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**CHILE**

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY**  
**INTERNATIONAL**



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## INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Human Rights Committee or the Committee) ahead of its examination in July 2014 of Chile's third periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

Amnesty International recognizes that several changes and reforms have taken place in Chile since it was last reviewed by the Human Rights Committee in 2007. Nevertheless, Amnesty International is concerned about the failure to fully implement international law and standards into national law and how this is affecting the enjoyment of human rights in the country.

In this regard, Amnesty International would like to highlight a number of human rights concerns in connection with several questions on the Committee's list of issues from August 2013.<sup>1</sup>

Amnesty International deeply regrets that Chile has not yet put in place laws that fully guarantee sexual and reproductive rights and is particularly concerned about the total ban on abortion. This ban persists despite several recommendations by the Committee and other UN Treaty Bodies on the need to reform the law (Question 8 in the list of issues).

- Amnesty International recognizes that there has been progress on truth, justice and reparation for past human rights violations since the return to democracy in 1990. Nevertheless, the organization is concerned that the 1978 Amnesty Law (Decree Law 2191 of 1978), provides an amnesty for crimes under international law and human rights violations committed between 11 September 1973 and 10 March. Moreover, Chile has ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), and recognized the competence of the Committee on Enforced Disappearances to receive and consider individual communications, however, it has yet to implement the CED in national law. Amnesty International considers that more efforts and resources are needed to end impunity for crimes committed during the military regime. In particular, the organization is concerned that victims of torture do not have the support and legal assistance of the Human Rights Programme in the Ministry of Interior, as is the case for victims of enforced disappearance. This results in fewer criminal investigations and convictions in torture cases (Question 11).

- Legislation has not yet been passed to ensure that the definition of torture in national law is in conformity with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) and to implement a national mechanism for the prevention of torture. Moreover, the organization is concerned about reports of the excessive use of force and ill-treatment by the police, particularly in the context of demonstrations and social unrest. It is equally perplexed by the lack of prompt and independent investigations to ensure that all those suspected of criminal responsibility for

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<sup>1</sup> See List of issues in relation to the sixth periodic report of Chile (CCPR/C/CHL/6), adopted by the Committee at its 108th session (8–26 July 2013). Chile's state report to the Human Rights Committee is available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=626&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=626&Lang=en)

these crimes are brought to justice and victims of police violence have access to fair reparation (Questions 13, 15 and 20).

- Amnesty International is also concerned about the application of the current regulation on migration that appears to discriminate against illegal migrants without providing justification for this different treatment. The organization welcomes the ongoing discussion in Congress of a proposed bill on migration, and calls on the State to ensure that the current proposed text is fully aligned with its international obligations (Question 21).
- Amnesty International welcomes the reform of the Military Code of Justice (Código de Justicia Militar, Decreto 2226-1944) in 2010. As a result of this reform, civilians are now excluded from military jurisdiction when accused of offenses against the military or police forces. However, cases of human rights violations allegedly committed by public security personnel continue to be heard in military courts, which Amnesty International considers do not guarantee the right to a fair trial, given concerns about their lack of impartiality and independence (Question 23).

## **I. NON-DISCRIMINATION, VIOLENCE AGAINST WOMEN AND RIGHT TO LIFE (Articles 2, 3, 6, 7 AND 26 ICCPR)**

### **Criminalization of abortion (Question 8 in the List of Issues)**

During Chile's previous review the Committee reiterated its concern about Chile's restrictive abortion laws and recommended that the State bring its legislation into compliance with the Covenant.<sup>2</sup> However, a total ban on abortion is still in force today, and Chile has yet to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.<sup>3</sup>

No one should be criminalized as a consequence of an abortion, as this breaches the right to life, non-discrimination and privacy, amongst other rights. In its General Recommendation 24, the UN Committee on the Elimination of Discrimination against Women (CEDAW) called on states to "refrain from obstructing action taken by women in pursuit of their health goals".<sup>4</sup> The Committee explains that barriers that obstruct women's access to appropriate health care "include laws that criminalize medical procedures only needed by women and

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<sup>2</sup> HRC, Concluding Observations Chile, CCPR/C/CHL/CO/5, 18 May 2007, para. 8.

<sup>3</sup> Amnesty International sent a letter to the government suggesting human rights commitments prior to Chile's candidature for the Human Rights Council. The government's answer, dated July 2011 explained that the Optional Protocol of CEDAW was in Congress for approval and ratification. However, this was withdrawn from Congress in 2002. The state made a commitment to women's rights in the context of its candidature for election to the Human Rights Council in May 2011, see General Assembly, 65<sup>th</sup> session, Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council. *Note Verbale dated 18 October 2010 from the Permanent Mission of Chile to the United Nations addressed to the Secretariat*. A/65/730, page 2-4.

<sup>4</sup> CEDAW, General Recommendation No. 24 (20th session, 1999) (article 12: Women and health)", contained in document A/54/38/Rev.1, chapter I.1999, para. 14.

that punish women who undergo those procedures”.<sup>5</sup> Abortion is a procedure only required by women. The Committee recommends that “when possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”.<sup>6</sup> This same Committee has consistently urged the State to decriminalize abortion in cases of rape, incest or threats to the health or life of the pregnant woman and to gather statistical data on illegal and unsafe abortion.<sup>7</sup>

It is well recognized that the criminalization of abortion compels women to undergo illegal abortions and that many die as a result of such clandestine and unsafe interventions.<sup>8</sup> At the regional level (Latin America and the Caribbean), unsafe abortions (often illegal and clandestine) are responsible for about 12 percent of maternal deaths and globally they cause about 47,000 deaths per annum and cause largely preventable disabilities for an additional 5 million people.<sup>9</sup> Both the Human Rights Committee and the CEDAW have repeatedly emphasized the link between laws that criminalize abortion and risks to the lives of pregnant women and girls.<sup>10</sup>

These Committees have also consistently argued that access to legal and safe abortion can save lives and, therefore, governments have the obligation to ensure all women and girls have access to safe and legal abortion at least in cases of rape or incest or when the health or life of the pregnant woman or girl is at risk.<sup>11</sup>

Governments in the region, including Chile, have recently agreed to

“consider amending their laws, regulations, strategies and public policies relating to the voluntary termination of pregnancy in order to protect the lives and health of women and adolescent girls, to improve their quality of life and to reduce the number of abortions;” as well as to “eliminate preventable cases of maternal morbidity and mortality, including (...) measures for preventing and avoiding unsafe abortion (...)”.<sup>12</sup>

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<sup>5</sup> *Ibid.*, para. 14.

<sup>6</sup> *Ibid.*, para. 31(c).

<sup>7</sup> CEDAW, Concluding observations on the fifth and sixth periodic reports of Chile, adopted by the Committee at its fifty-third session (1–19 October 2012), CEDAW/C/CHL/CO/5-6, 12 November 2012, para. 34 and also its previous review, CEDAW/C/CHL/CO/4, para. 19.

<sup>8</sup> World Health Organization, 2012. Safe abortion: technical and policy guidance for health systems, second edition, Geneva: WHO.

<sup>9</sup> World Health Organization and Guttmacher Institute, “Facts on Induced Abortion Worldwide, In Brief”. Geneva/Washington DC, 2012.

<sup>10</sup> See, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Bolivia” CCPR/C/79/Add. 74, 5 May 1997, para. 22; and CEDAW “Concluding comments of the Committee on the Elimination of Discrimination against Women: Nicaragua” UN Doc. CEDAW/C/NIC/CO/6, 2 February 2007, paras. 17-18.

<sup>11</sup> See for example, Human Rights Committee, *KL v Peru* (2005); CEDAW, *LC v Peru*, (2011); Human Rights Committee, “Concluding observations of the Human Rights Committee: Guatemala” CCPR/CO/72/GTM, 27 August 2001, para. 19; “Concluding observations of the Human Rights Committee: Sri Lanka” CCPR/CO/79/LKA, 1 December 2003, para. 12 (“The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (art. 7 and General Comment 28), and repeal the provisions criminalizing abortion”).

<sup>12</sup> Montevideo Consensus on Population and Development, *Full integration of population dynamics into rights-based sustainable*

Whilst data indicates that Chile has one of the lowest maternal mortality rates in the region,<sup>13</sup> these numbers do not accurately reflect the risk that the total abortion ban presents to women and girls. Authorities recognize that abortion is a clandestine practice in Chile.<sup>14</sup> The stigma around abortion and the chilling effect that criminalization of abortion has, very likely results in the under-reporting of maternal mortality and morbidity in the country.

In practice, the total ban on abortion obstructs the access of women and girls to adequate health services which puts their health and lives at risk.<sup>15</sup> This is of particular concern for those women and girls who do not have the means to seek a legal abortion outside Chile or to pay for illegal abortions in Chile.<sup>16</sup>

In addition, women and girls who seek post-abortion care in the health system after having undergone unsafe clandestine abortions can face criminal charges, and be reported to law enforcement officials by the health professional assisting them. This is the case in spite of the fact that a health regulation of 2009 clearly states that women and girls should not be required to 'confess' to having had an abortion in order to receive emergency health care as a result of illegal abortion.<sup>17</sup> The UN Committee against Torture has expressed its concern in the past over this practice, and has called on Chile to:

Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State party should ensure immediate and unconditional treatment of

*development with equality: key to the Cairo Programme of Action beyond 2014*; adopted at the First session of the Regional Conference on Population and Development in Latin America and the Caribbean; Montevideo, 12-15 August 2013; paras. 40-42.

<sup>13</sup> The average maternal mortality ratio for Latin America and the Caribbean for 2010 was 81 per 100,000 live births. In Chile, the maternal mortality rate was 25 per 100,000 live births, the second lowest ratio after Puerto Rico. Similarly, abortion as a cause of maternal mortality is also low in comparison with other countries in the region. According to national data, in 2011 the abortion rate as a cause of maternal mortality was 3.2 for 100,000 live births. Latest international data (2010) by the Economic Commission for Latin America and the Caribbean (ECLAC), Statistics Division. Available at <<http://interwp.cepal.org/sisgen/ConsultaIntegrada.asp?idIndicador=41&idioma=e> See statistics Ministry of Health, Chile, *Departamento de Estadísticas e Información de Salud* <http://www.deis.cl/defunciones-y-mortalidad-por-causas/>

<sup>14</sup> See <http://radio.uchile.cl/2014/05/15/ministra-claudia-pascual-hoy-el-aborto-es-una-realidad-que-se-practica-y-de-manera-clandestina>

<sup>15</sup> In July 2013, an 11 year old girl pregnant as a consequence of being raped by her stepfather was not offered an abortion. See Amnesty International, press release, "Chile must provide 11-year-old pregnant rape victim with all options, including abortion", Al Index: PRE01/344/2013. More recently, in May 2014, the life of a 17 year old girl was at risk because of a hemorrhage produced by an abortion carried out in her house <http://eldesconcierto.cl/menor-de-edad-permanece-grave-tras-aborto-en-la-reina/>

<sup>16</sup> According to a recent report, an illegal abortion could cost between 40,000 to 4 million Chilean pesos. See Diego Portales, University, Human Rights Annual Report 2013, p. 74

<sup>17</sup> Ministry of Health, Chile, Ordinario A/15; 1675, 24 April 2009, from the Minister of Health, Álvaro Erazo Latorre, to directors of health services, "*Aun cuando el aborto es una conducta ilegal y constitutiva un tipo penal en la legislación chilena (art. 342 Código Penal), no corresponde extraer confesiones a mujeres que requieran atención médica como resultado de un aborto sobre todo cuando dicha confesión se solicita como condición para la prestación de la salud requerida, pues con ellos se vulnera la norma contenida en el artículo 15 ya citado de la Convención contra la Tortura, así como el derechos esencial a la protección de la salud, asegurado en (...)*".

persons seeking emergency medical care;<sup>18</sup>

According to the State response to the Committee's list of issues, between 2006 and 2013 there was a total of 451 cases relating to abortion (articles 342 to 345 of the criminal code), out of which 125 ended in sentence. The State did not provide information on how many people are serving time in prison due to these sentences.<sup>19</sup>

### **Progress on the decriminalization of abortion**

Efforts to decriminalize abortion for therapeutic reasons were rejected by the Chilean Congress in 2012.<sup>20</sup> A new bill, filed before the Congress in 2013 and which has yet to be discussed, proposes to decriminalize abortion if the pregnancy poses a risk to the woman's life or health, if it is the result of rape or incest, or if the fetus is not viable.<sup>21</sup>

More recently, President Michelle Bachelet, who assumed office this March,<sup>22</sup> has expressed her commitment to decriminalize abortion in cases of rape, when the life of the woman is at risk or when the fetus is not viable.<sup>23</sup> She has also committed to passing a law on sexual and reproductive rights.<sup>24</sup>

The Minister of the Women's Service (Servicio Nacional de la Mujer – Sernam) has also indicated that decriminalization of abortion in certain cases will be discussed. However, when this will happen has yet to be determined.

### **Access to sexual and reproductive information and services**

With respect to barriers to sexual and reproductive services, the UN Committee on Economic, Social and Cultural Rights stated that "the realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."<sup>25</sup> In 2010, Law 20.418 on information, orientation and services regarding the regulation of fertility was passed.<sup>26</sup> This

<sup>18</sup> CAT Committee, Concluding Observations: Chile, para 7(m), CAT/C/CR/32/5 (2004)

<sup>19</sup> List of issues, sixth periodic report Chile, addendum, Chile's response to the list of issues. CCPR/C/CHL/Q/6/Add.1, 8 May 2014, para. 24.

<sup>20</sup> On 4 April 2012, the Senate debated three separate projects attempting to decriminalize abortion in certain cases. The three draft laws (bulletins N°7.373-07, 6.522-11 and 6.591-11) were rejected in general by the Senate. This closed the debate and prevented new proposals for legislation from being presented on the subject for a 1-year period.

<sup>21</sup> Bulletin N°8862-11, filed 2 April 2013 "Establece licitud de interrupción del embarazo en ciertos casos" (establishes legality of interrupting pregnancy in certain cases). It has been derived to the Health Commission of the Senate for discussion.

<sup>22</sup> Having previously served as President between 2006 and 2010

<sup>23</sup> Programa de Gobierno 2014-2018, p. 169 available in <http://michellebachelet.cl/programa/>

<sup>24</sup> Michelle Bachelet, Government Programme, page 169.

<sup>25</sup> Committee on Economic, Social and Cultural Rights "The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)", General Comment 14, 11 August 2000, UN Doc E/C.12/2000/4, para. 21.

<sup>26</sup> Law N°20.418, 28 January 2010, "Fija normas sobre información, orientación y prestaciones en materia de regulación de la

law establishes the rights to information on sexual and reproductive health and to access contraception. However, its implementation has been inconsistent. For example, emergency contraception, which, according to the law should be provided free of charge, is not provided in many health centers for reasons including moral and religious beliefs (conscientious objection), limited stocks, or because of a lack of knowledge by those working in health centers on how and when to provide it.

According to a 2013 report by the *Universidad Central*, out of the 321 municipalities, 86.3 percent are providing emergency contraception, while 5.9 percent are not providing it. The most common reason not to provide contraception is the lack of human resources (63.2 percent) followed by no availability (10 percent).<sup>27</sup> In the municipalities where emergency contraception is provided, the reasons for doing so are not consistent with the law, which means that some women may not receive it.<sup>28</sup> Furthermore, the administrative ruling on the implementation of Law 20.418 was only issued in 2013.<sup>29</sup> This ruling sets out that the service provider has to inform either the parents or a guardian when girls of 14 years old or under request the drug. The Ministry of health has clarified that this should not be an obstacle to providing the treatment but just a mechanism of notification.<sup>30</sup>

According to CEDAW all adolescents should have the same right to access health care without third party authorization, whether that is a spouse or a parent, and whether the adolescent is married or unmarried.<sup>31</sup> According to UNFPA, pregnancy-related deaths are the leading cause of death for adolescent girls in developing countries.<sup>32</sup> Amnesty International is concerned that a mandatory notification requirement for emergency contraception without assessment of the evolving capacity and best interest of the child, will place some at risk of not seeking or obtaining emergency contraception.<sup>33</sup> This could lead to unwanted pregnancies, unsafe abortions and death.

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fertilidad" (sets rules on information, orientation and services related to regulation of fertility).

<sup>27</sup> Central University Chile, *Provisión de Anticoncepción de Emergencia en el Sistema de Salud Municipal de Chile Estado de Situación 2013*, Documento de trabajo No. 3, 2013.

<sup>28</sup> See [http://www.ucentral.cl/prontus\\_ucentral2012/site/artic/20120711/asocfile/20120711091025/seguimiento\\_ley\\_20418.pdf](http://www.ucentral.cl/prontus_ucentral2012/site/artic/20120711/asocfile/20120711091025/seguimiento_ley_20418.pdf) some health centers it is only provided in emergency situations or in cases of rape, which is not in compliance with Law 20.418.

<sup>29</sup> Decree N°49, 28 March 2013, "Aprueba Reglamento para el Ejercicio del Derecho a Recibir Educación, Información y Orientación en Materia de Regulación de la Fertilidad" (approves regulations for the exercise of the right to receive education, information and orientation regarding fertility regulation).

<sup>30</sup> See <http://www.latercera.com/noticia/nacional/2014/01/680-562143-9-circular-ratifica-entrega-de-pildora-de-emergencia-a-menores-de-14-anos.shtml>

<sup>31</sup> *General Recommendation 24: Women and health (article 12)*, paras 20-23, 31(b, c). United Nations, 1999.

<sup>32</sup> UNFPA, State of the World Population Report, 2013, Motherhood in Childhood: facing the challenge of adolescent pregnancy. <http://www.unfpa.org/webdav/site/global/shared/swp2013/EN-SWOP2013-final.pdf>

<sup>33</sup> The Convention on the Rights of the Child requires States to apply the principle of 'evolving capacities' which relates to the adolescent's acquisition of sufficient maturity and understanding to make informed decisions on matters of importance, without the authorization of their parents or guardians, to sexual and reproductive health services.

## **Amnesty International recommendations to the Chilean State**

- Repeal all legislation criminalizing women and girls for having an abortion, as well as the service providers performing it, and take measures to allow legal and safe abortions at a minimum in case of rape or incest and in case of risk to the woman's life or her physical or mental health, including on grounds of serious fetal impairment.
- Systematically consider the child's evolving capacities, and ensure that appropriate services are made available to them independent of parental or guardian authorization, when this is in the best interest of the child.
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Ensure that sexual and reproductive rights are respected and protected in Chile, including access without discrimination to health services, contraception and emergency contraception, as well as information about those services.

## **II. RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, AND FIGHT AGAINST IMPUNITY (ARTICLES 2, 6 AND 7 ICCPR)**

### **Impunity for past human rights violations (Question 11 in the List of Issues)**

Amnesty International recognizes the progress made by the state to tackle the legacy of the widespread and systematic human rights violations committed in Chile between 1973 and 1990. However, more efforts to end impunity for these crimes are still needed. According to official figures, during that period, more than 3,000 people were victims of enforced disappearance or were extra-judicially executed and approximately 38,000 people were victims of torture and political imprisonment.<sup>34</sup>

In January 2012, a prosecutorial authority submitted 726 new criminal complaints for investigation in relation to past human rights violations. These complaints were combined with more than 1,000 other complaints filed over the years by relatives of individuals who were disappeared or executed. As a result, the number of cases of past human rights violations under investigation by the courts rose to its highest level yet.

According to reports based on data from the Human Rights Programme of the Interior Ministry, 799 former members of the security forces were charged with or sentenced for human rights violations and 250 had final sentences confirmed between 2000 and February 2012.<sup>35</sup> However, only a very small number of the persons found guilty of past human

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<sup>34</sup> See final report Rettig Commission "*Comisión Nacional de Verdad y Reconciliación*", Chile, 1991 and the final report Valech Commission "*Comisión Nacional sobre Prisión Política y Tortura*", Chile, 2004.

<sup>35</sup> Observatorio de Derechos Humanos, Universidad Diego Portales. Estadísticas juicios de derechos humanos en Chile a febrero de 2012. [http://www.icsoc.cl/wp-content/uploads/2012/11/Cifras\\_septiembre\\_2012\\_ESP.pdf](http://www.icsoc.cl/wp-content/uploads/2012/11/Cifras_septiembre_2012_ESP.pdf)

rights violations are currently in prison.<sup>36</sup>

The Human Rights Program within the Ministry of Interior continues to provide legal and social assistance to victims of human rights violations committed in the past. Nevertheless, this Programme only has a mandate to initiate cases with respect to enforced disappearances and extrajudicial executions, but not regarding torture.<sup>37</sup> This leaves the burden of starting judicial procedures for torture survivors mainly on victims and their families, without adequate support from the State. Concerns around the absence of investigations in cases of torture and delays in these investigations have also been highlighted by the Inter-American Court of Human Rights. In August 2013 the Court ruled against Chile for the excessive delay in opening an investigation into the allegations of torture of a victim of the Pinochet regime.<sup>38</sup>

Amnesty International is further concerned that the 1978 Amnesty Law still remains in force.<sup>39</sup> This is the case in spite of the numerous recommendations of the Human Rights Committee that the State must remove the possibility that the decree could be applied by the courts, by incorporating

“the jurisprudence of the Supreme Court regarding 1978 Amnesty Decree-Law No. 2.191 into domestic positive law as soon as possible.”<sup>40</sup>

The Committee against Torture has gone even further, calling on the State to abrogate the law entirely.<sup>41</sup>

In 2006, the Inter-American Court of Human Rights found this law to be incompatible with the American Convention on Human Rights.<sup>42</sup> Although the Amnesty Law has not been applied in recent cases<sup>43</sup>, whilst it remains in force, there is a risk that it could be used to grant an amnesty to members of the armed forces accused of human rights violations.

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<sup>36</sup> This concern was expressed by the UN Working Group on Enforced or Involuntary Disappearances, following a visit to Chile in August 2012. Human Rights Council, 22nd session, Addendum Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Chile. A/HRC/22/45/Add.1, paragraphs 27-29.

<sup>37</sup> See [http://www.ddhh.gov.cl/juridica\\_mision.html](http://www.ddhh.gov.cl/juridica_mision.html).

<sup>38</sup> Inter-American Court of Human Rights, Case of García Lucero et. Al v. Chile, judgment of August 28, 2013, Preliminary objection, merits and reparations.

<sup>39</sup> Decree Law N°2191, approved on 18 April 1978, “Concede amnistía por los delitos que señala” (grants amnesty for the crimes it indicates), provides amnesty for crimes committed between 11 September 1973 and 10 March 1978.

<sup>40</sup> Concluding observations on Chile of the Human Rights Committee, CCPR/C/CHL/CO/5, May 2007, para 5.

<sup>41</sup> Concluding Observations on Chile Committee against Torture, June 2009, CAT/C/CHL/CO/5, para. 12.

<sup>42</sup> Inter-American Court of Human Rights, Case Almonacid Arellano and others Vs Chile, ruling 26 September 2006. The Inter-American Court concluded that “Consequently, given its nature, Decree Law No.2.191 does not have any legal effects and cannot remain as an obstacle for the investigation of the facts inherent to the instant case, or for the identification and punishment of those responsible therefor” (para.119) [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_154\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf)

<sup>43</sup> In the Carmelo Soria case, who was an official of the United Nations Latin American Centre of Demography (CELADE), found dead on 16 July 1976, in a canal in Santiago, Chile, the amnesty law was applied in 1996. The Supreme Court decided not to reopen the investigations in 2010. However, later in 2013, a Supreme Court minister reopened the investigations. See Amnesty International, public statement, “Chile: Los responsables del asesinato de Carmelo Soria deben comparecer ante la justicia”, AMR 22/002/2010, 1 Abril 2010.

Likewise, provisions in the Criminal Code that allow for reduced sentences or alternative penalties without imprisonment are also of concern, as they may allow for punishments to be imposed that are not commensurate with the gravity of the crimes committed. Attempts to modify statutory limitations in the Penal Code have not been successful.<sup>44</sup> Further, Chile has not yet acceded to the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which is still pending in Congress.<sup>45</sup> Concerns have been highlighted that the authorities may intend to include a reservation or a declaration amounting to a reservation limiting the effect of the Convention.

### **Amnesty International recommendations to the Chilean State**

- Revoke the 1978 Amnesty Law (Decree Law 2191) and all other similar measures that enable impunity - in full compliance with the Judgment rendered by the Inter-American Court of Human Rights in the Almonacid Arellano case.
- Revoke any provision on statutes of limitations for crimes under international law and civil suits arising from those crimes, irrespective of the date of their commission.
- Accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity without making any reservation or declaration amounting to reservation.
- Enact legislation implementing the International Convention for the Protection of All Persons from Enforced Disappearance into national law;<sup>46</sup>
- Enact legislation making torture criminal under national law, as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Enact legislation implementing the obligation to cooperate fully with the International Criminal Court.
- Take adequate steps to ensure torture cases from the Pinochet military regime are investigated without further delays.
- Fully comply with the 2013 Judgment of Inter-American Court of Human Rights that

<sup>44</sup> Bulletin N°3959-07, interprets article 93 of the Penal Code with regard to the statute of limitations on crimes sanctioned under international law. This bulletin was filed on 30 August 2005, and approved by the Chamber of Deputies in December 2006. The Senate declared the project inadmissible in June 2008, but the Chamber of Deputies insisted on continuing its discussion. The discussion has yet to be concluded.

<sup>45</sup> Bulletin N°1265-10, Approves Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the United Nations General Assembly, by Resolution N°2391 (XXIII), of 26 November 1968. The Convention was approved for ratification with no reservations by the Senate on October 3, 2012 and is now pending approval of the Chamber of Deputies.

<sup>46</sup> See 'No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance', IOR 51/006/2011, November 2011, available at: <http://www.amnesty.org/es/library/info/IO51/006/2011/en>

orders Chile to finalize the investigation and bring to justice all those responsible for the torture suffered by Leopoldo Garcia Lucero during the Pinochet military regime; and to ensure adequate compensation to the victim.

### **III. RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, RIGHT TO LIBERTY AND FREEDOM OF EXPRESSION (ARTICLES 2, 7, 9, 10 AND 19 ICCPR)**

#### **Excessive use of force by police during protests (List of Issues, paras 13, 20, 26)**

An increasing amount of demonstrations have taken place in different parts of Chile since 2011 in comparison to previous years, demanding diverse reforms in the areas of education, decentralization and social inclusion. Throughout 2011, dozens of demonstrations took place in Santiago alone. Although largely peaceful, some demonstrations ended in violent confrontations with the police.

Amnesty International recognizes the difficult environment in which police officers work, and during some student demonstrations police officers dealt with violent and dangerous situations including the lifting of barricades and the throwing of stones. According to the Chilean police force, between January and September 2011, 106 police officers were injured in the context of demonstrations, 7 of them with severe wounds.<sup>47</sup> Nevertheless, this cannot be a justification for not applying human rights principles and standards whilst carrying out their duties to maintain public order.

International human rights standards establish a State duty to maintain public order, but this duty must be fulfilled in accordance with international human rights standards on the use of force.<sup>48</sup> In line with the UN Basic Principles on the Use of Force, police may use force only when strictly necessary and only to the extent required for the performance of their duty and must, as far as possible, apply non-violent means before resorting to the use of force.<sup>49</sup> If force cannot be avoided, police officials must exercise restraint in its use, and act in proportion to the seriousness of the offence and the legitimate objective to be achieved. Policing must be carried out in such a way as to protect the rights of the peaceful demonstrators and a demonstration should not be treated as one collective mass, but should rather receive differentiated responses.<sup>50</sup>

Amnesty International and other organizations have expressed concerns about the

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<sup>47</sup> According to the National Institute of Human Rights' Annual Report 2011, in the correspondence sent by Carabineros de Chile in response to a query made by the Institute (Oficio N° 2098, 14 September de 2011), in the context of demonstrations, of those 106 staff, 7 sustained serious injuries, 12 sustained less serious injuries and 87 sustained slight injuries.

<sup>48</sup> See the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (Hereafter, "the Basic Principles on the Use of Force")

<sup>49</sup> Basic Principles on the Use of Force

<sup>50</sup> Anneke Osse, "Understanding Policing. A resource for human rights activists" Amnesty International, p. 142.

proportionality of the use of force in the police response in their response to protests.<sup>51</sup> There have been allegations of excessive use of force, including beatings, the disproportionate use of tear gas, paintball guns and water cannons, and gender-specific violence against women and girls involved in the protests. Student organizations complained that police did not respond to demonstrators appropriately.<sup>52</sup> They claimed that the police did not distinguish between those who peacefully exercised their right to freedom of assembly and expression and those who violently confronted the police.

In addition to demonstrations in and around the major cities of Chile, students also occupied educational buildings (public and private) as part of their protests. Amnesty International received complaints from students about the excessive use of force during the evictions from the occupied buildings.

### **Arbitrary detentions in the context of the protests (List of Issues, paras 13, 20)**

Thousands of people, including minors, were detained during the student demonstrations. In many cases the detention seemed to be arbitrary. In the majority of cases the person was released after a few hours or days with only a small number of cases taken forward by the prosecution services. During the non-authorized march of 4 August 2011, only 6 out of 308 cases of detained persons were taken up by prosecutors, since the other detentions were declared illegal by the courts.<sup>53</sup> The National Institute of Human Rights (INDH) has noted that the fact that prosecution processes were not initiated for the majority of these detentions is an indication that police are using arbitrary arrests to illegitimately control demonstrations.<sup>54</sup>

As secondary school pupils were among protesters, a special concern is the arbitrary arrest of minors. Chile has ratified the Convention on the Rights of the Child and is therefore legally bound to ensure that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.<sup>55</sup> However, according to reports, minors seem to have suffered arbitrary arrest during demonstrations and it is not evident that the best interests of children have been taken into account in security operations, as the Inter-American Commission on Human Rights recommended to Chile in August 2011.<sup>56</sup> Moreover, the INDH reported that the separation of children from adults in detention, as required by the Convention on the

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<sup>51</sup> One of those who raised concerns was the Inter-American Commission on Human Rights, see press release, “IACHR Expresses Concern for Violence Against Student Protests in Chile”, 6 August 2011

<sup>52</sup> AP, “*Estudiantes chilenos denunciarán represión policial*”, 23 October 2011.

<sup>53</sup> El Mostrador, “*Tribunales declaran ilegales 25 de las 31 detenciones realizadas por Carabineros*”, 5 August 2011.

<sup>54</sup> INDH, Annual Report 2011, p. 77. <http://www.indh.cl/wp-content/uploads/2011/12/27555-Informe-Anual-2011-BAJA1.pdf>

<sup>55</sup> Convention on the Rights of the Child, article 37b

<sup>56</sup> Inter-American Commission on Human Rights, “IACHR Expresses Concern for Violence Against Student Protests in Chile”, 6 August, [http://www.oas.org/en/iachr/media\\_center/PReleases/2011/087.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/087.asp) (accessed 22 February 2012)

Rights of the Child, was not consistently applied across all police stations visited and was, in fact, ignored in most cases.<sup>57</sup>

### **Torture, inhuman and degrading treatment in the context of the protests (List of Issues, paras 13, 20, 26)**

In July 2011, following the evictions of four secondary schools in Santiago, it was reported that around 100 people were arrested, many of them minors. Some of them complained that they were beaten and ill-treated during their time at the police station.<sup>58</sup> In the context of these protests, human rights observers and media workers were also attacked and harassed by police officers.<sup>59</sup>

Many of those arbitrarily detained reported also suffering other human rights violations while in police custody, such as ill-treatment, including in some cases treatment of a severity that rose to the level of torture. The INDH registered testimonies of threats, ill-treatment and beatings inside police stations.<sup>60</sup>

According to complaints received by Amnesty International, as well as in press reports, many of these abuses happened inside police vans, whilst demonstrators were being transferred to the police station. Amnesty International received accounts of individuals being violently pushed to the floor of the vans, being punched, kicked and stamped on, and being beaten with shields and batons. Physical violence was accompanied by verbal abuse, including threats of further violence, beatings and even death threats. Many of those who reported abuse were minors. They recounted how the attacks would happen at random and that witnessing other people being abused in such a confined space created a climate of anxiety and uncertainty.

Women and girls taking part in the demonstrations complained of sexual violence including molestation and sexual assault and threats of sexual violence by police officers. The National Institute of Human Rights documented the denial of medical treatment to detainees in serious conditions which required urgent medical attention.<sup>61</sup> Amnesty International formally requested the Ministry of the Interior, in charge of the Police force, to share the Police

<sup>57</sup> INDH, *Informe sobre programa de seguimiento y registro de abusos policiales*, Unidad Jurídica Judicial, November 2011, p. 10.

<sup>58</sup> Radio Universidad de Chile, "Secundarios denuncian malos tratos en Comisaría por desalojo de liceos", 12 July 2011.

<sup>59</sup> Members of the civil society organization Citizen Advice, (Asesoría Ciudadana), were detained for three hours in a police station without being charged after being arrested at a student demonstration. Similarly, a staff member of the National Institute of Human Rights, an official state institution, was attacked by a police officer while he was observing police actions and taking pictures. The group Human Rights Observers, (Observadores de Derechos Humanos), which was funded in 2011 to monitor police responses to protest and demonstrations, has also denounced abuses against some of its members. They denounced that at least four of its members have been seriously injured. See report by the Observadores de Derechos Humanos "Violencia Policial en Chile. Agosto a Octubre 2011", p. 17 See also Amnesty International Annual Reports for 2012 and 2013, Chile chapter. See also: Open Letter to President Piñera on his second year of government, March 2012, AMR 22/001/2012.

<sup>60</sup> INDH, *Informe sobre programa de seguimiento y registro de abusos policiales*, Unidad Jurídica Judicial. November 2011, p. 14 - 15.

<sup>61</sup> INDH, *Informe sobre programa de seguimiento y registro de abusos policiales*, Unidad Jurídica Judicial. November 2011, p. 14 - 15.

force's standard operating procedures (*protocolos de actuación*), including those employed during crowd management situations such as demonstrations and evictions from enclosed spaces/buildings.<sup>62</sup> The Ministry referred the query to the Police force as they argued that the request fell outside of the Minister's functions.<sup>63</sup> The Police force refused to provide this information as they argued that if they did so the security of the police officers involved and the success of their operations would be compromised.<sup>64</sup> Amnesty International believes that the denial to publish the procedures weakens the accountability of the police, who are expected to be independently monitored in their compliance with the rule of law, especially when a significant number of complaints have been made.

In this context, it is particularly concerning for Amnesty International that although Chile has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and it has accepted recommendations to take measures to eradicate torture,<sup>65</sup> the definition of torture in national law has not been aligned with that contained in the Convention. Different attempts to adjust this have failed so far.<sup>66</sup>

### **Inadequate medical examinations**

Amnesty International received reports that the medical examinations - carried out in order to assess signs of torture and ill-treatment and to document any abuses - were quick, biased, superficial and lacking in rigor. A common grievance was the presence of police officers during the examinations. In some cases, the same officers that were accused of carrying out the abuses were present during the medical examinations. Demonstrators report that some of the doctors and other medical workers carrying out the examinations explicitly expressed their hostility towards the patients, telling them that they were to blame for their own injuries because they participated in a protest. People reported that they were forced to sign a disclaimer stating that the injuries sustained were not caused by the police, but were the result of a fall. In certain cases, they were threatened with more serious charges if they made a formal complaint or if they told the truth about their injuries.<sup>67</sup>

### **Police abuses of Mapuche community members**

In past years Amnesty International has received reports of police violence in Mapuche

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<sup>62</sup> Request of access to information by Amnesty International to the Chilean Subsecretaria de Interior, AB001W 0000854, 17 August 2011. It requested this information through the mechanism established by the Chilean Transparency Law. In all cases, the Ministry of the Interior did not respond, and the request was sent to the Police, indicating that according to articles 1 and 2 of Law N°20.502, that creates the Ministry of Interior and Public Security, the Ministry is responsible for the "management of administrative affairs and processes that the Public Order and Security Forces require to carry out the functions within their area of competence". Memorandums N°19.652, of 14 September 2011, 20.223 of 29 September 2011 and 16.147 of 27 September 2012.

<sup>63</sup> Reply send to Amnesty International by the Subsecretaria de Interior, División Jurídica, Oficio 19652, 11 September 2011

<sup>64</sup> Carabineros de Chile reply to Amnesty International's request of access to information, Resolución extraordinaria 282, 24 November 2011

<sup>65</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 12<sup>th</sup> session, A/HRC712/10, 4 June 2009, recommendation 96.32-96.33 (Brazil, Uzbekistan).

<sup>66</sup> The most recent attempt – Bulletin N°6702-07, filed on September 15, 2009 – has not been debated in Congress yet.

<sup>67</sup> INDH, *Informe sobre programa de seguimiento y registro de abusos policiales*, Unidad Jurídica Judicial. November 2011, p. 10.

communities at least once a month.<sup>68</sup> Concerns have also been raised regarding raids carried out by the investigative police in the context of judicial investigations of alleged criminal acts, in which search or arrest warrants issued by judges were used. Mapuche community members complain that these raids are carried out in such a manner that those present in the house at the time suffer psychological ill-effects, and that the raids disproportionately affect women and children. The communities have reported that during these raids they are subjected to ill-treatment, excessive use of force and arbitrary arrests.<sup>69</sup>

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged Chile to ensure that no further arrests of Mapuche land protestors be carried out, and that no further charges be brought against them on the basis of anti-terrorism legislation. The Special Rapporteur also recommended that the State investigate complaints of abuse and violence against indigenous peoples committed by police officers, to prosecute and punish those responsible for such acts and to provide compensation to the victims or their family members.<sup>70</sup>

### **Amnesty International recommendations to the Chilean State**

- Ensure that allegations of excessive use of force by the police are promptly, thoroughly and independently investigated and that those suspected of criminal responsibility are brought to justice and that victims receive reparation.
- Ensure that complaints of arbitrary detention, torture and ill-treatment are promptly investigated by ordinary courts, including those that took place during protests as well as those in raids among Mapuche communities.
- Adopt preventive measures to stop excessive use of force by the police, including adoption of publicly known protocols in line with international standards, proper training of police forces, and adequate control of compliance with such protocols.
- Make torture criminal under national law, in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **V. RIGHT TO LIBERTY AND SECURITY OF PERSON (ARTICLE 9 ICCPR) AND PROCEDURAL GUARANTEES AGAINST EXPULSION (ARTICLE 14)**

### **Inadequate legislation to protect Migrants' rights (Question 21 in the List of Issues)**

Amnesty International is concerned about the failure of the current legislation to fully respect, protect and fulfil the human rights of all migrants. Furthermore, the organization has

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<sup>68</sup> See Amnesty International: "Human Rights and the Mapuche People", 17 April 2013, chapter 2.

<sup>69</sup> Anide, Red ONGs Infancia y Juventud y REDLAMYC, *Informe sobre violencia institucional contra la niñez mapuche*, Resumen ejecutivo, presented to the Inter-American Commission on Human Rights in March 2011.

<sup>70</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on Chile, A/HRC/25/59/Add.2, 14 April 2014.

received information that suggests that the law is not being implemented in practice. This has also been highlighted by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>71</sup> The organization welcomes the current discussion in Congress aimed at improving migration regulations and the fact that the proposed bill on migration explicitly recognizes equality of rights between migrants and nationals.<sup>72</sup> However, the bill fails to remedy several of the failures of the current legislation.

Amnesty International is particularly concerned about the legislative framework and practice of administrative detention of migrants. As observed by the Committee, in order not to be arbitrary, arrest and detention of migrants, including those in an irregular situation, must be (a) prescribed by law, (b) necessary in the specific circumstances and (c) proportionate to the legitimate aim pursued.<sup>73</sup> In particular, the principle of proportionality requires States parties to detain migrant workers only as a last resort, and when it is strictly necessary,<sup>74</sup> and to give preference to less coercive measures, that is non-custodial measures, whenever such measures suffice to achieve the objective pursued.<sup>75</sup> The Chilean bill on migration allows restrictions on the liberty of migrants to facilitate the expulsion of a migrant in an irregular situation subject to an expulsion order, provided that such restrictions are “strictly necessary”. However, the bill does not provide for a case-by-case assessment of the personal situation of the individual concerned.<sup>76</sup> The bill also fails to establish a preference in favour of non-custodial measures, i.e. alternatives to detention.

Complaints have been made regarding the short time limit that migrants have to lodge appeals against decisions of expulsions. Amnesty International is concerned that the bill on migration does not seem to address this concern, fixing such a time limit at 48 hours.

Amnesty International reiterates its call to the State to ensure that the text of the bill on migration is fully aligned with international standards.

### **Amnesty International recommendations to the Chilean State**

- Promptly approve migration laws that recognise and are in line with human rights.
- In particular, establish in legislation that any decision restricting the right to liberty of migrants must always be based on a detailed and individualized assessment, including the personal history of the individual concerned, and, as relevant, the risk of absconding, if any. The person concerned should be provided with a reasoned decision, preferably in a language that they understand.

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<sup>71</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on Chile, CMW/C/CHL/CO/1, 19 October 2011, paras 30 and 34.

<sup>72</sup> Bulletin N°8970-06, filed on 4 June 2013.

<sup>73</sup> Human Rights Committee, communication No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997, para. 9.2.

<sup>74</sup> A/HRC/13/30, para. 59.

<sup>75</sup> A/HRC/13/30, paras. 59 and 65.

<sup>76</sup> Committee on Migrant Workers, Concluding observations, Bosnia and Herzegovina, 2012 (CMW/C/BIH/CO/2), para. 26(c); Rwanda, 2012 (CMW/C/RWA/CO/1), para. 24(a).

- Ensure that migration legislation respects the right of anyone arrested or detained solely for immigration purposes to be brought promptly before a judge or other officer authorised by law to exercise judicial power to review the lawfulness of the arrest and/or detention and its/their continued necessity; and to order unconditional release and/or less coercive measures, if warranted.
- Ensure that migration legislation allows sufficient time to lodge appeals against decisions of expulsions.

## **VI. FAIR TRIALS AND PROCEDURAL GUARANTEES (ARTICLE 14 ICCPR)**

### **Military courts and human rights violations (Question 23 in the List of Issues)**

As various UN human rights expert mechanisms have repeatedly pointed out, the system of military courts and its criminal procedures in Chile is in dire need of reform.<sup>77</sup> This has not yet been completed. In 2010, legislation was enacted to limit the scope of the jurisdiction of military courts over civilians. However the reform did not address crimes committed against civilians by members of the police or military, which still remain under the jurisdiction of the military courts. Since then, several bills have been filed in Congress,<sup>78</sup> but these have not yet been discussed.

Amnesty International calls for trials of human rights violations and crimes under international law to take place before civilian – not military – courts, given concerns about lack of independence and impartiality of military courts and concerns about impunity.<sup>79</sup> The use of the military courts to deal with human rights violations has been a major concern for many years in Chile. In the past it constituted a serious obstacle to independent and impartial investigations into the grave human rights violations committed during the Pinochet military regime. More recently, the lack of reform of the military justice system raises the concern that instances of excessive use of force by the police in the context of recent protests will not be adequately investigated and that those suspected of criminal responsibility will not be held to account.

The number of complaints of police violence between 1990 and 2011 highlights the lack of independence and impartiality within the military justice system in Chile. According to reports between 1990 and 2004, of the 6,083 complaints during this period, only 3.2 percent ended in convictions, while between 2005 and 2011 this number dropped to 0, 48

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<sup>77</sup> Human Rights Committee, Concluding observations of the Human Rights Committee Chile, CCPR/C/CHL/CO/5, 18 May 2007, para. 12; Committee against Torture, Concluding observations of the Committee against Torture Chile, CAT/C/CHL/CO/5, 23 June 2009, para. 14.;also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on Chile, A/HRC/25/59/Add.2, 14 April 2014, para. 96. The Inter-American Court of Human Rights, in *Almonacid Arellano v. Chile*, had recalled that "[i]n a democratic State, the military criminal jurisdiction must have a restrictive scope and must be exceptional and aimed at the protection of special legal interests related to the functions that the law assigns to the Military. Therefore, it must only try military men for the commission of crimes or offenses that due to their nature may affect military interests" (para.131).

<sup>78</sup> See, for example, Bulletin N°8472-07 and N°8803-02, the most recent attempts to modify the Military Justice Code, still pending before the Congress.

<sup>79</sup> Amnesty International, *Fair Trial Manual*, second edition, 2014, chapter 29.

percent.<sup>80</sup> During the first period, more than 90 percent of the cases were dismissed (*sobreseida*) by the investigating judges, in most cases because there was not enough evidence to pursue an investigation.

There is a high risk that decisions by military tribunals allow a culture of impunity to persist in Chile. Jaime Mendoza Collío, a 24-year-old Mapuche, died on 12 August 2009 after being shot by police. He was among approximately 80 people who had occupied a farm in the community of Ercilla, Araucania region, as part of their campaign for the return of land they claim to have ancestral rights to. During the police operation to evict the protesters at least eight people were injured. According to reports, forensic analysis stated that Jaime Facundo Mendoza Collío was shot from behind. In November 2011 a military tribunal found a police officer guilty and sentenced him to five years in prison, but in August 2012 the Martial Court (appealing court) overturned the sentence and found him not guilty, ruling that the police officer acted in self-defence. The case was subsequently dealt with by the Supreme Court. In 2013 this Court annulled the decision and sentenced the police officer to a non-custodial sentence of three years [*libertad vigilada*].<sup>81</sup>

In another case, a military court sentenced a police officer to a non-custodial sentence of three years and one day for his role in the death of a 16 year old boy, Manuel Gutierrez, who was shot dead during a protest in August 2011.<sup>82</sup> The victim's lawyer and family of the minor have expressed their disagreement with the decision. The decision is under review by the Martial Court.

Similarly, on 7 November 2002, Alex Edmundo Lemún Saavedra, a Mapuche minor, was shot during a police operation in the context of a Mapuche protest in the community of Ercilla, IX Region. The boy died five days later in a hospital in Temuco (a nearby city). The regional Public Ministry office in La Araucania (*Fiscalía Regional del Ministerio Público*) ordered for the case to be transferred to the military courts system as they claimed they were not qualified to hear the case. In August 2003, the Military Prosecutor (*Fiscal Militar*) belonging to the IV Military Court of Valdivia ordered criminal proceedings (*auto de procesamiento*) against a police officer and the preventive detention (*detención preventiva*) in connection with the death of the boy. He was later granted parole with bail. A month later, in September 2003, following an appeal by the police officer, the Martial Court ruled to overturn the proceedings against him and his immediate release. According to the court, there was not enough evidence to substantiate the existence of the crime. In July 2004, the case was temporarily and partially dismissed by the IV military court of Valdivia. Two months later, the same court ruled to dismiss the case temporarily and entirely, a decision that was also confirmed by the Martial Court in March 2005. In April 2006, after being denied access to justice in Chile, the family submitted the case to the Inter-American Commission on Human

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<sup>80</sup> INDH, "Estudio exploratorio Estado de Chile y pueblo Mapuche", February 2014, chapter 3.

<sup>81</sup> See <http://www.biobiochile.cl/2013/08/21/corte-suprema-condena-a-cabo-que-mato-a-jaime-mendoza-collio-tras-anular-absolucion.shtml>

<sup>82</sup> See <http://www.emol.com/noticias/nacional/2014/05/12/659737/condenan-a-tres-anos-de-libertad-vigilada-a-carabinero-que-dio-muerte-a-joven-en-macul.html>

Rights. In November 2012 the petition was admitted by the Commission.<sup>83</sup>

Amnesty International welcomes the recent decision of the Constitutional Court (*Corte Constitucional*) rejecting the competency of the military courts to deal with a case against the police for its alleged responsibility for an injury suffered by an individual causing him to lose sight in one eye during a demonstration in April 2013. After the incident, the judge ruled that he had no jurisdiction to hear the case and ordered that the case be transferred to the military jurisdiction. In May 2014, the Constitutional Court ruled that there had been a violation of the individual's rights to be heard before a competent court and to be tried by an independent and impartial tribunal.<sup>84</sup> Similarly, the Supreme Court has recently adopted a restricted interpretation with regards to the application of the military jurisdiction in cases of police officers involved in abuses against civilians.<sup>85</sup> Amnesty International also welcomes the recent statement made by the government to reform the military justice system in line with international human rights standards.<sup>86</sup>

### **Use of the anti-terrorist law against Mapuche people (List of Issues para. 22)**

International bodies have expressed concerns at the discriminatory use of the "Anti-Terrorist Law" (Law 18.314) against Mapuche people. In April 2011 the Inter-American Commission on Human Rights filed an application with the Inter-American Court of Human Rights against Chile. The Commission argued that the law adversely affected the due process rights of the Mapuche people, by taking into account the victims' ethnic origin in a way that was unjustified and discriminatory.<sup>87</sup> The case is pending before the Court.

According to the UN Special Rapporteur on Indigenous People, the use of inappropriate legislation, such as the "Anti-Terrorist Law" as well as alleged excessive use of force and a disproportionate level of police activity in certain communities, has led to an apparent criminalization of protest.<sup>88</sup>

### **Amnesty International recommendations to the Chilean State**

- Ensure a prompt reform of the military justice system to ensure that its use is limited to trials of military personnel for breaches of military discipline, that all ordinary crimes and crimes under international law allegedly committed by police or military personnel are

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<sup>83</sup> Inter-American Commission on Human Rights, Petition 404-06, Alex Edmundo Lemun Saavedra and Others, Admissibility, 8 November 2012.

<sup>84</sup> Constitutional Court, Declaration of lack of applicability for unconstitutional (*Declaracion de inaplicabilidad for inconstitucional*), 6 May 2014, available at <http://www.tribunalconstitucional.cl/wp/>

<sup>85</sup> Supreme Court, 19 May 2014, Rol N° 4450-14

<sup>86</sup> <http://www.defensa.cl/columnas/justicia-militar-una-reforma-necesaria/>

<sup>87</sup> Inter-American Commission of Human Rights, Case No. 12.576, Norín Catrimán et al. (Lonkos, Leaders of and Activists for the Mapuche Indigenous People), Chile.

<sup>88</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, The situation of indigenous peoples in Chile: follow-up to the recommendations made by the previous Special Rapporteur, A/HRC/12/34/Add.6. 5 October 2009.

investigated and tried in ordinary civilian courts, and that its use is aligned with principles of due process of law and the right to defense.

- Promptly ensure that all cases currently under the competence of military courts that involve civilians or military or police personnel allegedly responsible for crimes against civilians are transferred to ordinary courts.
- Revise the text of the "Anti-Terrorist Law" (Law 18.314) and ensure that its application is fully compliant with international human rights law and standards, including ending its discriminatory application against Mapuche people.

## LIST OF AMNESTY INTERNATIONAL DOCUMENTS

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