



**Casa Memoria José Domingo Cañas**

**FUNDACIÓN 1367**

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**IMPUNITY, RIGHT TO PROTEST, POLICE VIOLENCE,  
SPECIAL PROTEST GROUPS AND MEMORY POLICIES<sup>i</sup>**

For presentation to the Fourth Cycle of the  
Universal Periodic Review of the State of Chile, to be carried out during the year 2024.

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#### **A. Presentation**

The house located at José Domingo Cañas 1367 in Santiago de Chile, former Ollagüe barrack of the National Intelligence Directorate (DINA), is one of the many properties that were occupied as kidnapping, torture and extermination barracks during the civil-military dictatorship. Currently converted into a Site of Memories, and administered on loan by the 1367 Foundation, it focuses its activities on the promotion and defense of human rights. One of its work teams, the Commission of Human Rights Observers (hereinafter the Commission), was formed within the framework of the social mobilizations that took place during 2011, because of the police violence experienced by the mobilized actors. Since then, its work has focused on monitoring and social control over the actions of the police force in the context of demonstrations, in the sense of making visible the guarantees of non-repetition and the duty of States to implement measures that enable the effective enforcement of human rights.

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**Santiago de Chile**

## B. Executive Summary

This report focuses on the progress and limitations of the implementation of transitional justice mechanisms in the face of serious and systematic human rights violations that occurred in Chile during 1973 to 1990; and in the actions of the police force in the last five years, referring to human rights violations linked to the right to free expression and protest, as well as violations of special protection groups, making visible the lack of guarantees of non-repetition. It also pronounces on the recommendations accepted by the State of Chile in the third cycle of the UPR 2019 and establishes recommendations for the effective guarantee of human rights<sup>ii</sup>.

### C. Transitional Justice: Crimes Against Humanity 1973-1990

In relation to the recommendations 125.52; 125.81; 125.83; 125.84; 125.85

1. In Chile, the State recognizes 40,018 victims of serious and systematic human rights violations during the dictatorship, 3,065 of whom are executed or detained and disappeared. However, even though the National Search Plan (hereinafter PNB) proposes among its specific objectives to advance in the establishment of the judicial and extrajudicial truth regarding the commission of crimes associated with forced disappearance in the context of the dictatorship, the secrecy of the Commission on Political Imprisonment and Torture established in Law No. 19.992 is still in force, which favors impunity.
2. The State should adopt measures to guarantee access to documentation and information to the authorities investigating enforced disappearances. This entails the need to repeal these articles and/or laws and establish legal mechanisms that prevent the Armed Forces and Police from destroying or eliminating records of repression and establish proportional sanctions in cases where this occurs or is known to have occurred. These should be made available to the PNB.
3. Chile hasn't yet criminalized the forced disappearance of persons in the Penal Code, preventing progress in Truth and Justice in relation to disappeared detainees.
4. The Commission has verified, in cases registered in Mapuche communities and protests in recent years, that there have been mass and individual detentions, some of which could be configured as forced disappearance of persons according to the definition of the Inter-American Convention on Forced Disappearance.<sup>iii</sup>.

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5. Fifty years after the coup, a total of 1,359 trials have been held with approximately 1,359 sentences<sup>iv</sup>, with only 16 former officers sentenced to life imprisonment, 161 former officers acquitted and 382 with sentences served<sup>v</sup>. One of the obstacles to access to justice relates to the incorporation by the Supreme Court since 2007 of the concepts of gradual prescription, established in article 103 of the Criminal Code. This measure has benefited convicted officers in the reduction of sentences given the time for their prescription. Sentences of less than five years have also been established, benefiting from probation despite convictions for serious crimes, which violates the duty to prevent impunity<sup>vi</sup>. Therefore, the progress on recommendations 125.83 and 125.84 is partially assessed.
6. It was recommended that the State of Chile repeal the Amnesty Law (DL No. 2.191) (125.52). In this regard, Chile took note, arguing that the Supreme Court has left it without application. However, although it has not been applied since 1998, it is still in force, allowing its application in the face of a change in the criteria of the judges, as indicated by the UN Committee on Enforced Disappearances.<sup>vii</sup>.

Recommendations

7. Repeal the Amnesty's Decree Law.
8. Declassify the files of the dictatorship's security and intelligence apparatuses, along with the testimonies of the Commission on Political Imprisonment and Torture.
9. Establish legal mechanisms that prevent the Armed Forces and Police from destroying or eliminating archives of the dictatorship and sanction in cases in which they are or have been destroyed.
10. Prosecute all human rights violations committed during the dictatorship, for the full fulfillment of the right to memory, truth, justice and reparation, both of "absent" victims and survivors, as well as of society.
11. Create a single system for monitoring the enforcement of sentences for human rights violations, along with a mechanism that makes transparent the granting of prison benefits and alternative regimes.
12. Repeal the benefits, regimes and use of special detention facilities for perpetrators of war crimes and crimes against humanity.
13. Allocate sufficient resources and specialized personnel for the PNB.

14. End the abusive use of pretrial detention for people detained in the context of protests.

**D. Civil and political rights: right to protest and free expression** in relation to the recommendations 125.54; 125.59; 125.60; 125.63; 125.64; 125.71; 125.72; 125.73; 125.74; 125.75; 125.76; 125.77; 125.78; 125.79.

15. The Constitution enshrines the right to assembly; however, it is governed by Supreme Decree 1086 of 1983, signed by the Military Junta, which makes the enjoyment and exercise of this right subject to an administrative and/or police decision.
16. The Commission's Human Rights Report on the Social Outburst shows serious, massive, generalized, and systematic violations of human rights by the State.
17. In the Social Outburst, more than 500 people mutilated with eye loss by agents of the State were registered, more than 2000 complaints of torture, of which an undetermined number refer to sexual torture; 1914 cases of cruel, inhuman and degrading treatment contained in 1597 complaints filed by the National Institute of Human Rights only until June 2020; To this are added more than 3,500 people wounded with less lethal and lethal weapons. To date, there has been little progress in terms of investigation, justice, reparation and guarantees of non-repetition of these human rights violations..
18. In front of the table of integral reparation of victims of the Social Outburst<sup>viii</sup>, the reports of civil society (UDP and Amnesty International) on integral reparation substantiate that the measures that were adopted do not constitute integral reparation. Their proposals and recommendations do not contemplate the psychosocial traumas associated with the repression suffered, in addition, the victims who suffered pellet impact on other parts of the body have been made invisible. To date, four people have committed suicide as a result of the lack of comprehensive reparation.
19. It is noted<sup>ix</sup> that the principles governing the use of force by the personnel of the Forces of Order and Public Security are not fully complied with or respected. There have been deliberate practices of concealment of police identification, breaches of vehicle identification protocol; direct attacks on groups of human rights defenders such as the press, health and observer groups; deliberate attacks on public infrastructure, among others. Therefore, mechanisms are needed for accountability by the police in the protection of demonstrations. They act from the control of public order and not from the protection of protest.

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20. In 2023, the Bill on Rules of the Use of Force was presented, which urgently needs to be adjusted to the guidelines of the international human rights framework. It is also essential to establish mechanisms for accountability on the part of the police in the protection of demonstrations and command responsibility.
21. From January 1, 2019, to December 31, 2022, Carabineros carried out 107,407 preventive identity checks on children throughout the national territory, accounting for 76.07% of the total identity controls applied to children and adolescents in the period, which constitutes a crime as stipulated in Article 12 of Law No. 20,931. The Commission has observed in protest environments that these identity checks are indiscriminate<sup>x</sup>.

**Recommendations:**

22. Recognize the right to protest of children, as subjects of special protection and rights. Their protests are required to be answered by addressing the causes that generate them (the right to quality education, to an environment free of violence, to decent food, among others), and not only to the effects of the specific mechanisms they use to demonstrate.
23. Establish a mechanism to follow up on the total number of cases that are being prosecuted for human rights violations of the Social Outburst, the processing times, effective results and measures to accelerate the investigation of these serious violations, so that it is reflected that they are being addressed as such and not with the deadlines and priorities of any other crime.
24. Protocols for medical examinations to ascertain injuries of detainees should be mandatory and the privacy of the procedure should be ensured. The health certificate must be carried out by health personnel and the agreement of the detainee-patient must be expressly recorded. The health system must have a record of detection of injuries consistent with torture and ill-treatment, and of allegations received from the persons examined, considering the provisions of the Istanbul Protocol<sup>xi</sup>.
25. Establish an articulation with the entire health network for the care of people in State custody. Provide priority attention for people in police custody, limiting custody times and limiting the time they may be subjected to torture and ill-treatment.
26. Train all health personnel in human rights in their role as guarantors of rights.

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27. Effectively and proportionately dismiss and punish all officials involved in past and present human rights violations, giving a public account of it.
28. Investigate, sanction and repair the violations suffered by children and adolescents in the context of social mobilizations.
29. Establish schools, lyceums and universities as territories for the protection of children and adolescents, establishing an absolute ban on the entry of the police force.
30. Study the impact of police violence on children and adolescents and take effective measures in their favor based on the results obtained.

**E. Special Protection Groups and Indigenous Peoples**

In relation to the recommendations 125.228; 125.233; 125.242

31. The Commission has received reports from people from Mapuche communities in the Biobío and La Araucanía regions verifying, from direct and open sources, the practice of military exercises in Mapuche communities without justification, with the presence of dozens of war vehicles, helicopters flying over the communities at low altitude, cuts in the exit routes of the communities that impede mobility. and helicopter descent in school zone<sup>xii</sup>. Therefore, recommendation 125.242 has not yet been implemented.
32. The reports issued by the Commission show the existence of a political-military strategy on the part of the State of Chile, which seeks to stop, through the use of violence, the territorial conflict and the demand for autonomy that the Mapuche communities maintain to this day, denying the principle of self-determination of the peoples and the rights that are recognized to them by ratifying ILO Convention 169 on Indigenous and Tribal Peoples.
33. It is noted<sup>xiii</sup> the practice of indiscriminate identity checks in the Biobío and Araucanía regions, where a high percentage of the Mapuche population is concentrated. During the period, 39.127 identity checks were carried out in the commune of Cañete, whose population is 34.537 inhabitants.<sup>xiv</sup>; in Collipulli, 23.983 checkpoints, population 24.598; in Ercilla 15.093 controls and its population is 7.733. These practices represent a violation of the right to personal liberty and the right to privacy, in turn that account for institutional racism<sup>xv</sup>, since these constitute practices directed in a systematic, indirect and persistent way to certain groups, producing classifications and distinctions through which their position of equality is affected.<sup>xvi</sup>.

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34. Between January 1, 2019 and February 15, 2023, there are 12 complaints of illegitimate coercion committed by public employees against children and adolescents in the communes of Collipulli, Ercilla, Curanilahue, Cañete, Curacautín, Freire, Lumaco and Tirúa (Biobío and La Araucanía Regions). Likewise, in the regions of BioBío and La Araucanía, 69.83% of the complaints filed in the Prosecutor's Office, linked to institutional violence between 2019 and 2022 were for illegitimate coercion<sup>xvii</sup>.

Recommendations:

35. End militarization in the Wallmapu areas and discriminatory practices in police procedures and judicial proceedings, which hinder the exercise of individual and collective rights of members of the Mapuche People.
36. Modify the police protocols of the Carabineros and the Investigative Police in accordance with international human rights standards, especially those related to indigenous issues.
37. Frame and adapt the anti-terrorism legislation in line with international standards, especially regarding the definition of terrorist offences and due process.

**F. Institutionalidad in Human Rights and memory**

38. The main bodies of human rights institutions in Chile are not autonomous. In the case of the National Institute of Human Rights, its Council is responsible for making the most relevant institutional decisions and electing a director (executive) and is composed of 11 people who are appointed for a period of six years. However, among the members of the Council, 2 are appointed by the Executive, 4 by the Legislative Power, 1 by deans of the Faculties of Law of the member universities of the Council of Rectors and autonomous universities, and 4 by human rights organizations, there being 6 political appointments and 5 from civil society, which undermines institutional autonomy.
39. Law No. 21.154 that creates the National Mechanism for the Prevention of Torture (hereinafter the Mechanism) designates the INDH as the Mechanism, which implies that key decisions are subject to what the INDH Council determines.
40. In the case of the Office of the Ombudsman for Children, the election of the post of Ombudsman for Children rests solely with the Senate's Commission on Human Rights and Citizenship, which, upon call, designates a name for ratification by the

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full Senate, leaving the election solely to the discretion of the Senate and the respective Commission.

41. Through cases<sup>xviii</sup> followed by the Commission, it is noted that there are serious problems in the response of human rights institutions in Chile to torture. There is no rapid response to torture when it occurs. No concrete actions are generated that can stop torture, by not giving immediate medical attention to the affected people, having to spend several hours enduring the pain of the physical damage inflicted.
42. The Sites of Memory in Chile do not have funding regulated by law for their maintenance and operation. The sources of financing are subject to public tenders, lobbying in Ministries, Congress and the Presidency. There are no comprehensive policies that support processes of memory and memorialization and that are available to people residing in the national territory for the exercise of their right to memory, without considering time limits.

### **Recommendations**

43. Move towards a real autonomy of the main bodies that make up the institutionality of human rights in Chile, independently of each other, in which coherent and coordinated action is sought.
44. Create a Comprehensive Memory Policy that contributes to the guarantees of non-repetition, that regulates the actions of the State for the protection and guarantee of the right to memory and guarantees victims, survivors, relatives, organizations and society the participation in processes of construction of memories regarding human rights violations.
45. Guarantee, safeguard and maintain the Sites of Memories with adequate and permanent public budgets, to strengthen civil society in the mission of promotion, defense and education in Human Rights.
46. Create a comprehensive human rights protection system that acts in an interrelated manner, generating an immediate response capacity to complaints of torture and other violations.
47. Generate an emergency action protocol that accounts for the responsibilities and immediate concrete actions of the institutions in Human Rights against Torture.
48. Generate a mechanism that guarantees transparency and accountability of the actions carried out by human rights institutions and to be able to follow up on reported cases.



## Notes and References

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<sup>i</sup> This report is based on the compilation of primary sources, databases requested for transparency, interviews and observation missions, carried out by the Commission of Human Rights Observers of the José Domingo Cañas Memorial House, mainly in the period covered by this report from 2019 to 2023. The Human Rights reports issued by the Commission and referenced in this report can be found at the following link: [https://drive.google.com/drive/folders/1-V\\_F9MfFC7bPq2tGe0hoFZMtKkitRoPh?usp=sharing](https://drive.google.com/drive/folders/1-V_F9MfFC7bPq2tGe0hoFZMtKkitRoPh?usp=sharing)

ii The period covered by this report (2019-2023) is characterized by various processes of social protests, such as those that occur between October 18, 2019 and March 2020, in the framework of the citizen uprising that demands the recognition of fundamental rights from the State of Chile and that is strongly repressed. These mobilizations are interrupted by the COVID-19 pandemic, addressed from the dictation of the State of Emergency of Catastrophe, with special emphasis on the control of public order, strong measures of restriction to individual freedom and as an excuse to restrict the right to freedom of expression. In the years 2022 and 2023, there have been several demonstrations by high school students demanding, among other things, the right to quality education. So far in 2023, the police force has carried out around 65 operations in and around schools and high schools, committing multiple violations of rights with children.

Faced with the advances in transitional justice, in 2023 the National Plan for the Search for Truth and Justice (hereinafter PNB) is announced, as a public policy whose purpose is to clarify the circumstances of disappearance and / or death of victims of forced disappearance. In this regard, there is considerable uncertainty about its materialization, considering that in the country the Forced Disappearance of Persons has not been incorporated into national legislation, outside the regime of crimes against humanity, the 50-year secrecy of the testimonies collected by the Valech I Commission has not yet been repealed, nor are legal mechanisms established to prevent the Armed Forces and Police from destroying or eliminating files of repression. The law of Amnesty is still in force, as is Article 103, which allows for the gradual statute of limitations.

<sup>iii</sup> According to the Inter-American Convention on Forced Disappearance of Persons of the Organization of American States (1994), forced disappearance is defined as: "the deprivation of liberty of one or more persons, in whatever form, committed by agents of

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the State...", Special Forces of Carabineros in this case, "... followed by the lack of information or refusal to acknowledge such deprivation of liberty or to report on the whereabouts of the person, thereby impeding the exercise of relevant legal remedies and procedural guarantees" (Article II). Viewed online September 2023: <https://www.oas.org/juridico/spanish/tratados/a-60.html>

<sup>iv</sup> In the systematization carried out by Barthou, C. and the Ethical Commission against Torture, (2023), it is recorded that until December 31, 2023, 1313 trials have been carried out with convictions of perpetrators for human rights violations between 1973 and 1990. In the follow-up carried out during 2023 to trials and convictions, approximately 46 sentences to perpetrators are registered so far in 2023.

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

<sup>vi</sup> The bulletins issued by the Transitional Justice Observatory of the Human Rights Center of the Diego Portales University, give an account of the arguments, considering the characteristics and times of the sentences and sentences that have been issued to perpetrators of human rights violations, below, it is exemplified with a case:

"Case of brothers José Miguel and Isabel Verónica Sánchez Larraín, survivors: ineffective sentences to five former members of the Navy for kidnapping two minors in 1974, in order to use them as hostages. The extenuating circumstance of 'irreproachable previous conduct' is also admitted On February 27, the Supreme Court sentenced five retired members of the Navy – Pedro Victorio Frioli Otonel, Manuel Alejandro Buch López, Arístides León Calffas, Guillermo Retamales Ruiz and Germán Patricio Valdivia Keller – to 541 days in prison, each with the benefit of probation (ineffective sentences) as authors of the simple kidnapping of the brothers José Miguel and Isabel Verónica Sánchez Larraín, survivors arrested as children, in August 1974, at their home in the El Belloto sector of the commune of Quilpué. The objective of the kidnapping was the persecution of their older sister, who was a militant of the Communist Youth. In a unanimous ruling (case 21.037-2020), the Second Chamber of the highest court – composed of Justices Haroldo Brito, Manuel Antonio Valderrama, Jorge Dahm, Leopoldo Llanos and Minister María Teresa Letelier – partially accepted the appeal in cassation on the merits deducted by the common defense of the sentenced Retamales Ruz and Valdivia Keller. In a replacement sentence, he recognized the mitigating circumstance of previous irreproachable conduct of the convicted Valdivia Keller,

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for which he reduced the sentence of 3 years and 1 day of imprisonment that the respective Court of Appeals had set. In the civil part, the first instance ruling was upheld, which ordered compensation of CLP 35,000,000 (USD 42,752) to the victims for the moral damage caused" (p. 15). Transitional Justice Observatory, 2023. Transitional Justice Observatory Diego Portales University, Santiago de Chile. Informative Bulletin No. 75, January - February 2023. Viewed online September 2023: [https://derechoshumanos.udp.cl/cms/wp-content/uploads/2023/07/Boleti%CC%81n-76\\_marzo-abril-2023.pdf](https://derechoshumanos.udp.cl/cms/wp-content/uploads/2023/07/Boleti%CC%81n-76_marzo-abril-2023.pdf)

<sup>vii</sup> In Chile in recent years there has been a growing articulation and proliferation of anti-rights discourses and relativization of serious human rights violations that occurred in the period of the civil-military dictatorship. In this context, there is a particular risk that the application of this Amnesty Law will be urged.

<sup>viii</sup> This instance promoted by the Undersecretariat of Human Rights ended its work in March 2023. Viewed online September 2023: <https://programaviddhh.minjusticia.gob.cl/mesa-de-reparacion-integral-concluye-su-funcionamiento-con-la-entrega-de-informe-de-recomendaciones-a-presidencia/>

<sup>ix</sup> Constatación en base al monitoreo realizado por la Comisión en contexto de protestas. Ver informes en el siguiente link: [https://drive.google.com/drive/folders/1-V\\_F9MfFC7bPq2tGe0hoFZMtKkitRoPh?usp=sharing](https://drive.google.com/drive/folders/1-V_F9MfFC7bPq2tGe0hoFZMtKkitRoPh?usp=sharing)

<sup>x</sup> Information collected by the Commission via the Transparency Law regarding events in which Carabineros agents are involved in the control of public order.

<sup>xi</sup> With regard to the investigation and documentation of situations of torture and other cruel, inhuman or degrading treatment or punishment. As well as the stipulations in relation to the differential considerations for the case of children.

<sup>xii</sup> One of these cases reported to the Commission occurred in the María Colipi Viuda de Maril Community on July 25, 2023. The constitutional state of exception has been in force for more than a year and the permanent militarization of Wallmapu in the Araucanía Region and the Provinces of Arauco and Biobío is constant.

<sup>xiii</sup> Finding based on information collected via the Transparency Law regarding the period 2020-2022, as well as what was observed by the Commission in observation missions.

<sup>xiv</sup> According to the Census conducted in 2017 in Chile.

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

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

<sup>xvii</sup> Information obtained in databases of the Prosecutor's Office collected and extracted from the Computer System of Support to Prosecutors (SAF) and obtained by the Transparency Law.

<sup>xviii</sup> An example is the case recorded on 25 September. On this date, the Commission receives a report on the case of two Mapuche prisoners (brothers) who are in the Concepción Prison and who were allegedly beaten by gendarmerie personnel and subsequently isolated without allowing communication with a lawyer or family members, nor being attended by a doctor to verify injuries, this for about 24 hours. The Mechanism failed to act in coordination with personnel in charge of the INDH, approximately 24 hours elapsed between the moment in which the violation occurs and the visit of the INDH to the prison. The institutions do not establish communication with the family to carry out containment or deliver information, which amplifies the torture towards the family environment, considering the state of anguish in which it finds itself without communication and information from its relatives for several hours. No concrete actions are generated that can stop torture, by not giving immediate medical attention to the affected people, having to spend several hours enduring the pain of the physical damage inflicted.