



**HUMAN RIGHTS DEFENDERS,  
RIGHT TO PEACEFUL ASSEMBLY AND POLICE VIOLENCE**

7TH PERIODIC REVIEW  
HUMAN RIGHTS COMMITTEE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**2024**

**Casa Memoria José Domingo Cañas  
Fundación 1367  
Commission of Human Rights Observers**

## Casa Memoria José Domingo Cañas

*Casa Memoria José Domingo Cañas, formerly the Ollagüe barracks of the secret police (DINA) of the civil-military dictatorship, is one of the numerous facilities used as centers for kidnapping, torture, and extermination during that time. Nowadays, it is a memory site administered on loan by the 1367 Foundation. Casa Memoria focuses its activities on promoting and defending human rights and memory. We have a Human Rights Observers Commission that specializes in monitoring police forces and strives to push for the generation of adequate guarantees of non-repetition and compliance of the State with its human rights obligations. Since its creation, the Commission has carried out approximately 220 observation missions in social protests, receiving various complaints and requests for support on issues related to human rights and the right to social protest throughout the country.<sup>1</sup>*

### Executive Summary

This report aims to contribute to the seventh periodic review by the Human Rights Committee of the International Covenant on Civil and Political Rights. It is crucial to note that while the issues align with those examined in 2014, Chile has undergone significant political and social developments since then. Within this context, the State of Chile, through its law enforcement and security forces, has perpetrated multiple and systematic human rights violations.

A notable example is the social uprising on October 18, 2019, during which the citizenry demanded the recognition of fundamental rights from the State of Chile. The response to these demands was the intense, disproportionate, and indiscriminate use of force by the security forces. These mobilizations were later disrupted by the COVID-19 pandemic, which was managed under the State of Exception. This period witnessed a notable emphasis on public order control and the implementation of stringent measures limiting individual freedoms, including the right to freedom of expression. In 2022 and 2023, various demonstrations by secondary school students demanded, among other things, an accessible and quality education. The State addressed these student protests not by recognizing the legitimate demands of the students but from a perspective of public order control. During 2023, the police carried out approximately 192 operations in and around schools, resulting in multiple rights violations against children and adolescents.

Casa Memoria welcomes the advancements achieved by Chile regarding civil and political rights, including the establishment of the National Mechanism for the Prevention of Torture, the ratification of various agreements and the progress made in the second National Human Rights Plan. This document addresses issues in which significant shortcomings have been identified concerning the ICCPR, based on the work of the Human Rights Observers Commission of Casa Memoria José Domingo Cañas (hereinafter referred to as the Commission). These include (1) the right to peaceful assembly and freedom of expression, (2) vulnerable groups and indigenous peoples, (3) human rights defenders, and (4) the human rights institutional framework. The document is based on primary sources, the review and analysis of human rights reports, databases requested through the transparency law directly to State bodies, interviews, and field observation missions conducted by the Commission.

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<sup>1</sup> More information on our website: [www.observadoresddhh.org](http://www.observadoresddhh.org) - [www.josedomingocanas.org](http://www.josedomingocanas.org)

## **THE RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF EXPRESSION**

### **A) Criminalization threatens the right to peaceful assembly**

1. Chile tends to perceive protests as a threat and an amplifier of crises. It adopts a hostile approach centered on vague and imprecise definitions of public order. This is used to justify excessively broad restrictions on the exercise of the right to peaceful assembly and the approval of anti-rights laws. This approach has led to the criminalization of protests and their repression, resulting in serious violations of civil liberties and human rights.
2. In this context, the Political Constitution of Chile guarantees the right to assembly under Article 19, No. 13. However, it is governed by Supreme Decree 1086, enacted on September 15, 1983, under the authority of the Military Junta. This decree subordinates the enjoyment and exercise of such a right to administrative and/or police decisions.
3. It is worth highlighting the case of Law 2,560, known as the Naín-Retamal Law.<sup>2</sup> This law shields the police and ensures their impunity by introducing the concept of privileged self-defense, which constitutes a failure on the part of the State in fulfilling its obligations to guarantee, protect, and promote human rights. Firstly, this norm represents a setback in efforts to regulate the use of weapons under the principles of necessity and proportionality. Moreover, as it is incorporated into the Criminal Code, a legal statute with general application, it can be used against any citizen in the context of demonstrations, thereby putting the integrity of individuals present at these events at risk. It is highly concerning that this privileged self-defense is also granted to the Armed Forces, institutions not intended to control public order nor qualified for such a role.

### **B) Systematic Violations of Human Rights in Protest Contexts in Chile**

4. The Human Rights Report on the Social Unrest,<sup>3</sup> issued by the Commission, highlights severe and systematic human rights violations by the Chilean State based on 224 observation missions during various demonstrations. The universal human rights system recognizes that systematic human rights violations are characterized by their organized occurrence rather than being random. Furthermore, Chilean legislation, following the principles of the Rome Statute, defines systematic violations as attacks involving a series of successive acts extending over a certain period and affecting or targeting a considerable number of persons.
5. The observation of events during the Social Unrest reveals the presence of such systematicity, as there is a non-accidental repetition of specific patterns of violent conduct by the State's police forces against the civilian population in contexts of social protest. This repetition occurs in situations where rights such as freedom of expression, freedom of assembly, the right to life, and protection against torture, among others, are violated in a non-isolated manner.

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<sup>2</sup> Law 2.560 available in the following link: <https://www.bcn.cl/leychile/navegar?idNorma=1191005>

<sup>3</sup> Available in the following link:

[https://observadoresddhh.org/resources/informes\\_anuales/2020\\_informe\\_anual\\_odh\\_estallido\\_2019.pdf](https://observadoresddhh.org/resources/informes_anuales/2020_informe_anual_odh_estallido_2019.pdf)

6. According to the Ethical Commission Against Torture (CECT),<sup>4</sup> from October 2019 to March 2020, during the Social Unrest, there were over 500 recorded cases of individuals mutilated with eye loss by state agents. Additionally, there were more than 2,000 reports of torture, with an undetermined number involving sexual torture. Furthermore, 1,914 cases of cruel, inhuman, and degrading treatment were documented in 1,597 complaints filed by the National Institute of Human Rights up until June 2020. This is compounded by over 3,500 individuals who were injured with both less lethal and lethal weapons. As of now, there has been limited progress in terms of investigation, justice, reparations, and guarantees of non-repetition for these human rights violations.

### **C) Absence of Comprehensive Reparations for the Victims of the Social Unrest**

7. The Roundtable for Comprehensive Reparations for Victims of Human Rights Violations during the Social Unrest was an initiative promoted by the Undersecretariat of Human Rights. In this context, reports from Diego Portales University and Amnesty International were instrumental, arguing that the measures taken so far do not constitute comprehensive reparations for victims as they fail to address the complexity of the issues from a human rights-based approach.
8. Considering the above, actions taken in terms of reparations have not given sufficient visibility to the victims who suffered the impact of pellets in other parts of the body, focusing mainly on those who suffered ocular injuries. As of November 30, 2019, the Public Prosecutor's Office was investigating 250 cases of ocular injuries as well as 1,938 other cases of individuals reporting injuries from firearms, including police pellet shotguns. During the same period, the National Institute of Human Rights filed lawsuits on behalf of 493 individuals who allegedly suffered injuries from the use of shotguns by Carabineros officials, with 202 of these cases involving shots from close range and 322 from shots in the upper body.<sup>5</sup>
9. The psychosocial effects associated with the repression suffered during the Social Unrest have not been adequately considered. The Health in Resistance Movement (MSR),<sup>6</sup> actively providing psychological and psychosocial care to victims of pellet injuries, has raised awareness regarding the devastating consequences of police oppression on a victim's mental health. To date, the Commission has received reports of six cases of suicide among victims of police abuse due to the insufficient implementation of comprehensive reparation measures, which should also include psychosocial support. Among these cases, four are suicides of victims with ocular trauma who took their own lives, feeling hopeless due to the lack of access to justice and comprehensive reparations.<sup>7</sup>

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<sup>4</sup> Barthou, C. y Comisión Ética contra la Tortura, (2023). *La Justicia en la Balanza: procesos de juicios y condenas por violaciones a derechos humanos acontecidas en Chile entre 1973 y 1990*. Comisión Ética contra la Tortura, Santiago de Chile.

<sup>5</sup> Amnesty International Chile, (2020). Ojos Sobre Chile. Available in the following link:

<https://www.amnesty.org/es/latest/research/2020/10/eyes-on-chile-police-violence-at-protests/>

<sup>6</sup> Visit link: <https://luisemiliorcabarren.cl/wp-content/uploads/2023/11/Informe-de-Movimiento-Salud-en-Resistencia-October-2023.pdf>

<sup>7</sup> <https://www.elmostrador.cl/noticias/pais/2023/07/06/cuarto-suicidio-de-victima-de-trauma-ocular-abre-flanco-en-la-moneda/>

**D) Failure to Comply to International Standards for the Use of Force in Demonstrations by Law Enforcement and Public Security Forces**

10. In the monitoring conducted by the Commission during protests, it was observed that the four fundamental principles—proportionality, legality, necessity, and responsibility—that should govern all state actions affecting human rights, and consequently, the actions of law enforcement and public security forces personnel, are not fully complied with or applied.
11. The issued reports of the Commission have identified deliberate practices of concealing police identification. The Commission possesses an extensive photographic record to substantiate this observation.<sup>8</sup> Police officers have been registered intentionally covering their names or identification codes with clothing or other items. A similar practice has been observed with the identification plates of police vehicles. Not only have the identification plates been covered, but inconsistencies have also been detected between the front and rear plates of the vehicle, indicating different codes. Despite the illegality of this practice, the photographic record is quite significant, underscoring the widespread nature of this behavior.
12. The Commission has also firsthand identified direct attacks on groups of human rights observers engaged in monitoring, health brigades, and the press within the context of protests. Additionally, there are records of deliberate attacks on symbols and public infrastructure. The Commission possesses extensive audiovisual records of these practices.<sup>9</sup>
13. Based on the above, efficient mechanisms are needed to ensure the accountability of police forces during the policing of demonstrations, with the guarantee that the four guiding principles for the use of police force in contexts of protest are fully complied with. According to the Commission's records, it has been observed that these institutions operate with an approach oriented towards the control of public order rather than security, relegating the right to social protest to a non-priority position.
14. The Transparency Law (No. 20.285) grants all individuals the right to access data and reports held by state entities. In this context, the Commission has requested information from the police regarding events involving police officers in the control of public order. The analysis of the databases provided by the police from January 1, 2019, to December 31, 2022, reveals that 107,407 preventive identity checks were conducted on children and adolescents throughout the national territory during this period. This constitutes a crime according to the provisions of Article 12 of Law No. 20.931 and poses a risk to the physical and psychological integrity of children and adolescents, as well as a violation of their right to protest, in accordance with Article 15 of the Convention on the Rights of the Child.
15. Regarding children and adolescents, the Commission has observed police forces using tear gas and other types of deterrent weapons against them, even inside schools, leaving them with no way out, which puts their integrity at risk and violates their human rights.

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<sup>8</sup> See, for example, page 323 of the following report:

[https://observadoresddhh.org/resources/informes\\_anuales/2020\\_informe\\_anual\\_odh\\_estallido\\_2019.pdf](https://observadoresddhh.org/resources/informes_anuales/2020_informe_anual_odh_estallido_2019.pdf)

<sup>9</sup> See sequence of images in the report conducted by the Commission (page 477) at the following

link: [https://observadoresddhh.org/resources/informes\\_anuales/2020\\_informe\\_anual\\_odh\\_estallido\\_2019.pdf](https://observadoresddhh.org/resources/informes_anuales/2020_informe_anual_odh_estallido_2019.pdf)

**E) Torture and ill-treatment by police officers**

16. According to the NHRI's Annual Reports on the Police Function (2015-2019),<sup>10</sup> evidence indicates the absence of a procedure for verifying injuries to detainees in approximately 30% of the recorded cases. This highlights that the verification of injuries is a discretionary practice and is not consistently applied to all cases. In the 2019 report conducted by the NHRI, it is noted that out of the 39 children and adolescents taken for the examination of injuries, 33 (84.6%) did not receive a copy of the examination report from the relevant authorities or professionals.
17. Through the Transparency Law, the Ministry of Health and the Forensic Medical Service (Servicio Médico Legal) have been requested to provide protocols for verifying injuries in children and adolescents during demonstrations or social protests, as well as the protocol for verifying injuries in adults. The Forensic Medical Service provided a document titled: "Normativa Técnico Pericial del Servicio Médico Legal para la Evaluación Clínica de Lesiones" (Res. Ex. 2349, 23/09/2020). However, this norm fails to distinguish between children and adolescents and adults. In accordance with the Convention on the Rights of the Child and the Istanbul Protocol, it is imperative to incorporate differential considerations for children and adolescents. The Istanbul Protocol specifies that the distinct impact of torture on this demographic must be recognized, considering how they articulate their experiences based on their age, level of development, and other factors such as family dynamics. Additionally, the protocol underscores the importance of having a specialized professional assess children and adolescents in accordance with their stage of development.

**Recommendations**

18. Given that peaceful demonstrations and freedom of expression are safeguarded by various international and regional human rights instruments, including articles 19, 21, 22, and 25 of the ICCPR, and recognizing that states have an obligation to respect, protect, and fulfill the right of individuals to freedom of peaceful assembly, the Commission of Human Rights Observers puts forth the following recommendations to the Human Rights Committee:
19. Urgently repeal Supreme Decree 1.086 by 2024 and legislate, through a comprehensive law, the right to peaceful demonstration in alignment with international and regional human rights standards. Ensure the right to protest is not subject to administrative or police discretion.
20. Repeal or amend the Nain-Retamal Law (Law No. 2.560) to align with human rights standards, ensuring the effective inclusion of an efficient mechanism for transparency and accountability for law enforcement bodies.
21. Develop a mechanism to oversee all cases involving human rights violations during the Social Unrest, encompassing expedited procedures, outcomes, and measures to hasten the investigation of these severe violations. Addressing these systematic violations should receive

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<sup>10</sup> Available here: <https://bibliotecadigital.indh.cl/collections/71b27818-ca21-4977-8460-aa2e0a8c0e36>

careful attention and not be governed solely by the timelines and priorities applicable to ordinary crimes.

22. Actively remove and penalize state officials implicated in past and ongoing human rights violations, providing transparent public accountability.
23. Ensure comprehensive reparations for victims of the Social Unrest, considering the psychosocial and traumatic factors they experienced during that period.
24. In light of police identification cover-ups, attacks on human rights observers, health brigades, and the civilian population on multiple occasions, urge the State to establish an effective mechanism ensuring law enforcement and security forces adhere to fundamental principles of legality, proportionality, necessity, and accountability during protests.
25. Acknowledge the right of children and adolescents to demonstrate, recognizing them as subjects of rights and special protection who exercise their right to protest. Address the causes that prompt their protests, such as the right to quality education, rather than solely focusing on the effects of their chosen means of demonstration.
26. Investigate, punish, and remedy the abuses suffered by children and adolescents in the context of social demonstrations.
27. Establish educational centers as safe spaces for the protection of children and adolescents, enforcing an absolute prohibition on the entry of police forces.
28. Establish a protocol for medical examinations to verify injuries, ensuring the comprehensive verification of injuries for all detainees. This protocol should guarantee that individuals undergoing the procedure are informed in accordance with Law 20.5844,<sup>11</sup> safeguarding the privacy of the process and conducted by qualified health personnel. Additionally, it must ensure that the detainee/patient is adequately informed and expressly agrees to the report.
29. Implement a specialized protocol for verifying injuries in children and adolescents, aligning with the provisions of the Istanbul Protocol. This instrument emphasizes the need for differential considerations for this demographic, recognizing the specific impact of torture and how children or adolescents articulate their experiences based on age, developmental stage, and other factors such as family dynamics. The protocol underscores the importance of evaluating children and adolescents by specialized professionals.
30. Set up a mechanism within the national health system to record findings of injuries, designed within a human rights framework, specifically adhering to the guidelines outlined in the Istanbul Protocol for the investigation and documentation of situations involving torture and other cruel, inhuman, and degrading treatment or punishment.

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<sup>11</sup>La Ley 20.584 Regula los Derechos y Deberes que tienen las Personas en relación con Acciones Vinculadas a su Atención en Salud, del 13 de abril de 2012. Artículo 10. Disponible en <https://www.bcn.cl/leychile/navegar?idNorma=1039348>

## **VULNERABLE GROUPS AND INDIGENOUS PEOPLES**

31. In relation to the conflict between the State and the Mapuche people, the Commission has received and verified reports from individuals within Mapuche communities in Biobío and Araucanía concerning unjustified military exercises in their lands and territories. These incidents involve the presence of numerous military vehicles, helicopters flying at low altitudes over communities, the blockage of exit routes restricting mobility, and even helicopters descending in school areas. One reported case occurred in the María Colipi Viuda de Maril Community on July 25, 2023. The ongoing concerns arise from the state of constitutional exception in place for more than a year and the continuous and growing militarization of Mapuche ancestral lands and territories (Wallmapu) in the Araucanía Region, along with the Arauco and Biobío Provinces.
32. The reports issued by the Commission reveal the existence of a political and military strategy on the part of the State of Chile that aims to suppress, through the use of violence, the ongoing territorial conflict and the demand for autonomy maintained by Mapuche communities to this day. This contradicts the principle of self-determination and the rights recognized in Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization, including the right to prior consultation. Furthermore, the right to free, prior, and informed consent in matters concerning indigenous peoples has not been guaranteed, nor have other rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples, a document also endorsed by Chile.
33. The information gathered through the Transparency Law, referencing databases provided by police forces from January 1, 2019, to December 31, 2022, along with observations made by the Commission, highlights the pervasive practice of indiscriminate identity checks and frisk searches in the Biobío and Araucanía regions, where a significant percentage of the country's Mapuche population is concentrated. For instance, during this period, 39,127 controls were conducted in the Commune of Cañete, which, according to the 2017 census, has a population of 34,537 inhabitants. In Collipulli, 23,983 controls were carried out, although the commune's population is 24,598, and in Ercilla, 15,093 controls were conducted despite its population being 7,733 inhabitants. These practices represent a violation of the right to personal freedom and privacy, concurrently exposing the existence of institutional racism<sup>12</sup> within the police force. Such actions configure as practices and procedures systematically and persistently aimed at specific groups, resulting in classifications and distinctions that undermine their equality<sup>13</sup> and impede the exercise of their rights.

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<sup>12</sup> Adetunji, J. (2021). Racismo institucional: ¿De qué estamos hablando? The conversation, Academic Rigour, Journalistic flair. Accessed online in September 2023: <https://theconversation.com/racismo-institucional-de-que-estamos-hablando-157152>

<sup>13</sup>The Declaration of the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2012) expresses concern that the institutional and legal structures of States may become factors of racial discrimination (22). Accessed online September 2023: [https://www.un.org/es/letsfightracism/pdfs/united\\_against\\_racism\\_for\\_web.pdf](https://www.un.org/es/letsfightracism/pdfs/united_against_racism_for_web.pdf)



34. In the databases of the Prosecutor's Office, compiled from the Prosecutor Support Information System (SAF) and obtained through the Transparency Law between January 1, 2019, and February 15, 2023, there are 12 complaints of unlawful coercion committed by public employees against minors in the municipalities of Collipulli, Ercilla, Curanilahue, Cañete, Curacautín, Freire, Lumaco, and Tirúa (Biobío and Araucanía Regions). Furthermore, in the regions of Biobío and Araucanía, 69.83% of the complaints filed in the Public Prosecutor's Office regarding institutional violence between 2019 and 2022 were related to unlawful coercion.
35. In the context of detentions of individuals participating in protests during the Social Unrest, particularly those recorded in Mapuche communities in the Wallmapu and protests in recent years, the Commission has identified instances of both mass and individual detentions. Some of these detentions could potentially be understood as forced disappearances of persons, conducted temporarily, aligning with the definition outlined in the Inter-American Convention on Forced Disappearance of Persons.<sup>14</sup>

### **Recommendations:**

36. To put an end to militarization in the Wallmapu areas and to eliminate discriminatory practices in police procedures and judicial proceedings that impede the exercise of individual and collective rights of the Mapuche People.
37. Police forces, including Carabineros and PDI, should revise their police protocols in accordance with international human rights standards relevant to indigenous issues. This includes adherence to principles related to indigenous consultation and special measures concerning the use of force as established in ILO Convention 169.
38. The provisions of the Universal Declaration on the Rights of Indigenous Peoples, specifically Article 30 addressing the free, prior, and informed consent of communities regarding matters that affect them, including the presence of the military in indigenous areas, should be regarded as of significant importance in decision-making and actions within the military forces.

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<sup>14</sup>According to the Inter-American Convention on the Forced Disappearance of Persons of the Organization of American States (1994), forced disappearance is defined as: “the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.” (Article II). Accessed online September 2023: <https://www.oas.org/juridico/spanish/tratados/a-60.html>

## **HUMAN RIGHTS INSTITUTIONAL FRAMEWORK: MEMORY, TRUTH AND JUSTICE**

### **A) Human rights institutional framework**

39. In the previous review, the Human Rights Committee recommended that the State of Chile intensify its efforts to ensure that the NHRI has the necessary resources to carry out its mandate effectively in all regions of the country. Despite the State of Chile's efforts to strengthen human rights institutions, particularly the NHRI, there is a noticeable lack of effectiveness and diligence in its actions. An illustrative example is the Commission's findings on September 25, 2023, when it received a report on the case of two Mapuche prisoners (brothers) in Concepción's Prison. Their fundamental rights were violated when gendarmerie personnel beat them and subsequently isolated them without allowing communication with a lawyer or family members and without being attended by a doctor to verify injuries for about 24 hours.
40. The Commission's report and its subsequent follow-up on this case reveal severe shortcomings in the institutional response to torture in Chile. The National Mechanism for the Prevention of Torture, assumed to be a preventive instance, fails to coordinate with personnel in charge of the National Human Rights Institution. A prompt response to torture is ineffective when it occurs; in this case, approximately 24 hours elapsed between the violation and the INDH's visit to the prison. Institutions do not establish communication with the family to provide support, exacerbating the impact of torture on the family environment. Considering the anguish caused by the lack of communication and information from their relatives for several hours, concrete actions are not taken to halt the torture. Immediate medical attention is not given to the affected persons, forcing them to endure physical pain for several hours. This lack of intervention leaves the families without information and communication regarding the incident.
41. The main bodies that constitute Chile's human rights institutions lack autonomy. In the case of the National Human Rights Institute (INDH), the Council is responsible for making crucial institutional decisions. This Council comprises eleven members appointed for six years. The Council elects a director from among its members through an absolute majority vote. The director has exclusive dedication and is in charge of the executive direction, management, administration, and legal representation of the institution. The Council is composed of two councillors appointed by the Executive, four councillors appointed by the legislative power, one councillor appointed by the deans of law faculties from universities that are members of the Council of Rectors and autonomous universities, and four councillors from organizations linked to the promotion and defense of human rights. In sum, this composition results in six political appointments and five from civil society, undermining institutional autonomy in favor of the unrestricted defense of human rights.

42. Regarding the National Mechanism for the Prevention of Torture, Law No. 21.154 designates the INDH as the main organ responsible for the Mechanism. Consequently, critical decisions are subject to the determination of the INDH Council. In the case of the Ombudsperson for Children, the position is solely elected by the Senate Human Rights and Citizenship Commission. After a call for nominations, the Commission designates a name for ratification by the full Senate, placing the election entirely at the discretion of the Senate and the respective Commission.
43. Memory sites play a fundamental role in the defense, promotion and education of human rights in Chile. However, they do not have funding regulated by law for their maintenance and operation. The sources of funding are subject to contests and political will and are fragmented by sectoral actions and responsibilities. This directly affects the continuity of the country's remembrance processes, the development of educational programs on memory and human rights that allow understanding of the human rights violations of the past and present, as well as the importance of the defense of human rights and the mechanisms to demand their guarantee, which would contribute to the construction of a democratic society. The seriousness of the lack of comprehensive memory policies translates into a circle of impunity, non-comprehensive reparation and repetition of human rights violations.

**B) Human Rights Violations in the Recent Past (1973-1990)**

44. In Chile, 40,018 victims of severe and systematic human rights violations that occurred between 1973 and 1990 have been identified. Among them, 3,065 were executed or detained and disappeared. The National Search Plan<sup>15</sup> aims to advance the establishment of judicial and extrajudicial truth regarding the perpetration of crimes associated with forced disappearances during the dictatorship. However, the secrecy of the Commission on Political Prisoners and Torture, established in Law No. 19,992, persists. This law mandates the confidentiality of information obtained for fifty years, keeping it hidden from the public, the justice system, and the courts, thereby favoring impunity. The State of Chile must take measures to ensure access to necessary documentation and information for authorities investigating forced disappearances. This involves not only repealing these confidentiality provisions but also establishing legal mechanisms preventing the Armed and Police Forces from destroying or eliminating relevant files. Instances of such actions should be subject to punishment. These measures are crucial to fulfilling the objectives of the National Search Plan.
45. Chile has not yet criminalized the forced disappearance of persons in the Penal Code. This absence hinders progress in Truth and Justice, particularly concerning individuals classified as disappeared detainees during the civil-military dictatorship. Additionally, cases of forced disappearance of persons during the transition to democracy until today remain unresolved due to this legal gap.

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<sup>15</sup> Available in the following link: <https://www.gob.cl/noticias/publicacion-diario-oficial-plan-nacional-busqueda-verdad-justicia-contraloria-toma-razon/>

46. In Chile, as of 2023, a total of 658 cases have been fully concluded in the Supreme Court, with 534 of them classified as criminal cases.<sup>16</sup> Among these, only 228 cases relate to victims of detained-disappeared persons, contrasting sharply with the figure of 3,216 individuals executed or made to disappear during the dictatorship. One significant obstacle to access to justice is the Supreme Court's incorporation, since 2007, of the concept of gradual prescription outlined in Article 103 of the Criminal Code. This measure has favored convicted agents by reducing their sentences. In certain instances, sentences of less than five years have been imposed, allowing them to benefit from probation despite being convicted of particularly serious crimes. This severely impacts the state's obligation to prevent impunity, constituting a serious breach of the international human rights framework. Notably, these crimes are deemed imprescriptible according to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
47. The previous review by the Human Rights Committee recommended that Chile abolish the Amnesty Law and ensure that it does not continue to apply to human rights violations committed in the past. However, Chile has not repealed Amnesty Law Decree No. 2,191 (125.52). Although it is argued that the Supreme Court has rendered it inapplicable and has not applied this Decree-Law since 1998, it remains in force. This persistence would allow its application in case of a change in judges' criteria, as noted by the UN Committee on Enforced Disappearance (2019).

## **Recommendations**

48. Strive for genuine autonomy within the key entities constituting the human rights institutional framework in Chile, fostering independence and ensuring cohesive and coordinated actions.
49. Develop and implement a Comprehensive Memory Public Policy aimed at preventing the recurrence of human rights violations. Recognizing memory as a fundamental right, this policy should regulate State actions to protect and guarantee this right. A memory law should ensure the participation of victims, survivors, family members, civil society organizations, and the broader society in state-promoted processes related to the memory of human rights abuses, whether through action, omission, or acquiescence, as well as the collective memory of struggles for social change.
50. Ensure, safeguard, and allocate sufficient and enduring budgets for memorial sites to empower civil society in promoting, defending, and educating about human rights.

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<sup>16</sup> Observatorio de Justicia Transicional (2023), 'Principales hitos jurisprudenciales, judiciales y legislativos en causas de DDHH en Chile 1993-2023', Santiago de Chile: Universidad Diego Portales.

51. Establish and implement a comprehensive human rights protection system that operates in an interconnected manner, building immediate responsiveness to torture complaints.
52. Develop an emergency action protocol outlining the responsibilities and immediate actions of human rights institutions in addressing cases of torture.
53. Establish a monitoring mechanism for human rights organizations, ensuring transparency and accountability, allowing civil society to track reported cases.
54. Repeal the Amnesty Decree Law of 1978.
55. Declassify the archives of the security and intelligence apparatuses of the dictatorship, along with the testimonies of the Commission on Political Prisoners and Torture. Additionally, establish legal mechanisms to prevent the Armed and Police Forces from destroying or eliminating dictatorship archives and impose penalties for cases where destruction occurs.
56. Ensure the prosecution of all human rights violations committed during the civil-military dictatorship. This is essential for fully realising the right to memory, truth, justice, and reparations for both "absent" victims and survivors, as well as for society as a whole.
57. Establish a unified system for monitoring the enforcement of sentences, accompanied by a transparent mechanism for granting prison benefits and alternative sentencing regimes.
58. Repeal benefits, alternative sentences, and the use of special confinement facilities for perpetrators of war crimes and crimes against humanity.
59. Allocate sufficient resources and employ specialized personnel with training and experience for the National Search Plan.
60. Put an end to the abuse of preventive detention for individuals detained in the context of protests.

## **HUMAN RIGHTS DEFENDERS**

61. In Chile, human rights defenders lack adequate protection mechanisms and comprehensive policies to carry out their work safely. Although the Undersecretariat for Human Rights initiated the creation of a "Protocol for the Protection of Human Rights Defenders"<sup>17</sup> in 2023, it remains insufficient due to the overall lack of protection, as well as the absence of public recognition and promotion of the defenders' role by the State.
62. This situation has rendered human rights defenders highly vulnerable, leading to persistent incidents of police violence during demonstrations. The Commission of Human Rights Observers at Casa Memoria José Domingo Cañas has documented assaults on journalists, health brigades, rescuers, and observers by State agents and civilians with their acquiescence. Tragically, two of these incidents resulted in fatalities. Additionally, our Commission has directly faced attacks by the police force while performing its duties. The right to truth, justice, and reparation for these offenses has not been guaranteed despite filing complaints and possessing traceable and objective evidence of the violations.

## **Recommendations**

63. Permanently and publicly recognize and promote the crucial role of human rights defenders, particularly human rights observers. Enact legislation that safeguards human rights defenders in the discharge of their duties.
64. Establish a dedicated branch of the prosecutor's office for crimes and human rights violations against human rights defenders, equipped with specialized personnel, an adequate budget, and exclusive commitment.
65. Introduce a law allowing the suspension of State agents involved in crimes or human rights violations against human rights defenders during ongoing investigations. Impose proportional and effective sanctions if they are found guilty of such crimes or violations.

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<sup>17</sup> More information in the following link: <https://ddhh.minjusticia.gob.cl/ministerio-de-justicia-y-ddhh-impulsa-proceso-participativo-para-crear-protocolo-de-defensores-de-derechos-humanos/>