Chile’s Carabineros: A Challenge to Democracy?

Criminal Procedure Reform without Military Justice Reform

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Meredith Fensom
Director, Law & Policy in the Americas Program
Chile’s *Carabineros*: A Challenge to Democracy?

Background to Reform

- Orthodox Inquisitorial System
- History of Judicial Independence
- Breakdown
Return to Democracy

- 1990: “Judicial Bench is in Crisis.”
- October 1999: law establishing a *Ministerio Público* published in the *Diario Oficial*
- Criminal justice system shifts to public trials, oral hearings, and adversarial presentation of evidence.
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1973-1990

- Military Court jurisdiction expanded
  - By mid-1980s, 95 percent of those in military courts are civilians
- Transformation of *Carabineros*
  - 1927: Created as deterrent to military adventurism, under Ministry of the Interior
  - 1973: Assigned to Ministry of Defense
  - 1991: Rettig Report established *Carabineros* responsible for over 50% of military regime human rights violations resulting in death.
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http://www.carabinerosdechile.cl/
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Democratic Consolidation & Military Subordination

- Democracy
  - Lack of restriction on citizen expression
  - Absence of discrimination against particular political parties
  - Freedom of association for all interests
  - Civilian control over the military
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Criminal Procedure Reform without Military Justice Reform
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 Nº 3, junio, 2005, programa de seguridad y ciudadanía FLACSO-Chile.
6,083 charges of police violence have been filed in the military courts of the IV, V, VI and Metropolitan Regions of Chile since the country's return to democracy in 1990.

International Convention Obligations

Trial of members of the armed forces accused of human rights violations in military courts is incompatible with international law norms. 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.
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Legal & Social Change

- Understanding relationship between law & society critical; societal context affects implementation of laws and vice versa
- Legal change produces repercussions in society; social change can provoke further legal change
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Citizen Security & Human Rights

- Perceived tension
- Safeguarding of citizen security & protection of human rights viewed as zero sum game, mutually incompatible goals
- Reduction of police powers an obstacle to public order?
- Demilitarization not a military specific issue
TRUST IN POLICE, TOTALS BY COUNTRY 2005

Q: Would you say you have a lot, some, a little or no confidence?

Percentage of respondents who said “a lot” or “some.”

Latinobarómetro 2005.
Trust in Groups/Institutions, Totals for Chile 2005

Q: Would you say you have a lot, some, a little or no confidence?
Percentage of respondents who said “a lot” or “some.”

- Police: 64%
- Armed Forces: 49%
- Congress: 37%
- Judiciary: 27%
- Political Parties: 17%

Latinobarómetro 2005.
Recognition of the Problem as a Pre-Condition for Change

- Agenda setting, through campaigns to increase public awareness;
- Legal reform, through legislative passage;
- Monitoring activities over police institutions to ensure policy compliance