
CHILE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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In 2010 and 2011, there were some judicial advances for leaders defending the rights of the Mapuche people. However, not all of the Mapuche leaders who were wrongfully convicted were released, and there were still acts of intimidation against lawyers defending the Mapuche who were accused under the Antiterrorist Act. Furthermore, in 2010, defenders and organisations reporting violations in judicial investigations in the country's capital, reported being harassed and monitored.

Political context

On March 11, 2010, Mr. Sebastián Piñera, the candidate of the opposition Coalition for Change (*Coalición por el Cambio*), became President of the Republic. Due to the earthquake on February 27, 2011, which wreaked havoc in the centre and south of the country, killing more than 524 and injuring around two million people¹, the new Government had to confront criticisms of the public emergencies system and housing reconstruction. Then, on August 5, 2010, the San José mine in northern Chile collapsed. Although the 33 miners that were trapped 700 metres below the surface for seventy days were successfully rescued, the accident served as a reminder of the Government's precarious assessment and supervision in mining, as well as the lack of legal instruments protecting the rights of miners². At the end of the year, a fire that occurred on December 8, 2010 in San Miguel prison (Santiago) heightened the crisis due to crowding in prisons.

The hunger strike of 34 Mapuche imprisoned in various criminal facilities in southern Chile that began in July 2010 in protest of the growing criminalisation and violence against their communities managed to break the silence and generated discussion on indigenous peoples. In particular, this strike generated discussion of the competencies of Military Law and the application of the Antiterrorist Act to criminalise the social protest of the Mapuche people³. The debate over indigenous peoples became even more significant when images surfaced of police violence against the Rapa Nui people of Easter Island from December 2010, following various occu-

1/ See Interior Ministry and Public Safety.

2/ Although mining is an important activity in Chile, the country has not ratified Convention No. 176 of the International Labour Organisation (ILO) on Safety and Health in Mines.

3/ In 2010, a total of forty Mapuche were detained for engaging in so-called terrorist activity.

pations demanding that the Chilean Government return their lands⁴. There was such excessive use of force against the Rapa Nui that, on February 7, 2011, the Inter-American Commission on Human Rights (IACHR) granted protective measures to this indigenous community, asking the Chilean Government to immediately stop using armed violence against members of the Rapa Nui community⁵.

In terms of impunity, Chilean justice continued to make headway on establishing criminal liability for the crimes committed during the Pinochet's dictatorship. Although there were significant improvements, the cases under judicial investigation were less than half of the officially recognised cases⁶, and while more than 808 officers involved in the repression appeared before courts, only about sixty of them were carrying out sentences as of April 2011. Many were sentenced to minor penalties despite the seriousness of the crimes committed. One significant event was the decision of the Criminal Court of Paris from December 17, 2010, convicting thirteen individuals, including eleven Chilean ex-military men, for the forced disappearance of four French-Chilean citizens⁷. It is important to note additional improvements in uncovering the truth and the memory of human rights violations. On January 11, 2011, the National Museum of Memory and Human Rights (*Museo Nacional de la Memoria y los Derechos Humanos*) was inaugurated⁸, and on February 17, 2010, the Advisory Committee for the Qualification of Disappeared Detainees, Victims of Political Execution, Political Imprisonment and Torture (*Comisión Asesora para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y Tortura*), also known as the "Valech Commission" (*Comisión Valech*), was re-launched, which received more than 30,000 new cases and whose new report will be submitted

4/ See Centre for Mental Health and Human Rights (*Centro de Salud Mental y Derechos Humanos - CINTRAS*), Corporation for the Promotion and the Defence of the Rights of the People (*Corporación de Promoción y Defensa de los Derechos del Pueblo - CODEPU*), Human Corporation (*Corporación Humanas*) and Citizen Observatory (*Observatorio Ciudadano*) Report, *Informe Intermedio de Organizaciones No Gubernamentales sobre el Seguimiento de las Observaciones Finales del Comité Contra la Tortura al Estado de Chile (CAT/C/CHL/CO/5)*, June 23, 2009.

5/ See IACHR Precautionary Measures 321/10, February 7, 2011.

6/ According to the statistics provided by the Government, as of September 2010, there were 514 proceedings underway without definitive sentences, representing 1,311 victims, 598 of whom were still missing. See Interior Ministry and Public Safety Official Statistics: http://www.ddhh.gov.cl/juridica_estadisticas.html.

7/ The decision will be notified in 2011, demanding that this sentence be carried out in Chile or in France.

8/ This museum was created to "shed light on the human right violations that were committed by the Chilean Government between 1973 and 1990; dignify the victims and their families; and stimulate reflection and debate on the importance of respect and tolerance, so that these events are never repeated ever again".

in August 2011. Furthermore, on July 20, 2010, the National Human Rights Institute (*Instituto Nacional de Derechos Humanos - INDH*), an autonomous Government body, was finally established, which constitutes a significant contribution to the discussion and documentation of human rights in Chile⁹.

Surveillance and harassment against defenders of indigenous peoples' rights

Although there were some improvements for leaders and members of the Mapuche community since the hunger strike of 34 Mapuche in July 2010¹⁰, human rights defenders involved in the defence of Mapuche in criminal proceedings continued to be monitored and harassed, including at the judicial level, in 2010 and 2011. For example, in the early months of 2010, the Public Ministry illicitly intercepted phone calls from Mr. **Rodrigo Curipán**, Spokesman for the Mapuche detained at Angol prison. Among the intercepted phone calls were those with Mr. **Jaime Madariaga**, a private defence lawyer of the Mapuche, in which they discussed various judicial strategies for the criminal proceedings against the Mapuche and in particular, the trial against Chilean police for the murder of Mr. Jaime Mendoza Collío, a member of the Mapuche community, on August 12, 2009. On August 18, 2010, Ms. **Karina Riquelme Viveros**, a lawyer and member of the legal team from the organisation *Liberate (Liberar)*¹¹, who has actively defended the Mapuche, was served a summons from the police in charge of investigations, indicating that she was being investigated for "illegally practicing her profession". This was initiated directly by the Public Prosecutor's office in the region of Araucanía, which accused her of having signed documents when she did not yet have her law degree and began working as a legal advisor with the Office for Protection of Rights in the city of Pucón in 2009. This action by the Public Prosecutor's office was denounced as an act of intimidation. As of late April

9/ The INDH published its first Annual Report on human rights in Chile in December 2010. Its Chairwoman, Ms. Lorena Fries, received this position with the support of the human rights organisations that are part of the Institute, such as CODEPU and Citizen Observatory.

10/ Minor reforms that eliminate double trials (under civil law and military law) were adopted, but there were no substantial changes to the Antiterrorist Act. There will be a comprehensive reform of Military Law in June 2011. Furthermore, the Government promised to reassess the terrorism-related actions brought against the Mapuche. This occurred late in the first trial of seventeen Mapuche community members, which concluded in March 2011 and in which Messrs. Héctor Llaitúl, Ramón Llanquileo, Jonathan Huillical and José Huenuche were convicted in provincial courts, although the judgement was based on evidence obtained under the Antiterrorist Act. Furthermore, this law was still sometimes applied to new cases. See CODEPU and Citizen Observatory.

11/ Liberate is a group of lawyers responsible for the criminal defence of the Mapuche accused under the Antiterrorist Act.

2011, the judicial proceedings were still pending and a trial was expected to take place in 2011¹².

Furthermore, some Mapuche leaders who were convicted several years ago under the Antiterrorist Act, were granted prison benefits and even conditional release in 2010. These leaders included Mr. **José Huenchunao Mariñan**, who as of April 2011, remained detained at the Education and Work Centres in Angol with prison benefits, Messrs. **Jaime Marileo Saravia**, **Juan Patricio Marileo Sarvia** and Ms. **Patricia Troncoso Robles**, who were granted conditional release in December 2010. Likewise, on September 10, 2010, the Mapuche *lonko*, Ms. **Juana Calfunao Paillalef**, whose case demonstrates the Chilean Government's policy of criminalisation against the Mapuche¹³, was granted conditional release. In addition, Ms. **Elena Varela**, a documentary maker who was detained on May 7, 2008 while making a documentary on the Mapuche people, and placed on parole in late 2009, was finally declared innocent on April 22, 2010. Some of her filmed material was lost during the proceedings of the Civil Public Prosecutor's office and, of the third that was recovered, one part was damaged.

Intimidation of human rights defenders who report violations in judicial investigations

Defenders whose work involves accompanying victims and family members who report unfounded criminal proceedings, were subject to acts of intimidation in 2010. On August 14, 2010, members of the Special Police Operations Group (*Grupo de Operaciones Policiales Especiales - GOPE*) searched the home of Ms. **Viviana Uribe Tamblay**, Chairwoman of the Corporation for the Promotion and the Defence of the Rights of the People (*Corporación de Defensa y Promoción de los Derechos del Pueblo - CODEPU*), in connection with the so-called "bombs case"¹⁴, in which fourteen youths were charged under the Antiterrorist Act. Ms. Viviana Uribe Tamblay accompanied the accused and their family members

12/ See CODEPU and Citizen Observatory.

13/ Ms. Juana Calfunao Paillalef, of the "Juan Paillalef" community situated in the community of Cunco in the Araucanía region, was accused of committing minor offenses, such as "attacking authority", "threatening policemen on duty" and "public disorder", and was sentenced in November 2006 to six and a half years in prison. While in prison, Ms. Calfunao Paillalef was tortured and harassed by police personnel and other inmates.

14/ The bombs case is a judicial investigation that was launched in 2006 after the explosion of more than 160 handmade explosive devices that were placed in various areas of the capital. The Prosecutor in charge of the case could not find any conclusive evidence to detain those responsible. However, on June 17, 2010, Prosecutor Alejandro Peña was appointed and thus charged fourteen youths with "unlawful terrorist association".

in reporting serious anomalies that occurred in the judicial investigation since Prosecutor Alejandro Peña took over the investigation on June 17, 2010. During the search, GOPE officers interrogated the daughter of Ms. Uribe Tamblay and confiscated CODEPU work material, which was not returned. Furthermore, the group of lawyers of Popular Defence (*Defensoría Popular*), who is defending some of the accused in the “bombs case”, discovered a microphone in its offices.

Acquittal of a journalist fighting against impunity in the crimes committed during the military dictatorship

Finally, on a positive note, on January 22, 2010, the Seventh Court of Guarantee in Santiago acquitted Ms. **Pascale Bonnefoy**, an independent journalist who had been accused of “libel”, “slander” and violation of Act No. 19.733 on Freedom of Opinion, Information and Journalistic Practice, after publishing an investigative article in 2006 in which she confirmed the identity of former military officer Edwin Dimter Bianchi as the Chile Stadium¹⁵ repressor, nicknamed the “Prince”, in the days following the military coup in 1973.

Urgent Interventions issued by The Observatory from January 2010 to April 2011

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Pascale Bonnefoy	Judicial harassment	Urgent Appeal CHL 001/0110/OBS 001	January 5, 2010
	Acquittal / Judicial harassment	Urgent Appeal CHL 001/0110/OBS 001.1	January 21, 2010
		Press Release / Judicial Observation Mission Report	July 2, 2010
Ms. Juana Calfunao Paillalef	Arbitrary detention / Judicial harassment	Urgent Appeal CHL 001/0705/OBS 056.10	May 12, 2010
	Conditional release	Press Release	September 17, 2010
Ms. Viviana Uribe	Search	Open Letter to the authorities	August 19, 2010

15/ Following the coup d'état on September 11, 1973, the sports facility was used as a detention centre, where officers involved in the coup held political prisoners.