

TREATY BODY MONITOR

International Service for Human Rights



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COMMITTEE AGAINST TORTURE 42TH SESSION CHILE, 5TH REPORT 4 AND 5 MAY 2009

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Key facts¹

Ratification	Reservations	Recognises Committee's competency under Article 22 ²	Other core treaties ratified	Due date of report and submission
1988	Articles 30 par.1	Yes	ICCPR, ICESCR, CAT, CRC, CERD, CEDAW, CRPD, CED	Yes

Opening remarks by the delegation

The delegation of Chile was led by Mr Jorge Frei, the Vice Minister of Justice. He was supported by a large and high-level delegation consisting of representatives of the Ministry of Justice, the Ministry of Foreign

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 22 provides that a State Party to the Convention may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

Affairs, Public Ministers, Carabineros and others as well as representatives of the Permanent Mission in Geneva.³

The State's presentation of its 5th report to the Committee against Torture (The Committee) lasted for about 30 minutes during which it reaffirmed its commitment to human rights and the elimination of torture.⁴ The delegation particularly highlighted progress in providing reparation to victims of torture; in increasing the quality and number of prosecutions; comprehensive legislative framework for preventing and prosecuting cases; investigating allegations of torture and ill-treatment; monitoring of police and judicial practices; and the fact that no acts of torture have been committed by State bodies. Given that the report was submitted two years before the review, the State then updated the Committee on the latest progress in the prevention of torture namely the reform of criminal procedure; the new 2007 juvenile code; investments in prisons; ongoing reform of the military code; the possible establishment of a Ministry of Public Security ; the creation of special body for indigenous people; the setting up of a national unit for crimes against human rights; and the ratification in January 2009 of the Optional Protocol to the *Convention against Torture* (the Convention).⁵

Given the updates and the overall friendly atmosphere, the presentation was useful and the State demonstrated its readiness to engage in a cooperative dialogue with the Committee.

Overview of key issues

The following overview addresses five of the Committee's concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe.⁶ Each issue is assessed according to how it was addressed in the examination, including the initial views of the State, questions, comments by the Committee and responses provided.

Chile engaged in a constructive dialogue with the Committee's members as reflected in their answers to the list of issues which were both detailed and frank.⁷ NGOs were successful in giving their inputs to the dialogue.⁸ Indeed many of the issues they raised were mentioned during the debate. The Committee also openly referred to their submissions. The Committee was overall satisfied with the State's answers and with all legislative processes in progress in the country. Nevertheless it is regrettable that most of the issues discussed repeat concerns already expressed by the Committee at the last review in 2004. It should also be

3 Mr. Carlos Portales (Embajado), Mr Luciano Parodi (Ministro Consejero), Mr Rodrigo Donoso (Primer Secretario) and Ms Amira Esquivel (Agregada) from the Permanent Mission in Geneva; Mr Juan Aníbal Barría (Embajador, Director de la Dirección de Derechos Humanos), Ministerio de Relaciones Exteriores; Mr Alejandro Rogers (Ministro Consejero), Representante Permanente Alterno de Chile; Mr Vicente Zerán (Tercer Secretario), Dirección de Derechos Humanos, Ministerio de Relaciones Exteriores; Ms Ana María Morales (Jefa de la División de Defensa Social), Ministerio de Justicia; Ms María Luisa Sepúlveda, Comisionada Presidencial para Políticas de Derechos Humanos; Sra. Rosemarie Bornand (Secretaria Ejecutiva del Programa de Derechos Humanos), Ministerio del Interior; Mr José Luis Cabión (Jefe de la Brigada de Derechos Humanos) and Mr Abel Lizama (Comisario) from Investigaciones de Chile; Mr Eduardo Picand (Abogado), Oficina de Cooperación Internacional, Ministerio Público; Mr Gustavo González J. (General Subdirector), Mr Heriberto Navarro (Mayor J) and Sra. Lily Fuentes (Asesora, Subsecretaría) de Carabineros de Chile; Mr Marcos Opazo (Asesor), Ministerio Secretaría General de la Presidencia.

⁴ CAT/C/CHL/5 available at <http://www2.ohchr.org/english/bodies/cat/cats42.htm>

⁵ It is noteworthy that the State report was quite short though it was done in an interesting manner. Indeed the State, in the second part, detailed its implementation of the recommendations issued at the last review in 2004.

⁶ Concluding observations and recommendations are included in the document CAT/C/CHL/CO/5

⁷ The session was chaired by Mr Wang so as to conserve the impartiality of the process, as Mr Grossman who is chairing the Committee is Chilean.

⁸ Three NGOs reports were submitted from Redress, CODEPU, and a coalition of Chilean civil society NGOs including the Observatorio Ciudadano, Amnestia Internacional, the Centro Derechos Humanos, the Centro Regional de Derechos Humanos y Justicia de Genero, Opcion and the Centro de Salud Mental y Derechos Humanos. The two latter NGOs were present at the informal meeting with the Committee.

noted that while many important laws are waiting to be passed in Parliament, NGOs expressed concerns that the Parliament is not effectively ensuring the enactment of international instruments.

Before examining the recommendations it should be noted that the Committee highlighted the following positive developments: the ratification of the Optional Protocol to CAT; the efforts made to harmonise its laws with the Convention; and the passing of a new criminal code.

Definition of torture in domestic law

‘El Estado parte debe adoptar las medidas necesarias para asegurar que todos los actos de tortura aludidos en los artículos 1 y 4 de la Convención sean considerados delitos en su legislación penal interna y que se apliquen penas apropiadas en cada caso teniendo presente el grave carácter de estos delitos. Asimismo, el Comité insta al Estado parte a que elimine la prescripción actualmente vigente para el delito de tortura.’⁹

The debate on this issue reached a stalemate with the Government not ready to change its legislation on some elements that does not match the definition of the Convention such as the fact that the law limits potential victims of torture to persons deprived of their liberty, the persistence of a 10-year statute of limitation, and the non explicit mention of attempted torture as an offence under domestic legislation. One of the two members serving as Rapporteurs, Mr Chiriboga underlined that the implementation of the Convention by the courts require a complete and clear definition of torture in domestic law. Noting the progress made since 2004, Mr Gallelos added that the definition should be clear to avoid impunity. Nevertheless, the State report makes it clear that the definition of torture in domestic law is not fully in compliance with that of the Convention.¹⁰ Despite several questions from the Committee on the list of issues and during the debate, and similar concerns expressed by NGOs during their informal meetings with the Committee, the Government maintained its position. It reiterated that torture can only happen in places of detention and that attempted torture is criminal under the law.. On the 10 year-limitation applying to acts of torture, the Government informed the Committee in its answers to the list of issue that it was taking steps to make the offence of torture subject to the special rules applicable in the jurisdiction of the International Criminal Court. Given the limited progress made to address that issue and the absence of answers during the review on this issue, the Committee reiterated its above recommendation.¹¹

The Amnesty Decree-Law and statutes of limitation

‘El Comité insta al Estado parte, siguiendo sus recomendaciones anteriores, a que derogue el Decreto-Ley de Amnistía. En este sentido señala a la atención del Estado parte el párrafo 5 de su Observación general n° 2 (2007) conforme a la cual, el Comité considera que las amnistías u otros obstáculos que impiden enjuiciar y castigar con prontitud e imparcialidad a los autores de actos de tortura o malos tratos, o ponen de manifiesto una falta de voluntad al respecto, infringen el carácter imperativo de la prohibición de la tortura. Asimismo, el Comité recomienda que se adopten todas las medidas necesarias para garantizar que las investigaciones de torturas y otros tratos o penas crueles, inhumanos o degradantes sean realizadas exhaustivamente, con prontitud y de manera imparcial y que se proceda al enjuiciamiento y castigo de los autores, así como a la adopción de medidas de reparación a las víctimas, de conformidad con lo dispuesto en la Convención.’¹²

This issue dominated the debate and counted among the main concerns expressed by NGOs. For Redress, this Decree-Law 2.191 legitimates and legalises impunity for the commission of crimes against humanity during the dictatorship in Chile.¹³ CODEPU stressed that due to two failed attempts at having the decree repealed,

⁹ Recommendation number 12.

¹⁰ Paragraphs 79 and 80 of the State report.

¹¹ See the recommendations 7(a) and 7(f) from the 2004 Conclusions and recommendations of the Committee against Torture.

¹² Recommendation number 12.

¹³ The Decree gives amnesty to ‘anyone that, as a perpetrator or an accomplice, committed an offence during the state of siege, including from 11 September 1973 to 10 March 1978’.

the decree was still being applied. It stressed that this is a serious violation of international obligations and recommended the State reform this legislation. Responding to the list of issues, Chile stated that some members of Parliament had submitted a new bill on the Amnesty Decree-Law and the statute of limitations for crimes against humanity to the senate. During the review, Chile announced that the decree was not applicable anymore. However, this is contradicted by information from NGOs.¹⁴ During the interactive dialogue, many Committee members expressed strong concerns on this issue.¹⁵ They specifically raised the issue of lower courts still applying the amnesty law although the Inter-American Court of Human Rights found it to be in violation of Chile's human rights obligations and the Chilean Supreme Court found that it should not apply to certain crimes, such as torture. Mr Gaye questioned the exact position of the Government on this matter. Commenting on the Government's claim that the amnesty law had not been applied since 1998, Ms Sveaass asked how the Decree could be suspended if the new bill had not been adopted yet. The Government finally admitted that the Decree was sometimes applied by lower courts, that they had unsuccessfully attempted to amend the Decree twice, but that the Government was working on it to ensure that there is no impunity. Given that a similar recommendation was issued by the Committee in 2004, the Committee attached a request for specific follow up to the above recommendation. Chile will have to report on the progress made within a year.

Reform of the military justice and the shortcomings of the judiciary

*'El Comité recomienda al Estado parte que agilice el proceso de adopción de la ley que modifica el Código de Justicia Militar, por medio del cual se establecen límites a la competencia material y personal de los tribunales militares. Asimismo, el Comité reitera al Estado parte que elimine el principio de obediencia debida del Código de Justicia Militar.'*¹⁶

The amendment of the military code was only raised once during the dialogue. Chile, both in the follow-up to a similar recommendation made by the Committee in 2004 and in its answers to the list of issues, briefly explained that this issue was entrusted to a national commission and that it hoped the first draft of the reform would be examined by the National Congress in the second half of 2009.¹⁷ Indeed, the outcome of the 2004 review asked Chile to ensure that the jurisdiction of military courts is limited to crimes of a military nature and to eliminate the principle of due obedience which may permit a plea of superior orders. It seems that the Committee reiterated this recommendation and asked Chile to report on it within a year, mainly due to NGO concerns. Moreover, the existence of a due obedience defence is an explicit violation of Article 2. All three NGOs in their reports denounced the overlap between the civilian and military judiciary. The NGO Citizen Observatory in its report expanded on the inconsistencies of the bill and the shortcomings that persist.¹⁸

Reparation for the violations committed during the dictatorship

'El Comité recomienda al Estado parte que tenga en cuenta el deber de reparar a todas las víctimas de tortura y que considere establecer acuerdos de cooperación con países donde residen para que aquéllas puedan tener acceso al tipo de tratamiento médico necesario por su condición de víctimas de tortura. Asimismo, el Comité insta al Estado parte a tomar medidas con miras a garantizar el financiamiento necesario para que cada equipo PRAIS u otros puedan atender de un modo efectivo a todos los consultantes

¹⁴ 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 or ordinary offences constituting genocide, crimes against humanity and war crimes, as defined in the international treaties ratified by Chile and currently in force.

¹⁵ Mr Chiriboga, Ms Sveaass, Mr Gaye.

¹⁶ Recommendation number 14.

¹⁷ 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.

¹⁸ Some offences involving civilians are still dealt by military courts.

*acreditados. El Comité insta también al Estado parte a que incorpore una política de género que incluya la capacitación y sensibilización de los funcionarios encargados de atender los casos de las víctimas de agresión y violencia sexual. El Comité recomienda al Estado parte que incremente los esfuerzos en materia de reparación, indemnización y rehabilitación de manera que se garantice una reparación justa y adecuada a todas las víctimas de tortura.*¹⁹

*El Comité recomienda al Estado parte su obligación de velar por que todas las víctimas de actos de tortura tengan derecho a una reparación justa y adecuada. El Estado parte debe velar por que todas aquellas personas que fueron víctimas de actos de tortura durante la dictadura, incluidas aquellas que no se encuentran actualmente en el Estado parte, puedan tener acceso a una reparación adecuada, acorde con la gravedad del delito de que fueron objeto.*²⁰

Reparation to victims of torture was a recurrent topic during the interactive dialogue. The Government both in its report and answers to the list of issues reported to the Committee on the individual and collective measures it has taken in this regard. Nevertheless the Committee issued two time-bound recommendations on this issue, recommendation 18 dealing with health compensation and recommendation 25 concerning access of all victims to reparations, including those living abroad.

Ms Sveaass was the only member to raise health care for victims in relation to reparations. Chile in its replies highlighted its collaboration with NGOs in providing health care to victims and provided extensive figures on the number of people receiving compensation and the amounts received. This focus on reparation has possibly been drawn from an NGO report almost entirely dedicated to that issue. Recognising that a system has been put in place, the NGO Redress emphasised that domestic law contains obstacles which prevent victims in exile from accessing fair and adequate compensation and asked the Committee to address this matter.²¹ Committee members expressed concerns regarding victims of the Pinochet regime living abroad in relation to the following issues: lack of information to access compensation, shortcomings in the collaborations between Chile and its diplomatic representations around the world in this regard, and the limited time (only six months) allocated to the investigation of cases.

Some Committee members asked for the concrete functions of the National Commission on Political Prisoners and Torture and the Truth and Reconciliation Commission and whether their mandates overlapped. They expressed strong concern regarding their efficiency and the number of cases that still needs to be processed.²² Mr Marinos and Ms Sveaass recalled that as a result of the shortcomings mentioned above, many cases have not yet been investigated meaning that impunity for the crimes of the past still prevails. CODEPU confirmed having taken inventory of thousands of non-investigated cases. Both recommendations while addressing specific issues, that of health and Chileans living abroad, basically request Chile to continue investigating and providing reparations for the crimes of the past. Nevertheless it seems that once the bill on the creation of a national human rights institution is passed, it will re-establish the truth commission for a period of one year and answer to the Committee's concerns.

Practices of torture, cruel, inhuman or degrading treatment: Police brutality and training of Carabineros

'El Comité recomienda al Estado parte que introduzca reformas legislativas en relación al control de las fuerzas policiales lo antes posible, con miras a garantizar que ningún acto de éstas contrario a la

¹⁹ Recommendation number 18.

²⁰ Recommendation number 25.

²¹ The NGO denounced the fact that the Civil Code does not include explicitly a specific recourse for victim of torture and therefore is seen as a simple unlawful act; a civil action can be lodge only during penal proceedings; criminal proceedings requires the name of the perpetrators what is hard to identify in case of torture and against international standards; the impact of the 50-year limitations to the use of cases' documents; etc...

²² Ms Sveaass, Mr Chiriboga.

*Convención permanezca impune y que las investigaciones correspondientes sean efectivas y transparentes. El Estado parte debe reforzar los programas educativos para lograr que todos los agentes de las fuerzas del orden tengan plena conciencia de las disposiciones de la Convención. El Comité recomienda igualmente al Estado parte que continúe acelerando los trámites para la creación del Ministerio de Seguridad Pública, bajo cuya supervisión se colocaría a Carabineros y Policía de Investigaciones.*²³

The issue of allegations of torture, particularly against police officers was not a major topic of discussion but as it was dealt with in relation to other matters, it resulted in a comprehensive recommendation. The issue was addressed in the context of prevention of acts of torture committed by police officers, training of Carabineros, the oversight of their actions, and investigation and prosecution of allegations of torture. This time-bound recommendation reflected the debate. Few Committee members expressed their views on the subject which was raised by the Observatory of Citizens during the informal meeting.²⁴ The NGO highlighted the persistence of multiple situations of abuse, unnecessary use of force and brutality by State police agents, resulting in torture, or inhuman or degrading treatment of persons. It stated that certain groups are at greater risk of torture and in this regard highlighted vulnerable groups such as indigenous peoples, workers and children but also other groups that may be exposed to risks during police raids or when exercising their rights to freedom of speech or peaceful assembly.²⁵ As aggravated factors the NGO emphasised the limitations of the legal ordinances to allow proper internal and external inspection of police action, the competence of military courts on certain civilian matters, and the lack of political will to adopt all appropriate measures. In this regard, the State report does not provide much information on training for police officers and preventive mechanisms. Furthermore during the debate its discourse contradicted allegations made by NGOs. Chile mentioned that a code of ethics for Carabineros was in place and that any breach was liable to penalties. Responding to the concerns of Committee members in the interactive dialogue related to the insufficient training of police officers and dissemination of the Istanbul Protocol, Chile stated that human rights instructions is included in their training programme and that all complaints of police misconduct are fully investigated.²⁶ Nevertheless, Ms Kleopas's question on the authority competent to investigate cases against police officers never received a reply. The chief of the *carabineros* admitted that police actions are not exempt from errors. He affirmed that complaints are investigated and that superior officers should ensure the high moral standards of their subordinates. The Government also noted that the bill establishing the Ministry of Public Security has been approved by the Senate²⁷. The Ministry will oversee the operations of the *Carabineros* and the criminal investigation of police officers.

Other issues not reflected in concluding observations

Most issues raised in the debate were reflected in the recommendations. As it was not possible to deal with all of them in the above analysis, it should be noted that The Committee also discussed: overcrowding and increase of suicide in prison; illegal abortion; extradition and *non-refoulement*; indigenous rights; *incommunicado* detention; age of criminal liability; and refugees.

Conclusions and next steps

The chairperson, Ms Grossman, expressed satisfaction with the dialogue which he characterised as fruitful and productive. He added that he believed the country has embarked on a road which will eliminate the consequences of the past. However, he regretted that Chile's past is recalled so often. He emphasised that the promotion of human rights was a priority for the State. He promised that it will do all it can to **adopt the legislations under way, strengthen the penitentiary systems and improve conditions in prisons.** He

²³ Recommendation number 13.

²⁴ The first part of their report is dedicated to this issue in a detailed and documented manner.

²⁵ They referred in their report to the annual report of Human Rights by the Diego Portales University in Chile which expressed concern about the increased of abusive use of forces by the police, in particular as a mean of repressing social mobilisation.

²⁶ Mr Marinos, Ms Sveeas, Mr Gaye.

²⁷ Written replies by the Government, paragraph 19.

closed his final remarks stating that there should be no impunity for the acts of violence committed during the dictatorship.

The Committee invited Chile to present its next periodic report no later than 15 May 2013.

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