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**Comments by the Government of Chile\* on the conclusions and recommendations  
of the Committee against Torture (CAT/C/CR/32/5)**

**Paragraph 7 (k): Extend the term and mandate of the National Commission on Political  
Imprisonment and Torture to victims of all forms of torture, including victims of sexual  
violence**

1. As has been mentioned previously, the Commission received testimony from a considerable number of persons, representing a total of 35,868 cases. Such testimony came from various parts of the country, including more than 100 remote localities, which were visited by Commission officials. In addition, testimony was also received abroad.
2. With regard to the extension of the term of the Commission, the bill on the establishment of the National Human Rights Institute, which is being discussed in Congress and which in August 2006 was approved in its first reading by the Chamber of Deputies, contains a transitional provision that allows the Council of this body to "... determine cases of torture or

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\* The present document is part of Chile's fifth periodic report. Since the Government of Chile has not been consulted concerning the publication of its report in separate parts, the contents of this document are confidential and intended solely for consultation by the members of the Committee against Torture.

political imprisonment that have not been submitted to the National Commission on Political Imprisonment and Torture ...". Without prejudice to that provision, the Government is considering the possibility of re-establishing a similar commission.

3. The Commission's mandate was not defined in such a way as to restrict its competence to the subject of torture; it also considered sexual violence, which is described in the methods of torture referred to in the Commission's final report, which is annexed hereto. The Commission was not only able to describe methods of torture that consist in sexual aggression, in a special section, on the basis of victims' spontaneous statements, but was also able to describe the consequences of such aggression in a special chapter of its report.

**Paragraph 7 (k) (i): Initiate measures to better publicize the work of the Commission, utilizing all media, and clarifying the definition of torture, including sexual violence, on the forms victims must complete**

4. The Commission has carried out many measures to publicize its work, through radio, television and the printed press, by displaying posters in public places, and through organizations of former political prisoners and victims of other human rights violations. Press interviews helped to explain the Commission's functions. The Commission's work was also publicized by Chilean consulates abroad, and statements referring to the Commission's report were received from 40 countries. With regard to the extension of the Commission's mandate, it should be pointed out that, during its operation, the Commission received many requests from groups of victims and individuals requesting that the process should not be extended for a long time, in order to ensure that compensation was provided in a timely manner, particularly in the light of the advanced age and the poverty of many of the victims.

5. The operational definition of torture used by the Commission is contained in its report and was based on the definitions established in the Inter-American Convention to Prevent and Punish Torture and in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. With regard to the inclusion, on the forms that the victims had to complete, various kinds of torture, including sexual aggression, as was mentioned earlier, the Commission carried out its work on the basis of a broad definition of torture, which included sexual aggression, as demonstrated by the Commission's report. According to that report, persons who made

statements before the Commission understood the definition of torture that had been adopted by the Commission, and described the treatment to which they had been subjected; the existence of open questions on the subject did not constitute a limitation on the presentation of statements.

**Paragraph 7 (k) (ii): Ensure that victims will be afforded privacy when registering with the Commission, and that persons in rural areas or otherwise unable to file in person can register**

7. One of the Commission's main concerns was to provide dignified support that would make it possible to take statements and, at the same time, treat the victims. The statements were taken in personal interviews - following a process of registration for the interviews, which avoided waits and queues - in offices specially intended for that purpose. Some interviews were conducted with one interviewer, while others were held with two or more interviewers, observing strict confidentiality.

8. It is, however, possible that, in some cases, owing to the volume of work carried out and to the diversity of the territories covered by the Commission, ideal conditions of privacy were not met. Nevertheless, the general impression, both of the persons interviewed and of all the victims' organizations with which the Commission had ties, is that the work was conducted with high professional standards and respect for the dignity of the persons interviewed, as well as consideration for the seriousness and privacy of the information reported.

9. Provincial governments were involved in taking statements from persons from rural areas; all persons who called these offices or the free telephone line to request interviews were interviewed. Officials of the Commission travelled to some of the remotest areas in order to take statements.

**Paragraph 7 (k) (iii): Include in the final report of the Commission data disaggregated by gender, age, type of torture, etc.**

10. The Commission's report includes statistics on the age and gender of persons recognized as victims and describes and provides anonymous statements concerning various methods of torture. However, the Commission did not consider it advisable to provide statistical information on the methods of torture referred to, since such information had not been verified and was not verifiable. It was, however, indicated that 94 per cent of the persons recognized as victims of political imprisonment claimed that they had been subjected to torture.

**Paragraph 7 (k) (iv): Consider extending the Commission's mandate to permit investigations and, where warranted, the initiation of criminal proceedings against those allegedly responsible for the actions reported**

11. The decision to establish the Commission was a response to requests from human rights organizations and victims' groups regarding the need to establish the truth about cases of victims of political imprisonment and torture, and to provide compensation to the victims. From the very beginning, the process involved efforts to establish facts to support the recognition of these grave human rights violations, in order to help preserve the historical memory of what happened and to recognize and compensate the victims who, until then, had not received compensation. This was done without prejudice to the possibility of obtaining justice in the courts.

12. For its part, the Commission considered that the information received from victims' statements is restricted, given the intimate nature of many of the statements, which contained reports and consequences of torture that many of the persons interviewed did not wish to make public. All of this was communicated to the persons who gave evidence.

13. The Commission, and subsequently the legislative authorities, had to decide between the need for publicity and the need to safeguard confidentiality. For this reason, a decision was taken to publicize the Commission's report in order to make the population aware of the events in all their magnitude and horror. A reading of the report provides a good description of what happened and makes it possible to understand the consequences that the events had on people's lives. The report does not seek to protect possible perpetrators. The Commission did not have the competence to investigate those responsible, but only to take victims' statements and establish their status as such.

14. In order to protect the privacy and honour of the persons in question, it was proposed that their personal history, which was not included in the published report, would be kept in reserve for a certain period of time, bearing in mind the practice followed in other world archives in such situations. The relevant law on the subject<sup>1</sup> provides that statements will be kept secret for a period of 50 years, which does not prevent persons from publicizing their story or from bringing their cases before the courts in order to establish the criminal responsibility of the persons who

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<sup>1</sup> Article 15 of Act No. 19.992 of December 2004.

committed these offences. Nor was compensation for the victims made contingent on their waiver of the right to bring civil suits, which means that victims are free to go to the courts to sue for damages and request the relevant compensation.

**Paragraph 7 (m): Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; review convictions where statements obtained by coercion in such cases have been admitted into evidence**

15. In Chile, induced abortion is an offence under the Criminal Code.<sup>2</sup> The Administrative Statute<sup>3</sup> establishes the general obligation of civil servants to report to the judicial authorities crimes and ordinary offences of which they become aware in the performance of their duties. However, the aforementioned obligation is contradicted by another part of the same article,<sup>4</sup> according to which every civil servant has the obligation to maintain the secrecy of matters that are restricted by law, by regulations, by their very nature, or by special instructions.

16. In this regard, the Code of Criminal Procedure<sup>5</sup> expressly states that persons who, by virtue of their status, profession or legal function, had the obligation to maintain the secrecy of the information confided in them, have the right to abstain from making statements for reasons of secrecy. By way of example, the provision in question refers to the situation of medical doctors. Thus, Chile's legal system contains norms that are somewhat contradictory, since certain norms establish the obligation to report, while others stipulate the need to observe the secrecy or restricted nature of information. In any case, none of the norms described obliges health personnel to question their patients or implies that they must do so, or that health personnel are authorized to act as investigators of a possible crime or offence. Consequently, Chile's legal system does not contain any norm that obliges health-care personnel - and less in emergency or urgent cases - to supply information or confess that the patient had participated in an offence or quasi-delict.

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<sup>2</sup> Article 342.

<sup>3</sup> Act No. 18.834, article 61 (k).

<sup>4</sup> Act No. 18.834, article 61 (h).

<sup>5</sup> Article 303.

17. While the legislative framework in force establishes the obligation of professionals of public and private health establishments to report induced abortions, in practice the reporting of such cases has been rather infrequent and of a discretionary nature, for a number of reasons; for example, when there are very serious complications that call for highly complex and costly medical and surgical intervention, or in cases of death associated with this condition, cases are not reported in order to avoid possible medical and legal problems for the professionals who provided treatment or for the health establishment.

18. Professionals providing treatment give priority to the confidentiality of the medical procedure, which is clearly established in Chile's legal system, using information that patients may supply concerning the nature of their problem as an element for deciding on appropriate clinical treatment.

19. In short, the Ministry of Health cannot issue instructions that contravene legislation currently in force, nor has it issued any instruction on the "extraction of confessions" from health personnel, which is a matter for the police and judicial authorities.

20. It should be borne in mind that one means of preventing abortions that Chile has been promoting for almost 40 years is family planning based on the concept of responsible paternity, which makes it possible to ensure that pregnancies and births are freely desired by both parents. In this regard, the Ministry of Health established guidelines for health services concerning female and male sterilization; the guidelines provide that the decision to be sterilized is personal and is the freely expressed will of the person requesting sterilization. A person's decision to be sterilized is not conditional on the approval of third parties; the only requirement being that the persons in question have reached the age of majority and are in possession of their mental faculties.<sup>6</sup>

21. In this regard, the national health objectives formulated by the Ministry of Health for the decade 2000-2010 include specific objectives in the area of reproduction: reduce reproductive inequality caused by gender inequalities and the greater vulnerability of certain population

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<sup>6</sup> Exempt Resolution No. 2326 of 2000.

groups; reduce the incidence of induced abortion and reduce the number of unwanted pregnancies among adolescents, who require appropriate and easily accessible services.

**Paragraph 7 (q): Provide detailed statistical data, disaggregated by age, gender and geographical location, on complaints related to torture and ill-treatment, allegedly committed by law enforcement officials, as well as the related investigations, prosecutions and sentences**

22. Beginning with the reform of criminal procedure, judicial inquiries into offences involving such behaviour are conducted by the Public Prosecutor's Office, when civilian officials of the Gendarmería (Prison Service) and the Investigatory Police are prosecuted. Military courts are responsible for trying law enforcement officers belonging to the Carabineros (uniformed police) who engage in unnecessary violence punishable under the Code of Military Justice.

**Administrative proceedings carried out by the Gendarmería**

23. With regard to the investigations of incidents involving alleged abuses committed by members of the Gendarmería against persons in their custody, in 2005 there were 68 administrative proceedings involving cases of physical and verbal aggression, ill-treatment and sexual harassment. In September 2006, 38 pretrial proceedings had been concluded and 30 were still under way (see annex, tables 18 and 19). With regard to the 38 pretrial proceedings that were concluded, 30 cases were dismissed, 2 resulted in acquittals, 4 resulted in fines, 1 in censure and 1 in suspension (see annex, table 20). Between January and September 2006, 24 administrative proceedings were instituted for incidents involving alleged abusive behaviour by members of the Gendarmería against persons in their custody; in the proceedings, cases of physical and verbal aggression, ill-treatment and sexual harassment were investigated. In September 2006, only two investigations had been concluded and the cases dismissed (see annex, table 21).

**Criminal proceedings instituted against members of the Gendarmería for offences of ill-treatment of or injuries inflicted on prisoners**

24. In 2005, eight criminal proceedings were initiated, three of which were concluded and five of which are still under way. The proceedings involve one case of alleged abuses against individuals; one case involving the alleged infliction of injuries and ill-treatment; two cases involving the infliction of slight injuries; two cases involving ill-treatment; one case involving

torture of detainees and ill-treatment; and one case involving torture of detainees and the infliction of injuries (see annex, tables 22 and 23). Between January and September 2006, the only criminal proceedings that were brought were against staff of the Gendarmería of the Coyhaique Penal Enforcement Centre in Region XI (Aisén).

**Complaints filed with the Carabineros for alleged acts of torture and ill-treatment committed by its officers in 2005**

25. In 2005, 154 complaints were registered. In decreasing order, the regions with the highest number of complaints are the Metropolitan Area of Santiago, with a total of 62 cases (40.3 per cent); Region X (Lagos), with 36 cases (23.4 per cent); Region IX (Araucanía), with 27 complaints (17.5 per cent); and Region I (Tarapacá), with 15 cases (9.7 per cent). The remaining regions submitted between 0 and 3 complaints (see annex, tables 24 and 25).

26. Considering the number and percentage of the 154 complaints by communes, in decreasing order, the commune of Santiago registers 53 cases (34.4 per cent); the commune of Puerto Montt registers 20 cases (13 per cent); the commune of Temuco, 11 cases (7.1 per cent); the commune of Osorno, 10 complaints (6.5 per cent); and the commune of Iquique, 9 cases (5.8 per cent). The remaining communes do not exceed five cases a year (see annex, table 26).

27. The 154 complaints involve 170 complainants; this difference can be explained by the fact that one case sometimes involves more than one complainant. Of the complainants, 111 are adult males (65 per cent), 49 are adult females (29 per cent), 10 are under-age males (6 per cent) and there are no under-age females (see annex, table 27).

28. Of the 154 complaints, which were effectively verified, 138 were rejected or were dismissed in court. The remaining 16 complaints do not register information under this item. Of the 138, 18 were verified cases, 116 cases were rejected and 4 cases were dismissed in court (see annex, table 28).

29. With regard to the current stage of administrative proceedings, 99 per cent of complainants are in the investigation stage (see annex, table 29).

30. Of the persons charged, 253 (97 per cent) were personnel appointed by the institution itself and 8 (3 per cent) were appointed by the Government (see annex, table 30).

**Complaints lodged with the courts for alleged acts of torture and ill-treatment committed by Carabineros in 2005**

31. In 2005, 49 complaints were registered. The region with the highest number of complaints, considerably exceeding all other regions, is Region IX (Araucanía), with a total of 24 cases (49.0 per cent); Region VII (Maule), with 7 cases (14.3 per cent); Region X (Lagos), with 4 complaints (8.2 per cent); Region II (Antofagasta), with 3 cases (6.1 per cent); Region V (Valparaíso), Region VI (O'Higgins), Region XI (Aisén) and Region XII (Magallanes), with 2 cases each (4.1 per cent); and Region III (Atacama), Region VIII (Biobío) and the Metropolitan Area of Santiago, with 1 case each (2.0 per cent). Region I (Tarapacá) and Region IV (Coquimbo) did not register any complaints in 2005 (see annex, tables 31 and 32).

32. The 49 complaints lodged in 2005 covered a total of 20 communes. The commune of Temuco registered the highest number of complaints - 12 (24.5 per cent); the commune of Angol registered 6 complaints (12.2 per cent); the commune of Constitución and Villarrica, 5 complaints (10.2 per cent); the commune of Taltal and Panguipulli, 3 complaints (6.1 per cent); and the commune of Punta Arenas, 2 complaints (4.1 per cent). The remaining communes registered one complaint each (2.0 per cent) (see annex, table 33).

33. Of the total number of persons who reported the 49 cases, 36 are adult males (69 per cent), 12 are under-age males (23 per cent), 1 is an adult female (2 per cent) and 3 are under-age females (see annex, table 34).

34. Of the persons charged, 121 persons (98 per cent) were personnel appointed by the institution itself and 2 persons (2 per cent) were persons appointed by the Government (see annex, table 35).

**Internal investigations into alleged ill-treatment committed by members of the Investigatory Police**

35. Tables 36 and 37 (see annex) indicate the cases in which these investigations resulted in administrative proceedings and/or criminal prosecution in 2004 and 2005.

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