'I DIDN'T KNOW THERE WERE TWO KINDS OF JUSTICE'

MILITARY JURISDICTION AND POLICE BRUTALITY IN CHILE

AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

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

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

Amnesty International Publications
First published in 2016 by Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org
© Amnesty International Publications 2016
Index: AMR 22/3209/2016
Original language: Spanish

© Amnesty International 2015
Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence. https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode For more information please visit the permissions page on our website: www.amnesty.org
Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

*← **Cover photo:** Police fire water cannon at Chilean students during clashes with protesters demanding that President Sebastián Piñera's government improve the quality of education, Santiago, 13 June 2013.*
© MARTIN BERNETTI/AFP/Getty Images.

The title of the report, which refers to the existence of the military and ordinary justice systems, is taken from the testimony of Gerson Gutiérrez. His brother, Manuel Gutiérrez, was shot dead by a former police officer in 2011. See page 26.

amnesty.org

AMNESTY INTERNATIONAL

CONTENTS

1. EXECUTIVE SUMMARY 1

Methodology 4

2. POLICE BRUTALITY 5

A. Police brutality in the context of public demonstrations 9

B. Police violence against the Mapuche 13

C. Regulations governing the use of police force during public demonstrations 15

3. MILITARY JURISDICTION: ACCESS TO JUSTICE? 20

A. The competent court 25

B. Independent and impartial tribunals 29

C. Obstacles to justice and comprehensive reparation 38

D. Transferring cases to the ordinary civilian courts 42

E. Challenges in the ordinary courts 48

4. CONCLUSIONS AND RECOMMENDATIONS 49

1. EXECUTIVE SUMMARY

'[T]aking into account the nature of the crime and the legal rights infringed, the military justice system is not the competent jurisdiction to investigate and, where appropriate, prosecute and punish the perpetrators of human rights violations. The prosecution of those responsible must always fall to the ordinary civilian justice system'

Inter-American Court of Human Rights, *Radilla Pacheco vs Mexico*, Judgment of 23 November 2009, para 273.

Under the Chilean Code of Military Justice, common crimes committed by members of the military – including the *Carabineros de Chile* (National Police) – in the exercise of their duties or in connection with them, must be investigated and tried by military courts. This means that crimes, including excessive use of force by police and other possible human rights violations, committed by members of the security forces while carrying out their duties are dealt with by the military courts rather than the ordinary courts.

International human rights law states that military jurisdiction should be limited to offences directly related to military discipline committed by military personel and should not extend to common crimes, human rights violations or crimes under international law, among others, because military courts lack the required independence and impartiality. Officials without legal training and members of the same institution to which the alleged perpetrator belongs serve in Chilean military courts. In addition, most trial proceedings are held in secret. The composition and secrecy of the military courts are at odds with the impartiality and independence that should characterize all courts and violate the right to justice and due process. Reform of military jurisdiction in Chile is crucial in order to ensure that victims of human rights violations or crimes under international law have access to an effective remedy and reparation under the ordinary justice system.

More than 10 years ago, in November 2005, the Inter-American Court of Human Rights criticized the Chilean government for prosecuting a former officer in a military court. It called on Chile to reform its domestic justice systems to ensure that military justice is only applicable to crimes committed by military officers on active service and that under no circumstances should the jurisdiction of military criminal courts extend to investigating and punishing human rights violations or crimes under international law. More recently, several UN bodies – the Human Rights Committee, the Committee against Torture and the Special Rapporteur on the right to freedom of peaceful assembly and of association – made similar recommendations to Chile.

Excessive use of force by police breaches human rights principles and constitutes a violation of the rights to humane treatment or to life. In addition, if the state does not respond by investigating and punishing these violations adequately through competent, independent and impartial courts but rather leaves the investigation and punishment to the military courts, this also leads to violations of the right to justice and comprehensive reparation.

Limiting military jurisdiction to crimes of a military nature, and therefore excluding cases of police violence, will not by itself stop excessive use of force by law enforcement officials. However, the state would be giving a clear signal that violations of human rights committed by the security forces will not be covered up or tolerated. It would send a message that these violations will be responded to through a system of justice that complies with the rule of law that respects international human rights standards, including due process and the independence and impartiality of the courts.

In recent years, Amnesty International has documented cases of excessive use of force by police in the context of public demonstrations in support of various social demands throughout the country. In the emblematic cases documented in this report where police actions have resulted in deaths or serious injury, not all of those responsible have been identified. Victims and their relatives have been denied access to justice, to an effective remedy or due process.

In most cases, those in the military responsible for abuses are not held to account. Amnesty International has analysed the records of cases passed to the Santiago Second Military Court. This Court covers the central part of the country where the highest number of public demonstrations in the last decade have taken place. Amnesty International looked at the total number of cases submitted to the Court in 2005, 2008, 2011 and 2014 for "unnecessary violence" (the charge under which most cases of excessive use of force by police is pursued) and found that only 0.3% were resolved (that is, only 14 out of 4,551 cases). The overwhelming majority (96.5%) were closed (permanently or temporarily dismissed) without those responsible being brought to justice and without providing redress to the victims. A similar trend is found in other military courts in the country.

In 2010, Chile agreed a number of amendments to the military justice system. As a result of this reform, allegations of crimes committed by civilians against *carabineros* were passed to the jurisdiction of the ordinary courts. Also, minors under the age of 18, whether they were the alleged victims or perpetrators of crimes involving the *carabineros*, would also no longer be dealt with by the military justice system. Although this was a step in the right direction, the reform still left the investigation and prosecution of alleged crimes committed by the police and military against civilians under the jurisdiction of the military justice system.

President Michelle Bachelet has pledged in her government's programme for the current term of office (March 2014 to March 2018) to include reform of the military justice system in order to bring it into line with international standards. However, two years after taking office, her government has yet to fulfil this commitment; to date Congress has not discussed any of the initiatives presented on the issue.

In this report, Amnesty International examines several cases in order to highlight the scale of human rights violations and the obstacles faced by those seeking access to an effective remedy before an independent and impartial tribunal. It also shows how this context facilitates impunity for police brutality.

The report concludes with recommendations to the Chilean authorities, calling on them to, among others things:

- Take measures to ensure as a matter of urgency that all common crimes, human rights violations and crimes under international law allegedly committed by members of the security forces – including cases of excessive use of force by police – are independently and impartially investigated and brought to trial in full accordance with international fair trial standards in ordinary courts. These measures should include the enactment of legislation to reform military jurisdiction in Chile to bring it into line it with international human rights standards.

- Ensure that investigations and trials of those suspected of responsibility in cases involving *carabineros* transferred to the ordinary justice system proceed promptly, that sufficient resources are allocated to ordinary criminal courts to deal with these cases and that in future all such cases will be investigated and, where appropriate, punished effectively and impartially.

- Guarantee genuine access to comprehensive reparation to victims of human rights violations committed by law enforcement officials, including compensation, rehabilitation, satisfaction and guarantees of non-repetition.

METHODOLOGY

The research on which this report is based was carried out between June 2014 and February 2016 and covers cases of excessive use of force by police in the context of social protests, including protests by Mapuche, over the past 15 years. In addition, the report details cases of torture or other cruel, inhuman or degrading treatment or punishment in police custody.

In June and December 2014, an Amnesty International delegation visited the country. Approximately 20 interviews were carried out with victims or relatives of victims in Santiago, Temuco, Villarrica and Chile Chico. Court records of cases heard in ordinary and military courts, academic reports and reports by international human rights bodies were also analysed. Amnesty International held meetings or communicated with lawyers dealing with several of the cases documented, with academics, with the National Institute for Human Rights, the Legal Assistance Corporation, non-governmental organizations, officials from the Public Criminal Defender's Office and the Public Prosecutor's Office, as well as representatives from the Ministry of Defence, military court officials and of the Constitutional Court of Chile. In total, approximately 60 people were interviewed. In addition, legal records of cases before the military and ordinary courts were analysed, as well as academic reports and reports by international human rights bodies.

In order to gather data on the outcome of the prosecutions in military courts, researchers reviewed data on cases reaching the Santiago Second Military Court, one of six military courts in the country, in 2005, 2008, 2011 and 2014. This court was selected because most complaints of police brutality in the country are lodged with this court. It also covers the central area of the country, which has seen the highest number of public demonstrations in recent years. Data sent by Coyhaique Fourth Military Court and the Punta Arenas Fifth Military Court were also analysed as were reports by national organizations covering other areas of the country.

The individual cases included in this report do not reflect all cases of police brutality that have come before the military and ordinary courts in Chile, rather they are emblematic cases that Amnesty International has documented. Three of the cases documented by Amnesty International involve women and girls who were sexually assaulted by police officers. For various personal reasons the women and girls do not wish their cases to receive further publicity. Amnesty International respects their right to privacy and has therefore not included their stories in this report. As Amnesty International and other local organizations have highlighted previously, gender-based violence by police is a serious concern and should be properly investigated and punished by the authorities.

Amnesty International would like to pay tribute to the tireless effort of victims of police violence, their relatives and representatives and human rights defenders in pursuing the rights to truth, justice and reparation, and to thank them for sharing their testimony and experiences with the organization. The National Institute for Human Rights and the Human Rights Office of the Legal Assistance Corporation also provided information about cases and about the military justice system which was extremely useful. Amnesty International would also like to thank various Chilean officials who supplied information about the scope of military jurisdiction and about military institutions – such as the Court Martial and military courts – including the *Carabineros de Chile* (National Police), the Public Criminal Defender's Office, the Public Prosecutor's Office, the Constitutional Court and several members of the administration.

2. POLICE BRUTALITY

'After I finished recording the crackdown against the protesters, I walked to another sector, looking for other protests. I saw one [*carabinero*] who was with a group of mounted police and who had seen that I was taking pictures. He started to come towards me and I saw he was brandishing a weapon. I saw that he was heading towards me. I told him to calm down. But he hit me in the eye. I never thought that he would do something like that.'

Photographer Víctor Salas describing how he was assaulted by a carabinero while he was cover a presidential speech in Valparaiso in May 2008. Interviewed by Amnesty International in December 2014.

In recent years, national and international human rights organizations have documented an increase in the unnecessary and disproportionate use of force by the *Carabineros de Chile* particularly during public demonstrations relating to the right to education, increased support for the regions and the rights of the Mapuche, among others. The behaviour of the police has also been called into question in cases of possible torture or other cruel, inhuman and degrading treatment in police stations and in one case of alleged enforced disappearance. [1]

Under to the Chilean Constitution, security and law enforcement are the responsibility of the *Carabineros de Chile* and the Investigative Police (see box), with *carabineros* having principal responsibility for maintaining public order during protests.

[1] See the case of Iván Vázquez, pp. 36. 37; Marcos Antilef, pp. 45, 46; and José Huenante, p. 47.

CARABINEROS DE CHILE – A MILITARIZED FORCE

The *Carabineros de Chile* and the Investigative Police[2] are the two institutions that constitute the public force responsible for law enforcement, public order and internal public security. Their duties and responsibilities are set out in the organic laws governing these bodies.[3]

According to Chilean legislation, the *Carabineros de Chile* is an institution governed by military discipline.[4] It is an armed police force that has an implementing rather than a policy-making role and is professional, hierarchical and disciplined.[5] It is the principal body responsible for maintaining public order, including in the context of public demonstrations.[6] Among the agencies created for this purpose are the State Special Forces (Prefectura de Fuerzas Especiales),[7] which act as riot police.

The *carabineros* are bound by the Constitution to act in accordance with the Constitution and laws that are consistent with it.[8] *Carabineros* must also respect and protect the human rights set out in the Constitution and in international treaties ratified by Chile that are in force.[9] *Carabineros* are subject to the Code of Military Justice and internal regulations. The institution is part of the Ministry of the Interior and Public Security.[10]

---

[2] The Investigative Police of Chile is a professional, technical and scientific police body that forms part of the security forces and comes under the Ministry of the Interior and Public Security. According to its organic law (Decree-Law 2460 of 1979), the fundamental mission of the police is to investigate crimes as requested by the Public Prosecutor's Office, to contribute to the maintenance of the public peace, to prevent the perpetration of crimes and offences threatening the stability of key organs of the state, among other functions. Given its civil rather than military nature, the Investigative Police is supervised by the ordinary courts. For more information, see http://www.pdichile.cl/index.html (last accessed 12 January 2015).

[3] Article 101 of the Chilean Constitution.

[4] The *Carabineros de Chile* Policy Manual (Manual de Doctrina de Carabineros de Chile) states that its "military character" is reflected in its internal organization and hierarchical structure, consisting of military ranks and grades, combined with its policies that are based on military principles, values and iron discipline ("su carácter militar está dado por su organización interna y estructura jerarquizada, conformada por escalafones y grados militares que, en conjunto con la doctrina enmarcada en principios, valores y férrea disciplina", 2010, p. 56, available at http://www.esfocar.cl/resources/entradas/archivos/12-06-2013_09-30-02manual%20de%20doctrina%20de%20carabineros%20de%20chile.pdf (last accessed 10 November 2015).

[5] Article 2 of the Organic Law on the Constitution of the *Carabineros de Chile.*

[6] Articles 1 and 2 of the Organic Law on the Constitution of the *Carabineros de Chile.*

[7] This prefecture dates from 1936, Historical Museum of the *Carabineros de Chile*, Evolution of Policing Functions, 2015, p. 12, available at http://www.carabineros.cl/Historia/pdf/Historia_de_Carabineros.pdf (last accessed 7 November 2015).

[8] Article 6 of the Chilean Constitution.

[9] Article 5, para. 2, of the Chilean Constitution.

[10] Since August 2005, following reform of the Constitution, the *Carabineros de Chile* have been part of the Ministry of the Interior and Public Security (Law 20.050, Article 1 No. 45). Prior to this, the *Carabineros* were part of the Ministry of Defence, along with the armed forces; that is, the Army, Navy and Air Force.

Chile has an obligation to respect, protect and fulfil human rights, including the right to peaceful assembly, to freedom of expression, to physical and mental integrity and to life.[11] All agents of the state, including the law enforcement officials, have this obligation. As the forces who exercise public power in the context of demonstrations, *carabineros* have a particular duty to respect and guarantee the legitimate exercise of these rights.[12]

A number of international human rights bodies have expressed concern about the excessive use of force by law enforcement officials in Chile. Following his visit to Chile in September 2015, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern at the numerous examples he received of excessive use of force by police in various contexts and how difficulties in isolating violent protesters had led to police crackdowns on peaceful protesters.[13] Similar concerns were expressed in the recommendations made to Chile by the UN Human Rights Council as part of the Universal Periodic Review in 2014.

In August 2014, the UN Human Rights Committee, the body responsible for monitoring compliance with the International Covenant on Civil and Political Rights (ICCPR), raised concerns about allegations of excessive use of force by state officials in the context of public demonstrations, as well as about allegations of torture and other ill-treatment. The Committee called on Chile to make greater efforts to prevent and eliminate torture and other ill-treatment, including by strengthening the human rights training of members of the security forces and reviewing police protocols.[15]

In its 2009 report on Chile, the UN Committee against Torture expressed concern about allegations of serious crimes committed by police officers in carrying out their duties and called for legislative reform regarding the control of the police.[16] In addition, and given that allegations of excessive use of force can constitute torture or other ill-treatment, the Committee reiterated the urgency of revising Chile's domestic legislation to bring it into line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).[17] Similar recommendations were made by the Human Rights Council in the context of the Universal Periodic Review in 2009.[18] Currently, torture is covered in the Criminal Code by the crime of "unlawful coercion"[19] which is not consistent with the definition of torture set out in Article 1 of the Convention against Torture. The Committee against Torture called on Chile to take the necessary steps to ensure that all acts of torture referred in Articles 1 and 4 of the Convention against Torture, such as for example attempting to commit torture, are considered offences in domestic criminal legislation and that appropriate penalties, consistent with the gravity of the crime, are applied in each case.[20]

---

[11] These rights are recognized in the International Covenant on Civil and Political Rights (Articles 6, 7, 9, 19, 21), the American Convention on Human Rights (Articles 4, 5, 13, 15), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which have been ratified by Chile and are currently in force. These rights are also enshrined in Chile's Constitution, specifically, Articles 19 paras 1, 7, 12 and 13.

[12] Amnesty International, AI Netherlands, *Guidelines for the implementation of the UN basic principles on the use of force and firearms by law enforcement officials*, August 2015.

[13] UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, press release at the end of his visit to the Republic of Chile (21 to 30 September 2015) http: // www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16542&LangID=S#sthash.KnFXK9t4.dpuf (last accessed 9 November 2015).

[14] Cuba and Cyprus expressed concern about the use of force by *carabineros* in the context of demonstrations and made recommendations that were accepted by Chile. See, Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/26/5, 2 April 2014.

[15] Human Rights Committee, Concluding Observations on Chile, CCPR/C/CHL/CO/6, 13 August 2014, para. 19.

It is extremely worrying that despite the increase in complaints of excessive use of force by police in Chile submitted to both the military and ordinary justice systems over the past 10 years,[21] there has been such a small number of convictions for these crimes. In various meetings with lawyers and organizations supporting victims of police brutality, Amnesty International was told that police violence has come to be seen as the "norm" in society. As a result, it is possible that many of these crimes were not reported to either the ordinary or military justice systems and that the figures quoted of reports of excessive use of force by police underestimate the true scale of the problem.

The state has a duty to investigate human rights violations, including the unnecessary or disproportionate use of force; to punish those responsible; and to ensure appropriate reparation for victims. In other words, victims of these violations have a right to an effective remedy,[22] which Chile is failing to fulfil (see Chapter 2).

---

[16] Committee against Torture, Concluding Observations on Chile, CAT/C/CHL/CO/5, 23 June 2009, para. 13.

[17] Committee against Torture, Concluding Observations on Chile, CAT/C/CHL/CO/5, para. 10.

[18] Human Rights Council, Report of the Working Group on the Universal Periodic Review, Chile, 12th period of sessions, 4 June 2009, recommendation 96.32-96.33 (Brazil, Uzbekistan).

[19] The offence of unlawful coercion is contained in Article 150A of the Chilean Criminal Code.

[20] In November 2015, the Human Rights Commission of the Chamber of Deputies approved the latest attempt to define the crime of torture (Bulletin 9589-17, motion submitted on 11 September 2014). At the time of writing, the bill was being debated in Congress.

[21] While under Chilean law excessive use of force by police should be investigated by the military justice system, some cases have been transferred to the ordinary courts. See Chapter 3 of this report.

[22] The right to effective remedy for victims of human rights violations is enshrined in Article 2 of the ICCPR, Article 25 of the American Convention on Human Rights, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others. All of these have been ratified by Chile. It is recognized also in Article 8 of the Universal Declaration of Human Rights.

A. POLICE BRUTALITY IN THE CONTEXT OF PUBLIC DEMONSTRATIONS.

During the past 10 years, hundreds of demonstrations have taken place in different parts of Chile. According to the information provided by the *Carabineros de Chile*, between 2011 and 2014 there were approximately 16,600 public order operations across the country, with 2011 recording the highest incidence of such actions (almost 7,000).[23] In the Santiago Metropolitan Region alone, more than 12,000 public order operations, including public demonstrations, were recorded between 2005 and November 2015.[24]

Although most of the public demonstrations in different parts of the country were non-violent or at least began peacefully, some ended in violent clashes between demonstrators and police. Hundreds of people, protesters and *carabineros*, were injured and several people lost their lives. At least five protesters were killed[25] and dozens were injured, some seriously. Among the injured were journalists covering the demonstrations.[26] According to data provided by the *Carabineros de Chile*,[27] between 2011 and 2014, 1,824 injuries to protesters (see chart) were recorded. Some 2,653 *carabineros* were injured and in 2012 two were killed.[28] It is possible that the information provided by the *Carabineros de Chile* regarding injuries sustained by protesters is incomplete given that protesters may have decided not to report incidents to the institution whose members were reportedly responsible for inflicting the injuries. Lawyers told Amnesty International that people may have been reluctant to lodge complaints because of fears that judicial proceedings would be pursued against them or because they did not believe that their complaints would result in sanctions against those responsible.

---

[23] Letter sent by the *Carabineros de Chile* to Amnesty International on 7 December 2015, RSIP No. 31313 in response to a request for information sent by Amnesty International dated 13 November 2015 (AMR 22/2015.11).

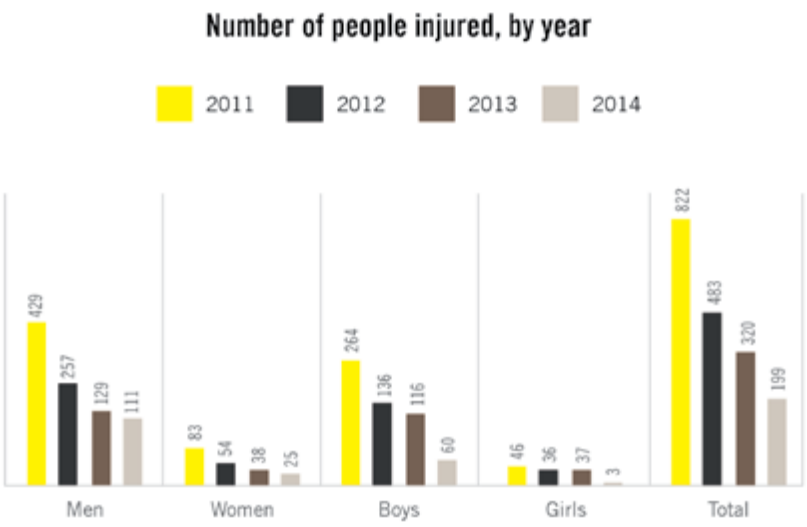
[24] Letter sent to Amnesty International by the Metropolitan Regional Council (Intendencia de la Región Metropolitana) on 20 November 2015, Ref No. 5374. See also Carabineros de Chile, Análisis de Informe Anual 2013 Programa de Derechos Humanos y Función Policial del Instituto Nacional de Derechos Humanos, 2013, table 1, available at: http://deptoddhh.carabineros.cl/a2/RESPUESTA_AL_INSTITUTO_NACIONAL_DE_DERECHOS_HUMANOS.pdf (last accessed 9 November 2015).

[25] Alex Lemún Saavedra in 2002, Matías Catrileo in 2008, Jaime Mendoza Collío in 2009, Manuel Gutiérrez in 2011 and Nelson Quichillao in 2015

[26] According to a survey by the Chilean Union of Photographers and Cameramen, 41 attacks by police on members of the press were recorded between 2008 and 2014.

[27] Letter sent by the *Carabineros de Chile* to Amnesty International on 7 December 2015, RSIP No. 31313.

[28] *Carabineros de Chile*, No. 174, "Segundo Informe Anual del INDH", 31 December 2012, diagram 3, available at http://deptoddhh.carabineros.cl/assets/6respuesta_informe_anual_2012_de_indh_(31_de_diciembre_de_2012).pdf (last accessed 9 November 2015).



Source: Graph compiled by Amnesty International on the basis of data provided by the Carabineros de Chile in December 2015.

While the number of injuries recorded by police has declined in recent years, the number of complaints of excessive use of force by police brought before both the military and ordinary courts has increased.[29] In the military justice system, such violations are dealt with under the offence of "unnecessary violence".[30] Amnesty International[31] analysed the complaints received between 2005 and 2014 by the Santiago Second Military Court,[32] where the largest number of such complaints are lodged.[33] The records show an increase of some 300% in the number of cases of "unnecessary violence" filed over the past 10 years; rising from 491 cases in 2005 to 1,617 cases in 2014.[34] This figure is consistent with the data previously sent to Amnesty International by the Punta Arenas Fifth Military Court and the Coyhaique Fourth Military Court. In the Punta Arenas Fifth Military Court, 11 cases were filed in 2005, rising to 41 in 2014; the increase was mainly from 2012 onwards.[35]

---

[29] See Chapter 3 on the situation encountered in several cases passed to the ordinary courts.

[30] Article 330 of the Chilean Code of Military Justice.

[31] On 30 January 2015, Amnesty International wrote to the Court Martial of the Army, Air force and Carabineros de Chile (TG AMR 22/2015.01) and in November of 2015 to the country's six military courts to request information on cases of "unnecessary violence" in their jurisdictions (TG AMR 22/2015.03; TG AMR 22/2015.04; TG AMR 22/2015.05; TG AMR 22/2015.06; TG AMR 22/2015.07; TG AMR 22/2015.08).

[32] This court covers the regions of Coquimbo, Valparaíso, the Metropolitan Region and O'Higgins.

[33] National Institute for Human Rights, *Estudio Exploratorio: Estado de Chile y pueblo Mapuche: Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía*, February 2014, Chapter 3.

[34] This increase may be the result of various factors, but this analysis lies outside the scope of this report. However, at least two possible scenarios suggest themselves: either there are actually more cases of police violence or people are more willing to report them.

In the Coyhaique Fourth Military Court, the number of cases filed rose from 16 in 2005 to 50 in 2015.[36] This increase was also confirmed by a recent study by the Diego Portales University which found that cases of "unnecessary violence" had increased from 675 complaints in 2004 to 1,797 complaints in 2011.[37]

Complaints about police actions that come before the ordinary courts[38] are investigated as "unlawful physical and mental coercion"[39] which is a distinct offence in the Criminal Code.[40] Here, too, an increase in complaints has been recorded. Between 2006 and 2014, 785 such cases in total came before the ordinary courts. The number of cases filed rose from 13 in 2006 to 186 in 2014.[41] While the increase in cases is seen a positive step towards ensuring access to justice and reparation for victims, such complaints remain the exception. Moreover, despite this increase in complaints of excessive use of police force coming before both the military and ordinary courts, there has not been a corresponding increase in the number of convictions or penalties imposed, as discussed in the following chapter.

Regarding the type of violence that has been reported during demonstrations, particularly between 2008 and 2015, Amnesty International has documented cases of excessive use of force by police including beatings, the use of tear gas, paintball guns and water cannon, as well as gender-based violence targeting women and girls taking part in the demonstrations. The statements gathered for this report underscore the fact that the police did not differentiate between those peacefully exercising their rights to freedom of assembly and expression and those who violently confronted the police (see the case of Enrique Eichin, pages 43, 44).

In 2011, mainly in the context of protests demanding access to education, the National Institute for Human Rights recorded complaints of threats, ill-treatment and beatings in police stations.[42] Women and girls who participated in the demonstrations reported sexual violence, harassment and assault and threats of sexual violence by *carabineros*.

---

[35] Letter sent to Amnesty International by the Punta Arenas Fifth Military Court, V JM (R) No. 1595/14/ National Institute for Human Rights, 18 January 2016.

[36] Letter to Amnesty International from Coyhaique Fifth Military Court, Ref No. 3 / 2016, 12 January 2016.

[37] University Diego Portales Centre for Human Rights, *Informe Anual sobre Derechos Humanos en Chile*, 2015, available at http://www.derechoshumanos.udp.cl/derechoshumanos/index.php/informe-anual (last accessed 28 February 2016).

[38] See Chapter 3 on the situation encountered in some cases transferred to the ordinary justice system.

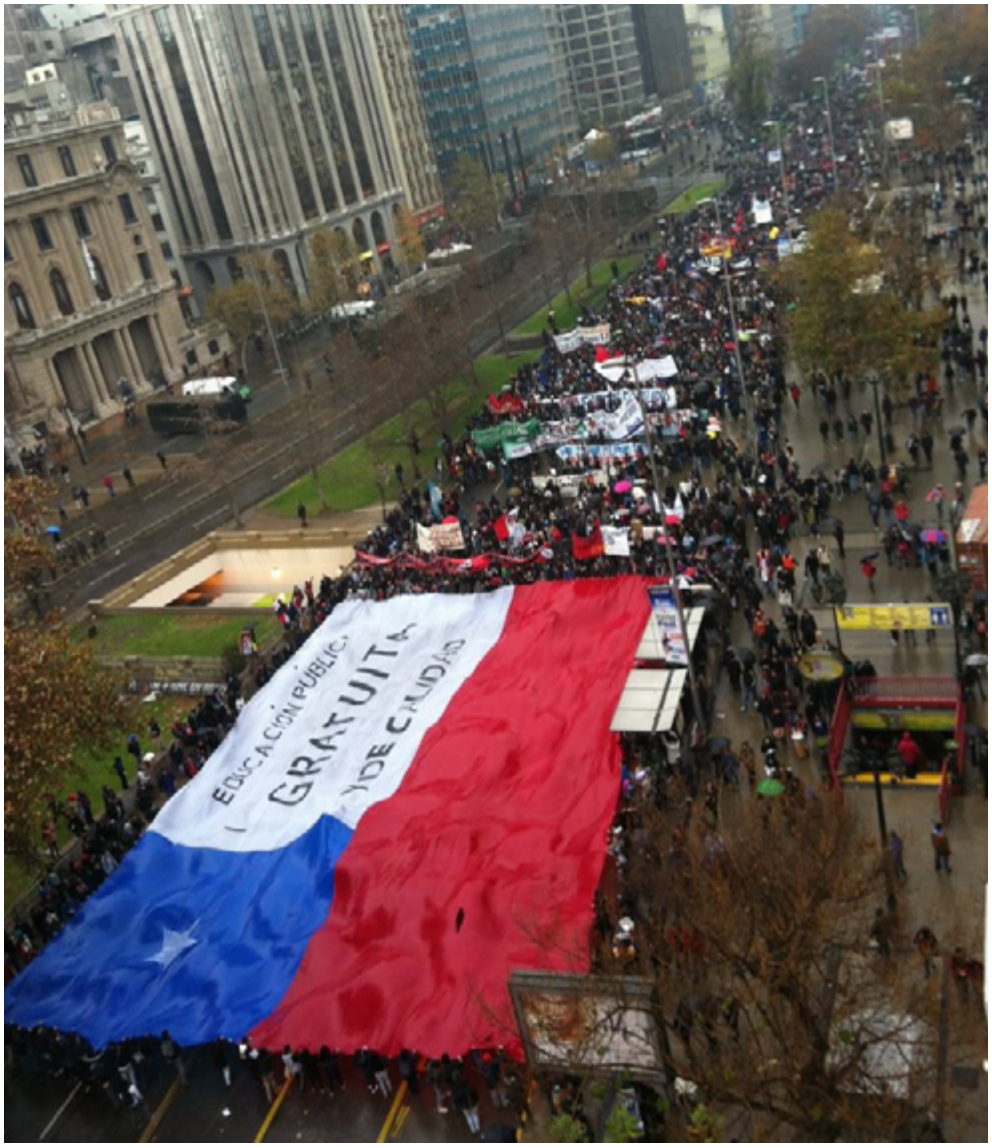
[39] The offence used to prosecute excessive use of force in the ordinary courts is "unlawful physical or mental coercion" because the crime of torture and other ill-treatment does not exist in Chilean legislation.

[40] Article 150A of the Chilean Criminal Code.

[41] University Diego Portales Centre for Human Rights, *Informe Anual sobre Derechos Humanos en Chile*, 2015, p. 133.

[42] National Institute for Human Rights, *Informe sobre programa de seguimiento y registro de abusos policiales*, Judicial Legal Unit (Unidad Jurídica Judicial), November 2011, pp. 14-15.

The UN Human Rights Committee in its periodic review of Chile in 2014 expressed concern "that allegations are still being made about torture and ill-treatment by State officials. The Committee is particularly concerned by cases involving the excessive use of force during public protests and the infliction of torture during the transfer and detention of persons, as well as by allegations about the police committing acts of sexual violence against girls and women during student protests".[43]



Students protest in central Santiago demanding educational reforms. © Private

[43] Human Rights Committee, Concluding Observations on Chile, CCPR/C/CHL/CO/6, para. 19.

B. POLICE VIOLENCE AGAINST THE MAPUCHE

Amnesty International has also documented cases of excessive use of force by police in the context of demands by Mapuche communities[44] resulting in dozens of people, including children, being injured and several deaths.[45]

In June 2014, Amnesty International delegates met Mapuche representatives as well as organizations working to promote and ensure respect for the rights of Mapuche communities.[46] They explained that most violence was inflicted during raids on Mapuche communities by police using judicial arrest or search warrants in pursuit of criminal investigations. The officers involved in these operations were from both the Investigative Police and the *Carabineros de Chile*, and complaints have been lodged against members of both forces.[47] Members of Mapuche communities reported that during these raids they were subjected to ill-treatment, excessive use of force and arbitrary detention[48] and that these abuses have had a disproportionate impact on women and children.[49]

Several national organizations have raised concerns about the situation in Araucania and the surrounding areas. Most recently the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism assessed the situation in that area to be "volatile, and liable to spread into a full-blown regional conflict unless urgent action is taken to address not only the manifestations of the violence, but also its root causes."[50]

---

[44] See Amnesty International, *Estándares de derechos humanos y el pueblo mapuche*, 17 April 2013, Chapter 2, available at http://amnistia.cl/web/wp-content/uploads/2015/02/Est--ndares-de-derechos-humanos-y-el-pueblo-mapuche.pdf (last accessed 9 March 2016).

[45] On the violence that occurred between June 2014 and June 2015, see "Cronología de un año de represión en contra del pueblo Mapuche por parte del Estado de Chile (junio de 2014 - julio de 2015)" in *Informe de Derechos Humanos 2015 de la Comisión Ética contra la Tortura*, September 2015. See also, National Institute for Human Rights, *Estudio Exploratorio: Estado de Chile y pueblo Mapuche: Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía.*

[46] Amnesty International held a meeting in Temuco with representatives of the Centre for Research and Defence in the South (Centro de Investigación y Defensa SUR, CIDSUR), the Ethical Commission against Torture (Comisión Ética contra la Tortura), the Indigenous Institute Foundation (Fundación Instituto Indígena) and the Citizen's Observatory (Observatorio Ciudadano) in June 2014..

[47] As stated earlier, alleged offences by the Investigative Police are heard in the ordinary courts; whereas allegations against members of the *Carabineros de Chile* fall under military jurisdiction.

[48] Anide, the Children and Youth NGO Network (Red ONGs Infancia y Juventud) and REDLAMYC, *Informe sobre violencia institucional contra la niñez mapuche*, Executive Summary, presented to the IACHR, March 2011.

[49] For more on the situation of children see Foundation ANIDE, "Violencia institucional hacia el pueblo y la niñez Mapuche" in *Informe de Derechos Humanos 2015* de la *Comisión de Ética contra la Tortura*, September 2015, pp. 73-84.

[50] Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Mission to Chile, 14 April 2014, A/HRC/25/59/Add.2, para. 28.

The Special Rapporteur has also raised concerns about the excessive use of force by both the *Carabineros de Chile* and the Investigative Police in the context of raids or searches in Mapuche communities and the failure to hold those responsible to account. He has called on Chile to investigate allegations of abuse and violence against Indigenous communities by the police, to prosecute and punish those responsible and to ensure victims or their relatives receive compensation.[51]

Similarly, following a recent visit to Chile in September 2015, the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern about allegations of the sexual harassment of Mapuche women detained during protests.[52]

The Committee against Torture in its 2009 review of Chile highlighted its concern about "the many reports that it has received regarding the continuing commission of abusive acts by *carabineros* against members of indigenous peoples, especially members of the Mapuche people. The Committee is particularly concerned by the fact that the victims of these acts include women, children and older persons." [53]

During recent hearings on the topic of children's rights,[54] the Inter-American Commission on Human Rights (IACHR) expressed concern about the particular impact on children of police interventions in communities.[55]

According to a study by the National Institute for Human Rights, complaints of excessive violence by law enforcement officials around Mapuche communities have increased in recent years and have shown a sharp rise in the 2000s. An analysis of the cases before the Valdivia Third Military Court – which covers the regions of Maule, Bio-Bio, Araucanía, Los Ríos and Los Lagos – on average 97 complaints were received annually between 1990 and 2000; between 2001 and 2011 that number rose to 326 complaints per year.[56]

---

[51] Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Mission to Chile.

[52] Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, press release at the end of his visit to the Republic of Chile (21 to 30 September 2015).

[53] Committee against Torture, Concluding Observations on Chile, CAT/C/CHL/CO/5, para. 23.

[54] IACHR, Session: 156, 22 October 2015, Reports of Violence against Mapuche Indigenous Children and Impunity in Chile, available at http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=16 (last accessed 3 march 2016).

[55] UNICEF in Chile expressed similar concerns in 2012, available at http://www.unicef.org/lac/media_23867.htm (last accessed 1 February 2016).

[56] National Institute for Human Rights, *Estudio Exploratorio: Estado de Chile y pueblo Mapuche: Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía*, p. 59.

There was particular concern about the deaths during this period of three young Mapuche – **Matías Catrileo**, **Alex Lemún Saavedra** and **Jaime Mendoza Collío** – in very similar circumstances. All three young men were shot dead by police during police evictions of farm occupations linked to land claims in the Araucanía Region. None of the officers responsible in the three cases was sentenced to prison terms.

Matías Catrileo, a 23-year-old Mapuche student, was shot in the back in January 2008 by a member of the *Carabineros de Chile*'s Special Operations Group (Grupo de Operaciones Especiales, GOPE). In January 2010, the Valdivia Third Military Court convicted an officer of "unnecessary violence resulting in death" under the Code of Military Justice and handed down a two-year suspended sentence on grounds of mitigating circumstances. The military prosecutor had called for a 10-year sentence. The Court Martial subsequently imposed a suspended sentence of three years and one day, which was confirmed by the Supreme Court in December 2011.

Jaime Mendoza Collío, a young Mapuche man, was also shot dead by a *carabinero* in 2009 during a police eviction operation. The case was investigated by the military courts and the officer responsible was initially sentenced to five years and one day in prison. However, he was subsequently acquitted by the Court Martial on the grounds that he had acted in self-defence. Following an appeal by the family, the Supreme Court sentenced the officer to three years and one day, which the officer was allowed to serve outside prison.[57]

Alex Lemún Saavedra, died in 2002 after being shot in the forehead. In July 2004, the case against the officer accused of the shooting was partially dismissed and suspended by the Valdivia Third Military Court. To date, no one has been held to account for the death of Alex Lemún Saavedra.[58]

C. REGULATIONS GOVERNING THE USE OF POLICE FORCE DURING PUBLIC DEMONSTRATIONS

The right to freedom of peaceful assembly, along with the rights to freedom of association and expression, is enshrined in human rights treaties to which Chile is a party, such as the ICCPR[59] and the American Convention on Human Rights.[60]

States have the obligation to respect, protect and fulfil these rights. This requires them to ensure that their own agents do not commit human rights violations and that these rights are not subject to restrictions, except where such restrictions are demonstrably necessary and proportionate to a legitimate purpose permitted in international law. In other words, any such restrictions must have been previously established in law and be necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. States are also obliged to protect the exercise of these rights against interference by third parties and to ensure that those within their jurisdiction are able to exercise these rights in practice.[62]

---

[57] See the case of Jaime Mendoza Collío p. 33.

[58] See the case of Alex Lemún Saavedra p. 35.

[59] Articles 19, 21 and 22 of the ICCPR.

[60] Articles 13, 15 and 16 of the American Convention on Human Rights.

The Chilean Constitution recognizes the right to freedom of assembly without prior permission and without weapons adding that meetings in squares, streets and other public places are governed by the general provisions concerning the police.[63]

The regulation of and restrictions on the right to peaceful assembly in Chile are contained in Supreme Decree 1086 of 16 September 1983. The text of the decree states that notice must be given two days in advance to the relevant official (the mayor or governor), who may fail to authorize meetings or processions.[64] In practice, this means that it may be necessary to obtain prior *authorization* from the authorities, which is contrary to international human rights standards.

The IACHR has said that "states may regulate the use of public space, for example by establishing requirements of prior notice, but such regulations may not impose excessive demands that invalidate the exercise of the right."[65] It has also noted that prior notification should only serve the purpose of informing the authorities and allowing them to take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community.[66]

Recently, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association issued a statement on the issue in which he noted that: "States may, at most, require prior notification for peaceful assemblies, not authorization". He stated that the Decree was not compatible with international law and best practice and was "a remnant of Chile's past"; he urged "the authorities to repeal it as soon as possible."[67]

In addition, the Rapporteur noted that: "Assemblies, by their nature, can cause a certain degree of disruption. The purpose of notification is to allow authorities to facilitate the exercise of the right to peaceful assembly, and to take measures to protect protesters, public safety, order and the rights and freedoms of others."[68]

---

[61] Article 21 of the ICCPR and Article 15 of the American Convention on Human Rights.

[62] Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council, A/HRC/20/27, 21 May 2012, para. 27.

[63] Article 19 No. 13 of the Chilean Constitution..

[64] Article 2 (c) and (d) of Supreme Decree 1086.

[65] IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, 2006, para. 56.

[66] IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc 66, 2011, para. 137.

[67] Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, press release at the end of his visit to the Republic of Chile (21 to 30 September 2015).

[68] Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, press release at the end of his visit to the Republic of Chile (21 to 30 September 2015).

International human rights standards state that the purpose of the notification is to facilitate the assembly, not to subject to gatherings to official authorization. Amnesty International believes that even if the required notification has not been given, if the right of assembly is exercised peacefully, as a general rule it ought not to be dispersed and force should not be used in policing such protests. Law enforcement officials must have the discretion not to intervene where assemblies are carried out peacefully and do not jeopardize the rights and freedoms of others.

President Bachelet's government has promised to introduce a bill during its current term of office (2014-2018) to regulate the right of assembly.[69] At the time of writing, the proposed legislation had yet to be submitted to Congress.

In the context of public demonstrations, states have an obligation to ensure security and maintain public order, but in doing so they must comply with international human rights standards on the use of force.[70] According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles on the Use of Force), the police can only use force when strictly necessary and only to the extent required for the performance of their duties; in addition, as far as possible, they must apply non-violent means before resorting to the use of force.[71] Furthermore, the police must carry out their duties in such a way as to protect the rights of demonstrators, including their right to life and security of the person, and demonstrations should not be treated as one collective mass, but should rather receive differentiated responses.[72]

The use of force must always respect the principles of necessity and proportionality. The principle of necessity determines whether a restriction is permissible in order to achieve a legitimate objective (for example, to maintain public order) or whether a lesser restriction could achieve the same objective. The principle of proportionality requires that the possible consequences and potential harm caused by the restriction of a right be assessed in comparison to lesser restrictions or refraining from the use of force altogether.

The use of firearms by law enforcement officials should only permitted as a last resort, when all other means at their disposal have proved ineffective and when strictly necessary in self-defence or to defend others from the imminent threat of death or serious injury.[73] The intentional use of firearms is permitted only when strictly unavoidable to protect life.[74]

---

[69] Programme of the Government of Michelle Bachelet, p. 165, available at http://www.onar.gob.cl/wp-content/upLoads/2014/05/ProgramaMB.pdf (last accessed 13 November 2016).

[70] See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[71] Basic Principles on the Use of Force, Principle 4.

[72] Anneke Osse, Understanding Policing: A resource for human rights activists, Amnesty International, p. 142.

[73] Basic Principles on the Use of Force, Principle 9.

[74] Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, A/66/330, para. 88: "(b) The starting point is the sanctity of life. International norms in this regard are premised on what has been called the 'protection of life principle': the right to life may be limited only in order to protect life".

Amnesty International recognizes that when policing some demonstrations, law enforcement officials have to deal with complex situations that can on occasion involve violence, with barricades being erected and stones thrown. However, that cannot justify police actions in the performance of their duty to maintain public order that fall short of human rights principles and standards. As the visible arm of the state, the police can become an easy target if a demonstration turns violent. That is why the way in which the police "address the task of policing the public assembly must leave no doubt that they are doing their job of maintaining public order, and must not give the impression through their conduct and the restrictions imposed that they are taking sides against the protesters."[75] It is also crucial that the police have the appropriate training, equipment and procedures on policing protests and on the use of firearms in order to ensure that their actions conform to international standards.

In Chile, police operating procedures for dealing with social protests are set out in the Protocols for Maintaining Public Order, (*Protocolos para el mantenimiento del Orden Público*).[76] These Protocols were made public by the *Carabineros de Chile* in August 2014[77] following requests by various organizations, including Amnesty International, for copies.[78] The Protocols should be read in conjunction with Circular DIGCAR 1756 of 13 March 2013, the Manual on Operational Procedures on the Use of Force and Maintaining Public Order (*Modelo para el Uso de la Fuerza y el Manual de Operaciones para el Control del Orden Público*), which is refered to in Protocol 2.7.[79]

Amnesty International welcomes the fact that these operating procedures have been published, allowing them to be analysed against international human rights standards, in particular the Basic Principles on the Use of Force.[80] It also enables their impact on respect for and protection of the right to peaceful assembly to be assessed.

---

[75] Amnesty International Netherlands Section, *Policing Assemblies*, *Short papers series No. 1*, December 2013.

[76] See http://deptoddhh.carabineros.cl/a1/Protocolos_mantenimiento_del_orden_publico.pdf. There are five Protocols each of which is divided into various sub-sections (last accessed 9 November 2015).

[77] See http://www.intendenciametropolitana.gov.cl/n6378_15-08-2014.html (last accessed 9 November 2015).

[78] Application for access to information submitted by Amnesty International to the Chilean Undersecretary of the Interior and the *Carabineros de Chile*; a copy of the protocols was not received. Memorandum Nos 19.652 of 14 September 2011; 20.223 of 29 September 2011; and 16.147 of 27 September 2012. Response to Amnesty International from the Undersecretary of the Interior, Legal Division, Ref 19652, 11 September 2011. Response from the *Carabineros de Chile*, Extraordinary Resolution 282, 24 November 2011.

[79] DIGCAR Circular 1756 appears as available on the website http://deptoddhh.carabineros.cl/. However, Amnesty International tried to log in several times without success. Access to this circular was requested in a note sent to the *Carabineros de Chile* dated 15 November 2015 (TG AMR 22/2015.11). A response received on 7 December 2015 stated that this document, as well as the Operating Manual for Maintaining Public Order would be available on the internet. Despite several attempts on different days, Amnesty International was not able to access these documents.

[80] Amnesty International Netherlands, *Guidelines for the implementation of the UN basic principles on the use of force and firearms by law enforcement officials*.

This analysis has raised particular concern that the protocols distinguish between authorized and unauthorized demonstrations to determine the type of deterrence that can be deployed. Authorization should not be a criterion that determines police responses; according to international standards only prior notification, and not prior authorization, should be required. The role of the police should be to facilitate the right to peaceful assembly.

In addition, the protocols should reflect the principles of necessity and proportionality regarding the use of force and establish that force will only be resorted to if other means remain ineffective or without any promise of achieving the intended result.[81] The degree of force used must be proportionate to the seriousness of the offence being committed and must be deployed in such a way as to minimize the damage and injury caused.[82] None of these principles is adequtelly incorporated into the Protocols.

The protocols should also explicitly state that law enforcement officials must wear some visible form of identification; they make no reference to this at present. Finally, the protocols are not sufficiently clear on how and when firearms may be used. For example, in Protocol 2.17, relating to issuing a warning, is not clear that, where relevant, a warning should specify the possible use of firearms. Principle 10 of the Basic Principles on the Use of Force states that when law enforcement officials believe that the use of firearms is necessary, they "shall identify themselves as such and give a clear warning of their intent to use firearms", except for the specific situations outlined in the Principle. The current protocols do not refer to the need to issue a clear warning of the intent to use firearms.

[81] Basic Principles on the Use of Force, Principle 4.

[82] Basic Principles on the Use of Force, Principle 5 (a).

3. MILITARY JURISDICTION: ACCESS TO JUSTICE?

'All persons shall be equal before the courts and tribunals... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.'

Article 14.1 of the ICCPR

Everyone has the right to be tried before courts of justice that are independent and impartial, in accordance with legally established procedures. International human rights law establishes that states must not create tribunals whose proceedings do not conform to due process standards previously set out in law and give them jurisdiction over areas that would normally come within the remit of ordinary courts.[83] In addition, all victims of human rights violations or their relatives have the right to an effective remedy,[84] before a competent, independent, impartial tribunal[85] in pursuit of their rights to truth, justice and reparation. This right is also recognized in the Chilean Constitution, which establishes the right to equal protection before the law, as well as the right not to be tried by special commissions.[86]

Although specialized or different jurisdictions separate from the jurisdiction of the ordinary courts are permitted in international law, they must be used only insofar as there are reasonable and objective reasons to justify their existence. For example, such jurisdiction may relate to specific issues or to individuals who have a special legal status, such as children and adolescents, or crimes strictly related to breaches of military discipline. However, the use of military jurisdiction must be the exception and restricted solely to dealing with the infringement of military law by members of the armed forces in the exercise of their duties.[87]

According to Chilean law, military courts are special courts that are part of the national justice system.[88] The Supreme Court, the highest court in the country, oversees the conduct, administration and finances of all courts in the country, including the military courts.[89] In addition, it is the Supreme Court which adjudicates in disputes over jurisdiction that may arise between the military and ordinary courts; that is, it decides which tribunal will deal with each individual case.[90]

---

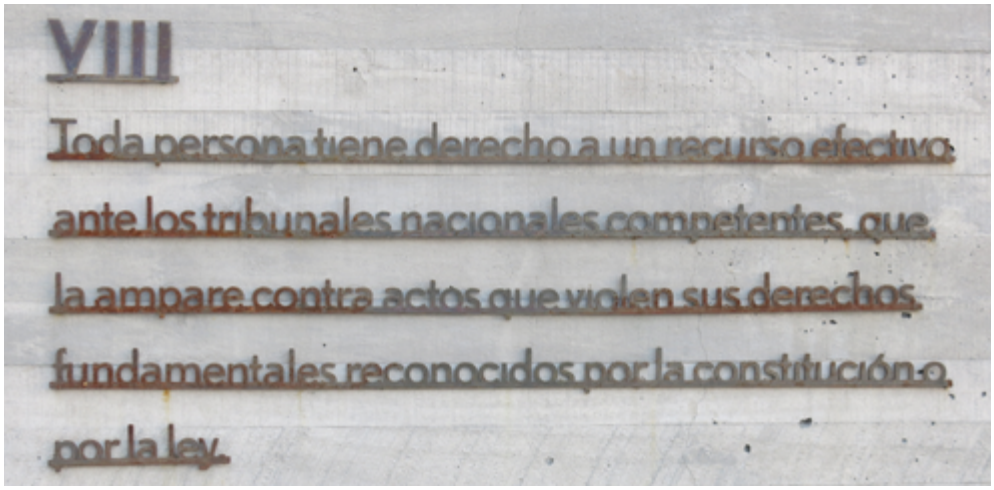
[83] Article 14 ICCPR and Articles 8 and 25 ofthe American Convention on Human Rights.

[84] Article 2 (3) ICCPR and Articles 8 and 25 of the American Convention on Human Rights. This right is also recognized in other treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 13); International Convention on the Elimination of all forms of Racial Discrimination (Article 6); International Convention for the Protection of all Persons from Enforced Disappearance (Articles 12, 17.2 (f) and 20); and the Universal Declaration of Human Rights (Article 8).

[85] Article 14 of the ICCPR and Articles 8 and 25 of the American Convention on Human Rights. Chile became a state party to the American Convention on Human Rights on 21 August 1990 and ratified the ICCPR on 10 February 1972. The right to due process and fair trial are also recognized in Articles XVIII and XXVI of the American Declaration of Human Rights.

[86] Article 19 No. 3 of the Chilean Constitution.

The Chilean Code of Military Justice[91] states that military jurisdiction will apply to common crimes committed by military personnel during military service or as a consequence of it, in barracks, outposts and other situations.[92] The Code stipulates that "military personnel" includes, among others, officials belonging to the armed forces and the *Carabineros de Chile*.[93] Regarding excessive use of force during demonstrations, the offence that is invoked by the military courts is "unnecessary violence",[94] which is defined in the Code of Military Justice.[95]



Article VIII Universal Declaration of Human Rights, entrance to the Museo de la Memoria (Museum of Memory), Santiago, Chile. © Amnesty International

In 2005, the Inter-American Court of Human Rights criticized the scope of military jurisdiction in Chile.[96] It ordered Chile to adapt its legislative framework within a reasonable time, stating that military jurisdiction should only be applied to crimes committed by military officials on active service and that under no circumstances should a civilian be subject to the jurisdiction of the military criminal courts.

---

[87] Inter-American Court of Human Rights, *Case of Durand and Ugarte vs Peru*, Judgment of 16 August 2000, series C No. 68, para. 117; *Case of Lori Berenson Mejia vs Peru*, Judgment of 25 November 2004, series C No. 119, paras 141-142; *Case of Nadege Dorzema vs Dominican Republic*, Judgment of 24 October 2012, series C No. 251, para. 187; *Case of Radilla Pacheco vs Mexico*, Judgment of 23 November 2009, Series C No. 209, para. 272; *Case of Osorio Rivera and relatives vs Peru*, Judgment of 26 November 2013, series C No. 274, para. 187.

[88] Organic Court Statutes Code of Chile (Código Orgánico de Tribunales, COT), Article 5, para. 4.

[89] Article 82, para. 1 of the Chilean Constitution.

[90] COT article 191 and Article 3 of Act 20.477 of 2010. A dispute over jurisdiction may occur when both a military and an ordinary court believe they are competent to hear a particular case. According to Chilean law, cases of police brutality come under the jurisdiction of the military justice system. However, a conflict over jurisdiction can occur when, for example, a complaint of unlawful coercion is presented in an ordinary court which is of the view that it has jurisdiction to hear the complaint (see section E below).

[91] The Code of Military Justice was established by Decree 2226 of 27 October 1944. It replaced the previous Code of 1925. For an account of the historical evolution of military criminal jurisdiction in Chile see Sergio Cea and Roberto Coronado, Derecho Militar, Parte General, Tomo I, 2011.

The Inter-American Court has also indicated that if a crime committed by a member of the military on active service is not of a matter of military discipline, the suspect should be tried by an ordinary court. Consequently, in cases of human rights violations, military jurisdiction can never be applied.[97] It also stated that: "only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself."[98]

Similar calls to modify Chilean legislation on the use of military justice in cases of human rights violations have been made by the UN Human Rights Committee and the UN Committee against Torture. The Human Rights Committee expressed its concern at the continuing use of military justice in Chile and stated that: "the State party should amend the current rules of military criminal law so as to exclude human rights violations from military jurisdiction."[99] Similarly, in the context of the UN Universal Periodic Review of Chile in 2014, recommendations were made, and accepted by Chile, to amend military jurisdiction.[100] In 2013, the Working Group on Enforced or Involuntary Disappearances had recommended that Chile "Revise and amend domestic legislation so that the military jurisdiction, where it exists, is not competent to try cases of enforced disappearance or other human rights violations. In particular, the *Carabineros de Chile* must be subject to ordinary jurisdiction in the trial of any unlawful act committed by its members".[101]

---

[92] According to article 5 para. 3 of the Code of Military Justice, the following fall under military jurisdiction: common crimes committed by soldiers while on active duty during a state of war, during military service, in barracks, bivouacs, camps, forts, military works, warehouses, offices, outbuildings, foundries, workshops, factories, parks, academies, schools, boats, arsenals, lighthouses and other military or police premises or establishments or institutions of the armed forces.

[93] Article 6 of the Code of Military Justice.

[94] Article 330 of the Code of Military Justice defines this crime and provides for varying sentences depending on mitigating or aggravating circumstances, ranging from 41 days to 541 days if there were no injuries or minor injuries; 61 days to three years if the injuries are not very serious; 541 days to 10 years in prison if serious injury is inflicted; and between five and 15 years' imprisonment for fatal injuries. The length of time actually spent in prison depends on the length of sentence imposed. Article 330 states that:

The soldier who, in order to carry out the order of a superior or while performing their military duties inflicts or, or causes others to inflict, unnecessary violence that was not jusitifed by the pursuit of their duties, will be punished:

> 1° with the penalty of long-term imprisonment with minimum to medium duration if their action resulted in the death of the victim;
>
> 2° with sentences between short-term imprisonment with medium duration and long-term imprisonment of minimum duration if their action resulted in serious injury;
>
> 3° with short-term imprisonment of between minimum and medium duration if lesser injuries were caused, and
>
> 4° with short-term imprisonment of minimum duration if no injuries or only slight injuries were caused.

If violence is used against detainees or prisoners in order to obtain information, reports, documents or evidence related to an investigation into offences, the penalties should increase by one degree.

In 2010, Chile approved reforms to legislation aimed at implementing the judgment of the Inter-American Court of Human Rights.[102] This reform excluded minors, who in any case are subject to the ordinary courts under the provisions for adolescent responsibility, from military jurisdiction. In addition, the jurisdiction of the military courts was restricted; attacks on the military or policy by civilians were placed outside their scope.

While Amnesty International recognized this reform as a positive step, it was not sufficient to bring the military justice system into line with Chile's international human rights obligations. Human rights violations and crimes under international law committed by law enforcement officials and common crimes committed by officers in the exercise of their duties, continue to come under the remit of military jurisdiction, irrespective of whether the victims are civilians or members of the military.

The IACHR has indicated that, with regard to the trial of civilians, the right to be tried by a competent, independent and impartial tribunal "requires trial by regularly constituted courts that are demonstrably independent from the other branches of government and comprised of judges with appropriate tenure and training, and generally prohibits the use of ad hoc, special, or military tribunals or commissions to try civilians."[103] In particular, the IACHR has highlighted concerns about the use of ad hoc or special courts or military tribunals to prosecute civilians for security offences in times of emergency or to try members of the security forces accused of involvement in human rights violations.[104]

---

[95] See article 330 of the Code of Military Justice in relation to Article 56 of the Criminal Code.

[96] Inter-American Court of Human Rights, the Case of Palamara Iribarne vs Chile, Judgment of 22 November 2005, series C No. 135, 22 November 2005. In this case, a military court indicted and sentenced a former naval officer for attempting to publish a book on military intelligence and ethics.

[97] Inter-American Court of Human Rights, *Case of Radilla Pacheco vs Mexico*, para. 272.

[98] Inter-American Court of Human Rights, *Case of Radilla Pacheco vs Mexico*, para. 272.

[99] Human Rights Committee, Concluding Observations on Chile, CCPR/C/CHL/CO/6, para. 22.

[100] These recommendations stated: "121.109. Guarantee that the civil courts' jurisdiction is applied also in cases of police persons (*Carabineros*) accused of violations of human rights"; "121.110. Reform the military justice system to exclude civilians from its jurisdiction and be used only to hear offences arising in the context of military duties"; "121.111. Bring military justice into conformity with international standards to ensure the right to a fair trial", Human Rights Council, Report of the Working Group on the Universal Periodic Review, Chile, 2014, Doc UN A/HRC/26/5.

[101] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, 2013, Addendum, Mission to Chile, Doc UN A/HRC/22/45/Add.1, para. 69.

[102] Law 20.477 Amending the Competence of Military Courts of 30 December 2010.

[103] IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc 5 rev. 1 corr., 22 October 2002.

[104] IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc 57, 31 December 2009, para. 162.

Furthermore, the Inter-American Court of Human Rights has indicated that military criminal jurisdiction is not competent to investigate and, where appropriate, judge and punish the perpetrators of human rights violations; such offences fall under the jurisdiction of the ordinary courts, taking into account the nature of the crime and the harm caused.[105] The Inter-American Court, recognizing a trend towards the reduction of military criminal jurisdiction, has indicated that it should be used in a restricted way and should abide by the principles and guarantees that govern modern criminal law.[106]

In particular, referring to the rights of victims of human rights violations, the Inter-American Court of Human Rights stated:

> "*when the military courts hear of acts that constitute violations to human rights against civilians they exercise jurisdiction not only with regard to the defendant, which must necessarily be a person with an active military status, but also with regard to the civil victim, who has the right to participate in the criminal proceedings not only for the effects of the corresponding reparation of the damage but also to exercise their rights to the truth and to justice. In that sense, the victims of the violations of human rights and their next of kin have the right to have said violations heard and resolved by a competent tribunal, pursuant with the due process of law and the right to a fair trial.* ***The importance of the passive subject transcends the sphere of the military realm, since juridical rights characteristic of the ordinary regimen are involved***"[107] [emphasis added].

It is also possible that, in addition to the penalties imposed by a military court, *carabineros* who are found to have failed to fulfil their duties or obligations can face investigation for administrative offences.[108] Such investigations are carried out by the *Carabineros de Chile* themselves. These disciplinary procedures can result in a variety of sanctions up to and including being discharged or dismissed from the service.[109] One of the problems documented by Amnesty International in relation to administrative processes carried out by the police is the lack of information provided to victims on cases and their outcome.

The case of the photographer **Víctor Salas**, who lost his sight in one eye as a result of being hit by a carabinero while he was covering a demonstration in May 2008 (see box on page 40-41), highlights the difficulties victims face in obtaining information about administrative disciplinary procedures. The National Institute for Human Rights and Amnesty International tried to obtain information about the case from the police authorities. The reply received by the victim and both organizations provided no explanation of the administrative procedure or the result, and merely referred to the adoption of relevant disciplinary measures, based on the merits of the facts of the case, by the administrative authorities and stated that Law 19,628 on the Protection of Privacy meant that the requested information could not be provided to the organizations.[110]

---

[105] Inter-American Court of Human Rights, the *Case of Radilla Pacheco vs Mexico*, para. 273.

[106] Inter-American Court of Human Rights, the *Case of Radilla Pacheco vs Mexico*, para. 274.

[107] Inter-American Court of Human Rights, the *Case of Radilla Pacheco vs Mexico*, para. 275.

[108] Article 36 of the Organic Law on the Constitution of the *Carabineros de Chile*. See also *Carabineros de Chile* Regulation on Administrative Procedures, No. 15, Article 5 d) and *Carabineros de Chile* Disciplinary Regulation No. 11 (unofficial translation).

[109] See also *Carabineros de Chile* Disciplinary Regulation, No. 11.

In response to a second request for Amnesty International, the *Carabineros de Chile* indicated that they had established administrative responsibility and that the officer involved had received firm and prompt punishment and as a result the case was closed in 2010.[111] The victim, Víctor Salas, has not been informed of the concrete measures taken by the *Carabineros de Chile* or what administrative sanction was imposed on the officer who caused his serious injury.

A. THE COMPETENT COURT

Civilians must be excluded from the scope of military jurisdiction which should only judge members of the military for crimes or offences committed that by their very nature infringe legally protected interests of the military order.

Inter-American Court of Human Rights, the Case of Durand and Ugarte vs Peru.[112]

The principle of the competent or natural tribunal implies that the court hearing a case and passing sentence must have been previously established permanently and in law in order to avoid the creation of ad hoc or special tribunals.[113] In addition, its jurisdiction must be restricted solely to those matters that are relevant to the tribunal in fulfilling international and national laws. In the specific case of military tribunals, their competence should be restricted to matters of a purely disciplinary character affecting military officials.

With regard to the principle of natural justice, the Inter-American Court of Human Rights has stated that: "When a military court takes jurisdiction over a matter that regular courts should hear, the individual's right to a hearing by a competent, independent and impartial tribunal previously established by law and, a *fortiori*, his right to due process are violated."[114] The Inter-American Court has indicated that applying military justice, which should be the exception and restricted, beyond its proper scope is a violation of the principle of a competent court. Furthermore, it has stated that military criminal courts "must only try military men for the commission of crimes or offenses that due to their nature may affect military interests".[115]

For more than four years since **Manuel Gutiérrez** was shot and killed, his family has sought justice. They described the only response that they have received to date as inadequate, highlighting the failure to ensure their rights to truth, justice and reparation.

---

[110] Response of the *Carabineros de Chile* to Amnesty International 23 December 2014.

[111] Response of the *Carabineros de Chile* to Amnesty International of 27 March 2015.

[112] Inter-American Court of Human Rights, *Case of Durand and Ugarte vs Peru*, para. 117.

[113] Inter-American Court of Human Rights, the *Case of Barreto Leiva vs Venezuela*, Judgment of 17 November 2009, series C No. 206, para. 75.

MANUEL GUTIÉRREZ

"*I didn't know there were two kinds of justice*" was one of the first things that Gerson Gutiérrez, Manuel's brother, said to Amnesty International during a meeting in June 2014.

Manuel Gutiérrez © Amnesty International

Shortly before dawn on 25 August 2011, 16-year-old Manuel Gutiérrez, his brother Gerson and another friend were watching as clashes broke out in the south of Santiago in the wake of a general strike called by the United Workers' Confederation (Central Unitaria de Trabajadores).

The protests had continued on into the evening and there had been sporadic outbreaks of violence by demonstrators. The three youths were at the intersection of two streets – Américo Vespucio Sur and Amanda Labarca – when they heard three shots. "*Suddenly, Manuel, who was walking along just a metre away from me, fell to the ground. I saw he had a hole of about a centimetre in diameter in the centre of his chest blood was pouring out of the wound*", Gerson Gutiérrez told Amnesty International.

Helped by several neighbours, they took Manuel to a medical centre, where he died as a result of a cardiac arrest caused by the gunshot wound to his chest. The young student was not the only gunshot victim there. That same night, Carlos Andrés Burgos Toledo, was shot and injured in the right shoulder.

Manuel's father is a traditional fisherman and his mother takes care of the household. Manuel was the youngest of four brothers. As Gerson explained, "*he was a very happy person. He was always telling jokes. He wanted to study, to have a career. At one time he even wanted to be a* carabinero *to help out the family.*"

The first reaction of the authorities was to deny that the police were behind the shooting, arguing that this may have been a dispute between youths. After Manuel's death, the case was referred to the local prosecutor in La Florida and following the initial investigation a carabinero was placed in pre-trial detention, charged with homicide. But five days after the investigation began, the ordinary court declared that the case did not fall within its jurisdiction and passed the case file to the military court on the grounds that the accused was a *carabinero*. On 17 November 2011, the carabinero was conditionally released pending trial.

On 6 May 2014, after nearly three years, the Santiago Second Military Court sentenced former sergeant Miguel Ricardo Millacura Cárcamo, the officer who fired the shots, to three years and one day's imprisonment for the crime of "unnecessary violence resulting in death" in the case of Manuel Gutiérrez, and 60 days' for "unnecessary violence causing less serious injuries" to Carlos Andrés Burgos Toledo. In addition, he was barred from public office or employment for the duration of the sentence and dismissed from the military. The court ruled[116] that the custodial sentences should be commuted and that he should be released on probation for the duration of the sentence. A second lieutenant was tried as an accessory to the crimes and acquitted.

---

[114] Inter-American Court of Human Rights, the *Case of Castillo Petruzzi et al vs Peru*, Judgment of 30 May 1999, series C No. 52, para. 128; *Case of Radilla Pacheco vs Mexico*, para. 273; *Case of La Cantuta vs Peru*, Judgment of 30 November 2007, series C No. 173, paras 138-143.

[115] Inter-American Court of Human Rights, the *Case of Almonacid Arellano et al vs Chile*, Judgment of 26 September 2006, series C No. 154, para. 131; *Case of Palamara Iribarne vs Chile*, para. 124; *Case of Radilla Pacheco vs. Mexico*, para. 284.

[116] The court made use of national legislation, Law 18,216 of 20 April 1983, which provides for alternatives to custodial sentences or deprivation of liberty, article 15a.

Manuel's family cannot understand why the sergeant was able to claim mitigating circumstances on the grounds of his important help in clarifying the facts when he initially told his superiors that he had not used his gun on the night of the shooting and then cleaned and reloaded his gun to cover up the fact that he had indeed fired the weapon. For the family, a sentence of just over three years' probation is not proportionate to the nature of the crime.

The family's disillusionment with the Chilean justice system was heightened when on 7 May 2015, the Court Martial (which acts as the court of appeal) substantially reduced the sentence to 461 days suspended[117] on the grounds that the facts did not demonstrate an intent to cause harm and hence constituted "manslaughter" which carries a lesser penalty. The family appealed to the Supreme Court, which rejected the appeal in December 2015 and upheld[118] the sentence imposed by the Military Court.

A study of court decisions handed down in the case of Manuel Gutiérrez, as well as some documents presented during the proceedings, reveals that the *carabinero* involved initially withheld information from investigators about the firearm that was used on the night of the incident.[119] Nevertheless, in setting the sentence, the court of first instance took into account two mitigating factors: the officer's lack of prior criminal records and his cooperation in clarifying the facts.[120] The family had argued that,[121] on the contrary, there was an aggravating circumstance, namely that the officer responsible was not in any danger[122] when he fired, but this was dismissed. The court applied the mitigating factors but not the aggravating circumstance and so gave a lower penalty which did not entail deprivation of liberty. The court held that the need for the former sergeant to use the firearm during the demonstrations had not been proved and that instead it had been shown that lesser force – such as chemical deterrents – was available to disperse the demonstrators. Subsequently, the Court Martial dismissed the argument of the first court and found the officer guilty of manslaughter, and reduced the sentence. The case was passed to the Criminal Chamber of the Supreme Court, convened for cases involving the military the Auditor General of the Army,[123] which confirmed the decision of the Court Martial.

Amnesty International believes that in cases of human rights violations, such as the excessive use of force by police, the sentence imposed should be proportionate to the harm caused. It is, therefore, a cause for concern that this sentence was handed down in the case of the death of Manuel Gutiérrez despite the fact that the former *carabinero* initially withheld information from investigators. This may indeed be the result of the shortcomings that characterize the military courts, namely their lack of independence and impartiality. Even more, given that the court which initially heard the case was not competent to do so, it is possible to argue that decisions made with respect to that initial decision may also be flawed and that this was a mistrial.

---

[117] This sentence includes 61 days' detention for injuries to Carlos Burgos Toledo.

[118] Supreme Court judgment of 14 December 2015.

[119] Decision of the Santiago Second Military Court, Roll No. 2142-2011 of 6 May 2014.

[120] Article 11 Nos 6 and 9 of the Chilean Criminal Code.

[121] Chilean Criminal Code, Article 66 on the application of mitigating and aggravating circumstances.

[122] Aggravating factor set out in Article 12 No. 1 of the Criminal Code. It consists of taking advantage of opportunities to ensure that an action can be carried out without risk to the offender.

[123] In accordance with Article 70A of the Code of Military Justice, the Criminal Chamber of the Supreme Court – a body consisting of six members including the Auditor General of the Army – can undertake a judicial review of both the substance and procedures of judgments issued by the Court Martial.

The fundamental issue is that a court that lacks competence to hear a case cannot guarantee access to justice for victims and ensure adequate reparation, which encourages impunity. If this type of procedures is tolerated by the state, it also constitutes a failure to take steps to ensure non-repetition.

The Inter-American Court of Human Rights has established that "remedies before the military courts are not effective to decide cases of serious human rights violations, much less to establish the truth, prosecute those responsible, and make reparation to the victims".[124] This has led the Inter-American Court to consider that a trial by a court that violates the principle of competence is "a proceeding, flawed from its beginning"[125] and that, consequently, "subsequent actions in the context of these criminal proceedings would be invalid in toto, because they were conducted by courts that did not have competence, at least initially".[126]

---

[124] Inter-American Court of Human Rights, the Case of Nadege Dorzema vs the Dominican Republic, para. 189.

[125] Inter-American Court of Human Rights, the Case of Uson Ramírez vs Venezuela, Judgment of 20 November 2009, series C No. 207, para. 124.

[126] Inter-American Court of Human Rights, the Case of Yvon Neptune vs Haiti, Judgment of 6 May 2008, series C No. 180, para. 84.

B. INDEPENDENT AND IMPARTIAL TRIBUNALS

'The violation of the rights to be heard by a competent court, to proceedings held in public and to be tried by an independent and impartial tribunal, constitutes a series of violations of Article 8 of the American Convention on Human Rights. Chilean constitutional law has corresponding provisions set out in Article 5, second paragraph, of the Constitution.'

Constitutional Court of Chile, judgment on the inapplicability of unconstitutionality, 17 June 2014, Conclusion no 23, (unofficial translation).

As stated above, trials for violations of human rights and crimes under international law should take place in civilian, not military courts, given concerns about the lack of independence and impartiality of military courts and in order to prevent impunity and guarantee the right of victims to an effective remedy and judicial protection.[127]

The structure and composition of military courts in Chile (see box) call into question whether these courts are consistent with the fundamental principles that should characterize any tribunal, mainly independence and impartiality. Both the American Convention on Human Rights and the ICCPR recognize these principles as central to the administration of justice and therefore to the right to justice and due process.

The Inter-American Court of Human Rights has questioned in particular the lack of impartiality of military courts, given that these often have strong links with the military hierarchy, as is evident from its promotions procedures, professional incentives and the delegation of functions of lower ranks.[128] In addition, the chain of command means that members of military courts are appointed by and subordinate to their superiors; their appointment is not dependent on their professional competence or suitability for judicial office nor do they enjoy security of tenure in office.[129]

---

[127] Amnesty International, *Fair Trial Manual, Second Edition*, 2014, Chapter 29. See also Inter-American Court of Human Rights, *Case of Nadege Dorzema vs. Dominican Republic*, para. 187.

[128] Inter-American Court of Human Rights, the Case of Castillo Petruzzi vs Peru, para. 130.

[129] Inter-American Court of Human Rights, the Case of Palamara Iribarne vs Chile, para. 155.

STRUCTURE AND COMPOSITION OF MILITARY COURTS IN CHILE

The court of first instance (the institutional court) is the military court that is responsible for hearing cases involving *carabineros*. There are six military courts in the country (Antofagasta First Military Court, Santiago Second Military Court, Valdivia Third Military Court, Coyhaique Fourth Military Court, Punta Arenas Fifth Military Court and Iquique Sixth Military Court). The 34 military prosecutors in various cities are answerable to these six courts.

Military courts are composed of a judge and a major-general, who does not necessarily have any legal training (ie, is not always a lawyer). It also has an auditor, a member of the military whose role is to advise administrative and judicial officials of the armed forces; the auditor is assisted by a secretary. The courts also include a military prosecutor, who is responsible for the conduct of proceedings, logging all the evidence, arresting the accused and preparing all elements of the case for the prosecution.

Two Courts Martial act as appeal courts in the military justice system. In the ordinary justice system, this role falls to the relevant appeal courts. The court that hears cases involving *carabineros* is the Court Martial of the Army, Air Force and *Carabineros*, based in Santiago, which covers all cases in the country. It is composed of two members of the Santiago Court of Appeals, the Auditors General of the Air Force and *Carabineros* and a military judge of the rank of colonel on active service.

The Auditor General of the Army, or his substitute, sits on the Supreme Court when it hears crimes under military jurisdiction. In addition, the Supreme Court hears appeals, retrials, complaints and disputes over jurisdiction between the military and ordinary justice systems and between institutional courts.

The IACHR has argued that: "Where the state allows investigations to be conducted by the organs potentially implicated, independence and impartiality are clearly compromised. Legal procedures compromised in this way are incapable of affording the investigation, information and remedy purportedly available... This type of de facto impunity is corrosive of the rule of law and violative of the principles of the American Convention."[130] In particular, the Committee has stated that the nature and structure of military criminal courts do not fulfil the requirements of independence and impartiality set out in Article 8.1 of the American Convention on Human Rights. Article 14 of the ICCPR also requires the creation of competent, independent and impartial courts. In addition, rights to a fair trial enshrined in international standards are applicable to criminal proceedings in all courts.[131]

As the Inter-American Court of Human Rights stated when considering the case of Palamara Iribarne vs. Chile: "The impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy."[132] When a tribunal is composed of members of the institution to which the accused also belongs, it is precisely the principle of impartiality that is violated.

---

[130] IACHR, Report No. 10/95, Case 10.580, Ecuador, 12 September 1995, para. 48.

[131] Human Rights Committee, General Comment 32, CCPR/C/GC/32, 23 August 2007, para. 22.

[132] Inter-American Court of Human Rights, the Case of Palamara Iribarne vs Chile, para. 146.

The lack of independence and impartiality of the military courts is one of the central concerns expressed by all the lawyers and victims to whom Amnesty International spoke during the research for this report. Cristian Cruz, a lawyer who has represented several of the cases before military courts documented by Amnesty International, said that in the military justice system "there are unwritten rules" that protect members of the institution.[133]

Information collected by Amnesty International on cases dealt with by military courts regarding the crime of "unnecessary violence" shows a low conviction rate and a high number of dismissed cases. In the Santiago Second Military Court, which covers the central part of the country, the most common reason for stopping proceedings is the closure of cases on grounds that it could not be fully demonstrated that the crime that led to the indictment was perpetrated. Court records for each of the years analysed show a low conviction rate (see table below).[134] Data sent to Amnesty International by Coyhaique Fourth Military Court and Punta Arenas Fifth Military Court reveal a similar scenario of low conviction rates and high dismissal rates. In the first case, of the 395 cases admitted between 2005 and 2015, 333 had already been archived. Of these, 330 had been dismissed[135] and three resulted in convictions; that is, just 1%. In the case of the Punta Arenas Fifth Military Court, between 2005 and 2015 there were 191 cases of "unnecessary violence". Of this total, 20 cases are the subject of ongoing proceedings; the rest have been dismissed and closed. In other words, some 90% of all the cases involving this charge recorded from 2005 onwards have been dismissed.[136]

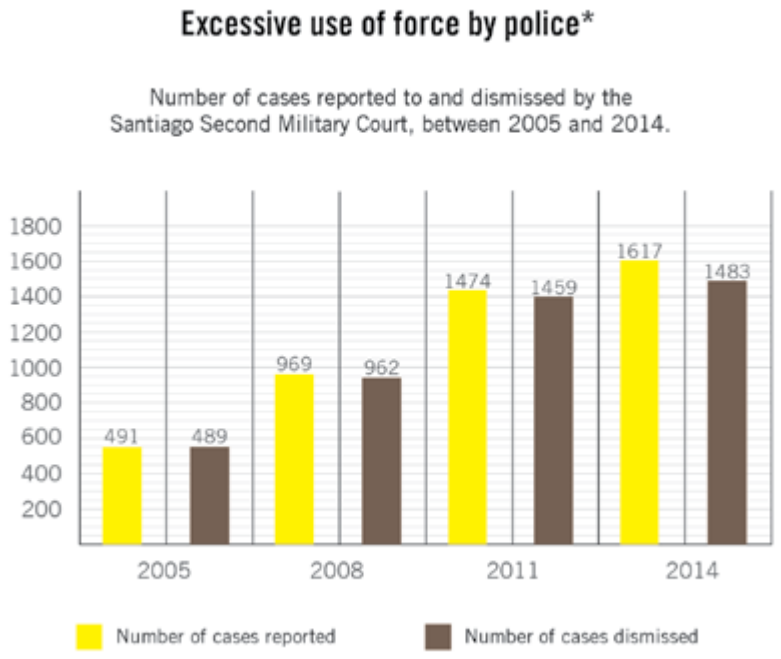
---

[133] Amnesty International interview with Cristian Cruz, June 2014.

[134] Note on data: the cases submitted each year do not necessarily correspond to the cases closed that same year. Due to the length of time that proceedings can take, it is possible that cases submitted in any given year are registered as "closed" following year or later. Therefore, the numbers in this table do not reflect an analysis of the progress of each case, but rather they indicate a trend by comparing the number of complaints submitted and the number of cases dismissed in the same year.

[135] According to the information sent by the Coyhaique Fourth Military Court, the main reason for cases being dismissed was article 409 No1 of the Code of Criminal Procedure which stipulates that cases must be provisionally closed in the absence of confirmation that the offence which is the basis of the indictment was perpetrated. Letter to Amnesty International, from Coyhaique Fourth Military Court, No. 3 / 2016, 25 January 2016.

[136] Information received from the Punta Arenas Fifth Military Court, V JM (R) No. 1595/14/INDH, 18 January 2016. The main reasons indicated by this court for dismissing cases are Article 409 No. 1 and 2 of the Code of Criminal Procedure which stipulate that cases should be closed in the absence of confirmation that the offence which is the basis of the indictment was perpetrated and when there is confirmation that a crime was committed but there is insufficient evidence to charge anyone as the author, accomplice or accessory to the crime.



* In the military justice system, excessive use of force by police is prosecuted under the offence "unnecessary violence"

Source: Amnesty International's analysis based on data provided by the Santiago Second Military Court about cases received and dismissed in 2005, 2008, 2011 and 2014.

A 2014 report by the National Institute for Human Rights paints a similar picture.[137] This report indicates that 6,083 complaints of "unnecessary violence" were lodged between 1990 and 2004 with the Santiago Second Military Court, of which only 3.2% resulted in convictions, while over 90% were dismissed. In addition, between 2005 and 2011, just 0.48% of cases resulted in a conviction and nearly 95% of cases were dismissed; the most common reason given for dismissal was the lack of sufficient evidence to carry out an investigation.

The story of **Jaime Mendoza Collío** (see box below) also shows how military tribunals may seek to cover up the actions of those who have committed human rights violations. The family of Jaime Mendoza Collío told Amnesty International of their lack of trust in the military justice system. Although they recognize that the Supreme Court overturned the acquittal by the Court Martial, they felt the sentence was too lenient and that "*quite possibly in theordinary courts the case would have turned out differently*".[138] The family has fought for justice for some four years, but they feel that they "still don't have the peace of mind of saying that Jaime has found justice". For this family of Mapuche origin, what has happened is also "*an affront to the entire Mapuche People. Insulting them for not having resources, for being Mapuche or poor, we had to suffer the disdain of so many people*".

---

[137] National Institute for Human Rights, Estudio Exploratorio: *Estado de Chile y pueblo Mapuche: Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía*, Section 3.1.1.

[138] Amnesty International interview with the family of Jaime Mendoza Collío, Santiago, June 2014.

JAIME MENDOZA COLLÍO

Jaime Facundo Mendoza Collío, a 24-year-old Mapuche, died on 12 August 2009 after being shot by police. He was one of about 80 people who had occupied a farm in the community of Ercilla, IX Region of La Araucanía, as part of a campaign for the return of land over which the community claimed ancestral rights. "*Jaime had gone to negotiate with the owner of the property but the police arrived and shot him*," his sister, María Collío, told Amnesty International. At least eight other people were injured during the eviction of the protesters, which was carried out by the Special Forces of the Prefecture of Malleco and members of the Special Police Operations Group (Grupo de Operaciones Policiales Especiales, GOPE).

In November 2011, the Valvidia Third Military Court declared a GOPE officer guilty of "unnecessary violence resulting in death" and sentenced him to five years and a day in prison and barred him permanently from public office. The court concluded on the basis of the evidence presented that it would appear the officer could not have acted in self-defence because the young man was not armed and there was no evidence that the use of the weapon was reasonable and necessary. In addition, forensic reports showed that Jaime Mendoza Collío was shot in the back."[139]

However, in August 2012, following an appeal by the *carabinero* and the State Defence Council, the Court Martial quashed the conviction and acquitted the officer, concluding that he had acted in self-defence. The Court Martial dismissed the testimonies of 11 members of the Mapuche community who had testified that they did not possess firearms, arguing that these could not be taken into account because it had been shown that at least one of them had fired a weapon and therefore all the testimonies lacked impartiality. Neither did it take into account expert evidence gathered during the investigation or the fact that the young man was shot in the back. The case then was passed to the Supreme Court, which in August 2013 rejected the ruling of the Court Martial. It found that it had not been proved that the officer had acted in self-defence, nor that the victim was armed, as claimed by the defence, while it had indeed been proved that the bullet was fired at the victim's back as he fled. The Supreme Court reduced the initial sentence passed by the court of first instance from five to three years in prison since it was considered that the officer had acted in a violent situation. The officer was permitted to serve the sentence on probation and was suspended from his post and barred from public office for the duration of the sentence.[140]

The family of Jaime Mendoza Collío believe that the final outcome of the judicial process has not delivered justice. Although the judgment of the court of first instance had provided them with some comfort, it was revised and in the end the officer responsible for the death of Jaime Collío was able to evaid prision. [141]

Although this case ended with a conviction in the Supreme Court, the Court Martial had cleared the officer. This acquittal, given the later conviction by the Supreme Court, could be seen as an attempt to protect members of the institution and, consequently, a lack of impartiality.

---

[139] Case Roll No. 702-2009, Valdivia Third Military Court, 11 November 2011.

[140] Supreme Court, revised sentence, 21 August 2013. The Court applied two mitigating factors: the previous unblemished record of the officer and the fact that, given that he was operating in a violent context, the officer was exposed to intense provocation which obviously led to the outburst and inflexiblity.

[141] Amnesty International interview with the family of Jaime Mendoza Collío, June 2014.

The Inter-American Court of Human Rights has stated that: "The independence of any judge presumes that his appointment is the result of the appropriate process, that his position has a fixed term during which he will not be removed, and that there are guarantees against external pressures."[142] Again in a case relating to Chile, the Court has indicated that:

> "*the organic structure and composition of military courts as described... implies that, in general, they are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command, that their designation does not depend on their professional skills and qualifications to exercise judicial functions, that they do not have sufficient guarantees that they will not be removed, and that they have not received the legal education required to sit as judges or serve as prosecutors. All this implies that said courts lack independence and impartiality.*"[143]

The Basic Principles on the Independence of the Judiciary, adopted by the UN General Assembly in 1985, state that: "The judiciary shall decide matters before them... without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." The Basic Principles also state that: "It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."[144]

An essential aspect of judicial independence is that judges and magistrates are judicial officials and are dependent of and not subordinate to the hierarchy of other institutions, in particular the Executive. The Human Rights Committee has stated that: "The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature."[145]

In light of this, the Inter-American Court of Human Rights has stated that: "the State has the duty to guarantee an appearance of independence of the Magistracy that inspires legitimacy and enough confidence not only to the parties, but to all citizens in a democratic society".[146] The fact that those military tribunals are made up of members of the armed forces on active service (this is a requirement for being part of the military courts) compromises the principles of independence and impartiality.[147]

---

[142] Inter-American Court of Human Rights, the *Case of Palamara Iribarne vs Chile*, para. 156.

[143] Inter-American Court of Human Rights, the *Case of Palamara Iribarne vs Chile*, para. 155.

[144] See UN Basic Principles on the Independence of the Judiciary, 1985, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx (last accessed 28 February 2016).

[145] Human Rights Committee, General Comment 32, para. 19.

[146] Inter-American Court of Human Rights, the *Case of Reverón Trujillo vs Venezuela*, Judgment of 30 June 2009, series C No. 197, para. 67.

[147] Inter-American Court of Human Rights, the *Case of Durand and Ugarte vs Peru*, para. 126.

The death of **Alex Lemún Saavedra** (see box below) during a police operation at an occupation in the town of Ercilla, IX Region, also shows how the lack of independence and impartiality of the military courts has become a barrier to justice. In the absence of a response from national courts and in the face of continuing impunity for those responsible, Alex Lemún's family has decided to take their case to the international human rights system.

ALEX LEMÚN SAAVEDRA

On 7 November 2002, Edmundo Alex Lemún Saavedra, a 17-year-old Mapuche, was shot in the forehead during a police operation at an occupation of an area in the town of Ercilla, IX Region. The protest was part of a campaign to reclaim ancestral lands. Alex died five days later in a hospital in the city of Temuco.

On 19 November 2002, the Regional Prosecutor's Office in La Araucanía passed the file of the case initiated in the ordinary justice system to the military prosecutor, on the grounds that the bullet fired at Alex was the type of shotgun cartridge used in police firearms and that therefore *carabineros* were involved in the incident.

In August 2003, the military prosecutor of the Valdivia Third Military Court indicted a *carabinero* officer from the police station in Angol for firing the shot that killed Alex Lemún. According to the prosecutor's investigation, the police operation was attacked with stones, which was why the officer deployed tear gas and his anti-riot shotgun to fire rubber bullets. When he was hit by a missile, unable to see who was responsible, the officer decided to change the rubber bullets for live ammunition and fired at residents form a distance of 100m; one of the bullets hit Alex Lemún. The prosecutor concluded that there was sufficient evidence to show that there was no real or imminent danger to the officer to justify his using his firearm in the way that he did, despite the violent situation. The prosecutor charged the officer with "unnecessary violence resulting in death" under the Code of Military Justice and ordered his detention pending trial.

The officer was subsequently granted police bail and in September 2003, following an appeal by the officer, the Court Martial dismissed all proceedings against him and ordered his immediate release. The court ruled that there was insufficient evidence to establish that a crime had been committed.

Alex Lemún's relatives appealed against the decision and presented the testimony of five witnesses. However, the court ruled that no new evidence had been presented and in May 2004 decided not to proceed with the case against the officer.

In July 2004, the cause was partially dismissed by the Valdivia Third Military Court on the grounds that it had not been duly shown that the crime of "unnecessary violence resulting in death" had been committed in the case of Edmundo Alex Lemún Saavedra. Two months later, the same court ruled that the case should be dismissed in its totality; this decision was confirmed by the Court Martial in March 2005.

The officer was the subject of an administrative investigation by police, which recognized that planning and police tactics in the operation were not in line with the regulations that had been established to deal with this type of situation. "[The officer's] identification and assessment of the extent of the risk involved... was inappropriate, given that this was clearly a conflict situation... he failed to implement the operational strategy indicated by the Prefecture". The officer was given one day's arrest with duties.[148]

In April 2006, having been denied access to justice in Chile, the family, with the support of the Centre for Justice and International Law (Centro por la Justicia y el Derecho Internacional, CEJIL), took the case to the IACHR, which issued its report on admissibility of the case in November 2012.[149] CEJIL told Amnesty International that this case is "representative of the type of human rights violations resulting from the existence of military jurisdiction and its application to crimes such as the murder of young Mapuche by the security forces."

Those responsible for the death of Alex Lemún, a minor, have still not been brought to justice.

Even though the family had produced new witnesses, the military court found that there was not sufficient evidence to proceed. This response from the military justice system is particularly worrying given that an internal police investigation found that mistakes had been made in the assessment and planning of the operation. Although internal administrative disciplinary processes are different to criminal proceedings in military courts, this disparity in outcomes call into question the level of independence and impartiality of the actions of the military court.

The low number of cases of human rights violations before military courts that have been resolved has deterred victims from approaching the justice system; they do not have confidence in these institutions and they do not believe that the process can deliver a satisfactory outcome.

For Juana Leuquén, the wife of Iván Vásquez, (see box below) the military justice system is not making all the efforts required to find out who was responsible for the death of her husband in the Chile Chico police station in May 2014. "*I am very dissatisfied with the way in which the case has been treated, with the superficial way in which the Military Prosecutor's Office has handled everything. For me this doesn't make sense. It's not about one person acting alone in there… My children saw how they beat their father* [during arrest at home]", said Juana Leuquén, in an interview with Amnesty International.[150]

The death of her husband has had a huge impact not only on her, but also on her two young children. Iván Vázquez was the main breadwinner in the family. When the family could no longer pay the rent on their house, they had to move.

IVÁN VÁZQUEZ

Iván Vásquez © Amnesty International

On 4 May 2014, 39-year-old Iván Vázquez was arrested at his home in Chile Chico after his wife, Juana Leuquén, lodged a complaint against him for domestic violence. He was taken to the 3rd *Carabineros* Commissariat in Chile Chico and detained.

Before his transfer to the police station, Iván Vázquez was taken to the hospital to record his injuries. According to the information received by Amnesty International, the doctor who treated him at that time found no serious injuries. Iván Vázquez was then taken to the police station. An hour later, according to the police's initial version of events, Iván Vázquez died, having hanged himself in his cell. According to the police, he suffocated using his own t-shirt and although he was transferred to the hospital, they were unable to save his life. The medical report states that he died as a result of "hanging, strangulation and suffocation".

[148] IACHR, Admissibility Report No. 81/12, 8 November 2012, (Petition 404-06), para. 15.

[149] IACHR, Admissibility Report No. 81/12, 8 November 2012.

[150] Amnesty International interview with Juana Leuquén, January 2015.

Police reported the alleged suicide to the Chile Chico's Public Prosecutor's Office, which requested an autopsy. The autopsy was carried out on 5 May 2014 and gave the cause of death as hypovolaemic shock caused by trauma to the liver resulting in internal bleeding.

Given the possible involvement of officers in a criminal act, the Chile Chico Prosecutor's Office declared that it would not pursue the case and transferred the investigation to the Coyhaique Military Prosecutor's Office on 6 May.

On 26 May, after taking statements, as suspects in the case, from the four officers who were involved in the arrest, the Military Prosecutor issued an indictment against a non-commissioned officer and ordered his detention pending trial for "unnecessary violence resulting in death".

Iván Vásquez's grave in the Municipal Cemetery of Chile Chico © Amnesty International

Subsequently, in September 2014, at the request of accused officer's lawyer, the Military Prosecutor ordered a second autopsy by the Legal Medical Service to determine the cause of the death. The preliminary report of this second autopsy of October 2014 concluded that Iván Vázquez had hanged himself, again supporting the idea of suicide. According to this second report, the first autopsy was not carried out properly. As a result the charge was dropped and the officer was released.

For the lawyers of Iván Vázquez' family, the second autopsy in October 2014 should not be considered valid because it was carried out by an official who works for the *Carabineros de Chile* and therefore did not have the necessary independence and impartiality to carry out the examination. They asked the Court Martial for a third expert examination of the body of the deceased to determine the exact cause of death. The Court Martial agreed in August 2015. At the time of writing, the result of the third examination was pending.

To date, none of the six officers who participated in the arrest or were at the police station at the time of the incident has been the subject of an administrative sanction, not even for lack of due care of a person under their supervision.

Juana Leuquén told Amnesty International: *"The Military Prosecutor's Office will try to drag the case out as long as it can. But if they think I'm going to give up, they are wrong. Because everything that happens to me makes me stronger... I never thought this would happen to me. If I had known that they were going to kill him, I would never have called the police, and even less so given the way they killed him."*

C. OBSTACLES TO JUSTICE AND COMPREHENSIVE REPARATION

According to the Code of Military Justice, the procedure governing the military courts is an inquisitorial one. Its procedures are characterized by secrecy;[151] a lack of participation by the victim (when a victim's lawsuit is not permitted); notarial documentation; and the fact that the same party that investigates also passes judgment in the case.[152] In contrast, the criminal justice system, which has been in force in Chile's ordinary courts since the reform of the criminal justice system in 2000, is an adversarial system. This system is characterized by oral hearings, an adversarial approach and intermediary parties; that is, it is the judge who decides based on the evidence presented. Both defence lawyers and prosecutors play a crucial role in this process.[153]

The 2000 reforms of criminal procedure did not apply to military tribunals. According to the Chilean Constitution,[154] criminal proceedings and the investigation of the facts for offences under the Code of Military Justice are carried out by the people or bodies determined in that Code.

Various international human rights bodies have stated that a system in which secrecy is prioritized, where the accused has limited options for defence and victim participation in the process is limited, is not consistent with international human rights norms. The Inter-American Court of Human Rights has noted that under the American Convention on Human Rights, states have an obligation to "to provide effective judicial recourses to the people that argue they are the victims of violations of human rights (Article 25), recourses that shall be substantiated pursuant with the rules of the due process of law (Article 8(1)), all within the general obligation, that falls upon the same States, to guarantee the free and full exercise of the rights acknowledged by the Convention to all those people under its jurisdiction (Article 1(1))."[155]

The principle of public trial is enshrined in Article 8.5 of the American Convention on Human Rights and Article 14.1 of the ICCPR and is an essential element of the right to a fair trial. The Inter-American Court of Human Rights has stated that: "The publicity of criminal proceedings aims at preventing the administration of secret justice, submitting it to the careful examination of the parties and the public, and is related to the requirements of transparency and impartiality of the decisions which are to be taken. Furthermore, it is a means for promoting confidence in courts of law."[156]

In addition, in the case of Palamara Iribarne vs Chile, the Inter-American Court of Human Rights stated in 2005 that: "provisions, which set forth that in the Chilean military criminal jurisdiction the investigation stage of the proceedings must be confidential, except as otherwise provided by law, oppose the right to defense of the accused, as they prevent access to the record of the case and to the evidence gathered against him, which, in turn, prevents him from defending himself adequately, in violation of the provisions set forth in Article 8(2)(c)."[157] It went on to add that with a few exceptions, the provision regarding the confidentiality of the investigation stage under the Chilean military jurisdiction violates the guarantee of public criminal proceedings set out in Article 8(5) of the American Convention on Human Rights.

---

[151] The indictment is the investigatory stage during an inquisitorial procedure. In accordance with Article 130 of the Code of Military Justice, the secret indictment stage can last for up to 60 days and may be extended if making information public might prejudice the outcome of the investigation.

[152] Chapter II of the Code of Military Justice regulates criminal proceedings.

[153] The new Code of Criminal Procedure dates from October 2000.

The limitations of a process in which the secrecy is paramount and the victim, who is the complainant in most cases[158] is not allowed to participate – that is, where all those involved are acting ex officio – are highly disturbing. Indeed, lawyers and human rights defenders have told Amnesty International that the limitations on requesting prosecutors' actions in order to clarify the facts create great difficulties in the military criminal proceedings.

The shortcomings of the Chilean military justice system have been recognized by the Supreme Court of Chile as regards disputes over jurisdiction and in relation to the reform of the military justice system in 2010. In its analysis, the Supreme Court has stated that "it should be understood that the exclusion of military justice referred to in Article 1 of Law No. 20.477 refers not only to those cases where those accused of unlawful acts are civilians or minors, but also where those are affected or victims of such acts are civilians or minors. This is because the non-military citizen who is the victim of these acts has a greater number of entitlements in proceedings before the ordinary courts, principally the right to pursue a criminal action... By the same token, the rights of the victim are given greater recognition when the case is pursued through the ordinary courts as they have more possible courses of action open to them."[159]

Another obstacle to justice that emerged during Amnesty International's research is the difficulty victims and their families have in obtaining comprehensive compensation under the military judicial process. Chile has an obligation to respect, protect and fulfil the right of victims to effective remedies,[160] in accordance with its international obligations. This obligation also involves establishing the truth and access to justice and comprehensive reparation; that is, the state must ensure full and effective remedies for the victims and their relatives, which may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[161]

---

[154] Article 83, final paragraph of the Chilean Constitution.

[155] Inter-American Court of Human Rights, the *Case of Radilla Pacheco vs Mexico*, para. 190.

[156] Inter-American Court of Human Rights, the *Case of Palamara Iribarne vs Chile*, para. 168.

[157] Inter-American Court of Human Rights, the *Case of Palamara Iribarne vs Chile*, para. 170.

[158] Inter-American Court of Human Rights, the *Case of Palamara Iribarne vs Chile* in relation to article 133 of the Code of Military Justice.

[159] Supreme Court Judgment of 12 August 2014. Case Roll No. 12.908-14, Conclusion No. 5 (unofficial translation).

[160] The right of victims of human rights violations to effective remedy is enshrined in, among others, Article 2 of the ICCPR, Article 25 of the American Convention on Human Rights, Article 6 of the International Convention on the Elimination of all forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which have been ratified by Chile. It is also recognized in Article 8 of the Universal Declaration of Human Rights

[161] Amnesty International, Truth, justice and reparation: Establishing an effective truth commission, 11 June 2007 (Index: POL 30/009/2007). See also Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 9 August 2012, A/HRC/21/46; Office of the UN High Commissioner for Human Rights, Rule-of-law Tools for Post-conflict States: Reparations programmes, HR/PUB/08/1, Geneva, 2008.

Under military jurisdiction, access to full reparation is severely limited. Under Article 10 of the Chilean Code of Criminal Procedure, civil actions are aimed at repairing the effects of the offence, such as, among others things, pursuing the return of goods or their value, or compensation for the damage caused.[162] Therefore, the scope of possible use of civil action is quite restrictive, which means that in order to obtain compensation for psychological harm, for example, the victim must file an action in a civil court, with consequent delays.[163]

In practice, this creates greater costs and delays in the process. The journalist **Víctor Salas**, (see box below) has been seeking reparations, but more than eight years after the incident, his compensation case remains pending in a civil court. To date, he has not received any reparations nor support for the medical treatment he requires as a result of losing his sight.

Víctor Salas © Private

VÍCTOR SALAS

On 21 May 2008, the photojournalist Víctor Salas Araneda was in Valparaíso covering the annual presidential message to Congress when clashes erupted between a group of protesters and the police near the parliament building. He set off to record events. A mounted *carabinero* hit him with a metal whip. As a result of the blow, Víctor Salas lost almost all sight in his right eye.

In July 2008, the Military Prosecutor's Office laid charges against a lance corporal for the attack on Víctor Salas. During the investigation, the reporter produced evidence including photographs showing the lance corporal at the time of the attack. In January 2012, the Santiago Second Military Court confirmed the officer's responsibility and sentenced him to 541 days in prison for "unnecessary violence causing severe injury"[164] to the victim. The officer was suspended from his post, barred from public office for the duration of his sentence and dismissed from the military. Víctor Salas appealed against the sentence to the Court Martial on the grounds that it was too lenient. However, on 4 April 2013 this Court reduced the original sentence to 300 days in jail, which could be served on probation during one year. In the view of the Court Martial, the fact that the officer did not have any previous convictions and the absence of any aggravating circumstances were sufficient reasons to take into consideration the mitigating factor of "irreproachable former conduct" as a "highly relevant extenuating circumstance" and therefore the military judge handed down a reduced sentence. In addition, by imposing a sentence of less than one year, the officer was not subject to the additional sanction of being suspended from his post or barred from holding public office.[165] The sentence was upheld by the Supreme Court in September 2013 following an appeal by the convicted officer.

[162] This article was modified by the Law 18.857 of 1989.

For Víctor Salas, the outcome of the legal process before the military courts was confirmation that the military justice system was intent on keeping the officer responsible for the attack in the military and imposing a minimum sentence, despite the seriousness and consequences of the injury. Víctor Salas also regrets that during the investigation by the *Carabineros de Chile*, officers tried to discredit his testimony and that even after the officer's conviction he never received a public apology. "*All the time I felt there was a publicity campaign [by police] against me to discredit my testimony and justify the actions of the police, in effect making me out to be a liar... My professional image was called into question and damaged*", he told Amnesty International.

Dissatisfied with the judgment, in March 2014, Víctor Salas filed a complaint with the IACHR; a decision on whether it would be admitted was pending at the time of writing. In May 2012, he also filed a civil lawsuit (compensation for damages) against the state; this was pending before the Valparaíso Court of Appeals at the time of writing. In the lawsuit, Víctor Salas, raises the psychological, physical and economic harm caused and impact of all this on his family, issues that must be considered when determining reparations. He had to stop working as a photographer because of the injury to his right eye and it took him a long time to learn to work, albeit with difficulty, with just his left eye. "*I was left with a feeling of helplessness... I saw that basically as far as the state was concerned, at an institutional level, no one cared about what had happened to us... about my health. It meant nothing to them*".

---

[163] The Santiago Court of Appeals, for example, has followed this restrictive approach in dealing with civil actions in the criminal courts. For example, in the case of "Miguel Ángel Sandoval Rodríguez" (Roll No. 2182, 1998) the Santiago Court of Appeals ruling on an appeal about the competence of a criminal court to hear a civil suit stated that the jurisdiction granted by Article 10 of the Code of Criminal Procedure does not accord the criminal court competence to hear a case relating to the responsibility of the state for the civil consequences of administrative acts. Such cases fall under the jurisdiction of the civil courts, via a decree judgment and broad application, cited by Ewaldo Shculz, in Procedencia de la acción civil en el proceso penal antiguo, available at http://www.cde.cl/wps/wcm/connect/6242e8d3-8a91-4ed6-b37d-86cd2781dba6/17.pdf?MOD=AJPERES (last accessed 12 January 2016).

[164] Under article 330 No. 2 of the Code of Military Justice, this crime can carry a penalty of short-term imprisonment for medium duration or long-term imprisonment for minimum duration; that is, between 541 days and 10 years.

[165] Under article 222 of the Code of Military Justice, sentences of up to one year for misdemeanours do not entail loss of military status, but rather suspension from military duties. This explains why the officer could remain within the military.

D. TRANSFERRING CASES TO THE ORDINARY CIVILIAN COURTS

In recent years both the Supreme Court and the Constitutional Court have played an important role in restricting the use of military courts and preventing them from hearing cases of human rights violations. This is mainly due to the work of victims, their lawyers, human rights defenders and the National Institute for Human Rights who have pursued processes to transfer cases from military jurisdiction to the ordinary courts.[166] This has received the support of some ordinary tribunals, as well as messages from the Executive that cases of police brutality should be investigated and punished by the ordinary courts. Some of the cases documented by Amnesty International, for example the case of **Rodrigo Avilés** (see box below), reflect this new tendency.

RODRIGO AVILÉS

On 21 May 2015, Rodrigo Avilés, a university student, was seriously injured when he was hit by water fired by riot police using water cannon as he was leaving a demonstration he had participated in outside the National Congress in the city of Valparaiso. The jet of water caused him to fall, hitting his head on the ground. He cracked his skull, causing trauma to the brain and he lost consciousness. He was in a critical condition and remained in a coma for a 19 days, during which he underwent brain surgery.

Initially, *Carabineros de Chile* spokespeople claimed that the injury was not the result of his being hit by the jet of water.[167] However, a video came to light showing the water cannon firing directly at Rodrigo Avilés and the *carabineros* admitted responsibility. The officer driving the vehicle was dismissed.

Rodrigo's father, Felix Avilés, a lawyer, demanded from the outset that the case be heard in the ordinary courts, as he had no confidence at all in the military justice system. He told Amnesty International: "t*he military justice system is an institution designed to defend the institution; it facilitates impunity*". On this occasion, the government promised that the case would be investigated by the ordinary courts to establish responsibility.[168] The case remained pending before the ordinary courts at the time of writing.

Rodrigo Avilés left hospital in July 2015. With rehabilitation treatment and the support of his family and friends he is continuing his recovery. "*It's a full time job, and the reward is his life*," Rodrigo's father told Amnesty International. In December 2015 Rodrigo was again admitted to hospital for severe headaches and fits related to the injury; he was subsequently discharged.

His father continues to demand justice for the attack on his son and is calling for a reform of the Code of Military Justice to ensure that no cases of human rights violations committed by *carabineros* or other law enforcement officials are heard in military courts. "*What we are demanding is structural change in this country so that there will never be another case like this and so that state institutions are not complicit in the violation of rights by encouraging silence and waiting for people to forget.*"

---

[166] Amnesty International interviews with the National Institute for Human Rights in June 2014, December 2014 and October 2015; communications with lawyers; an interview with Enrique Eichin in June 2014; and an interview with Víctor Salas in June 2014.

[167] See http://noticias.terra.cl/chile/informe-de-carabineros-niega-responsabilidad-en-caso-de-rodrigo-aviles,88d19d7cfe28ad222053814edd6d9902czijRCRD.html (last accesed 10 February 2016).

[168] See http://www.t13.cl/noticia/nacional/ministra-de-justicia-investigacion-por-joven-herido-en-marcha-no-pasara-a-justicia-militar (last accesed 10 February 2016).

Many instances of cases being transferred to the ordinary courts have occurred following the Constitutional Court ruling on inapplicability of unconstitutionality petitions.[169] One such case was that of **Enrique Eichin and Marcos Antilef** (see box below).

In the case of Enrique Eichin, the Supreme Court heard the dispute over jurisdiction between a military tribunal and an ordinary court. On that occasion, the Supreme Court stated that the jurisdiction of military courts, which are special courts, should be restricted, above all when the case involves people who are not part of the military.[170]

ENRIQUE EICHIN

On 11 April 2013, Enrique Eichin, a 58-year-old architect, and his family took part in a student march in the Mapocho Station area in Santiago. As they were leaving, *carabineros* were carrying out an operation to disperse protesters. Enrique Eichin reported that he was shot by a paintball fired by a member of the Special Forces standing about 30m away. According to his testimony, the *carabinero* was the only one firing in that area and he was shooting indiscriminately. The paintball caused serious injury to Enrique Eichin's right eye. After several operations, it was confirmed the he had completely lost his sight in the eye. The injury sustained will affect his ability to work as an architect for the rest of his life; in October 2013 the eye had to be removed and replaced with an artificial eye.

Enrique Eichin © Private

Enrique Eichin did not know that Chilean law still allows cases of human rights violations committed by *carabineros* to be heard in military courts; these courts are treated with suspicion because of the role they played under Chile's military regime. Enrique Eichin told Amnesty International that, while he was recovering in the hospital, a *carabinero* visited to take his statement. At that point he learned that his case could be heard in the military courts. "*I told the officer who came to the hospital that I was not going to lodge a complaint with the military prosecutor. I knew I had been shot by a Carabineros de Chile officer, although I did not know [who exactly]. As a civilian I had to go to civilian justice system. I wasn't going to use the military justice system." Nevertheless, and initially without his knowledge, an investigation was started under military jurisdiction.*

On 14 June 2013, Enrique Eichin filed a criminal complaint before the 7th Court of First Instance (Juzgado de Garantía) in Santiago (the ordinary court competent to hear this case), which referred the case to the relevant officials in the Public Prosecutor Prosecutor's Office. That same month, the prosecutor in the case declared that he was not competent to deal with the case because it involved "*Carabineros de Chile* officials carrying out their duties". However, the 7th Court of First Instance did not accept this argument and decided to keep the case in the ordinary courts. The prosecutor appealed this decision to the Santiago Court of Appeals.

At the same time, in July 2013, Enrique Eichin took the case to the Constitutional Court,[171] which temporarily suspended hearings of the appeal before the Court of Appeals. On 6 May 2014, the Constitutional Court ruled in favour of the ordinary courts, which set an important precedent. The Constitutional Court based its decision on the jurisprudence of the Inter-American Court of Human Rights and international treaties, noting that the military justice system does not have jurisdiction over civilian parties and can only investigate and punish infringements of the law related to military functions. Following the Constitutional Court judgment of 22 May 2014, the Santiago Court of Appeals ruled on the appeal that had been filed by the prosecutor in 2013, finding in favour of continued investigation of the case in the ordinary courts.

---

[169] Appeals on the grounds of inapplicability by reason of unconstitutionality are regulated by article 93 No. 6 of the Chilean Constitution.

[170] Supreme Court, Judgment on jurisdictional dispute, 19 May 2014, Roll No. 4450-14, Conclusion No. 1.

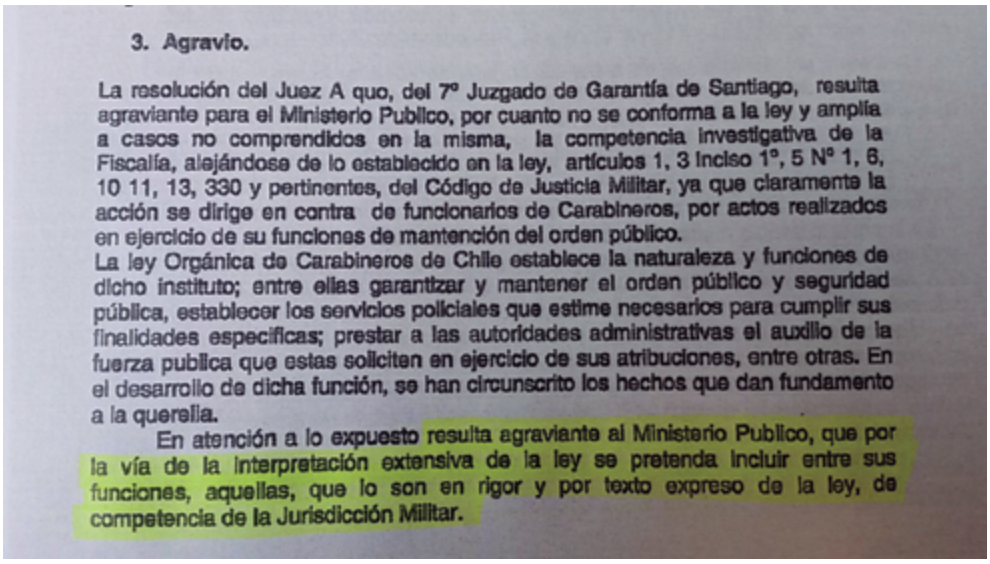
However, despite the decision of the Constitutional Court, the Military Court of Santiago continued to argue that the law gave it authority to hear this case.[172] This created a conflict of jurisdiction between the military court and the ordinary court, which was finally resolved by the Supreme Court in favour of the ordinary courts in February 2015.[173] The case remains pending before the ordinary courts.

The *Carabineros de Chile* conducted an internal investigation which concluded that the complaint against the officer could be neither proved nor dismissed. This, despite the fact that Enrique Eichin had provided a photograph which showed the *carabinero* firing. The officer alleged to be responsible was not suspended during the investigation.

Enrique Eichin is still demanding justice and hopes that his case will be resolved by the ordinary justice system promptly, independently and impartially, as required by the rule of law.

Although the Chilean courts finally ruled in favour Enrique Eichin and endorsed the jurisdiction of the ordinary courts, the obstacles he has faced since 2013 in getting his case transferred from the military courts have generated significant delays in the investigation. To date the alleged perpetrators have not been brought to justice and Enrique Eichin has not received compensation for the harm caused.

Amnesty International is concerned that, as Enrique Eichin's case illustrates, some prosecutors remain reluctant to investigate and bring to trial cases of human rights violations committed by members of the security forces and that they are continuing to refer such cases to the military courts, contrary to international human rights standards.



3. Agravio.

La resolución del Juez A quo, del 7º Juzgado de Garantía de Santiago, resulta agraviante para el Ministerio Publico, por cuanto no se conforma a la ley y amplía a casos no comprendidos en la misma, la competencia investigativa de la Fiscalía, alejándose de lo establecido en la ley, artículos 1, 3 inciso 1º, 5 Nº 1, 6, 10 11, 13, 330 y pertinentes, del Código de Justicia Militar, ya que claramente la acción se dirige en contra de funcionarios de Carabineros, por actos realizados en ejercicio de su funciones de mantención del orden público.
La ley Orgánica de Carabineros de Chile establece la naturaleza y funciones de dicho instituto; entre ellas garantizar y mantener el orden público y seguridad pública, establecer los servicios policiales que estime necesarios para cumplir sus finalidades especificas; prestar a las autoridades administrativas el auxilio de la fuerza publica que estas soliciten en ejercicio de sus atribuciones, entre otras. En el desarrollo de dicha función, se han circunscrito los hechos que dan fundamento a la querella.

En atención a lo expuesto resulta agraviante al Ministerio Publico, que por la vía de la interpretación extensiva de la ley se pretenda incluir entre sus funciones, aquellas, que lo son en rigor y por texto expreso de la ley, de competencia de la Jurisdicción Militar.

Extract of the appeal filed by the Prosecutor's office against the civilian judge's decision to retain jurisdiction in the case of Enrique Eichin. Emphasis added © Amnesty International.

[171] Action of inapplicability on grounds of unconstitutionality, Roll No. 2493-13-INA.

[172] Denial of request for to limit jurisdiction on 23 December 2014 submitted by the Santiago 7th Criminal Court of First Instance on 30 October 2014.

[173] Supreme Court ruling of 26 February 2015, Roll No. 878-2015.

The Constitutional Court upheld the application of ordinary jurisdiction following a petition for the inapplicability of unconstitutionality lodged in another case, that of **Marcos Antilef** (see box below), brought by the National Institute for Human Rights. The case is still under investigation in the ordinary courts.

MARCOS ANTILEF

"*I never expected this when I left my son at the* [Carabineros de Chile] *training school. I delivered him safe and sound. And to have him home now in this condition has been a very hard blow... Now, I devote my life to my son. We are like twin souls. I depend on him, he depends on me. We cannot be separated. But I want justice. Above all justice.*"[174]

Marcos Antilef © Amnesty International

In 2007, Marcos Antilef, a carabinero originally from Villarrica (Temuco) was assigned to a police outpost in the town of Palmilla (Linares) in the south of the country. Marcos told Amnesty International that he had problems with some of his fellow officers right from the start; they mocked and insulted him because he had a Mapuche surname. "*I was always a bit left out of police functions. I was forced to do lots of things that had nothing to do with police work*".[175]

On 17 November 2012, as Marcos was driving back to the barracks in the early hours of the morning, he fell asleep at the wheel and crashed on the side of the road. Marcos admits he had been drinking alcohol. Three officers from the Palmilla outpost arrived at the scene and took him to hospital in Linares where he was treated for minor injuries. After learning of the incident, the prosecutor in charge of investigating the alleged crime of drunk driving charged and released him.

According to Marcos, after the hospital registered his injuries, the *carabineros* put him in a van and took him to the police station in Linares. "*When I was still in the doorway of the room, I was knocked violently to the ground and a sergeant started kicking me in the back. He kicked me five or six times in the lower back before I lost consciousness. I was left on the ground*".[176]

Marcos Antilef woke up the next day in bed in a room in the Linares police station. He was in severe pain and asked for help but it was several hours before another officer helped him to get to hospital in Linares where he was told he had a cervical fracture and quadriplegia that would prevent him walking again. After spending three months in hospital he returned home to his parents in Villarrica. Since then, Marcos Antilef has used a wheelchair to get around. He can stand up with the help of another person and with wooden crutches that his father has made.

On 21 September 2012, Marcos Antilef's mother filed a complaint with the Linares Public Prosecutor's Office against three *carabineros* from the Palmilla military outpost suspected of involvement in causing serious injury to her son. Four days later, the Public Prosecutor's Office referred the case to the Linares Military Prosecutor on the grounds that this fell within that jurisdiction. On 10 October, the military court took a statement from Marcos Antilef in the Linares hospital.

---

[174] Amnesty International interview with Jacqueline Quintulaf, Marcos Antilef's mother, June 2014.

[175] Amnesty International interview with Marcos Antilef, June 2014.

[176] Amnesty International interview with Marcos Antilef, June 2014.

In May 2013, the National Institute for Human Rights filed a complaint with the Linares Court of First Instance against the three *carabineros* for their alleged involvement in the cruel, inhuman and degrading treatment of Marcos Antilef (the crime of "unlawful physical or mental coercion"[177]). It argued that the crimes did not occur in the exercise of their duties, but while they were accompanying Marcos Antilef in their capacity as companions or comrades and in residential premises for single officers designed as a rest area and not a place where police functions are exercised. However the court argued that the crime was committed by *carabineros* in a police station and, citing the Code of Military Justice, declared that the case did not fall within its jurisdiction, but rather was under military jurisdiction.[178] The National Institute for Human Rights lodged an appeal and in July 2013, the Court of Appeals of Talca upheld the lower court's decision. This prompted the National Institute for Human Rights to lodge a complaint before the Supreme Court. This was suspended when the case was passed up to the Constitutional Court following a motion for inapplicability on grounds of unconstitutionality.

On 17 June 2014 the Constitutional Court upheld the argument of the National Institute for Human Rights. In its judgment, the Court noted that in this specific case there was no "constitutionally permissible justification preventing a person, civilian or military, from exercising their rights as a victim of a common crime and depriving them of a sound and fair process".[179] The Court stated that in its view pursuing the case under military jurisdiction would be violating several articles of the Chilean Constitution and the American Convention on Human Rights.

Following the decision of the Constitutional Court, the Supreme Court set aside the judgment of the Talca Court of Appeals and, therefore, the decision of the Linares court, thereby allowing the investigation to be passed on to the ordinary courts in September 2014.[180]

The investigation remains open with the Linares Public Prosecutor's Office awaiting confirmation of the cause of the serious injury suffered by Marcos and possible perpetrators.

Sometimes, the use of military jurisdiction in Chile has led to cases of human rights violations remaining in legal limbo. This has resulted in delays in the administration of justice and potentially to impunity. A case that clearly reflects the consequences of this legal uncertainty is that involving the alleged enforced disappearance of **José Huenante** (see box below). His family has been waiting for years for an effective investigation and for those responsible to be brought to justice. The National Institute for Human Rights has recently started pursuing the case and is working to have it transferred to the ordinary courts. In January 2016, the supervisory court in preliminary proceedings in Puerto Montt declared admissible the complaint filed by the Institute in 2015 against those responsible for the disappearance of José Huenante.[181] Following this ruling, the ordinary courts are investigating the alleged involvement of civilians in the incident, while the military courts continue to look into the possible involvement of members of the security forces. This separate pursuit of the cases has hampered victims' access to justice.

---

[177] Article 150A of the Criminal Code.

[178] Article 5 No. 3 of the Code of Military Justice.

[179] Judgment of the Constitutional Court on appeal of inapplicability by reason of unconstitutionality of 17 June 2015, Conclusion 33.

[180] In its ruling, the Court rejected the complaint of the National Institute for Human Rights, but concurred with the position of the Constitutional Court regarding the nature and place of the crime as fallling outside military jurisdiction.

[181] See http://www.indh.cl/justicia-declara-admisible-querella-del-indh-por-desaparicion-de-jose-huenante (last accessed 14 January 2016).

THE DISAPPEARANCE OF JOSÉ HUENANTE

"Today more than ever we ask for the truth about what happened to José Huenante. Put yourselves in our place, we call on those who know what happened, to speak up and say where he is. Let us give him a decent burial. Put your hands on your heart, overcome your fears and tell the truth. Give us that information and give us his body." [182]

José Gerardo Huenante Huenante, of Mapuche origin, was forcibly disappeared on the morning of 3 September 2005. He was 16 years old at the time. According to the account given in the 2009 annual human rights report of the Diego Portales University, on the day of his disappearance, José Huenante was drinking with other young people in the Mirasol area of Puerto Montt, in the south of the country, when several patrols arrived to carry out a raid. Witnesses claim to have seen José Huenante running in front of a patrol car and how at one point two officers got out of the vehicle and arrested him.[183] He has not been seen since and his whereabouts remain unknown.[184]

© Guillermo Núñez, "¿Dónde están?, ¿dónde está? El caso José Huenante" ('Where are they? Where is he? The case of José Huenante') Urban intervention organised by Londres 38 Espacio de Memorias, Santiago, Chile, 2011.

The family filed a complaint about the disappearance two days after the incident. The Public Prosecutor's Office began investigating this as the reported crime of "alleged misadventure". The investigation resulted in three *carabineros* being charged with child abduction. Following a criminal complaint lodged with the Puerto Montt Public Prosecutor in March 2009 and in light of new reports pointing to the three *carabineros* as responsible for altering detention records and the recorded mileage of the patrol car on the day of the incident, the prosecutor filed an indictment against the three officers on charges of illegal detention. "According to the investigation these *carabineros* altered the book so that the number "1" rather than "2" appeared in relation to the number of arrests that night. As if José Huenante had never been detained", a lawyer with the National Institute for Human Rights working on the case told Amnesty International.

However, in late 2009, following an appeal by the defence, the Puerto Montt Court of Appeals referred the case to the military courts on the grounds that the alleged crimes were reportedly committed by police personnel on duty and therefore should fall under military jurisdiction.[185] The case of alleged misadventure in the ordinary courts was left open by the Public Prosecutor.

More than 10 years later, the whereabouts of José Huenante remain unknown and no one has been brought to justice in the case. In October 2015, the National Institute for Human Rights filed a complaint with the Puerto Montt Court of First Instance for enforced disappearance; this was declared admissible in January 2016.

In November 2015, public pressure in the country led the military court, which had dismissed the case, to partially accept an appeal by the State Defence Council. It ordered the pre-trial detention of the three *carabineros* allegedly involved in the incident for falsifying public documents, specifically altering the logbook in which detainees are registered, early on morning of 3 September 2005.

---

[182] Press release by the family of de José Huenante, 22 July 2015, available at http://www.disidentes.cl/comunicado-publico-de-la-familia-de-jose-huenante-10-anos-desaparecido/ (last accessed 15 December 2015).

[183] Complaint of enforced disappearance presented by the the National Institute for Human Rights, September 2015.

E. CHALLENGES IN THE ORDINARY COURTS

The transfer of cases to the ordinary justice system does not in itself ensure the right to truth, justice and reparation for victims. Once cases of alleged human rights violations or crimes under international law are transferred to the jurisdiction of the ordinary courts, there are still several challenges to be overcome.

Among them, as lawyers and victims whose cases have already been transferred to the ordinary justice told Amnesty International, is the backlog in the overstretched system of justice and the resulting slow moving processes. During a meeting with Amnesty International in June 2014, representatives of the Public Prosecutor's Office concurred with this analysis. They indicated that, following the reform of the military justice system 2010, which transferred cases in which the accused were civilians to the ordinary courts, no additional resources were provided to deal with this new area of work. The result was a significant backlog and delays in the administration of justice.

Moreover, victims' representatives told Amnesty International that the lack of a dedicated unit within the prosecution service to undertake investigations into human rights violations committed by law enforcement officials, such as those that took place in the context of public demonstrations, creates enormous problems. *Carabineros* usually work closely with the prosecution service in investigations of criminal offences. The impartiality of investigations by the same prosecutors into the actions of *carabineros* can therefore be compromised. This is an issue which emerges with particular clarity in remote areas of the country where there are fewer police officials and there may be no members present of the Investigative Police, who are principally responsible for investigations. In other words, there are cases where – at the institutional level – officials who are working together one moment are expected to investigate each other's actions the next. If there were a specialist unit for investigations into human rights violations and crimes under international law, in the same way as there are specialized prosecutors for other areas (for example, the Special Anti-Corruption Unit), this potential conflict of interest would be eradicated, or at least diminished, and lead to more efficient and effective investigations, as well as ensuring their independence and impartiality.

Finally, it is essential that the necessary mechanisms are put in place to ensure coordination and cooperation between law enforcement institutions in order to facilitate investigations. In most cases, it is the security forces who have access to the evidence first and who control the crime scene. It is essential that mechanisms be created to ensure that members of the *Carabineros de Chile* and other branches of the armed forces provide full and transparent support to the ordinary courts, including information relevant to the investigation. These should include appropriate protocols on the handling of evidence and chain of custody.

---

[184] Centre for Human Rights, Diego Portales University, Informe Anual 2009, available at file://intsec.amnesty.org/data/users/mcostari/Downloads/Cap+04+justicia+militar+y+ddhh.pdf (last accessed 28 February 2016).

[185] Puerto Montt Appeals Court, Case Roll No. 257-2009, Judgement of 30 December 2009.

4. CONCLUSIONS AND RECOMMENDATIONS

'Chile must comply fully with international human rights obligations. To do this... we will reform the jurisdiction of the military justice system so that cases involving civilian victims of crimes committed by members of the military and police are heard in the ordinary courts'.

Programme of the Government of President Michelle Bachelet, 2014-2018 [186]

This Amnesty International report highlights how the use of military jurisdiction to investigate and punish human rights violations, such the excessive use of force by police, means that in practice victims and their relatives are denied access to justice and an effective remedy. In many cases the sentences handed down have been reduced by the higher courts, while in others no conviction was secured.

For years, international human rights bodies have reminded Chile of its obligation to amend military legislation in order to restrict military jurisdiction. Amnesty International reiterates that the use of military jurisdiction should be the exception and restricted and that military courts should hear only those cases strictly related to military discipline; not cases of human rights violations or crimes under international law.

Recognizing that current practice falls short of the international human rights obligations that Chile has agreed to be bound by and in an effort to improve the justice system in the country, a number of bills have been presented to Congress to reform military jurisdiction and ensure that the latter deals only with offences strictly related to military discipline.[187] However, these bills have yet to be debated.

More recently, as part of her Programme of Goverment 2014-2018 President Michelle Bachelet made a commitment to reform military jurisdiction to ensure equal procedural guarantees for both civilian and military citizens "with a qualified judiciary that is fully independent of the military hierarchy".[188]

---

[186] Programa de Gobierno Michelle Bachelet, p. 151, available at http://www.gob.cl/programa-de-gobierno/, (last accessed 01 November 2015).

[187] See, for example, Bulletins Nos 8472-07 and 8803-02, which were still pending in Congress at the time of writing.

[188] Programa de Gobierno de Michelle Bachelet, p. 91.

While research for this report was in progress, Amnesty International was informed that a draft bill to reform military jurisdiction had been prepared by the Ministry of Defence in 2014. Indeed, the then Minister, Jorge Burgos, made statements indicating a strong commitment to carry out this reform.[189] However, at the time of writing, the proposed reform had yet to be presented to Congress.[190]

It is in this context and recognizing the urgent need for prompt reform of military jurisdiction that Amnesty International makes the following recommendations to the Chilean authorities:

- Take measures to ensure as a matter of urgency that all common crimes, human rights violations and crimes under international law allegedly committed by members of the security forces – including cases of excessive use of force by police – are independently and impartially investigated and brought to trial in full accordance with international fair trial standards in ordinary courts. These measures should include the enactment of legislation to reform military jurisdiction in Chile to bring it into line with international human rights standards.

- Ensure that legal reforms to the military justice system restrict military jurisdiction to breaches of military discipline, which only a member of the military can commit; and that the procedure to investigate and punish offences complies with the principles of due process and the right to adequate defence.

- Ensure that investigations and trials of those suspected of responsibility in cases involving *carabineros* transferred to the ordinary justice system proceed promptly, that sufficient resources are allocated to ordinary criminal courts to deal with these cases and that in future all such cases will be investigated and, where appropriate, punished effectively and impartially.

- Create a specialized unit within the Public Prosecutor's Office to investigate cases of police brutality, taking into account the complexities of such cases and the close working relationship between prosecutors and police officials in the investigation of criminal offences.

- Guarantee genuine access to comprehensive reparation to victims of human rights violations committed by law enforcement officials, including compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- Put in place preventive measures to avoid excessive use of force by the police, including bringing police protocols into line with international standards, appropriate training and equipment for the police and establishing appropriate mechanisms to ensure compliance with these protocols.

- Amend Chilean legislation to bring it into line with international human rights standards regarding the exercise of rights such as freedom of peaceful assembly, association and expression. This should include revising regulations governing the right to peaceful assembly to ensure that authorization is not required in order to exercise this right and include a distinct definition of the crime of torture, in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

---

[189] See http://www.defensa.cl/noticias/jorge-burgos-sobre-justicia-militar/ (last accessed December 15, 2015).

[190] Amnesty International tried without success to obtain information on the progress of the bill and when it would be presented to Congress, (TG 22/2015.03, 4 November 2015).

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

JOIN THE CONVERSATION

www.facebook.com/AmnestyGlobal

@AmnestyOnline

'I DIDN'T KNOW THERE WERE TWO KINDS OF JUSTICE'

MILITARY JURISDICTION AND POLICE BRUTALITY IN CHILE

More than 10 years since Chile was condemned by the Inter-American Court of Human Rights for the wide scope of its military jurisdiction, this concern has yet to be fully addressed. Today, human rights violations committed by the Chilean security forces – such as the excessive use of force by the police – continue to be investigated and punished by military courts.

Allowing military tribunals to hear cases involving human rights violations or crimes under international law is itself a violation of the right to justice and comprehensive reparation. These tribunals lack the necessary independence and impartiality that all courts must have.

This report analyses eight cases that highlight the obstacles that victims and their families face in Chile today when seeking truth, justice and reparation for human rights violations committed by the police.

The outcomes of cases of excessive use of force by police heard by Chilean military courts are alarming. Between 2005 and 2014 less than 1% of such cases heard by one of the six military courts in the country ended in a conviction; some 96% were closed without those responsible being brought to justice. Other military courts reported similar outcomes.

Amnesty International calls on the Chilean authorities to take all necessary measures, including amending legislation, to ensure that all cases of human rights violations and crimes under international law committed by the security forces are heard by ordinary, not military, courts.