



Casa Memoria José Domingo Cañas

FUNDATION 1367

Alternative Report

THE RIGHT TO HEALTH:

**RIGHT NOT TO BE SUBJECTED TO TORTURE, CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT.**

For presentation to the fourth periodic report of the State of Chile before the Committee
of the United Nations for Economic, Social and Cultural Rights

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The Casa Memoria José Domingo Cañas is located in a site in which existed one of the many houses used as a torture and extermination quarter during the Chilean Military Dictatorship between 1973 and 1990. Nowadays, the Foundation 1367 in charge of this site of conscience, focuses its mission in the promotion and defense of Human Rights, thus, it has formed a committee of observers whose aim is to monitoring and social control over the actions of the police force, in the sense of making visible the exercise of the guarantees of non-repetition from the Chilean State and the duty that have States to implement measures to enable the effective observance of Human Rights.

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EXECUTIVE RESUME

Keywords: Impunity, police violence, torture, criminalization of torture, repression, mental health, access to justice, education of human rights.

Impunity for crimes of the dictatorship gives orientation actions for the state agents of today, which is facilitated by not being typified torture as a crime. A significant increase of cases of police violence and an alarming number of arbitrary arrests in public demonstrations of students, labor, suburbs, Mapuche and Pewenche people is observed. To this, is added the lack of standards and laws of protection for people affected by mental health which are also victims of torture, cruel, inhuman or degrading treatment.

Therefore the state must:

1. Adapt police procedures to international standards.
2. Create a Mental Health Act to protect all rights independently.
3. The crime of torture in domestic criminal law and implement the National Mechanism for Prevention of Torture.
4. Take steps to ensure access to truth, justice and reparation for victims of violence by the state.
5. Incorporate in the curricula of Technical and University Education, Human Rights education with special emphasis on the approach and care for people who have been victims of torture.

Article 12: Right to Health

The right to health contains both freedoms and rights, such as free from interference and not be subjected to torture, cruel, inhuman or degrading treatment or punishment.

1. During the period covered by this report, there have been serious attempts against mentally ill people, which could be considered as torture. Based on the negative stigma that society has built about them, it is justified the repressive actions of professionals in the area of health and mental illness that must treat, in their professional exercise, with the subtle boundaries between what constitutes the rights of a citizen affected their mental health and duties of health professionals and staff.
2. Most Western countries have legislated with respect thereto and have a Mental Health Act, which Chile has not got.
3. Since 1990 it has been discussed in small circles of mental health professionals and organizations of families of mentally ill people. In August 1998 it was approved the regulations for the admission of persons with mental illness and establishments that provide it, in January 2001 Supreme Decree No. 570 took effect, amending the old regulations internment of insane. In Title VII, Article 59, this new regulation provides for the establishment of the National Commission for Protection of the Persons of Mental Disorders (CNPPAEM in Spanish). The CNPPAEM has regularly held sessions in the Ministry of Health, with unclear administrative dependence.
4. This decision to create a commission, whose main task is to assume the defense of those affected by mental illness, while their attention on health, under the administrative dependence of who are responsible for regulating, supervising and safeguarding the good performance of the providers of health services, has does not guaranteed the possibility of defending the rights of people and carry out a due process because the parties have coincidence of interests.
5. It is suggested that the rights of persons suffering from mental illness in Chile, should be protected by an independent entity of hum has the obligation to provide

the services that the patient may claim, and to insist on the need for a Law of Mental Health.

6. Furthermore, it was found that officials and medical staff from other areas of Health do not know or do not apply the Istanbul Protocol so that allegations of abuse and torture by state agents are not served in due form in the first care and health facilities, covering and obstructing complaint in justice courts and incidentally hiding the real number of such crimes.
7. The citizen demonstrations of protest, in recent years, have been severely repressed, much of detainees allege they were tortured and abused by the police, including girls, children and adolescents report various forms of sexual violence, forced nudity, sexual fumble, genital knocking among others.
8. Taking into account international regulations, the recommendations given by the International Red Cross and the United Nations High Commissioner for Human Rights, has noted in general terms: the lack of necessity, gradualness and proportionality in controlling social protests events, using deterrents arbitrarily and indiscriminately.
9. The use of violence at the time of arrest, has caused various injuries to protesters, found during the period 2011-2014 by doctors of the Human Rights Department of the Medical Association of Chile AG.
10. It was found that many of the detainees come visibly beaten at police stations. The moments of detention and within shuttle buses is where it is generated the highest levels of violence and violation of rights.
11. Regarding adolescents as prisoners, and which are transferd to detention controls before the Courts of Guarantee, it was found that once they are turned over to the custody of Gendarmerie of Chile, officials of such establishment begin to beat them again with fists, kicks and service poles.
12. It has been found that people who have been arrested, especially under 18, have been subjected to interference and violations of their rights, such as stripped naked and sexual assault in police stations for the purpose of a personal review of detention. It was found the practice of forced nudity to children and adolescents,

police authority justified by the need to review the detainees upon entry to the police station. Review procedures involving stripping affect significantly the personal integrity of the detainees and can be aggravated if they are done in conjunction with other detainees, it may be considered cruel or degrading treatment.

13. On the other hand, we collected testimonies about physical exercises that are done in the context of the review, and that they are coerced the detainees to a series of pushups that should not be applied to detainees or less teenagers led to identity check.
14. . Also on abuse outside police stations to relatives (mothers) of juvenile detainees.
15. Police abuse to relatives (mothers) of juvenile detainees outside police stations. Police gives no information of the detainees to their families. It conceals or misrepresents the information of detainees, generating that families have to wander from one police station to another without knowing the where about of their child.
16. Minor detainees are forced to sign documents without their consent and under threat of reprisals to themselves or the family before being released.
17. Denial or difficulty in access to police stations of lawyers that are not part of the National Institute of Human Rights.
18. Hiding evidence: Illegal detention practices -like agents that are not identified or who not register the name of the detainees in a record, who deny the access to lawyers, relatives or medical doctors- facilitate impunity by hiding the track leading from the crime to the perpetrator. The torturers choose methods that leave few physical signs, such as psychological torture, prolonged confinement in moving vehicles, and denial of restroom. Records are modified detention time, and enter the doctor's box pointing what they have to write in the injuries reports.
19. Victims were denied access to legal recourses: Victims, already terrified, are intimidated into keeping silent about what happened or their families are threatened to not interpose recourses, specialty in case of minors.
20. The agents act as accomplices: The "code of silence" active in our military and law enforcement officers deter to provide primary evidence against their colleagues accused of torture.

21. The legal framework is inadequate to punish Torture: Not being criminalized torture in the penal code, the evidence to convict perpetrators will always be insufficient.
22. Mapuche and Pewenche communities are frequently raided by police forces, committing various abuses and mistreatment of children, adolescents, women and elderly, despite international recommendations on the subject. It should be mentioned that indigenous women, especially Mapuche and Pewenche have been constant victims of disproportionate use of force by state agents in the context of police operations, a situation recognized by the CEDAW Committee in 2012.
23. Despite various recommendations of the international community (UPR, UN Human Rights Committee) the State of Chile still does not criminalize torture nor has implemented the National Mechanism for Prevention of Torture.

RECOMMENDATIONS

1. Investigate, punish and redress the abuses suffered by teenagers, children and youth in the context of social movements over the past 25 years. With special safeguarding the rights of children, girls and adolescents.
2. Typify in domestic criminal law the crime of torture as a crime against humanity.
3. The operation of a National Commission of Inquiry on Torture and other cruel, inhuman and / or degrading treatment or punishment, also called preventive mechanism. This Committee should be constituted as an autonomous entity that includes civil society organizations.
4. The prohibition of the use of weapons in controlling social protests.
5. The removal of state officials involved in human rights violations, past and present, and public realizing it.
6. Remove the formation of government agents under the National Security Doctrine.
7. Incorporate in the curricula of Technical and University Education, Human Rights education with special emphasis on the approach and care for people who have been victims of torture.
8. Create a Mental Health Law to protect all rights independently.

REPORTS OF SUPPORT:

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