

**LATIN AMERICAN DELEGATION IN COLOMBIA  
“LA PAZ EN COLOMBIA ES POSIBLE “  
CAMPAÑA DE CARITAS INTERNACIONALIS**

**CHILE**

**TRUTH, JUSTICE AND REPARATIONS**

**SPEECH**

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## **Human Rights Violations Reparations Policy in Chile Implemented By Democratic Governments as of 1990**

The Administration of President Patricio Aylwin Azocar, the first government of the Concertation of Parties for Democracy, elected democratically in December 1989, faced the most difficult legacy of the dictatorship: the systematic and permanent violation of human rights.

The succeeding governments elected to office from the same political alliance, including the present government of Michelle Bachelet, have had to deal with the same issue, with varying degrees of highs and lows. However, a comprehensive solution to permit these wounds inflicted in the past to heal has yet to emerge.

The infringement and restriction of fundamental rights during the more than 17 years the military regime was in power, led Mr. Aylwin to assign priority to the following types of violations:

1. The violation of due process guarantees, as a characteristic of political imprisonment.
2. The violation of the right to live in one's own country, as represented by the exile of thousands of Chileans.
3. The violation of the right to life of victims who were summarily executed for political motives and forcibly disappeared.

### **Political Imprisonment**

On March 11, 1990, when the Aylwin government was inaugurated, approximately 400 people imprisoned by the dictatorship remained in prison. Some had been held since 1979. Most had been imprisoned under military court jurisdiction and martial court proceedings. In order to accelerate these cases, the executive branch sent several legislative proposals to Congress that sought to improve basic individual rights, by modifying several existing de facto laws such as the Arms Control Law and the Anti-Terrorist Law. In cases that resulted in convictions, the political prisoner would request a presidential pardon, which was granted, subject to parole that extended from 2 to 10 years.

Due to the serious nature of the crimes of 24 prisoners (assassination attempt against Augusto Pinochet in 1986; killing of the Army Intelligence Director in 1982; homicide of the Santiago Governor in 1983), the sentences of this group were commuted to 5, 10, 20, 25 and 40 years of exile.

Although a small monetary compensation was granted to each former political prisoner, these people had great difficulty finding employment because they had police records. A law is still needed to expunge the police records of former political prisoners. In March 1994 the last political prisoner was released.

### **Exile**

In order to repair the damage caused to thousands of Chileans who were prohibited from living in their own country, the government created the National Office for Return (Oficina Nacional para el Retorno) that operated until August 1994.

The Returnee Program formed agreements with human rights organizations to assist in locating employment, job training, housing, economic assistance, customs fees and a law

conferred recognition of professional titles earned abroad. Some exiles who returned to Chile also received assistance from the country that had harbored them.

### **Loss of Life**

The most serious consequence of the dictatorship was the systematic violation of the right to life. Disregard for human life, beginning on the day of the coup and continuing throughout the entire period of military rule, earned the permanent condemnation from international human rights institutions. International repudiation of the military coup and the repressive practices that characterized the dictatorship brought Chile under the watchful scrutiny of the United Nations and the Organization of American States (OAS).

The brutal events that occurred in the country prompted the UN in 1975 to create the human rights supervisory Work Groups. The first Work Group operated in Chile, and in 1977 the position of Special Rapporteur was created. The first Rapporteur was assigned to monitor the human rights situation in Chile, which was maintained until 1989.

In addition to the OAS annual reports on repression in Chile, in July 1974 the Inter American Human Rights Commission conducted the first on site visit to a country of the region to appraise first hand the situation that affected basic rights.

The dictatorship came to end with the defeat of General Pinochet in the 1988 Plebiscite, followed by presidential elections in which the democratic candidate triumphed. The new democratically elected government was inaugurated despite strong presence of de facto powers and the perpetuation of the Constitution of 1980. Moreover, the influence of Pinochet in Congress was evident, particularly in the delegation of designated senators, a position that had been created by the military to ensure the continuation of its ideology. The sway of the former dictator was pervasive in the political arena and in the Armed Forces. President Patricio Aylwin made the decision to confront the most serious disregard for the human being, the “violation of the right to life,” through the creation of the Truth and Reconciliation Commission.

### **TRUTH AND RECONCILIATION COMMISSION**

President Patricio Aylwin created this commission on April 25, 1990 through Discretionary Decree N. 335 under the Interior Ministry. The scope of the Truth and Reconciliation Commission was limited to the investigation of human rights violations that resulted in death that occurred between September 11 1973 and March 11, 1990. It only included the crimes of forced disappearance, summary political executions, or others in which a body was recovered and a coroner death certificate issued.

The mission was not the investigation of the truth regarding what occurred, because national and international human rights institutions had amply documented the situation. The Commission’s underlying objective was to certify and vest that truth with official credibility through multi-partisan participation, including people aligned with the political right. President Aylwin appointed eight people, four of whom were associated with right-wing political parties, to serve as Commission member. Seven were lawyers and one was a social worker. Two women served on the Commission.

Commission staff consisted largely of young attorneys who had not worked in the human rights field during the military regime. Working intensely, they fulfilled the Presidential mandate in just nine months.

The amnesty decree law, more properly a self-amnesty, that shielded from prosecution the perpetrators and accessories to crimes committed between September 11, 1973 and March 10, 1978, was politically unassailable due to the strength of the political right in Congress. The amnesty decree law obstructed the advancement of truth in the cases of forced disappearances.

The Truth and Reconciliation Commission presented the four volumes of its Report to President Aylwin on February 8, 1991, product of just nine months of work.

The report provides an overview of human rights violations including descriptions of the methods employed, agencies responsible for committing such acts, the selection of victims, forms of repression and the way impunity was ensured. It also contains brief narrative of each case in which the Commission arrived at a moral conviction that the individual was the victim of a human rights violation or political violence.

On March 4, 1991, President Aylwin formally presented the report to the nation on live radio and television broadcast. In an emotional speech, he asked the victims' family members to forgive him, from his condition as President of the Republic. The government's Communication and Culture Administration published the report, which was circulated in a national newspaper. A copy of the Report was given to victims' relatives and human rights organizations that had testified before the Commission.

Subsequently, human rights non-governmental organizations formed a committee called "Paracrear en Chile" ("To believe in Chile") to publish, in Spanish, English and French, a summarized version of the report, complete with photos, and statistics. Human rights educators were trained to inform civil society of the content of the Report. These efforts were marred, however, by the assassination less than a month after the report was released, of right-wing senator Jaime Guzman, an ideologue and important advisor to the dictatorship. This tragic event greatly affected the possibility of creating consciousness among Chilean society of the serious nature of the human rights crimes and the need to ensure the concept of Never Again.

## **Rationale for the Commission**

### **Judicial ethical duty:**

International law obliges States to repair the damage caused to victims, punish crimes of war, crimes against peace and crimes against humanity.

### **Political ethical duty:**

Build a new democratic order upon a solid and credible foundation.

### **Legal framework:**

*Universal Declaration of Human Rights*

*International Humanitarian Law*

Norms of Jus cogens

At the time of these most serious crimes were committed, Chile had not ratified either the San Jose Pact of Civil and Political Rights, (1989) nor the American Human Rights Convention (1991).

**Victims recognized**

1. Serious human rights violations committed by agents of the State or individuals at the service of the State: forced disappearances, extra-judicial executions, and torture resulting in death.
2. Victims of political conflict
3. It adds abductions or assassination attempts committed by politically motivated private individuals.

The Commission received 4150 denunciations.  
It classified as victims the following:

**1. Victims of human rights violations committed by agents of the State or individuals at their service:**

▪ Persons forcibly disappeared	957	
▪ Persons killed	1068	
	-----	<b>2025 victims.</b>

**Killings:**

▪ War Council Death Sentences	59	
▪ Executions alleging fugitive law	101	
▪ Other executions and deaths by torture	815	
▪ Repression during protests	93	
	-----	
	1068	

Persons killed by private individuals for political reasons. 90 persons

**TOTAL 2115 persons**

Victims of political violence 164  
**Total 2279**

**Criticism of the Commission:**

**1. Limited scope:**

Investigation only concerned human rights violations that resulted in death.  
It excluded and did not receive testimony from survivors of tortured.  
Lack of authority to investigate, subpoena testimony, identify perpetrators and guarantee cases could be heard in court.  
It could only invite, not compel, individuals to testify.  
It could only send information to the courts.  
Overly confidential nature of testimonies and facts gathered, as imposed by decree that created the Commission.

## **2. Political will to minimize role of justice:**

“The moral conscience of the Nation demands that truth be brought to light, that justice be made to the degree possible, reconciling the virtue of justice with the virtue of prudence and later will come the hour of forgiveness.”(P. Alywin)

3. **Changed definition of the concept of “human rights violation”** by assigning the State and politically motivated individual or group the same degree of responsibility.

## **Rejection of the Report**

### **Political parties of the right**

Accepted the Report and condemned the crimes but justified these as excesses inevitable in situations of non-justifiable conflict. The common explanation was, “The Marxist left sowed wind and harvested a storm.”

### **Armed Forces and Uniformed Police**

Instead of asking forgiveness for their actions, the military justified and upheld them as patriotic.

They denied the historic and judicial validity of the Report.

They accused the Commission of lack of meticulousness.

They regarded the vindication of the victims as an affront to reconciliation.

They rejected preventive measures the Commission recommended.

When criminal complaints began to be filed in court, military troops took actions intended to subtly but distinctly rattle their swords.

### **Judicial Branch**

Judges commented that the report was biased, incomplete and not credible. They repudiated the criticism of the courts’ gross dereliction of duty and failure to defend basic human rights. During the military regime, as the Report pointed out, the courts repeatedly denied habeas corpus petitions, refused to investigate reports of presumed mishap, renounced their constitutional mandate to supervise all courts by giving free rein to War Councils.

The Report emphasizes the specific responsibility of the Judicial Branch for the violations of human rights by failing to fulfill its duties and for “lack of moral courage to carry them out.” (P. Alywin).

The Report also described a systematic, planned extermination of political opponents, leading to serious, massive, and systematic human rights violations.

In regards to torture, it employed the International Convention definition.

The cases the Commission investigated were homicides and forced disappearance of persons but did not term these war crimes, genocide or crimes against humanity.

It did not address the application of International Humanitarian Law, even though Chile is a party to the Geneva Conventions since April 1951.

## **RECOMMENDATIONS of the COMMISSION**

Foster reconciliation and prevention of human rights violations in the future through the following:

### **1. Measures for Reparation**

- a. Vindication of victims and symbolic reparation.
- b. Legal and administrative recommendations.
- c. Recommendations regarding social welfare.
- d. Children of victims are exempt from Mandatory Military Service

### **2. Recommendations that address judicial and institutional preventive measures.**

#### **Judiciary:**

- Foster reforms and changes in the system for appointing judges and judicial procedure.
- Did not mention the need to purge the Armed Forces of individuals who participated in repressive actions but did recommend a redefinition of intelligence functions and promoted greater contact with civil society through social and cultural activities.

### **3. Other recommendations regarding follow-up of investigations underway.**

#### **The creation of an agency accountable to the State in order to:**

- Continue the investigations pending.
- Search for whereabouts of the victims.
- Compile facts.
- Classify cases still pending. (The Commission did not reach a conviction in 600 cases)
- Centralize information the Commission compiled.
- Assist the victims' family members to obtain reparations.

#### **The Report classified as victims:**

- Disappeared persons;
- Extra-judicial executions;
- Undue use of force;
- Deaths during curfew hours;
- Abuses of power
- Torture or mistreatment that resulted in death.
- Interruptions of pregnancy
- Suicide as a consequence of torture or arbitrary deprivation of freedom.

The President accepted the recommendations made by the Truth and Reconciliation Commission, popularly known as the Rettig Commission, (in name of attorney Raul Rettig who presided over the body), in February 1992, through Law 19123, creating the **National Reparations and Reconciliation Commission**.

This governmental agency was accountable to the President through the Interior Ministry.

**Objective:** To implement the recommendations and conclude the process of classification of the victims of the most serious human rights violations or political violence.

## **Reparations measures established:**

1. A **reparations pension and** a onetime damages payment, equivalent to 12 months' pension, for the following beneficiaries:

- Surviving spouse 40%
- Mother of victim or, if deceased, the father 30%
- Mother of children born out of wedlock to the victim or the father, if the victim is the mother 15%
- Legitimate, out of wedlock, or adopted children less than 25 years of age, and handicapped children of any age. 15%
- The pension is non-transferable and granted for the beneficiary's lifetime, except for children over 25 years of age. Reajustable to inflation and compatible with any other benefit family members may receive from the State.
- Health insurance is not deducted from the pension; the State finances health benefits separately.

2. **Provides medical benefits** to the father, mother, and siblings of the victim through the creation of the Integral Health Reparations Program (Programa de Reparación Integral en Salud, PRAIS). This provides medical assistance in public hospitals, through a credential that accredits the bearer as a beneficiary of the State reparations program.

3. Children are provided **education benefits**.

4. The law establishes that all children of the victim whether legitimate, out of wedlock, or adopted have equal rights in this regard and are exempt from Mandatory Military Service.

The Reparations and Reconciliation Corporation presented its final Report to the President.

### **The Corporation received 1200 denunciations and certified as victims:**

a. 899 persons, of whom 123 were disappeared persons and 776 killed.

b. 255 persons: Victims of political violence.

**TOTAL** 1154 victims

### **Total Victims Certified by the Truth and Reconciliation Commission and the Reparations and Reconciliation Corporation:**

KILLINGS	2095
DISAPPEARANCES	1102
<b>TOTAL</b>	<b>3197</b>

HUMAN RIGHTS VIOLATIONS	2774
POLITICAL VIOLENCE	423
<b>TOTAL</b>	<b>3197</b>

**COMISSION on POLITICAL IMPRISONMENT and TORTURE**  
**“PARA NUNCA MAS VIVIRLO, NUNCA MAS NEGARLO”**  
**(“Never Again Endure it, Never again deny it.”)**

**Background**

In August 2003 President Ricardo Lagos Escobar presented the government human rights proposal entitled “**No hay mañana sin ayer**” (“Without a yesterday, the here is no tomorrow.”).

The proposal included a series of measures to continue advancing the process of healing wounds produced by the grave human rights violations committed between September 11, 1973 and March 10, 1990.

One measure was the formation of a Commission to meticulously establish a listing of people who suffered deprivation of freedom and torture for political reasons.

On November 11, 2003 Supreme Decree 1040 created the National Commission on Political Imprisonment and Torture.

President Lagos appointed to the commission five lawyers, one psychologist, one social worker and Catholic Bishop Sergio Valech, was elected to preside. The body is commonly known as the Valech Commission in honor of its director.

The Decree provided a time frame of six months that was later extended to three months more, to prepare the final report, by November 30, 2004. The objectives were to ascertain who suffered politically motivated deprivation of freedom and torture by agents of the State or individuals at its service, during the period that spanned September 1, 1973 to March 10, 1990 and propose reparations measures.

The text of the decree states that Valech Commission members and staff cannot perform judicial functions, take actions in regards to responsibility on the basis of confidential statements they have taken.

**Reserved nature of testimony:**

The decree set forth that all documents, testimonies, and information provided to the Commission are strictly reserved. After the Commission concluded its mission, it even denied courts of law access to documents it had gathered. The reserved nature of documentation will be maintained for a period of 50 years, during which all documents will be in the custody of the Interior Minister. However, persons who provided and are the subject of such documents may inform about them or provide them to third parties on their own.

**Victims Recognized**

The Commission received testimonies of 35,865 persons resident in Chile and abroad. The testimonies were accepted and verified the condition of 28,459 persons, corresponding to 34.690 detentions. Women represent 3621 of these former prisoners. Persons who at the time of arrest were less than 18 years old represent 1244 cases, of whom 176 were younger than 13 years old.

**LEGAL FRAMEWORK**

**National:**

Constitution

Supreme Decree 1040. Criminal Code.  
Military Justice Code.

### **International**

- International Convention against Torture, Cruel, Inhumane and Degrading Treatment, Published November 1988
- Inter American Convention against Torture, Cruel, Inhumane and Degrading Treatment. Published November 1988
- Jus cogens norms.
- Universal Declaration of Human Rights
- Pact of Civil and Political Rights
- American Declaration on Rights and Duties of Man
- American Convention

### **Commission considered as Torture:**

All acts that intentionally inflict upon a person: pain or serious suffering, either physical or mental, with the object of extracting from the victim or from a third person information or a confession; punish for an action taken or an action suspected to have taken; intimidate or force that person or others to annul their personality, or diminish their physical or mental capacity, or for reasons related to any type of discrimination.

*Such pain or suffering is considered under the Commission's mandate as long as it is committed by agents of the State or another individual in its service who acts under instigation, consent, or acquiescence of an agent of the State.*

### **Value of the Valech Report**

**A. It recognizes that torture was an institutional practice of the State,** and, therefore, it is the duty of the State to acknowledge its responsibility and repair the damage caused.

### **B. Regarding Violence**

Sixty-seven percent of persons who testified to the Valech Commission were taken as prisoners in the weeks immediately after September 11, 1973, confirming that the Military Junta made maximum use of violence in the first 90 after the coup to secure its control over the country and eliminate all resistance.

Twelve years earlier, the Rettig Report had reached the same conclusion: that the highest concentration of deaths during any one period of time occurred in the initial months following the coup.

Later, human rights violations became selective, in the hands of specialized intelligence units and agents on orders of superior military officers, repudiated nationally and internationally.

Violence was a systematic practice of each and every one of the Armed Forces and police. Some observers believe the absence of international human rights and humanitarian law training in the military, at least partially, explains the proclivity to use brutal force.

Testimonies from former prisoners revealed that 1132 places throughout the country's 13 regions were used as prisons, where torture was routinely practiced. The broad range of places utilized for this purpose included police stations, Naval ships such as the Esmeralda Cadet Ship, provincial government buildings, stadiums, military bases, prisons and numerous properties expropriated to serve as secret detention centers for the National Intelligence Directorate (DINA) and its successor the National Information Central (CNI).

**C. It represents partial reparation for the lives of these surviving victims** who endured pain, silence, and judicial impunity.

**D. It signals the responsibility of** each branch of the Armed Forces and police in the exercise of torture.

The Valech Report also recognizes the responsibilities of civilian sectors of society such as the courts and the communications media.

1) Judicial Branch

Through its actions and omissions, the Supreme Court committed a moral dereliction of duty, establishing a model followed by the entire judicial branch, with a few notable exceptions. Unconditional support for the dictatorship led the judiciary to renounce its ethical principles and professional obligations.

The rejection of thousands of habeas corpus writs, denunciations of abuse and relinquishing its supervision of Military Tribunals in times of war, created a situation of extreme vulnerability and victims were left defenseless.

2) Communications media

The communications media placed themselves at the service of official versions of the truth and the control of dictatorship through the National Social Communication Administration (Dirección Nacional de Comunicación Social, DINACOS). Over time, censorship became incorporated in the operation of communications media, evolving to the practice of prior censorship.

The press played a significant role in supporting the dictatorship through disinformation, distorting facts or outright fabrication of stories to justify the regime's repressive actions. A notorious example was Operation Colombo. The *La Segunda* newspaper construed to explain the forced disappearances of 119 people as leftists who died in armed confrontations in Argentina and Brazil. *La Segunda's* headline read: "*Los Miristas se exterminan como ratas*" ("Miristas kill each other like rats.").

During many years, the press referred to disappeared people as "the alleged disappeared persons."

The communications media configured a smokescreen to conceal Operation Condor, a coordination of intelligence operations of Brazil, Argentina, Paraguay, Bolivia, and Chile. Today court proceedings are under way in the case in both Chile and Argentina.

**E. It rejects the thesis of internal war as justification for torture and mistreatment.**

No one today disputes that the Armed Forces and police achieved complete control of the country on the very day of the coup, September 11, 1973. The Armed Forces encountered very little resistance. Trained military professionals found only sporadic, isolated efforts with limited weapons capacity. The thesis that a war was going on was a serious impediment to justice that for years prevented judges from recognizing the application of international humanitarian law.

**Reactions of the Armed Forces and Police to the Valech Report**

Each branch of the Armed Forces reacted to the Valech Report by defending its actions on the basis of the historic context and the existence of the alleged cold war. These entrenched arguments of the past gave way to varying degrees of recognition of responsibility.

**The Army** acknowledged responsibility that “corresponds to the institution regarding all imputable and morally unacceptable actions of the past.”

**The Navy** sustained that the torture resulted from the individual actions of a few lower-ranking officers but was not an institutional practice. It termed “unfortunate” that superior officers permitted the Naval cadet ship “Esmeralda” to be used as detention camp where prisoners were subjected to torture. A few weeks before the Valech Report was issued, the Naval Commander-in-Chief had denied the “Esmeralda” had been used to commit such crimes.

**The Air Force** affirmed that superior officers have the moral and legal obligation to ensure that the Air Force never lose track of its institutional objectives.

**Carabinero Police** repudiated the fact that high-ranking officers bear responsibility, either through their actions or by failing to act, for human rights violations.

**Investigations police** also recognized their share of blame.

In short, with slight differences, the Armed Forces admitted its responsibility for human rights violations that were committed either by the institution or by individual personnel.

### **The Report’s Strengths**

Unlike what occurred in 1991 with the Truth and Reconciliation Commission Report, which the Armed Forces and parties of the right attempted to discredit and questioned its veracity, the legitimacy of the Valech Report was recognized by the major sectors that had involvement with human rights abuses.

The Report clearly confirms what national human rights organizations had denounced throughout the dictatorship, validated by international human rights monitoring agencies, as of 1974, to the effect, “Torture was permanent and systematic in Chile.”

Today Chilean society recognizes that thousands of people were tortured, and that torture is one of the most horrendous crimes against human dignity that obligates the victim to conceal and deny what happened to him or her. It must be addressed through collective recognition.

*Moral reparation* refers to the recovery of sites that were once places of detention, the construction of memorials and introducing human rights as part of the primary and secondary school education curriculum. Still pending is acknowledgement of the role civilians played in aiding and abetting the dictatorship.

## **REPARATION MEASURES**

A monthly pension (approximately \$US 200) was awarded to every person whose case the Report certified. The pension is not hereditary. If the beneficiary already receives another government pension, he or she must choose one or the other. It also accords public health benefits, and educational scholarships for vocational or university studies.

## **JUSTICE**

Judicial impunity in the cases of human rights violations was a constant throughout the entire dictatorship period and during the first 10 years of the transition to democracy, after 1990.

Ineffective action of the judicial branch regarding the most serious human rights violations was clearly shown in the Rettig and Valech Commission Reports.

The arrest of Augusto Pinochet in London in October 1998 was a landmark event in the history of Chile, and internationally. It exposed for all the world to see how Chile had maintained impunity intact from 1973 to the present time.

Chile's political and economic right, the Armed Forces, particularly retired military officers, and the recalcitrant Pinochet supports pressured the government of President Eduardo Frei to defend the principle of sovereignty under Chilean penal law.

They argued that serious crimes committed in Chile only can be heard in Chilean courts of law. This line of reasoning ignored commitments Chile acquired as signatory of international human rights law and especially treaties that as of 1990 attained the constitutional status granted a year earlier in 1989.

In this context, politicians called for the creation of a Dialogue Table. It became increasingly untenable for the Armed Forces and police to maintain their claim that denunciations and international repudiation of human rights violations committed by the military amounted to an international Marxist plot.

The subsequent designation of Special Judges to investigate, indict, and sentence individuals responsible for violating the right to life, is gradually lifting the impunity that had protected perpetrators for so many years.

Moreover, these judges have invoked international human rights law to further their inquests and indictments.

The Courts of Appeals and the Supreme Court's Penal Bench have become more reluctant to apply the 1978 amnesty decree, arguing that under international human rights law crimes against humanity are not subject to amnesties or statutes of limitation.

A notable example is the fact that the joint sentences in several cases have sentenced Manuel Contreras, former director of the repressive DINA, altogether to more than 150 years in prison as author of the crime of continuing abduction, or forcible disappearance of persons).

Recently, former Army General Salas Wenzel was sentenced to life in prison for his responsibility as director of the CI and intellectual author of the murders of 12 young people, members of the resistance movement Manuel Rodriguez Patriotic Front (FPMR), in June 1987. The court ordered the State to pay the victims' families damages that amount to nearly US\$6.5 million.

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## **BIBLIOGRAPHY**

- Truth and Reconciliation Commission Report
- Truth and Reparations Commission Report
- Political Imprisonment and Torture Commission Report
- Las Comisiones de Verdad y los nuevos desafíos en la promoción de los DDHH  
abril de 2001, Seminar, Corporación Justicia y Democracia
- Comisiones de Verdad ¿un camino incierto? CODEPU 2003.
- Dialogue Table, official document, 2002