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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

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

### **Note by the Secretariat**

The Special Rapporteur on the rights to freedom of peaceful assembly and of association undertook an official visit to Chile from 21 to 30 September 2015 to assess the situation of freedom of peaceful assembly and of association in the country, upon the Government's invitation. Following an introductory section, sections II and III contain a series of good practices and remaining challenges in relation to the enjoyment of the rights to freedom of peaceful assembly and of association. Finally, the Special Rapporteur formulates his recommendations to overcome the challenges he identified

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

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

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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, visited the Republic of Chile from 21 to 30 September 2015, at the invitation of the Government, for the purpose of making an in-depth assessment of the situation of freedoms of peaceful assembly and association in the country.

2. The Special Rapporteur would like to thank the Government of the Republic of Chile for its exemplary cooperation in organizing this visit –his first to the Americas– particularly in 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 his mandate. He also commends the Government for extending a standing invitation to all special procedures mandate holders and for having accommodated the visit of four United Nations 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, Interior and Public Security, Education, and Labour and Social Affairs, the Public Prosecutor, the General Director of Carabineros de Chile (the unified national police), the General Director of the Investigation 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 Presidents and representatives of the Commission for Constitution, Legislation and Justice, and the Commission for Human Rights and Indigenous peoples, from the Senate and Chamber of Deputies. 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 his 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 Chileans 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”,

i.e. the benefits and progress that can accrue when a country turns from dictatorship to democratic rule. Poverty has drastically reduced, the economy 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 the Human Rights Council resolution 15/21 establishing the Special Rapporteur's mandate in 2010 (and the subsequent ones), Human Rights Council resolution 27/31 on civil society space, and Human Rights Council 17/19 on human rights, sexual orientation and gender identity.

10. On 16 December 2015, the President of Chile enacted Law No. 20.885 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 for fulfilling 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 freedoms of peaceful assembly and association, including the International Convention on the Elimination of All Forms of Racial Discrimination (1971), the International Covenant on Civil and Political Rights (1972), the International Covenant on Economic, Social and Cultural Rights (1972), the Convention on the Elimination of All Forms of Discrimination against Women (1989), the Convention on the Rights of the Child (1990), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1998), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2005), the Convention on the Rights of Persons with Disabilities (2008), and the Convention for the Protection of All Persons from Enforced Disappearance (2009).

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

14. In addition, Chile has ratified several regional instruments that are relevant to the promotion and protection of freedoms of peaceful assembly and association, in particular the American Convention on Human Rights (1990) and the Inter-American Convention to Prevent and Punish Torture (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 (Article 8(a)); elaborating a National Human Rights Action Plan (article 8(c)); and generating and coordinating opportunities for the participation by civil society in relation to the adoption of such policies, plans and programmes (article (h)).

## II. Right to freedom of peaceful assembly

### A. General legal framework

15. The Constitution of Chile guarantees the “[t]he right to assemble peacefully without prior permission and unarmed”.<sup>2</sup> It provides that “[m]eetings in squares, streets and other public places shall be governed by the general police regulations”.<sup>3</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 (Intendente) or provincial (Gobernador) governor at least two days in advance. If organizers fail to do so, law enforcement officials may prevent or dissolve the planned meeting or demonstration (article 2). Furthermore, the regional or provincial governor has a large discretion not to authorize meetings or processions in high-density roads or streets where they may disrupt public transit, or meetings held in squares and leisure roads during recreational or rest hours and in parks, squares, gardens and green avenues (article 2).<sup>4</sup>

17. The Special Rapporteur considers this regulatory framework to be a de facto authorization regime, which not only contradicts Chile’s own Constitution, 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, not authorization.<sup>5</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 only constitute 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>6</sup> It further 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>7</sup>

20. In addition, 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 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, organizers, community or political

<sup>2</sup> Article 19, item 13, of Chilean Constitution (emphasis added).

<sup>3</sup> Ibid.

<sup>4</sup> Supreme Decree No. 1086 (1983).

<sup>5</sup> A/HRC/20/27, para 28.

<sup>6</sup> Organization of American States (OAS), IACHR, Report on Citizen Security and Human Rights, 31 December 2009 (OEA/Ser.L/V/II), para. 198. Available at: <http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

<sup>7</sup> OAS/IACHR, Report on Citizen Security and Human Rights, 31 December 2009 (OEA/Ser.L/V/II), para. 193.

leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment<sup>8</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 such is not guaranteed in the future as the decree gives authorities the power to curtail peaceful assemblies, which could be used by future less human rights friendly regimes. Therefore, he urgently calls on 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. He firmly believes that Supreme Decree No. 1086 is a remnant of Chile's past that has no place in today's Chile. He hopes that the necessary political shall be marshalled to repeal this decree which can be done via 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 avails himself 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 that, thanks to public pressure –notably from the INDH– were made public in August 2014.<sup>9</sup> According to the police, these protocols mainly guide the work of police special forces who 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 1) an authorization was previously granted or if it occurs on a spontaneous basis, and 2) if it unfolds quietly, securely and with respect for the police authority. The Special Rapporteur stresses again 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. The Special Rapporteur is concerned, however, that the head of police operations is responsible for identifying the legality or illegality of the demonstration based on the degree of peace and respect displayed. S/he also decides on the degree of force required to preserve public order.<sup>10</sup> The Special Rapporteur considers that such broad definition leaves room for arbitrary interpretations.

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<sup>8</sup> A/HRC/23/39, para. 51. See also A/HRC/31/66, para. 23.

<sup>9</sup> Police protocols to maintain public order (only in Spanish): <http://www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf>

<sup>10</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 against the fact that sporadic acts of violence by a few individuals does not automatically mean that the assembly as a whole is non-peaceful. He welcomes the principle in the protocols that law enforcement officials 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>11</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. In addition, the criteria of violence should be applied to individuals, and not to assemblies as a whole, given that the right to peaceful assembly is individual to all persons.

28. The Special Rapporteur further welcomes the emphasis laid on the importance of dialogue between law enforcement authorities and assembly organizers and participants, while stressing 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>12</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: 1) principle of legality, 2) principle of necessity, and 3) principle of 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 last resort measure 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, 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 whereby a protestor lost his eye (see section 2). This is a positive development. Nevertheless, their use is still technically permissible in the protocols.<sup>13</sup> In addition, as flagged by the INDH, the protocols fail to specify the composition of the water and the gas to be used, in order to ensure the safety of the demonstrators, and the population at large.<sup>14</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 its use. However, he stresses that the use of gas and water cannons present a significant risks of harm, especially since it does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions.

<sup>11</sup> Ibid., Protocol 1.1

<sup>12</sup> Ibid., para. 56.

<sup>13</sup> Principle 2.15

<sup>14</sup> Report of the INDH, Situación de los Derechos Humanos en Chile, Informe Annual (2014), p. 51.

31. The protocols govern appropriately the use of firearms, which is seen as an extreme measure. Firearms are permitted only under exceptional circumstances, when there is an immediate threat to the life of a police officer (self-defense) or another person, or a similarly immediate threat of grave bodily injuries. 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 officials, but not in a consistent and detailed manner. A specific section should be devoted to this critical aspect, emphasizing the need to provide periodic training to law enforcement officials on the lawful use of force in general, and specifically on the weapons authorized. These officials should be tested on such use regularly, as well as 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 are the most important element to consider during operations when preserving public order. He stresses that the physical and psychological integrity of demonstrators, human rights monitors and by-standers is equally important, and every effort must be made to guarantee such integrity.

#### *Monitoring*

34. With regard to the monitoring of assemblies, the protocols recognize the important role of the INDH in this regard<sup>15</sup>, which the Special Rapporteur welcomes. He considers as 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 the INDH. He calls on 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 the INDH in that regard.

35. Another issue of concern relates to the requirement for media workers to hold a journalist license or be employed by a media company in order to be allowed to cover assemblies.<sup>16</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 similarly be allowed to monitor assemblies. Social media are a crucial tool in democratic societies for upholding good governance and holding officials accountable.

36. In addition, the protocols require that those monitoring assemblies to remain at a distance from the area of operations of the police.<sup>17</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. Importantly, the Special Rapporteur expresses a general concern about the lack of practical guidance on how to implement these protocols, and monitor their implementation. The 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>15</sup> Protocol 5.1.

<sup>16</sup> Protocol 5.2.

<sup>17</sup> Protocol 5.3.



38. In conclusion, the Special Rapporteur calls on 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 the joint compilation of practical recommendations for the proper management of assemblies he presented to the Human Rights Council in March 2016, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, as a useful guidance tool for that matter, in addition to the present report.<sup>18</sup> Furthermore, it is essential to consult the INDH and other relevant experts from the civil society in this review process in a meaningful manner. The Special Rapporteur avails himself 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, in the course of his visit, the Special Rapporteur heard several reports, including directly from victims, of excessive use of force and sexual harassment by the police special forces against protestors.

40. Such reports are in line with the concern made by the Human Rights Committee during the sixth review of Chile in 2014 when the Committee said 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>19</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 special forces who allegedly regularly use excessive force when managing protests. He notes the statement of the Ministry of Interior that police special forces are elite forces who receive special training. However, in light of the several concerns received on their interventions in the context of protests, he 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, causing him to lose sight in his right eye. Similarly, in 2008, Victor Salas, a photo journalist, 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 knocked unconscious for two months due 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 the 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. It is

<sup>18</sup> A/HRC/31/66.

<sup>19</sup> Human Rights Committee, Concluding Observations on the sixth periodic report of Chile, 13 August 2014, CCPR/C/CHL/CO/6, para. 19.

the duty of the police to distinguish between peaceful 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 non-peaceful. It does not give the State carte blanche to use force against or carry out indiscriminate arrests. 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>20</sup>

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

45. According to the Public Prosecutor, it is very difficult to investigate disruptive individuals and hold them accountable. There are reportedly hundreds of cases of such individuals brought to his attention. However, he said that his office's ability to handle these cases is often hampered due 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 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 further received testimonies of students, including minors, detained during the 2011 demonstrations. Most of them were released a couple of hours later, but the detention prevented them from joining the assembly. The INDH noted that the majority of the detainees were not subsequently prosecuted, demonstrating that the police have resorted to arbitrary arrests to illegally curb protests.<sup>21</sup>

47. Finally, of concern to the Special Rapporteur is the fact that officials have at times shown hostility to the work of the INDH. For example, in 2013, the INDH released a report that was critical of the action by the police during the protests of 2011. In response, the Head of the police harshly criticized the INDH, and in 2015 a parliamentary procedure was subsequently initiated aiming at demoting the Director of the INDH. The move eventually failed, but the 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 to the INDH and to 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 also 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

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<sup>20</sup> Ibid., para. 8 and 9.

<sup>21</sup> INDH, 2011 Annual Report, p. 77: <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 on front of the Governor's building in Temuco, and was then beaten and forced to undress in a police station. Some victims filed a complaint, and the cases were brought before the military court, yet they were dismissed as the perpetrators could not be identified. In other cases, the public prosecutor reportedly did not have enough evidence to initiate a case.

51. Furthermore, the Special Rapporteur was informed by civil society that a number of cases of sexual harassment end up not being reported because of the shame felt by the victims, the prevailing impunity for the perpetrators in those cases, or simply because women are unaware that abusive body searches, derogatory comments or threats of sexual violence do 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 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 handle female protestors on the front line. The Special Rapporteur takes note of the fact that authorities' have, in response to the claims of sexual harassment and abuse, allowed INDH representatives to monitor detention facilities. He looks forward to resolute actions 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 demonstrated in the vicinity of the presidential palace against recent instances of femicide in the country. The police then dispersed the group, reportedly using excessive force. Female protestors were beaten and insulted by police officers. Nine of them were then taken to a police station. It is reported that police officers sexually assaulted some of these detainees, touching their private parts. The INDH wrote to General Director of Carabineros in relation to this case.

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

#### *Situation of indigenous peoples*

55. The Special Rapporteur travelled to Temuco, Araucania region, to look into the particular challenges faced by the indigenous Mapuche community when exercising their right to freedom of peaceful assembly. He met with Mapuche representatives from different communities, farmers, and with the 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 refers to the reports of the Special Rapporteur on the rights of indigenous peoples<sup>22</sup> and the Special Rapporteur on the promotion and protection of human rights

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<sup>22</sup> A/HRC/12/34/Add.6.

while countering terrorism and fundamental freedoms<sup>23</sup> on their visits to Chile in 2009 and 2013 respectively.

57. The Special Rapporteur was informed by the authorities of Araucania that peaceful cohabitation with the Mapuche is a priority for the region, and that the Government values diversity and fosters it. The Ministry of Justice reportedly has six specialized units which all have special sub-units dealing with Mapuche issues. The Ministry also has inter-cultural facilitators and Mapuche staff interacting with the Mapuche community. According to the Head of the police in Temuco, since taking up his functions in December 2013, the city had not witnessed any incident in relation 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 the police have resorted over the years to excessive use of force in the context of protests by indigenous peoples who have called for the respect of their rights, especially land rights.

59. The majority of protests by Mapuche take place in rural areas, on the lands they consider as theirs ancestrally and which are today owned by farmers. Many of the protests are “occupation” style demonstrations. They are typically peaceful, though there have been instances of violence against farmers’ properties. In such cases, police special forces are called 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 this context of land occupation. In 2002, Mr. Alex Lemún, a 17-year old Mapuche, was shot dead by the police in Ercilla. The perpetrator received a one-day suspension as disciplinary measure, and was acquitted by a military court. In 2008, Mr. 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. A military court, nevertheless, sentenced him to three years and one day on probation. The police maintained the police officer in his functions until January 2013 where he was eventually dismissed after repeated criticisms from civil society. In 2009, Mr. Jaime Mendoza Collio, a 24-year old Mapuche, was shot in the back by a police officer while occupying the farm San Sebastian. An internal investigation similarly 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 the Court Martial which upheld the thesis that the police officer had acted in self-defense. In 2013, the Supreme Court quashed this decision, ruling that the conditions justifying self-defense had not been met, and sentenced him to three years on 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 the farm La Romana, in Ercilla. The police then forcibly evacuated the demonstrators, including children, and detained them. Similarly, on 1 October 2014, members of the Mapuche Huilliche marriao Collihuinca community proceeded with peacefully occupying the land Lumaco Bajo. The demonstration was immediately dispersed by a large number of police forces. 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, taken to a police van and brought to the police station of Río Bueno where the boy aged 12 presented minor injuries.

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<sup>23</sup> A/HRC/25/59/Add.2.

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 some Mapuche. However, as the farmers recognized themselves during their meeting with him, these violent Mapuche individuals only represent a very small portion of the entire Mapuche community. Furthermore, farmers have also assaulted Mapuche and have reportedly not been prosecuted.

63. In addition, the Special Rapporteur was informed that in rural areas, there is a constant presence of police forces in Mapuche communities, hence fuelling tension and frustration within these communities. Between 2009 and 2013, there were reportedly 70 police raids into Mapuche communities, most without any search warrant. In this context, there were six decisions by a court in Temuco ordering police to refrain from violence and to care for the safety of children during their operations. The police stated that since December 2013, all police interventions have been done 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 an illegal gun allegedly had been discovered by the police in her house. The Machi denied hiding this 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 such claim of its kind. She 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 felt to be a deeply humiliating measure. She was later granted compensation by a civil court in Temuco because the police officers failed to respect her ancestral Mapuche authority (though it ruled that her detention and the raid at her place had been done 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 the permission 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 the assembly principally belongs to the organizers of the assembly.

66. The Special Rapporteur was informed that when a protest happens 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 of protestors. For instance, 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 from the Malleco region, peacefully occupied the premises of the National Corporation for Indigenous Peoples' Development (CONADI) in Temuco. They demanded 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 excessive manner and in complete disregard of the fact that there were children in the premises. Several Mapuche were injured in the course of the operation. The police operation also breached a court order that required the presence of an INDH representative during any action to evacuate the premises. The police told the Special Rapporteur that they had tried to reach out to the local INDH representative ahead of the operation, 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 on the authorities to ensure a safe and conducive environment for the Mapuche when exercising their right to freedom of peaceful assembly.

Fundamentally, a lasting solution to the issue of land dispute must be achieved, and to this end, he once again refers to the reports of his peers and other human rights mechanisms, who 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 special police forces during a protest. The protestors, all sub-contractors working for CODELCO, the State-owned copper mine company, were blockading the road to the mine, calling for better pay and benefits. Police used live ammunition during an operation to clear the demonstration.

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

71. Authorities claim that the protest was not entirely peaceful, and that they were acting in self-defense when they fired live ammunition. In fact, Mr. Quichillao was inside a mechanical shovel when he was hit by the police special forces, who claim 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 the latter opened fire. Regardless of the veracity of this claim, 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 these rights.

72. The Special Rapporteur welcomes the investigation that has been opened into the case, which was still on-going at the time of drafting 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 brought to the attention of the Special Rapporteur during his visit was the use of 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 to be committed. A person failing or refusing to identify him or herself can be brought 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 – without specific evidence that they have committed or are about to commit a crime – asking for identification, and detaining them if identification cannot be produced. The authorities 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. More worryingly, a bill enabling wider use of preventive identity controls is pending and was endorsed by the Chamber of Deputies at the time of the Special Rapporteur's

visit.<sup>24</sup> Article 12 of Bill Number 9985-07 introduces a new general power for police to stop and check the identity of all people, 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 halt people and ask for their identity. Critically, the Special Rapporteur fears that the Bill will most likely disproportionately affect groups at risk such as youth (students), indigenous peoples, trade unionists and migrants. Giving law enforcement authorities enhanced power and discretion will 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 report by the Supreme Court of September 2015, which stated that the preventive identity checks, as envisaged in the Bill on combatting crime, is “difficult to accept in a democratic State”.<sup>25</sup>

77. 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 combatting crime. In fact, it may do the opposite: allowing 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 – and will not benefit from – such shortcuts.

78. The Special Rapporteur issued on 17 November 2015 a comprehensive analysis of the Bill, which was shared with key members of the executive, legislative and judiciary.<sup>26</sup> He urges all stakeholders involved in the legislative process to take into account the concerns detailed in this 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

79. Also of great concern to the Special Rapporteur is the fact that human rights violations committed by law enforcement authorities can fall under military justice jurisdiction. This is highly problematic. First military jurisdictions ought to be limited to matters of military nature only. Second, these military courts do not offer sufficient guarantees of independence and impartiality in such cases. According to the INDH, between 1990 and 2011, 40,000 cases of police abuses were reported, but perpetrators were sanctioned in only 1.5% of these cases.<sup>27</sup> The majority of these cases reportedly appeared before military courts. The PDI corroborated the figure, but responded that there was most often not enough evidence for sanctions to be applied. The police disagreed with the INDH’s figure, stating that out of 1,000 demonstrations held per year, the police were found responsible for violations only in the context of three demonstrations.

<sup>24</sup> Since the visit, the Bill was examined by the Commission for Constitution, Legislation and Justice of the Senate, with a few modifications made that did not alter the purpose of the Bill.

<sup>25</sup> Radio U Chile, ‘Informe de Corte Suprema califica de “ineficaz” proyecto de ley antidelincuencia’, 22 September 2015: <http://radio.uchile.cl/2015/09/22/informe-de-corte-suprema-califica-de-ineficaz-proyecto-de-ley-antidelincuencia>

<sup>26</sup> Information note, analysis of the proposed regime of identity control, Draft Bill Number 9985-07 of Chile : [http://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>27</sup> INDH, “Estudio exploratorio Estado de Chile y pueblo Mapuche”, February 2014, Chapter 3.

80. 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 Palamara-Iribarne case, ordered Chile to limit penal military jurisdiction to matters of a military nature only.<sup>28</sup> The United Nations Human Rights Committee and the Committee against Torture expressed a similar position in 2007 (reiterated in 2014), and 2009, respectively.<sup>29</sup> In 2014, the Special Rapporteur on the promotion and protection of human rights while countering terrorism added his voice on the matter.<sup>30</sup>

81. In 2010, a law was passed to remove civilian perpetrators of violence against the police from the military courts' jurisdiction. 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.

82. In 2014, the Public Prosecutor ordered prosecutors to transmit cases involving security forces to ordinary courts, which the Special Rapporteur welcomes. He further welcomes the decision of the Supreme Court in February 2015 in the 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.

83. This is most laudable, but the Government must go a step further and undertake a comprehensive reform of the military justice code to ensure that military courts no longer have jurisdiction in cases of violations committed by security forces against civilians. The Special Rapporteur raised this issue at length with the Ministries of Defense, Justice, and 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 to rectify the situation and return the police forces to full civilian oversight in all ways, as should be the case in democratic societies. However, at the time of drafting the report, some seven months after the initial visit, no Bill had been presented to the Parliament. The Special Rapporteur finds this disappointing. He urges the Government to tackle this matter as a matter of utmost urgency.

84. In his 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 a further nail in the coffin of the dictatorship.

### **III. Freedom of association**

#### **A. Associations**

85. The Constitution of Chile guarantees the right to associate without authorization.<sup>31</sup> Law No. 20.500 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 public safety.<sup>32</sup> Should an association want to acquire legal personality, it must register at the municipal level by

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<sup>28</sup> Inter-American Court for Human Rights, case of Palamara-Iribarne v. Chile, Judgement of 22 November 2005 (merits, reparation and costs):

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_135\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf)

<sup>29</sup> *Ibid.*, para. 22; Committee against Torture, Concluding Observations on Chile, CAT/C/CHL/CO/5, para. 14.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, Article 19, item 15.

<sup>32</sup> Law 20.500 on Associations and Citizen Participation in Public Administration (2011), article 1.



providing information such as the name and address of the association, its purpose and its statutes. Associations can operate without legal personality.<sup>33</sup>

86. Prior to the adoption of Law No. 20.500, 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 which municipality 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 Law No. 20.500 would be amended with a view to strengthening it and making it effective at the local level.<sup>34</sup> The Special Rapporteur hopes 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.

87. The Special Rapporteur further 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. He encourages the Government to enhance its support and resources to the civil society sector, especially the critical accountability organizations.

88. It is clear to the Special Rapporteur that the Government highly values the contributions of the private sector to the economy and public policy. However, it is not so obvious that it values civil society associations, including trade unions, to a similar extent. He calls on 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 with businesses and experts. In this regard, the Special Rapporteur is encouraged by the aforementioned announcement by the President of Chile that a National Council on Citizen Participation and Strengthening of Civil Society will be established with the purpose to “effectively include citizens and the enormous diversity of citizen organizations in public life”.<sup>35</sup>

89. Another issue of concern to the Special Rapporteur is the fact that under Law No. 19.253 on the protection, promotion and development of indigenous people and its regulation, claims to land restitution by indigenous peoples are restricted to 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 of land that erode their traditional structures and organizations, which are generally based on larger territories than those of communities, or on family relations.

90. Article 20 of this law establishes a land and water fund, administered by CONADI, whose task is to consider land claims from indigenous individuals or groups. In order to make a claim, indigenous groups must be recognized as legal entities as provided by Law No. 19.523. To this effect, “indigenous communities” are recognized as legal entities, as per article 10 of the law. As a consequence, indigenous people’s traditional institutions, such as Lof or Aillu in the case of Mapuche and Aymara respectively, cannot submit claims to CONADI since they were not created in accordance with Law No. 19.523 and are not registered as legal entities with CONADI as requested by this law.

91. The Special Rapporteur calls on the Government to rectify this situation without delay. This is all the more troubling as the International Labour Convention 169 concerning

<sup>33</sup> Civil Code, Title 33, Book 1, article 545-548.

<sup>34</sup> <http://www.gob.cl/2016/01/14/president-presents-national-council-on-citizen-participation-and-strengthening-of-civil-society/>

<sup>35</sup> Ibid.

Indigenous and Tribal Peoples in Independent Countries, ratified by Chile, acknowledges the existence of indigenous traditional institutions and requires that States party to the Convention recognize them.

## **B. Trade unions**

92. Chile's labour legislation is another remnant of the dictatorship era, and has on several occasions been criticized by the International Labour Organization (ILO).<sup>36</sup>

93. 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 the private sector whose enterprises provide public utility services, or services of which the interruption would seriously endanger the health, public supply, the national economy or national security (article 16). This is re-affirmed in the Labour Code under section 384. 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, due to its nature, timing or duration, the President of Chile can order the resumption of work (section 385). The Labour Code also requires an absolute majority of workers in a company to decide to go on strike (section 372 and 373). In addition, while containing a general ban on the replacement of striking workers, Section 381 of the Labour Code provides exceptions to the rule under certain conditions. The Constitution also denies the right to collective bargaining for workers from the public sector (article 16). Finally, it prohibits trade union officials from becoming active members in a political party (article 23).

94. Since 2015, the Government of Chile has embarked on a welcome process to reform this labour legislation, in consultation with social partners, including the Chilean Trade Union Confederation (CUT). A bill has been drafted that addresses some of the most pressing issues, including guaranteeing effectively 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 in the union negotiating team compulsory.

95. While noting with satisfaction these improvements, 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 such action by those performing 'minimum services'. International standards state that only workers providing 'essential services' may face restrictions of their right to strike. According to the 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>37</sup> Furthermore, according to the CUT, the bill is conceptually flawed as it does not recognize trade unions as key players for democracy. It is also hoped that the bill will foster a better union culture, with bigger and stronger unions, as presently trade unions are largely fragmented into small weaker unions. According to CUT, the overall unionization rate is 14.6%, and the collective bargaining coverage is only 8%.

96. At the time of drafting the report, the bill had not yet been adopted. The Special Rapporteur urges the Government to address these remaining issues of concern without delay, prior to adoption. It should continue taking measures to bring its legislation into full compliance with ILO Conventions 87 and 98, as requested by ILO's Committee on Experts on the Application of Conventions and Recommendations.

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<sup>36</sup> ILO's Committee on Experts on the Application of Conventions and Recommendations, Observation on Chile, 99th ILC session (2010):

[http://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>37</sup> Ibid.

97. Furthermore, it is also important that the Government ensures 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 (article 8 of the ICESCR).

98. He believes it is equally important for the Government to remain sensitive to businesses' increasing use of contract employees – particularly in State enterprises – and how this impacts workers' right to associate. While the use of contract employees is not a violation of the right to freedom of association in and of itself, widespread use of the practice can create a feeling of precariousness that degrades the right. Outsourcing can also be abused by employers as a “divide-and-conquer” tactic against workers, as in the case of the Federation and Confederation of Copper Workers in El Salvador which are openly at odds with each other. This antagonism clearly stemmed in part from large imbalances in pay, benefits and job security between the two groups.

99. Furthermore, the Special Rapporteur heard claims that 250 demonstrators who took part in the road blockade in El Salvador and made testimonies during the initial investigation were subsequently fired by their outsourcing companies as means of retaliation. He conveyed these serious allegations to the Public Prosecutor, who said that his office would investigate them. The Special Rapporteur calls on 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

100. **Chile has made remarkable progress in the past 25 years, and will no doubt continue. It has made a most painful, but inspirational journey for all peoples striving for democracy around the world. Chileans have set a high standard for what they want in terms of human rights, and in turn the international community has high expectations for Chile in this regard.**

101. **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.**

102. **Chile's most significant challenge lies in the fact that some vestiges of dictatorship remain. The transition was 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 in the context of assemblies and protests. Under international law, this role is clear: they are there to facilitate and protect peaceful assemblies and protests.**

103. **This situation represents a significant –yet certainly surmountable– obstacle to the unhindered exercise of the rights to freedom of peaceful assembly and association, and weakens their effectiveness as a tool to peacefully address social conflict, precisely at the moment that Chile needs them most. A democratic dispensation elevates and preserves rights, making limitations the exceptions. It also fully embraces and**

encourages a plurality of voices from civil society whose contribution to the consolidation of democracy cannot be stressed enough.

104. 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 continue see this transition through. In this regard, the Special Rapporteur stands ready to provide technical assistance to the Government when deemed necessary.

## **B. Recommendations**

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

- a) Repeal Supreme Decree 1086;
- b) Adopt new legislation that facilitates and protects the exercise of the right to freedom of peaceful assembly, requiring at most prior notification for peaceful assemblies, with the exception of spontaneous assemblies;
- c) Amend police protocols with a view to ensuring their compatibility with international human rights norms and standards, including the joint report on the proper management of assemblies (A/HRC/31/66);
- d) Provide clear practical guidance to police officers about 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, exercise restraint in proportion to the seriousness of the offence and to objectives pursued with due respect to human lives;
- f) Further ensure that police officers distinguish at all times between peaceful and non-peaceful protestors, extract the latter from the protests, and prosecute them in conformity with the rule of law;
- g) 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 a focus on the appropriate use of force under international law;
- i) Further train police officers on the rights and culture of indigenous peoples of Chile, and ensure that they effectively respect such 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. 9985-07, which introduces changes to the current identity controls 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 obtaining legal personality is completed in a speedy fashion in all municipalities and provide guidance and support to municipal officials to fulfil their task effectively;**
- o) **Enhance support and resources to civil society actors, especially accountability organizations, and ensure an enabling environment as conducive to success as the one accorded to the business sector;**
- p) **Amend Law 19.253 with a view to allowing indigenous traditional institutions to claim land restitution, while implementing ILO Convention 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 the International Labour Organization 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 INDH in relation to the respect of human rights;**
- u) **Engage in meaningful consultations with civil society actors, including the INDH, in decision-making processes, in particular when adopting and amending the abovementioned legislation;**
- v) **Continue their laudable efforts to promote and protect the rights to freedom of peaceful assembly and of association at the international level.**

106. **The Special Rapporteur calls on the INDH to:**

- a) **Continue its excellent work in monitoring and reporting on human rights violations and abuses, and in promoting and protecting human rights generally;**
- b) **Follow up and monitor the implementation of the recommendations contained in the present report.**
- c) **The Special Rapporteur calls on civil society actors to:**
- d) **Continue their advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;**
- e) **Use every opportunity to participate in decision-making processes, including in relation to the elaboration of the abovementioned draft laws;**
- f) **Follow up and monitor the implementation of the recommendations contained in the present report.**

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

- a) **Continue its advocacy work with relevant authorities concerning respect of the rights to freedom of peaceful assembly and of association;**
- b) **Further support capacity-building of the relevant authorities, the INDH and civil society organizations;**

c) **Follow up and monitor the implementation of the recommendations contained in the present report.**

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