The National Reparation and Reconciliation Corporation was created as a result of Law No. 19,123 of February 1992. A total of 3,197 cases of human rights violation were recorded in the combined findings of the reports of the two commissions and were officially recognized by the State. The figure did not include the thousands of torture victims who survived the ordeal.

In August 1999, at the initiative of the then President Eduardo Frei Ruiz-Tagle, a *Mesa de Diálogo*, Human Rights Discussion Table, was established with the intention of finding solutions to the legacy left by the human rights violations committed under the military government[11]. The information submitted to President Lagos by the armed forces in January 2001 was handed over to the Supreme Court for investigation. Human rights organizations criticized the information as being inadequate and, in some cases, inconsistent with other well-documented data. More recently, in August 2003, President Ricardo Lagos presented his government's proposals for addressing the violations inherited from the period of military rule. The proposals, which included legislative and judicial measures, did not include repeal of the Amnesty Law and appeared insufficient to bring an end to impunity[12].

The proposal included the setting up of a commission to look into cases of torture from the period of military government and to put forward reparation measures. The *Comisión Nacional sobre Prisión Política y Tortura*, National Commission on Political Imprisonment and Torture, started work in November 2003 and will accept testimonies until 11 May 2004.

iv) Amnesty International's ongoing concerns

Since the Committee against Torture submitted its conclusions and recommendations in July 1995, following its examination of Chile's second periodic report at its 191st and 192nd sessions on 8 November 1994, and the publication of the report by the Special Rapporteur on Torture, Sir Nigel S. Rodley, in January 1996[13], Amnesty International has continued to record reports of torture and ill-treatment of people arrested by members of the security forces.

The organization has addressed the Chilean authorities about these human rights violations on many occasions. For example, in October 2000, an Amnesty International delegation handed over to the Chilean authorities a report on torture and ill-treatment compiled by the Chilean non-government human rights organization *Corporación de Promoción y Defensa de los*

[11] The Human Rights Discussion Table, which began on 21 August 1999, was convened by the then Minister of Defence Edmundo Pérez Yoma and involved representatives of the armed forces, human rights lawyers, representatives of civil society and public figures. In January 2001, the armed forces submitted a list of 200 cases of victims of human rights violations to President Ricardo Lagos. The list contained the names of 180 people detained between 1973 and 1976 with the identity of the remaining 20 not known. The list indicated that most of them had been thrown into the sea or the country's rivers or lakes.

[12] The proposals put forward by President Ricardo Lagos include: possible immunity before the courts for people against whom no charges have so far been lodged or who are not undergoing prosecution if they attend court to provide information about the whereabouts of victims or the circumstances of their "disappearance" or death; possible immunity before the courts for military personnel who claim they were acting on the orders of a superior; continued application of the Amnesty Law (Decree Law 2191) at the discretion of the courts; the transfer to civilian courts of all cases of human rights violation committed under the military government which are currently in the hands of military courts; and the establishment of a commission to look into cases of torture which occurred under the military government.

[13] UN document E/CN.4/1996/35/Add.2.

Derechos del Pueblo (CODEPU), Committee for the Promotion and Defence of the Rights of the People. The report included 33 complaints of torture and ill-treatment inflicted during 1999 and the first half of 2000, affecting over 141 individuals[14]. Although the authorities refuted most of them, in April 2003 the Amnesty International delegation which was visiting Chile at that time was informed of further judicial complaints supporting the original ones.

Amnesty International believes that, despite the legislative measures adopted and the procedural reforms carried out indicating that the Chilean authorities are committed to taking effective measures to prevent and eradicate torture throughout the territory under its jurisdiction, there is cause to be concerned about the Chilean State's compliance with the Torture Convention. Over the past nine years, Amnesty International has received repeated reports of torture and ill-treatment of people arrested mainly by the *Carabineros* (uniformed police) and the *Gendarmería* (prison guards).

Amnesty International's main concerns with regard to implementation of the Torture Convention include the torture and ill-treatment of people arrested by members of the security forces; the lack of thorough, independent and conclusive investigations into such complaints; and the lack of an effective solution to the legacy of human rights violations committed during the period of military government (1973-1990), which included the systematic use of "disappearances", extrajudicial executions and torture.

II. Reports of torture and ill-treatment

Amnesty International has continued to receive reports that ill-treatment has been inflicted on prisoners by members of the prison guard. An Amnesty International delegation which visited Chile in March 2003 found that prison conditions, including the problem of overcrowding, continued to be a concern and that in some prisons international standards were not being met. They also found that the prison authorities failed to exercise external oversight of the system for granting prisoner benefits. There were frequent cases of ill-treatment of political prisoners by members of the prison guard[15]. In all cases Amnesty International's concerns were made known to the relevant authorities. In some instances the authorities accepted that there may have been the occasional individual case of abuse and in such cases the official found to be responsible was punished. However, Amnesty International has received no information indicating that immediate, impartial and thorough investigations of such complaints were carried out.

i) Circumstances in which torture and ill-treatment have been reported

Article 1. "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a

[14] Amnesty International Annual Report 2001, concerns during the year 2000, chapter on Chile, p.138.
[15] Amnesty International considers people accused or convicted of politically-motivated ordinary offences to be political prisoners.

person […] when such pain or suffering is inflicted by […] a public official or other person acting in an official capacity […].”

Article 12. “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Reports received by Amnesty International from reliable sources, most of which have been widely publicized in the Chilean press, indicate that torture and ill-treatment are still being used by the security forces. In most cases, Amnesty International has received no information about whether investigations were launched as a result of the complaints and, if they were, whether any progress has been made. The cases described below are just an illustration of the reports of torture and ill-treatment the organization has received:

Political prisoners arrested after 1990 have alleged that they were subjected to torture and ill-treatment. In January 2003, political prisoners **Jorge Espínola Robles and Marcelo Gaete Mancilla**, who were being held in Colina II Prison in the Metropolitan Region, were brutally beaten and drenched with water by members of the prison guard and the anti-riot squad of the prison guard known as the *Grupo Especial Antimotines*[16]. Both men were placed in punishment cells despite not having participated in the riot which had brought about the intervention of the prison guard.

Amnesty International has received reports that political prisoners were ill-treated on other occasions[17]. Marcelo Gaete Mancilla was reportedly ill-treated when 56 inmates were transferred from Colina I Prison to Colina II Prison in February 1999. On that occasion several political prisoners were ill-treated when prison guards pushed them to the ground, beat them using their fists and rifle butts and doused them with water and tear gas. At least two of them were reportedly tortured with an electric prod and others had their heads forced under water; all were handcuffed at the time. Lawyers acting for the families of the prisoners filed a *habeas corpus* writ and a criminal complaint. They also filed a request for the appointment of a special judge (*ministro en visita*) but it was rejected by the Appeal Court. The authorities denied the allegations of torture and ill-treatment.

People arrested for short periods by members of the security forces for no apparent reason have complained of torture and ill-treatment. For example, in May 2003, **Elson Mauricio Salazar Campos** was arrested in Santiago, together with a work colleague, by seven members of the *Policía de Investigaciones* (plainclothes police). According to the description of their arrest, the two men were kicked, punched and beaten with the butt of a revolver and

[16] See Amnesty International Urgent Action (AI Index AMR 22/001/2003) of 17 January 2003.

[17] See Amnesty International Urgent Actions concerning Marcelo Gaete Mancilla, Dante Ramírez Soto, Ramón Escobar Días, Patricio Gallardo Trujillo, René Daniel Salfate Osorio, Marcos Andrade Sánchez and 50 other political prisoners (AI Index AMR 22/06/99) of February 1999 and Omar Hermosilla Marín, Pablo Contreras Olivos, Dante Ramírez Soto and 53 other political prisoners (AI Index AMR 22/08/99) of March 1999.

taken to the *Comisaría de Investigaciones de Ñuñoa*, offices of the plainclothes police in Ñuñoa, where they were held for two days before being released. While they were there, Mauricio Salazar Campos was reportedly stripped naked, drenched with water, handcuffed and blindfolded, punched and tortured by means of electric current applied to his forehead and testicles. Lawyers for the non-governmental organization CODEPU filed a criminal complaint before the *27 Juzgado del Crimen*, 27th Criminal Court. The existence of injuries consistent with having been punched and the application of electric current was reportedly corroborated by the *Servicio Médico Legal*, Department of Forensic Medicine.

People arrested during peaceful demonstrations by members of the *Carabineros* in March 2001 have alleged that they were ill-treated at the time of arrest and while being held in police stations in Santiago. For example, **Andrea Martina Olivares** was arrested together with 30 other people. She was dragged into a police vehicle where she was insulted, fondled all over and pinched. She was held for several hours at the *Tercera Comisaría de Carabineros*, Third Police Station, where she was not allowed to eat, drink or go to the toilet. She was not told why she had been arrested and she was forced to sign documents without being informed of their content.

Reports have been received indicating that it is not unusual for recruits who are undergoing compulsory military service to be given punishments that amount to torture and ill-treatment. A case in point is that of **Cristóbal Auger Hinrishen**, a 19-year-old former cadet at the *Escuela Militar*, Military Academy, who alleged that he had been subjected to ill-treatment by his superiors at the Military Academy between February and March 2002. The information indicates that while Cristóbal Auger Hinrishen was at the Military Academy, he suffered a nosebleed while outside in the sun and was taken to the infirmary where he was told that it had happened because of exposure to the sun and that he should stay in the shade. Having been told by his superior that he would be spending the whole time bleeding, he was subjected to cruel, inhuman and degrading treatment which consisted of being forced to place the palms of his hands on the ground as well as being subjected to what is known as "CP", Prison Camp, which meant that he was pushed to the ground with his feet raised and his hands behind his back and forced to place his cheeks against the hot ground. On another occasion, he was beaten because he had stopped swinging his arms when marching for 15 minutes. He was subjected to the "*silla eléctrica*", "electric chair" (the application of electric shocks to different parts of the body), as well as the so-called "*tombitos*" (being forced to turn round and round while being pushed by other people), which left him feeling nauseous and on the point of being sick.

On another occasion, his superiors told him that he was going to be subjected to the "*prueba del sufrimiento*", "suffering test". In the morning after he had had breakfast and while he was brushing his teeth and having a wash, they made him go to a room where he was forced to lie on the ground while they beat him with thick cord. He was beaten on the legs and around the ribs and then, after a bag of newspapers had been placed on it, brutally beaten about the head.

He was also given so-called "*besitos de buenas noches*", "goodnight kisses", meaning that he was whipped on the soles of the feet. If he complained, he was accused of being a coward. In May, following a public complaint lodged by the mother of Cristóbal Auger Hinrishen, two low-ranking officers were expelled for their part in the ill-treatment. In August 2002, because of the ill-treatment to which he had been subjected, Cristóbal Auger Hinrishen decided to leave the Military Academy and to lodge a complaint about what had happened to him. At the moment, as a result of the ill-treatment and as attested by his medical records, Cristóbal Auger Hinrishen is suffering from post-traumatic stress. In September 2002, a criminal complaint was lodged by lawyers from CODEPU before the *II Juzgado Militar de Santiago*, Second Military Court of Santiago. The proceedings are being handled by the *Primera Fiscalía Militar*, Office of the First Military Prosecutor, as case Nº 931-2002.

ii) Past violations - Torture

Article 14. "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation".

The combined conclusions of the two commissions, the National Truth and Reconciliation Commission and the National Reparation and Reconciliation Corporation, contained 3,197 cases of "disappearance", extrajudicial execution and deaths from torture. Neither of the two commissions included survivors of torture and cases in which torture did not result in death were not investigated.

During the military government of Augusto Pinochet, torture was used as a deliberate policy to instil widespread fear among the population and eliminate opponents or suspected opponents. According to the additional report submitted by Chile in November 1990, the consolidation of power in the hands of the military government facilitated "the systematic use of arbitrary detention and torture by the security forces"[18]. The number of victims of torture during the military government of Augusto Pinochet is estimated to be in the thousands. In his January 1996 report, the Special Rapporteur on torture, Sir Nigel S.Rodley, said that the extent to which torture has been used since 1973 needed to be investigated in the same way as the Truth and Reconciliation Commission had done with regard to the "disappeared"[19].

Since the return to civilian government, the *Agrupación Nacional de Ex Presos Políticos*, National Association of Former Political Prisoners, who are survivors of torture, have been seeking recognition and reparation for the serious human rights violation they suffered during

[18] UN document CAT/C/7/Add.9 of 16 November 1990. The additional report contains supplementary information requested by the Committee against Torture at its third session after having examined the initial report from Chile dated 23 November 1989 (UN documents CAT/C/SR).

[19] UN document E/CN.4/1996/35/Add.2, 4 January 1996, Recommendations, (u), paragraph 76.

the period of military government. In October 2000, the Secretary General of Amnesty International, Pierre Sané, who was leading the delegation that visited Chile at that time, presented documentation prepared on the subject by the *Agrupación Nacional de Ex Presos Políticos* to President Ricardo Lagos for his consideration. In March 2001, the *Comisión Ética Contra la Tortura* (CECT), the Ethical Commission against Torture, which is made up of former political prisoners and non-governmental organizations, was set up. Since its creation, CECT has submitted its demands to President Ricardo Lagos in the form of periodic reports. In June 2001, CECT submitted a request for the creation of a *Comisión Nacional de Verdad, Justicia y Reparación*, National Truth, Justice and Reparation Commission, for the survivors of torture in Chile, with full power to "investigate the consequences of torture in Chile under the military government and to make social, moral and economic reparation available to thousands of Chileans […]". The request has been reiterated by CECT in subsequent reports to the current administration[20].

The proposals presented to the country by President Ricardo Lagos in August 2003 included the setting up of a commission to examine cases of torture from the period of military government and to put forward reparation measures. As a result, the *Comisión Nacional sobre Prisión Política y Tortura*, National Commission on Political Imprisonment and Torture, was set up and began its work in November 2003[21]. However, the work of the Commission will not cover the cases of people who were arrested at public demonstrations and later given prison sentences. Article 1 of Decree 1,040 states that "No determination will be made of the situation of people who were arrested at public demonstrations, put at the disposal of the local police courts or any criminal court in connection with ordinary offences and subsequently convicted for such offences". The National Commission on Political Imprisonment and Torture will accept testimonies until 11 May 2004.

The Chilean Navy

In the report published in March 1991 by the National Truth and Reconciliation Commission, known as the Rettig Report, several ships belonging to the Chilean Navy were identified as having been used as detention and torture centres in the period during which the *coup d'état* led by General Augusto Pinochet took place. The report mentions the training ship "Esmeralda", as well as the "Lebu" and the "Maipo", and says, in connection with the

[20] Reports by the *Comisión Ética Contra la Tortura*: Report I on Torture in Chile, 26 June 2001; Report II on Torture in Chile, 10 December 2001; Report III on Torture in Chile, 22 March 2002; Report IV on Torture in Chile, 26 June 2002; Report V on Torture in Chile, 10 December 2002; Report VI on Torture in Chile, 26 June 2003.

[21] Supreme Decree No. 1,040 published in the *Diario Oficial*, Official Gazette, on 11 November 2003.

"Esmeralda", that "a specialist unit of the Navy was installed on board in order to interrogate detainees […]. As a general rule, such interrogation included torture and ill-treatment"[22]. There is no evidence to suggest that the "Esmeralda" was used as a torture centre after 1973 but it remains a symbol of the terrible fate suffered by political prisoners in the recent history of Chile and, in particular, the use of torture by representatives of the Chilean State. Despite the information provided in the Commission's Report and the testimonies of those who were tortured on the "Esmeralda" and their relatives, the full truth about human rights violations committed on board the vessel has not been revealed and none of those responsible have been brought to justice.

So far the fact that the Chilean naval training ship "Esmeralda" acted as a detention and torture centre in the weeks following the military coup in 1973 has been shrouded in impunity. Both the government and the leaders of the Chilean Navy continue to deny that naval ships and facilities were used as torture centres. Each year, the "Esmeralda" carries out naval training cruises during which it visits ports throughout the world, acting as a "goodwill" ambassador on behalf of Chile.

Amnesty International, human rights groups and relatives of the victims have urged the Chilean authorities to acknowledge that serious human rights violations were committed on board the "Esmeralda", to carry out independent and impartial investigations into all complaints of brutal torture and other human rights violations committed in facilities and vessels belonging to the Navy while the military government was in power and to ensure that those responsible are brought to justice and that full moral and material compensation is provided to the victims and their families[23]. Reparation for the victims of torture and their relatives should be not only financial and strictly material but also symbolic and exemplary. The training ship "Esmeralda" symbolizes the complete opposite.

iii) Disappearances

Amnesty International believes that the commitments made in the new human rights policy proposed by President Ricardo Lagos in August 2003 are significant. However, the organization fears that some aspects will result in ongoing impunity for human rights violators and that the proposals for granting immunity from prosecution would mean that perpetrators of human rights violations against whom charges have not yet been brought or who are not yet undergoing prosecution will be eligible for *de facto* amnesties or pardons. Amnesty International is concerned that the proposals do not include abolition of the *Ley de Amnistía*, Amnesty Law (Decree Law 2191 of 18 April 1978), which was introduced during the military government of Augusto Pinochet and has protected the violations committed

[22] National Commission for Truth and Reconciliation, Rettig Report, Volume 1, Part 3, Chapter I, 2. List of cases f), pp. 292 and 293: "In the case of the training ship Esmeralda, the investigations conducted by this Commission found that a specialist unit of the Navy was installed on board in order to interrogate detainees who were on the ship and those who were brought from other naval detention centres. As a general rule, such interrogation included torture and ill-treatment".

[23] See: Chile: Torture and the Naval Training Ship, the "Esmeralda" (AI Index: AMR 22/006/2003), June 2003.

during that period and stood in the way of truth and justice. The truth and justice sought by the relatives of the "disappeared" has yet to be achieved.

It is internationally recognized that not only is the large-scale or systematic use of enforced disappearance a crime against humanity but also that enforced disappearance entails serious pain and suffering amounting to torture, both for the victim and for the relatives of the "disappeared", as long as the "disappearance" has not been explained. This consensus has been recognized by the United Nations Special Rapporteur on Torture, Sir Nigel S. Rodley[24]. Several United Nations bodies, including the Committee against Torture, as well as various bodies of the Organization of American States, have made their views known on this point[25]. In 1998, the European Court of Human Rights also reached the same conclusion when it ruled that the serious suffering and pain caused to the mother of a "disappeared" person as a result of an enforced disappearance violated article 3 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms[26].

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[24] See: *The Treatment of Prisoners under International Law*, Oxford, Clarendon Press, 20 ed., 1999, p. 261.

[25] In its Concluding Observations on Guatemala, the Committee against Torture expressed its concern about "e) The lack of an independent commission with wide powers and extensive resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains. Uncertainty about these circumstances causes the families of disappeared persons serious and continuous suffering" (Committee against Torture, Concluding observations concerning Guatemala, 06/12/2000, A/56/44**,** 25th session, 13-24 November 2000). The Human Rights Committee in the case of a woman who 'disappeared' in Uruguay: *Elena Quinteros Almeida vs. Uruguay* (Communication 107/1981, Views of the Human Rights Committee, 21 July 1983, para. 14, re-published in *Selected Decisions of the Human Rights Committee under the Optional Protocol*, 138 142 (1990)). Upon examining the periodic report submitted by Algeria, the Human Rights Committee concluded that "disappearances violate article 7 with regard to the relatives of the disappeared" (United Nations document CCPR/C/79/Add. 95, 18 August 1998, para.10). The United Nations Working Group on Enforced or Involuntary Disappearances raised the issue in a similar way when it said: "*[t[he very fact of being detained as a disappeared person, isolated from one's family for a long period is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture*" (Report of the United Nations Working Group on Enforced or Involuntary Disappearances, UN document E/CN.4/1983/14, para.131). The Inter-American Court of Human Rights has concluded that enforced disappearance violates article 5 of the American Convention on Human Rights: (*Velásquez Rodríguez* Case, Judgment of 29 July 1988, paras. 155-156). Inter-American Court of Human Rights: (*Godínez Cruz* Case*: Godínez Cruz versus Honduras*, Judgment, 20 January 1989, Series C, No. 5, para. 197). Inter-American Court of Human Rights: (*Blake* Case: *Blake versus Guatemala*, 24 January 1998, concerning "disappearances" in Guatemala, para. 97).

[26] See *Kurt versus Turkey*, Judgment, European Court of Human Rights, Case No. 15/1997/799/1002, 25 May 1998, para. 134.

Similarly, recognizing that enforced disappearance constitutes torture for the relatives of the "disappeared" person, article 1.2 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance (United Nations Declaration), adopted by the United Nations General Assembly in Resolution 47/133 of 18 December 1992, states that "[a]ny act of enforced disappearance […] inflicts severe suffering on [them and] their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment".

iv) Conditions of detention
Article 16. "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment […]".

An Amnesty International delegation which visited Chile in March 2003 found that conditions of detention, including the problem of overcrowding, continued to give cause for concern and that, in some prisons, they constituted cruel, inhuman or degrading treatment.

In the case of the former Santiago Sur Penitentiary, where over 5,300 detainees are held in facilities built for about 2,500, there was obvious severe overcrowding to the extent that, for example, about eight detainees were sleeping in a cell measuring 3 metres wide by 2.5 metres long and 2 metres high and cabins had been installed on the roof of the block. The sanitary facilities were inadequate and were not properly maintained. Some prisoners from block I [known as *Calle I*] had to sleep in the open air.

Prisoners are reportedly subjected to torture and ill-treatment. It seems to occur mainly in the context of prisoner transfers, reprisals or control measures taken to deal with prisoner actions such as strikes or riots, special security measures or disciplinary punishment. The treatment a guard metes out to a specific detainee is usually known as "*palo-terapia*", "stick-therapy". A lack of external oversight on the part of the prison authorities with regard to the system for granting prisoner benefits was also found. There also appeared to be no effective monitoring of prison conditions or the role of the prison authorities. Prisons tend to be run according to the questionable logic determined by the *Gendarmería*, Prison Guard, or through the use of occasional inspections, sometimes carried out by certain prisoners. The supervision exercised by the Ministry of Justice and other institutions responsible for prison-related matters are of a formal nature and any irregularities are usually only looked into by means of an internal monitoring mechanism. The reform of criminal procedure that was carried out did not include a judicial figure with the power to oversee matters relating to imprisonment. At present the national institutional framework does not include an ombudsman who could get involved in pushing for urgent substantial improvement in the monitoring of prison-related matters.

Non-governmental organizations working on prison issues and providing legal aid to detainees have expressed their concern about the lack of protection afforded to those

imprisoned for ordinary criminal offences. During the visit of the Amnesty International delegation, information confirming this concern was obtained. For example, prison directors are responsible for managing benefits. Benefits, such as the granting, suspension or cancelling of permission to leave the prison as part of social rehabilitation, do not necessarily depend on the report provided by the *Consejo Técnico*, Technical Council, who assess inmates applying for benefits. The director is not obliged to grant such benefits when a favourable report has been made. The information obtained indicates that the cases of inmates who met the necessary requirements to be granted benefits were not always considered by the Technical Council and were therefore not studied by the prison director.

For example, the Chilean media reported on a protest action held in April 2003 by ordinary prisoners held in various prisons throughout the country who were seeking legally-established benefits entitling those who had completed half their sentence to an annual three-month reduction in their overall sentence as well as a reduction in overcrowding. According to reports in the Chilean media, a group of over 20 prisoners in Colina II Prison cut themselves with sharp instruments in order to call attention to their situation.

III. Conclusion

Torture is a very serious violation of human rights which has been condemned by the international community as an offence against human dignity and is prohibited in all circumstances under international law.

On the basis of the complaints of torture it has received, Amnesty International believes that torture and ill-treatment can only be eradicated as a result of vigorous and decisive action on the part of the national and regional authorities and the judiciary. Amnesty International believes that it is vitally important that thorough independent investigations are conducted into such complaints, that the methods of investigation and conclusions are made public and that those responsible are brought to justice. The apparent inaction of the authorities in such circumstances gives the negative impression that such acts are tolerated and encourages their recurrence. The Chilean authorities must ensure that conditions of detention comply with international standards regarding the treatment of prisoners and that such conditions do not constitute cruel, inhuman or degrading treatment.

Amnesty International believes that, as a result of the human rights developments in international law and the reforms made to the Chilean legal framework over the past few years, especially since 1998, following the arrest of Augusto Pinochet in the United Kingdom, it should be possible for Chile to comply with its obligations under the Torture Convention. However, the absence of independent mechanisms for investigating reports of torture and ill-treatment carried out by the *Carabineros* and other sections of the security forces makes it unlikely that investigations will be thorough and conclusive. Amnesty International knows from experience that prohibiting torture by law is not enough. It is necessary to take immediate steps to bring about the eradication of torture and other cruel, inhuman or

degrading treatment or punishment. It is vital that there is the political will to enforce existing positive norms, to investigate reports of torture and ill-treatment, to make the results of such investigations public and to punish those responsible. Such measures will help to ensure that the Torture Convention, which holds a position of superiority in the hierarchy of laws regulating the Chilean State, is properly enforced.

APPENDIX I

COMMITTEE AGAINST TORTURE CAT/C/CR/32/5(FUTURE)
Thirty-second session
3 May – 21 May 2004 ORIGINAL: ENGLISH

UNEDITED VERSION

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) 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 the national criminal system;

b) the comprehensive reform of the Code of Criminal Procedure including changes aimed *inter alia* at improving the protection of detainees;

c) the establishment of the *Defensoría Penal Pública*, (Office of the Public Criminal Defender), and of the *Ministerio Público,* (Office of the Public Prosecutor);

d) the abolition of the provision of the arrest on suspicion without due cause;

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 can be made directly applicable by the Courts;

g) the establishment of a 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 permitted in court, and recognition by them of the serious problem of coercing confessions from women who seek life saving treatment in public hospitals after prohibited abortions;

i) confirmation that non-governmental organizations are allowed regularly to visit places of deprivation of liberty;

j) the declarations under articles 21 and 22 of the Convention, enabling other state parties (article 21) and individuals (article 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 the 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), Investigaciones Police (civil police forces) and 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 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 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 Investigaciones Police to the Ministry of Defence, resulting *inter alia* in continued and excessively broad competence of the military jurisdiction;

e) reports that some officials accused of torture-related crimes during the dictatorship have been appointed to high official positions;

f) the absence of internal legal provisions that expressly prohibit extradition, return, or expulsion when there are grounds for believing the person faces a real risk of torture in the requesting country, and the absence of internal provisions regulating 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 of their 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 far fewer persons registering than anticipated;

(ii) the lack of clarity as to forms of torture included in the Commission's purview;
(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 crimes (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 of detention in places of deprivation of liberty and reports of failure to systematically monitor conditions in 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 the right to protest against orders to commit any prohibited acts;

j) that, prior to initiating life-saving medical care to women suffering complications after prohibited abortions, public officials coerce confessions which are reportedly used subsequently in legal proceedings against the woman and/or third parties, in contradiction to the requirements 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 governmental efforts to establish a "dialogue table";

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 situation in the military falling within the areas of concern of the Convention;

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 to be free from torture and 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 Carabineros and the Investigaciones Police from the Ministry of Defence to the Ministry of 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 2.3 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 ten 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 faces a real personal risk of torture;

h) clarify, through legislation, the status of the Convention in domestic law to ensure that the provisions of the Convention are in force, or adopt specific legislation to enforce the Convention;

i) develop training programmes about the specific requirements of the Convention for judges and prosecutors as well as other law enforcement officials, including programmes on the prohibition of torture and ill-treatment both 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 programmes for medical specialists specifically teach about 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 the overcrowding in prisons and other places of detention; introduce a system of monitoring the conditions of detention, the treatment of inmates as well as inter-prisoner and sexual violence;

k) extend the term and mandate of the National Commission on Political imprisonment and Torture to enable victims of all forms of torture to file complaints, including but not limited to victims of sexual violence. 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 the 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 prohibited abortion; investigate and review convictions where such statements 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 such 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 in the whole country;

o) introduce safeguards by the time the reform of the criminal justice system is completed to protect persons experiencing possible retraumatization in connection with prosecution of cases such as child abuse, sexual abuse, etc.;

p) provide updated information on the status of prosecution of past crimes involving torture, including the cases known as the "Caravan of Death", "Operación Condor" 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 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 paragraphs 7, subparagraphs (k), (m) and (q) above;

9. The Committee, considering that Chile has provided information concerning the implementation of the Convention during the period covered by the third and fourth periodic reports, recommends that the State party submit its 5th periodic report by 29 October 2005.

APPENDIX II

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 11 (a) of the provisional agenda

E/CN.4/56/Add.3
13 February 2004

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Torture and other cruel, inhuman or degrading treatment or punishment

Report of the Special Rapporteur, Theo van Boven

Addendum

Follow-up to the recommendations made by the Special Rapporteur

CHILE

Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a Chile en agosto de 1995 (E/CN.4/1996/35/Add.2, párr. 176)

101. Por carta con fecha de 15 de julio de 2003, el Relator Especial solicitó al Gobierno información sobre el seguimiento dado a las recomendaciones hechas tras la visita al país realizada en 1995. Información sobre esta materia previamente proporcionada por el Gobierno ya fue reflejada en el informe del Relator Especial (E/CN.4/2000/9/Add.1, párrs. 2 a 19). Los comentarios del Gobierno sobre dicha visita pueden encontrarse en el informe del Relator Especial (E/CN.4/1997/7, párrs. 44 a 53). Por carta con fecha de 10 de septiembre de 2003, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

102. La recomendación *a*) dice: **La policía uniformada (carabineros) deberá quedar sometida a la autoridad, no ya del Ministro de Defensa, sino del Ministro del Interior. Los carabineros**

deberán quedar sometidos a la jurisdicción penal ordinaria únicamente, y no a la jurisdicción militar. En tanto el Código Penal Militar siga aplicándose a la policía uniformada, no cabría considerar en ningún caso que los actos de violaciones penales de los derechos humanos, incluida la tortura de civiles, constituyen "actos cometidos en el desempeño de las funciones" (acto de servicio) y deberían ser examinados exclusivamente por tribunales ordinarios.

103. El Gobierno informó de que en el mes de noviembre de 2001 el poder ejecutivo envió al Congreso Nacional un proyecto de reforma constitucional que cambia la dependencia de los Carabineros y de la Policía de Investigaciones del Ministerio de Defensa al Ministerio del Interior.

104. El Gobierno también informó de que en la Propuesta del Presidente Ricardo Lagos en materia de derechos humanos denominada "No hay mañana sin ayer" y presentada el 12 de agosto de 2003, y en particular en su capítulo "Fortalecer la sociedad y sus instituciones para que esto no vuelva a ocurrir", se consideran proyectos de ley destinados a reformar la Constitución para someter los Tribunales Militares en tiempo de Guerra a la Superintendencia de la Corte Suprema y a reducir la competencia de estos Tribunales, estableciendo que "debe corresponder a la justicia ordinaria el conocimiento y juzgamiento de cualquier clase de delitos cometidos por civiles, delitos comunes de militares y delitos comunes con la coparticipación de civiles y militares".

105. La recomendación *b*) dice: **Toda detención que prevea la denegación de acceso al mundo exterior (abogado, familia, médico), tanto si es practicada por la policía o se lleva a cabo con arreglo a un mandamiento de un juez, no debería exceder de 24 horas e, incluso en los casos graves en que exista un temor de colusión bien fundado que sea perjudicial para la investigación, el plazo máximo de dicha detención no debería exceder de 48 horas.**

106. El Gobierno informó de que el nuevo Código Procesal Penal, promulgado como Ley de la República el 12 de octubre de 2000, contiene cambios sustanciales para garantizar la protección del detenido, que inciden en el derecho a no ser torturado. En particular, la disminución del plazo de detención policial a un máximo de 24 horas. A petición fiscal y para el éxito de la investigación, el tribunal puede prohibir las comunicaciones del detenido o preso hasta un máximo de 10 días, pero ello no impedirá el acceso del imputado a su abogado, a la atención médica y al tribunal.

107. La recomendación *c*) dice: **Los jueces no deberían estar facultados para ordenar la reclusión en celdas solitarias, salvo como medida especial en los casos de violación de la disciplina institucional, durante un plazo superior a dos días. En espera de que se modifique la ley, los jueces deberían abstenerse de recurrir a una autoridad que pueda equivaler a una orden de infligir tratos crueles, inhumanos o degradantes.**

108. La recomendación *d*) dice: **Deberá facilitarse a todos los detenidos, inmediatamente después de su detención, información sobre sus derechos y sobre el modo de utilizar esos derechos.**

109. El Gobierno informó de que, de acuerdo con recientes reformas legales, al momento de la detención el funcionario público tiene la obligación de informar verbalmente al aprehendido de la razón de su privación de libertad y los derechos que tiene y que deberán estar consignados en todo recinto de detención policial. Asimismo, el encargado del primer lugar de detención al que sea conducido el detenido tiene la obligación de practicar la misma información. Existe igualmente la obligación de

exhibir en un lugar claramente visible de todo recinto de detención, un cartel destacado con los derechos del detenido, cuyos texto y formato fueron fijados por Decreto supremo del Ministerio de Justicia, conteniendo los siguientes derechos: 1) a ser informado de sus derechos y del motivo de su detención; 2) a guardar silencio, para no culparse; 3) a ser llevado inmediatamente a un lugar público de detención; 4) a que, en su presencia, se informe a un familiar, o a la persona que indique, de que ha sido detenido, el motivo de la detención y el lugar donde se encuentra; 5) a no ser sometido a torturas o a tratos crueles, inhumanos o degradantes; 6) a solicitar la presencia de su abogado, para hablar con él; 7) a recibir visitas, si no se encuentra incomunicado por orden judicial; 8) a defenderse jurídicamente por medio de un abogado; 9) a ser puesto a disposición del Tribunal; y 10) a tener, a su costo, las comodidades compatibles con el régimen del establecimiento de detención.

110. El Gobierno indicó que la mencionada reforma establece los efectos que del incumplimiento de estos deberes derivan para los funcionarios responsables de la detención y para el procedimiento judicial respectivo, ya que el juez tendrá por no prestadas las declaraciones hechas por el detenido ante los aprehensores que infringen los deberes señalados y enviará los antecedentes a la unidad policial competente para la aplicación de las sanciones disciplinarias correspondientes.

111. La recomendación *e*) dice: **Debe garantizarse plenamente el derecho de los detenidos a comunicar sin demora y con toda confidencialidad con su abogado defensor. A este respecto, la legislación interna debe tener en cuenta lo dispuesto en el Principio 18 del Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión, así como el párrafo 8 de los Principios Básicos relativo a la función de los abogados.**

112. La recomendación *f*) dice: **Todos los detenidos deben tener acceso a un pronto examen médico a cargo de un médico independiente. A este respecto, la legislación vigente debe cuando menos adaptarse a los Principios 24 a 26 del referido Conjunto de Principios.**

113. La recomendación *g*) dice**: Debe registrarse debidamente la identidad de los funcionarios que lleven a cabo la detención y los interrogatorios. Los detenidos y sus abogados, así como los jueces, deberían tener acceso a esa información.**

114. La recomendación *h*) dice: **Debe prohibirse terminantemente la práctica consistente en vendar la vista a los detenidos que se encuentren bajo custodia de la policía.**

115. La recomendación *i*) dice: **Debe examinarse seriamente la posibilidad de registrar en vídeo los interrogatorios y de hacer confesiones o declaraciones formales, tanto para proteger a los detenidos de todo abuso como para proteger a la policía de las denuncias infundadas acerca de un comportamiento indebido.**

116. La recomendación *j*) dice: **Se debe impedir que las personas que supuestamente hayan cometido actos de tortura desempeñen funciones oficiales durante la investigación.**

117. La recomendación *k*) dice: **La carga de la prueba de que una persona fue sometida a tortura no debe recaer enteramente en la presunta víctima. Los funcionarios de que se trate o sus superiores también deberían estar obligados a aportar pruebas en contrario.**

118. La recomendación *l*) dice: **Los jueces deben aprovechar plenamente las posibilidades que brinda la ley en cuanto al procedimiento de hábeas corpus (procedimiento de amparo). En**

particular, deben tratar de entrevistarse con los detenidos y verificar su condición física. La negligencia de los jueces con respecto a esta cuestión debería ser objeto de sanciones disciplinarias.

119. El Gobierno informó de que a partir de marzo de 1990 se ha ejercido sin alteraciones el control de la legalidad de las detenciones mediante la regular tramitación del recurso de amparo (hábeas corpus) por los tribunales. La actitud de estos últimos ha cambiado en el sentido de reconocer reiteradamente en sus fallos los derechos otorgados por el ordenamiento constitucional y legal a las personas detenidas, aplicando las normas destinadas a proteger al detenido y a prevenir la tortura.

120. La recomendación *m*) dice: **Las disposiciones relativas a la detención por sospecha deberían ser modificadas con el fin de asegurar que tal detención sólo tiene lugar en circunstancias estrictamente controladas y de conformidad con las normas nacionales e internacionales que garantizan el derecho a la libertad de la persona. Los detenidos por sospecha deberían estar separados de otros detenidos y tener la posibilidad de comunicar inmediatamente con los familiares y los abogados.**

121. El Gobierno informó de que con las reformas legales se ha eliminado la detención por sospecha que autorizaba a la policía a detener "al que anduviere con disfraz o de otra manera que dificulte o disimule su verdadera identidad y rehusare darla a conocer" y "al que se encontrare a deshora o en lugares o en circunstancias que presten motivo fundado para atribuirle malos designios, si las explicaciones que diere de su conducta no desvanecieren sospechas". Al respecto se hicieron los siguientes cambios al Código de Procedimiento Penal: se derogó el artículo que otorgaba facultades a la policía para detener en los casos transcritos anteriormente; se agregó la facultad de la policía de controlar la identidad personal en casos fundados, que puede acreditarse por cualquier medio, y si ésta no se puede acreditar, la persona es conducida a una unidad policial donde, previa citación al tribunal competente y comprobación de domicilio o rendición de fianza de comparecencia, es dejada en libertad; se estableció que el encargado del recinto policial al que es conducida una persona a la que se le imputa la comisión de un delito flagrante sancionado con penas menores debe dejarla en libertad previa citación al tribunal, a la primera audiencia inmediata, si acredita domicilio o rinde fianza.

122. La recomendación *n*) dice: **Debe prestarse gran atención a la recomendación del Comité contra la Tortura acerca de la conveniencia de tener especialmente en cuenta los delitos de tortura, según se señala en el artículo 1 de la Convención, y de castigar ese delito con una pena que esté en consonancia con la gravedad del delito cometido. Los plazos de prescripción también deberían reflejar la gravedad del delito.**

123. El Gobierno informó de que mediante la Ley N^{o} 19567, se han adoptado las siguientes modificaciones del Código Penal: el artículo 150 del Código Penal mantiene sanciones que van de 61 días a 5 años de presidio o reclusión para quienes decreten o prolonguen indebidamente la incomunicación de una persona privada de libertad, usen con ella rigor innecesario, o la hagan detener arbitrariamente en otros lugares que los establecidos par la ley; se agrega a este texto legal el artículo 150 A, que sanciona específicamente el delito de tortura estableciendo penas relevantes para los empleados públicos que la apliquen mediante daños físicos o mentales, en los términos que se indican a continuación: *a*) con penas que fluctúan entre 541 días y 5 años de presidio o reclusión al empleado público que aplique a una persona privada de libertad tormentos o apremios ilegítimos, físicos o mentales o que ordenare o consintiere su aplicación (inciso primero); *b*) con las mismas penas

disminuidas en un grado al empleado público que conociendo la ocurrencia de las conductas anteriormente señaladas, no las impide o hace cesar, teniendo facultad o autoridad para ello (inciso segundo); *c*) con penas agravadas que fluctúan entre 3 y 10 años de presidio o reclusión al empleado público que mediante las conductas anteriormente descritas compele al ofendido o a un tercero a efectuar una confesión, prestar algún tipo de declaración o entregar información (inciso tercero); *d*) penas agravadas que fluctúan entre 5 y 15 años de presidio o reclusión al empleado público que provoque lesiones graves o la muerte a una persona privada de libertad, como resultado de la realización de las conductas anteriormente descritas, si este resultado es imputable a negligencia o imprudencia del empleado público (inciso cuarto). Se agrega también al Código Penal el artículo 156 B, que sanciona con penas que fluctúan entre 61 días y 3 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen los delitos sancionados en los artículos 150 y 150 A, inciso primero; con penas que fluctúan entre 541 días y 5 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen el delito sancionado en el artículo 156 A, inciso segundo; con penas que fluctúan entre 3 años y un día y 16 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen el delito sancionado en el último inciso del artículo 150 A.

124. El Gobierno indicó que todas las penas señaladas se aplican al respectivo actor de cada uno de los ilícitos mencionados en el caso de delito consumado. De acuerdo a las disposiciones generales del Código Penal, también es posible sancionar la tentativa de cometer un delito de tortura así como la participación en el mismo como cómplices y encubridores. En tales casos y por regla general, la pena se disminuye en uno o dos grados (artículos 50 a 54 del Código Penal).

125. La recomendación *o*) dice: **Es necesario adoptar medidas a fin de reconocer la competencia del Comité por lo que respecta a las circunstancias señaladas en los artículos 21 y 22 de la Convención.**

126. La recomendación *p*) dice: **Deben adoptarse medidas para asegurar que las víctimas de la tortura reciban una indemnización adecuada.**

127. El Gobierno indicó que en la Propuesta presidencial previamente mencionada, se dan a conocer medidas tales como la regulación por ley de los beneficios médicos que actualmente proporciona a las víctimas de la tortura y otras personas el Programa de atención integral de salud (PRAIS). Estos beneficios médicos consisten en la gratuidad de las prestaciones médicas para las víctimas directas (y para los familiares que señala la Propuesta) de eventos represivos traumáticos acaecidos entre el 1º de septiembre de 1973 y el 10 de marzo de 1990. Otra medida consiste en la creación de una comisión que elaborará una lista de personas que hayan sufrido privación de libertad y tortura por razones políticas y que extenderá un certificado que acredite tal calidad para recibir "una indemnización austera y simbólica" que determinará el Ejecutivo. En el futuro próximo será dada a conocer por el Gobierno la composición de la comisión señalada y el procedimiento para identificar a las víctimas de la tortura, así como el contenido de los proyectos de ley necesarios para implementar la propuesta que serán enviados al Congreso para su tramitación.

128. La recomendación *q*) dice: **El Programa de reparación y atención integral en salud para los afectados por violaciones de los derechos humanos (PRAIS) debe ser reforzado para poder prestar asistencia a las víctimas de las torturas practicadas bajo los gobiernos militares o civiles en todos los aspectos de su rehabilitación, incluida la rehabilitación profesional.**

129. Véase la información relacionada con la recomendación *p*).

130. La recomendación *r*) dice: **Las organizaciones no gubernamentales (ONG) del país también desempeñan, y han desempeñado en el pasado, un papel importante en la rehabilitación de las víctimas de la tortura. Siempre que lo soliciten, deberá prestarse a esas organizaciones apoyo oficial para llevar a cabo sus actividades al respecto. Por otra parte, se insta al Gobierno a que examine la posibilidad de incrementar su contribución al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura, el cual ha financiado a lo largo de los años los programas de varias ONG en Chile.**

131. La recomendación *s*) dice: **El Gobierno y el Congreso deberán prestar especial atención, como cuestión prioritaria, a las propuestas (algunas de las cuales están sometidas actualmente al Congreso) encaminadas a reformar el Código de Enjuiciamiento Criminal. En particular, debe encargarse a un servicio de enjuiciamiento independiente del Gobierno (Ministerio Público) la tramitación de las causas con miras a la adopción de la correspondiente decisión judicial. Hay que establecer condiciones de igualdad entre el Ministerio Público y la defensa.**

132. El Gobierno informó de que el proyecto de ley relativo a este Código de Procedimiento Penal fue enviado al Congreso Nacional el 9 de junio de 1995 y promulgado como Ley de la República el 12 de octubre de 2000. Sus normas se han ido aplicando progresivamente en las distintas regiones del país. En el año 2004 tendrá vigencia en todo el territorio nacional. La reforma procesal penal es un conjunto normativo que además del Código Procesal Penal está constituida por: la reforma constitucional que creó el Ministerio Publico (Ley N° 19519, vigente desde el 16 de septiembre de 1997); la Ley Orgánica Constitucional del Ministerio Publico (N° 19640, vigente desde el 15 de octubre de 1999); modificaciones al Código Orgánico de Tribunales, que establecen los jueces de garantías o de control de la instrucción y el Tribunal Oral (Ley N° 19665, vigente desde el 9 de marzo de 2000); la Defensoría Penal Pública (Ley N° 19718, de 10 de marzo de 2001); y otras normas que adaptan diversas leyes al nuevo sistema procesal penal.

133. El nuevo procedimiento procesal penal se realiza a través de un juicio oral, público y contradictorio a cargo de un Tribunal Colegiado que aprecia la prueba y dicta sentencia, y mediante investigaciones realizadas por un fiscal del Ministerio Público con la colaboración de los agentes policiales. El juez liberado de llevar adelante la investigación podrá dedicarse a encauzarla dentro de los marcos legales y a velar por los derechos de los involucrados. Este sistema otorga amplias facultades al Ministerio Público durante la instrucción de la causa, que tienen como límite los derechos individuales de la persona, los cuales se encuentran protegidos por la intervención judicial si son vulnerados.

134. Este nuevo Código contiene cambios sustanciales para garantizar la protección del detenido, que inciden en el derecho a no ser torturado.

135. La recomendación *t*) dice: **El Gobierno debe considerar la posibilidad de someter al Congreso propuestas acerca del establecimiento de una institución nacional para la promoción y protección de los derechos humanos. Cuando se proceda a la elaboración del correspondiente proyecto de ley, es preciso prestar atención a los principios referentes a la condición jurídica de las instituciones nacionales establecidas por la Comisión de Derechos Humanos por su resolución 1992/54, de 3 de marzo de 1992, y aprobadas por la Asamblea General.**

136. La recomendación *u*) dice: **Todas las denuncias de torturas practicadas desde septiembre de 1973 deberían ser objeto de una investigación pública exhaustiva, similar a la realizada por la Comisión Nacional de Verdad y Reconciliación respecto de las desapariciones forzadas y las ejecuciones extrajudiciales. Cuando las pruebas lo justifiquen -y, dado el período de tiempo transcurrido desde las peores prácticas del gobierno militar, ello sería sin duda raro-, los responsables deberían comparecer ante la justicia, salvo en los casos en que los delitos hayan prescrito (prescripción).**