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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## **Rapport du Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association concernant sa mission au Chili\***

### **Note du secrétariat**

Le secrétariat a l'honneur de transmettre au Conseil des droits de l'homme le rapport du Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association, Maina Kiai, concernant la visite qu'il a effectuée au Chili du 21 au 30 septembre 2015, à l'invitation du Gouvernement. La visite avait pour objectif principal d'apprécier la situation eu égard au droit de réunion pacifique et de liberté d'association dans le pays. Dans le présent rapport, le Rapporteur spécial présente une série de bonnes pratiques et examine les difficultés qui demeurent dans l'exercice du droit de réunion pacifique et de la liberté d'association. Enfin, le Rapporteur spécial formule des recommandations afin d'aider les autorités chiliennes à surmonter les difficultés recensées.

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\* Le présent rapport a été soumis après la date limite afin que des renseignements sur les faits les plus récents puissent y figurer.

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Merci de recycler



**Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile\*\***

**Contents**

	<i>Page</i>
I. Introduction .....	3
A. Historical and political background .....	3
B. International and regional legal framework .....	4
II. Right to freedom of peaceful assembly .....	5
A. General legal framework .....	5
B. Management of protests .....	6
III. Freedom of association.....	16
A. Associations .....	16
B. Trade unions .....	18
IV. Conclusion and recommendations.....	19
A. Conclusion .....	19
B. Recommendations.....	20

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\*\* Circulated in the language of submission and in Spanish only.

## I. Introduction

1. Pursuant to Human Rights Council resolution 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, conducted an official visit to Chile from 21 to 30 September 2015, at the invitation of the Government. The purpose of the visit was to carry out an in-depth assessment of the situation relating to the freedoms of peaceful assembly and of association in the country.

2. The Special Rapporteur would like to thank the Government of Chile for its exemplary cooperation in organizing this visit — his first to the Americas — particularly in the light of the earthquake that struck Chile on 16 September 2015. This demonstrates the Government's willingness to engage in a constructive dialogue on issues pertaining to the mandate. He also commends the Government for extending a standing invitation to all special procedures mandate holders and for having accommodated the visits of four special procedures mandate holders since July 2013.

3. During his visit, the Special Rapporteur travelled to Santiago, Valparaiso, Temuco and Copiapo. He had fruitful exchanges with the President of Chile, the Minister of Justice, the Minister of Defence, the Minister Secretary-General of the Presidency, representatives of the Ministries of Foreign Affairs, the Interior and Public Security, Education, and Labour and Social Security, as well as with the Public Prosecutor, the General Director of the Carabineros de Chile (the national police), the General Director of the Investigations Police of Chile, the President of the Supreme Court, the Vice-President and representatives of the Senate, representatives of the Chamber of Deputies, and the Chairs and representatives of the Commission for the Constitution, Legislation and Justice, and the Commission for Human Rights and Indigenous peoples of the Senate and the Chamber of Deputies respectively. He had similar exchanges with local authorities in Temuco and Copiapo.

4. The Special Rapporteur also met with the Director of the National Institute for Human Rights (*Instituto Nacional de Derechos Humanos*) (INDH) and her team, whose assistance in the framework of this visit and expertise on issues pertaining to the mandate was greatly appreciated.

5. In addition, the Special Rapporteur met with brave and committed human rights activists, including members of civil society organizations, Mapuche leaders, student leaders and members of trade unions who are engaged in critically important work to strengthen democracy and human rights in Chile. He also met with farmers and truck owners in Temuco.

6. Finally, the Special Rapporteur met with representatives of the diplomatic community and the United Nations country team.

### A. Historical and political background

7. From 1973 to 1990, Chile was ruled by the military dictatorship of Augusto Pinochet — an era marked by brutal State-sponsored atrocities. During that period, over 30,000 individuals were killed, forcibly disappeared, imprisoned and/or tortured. The Special Rapporteur pays tribute to all the victims and their loved ones who lived through this ordeal. During his trip, he visited the Museum of Memory and Human Rights and was deeply moved and humbled by the heroism of the people of Chile during this dark chapter of the country's history.

8. The Special Rapporteur commends Chile for the enormous strides it has made since its return to democracy 25 years ago. The country epitomizes the “democracy dividend” —

the benefits and progress that can accrue when a country turns from dictatorship to democratic rule. Poverty has drastically reduced, the economy has diversified and the country has found firm footing among the more developed countries in the world.

9. Equally important, the country has made great progress in areas of democracy and human rights. Political change now happens peacefully, regularly and democratically. In addition, human rights hold an important place on the Government's agenda. For example, Chile co-sponsored Human Rights Council resolution 15/21 that established the Special Rapporteur's mandate in 2010 (and resolutions 24/5 and 32/32 that extended it); resolution 27/31 on civil society space; and resolution 17/19 on human rights, sexual orientation and gender identity.

10. On 16 December 2015, the President of Chile enacted Act No. 20885 establishing the Under-Secretariat for Human Rights. This body has been vested with a broad mandate, which the Special Rapporteur welcomes.<sup>1</sup> He calls on the Government to allocate adequate human, material and financial resources to this institution so that it may fulfil its important mandate.

11. Lastly, the Special Rapporteur salutes the work and courage of civil society actors in the country, who have contributed enormously to the progress that Chile has made to date.

## **B. International and regional legal framework**

12. Chile has ratified the main international human rights instruments, many of which contain norms and standards pertaining to the freedoms of peaceful assembly and of association, including the International Convention on the Elimination of All Forms of Racial Discrimination, in 1971; the International Covenant on Civil and Political Rights, in 1972; the International Covenant on Economic, Social and Cultural Rights, in 1972; the Convention on the Elimination of All Forms of Discrimination against Women, in 1989; the Convention on the Rights of the Child, in 1990; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1998; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2005; the Convention on the Rights of Persons with Disabilities, in 2008; and the Convention for the Protection of All Persons from Enforced Disappearance, in 2009.

13. Chile has also ratified several International Labour Organization (ILO) conventions, including the Freedom of Association and Protection of the Right to Organise Convention (No. 87), the Right to Organise and Collective Bargaining Convention (No. 98) and the Workers' Representatives Convention (No. 135), in 1999, and the Indigenous and Tribal Peoples Convention (No. 169), in 2008.

14. In addition, Chile has ratified several regional instruments that are relevant to the promotion and protection of the freedoms of peaceful assembly and of association, in particular the American Convention on Human Rights, in 1990, and the Inter-American Convention to Prevent and Punish Torture, in 1988.

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<sup>1</sup> The mandate of the Under-Secretariat for Human Rights includes, inter alia, putting forward proposals to the Ministry of Justice and Human Rights to design and elaborate policies, plans, programmes and studies related to the promotion and protection of human rights (art. 8 (a)); elaborating the National Human Rights Action Plan (art. 8 (c)); and generating and coordinating opportunities for the participation of civil society in relation to the adoption of such policies, plans and programmes (art. 8 (h)).

## II. Right to freedom of peaceful assembly

### A. General legal framework

15. The Constitution of Chile guarantees the “right to assemble peacefully *without prior permission* and unarmed” and provides that “meetings in squares, streets and other public places shall be governed by general police regulations”.<sup>2</sup>

16. Supreme Decree No. 1086, adopted in 1983, regulates the exercise of this right. Under this decree, the organizers of any meeting or demonstration must notify either the regional intendant (*Intendente*) or the provincial governor (*Gobernador*) at least two days in advance. If organizers fail to do so, law enforcement officers may prevent or dissolve the planned meeting or demonstration (art. 2). Furthermore, the regional intendant or provincial governor has large discretion whether or not to authorize meetings or processions in high-density roads or streets where they may disrupt public transit, or in squares and leisure roads during recreational or rest hours, and in parks, squares, gardens and green avenues (art. 2).

17. The Special Rapporteur considers this regulatory framework to be a *de facto* authorization regime, which not only contradicts the Constitution of Chile, but is also incompatible with international law and best practices governing freedom of peaceful assembly. Fundamentally, requiring authorization — even when couched as notification — turns the exercise of the right to freedom of peaceful assembly into a privilege.

18. Best practice dictates that States may, at most, require prior notification for peaceful assemblies, but not authorization.<sup>3</sup> The purpose of prior notification is to allow authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect protesters, public safety, order and the rights and freedoms of others. The Special Rapporteur acknowledges that assemblies, by their nature, can cause a certain degree of disruption to the normal routine of daily life. However, these constitute only a temporary interference with the rights and activities of others and therefore should be tolerated.

19. In this regard, the Inter-American Commission on Human Rights has stressed that, “such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves”.<sup>4</sup> It also stressed that “the competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly, [including] rerouting pedestrian and vehicular traffic in a certain area”.<sup>5</sup>

20. Furthermore, under the current regulatory regime, spontaneous assemblies are *de facto* prohibited. Spontaneous assemblies, where prior notice is impracticable or where no identifiable organizer exists, should be exempt from notification requirements.

21. In general, failure to notify the authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify the authorities, organizers,

<sup>2</sup> See the Constitution of Chile, art. 19 (13) (emphasis added).

<sup>3</sup> See A/HRC/20/27, para. 28.

<sup>4</sup> See Organization of American States, Inter-American Commission on Human Rights, “Report on citizen security and human rights”, 31 December 2009 (OEA/Ser.L/V/II), para. 198. Available from [www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm](http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm).

<sup>5</sup> *Ibid.*, para. 193.

community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.<sup>6</sup>

22. The Special Rapporteur welcomes the fact that Chilean law does not impose responsibility upon assembly organizers for the violent behaviour of others, in accordance with international human rights norms and standards. There was an attempt under the previous Government administration to introduce such responsibility in the domestic legal framework, but it was defeated in Congress.

23. In general, the Special Rapporteur notes, from his meetings with national and local authorities, that assemblies have reportedly been routinely permitted in the last few years. However, he cautions that there is no guarantee of that in the future, as the decree gives the authorities the power to curtail peaceful assemblies, which could be used by future, less human rights-friendly regimes. Therefore, he urgently calls upon the Government of Chile to repeal Supreme Decree No. 1086 so as to bring its legal framework governing the exercise of the right to freedom of peaceful assembly in full compliance with international human rights norms and standards. The Special Rapporteur firmly believes that the decree is a remnant of Chile's past that has no place in the Chile of today. He hopes that the necessary political support will be marshalled to repeal this decree, which can be done by an executive order. Any legislation to replace Supreme Decree No. 1086 should be in line with international human rights norms and standards. The Special Rapporteur is available to provide technical assistance in this regard.

## **B. Management of protests**

### **1. Police protocols**

24. The practical management of protests is governed by a series of police protocols aimed at maintaining public order, which, thanks to public pressure — notably from INDH —, were made public in August 2014.<sup>7</sup> According to the police, these protocols mainly guide the work of police special forces that are usually deployed during assemblies. They contain a series of positive principles that seek to facilitate and protect protests, but also present a number of problematic points that need to be addressed.

#### *Definitions*

25. The protocols differentiate between lawful and unlawful assemblies. They deem an assembly lawful if: (i) an authorization was previously granted or if it occurs on a spontaneous basis; and (ii) if it unfolds quietly, securely and with respect for the police authority. The Special Rapporteur again stresses that an authorization regime should not govern the exercise of the right to freedom of peaceful assembly, but he welcomes the recognition of spontaneous assemblies in the protocols. He is concerned, however, that it is the head of police operations who is responsible for identifying the legality or illegality of a demonstration based on the degree of peace and respect displayed and also decides on the degree of force required to preserve public order.<sup>8</sup> The Special Rapporteur considers that such a broad definition leaves room for arbitrary interpretations.

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<sup>6</sup> See A/HRC/23/39, para. 51; also A/HRC/31/66, para. 23.

<sup>7</sup> See Carabineros de Chile, *Protocolos para el mantenimiento del orden público* (Police protocols for maintaining public order), March 2013. Available in Spanish only at [www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf](http://www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf).

<sup>8</sup> *Ibid.*, protocol 1.1.

26. Importantly, the lawfulness of a demonstration should be assessed first and foremost in terms of its peaceful nature. In this regard, the Special Rapporteur underscores that the peaceful intentions of organizers and participants should be presumed, and warns that sporadic acts of violence by a few individuals does not automatically mean that the assembly as a whole is not peaceful. He welcomes the principle in the protocols that law enforcement officers must distinguish during a protest between peaceful protestors and those breaking the law.

27. The protocols also define unlawful assemblies as those which are either violent or aggressive.<sup>9</sup> The protocols define assemblies as “violent” when police instructions are contravened and “aggressive” when damage is caused or when people or police authorities are intentionally attacked. The Special Rapporteur is of the opinion that these definitions are far too broad and likely to lead to arbitrary interpretations. They unduly curtail the right to freedom of peaceful assembly as they do not meet the legality criteria for restrictions. Furthermore, the criteria of violence should be applied to individuals, not to assemblies as a whole, given that the right to peaceful assembly is the individual right of all persons.

28. The Special Rapporteur welcomes the emphasis laid on the importance of dialogue between law enforcement authorities and assembly organizers and participants, but stresses that the authorities should not formally or informally impose on organizers the expectation to negotiate the time, place or manner of the assembly with the authorities.<sup>10</sup>

#### *Use of force*

29. The police protocols allow for the gradual and discriminate use of force in the context of protests. They condition the use of force on the respect of three principles: legality; necessity; and proportionality. The Special Rapporteur welcomes this sound approach. However, he points out that the protocols define the principle of legality as “previously authorized by police,” instead of “as prescribed by law,” which falls short of international human rights norms and standards. The principle of necessity refers to the use of force as a measure of last resort when faced with an act of resistance or a threat. The principle of proportionality is defined as a balance to be struck between the level of resistance or aggression faced by the police and the intensity of the use of force to compel the person to abide. These two latter principles are crafted in a satisfactory manner.

30. The protocols provide for the gradual resort to different means of intervention, including batons, water cannons, tear gas, paintballs and rubber bullets. The Special Rapporteur was informed by the police that they no longer use paintballs, following a serious incident in which a protestor lost an eye (see para. 42 below). This is a positive development. Nevertheless, according to the protocols, their use is still technically permissible.<sup>11</sup> In addition, as flagged by INDH, the protocols fail to specify the composition of the water or the gas to be used in order to ensure the safety of the demonstrators and the population at large.<sup>12</sup> The Special Rapporteur notes the statement made by the police that they always check if a new weapon complies with the protocols prior to using it. However, he stresses that the use of gas and water cannons present significant risks of harm, especially since their use does not discriminate between demonstrators and bystanders, healthy people and people with health conditions.

31. Protocol 2.17 appropriately governs the use of firearms and considers it an extreme measure. Firearms are permitted only under exceptional circumstances, when there is an

<sup>9</sup> Ibid.

<sup>10</sup> See A/HRC/23/39, para. 56.

<sup>11</sup> See Carabineros de Chile, *Protocolos para el mantenimiento del orden público* (Police protocols for maintaining public order), March 2013, protocol 2.15.

<sup>12</sup> See INDH, *Situación de los Derechos Humanos en Chile*, Informe anual 2014, p. 51.

immediate threat to the life of or grave bodily injuries to a police officer or another person (self-defence). Other less serious means must be exhausted before opening fire and a balance between the means employed and the protection of a legitimate aim must be achieved.

32. The protocols contain a number of references to the training of law enforcement officers, but not in a consistent and detailed manner. A section should be specifically devoted to this critical aspect, with emphasis on the need to provide periodic training to law enforcement officers on the lawful use of force, in general, and on the weapons authorized, in particular. Law enforcement officers should be tested regularly on such use and on their psychological ability for this purpose. Officials who fail the tests should not be deployed to protest sites.

33. Finally, the Special Rapporteur notes with concern the statement made by the General Director of the Carabineros during their meeting that the lives of police officers were the most important element to consider during operations when preserving public order. The Special Rapporteur stresses that the physical and psychological integrity of demonstrators, human rights monitors and bystanders is equally important and every effort must be made to guarantee such integrity.

#### *Monitoring*

34. With regard to the monitoring of assemblies, the Special Rapporteur welcomes the fact that the police protocols recognize the important role of INDH in this regard.<sup>13</sup> He considers it good practice that INDH representatives are permitted inside police vehicles to monitor the detention of individuals. The protocols, however, do not foresee a role for independent civil society organizations engaged in monitoring activities complementary to those of INDH. He calls upon the authorities to grant more importance in the protocols to the crucial work of independent civil society actors in that respect, while preserving the current important role of INDH.

35. Another issue of concern relates to the requirement for media workers to hold a journalist licence or to be employed by a media company in order to be allowed to cover assemblies.<sup>14</sup> The Special Rapporteur finds this requirement unduly restrictive as freelance journalists, community radio journalists, bloggers and citizen journalists — basically anyone using a smartphone — should not be prevented from monitoring assemblies. Social media are a crucial tool in democratic societies for upholding good governance and holding officials accountable.

36. Furthermore, the protocols require that those monitoring assemblies remain at a distance from the police operations area.<sup>15</sup> Failure to respect such distance will lead to the detention of the monitors. The Special Rapporteur deems this provision vague, which may restrain or prevent monitors from undertaking their important work.

#### *Lack of practical guidance*

37. More importantly, the Special Rapporteur expresses general concern about the lack of practical guidance on how to implement the police protocols and monitor their implementation. Police abuses committed in the context of protests, as reported in the next section of this report, provide apt examples.

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<sup>13</sup> See Carabineros de Chile, *Protocolos para el mantenimiento del orden público* (Police protocols for maintaining public order), March 2013, protocol 5.1.

<sup>14</sup> *Ibid.*, protocol 5.2.

<sup>15</sup> *Ibid.*, protocol 5.3.



38. In conclusion, the Special Rapporteur calls upon the authorities, in particular the human rights unit within the police, to genuinely and thoroughly review the police protocols and ensure that they comply with international human rights norms and standards. He especially recommends that the authorities take into account as a useful guidance tool on the matter the joint compilation of practical recommendations for the proper management of assemblies<sup>16</sup> that he and the Special Rapporteur on extrajudicial, summary or arbitrary executions presented to the Human Rights Council in March 2016, as well as the present report. Furthermore, it is essential that INDH and other relevant experts from civil society be consulted in this review process in a meaningful manner. The Special Rapporteur is available to provide technical assistance in this regard as deemed necessary.

## 2. Management of protests in practice

### *Overview*

39. In recent years, Chileans have taken to the streets to demand reforms in relation to education, social inclusion and decentralization, with the number and intensity of protests peaking in 2011. With some notable exceptions, the majority of these protests took place in a peaceful manner. However, during his visit, the Special Rapporteur heard several reports, including directly from victims, of excessive use of force and sexual harassment of protesters by the police special forces.

40. Such reports are in line with the concern expressed by the Human Rights Committee during its consideration of the sixth periodic report of Chile, in 2014, when it was “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”.<sup>17</sup>

41. The Special Rapporteur makes a distinction between ordinary police officers, who reportedly fulfil their functions adequately and who enjoy respect among the population, and the police special forces, who allegedly regularly use excessive force when managing protests. He notes the statement by the Ministry of the Interior that police special forces are elite forces who receive special training. However, in the light of the several concerns expressed about their interventions in the context of protests, the Special Rapporteur questions the effectiveness and appropriateness of such training.

42. The police special forces have reportedly used rubber bullets, paintball guns, tear gas and water cannons when policing protests, sometimes with tragic consequences. In 2011, Manuel Gutierrez Reinoso, aged 16, was shot dead by a police officer during a protest in Santiago. In 2013, Enrique Eichin, while on his way home after taking part in a protest for better education, in Santiago, was hit by a paintball bullet fired by a police officer, which caused him to lose the sight in his right eye. Similarly, in 2008, Victor Salas, a photojournalist, lost the sight in his right eye after being beaten by a police officer in Valparaiso. In May 2015, Rodrigo Avilez, who was participating in a student protest in Valparaiso, was unconscious for two months owing to the inappropriate use of a water cannon. In 2011, a 16-year-old boy had his jaw broken by a police officer during a protest.

43. The police have justified the dispersal of protests and recourse to force by the presence of disruptive individuals — including possible agents provocateurs — in the margins of such protests. However, the Special Rapporteur is not persuaded by this argument. In his view, it is the duty of the police to distinguish between peaceful

<sup>16</sup> A/HRC/31/66.

<sup>17</sup> See CCPR/C/CHL/CO/6, para. 19.

demonstrators and disruptive individuals during their intervention. The presence of a few people engaging in violence in and around a protest does not authorize police to brand the entire protest as non-peaceful, nor does it not give the State carte blanche to use force against protesters or carry out indiscriminate arrests. More importantly, the Special Rapporteur emphasizes that, even when some protesters engage in violence during an assembly, thus losing the protection of the right to peaceful assembly, they still retain all other rights, including the right to life and right to bodily integrity.<sup>18</sup>

44. Therefore, violent elements should be extracted from the protest and dealt with in accordance with the rule of law. The persistent failure in dealing appropriately with these few violent individuals raises serious questions as to why an effective and well-trained police force seems unable to handle a few violent people during protests. It is clear that persistent violence by a few individuals is marring the image and effectiveness of public protests. Extracting these violent individuals requires skill, training and dedication on the part of the police. After meeting with authorities across the country, the Special Rapporteur is confident that Chile's police forces have the ability to better handle this situation.

45. The Public Prosecutor stated that it was very difficult to investigate disruptive individuals and hold them accountable. There are reportedly hundreds of cases of such individuals brought to his attention. However, the ability of his office to handle these cases is often hampered owing to insufficient evidence provided by the police. He believes that police reluctance to gather evidence is linked to the fact that violent protesters typically face only minor charges, punishable by community service and verbal apologies. The Special Rapporteur stresses that it is of utmost importance that agents provocateurs are arrested, prosecuted and tried in accordance with the principles of due process.

46. The Special Rapporteur received testimonies from students, including minors, detained during demonstrations in 2011. Most of them were released a couple of hours later, but the detention prevented them from joining the assembly. INDH noted that the majority of the detainees were not subsequently prosecuted, which demonstrated that the police resorted to arbitrary arrests to illegally curb protests.<sup>19</sup>

47. Finally, the Special Rapporteur is concerned that officers have, at times, shown hostility with regard to the work of INDH. For example, in 2013, INDH released a report that was critical of police action during the 2011 protests. In response, the head of police harshly criticized INDH and, in 2015, a parliamentary procedure was subsequently initiated aimed at demoting the Director of INDH. The move was unsuccessful, but INDH continues to be the subject of repeated public criticisms from the police and some members of Parliament, who question the body's impartiality.

48. The Special Rapporteur reiterates his full support for INDH and its staff, who undertake important and independent work as human rights watchdogs, in compliance with its parliamentary mandate.

#### *Cases of sexual harassment*

49. During his visit, the Special Rapporteur was alerted to a number of cases involving allegations of sexual harassment against female students and Mapuche demonstrators detained during protests.

50. In a number of instances, women apprehended by the police in the context of protests were beaten on their private parts or ordered while in detention to strip naked and

<sup>18</sup> See A/HRC/31/66, paras. 8-9.

<sup>19</sup> See INDH, *Situación de los Derechos Humanos en Chile*, Informe anual 2011, p. 77. Available at [www.indh.cl/wp-content/uploads/2011/12/27555-Informe-Anual-2011-BAJA1.pdf](http://www.indh.cl/wp-content/uploads/2011/12/27555-Informe-Anual-2011-BAJA1.pdf).

perform degrading physical exercises in front of officers. For instance, a 22-year-old female Mapuche demonstrator was arrested during a protest in front of the Governor's building in Temuco and taken to a police station where she was beaten and forced to undress in front of officers. Some victims filed complaints and the cases were brought before the military court; however, they were dismissed as the perpetrators could not be identified. In other cases, the Public Prosecutor allegedly did not have enough evidence to initiate court proceedings.

51. The Special Rapporteur was also informed by civil society that a number of cases of sexual harassment are not reported because the victims feel ashamed, because impunity for the perpetrators prevails, or simply because women are unaware that abusive body searches, derogatory comments or threats of sexual violence constitute sexual harassment. It is also likely that the culture of impunity regarding sexual harassment leads some women to accept that such acts constitute a natural consequence of their participation in protests.

52. The Special Rapporteur finds these claims deeply troubling. He raised these concerns with the General Director of the Carabineros, who, at the time of the visit, was only aware of one case of sexual harassment in which a police officer was subsequently sanctioned. The General Director also mentioned that female police officers have been trained to deal with female protestors on the front line. The Special Rapporteur notes that, in response to the claims of sexual harassment and abuse, the Chilean authorities allow INDH representatives to monitor detention facilities. He looks forward to resolute action to hold all perpetrators accountable.

53. Regrettably, the Special Rapporteur received disconcerting allegations of sexual harassment after his visit. On 11 March 2016, a group of peaceful protestors demonstrating in the vicinity of the presidential palace against recent instances of femicide in the country was dispersed by the police who reportedly used excessive force. Female protestors were beaten and insulted by police officers and nine of them were taken to a police station. It is reported that police officers sexually assaulted some of the detainees and touched their private parts. INDH wrote to the General Director of the Carabineros with regard to this case.

54. The Special Rapporteur is appalled by these latest allegations. He urges the police to shed light on this case and to investigate and prosecute the alleged perpetrators, and, more generally, to combat all acts of sexual harassment against female protestors and sanction perpetrators appropriately.

#### *Situation of indigenous peoples*

55. The Special Rapporteur travelled to Temuco, in the Araucanía Region, to look into the particular challenges faced by the indigenous Mapuche community in exercising their right to freedom of peaceful assembly. He met with Mapuche representatives from different communities, farmers and local authorities. Assembly rights are mainly exercised by the Mapuche in the context of land disputes with farmers. These demonstrations take place in a very tense and volatile environment, as the issue of indigenous land rights is a complex, emotional topic that stretches back more than 200 years.

56. For the general human rights situation of indigenous peoples in Chile, the Special Rapporteur referred to the reports of the Special Rapporteur on the rights of indigenous peoples<sup>20</sup> and the Special Rapporteur on the promotion and protection of human rights

<sup>20</sup> A/HRC/12/34/Add.6.

while countering terrorism and fundamental freedoms<sup>21</sup> on their visits to Chile in 2009 and 2013, respectively.

57. The Special Rapporteur was informed by the authorities of Araucanía that peaceful cohabitation with the Mapuche is a priority for the region and that the Government values and fosters diversity. The Ministry of Justice reportedly has six specialized units, all of which have special subunits dealing with Mapuche issues. The Ministry also has inter-cultural facilitators and Mapuche staff to interact with the Mapuche community. According to the head of police in Temuco, since he took up his functions in December 2013, the city has not witnessed any incident relating to Mapuche protests. The police have specific protocols to ensure that they respect Mapuche culture and do not breach community rights. Mapuche detainees are allegedly allowed to practice their culture.

58. However, the Special Rapporteur received several reports that, over the past years, the police have resorted to excessive use of force in the context of protests by indigenous peoples calling for the respect of their rights, especially land rights.

59. The majority of protests by Mapuche take place in rural areas, on the lands that they consider as theirs ancestrally and which are, today, owned by non-indigenous farmers. Many of the protests are occupation-style demonstrations. They are typically peaceful, although there have been instances of violence against farmers' properties. In such cases, police special forces are called in to disperse the occupation, often using excessive force and apprehending the demonstrators.

60. The most emblematic cases of excessive use of force by the police against Mapuche have occurred in the context of land occupation. In 2002, Alex Lemún, a 17-year-old Mapuche, was shot dead by the police in Ercilla. The perpetrator received a one-day suspension as a disciplinary measure and was acquitted by a military court. In 2008, Matias Catrileo, a 22-year-old Mapuche student from the Requem Pillan community, was killed by a police officer during a protest on the Santa Margarita farm in Vilcún. The internal police investigation cleared the officer, however, a military court sentenced him to three years and one day on probation. The police force maintained the police officer in his functions until January 2013 when he was dismissed following repeated criticism from civil society. In 2009, Jaime Mendoza Collio, a 24-year-old Mapuche, was shot in the back by a police officer while occupying the San Sebastian farm. An internal police investigation cleared the alleged perpetrator but, in 2011, a military court sentenced him to five years and one day in jail. However, the sentence was overturned a year later by a court martial which upheld the thesis that the police officer had acted in self-defence. In 2013, the Supreme Court quashed this decision, ruling that the conditions justifying self-defence had not been met, and sentenced him to three years' probation.

61. Mapuche demonstrators have reportedly been detained and mistreated in other instances as well. In July 2012, a group of Mapuche belonging to the Temucuicui community peacefully occupied La Romana farm in Ercilla. The police forcibly evacuated the demonstrators, including children, and detained them. Similarly, on 1 October 2014, members of the Mapuche Huilliche Marraio Collihuinca community proceeded to peacefully occupy land in Lumaco Bajo. The demonstration was immediately dispersed by a large police force. Two children, aged 10 and 12, started recording the eviction and were aggressively ordered to stop (one police officer reportedly pointed his gun at one of the children). They were then handcuffed and taken in a police van to the police station in Río Bueno, where the 12-year-old boy presented minor injuries.

62. The Special Rapporteur acknowledges that farmers involved in land disputes have on some occasions been the victims of threats and acts of violence by Mapuche individuals.

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<sup>21</sup> A/HRC/25/59/Add.2.

However, in a meeting, the farmers themselves recognized that these violent Mapuche individuals only represented a very small portion of the entire Mapuche community. Furthermore, farmers have assaulted Mapuche and have reportedly not been prosecuted.

63. The Special Rapporteur was also informed that, in rural areas, there is a constant police presence in Mapuche communities, which fuels tension and frustration within these communities. Between 2009 and 2013, there were reportedly 70 police raids on Mapuche communities, most carried out without a search warrant. In this context, six decisions handed down by a court in Temuco ordered the police to refrain from violence and to consider the safety of children during their operations. The police stated that, since December 2013, all police interventions have been carried out on the basis of a court order.

64. In one distressing case, a female Mapuche religious leader (*Machi*) was put under house arrest for eight months after the police allegedly discovered an illegal gun in her house. The Machi denied that she had hidden the weapon and claimed that it had been planted in her house. She had previously filed a complaint against a farmer for land restitution, reportedly the first claim of its kind. The Machi was prosecuted and found guilty of hiding a weapon, but later acquitted by the Supreme Court. While in police custody, she was forced to remove her traditional outfit and necklaces, which she considered deeply humiliating. She was later granted compensation by a civil court in Temuco because the police officers failed to respect her ancestral authority as a Mapuche Machi (although the court ruled that her detention and the raid at her place had been carried out in accordance with the law).

65. Mapuche demonstrations in urban areas are reportedly regularly authorized, but the massive presence of the police — seen as a form of intimidation — hinders participation. According to testimonies, if the organizers seek permission to demonstrate from the authorities, the police will unilaterally determine the route of the protest. In this regard, the Special Rapporteur clarifies that the choice of location and route of an assembly principally belongs to the organizers of the assembly.

66. The Special Rapporteur was informed that, when a protest takes place spontaneously, for instance, in reaction to the sentencing of a Mapuche leader, it will be dispersed immediately, usually by the police firing tear gas and rubber bullets or beating protestors. In 2014, the leader of a Mapuche movement against land grabbing was reportedly apprehended during a protest in front of a court, forced into a car and beaten inside the vehicle.

67. From 17 August to 7 September 2015, a group of Mapuche, including several women and children, belonging to 11 communities in the Malleco Region peacefully occupied the premises of the Corporation for the Development of Indigenous Peoples (CONADI) in Temuco. They were demanding that their ancestral land be respected and that security forces present in the communities of Bajo Malleco be withdrawn. The police special forces eventually intervened to clear the occupation in a reportedly excessively forceful manner and with complete disregard for the fact that there were children on the premises. Several Mapuche were injured during the operation. The police operation also breached a court order that required the presence of an INDH representative during any action to evacuate premises. The police told the Special Rapporteur that they had tried to reach the local INDH representative ahead of the operation, but to no avail. However, the INDH representative told the Special Rapporteur that he only had one missed call from the police late at night, a few hours before starting the intervention.

68. The Special Rapporteur calls upon the authorities to ensure a safe and conducive environment for Mapuche exercising their right to freedom of peaceful assembly. Fundamentally, a lasting solution to land dispute issues must be achieved and to this end

the Special Rapporteur once again refers to the reports of his peers and other human rights mechanisms that have made concrete recommendations in this regard.

*Case of Nelson Quichillao*

69. The Special Rapporteur is similarly disturbed by the killing on 24 July 2015 in El Salvador, Atacama Region, of Nelson Quichillao, a contract copper mine worker who was shot dead by police special forces during a protest. The protestors, all subcontractors working for CODELCO, the State-owned copper mining company, were blockading the road to the mine, calling for better pay and benefits. Police used live ammunition to clear the demonstration.

70. The Special Rapporteur travelled to El Salvador, including to the site where the tragedy occurred, and met with Mr. Quichillao's colleagues at the Confederation of Copper Workers (CTC). He also met with local authorities, including the police, in Copiapo, and representatives of the Federation of Copper Workers (FTC) — the union that represents permanent employees —, who have dissociated themselves from the Confederation's action, to discuss this case.

71. The authorities claim that the protest was not entirely peaceful, and that they were acting in self-defence when they fired live ammunition. In fact, Mr. Quichillao was inside a mechanical shovel when he was shot by the police special forces, who claimed that he was using the vehicle to advance on them. Some witnesses stated, however, that the vehicle was moving away from the police forces when they opened fire. Regardless of the veracity of the claims, the Special Rapporteur believes that the police response raises serious questions regarding proportionality. He stresses again that individuals retain at all times their rights to life and physical integrity, even if they become violent during protests, and it is the State's duty to safeguard those rights.

72. The Special Rapporteur welcomes the investigation that has been opened into the case, which was still ongoing at the time of the drafting of this report. He trusts that it will be conducted in an impartial, transparent and thorough manner, with a view to shedding full light on this tragedy as the best way to ease the tensions among the copper workers community.

### **3. Preventive identity controls**

73. Another issue of concern that was brought to the attention of the Special Rapporteur during his visit was preventive controls of demonstrators' identification by the police.

74. Article 85 of the Code of Criminal Procedure allows authorities to undertake identity controls in the context of a crime committed or suspected of being committed. A person failing or refusing to identify himself or herself can be taken to the nearest police station, where further efforts of identification may take place. The individual may be held for up to eight hours, after which he or she must be released.

75. The Special Rapporteur received reports that the authorities have performed preventive identity controls in the context of protests, stopping individuals at random — with no specific evidence that they had committed or were about to commit a crime —, requesting identification and detaining them if identification cannot be produced. The authorities have denied any such practice. The Special Rapporteur believes that the use of such identity controls amounts to a type of profiling and surveillance that has the potential to chill the exercise of the right to freedom of peaceful assembly.

76. The Special Rapporteur finds it worrying that a bill enabling wider use of preventive identity controls is pending in Parliament and had been endorsed by the Chamber of

Deputies at the time of his visit.<sup>22</sup> Article 12 of bill No. 9985-07 introduces a new general power for the police to stop and check the identity of anybody, without any indication or context of a crime. This provision greatly exacerbates the risk of chilling the exercise of the right to freedom of peaceful assembly and other rights and possibly violating such rights, as no justification whatsoever will be needed to stop people and request identification.

77. The Special Rapporteur fears that the bill will disproportionately affect groups at risk, such as youth (students), indigenous peoples, trade unionists and migrants. Giving law enforcement authorities enhanced power and discretion could create opportunities for repression and abuse of authority, with little or no checks and balances. He is also worried that there is not sufficient independent oversight of the data collected during the preventive identity controls. Overall, the Special Rapporteur echoes the statement made by the Supreme Court in its report of September 2015 that the preventive identity checks, as envisaged in the bill on combating crime, is “difficult to accept in a democratic State”.<sup>23</sup>

78. During his visit, the Special Rapporteur was told by Government officials that the bill is necessary to stem a recent increase in criminal activity in Chile. He is, however, not convinced that the law will be effective in combating crime. In fact, it may do the opposite; allowing the police to randomly detain anyone they choose without any evidence or identifiable suspicion is a shortcut that fosters counterproductive policing. Effective police forces can do their jobs without interfering with fundamental rights. The Special Rapporteur is confident that Chile’s police force is effective and that it does not need — nor will it benefit from — such shortcuts.

79. On 17 November 2015, the Special Rapporteur issued a comprehensive analysis of the bill, which was shared with key members of the Chilean executive, legislative and judiciary.<sup>24</sup> He urges all stakeholders involved in the legislative process to take into account the concerns detailed in that document with a view to ensuring that Chile complies with its obligations under international human rights law and to further strengthening democracy and the rule of law in the country.

#### 4. Military jurisdiction

80. Also of great concern to the Special Rapporteur is the fact that human rights violations committed by law enforcement authorities can fall under the jurisdiction of military justice. This is highly problematic. First of all, military jurisdictions ought to be limited to matters of a military nature only; second, military courts do not offer sufficient guarantees of independence and impartiality in such cases. According to INDH, between 1990 and 2011, 40,000 cases of police abuses were reported, but perpetrators were sanctioned in only 1.5 per cent of these cases.<sup>25</sup> The majority of the cases were reportedly brought before military courts. The Investigations Police of Chile corroborated the figures, but stated that, most often, there was not enough evidence for sanctions to be applied. The

<sup>22</sup> Since the Special Rapporteur’s visit, bill No. 9985-07 has been examined by the Senate Commission for Constitution, Legislation and Justice and a few modifications have been made, which, however, did not alter the purpose of the bill.

<sup>23</sup> See Radio U Chile, “Informe de Corte Suprema califica de ‘ineficaz’ proyecto de ley antidelincuencia”, 22 September 2015, available at <http://radio.uchile.cl/2015/09/22/informe-de-corte-suprema-califica-de-ineficaz-proyecto-de-ley-antidelincuencia>.

<sup>24</sup> See Office of the United Nations High Commissioner for Human Rights, Information note, “Analysis of the proposed regime of identity control, draft bill number 9985-07 of Chile” by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 18 November 2015. Available at [www.ohchr.org/Documents/Issues/FAssociation/2015-11-18\\_Information\\_note\\_Chile\\_ENG.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/2015-11-18_Information_note_Chile_ENG.pdf).

<sup>25</sup> See INDH, Estudio exploratorio, “Estado de Chile y pueblo Mapuche – Análisis de tendencias en materia de violencia estatal en la Región de La Araucanía”, February 2014, chap. 3.

police disagreed with the figures cited by INDH, stating that out of 1,000 demonstrations held each year, the police had been found responsible for violations in the context of only three demonstrations.

81. The international community has, time and again, expressed serious concern over this situation for many years. In 2005, the Inter-American Court for Human Rights, in the case of *Palamara-Iribarne v. Chile*, ordered Chile to limit penal military jurisdiction to matters of a military nature only.<sup>26</sup> The Human Rights Committee and the Committee against Torture expressed similar positions in 2007 (reiterated in 2014) and 2009, respectively.<sup>27</sup> In 2014, the Special Rapporteur on the promotion and protection of human rights while countering terrorism added his voice on the matter.<sup>28</sup>

82. In 2010, a law was passed to remove civilian perpetrators of violence against the police from the jurisdiction of the military courts. However, this reform failed to address violations committed against civilians by members of the police and the military, who remain under the jurisdiction of these courts.

83. In 2014, the Public Prosecutor ordered prosecutors to transmit cases involving the security forces to the ordinary courts, which the Special Rapporteur welcomes. He further welcomes the February 2015 decision of the Supreme Court in the Enrique Eichin case, which ruled that proceedings involving violence by the police against civilians should be conducted by a civilian court, following a similar decision by the Constitutional Court.

84. This is most laudable, but the Government must go a step further and undertake a comprehensive reform of the Code of Military Justice to ensure that military courts no longer have jurisdiction, in cases of violations committed by security forces against civilians. The Special Rapporteur discussed this issue at length with representatives of the Ministries of Defence, Justice and the Interior, which all stated that such reform was a priority for the Government. He was informed that the three ministries were working on a bill aimed at rectifying the situation and returning the police forces to full civilian oversight, as should be the case in democratic societies. However, at the time of the drafting of this report, that is, some seven months after the visit, the bill had not yet been presented to the Parliament. The Special Rapporteur finds this disappointing. He urges the Government to tackle this matter as one of utmost urgency.

85. In the Special Rapporteur's opinion, the current system — and the impunity it fosters — is among the most visible parts of the legacy of dictatorship in Chile. A comprehensive legislative reform in compliance with international human rights standards would be a landmark achievement and another nail in the coffin of the dictatorship.

### III. Freedom of association

#### A. Associations

86. The Constitution of Chile guarantees the right to associate without authorization (art. 19 (15)). Act No. 20500 on Associations and Citizen Participation in Public Administration further guarantees the right of everyone to associate freely, under the condition that the association does not pursue an aim that is contrary to morals, public order or national

<sup>26</sup> See Inter-American Court of Human Rights, *Palamara-Iribarne v. Chile*, judgment of 22 November 2005 (merits, reparations and costs), available at [www.corteidh.or.cr/docs/casos/articulos/seriec\\_135\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf).

<sup>27</sup> See CCPR/C/CHL/CO/5, para. 12; CCPR/C/CHL/CO/6, para. 22; and CAT/C/CHL/CO/5, para. 14.

<sup>28</sup> See A/HRC/25/59/Add.2, paras. 75 and 96.



security (art. 1). To acquire legal personality, an association must register at the municipality level and provide general information, such as the name and address of the association, its purpose and its statutes. Associations can, however, operate without legal personality.<sup>29</sup>

87. Prior to the adoption of Act No. 20500, the registration of associations was a prerogative of the Ministry of Justice and the procedure was deemed burdensome. The Special Rapporteur notes with satisfaction that the current procedure is uncomplicated and free of charge. However, it may take up to two months for an association to be registered, depending on the municipality in which the application is made, whereas the procedure to create a business company is reportedly lighter and faster. In January 2016, the President of Chile announced that Act No. 20500 would be amended with a view to strengthening it and making it effective at the local level.<sup>30</sup> The Special Rapporteur hopes that this reform will be an opportunity to provide guidance to authorities at the local level in charge of registering associations with a view to expediting the process.

88. The Special Rapporteur also notes with satisfaction that there are no legal barriers for associations to receive domestic or foreign funding. However, many civil society interlocutors complained that there are very few opportunities to obtain funding. The Special Rapporteur encourages the Government to enhance its support and resources to civil society, especially critical accountability organizations.

89. It is clear that the Government places a high value on the contributions of the private sector to the economy and public policy. However, it is not so obvious that it values that of civil society associations, including trade unions, to a similar extent. The Special Rapporteur calls upon the Government to facilitate an enabling environment for civil society similar to that accorded to businesses, for example by considering their views and opinions on public policy, as it does when it comes to the views of businesses and experts. In this regard, the Special Rapporteur is encouraged by the establishment of the National Council on Citizen Participation and Strengthening of Civil Society, which seeks to “effectively include citizens and the enormous diversity of citizen organizations in public life”.<sup>31</sup>

90. Another issue of concern to the Special Rapporteur is the fact that under Act No. 19253 on the Protection, Promotion and Development of Indigenous Peoples and its regulation, land restitution claims by indigenous peoples are restricted to indigenous communities or to indigenous individuals. However, indigenous leaders expressed concerns, which the Special Rapporteur shares, that this legal requisite favours forms of associations for reclaiming land that erode their traditional structures and organizations, which are generally based on larger territories than those of communities or family relations.

91. Article 20 of Act No. 19253 establishes an indigenous land and water fund, administered by CONADI, which is tasked with considering land claims by indigenous individuals or indigenous communities. In order to make a claim, an indigenous community must be recognized as a legal entity, as provided for under article 10 of Act No. 19523. Consequently, indigenous people’s traditional institutions, such as the *Lof* or *Aillu* in the case of the Mapuche and the Aymara, respectively, cannot submit claims to CONADI as they were not created in accordance with Act No. 19523 nor are they registered as legal entities pursuant to the Act.

<sup>29</sup> See Civil Code of Chile, title 33, arts. 545-548.

<sup>30</sup> See Government of Chile press release, available at [www.gob.cl/2016/01/14/president-presents-national-council-on-citizen-participation-and-strengthening-of-civil-society/](http://www.gob.cl/2016/01/14/president-presents-national-council-on-citizen-participation-and-strengthening-of-civil-society/).

<sup>31</sup> Ibid.

92. The Special Rapporteur calls upon the Government to rectify this situation without delay. This situation is all the more troubling as the ILO Indigenous and Tribal Peoples Convention (No. 169), which Chile ratified, acknowledges the existence of indigenous traditional institutions and requires that States parties to the Convention recognize them.

## **B. Trade unions**

93. Chile's labour legislation is another remnant of the dictatorship era and has, on several occasions, been criticized by ILO.<sup>32</sup>

94. Of particular concern is the fact that the Constitution does not recognize the right to strike for State and municipal employees nor for workers in private-sector enterprises that provide public utility services or other services, the interruption of which would seriously endanger health, supplies to the population, the national economy or national security (art. 19 (16)). This is reaffirmed in article 384 of the Labour Code. Moreover, if a strike is deemed to cause a serious risk to health, the supply of goods or services to the population, the national economy or national security, owing to its nature, timing or duration, the President of the Republic may order the resumption of work (art. 385). The Labour Code also requires an absolute majority of workers in a company to decide to go on strike (arts. 372-373). In addition, while containing a general ban on the replacement of striking workers, article 381 of the Labour Code provides for exceptions to the rule under certain conditions. The Constitution also denies the right to collective bargaining for public-sector workers (art. 16) and prohibits trade union officials from becoming active members in a political party (art. 23).

95. The Special Rapporteur welcomes the fact that, since 2015, the Government of Chile has embarked on a process to reform its labour legislation, in consultation with social partners, including the Chilean Trade Union Federation (CUT). A bill was drafted that addresses some of the most pressing issues, including effectively guaranteeing the rights to strike and collective bargaining, banning the replacement of striking workers and introducing a gender clause that makes the presence of at least of one woman on the union negotiating team compulsory.

96. While noting these improvements with satisfaction, the Special Rapporteur regrets that the bill fails to address the right of public-sector workers to form trade unions. Moreover, it broadens the category of workers prohibited from striking, banning strike action by those performing "minimum services". International standards state that only workers providing "essential services" may face restrictions to their right to strike. According to ILO, "essential services" are those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population".<sup>33</sup> Furthermore, CUT considers that the bill is conceptually flawed as it does not recognize trade unions as key players for democracy. It is hoped that the bill will foster a better union culture with bigger and stronger unions as, currently, trade unions in Chile are largely fragmented into small weaker unions. According to CUT, the overall unionization rate is 14.6 per cent, while collective bargaining coverage is only 8 per cent.

97. At the time of the drafting of this report, the bill had not yet been adopted. The Special Rapporteur urges the Government to address these remaining issues of concern

<sup>32</sup> See ILO Committee of Experts on the Application of Conventions and Recommendations, Observation concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in respect of Chile (2010). Available at [www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2314910](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2314910).

<sup>33</sup> Ibid.

without delay, prior to adoption. He also urges the Government to continue to take measures to bring its legislation into full compliance with ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as requested by the ILO Committee of Experts on the Application of Conventions and Recommendations.

98. It is also important that the Government ensure that all employers cease anti-union activities such as targeting, blacklisting or firing workers for exercising their right to strike, which demeans the right. The Special Rapporteur reminds Chile of its obligation under international human rights law to ensure the right to strike.<sup>34</sup>

99. The Special Rapporteur believes it is equally important for the Government to remain sensitive to the increasing use of contract employees on the part of businesses — particularly State enterprises — and how this impacts workers' right to association. While the use of contract employees, in and of itself, is not a violation of the right to freedom of association, widespread use of the practice can create a feeling of precariousness that would degrade the right. Employers may also abuse outsourcing as a divide-and-conquer tactic to keep workers in check, as in the case of the Federation of Copper Workers (FTC) and the Confederation of Copper Workers (CTC) in El Salvador, which are openly at odds with each other. This antagonism clearly stems, in part, from large imbalances in pay, benefits and job security between the two groups.

100. Furthermore, the Special Rapporteur heard claims that 250 demonstrators who took part in the road blockade in El Salvador and gave testimonies during the initial investigation were subsequently fired by their outsourcing companies as a means of retaliation. He conveyed these serious allegations to the Public Prosecutor, who said that his office would investigate them. The Special Rapporteur calls upon all stakeholders involved in the labour dispute that triggered this tragedy, including the Ministry of Labour, to engage in a genuine dialogue to seek a sustainable solution.

## IV. Conclusion and recommendations

### A. Conclusion

101. **Chile has made remarkable progress in the last 25 years and will no doubt continue to do so. It has made a most painful journey towards democracy, one that is an inspiration for all peoples striving for democracy around the world. Chileans have set a high standard for what they want to achieve in terms of human rights and, in turn, the international community has high expectations for Chile in this regard.**

102. **The rights to freedom of peaceful assembly and of association are generally protected in Chile. Chileans exercise these rights routinely and vibrantly. However, there are areas for improvement, as in any country. It is important for Chile to address the remaining challenges, both for the consolidation of its own democracy and in order to take its rightful place as a global leader in human rights.**

103. **Chile's most significant challenge lies in the fact that some vestiges of dictatorship remain. The transition has been gradual and not a radical break with the past, leaving remnants of yesteryear that have no place in the Chile of today. A central feature of the dictatorship era was the severe restriction of rights emanating from the securitization of the State. As a consequence, there is an urgent need for today's police to change their mindset with regard to assemblies and protests. Under international**

<sup>34</sup> See International Covenant on Economic, Social and Cultural Rights, art. 8.

law, this role is clear: they are there to facilitate and protect peaceful assemblies and protests.

104. This situation represents a significant — yet certainly surmountable — obstacle to the unhindered exercise of the rights to freedom of peaceful assembly and of association and weakens their effectiveness as a tool to peacefully address social conflict, precisely at a time when Chile needs them most. A democratic dispensation elevates and preserves rights and makes limitations the exception. It also fully embraces and encourages a plurality of voices from civil society whose contribution to the consolidation of democracy cannot be stressed enough.

105. The following recommendations are made bearing in mind where Chile has come from, but also where it is capable of going. The Special Rapporteur is confident that the country has the capacity, political will and maturity to see this transition through. In this regard, the Special Rapporteur stands ready to provide any technical assistance to the Government when deemed necessary.

## **B. Recommendations**

106. The Special Rapporteur calls on the competent authorities to:

- (a) Repeal Supreme Decree No. 1086;
- (b) Adopt new legislation that facilitates and protects the exercise of the right to freedom of peaceful assembly and that requires, at most, prior notification of peaceful assemblies, with the exception of spontaneous assemblies;
- (c) Amend the police protocols with a view to ensuring their compatibility with international human rights norms and standards, including the joint report of the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66);
- (d) Provide clear practical guidance to police officers on how to implement the revised police protocols and monitor their implementation;
- (e) Ensure that police officers apply non-violent means before resorting to force and, when force is unavoidable, they should exercise restraint in proportion to the seriousness of the offence and to objectives pursued with due respect to human lives;
- (f) Also ensure that police officers distinguish at all times between peaceful and non-peaceful protesters, extract the non-peaceful protesters from the protests and prosecute them in conformity with the rule of law;
- (g) Further ensure that all allegations of excessive use of force and sexual harassment against female and male protestors by security forces are promptly, thoroughly and independently investigated, and that the alleged perpetrators are prosecuted;
- (h) Train and test police officers effectively and regularly on human rights, in general, and on the management of assemblies and protests, in particular, with focus on the appropriate use of force under international law;
- (i) Train police officers on the rights and culture of the indigenous peoples of Chile and ensure that they effectively respect those rights and culture;
- (j) Ensure that the victims of violations and abuses of the rights to freedom of peaceful assembly and of association can access civilian courts and obtain

appropriate reparation, including adequate compensation, and health and rehabilitation services;

(k) Ensure that law enforcement authorities do not perform preventive identity controls in the context of protests and improve independent oversight mechanisms to this end;

(l) Review bill No. 998507, which introduces changes to the current identity control regime, to ensure that it complies with international human rights norms and standards;

(m) Adopt a law that guarantees that all violations committed by security forces against civilians fall within the jurisdiction of civilian courts;

(n) Ensure that the registration process for associations to obtain legal personality is completed in a speedy manner in all municipalities and provide guidance and support to municipal officials to enable them to fulfil their task effectively;

(o) Enhance support and resources to civil society actors, especially accountability organizations, and ensure an enabling environment that is as conducive to success as the one accorded to the business sector;

(p) Amend Act No. 19253 with a view to allowing indigenous traditional institutions to claim land restitution, while implementing International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which acknowledges the legitimacy of such institutions;

(q) Adopt labour legislation that recognizes trade unions as key players for democracy and addresses all concerns raised by ILO regarding current labour legislation;

(r) Ensure that all employers cease anti-union activities;

(s) Allocate adequate human, material and financial resources to the Under-Secretariat for Human Rights;

(t) Take fully into account the observations and recommendations made by the National Institute for Human Rights (*Instituto Nacional de Derechos Humanos*) (INDH) in relation to respect for human rights;

(u) Engage in meaningful consultations with civil society actors, including INDH, in decision-making processes, in particular when adopting and amending the above-mentioned legislation;

(v) Continue their laudable efforts to promote and protect the rights to freedom of peaceful assembly and of association at the international level.

107. The Special Rapporteur calls upon the National Institute for Human Rights (*Instituto Nacional de Derechos Humanos*) (INDH) to:

(a) Continue its excellent work in monitoring and reporting on human rights violations and abuses, and in promoting and protecting human rights, in general;

(b) Follow up and monitor the implementation of the recommendations contained in this report.

108. The Special Rapporteur calls upon civil society actors to:

(a) Continue their advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;

(b) Use every opportunity to participate in decision-making processes, including in relation to the elaboration of the above-mentioned draft laws;

(c) Follow up and monitor the implementation of the recommendations contained in this report.

109. The Special Rapporteur calls on the United Nations, including the Office of the United Nations High Commissioner for Human Rights, to:

(a) Continue its advocacy work with relevant authorities concerning respect for the rights to freedom of peaceful assembly and of association;

(b) Further support capacity-building of the relevant authorities, INDH and civil society organizations;

(c) Follow up and monitor the implementation of the recommendations contained in this report.

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