



General Assembly

Distr.: General
date

English only

Human Rights Council

Twenty-fourth session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by Centre Europe - Tiers Monde - Europe-Third World Centre, a non-governmental organization in general consultative status*

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 September 2013]

ASSESSMENT OF HUMAN RIGHTS IN CHILE: 40 YEARS LATER¹

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

¹ This declaration has been drafted by the following jurists: Ms. Giselle TOLEDO VERA, Ms. Lydie RUIZ, and Ms. Nicole Allgöwer KIRBERG.

I. Background

11 September 2013 marks the fortieth anniversary of the 1973 Chilean coup d'état. The Europe-Third World Centre (CETIM) would like to honor the memory of all the victims of the Chilean military dictatorship with this declaration¹.

It should be noted that Chile has ratified the majority of international instruments on human rights. In accordance with the principle of *pacta sunt servanda*, Chile is required to faithfully comply with these international treaties and fulfill its international obligations, to which it freely agreed. Chile cannot invoke its domestic law as a reason for not fulfilling its obligations.

Nevertheless, despite the transition to a democratic government over 22 years ago in Chile, significant changes in Chilean legislation have not yet been implemented. One example of this is Decree Law No. 2191 (ratified 19 April 1978), which grants amnesty to people who committed crimes between 1973 and 1978. Although the law is no longer applied by courts, it has not yet been formally repealed. This contributes to the culture of impunity existing in Chile, which disclaims the atrocious and reprehensible nature of crimes committed during the time of the dictatorship.

- On 21 November 2011, a ceremony in honor of Miguel Krassnoff was held in Providencia, Santiago. Krasnoff perpetrated grave human rights violations, including acts of enforced disappearance, which resulted in a sentence of over 100 years in prison. Cristian Labbé, mayor of Providencia at the time, actively participated in the ceremony, which was lauded by the President of the Republic, Sebastian Piñera. The 4th edition of the book *Miguel Krassnoff: Prisoner for Serving Chile* was presented at the ceremony.
- On 10 June 2012, a tribute to General Pinochet took place in Santiago. On 6 June 2012, Secretary of State Andrés Chadwick told the press that he could not understand those who demanded that the government prevent these types of events, which he described as “a legitimate and guaranteed Constitutional human right.” He added that “one must not respect only those rights that are favorable to one specific person.”

Chilean authorities cannot, in any way, use human rights to defend the decision to honor torturers or justify or trivialize barbaric acts. It should be noted that the denial, justification or gross trivialization of crimes against humanity are not protected under the framework of human rights.

Despite significant legislative development, Chile remains governed by the legal order established by the 1980 Constitution, as well as some laws enacted during the military regime, which are obstacles to the democratic functioning of certain fundamental institutions such as the electoral system.

Thus, Chile, unlike any other country, uses a binomial electoral system of majority voting for single parliamentary elections. This system favors the largest minority and not the actual majority, preventing a true representation of Chilean citizens in Parliament.

II. Fight against Impunity

In the fight against impunity, it should be noted that the widespread and systematic acts of extrajudicial or summary execution, enforced disappearance and torture that took place in Chile during the dictatorship, should be considered crimes against humanity. Thus, Chilean authorities must investigate these acts, and try and punish the perpetrators of these crimes. Further, they must refrain from enforcing any measure that would grant the perpetrators immunity from prosecution or effective legal penalties. These penalties must be commensurate to the gravity of the crimes.

Although Chile has made efforts to fight against impunity, thousands of people are still waiting for justice, and the penalties for the crimes are not always commensurate to the gravity of the offenses.

It is shocking to see that Punta Peuco y Penal Cordillera Prison, home to former members of the military who committed human rights violations, such as Miguel Krassnoff, is a very comfortable place with tennis courts and large recreation areas. This is in direct contrast to the deplorable conditions of other prisons. The Chilean government should follow the recommendations made in 2012 by its own Commission for the Reduction of Convictions, chaired at the time by Amanda Valdovinos, and close this prison after transferring the prisoners to another place of detention.

III. Enforced Disappearances and Extrajudicial or Summary Executions

The large number of cases yet to be solved has driven the *Agrupación de Familiares de Ejecutados Políticos* [Association of Families of Executed Political Prisoners] (AFEP) and the *Agrupación de Familiares de Detenidos Desaparecidos* [Association of Relatives of Disappeared Detainees] (AFDD), to file numerous criminal complaints since 2011. To date, these complaints name 1,250 victims, and continue to be investigated by the Court, with a few exceptions.

- Photographer Rodrigo Rojas De Negri was burned alive with Ms. Carmen Gloria Quintana, a student of psychology at the time, by a military patrol on 2 July 1986. Given the ineffective nature of the Chilean judicial system, the mother of the victim, Ms. Veronica De Negri, was forced to file a criminal complaint on 2 July 2013, 27 years after her son's death, in order for all the perpetrators to be punished. In fact, the only perpetrator punished by the military court so far is Officer Fernández Dittus, who was sentenced to 600 days imprisonment.

IV. Torture and Cruel, Inhuman and Degrading Treatment

In 1996, the Special Rapporteur on Torture stated that the Chilean government had notified him of its intention to reform Article 150 of the Criminal Code in order to include the prohibition of torture and use the definition of the term *torture* from Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, which would replace the more vague definition used in Chilean legislation at that time (E/CN.4/1996/35/Add 2, § 69).

Unfortunately, this legislative reform, which notably led to the entry into force of Article 150A of the Penal Code, has not reached its goal. It is regrettable that, in 2013, the definition of acts that can be described as torture in Chilean law still does not include all the elements contained in Articles 1 and 4 of the aforementioned Convention.

In addition, the Chilean State should incorporate a gender-based approach in the fight against torture and impunity in order to take into account the specific complaints made by women since December 2010 regarding sexual violence as a form of torture perpetrated during the dictatorship.

In terms of police violence, several witnesses affirm that uniformed police officers used excessive force during the suppression of public demonstrations. The use of paintballs, non-lethal weapons that can cause serious bodily harm, is a concern for civil society. The Medical Board of Chile strongly condemned the use of those weapons. The case of Mr. Enrique Eichin Zambrano, wounded along with four other people during a student demonstration in April 2013, is paradigmatic.

- On 11 April 2013, Enrique Eichin Zambrano, a 58-year-old architect, was wounded in the face by a paintball while peacefully marching with his wife and daughter. The projectile, fired randomly and toward his face by a policeman in the midst of a violent clash between the police and protesters around Zambrano, caused a complete loss of vision in his right eye. In addition to the intense pain he now endures, this heinous act has particularly serious consequences for an architect, namely the inability to work and a loss of income.

V. Reparations to the Victims of the Dictatorship

Chilean law allows for only limited recognition of the "victims of the dictatorship." At first, only the missing, executed, or persons killed by torture were recognized as victims of grave human rights violations and were entitled to compensation. In 1993, Law No. 19.234 allowed the granting of compensation to persons dismissed from their jobs for political reasons. It was not until December 2004 that a right to compensation was granted to persons detained for political reasons and to survivors of torture inflicted during the dictatorship (Law No. 19.992).

Aside from the above-mentioned categories of persons, and some of their relatives, no other beneficiaries are entitled to reparations. Thus, persons detained or tortured for non-political reason (e.g., abuse of power) are not recognized as victims and are not entitled to the reparations provided by law, as stated by the *National Commission on Political Prison and Torture*. People who were not part of the workforce at the time, such as students who were forced into exile, cannot receive compensation either.

In addition, compensation is merely symbolic, in accordance with the will of Chilean legislators. They do not reflect the damage caused to the person, nor the personal and social situation of the persons concerned, nor of any disability caused by the State, nor the place of residence of the victim, nor the current cost of living. The granting of such benefits is contrary to Article 14 of the Convention against Torture, which provides for fair and adequate compensation.

Finally, only the victims of the dictatorship residing in Chile can benefit from reparations pertaining to medical care. Indeed, in the absence of a bilateral treaty on the subject, no action is planned for Chileans living abroad, leaving them without healthcare. The Inter-American Court of Human Rights was informed of the issue of the lack of full compensation, per the request of Mr. Lucero Garcia, a Chilean living abroad who was tortured during the dictatorship.

In light of all the evidence mentioned above, reparations should be granted to any victims who have suffered from these atrocities. These reparations should also include the reinstatement of political rights for all, including political exiles living overseas.

Chilean authorities should also establish a constituent assembly in order to begin the complete revision of the Constitution. They should also allow Chileans living overseas to vote by visiting a consulate or to vote electronically.

In order to fully leave behind this dark period in Chilean history, Chile must demonstrate sustained political will in bringing an end to the culture of impunity, recognizing all the victims of the dictatorship, and granting fair and equal compensation to both individuals and the Chilean political community in general by allowing them to unite around a new social contract.

We call on the Special Procedures of the Human Rights Council and treaty bodies to continue to participate in the process of the modernization and restoration of human rights in Chile, the repeal of the amnesty law, the expiration of impunity from past criminal acts, and the respect of the fundamental rights of Indigenous Peoples.

It should be noted that the situation regarding the respect of the human rights of the Indigenous Peoples of Chile merits a separate declaration, and will therefore not be discussed in this assessment.
