The house located at José Domingo Cañas 1367 in Santiago de Chile, former headquarter Ollagüe of DINA, is one of the many houses that were occupied as headquarters for clandestine detention, torture and extermination during the past civic-military dictatorship. Currently converted into a Memory Site, and managed as a loan to the Fundación 1367, it focuses its activities on the promotion and defense of Human Rights. Thus, it has formed a committee of observers whose aim is to monitor 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 25, 2018
Santiago, Chile
This report was written in order to give response to the document: "List prior to the submission of the sixth periodic report of Chile (CAT / C / CHL / 6) adopted by the Committee at its 48th session issues, May 7 to June 1, 2012 ".

ABSTRACT

The State of Chile modifies its Criminal Code to typify the crime of torture in November of 2016 with serious objections in its redaction. With 9 years of delay, it has not yet implemented the National Mechanism for the Prevention of Torture. The Amnesty Law is still in force as well as Article 103 that allows the gradual prescription of crimes against human rights. The secret for 50 years of the testimonies collected by the Valech I Commission is still not repealed. Only 0.29% of cases of political imprisonment and torture have been prosecuted. Today, there is an average of 1530 cases of torture, cruel, inhuman or degrading treatment reported a year, of which more than 99% of them remain unpunished.

The period covered by this report is characterized by an increasing mass of social manifestations, which demand from the State of Chile the recognition of fundamental rights such as education, health, equality, care for the environment, salary improvements, ancestral territorial rights, among other demands. These citizen demonstrations have been severely repressed with the use of police force in an arbitrary and indiscriminate manner, where part of the detainees alleged to have been tortured and mistreated by agents of the State, including children and adolescents, who denounce various forms of sexual violence, as well as forced nudity, hits to the genitals, hanging, suffocation with plastic bags, death threats, forced positions and humiliating and degrading treatment, among others.

Keywords: torture, national preventive mechanism, indigenous peoples, impunity
Criminalization of Torture: Articles 1 and 4

1. Although the State had committed itself to defining the crime of torture within the deadlines set by the Convention, it was not until November 2016, after six years of delay, that the law that defines the crime of torture in the criminal code was published\(^1\). This law maintains the figure of "illegitimate constraint", incorporates the definition of torture, but leaving the judge's discretion to use one or the other. The classification in the penal code makes a closed list of actions that could be considered as torture, leaving the possibility of arguing an action different from that indicated for the perpetrator to resort to a category of crime of a lower criminal type. Although sexual torture is added as an aggravating circumstance, it is considered that it should be classified as a specific crime since, in reality, a victim of sexual torture is treated in the public system (Legal Medical Service, Police) as simple sexual abuse and not torture and without the implementation of the Istanbul Protocol. (case of a woman abused by police officers, she was treated in SML not according to torture).

Impunity: paragraphs 11 and 19

2. For cases of crimes against humanity perpetrated during the civil-military dictatorship, the State leaves to the discretion of special ministers, the principle of the non-applicability of statutes of limitations for torture offenses, since the current regulations do not establish the possibility of prosecuting with the new definition crimes committed prior to its enactment.

3. Of the 38,254 cases of victims of torture and political prison documented by the two Valech Commissions, only 112 (0.29%) have been judicially prosecuted. In other words, 99.3% of the cases of torture that occurred during the military civic dictatorship and reported in the Valech 1 and 2 Commissions, have not had access to justice or reparation commensurate with the crimes committed.

4. In Chile they are maintained current rules on extinction of the criminal responsibility that allow to avoid the criminal and civil responsibility derived from the commission of serious violations to the

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\(^1\) Draft Law for the Classification of Torture, Balances and Criticism. Author: Luis Torres. Consulted online, May 2018:
http://bibliotecadigital.indh.cl/bitstream/handle/123456789/985/articulo-tortura.pdf?sequence=1
human rights, in reason of the time elapsed since its perpetration. This, despite the mandatory nature of the statute of limitations for crimes against humanity and the express recommendations made in this regard by the Human Rights Committee, the Committee against Torture and the Human Rights Council of the United Nations to the State of Chile. Hence, it should be noted that the Supreme Court, since 2006, in many cases has privileged the application of the rules and principles of international law by virtue of which war crimes and crimes against humanity do not prescribe and must be investigated and judged. However, the rules of domestic law that contemplate the extinction of criminal liability remain in force. In addition, in a significant number of cases the Supreme Court, even declaring the inadmissibility of amnesty and / or prescription for violations of human rights, has determined the application of the rule on gradual prescription (also known as "mean prescription"), with the consequent significant reduction in the extension of the penalties applied; as also it has admitted the prescription of the civil responsibilities derived from the commission of these crimes. As a result, numerous state agents responsible for crimes against humanity have not received a sanction proportional to the seriousness of the human rights violations committed; as, likewise, this reduction in the sanction has allowed perpetrators to access alternative benefits to custodial sentences, ending by serving their sentence in freedom. This has also implied that numerous victims and relatives have been deprived of access to economic compensation or compensation for damages that are fair.

5. With respect to the abolition of the 19.992 law, this has not occurred and is still being held in Congress. This non-abolition of the decree contributes to the impunity of crimes against humanity, by keeping the secret for 50 years of the background and testimonies collected in the so-called Commission on Political Prison and Torture, led by Bishop Sergio Valech. These testimonies will continue to be a set of documents to which there is no public access, and, in addition, the courts and their judges will not be able to consult them for their judicial investigations. The secret of 50 years is not a “protection to the victims”, it is in fact a protective shield for the torturers who, in many cases, were also the material authors or accomplices of murders and forced disappearances. It also protects the top military commanders of the military civic dictatorship, as well as the civilians who participated in the repression and torture. To whom appeared in the face of the Valech Commission never were asked if they agreed to leave their testimonies under lock and key for half a century. The secret was later imposed, when the Valech Report was already published.
6. The State of Chile has been condemned by the Inter-American Court of Human Rights for the application and enforcement of Decree Law Nº 2.191 of 1978 on amnesty. This, in the judgment issued in September 2006 in the case of Almonacid Arrellano and others v. Chile 397, but after more than 10 years, this rule is still valid in the national legal order. Although since 1998 the Supreme Court has ruled to deprive the decree law of effectiveness in a significant number of cases, establishing a certain jurisprudence in this regard, this regulation is also invoked permanently by the lawyers of state agents and perpetrators prosecuted inadjudicial processes for crimes against humanity and could eventually be resolved by a jurisdictional body.

7. The abolition project of the Amnesty DL was admitted in 2006, was filed in 2010 and reopened as a project in 2014 within a constitutional reform, however, the constitution commission has not prioritized its analysis and its processing is paralyzed.

8. The bulletins 9.748-07 and 9.773-07 that modify article 103 of the penal code in relation to crimes against humanity, genocide and war crimes, both admitted in December 2014, are still in process, so it is still maintains the gradual prescription of Article 103.

9. Although Carabineros (Police Force) became dependent on the Ministry of the Interior in 2011, its operational functioning continues to be militarized and under paradigms of the National Security and Internal Enemy Doctrine, carrying out its operations with a high degree of autonomy and little oversight of the civil power. In fact, only after the student demonstrations of 2011 and 2012, and the complaints made by civil society organizations and INDH, Police Force makes public its protocols to regulate social demonstrations. However, in its Report of the year 2013 of the Human Rights and Police Function Program, in Chapter II section a, the INDH states that it has refused to hand over the Police Protocols, and then they are handed over as reserved.

10. During the first quarter of 2013, the INDH became aware of the existence of a new manual of operations of the Police Force, which would have unified several existing protocols in the institution aimed at the control of public order. In view of the foregoing, on March 21, 2013, the INDH directed
Office No. 086 to the Police, with the purpose of obtaining a copy of the new "Police Operations Manual for the Control of Public Order". The Police responded by means of letter No. 046 of April 5, 2013, not giving rise to the request. The grounds for the refusal were found in the provisions of article 8 of the Constitution, in article 436 of the Code of Military Justice, and in article 21 of Law 20.2859, by virtue of which it is estimated that said document it has the nature of secrecy, provided that its disclosure would affect the proper fulfillment of the functions assigned by the Constitution to Police Force of Chile, and for containing operation and service plans of that institution, whose knowledge may affect the maintenance of public order or public safety.

11. In this regard, the INDH presented a reiteration of the request for access to the referred Manual, by means of official letter No. 106 of April 17, 2013. In it, the INDH argued, first of all, that the request for access to information has legal basis in the functions and powers of the INDH contained in Law 20,405, in particular, in its articles 2, 3 and 4, which indicate its purpose, its powers, and the duty of collaboration of the other organs of the State for the exercise of their functions (...). As a result, on April 24, 2013, the General Subdirector of the Police sent to the INDH, on a confidential basis, the "Protocols for the Maintenance of Public Order", which consist of different procedures for intervention, applicable to police procedures, related to the maintenance of public order during demonstrations.²

12. These police protocols are made out by themselves, they are insufficient documents and too general to determine their actions. There is no regulation, drawn up by the civil power, which rules and delimits its operations and which obliges them to give an account of their actions to the civil authority. We, as an Organization of Civil Society, have asked Police Force to publish their specific protocols, which are directly related to the use of force, interrogations, use of weapons and vehicles such as gas and water launchers, but denied by adding National security³.

13. We deserve special attention that, in the public order maintenance protocols, published in 2014, and consulted for this report directly on its website in May 2018, they maintain a protocol for work with INDH staff, civil society organizations and media. In this document, it is left to the discretion of the police officer the distance that can be allowed to these entities to monitor them, with the express instruction to arrest in case of non-compliance with the instructions of the police force. It also prohibits human rights defenders from entering police vehicles where people are deprived of their liberty, only occasionally allowing the entry of personnel from the INDH, which often cannot descend from them because these vehicles are moving towards places away from the demonstration, having to remain on

² Informe Anual 2013, Programa De Derechos Humanos Y Función Policial. INDH.  
http://bibliotecadigital.indh.cl/bitstream/handle/123456789/647/Informe%20Función%20Policial.pdf?sequence=4

³ Index of acts and documents classified as secret or reserved  
http://www.carabineros.cl/transparencia/resolucion_denegatorias.html
board until the unit stops in a destination causing a detriment in their work of control and therefore, more likely to occur situations of police violence.

14. When a person is arrested by the police, they are in a situation of special vulnerability. Because the police have special powers, such as the legitimate use of force, arrested are totally in the hands of law enforcement agents. This imbalance of power creates a situation of risk that can lead to abuse and torture. That is why it is so important and necessary for the Ministry of the Interior to regulate and regulate police action. We have noted, as the Commission of Human Rights Observers of the José Domingo Cañas Memorial House, that since 2011 to date, both the police and the PDI (investigation police) have been responsible for multiple violations of Human Rights, of which torture is the most repeated, with majority of these cases remaining in the most complete impunity.

15. In the control of social protest, especially by secondary students, it is observed that police personnel abuse their power and do not make an adequate use of force or gradualness of it, generating situations of cruel, inhuman and degrading treatment with protesters in general and torture with arrested (especially with adolescents arrested in demonstrations, with whom sexual abuse has become frequent). It is observed that the principles of legality, necessity and proportionality do not apply.

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**Violence against women and children**

16. The State has established public policies with a normative framework oriented and focused only on violence against women in the public and private sectors among civilians, leaving out state violence against women. Legislative proposals do not include a definition of violence against women committed by agents of the State, as neither of institutional violence. Nor do they refer to political violence. The normative proposal suggests state entities to "promote", "watch" and "procure", instead of imposing direct obligations. From 2011 to date, we have monitored around 194 repressive observation missions and we have made at least 10 visits to Mapuche and Pewenche communities. In all the demonstrations and visits to Mapuche and Pewenche communities, we have observed all types of violence against women, girls, boys and adolescents, by State Agents and also by Health personnel of public hospitals and clinics. We have saw forced nudity, death threats with knives and firearms, threat of death to close relatives, threats of burning, forced positions for prolonged periods, threat and simulation of rape, gagging, attempted suffocation by strangulation, dry submarine, captivity in a cell with excrement.

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4 APT. Custodia Pólicial, Guía Práctica de Monitoreo, 2013.
[https://www.apt.ch/content/files_res/custodia_policial_es.pdf](https://www.apt.ch/content/files_res/custodia_policial_es.pdf)
captivity in a cell without blankets, transfer of arrested face down on surfaces with animal excrement, hits of fists and foot beating while people are lying and moored in the ground, forcings to lie on branches with spines, shots of bullets and tear gas bombs at point-blank range, and cruel, inhuman and degrading treatment such as humiliations alluding to ethnic origins, orientation and / or sexual condition, age range, clothing and different types of discrimination.

17. At the end of the legislative period 2017, the project of the law on the right of women to a live free of violence did not meet any stage of legislative procedure and is still under debate in the first constitutional process.

18. The bill on the System of Guarantees of Rights of Children presented by the Government does not conform to the international obligations assumed by the State of Chile on the human rights of children and adolescents. In particular, because does not clearly establish the role of guarantor that corresponds to the State in relation to the promotion, protection and universal guarantee of the rights of children and adolescents. This is reflected in the actions of police officers in the control of demonstrations, where violence is exercised especially towards the secondary students and, in the case of the latter, sexual violence is explicit on the part of the Police Special Forces ⁵.  

19. With regard to sexual violence, exercised by agents of the State, in the context of the arrests of students in public demonstrations, we can affirm that is a frequent practice in arrests is to touch up arrested women, strip students in police stations, threatening language with content sexual assault on students and, in some cases, introduction of elements into the vaginas of arrested, as well as hits to her breasts and vagina ⁶.

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⁵ As an example, see the April 2018 report in the following link:

⁶ Regarding the above, we attach a link to our reports from 2011 to the date:


20. As the Commission of Human Rights Observers of Casa Memoria José Domingo Cañas, since 2012 we have been monitoring the Mapuche and Pehuenche communities of *Alto Bío Bío*, *Collipulli* and *Tirúa*, communities that have called us for situations of raids and police violence in their territories. From the testimonies obtained in the first person, the practice of arbitrary and frequent raids was observed with respect to persons belonging to this communities, instance where various types of abuse of power are committed and mistreatment against boys and girls, adolescents, women, pregnant women, elderly people, despite international recommendations on the subject. There are also various forms of torture, among them; forced nudity, threat of death with knives and firearms, threat of death to close relatives, threat of burning, forced positions for prolonged periods, threat and simulation of rape, gagging, captivity in cell with excrement, captivity in a cell without blankets, transfer of arrested face down on surfaces with animal excrement, hits of fists and foot beating while lying and tied up on the ground, forcing to lie on thorny branches, shots of bullets at point-blank range, and treatment cruel, inhuman and degrading as humiliations alluding to their ethnic origins and damage to animals used as means of work and transportation, such as horses. In the case of the *Alto Bío Bío* community, there are situations of infant left without their mother and isolation of the community for a week. Mapuche woman stripped in police station. Arrested women, adolescents and an elderly asthmatic, who are shot tear gas while they are in a police bus.
21. The observed facts demonstrate the existence of a political and military strategy on the part of the State of Chile, which seeks to stop, through the use of violence, the territorial conflict and the demand for autonomy that the Mapuche communities maintain up to the present, denying the Principle of Self-determination of the Peoples, and the rights that are recognized to them by the signing and ratification of Convention 169 on Indigenous and Tribal Peoples of the International Labor Organization.

22. With regard to the observations made in both the Tirúa and Ercilla sectors, a series of violations of fundamental rights have been noted, such as the right to life and to health, both psychic and physical, established in our Political Constitution, in Article 19 N° 1. Thus it can be inferred from the situations occurred in the observation Sector Ercilla-Puerto Choque, which states: "At that time, about 8 Police officers come out of hiding, with their faces covered, heavily armed and without identification visible reduced them. While being asked about the weapons and the location of certain people, they were beaten with fists, feet and "bats". They are tied hand and foot, climbed in the same truck in which they arrived at the place, are sprayed with fuel, are threatened to burn them alive if they did not turn over the location of weapons and of certain people. By not giving the required information, they are removed from the truck, which had already started to catch fire". The mistreatment contained in the previous account constitutes torture, since it is a serious physical and mental constraint, intentionally caused by public officials, constraints with the order to intimidate or coerce. The observation made in the different communities demonstrates the systematic violation of rights suffered by the Mapuche people, the criminalization of their demands, the lack of access to justice, the feeling of impunity for the abuses perpetrated by the police and the discriminatory treatment they receive by the agents of the Chilean State. This is reflected in a series of testimonies that indicate crimes executed by police officers, which fit within such figures as humiliation, unlawful coercion and torture, all that in relation to articles 150 a-e, 255 and 256 of the Penal Code.

23. This in turn demonstrates the importance of having serious investigations, in which the injuries suffered, and complaints made by Mapuche community members are effectively verified, and the antecedents are considered for possible illicit acts of humiliation, according to article 255 and 256 of the Penal Code, as of illegitimate constraints or torture of article 150 a, b, c, d and e of the same legal body. The previous behavior of the State security forces and bodies also violate other provisions. Thus, for example, they violate Article 2 of the United Nations Code of Conduct on Law Enforcement Officials, of 1979, which states, "In the performance of their duties, officials responsible for enforcing the law shall respect and protect human dignity and shall uphold and defend the human rights of all persons"; and article 8 of the same Code that states that: "The law enforcement officials and the present Code shall be respected by law enforcement officials. They will also do everything in their power to prevent any violation of them and to strictly oppose such violation". They also violate the provisions of Article 5 of the United Nations Code of Conduct on law enforcement officials, which orders that: "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke the order of a superior or special circumstances, such as
a state of war or threat of war, threat to national security, internal political instability, or any other public emergency, as justification for the torture or other cruel, inhuman or degrading treatment or punishment ". The Subcommittee Report for the Prevention of Torture during its visit to Chile in 2016 was also informed of ".\(\ldots\) cases of members of the Mapuche community who had been subjected to torture or ill-treatment after being arrested. Sometimes this torture and ill-treatment was applied on people wounded with firearms in the moments before the arrest\(\)\(\)."

24. There are many complaints about the disproportionate use of violence against Mapuche women by state officials and private guards of forestry companies in the context of the above-mentioned conflict situations. On many occasions, the violence of these agents has also spread to other vulnerable groups, such as the elderly, boys and girls. In the attack on the \(\textit{lof Huapetrío}\) communities, they seized a pregnant young woman, pushed her into the van and threw a tear gas bomb inside it. She, who was six months pregnant, begged them not to hurt her anymore and told them she was pregnant.

25. From the stories of the community of \(\textit{Licancurra}\), the majority were women: ".\(\ldots\) we were almost pure women. There was my brother there, ... uncle Juan and the other boy who was on horseback and the rest of us were pure women. In total we were around twenty, plus a group of minors ... The Police special forces made use of their service weapons, those of nine millimeters and other larger weapons, a shotgun. And those service weapons that they use here next, the revolvers. Those three weapons were bringing. And there was one who gave the order to shoot\(\)\(\)." These acts openly violate treaties signed by the Chilean State such as the Inter-American Convention to Prevent, Eradicate and Eliminate Violence against Women of the OAS (Convention of Belém do Pará) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 2 of the Convention of Belém do Pará includes physical, sexual or psychological violence against women that is perpetrated or tolerated by the State and its agents, wherever it occurs. The Beijing Declaration (China, 1995), recognized the difficulties that affect women in the enjoyment of their rights because of their ethnic origin or because they belong to the indigenous population, calling for intensifying efforts to guarantee the enjoyment of such rights on equal terms with all women (par.18). On the other hand, the Declaration that emerged from the Regional Conference of the Americas in preparation for the World Conference against Racism in Durban, held in Santiago in 2000, in paragraph 98 states: "\(\textit{We ask states to adopt public policies and promote programs for the benefit of indigenous women with the commitment to promote their civil, political, economic, social and cultural rights; eliminate their disadvantage due to gender; address urgent problems that affect them, in the areas of education, the economy and the issue of domestic violence; and eliminate the situation of aggravated discrimination suffered by manifestations of racism and discrimination by gender}\(\)."

26. In the case of the attack on the communities of the \(\textit{lof Huapetrío}\) several people were injured by pellets shot at close range. One of the wounded women was hospitalized 20 days in \(\textit{Angol}\) because of the attack. In the case of the \(\textit{Antonio Paillao}\) community in the \(\textit{Colcuma}\) sector, two community
members were shot at close range with shotguns, which caused one to lose his left eye and the other the loss of a large part of muscle mass of his left leg. Also, in the María Colipi community, prior to a game of palin (traditional Mapuche sport), all the comuneros that were in that place were attacked, two of them were seriously wounded, one of which received more than 100 pellets. The testimonies on the actions of the police in the Mapuche communities show a habitual practice of the use of force, which is not proportionate to the obligations of respect and protection of human rights that corresponds to Police, particularly in relation to the respect for due process and fundamental rights. In these attacks, Circular No. 1756 of 2013 of the Police Force of Chile on the Use of Force, which complies with international standards in the matter, has been violated, since, according to the testimonies gathered in the accounts, they were not respected the principles of legality, necessity and proportionality. From the same Circular it can be deduced that “the use of potentially lethal force constitutes an extreme measure only justified by the legitimate defense of life. The firearm will only be used to interrupt an assault, that is, to stop a serious attack that affects the integrity of a person. In this way, the firearm should not be used to demonstrate force but to neutralize a dangerous aggressor in the most immediate way possible. For this reason, it is inadvisable to prepare the weapon in cases that are not extreme, to make shots in the air, or to the tires of a vehicle”. This is how, according to what was observed, the international standards included in the Circular in question were violated, since the attack took place without identification. Likewise, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 were violated, specifically Principle No. 4, which states that: “Law enforcement officials in the performance of their duties, will use nonviolent means as much as possible before resorting to the use of force and firearms. They may use force and firearms only when other means are ineffective or in no way guarantee the achievement of the expected result”; Principle No. 9 which states that: “Law enforcement officials shall not use firearms against persons except in self-defense or that of others, in case of imminent danger of death or serious injury, or for the purpose of to avoid the commission of a particularly serious crime that entails a serious threat to life, or for the purpose of arresting a person who represents that danger and opposes his authority, or to prevent his escape, and only in case less extreme measures are insufficient to achieve these objectives. In any case, only intentional use of lethal weapons can be made when strictly unavoidable to protect a life”. Finally, Principle No. 15, which states that: “Law enforcement officials, in their relations with persons in custody or in custody, shall not use force, except when strictly necessary to maintain security and order in the establishments or when the physical integrity of the people is in danger”. The Subcommittee Report for the Prevention of Torture in its 2016 visit to Chile also states that: “It has received solid and consistent information on the excessive and disproportionate use of force against members of the Mapuche people at the time of their arrest, in particular, of Special Police Operations Groups of Carabineros. The methods used have been: the use of firearms for the dispersion of members of the Mapuche community in the context of social protest within a short distance of the victims; indiscriminate beatings and verbal abuse during arrests and raids. Some of these incidents resulted in seriously wounded people who were left
27. With regard to the cases mentioned above, the perpetrators are in total impunity and exercising functions in the same areas where they committed these violations of Human Rights. In fact, the perpetrators are repeated in the different cases in the zones. In cases where the INDH has filed complaints for torture, the cases sleep for years, without movement, as is the case of the community of Choque in the Tirúa sector and the Antonio Paillao community in the Colcuma sector⁷.

28. The State of Chile ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in December 2008. To date, Chile still does not have an Nacional Preventive Mechanism (NPM). The government says it is in the final stage of elaboration of it. The bill presented, in our opinion, suffers from important elements, which must be resolved as soon as possible. One of the elements to solve has to do with the autonomy and independence of the NPM. Another very important element is the null consideration of the participation of the civil society and the limited number of experts / as members of the Committee for the Prevention of Torture, among others. One of the recommendations made by the SPT in its last visit to Chile was: “In order to guarantee the functional autonomy of the NPM, the SPT recommends “that the NPM must not be subject to any form of subordination with the NHRI. The organization chart of the NHRI should reflect the requirements of the Optional Protocol, which specifies that the NPM must have autonomy operative with respect to his resources, his plan, job, conclusions, recommendations and direct and confidential contact with the SPT”. The NPM should have guarantees for acting independently and independently of any State organ, even with respect to the National Institute of Human Rights.

29. With respect to the National Institute of Human Rights (INDH), since September 2012 they are authorized to enter places of persons deprived of liberty, which includes police vehicles. In practice we

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⁷ We attach reports of the monitored areas.

Mayo 2018, Informe De Mision De Observación, Derechos Humanos Y Pueblos Originarios / Sector Collipulli Y Tirúa

have seen that this is not effective. In many cases they are delayed at the entrance to police stations. With respect to the entry into police vehicles, where there are many violations and torture of protesters, the officials of the INDH are not always allowed to enter and, in many cases, when they manage to board these vehicles, we see as the police force take vehicles away, taking them out of the demonstration and, therefore, hindering and / or preventing inspection in the place. On the other hand, the staffing of the INDH is absolutely insufficient to carry out this task, not being able to monitor the level of deployment of the police forces and to be able to record the impact that this generates on the population.

Educational Programs: Article 10 (paragraphs 13 and 20)

30. On the website of the Human Rights department of the Police Force of Chile, informs of the realization of a course of Instructors in Human Rights Applicable to the Police function, and of the third Update Course for Instructors in Human Rights belonging to the same institution. In the particular case of this last update course, it should be noted that in that instance only 17 officers participated. In relation to the courses in which INDH participates, its role is reduced to two specialized dissertations in conjunction with the Museum of Memory and Human Rights (MMDH). In the course of Human Rights Instructors of the Police Force, this year, only 24 officers were selected to take the course. From the first course, to date, 160 instructors have graduated, among the more than 60,000 officials that make up the institution, and they are responsible for transferring the knowledge acquired to their respective units.

31. As Commission of Observers of Human Rights of Casa Memoria José Domingo Cañas we have monitored the actions of the Special Forces of the Police in the context of social protest since 2011. We have monitored 194 marches until April 2018. During our work have not seen on the part of the institution some change that accounts for the effectiveness of human rights education programs. There is a disagreement between the standards of international law that the institution has identified to reach the international police standard, which derives from the interpretation of the Universal Declaration of Human Rights (UDHR), the American Convention on Human Rights (ACHR), the International Covenant Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CCT), Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Code of Conduct for Enforcement of the Law (Code of Conduct), Guidelines for the Effective Application of the Code of Conduct for Officials Law Enforcers, Basic Principles for the Use of Force and Firearms by Law Enforcement Officials, Set of Principles for the Protection of All Persons Subjected to Any Form of Detention or Prison. These 10 legal instruments serve as a guide, limit and support for police action in three areas: Protection of groups
subject to vulnerability, use of force and deprivation of liberty. However, we have witnessed that they have not been applied by the Special Forces of the Police, violating these treaties and agreements.

32. As an example of these situations, as Commission of Observers of Human Rights of Casa Memoria José Domingo Cañas, we have observed in the present year, an increase in the force exerted towards secondary and secondary students in the context of social protest, illegal detentions, detention of students who are in a state of unconsciousness, excessive use of chemical weapons, in addition to the systematic entry of Special Task Forces into educational establishments using shotguns, chemical weapons in the interior of the establishments, intimidating the educational community, beating students, etc. These situations of human rights violations is repeated also in university campuses, however, secondary students are in a more vulnerable situation, bearing in mind that, as stated in the Declaration of the Rights of the Child, "the Child, due to his lack of physical and mental maturity, needs special protection and care, including due legal protection, both before and after birth".

33. In relation to the formulation by the State of methodology to evaluate the effectiveness and effects of training programs on the reduction of cases of torture and ill-treatment, we note that this function falls to the National Institute of Human Rights (INDH) who has carried out the Human Rights and Police Function Program since 2013. In order to carry out this program effectively, the INDH proposes provide the INDH with a permanent information and management system around police abuse.

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8. Prosecutor’s Office will investigate alleged kidnapping and torture of students by PDI officials
http://radio.uchile.cl/2013/05/10/fiscalia-investigara-supuesto-secuestro-y-tortura-a-estudiante-por-funcion-de-la-pdi/

9. Student’s mother run over by carabinieri reveals that he was handcuffed when he was unconscious in the emergency box

10. Confech filed a complaint for beating student during protest Published: Wednesday, March 28, 2018

11. Special Forces bursts with tear gas bombs in rural school in Temucui The records show how the tear gas thrown by Carabineros broke into the rural school, with children inside it. By The Desconcierto / 06.14.2017

12. Carabineros special forces enters the Liceo Manuel Barros Borgoño.
http://www.primeralineaprensa.cl/?p=931

13. The latest report on police action by the INDH notes that situations of violence persist. 2016 Report. Consulted online May 2018:
http://bibliotecadigital.indh.cl/bitstream/handle/123456789/1137/funcion-policial.pdf?sequence=1
and violence in manifestation contexts, treatment of sexual diversities, particularly transvestites and transsexuals, Mapuche communities and urban peripheral sectors; facilitate efficient and timely intervention modes in the face of contingencies that arise in these three areas; establish networks and forms of collaboration with civil society organizations that are oriented in the same perspective task. In our work of monitoring in social protest, as Commission we have witnessed the almost null collaboration of Special Task Gorce of the Police with the officials of the INDH at the moment of exercising their function as inspectors of their actions, they have been denied entry to the vehicles for the transfer of arrested and police stations, even they have been mistreated by agents of FF.EE. Internally, the Police Force has, since October 2013, the Regulation of Administrative Summaries of Carabineros de Chile N ° 15-, which are in charge of Policemen Justice Officials, which finally is in charge of the Military Justice, which has already been questioned in international instances related to Human Rights. In relation to the above, both evaluation mechanisms are inefficient 15.

34. In relation to the formation and training of the Istanbul Protocol, this has been carried out by the Medical Association in conjunction with the INDH. However, these measures have been translated into courses or workshops, and not the integration of the content of careers related to the public sector of the Istanbul Protocol, so that the application of the Protocol by public officials has not been done in practice. This situation makes it even more difficult to prevent torture and other cruel, inhuman or degrading treatment or punishment, since we are facing violations that are rooted in the Forces of Order and Public Security of Chile and legitimized by the public sector. It should be noted that in 2013 an "inter-institutional protocol agreement was approved to establish the health status of the arrested in the criminal proceedings" which, as one of its objectives, was "To end with the generalized practice of carrying out a health assessment - finding injuries to all the detainees before the various health

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14 INDH will file a complaint for the aggression of Carabineros to two of its employees Published: Friday, May 13, 2016
https://www.cooperativa.cl/noticias/pais/dd-hh/indh-presentara-querella-por-agresion-de-carabineros-a-dos-de-sus/2016-05-13/160506.html

15 Attached is the link of our observation mission report made on April 5 of this year in the context of a high school student march. that accounts for situations of violation of minors previously exposed.


Press link on the entrance of FF.EE. to educational establishments news:

Income of FF.EE. to Liceo Barros Borgoño April 19, 2018
http://www.primeralineaprensa.cl/?p=931

Income of FF.EE. to National Institute May 24 2018
https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2018/05/24/asi-fue-el-actuar-de-carabineros-tras-ingresar-al-instituto-nacional.shtml
centers”, leaving to the discretion of the officials of the Police, the transfer of the arrested to make the verification of injuries, opening the possibility of mask and make invisible situations of violation of rights committed by agents of the State or under their acquiescence.

35. As Commission of Human Rights Observers of Casa Memoria José Domingo Cañas, we have denounced the non-application of the Istanbul Protocol and mistreatment by health officials towards the arrested, being treated with handcuffs and / or in the presence of Policemen, both in the case of juvenile deprived of liberty, men, women and persons belonging to the Indigenous Peoples.

36. Regarding the creation of the Human Rights Department of Carabineros de Chile, this is a police body whose role is to promote the implementation of human rights standards applicable to the police function set forth in Chilean domestic law and international law, which was created by General Order No. 2,038 of 11.11.2011 published in BO 4406 of 12.11.2011: creates the Human Rights Department under the Subdirectorate General. In this ordinance, updated in 2016, the attributions of the department are explained in articles 10, 11 and 12 of paragraph 14 of the Ordinance. Within these it is made explicit that its mission is:

> Promote the implementation of international standards of Human Rights in the Institution, represent Carabineros de Chile before international supervisory bodies and respond to the requirements emanating from administrative and jurisdictional bodies of the State on the matter”.

38. Considering the above, the Human Rights Department of the Carabineros de Chile does not have the powers to inspect and / or evaluate the content of human rights training and its application in the protocols of the Institution.

39. As Commission of Observers of Human Rights of Casa Memoria José Domingo Cañas we have witnessed and denounced that the actions of the Special task Forces of the Police (FF.EE.) does not conform to its own protocols of action and has systematically violated the treaties and agreements on Human Rights that the Chilean State have. Therefore, in the absence of an evaluation or oversight body, it seems negligent and only interfere with a real change in the protocols and actions of the institution with respect to Human Rights, favoring impunity and the invisibility of violations committed by members of the same institution.

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16 Attached link of the agreement of interinstitutional protocol for ascertaining the health status of detainees in the criminal process:

Attached is the link of the Organization and Operation Directive of the General Subdirectorate of Carabineros, updated in 2016:
40. In December 2016, together with another civil society organization, we decided to establish ourselves as a Civil Society Torture Prevention Mechanism. In this context, we visited 2 deprivation of liberty centers: CCP Colina II and CIP San Joaquín. In the visits made, practices and habitability conditions were detected that constitute torture or at least cruel, inhuman or degrading treatment, which had been warned and denounced in different instances since at least the year 1991, which accounts for its systematic and structural nature, by the Special Commission of the Chamber of Deputies, and in various rapporteurs on Human Rights, Reports of the Judiciary, of the National Institute of Human Rights and Research Centers, as well as in the Final Observations to the State of Chile made by the Committee against Torture of the United Nations in 2009 and in the Report issued by the Subcommittee for the Prevention of Torture of the United Nations in June of 2016 after its visit to Chile. Testimonies were collected about excessive and unnecessary use of force and punishment by custody personnel, recourse to solitary confinement for prolonged periods in inhuman and degrading living conditions, the use of methods of forced immobilization such as the position called "the boat", the denuding in common courtyards, overcrowding, and psychological violence through threats and verbal abuse, among others.

41. We requested, via the Transparency Law, the statistical data on the deaths that occurred during custody in the period under review, where the information was obtained between 2011 and 2016:

<table>
<thead>
<tr>
<th>Year of Death inside Units of Gendarmerie of Chile. Years 2011-2016</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>169</td>
<td>140</td>
<td>136</td>
<td>143</td>
<td>156</td>
<td>142</td>
<td>886</td>
</tr>
</tbody>
</table>

Table 2

17 Final report SPT – Chile 2016/ consulted June 2018: http://www.minjusticia.gob.cl/media/2016/12/InformeFinal_SPT.pdf


19 Table of Deceased in the penal units enclosure 2011-2012

http://www.observadoresdhhh.org/wp-content/uploads/2013/05/Planilla_Fallecidos_6400.xls
42. As Commission of Observers of Human Rights of the Casa Memoria José Domingo Cañas, we have requested, making use of the Transparency Law or some other official means, to the different state instances, the statistical information regarding the number of denunciations for torture, cruel inhuman treatment or degrading.

43. In the case of the Police Force, the information published by the INDH that reports on cases of Unnecessary Violence between the regions of Coquimbo and Los Lagos is rescued. In addition, the information provided by the Police through a response to a consultation via the Transparency Law, where it is summarized in the following table:

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**Cause Death inside Units of Gendarmerie of Chile. Years 2011-2016**

<table>
<thead>
<tr>
<th>Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCIDENT</td>
<td>17</td>
</tr>
<tr>
<td>DISEASE</td>
<td>420</td>
</tr>
<tr>
<td>FIRE</td>
<td>1</td>
</tr>
<tr>
<td>LEASE ATTEMPT</td>
<td>2</td>
</tr>
<tr>
<td>POISONING</td>
<td>8</td>
</tr>
<tr>
<td>OTHER CAUSES</td>
<td>10</td>
</tr>
<tr>
<td>RIÑA / AGRESSION</td>
<td>305</td>
</tr>
<tr>
<td>SUICIDE</td>
<td>123</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>886</td>
</tr>
</tbody>
</table>

**Table 3**

**Sex Death inside Units of Gendarmerie of Chile. Years 2011-2016**

<table>
<thead>
<tr>
<th>Sex</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEMALE</td>
<td>39</td>
</tr>
<tr>
<td>MALE</td>
<td>847</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>886</td>
</tr>
</tbody>
</table>

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20 NATIONAL INSTITUTE OF HUMAN RIGHTS. "Executive summary of the exploratory study. State of Chile and Mapuche People: Analysis of Trends in Matters of State Violence in the Region of La Araucanía." - INDH 2013

21 Table with the number of complaints made in the OIRS Department against Carabineros staff for abuse of authority, labor harassment, assault, threats, mistreatment of detainees and unnecessary violence, between January 1, 2015 and September 17, 2017, disaggregated by month and year. The information refers only to events that occurred in the exercise of functions:

http://www.observadoresddhh.org/wp-content/uploads/2013/05/38690-ESTAD%C3%8DSTICA.xlsx
Table 4

Cases of Complaints "Unnecessary violence, mistreatment of deprived of liberty, threats, aggression, labor harassment, abuse of authority"

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>1609</td>
<td>1605</td>
<td>1797</td>
<td>1775</td>
<td>yes</td>
<td>yes</td>
<td>1812</td>
<td>1247</td>
<td>871</td>
<td>yes</td>
</tr>
</tbody>
</table>

s / i: No Information

44. This information is contrasted with that provided by the State of Chile in its responses to the Previous Issues where in Annex II it indicates about the police parties with complaints about possible excessive use of force (Table 2). For 2010: 20 cases, 2011: 38, 2012: 31, 2013: 28, 2014: 38 and 2015: 92. The difference between what was reported by the police via the Transparency Law and what the State of Chile reports in his answers are unusual: only in 2015 there would be a difference of 1720 cases not reported.

Table 5

Statistics of police reports with complaints (criminal) for possible excessive use of force Annex II, Article 2, paragraph 7, State Response

<table>
<thead>
<tr>
<th>PARTS BY REGIONS</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015 (until August)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRAND TOTAL</td>
<td>twenty</td>
<td>38</td>
<td>31</td>
<td>28</td>
<td>38</td>
<td>92</td>
</tr>
</tbody>
</table>

45. In the case of the Investigations Police (PDI), the following statistical information was also obtained via the Transparency Law on cases of abuse of power, mistreatment of detainees and / or torture: 2010: 3 cases; 2011: 10, 2012: 22, 2013: 46, 2014: 37. No information was obtained from the other years.

46. For the Gendarmerie case, the following statistical information was also obtained via the Transparency Law on cases of abuse of power, mistreatment of detainees and / or torture: 2011: 10, 2012: 3, 2013: 10, 2014: 13 and 2015: 34 cases. No information was obtained from the other years.

47. Information about the number of deaths under the custody of the gendarmerie was also requested and the following statistics were delivered: 2010: 81 people (December), 2011: 177, 2012: 140, 2013: 136, 2014: 143, 2015: 156, and 2016: 142 people died inside Gendarmerie precincts.
48. In turn, the INDH was asked to provide information on the number of complaints of torture, appeals for protection from police violence and other complaints. The INDH provided the following statistical information: 2011: 4 cases, 2012: 15, 2013: 18, 2014: 24, 2015: 35, 2016: 52, 2017: 76 and up to April 2018: 38 cases.

49. It was requested, via the Transparency Law, to the National Prosecutor’s Office to report on the number of complaints filed after the year of the crime of torture. The following summary information was received:

Table 6

<table>
<thead>
<tr>
<th>OTHER TERMS</th>
<th>JUDICIAL DEPARTURE</th>
<th>Non-judicial exit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Favorable to Victim</td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>290</td>
<td>26</td>
<td>1,454</td>
</tr>
<tr>
<td>fifteen%</td>
<td>1%</td>
<td>9%</td>
<td>75%</td>
</tr>
</tbody>
</table>

53. From the information collected via the Transparency Law, it can be concluded that the average number of cases from the 2009 to 2017 period is 1,660 cases per year, including Carabineros, PDI and Gendarmerie. On the other hand, the average number of complaints and protection recourse, presented by the INDH is 33 cases representing about 2% of the total number of complaints of torture, cruel, inhuman or degrading treatment throughout the country. Only 15 cases of the INDH have had a positive resolution for the victims. This number compared to the number of complaints made in the same period (9,647) corresponds to 0.16%. In other words, of the cases of torture and police violence that are managed to document and prosecute, impunity is 99.84%.

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22 Table with figures of crimes of torture November 2016 to November 2017 extracted and processed from the database of the Fiscal Support System (SAF) in accordance with the criteria established in the methodological document Counting techniques in the Statistical Reports.

http://www.observadoresddhh.org/wp-content/uploads/2013/05/Informe-ley-de-tortura-primer-a%C3%B1o-2017.xlsx
51. Create and maintain a permanent instance of monitoring, recognition ("qualification") and extension of reparation rights to persons affected by political imprisonment, torture, forced disappearance and/or political execution committed between 1973 and 1990. This body must have the authority and necessary expertise to provide legal advice and deliver reparation measures, review and propose amendments to existing legislation, and advise legislators on future legislation that directly or indirectly affects the rights to truth, justice, reparation and participation of family members and survivors.

52. Abolish the 1978 Amnesty Law Decree.

53. Declassify the archives of the security apparatuses of the Dictatorship (DINA, CNI, etc.) together with the testimonies of the Political Prison and Torture Commission.

54. Judicialize all human rights violations committed during the civil-military dictatorship from 1973 to 1990, for full compliance with the right to memory, truth, justice and reparation in each case, both of "absent" victims and survivors.

55. Create a single system to monitor compliance with penalties, together with a mechanism that makes transparent the granting of penitentiary benefits and alternative regimes.

56. Cancel the benefits and regimes, and use of special places of confinement, in the cases of perpetrators of war crimes and crimes against humanity.

57. Investigate, sanction and repair the abuses suffered by children and adolescents within the social mobilizations during the last 28 years.

58. Adapt the current definition of the internal penal regulations for Torture according to international standards.

59. The operation of a National Mechanism for the Prevention of Torture and other cruel, inhuman and/or degrading treatment, in accordance with international standards, with full autonomy and independence. The Mechanism must be established throughout the national territory as soon as possible.

60. Repeal the second paragraph of article 19 n° 13 of the CPR, because it gives the regulation of public demonstrations to the general provisions of police.

61. Abolish DS 1086 that regulates public demonstrations.
62. Adopt sufficient measures to safeguard the right to protest.

63. Prohibit the use of lethal weapons for control social protest (chemical tear weapons, water with chemical, fire arms, etc.).

64. Depose and effectively punish the state functionaries involved in violations of human rights past and present, giving public account of it.

65. Eliminate the National Security Doctrine in the training of State agents.

66. Guarantee, safeguard and maintain the Memory Sites with adequate and permanent budgets to strengthen civil society in the mission of promotion, defense and education in Human Rights.