



World Report 2013 - Chile

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During 2011 and 2012, Sebastián Piñera's government faced student unrest and other protests that often ended in the destruction of property and violent clashes between police and demonstrators. Police abuses, including inappropriate use of anti-riot weapons and ill-treatment of detainees, were reported. The Piñera administration has ended the trial of civilians by military courts and amended elements of counterterrorism legislation that were incompatible with international standards of due process. However, military courts that lack independence from the military hierarchy still try police accused of human rights abuses. Although the government has not pressed terrorism charges against indigenous protesters, some prosecutors have continued to bring charges against them under the counterterrorism law for actions that should be considered common crimes.

Most recorded cases of extrajudicial executions and enforced disappearances committed during military rule (1973-1990) have been heard in court or are now under judicial investigation. Judges continue to convict former military personnel for these crimes. However, final sentences are often unacceptably lenient given the seriousness of the crimes.

The passage of a law protecting sexual minorities and other vulnerable groups from discrimination was a notable advance in 2012. Abortion continues to be prohibited in all circumstances, even when the mother's life is at risk.

Police Abuses

In 2011 and 2012, student marches and occupations demanding educational reforms sometimes ended in violent clashes in which police were injured and public and private property destroyed. A policeman was shot dead in September 2012 during disturbances on the anniversary of the 1973 military coup. *Carabineros* (uniformed police) sometimes used excessive force against protesters, including the misuse of non-lethal anti-riot weaponry such as tear gas and rubber bullets, arbitrary arrests, and the ill-treatment of detainees.

During February and March protests over regional economic and social demands in Aysen, southern Chile, local human rights monitors reported that police special anti-riot forces fired water-cannons and tear gas into homes, and shot tear gas cartridges directly at people. A 49-year-old mechanic, Teófilo Haro, was blinded by a steel pellet in the eye fired by a *Carabinero*, according

to press reports. At a meeting of the Congressional Human Rights Commission, the head of *Carabineros* admitted the use of excessive force, and that metal shotgun pellets had been used incorrectly. The government spokesperson said in August 2012 that abuses by the police were "completely and categorically rejected, and immediately investigated."

At this writing, a police sergeant faced charges before a military court for unlawful use of lethal force in connection with the fatal shooting of 16-year-old student Manuel Gutiérrez Reynoso while he was watching a demonstration in August 2011 from a Santiago footbridge during a national strike.

Reports of police abuses against Mapuches during evictions of occupied land and attempts to arrest suspects in Mapuche communities continue. In July 2012, *Carabineros* fired rubber bullets at a group of Mapuches outside a hospital in Collipulli, in the southern region of Araucanía, where doctors were checking the injuries of people detained during a land eviction. According to an eyewitness, the shots were fired at short range, without provocation or warning, wounding seven people, including a 13-year-old girl and two 17-year-old boys.

Military Jurisdiction

Police accused of human rights abuses continue to be tried by military courts that are not independent. Following the recommendations of the Inter-American Court of Human Rights (IACrtHR) in its 2005 ruling against Chile in the Palamara case, legislation introduced by Piñera's administration and approved by Congress in September 2010 finally ended the jurisdiction of military courts over civilians.

However, the reforms did not address jurisdiction over abuses against civilians by *Carabineros*, which is still exercised by military courts composed of military officers on active service. Apart from their lack of independence, these courts do not provide the due process guarantees that have existed in ordinary criminal proceedings since their reform in 2005.

Investigations are secret, criminal proceedings are conducted mainly in writing, and lawyers representing victims of police abuse have limited opportunities to cross-examine witnesses. Decisions by the *Corte Marcial* (the military appeals court) in cases involving the alleged unlawful use of lethal force by *Carabineros* have not inspired confidence in the court's impartiality. At this writing, the government was preparing a bill to restructure the military justice system.

Counterterrorism Laws

The inappropriate use of counterterrorism legislation to deal with common crimes against property, such as arson, committed by indigenous Mapuche activists remains an important due process issue. In September 2010, following concern expressed by the United Nations and regional human rights bodies, the government amended the counterterrorism law. Some due process guarantees were strengthened, such as allowing witnesses whose identity can be concealed to be cross-examined by defense attorneys, and children could no longer be tried under the law. However, the inclusion in the law of crimes against property was left unchanged and prosecutors continue to apply the law in such cases, even though the government has refrained from doing so.

Confronting Past Abuses

More than three-quarters of the 3,186 documented killings and "disappearances" during the Augusto Pinochet dictatorship (1973-1990) have been heard by courts or are now under court jurisdiction, according to Diego Portales University's Human Rights Observatory, a nongovernmental organization that monitors progress in human rights trials.

Between 2000 and September 2011, more than 800 former state security agents had been indicted or convicted, and as of August 2012, 64 agents were serving prison sentences. In many cases, the Supreme Court has used its discretionary powers to reduce sentences against human rights violators in recognition of the time elapsed since the criminal act. Others had their sentences commuted.

These practices raise concerns about Chile's fulfillment of its obligation to hold accountable perpetrators of crimes against humanity by imposing appropriate punishments or sanctions.

Prison Conditions

Overcrowding and poor conditions in many prisons continue to be a problem. As of May 2012, the official capacity of the prison system was 39,832, but there were 54,339 prisoners.

Following a fire in December 2010 in Santiago's San Miguel prison in which 81 prisoners died, the Ministry of Justice undertook important reforms both to improve conditions and reduce overcrowding. In June 2012 a law entered into force that allowed the release of low-risk inmates, including women with young children who were within six months of completing two-thirds of their sentence, and the voluntary return of non-Chilean inmates to their countries of origin. Another law, promulgated the same month, provides six alternatives to prison for low risk offenders, including community service and the use of electronic bracelets.

Sexual Orientation and Gender Identity

In July 2012, President Piñera promulgated a law to provide legal protection for Chile's vulnerable minorities, including lesbian, gay, bisexual, and transgender (LGBT) individuals. The law explicitly includes sexual orientation and gender identity as prohibited grounds of discrimination. It also creates a special judicial process aimed at providing rapid redress to victims of discriminatory acts, which allows judges to halt or reverse them and provide protection for victims and toughens penalties. However, the law does not provide victims of discrimination with a mechanism for compensation.

Reproductive Rights

Chile is one of only three countries in Latin America (the other two being El Salvador and Nicaragua) with an absolute prohibition on abortion, even prohibiting medical necessity as a defense. In April 2012, the Senate rejected three bills to legalize abortion in cases in which the mother's life was at risk or the fetus was unviable. Such an absolute prohibition violates a woman's fundamental right to the highest attainable standard of health, life, nondiscrimination, physical integrity, and freedom from cruel, inhuman, or degrading treatment.

Key International Actors

In February 2012, the IACrTHR found that Chile had violated the rights of Karen Atala, a lesbian, and her three children to equal treatment and to non-discrimination. Atala lost custody of her children when Chilean courts ruled that, due to her sexual orientation, her children would be at risk if she were to raise them with her female partner.

As reparations for the violation of Atala's rights, the court ordered Chile, inter alia, to invite the victims and the organizations that represented them in the case to a public event in which the state would recognize its responsibility. The court also ordered Chile to implement training programs for judges and other public officials to ensure respect for the rights of the LGBT population.

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