INDH INSTITUTO NACIONAL DE DERECHOS HUMANOS	**Complementary Report to the United Nations Committee against Torture** **Sixth Periodic Report of Chile** *Report prepared by the National Human Rights Institute of Chile (Instituto Nacional de Derechos Humanos or INDH)*[1]

Preliminary aspects

1. Through this report, the National Human Rights Institute (INDH), an autonomous body of the State, created by Law N° 20.405 of 2009, whose mission is the promotion and protection of human rights of people living in Chile, makes available to the Committee against Torture of the United Nations relevant information on the progress and pending matters regarding the application of the Convention against Torture in the country, with the purpose that these antecedents, referring to the 2009-2018 period, be taken into account at the 64th session during which the sixth periodic report of Chile will be considered.

Answers to the list of issues prior to reporting

2. Based on the list of issues prior to the submission of the sixth periodic report of Chile (CAT/C/CHL/6), approved by the Committee at its 48th session, the specific information on the application of Articles 1 to 16 of the Convention, particularly regarding the previous recommendations of the Committee, is the following.

[1] Approved by the Council of the INDH, on June 18, 2018, at session N° 429.

Articles 1 and 4

Paragraph 1

Law N°20.968 that defines crimes of torture and cruel, inhuman and degrading treatment

3. By Law 20.968, of 2016, the Chilean State expressly defined the crime of torture, incorporating it into Article 150 A of the Criminal Code[2] and adapting it to the definition of international law.

4. The rule makes a distinction between the punishment of rigorous imprisonment in its minimum term (from 5 years and 1 day to 10 years of imprisonment) for the public employee who commits these acts, and of ordinary imprisonment of a maximum term (3 years and 1 day to 5 years) when it is aimed at "*canceling the personality of the victim, or diminishing his will or ability to discern or decide".* In the latter case, the punishment assigned is not a punishment for crime but for misdemeanor, which favors the granting of alternative benefits or penalties, and shortens the limitation period, an issue that is not consistent with the gravity of the crime of torture.

5. This legal modification constitutes an advance since, from November 22, 2016, what was previously together in Arts. 150 A and 150 B under the only description of "unlawful physical or mental coercion", is now broken down into two central types: the crime of torture (Arts. 150 A to 150 C), and the crime of "unlawful coercion or other cruel, inhuman or degrading treatment that does not amount to torture" (Art. 150 D to 150 F)[3].

6. In both cases aggravated concepts are considered (150 B, 150 D subsection 2, 150 E). Likewise, an aggravation of the penalty is contemplated (Art. 150 C) for cases of torture in which the victim is legitimately or illegitimately deprived of freedom, or under care, custody or control. The latter is one of the major differences with the previous regulation, wherein the crime of coercion required that the victim was in a situation of deprivation of liberty, leaving aside several situations that occurred outside the formality of detention. An additional regulation is also considered regarding individuals who, in the exercise of public duties or at the instigation of public officials or their consent or acquiescence executes such coercion or treatment (Art. 150 F).

[2] In this provision torture is defined as *"any act by which severe pain or suffering, whether physical, sexual or mental, is intentionally inflicted on a person for such purposes as obtaining from him or any third person information, declaration or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating or coercing him, or for any reason based on discrimination of any kind, such as ideology, political opinion, religion or beliefs of the victim; the country, race, ethnicity or social group to which he belongs; the sex, sexual orientation, gender identity, age, filiation, personal appearance, health status or disability situation"*.

[3] For further detail, see explanatory table of criminal types associated with the crime of torture in ANNEX 1.

Paragraph 2

Imprescriptibility of torture crimes

7. Law 20.968 does not establish the statute of limitations for crimes of torture, applying to them the general rules of Chilean Criminal Law[4]. Thus, in the case of crimes punishable by crime punishment (5 years and 1 day or more), as the first type of torture already described, the criminal action prescribes in 10 years. Instead, in the second type called "attenuated" torture of Art. 150 A subsection four, because it is a punishment for misdemeanor, the criminal action prescribes in 5 years.

8. The unlawful coercion of Law N° 20.968 in its simple form are punishable by punishment for misdemeanors, and therefore, prescribe in 5 years. Instead, its aggravated types have crime punishment and prescribe in 10 years. Only in the case of torture as crime against humanity (Law 20.357) is its imprescriptibility established.

Paragraph 3

Secret of the background of the Valech I Commission

9. Both Law N° 20.968 that defines crimes of torture and cruel, inhuman and degrading treatment, approved in 2016, as Law 20.357 that defines crimes against humanity, genocide and war crimes, approved in 2009, do not cover the crimes committed prior to their adoption.

10. Despite the existence of a legislative initiative of the Executive[5], which seeks to make the background of the Valech I Commission available to the courts of justice, the secret of 50 years established on said antecedents (Law 19.992) has not yet been reviewed, nor the existence of the special offense of "breach of secrecy" established in said law, which would be configured even when the information is delivered at the request of some judiciary body[6]. In this regard, it is worth noting that the INDH in its role as custodian of

[4] Established in Art. 94 et seq. of the Criminal Code.

[5] Bulletin N° 10.883-07, of 2016.

[6] Article 15 of Law 19.992 (of 2004, known as the "Valech Law") declares the secret nature of "*the documents, testimonies and information provided by the victims" to the Valech I Commission, which "will be maintained during a period of 50 years". In the meantime, it is provided that "no person, group of persons, authority or Court will have access*" to them, but an important exception is established when adding that this is "*without prejudice to the personal right of the holders of the documents, reports, declarations and testimonies included in them, to make them known or provide them to third parties at their own free will*".
The fourth paragraph of the same article specifies that the members of the Commission, as well as "*the other persons who participated in any capacity*" in their work, are obliged to maintain said reservation during the aforementioned period, and makes applicable to them the rules of the Code of Criminal Procedure and Criminal Procedural Code regarding the power to refrain from testifying in court for reasons of professional secrecy.

the Valech archives, received the request from the Special Inspecting Judge of the Court of Appeals of Santiago, Mr. Mario Carroza, who is investigating the case N° 1384-2018, to be sent the backgrounds of the victims of torture qualified in the reports of both Valech commissions[7]. This request is being analyzed by the Council of the INDH.

Paragraph 4

Application of the Amnesty Law Decree

11. During the reported period, none of the legal initiatives or constitutional reform to definitely annul this Decree Law have been successful. Although since October 1998 the superior courts have stopped applying the Amnesty Law Decree in cases of systematic and mass violations of human rights committed during the period of the civil-military dictatorship, it is necessary to point out that sentences in Chile have effect only between the parties, and therefore, as long as this legislation exists there is the risk, although very unlikely, that it is used by the courts of justice. Therefore, although since 1998 the Decree Law of Amnesty has not been an obstacle to investigate, judge and sanction those responsible for the violation of human rights during the dictatorship period, according to the terms set out in the ruling of the Almonacid vs Chile case of the Inter-American Court of Human Rights[8], its non-application is not fully ensured. It must also be mentioned that, in terms of criminal sanctions, the application of criminal-legal provisions, such as half

---

The final paragraph contemplates a special criminal figure that sanctions with the penalties indicated in Art. 247 of the CC "*the communication, dissemination or disclosure of the background and data protected by the secret established in the first paragraph*".

[7] The National Commission on Political Imprisonment and Torture (Valech I Commission), was created by Supreme Decree N° 1.040, of September 26, 2003, whose Final Report was delivered on November 28, 2004, acknowledging a total of 28,459 victims. Subsequently, the Presidential Advisory Commission for the Qualification of Disappeared Detainees, Persons Executed for Political Reasons and Victims of Political Imprisonment and Torture (Valech II Commission) was created by Supreme Decree N° 43 of February 17, 2010, and constituted on that same date which operated for 18 months and accredited 9,795 new cases of political imprisonment and torture and 30 new cases of disappeared detainees and persons executed for political reasons, raising the official figure of recognized victims of political imprisonment and torture to 38,254 people. Regarding the Valech II Commission, Transitory Art. 3 of Law 20.405 states that "actions taken by the Commission, as well as all the antecedents it receives, will be confidential, for all legal purposes". Notwithstanding the aforesaid, it does not consider special penal types, so one could conclude that Art. 15 of the Valech Law is not applicable. Instead, Law 20.496 established in 2011, by extending the term of operation of the Valech II Commission in 6 months, makes expressly applicable the penal type of Art. 15 of Law 19.992, in the following terms: "The Advisory Commission to which transitory article 3 of Law refers to, and the persons authorized by it by virtue of the previous paragraph, will be subject to the same obligations, prohibitions and sanctions established in Article 15 of Law 19.992".

[8] Almonacid Arellano y Otros vs Chile, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf In this point, the Court of IDH ruled that: "The State must ensure that Decree Law No. 2.191 does not continue to represent an obstacle to the investigation, judgment and, where appropriate, punishment of those responsible for other similar violations that occurred in Chile, according to what is stated in paragraph 145 of this Judgment."

periods of limitation[9], have mitigated penal sanctions and violated the obligation to apply sanctions appropriate to the damage inflicted.

Article 2

Paragraph 5

Institutional dependence of the police

12. As of Law N°20.502, of 2011, both police forces, Carabineros de Chile and Policía de Investigaciones, ceased to depend on the Ministry of National Defense and became dependent on the Ministry of the Interior and Public Security.

Paragraph 6

Prevention of violence against women and children

13. Studies carried out by public entities indicate that 38% of women in the country over the age of 15 have experienced some type of violence in the family[10]. Statistics on family violence indicate that the number of complaints has decreased steadily in recent years[11]. Instead of representing progress, this decrease in the number of complaints can be an indicator of the low level of trust in the institutions of the justice system. Indeed, a national survey conducted by the Ministry of the Interior shows that 46,8% of the women who experienced physical violence, 41,8% of those who experienced sexual violence and 48,9% of those who experienced psychological violence do not believe that it is worthwhile to file a complaint or have previously filed complaints without obtaining a response[12]. This perception is related to the legal treatment of the cases in criminal courts, where the proportion of out-of-court solutions of the system has not changed substantially, nor has the relationship between convictions and conditional suspensions of the sentence, thus setting a sustained pattern of judicial prosecution that is worrisome[1314].

[9] The application of half periods of limitation, also known as gradual, partial or incomplete period of limitation has had as a consequence the imposition of remitted penalties or the access to other benefits to be complied with in freedom. INDH, 2012 Annual Report on the situation of human rights in Chile, p. 281-287.

[10] Undersecretariat of Crime Prevention (2017). Third national survey on family violence against women and sexual crimes. Available at http://www.seguridadpublica.gov.cl/media/2018/01/Resultados-Encuesta-VIF.pdf

[11] In 2011, there were 96,841 reports of domestic violence, figures that have decreased steadily in subsequent years, reaching in 2016 72,672 reports. See http://www.seguridadpublica.gov.cl/estadisticas/tasa-de-denuncias-y-detenciones/

[12] Undersecretariat of Crime Prevention (2017). Third national survey of domestic violence against women and sexual crimes. Available at http://www.seguridadpublica.gov.cl/media/2018/01/Resultados-Encuesta-VIF.pdf

[13] Legal decisions were 56,5% in 2010 and 57,7% in 2017, according to the data of the Public Prosecutor's Office. Of these, convictions were respectively 9,9% and 9,2%. Non-legal decisions varied from 43.4% to

It should be noted that Law 20.480, which establishes the crime of femicide, was published in December 2010.

14. On the other hand, in 2017, the Executive entered into Parliament the bill on the right of women to a life free of violence[15], which constitutes an important step forward for the future implementation of an articulated public policy that considers the violence that women face in the public and private spheres, and which contains the dimensions of prevention, sanction and eradication of violence against women, incorporating other types of violence, such as obstetric violence.

15. Violence against children and adolescents in the family continues to be an extended problem, mainly in the 14 to 17 age group, a group that is also disproportionately affected by sexual violence[16].

16. Regarding the violence that affects Children and Adolescents in State protection programs, the Observation Mission conducted by the INDH in 2017 in 171 protection centers of SENAME (National Service for Minors), on a simple of 405 surveyed boys and girls[17], showed that 85% of the girls and 83% of the interviewed boys[18] suffered punishment from the staff of those institutions. Within these punishments, 12.2% of the total corresponded to light physical abuse, 5,9% to severe physical abuse and 45,6% to psychological abuse. In addition, of the total number of reports of sexual abuse that occurred within SENAME centers, 79,7% affect girls and 20,3%, boys. As regards peer violence, 48.4% of the study participants reported having been the victim of repeated violence by their peers in the last 12 months, a situation that affects both boys and girls equally[19].

42,3% during those same years. In 2017, the crimes that register a higher proportion of alternative outcomes are sexual crimes (63,9%) and habitual abuse (68,1%).

[14] The CEDAW Committee expressed its concern about the institutional, procedural and practical barriers that women must face to have access to justice, in particular "discriminatory stereotypes, judicial bias and scarce knowledge about women's rights among members of the judiciary, justice professionals and law enforcers, including the police;" Committee on the Elimination of Discrimination against Women, concluding observations on the seventh periodic report of Chile, CEDAW/C/CHL/CO/7, March 14, 2018.

[15] Legislative Bulletin N°11077-07, processing available at: https://www.camara.cl/pley/pley_detalle.aspx?prmID=11592&prmBoletin=11077-07

[16] Childhood and Adolescence Observatory (2016). Childhood 2016 account in Chile. Fourth Childhood and Adolescence Observatory Report. Available at: http://www.xn--observatorioniez-kub.cl/wp-content/uploads/2016/12/Informe_Infancia_Cuenta2016.pdf

[17] 250 girls and 155 boys, corresponding to the proportion of boys and girls in these centers at a national level.

[18] A total of 405 girls, boys and adolescents (250 girls and 155 boys) participated in a random sample survey

[19] SENAME Observation Mission available at https://www.indh.cl/destacados/mision-de-observacion-sename-2017/

17. In relation to the institutional framework for children, it has been strengthened in recent years. On the one hand, in 2018 Law N° 21.067 was passed creating the Office of the Defender of the Rights of Children and Law N° 21.090 creating the Under-Secretariat for Children. On the other hand, in 2015 a bill entered Parliament creating the System of Guarantees of the Rights of Children[20], which includes a coordinated ordering of legal provisions and a set of policies, institutions and rules aimed at ensuring the development of children and adolescents. Law 21.013 was published in June 2017, adding a series of offenses to the Criminal Code, referring to mistreatment of persons under 18 years of age, older adults or people with disabilities.

Police sexual violence against girls, boys and adolescents

18. Regarding police sexual violence against girls and adolescents in the context of peaceful demonstrations, the INDH learned of two cases of stripping in police stations produced during the demonstrations in 2012. One of these complaints was referred by the ordinary justice system to the Military Justice[21]. The other case, which took place in August 2012 in the city of Rancagua, during the occupation of a school, remained in the hands of the ordinary courts after debating the problem of competence, but finally in January 2016 the Prosecutor's Office decided not to pursue the investigation[22].

19. Subsequently, the INDH has received more similar complaints that reflect the persistence of these practices and the slow progress of justice. Thus, in the city of Concepción after the eviction of a girls' school that had been occupied in June 2016, stripping and mistreatments were carried out against 10 adolescents while they were detained in a Carabineros precinct, including the extraction of a ring one of them had in the nose with a plier. There is a complaint filed by the INDH for these facts. Other two INDH complaints are related to the stripping of adolescents carried out in the city of Santiago, in two different police stations.[23]. Both cases are still being investigated by the Center North Prosecutor's Office, without formal charges. Likewise, in the context of a student's march in May 2016, a pregnant woman reported a police officer for kicking her and provoking an abortion, a case for which the INDH filed a complaint for torture. Despite the seriousness of the facts reported, it was not until February 2018 that the officer was charged for the

[20] Legislative Bulletin N°10315-18, processing available at: https://www.camara.cl/pley/pley_detalle.aspx?prmID=10729&prmBoletin=10315-18

[21] 14th Warranty Court of Santiago, RIT 11115-2012.

[22] Warranty Court of Rancagua, RIT 16411-2012.

[23] The events occurred in the 3rd police station on March 26, 2016, and in the 48th police station on February 22 of that same year)7th° Warranty Court of Santiago, RIT 6781-2016 and 6783-2016.

alleged crime of unlawful coercion[24]. In March 2018 three boys and a Mapuche girl reported having been subjected to an illegal police procedure by Carabineros, during which besides checking their belongings in an uninhabited place, three of them (the boys) were forced to lower their pants. Their families filed an appeal for constitutional protection through the NGO CID-SUR, to which the INDH adhered. The Court of Appeals of Temuco rejected the appeal in first instance, considering that the indicated legal infringements had not been proved[25], but later on the Supreme Court revoked that judgment, declaring that the actions of Carabineros "constituted a violation of personal liberty and individual security of those protected, since they were subjected to an informal control and interrogation, which limited and affected, even briefly, the aforementioned rights, without legal authorization"[26].

Carabineros protocols for the maintenance of public order

20. Carabineros protocols for the maintenance of public order, made public in 2014, do not fully apply regarding the detention of minors. In effect, although in protocol 4.2, on the detention of minor demonstrators, it is expressly stated that *"those over 14 years of age arrested after having been charged with an offense do not require the presence of an adult responsible for their freedom"*, in practice the presence of a "responsible adult person" continued to be a requirement to set the adolescents free. This practice was consolidated in the Manual of Carabineros on Police Procedures with children and adolescents, of 2016. As a result of this requirement, which is not covered by the relevant regulations (Law N°20.084, on adolescent criminal responsibility), which causes, among other consequences, "an unnecessary delay and extension of the time for the adolescents to be set free"[27].

21. On the other hand, there are Carabineros protocols that are covered by the secrecy regime contemplated by the Code of Military Justice, among them the Manual of Police Operations for the Control of Public Order, called "Operation instructions for water-cannon vehicles"[28]. Despite their confidential nature, these protocols were published in

[24] https://www.indh.cl/formalizan-apremios-ilegitimos-carabinera-acusada-golpear-embarazada-hacerla-abortar/.
[25] Court of Appeals of Temuco, Case N°50-2018, judgment of May 18, 2018.
[26] Supreme Court, Case N° 10868-2018, judgment of May 30, 2018.
[27] INDH, 2016 Report on Human Rights Program, Police Function and Public Order, page 87.
[28] Faced with a request for information from the INDH in July 2017, the General Sub-Directorate of Carabineros replied through Official Letter N° 94 of July 21, 2017, that said Manual "is of a confidential nature pursuant to Article 436 of the Code of Military Justice, since it refers to operation or service plans of Carabineros de Chile.

the media[29] in the context of the investigation for the responsibility of a vehicle operator who during a social demonstration on May 21, 2015 in Valparaíso caused serious injuries to the University student Rodrigo Avilés, who after receiving the impact of the jet of water and hitting his head hard, was at vital risk.[30]

Paragraph 7

Competence of military courts

22. After the modification of the competence of military courts carried out by Law N°20.477, of 2010, there were different interpretive criteria regarding the scope of the exclusion of civilians from it. Only in 2016, with Law 20.968, was Article 1 of Law 20.477 amended. Thus, establishing in an absolutely clear manner that "in no case shall civilians and minors, who are victims or accused, be subject to the competence of military courts". However, these legal modifications are insufficient to fully comply with the Palamara Iribarne ruling of the Inter-American Court of Human Rights, since the military criminal jurisdiction has not been limited only to "offences committed by military personnel in active service in the course of duty"[31], whereas the Code of Military Justice contemplates the trial of both the military and officials of Carabineros and civilian staff of the military institutes. Furthermore, these courts are competent to hear military and civil offences when they are committed by military personnel in the course of duty or in facilities that are considered military, which includes police precincts[32]. In addition, the organic structure of these courts has not been modified so as to ensure their impartiality and independence[33]. In the same way, the process before the military justice system remains the same, which could constitute a violation of the guarantees of due process, both for the victims and the defendants[34].

[29] http://www2.latercera.com/noticia/el-instructivo-secreto-de-carabineros-que-regula-la-operacion-de-los-carros-lanzaguas/

[30] In this case, the INDH filed a criminal complaint and the oral hearing will soon take place. See: https://www.indh.cl/justicia-continuara-proceso-contra-carabinero-que-hirio-a-estudiante-rodrigo-aviles/

[31] IDH Court, Palamara Iribarne vs Chile case, judgment of November 22, 2005.

[32] After Law 20.968 it is understood that these hypotheses will remain in the military justice only when both the offender and the victim are "military" for purposes of the Code of Military Justice.

[33] All these points were indicated by the INDH in its Memorial of Law before the Inter-American Court of Human Rights in the Humberto Palamara Iribarne vs the Chilean State case, May 2014.

[34] In this regard, the Constitutional Court has indicated that "the current military criminal process contains a minimum set of rights that prevent the victim from exercising the right to a public process (…) and an adequate right to defense that allows him to watch over his interests, especially if the perpetrator is a member of the same hierarchical institution that is judging him, generating a violation of the right to be judged by the natural judge". Judgment of the Constitutional Court, June 17, 2014, Case N° 2492-2013.

23. In addition, one year after the reform carried out by Law 20.968, one can still notice that justice operators of Warranty Courts, Prosecutors and Public Criminal Defense are still not very clear about the incompetence of military justice to hear civilian complaints against police violence, particularly when they are filed by people arrested in the context of controls of preventive detention, and continue to refer cases to Military Prosecutor's Offices[35]. In fact, the data of the Public Prosecutor's Office regarding the first year of application of this law (November 2016 to November 2017) show that in 12 cases, the investigation ended with a declaration of "incompetence", which means that they were referred to the military justice, despite the express text of the law[36].

Paragraph 8

Custody and alternative measures to deprivation of liberty

24. Since 2009, custody rates have increased in the country[37]. Of the total of people who were in custody between 2005 and 2010, 23% ended by being convicted to a prison sentence. The excessive use of custody has been highlighted by the Public Defender's Office in recent years, especially in those cases in which there is custody although the person charged with the crime ends up by being acquitted[38]. To this we can add that there are no special judicial or administrative ways to make amends for the people who were subjected to an inadmissible custody, and therefore general mechanisms must be applied[39]. In addition, the measures contemplated in Law N°18.216, modified in 2012 by Law N°20.603 which establishes alternative measures to penalties that deprive or restrict liberty, have not been able to reduce significantly the levels of deprivation of liberty in the country.

[35] A request for updated information was sent to the Martial Court on May 10, 2018, asking about the number of current cases involving civilian victims.

[36] In one of these cases, regarding the application of torture to Bolivian citizens detained on the border with Chile, in a hearing held on March 20, 2017, the defense of the detainees requested that the complaints of mistreatment should be filed to the corresponding Military Prosecutor's Office, and so it was decreed by the Judge, without opposition of the Prosecutor's Office. The INDH sent on May 11, 2017, Official Letter N° 386, addressed to the National Prosecutor pointing out to him the illegal nature of that decision.

[37] According to the study conducted by the INDH in its 2014 Annual Report, in 2009 there were 23,912 adults in custody, a figure that increased to 25,112 people in 2015, of which 88,5% were men and 11,5%, women. The average duration of custody in the 2009-2013 period was of 121,1 days. INDH, Annual Report on the situation of human rights in Chile 2014, p. 71-89.

[38] See Defensoría Penal Pública, Informe Estadístico 2007, page 31 and Memoria Anual 2008, page 47. In the same sense, see Duce, Mauricio y Riego, Cristián, La prisión preventiva en Chile: Análisis de los cambios legales y su impacto, Ediciones Universidad Diego Portales, 2011, page 165.

[39] Such as civil action against prosecutors of the Prosecutor's Office, or pursuing their administrative responsibilities, as well as pursuing the responsibility of judges for crimes such as prevarication, or their disciplinary responsibilities within the Judiciary.

Conditions of detentions of migrants

25. Arrests of migrants are carried out by the Policía de Investigaciones (PDI), in response to expulsions decreed on the basis of Decree Law 1094 by the Ministry of the Interior or Regional Governments, and take place in such police precincts. In this regard, it is worth noting that in 2013 the INDH filed a writ of protection for the situation of a Colombian citizen who had been detained in a police precinct of the PDI in the city of Arica waiting to be deported, staying for more than 50 days in that situation, in very poor living conditions. The Court of Arica accepted the remedy of protection, stating that said deprivation of liberty was contrary to law[40]. More recently, the practice of mass arrests has been identified at the Santiago airport, in the case of migrants who are denied entrance by the PDI. On March 6, 2018, a team of the INDH verified at the International Airport of Santiago "Arturo Merino Benítez" the conditions of a group of 62 people from Haiti since March 2, who upon arrival at the country, had been detained by PDI staff. During those four days they remained in deficient conditions, in a small facility corresponding to an airport departure lounge, pending the resolution on entry authorization or re-boarding by the relevant authority. It was found that these 62 people had not been able to cover their most basic needs since they had no access to toilets to be able to clean themselves -the place had obviously not been designed nor was destined to detain or accommodate people for such a long period - and it was also found that they had not received any food. Two women were ill and others were semi-faint from lack of food. During this period, they were not allowed to access their luggage and therefore, they could not change their clothes or access any personal utensils, since their bags were also held in custody, and so they were cold at night due to the air-conditioning of the place, and although on numerous occasions they asked that it be turned off, they were not listened to. Finally, all these people were denied entry, despite the fact that all of them brought at least USD 1,000, because the PDI estimated that the hotel reservations they had mentioned were false. A remedy of protection filed against this measure by the Movimiento Acción Migrante (Migrant Action Movement) was rejected in the first instance in the Court of Appeals of Santiago (Case N° 299-2018), but was later on accepted by the Supreme Court, who deemed insufficient the criteria used to deny them entry to the country[41]. For the same facts, plus other similar ones observed in the field on March 7, 19, 23 and 27, 2018, there is a remedy of protection filed by the INDH, which is still being processed[42].

[40] Court of Appeals of Arica, Case N° 10-2013, judgment of March 18, 2013.

[41] Supreme Court, Case N° 4292-18, judgment of March 21, 2018

[42] It should be noted that in its Regulation of Rules of Procedure, the PDI includes "Special rules on deprivation of liberty to subjects of special protection. Foreigners", but these do not conform to current human rights standards.

Paragraph 9

Minors in temporary internment

26. As regards minors, the so-called "temporary internment", equivalent to custody in the system of criminal responsibility of adolescents (RPA), it is stated that figures have been decreasing since 2009 to date. This decrease in terms of total figures should be put into context with the information regarding the general functioning of the RPA system. According to the information provided both by the Public Defender's Office and the Prosecutor's Office, in recent years there has been a considerable and sustained decrease in the number of adolescents entering the penal system[43]. Thus, in the range of 14/15 years, entries to the RPA system have decreased from 22,665 in 2008 to 12,747 in 2016, while in the range of 16/17 years they decreased during the same amount of time from 48,096 to 28,014[44]. However, although in the context of this general decrease in the use of the RPA system may give the impression of a downward trend in the use of temporary internment, available figures show a tendency towards excessive use of this precautionary measure. In effect, as stated in a report of the Chamber of Deputies of 2015, 20% of precautionary measures that are applied are temporary internment, and only in 8% of the cases in which this measure has been applied, adolescents are ultimately sentenced to serve custodial sentences[45].

Paragraph 10

Measures related to complaints of police abuse against members of indigenous peoples, and excessive or unjustified use of force in student demonstrations.

27. With regard to training, significant efforts have been made to strengthen the training of police forces, incorporating contents on torture and human rights[46]. Nevertheless, there is a need to incorporate with greater systematicity and depth, topics referring to gender violence, protection of children and adolescents and mass and systematic violations of human rights during the 1973-1990 period[47].

[43] Public Criminal Defense Office, Comments on the bill extending the preventive identity control of adolescents (Bulletin 11.314-05), August 7, 2017.

[44] Prosecutor's Office, Presentation about Bulletin 11.314-25, Citizen Security Commission, Chamber of Deputies, August 2017. In this same report it is stated that the average number of cases per subject increased from 1,25 in 2008 to 1,49 in 2015.

[45] Evaluation of Law 20.084, Committee of evaluation of the Law /OCDE-Chamber of Deputies

[46] As an example, in La Araucanía, an area where the intercultural conflict between the Chilean State and the Mapuche people concentrates, the Regional Office of the INDH carried out during 2017 three sensitization workshops and training sessions on human rights issues at the Prefecture of Carabineros of Angol and the Police Training School of La Araucanía, and in March 2018 to Carabineros of Villarrica.

[47] INDH, Annual Report Program of Human Rights and Police Function, 2013, p.92. (This report was made taking into consideration the reforms that were made to the Carabineros network for 2014).

28. Regarding Protocols on the use of force in demonstrations, a greater dissemination of them is required among all police personnel, as well as adequate supervision of their application[48].

29. With respect to police abuse against members of indigenous peoples, between December 2011 and December 2017 the INDH filed 31 remedies of protection for police actions against members of the Mapuche people, and in 21 of them, the persons affected are minors. Of the total number of legal actions, 22 of them were accepted by the Courts, who specially instructed the police about the need to respect the established legal procedures, above all in relation to the possibility that their actions may affect children and adolescents[49]. Additionally, between 2013 and 2017 the INDH filed 10 complaints for torture against members of the Mapuche people. All of them are still being investigated. Among them, one of the most serious cases is that of Brandon Hernández Huentecol, a 17 old Mapuche adolescent, who in the town of Collipulli in December 2016, was grievously wounded by a gunshot in his back by a Carabinero, in the context of a police control procedure of a vehicle, while he was reduced. The adolescent was at vital risk and has had a subsequent slow recovery. Only in January 2018 was the person responsible for the gunshot arraigned at the Warranty Court of Collipulli, and subject to the precautionary measure of total house arrest[50].

<u>Excessive and unjustified use of force in student protests. Investigations and sanctions to those responsible</u>.

30. Between 2011 and 2017 the INDH filed 17 complaints for acts of torture or coercion by police personnel against demonstrators in the context of social protests and student demonstrations. Seven of them are still being processed. Of the ten remaining

[48] INDH, Annual Report Human Rights program and police function, 2013, p. 93.
[49] Case N° 1136-2011, judgment of December 21, 2011, confirmed by the Supreme Court.
[50] Commenting on the operative part of this judgment, an Exploratory Study commissioned by the INDH to the University Diego Portales concludes the following: "A first aspect that deserves attention is the scant concretion of these measures. Basically what is done through them is to reiterate the generic duty of the police to adhere to the Constitution and the laws in force. The problem with this is that the lack of guidelines, precision or specificity of the measures available for the protection of the affected person do not tend to favor their implementation. As a corollary, the remedy's effectiveness could be more easily eroded. In this regard, it is interesting to recall that, according to the Inter-American Court, 'to maintain the useful effect of the decisions, the domestic courts when issuing their rulings in favor of the rights of the people and ordering reparations, must establish, clearly and precisely -in accordance with their spheres of competence – the scope of the reparations and the forms of execution thereof' (IDH Court, Case Mejía Idrovo v. Ecuador, ruling of July 5, 2011, paragraph 96.)". Estudio Exploratorio. Estado de Chile y pueblo Mapuche: Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía, INDH, 2014, page 119.
Warranty Court of Collipulli, RIT 14-2017. In this case the INDH filed a complaint for the crime of attempted manslaughter.

ones, in six cases the Prosecutor's Office decided not to persevere, and other two were referred to Military Justice[51]. In another case which took place in the town of Freirina there was a conviction, that was later on annulled and in the new trial it was acquitted[52]. Only in one case an official of the PDI was convicted for unlawful coercion against an adolescent[53].

Definition of terrorism and application to persons of indigenous peoples.

31. The definition of terrorism was modified in October 2010, by Law 20.467, reconfiguring some elements of the type and eliminating the presumptions of terrorist purpose through the use of incendiary devices or explosives. With respect to the new definition[54], the Inter-American Commission on Human Rights has stated that "the problems of breadth, vagueness, imprecision and lack of differentiation with other criminal types that remain in force have led it to conclude that the types of Law 18.314 contradict in their formulation the principle of legality"[55]. Subsequently, regarding this same case, the Inter-American Court of Human Rights (CIDH) issued a ruling against the Chilean State, questioning the application of Law 18.314, although focusing on the system of "presumptions of terrorist purpose" existing in the version in force before Law 20.467, because it was that version of the regulations that was applied to them[56]. To the extent that the IDH Court considered that said system breached Art. 2 (duty to adopt provisions of domestic law) with respect of Articles 9 (principle of legality) and 8.2 (presumption of innocence) of the American

[51] That later dismissed and filed them.

[52] Oral Proceedings Court of Copiapó, RIT 107-2015.

[53] 7th Warranty Court of Santiago, RIT 9429-2013.

[54] Art. 1: "*Terrorist crimes will be those listed in Article 2, when the act is committed with the purpose of producing in the population or in part of it the justified fear of being victim of crimes of the same kind, either by the nature and effects of the means used, the evidence that they respond to a premeditated plan to attempt against a certain category or group of people, or because they are committed to obtain or inhibit resolutions from the authority or impose demands"*.

[55] Inter-American Commission on Human Rights, Background report Nº 176/10, November 5, 2010, paragraph 152. The IDH Commission quotes the similar conclusion reached by the Human Rights Committee in the Review of the Fifth Periodic Report of Chile in April 2007, expressing its "concern about the definition of terrorism included in the Anti-terrorist Law 18.314, which could be too broad" (Ibid, paragraph 144), as well as what was stated in November 2007 by the United Nations Special Rapporteur on protection of human rights in the fight against terrorism related to Article 1 of the same law, whose definition "is excessively broad and vague in light of the principle of criminal legality enshrined in Article 15 of the International Covenant on Civil and Political Rights", which implies that "criminal responsibility must be determined through clear and precise provisions established by law, in order to respect the principle of legal certainty and ensure that it is not subject to an interpretation that may broaden the scope of the punishable conduct" (Ibid, paragraph 145).

[56] IDH Court, Norín Catrimán and others case (leaders, members and activists of the Mapuche indigenous people) vs. Chile. Ruling of May 29, 2014 (Merits, reparations and costs).

Convention, it did not rule on other problematic aspects of Law 18.314 that subsist after the legal modification of 2010[57].

32. Between 2000 and 2016, there were 21 cases in which an attempt was made to apply the Anti-Terrorist Law, with 108 persons charged[58]. Of the nine persons convicted, all of them of Mapuche origin, seven convictions were overruled by order of the Inter-American Court of Human Rights[59] , and the other two convictions fall on the same person: Raúl Castro Antipán[60]. Castro Antipán was an informant of the police intelligence, and in both cases accepted his responsibility in summary trials. In addition to him, the only other person that has been convicted for terrorist crime after Law 20.467 is Juan Flores Riquelme -with no connection with the territorial demands of the Mapuche people -, for placing a bomb in a subway station in the city of Santiago in September 2014[61]. Subsequently, on May 5, 2018, three persons of the Mapuche people were convicted at the Criminal Oral Court of Temuco, in the context of the new Oral Trial for the Luchsinger-Mackay case[62]. A legislative initiative to modify the anti-terrorist law is currently being discussed in Parliament[63].

[57] "The Court does not find it necessary to rule in this case on the other alleged violations related to the subjective element of the type, nor the allegations related to the objective element of the terrorist type, since it has already concluded that the presumption of the purpose of instilling fear in the population in general is incompatible with the Convention, and in the processes against the presumed victims of this case said presumption was applied" (Ibid., paragraph 178).

[58] Of these, 8 cases and 30 defendants correspond to the version in force of Law 18.314, i.e., after the 2010 reform.

[59] Norín Catrimán and others Vs. Chile case, judgment of May 24, 2014. Besides the aforesaid violation of Articles 9 and 8.2 of the American Convention on Human Rights, in this judgment the Court also declared the violation by the State of Chile of Art. 24 (principle of equality and non-discrimination); Art. 8.2 f) (right of the defense to examine witnesses and obtain the appearance of witnesses who could shed light on the facts; Arts. 7.1, 7.3 and 7.5 (right to personal freedom, not to be subjected to arbitrary detention and not to suffer custody in conditions not adjusted to international standards); Art. 13.1 (freedom of thought and expression); Art. 23 (political rights); and Art. 17.1 (right to the protection of the family).

[60] Judgment of the Warranty Court of Victoria of October 22, 2010, RUC 0900969218-2 and Judgment of Warranty Court of Temuco of September 14, 2012, R.U.C.: 0900697670-8.

[61] Judgment of the 6th Oral Court, Case N° 64-2017, which convicts him to 23 years of prison, but is not yet firm because the defense filed an appeal for annulment.

[62] Oral Court of Temuco, RIT 150-2017. The whole sentence was released on June 11, 2018, and applies to two of them the penalty of life imprisonment and to the third one (recognized as "compensated informer" 5 years of probation. The defenses have 10 days from that date to file appeals for annulment, which if successful, could generate a replacement sentence or a new oral trial.

[63] The bill to modify the anti-terrorist regime (Bulletin 9692-07), mentioned in the State Report, was consolidated in 2015 with another project presented by a group of senators (Bulletin 9669-07). The new government that took office on March 11, 2018 presented indications to said consolidated project, that is based, in its turn, on a project presented during President Piñera's previous term (2010-2014), Bulletin 7207-07.

Mendoza Collío Case

33. Jaime Mendoza Collío, a young Mapuche community member, died of a shot in the back, during a police operation to evict the people from a farm that had been occupied in the south of Chile in 2009. The case was investigated by the Military Justice for the crime of "unnecessary violence causing death". When reviewing the appeal of the conviction, the Martial Court only granted credibility to the testimony of the convicted policeman, playing down all that had been said by the Mapuche witnesses, without giving any reason for this discrimination and acquitted the only defendant for legitimate defense[64]. Subsequently, the Supreme Court sentenced the policeman, author of the shootings, to a referred sentence[65].

Paragraph 11

Decriminalization of abortion.

34. In September 2017, Law Nº 21.030 regulating decriminalization of the voluntary interruption of pregnancy on three grounds was approved, a legislative progress that was achieved after 28 years of absolute prohibition of abortion, thus complying with repeated recommendations on this matter issued by different treaty monitoring bodies[66]. Subsequently, on March 22, 2018, the Health Ministry developed a new Protocol for the manifestation of conscientious objection[67] which eliminated the prohibition that private bodies had with obstetrics and gynecology benefit agreements financed by the State to invoke institutional conscientious objection. A decision of the Comptroller General of the Republic resolved that said protocol did not conform to law and that the administrative authority had to overrule it[68]. Additionally, a cadaster carried out by the Health Ministry reported that a third of all obstetric professionals in the public health system declare being conscientious objectors, and in cities such as Osorno and Huasco 100% of the

[64] Martial Court Sentence of August 16, 2012. Cse N° 17-2012.

[65] Supreme Court Replacement Judgment, Case N° 6735-2012, of August 21, 2013.

[66] Committee for the Elimination of Discrimination against Women, Concluding observations. Chile, 2012, CEDAW/C/CHL/CO/5-6, paragraph 35 (d). "review the current legislation on abortion with a view to decriminalization in cases of rape, incest or threat to the health or life of the mother". In a similar sense, the DESC Committee recommended that Chile "should expedite the adoption of a bill on the voluntary interruption of pregnancy and guarantee its compatibility with fundamental rights such as that of health and life of women, considering the extension of the allowed circumstances." E/C.12/CHL/CO/4, July 7, 2015, paragraph 29. Likewise, the Human Rights Committee recommended "establishing exceptions to the general prohibition of abortion, considering therapeutic abortion and in cases where pregnancy is the result of rape or incest" CCPR/C/CHL/CO/6, August 13, 2014, paragraph 15.

[67] See http://www.minsal.cl/wp-content/uploads/2018/02/Protocolo.pdf

[68] The ruling establishes that public health precincts cannot invoke conscientious objection since it is the function of the State to guarantee equal access to health. In the same way, private institutions with an agreement with the State cannot accept institutional conscientious objection, because when receiving public financing it is understood that they substitute health services and are part of the public health network. Ruling N° 011781n18

doctors are opposed to performing abortions[69], figures that could hinder access to the benefit, mainly in the most remote areas of the country.

Sterilization of women with disabilities

35. Sterilizations are regulated by Exempt Resolution Nº 1110 of the Health Ministry that approves Technical Standard Nº 71 on standards of surgical sterilization of people with mental illness, according to which the procedure is only applicable to persons of legal age with psychic disability that affects the capacity for reproduction, maternity / paternity and upbringing and that do not have the capacity to give informed consent, requiring the request of a relative or legal guardian to the respective health service and the authorization of two psychiatrists. In this sense, a procedure of this kind cannot be requested for children with mental disabilities, to the extent that they have not completed their development[70]. Despite this, the INDH has received complaints about sterilizations performed on children under 18 years of age[71].

Paragraph 12

Law 20.507: Human smuggling and trafficking

36. The criminal offense of trafficking in persons, such as provided for in Article 411 quater of the Criminal Code in accordance with Law 20.507, differs partly from international standards, since during the processing of said legal modification, the allusion to "labor exploitation" as one of the purposes of this crime was suppressed[72]. The fact that the aims

[69] See http://impresa.elmercurio.com/Pages/NewsDetail.aspx?dt=2018-04-14&PaginaId=1&BodyID=3

[70] National Human Rights Institute, 2014, page 117

[71] In relation to minors, the INDH interviewed Irma Gómez, president of the Fundación Down21 Chile, who pointed out that there is in Chile involuntary sterilization of women and girls which "is indiscriminately performed on people with or without resources […] When a person with the Down syndrome goes to the doctor, the doctor offers sterilization without consent, because there is ignorance about the fact that they are citizens with full rights and, in the case of children, that they are in development. As regards those over 18, there is no awareness that, although they can be sterilized, it has to be with their consent, and that one has to obtain that consent by educating, asking and giving the necessary support, so that it is the own person who makes the decision. However, forced sterilization is performed on women over 18 because you ask them about it and they don't know what was done to them". The interviewee also adds that "the families do not wait until the girls are 18 because it's easier, they don't say anything, they even remove their uterus so that they cease to menstruate because they are cleaner this way". National Human Rights Institute, 2014, page 121.

[72] Article 3 letter a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime states that *"trafficking in persons" shall be understood as the transportation, transfer, reception of persons, resorting to the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a situation of vulnerability or the granting or receipt of payments or benefits to obtain the consent of a person who has authority over another*, ***for the purpose of exploitation***. *That exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude or the removal of organs* "(the highlight is ours).

pursued in trafficking do not include the concept of labor exploitation acquires special relevance in the case of the obligations the Chilean State has assumed in the framework of children's rights, which include all forms of exploitation[73].

37. Since the enactment of Law N° 20.507 in 2011, which defined the crime of trafficking in persons and smuggling of migrants, and until December 31, 29 cases were arraigned for the crime of trafficking, identifying a total of 206 victims, of which 142 were victims of labor trafficking and 64 victims of trafficking for the purpose of sexual exploitation[74]. Regarding the type of trafficking, of the arraigned cases, 20 of the investigations are related to sexual trafficking and 9 with labor trafficking. The investigations concluded their processing in 25 of the cases, achieving 12 convictions: 9 for sexual trafficking and 3 for labor trafficking. The low number of convictions obtained is striking, considering the seriousness of the crime. Of the 100% of the victims, 42% (87) are women, of which 24 were subject to labor trafficking (28%) and 63 to sexual trafficking (72%). The fact that 15 of the identified victims are minors and 12 of them are women is very disturbing for the INDH[75].

38. In addition, training to State officials on trafficking is very low and clearly insufficient. According to figures provided by the Civil Service, in 2015 there were only 5 training sessions on migration, shelter and trafficking, which totaled only 20 hours and reached 112 officials.

Paragraph 13

Human Rights Institutionality

39. In 2010 Law N° 20.405 was approved, creating the National Human Rights Institute (INDH), an autonomous corporation under public law, with legal personality and its own assets, whose purpose is the promotion and protection of the human rights of the people who inhabit the country. Since its creation, the Institute has established itself as an autonomous and independent institution and has grown in funding[76], personnel and

---

The text of Article 411 quater conforms to the minimum indicated in the Protocol already mentioned, when sanctioning as the perpetrator of the crime of trafficking in persons, whoever *"through violence, intimidation, coercion, deception, abuse of power or the granting or receipt of payments or benefits to obtain the consent of a person who has authority over another captures, transfers, accepts or receives persons* ***to be subject to some form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or analogous practices, or removal of organs****"*.

[73] ILD Convention 182, Article 3 letter d), ILD Convention N° 138 Articles 2 and 7 (which sets the minimum ages for accession to employment), Children's Convention Articles 35 and 36.

[74] The INDH took part in 9 of them by filing complaints.

[75] Data obtained from the Intersectorial Panel on Trafficking in Persons, 2011-2016 data.

[76] The Budget law of the public sector of 2011 granted the INDH a Budget of $1.436.903.000, funding that was gradually increased and that for 2018 stands at $7,383,730.000.

national presence, which has allowed the gradual and progressive strengthening of the agency in fulfilling the mandate. In 2013, the INDH was recognized with Class A by the Global Alliance of National Human Rights Institutions (GANHRI). On that occasion, and to advance in full compliance with the Paris Principles, the Accreditation Sub-Committee recommended the incorporation of a legal provision to grant functional immunity to the members of the administrative body with respect to the actions carried out in their official capacity, with the aim of promoting its independence and reducing the possibility of external interference, a legal modification that has not been carried out to date.

40. In March 2016, the Executive presented a bill (Bulletin N° 10584-07) to create the Children's Ombudsperson's Office, which was finally approved in January 2018[77]. Among its powers, are visits to detention centers, residential protection centers or any other institution, including means of transportation, in accordance with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments, in which a child remains deprived of freedom, whether they receive or not State resources. On January 29 Law 20.067 was published and on April 18, the Senate appointed the first defender, Miss Patricia Muñoz.

41. In 2008 the bill that created the Defender of the People's Office was admitted to Parliament[78], but since 2010 no progress has been reported in its legislative process.

42. The creation in 2016 of the Under-Secretariat for Human Rights under the Ministry of Justice and Human Rights, through Law N°20885, represents a significant step forward in institutional matters. Its main function is to provide advice in the design and elaboration of public policies regarding the promotion and protection of human rights. In 2017 the Under-Secretariat submitted the 2018-2022 First National Human Rights Plan, an instrument that responds to the recommendations made to the Chilean State on human rights matters which includes a set of concrete actions, goals, responsible institutions and associated financial resources.

Paragraph 14

National Mechanism for the Prevention of Torture

43. There is a bill in the second institutional procedure (Bulletin N° 11245-17) that designates the INDH as National Mechanism for the Prevention of Torture (MNPT in its Spanish acronym). The bill is satisfactory in general terms because it is in accordance with the

[77] This project was based on the recommendations of the Committee on the Rights of the Child to Chile, made in 2002, 2007 and 2014, and in its general observation N° 2.

[78] Legislative Bulletin N°6232-07, available at: https://www.camara.cl/pley/pley_detalle.aspx?prmID=6630&prmBoletin=6232-07

minimum principles and requirements that have been established for the fulfillment of the obligations assumed in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments. The INDH has made some observations on the articles of the bill so that it can be improved. Special attention should be given to the definition of torture for purposes of the work of the MNPT; the establishment of more severe sanctions in the event of retaliation for the work of the experts of the MNPT and the correction of the rule on inability to become an expert of the MNPT.

44. It should be noted that, since its establishment, the INDH has some of the powers of the MNPT. Thus, Article 4 of Law 20405 that creates the Institute states that the INDH, for the exercise of its powers, can commission its staff to enter public premises, where people deprived of their liberty are or may be found[79].

Article 3

Paragraph 15

Mechanisms of appeal against expulsions of people

45. The legislation in force on foreigners, Decree Law 1094 of 1975, provides for a special appeal before the Supreme Court, to be resolved within 5 days, in the case of expulsions by supreme decree of the Ministry of the Interior and Public Security. This appeal should be filed within a period of 24 hours after the person becomes aware of the expulsion order[80]. The problem is that expulsions can also be decided by resolution of Regional Governments, and in that case that special appeal is not applicable. The possibility to file regular constitutional actions (remedy of protection) is impracticable, given the haste with which expulsions are usually carried out[81]. There are cases[82] in which ideological reasons

[79] Regarding the specific scope of this rule the INDH made a request to the Office of the Comptroller General of the Republic to rule on the exercise of this power and whether it is appropriate for INDH staff to access the interior of police vehicles. In Ruling 58070 of the Office of the Comptroller General of the Republic, of September 2012, said body pronounced itself in favor of that interpretation of its powers.

[80] In the Immigration and Foreign Nationals Bill (Bulletin 8970-06), presented in 2013 and to which the current Government has presented alternative indications in April 2018, it is envisaged to increase said deadline to 48 hours and that the processing is made before the respective Courts of Appeal, in a single instance.

[81] Thus, for example, in February 2017, an Italian citizen was expelled by resolution of the Metropolitan Regional Government, stating that he had been detected "participating in various antisystemic activities, altering the social order of the country and thus constituting a danger to the State". The resolution was presented to him on February 3 and he was expelled from the national territory the following day, despite the fact that in the text of the resolution it was stated that this person could exercise the administrative remedies established in Article 59 of Law 19.880, within a period of 5 days from receiving said notice. The INDH subsequently filed a remedy of protection, which was rejected at first instance, but accepted in the appeal to the Supreme Court, which stated that "the resolution that motivates the appeal lacks factual reasoning, transforming the administrative act into a mere affirmation of authority, without support and

have been invoked to support the expulsions, the one in which an attempt was made to frame it on the prohibition of Art. 15 N°1 of Decree Law 1094[83]. During the processing of the appeals filed by the INDH, the respective regional governments invoked that as the expulsion had already taken place, the remedy for protection had lost opportunity and become untimely[84].

46. In relation to immigration control, illegal and arbitrary practices of the officials of the PDI have been observed, prohibiting the entry into the country at the border of persons who met the requirements necessary to enter Chile as tourists[85]. This has led to the discrimination and arbitrary rejection of entry, particularly to people of African descent, as the INDH was able to observe during its observation mission to the Chacalluta border carried out between November 6 and 16, 2017. The aforesaid entails another problem, since people are left stranded on the border and can be co-opted by networks of illicit trafficking of people.

Paragraph 17

Migrant workers and appeals against expulsion decrees

47. Although the Political Constitution of the Republic enshrines the right to legal defense for all persons within the national territory, regardless of their nationality or immigration status, the fundamental rule is not able to ensure the removal of barriers that allow migrant people to go to courts and other bodies when their rights have been affected, within the aforementioned deadlines, and also the language adaptations are not carried

---

without giving the affected party any possibility of exercising his defense, which is unacceptable in any action of the Public Administration" (Supreme Court, Case N° 7080-2017, judgment of March 7, 2017). Only at that moment was the prohibition to enter the national territory lifted.

[82] Court of Appeals of Santiago, Case N° 1897-2017 and Case N° 1919-2017; Court of Appeals of Antofagasta, Case N° 84/85-2017.

[83] "The following foreigners are prohibited from entering the country: 1.- Those who propagate or promote in Word or in writing or any other means, doctrines that tend to destroy or alter by violence, the social order of the country or its government system, those that are syndicated or reputed to be agitators or activists of such doctrines and, in general, those who execute acts that Chilean laws qualify as crimes against foreign security, national sovereignty, internal security or public order of the country and those who commit acts contrary to the interests of Chile or constitute a danger to the State".

[84] This allegation was dismissed in all cases. Thus, in one of the judgments it is taken into account that "the allegation of admissibility that has been raised by the Metropolitan Regional Government must be dismissed, since the ambulatory freedom of the protected person has been violated in a scenario in which the prohibition of entry to the national territory is maintained" and also states that "the procedure used for the expulsion of the protected person notified verbally of the respective decree – is contrary to the standards of a due process in the matter, precisely because he had no real knowledge of the police action, which would have made possible the presence of a lawyer and provoke the relevant administrative and ordinary remedies" (Case N° 1919-2017).

[85] Remedy of protection CASE N° ICA Arica 44-2013 and CASE N° ECS 10.767. Available at www.pjud.cl.

out in accordance with Article 18.3.a. of the Convention. Additionally, the Legal Aid Corporation takes charge of the cases it receives -a work in which some Legal Clinics of Universities also take part -, although it does not have the financial and human resources needed to comply adequately with its role of providing legal assistance to the disadvantaged population.[86]

Article 10

Paragraphs 21 to 24

Training of public officials on human rights and torture.

48. Although progress on training in human rights to State officials has been acknowledged, it is still very low in relation to the total number of training sessions that are held annually, both in the number of activities, the hours destined to them and the number of officials that are trained. According to data furnished by the Civil Service[87], only 9% of the training given to State officials deal with human rights[88], reaching only 10% of officials that year. In this sense, these training sessions are insufficient to "install in public officials a comprehensive notion of human rights, and even more, to establish the responsibilities that are theirs as representatives of the State in their daily practices of public service"[89].

49. As regards training for medical personnel involved in the identification of torture cases on the Istanbul Protocol, the Legal Medical Service informed the INDH that between 2010 and 2015 five training sessions were held and that throughout the country there is a total number of 98 medical professionals and psychologists prepared to deliver expert opinions[90].

50. Regarding training to State officials in matters of sexual violence and harassment it is very low in relation to the total number of training sessions that are being held. The Civil Service reports that in 2015 only 0,6% out of the total hours of training dealt with the topic of sexual violence and/or harassment, reaching only 3,4% of the total number of

[86] INDH. 2012 Annual Report on the Situation of Human Rights, pages 97-100.

[87] The Civil Service is a public body created in 2003 that has the mission to implement a policy of strategic management of the people who work in the central administration of the State

.

[88] Ordinary Official Letter 1118, of May 4, 2015. In total, the government reports 10,318 training sessions given to its officials during 2015, of which 931 (9%) are training sessions related to HRE and 9,387 (91%) have no relation with this topic. Of the total number of 277,094 hours of training, only 20,989 (8%) are related to human rights issues.

[89] INDH, 2012 Annual Report on Human Rights in Chile, p. 307.

[90] Which is 51% of the total amount of experts in Clinic and Mental Health.

people trained that year[91], a much lower percentage compared to other training courses of an operative nature[92]. Furthermore, these instances do not incorporate the human rights approach.

51. With respect to the training of judges, the INDH "found that 44 training sessions were directly related to human right topics, which represents 6% of the total training implemented that year"; and that there are "training gaps in the design of study programs on economic, social and cultural rights, and women rights and scant education on the rights of indigenous peoples and fundamental principles, such as that of non-discrimination"[93]

52. Currently, the INDH is coordinating an inter-institutional panel with the participation of Gendarmería (Gendarmerie), both police forces, the National Service for Minors (SENAME), and the institutions responsible for investigating and punishing acts of torture. At this meeting, progress is being made towards the incorporation of human rights training criteria for officials who perform various functions in the services, as well as in the implementation of joint training instances that are expected to be carried out during 2019.

53. In the case of Carabineros and the Policía de Investigaciones there has been progress in terms of training for the prevention of torture[94], but according to what has been observed, this and other human rights issues are being approached more from a normative angle and are not adequately articulated with the practice and the protocols of action[95]. In addition, these efforts are expressed rather in the line of specialization, with courses of low coverage, and not so much in the formation of training schools.

54. Regarding the Armed Forces, the information gathered during 2016 does not show any specialized course on human rights in any of its branches, and there is low mainstreaming of human rights contents in the subjects[96]. It is particularly worrying that there is no

[91] The information received by the INDH reports 310 training actions for public officials on sexual violence and/or harassment, with a total of 1,777 hours and 5,286 persons trained.
[92] For example, that same year 16,131 hours of training on the Excel program were given, 9 times more than on the issue of harassment and sexual violence.
[93] INDH, 2012 Annual Report on Human Rights in Chile, p. 307.

[94] INDH,2013 Annual Report on Human Rights and Police Function, p. 93.
[95] INDH, 2012 Annual Report on Human Rights in Chile, p. 310.
[96] In some courses, such as ethics or law, contents on human rights and humanitarian law are reported, but they show weak mainstreaming and integration of human rights. In the case of the Army, for instance, 174 hours are reported for education on human rights, over a total number of 6,556 teaching hours, which represents 2,6%.

mention to the prohibition of torture in any of the branches and that the issue of enforced disappearances is only included in a lecture in the formation of the Air Force. Finally, it is necessary to point out that, the same as in the training of policemen, human rights topics are focused on regulatory aspects and there is scant mainstream incorporation in practices and operational procedures.

55. The training of officials of Gendarmería de Chile, until 2017, has not been officially recognized by the Ministry of Education, and has been insufficient to prepare officers and non-commissioned officers according to human rights standards. However, said training processes have been under review, in which the INDH has collaborated, and currently the School of Gendarmería has been recognized as a training school, the amount of training semesters has increased for both ranks of officials and human rights have been incorporated as an important part of the school's graduation profile.

56. It should be mentioned that the different training cases mentioned do not include a methodology allowing to evaluate the effectiveness and effects of the training programs in the reduction of cases of torture and ill-treatment. In this sense, a comprehensive conception of the intervention would be required that does not only boil down to formal instances of education or training.

Article 11

Paragraphs 25 and 26

Measures to improve prison conditions and reduce overcrowding and occupancy rates in each Crime Unit

57. According to the latest statistics available, as of the month of April 2018, a total of 49,711 persons were incarcerated in the closed system, of which 26,241 were serving sentences[97]. According to the Study of Prison Conditions conducted by the INDH between 2014-2015, of 31 public prisons for male population visited in 2014, 20 exceeded the number of places, and 13 were at a critical level[98], according to the definition of the

[97] Based on penitentiary statistics, the daily average of persons deprived of liberty in the closed system was 52,160 (2010), 51,390 (2011), 49,350 (2012), 45,696 (2013), 43,114 (2014), 42,515 (2015), 48,705 (2016) , 50,013 (2017). Figures available at : http://www.gendarmeria.gob.cl/estadisticas_general_historica.jsp

[98] The Preventive Detention Centers (CDP) Limache (238,2%,), the Penitentiary Compliance Centers (CCP) Copiapó (226,6%), CDP Santiago Sur (201,7%), CDP Calama (188,5%), CCP Curicó (180,2%), CCP Talca (167,6%), CDP Quillota (165,9%), CCP Chañaral (157,5%), CP Valparaíso (147,2%), CCP Santa Cruz (144,4%), CCP Colina II (137,5%), CDP Ovalle (133%) and CCP Coyhaique (126,1%). In the case of prisons for women, of the eight enclosures that surpassed their capacity of places, 4 would have reached a critical level: the CCP Chañaral (420%), the CPF Talca (242,5%), the CCP Copiapó (127,3%), and the CP Valparaíso (124,5%). As regards the crime units under concession, two of the enclosures with men's modules were over-occupied to

European Committee on Crime Problems. In 2015, 19 of the public prisons (or "traditional" prisons, to differentiate them from those that are under concession) visited there were occupancy conditions that exceeded their structural capacity, of which 15 were at a critical overpopulation level[99].

Paragraph 27

Isolation cells

58. While it is true that since the measures taken by Gendarmería in 2013 there has been a considerable decrease in the use of punishment cells, in fact those same facilities continue to be used for the practice of isolation, but justifying it for other reasons (as a measure of protection, or for inmates who are "in transit" from one prison to another). Both in these cases as in the crime units that still use isolation as punishment, the conditions of these cells are generally deplorable.

59. According to the 2014-205 INDH Study on Prison Conditions[100], 30,3% of the 36 public prisons visited declared not to have punishment cells. In the remaining precincts 209 punishment cells were detected in 2014, which had dropped to 197 during the first semester of 2015. In the 8 concessioned prisons visited in 2014, 108 punishment cells were found, and only in one of these prisons these cells did not exist.

60. The cells recognized as cells of isolation, but used for other purposes (protection or transit), were 184 in the 43 public or traditional crime units visited in 2014, which rose to 186 during the first semester of 2015. In the 8 concessioned prisons visited, there were 96.

61. As a result of the field visits, serious violations were reported in the isolation cells in terms of hygiene, health and access to basic needs, such as water and toilets.

---

house this population, without reaching a critical level: CCP Antofagasta (108,9%) and CP Rancagua (108,1%). The European Committee on Crime Problems (CDPC) uses the definition of critical lebvel as one that exceeds 120% occupancy. See: Carranza, E. (coordinador), Delito, Justicia Penal y Prisión en América Latina y el Caribe, 2010, p. 59.

[99] The CDP Limache (259,1%), CCP Copiapó (213,3%), CDP Santiago Sur (208,1%), CDP Calama (186,1%), CCP Curicó (185,2%), CDP Quillota (179,5%), CCP Chañaral (156%), CCP Talca (153,2%), CP Valparaíso (144,3%), CCP Colina II (143,5%), CDP Ovalle (135,6%), CCP Santa Cruz (135%), CCP Cauquenes (126,6%), CCP Coyhaique (123,9%), and the CDP Castro (123,1%). In the women's prisons, those that showed a critical level of occupancy were the CCP Chañaral (390%), CPF Talca (220%) and CCP Cauquenes (127,3%).

[100] http://bibliotecadigital.indh.cl/handle/123456789/1136

Paragraph 28

Deaths in custody

62. Between 2014 and 2015, the INDH identified a total number of 60 deaths resulting from fights or aggression in public prisons, and 10 in concessioned ones. In addition, 6 suicides were registered in that same period in traditional crime units and 10 in concessioned one[101]. With respect to minors, according to information requested by the INDH to the SENAME, in the 2005-2016 period there was a total of 243 children and adolescents who died while in custody, of which 33 (14%) were serving custody in centers directly administrated by SENAME, and 210 (86%) were in residences or homes of the protection system of SENAME and its collaborating agencies[102].
63. In relation to the criminal responsibilities for the fire on December 8, 2010, that caused the death of 81 inmates of the prison of San Miguel, 8 gendarmes were brought to trial. Through sentence of the 6th Oral Criminal Court of Santiago they were acquitted in June 2014 of the charges of repeated manslaughter and negligent bodily injuries. The appeals for nullity filed by the representatives of the victims and their families were rejected by the Court of Appeals of San Miguel. As regards compensation, 20 civil lawsuits were filed, which are still pending having been joined in a single case at the 7th Civil Court of Santiago. The relatives of the victims have declared that so far they have not received any form of reparation.

Situation of adolescents in custodial centers

64. During 2017, the INDH conducted a study in Provisional Internment Centers (Centros de Internación Provisoria - CIP) and Closed Regime Centers (Centros de Régimen Cerrado - CRC), where absolute deprivation of liberty of adolescents is practiced[103], in which primary information was collected through interviews with headquarters and adolescents therein confined. The INDH was able to verify that the adolescents are frequently subjected to nudity. Of the 87 boys surveyed, 70,1% reported having been stripped during a preventive search procedure, and of the 11 women, 5 reported having experienced the same situation.

[101] INDH, 2014-2015 Study of Prison Conditions, page 121 et seq.
[102] INDH, 2016 Annual Report on the situation of human rights in Chile, p. 142
[103] Law 20.084 contemplates in its Art. 43 the Centers of Deprivation of Liberty (Centros de Privación de Libertad), in charge of SENAME, that include the Provisional Internment Centers (CIP) to comply with the deprivation of liberty as a precautionary measure, and the Closed Regime Centers (CRC), where the detention sanction takes place. In both cases, the law establishes that an external armed guard will be maintained, in charge of Gendarmería de Chile, which will remain outside the premises but will be authorized to enter in case of riot or serious risk for the adolescents. Its more detailed regulation is included in the regulation of Law 20.084.

65. The entry of weapons inside the facilities by Gendarmería de Chile (GENCHI)[104], as well as the use of pepper spray was also reported[105]. There were adolescents who reported that pepper spray was sprayed at their faces or on their beds so that they would be wet or in the rooms where they were then locked in, until remaining there became unbearable; another modality reported was that Gendarmería officials made them sit on the ground in a row and then sprayed them with pepper spray[106].

66. Regarding the use of force, there is also disparity in what was reported by the Directors of SENAME, who point out that Gendarmería de Chile entered the perimeter only in case of critical conflict, but when consulting the detachment headquarters of the 18 CIP-CRC throughout the country, 16,7% indicated the use of force also in the procedures of transfer of adolescents; 44,4% in preventive raids[107]. Additionally, the use of force in raid contexts, in charge of Gendarmerie, is a matter of concern where insults, beatings, threats and the use of handcuffs or shackles are reported[108], as well as reports of threats and aggressions of various kinds[109].

Articles 12 and 13

Paragraph 29

Complaints of torture and other ill-treatment and result of the investigations

[104] 33,3% of the 87 boys and 27,3% of the 11 girls interviewed answered that weapons were entered. 97% of that total stated that said weapon internment had been made by officials of Gendarmería de Chile.

[105] Of those who indicated that weapons had been entered, 90,8% of the boys stated that they had seen pepper spray being used inside the Center and 63,6% of the girls said the same, and of this total 100% stated that those who used it were officials of GENCHI. Finally, 67,8% of the boys reported having been sprayed with pepper spray by Gendarmería and 36,4% of the girls reported the same.

[106] There is disparity between what is reported by the Directors of SENAME, which is not consistent with what is reported by the headquarters of Gendarmería Detachments and even less with what was declared by the adolescents who live inside these Centers.

[107] Additionally, in 5 of the 18 Centers, Gendarmería is responsible for the process of "the account" and there was one detachment chief who reported having used force in that process. Likewise, 22,2% of Gendarmería headquarters indicated having used force in the body searches of adolescents.

[108] Of the 87 boys surveyed, 89,7% had experienced a search in the Center in which he was at the time of the visit and of the 11 girls, 63,6% reported having experienced a similar situation. Respect of this total, 39,7% of the boys and 28,6% of the girls said they had been insulted; 35,9% of the boys and 14,3% of the girls reported having been hit; 26,9% of the boys and 14,3% of the girls reported having been shackled and/or handcuffed; and 24,4% of the boys and 28,6% of the girls said they had been threatened (in multiple response).

[109] Of the 87 boys, 81,6% and of the 11 girls, 63,6% had been forced to do sit-ups by Gendarmería de Chile, personnel of SENAME also participating in 3% of the cases. Of the 87 boys, 57,5%, and of the 11 girls, 36,4% had been verbally assaulted, and of this total, in 89% of the cases, Gendarmería is identified as the aggressor.

67. To date, a system has not been implemented for the statistical recording of torture complaints disaggregated by sex, age, ethnic-racial origin, disability situation, etc. of the victims. According to figures of the Prosecutor's Office[110], during the first year of application of the new law on torture (N° 20.968), between November 2016 and November 2017, 2,042 cases related to crimes of torture and punishment (including abuses against individuals) were admitted[111]. Of these total number of cases, 1,940 had already ended, generating 24 convictions and 8 acquittals. What is more striking is that nearly 70% of the cases had ended before they had been taken to court, through provisional classification (1328 cases), decisions not to persevere (111 cases) and the application of the principle of opportunity (3 cases), besides 12 cases that ended with "incompetence", i.e., although the law expressly provides that they have to be known by the ordinary criminal justice system, they would have mistakenly been referred to the Military Justice. It is also striking that 38 cases that had been prosecuted should have ended with the conditional suspension of the procedure, because that kind of alternative rulings contravene the international standard that requires investigating and adequately punishing this type of crime.

68. Additionally, it should be noted that between 2011 and 2017, the INDH has filed 163 complaints of torture and unlawful coercion. Of these, 23 referred to acts that had been committed against victims that were minors. As of the date of this Report, 15 were currently being investigated; 4 ended by application of the decision of the Prosecutor's Office not to persevere; 2 through incompetence of the court and transfer to the military justice; 1 through conditional suspension of the procedure; and in 1 a conviction was obtained against an official of the Policía de Investigaciones for unlawful coercion in the context of a student demonstration.

Paragraph 31

[110] Prosecutor's Office, Figures of crimes of torture, November 22, 2016 to November 22, 2017.
[111] According to the following detail:
Art. 150 A subsection 1 (torture by public employees): 341
Art. 150 subsection 2 (torture by private individuals in the exercise of a public function or with the consent of public employee): 27
Art. 150 subsection 4 ("torture to annul the will"): 1
Art. 150 B N° 3 (torture with quasi-delict): 4
Art. 150 D (unlawful coercion): 861
Art. 150 E N° 2 (coerción with rape or sexual abuse): 5
Art. 150 E N° 3 (coerción with quasi-delict): 14
Art. 255 (abuses against individuals): 724
Arts. 256 to 259 (other abuses against individuals): 65

Measures to protect whistleblowers from retaliation

69. Although the Prison Regulation establishes administrative mechanisms so that persons deprived of liberty may report ill-treatment, there are serious problems to achieve this. The main inconvenient in the administrative process is related to insufficient guarantees of due process, such as the assistance of a professional defense, the impartiality of the person who knows and judges or the lack of information for the inmate about why he or she is being judged and what acts contrary to regulations they are charged with. Another concern is the allegations of ill-treatment or tortures, since although there are both administrative and legal procedures, there are obstacles for their filing and outcome. According to what has been detected in visits to prisons, there is in general no way of reporting that guarantees confidentiality.

Article 14

Paragraph 35

Advisory Commission for the Qualification of Disappeared Detainees, Persons Executed for Political Reasons and Victims of Political Imprisonment and Torture

70. The Advisory Commission for the Qualification of Disappeared Detainees, Persons Executed for Political Reasons and Victims of Political Imprisonment and Torture between September 11, 1973 and March 11, 1990, created under Law 20405, was extended by Law 20496 until August 17, 2011 and recognized 9,795 cases of victims of political imprisonment and torture. Those persons who gave their testimony to this commission, but were not qualified as victims, did not have the mechanisms to file appeals nor to know the qualification criteria used by said commission.

Paragraph 36

Measures of reparation for victims of torture

71. The State has developed the public policy of reparation based on a set of measures and programs that respond to the categories of rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition[112]. As a whole, these measures are not

[112] Among others, we can highlight the pension system of reparation to relatives of persons victims of enforced disappearance, persons executed for political reasons and victims qualified as survivors of political imprisonment and torture; the Program of Reparation and Comprehensive Attention on Health and Human Rights (Programa de Reparación y Atención Integral en Salud y Derechos Humanos - PRAIS); the social and legal assistance carried out by the Human Rights Program of the Ministry of the Interior; the forensic identification and search system for missing persons through the Legal Medical Service; scholarships for children of victims qualified as enforced disappearance or extrajudicial execution under 35 years of age, or for the victim or a descendant of their choice in the case of survivors of torture or political imprisonment;

organically coordinated, some of them are in the hands of the Ministry of Health, others in those of the Ministry of the Interior or the Ministry of Education, the Ministry of Justice and the Ministry of Housing and Urban Development. In order to ensure the coherence and consistency of these policies, a centralized coordination of these policies is needed[113].

72. The higher courts of justice have taken important steps in recent years to establish criminal liability for war crimes and crimes against humanity and to regulate these criminal conducts as reprehensible acts in the light of international humanitarian law and human rights. However, jurisprudence in this area has been contradictory. As there are differences in the rulings regarding the prescriptibility of the civil action, in June 2012, for the first time the background related to the limitation of the civil compensation action was sent to the Plenary of the Supreme Court, in order to unify the jurisprudence[114]. After hearing the case, it was decided to reject the compensation action of the relatives and to declare time-barred the respective action[115]. However, in 2018, Courts sentenced the Chilean State to pay a total compensation of $580,000,000 (approx. USD 915,000) to 29 victims acknowledged by the Valech I and II Commissions, who had been subjected to unlawful coercion in various periods in the Region of Biobío. The ruling is based on the imprescriptibility of crimes against humanity and the State's obligation to fully repair the damage caused to victims of human rights [116].

73. At the beginning of March 2018 a bill was sent to Congress (Bulletin 11.619-17) under which a Single Reparation Contribution of $3,000,000 (equivalent to USD 4,800 approx.)- would be delivered to each person survivor of political imprisonment and torture in the context of the dictatorship, according to the list of victims of the Valech I and II Commissions. After having been approved in general in the Commission of Human Rights and Indigenous Peoples of the Chamber of Deputies, the bill was withdrawn on April 19, through message N° 19-366.

74. With regard to the current cases of torture, coercion or other police mistreatment occurred from 2009 to date, the INDH has no information regarding reparations or

---

the rehabilitation of civil and political rights and non-contributory pension for people who had been dismissed for political reasons.

[113] INDH, Annual Report on the situation of human rights in Chile 2012, p. 289.

[114] Case for the qualified kidnapping of Dr. Eduardo Alberto González Galeno. Supreme Court Case N° 10.665-11. June 25, 2012. The same decision was made by the Criminal Court after hearing the case for the qualified murder of Luis Pantaleón Pincheira Llanos and others, Supreme Court Case N° 3841-12.

[115] Supreme Court Case N° 10.665-2011. January 21, 2013.

[116] Cases N° 14.423-2017 and N° 14.188-2017, Judge Pedro García Muñoz of the 22nd Civil Court of Santiago, established the responsibility of the State for the crimes against humanity of which 11 and 18 political prisoners had been victims, respectively, who filed the legal actions.

compensation administratively or judicially decreed, which is consistent with the information delivered by the State, in its Annex XIX, which only refers to criminal actions. Thus, for example, in a case of police violence resulting in death[117] during a labor protest, the court decreed in April 2013 that a compensation of 30 million pesos had to be paid to the widow. Subsequently the Supreme Court revoked that ruling, prompting the family of the victim to take the case to the Inter-American Commission on Human Rights.

Article 15

Paragraph 39

Use as evidence of information obtained through torture

75. In the context of the so-called "Luchsinger Case", one of the criminal processes in which the Anti-Terrorist Law (18.314) has been invoked against persons belonging to the Mapuche people, the use of statements obtained from a defendant that had not been prosecuted, without the presence of a defense lawyer and under moral pressure, harassment or downright torture, was questioned[118]. This concern was shared by the Oral Criminal Court[119], who acquitted him. However, said ruling was annulled in December 2017[120] and in the new oral trial, José Peralino Huinca and other two persons were convicted, the Court unanimously declaring that the statements of Peralino were not vitiated by illegality and that neither had they noticed that he had been coerced[121],

[117] The case is that of Rodrigo Cisternas, a 26-year-old forester who was shot by policemen during the repression of a strike in May 2007. See press information: https://www.biobiochile.cl/noticias/nacional/region-del-bio-bio/2017/05/03/10-anos-de-la-muerte-de-rodrigo-cisternas-gobierno-aun-no-responde-demanda-internacional.shtml

[118] Statement by one of the defendants, José Peralino Huinca, given before two prosecutors and two police officers of Investigaciones on October 23, 2015, without the presence of a defense lawyer, in which he would have provided details about the planning of this act, as a result of which two elderly people died in a fire. Subsequently, at the arraignment hearing, on March 30, 2016, before the warranty judge, Peralino retracted himself from everything he had allegedly declared in that statement.

[119] After pointing out a series of inconsistencies and contradictions, the Criminal Oral Court notes that there was "a significant weakening of what had been stated by these declarants, in such a way that their assertions, as they reproduce what Peralino stated on October 23, 2013, are not sufficient to overcome the presumption of innocence that protects the other defendants and, therefore, do not allow to form in the judges of this Court a certainty of conviction" RIT 150-2017, TOP (Criminal Oral Court) of Temuco.

[120] Case 1056-2017.

[121] "(…) neither did the incorporated evidence acknowledge the presence of any kind of coercion – of any nature – affecting those assertions at the origin, in other words, the hypothesis that the statement had been forced or granted under coercion or any promise of a gift or other element intervening in the will of the declarant so that it would be given in a certain sense was not supported during the trial, nor that said statement was made by animosity to the remaining co-defendants, which together with the lack of detailed knowledge of the statement given at the Court of Warranty in March 2016, forces us to weigh those that are in the trial, all of the above despite the enormous efforts on the part of the defense to incorporate through their challenging evidence and cross-examinations such information, without knowning so far the terms under which it was given and its content in order to determine its motive or origin". (RIT 150-2017, TOP of Temuco, judgment of May 5, 2018, point VII).

despite the fact that the remedy of complaint for these facts filed by the defense remains open[122]. It should be noted that the Chilean Criminal Procedure Code allows excluding in the preparation phase of the oral trial evidence "that has been obtained in violation of fundamental guarantees"[123].

Article 16

Paragraph 40

Excessive use of force by the police, particularly during public demonstrations

76. According to the INDH Report on Human Rights, Police Function and Public Order, of 2015, the actions of control of public order involving the use of force decreased by 7% in comparison with the previous report. However, a non-focused use of force was observed during demonstrations[124]. Another issue that is addressed in this Report is the gradualism of the dissuasive methods used in demonstrations, reducing the use of gradualism for dissuasive means of 50% in 2014 to 37,5% in 2015; therefore, in 67,5% of the cases where dissuasive means were used, these were not gradual. Injured people were registered in 43% of the demonstrations observed in 2016, a figure that is comparatively higher than the one observed in 2015 (18 %). The main reason was the direct action of Carabineros. Likewise, violations of the duties belonging to the police function have been detected in relation to persons deprived of liberty[125], as well as police abuse against the Mapuche people, several of which affect rights of Mapuche children and many of them in the context of territorial claims[126]. In this regard, the lack of an internal control procedure in the use of weapons and compliance with international standards that regulate this matter is of particular concern. During 2016 these events led to the INDH filing 10 remedies of protection and 11 complaints of torture /coercion (Art. 150 A prior to Law 20.968). In one of the most serious cases that occurred in 2013, that of Enrique Eichin (who lost the vision of his right eye after having been hit by paintballs of Carabineros), the Constitutional

[122] Case 76331-2016, judgment of February 8, 2017.

[123] Art. 276 subsection three of the Criminal Procedure Code.

[124] There was an increase in the non-targeting of the use of force on demonstrators who caused riots from 25% in 2014 to 75% in 2015, figures that are maintained during the observation of marches in 2016. Indeed, only in one of the observations of 2016 that reported the use of force by the police was a targeted response registered.

[125] In 2014, 2015 and 2016 various acts were reported: excessive violence at the time of the detention, detention for the mere fact of questioning the action of the police and in an arbitrary manner, without considering the hypothesis of flagrancy referred to in Article 130 of the Criminal Procedure Code, cause of arbitrary deprivation of liberty, psychological abuse at the time of deprivation of liberty, omission to communicate their rights to the persons deprived of liberty, as well as strippings.

[126] The use of non-lethal and lethal weapons is particularly worrisome in the context of the conflict of the State and the Mapuche people, which cause damage to the people's physical and mental integrity (2016 INDH Report on the Program of Human Rights, Police Function and Public Order).

Court decided to maintain the case in the ordinary justice[127], avoiding it to be transferred to Military Justice, but the criminal case for serious injuries remains open in the 7th Warranty Court of Santiago[128]. In another serious case, that of the injuries caused to Rodrigo Avilés after the impact of a water cannon jet in Valparaíso in 2015, the Prosecutor's Office in agreement with the defense of the defendant Manuel Noya tried in May 2018 to reach a summary trial, applying the penalty of one year of minor prison in its minimum degree in the modality of a referred sentence, as perpetrator of the crime of serious injuries, but the INDH as complainant opposed it, due to which the case remains open pending the closure of the period of investigation[129].

Manuel Gutiérrez Case

77. In the case of the death of the 16-year-old Manuel Gutiérrez, through shots fired by a carabinero during a protest on August 25, 2011, despite the judgment of the IDH Court in the Palamara case (2005) and the modifications of the Military Justice through Law 20.477 (2010), the Chilean State applied Military Justice and not ordinary justice, without discussing the issue of competence. In both instances of the trial against sergeant Millacura, it was avoided that he actually served a prison sentence[130], which is worrisome, because although in principle the State's obligation to investigate and punish these facts was met, there are doubts about whether the punishment applied was an appropriate one, according to the terms of Art. 4.2 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment. The INDH, together with the other defendants, filed a complaint, insisting on the initial legal qualification of unnecessary violence resulting in death and requesting the application of a penalty of 5 years and 1 day, which was rejected by the Supreme Court.

Ill treatment of the elderly in long-stay centers and people with disabilities in psychiatric centers

[127] Constitutional Court, Case 2493, judgment of May 6, 2014.
[128] RIT 11463-2013.
[129] RUC 1500493669-5
[130] In the first instance Millacura was sentenced to 3 years and 1 day (under the benefit of probation), but although the penalty for the crime of unnecessary violence resulting in death is more than 5 years and, therefore, of effective application, it was deemed that in this case there were 2 mitigating factors: irreproachable previous conduct and collaboration with justice. Resolving the appeal phase, the Martial Court considered that the second mitigating factor was not present (given that Millacura had cleaned his weapon, an UZI, with alcohol and replaced the ammunition, first denying that he had used it), but it also requalified the fact, declaring that the act had been reckless but not intentional and therefore, would constitute manslaughter. Therefore, it applied a penalty of 400 days of minor imprisonment in its minimum degree, with the benefit of remission of the penalty.

78. During the observation made by the INDH in 2017 to long-stay psychiatric units, assaults by the staff were reported and little support to overcome this situation[131]. Of particular concern are the reports on sexual assaults by officials and the lack of timely complaints[132]; humiliating punishments such as public stripping[133]; reports of mentally disabled people who say they were forcibly confined in an isolation room or seen this occurring to other people in their unit[134]; the verification of the confinement of a woman in a room of involuntary isolation, in a single locked room, without heating, drinking water or bathroom, since it only had a portable toilet[135]; and reports of forced medication to calm a crisis and the use of mechanical or physical restraint[136].

Paragraph 42

Protection of migrant domestic workers

79. It is estimated that around 300,000 women work in this area, including a significant number of immigrants[137]. The approval in 2014 of Law N° 20.786, which modifies the working day, rest and composition of the remuneration of the workers of private homes and prohibits the requirement of uniform in public places, constituted an important advance in the respect for the labor rights of domestic workers. However, data available for the year 2014, show that there were more private home workers who worked without

[131] Of 23 respondents, 5 report having been directly attacked or assaulted by a member of the staff, only 2 received support to overcome the situation, and only one case stated that the entity took measures to prevent further attacks. Furthermore, 7 people said they saw another user being assaulted by institutional personnel.

[132] Given the seriousness of these events, the INDH submitted the information to the National Commission of Protection of the Rights of People with Mental Illness (Comisión Nacional de Protección de Derechos de Personas con Enfermedades Mentales - CONAPPREM), through Official Letter 698, of September 28, 2017, with the purpose of taking the necessary measures to investigate the events, punish those responsible and make reparations to the victims.

[133] They also report being tied to their beds at night, that their belongings had been requisitioned, having been deprived of food and even being hit.

[134] It is worth mentioning that in all the units observed, the hospital staff says they used alternative methods to isolation to mitigate the escalation of potential crises.

[135] This fact was also communicated to the CONAPPREM through Official Letter 698, of September 28, 2017.

[136] In the seven units observed the use of pharmacological containment was recorded, Lorazepam and Clonazepam being the main drugs prescribed, oral and injectable.

[137] Although there are no up-to-date statistics, between 2005 and 2014, 130,216 work visas were given to domestic workers, figures that allow us to estimate that at least 1 out of every 3 people working in this area is foreigner. Department of Migration (2016). Migration in Chile 2005 – 2014. Available at: http://www.extranjeria.gob.cl/media/2016/02/Anuario-Estadístico-Nacional-Migración-en-Chile-2005-2014.pdf

a contract than with one.[138]The lack of documentation places immigrants in a situation of high vulnerability, since besides generating lack of protection in the workplace and social security, an obstacle is created un the process of migratory regularization.

Paragraph 44

Anti-terrorism

80. The challenges to the current Anti-Terrorist Legislation, contained in Law N° 18.314, led to the presentation during 2014 of two bills to reform it: the Motion of a group of senators (Bulletin N° 9669-07) and the Presidential Message (Bulletin 9692-07). Both were consolidated in their processing in March 2015 by decision of the Senate. On April 5, 2018, the new government sent to the Senate a substitute indication to said consolidated Project, in which, as indicated, proposals from both consolidated initiatives are included, plus those of the bill presented by President Piñera during his previous administration (Bulletin 7207-07, of 2010).

81. Within the context of the fight against terrorism there have been important issues related to the alleged tampering and planting evidence against eight Mapuche community members by Carabineros police intelligence officers in the framework of the so-called "Operación Huracán" (Hurricane Operation), during which such community members were prosecuted and remanded in custody charged with terrorist unlawful association. When the irregularities in the use of evidence were discovered, the Prosecutor's Office did not persevere in the investigation and subsequently police officers were charged with obstructing the investigation, falsifying a public instrument and unlawful association.

Recommendations of the INDH

1. The INDH recommends the co-legislative bodies to review and amend Law 20.968, which criminally defines torture and other cruel, inhuman or degrading treatment, in the sense that the penalties assigned to these conducts should be consistent with their seriousness, so that the granting of benefits, alternative penalties and limitation periods respond to stricter standards, complying with the State's obligation to adequately sanction acts of this kind.
2. The INDH urges the co-legislative bodies to evaluate the possibility of legislating to establish the imprescriptibility of the actions to judge the facts that constitute torture.

[138] Casas, L.; Olea, H. Trabajadoras de casa particular: invisibilizadas y discriminadas. In Informe Anual sobre Derechos Humanos en Chile 2014, Universidad Diego Portales, p. 123.

3. The INDH calls on the Executive to implement measures that, safeguarding the right of privacy of the persons affected, allow the background of the Valech I Commission to be sent to the courts when they consider that they may be useful in the investigation of legal cases about human rights violations.
4. The INDH recommends the Executive to advance in the efforts to expressly repeal the Amnesty Law Decree.
5. The INDH calls on the Executive and National Congress to perfect the bill on the right of women to a life free of violence, incorporating other types of violence, such as obstetric violence and to accelerate their legislative process so that it soon becomes law. It likewise recommends that sufficient resources be allowed for the training of justice operators and for the legal, psycho-social and health care of survivors. In the same way, it is essential to reinforce prevention measures, including contents in the educational curriculum of all levels of education and permanent communication campaigns.
6. The INDH urges the Judicial Branch, the Ministry of Justice and Human Rights and the SENAME to ensure the elimination of all forms of violence and/or abuse against boys, girls and adolescents living under the State's custody in the Centers of Specialized Repair of Direct Administration (Centros de Reparación Especializada de Administración Directa (CREAD)) and in the Accredited Collaborating Organizations (Organismos Colaboradores Acreditados (OCAS)), creating adequate mechanisms of prevention, as well as investigation, establishment of responsibilities, and applying the corresponding sanctions in case such situations occur.
7. The INDH recommends accelerating the legislative process of the bill that creates the System of Guarantees of the Rights of Children.
8. The INDH calls on the police and Prosecutor's Office to adopt all necessary measures to ensure that reports of police sexual violence against boys, girls, adolescents and women, in contexts of peaceful demonstrations, are promptly investigated in order to determine responsibilities and further sanctions.
9. The INDH urges Carabineros to adapt its police action protocols, ensuring full respect for human rights, adequately investigating and punishing its non-compliance. These protocols must be disseminated to the population and ensure the proper training of police personnel to guarantee its full compliance.
10. The INDH urges the Executive and Carabineros to strengthen the training of police officers in the right to assembly.
11. The INDH recommends taking the necessary measures, at all levels, including administrative and training measures for the different segments of the penal system, in order to give full application to Law 20.968 regarding the end of the jurisdiction of military justice to know facts of torture and unlawful coercion.

12. The INDH urges the Judiciary to take all necessary measures to reduce the use of custody and also to strengthen the application of alternative measures or alternative sanctions so as to effectively reduce recurring to deprivation of liberty.
13. The INDH calls on the PDI to ensure that international standards regarding the non-arbitrary detention of migrants are respected, avoiding mass detentions of migrants in facilities that are not destined for such purpose, such as borders or airports.
14. The INDH recommends ensuring that legal initiatives related to adolescent criminal responsibility which are currently being processed in the National Congress, restrict the excessive application of preventive custody measures.
15. The INDH urges Carabineros to reinforce its internal regulating frameworks to determine administrative responsibilities in cases of unjustified and excessive use of force against people exercising the right to assembly, and to ensure the necessary collaboration for the criminal prosecution of such acts.
16. The INDH calls for ensuring that all cases of police violence are tried by ordinary courts, avoiding excessive delays in legal proceedings and granting adequate reparation to the victims and their families.
17. The INDH recommends the Executive to ensure access for the interruption of pregnancy on the grounds established by Law 21.030 in health facilities, with medical personnel available to carry out the intervention, particularly in the most remote areas of the country.
18. The INDH urges legislation to ensure the exercise of legal capacity and the reproductive autonomy of persons with disabilities, avoiding the use of irreversible methods such as sterilization, establishing as an indispensable requirement for any surgical intervention of an invasive nature the free and informed consent of persons with disabilities, including of those declared interdicted.
19. The INDH calls for the full adaptation of national legislation on human trafficking to international instruments, redoubling the training efforts of the different agents of the penal system to adequately apply these standards, increasing the effectiveness of the system of justice to investigate and punish the crimes of human trafficking and trafficking of migrants.
20. The INDH recommends strengthening the institutional framework of the INDH, guaranteeing its independence and autonomy, in full harmony with the Paris Principles, and supporting its establishment and presence in all the regions of the country.
21. The INDH calls on the State to generate all measures to ensure the proper installation of the new institutional framework for children, particularly of the Children's Ombudsman's Office, so that it can be put into operation within the appropriate timeframes and comply effectively with its functions.

22. The INDH recommends that the Under-Secretariat of Human Rights establish adequate coordination channels between the different organizations that make up the human rights institutions in the country, with clearly defined powers, so that a collaborative logic between them may prevail. On the other hand, it is necessary for the State to ensure permanently to each institution the sufficient financial, human and technical resources for the proper performance of its attributions.
23. The INDH urges the State to strengthen human rights institutions through the creation of the Ombudsman's Office and other thematic ombudsmen.
24. The INDH recommends that the Executive grant urgency to the processing of the bill designating the INDH as MNPT, so that this initiative is approved in the short term; it is also recommended that the functions and the organic characteristics of the Mechanism are adjusted to international standards.
25. The INDH calls on co-legislative bodies to adapt the national regulation of the migratory regime to international human rights standards, repealing DL 1094 and replacing it with a law updated to these standards, generating effective mechanisms of appeal against expulsion measures, that respect due process and the right to defense.
26. The INDH recommends the Executive to take all necessary administrative measures to implement effective forms of legal advice and defense for migrant workers, through the Labor Inspectorate and Labor Ombudsmen.
27. The INDH urges that the organs of the State Administration integrate human rights training, and in particular the prohibition and prevention of torture into annual training systems for public officials and armed forces, and order and security forces, which ensure specific skills, attitudes and knowledge regarding the function they perform. The State must monitor centrally the training efforts carried out by institutions and generate support mechanisms for the implementation of actions.
28. The INDH recommends that Carabineros training schools strengthen the training of their instructors so that may effectively incorporate a human rights approach into the practical courses they teach, in which they address the protocols for action and use of force, as also in others related to the use of these protocols. Likewise, instances of training on human rights linked to processes of institutional promotion must be incorporated.
29. The INDH urges that the training of all Armed Forces branches incorporate specific courses on human rights in mandatory curricula, as well as including this approach in a cross-cutting manner in them, especially practical courses where action protocols are taught. To this end, it is suggested to strengthen the human rights training of their instructors and teachers by duly qualified external entities.
30. The INDH recommends that the School of Gendarmería strengthen the training of its instructors so that they effectively incorporate the human rights approach into the

workshops they offer. They should also include human rights training courses linked to institutional promotion processes.

31. The INDH calls for strengthening the State's efforts to reduce the number of people deprived of liberty and overcrowding in penal units, improving prison conditions and guaranteeing the dignified treatment of inmates.
32. The INDH urges the State to totally eliminate the use of punishment cells, and in the cases that isolation is still being used for other reasons, to ensure that the conditions in which this measures is carried out, comply with minimum standards of habitability, health and respect for the basic rights of persons deprived of liberty.
33. The INDH recommends taking measures to avoid deaths in custody, whether due to fights between the inmates or for other causes, both in public prisons and in concessioned ones and in the facilities of the SENAME.
34. The INDH urges adopting the necessary measures to improve life conditions in detention facilities for adolescents, drastically limiting the use of force, adequately preventing and punishing the cases of torture and/or ill-treatment.
35. The INDH urges to strengthen the fulfillment of the State's obligations regarding the investigation and punishment of torture, avoiding the archiving of causes and alternative solutions.
36. The INDH calls on the Executive Branch to include in the Under-Secretariat for Human Rights of the Ministry of Justice and Human Rights an instance of permanent classification of cases of mass and systematic violations of Human Rights in the period from September 11, 1973 to March 11, 1990.
37. The INDH recommends the three branches of the State to guarantee victims of mass and systematic violations of Human Rights and their families the right to full reparation, including civil compensation. It also urges them to reevaluate the amounts of the different reparation pensions. Likewise, it recommends the amendment of the law that establishes the condition of incompatibility between the two, which forces the victims to choose one of them, although they are reparations caused by different facts.
38. The INDH calls on the Executive Branch to establish reparation programs, and the Judiciary to ensure that the amounts of the reparations established on the basis of civil suits are adequate, in the cases of torture that occur today.
39. The INDH recommends Gendarmería de Chile to set adequate mechanisms so that those who report situations of torture in prisons do not suffer reprisals.
40. The INDH urges the State to put an end to long-term psychiatric facilities and to ensure that the people interned in them may be moved to homes or residences inserted in the community, in order to promote their social integration and prevent them being subjected to practices that constitute torture, cruel, inhuman or degrading treatment.

41. The INDH recommends strengthening the inspection of compliance with Law 20.786 carried out by the Labor Inspectorate, specifically in what concerns deeds of contracts, length of the workday, payment of remunerations and social security contributions, and respect for legal holidays and rest time. It is also recommended to disseminate and ensure access to the mechanism of filing reports of abuse and ill-treatment against employers of domestic workers, so that the facts are effectively investigated and punished.
42. The INDH recommends co-legislative powers to introduce substantive reforms to Law N°18.314 in order to adapt said regulating body to international standards governing this matter.

ANNEX 1: Criminal types associated with the crime of torture

Criminal type	Subject or circumstance	Associated penalty
Torture (Art. 150 A) "It will be understood as torture any act by which severe pain or suffering, whether physical, sexual or mental, is intentionally inflicted on a person for such purposes as obtaining from him or any third person information, declaration or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating or coercing him, or for any reason based on discrimination of any kind, such as ideology, political opinion, religion or beliefs of the victim; the country, race, ethnicity or social group to which he belongs; the sex, sexual orientation, gender identity, age, filiation, personal appearance, health status or disability situation".	-The public employee who, abusing his position or functions, will apply, order or consent to the application of torture, will be punished with rigorous imprisonment of a minimum term. -The same punishment will be imposed on the public employee who, knowing the occurrence of these conducts, does not prevent or stop the application of torture, having the necessary power or authority for it or being in a position to do so. -The same punishment will be applied to the individual who, in the exercise of public functions, or at the instigation of a public employee, or with his consent or acquiescence, executes the acts to which this Article refers to".	Rigorous imprisonment of a minimum term (5 years and 1 day to 10 years).
"Attenuated" torture (150 A subsection four). "Torture shall also be understood as the intentional application of methods tending to annul the personality of the victim, or to diminish his will or ability to discern or decide, for any of the purposes referred to in the preceding paragraph".	-id. -id. -id.	Short-term imprisonment of a maximum term (3 years and 1 day to 5 years).
Aggravated torture (150 B) "If, on occasion of torture, the following is also committed:"	1.-Homicide 2.- Any of the crimes provided for in Articles 361(rape), 362 (rape committed against a person below the age of 14), 365 bis	1.- Rigorous imprisonment of a maximum term to qualified life imprisonment 2.- Rigorous imprisonment of a

	(aggravated sexual abuse), 395 (castration), 396 (mutilation) or 397 number 1 (very serious injuries) 3.- Any of the quasi-delicts to which Article 490, number 1 refers to (quasi-delicts against people that would be crimes if there has been criminal intent)	maximum term to life imprisonment 3.- Rigorous imprisonment of a medium term (10 years and 1 day to 15 years).
Aggravated torture (150 C) "In the cases envisaged in Articles 150 A and 150 B the minimum term of the penalty will be excluded to the person who tortures another one who is, legitimately or illegitimately, deprived of liberty, or in any case under his care, custody or control".	-150 A (base type) -150 A ("attenuated" type) -150 B N°1 -150 B N° 2 -150 B N° 3	-7 years and a half to 10 years -4 years and 1 day to 5 years -Simple to qualified life imprisonment -Life imprisonment -The minimum term is excluded, the penalty starts at 12 years and a half.
Unlawful coercion or other cruel, inhuman or degrading treatment (150 D).	- The public employee who, abusing of his position or function, applies, orders or consents unlawful coercion or other cruel, inhuman or degrading treatment to be applied, which does not amount to torture, will be punished with the penalties of short-term imprisonment in its medium to maximum term and the corresponding accessory penalty. - The same penalty will be imposed on the public employee who, knowing of the occurrence of these conducts, does not impede or stop the application of the coercion or ill-treatment, having the necessary power or authority for it or being in a position to do so.	Short-term imprisonment of a medium to maximum term (541 days to 5 years), plus "corresponding accessory penalty".
Aggravated unlawful coercion (150 D subsection 2)	If the conduct described in the preceding paragraph is committed against a minor or to a	Penalty increases in one degree.

	person in a situation of vulnerability due to disability, illness or old age; or against a person who is under the care, custody or control of the public employee, the penalty shall be increased by one degree.	
Aggravated unlawful coercion (150 E)	1.-Homicide 2.- Any of the crimes provided for in Articles 361, 362, 365 bis, 395, 396 or 397, number 1 3.- Any of the quasi-delicts to which Article 490, number 1 refers to	1.- Rigorous imprisonment of a maximum term to life imprisonment 2.- Rigorous imprisonment of a medium term (10 years and 1 day to 15 years). 3.- Rigorous imprisonment of a minimum term (5 years and 1 day to 10 years).
Unlawful coercion, participation of private individuals (150 F).	The same penalty shall apply to the individual who, in the exercise of public functions, or at the instigation of a public employee, or with the consent or acquiescence thereof, shall execute the acts referred to in Articles 150 D or 150 E.	Same penalties as 150 D and E