

## **Judicial Reform, Military Justice, and the Case of Chile's *Carabineros***

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*Prepared for delivery at the 2006 Meeting of the Latin American Studies Association,  
San Juan, Puerto Rico, March 15-18, 2006.*

### Introduction

Since the country's return to democracy in 1990, Chile has implemented a broad program of judicial reform. These reforms came as a nationwide response to the judiciary's failure to protect the people during the country's 17 year military dictatorship. During this time, the Chilean judiciary yielded jurisdiction over civilian cases to military tribunals and military court jurisdiction expanded, encroaching into areas previously reserved for civilian justice.

A major weapon employed by the Pinochet regime against political adversaries was the use of military courts to prosecute suspected enemies of the state. These courts later provided a defensive shield for the regime when it was assailed for human rights abuses. In this way, the judicial system was subverted through jurisdictional expansion of military tribunals.

A central problem that remains in consolidating democracies is the issue of military subordination. Since Chile's return to democracy the country's police, the *Carabineros*, as a military or paramilitary institution, have continued to be denounced for persistent use of torture against civilians. An increase in charges of police violence addresses the need for effective and legitimate civilian control of the military.

Although Chile's criminal reforms have been called the centerpiece of the country's judicial reform program the reforms do not address military jurisdiction over the *Carabineros*. Similarly, military court jurisdiction over civilians charged with crimes against *Carabineros* has not been reduced or changed in any way since the country's return to democracy.

### I. Background to Chilean Judicial Reform

The Chilean judicial system was inherited from Spain during colonization and was influenced by Spain's tradition of religious-cultural warfare, rewards for conquest, military privileges, and fusion of military and government authority. From the beginning, Spanish military personnel were given special legal treatment. Military personnel who abused their authority or mistreated civilians often did so with impunity.<sup>1</sup>

The judicial system inherited from Spain was a completely orthodox inquisitorial system, meaning the functions of criminal investigation, prosecution, and judgment were all carried out by one person: the judge. This was true throughout all of Latin

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<sup>1</sup> BRIAN LOVEMAN, FOR LA PATRIA: POLITICS AND THE ARMED FORCES IN LATIN AMERICA 27-61 (1999).

America, but Chile presented the most orthodox inquisitorial model of all. A hallmark of the inquisitorial system was the fact that it was, for the most part, a written system. There was little or no contact between the parties or between the parties and the judge. Cases could and did drag on for years. All proceedings were secret and the presumption of innocence did not exist, in fact, criminal defendants were presumed guilty.

That having been said, prior to the 1970s, Chile enjoyed a tradition of judicial independence. The country's democratic Constitution of 1925 included guarantees such as life tenure for judges at all levels, irreducible salaries, and an explicitly nonpartisan appointment process that removed virtually any role for political parties in the selection of judges. Chilean democracy itself had been one of the oldest and most stable Latin American democracies until it completely collapsed during September of 1973.

Arturo Valenzuela has called the pre-1970s Chilean judiciary a "prestigious institution...respected for its neutrality and remoteness from the clamor of everyday politics."<sup>2</sup> The judiciary consistently attracted qualified applicants, maintained rigorous professional criteria, and was viewed as one of the most coveted career paths in the public sector. The professional merits of judges were not questioned. The most serious criticism of the judiciary was that the courts were politically conservative and did not serve the needs of Chile's growing urban working class.<sup>3</sup>

Though democracy, its processes and institutions were completely disrupted during the military dictatorship of Pinochet, the independence and integrity of Chile's courts began to be undermined during the administration of Salvador Allende (1970-1973).

Allende was elected president of Chile in 1970 with 36.2 percent of the vote in a three-way contest. From the outset, Allende's presidency constituted a minority presidency and his program for dramatic social change polarized society. Because Allende had not received an absolute majority of votes in the presidential election, the Chilean Constitution specified that the actual election of the president had to take place in the Congress. To accomplish this, it was necessary for Allende to make certain agreements in exchange for a coalition of political support. Allende's coalitional support began to dissolve soon after his inauguration. One not infrequent consequence of the loss of cohesion in regime-supporting coalition parties is the effort to remove highly conflictive issues from the arena of partisan politics by transforming them into legal or technical questions. The aim of this strategy is to gain time, because legal solutions are notoriously slow. Questions of constitutionality are raised about certain laws and decisions, and issues are referred to constitutional courts.<sup>4</sup>

Allende announced during his first speech to Congress that, once Chile had made its peaceful transition to Socialism, he would replace the court system with a new Supreme Tribunal selected by a popular assembly that would assist the majority classes in governing.<sup>5</sup> By the start of his second year in office, Allende had begun

<sup>2</sup> Arturo Valenzuela, *Origins, Consolidation, and Breakdown of a Democratic Regime*, in *DEMOCRACY IN DEVELOPING COUNTRIES: LATIN AMERICA* (1989).

<sup>3</sup> *Id.*

<sup>4</sup> JUAN J. LINZ, *THE BREAKDOWN OF DEMOCRATIC REGIMES: CRISIS, BREAKDOWN & REEQUILIBRATION* (1978).

<sup>5</sup> WILLIAM C. PRILLAMAN, *THE JUDICIARY AND DEMOCRATIC DECAY IN LATIN AMERICA: DECLINING CONFIDENCE IN THE RULE OF LAW* 139 (2000).

creating neighborhood tribunals to rule on issues ranging from petty crimes and neighborhood disputes to squatters' rights and land confiscation issues. These tribunals existed outside the formal justice system and were staffed by members of Allende's party, most with little or no legal training. Defendants were frequently denied an attorney in these processes.<sup>6</sup>

At the same time, senior officials in Allende's administration ignored Supreme Court rulings that overturned government expropriations and nullified uncompensated land reforms. In June of 1973, the Supreme Court broke with its tradition of silence on policy issues and issued a public warning that Chile was on the verge of lawlessness.<sup>7</sup> The military took power a mere three months later.

The most serious and enduring damage to Chile's judiciary was done between September 1973 and March of 1990. Pinochet's manipulations of the judiciary would subsequently create a dilemma for reformers because of the needed to undo these arrangements without politicizing or undermining the courts in the process.

During the military regime, the courts were docile to the regime and failed to vigorously pursue cases involving disappearances or illegal detentions. The military regime had invoked a state of siege in 1973, which continued intermittently in force until late in 1988. The state of siege resulted in the suspension of habeas corpus rights and rule by presidential decree. The courts became largely irrelevant to the administration of justice. Through the expansion of the jurisdiction of the military tribunals, the military regime was able to subvert the judicial system by infiltrating, and gradually usurping, the machinery of justice.<sup>8</sup> By the mid-1980s, 95 percent of those processed by military courts were civilians.<sup>9</sup>

The *Carabineros* played an active repressive role during the 1973-1990 dictatorship.<sup>10</sup> Soon after the coup, the new military government placed the uniformed police under the jurisdiction of the Ministry of Defense. This administrative change altered both the mission and the organizational structure of the *Carabineros*. Since their creation in 1927 as a deterrent to military adventurism, the *Carabineros* had been placed under the administrative tutelage of the Ministry of the Interior. As a paramilitary organization, it developed the tactical and technical qualities to provide for public order and protect the country's borders; as a police institution it took responsibility for crime prevention and the safeguarding of the personal security of the citizenry.<sup>11</sup>

The transformation of the uniformed police during the dictatorship was total. They became the most obvious sign of the repressive aspects of the military government since they were assigned the responsibility of carrying out the fight against legal and illegal opposition to the regime, both overtly in the streets and covertly through the assignment of police officers to the dictatorship's secret intelligence agencies.<sup>12</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Edward C. Snyder, *The Dirty Legal War: Human Rights and the Rule of Law in Chile 1973-1995*, 2 *TULSA J. COMP. & INT'L. L.* 253 (1995).

<sup>9</sup> *Id.*

<sup>10</sup> Nivaldo H. Galleguillos, *Re-Establishing Civilian Supremacy Over Police Institutions: An Analysis of Recent Attempted Reforms of the Security Sector in Chile*, 11 *J. THIRD WORLD STUD.* (2004) at 63.

<sup>11</sup> *Id.* at 57-61.

<sup>12</sup> *Id.* at 64.

Police officers were routinely recruited into the most brutal secret repressive units, such as the National Intelligence Directorate (DINA), and its successor, the National Information Center (CNI).<sup>13</sup> *Carabineros* were active participants in some of the most heinous crimes and human rights abuses committed by the military government.<sup>14</sup> Such repression was the institutional responsibility of the armed forces and of many of its operative units.<sup>15</sup> The *Carabineros* were the military branch with the most direct civilian contact and situated themselves in the frontline of Chile's war against suspected subversives throughout the country's dictatorship.

In February 1991, following Chile's return to democracy, the eight-member National Commission for Truth and Reconciliation, established in 1990 by then-President Patricio Aylwin to clarify the whole truth on the most serious violations of human rights during the military rule, released its report. The National Commission for Truth and Reconciliation Report is popularly known as the Rettig Report for former Senator Raúl Rettig, president of the commission. The Rettig Report established that an estimated 3,000 were killed or disappeared during the dictatorship. According to the Rettig Report, over 50 percent of the military regime era human rights violations resulting in death had been carried out by the *Carabineros*.<sup>16</sup>

The Rettig Report describes the posture taken by the judicial branch during the military rule as largely responsible for aggravating the process of systematic human rights violations, both directly insofar as persons who were arrested and whose cases reached the courts were left unprotected, and indirectly insofar as that stance offered the agents of repression a growing assurance they would enjoy impunity for their criminal actions, no matter what outrages they might commit. The Rettig Report concluded that, as a result, "The people of this nation still do not have confidence that the judicial branch as an institution is committed to defending their fundamental rights."<sup>17</sup>

As the country transitioned back to democracy, Chileans were united in their insistence that the judiciary be reformed, especially in the area of criminal justice. The political context of Chile's reforms was unusual, as the author of the 1980 Constitution, Pinochet, remained Commander-in-Chief of the armed forces and would remain until his resignation, as he was constitutionally required to do, on March 11, 1998.<sup>18</sup> Though the designation would later be removed, the former dictator was sworn in the same day as a lifetime senator - a condition of the transition to democracy - in the National Congress in Valparaiso. He sat down in the body he had closed down 25 years before, among leaders he had persecuted and exiled, and began to serve as senator for life.<sup>19</sup>

The 1980 Constitution was written by and for Pinochet and created numerous procedural and practical obstacles aimed at preventing future politicians from altering

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<sup>13</sup> *Id.* at 64-65.

<sup>14</sup> *Id.* at 65.

<sup>15</sup> GUILLERMO O'DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 29 (1986).

<sup>16</sup> Report of the Chilean National Commission on Truth and Reconciliation.

<sup>17</sup> *Id.*

<sup>18</sup> LOIS HECHT OPPENHEIM, POLITICS IN CHILE: DEMOCRACY, AUTHORITARIANISM, AND THE SEARCH FOR DEVELOPMENT 209 (1999).

<sup>19</sup> *Id.*

the document. Foreseeing the eventual return of elected governments, Pinochet's 1980 Constitution sought to perpetuate the armed forces' political power.<sup>20</sup> In an effort to maintain the military's primacy in the event of a return to civilian rule, it guaranteed an armed forces presence in Congress and placed roadblocks in the way of reforms by requiring majorities of up to two-thirds to amend the Constitution.<sup>21</sup>

The Chilean election system was the capstone of the authoritarian institutional framework designed by the military government to protect the 1980 Constitution from efforts by the Coalition of Parties for Democracy, the *Concertación*, to reform it.<sup>22</sup> The 1980 Constitution promulgated by the military government created an institutional framework of limited democracy, characterized by an electoral system designed to limit the number of political parties in Congress, presidential control of the legislative process and additional authoritarian enclaves to ensure "military tutelage and veto power over the decisions of civilian authorities."<sup>23</sup>

Of all bureaucratic authoritarian regimes existing in Latin America during this time period, Chile's military came the closest to establishing the constitutional and institutional bases for permanence. The 1980 Constitution guarantees the Chilean military, in addition to its regular budgetary allocations, 10 percent of annual export earnings of the state copper company.<sup>24</sup> This is significant, as Chile is the world's largest copper producer and copper prices have reached record highs in recent years.<sup>25</sup> Copper currently accounts for 44 percent of Chile's exports and, in 2005, the Chilean government took in \$27.4 billion in revenue from sales of the metal. This has boosted revenues from copper to 23.3 percent of Chile's gross domestic product.<sup>26</sup>

At the time of transition, there was widespread dissatisfaction with the passivity of the judiciary during the dictatorship when there was absolutely no protection for the most basic human rights. A criminal system is where you have the rights of a citizen at stake regarding the huge power of the state and even in a democracy; a criminal system can absolutely violate human rights. "Our old criminal system, we had for over 100 years, was based on the inquisitorial system. Even though the Constitution had repeatedly applied and promised its citizens that there was a principle of innocence and a right to a fair trial, a right to legal defense...when you came down to the criminal system, that didn't work...not in all the cases."<sup>27</sup>

It is for this reason that criminal reforms were the first to be implemented in the country, which can best be summarized as the departure from the former inquisitorial system custom of using a single judge as investigator, prosecutor and imposer of

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<sup>20</sup> *Chile Looks Set to Purge the Vestiges of a Dictatorship from the Constitution*, THE ECONOMIST, Oct. 21, 2004.

<sup>21</sup> Larry Rohter, *15 Years After Pinochet, Chile Begins to Dismantle his Rule*, N.Y. TIMES, Dec. 19, 2004.

<sup>22</sup> Daniel Pastor, *Origins of the Chilean Binominal Election System*, 24 REVISTA DE CIENCIA POLÍTICA [R.C.P.] 38 (2004).

<sup>23</sup> *Id.* at 38-39, quoting PETER SIAVELIS, THE PRESIDENT AND CONGRESS IN POSTAUTHORITARIAN CHILE: INSTITUTIONAL CONSTRAINTS TO DEMOCRATIC CONSOLIDATION xiv (2000).

<sup>24</sup> WILLIAM C. PRILLAMAN, THE JUDICIARY AND DEMOCRATIC DECAY IN LATIN AMERICA: DECLINING CONFIDENCE IN THE RULE OF LAW 139 (2000).

<sup>25</sup> *Copper Breaks New Record in London*, CORPORATE CHILE, Dec. 29, 2005.

<sup>26</sup> *Chilean Government's Copper Funds to Rise 12%*, BLOOMBERG NEWS, Oct. 4, 2005.

<sup>27</sup> Interview with Jaime Arellano, Undersecretary of Justice, Chile, in Santiago, Chile (Dec. 15, 2004).

sentence, to the expansion of legal protections for defendants, especially in the area of pretrial justice. The new criminal procedures make possible for the first time public trials, oral hearings, and the adversarial presentation of evidence. It makes possible for the first time public prosecutors and public defenders and recognition of victim's rights.

Procedural reforms were accompanied by constitutional reforms. Though Chile's Supreme Court had previously contained seventeen members,<sup>28</sup> constitutional reforms expanded the number to twenty-one and established that five of those would come from outside the judicial career stream.<sup>29</sup> The tenure of the justices was also limited.<sup>30</sup> The primary purpose of this reform was to decrease the influence of the Pinochet-appointed, life-tenured judges, enabling future reforms and a return to the judicial independence and integrity of the past.

In September of 1999, the Chilean Congress paved the way for additional far-reaching reforms within the Chilean justice system when the Senate and the Chamber of Deputies approved a law to create a *Ministerio Público* (similar to a State Attorney, District Attorney or Attorney General's Office in the United States). The creation of the *Ministerio Público* was called the centerpiece of the Chilean government's judicial reform program.<sup>31</sup> The creation of the *Ministerio Público* began the replacement of Chile's written criminal justice system with a more public and oral-based system. It also shifted responsibility for carrying out initial investigations and prosecuting criminal cases from the judges to the *Ministerio Público* itself.<sup>32</sup> Chile's new criminal trial regulations, began to be implemented gradually throughout the country in December of 2000 and were in place throughout the country by June of 2005.

This transformation is a complete paradigm shift and can be understood as almost revolutionary. Chile's criminal procedure reforms have been called the most important transition to occur in the country in the last century and will produce significant change both institutionally and culturally. The reforms are being observed closely throughout Latin America and have largely been recognized as a success, yet several aspects of the reform suggest the process is incomplete.

## II. Democratic Consolidation and Military Subordination

A well-functioning judicial system and a strong rule of law are critical to democratization and the consolidation of democracy. In discussing the consolidation of democracy, it is important first to define democracy. Democracy can be defined as a lack of restriction on citizen expression, absence of discrimination against particular political parties, freedom of association for all interests, and civilian control over the military.<sup>33</sup> Democracy can be defined as a set of institutions that permit the entire adult population to act as citizens by choosing their leading decision makers in competitive, fair, and regularly scheduled elections that are held in the context of the

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<sup>28</sup> *Id.*

<sup>29</sup> Felipe Sáez García, *The Nature of Judicial Reform in Latin America and Some Strategic Considerations*, 13 AM. U. INT'L. L. REV. 1267, 1323 (1998).

<sup>30</sup> *Id.*

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<sup>33</sup> TERRY LYNN KARL, *COMPARATIVE POLITICS: DILEMMAS OF DEMOCRATIZATION IN LATIN AMERICA* (1990).

rule of law, guarantees for political freedom, and limited military prerogatives.<sup>34</sup> State violence as well as state weakness may subvert the rule of law, providing a major obstacle to democratic consolidation.

Police forces throughout Latin America tend to be organized hierarchically, centralized, and military-like. In the case of Chile, the police are highly militarized.<sup>35</sup> The failure of Chile to incorporate the militarized police force into the country's criminal reform effort suggests that the country is much earlier in the consolidation process than popularly assumed.

In many ways the issue of civil-military relations is the key to democracy in Chile, in that the principle of military subordination to civilian authority underlies democracy.<sup>36</sup> A central problem that remains in consolidating democracies is the issue of military subordination. Since Chile's return to democracy in 1990, Chile's police, the *Carabineros*, as a military or paramilitary institution, have continued to be denounced for persistent use of torture against civilians. An increase in claims of police violence speaks to the need for effective and legitimate civilian control of the military.

In the beginning of the transition to democracy, the civilian governments' capacity to re-establish control over military organizations was seriously limited.<sup>37</sup> Still today, the resistance to change of police institutions and practices in Chile is strong. Regulating police powers is one of the most difficult challenges in newly democratized regimes as governments face simultaneous pressures to maintain public safety, enact structural socio-economic reforms, and protect citizens' rights from abuse of power. In Chile, attempts to regulate the police powers have been aggravated by rising perceptions of citizen insecurity.

The historical, institutional, and organizational constraints governing Chile's judicial structure and operations generate consequences disadvantageous to continued consolidation of democracy and complete citizenship, as citizens are denied an accountable and accessible judiciary. Chile's inability to hold human rights violators of the dictatorship era accountable has served to reinforce the sense of immunity and impunity of the armed forces. It is difficult to imagine how a society can return to some degree of functioning which would provide social and ideological support for political democracy without somehow coming to terms with the most painful elements of its own past.<sup>38</sup>

Although most of the nations of Latin America have undergone a transition to electoral democracy in recent decades, their legal institutions remain marred by deep-rooted authoritarian legacies. Though the transition to democracy throughout Latin America has been the subject of numerous important studies, these studies have

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<sup>34</sup> *Id.*

<sup>35</sup> Hugo Fruhling, *Policía Comunitaria y Reforma Policial en América Latina: ¿Cuál es el Impacto?*, CENTRO DE ESTUDIOS EN SEGURIDAD CIUDADANA, UNIVERSIDAD DE CHILE, INSTITUTO DE ASUNTOS PÚBLICOS, 2003, at 4.

<sup>36</sup> LOIS HECHT OPPENHEIM, POLITICS IN CHILE: DEMOCRACY, AUTHORITARIANISM, AND THE SEARCH FOR DEVELOPMENT 217 (1999).

<sup>37</sup> Nivaldo H. Galleguillos, *Re-Establishing Civilian Supremacy Over Police Institutions: An Analysis of Recent Attempted Reforms of the Security Sector in Chile*, 11 J. THIRD WORLD STUD. (2004) at 65.

<sup>38</sup> GUILLERMO O'DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 30-31 (1986).

addressed only preliminarily the importance of the judicial system in democratic consolidation.

When institutions of the state function according to the principle of the rule of law, the higher the quality of democracy and thus the more consolidated it is. When there is no strong rule of law to provide norms and procedures of democratic conflict regulation to be developed, the system breaks down. State violence as well as state weakness may subvert the rule of law, providing a major obstacle to democratic consolidation.<sup>39</sup>

The democratic orientation of social actors sees an effective rule of law as vital for consolidating democratic institutions and seeks to make legal systems more transparent, responsive to social needs, and accessible to the disadvantaged sectors of society. This orientation seeks to prevent human rights abuses while simultaneously becoming more efficient in preventing and sanctioning criminal activity.<sup>40</sup>

In 2001, representatives of various governmental organizations, primarily USAID, published a survey of the international promotion of judicial reform processes in Latin America. These authors recognized rule of law strengthening programs in Latin America as efforts to improve the functioning of the major state institutions directly involved in the making, implementation, and enforcement of laws – specifically the courts, prosecutors, police, public defenders and prisons.<sup>41</sup> In the case of Chile, the country's *Carabineros* are charged with enforcing laws that they themselves are not subject to. This practice has resulted in consequences disadvantageous to society as the rule of law has been compromised to respond to military prerogatives.

a. Criminal Procedure Reform without Military Justice Reform

Although Chile's criminal reforms have been called the centerpiece of the country's judicial reform program the reforms do not address military court jurisdiction over the *Carabineros* and civilians charged with crimes against *Carabineros*, which has seen no change, or reduction, since the country's return to democracy. This practice is incompatible with the goals of Chile's criminal reforms and various international conventions to which Chile is a party.

Citizens' expectations with respect to the judiciary, heightened due to an aggressive Ministry of Justice public relations campaign touting the benefits of the reformed justice system, have remained unmet. Despite a justice modernization process that is hailed as a model region-wide, low citizen confidence levels in the Chilean judiciary persist. In 2004, only 32 percent of Chileans reported confidence in the judiciary.<sup>42</sup> Past practices continue and citizen discontent with the judiciary remains.

Police forces have continued to violate individuals' basic rights in Chile since the re-establishment of democracy and continue to be denounced for the persistent use of torture against civilians. Confidence levels in the security forces, however, remain

<sup>39</sup> Juan J. Linz & Alfred Stepan, *Towards Consolidated Democracies*, 7 J. DEMOCRACY 2 (1996).

<sup>40</sup> Joseph R. Thome, *Heading South but Looking North: Globalization and Law Reform in Latin America*, WIS. L. REV. 691 (2000).

<sup>41</sup> THE RULE OF LAW IN LATIN AMERICA: THE INTERNATIONAL PROMOTION OF JUDICIAL REFORM 80-98 (Pilar Domingo & Rachel Sieder eds., 2001).

<sup>42</sup> Latinobarómetro 2004, at <http://www.latinobarometro.org>.

high. In 2004, 37 percent of Chileans reported confidence in the police and 40 percent reported confidence in the armed forces.<sup>43</sup> Perhaps this seeming paradox is explained by citizen confidence that security forces will impose order, but not necessarily within the context of respect for citizen's rights, which many view as incompatible with public order. Chilean citizens consistently describe the judiciary as more corrupt than the armed forces or the police.<sup>44</sup>

A U.S. \$500 million campaign<sup>45</sup> to modernize and transform the Chilean judiciary did not contemplate the transfer of jurisdiction over the country's police from the military courts to the civilian courts because it was not politically feasible to do so. The Chilean *Código de Justicia Militar* (Military Justice Code) dates from 1925 and since that time has undergone no significant change. According to the Military Justice Code, the *Carabineros*, like the armed forces, are covered by military jurisdiction including military and civilian issues in which they are involved. A typical example is a street protest, where there is an altercation between a *Carabinero* and a civilian and the *Carabinero* is injured. The civilian is then subject to jurisdiction of the military courts. A *Carabinero* is never subject to jurisdiction of the civilian courts; any charge against them enjoys exclusive jurisdiction in the military courts, regardless of the charge-triggering event occurring outside the scope of their duties as *Carabineros*.

These practices were ultimately not addressed in Chile's judicial reform. It was considered that a discussion of these practices would politicize the judicial reform discussion, leading to a breakdown of the process and making any reform impossible.<sup>46</sup> The *Carabineros*, as an institution, put forth a strong lobbying effort at the time that Chile's judicial reforms were under discussion, ensuring that they would avoid the jurisdiction of the civilian courts.<sup>47</sup> Dialogue ensued, whereby it was agreed that all cases not pertaining to military issues should be removed from the Military Justice Code and returned to civilian jurisdiction. This discourse has not been followed by substantive change.

The obstacles to judicial reform in Chile have been many. The transition to democracy in Chile is best viewed as a series of interlocking pacts between the democratic opposition and the military regime.<sup>48</sup> They include a constitutional pact in which the political opposition accepted Pinochet's 1980 Constitution; a party pact in which the political opposition agreed to work within Pinochet's institutional framework; an electoral and governmental pact in which groups would compete for the presidency and congressional seats within the unfavorable electoral laws established by Pinochet; and an institutional pact, which guaranteed the armed forces that the transition would occur within existing institutional arrangements.<sup>49</sup> Each pact perpetuated aspects of the military's institutional regime within the subsequent political democracy.

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<sup>43</sup> *Id.*

<sup>44</sup> ENA VON BAER & BERNADITA MAZO, *LIBERTAD Y DESARROLLO, SERIE INFORME POLÍTICO N° 90, ENCUESTA DE CORRUPCIÓN 2005: PERCEPCIÓN Y REALIDAD* (2005).

<sup>45</sup> Interview with Jaime Arellano, Undersecretary of Justice, Chile, in Santiago, Chile (Dec. 15, 2004).

<sup>46</sup> *Id.*

<sup>47</sup> Interview with Claudio Fuentes, Director of FLACSO-Chile, in Santiago, Chile (Jan. 16, 2005).

<sup>48</sup> JULIA PALEY, *MARKETING DEMOCRACY: POWER AND SOCIAL MOVEMENTS IN POST-DICTATORSHIP CHILE* (2001).

<sup>49</sup> *Id.*

Authoritarian legacies may explain the persistence of police violence but do not adequately explain why nothing is done to stop it. If police autonomy explains the violence, it does not explain why policymakers in a democratic society do little to stop police misbehavior and do not reform police institutions. As military institutions maintain their institutional prerogatives inherited from the dictatorship the country's institutional order remains less than democratic.

If we define military subordination as the armed forces' acceptance of civilian supremacy over basic policy decisions, military subordination can vary from indirect or informal influence in the state decision-making process to direct intervention in political affairs. Direct and indirect influence of the military in contemporary political life challenges the belief that once democracy is reestablished, the military will peacefully return to the barracks and cease its influence on national political development.

Rapid changes could be made in the juridico-formal definition of the military's role, such as redrafting constitutions and laws which assign it the role of the sovereign adjudicator, or which link it to institutions other than those held by electorally accountable executives.<sup>50</sup> Because legacies of the dictatorship-era political arrangements appear to be institutionalized, however, further change to the military's role in Chile appears a distant prospect.

#### b. Police Violence

Chileans elect authorities fairly and freely but still suffer mistreatment and abuse of authority. Paradoxically, Chile's *Carabineros* enjoy high levels of citizen confidence, while torture reports indicate that *Carabineros* might best be viewed as a citizen security concern. The perception of injustice is the first pre-condition for change. Dialogue and investigation are critical in bringing about the recognition of and solution for this problem.

Police violence is not simply a hangover from the military regime, but instead shares with the dictatorship common roots in an old authoritarian tradition. It is not clear whether inherited "values" of authoritarianism are the cause rather than the effect of other social, economic, and political conditions.

*Carabineros* were active participants in a military regime that massively violated human rights and mechanisms of accountability for past and present abuses have been weak. We see in Chile the existence of an insulated corporate police institution with legal privileges inherited from the past military regime.

The identification of cases of police brutality imposes a serious methodological challenge because many times victims of police violence do not file legal complaints; judicial records are not always available, due to a complete lack of transparency in military courts; and the media reports only a fraction of the cases. Chile is a puzzling case because, despite evidence suggesting constant police violence since the re-establishment of democracy, center-left civil authorities have adopted a defensive

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<sup>50</sup> GUILLERMO O'DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 32 (1986).

position that denies the existence of this problem. In three consecutive governments of the *Concertación*, we have seen no effective police reform. During this time, the police have become the primary and principal violator of human rights in the country.

The first empirical study of prisoner abuse was carried out in 1992, two years following Chile's return to democracy. More than two-thirds of the prison population surveyed indicated they had been abused at the time of arrest. The prisoners detailed their abuses, the most common forms of abuse being beatings (74%); electric shocks (49%); forced undressing (20%); and immersion under water, followed by electric shocks or asphyxiation (15%).<sup>51</sup> In 1993, 40% of Santiago's Appeals Court judges opined that police arrest practices did not conform with legal norms.<sup>52</sup>

*La Corporación de Derechos del Pueblo* (CODEPU) was created in 1980 to provide legal, social and medical assistance to victims of torture committed by state agents during the military regime. Beginning in 1990, CODEPU continued legal and social work, bringing claims for police abuse. Between 1990 and 1998, CODEPU presented 212 cases of police abuse to the courts.<sup>53</sup>

An analysis of charges filed against *Carabineros* for police violence, between 1990 and 2004, reveals 6,083 cases in the IV, V, VI and Metropolitan (Santiago) regions of Chile. Since the reestablishment of democracy in Chile, there have been an average of 405 charges of police violence annually in Chile's central zone, equating to more than one charge a day.<sup>54</sup> Close to 93 percent of these cases have been dismissed or stayed and only 3.2 percent of the charges have resulted in a formal conviction against a *Carabinero*.<sup>55</sup>

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<sup>51</sup> Claudio Fuentes, *Denuncias por Actos de Violencia Policial*, Santiago, Chile, FLACSO-Chile, 2001, at 21.

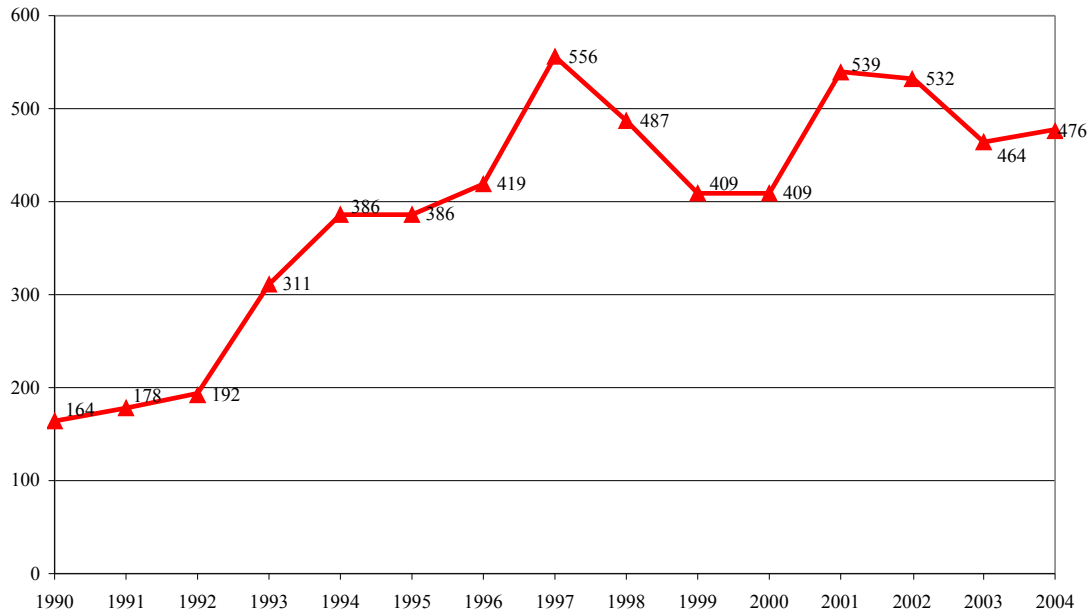
<sup>52</sup> *Id.* at 18-19.

<sup>53</sup> *Id.* at 24.

<sup>54</sup> Gonzalo Álvarez & Claudio Fuentes, *Denuncias por actos de violencia policial en Chile 1990-2004*, OBSERVATORIO N° 3, JUNIO, 2005, PROGRAMA DE SEGURIDAD Y CIUDADANÍA FLACSO-CHILE, at 1.

<sup>55</sup> *Id.* at 2.

**Charges of Police Violence brought before Military Courts, IV, V, VI and Metropolitan Regions, Chile**



Source: Gonzalo Álvarez & Claudio Fuentes, *Denuncias por actos de violencia policial en Chile 1990-2004*, OBSERVATORIO N° 3, JUNIO, 2005, PROGRAMA DE SEGURIDAD Y CIUDADANÍA FLACSO-CHILE.

Why have we seen a continued and increasing number of reports of police violence? There has been a political opening to allow these types of claims to be made, but the political space is not available to resolve the problem. Police violence probably has not increased since the end of the military dictatorship, but it likely has maintained a continuum and the number of people who report the violence has increased. Why is this not a relevant theme in public opinion or in the agenda of police reform in Chile? And, what are the consequences?

The persistence of police violence is attributed to a lack of investigation on the topic and, when such studies are carried out, we see limited publication of them.<sup>56</sup> Civil society must be informed, of their rights and of the police abuses, to bring about accountability and change.

Police violence is one issue and another, related issue, is the military court jurisdiction over civilians in Chile. During the period running from 1990 to 1996, almost 70 percent of the cases tried before the military courts involved a civilian, either as the defendant or the victim.<sup>57</sup> Military courts have exclusive jurisdiction over civilians accused of violence against the police.<sup>58</sup> Reform to the jurisdiction of military tribunals is an obligation that has been delayed, even as the Chilean laws are in place

<sup>56</sup> FACULTAD DE DERECHO, UNIVERSIDAD DIEGO PORTALES, INFORME ANUAL SOBRE DERECHOS HUMANOS EN CHILE 2005, HECHOS DE 2004 (2005).

<sup>57</sup> Jaime Couso Salas, *Competencia de la Justicia Militar: una Perspectiva Político- Criminal*, in HACIA UNA REFORMA DE LA JUSTICIA MILITAR: DELITO MILITAR, REGIMEN DISCIPLINARIO, COMPETENCIA Y ORGANIZACIÓN, 73-78 (2002).

<sup>58</sup> *Indebido Proceso: Los Juicios Antiterroristas, Los Tribunales Militares y Los Mapuche en el Sur de Chile*, por Human Rights Watch y el Observatorio de Derechos de los Pueblos Indígenas, Human Rights Watch, Vol. 16, N° 5 (B): 8.

guaranteeing due process and a fair trial. Access to impartial justice is all that is offered to those affected by the abusive conduct of police and military officials. It has been 17 years since the then-President of Chile's Supreme Court, Luis Maldonado, criticized the lack of independence of military court judges. A guilty verdict reached on behalf of the military court judges hurts the institutional image of the military, especially relevant in an institution that aims to present itself as a united front and is recognized for fierce political lobbying and aggressive public-relations campaigns.

Perhaps as disturbing as the persistent use of torture against civilians are the techniques employed, as they also represent a carryover from Chile's dictatorship days. Authoritarian legacies, that is, the maintenance of police practices inherited from the past military regime's highly autonomous security force, explain the persistence of police violence. This tradition of authoritarianism influences political actors' values on the use of force. Politicians and civil society generally believe that what is earned in freedom and the protection of individual rights is lost in public safety. Combined, these factors make advancing the protection of individual rights a more difficult task than maintaining the status quo.

The Amnesty International Annual World Report released May 28, 2002, reported that Chile's *Carabineros* had used excessive force in a number of incidents including when dispersing peaceful demonstrations. The report detailed that scores of protesters had been subjected to ill-treatment during arrest and while detained in police stations in Santiago. Amnesty further reported that in November of 2001, Gladys Marín, Secretary General of Chile's Communist Party, and other Communist Party members were beaten by *Carabineros* during an eviction at the party headquarters in Santiago. Those arrested were subsequently released without charge.<sup>59</sup> The Amnesty International Annual World Report 2003 detailed further confrontations and reports of excessive use of force by *Carabineros* in the context of continuing disputes over land rights in the south of Chile.<sup>60</sup> In May of 2004, Amnesty submitted its concerns to the United Nations Committee Against Torture, on the occasion of their examining Chile's report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The submission outlined repeated reports of torture and ill-treatment of people arrested by *Carabineros*, and the lack of thorough, independent and conclusive investigations into such complaints. The submission noted that, despite the adoption of legislative measures and procedural reforms in the Chilean Criminal Procedure Code, Amnesty had continued to receive reports of torture and ill-treatment, including of political prisoners, by members of the prison guard. In all cases Amnesty's concerns had been submitted to the relevant Chilean authorities but Amnesty had received no information indicating that the complaints have been investigated.<sup>61</sup> This failure to thoroughly investigate reports of torture and abuse breeds a climate of impunity which allows these practices to continue.

The Human Rights Watch World Report 2005 noted that a still unresolved legacy of the Pinochet era was the problem of continued military court jurisdiction over crimes

<sup>59</sup> *Amnesty International Report 2002*, at <http://web.amnesty.org/report2002/amr/chile!Open>.

<sup>60</sup> *Amnesty International Report 2003*, at <http://web.amnesty.org/report2003/Chl-summary-eng>.

<sup>61</sup> *Chile: Concerns on Torture and other Cruel, Inhuman or Degrading Treatment; Implementation of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Amnesty International (2004), at <http://web.amnesty.org/library/Index/ENGAMR220062004?open&of=ENG-CHL>.

involving police, however, the Report also claimed that the introduction of the new Criminal Procedure Code had helped reduce complaints of torture and mistreatment by the *Carabineros*,<sup>62</sup> an assertion that conflicts with data compiled by the *Programa de Seguridad y Ciudadanía* of FLACSO-Chile, under the direction of Dr. Claudio Fuentes, which indicates that charges of police violence are actually on the rise.<sup>63</sup> Additionally, it should be questioned why Chile's Criminal Procedure Code would have an affect of reducing complaints of human rights violations at the hands of the *Carabineros*, as *Carabineros* are not subject to the Code and the Code does not grant citizens access to the civilian courts to bring charges against the *Carabineros* for abuse.

The United States Department of State's 2005 Country Report on Human Rights Practices, describing Chile, stated that civilian authorities generally maintained effective control of the security forces and that while the government generally respected the human rights of its citizens, human rights problems included isolated reports of excessive use of force and mistreatment by police forces and physical abuse in jails and prisons; substandard prison conditions; and failure to advise detainees promptly of charges against them and to grant them a timely hearing.<sup>64</sup>

The Human Rights Watch World Report 2006 details that in Chile, the Lagos government failed to tackle reform of the over-extended system of military justice, which continued to allow civilians to be prosecuted by military courts for assaults on police and even speech offenses. The Report did claim, however, that the introduction of the new Criminal Procedure Code throughout Chile had improved due process guarantees for defendants facing criminal prosecution.<sup>65</sup> Not all Chileans have benefited equally from implementation of the new Code.

### c. International Convention Obligations

Chile was a founding member of both the United Nations (UN) and the Organization of American States (OAS) and was one of the countries on the drafting committee which produced the 1948 Universal Declaration of Human Rights. Chile, as a member of the OAS, is bound by the provisions of the American Declaration on the Rights and Duties of Man and has also ratified the Geneva Convention of 1948.

The International Covenant on Civil and Political Rights (ICCPR) was ratified by Chile in February 1972 and promulgated by Decree 778 in November 1976, but the procedure to incorporate international conventions into the domestic legal framework was not completed until April 1989. In July 1989 a number of amendments to the 1980 Chilean Constitution were enacted, giving constitutional status to international conventions ratified by Chile.

By 1990, Chile had signed many conventions on human rights and “was obligated to pursue procedures and judgments according to the rule of law and due process but

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<sup>62</sup> *Human Rights Watch World Report 2005*, at <http://hrw.org/english/docs/2005/01/13/chile9846.htm>.

<sup>63</sup> Gonzalo Álvarez & Claudio Fuentes, *Denuncias por actos de violencia policial en Chile 1990-2004*, OBSERVATORIO N° 3, JUNIO, 2005, PROGRAMA DE SEGURIDAD Y CIUDADANÍA FLACSO-CHILE.

<sup>64</sup> *2005 Country Reports on Human Rights Practices*, United States Department of State, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61720.htm>.

<sup>65</sup> *Human Rights Watch World Report 2006*, at <http://hrw.org/english/docs/2006/01/18/chile12205.htm>.

these reforms were not just to support an international image. It was also because the old system was not helping citizens; it was not respecting their rights.”<sup>66</sup>

In December 1990 and August 1992 respectively, Chile recognized the competence of the UN Human Rights Committee (Committee) under Article 41 of the ICCPR and the Optional Protocol to the Covenant ratified in August 1992. Also during 1990, Chile withdrew its reservations to the Inter-American Convention to Prevent and Punish Torture and to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Major concerns with regards to Chile’s implementation of the ICCPR include torture and ill-treatment of detainees by members of the security forces, principally the *Carabineros*, and the lack of thorough, independent and conclusive investigation into such reports. Reports that detainees have died as a result of torture while under the custody of *Carabineros* magnify the importance of the situation. The ICCPR requires the prompt and thorough investigation of all allegations of torture and ill-treatment with those responsible brought to justice. The Committee, the body of 18 experts which monitors implementation of the ICCPR, has explained that article 7 of the treaty requires that complaints of torture and ill-treatment must be investigated promptly and impartially by the competent authorities.<sup>67</sup>

Human rights violations committed by members of the army and *Carabineros* fall under the jurisdiction of military justice according to Chilean legislation. Such a system generates impunity and denies the right of effective recourse before the law, to victims and relatives of victims of human rights violations. Military courts in Chile do not guarantee the right to justice. Instead, the actions of the military courts have served to provide a veneer of legality to cover-up the impunity which the members of the Chilean military, including the *Carabineros*, enjoy when they are found to be involved in flagrant violations of human rights.<sup>68</sup> Despite Chile’s return to democracy, the military legislation remains substantially unchanged and continues to be a source of impunity for the military’s past and present human rights violations.

The Committee and the Inter-American Commission on Human Rights have repeatedly stated that the trial of members of the armed forces accused of human rights violations in military courts is incompatible with the obligations of States under international law. Article 16(2) of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly in December 1992, stipulates that those responsible for forced disappearances "shall be tried only by the competent ordinary courts in each State, and not in any other special tribunal, in particular, military courts". In his January 1996 report, the UN Special Rapporteur on Torture documented cases in Chile of ill-treatment by police of detainees accused of ordinary offences, the frequency of which he considered to be such that they could not be seen as isolated incidents. The report stated that it was essential to bring procedures governing incommunicado detention fully into line with the provisions of

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<sup>66</sup> Interview with Juan Cristóbal Gonzalez, Attorney and Director of International Relations Division, Ministry of Justice, Chile, in Santiago, Chile (Dec. 7, 2005).

<sup>67</sup> General Comment No. 20, in U.N. Doc. HRI/GEN/1, para.14.

<sup>68</sup> In O.A.S. Doc. OAS/Ser.L/V/II.66, para.180.

the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>69</sup>

The Inter-American Commission has stated that placing civilians under the jurisdiction of the military courts is contrary to articles 8 and 25 of the Inter-American Convention and that military courts are special and purely functional courts designed to maintain discipline in the military and police and ought therefore to apply exclusively to those forces.<sup>70</sup> The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that began in the civilian courts contribute to the impunity which such personnel enjoy against punishment for serious human rights violations.

The continuing jurisdiction of Chilean military courts over civilians does not comply with article 14 of the ICCPR. Between 1990 and 1996, almost 70 percent of the cases tried by the military courts involved civilians.<sup>71</sup> In recent decades there has appeared a clear doctrine, derived from the jurisprudence of international human rights organizations that affirms that the jurisdiction of military courts over civilians violates the due process guarantees provided for by article 14 of the ICCPR.<sup>72</sup> In its General Comment 13, issued in 1984, the Committee noted the existence, in many countries, of military or special tribunals which try civilians and could present serious problems as far as the equitable, impartial and independent administration of justice. The Committee reasoned that often such courts are established to enable exceptional procedures to be applied which do not comply with normal standards of justice. The ICCPR does not prohibit these categories of courts but the Committee noted the conditions which it lays down clearly indicate that “the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14.”<sup>73</sup>

In the 1990s, the position of the Committee with respect to the military courts was reaffirmed and strengthened as the Committee rejected their use to try civilians in any circumstance or to try military personnel for offenses that were not committed in the exercise of military functions. The Committee pointed out in its final observations of 1999 that allegations of torture, the issue of military jurisdiction and the right to a fair trial compromised Chile’s compliance with the ICCPR. Amnesty followed the Committee’s observations with a call for progress to be made in effecting reforms to limit the extensive jurisdiction of the military courts, noting that military court jurisdiction over human rights violations committed by members of the army and the *Carabineros* encourages impunity and denies the victims of human rights violations an effective judicial remedy.<sup>74</sup>

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<sup>69</sup> Memorandum to the Government of the Republic of Chile, Amnesty International’s Secretary General on Mission to Chile, Oct. 1-6, 2000.

<sup>70</sup> Annual Report of the Inter-American Commission, at 502, O.A.S. Doc. OEA/Ser.L/V/II.85(1993).

<sup>71</sup> Jaime Couso Salas, *Competencia de la Justicia Militar: una Perspectiva Política Criminal* in *HACÍA UNA REFORMA DE LA JUSTICIA MILITAR: DELITO MILITAR, RÉGIMEN DISCIPLINARIO, COMPETENCIA Y ORGANIZACIÓN* 73-78 (Jorge Mera ed., 2002).

<sup>72</sup> International Covenant on Civil and Political Rights, U.N. Doc. A/6316 (1966).

<sup>73</sup> General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14), April 13, 1984, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument) .

<sup>74</sup> Memorandum to the Government of the Republic of Chile, Amnesty International’s Secretary General on Mission to Chile, Oct. 1-6, 2000.

While the aforementioned efforts of international human rights organizations are commendable, this community, while continuing to apply pressure on Chile to conform with international norms and obligations, generally focuses their efforts and energies on Chile's failure to bring past perpetrators of gross abuses to justice. Human rights violations can and do occur in democratic societies and while the impunity for past violations has contributed to the current abuse and impunity climate in Chile, accountability for past violations must not come at the expense of failing to reconcile present ones.

Chile's obligations under international law are inconsistent with current practices of torture and ill-treatment of detainees by members of the security forces, principally the *Carabineros*, and the lack of thorough, independent and conclusive investigation into such reports. Trial of members of the armed forces accused of human rights violations in military courts is incompatible with international law norms and the expanded jurisdiction of military courts to also include civilians is extremely problematic in a democratic society. The trying of civilians by military courts, if at all, must be an exceptional circumstance and take place under conditions which genuinely afford due process guarantees and the right to a fair trial.

### III. Conclusion

#### a. Legal and Social Change in Chile

The repressive Pinochet years left a heavy legacy of apprehension. Chileans had developed protective behaviors as survival strategies under the authoritarian regime; people were afraid to speak their minds openly, and they learned to practice a high degree of self-censorship. This fear limited popular participation. Pinochet's legacies were not solely psychological, as the political institutions inherited from Pinochet contained many undemocratic features.

Understanding the relationship between law and society is critical, as the societal context affects the implementation of laws and vice versa. Legal change produces repercussions in society and similarly, social change can provoke further legal change.<sup>75</sup> It was in this way that Chile's judicial reforms came about. In Chile today we see increased citizen expectations with regards to the judiciary.

The Chilean judicial transformation, however, is incomplete. Authoritarian legacies persist and these legacies have created space for parallel, separate and unequal systems of justice. Under the current arrangement, Chilean security forces continue to act with impunity at the expense of citizen security, not as effective guardians of it.

#### b. Perceived Tension Between Citizen Security and Human Rights

One component of the relationship between social and legal change is the virtually society-wide perceived tension between citizen security and human rights. The

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<sup>75</sup> Hugo Rojas, *Cambios Sociales y Cambios Jurídicos en Chile: Construyendo Nuevos Puentes Entre Sociología y Derecho en la Promoción del Realismo Jurídico Latinoamericano*, 13 BERKELEY LA RAZA L.J. 453 (2002).

safeguarding of citizen security and the protection of human rights is generally viewed in Chile as a zero sum game or as mutually incompatible goals.

Governments in any society face a difficult trade-off between maintaining public order and protecting individual citizen rights. Citizens want not only to be safe from police abuses but also to be safe from crime. In Chile, society actors see the reduction of police powers as an obstacle to public order.

What is fundamentally at stake in this issue is the change of the armed forces' messianic self-image as the institution ultimately interpreting and ensuring the highest interests of the nation. Such a conception, frequently linked to ideologies of national security, implies that the armed forces should have an indisputable monopoly on determining what those interests are, and when and how they are being menaced.<sup>76</sup> Demilitarization is not a military specific issue. In no case in Latin America has the military intervened to topple a democratically-elected government without important and active civilian support.<sup>77</sup> Social and legal change, among civilians and within the military, will be critical in Chile's continued consolidation of democracy and respect for individual rights.

c. Recognition of the Problem as a Pre-Condition for Change

Agenda setting, through campaigns to increase public awareness; legal reform, through legislative passage; and monitoring activities over police institutions to ensure policy compliance are critical measures that must be undertaken to ensure that the armed forces' impunity for human rights violations, guaranteed through military court jurisdiction, ceases. Chilean citizens must be able to hold their security forces accountable for breaches of the law and these citizens must be guaranteed due process and access to impartial justice through civilian courts, and only in exceptional circumstances should a civilian be tried in a military court. Chile's great strides in providing increased accountability from and access to the judiciary through a revolutionary program of judicial reform have omitted military court re-jurisdiction at the expense of citizen security and the continued consolidation of democracy.

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<sup>76</sup> GUILLERMO O'DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 31 (1986).

<sup>77</sup> *Id.*