



Casa Memoria José Domingo Cañas

**FUNDATION 1367**

Report

**Impunity, Police Violence and Memory Politics<sup>1</sup>**

For its presentation to the

Universal Periodical Exam of the year 2014

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*The Casa Memoria José Domingo Cañas is located in a site in which existed there one of the several houses used as detention, torture and extermination quarter during the Chilean Military Dictatorship between 1973 and 1990. Nowadays, the Foundation 1367 in charge of this site of conscience, focuses its mission in the promotion and defense of Human Rights, thus it has formed a committee of observers whose aim is to monitoring and social control over the actions of the police force, in the sense of making visible the exercise of the guarantees of non-repetition from the Chilean State and the duty that have States to implement measures to enable the effective observance of Human Rights.*

June 17<sup>th</sup> of 2013

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<sup>1</sup> This report is based on the work done by the Committee of Human Rights Observers Casa Memoria José Domingo Cañas during the period October 2011 to October 2012 and which was embodied in the Human Rights Report 2012: The Reality of Social Protest in Chile: Role of the State, Police Act and Violation of Rights. March 2013 Edition.

<http://www.observadoresddhh.org/wp-content/uploads/2012/02/2013-03-20-Informe-2012-OBDH-Casa-Memoria-1.pdf>

***Executive Resume***

*Keywords: Impunity, crimes against humanity, police violence, torture, right to protest, repression, criminalization, social protest, access to justice, memory policy, human rights education.*

The impunity of the crimes of the dictatorship gives orientation to the police action today. There is a significant increasing in cases of police violence and an alarming number of arbitrary arrests in public manifestations, so that should remove the rules of the dictatorship that allow arbitrary exercise of power in regulating public demonstrations, adequate police procedures to international standards, define the crime of torture as international criminal law, give guarantees and safeguards of all civil and political rights, as well as take measures to ensure the access to truth, justice and reparation for victims of state violence, both yesterday and today.

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| <b>Violations of the Past: Crimes Against Humanity period 1973-1990</b> |
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| 45.- Further expedite the investigation and trial of the cases of gross human rights violation cases committed during the past military dictatorship to ensure adequate compensation and reparations for the victims and their families (Bangladesh) and complete the ongoing compensation process so that as many victims as possible can benefit from the reparation measures (Ghana); |
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1. In front of the serious and systematic human rights violations in Chile during the years 1973-1990, Chile has taken steps toward establishing the truth through Truth and Justice Commissions of 1990 and political Imprisonment and Torture created to clarify the identity of persons who suffered imprisonment and torture for political reasons by acts of agents or persons in their service, whose the second report was presented to the public on August 18, 2011 in which they are detected 40,018 victims , of which 3,065 executed or disappeared. Despite the relevance of antecedents and other data gathered by such commissions, the information obtained will not be released to the courts, but shall be considered reserved for fifty years.

2. These commissions do not adopt the definition of “victim” under international standards. The concept of victim is restrictive because it considers people who were subjected to kidnapping, torture and / or disappearance, but does not include those who suffered harassment and other violations, such as those observed in massive raids that took place in the low neighborhoods in which they beat people massively and indiscriminately in soccer fields, gyms or other facilities that were located in the vicinity of the neighborhoods. After finishing this operation, these people should return to their homes. Nor is it considered those in exile. In this sense, the term "victim" officially only considers the victims of political imprisonment in detention centers.

3. Regarding the Right of Access to Justice for the more than 38,000 survivors of torture and political imprisonment, there are only 29 open cases involving no more than 210 survivors.

4. The steps to establish the whereabouts of the disappeared have been a total failure, being strong contradictions on the listings provided by the Armed Forces and misidentification of vestiges, having made no significant progress in this area during this period.

5. The Chilean State law remains in force the law decree 2191 (of Amnesty), although the Interamerican Court has ordered the state to implement legal reforms to cancel it. Even though mayor jurisprudential not apply, has become recurrent application of statutes of limitations, thus contravening the ruling of the Interamerican Court of Human Rights and the provisions of the Geneva Conventions related to imprescriptibility and inamnistibility of crimes against humanity. The latter results in, of 799 officers prosecuted and convicted since 2000, only 61 are serving prison sentence. Only 8 of them are serving sentences in ordinary prisons, the rest serves sentences in military prisons with clear privileged conditions with respect to the rest of the prison population.

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| <b>General Topics of Human Rights</b> |
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| 8.- Ensure full compliance with all obligations assumed under the International Covenant on Civil and Political Rights as well as under all other international human rights treaties to which it is a Party and revise domestic legislation that may still be incompatible with these obligations (Germany). |
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6. The period covered by this report, is characterized by increasing massiveness of social protest events, which demand from the Chilean State the compliance of the basic human rights such as education, health, environment awareness, better salaries, among other requirements.

7. The Chilean Constitution establishes the right of assembly in Article 19, No. 13, however, is governed by a lower hierarchy standard, that is, the Supreme Decree 1086, valid in Chile since September 15, 1983 signed by the Military Junta, which, makes the enjoyment and exercise of such right to an administrative and / or police decision.

8. In this context it is found that in the last five years, police have made more than 80,000 arrests for public disorder. This corresponds to an average of more than 16,600 annual arrests for this cause, exceeding by more than 10% of total arrests for theft. It was found abuse to the right of the police to carry out identity checks and the ability to "lead" people to a police station for the same effect, using these legal powers to arrest indiscriminately to people before, during and after social demonstrations.

9. For example, in 2011, due to social protests nationwide, 15,807 people were arrested. Of these, only 114 people had a court case, only 28 with any degree of conviction and only 3 with custody.

10. There has been a significant increase of complaints of unnecessary violence made by police currently pending in the Second Military Court of Santiago: in the period 2011, 1,777 cases against 2,657 cases in the period 2012, representing an increase of 49.5% of complaints in this military court.

11. It has been repeatedly requested in different instances the updated Procedures and Protocols of Public Order Control, being rejected by both the Ministry of the Interior and the police, considering these documents "secret" as their content is directly related with "state security, national defense, public order or internal security of the person".

12. Taking into account international regulations, the recommendations given by the International Red Cross and the High Commissioner of the United Nations for Human Rights, it has been shown in general terms: the lack of necessity, proportionality and of graduality of control of social events, using dissuasive means arbitrarily and indiscriminately.

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| <b>Torture and other cruel, inhuman or degrading treatment or punishment</b> |
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| 33.- Take appropriate measures to prevent torture and to ensure that all allegations of torture are properly and independently investigated, and ensure that the law adopted to define torture is in accordance with article 1 of the Convention against Torture (Uzbekistan); |
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| 34.- Fully investigate the alleged cases of torture, ill-treatment and excessive use of force committed by police and security forces and bring the perpetrators to justice (Azerbaijan); |
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| <b>Military Justice</b> |
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| 42.- Strengthen accountability for abuses by the police and ensure that civilian authorities investigate, prosecute and try human rights abuses by police (Netherlands); |
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| 48.- Eliminate the application of military jurisdiction to civilians (Spain); review legislation to put an end to trials of civilians by military courts (Azerbaijan); adapt the military justice system to international standards so that it guarantees the right to a fair trial (Switzerland); |
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13. In recent months we have seen the use of kidnapping arrests, where civil personnel carry up people to cars to take them to detention centers for interrogation with the aggravating effect of use of torture or cruel and / or degrading treatment.

14. Use of unnecessary violence when making arrests, causing several injuries found by doctors of Human Rights Department of the Medical Association of Chile AG.

15. The absence of rights read people under arrest. Much of the testimony of detainees agrees that none was told their rights or the reason for their detention until being released 8 to 12 hours later.

16. Arrests of persons under 14 years old for participation in protests, are transferred to the police stations charged of fouling, although they are legally unimputable.

17. People, mostly children, are arrested while performing Identity Control and are taken to the police station, where they meet the admission and discharge process of the police station. This is an irregular fact by the current legislation. Many times when they are at the police station they are charged with faults and they stay under charge.

18. In cases of mass arrests, it is not complied to separate detainees by gender and age.

19. It was found that many of the detainees arrive visibly beaten at police stations, being the moments of arrest and then within the buses is where is generated higher levels of violence and violation of rights.

20. Regarding adolescents as prisoners, and which are transferred to detention controls before the Courts of Guarantee, it was found that once they are turned over to the custody of Gendarmerie of Chile, officials of such establishment begin to beat them again with fists, kicks and service poles.

21. It has found that people who have been arrested, especially under 18 have been subjected to interference and violations of their rights, such as stripping in Police Stations for the purpose of a personal inspect of the detainee and sexual assault. It was found the practice of forced nudity to children and teenagers, who police authority justified in the need to inspect the detainees upon entry to the police. Inspect procedures involving stripping constitute a significant impairment to the integrity of the detainees and may be aggravated if they are done in conjunction with more detainees, may be considered cruel or degrading treatment.

22. On the other hand, we collected testimonies about physical exercises that are done in the context of the review, and that they are coerced the detainees to a series of pushups that should not be applied to detainees or less teenagers led to identity check.

23. Police abuse to relatives (mothers) of juvenile detainees outside police stations. Police gives no information of the detainees to their families. It conceals or misrepresents the information of detainees, generating that families have to wander from one police station to another without knowing the where about of their child.

24. Minor detainees are forced to sign documents without their consent before being released and under threat of reprisal to themselves or family.

25. Hiding evidence: Illegal detention practices -like agents that are not identified or who not register the name of the detainees in a record, who deny the access to lawyers, relatives or medical doctors- facilitate impunity by hiding the track leading from the crime to the perpetrator. The torturers choose methods that leave few physical signs, such as psychological torture, prolonged confinement in moving vehicles, and denial of restroom. Records are modified detention time, and enter the doctor's box pointing what they have to write in the injuries reports.

26. Victims were denied access to legal recourses: Victims, already terrified, are intimidated into keeping silent about what happened or their families are threatened to not interpose recourses, specialty in case of minors.

27. The agents act as accomplices: The "code of silence" active in our military and law enforcement officers deter to provide primary evidence against their colleagues accused of torture. The officials of the Special Police Forces act as occupation bodies at local police stations, moving the chain of command and leaving the trail of torture and ill-treatment of local officials who live daily with the community.

28. The legal framework is inadequate to punish Torture: Not being criminalized torture in the penal code, the evidence to convict perpetrators will always be insufficient.

29. Under the cover of "National security" is denied information, such as: amount of tear gas used, amount of budget for Special Forces, or its protocols of action against social protests, or the weaponry to be used for procedures for dissolution of these.

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| <b>Human Rights Institutions</b> |
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| 15.- Elaborate a national human rights plan (Ghana) and approve it early (Peru); |
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30. Sites of Memory, despite being recognized nationally and internationally as Sites of Conscience, such as Casa Memoria José Domingo Cañas, receives no funding at all for maintenance and operation from any State entity.

***Recommendations***

1. Create and maintain a permanent instance of monitoring, reconnaissance ("rating") and extension of rights of redress for persons affected by political imprisonment, torture, forced disappearance and / or political execution committed between 1973 and 1990. This instance should have the authority and expertise needed to extend legal advice and provide remedies, review and propose amendments to the existing legislation, and advise legislators on future legislation that directly or indirectly affect the rights to truth, justice, reparation and participation of family members and survivors.

2. Cancel the Amnesty Law of 1978.

3. Declassify files from the security apparatus of the dictatorship (DINA, CNI, etc.) together with the testimony of the Commission on Political Imprisonment and Torture.

4. Prosecute all serious violations committed during the dictatorship of 1973-1990, for the full implementation of the right to truth and justice in each case, both "missing" victims as survivors.

5. Create and maintain a single system for monitoring compliance penalties, along with a transparent mechanism for the provision of benefits and alternative regimens in prisons.

6. Cancel the benefits, schemes, and use of special enclosures imprisonment for cases of perpetrators of war crimes and crimes against humanity.
7. Investigate, punish and redress the abuses suffered by teenagers, children and youth in the context of social movements over the past 23 years. With special safeguarding the rights of children, girls and adolescents.
8. Typify in domestic criminal law the crime of torture as a crime against humanity.
9. The operation of a National Commission of Inquiry on Torture and other cruel, inhuman and / or degrading treatment or punishment, also called preventive mechanism. This Commission should be established in police stations and detention centers in the shortest time possible.
10. Repeal the second paragraph of article 19 n ° 13 of the CPR, because it delivers the regulation of public demonstrations to the police general provisions.
11. To cancel the S.D. 1086 regulating public demonstrations.
12. The total removal of "bill to safeguard public order" for contravening international law in the field of social protest, as well as constitutional rights as the right to assembly and freedom of expression.
13. Take adequate measures to protect the demonstrators, without unduly or unnecessarily affect those who are not part of the demonstration.
14. The prohibition of the use of weapons in controlling social protests (tear gas, water with chemicals, bullets, pellets, firearms).
15. The removal of state officials involved in human rights violations, past and present, and public realizing it.
16. Remove the formation of government agents under the parameters of the National Security Doctrine.
17. Ensure, protect and maintain enough and permanent budgets for Sites of Memory.