



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

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COMMITTEE AGAINST TORTURE

**WRITTEN REPLIES BY THE GOVERNMENT OF CHILE* TO THE
LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE
CONSIDERATION OF THE FIFTH PERIODIC REPORT OF CHILE
(CAT/C/CHL/5)**

[16 March 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Article 1

Paragraph 1. *According to reports, the definition of torture given in Chilean legislation does not completely match the definition given in article 1 of the Convention, chiefly because the legislation limits potential victims of torture to persons deprived of their liberty, and because a 10-year statute of limitations still applies [...]. Please clarify whether attempted torture is an offence under current domestic legislation.*

1. Paragraphs 51 to 53 of the third and fourth periodic reports of Chile (CAT/C/39/Add.5) and paragraphs 79 and 80 of the fifth periodic report (CAT/C/CHL/5) set forth in detail the elements defining this offence in Chilean law. The Chilean Criminal Code covers the offence of torture under the designation “unlawful physical or mental coercion”. The legal provisions covering this offence are based on the idea of prosecuting and punishing the use of violence as a means of breaking the victim’s will. Articles 150 A and 150 B provide for various possible situations of unlawful coercion in which the perpetrator of the offence is either a public official (art. 150 A) or a private individual (art. 150 B).

2. With regard to the Committee’s comment that the definition of torture does not match the definition given in article 1 of the Convention insofar as “ it limits potential victims of torture to persons deprived of their liberty”, it is understood that, for there to be a punishable offence of torture, the victim must necessarily be deprived of their liberty; this would provide the basic premise of coercion applied to a passive subject, the second being the intention to inflict pain, either with no specific objective, as in the basic example given in article 150 A, or with the aim of extracting a confession or information, as in article 150 A (c).

3. However, even though effective deprivation of liberty is a criterion of this offence, Chilean law does not say whether that deprivation of liberty must be legal or may be unlawful, which means that even in the latter case the law would still be consistent with the provisions of article 1 of the Convention, since the victim of torture would not have the freedom to act.

4. As regards the Committee’s comment that “a 10-year statute of limitations still applies to acts of torture”, the offence is established in the Chilean Criminal Code and is thus subject to the rules on prescriptibility set forth in that Code. The Government is, however, taking steps to make the offence of torture subject to the special rules applicable in the jurisdiction of the International Criminal Court.

5. As to attempted torture, the offence of unlawful coercion is subject to the general rules of the Criminal Code and specifically article 7. The term “attempted” may apply to any of the offences covered by the Criminal Code, including torture.

Article 2

Paragraph 2. *Please indicate whether a national record is kept of information from domestic courts concerning cases of torture and ill-treatment that have occurred in the State party.*

6. The Public Prosecutor's Office has a modern data processing system, the Prosecution Support System, where all relevant data on complaints and criminal prosecutions coming into the Public Prosecutor's Office are stored, whether they are brought by the police (Carabineros; criminal investigation police), by the victim or by the courts. Using this data handling system it is possible to check the background to an offence, the parties involved and the investigations or procedures carried out in the case. In terms of the offence of torture specifically, the Public Prosecutor's Office now has a comprehensive record showing victims, suspects, witnesses, the date when the torture occurred, a detailed description of the events, investigations conducted by prosecutors, court rulings and sentences, among other things.

7. Without prejudice to the above, the judiciary also has a system for registering court cases, to which all Chile's judges have access and which is maintained by the judiciary administration.

Paragraph 3 (a). [Please indicate] when and by whom a detainee's personal details are recorded, who has access to the record and how long it takes to bring the detainee before a judge.

8. The Code of Criminal Procedure sets clear rules as to who may make an arrest, what the detainee's rights are and the procedure and deadlines for bringing a detainee before the competent judicial authority, in this case the guarantee judge.

9. A person may be arrested under the following circumstances: following an identity check, being caught in flagrante delicto or by court order. In all three instances the record is established by a police officer, i.e., a member of the carabineros or the criminal investigation police.

10. If the person is brought before the court, the police must hand them over to the Prison Service, which will check and record their physical integrity and ensure that they do not take any prohibited items into court.

11. Where the person is a suspect in pretrial detention or a convicted criminal serving a custodial sentence, the Prison Service is responsible for bringing the prisoner before the court, having duly registered them.

12. Body searches and searches of the detainee's clothing or other effects are carried out at all times with due respect for the person's sex and dignity.

13. As to access to the register of persons detained, the following applies:

(a) Following an identity check where the individual is found to be in possession of an item prohibited by law, the person may be held for flagrante delicto, in which case the record is placed in the prosecution file for the information of the defender or the judge at the hearing. The contents of the prosecution file may not be disclosed to third parties unconnected with the case;

(b) The same applies in cases of arrest for flagrante delicto or by court order, i.e., the record is placed in the prosecution's investigation file and the defence and the judge have access to that record at the hearing.

14. The maximum time a person may be held in police custody before being brought before the court is 24 hours from the time of arrest. The short deadline makes it possible for the guarantee judge to promptly verify the circumstances, legality and conduct of the detention procedure. Where an arrest is made for flagrante delicto, the police officer must inform the Public Prosecutor's Office within 12 hours, but the Public Prosecutor's Office may annul the arrest or order the detainee to be brought before the judge within 24 hours from the time of arrest.

Paragraph 4. *Please indicate whether the initiative to set up a national human rights institute has been approved by Congress, and whether the institute will conform to the Paris Principles.*

15. The bill to establish a national human rights institute is currently in the third stage of consideration in Congress. It has been before the Joint House of Deputies/Senate Commission since July 2008. The Government is working on the bill in the hope an agreement can be reached that will make it possible to adopt it at the final stage; the draft complies with the Paris Principles, notably in the matter of autonomy, representativity and powers.

Paragraph 5. *[Please indicate] whether the [Optional Protocol to the Convention against Torture] has been ratified so as to ensure its prompt entry into force.*

16. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was promulgated by the Government on 14 February 2009¹ and entered into force for Chile on 11 January 2009.

¹ Supreme Decree No. 340 promulgating the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Santiago, 18 December 2008.

Pursuant to: articles 32, paragraph 15, and 54, paragraph 1, of the Constitution of the Republic.

Whereas: the General Assembly of the United Nations Organization adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 December 2002 in New York; said Optional Protocol was ratified by the National Congress, as shown in House of Deputies memorandum No. 7699 of 15 September 2008. No. 39288, Saturday 14 February 2009 (2619), page 7; on 12 December 2008 the instrument of ratification of the Optional Protocol was deposited with the Secretary-General of the United Nations and consequently the Optional Protocol shall enter into force for Chile on 11 January 2009. Decree: Sole article: The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 in New York by the United Nations General Assembly, shall be promulgated; hereby approved; authorized copy of the text to be published in the Official Gazette.

Paragraph 6. *Please supply more detailed information on the recent establishment of the National Commission on Political Prisoners and Torture ...*

17. This information has already been given in paragraphs 12 to 14, 70 to 73 and 124 to 143 of Chile's fifth periodic report, and in the report issued by the National Commission on Political Prisoners and Torture, a copy of which was transmitted to the Committee as an annex to Chile's report.

18. To summarize: this body was established at the initiative of former President Ricardo Lago Escobar on 11 November 2003² and began work on that date; its mandate was to identify all those subjected to deprivation of liberty and torture for political reasons between 11 September 1973 and 10 March 1990; its mandate did not cover deprivation of liberty or torture for political reasons where these resulted in or directly caused the victim's death, since such acts were explicitly covered by the decree establishing the Truth and Reconciliation Commission (Rettig Commission) in 1990; it issued an extensive report containing statements from 35,868 people resident in Chile and abroad, 28,459 of which were deemed admissible, i.e., the Commission came to the "moral conviction" that they had been detained for political reasons, regardless of the duration of their deprivation of liberty; on completing its work it proposed to the President of the Republic the conditions, characteristics, forms and modes of reparation of a restrained and symbolic nature that could be granted to persons acknowledged to have been political prisoners or torture victims who had not previously received any reparation on those grounds.

Paragraph 7. *Please indicate whether a Ministry of Public Security has yet been established to oversee the operations of the carabineros and the criminal investigation police.*

19. The bill establishing the Ministry of Public Security has been approved by the Senate. In order to expedite the legislative procedure the Government decided to place it in the "most urgent" category, which speeds up the remaining stages in the House of Deputies; the bill should be enacted this year.

Paragraph 8. *Please indicate the current status of the bill before Congress to repeal Amnesty Decree-Law No. 2,191, and whether the State party has considered declaring the law unconstitutional or repealing it as contrary to international law. Is there any intention to declare the Amnesty Decree-Law inapplicable?*

20. With regard to the Amnesty Decree-Law and the imprescriptibility of crimes against humanity, a group of members of Parliament have submitted a new bill to the Senate. The proposal was approved in general terms by the Senate Committee on the Constitution in December 2008 and is now awaiting debate in the Senate plenary. The purpose of the proposal is to give an interpretation of article 93 of the Criminal Code that will preclude the application of grounds for extinction of criminal liability through amnesty, pardon or the statute of limitations, to crimes and ordinary offences constituting genocide, crimes against humanity and war crimes, as defined in the international treaties ratified by Chile and currently in force.

² Supreme Decree (Interior) No. 1040, Official Gazette, 11 November 2003.

21. In addition, a group of senators from opposition and Government parties have submitted a bill to criminalize in Chilean law the criminal acts established in the Rome Statute of the International Criminal Court, i.e., genocide, crimes against humanity and war crimes. The bill has the support of the Government and all parliamentary groups in the Senate.

Paragraph 9. Please provide more detailed information on the establishment in January 2006 of a working group comprising representatives of the ministries of justice, defence and foreign relations to discuss [reform of] military justice Please also supply information on the thrust of the proposed bill on military justice reform and procedure.

22. The reform of military justice has been entrusted to a commission comprising four ministries (Interior, Justice, Defence and Foreign Relations), the Armed Forces and the forces of law and order and security. Together, its members have been working on a preliminary proposal for a complete overhaul of the system that will address its basic constitution, redefine military offences and bring the rules of procedure into line with due-process standards. A key aspect of the new legislation is the curtailment of the jurisdiction of military courts, which will be limited to strictly military offences committed by uniformed personnel. The hope is to release a preliminary draft to civil society during the first half of 2009 and to put it before Congress during the second half of the year.

Article 4

Paragraph 11. Please indicate the current status of the bill to render statutory limitations inapplicable to crimes against humanity.

23. The bill is now in the first stage in the Senate.

Paragraph 12. Please indicate whether the Convention has been invoked directly before the domestic courts. If so, please provide examples.

24. The Convention has been invoked directly before the domestic courts in numerous proceedings for torture and other offences brought by survivors of political imprisonment and torture under the military regime.

25. The Convention has also been cited in the following court rulings and in proceedings for torture: trials for torture conducted by Judge Alejandro Solís, who issued indictments in case No. 2182-98 (Villa Grimaldi - torture) and case No. 2182-98 (Tejas Verdes - principal file), for torture and other offences against survivors of the Tejas Verdes detention camp. Judge Alejandro Solís Muñoz also cites the Convention in the application for the lifting of immunity for Augusto Pinochet Ugarte in respect of offences of torture committed at the Villa Grimaldi.

26. The Convention against Torture was also the legal basis for the conviction handed down by inspecting judge Víctor Stenger in case No. 01-2003 in Linares Court No. 1. This ruling, dated 16 November 2006, was upheld by the Talca Appeal Court on 9 October 2008 and both rulings are now final, the appeals in cassation submitted by the defence having been rejected as time-barred in January 2009. This was the first enforceable sentence handed down for torture in respect of the victims of political imprisonment and torture during the military dictatorship.

27. The Convention has also been invoked in the following cases:

(a) Criminal complaint for abduction, torture and other offences committed at the Air War Academy: case No. 1058-2001, conducted by jurisdictional judge Juan Eduardo Fuentes Belmar and currently in cassation proceedings against the conviction;

(b) Joindered complaints brought by survivors of the Londres 38 detention centre: case No. 218, conducted by jurisdictional judge Alejandro Solís;

(c) Abduction, torture and other offences against Ms. Guacolda Rojas Pizarro at Villa Grimaldi: case No. 8079-2005, conducted by jurisdictional judge Carlos Gajardo Galdames, currently at the investigation stage;

(d) Abduction, torture and other offences against Ms. Beatriz Bataszew Contreras at the so-called Venda Sexy centre: case No. 37,914-2004, conducted by jurisdictional judge Carlos Gajardo Galdames;

(e) Torture and other offences against Mr. Juan Miguel Molina Manzor: case No. 11,061, conducted by jurisdictional judge Carlos Gajardo Galdames;

(f) Torture and other offences against former political prisoners in Temuco (José Ponce Martínez and others): case No. 113,051 conducted by special inspecting judge Fernando Carreño.

Articles 6 and 7

Paragraph 13. Please state what roles the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture play in the identification of those responsible for extrajudicial killings, forced disappearances and torture.

28. The Truth and Reconciliation Commission³ had three basic objectives: (a) to draw up the fullest possible picture of serious human rights violations committed between 11 September 1973 and 10 March 1990, and the background and circumstances; (b) to gather information that would help identify victims and determine their fate or whereabouts; (c) to recommend whatever measures of reparation it considered just; and (d) to recommend whatever legal and administrative measures it considered should be adopted to prevent any recurrence of such serious human rights violations.

29. In view of the short time given to the Commission to complete its work, the Decree establishing it also determined that the most serious human rights violations would be defined to cover disappearances of detainees, executions, and torture resulting in death, committed by agents of the State or persons in the service of the State, and abductions and attempted killings by private individuals for political reasons.

³ Established by Supreme Decree No. 355 of 25 April 1990.

30. The Decree also provided that if, as the Commission went about its work, it obtained information on acts constituting criminal offences, it should take no further action but refer them to the competent court. Thus it was not one of the Commission's tasks to identify the perpetrators of extrajudicial executions or forced disappearances: that power lies with the courts of justice and is exercised in accordance with due process.

31. The Truth and Reconciliation Commission ceased to exist in legal terms in February 1991. Thereafter, from 8 February 1992 to 31 December 1996, the National Compensation and Reconciliation Board exercised similar functions and powers, settling cases that had not been dealt with by the Commission and reviewing cases not recognized by the Commission if new information had come to light.

32. In 1997 the Programme of Follow-up to Act No. 19123, or the Ministry of the Interior Human Rights Programme,⁴ was established, and since then has acted as a party concerned or intervener in judicial proceedings to determine the whereabouts of missing detainees or of individuals whose remains have not been located even though they are legally certified dead, or to establish the circumstances of their disappearance or death.

33. In addition, the National Commission on Political Prisoners and Torture⁵ was established in 2003 solely to identify persons subjected to deprivation of liberty and torture for political reasons by agents of the State or persons in the service of the State, during the period from 11 September 1973 to 10 March 1990.

34. The Decree establishing the Commission stipulates that it cannot pass judgement, and therefore cannot rule on individual liability under the law for acts that come to its attention. In this regard article 15 of the Act on benefits to persons identified by the Commission⁶ stipulates that "the documents, testimony and information provided by victims to the National Commission on Political Prisoners and Torture are classified secret information ... They shall remain so classified for 50 years During the period of classification established in this article no individual, group, authority or court shall have access" to that information. The Commission ceased to operate on 30 November 2004.

Paragraph 14. Please report on the progress of judicial proceedings against [carabineros and prison officers]

Carabineros (police)

35. As indicated in paragraph 177 of the fifth periodic report of Chile, of the 138 complaints against police officers, 4 were lodged with the courts. The current status of proceedings in these cases is as follows:

⁴ Established by Supreme Decree No. 1005 of 25 April 1997.

⁵ Established by Supreme Decree No. 1040 of 11 November 2003.

⁶ Act No. 19992, Official Gazette, 24 December 2004.

(a) Case No. 231-2005, brought in the Second Military Prosecutor's Office, Concepción, against a sergeant second-class attached to police station No. 2 in Lebu (Arauco prefecture), for an alleged offence of employing unnecessary violence. This case was dismissed. Administrative sanction: the sergeant was disciplined with four days' arrest with duties for transferring a man who had contravened the Alcohol Act to the police station without first having his injuries, which were visible, registered at a hospital; as a result the sergeant was accused of having caused them;

(b) Case No. 434-2005, brought in the Osorno Military Prosecutor's Office for an alleged offence of employing unnecessary violence and failing to comply with military duty, in which a corporal first-class was sentenced to three years and a day's ordinary imprisonment (maximum range); the trial court sentence is currently being appealed before the Military Appeal Court. Administrative sanction: the carabinero was separated from the force for misconduct;

(c) Case No. 55-2005, brought on 23 July 2005 in the Second Military Prosecutor's Office, Santiago, against a policeman with the rank of carabinero, for an alleged offence of employing unnecessary violence; the charge was dismissed by the Military Appeal Court on 7 December 2007. Administrative sanction: the accused was disciplined with four days' arrest with duties for failing to comply with detention procedures;

(d) Case No. 1619-2005, brought in the Rancagua Military Prosecutor's Office for an alleged offence of employing unnecessary violence leading to minor injuries, against a corporal first-class who was acquitted by the trial court. Administrative sanction: the corporal was disciplined with 20 days' arrest with duties for brawling while on duty with a person who came to request a procedure, as a result of which both parties sustained minor injuries.

Prison Service

36. According to information from the Prison Service personnel database, 19 court proceedings have been taken against prison officials for unlawful coercion, bodily harm and ill-treatment of private individuals. Six of these cases are pending; a conditional stay of proceedings has been granted in three cases; seven cases resulted in acquittals; and three in convictions.

Paragraph 15. Please inform the Committee whether the State party has taken steps to end court-authorized detention incommunicado which can last for up to 10 days.

37. The Constitution guarantees everyone personal freedom and individual security.⁷ This means that no one may be arrested or detained, or held in preventive arrest or prison, in places other than their home or public premises established for that purpose. Prison officials may not admit anyone who has been arrested or detained, or who is awaiting trial or has been sentenced

⁷ Art. 19, para. 7.

to prison, without recording the appropriate order, issued by a legally competent authority, in a public register. No “... incommunication order may prevent the official in charge of the place of detention from visiting any individual under arrest or in detention, subject to trial proceedings or sentenced to prison, held in such place of detention”.

38. In order to guarantee this important right to personal freedom and individual security and given that it has a bearing on “incommunicado detention of an individual in criminal matters”, the new Code of Criminal Procedure lists among the rights of defendants deprived of liberty that they are always entitled to “receive visitors and communicate in writing or in any other way, except as provided in article 151” of the Code of Criminal Procedure.⁸ The Code provides that, at the prosecutor’s request, the court may restrict or ban communication by the detainee or prisoner for up to 10 days if it considers it necessary to the success of the investigation. Naturally this option cannot restrict the defendant’s access to a lawyer or to the court itself. Nor can it restrict access to appropriate medical care. The court is required to instruct the authority responsible for the detention centre where the defendant is being held on how to implement this measure, which may in no case take the form of imprisonment in a punishment cell. This provision is currently in force. The defendant’s right to communicate freely with counsel during the trial is also recognized.⁹

Paragraph 16. *Please provide up-to-date information on the progress of the investigations into 27 members of the military forces indicted as principals or accomplices in 16 aggravated kidnappings, 13 aggravated killings and 59 aggravated kidnappings and killings.*

39. This refers to the “Caravan of Death” trial, and notably the Antofagasta, Calama, Copiapó, La Serena, Curicó, Cauquenes and Valdivia episodes, under investigation by jurisdiction judge Víctor Montiglio of the Santiago Court of Appeal. The proceedings were still at the investigation stage as of 23 February 2009. Details of the victims named in the investigation and the agents on trial are as follows:

ANTOFAGASTA EPISODE					
<u>Victims:</u> Luis Eduardo Alaniz Álvarez, Mario del Carmen Arqueros Silva, Dinator Segundo Ávila Rocco, Guillermo Nelson Cuello Álvarez, Marco Felipe De la Vega Rivera, Segundo Norton Flores Antivilo, José Boeslindo García Berríos, Darío Armando Godoy Mansilla, Miguel Hernán Manríquez Díaz, Danilo Alberto Moreno Acevedo, Washington Radomil Muñoz Donoso, Eugenio Ruiz-Tagle Orrego, Héctor Mario Silva Iriarte and Alexis Alberto Valenzuela Flores.					
1	(01)	Arellano Stark, Sergio	ARMY	General (rtd)	Dec. 00
Indicted as perpetrator on 14 counts of aggravated abduction and homicide.					
2	(02)	Arredondo González, Sergio	ARMY	Colonel (rtd)	Dec. 00
Indicted as perpetrator on 14 counts of aggravated abduction and homicide.					

⁸ Art. 94.

⁹ Art. 327.

3	(03)	Chiminelli Fullerton, Juan Viterbo	ARMY	Colonel (rtd)	Mar. 04
		Indicted as co-perpetrator on 14 counts of aggravated homicide.			
4	(04)	De la Mahotiere González, Emilio Robert	ARMY	Colonel (rtd)	Mar. 04
		Indicted as accomplice on 14 counts of aggravated homicide.			
5	(05)	Espinoza Bravo, Pedro Octavio	ARMY	Colonel (rtd)	Dec. 00
		Indicted as perpetrator on 14 counts of aggravated abduction and homicide.			
6	(06)	Moren Brito, Marcelo Luis	ARMY	Colonel (rtd)	Dec. 00
		Indicted as perpetrator on 14 counts of aggravated abduction and homicide.			
7	(07)	Ortiz Gutmann, Adrián Ricardo	ARMY	Colonel (rtd)	Mar. 04
		Indicted as co-perpetrator on 14 counts of aggravated homicide.			
8	(08)	Polanco Gallardo, Luis Felipe	ARMY	Major (rtd)	Mar. 04
		Indicted as accomplice on 14 counts of aggravated homicide.			

CALAMA EPISODE

INDICTMENTS FOR AGGRAVATED ABDUCTION AND HOMICIDE OF:

Mario Arguellez Toro, Jerónimo Jorge Carpanchai Choque, Carlos Alfredo Escobedo Caris, Luis Alberto Gahona Ochoa, Luis Alberto Hernández Neira, Rolando Jorge Hoyos Salazar, Hernán Elizardo Moreno Villarroel, Milton Alfredo Muñoz Muñoz, Carlos Alfonso Piñero Lucero, Fernando Roberto Ramírez Sánchez, Alejandro Rodríguez Rodríguez, Roberto Segundo Rojas Alcayata and José Gregorio Saavedra González.

INDICTMENTS FOR AGGRAVATED ABDUCTION OF: Carlos Berger Guralnik, Haroldo Ruperto Cabrera Abarzúa, Bernardino Cayo Cayo, Daniel Jacinto Garrido Muñoz, Manuel Segundo Hidalgo Rivas, Domingo Mamani López, David Ernesto Miranda Luna, Luis Alfonso Moreno Villarroel, Rosario Aguid Muñoz Castillo, Víctor Alfredo Ortega Cuevas, Rafael Enrique Pineda Ibacache, Sergio Moisés Ramírez Espinoza and Jorge Rubén Yueng Rojas. (Reclassified as aggravated homicide on 16 March 2006, decision set aside on 6 June 2006.)

		Arellano Stark, Sergio	ARMY	General (rtd)	Jun. 99
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
		Arredondo González, Sergio	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
		Chiminelli Fullerton, Juan Viterbo	ARMY	Colonel (rtd)	Mar. 04
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated homicide.			
		De la Mahotiere González, Emilio Robert	ARMY	Colonel (rtd)	Mar. 04
		Indicted as accomplice on 13 counts of aggravated abduction and as accomplice on 13 counts of aggravated homicide.			
		Espinoza Bravo, Pedro Octavio	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			

9	(09)	Fernández Larios, Armando	ARMY	Captain (rtd)	Aug. 99
		Indicted as co-perpetrator on 13 counts of aggravated abduction.			
10	(10)	Langer Von Furstenberg, Carlos Max George	ARMY	Brigadier (rtd)	Mar. 06
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide.			
11	(11)	Minoletti Arriagada, Carlos Humberto	ARMY	Major (rtd)	Mar. 06
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide.			
		Moren Brito, Marcelo Luis	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
12	(12)	Núñez Manríquez, Hernán Rómulo	ARMY	General (rtd)	Nov. 06
		Indicted as co-perpetrator on 26 counts of aggravated abduction and aggravated homicide.			
		Polanco Gallardo, Luis Felipe	ARMY	Major (rtd)	Mar. 04
		Indicted as accomplice on 13 counts of aggravated abduction and as accomplice on 13 counts of aggravated homicide.			
13	(13)	Rivera Desgroux, Eugenio	ARMY	Colonel (rtd)	Mar. 06
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide.			
14	(14)	Rojo Rojo, Jerónimo Tomás	ARMY	Senior NCO (rtd)	Mar. 06
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide.			
15	(15)	Santander Véliz, Víctor Ramón	ARMY	Colonel (rtd)	Mar. 06
		Indicted as perpetrator on 13 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide.			
<p>COPIAPÓ EPISODE</p> <p>INDICTMENTS FOR AGGRAVATED ABDUCTION AND HOMICIDE OF: Winston Dwigth Cabello Bravo, Agapito del Carmen Carvajal González, Fernando del Carmen Carvajal González, Manuel Roberto Cortázar Hernández, Alfonso Ambrosio Gamboa Farías, Raúl del Carmen Guardia Olivares, Raúl Leopoldo de Jesús Larravide López, Edwin Ricardo Mancilla Hess, Adolfo Mario Palleras Norambuena, Pedro Emilio Pérez Flores, Jaime Iván Sierra Castillo, Atilio Ernesto Ugarte Gutiérrez and Nector Leonelo Vicenti Cartagena.</p> <p>INDICTMENTS FOR AGGRAVATED ABDUCTION OF: Maguindo Antonio Castillo Andrade, Ricardo Hugo García Posada and Benito de los Santos Tapia Tapia. (Reclassified as aggravated homicide on 16 March 2006, decision set aside on 6 June 2006).</p>					
		Arellano Stark, Sergio	ARMY	General (rtd)	Jun. 99
		Indicted as perpetrator on 3 counts of aggravated abduction and as perpetrator on 13 counts of aggravated homicide. Indictment extended to cover these offences on 1 December 2000.			

		Arredondo González, Sergio	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator on 3 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
16	(16)	Castillo Cruz, Fernando Raúl de Fátima	ARMY	Lieutenant-Colonel (rtd)	Mar. 06
		Indicted as co-perpetrator in aggravated abduction of Castillo, García and Tapia.			
17	(17)	Díaz Araneda, Patricio Ramón Félix	ARMY	Brigadier (rtd)	Jun. 99
		Indicted as perpetrator on 3 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction. Indictment extended to cover the latter offences on 20 March 2006.			
		Espinoza Bravo, Pedro Octavio	ARMY	Colonel (rtd)	Mar. 00
		Indicted as perpetrator on 3 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
		Fernández Larios, Armando	ARMY	Captain (rtd)	Aug. 99
		Indicted as perpetrator on 3 counts of aggravated abduction.			
18	(18)	Haag Blaschke, Óscar Ernesto	ARMY	Colonel (rtd)	Nov. 06
		Indicted as co-perpetrator on 16 counts of aggravated abduction and aggravated homicide.			
19	(19)	Herbstaed Gálvez, Edwin Reynaldo	ARMY	General (rtd)	Mar. 06
		Indicted as co-perpetrator in aggravated abduction of Castillo, García and Tapia.			
20	(20)	Marambio Molina, Marcelo Arnaldo	ARMY	Colonel (rtd)	Mar. 06
		Indicted as co-perpetrator on 13 counts of aggravated abduction; not Castillo, García and Tapia.			
		Moren Brito, Marcelo Luis	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator on 3 counts of aggravated abduction and as perpetrator on 13 counts of aggravated abduction and homicide. Indictment extended to cover the latter offences on 1 December 2000.			
21	(21)	Ojeda Torrent, Waldo Antonio	ARMY	Colonel (rtd)	Mar. 06
		Indicted as co-perpetrator on 13 counts of aggravated abduction; not Castillo, García and Tapia.			
22	(22)	Pastén Morales, Óscar Gonzalo	ARMY	Senior NCO (rtd)	Mar. 06
		Indicted as co-perpetrator in aggravated abduction of Castillo, García and Tapia.			
23	(23)	Rojas Hidalgo, Daniel	ARMY	Judge advocate (rtd)	Mar. 00
		Indicted as accomplice in aggravated abduction of Castillo, García and Tapia.			
24	(24)	Yáñez Mora, Ricardo Fernando	ARMY	Lieutenant-Colonel (rtd)	Mar. 06
		Indicted as co-perpetrator on 13 counts of aggravated abduction; not Castillo, García and Tapia.			
25	(25)	Zúñiga Ormeño, Ramón Adolfo	ARMY	Colonel (rtd)	Mar. 06
		Indicted as co-perpetrator in aggravated abduction of Castillo, García and Tapia.			

LA SERENA EPISODE				
<u>Victims:</u> Óscar Gastón Aedo Herrera, Carlos Enrique Alcayaga Varela, José Eduardo Araya González, Marcos Enrique Barrantes Alcayaga, Jorge Abel Contreras Godoy, Hipólito Pedro Cortés Álvarez, Óscar Armando Cortés Cortés, Víctor Fernando Escobar Astudillo, Roberto Guzmán Santa Cruz, Jorge Mario Jordán Domic, Manuel Jachadur Marcarian Jamett, Jorge Ovidio Osorio Zamora, Jorge Washington Peña Hen, Mario Alberto Ramírez Sepúlveda and Gabriel Gonzalo Vergara Muñoz.				
		Arellano Stark, Sergio	ARMY	General (rtd) Dec. 00
		Indicted as perpetrator on 15 counts of aggravated abduction and homicide.		
		Arredondo González, Sergio	ARMY	Colonel (rtd) Dec. 00
		Indicted as perpetrator on 15 counts of aggravated abduction and homicide.		
		Chiminelli Fullerton, Juan Viterbo	ARMY	Colonel (rtd) Mar. 04
		Indicted as co-perpetrator on 15 counts of aggravated homicide.		
		De la Mahotiere González, Emilio Robert	ARMY	Colonel (rtd) Mar. 04
		Indicted as accomplice on 15 counts of aggravated homicide.		
		Espinoza Bravo, Pedro Octavio	ARMY	Colonel (rtd) Dec. 00
		Indicted as perpetrator on 15 counts of aggravated abduction and homicide.		
		Moren Brito, Marcelo Luis	ARMY	Colonel (rtd) Dec. 00
		Indicted as perpetrator on 15 counts of aggravated abduction and homicide.		
		Polanco Gallardo, Luis Felipe	ARMY	Major (rtd) Mar. 04
		Indicted as accomplice on 15 counts of aggravated homicide.		
CURICÓ EPISODE				
<u>Victims:</u> Francisco Lara Ruiz and Wagner Herid Salinas Muñoz				
		Arellano Stark, Sergio	ARMY	General (rtd) Jul. 03
		Indicted as perpetrator on 2 counts of aggravated homicide.		
26	(26)	Corvalán Palma, César Alfonso	ARMY	Lieutenant-Colonel (rtd) Nov. 06
		Indicted as co-perpetrator on 2 counts of aggravated abduction and aggravated homicide.		
27	(27)	Massouh Mehech, Carlos Enrique	ARMY	Colonel (rtd) Nov. 06
		Indicted as co-perpetrator on 2 counts of aggravated abduction and aggravated homicide.		
CAUQUENES EPISODE				
<u>Victims:</u> Claudio Arturo Manuel Lavín Loyola, Miguel Enrique Muñoz Flores, Manuel Benito Plaza Arellano and Pablo Renán Vera Torres.				
		Arellano Stark, Sergio	ARMY	General (rtd) Jun. 99
		Indicted as perpetrator in aggravated abduction and homicide of Claudio Lavín and Pablo Vera and as perpetrator in aggravated homicide of Miguel Muñoz and Manuel Plaza.		

		Arredondo González, Sergio	ARMY	Colonel (rtd)	Jun. 99
		Indicted as co-perpetrator in aggravated abduction and homicide of Miguel Muñoz, Manuel Plaza and Pablo Vera and as co-perpetrator in aggravated homicide of Claudio Lavín; the latter indictment issued 16 March 2006.			
		Chiminelli Fullerton, Juan Viterbo	ARMY	Colonel (rtd)	Mar. 04
		Indicted as co-perpetrator on 4 counts of aggravated homicide.			
		De la Mahotiere González, Emilio Robert	ARMY	Colonel (rtd)	Mar. 04
		Indicted as accomplice on 4 counts of aggravated homicide.			
		Espinoza Bravo, Pedro Octavio	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator in aggravated abduction and homicide of Claudio Lavín and Pablo Vera and as perpetrator in aggravated homicide of Miguel Muñoz and Manuel Plaza.			
		Fernández Larios, Armando	ARMY	Captain (rtd)	Aug. 99
		Indicted as perpetrator in aggravated abduction of Miguel Muñoz, Manuel Plaza and Pablo Vera.			
28	(28)	López Tapia, Carlos José	ARMY	Colonel (rtd); Army instructor	Mar. 04
		Indicted as perpetrator on 4 counts of aggravated homicide.			
		Moren Brito, Marcelo Luis	ARMY	Colonel (rtd)	Jun. 99
		Indicted as perpetrator in aggravated abduction and homicide of Claudio Lavín and Pablo Vera and as perpetrator in aggravated homicide of Miguel Muñoz and Manuel Plaza.			
29	(29)	Palomo Contreras, Antonio Alberto	ARMY	Captain (rtd)	Mar. 04
		Indicted as accomplice on 4 counts of aggravated homicide.			
		The charge against Arellano, Espinoza and Moren in respect of Pablo Torres was changed on 21 September 2000 from aggravated abduction to aggravated abduction and homicide. The indictment in respect of Claudio Lavín was issued at the same time. The charge against those officers in respect of Miguel Muñoz and Manuel Plaza was changed in July 2003 from perpetrators of aggravated abduction to perpetrators of aggravated homicide.			
VALDIVIA EPISODE					
<u>Victims:</u> Pedro Purísimo Barría Ordóñez, José René Barrientos Warner, Sergio Jaime Bravo Aguilera, Santiago Segundo García Morales, Enrique del Carmen Guzmán Soto, Víctor Fernando Krauss Iturra, Luis Hernán Pezo Jara, Víctor Eugenio Rudolph Reyes, Rudemir Saavedra Bahamóndez, Víctor Segundo Saavedra Muñoz and Luis Mario Valenzuela Ferrada.					
		Arellano Stark, Sergio	ARMY	General (rtd)	Jul. 03
		Indicted as perpetrator on 11 counts of aggravated homicide.			
		Chiminelli Fullerton, Juan Viterbo	ARMY	Colonel (rtd)	Mar. 04
		Indicted as co-perpetrator on 11 counts of aggravated homicide.			
		De la Mahotiere González, Emilio Robert	ARMY	Colonel (rtd)	Mar. 04
		Indicted as accomplice on 11 counts of aggravated homicide.			

	López Tapia, Carlos José	ARMY	Colonel (rtd); Army instructor	Mar. 04
	Indicted as co-perpetrator on 11 counts of aggravated homicide.			
	Palomo Contreras, Antonio Alberto	ARMY	Captain (rtd)	Mar. 04
	Indicted as accomplice on 11 counts of aggravated homicide.			

Paragraph 17. *Please provide up-to-date information on the upshot, if any, of the acquittal at first instance in the Arica Caravan file which the victims' lawyers were appealing before the Court of Appeal*

40. In this case, which looked into the aggravated homicide of Manuel Francisco Donoso Dañobeitia, Óscar Walter Pedro Ripoll Codoceo and Julio Gastón Valenzuela Bastías, the lower court handed down a sentence of acquittal on 12 April 2006, having applied the Amnesty Decree-Law in the accused's favour, while a fourth defendant, Sergio Arellano Stark, was acquitted on the grounds that he had taken no part in those events. On appeal the Santiago Appeal Court upheld Arellano Stark's acquittal on 16 August 2007 and sentenced René Iván Bravo Llanos, Luis Guillermo Carrera Bravo and Odlanier Rafael Mena Salinas to 10 years and 1 day of rigorous imprisonment (medium range), as co-perpetrators on three counts of aggravated homicide. The convicted parties appealed in cassation to the Supreme Court, which on 3 December 2008 upheld the Appeal Court's decision, reducing their sentence, however, to six years' rigorous imprisonment (minimum range). In January 2009 the three men began serving their prison sentences.

Article 10

Paragraph 18. *Please comment on whether the Istanbul Protocol is taught as part of the training curriculum for medical personnel to identify cases of torture*

41. The Forensic Medical Service is responsible, among other things, for providing technical and scientific advice to courts and investigative bodies throughout Chile in forensic medicine and science and other areas within its competence. In particular, it provides expert forensic medical reports as required.

42. In 2008 the Forensic Medical Service set aside part of its Human Rights Programme for the implementation of the Istanbul Protocol in dealing with cases of torture. In that context it has organized a number of activities to bring the Protocol to the attention of experts in every region who are responsible for evaluating such cases. One example is an international seminar on torture and trauma, which was attended by experts in this field from Chile and other Latin American countries, including Mr. Víctor Rodríguez Rescia, Vice-Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

43. In 2009 it is planned to press on with implementation of the Istanbul Protocol through relevant training for experts involved in cases of this kind at the national level. A multidisciplinary working group, drawn from the various units and departments that deal with torture in the Forensic Medical Service, has been set up to formulate objectives.

Paragraph 19. *Are there training programmes in place for local law enforcement personnel (prison guards) ... and any other groups of people that may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment?*

Carabineros

44. Professional development in the police force aimed at teaching, upgrading and refining members' knowledge, skills and aptitudes takes place in the context of education and training, follow-up and specialization programmes.

45. The Chilean police force is constantly reviewing, updating and redesigning the curriculum in all its training establishments; these include subjects relating to the protection of human rights in compliance with the requirements of international human rights law. New content resulting from this work will be included as from March 2009, the start of the new academic year.

46. Subjects are developed gradually, starting with general aspects of international law, right down to the detail of human rights in police work. Topics are dealt with in class in the simplest way possible, at all times making the link between human rights principles and the concept of the rule of law, so as to facilitate their internalization as materially relevant to practical police work and administration.

47. Basic training courses for officers and NCOs offer the same content, but in further training the emphasis is different for each category.

48. In updating the training curricula, material has been introduced to improve understanding of the problem of violence against women and to help strengthen protection for other vulnerable groups in society.

Criminal investigation police

49. As mentioned in previous periodic reports of Chile, human rights was first introduced as a subject (in the sixth semester) at the School for Investigation Police in 1995. At the Higher Academy for Police Studies, where future senior officers are trained, human rights and police ethics has been taught, also in one academic semester, since 1998.

50. Paragraph 41 of the fifth periodic report of Chile mentions the establishment of the Special Affairs and Human Rights Brigade of the criminal investigation police, which began work in January 2005. On 29 November 2007 a more senior institution, the National Office on Human Rights Offences, was created to replace the Special Affairs and Human Rights Brigade. The Office continues to meet the judicial obligations arising out of the trials for human rights violations committed under the military regime, but it also has a broader mandate, namely to assist the courts in investigations being conducted under the current inquisitorial criminal system into modern-day serious human rights violations. The Office has set up a Human Rights Education and Dissemination Department, which carried out the following training activities in 2008:

(a) 24-26 March: first human rights seminar, entitled “A systemic view”, which produced a theoretical platform building on police officers’ empirical knowledge of human rights;

(b) 17-18 July: first one-day conference on forensic best practice, organized jointly with the Forensic Medical Service under an agreement between the two institutions, and which gave rise to a discussion on ways of dealing with sites that raise criminalistic issues in respect of human rights;

(c) 19 December: visit by Mr. Víctor Rodríguez Rescia, Vice-Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, who gave a masterclass entitled “Police investigation and human rights: police effectiveness while safeguarding rights”;

(d) Since February human rights personnel in the criminal investigation police have been attending a training course on “Human rights culture for Chile’s bicentenary”, run by the Bicentenary Foundation;

(e) Since September, human rights personnel have been attending an international diploma course on economic, social and cultural rights and public policies, offered by the Henry Dunant Foundation, subsidiary and representative of the Henry Dunant University College, Geneva.

Prison Service

51. The Prison Service and the National Service for Minors (SENAME) both organize refresher courses on respectful treatment of persons in their care. The Prison Service has provided courses on tolerance and non-discrimination, the gender perspective and the Act on criminal responsibility of adolescents. Both bodies also run training courses on the treatment of detainees, focusing on the social rehabilitation of persons deprived of their liberty. In all, more than 1,300 members of the Prison Service have attended training courses.

52. In addition, there will be four high-level academic diploma courses in 2009 for independent trainers in SENAME detention centres; the subjects dealt with will be intervention, methods of working with adolescents deprived of their liberty, containment and prevention of risk situations and protection of adolescents’ rights.

Article 11

Paragraph 20. Please provide information on national monitoring mechanisms that visit all places of detention at regular intervals without prior warning.

53. As noted in paragraph 122 of the fifth periodic report of Chile (CAT/C/CHL/5), the Courts Organization Code¹⁰ lays down extensive and detailed regulations concerning the various mechanisms for prison visits that judicial personnel are required to conduct. It regulates the

¹⁰ Arts. 567-585.

weekly visits judges must pay on the last working day of each week to prison facilities where arrested persons or prisoners under their jurisdiction are held. Even though these visits are notified in advance, it should be stressed that they are conducted on a weekly basis, and that the Code allows such visits to be attended also by inmates' lawyers and, in the case of minors, their parents or guardians.

54. The Courts Organization Code further stipulates that judges have a duty to carry out quarterly visits and that the Court of Appeal, as represented by its president or a judge designated for the purpose, must make at least two visits each year, during which, inter alia, it must check health and safety and good order in the prisons, verify that convicted prisoners are serving their sentences and hear inmates' complaints. The Code also allows judges to visit prisons without advance warning.

55. Without prejudice to the above-mentioned legal provisions, the Prison Service, as part of its new communication policy - in which openness and transparency play an essential role - authorized 378 special visits and visits by the (primarily national) press in 2007 and 714 in 2008.

56. These provisions of the Courts Organization Code also apply to juvenile offenders held in custody by the National Service for Minors (SENAME). In addition, weekly visits must be made by members of the inter-agency commissions responsible for oversight of detention centres, which are governed by regulations to the Act on criminal responsibility of adolescents. These commissions are made up of members of civil society (representatives of universities and the United Nations Children's Fund (UNICEF)) and juvenile justice system officials (judges, prosecutors and defence attorneys). Their function is to make weekly visits to centres for minors and to issue reports, which are sent to the Ministry of Justice for evaluation, as well as to send the corresponding requests for corrective measures to SENAME.

Paragraph 21. Please indicate whether steps have been taken to end abusive checks and searches of detainees' relatives at prisons as a means of intimidation or punishment.

57. The prison administration has gradually been introducing the technology needed to carry out checks more efficiently and minimize body and object searches. Devices include hand-held and walk-through metal detectors and X-ray machines. More than 90 per cent of correctional facilities are now equipped with the technology needed to conduct both body and object searches. Over the course of 2008, 100 hand-held metal detectors and 3 X-ray units were purchased. Plans for 2009 call for the purchase of 400 hand-held scanners and 4 walk-through units.

58. All of the foregoing is consistent with the Prison Regulations,¹¹ which stipulate that all visitors and their belongings must be checked for security reasons; that such checks must be performed and supervised by staff of the same sex as the visitor; and that manual checks are permissible, but that steps should be taken to replace them with sensors and other non-tactile devices, at all times having due regard for the dignity of the person.

¹¹ Supreme Decree No. 518 of 1998, Ministry of Justice, art. 54, paras. 3 and 4.

Paragraph 22. *Please provide statistics on complaints lodged, disciplinary procedures initiated and sanctions applied against prison guards and police officers on grounds of torture in prisons.*

Carabineros

59. With regard to police conduct, procedures have been developed to deal with situations of unnecessary violence or ill-treatment that infringe the dignity of the person and that have been addressed in disciplinary and judicial proceedings.

60. From 2006 to 2008, some 730 complaints were registered in Chile, leading to proceedings in which members of the public challenged police action as involving abuse or ill-treatment. All these complaints were duly investigated at the administrative level. This information was obtained from the “complaints bulletin board” in the national police computer system, which is maintained by the General Inspectorate of Carabineros, and which contains all complaints, their classification and investigation results. Complaints are categorized according to the claimant’s perspective.

61. Of these 730 complaints, 52.5 per cent (383) were classified as “assault” and 47.5 per cent (347) as “unnecessary violence”. Of this total of 730 complaints for the three-year period in question, 52 are currently pending, while 678 investigations were settled as follows: 78 per cent (531) were dismissed; 11 per cent (78) resulted in findings of police liability, resulting in disciplinary action; in 9 per cent (58) of the cases, complainants withdrew from further inquiries; and in 2 per cent (11), a warning or comment was issued to the official concerned, which, while not constituting a disciplinary measure, and not therefore included in the figures for officials sanctioned, does have an impact on the annual performance evaluation or ratings for the person concerned.

62. As indicated by the foregoing, in 89 per cent of the complaints filed by members of the public against police officials and settled to date (678), no administrative liability was determined owing to the fact that the investigations were either dismissed by the investigators or the complainants withdrew.

63. In the 78 investigations in which police officers were found guilty, disciplinary measures were taken against 98 carabineros. These measures, in ascending order of severity, were: 17 warnings (16.18 per cent); 39 reprimands (38.24 per cent); 41 sanctions consisting of a number of days’ arrest (44.12 per cent); and 1 disciplinary measure of expulsion from the police force for misconduct (1.47 per cent).

Criminal investigation police

64. The information provided below was obtained from the Internal Affairs Department (No. V) of the criminal investigation police for the period January 2008 to February 2009. It refers to internal investigations and investigations ordered by the Public Prosecutor’s Office involving members of this force.

65. In 2008, the criminal investigation police carried out 25 internal investigations as follows: 10 cases of assault; 8 of coercion; 6 of ill-treatment; and 1 of abuse. The Public Prosecutor's Office, for its part, ordered investigations into 22 cases of injury; 3 of abuse; 1 of assault; and 1 of causing physical suffering to detainees.

66. In January and February 2009, the criminal investigation police carried out two internal investigations into instances of ill-treatment and one into an instance of assault. Over the same period, the Public Prosecutor's Office ordered five investigations into instances of abuse; three of injury, one of coercion and one of physical suffering.

Prison Service

67. Between 2006 and 2008 there were 60 internal investigations into cases of unlawful coercion of inmates, 63 for assault on inmates and 9 for ill-treatment of inmates, which amounted to 132 for this period. Of these, 47 were completed, with 31 being dismissed, 5 resulting in acquittals and 11 resulting in sanctions. The sanctions consisted of fines (eight cases), reprimands (two cases) or suspension from post (one case).

Paragraph 23. Please give details of the progress made with Government efforts to improve prison conditions since 2000 ...

68. With reference to paragraph 120 (a) of the fifth periodic report of Chile (CAT/C/CHL/5), there are six fully operational prisons in various cities: Alto Hospicio, La Serena, Santiago, Rancagua, Valdivia and Puerto Montt. Another four prisons are at various stages of design and construction in Concepción, Antofagasta, Santiago and Talca. Together these provide an additional 16,000 places, which is equivalent to 34 per cent of the accused and convicted population.

69. With reference to paragraph 120 (b), regarding prisons built with direct State funding, the table below shows the year construction was completed and the prisons' design capacity and building area:

	Punta Arenas prison	Angol prison	Cauquenes prison	Santiago maximum security prison
Year brought into operation	2003	2000	2002	2004
Design capacity (number of inmates)	334	150	166	150
Building area (m ²)	14 614	4 749	5 360	2 430

70. These compounds are composed of prison units whose purpose is to segregate the prison population according to stage of proceedings and degree of delinquency. Each unit consists of a secure area, individual cells, a workshop, refectory and kitchen, and a patio for the exclusive use of the criminal population of the unit. The Santiago maximum security unit has been made an extra wing of the capital's high security prison, sharing specialist support and catering services. Total investment in construction for these four prison facilities was US\$ 27 million.

Paragraph 24. Please indicate what steps the State party is taking to reduce or end prison overcrowding due to the steady growth in the prison population.

71. Please see the previous reply.

Paragraph 25. *Please give details of how the prison-building and privatization policy is being applied. Please also indicate how responsibilities are divided between the public and private sectors.*

72. During the period from 1990 to 1999, the Ministry of Justice invested approximately US\$ 135 million in prison infrastructure using sectoral and regional funds. The body responsible for prison administration, the Chilean Prison Service, also invested considerable resources in repairs and extensions, and has built a number of facilities, such as education and employment centres and social rehabilitation centres.

73. The prison investment programme seeks to avoid the further spread of criminal behaviour among inmates and to address the problem of overcrowding by adequately segregating the prison population while simultaneously providing it with basic services, including treatment aimed at prompt and effective social rehabilitation.

74. As part of a policy to improve prison conditions for inmates, the Ministry of Justice and the Prison Service sponsored the Prison Infrastructure Concession Programme, which originally called for the construction of 10 prison complexes funded privately but still administered by the State. The legal instrument that has led to the development of the current model of mixed administration is the public works concession contract, which is “an entitlement granted by the State to private entities for the execution, maintenance and operation of Government public works built on State property designated for public or Government use, for a fixed term during which investment sums and operating costs are borne by the concessionaire, but which may be supplemented by a schedule of contributions or payments by the State to the concessionaire. Private entities may collect operating revenue from the public works programmes”.

75. The private entity is responsible for design, construction, equipment and operation, for provision of the services specified in the concession contract and for transfer of the public works programme to the State at the end of the concession period. The Ministry of Public Works is the designated agent, inviting tenders and awarding, administering and overseeing the concession contract, as it is responsible for relations with the private-sector. The Prison Service is responsible for prison security, surveillance and administration.

76. The services provided by the private entity (or concessionaire) aimed at improving prison conditions for inmates include the following: maintenance, repair and replacement of key installations of each prison compound; maintenance of standard and security equipment; prison catering service for inmates, prison officials and female prisoners’ infants up to the age of 2; free laundry services for inmates; keeping inmates healthy, providing prompt treatment and organizing preventive health campaigns; hygiene and pest control; a commissary for staple requirements; and the design, implementation and monitoring of social reintegration programmes to rehabilitate the prison population.

77. The concession contract is overseen by an inspection unit attached to the Ministry of Public Works and itself advised by technical teams whose services are procured through a bidding process: there is one such team based permanently in each prison to oversee compliance with the contract and with the standards stipulated in the bidding conditions. Every six months, the Ministry of Public Works inspection unit submits an indicator compliance report and recommends fines for concessionaires who fail to comply with the terms of the contract.

Paragraph 26. *Please indicate whether the State party affords special protection to certain vulnerable groups, in particular adolescents, women, members of indigenous groups, persons with disabilities, older persons, the mentally ill, foreigners (especially illegal immigrants) and persons infected with HIV, at detention centres.*

78. In respect of programmes for vulnerable groups, it should be noted that institutional policies have been established in the following areas: systems of categorization and segregation; drug abuse treatment (therapeutic communities); juvenile sections - numbering 32 nationwide and governed by special regulations regarding both operation and intervention - for inmates under the age of 18 who have been sentenced under the Act on criminal responsibility of adolescents; and mother and child sections. In addition, attention should be drawn to the incorporation of gender mainstreaming in the various prison activities, with emphasis on the range of programmes.

79. In addition to these institutional programmes, initiatives have been taken at the local level in accordance with the composition of the prison population and the institutional and non-institutional resources available. Such initiatives are directed towards vulnerable groups, such as older people, persons with disabilities and the mentally ill, and, to the extent practically possible, favour the use of segregated areas in prisons in order to provide these groups with the best possible conditions.

80. Among the legal initiatives on the treatment of the mentally ill is a bill designed to meet the needs of a significant proportion of accused and convicted persons requiring outpatient mental health care, through the establishment of forensic psychiatric units intended to operate inside certain prisons.

Psychiatric patients

81. Mental health care in the Prison Service is provided by general health-care professionals and a mental health team composed of a psychiatrist, a psychologist, a therapist and a social worker based in the Metropolitan Region prison hospital, which acts as an interface for the entire country. This care is supplemented by the attention provided through coordination with the various mental health and psychiatric services of the Ministry of Health's national network.

82. In the late 1990s, as a result of the work of the National Committee of Forensic Psychiatry, and in order to comply with justice sector requirements, the Ministry of Health, which is a member of the Committee, set up a number of mental health and psychiatric facilities (moderate-complexity and high-complexity forensic psychiatric units) as part of the national health network. At the community level, it set up low-complexity forensic units (forensic residences) for individuals declared not criminally responsible in cases where criminal proceedings have been dropped and a security measure applied in order to carry out procedures consistent with the complexity of the medical treatment required. Before the establishment of these units, many of these people had remained in prison.

83. During the current decade, accused persons assessment units have been set up in regional psychiatric and general hospitals of the public health system, or as annexes, to evaluate accused persons' mental health. Two such units are currently in operation: Putaendo in the Valparaíso Region and Horwitz in the Metropolitan Region.

84. A bill is under consideration providing, inter alia, for the establishment of forensic psychiatry transit units, intended as support facilities attached to the respective health service but located inside the prison solely in order to benefit from the supervision and secure environment provided by the Prison Service. The main functions of these units would be to perform evaluations and to issue expert psychiatric reports, as requested by the guarantee judge, on accused persons in pretrial detention or on convicted prisoners. They would also provide psychological and psychiatric outpatient care to the prison population at large. This would also make it possible to improve existing mechanisms for detecting with certainty those cases in which proceedings are being brought against individuals who were mentally ill at the time they committed the offence or subsequently became mentally ill, as distinct from those who are not suffering from any mental disorder but pretend to be mentally ill in an attempt to avoid pretrial detention and possible conviction, which causes serious problems and disruption to psychiatric services in the health system.

Prison population infected with HIV/AIDS

85. Persons diagnosed with HIV/AIDS are monitored and receive medical care and treatment in accordance with their health status through the national HIV/AIDS programme administered by the Prison Service Health Office, which provides follow-up care and monitors patients.

86. An agreement with the National Commission on AIDS (CONASIDA) to conduct joint HIV/AIDS training and prevention in order to ensure comprehensive care for persons deprived of their liberty has been in effect since 2003. Care consists of HIV/AIDS testing, diagnosis and confirmation by the National Institute of Public Health, followed by notification, admission to the programme, an initial medical consultation with a specialist, routine examinations and subsequent medical evaluations. Inmates who need it have access to antiretroviral treatment.

87. At the close of 2008, the number of persons living with HIV/AIDS and in conflict with the law and deprived of their liberty was 163, including 13 women. Of the inmates living with HIV/AIDS, 102 receive antiretroviral therapy in accordance with protocols established by CONASIDA and only 4 have stopped their drug treatment.

Paragraph 27. Please indicate whether the State party has taken steps to address the alleged disciplinary failings and lapses in security that came to light during the October 2007 riot at the National Service for Minors “Tiempo de crecer” Behaviour Rehabilitation Centre, Puerto Montt, in which 10 teenagers died. Has preventive action been taken against incidents of this type? Has the investigation into the causes of the incident been completed?

Fact finding inquiry

88. On 22 October 2007, the National Service for Minors (SENAME) ordered an administrative inquiry aimed at ascertaining possible responsibility on the part of SENAME officials in connection with this incident. Subsequently, on 11 January 2008, the National Office of SENAME reopened the administrative inquiry and appointed a new investigating prosecutor. At the current stage of the inquiry, notice is being served of charges brought against some SENAME officials for violations of the following laws: the Administrative Statute; the

Organization Act establishing the National Service for Minors; and the Act establishing a System of Responsibility of Adolescents for Offences in Criminal Law, article 2 of which states: “In all judicial or administrative proceedings relating to procedures, penalties or measures applicable to adolescent criminal offenders, consideration should be given to the best interests of the adolescent, which is expressed in the recognition of and respect for their rights. When applying this Act, authorities shall give consideration to all the rights and guarantees recognized in the Constitution, the law, the Convention on the Rights of the Child and other international instruments ratified by Chile currently in force.”

Measures taken in the areas of infrastructure and security

89. These consist of the following:

(a) Improvement of the infrastructure, which included the construction of new facilities, thereby creating additional space for adolescents admitted under precautionary measures or in application of a punishment;

(b) Installation of a new system of technological surveillance to replace the previous one;

(c) Strengthening of the rehabilitation centre’s Emergency Plan in order to ensure closer coordination with other organizations, such as the fire department and the Prison Service, with which, under an agreed protocol, it was decided to undertake precautionary patrols inside the centre in order to prevent conflicts. The Plan is drawn up by the centre’s management on the basis of guidelines and recommendations issued by the Risk Prevention Unit of the National Office of SENAME and is renewed annually;

(d) Issuance of reminders concerning internal instructions on risk anticipation strategies;¹²

(e) Improvement of procedures for dealing with major conflicts, including both ordinary and special crisis intervention procedures;

(f) Stepping up inmates’ daily routine by increasing the number of hours of schooling, occupational workshops and sporting and recreational activities;

(g) Adjustments to the rules relating to riots, unrest or other unusual situations that may arise in the centres.¹³

¹² Contained in memorandum No. 40.

¹³ Governed in regulation No. 312/b of July 2007.

Measures taken to strengthen the capacity of staff

90. These consist of the following:

(a) Replacement of the centre's director as a result of the incident;

(b) Recruitment of nine teachers working directly with inmates;

(c) Recruitment of 10 new specialists in 2008, which has enabled the formation of an interdisciplinary support team to apply the socio-educational model to the centre's regime of precautionary detention and execution of custodial sentences.

Paragraph 28. Please provide information on the number of cases brought against carabineros and prison officers for acts of torture.

91. Please refer to the reply to paragraph 14.

Paragraph 29. Please provide information on the extent to which courts require, apparently, medical reports to be produced as evidence in cases of allegations of torture.

92. This assertion is incorrect, since that would involve a system of assessing evidence that differs from the one prescribed by the Chilean Code of Criminal Procedure, i.e., the "sound judgement" method, whereby the courts "shall freely evaluate evidence but may not contradict the principles of logic, the rules of experience or scientifically proven fact".¹⁴

93. In the first place, courts can never require medical reports to be produced as evidence of or against a particular offence, since it is the Public Prosecutor's Office that is responsible for investigating the acts constituting the offence and, therefore, for deciding what evidence to use in the trial to prove the facts described in the indictment. In the second place, the powers and obligations of the courts competent to try criminal cases are very clear on this subject: they are empowered to assess freely any evidence that may serve to substantiate an offence of torture (not only medical reports), provided they do not abuse this freedom by disregarding the rules of experience, logic and indisputable scientific fact. It is entirely conceivable that, on the basis of other pieces of evidence that do not contradict these principles, a court will find an accused person guilty of the crime of torture even in the absence of a medical certificate. This is, of course, without prejudice to the evidentiary difficulties that such a situation may pose to the Public Prosecutor's Office in demonstrating the veracity of the facts.

94. Thus medical reports merely strengthen the evidence produced by the Public Prosecutor's Office in proving the facts set forth in the indictment and in no way restrict the production of other evidence that might prove the offence. The Chilean courts may not, in any case, require the production of specific items of evidence, since, at this stage of the proceedings, they no longer have investigatory powers and are competent only to make a ruling based on their free evaluation of the evidence submitted in oral proceedings.

¹⁴ Art 297.

Article 14

Paragraph 31. *Please provide information on cases concerning torture victims that have been ruled on by the Chilean authorities. In how many cases was compensation awarded, and what were the compensation amounts? In particular, the Committee would like information on compensation awarded to victims recognized by the National Commission on Political Prisoners and Torture (“Valech Commission”).*

95. Information on all forms of compensation awarded to victims recognized by the Valech Commission may be found in paragraphs 138 to 143 of Chile’s fifth periodic report. Specific details concerning compensation amounts are contained in paragraph 141 (b) of the report.

96. The full text of the final report of the Commission has been published on the Internet site www.comisiontortura.cl, and contains specific information on all recommended measures for providing reparation to persons recognized as victims by the Commission.

Article 16

Paragraph 32. *Please comment on the alleged practice of holding prisoners in isolation cells as punishment without regard for the proper procedures and for long periods (up to 15 days).*

97. The Prison Regulations specify what acts constitute offences, the corresponding punishment and the procedure for its application. Solitary isolation is a punishment that may be applied only in the case of serious offences and may not exceed 10 days. The Regulations also specify the conditions for the application of this measure as follows: prisoners placed in isolation cells must be taken to an outdoor location previously determined by the prison director for at least an hour each day in order to allow them to take physical exercise if they so desire; prisoners must receive a visit each day from the prison director, physician or paramedic, and, if they so request, a minister of their religion, each of whom must record in writing if the inmate has been subjected to corporal punishment or if there has been a failure to comply with the Prison Regulations; the physician or paramedic must assess the need to terminate or modify the punishment for physical or mental health reasons and transmit their opinion in writing to the prison director; inmates in isolation cells may not receive packages, except for medicines authorized by the prison physician or items of personal hygiene that pose no threat to their health or safety.

98. This punishment may not be applied to pregnant women or up to six months after the end of pregnancy, nursing mothers or women accompanied by their children.

Paragraph 33. *Please indicate what steps are being taken to remedy the alleged serious shortcomings in prison conditions, such as lack of access to basic medical care, poor standards of health and hygiene and inadequate, poor-quality food.*

Measures to address alleged shortcomings in the quality and quantity of food

99. The Prison Service has introduced a series of measures aimed at improving health standards through hygienic food handling and the planning of meals, the aim of which is to make optimum use of available resources so as to ensure a diet of sufficient quantity and quality. These measures include: the designation of nutritionists responsible for meal planning and supervising proper food handling practices, except in the regions of Aisén and Atacama; the organization in 2008 of the first meeting of regional prison catering managers with the aim of improving information systems, records-keeping, food planning and the proper use of budgetary resources; the organization in 2009 of the first meeting of nutritionists and regional prison catering managers with the aim of harmonizing technical guidelines, improving teamwork and properly utilizing human, material and financial resources; the designation of a national nutrition coordinator; and the preparation of a series of manuals on food hygiene and safety.

100. The value of the daily food ration for each inmate ranges from US\$ 1.20 and US\$ 12.60 (Easter Island). In the juvenile sections, the value of the ration was increased in order to provide young people with a better diet.

Access to medical services

101. Health care for inmates is delivered through prison infirmaries, of which there are a total of 92 located throughout the country. In addition, there is a national prison hospital in the Metropolitan Region.

102. The health workers hired to provide health services to inmates include: 60 medical surgeons, 51 dental surgeons, 2 pharmaceutical chemists, 37 student nurses, 10 midwives, 6 medical technicians, 3 kinesiologists, 206 paramedic technicians, 2 psychologists, 1 chemist and 6 dental assistants - all spread throughout the various regions of the country. In this regard 2,468 hours per week are allocated to medical, dental and pharmaceutical-chemical staff.

103. In February 2008, under the Act on the criminal responsibility of adolescents, physicians, dentists, midwives (3), kinesiologists (1) and paramedic technicians (42) were hired to provide health care for adolescents in the custody of the Prison Service. This implied an increase of 385 staff hours each week.

104. The health services provided are supplemented by consultations with the public health facilities in the Ministry of Health network, with which good coordination has been established to provide services to users from the prison system.

105. Since 2004, there has been a drive to administer adult preventive check-ups, which have been given to at least 20 per cent of the convicted population nationwide. This drive is sponsored by the Ministry of Health, which is endeavouring to screen inmates for the chronic diseases most common among the Chilean population. In 2008, 7,688 inmates were given check-ups.

106. In 2008, 92 per cent of inmates admitted to a prison facility were given a primary care examination by prison infirmary staff. The examination is given on admission to the prison, or in the next 48 hours in places where there is a shortage of health workers. This activity is monitored

on a monthly basis by the Management Information System for Institutional Medicine. The total number of health-care interventions among the prison population nationwide in 2008 was 806,615, which amounts to an average of 15 interventions per prisoner. Also in 2008, 29,064 initial consultations were carried out, accounting for a level of medical coverage of 56 per cent.

Paragraph 34. *According to reports, people undergo thrashings and kickings and are beaten with sticks and swords by prison officers at several Chilean prisons. Please comment.*

107. The State of Chile, including the authorities responsible for prison operations, is opposed to any form of attack on the human rights of any individual, prisoners included. Consequently, the authorities, and indeed every public official, have the obligation to report such irregularities to the mechanisms described below.

108. Pursuant to article 175 of the Code of Criminal Procedure, members of the Prison Service are required to report all offences that they witness or that come to their attention. Once a report has been made of a Prison Service official's involvement in acts that may be characterized as an offence in the course of their duties, a complaint is duly drawn up and submitted to the Public Prosecutor's Office for information and subsequent investigation.

109. Alongside judicial proceedings, the background information in the case is transmitted to the prison authority concerned in order to launch an administrative inquiry to determine whether there is administrative liability in the matter.

Other matters

Paragraph 36. *Please indicate whether the application of Counter-Terrorism Act No. 18314 has adversely affected any legal and practical human rights guarantees.*

110. The application of the Counter-Terrorism Act in Chile, at least since the entry into force of the new Code of Criminal Procedure, has not adversely affected procedural safeguards. These are respected at all times by the Chilean guarantees courts and criminal trial courts, the guarantees courts being the guarantors of full and unconditional respect for the procedural safeguards granted by the Chilean Constitution and the international treaties to accused persons to be investigated, under investigation or charged under this Act.

Paragraph 37. *Please indicate what measures the State party has taken to include the gender perspective in legislation prohibiting torture. Indicate also specific measures taken to prevent acts of sexual violence. Please provide statistics on the number of investigations conducted and on their findings.*

Legislation

111. The Act on domestic violence currently in force in Chile contains innovative forms of protection to which women victims of ill-treatment or degrading acts - including acts of torture - have, in practice, repeatedly had recourse. In this sense, acts of domestic violence may include acts committed by a defendant that some would say constitute acts that are by definition

degrading. Thus, in addition to filing suit against the accused for torture, women victims may be entitled to various forms of protection under the Act, which, despite the fact that it makes no gender distinction, was primarily intended for women victims. This is, of course, without prejudice to any independent protection measures of protection offered by the Public Prosecutor's Office.

112. With the aim of addressing sexual violence, significant amendments were introduced in 1999 and 2004 to Chile's laws on sex offences.¹⁵ In the first of these laws, both men and women were recognized as potential victims of the offence of rape, while the verb defining the offence, *yacer* ("to lie with"), was replaced by the term *acceso carnal* ("carnal knowledge"), and the body cavities whose penetration would constitute rape were more clearly defined. This implied a radical change in methods for investigating these offences and protecting the legal rights they violated, especially for women, given their higher incidence of rape. In addition, the offence of indecent assault was redefined and is now referred to as "sexual abuse" (*abuso sexual*); this has also had an effect on the approach to offences of this kind and their treatment.

113. The second law raised the minimum age of sexual consent from 12 to 14 and increased the penalties for the offences of rape, rape of a minor and sexual abuse, among others. It also defined new offences, such as the acquisition or storage of child pornography, causing a child under the age of 14 to witness pornographic performances and aggravated sexual abuse and prescribed new penalties and introduced new investigative tools.

114. With regard to the investigation of sex offences, given the importance and complexity of this kind of offence and as a means of promoting better quality investigations, the national prosecution service of the Public Prosecutor's Office - through the Specialized Unit for Sexual and Violent Offences - ordered the appointment of specialized prosecutors, who would be given regular supplementary training. There are now 157 specialized prosecutors throughout Chile. In addition, a legal adviser on sex offences is available in each regional prosecutor's office in the country.

115. The Public Prosecutor's Office has a national Victim and Witness Support Division, whose objective is to ensure protection and support for victims and witnesses in criminal trials. Each regional prosecutor's office has a regional Victim and Witness Support Unit, which is responsible for the practical implementation of this objective under the technical supervision and guidance of the national Division.

116. The regional Victim and Witness Support Units have focused their efforts on the most vulnerable victims, which include women and children who have been subjected to sexual violence. The specialized assistance provided by the professionals comprising the Units (psychologists and social workers) includes reception and orientation; counselling, when deemed necessary for procedures that make a strong impression on victims (gynecological expert appraisals, examinations, statements, etc.); referral to the public or private network for curative treatment; ongoing risk evaluation; and the implementation of protection measures (improving

¹⁵ Act No. 19617 of 1999 and Act No. 19927 of 2004.

home security, personal alarms, provision of cell phones, placement in shelters, relocation, etc.) or a request for such measures to be taken by the prosecutor (police patrols, priority calls) or the guarantees courts (precautionary measures).

Measures to prevent acts of sexual violence

117. Measures taken include:

- (a) Public information and awareness-raising actions, through media campaigns, distribution of information, leaflets, etc.;
- (b) Training programmes for civil servants and officials working in the various public sectors;
- (c) Information workshops for social organizations, student organizations, etc.;
- (d) Actions in cooperation with the investigative police, the police, the Public Prosecutor's Office, the Ministry of Health and others.

Statistics on investigations

118. According to the Prosecution Support System (Statistical Bulletin 2008, Public Prosecutor's Office), the total of offences registered from 1 January to 31 December 2008, by category per 100,000 inhabitants, was 1,249,434. Of these, 18,291 were sex offences, as shown by the following table.

Category of offence	Offences Registered
Robbery	93 390
Non-violent robbery	190 611
Larceny	132 881
Other property offence	69 781
Personal injury	180 424
Homicide	1 448
Sexual offence	18 291
Offence against personal freedom and privacy	155 463
Infraction	117 741
Traffic violation	29 149
Drug law violation	16 295
Economic offence	39 519
Offence committed by public official	1 165
Violation of special laws	21 181
Fraud	4 864
Quasi-offence	17 672
Other	159 559
Total	1 249 434

Ministry of the Interior: 2008 National survey of victims of domestic violence and sex offences.

119. This survey indicates that 7 per cent of children and adolescents have at some time been subjected to some form of sexual abuse; 12.8 per cent of girls and 3.3 per cent of boys have been subjected to some form of sexual abuse; 29 per cent of sexual abuse occurs within the family (uncles and aunts, step-parents, cousins, grandparents or parents); 56 per cent of abuse occurs between the ages of 8 and 12; and 9.2 per cent of women have been subjected to some form of sex offence outside the couple relationship (after the age of 15).

Paragraph 38. Please indicate whether the Criminal Code defines an offence applicable to public officials who fail to report acts of torture that have come to their knowledge in the discharge of their duties.

120. The Administrative Statute, which is the law that governs all public officials, establishes officials' obligation to report to the Public Prosecutor's Office or the police any major or minor offences that come to their attention in the discharge of their duties.¹⁶

121. Article 175 of the Code of Criminal Procedure stipulates that "public employees" are under a reporting obligation; they must file a report within 24 hours of becoming aware that an offence has been committed. Failure to comply with this obligation is defined as an offence under article 494 of the Criminal Code, to which reference is made in article 177 of the Code of Criminal Procedure. This provision does not, however, define "failure to report" as an offence but merely refers to the applicable penalty, which consists of a fine of between one and four monthly taxation units. Hence, article 177 of the Code of Criminal Procedure may be seen as concerned not with the definition of the offence, but rather with the penalty prescribed by the Criminal Code. In any event, persons under a reporting obligation who fail to comply with this obligation are excluded from responsibility if they took such action in order to avoid criminal prosecution or prosecution of their immediate family.

122. There are other legal definitions in the Criminal Code that refer to the reporting obligation of public officials in relation to certain specific offences, under the heading of "Violations of constitutional rights by public officials".¹⁷

¹⁶ Administrative Statute, Act. No. 18834, art. 61 (k).

¹⁷ Criminal Code, art. 160, para. 4.