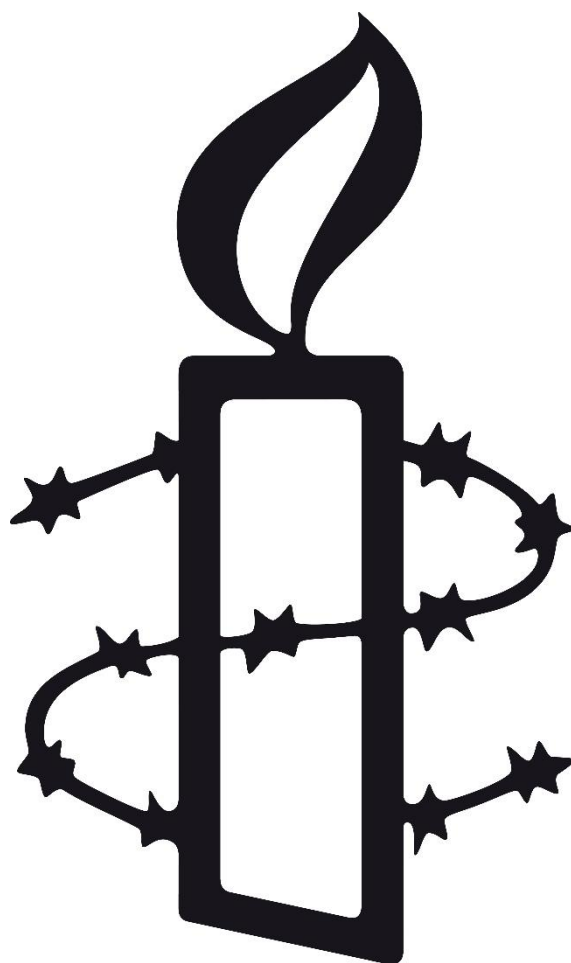


# CHILE

REPORT TO THE UN HUMAN RIGHTS COMMITTEE  
140TH SESSION, 4 TO 28 MARCH 2024



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Amnesty International submits to the United Nations Human Rights Committee information concerning the human rights situation in Chile for consideration at its 140<sup>th</sup> session.

# INTRODUCTION

Amnesty International submits this document on the human rights situation in Chile to the Human Rights Committee, so that it may be considered during the 140<sup>th</sup> session to be held between 4 and 28 March 2024.

The document contains Amnesty International's assessment of seven key aspects of the human rights situation in Chile. First, the measures taken to provide accountability for human rights violations committed during the 1973-1990 period of military rule, and the state's compliance with its obligations regarding crimes under international law and serious human rights violations committed during that period. Second, the measures taken to ensure accountability for violations committed during the social unrest of 2019, and the status of compliance with the state's obligations regarding serious human rights violations and possible crimes under international law committed during that period. Third, concerns regarding the implementation of a legislative agenda on security issues that may, at times, contravene Chile's international human rights obligations. Fourth, the current status of measures to prevent and respond to torture and other cruel, inhuman or degrading treatment. Fifth, the progress made in guaranteeing women's rights with regard to access to free and safe abortion and the prevention of violence against women. Sixth, the challenges related to Chile's migration and aliens policies, including those related to guaranteeing the rights of Venezuelan and Haitian nationals living in Chile. Seventh, the lack of progress in implementing measures for the protection of human rights defenders.

## HUMAN RIGHTS VIOLATIONS COMMITTED IN THE PAST

On 11 September 1973, Augusto Pinochet took power by force in Chile and, in conjunction with the Military Junta, imposed a repressive regime in which constitutional guarantees were suspended, Congress was dissolved, a state of siege was declared throughout the country, and torture and forced disappearances became state policy.<sup>1</sup> Pursuant to the provisions of Decree Law 2.191, known as the Amnesty Law,<sup>2</sup> crimes committed between 11 September 1973 and 10 March 1978 are in principle covered by an amnesty.

Various pronouncements by international bodies have made it clear that the provisions of the Amnesty Law are incompatible with the international obligation to investigate, prosecute and punish human rights violations and crimes under international law.<sup>3</sup> In 1999, for example, the Human Rights Committee expressed its concern regarding the validity of Decree-Law 2.191.<sup>4</sup> In 2007 it reiterated its concern, stating that even though “according to the State party this decree is no longer applied by the courts, it considers that the fact that the Decree-Law remains in force leaves open the possibility that it might be applied”.<sup>5</sup> The Committee recommended at the time that efforts should be made to incorporate the jurisprudence of the Supreme Court regarding Decree-Law 2.191 into domestic positive law as soon as possible.<sup>6</sup> In 2014, the Committee again welcomed the explanation submitted

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<sup>1</sup> Amnesty International. Chile: The Case against Augusto Pinochet. 16 October 2008. Available at: <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr220042008en.pdf>.

<sup>2</sup> Library of the National Congress of Chile. Decree-Law 2.191. Granting amnesty to the persons indicated for the offences indicated (in Spanish) Available at: <https://www.bcn.cl/leychile/navegar?idNorma=6849&idParte=>.

<sup>3</sup> Inter-American Court of Human Rights. Case of Almonacid-Arellano et al. V. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of 26 September 2006. Series C No. 154, paras 121-122. United Nations. Human Rights Committee. Consideration of reports submitted by States parties under article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 5.

<sup>4</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Chile. CCPR/C/79/Add.104. 30 March 1999, para. 7.

<sup>5</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 5.

<sup>6</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 5.

by Chile that Decree-Law was not applied in practice, but recommended that it should “repeal the Amnesty Decree-Law and ensure that it continues not to be applied to past human rights violations”.<sup>7</sup>

Despite this, the Amnesty Law remains in force, although it is not currently being applied by judges and courts. Amnesty International considers that Decree-Law 2.191, by the very fact of its existence, potentially jeopardises the fulfilment of Chile's obligation to investigate, prosecute and punish crimes under international law committed during this period, as well as the rights of victims to justice, truth and reparation.

En 2023, the government issued a supreme decree to launch the “National Search Plan for Truth and Justice for the victims of forced disappearance in Chile between 11 September 1973 and 10 March 1990”,<sup>8</sup> to investigate and identify the victims of these human rights violations. For this public policy to be effective, it is necessary to ensure sufficient resources for the implementation of all the lines of action related to the objectives of this Plan, as well as the effective incorporation into national legislation of the range of obligations contained in the International Convention for the Protection of All Persons from Enforced Disappearance, to which Chile is a party.<sup>9</sup>

According to the 2004 report of the National Commission on Political Prisoners and Torture, 1132 sites across the country were used as centres for the detention, kidnapping, torture and disappearance of political opponents. Of these, only 41 sites have been declared monuments by the state,<sup>10</sup> with seven sites having been approved for declaration as historical monuments.<sup>11</sup> At present, most of the efforts to recover, maintain and fund the proper functioning of these sites come from civil society rather than from the state, which is internationally obliged to do so.<sup>12</sup> Furthermore, some of the sites have serious problems of access, requiring, for example, permission from the army or the gendarmerie to enter the site, as is the case with Cerro Chena<sup>13</sup> and Tres y Cuatro Alamos,<sup>14</sup> respectively.

The government's current legislative human rights agenda includes five measures on which Amnesty International considers that decisive progress needs to be made: (i) legal classification of absence due to forced disappearance; (ii) classification of the crimes of extrajudicial execution and forced disappearance (there is a bill on the latter, but it has not yet been adopted);<sup>15</sup> (iii) partial lifting of the 50-year moratorium on the secrecy of testimonies given to the National Commission on Political Prisoners and Torture (CNPPT, also known as the Valech I Commission), which has not yet happened, despite the fact that in 2007 the Human Rights Committee recommended that Chile “make public all the documentation collected by the CNPPT”;<sup>16</sup> (iv) design and implementation of the

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<sup>7</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 9.

<sup>8</sup> Official Journal of the Republic of Chile. Number 43.697. Ministry of Justice and Human Rights. 10 November 2023. Available at: <https://www.derechoshumanos.gob.cl/wp-content/uploads/2023/12/Diario-Oficial-Decreto-Plan-Nacional-de-Busqueda.pdf>.

<sup>9</sup> Committee on Enforced Disappearances. Guiding principles for the search for disappeared persons. 29 August 2019. CED/C/7.

<sup>10</sup> National Network of Memory Sites. “Propuesta de Proyecto de Ley Sobre Sitios de Memoria y Memoriales [Bill on Memory Sites and Memorials]”. 2019, p. 9.

<sup>11</sup> Ministry of Culture, Arts and Heritage. *Consejo de Monumentos Nacionales aprueba nuevas solicitudes para convertir siete sitios de memoria en Monumentos Históricos* [National Monuments Council approves new applications to convert seven memory sites into Historic Monuments]. 2023. Available at: <https://www.cultura.gob.cl/actualidad/consejo-de-monumentos-nacionales-aprueba-nuevas-solicitudes-para-convertir-siete-sitios-de-memoria-en-monumentos-historicos/>.

<sup>12</sup> Network of Memory Sites. Sobre proyecto de ley modifica la ley n°17.288, sobre monumentos nacionales, para regular los patrimonios culturales (Boletín N°12175-24) [On bill amending Law No 17.288 on National Monuments to regulate cultural heritage (Official Gazette 12175-24)]. 2019, p.5. Available at: <https://www.camara.cl/verDoc.aspx?prmlD=162892&prmtIPO=DOCUMENTOCOMISION>.

<sup>13</sup> Memoria Viva. Cerro Chena Military Compound, Barracks N°2 (Casas Viejas de Chena). Available at: <https://memoriaviva.com/nuevaweb/centros-de-detencion/metropolitana/recinto-militar-de-cerro-chena-cuartel-no-2/>.

<sup>14</sup> National Human Rights Institute (INDH). INDH llama a preservar como sitio de memoria el Centro de Detención Tres y Cuatro Álamos [INDH calls for the preservation of the Tres y Cuatro Alamos Detention Centre as a memory site]. 18 December 2018. Available at: <https://www.indh.cl/indh-llama-a-preservar-como-sitio-de-memoria-el-centro-de-detencion-3-y-4-alamos/>.

<sup>15</sup> Chamber of Deputies. Official Gazette 9818-17. Proyecto de ley que modifica el Código Penal, tipificando el delito de desaparición forzada de personas [Bill amending the Penal Code, typifying the crime of forced disappearance of persons]. 17 December 2014. Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmlD=10240&prmtBOLETIN=9818-17>.

<sup>16</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 9.

National Memory and Heritage Policy; and (v) lifting the restriction of information regarding laws that were adopted under secret, reserved or restricted circulation.<sup>17</sup>

**Amnesty International makes the following recommendations to the Chilean authorities:**

- Repeal, once and for all, Decree Law 2.191 (Amnesty Law), irrespective of whether or not it is being applied in specific cases.
- Enact the necessary legislative amendments to ensure that forced disappearances and extrajudicial executions are criminalized in a manner consistent with applicable international human rights law and standards. In any event, such classification should adequately reflect not only the characteristics of each offence, but also their gravity and entity.
- Adopt regulatory and institutional measures for the effective protection of memory sites.

## **HUMAN RIGHTS VIOLATIONS COMMITTED DURING THE SOCIAL UNREST OF 2019**

What is now known as the Chilean period of social unrest began in mid-October 2019. Thousands of people took to the streets demanding greater social equality and the recognition and guarantee of social and economic rights. The authorities responded by declaring a state of emergency and deploying the Chile's *Carabineros* and, for ten days, the armed forces.<sup>18</sup> Amnesty International has documented that, during their intervention, “the Carabineros repeatedly used force in an unlawful, unnecessary and disproportionate manner in the context of the crisis, injuring thousands of protesters and inflicting serious injuries on many of them”.<sup>19</sup> It also documented excessive use of force by the *Carabineros* and the use of munitions contrary to applicable international standards that “deliberately inflicted pain and suffering on protesters, with the intention of causing suffering or knowing that their actions could cause suffering”<sup>20</sup> and could amount to acts of torture.

The judicial response to the widespread human rights violations committed during the social unrest has been inadequate and requires the attention of the Human Rights Committee.

Firstly, the Public Prosecutor's Office has made extensive use of temporary archive of proceedings, applicable when there is no information that would allow for investigative action to be taken to establish the facts,<sup>21</sup> and which has the effect of suspending the investigation. According to the National Human Rights Institute (INDH), the National Prosecutor's Office had registered 10936 cases of human rights violations during the social unrest by September 2022. Of these, 7917 cases have been closed, 4396 through the provisional archive of proceedings.<sup>22</sup>

Secondly, towards the end of 2023, Amnesty International found that out of a universe of 10142 cases related to the social unrest, the Prosecutor's Office reported only 127 formalized cases and 38 final convictions.<sup>23</sup> Given the passage of time and the fact that many of the cases were opened for possible crimes of “unlawful coercion”, for which the statute of limitations is set at five years under domestic regulations because they are considered simple offences,<sup>24</sup> the delay in advancing investigations puts the feasibility of criminal accountability at risk. The Chilean Penal Code itself also provides that the

<sup>17</sup> Government of Chile. Government presents legislative human rights agenda. 5 September 2023. Available at: <https://www.gob.cl/en/news/government-presents-legislative-human-rights-agenda/>.

<sup>18</sup> Amnesty International. Eyes on Chile. Police Violence and Command Responsibility During the Period of Social Unrest. Available at: <https://www.amnesty.org/en/documents/amr22/3133/2020/en/>, p. 4.

<sup>19</sup> Amnesty International. Eyes on Chile, p. 52.

<sup>20</sup> Amnesty International. Eyes on Chile, p. 5.

<sup>21</sup> Penal Procedural Code of Chile, Article 167.

<sup>22</sup> National Institute of Human Rights. Informe anual 2022. Situación de derechos humanos en Chile [Annual Report 2022. Human Rights Situation in Chile]. 2022, p. 56.

<sup>23</sup> Writ FN No. 1117/2023, in response to a request for data on the institutional violencia, period of social unrest. 13 December 2023. Consulted on 29 November 2023 by Amnesty International.

<sup>24</sup> Penal Code of Chile, Article 94, statute of limitations in penal proceedings.

statute of limitations runs from the day on which the crime was committed. Thus, if the “unlawful coercion” began on 18 October 2019, the first day of the social unrest, the statute of limitations could start to run from 18 October 2024, depending on the date on which each act was committed. In cases in which the Public Prosecutor’s Office has not made progress in the investigation, the statute of limitations could imply a breach of Chile’s international obligation to prevent impunity.

Given the seriousness of the facts in these cases (which always involve a state actor or a private person acting in an official capacity or with the complicity of a state actor), and the fact that the legislation itself equates these acts, at the very least, with cruel, inhuman and degrading treatment, Amnesty International considers that a five-year statute of limitations for crimes of unlawful coercion is incompatible with the severity of the violation of the right to personal integrity, and with Chile’s obligation to adapt its domestic legal system to promote compliance with its international commitments. A similar situation persists with regard to torture, a crime under international law. Despite the fact that the Human Rights Committee had already expressed concern in 2014 about the ten-year statute of limitations applicable to the crime of torture, recommending that the state extend it “to ensure that all acts of torture can be investigated properly, and the perpetrators can be prosecuted and punished,”<sup>25</sup> legislation remains as yet unchanged.

Thirdly, the Public Prosecutor’s Office recently announced the indictment (formalization) of three individuals who held high-ranking positions in Chile’s *Carabineros* in 2019 and who may bear responsibility for the serious human rights violations and crimes under international law that have been committed.<sup>26</sup> However, at the time of publication of this report, the indictment (formalization) had not yet become final. In its 2020 report “Eyes on Chile”, Amnesty International concluded that the widespread torture inflicted by the *Carabineros* on protesters, mainly in the form of irreversible eye injuries, would not have been possible if the *Carabineros* command had taken all necessary and available measures to restrict the use of the ammunition causing such injuries.<sup>27</sup> In particular, Amnesty International has analysed and highlighted the possible criminal responsibility of the then Director General, Mario Rozas, and the Director of Order and Security, Ricardo Yáñez, who currently holds the position of Director General of the institution, and has urged the Public Prosecutor’s Office to investigate and, if necessary, initiate criminal proceedings against them. These two officials are part of the indictment recently announced by the Public Prosecutor’s Office.<sup>28</sup> Technically, if the indictment does not materialize, there would be a risk of the statute of limitations running out, since the case is being brought for the failure of the high command to prevent the commission of unlawful coercion by its subordinates. This is all the more worrying given that, as documented by Amnesty International, the actions of the *Carabineros* constituted widespread torture but would be subject to a five-year statute of limitations.

The Chilean authorities have also failed to put in place a comprehensive strategy to ensure effective and adequate reparations for the victims of human rights violations committed during the period of social unrest. Despite the existence of a limited number of support programmes, the authorities have not taken any systematic measures to promote a comprehensive reparations policy that would include, at a minimum, the provision of legal advice, the guarantee of physical and mental health

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<sup>25</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 17.

<sup>26</sup> La Tercera. *Fiscalía pide formalizar a general director de Carabineros por responsabilidad de mando en el estallido social* [The Prosecutor’s Office seeks indictment for the Director General of the *Carabineros* for command responsibility during the period of social unrest]. 3 January 2024. Available at: <https://www.latercera.com/nacional/noticia/fiscalia-pide-formalizar-a-general-director-de-carabineros-por-responsabilidad-de-mando-en-el-estallido-social/UCNM0XOOLRDQNGN5CDIA7IK75Y/>

<sup>27</sup> Amnesty International. *Eyes on Chile. Police Violence and Command Responsibility During the Period of Social Unrest*. Available at: <https://www.amnesty.org/en/documents/amr22/3133/2020/en/>.

<sup>28</sup> Amnesty International. *Chile: Indictment of Ricardo Yáñez, Mario Rozas and another senior Carabineros official is a milestone on the road to truth and justice*. 4 January 2024. Available at: <https://www.amnesty.org/en/latest/news/2024/01/chile-indictment-senior-carabineros-official-justice/>.

care, the granting of social security benefits and the implementation of procedures to enforce the civil liability of those responsible for the harm suffered by the victims.<sup>29</sup>

In general, challenges related to the lack of legal regulation of the right to protest persist in Chile. Article 19(13) of the Political Constitution of the Republic protects the right to assemble peacefully and without arms. However, meetings in squares, streets and other public places are regulated by Supreme Decree 1.086, adopted in 1983.<sup>30</sup> This means that the right of assembly is governed by a normative instrument resulting from regulatory (infra-legal) power. In addition, the decree includes a prior authorization regime. These two elements are incompatible with Chile's binding obligations under international human rights standards.

#### **Amnesty International makes the following recommendations to the Chilean authorities:**

- Move forward in the process of seeking criminal accountability for those who held high-ranking positions in Chile's *Carabineros* during the period of social unrest and who may be criminally liable under international law, as well as for other individuals who, as members of the *Carabineros* at the time, may have been responsible for such crimes.
- Expedite criminal investigations into cases of human rights violations committed during the period of social unrest and punish those found guilty in fair trials. Chile must ensure that the application of statutes of limitations to investigations into possible cases of unlawful coercion and torture is consistent with its international obligation to prevent impunity and to investigate, prosecute and punish human rights violations.
- Amend legislation and extend the statute of limitations for the crimes of unlawful coercion and torture in a manner commensurate with the gravity of such crimes and the extent of the human rights they violate.
- Advance in the consolidation of a comprehensive policy of reparation for the victims of human rights violations during the period of social unrest, clearly defining the nature of the measures to be adopted, the stages of their implementation, and the funding required to ensure their full and appropriate application.
- Repeal Supreme Decree 1.086 and regulate by law the exercise of the right to peaceful assembly.

## **SECURITY AGENDA AND POLICING**

Law 21.560, known as the Naín-Retamal law, was enacted in April 2023. Amnesty International believes that its provisions are incompatible with Chile's international human rights obligations. This view is shared by the Inter-American Commission on Human Rights<sup>31</sup> and the National Human Rights Institute<sup>32</sup>, which issued statements to this effect before the law was passed.

The Naín-Retamal law has four components that are incompatible with international human rights law. First, it promotes participation of the armed forces in policing, without explicit safeguards. Second, it limits the possibility of removing police officers from duty before the completion of a relevant administrative investigation. Third, it includes a provision on the presumption of legality in the use of lethal force by police officers. Fourth, it amends the definition of the crime of torture contained in Article 150D of the Penal Code by adding two new elements: one requiring the official to have acted in

<sup>29</sup> Amnesty International and Núcleo Interdisciplinario de Derechos Humanos. *La reparación integral de las violaciones a los derechos humanos cometidas en el contexto del estallido social* [Comprehensive reparation for human rights violations committed in the context of the period of social unrest]. 31 May 2023. Available at: <https://amnistia.cl/noticia/amnistia-internacional-y-el-nucleo-interdisciplinario-de-derechos-humanos-presentan-informe-sobre-reparacion-integral-a-victimas-de-violencia-estatal-durante-el-estallido-social/>, p. 14.

<sup>30</sup> Ministry of the Interior. Supreme Decree 1.086. 16 September 1983.

<sup>31</sup> Inter-American Commission on Human Rights. IACHR Calls on Chile to Ensure Transparent, Participatory Process to Reform Legislation Concerning the Use of Force. 4 April 2023. Available at: [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2023/055.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/055.asp).

<sup>32</sup> DiarioUChile. *Directora del INDH critica Ley Naín-Retamal: "Podría favorecer la impunidad"* [INDH Director critical of Naín-Retamal Law: "It could favor impunity"]. 2 April 2023. Available at: <https://radio.uchile.cl/2023/04/02/directora-del-indh-critica-ley-nain-retamal-podria-favorecer-la-impunidad/>.

violation of regulations to qualify as constitutive of such a crime, and another removing the aggravated penalty for cases where the victim is under the care, custody or control of the official.<sup>33</sup>

Other legislative initiatives that are currently under discussion may also conflict with Chile's international obligations. The most important of these is a bill, identified under Bulletin no. 15033-07,<sup>34</sup> that seeks to increase protection for the *Carabineros*, and raises at least three issues. Firstly, it seeks to create a general presumption of legality in the use of firearms, making it more difficult to investigate, prosecute and punish possible cases of excessive use of force. Secondly, it proposes that police officers should be immune from liability for using force against a person if that person fails to keep a certain distance or fails to comply with an order to put their hands up and stop moving. Thirdly, it creates new offences punishing physical violence and insults against members of the *Carabineros* and obstructing their work. Each of these issues raises problems relating to the standards on the use of force by law enforcement officers (in the first and second cases) or respect for the principle of legality in the strict sense (in the third case).

There is still no comprehensive regulation of the use of force by the police, in particular the *Carabineros de Chile*, that is compatible with the international human rights standards applicable to Chile. Although the *Carabineros* have adopted a number of internal instruments to regulate the use of force in the maintenance of law and order,<sup>35</sup> these have not resulted in the use of less lethal weapons in accordance with Chile's international obligations.<sup>36</sup> Furthermore, no law has been enacted to comprehensively regulate the use of less lethal force by law enforcement and security forces.<sup>37</sup> The government submitted a bill on 10 April 2023, but as of December 2023 it was still in the early stages of the legislative process, although its approval would be a significant step forward given its content and nature.<sup>38</sup>

Lastly, problems remain with regard to the failure to reform the Counter-Terrorism Law (Law 18.314) and the persistence of elements in it that explicitly contravene applicable international human rights standards. In 2007, the Human Rights Committee expressed concern regarding the broad definition of terrorism contained in the law, the restriction of procedural guarantees in its application, and the harm caused to members of the Mapuche community who were accused of terrorism while exercising their right to protest. It therefore recommended that Chile adopt a narrower definition of crimes of terrorism.<sup>39</sup> The Committee reiterated its concerns in 2014, again recommending reform of the counter-terrorism law, both with regard to the definition of terrorism offences and the limitation of procedural guarantees.<sup>40</sup>

The combination of the application of exceptional rules that violate guarantees of due process for those prosecuted, with the elements of stigmatization that have been demonstrated in relation to the

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<sup>33</sup> Amnesty International. *Minuta. Ley 21.560 "Nain Retamal" (Boletín No 14.870-25)* [Bill 21.560 "Nain-Retamal" (Bulletin No 14.870-25)]. 3 April 2023. Available at: <https://amnistia.cl/wp-content/uploads/2023/05/Informe-AI-Ley-21.560-Nain-Retamal.pdf>.

<sup>34</sup> Senate of Chile. Bulletin No. 15033-07. *Proyecto de ley que modifica diversos cuerpos legales para aumentar la protección del personal de Carabineros de Chile, en memoria del Sargento Primero de esta institución, señor Gabriel Aldo Gallegos Fernández (Q.E.P.D.)* [Bill amending various legal texts to increase the protection of the personnel of the Carabineros de Chile, in memory of member First Sergeant Gabriel Aldo Gallegos Fernández (deceased)], 1 June 2022. Available at: [https://www.senado.cl/apps Senado/templates/tramitacion/index.php?boletin\\_ini=15033-07](https://www.senado.cl/apps Senado/templates/tramitacion/index.php?boletin_ini=15033-07).

<sup>35</sup> In this regard, *Carabineros de Chile* have adopted the following instruments: *Orden General No 2870, Protocolos para el Mantenimiento y Restablecimiento del Orden Público* [General Order No 2870, Protocols for the Maintenance and Restoration of Law and Order], 8 September 2021; *Circular No 1832 de la Dirección General de Carabineros, que norma el uso de la fuerza* [Circular No 1832 from the General Directorate of the *Carabineros*, regulating the use of force], 1 March 2019; *Orden General No 2635, Protocolos para el mantenimiento del orden público* [General Order No 2635, Protocols for the maintenance of law and order], 1 March 2019; *Orden General No 2780, Protocolos para el mantenimiento del orden público. Empleo de la escopeta antidisturbios* [General Order No 2780, Protocols for the maintenance of law and order. Use of riot-control shotguns], 14 July 2020; *Manual de técnicas de intervención policial. Nivel 1* [Handbook of Police Intervention Techniques, Level 1], August 2019.

<sup>36</sup> National Human Rights Institute. Annual Report 2022, p. 17.

<sup>37</sup> National Human Rights Institute. Annual Report 2022, p. 17.

<sup>38</sup> Amnesty International. Report. *Proyecto de ley para la regulación del uso de la fuerza (Boletín 15805-07)* [Bill on the regulation of the use of force (Bulletin 15805-07)]. 11 May 2023. Available at: <https://amnistia.cl/wp-content/uploads/2023/05/Informe-AI-sobre-proyecto-reglas-de-uso-de-la-fuerza.pdf>.

<sup>39</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 7.

<sup>40</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 7.



Mapuche people, has contributed to reinforcing the structural discrimination that has historically characterized the relationship between the Chilean state and the Mapuche people. At various times, the Counter-Terrorism Law has been used as a means for the criminalizing the Mapuche people and their leadership.<sup>41</sup>

**Amnesty International makes the following recommendations to the Chilean authorities:**

- Bring national legislation into line with international standards on the use of force and the prevention of torture and other cruel, inhuman or degrading treatment. This must include making the provisions of Law 21.560 consistent with Chile's human rights obligations and refraining from enacting new laws that violate such obligations.
- Urgently advance the adoption of the bill “establishing general rules on the use of force by law enforcement and public security forces and armed forces personnel”.
- Amend the Counter-Terrorism Law to repeal provisions that violate due process guarantees and to include explicit reference to the recognition and protection of the rights of Indigenous Peoples in the application of the law.

## **PREVENTION OF AND RESPONSE TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT**

In 1999, the Human Rights Committee expressed concern about persistent allegations of torture and excessive use of force by police and other security forces,<sup>42</sup> as well as about conditions in Chilean prisons and detention centres.<sup>43</sup> In 2007, the Human Rights Committee expressed concern about continuing cases of ill-treatment of detainees by law enforcement officials,<sup>44</sup> and in 2014, while noting Chile's efforts to improve conditions of detention, expressed concern at the “high levels of overcrowding, poor conditions in detention facilities and the lack of defined objectives to resolve these issues”.<sup>45</sup>

The creation of the Committee for the Prevention of Torture in 2020 by Law 21.154 is a positive step forward in Chile's compliance with its international obligations. The Committee is an operationally independent body whose work has led to the identification of worrying cases of non-compliance with standards for the prevention of torture and other cruel, inhuman or degrading treatment by the Chilean police.

Firstly, the Committee has noted repeated cases of insults, beatings and restraint with excessive use of force by members of the *Carabineros* during arrests and transfers to police facilities.<sup>46</sup> Secondly, the Committee has expressed concern at the lack of clarity regarding the existence and effectiveness of complaint and redress mechanisms for persons deprived of their liberty;<sup>47</sup> at the ill-treatment of elderly persons deprived of their liberty;<sup>48</sup> about incidents of pharmacological and physical restraint or isolation in situations of behavioural or emotional uncontrollability of persons with a mental health

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<sup>41</sup> Amnesty International. *Pre-Juicios Injustos. Criminalización del Pueblo Mapuche a través de la Ley “Antiterrorista” en Chile* [Unjust Prejudice. Criminalization of the Mapuche Peoples through the “Counter-Terrorism” Law in Chile]. 9 August 2019. Available at: <https://www.amnesty.org/es/documents/amr22/8862/2018/es/>

<sup>42</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Chile. CCPR/C/79/Add.104. 30 March 1999, para. 10.

<sup>43</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Chile. CCPR/C/79/Add.104. 30 March 1999, para. 14.

<sup>44</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 10.

<sup>45</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 21.

<sup>46</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022. *Prevención de la tortura y situación de las personas privadas de la libertad en Chile* [Prevention of torture and the situation of persons deprived of their liberty in Chile]. November 2022. Available at: [https://mnpt.cl/Segundo\\_Informe\\_Anuar\\_CPT.pdf](https://mnpt.cl/Segundo_Informe_Anuar_CPT.pdf), pp. 92-93.

<sup>47</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022, p. 121.

<sup>48</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022, p. 52.

diagnosis who are deprived of their liberty;<sup>49</sup> at the poor material conditions of isolation modules and cells and the overcrowding;<sup>50</sup> and about cases of violence in prisons, both between persons deprived of their liberty and by prison officers against detainees.<sup>51</sup>

**Amnesty International makes the following recommendations to the Chilean authorities:**

- Guarantee the independence and continued appropriate resourcing of the Committee for the Prevention of Torture.
- Respect and guarantee the physical integrity of persons deprived of their liberty and adopt appropriate and sufficient measures to ensure that torture remains firmly prohibited throughout the national territory.

## WOMEN'S RIGHTS

The Human Rights Committee has previously expressed concern about “unduly restrictive abortion laws”<sup>52</sup> and called on Chile to amend its legislation to “help women avoid unwanted pregnancies”<sup>53</sup> and to ensure that “all women and adolescents have access to reproductive health services in all parts of the country”.<sup>54</sup>

Chile's Law 21.030 legalizes the voluntary interruption of pregnancy in three circumstances. However, some health facilities have interpreted the conscientious objection provision contained in Article 119 (3) of the Health Code very broadly, applying it in its entirety and thus restricting women's and girls' access to this health service in their facilities, even in the circumstances permitted by law.<sup>55</sup> In 2023, the Humanas Corporation reported that 45.8% of doctors in the public health system declared themselves “conscientious objectors” in cases of abortion in the third circumstance (rape), and that five hospitals in the country had no professionals willing to perform the procedure in these cases.<sup>56</sup> Furthermore, Chile has not yet made progress in regulating abortion in all circumstances, and this precludes women, girls and pregnant persons from making a legitimate decision to interrupt their pregnancy and exercise their right to access comprehensive sexual and reproductive health services.

In 2014, the Human Rights Committee welcomed the existence of a bill to combat violence against women but expressed concern at the persistence of the phenomenon and recommended expediting “the adoption of the new law on the elimination of violence against women”.<sup>57</sup>

A bill on a comprehensive approach to violence against women has been pending since 2017,<sup>58</sup> but six years on it has yet to be approved. In the meantime, women and girls in Chile continue to face different types of violence in different contexts. According to the Chilean Network against Violence towards Women, this is evident in the continued perpetration of acts of gender-based violence, such as femicide, intimate partner violence and sexual assault, and in the negligent and sexually biased

<sup>49</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022, p. 71.

<sup>50</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022, p. 118.

<sup>51</sup> Committee for the Prevention of Torture. Second Annual Report 2021/2022, p. 122.

<sup>52</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 8.

<sup>53</sup> United Nations. Human Rights Committee. Consideration of reports submitted by States parties under Article 40 of the Covenant. Chile. CCPR/C/CHL/CO/5. 17 April 2007, para. 8.

<sup>54</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 15.

<sup>55</sup> Roundtable for Action in favour of abortion in Chile, the Right to Decide and APROFA. *Informe de Monitoreo Social. Acceso a la Ley de Interrupción Voluntaria del Embarazo* [Social Monitoring Report. Access to the law on voluntary interruption of pregnancy]. 2023. Available at: <https://aprofa.cl/wp-content/uploads/2023/11/Monitoreo-final.pdf>, p.16-17.

<sup>56</sup> Humanas Corporation. *Salud pública: 45,8% de los médicos no atienden abortos por violación* [Public health: 45.8% of doctors do not perform abortion in cases of rape]. 19 December 2023. Available at: <https://www.humanas.cl/salud-publica-458-de-los-medicos-no-atienden-abortos-por-violacion/>.

<sup>57</sup> United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Chile. Chile. CCPR/C/CHL/CO/6. 13 August 2014, para. 16.

<sup>58</sup> Senate of Chile. Bulletin No. 11077-07. *Proyecto de ley sobre el derecho de las mujeres a una vida libre de violencia* [Bill on women's right to a life free from violence]. 5 January 2017. Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=11592&prmBOLETIN=11077-07>.

way in which laws are applied.<sup>59</sup> The lack of recognition of violence against women and girls in the legal system has prevented the state from fulfilling its international obligations to prevent and eradicate this type of violence.

**Amnesty International makes the following recommendations to the Chilean authorities:**

- Establish clear regulatory criteria for the application of the rule of conscientious objection in cases of voluntary interruption of pregnancy, to guarantee that every woman, girl or pregnant person can access the service when needed.
- Adopt measures to ensure access to health services for the voluntary interruption of pregnancy throughout the country and that no woman, girl or pregnant person is forced to seek an unsafe abortion. This means that services for the voluntary interruption of pregnancy must be provided in safe conditions and with full respect for the rights of women and pregnant persons.
- Adopt the bill on the right of women and girls to a life free from violence and implement the national policy provided for therein.

## RIGHTS OF REFUGEES AND MIGRANTS

Chile has implemented measures that go against its international obligations to protect migrants and persons in need of protection, including the collective expulsions carried out in 2021.<sup>60</sup>

Amnesty International has identified significant obstacles in accessing refugee status recognition procedures by those in need of international protection, due to the unlawful implementation of arbitrary practices by the authorities, including a pre-eligibility review of asylum applications<sup>61</sup> and the requirement that asylum seekers and persons seeking regularization must make a “voluntary declaration of irregular entry”, or “self-report”,<sup>62</sup> which puts them at risk of expulsion.<sup>63</sup>

Law 21.325 on Migration and Aliens was enacted in 2021, repealing Decree Law 1.094. Of particular concern are the provisions relating to the immediate return and refoulement of persons who attempt to enter the country by circumventing migration controls, as they may result in the violation of several rights, such as the right to seek asylum, the right to protection against refoulement, the right to due process and the right to an effective judicial remedy.<sup>64</sup> Furthermore, this new legal framework is not sufficient to address the challenges inherent in guaranteeing the rights of migrants in Chile from a human rights perspective. These include the proper implementation of the National Migration Service, progress in the policy of granting humanitarian visas in cases of domestic violence, the fight against human trafficking and the protection of pregnant women, the guarantee of the rights of children and

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<sup>59</sup> Chilean Network against Violence towards Women. *Dossier informativo: 2022-2023 violencia contra mujeres en Chile* [Information dossier: 2022-2023 violence against women in Chile]. 2023. Available at: <http://www.nomasviolenciacontramujeres.cl/wp-content/uploads/2023/08/DOSSIER-2023.pdf>, p. 5.

<sup>60</sup> United Nations. Chile: Arbitrary and collective expulsion of migrants must stop - UN experts. 19 May 2021. Available at: <https://www.ohchr.org/en/press-releases/2021/05/chile-arbitrary-and-collective-expulsion-migrants-must-stop-un-experts>

<sup>61</sup> Amnesty International. Regularization and protection, pp. 32-33.

<sup>62</sup> Amnesty International. Chile: No one wants to live in hiding. Lack of protection for Venezuelan refugees in Chile. 7 March 2023. Available at: <https://www.amnesty.org/en/documents/amr22/6437/2023/en/>, pp. 10-13.

<sup>63</sup> Between January and October 2023, the authorities received 3331 refugee applications, of which 2077 were submitted by Venezuelan nationals. In this period, 68 applications (of a mixture of nationalities) were granted, and 585 rejected. Department of Studies. National Migration Service. General Statistics. Administrative Register of the National Migration Service. Figures from January 2014 to June 2023. Report 2. November 2023. Available at: <https://serviciomigraciones.cl/wp-content/uploads/2023/12/231228-Reporte-2-Estadisticas-SERMIG.pdf>, p. 46.

<sup>64</sup> While Article 131 provides that individuals may appeal against an expulsion order, this provision cannot be applied in practice since this remedy does not suspend the expulsion order and requires individuals to be outside the country in order to initiate it. Similarly, the wording of the exceptions to Article 131 is inadequate and not consistent with international law, as it does not incorporate the prohibition of the return of people in need of international protection. On the contrary, it only covers “people who present indications of being victims of human trafficking, kidnapping or any other crime that puts their lives at risk”, leaving out others with protection needs who have not been victims of a crime, for example. See: Amnesty International. No one wants to live in hiding, footnote 33.

adolescents in contexts of mobility, and the establishment of a formal procedure for the regularization of those who with irregular migratory status.<sup>65</sup>

In 2023, the National Policy on Migration and Aliens was published,<sup>66</sup> as a direct result of the adoption of the Law on Migration and Aliens. This new policy provides for a regularization process “through the ordinary channels”,<sup>67</sup> but does not resolve documentary obstacles and explicitly states that the visa system will not be changed.<sup>68</sup> This is despite the fact that the Law on Migration and Aliens clearly states that the new policy should establish specific objectives to enable the thousands of people living in Chile with irregular migratory status, in particular groups in need of special protection, may access a temporary residence permit.<sup>69</sup>

In recent years, there has been a proliferation of legislative initiatives that seek to restrict the rights of persons in contexts of mobility, including through the increased use of deprivation of liberty,<sup>70</sup> administrative expulsion procedures,<sup>71</sup> the situation of those seeking refuge,<sup>72</sup> the punishment of irregular entry into the country and the criminalization of irregular migration.<sup>73</sup> These measures are in serious contradiction with Chile's international obligations.

#### **Amnesty International makes the following recommendations to the Chilean authorities:**

- Ensure that all persons have access to a fair, effective and non-discriminatory asylum procedure for the recognition of refugee status. This includes ending the practice of conducting informal pre-eligibility review of asylum applications and requiring “self-reporting” as a prerequisite for accessing refugee status recognition procedures.
- Ensure that the principle of non-refoulement is respected in all circumstances, and therefore refrain from turning people back at the border and from carrying out collective expulsions or deportations without respect for due process. In particular, Chile must refrain from deporting persons in need of international protection, such as Venezuelan and Haitian nationals.
- Guarantee respect for the rights of migrants in existing legislation and refrain from approving any norm or measure that is contrary to Chile's obligations with regard to international standards on refugees and human rights.

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<sup>65</sup> Barufe, J. P. *Alcances sobre la implementación de la Ley de Migración y Extranjería* [Outcomes on the implementation of the Migration and Aliens Law]. 2023. Available at: [https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/33927/1/Alcances\\_sobre\\_la\\_implementacion\\_de\\_la\\_Ley\\_de\\_Migracion\\_y\\_Extranjeria.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/33927/1/Alcances_sobre_la_implementacion_de_la_Ley_de_Migracion_y_Extranjeria.pdf).

<sup>66</sup> Ministry of the Interior and Public Security. *Decreto 181, Establece Política Nacional de Migración y Extranjería* [Decree 181, establishing the National Policy on Migration and Aliens]. 27 December 2023.

<sup>67</sup> Ministry of the Interior and Public Security. *Decreto 181, Establece Política Nacional de Migración y Extranjería* [Decree 181, establishing the National Policy on Migration and Aliens]. 27 December 2023, specific objective 1.6.

<sup>68</sup> National Migration Service. *Gobierno de Chile presenta Nueva Política Nacional de Migración y Extranjería* [Government of Chile presents new National Policy on Migration and Aliens]. Available at: <https://serviciomigraciones.cl/gobierno-de-chile-presenta-pnme/>. Amnesty International. Regularization and protection: International obligations for the protection of Venezuelan nationals, 21 September 2023. Available at: <https://www.amnesty.org/en/documents/amr01/7130/2023/en/>, p. 37.

<sup>69</sup> Amnesty International. Regularization and protection, p. 37.

<sup>70</sup> Chamber of Deputies. Bulletins No. 15.820-07 and 15.822-07 (consolidated). *Proyectos de ley que modifican el Código Procesal Penal, en materia de procedencia de la prisión preventiva respecto de imputados extranjeros en las condiciones que indica* [Bills amending the Penal Procedural Code, in the matter of admissibility of pre-trial detention with respect to foreign defendants under the conditions indicated]. 12 April 2023 (still in process, pending approval). Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=16358&prmBOLETIN=15820-07>.

<sup>71</sup> Law 21.589 amending Law 21.325 on Migration and Aliens, adding alternative forms of notification of the start of administrative expulsion proceedings. Published in the Official Journal of 18 August 2023. Available at: [https://www.bcn.cl/historiadelaley/fileadmin/file\\_ley/8196/HLD\\_8196\\_d27100a2ddfba226c6fe0628b2adc365.pdf](https://www.bcn.cl/historiadelaley/fileadmin/file_ley/8196/HLD_8196_d27100a2ddfba226c6fe0628b2adc365.pdf).

<sup>72</sup> Chamber of Deputies. Bulletin No. 15439-06. *Proyecto de ley que modifica diversos cuerpos legales con el objeto de establecer medidas para enfrentar la crisis migratoria* [Bill amending various legal bodies in order to establish measures for addressing the migration crisis]. 19 October 2022 (still in process, pending approval). Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=15961&prmBOLETIN=15439-06>.

<sup>73</sup> Chamber of Deputies. Bulletin No. 15261. *Proyecto de ley que modifica la ley N°21.325, de migración y extranjería, para tipificar el delito de ingreso clandestino al territorio nacional* [Bill amending Law No. 21.325 on migration and aliens, defining the crime of clandestine entry into the national territory]. 5 August 2022 (still in process, pending approval). Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=15772&prmBOLETIN=15261-25>.

# HUMAN RIGHTS DEFENDERS

The Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) came into force in Chile in 2022. Although a bill for its implementation has been pending since 2021,<sup>74</sup> no substantial progress has yet been made. Moreover, Espacio Público Study Centre has pointed out that there are still no statutes in domestic legislation for recognizing human or environmental rights defenders, nor have specific criminal offences against environmental defenders been defined, both of which issues are considered gaps in the fulfilment of the pillar on environmental human rights defenders in the Escazú Agreement.<sup>75</sup>

Since 2022, the government has reportedly been working on a “Protocol for the protection of human and environmental rights defenders, communicators and justice system operators”. To date, there is no concrete information on the status of this initiative.

**Amnesty International makes the following recommendations to the Chilean authorities:**

- Establish a clear framework for action to implement the Escazú Agreement, including comprehensive, relevant and effective measures for the protection of human rights defenders from violence and criminalization.

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<sup>74</sup> Chamber of Deputies. Bulletin No. 14694-17. *Proyecto de ley que otorga reconocimiento a las personas defensoras de derechos humanos* [Bill granting recognition to human rights defenders]. 23 November 2021. Available at: <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmlD=15194&prmBOLETIN=14694-17>

<sup>75</sup> Guerrero, R. and Piña, M. *Acuerdo de Escazú en Chile: Recomendaciones para su implementación* [Escazú Agreement in Chile: Recommendations for implementation]. Santiago: Espacio Público. 2023, p. 19.

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