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**REPORT No. 458/21**

**CASE 12.880**

REPORT ON MERITS (PUBLICATION)

EDMUNDO ALEX LEMUN SAAVEDRA AND OTHERS  
CHILE

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## I. SUMMARY

1. On April 25, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a complaint filed by two individuals who requested that their identities be withheld, alleging the international responsibility of the State of Chile (hereinafter "Chile", "the State" or "the Chilean State"). The complaint states that the adolescent Edmundo Alex Lemun Saavedra (hereinafter "Alex Lemun" or "the alleged victim"), aged 17 and a member of the Mapuche indigenous people, was extrajudicially executed on November 7, 2002, by a State agent during a Carabineros military police operation. They also allege that military courts – which prosecuted, and ultimately acquitted the State agent involved- lacked jurisdiction, impartiality and independence to hear the case. In a communication received on November 4, 2009, Blanca Sonia Saavedra Horia and Edmundo del Carmen Lemun Necul - Alex Lemun's parents - and the Center for Justice and International Law (CEJIL) informed the IACHR that CEJIL would appear as petitioner in the case.

2. For its part, Chile stated its intention to protect human rights and promote a culture of respect and non-discrimination towards indigenous peoples. Additionally, it provides information on measures implemented by the *Carabineros* since 2002 in connection with international standards for the use of force and the protection of vulnerable groups. With regard to the events of November 7, 2002, when Alex Lemun was killed, the State argued that it was the result of a police operation by the officers of the Angol Police Station, in compliance with an order issued by a competent authority, in full exercise of their police functions. In its view, military courts acted according to standards of competence, independence and impartiality in this case.

3. After analyzing the position of the parties, the Commission concluded that the State is responsible for violating the rights to life, personal integrity, equality and non-discrimination, and the rights of the child as established in articles 4.1, 5.1, 24 and 19 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in connection with Article 1.1 of the same instrument to the detriment of the Mapuche adolescent Edmundo Alex Lemun Saavedra. The Commission also concluded that the State is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention in relation to Articles 1.1 and 2 of the same instrument to the detriment Edmundo Alex Lemun Saavedra's relatives. Finally, the Commission concluded that the State is responsible for the violation of the right to personal integrity and equality and non-discrimination established in Articles 5.1 and 24 of the American Convention in relation to its Article 1.1 to the detriment of Edmundo Alex Lemun Saavedra's family members and of the Requien Lemun Mapuche community, currently named Alex Lemun.

## II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT 81/12

4. On April 26, 2006, the IACHR received the initial petition. The proceedings carried out as from the filing of the petition until the decision on admissibility is explained in detail in Admissibility Report 81/12 issued on November 8, 2012. The Commission transmitted the admissibility report to both parties and granted the petitioners three months to submit additional observations on the merits. It also made itself available to the parties to reach a friendly settlement of the matter. The parties showed no interest in initiating a friendly settlement process.

5. The petitioners' response was received on May 28, 2013, and sent to the State on July 22, 2013, with a period of three months to submit observations on the merits. The State's observations were received on December 18, 2013. The petitioners submitted additional observations on February 28, 2014. On November 18, 2015, the State submitted a brief containing additional observations.

## III. POSITION OF THE PARTIES

### A. Petitioners

6. The petitioners provide socio-demographic information about the Mapuche people. They indicate that according to a census carried out in 2012, 11.11% of the total population considered itself as belonging to an

indigenous people; and of those, 84.11% consider themselves Mapuche. They also provide historical background on the claims to ancestral territory of the Mapuche people in Chile

7. They point out that the situation of social non-recognition, violence and territorial dispossession led the Mapuche people in the 1980's to mobilize in defense of their rights, in particular the right to their land. According to the petitioners, with the arrival of democracy in the 1990's, these claims were channeled through State-sponsored institutions such as the Special Commission on Indigenous Peoples . They add that indigenous people continue to be victims of serious violations of human rights and marginalized from participation in public life, despite the efforts carried out since the 1990s - such as the adoption of Law 19.253 recognizing indigenous culture and the creation of the National Corporation for Indigenous Development (CONADI) or the ratification of ILO Convention 169 and other international human rights treaties.

8. According to the petitioners, this situation of exclusion together with a State policy of promoting undertakings on Mapuche ancestral territories in violation of international standards, fueled territorial claims by various Mapuche organizations. In their view, the State responded by implementation of a policy of judicial persecution, criminalization of collective action, militarization of Mapuche ancestral lands, violence and police intimidation against those who participated in gatherings and public demonstrations claiming the rights of the Mapuche people.

9. In this context, they argue that the State's response has resulted in violent police operations and confrontations with members of the Mapuche communities, impacting a significant number of community members and, in particular, women, children and adolescents. They indicate that between 1999 and 2002 there have been a series of violent police operations involving the disproportionate and illegitimate use of force by the *Carabineros*, causing injuries to various Mapuche individuals.

10. They point out that Edmundo Alex Lemun Saavedra belonged to the Mapuche community Requien Lemun. According to the petitioners, the family lived in a modest dwelling in the community; with the father engaged in tilling the land and raising animals and the mother caring for the children, the household and their vegetable plot. They argue that despite economic hardship, Mr. Lemun Necul worked and encouraged his children to study and respect their ancestral traditions. Alex Lemun studied in secondary school and worked in the community. He was well regarded for his commitment and solidarity; he shared the community spaces and took part in the activities relating to the claims for the ancestral rights of the Mapuche people. After his alleged extrajudicial execution, his siblings were targeted and harassed by the *Carabineros*.

11. With regard to the events of November 7, 2002, they allege that in the previous months a group from the Montutui Mapu ("reclaiming land") community sporadically occupied a piece of land, located in the Ercilla commune, IX region, as part of the claim and recovery of lands occupied by logging companies. They allege that on November 7, 2002, Alex Lemun was involved in these claims with his brother Armando Arturo when three *Carabineros* commanded by Major Marco Aurelio Treuer Heysen arrived in order to verify the occupation, on the orders of General Bernales. According to the petitioners, the *Carabineros* did not attempt to dialogue with the demonstrators. Instead they used their firearms disproportionately even though the Mapuche were unarmed. They indicate that one of the shots hit Alex Lemun in the forehead seriously injuring him. He was taken by members of the community in an ox cart to the place where they were met by the ambulance almost an hour after Alex Lemun's family informed the authorities and requested assistance. They indicate that after five days in an intensive care unit Alex Lemun died on 12 November 2012

12. Regarding the investigation of these events, the petitioners report that the matter was brought before the civil, military and administrative jurisdictions. On November 19, 2002, the sole civil jurisdiction Prosecutor declared himself incompetent and transferred the file to the Angol Military Prosecutor.

13. The petitioners indicate that on September 17, 2004, the Military Court ordered a total and temporary dismissal of the case, a decision upheld by Court Martial on March 18, 2005.

14. With regard to the administrative proceedings, they report that by Resolution No. 46 of December 22, 2002, a disciplinary measure consisting of a day's arrest with services was imposed on Major Treuer. This decision was made final on February 2003.

15. The petitioners allege that Alex Lemun Saavedra's death was an arbitrary deprivation of life understood as an extrajudicial or summary execution. They also allege that his personal integrity and that of his family members was affected and that the investigation into the events before the military courts violated judicial guarantees and judicial protection. Due to the fact that Alex Lemun was 17 at the time of his extrajudicial execution, the context of discrimination against the Mapuche people and a systematic practice of police abuse particularly affecting Mapuche children and adolescents, they argue that the State also violated the duty to provide special protection to children and equality before the law.

## **B. The State**

16. Chile stated its intention to protect human rights and promote a culture of respect and non-discrimination. It adds that indigenous peoples benefit from the legal rules applicable to all Chileans and from a set of special provisions addressing the social, economic and cultural development of indigenous peoples, as well as their enhanced legal protection

17. The State indicates that this indigenous policy has been called the "Historical Reunion" and focuses on dialogue with the nine indigenous peoples living in Chile in order to ensure access to opportunities for their development with full respect for their rights, traditions, identity and culture. The State points out that the ILO Convention 169 is essential to this policy, and that the Council of Ministers for Indigenous Affairs has been established to this effect.

18. The State indicates that the focus of indigenous policy in Chile has among its objectives the constitutional recognition of indigenous peoples. It adds that in 2013 the Environmental Assessment Service incorporated into environmental law a special indigenous consultation, distinct from the general citizen participation for projects that directly affect indigenous peoples. It also mentions consultations and a "Consensus Panel" for a new general set of rules for indigenous consultation, and an agreement between the State and the indigenous representatives to repeal Supreme Decree 124 of 2009 regulating the consultation and participation of indigenous peoples.

19. With regard to land issues, it argues that it has promoted mechanisms for the conveyance of land to indigenous people under transparent and objective conditions. On the subject of poverty, the State reports that according to the 2011 CASEN survey in Chile, 8.1% of the population is indigenous (1,369,563 people), the Mapuche people constituting 86.4% of the total. The State adds that while Chile has taken steps to defeat poverty, improve the quality of life and develop the country as a whole, bridging the gap between the indigenous and non-indigenous population among others, is still a pending task.

20. The State provides information on a number of programs aimed at strengthening indigenous peoples' empowerment, health and education. Regarding non-discrimination policy, the State reports on a number of legislative and administrative measures. With regard to "ethnic minorities", the State indicates that activities will be focused on greater participation and consultation, wider comprehensive development of production capacities, quality education and protection and respect for their culture and identity.

21. Regarding police violence and the alleged violation of the rights of the Mapuche people, specifically in the case of Alex Lemun, the State reports that his death occurred in the context of compliance with a protection measure issued by the Angol Local Prosecutor's Office and addressed to Major Treuer, in his capacity as superintendent of the 1st. Angol police station. He had orders to patrol in order to prevent the extraction of wood from the Santa Alicia estate while protecting the transportation of logs by the logging company Mininco S.A. as administrators of the property. It indicates that the Public Prosecutor's office issued this order on the basis of a complaint on the occupation of land and damage caused by a Mapuche community.

22. With regard to the events of November 7, 2002, when Alex Lemun was killed, the State argues that according to internal reports, Major Treuer used his firearm to defend himself and his officers, in response to shots fired by the Mapuche community. It adds that the Malleco Prefecture concluded, as a result of an administrative investigation, that the planning and tactics of the police operation did not comply with previous orders, and that therefore Major Treuer was subject to arrest for one day, and that in November 2010, his request for voluntary retirement from the *Carabineros* was granted by the Ministry of Defense.

23. The State reports that in November 2011 a Human Rights Department was created at the *Carabineros* to promote, among other things, the integration of human rights within the organization. It states that one of its tasks was to revise the applicable standards on the use of force and to design specific procedures for the protection of indigenous peoples. The model was designed with the participation of the International Committee of the Red Cross. In December 2012, a revision of the protocols applicable to all types of use of force including the maintenance of public order to conform to international standards was ordered. The State reports on a number of other actions taken by the *Carabineros* in relation to Mapuche indigenous communities.

24. Regarding the military jurisdiction, the State argues that it was established due to the particularity, functionality and specialty of the armed forces and public order and security in the fulfillment of constitutional duties. According to the State, the procedure in this jurisdiction complies with international standards. It adds that in Chilean military justice, the judges in charge of the investigation phase act with full independence and impartiality from the parties or others not involved in the criminal investigation: if a member of the *Carabineros* is subject to prosecution, Army officers – a separate branch of the security forces - are in charge of the investigation and of taking all necessary procedural steps to determine responsibility. The State indicates that Article 6 of the Code of Military Justice subjects the *Carabineros* to military justice, and defines their police function as military in their role as an obedient, non-deliberative, professional, hierarchical and disciplined armed body whose main purpose is to ensure order and internal security.

25. On the application of military justice to the present case, the State alleges that what happened does not constitute a common crime, nor a terrorist offense nor crimes against humanity, but an action by officers in full exercise of their police functions. It emphasizes that the first procedural steps taken in the investigation were carried out by a civilian prosecutor attached to the Public Ministry.

26. Notwithstanding the foregoing, it points out that in order to modernize military justice in light of international standards, and in response to the judgment of the Inter-American Court in the *Case of Palamara Iribarne v. Chile*, in 2010, Law 20,447 that prevented military courts from judging civilians for breaches of the military code.

27. Lastly, it reports that since 2000, the military courts have heard four cases involving a breach of Article 350 of the Code of Military Justice on undue violence resulting in the death of Mapuche people, where there have been some convictions.

#### **IV. ESTABLISHED FACTS**

##### **A. The death of Edmundo Alex Lemun Saavedra**

28. Edmundo Alex Lemun Saavedra, a Mapuche<sup>1</sup>, was born on May 10, 1985, the son of Edmundo del Carmen Lemun Necul and Blanca Sonia Saavedra Horia.<sup>2</sup> He had 8 siblings: Juan, José, Inés del Carmen, Armando Arturo, Loreto, Carlos, Loren Sofia and Rodrigo Esteban Lemun Saavedra, who at the time of his death Alex were 22, 21, 18, 16, 14, 12, 10, and 4 years old, respectively. Edmundo Alex lived in the Requiem Lemun

<sup>1</sup> Which, in Spanish, means “people of the earth”.

<sup>2</sup> Annex 1. Birth Certificate issued by the Civil Registry and Identification Service of Chile, Victoria Constituency, registration number 492 of 1985 Page 51 of file 233-2002 added by the petitioners on August 5, 2011.



Mapuche Community<sup>3</sup> located in the commune of Ercilla, Malleco Province, Region of the Araucanía together with his parents and siblings, except for Juan.<sup>4</sup>

29. Alex Lemún attended secondary school. According to the petitioners, he worked by helping out in the community, which appreciated his commitment and solidarity. He used to share the community areas and to be part of the activities in connection with claims to the ancestral rights of the Mapuche people. The petitioners point out that the Requien Lemun community changed its name to Alex Lemun after his death.

30. In August 2002, part of the Santa Alicia estate, belonging to Forestal Crecex S.A., and administered by Forestal Mininco S.A., was occupied by Mapuche people from the Aguas Buenas Community.<sup>5</sup>

31. On November 7, 2002, approximately 40 Mapuche men, women, children and elderly people entered the occupied area of the estate to gather firewood to take to their homes, lit fires to cook and to demonstrate that they were present in that area of land. This they did daily.<sup>6</sup> At approximately 5:30 pm, officers of the *Carabineros* of Chile arrived:<sup>7</sup> Major Marco Aurelio Treuer Heysen, Miguel Castillo Diaz, Ariela Melian Sanhueza and Lance Corporal Domingo Gerardo Rozas Arias who was driving the truck transporting the group. According to statements by Major Treuer, they went to the scene because he had received a telephone call from Deputy Prefect Commander Galleguillos pointing out that there was an apparent occupation of the Santa Alicia estate which was subject to a protective measure<sup>8</sup> issued by the local Angol Public Prosecutor after a previous incursion.<sup>9</sup> Therefore he was ordered to visit to verify the situation.<sup>10</sup>

32. Since a bridge had been destroyed, Major Treuer left the police vehicle on a nearby road, and advanced with the *Carabineros* Castillo and Melian about seven hundred meters to the entrance of the estate. According to Mayor Treuer, on passing through the entrance gate and over a burnt bridge with references to the

<sup>3</sup> Annex 2. Police Statement of Edmundo del Carmen Lemun Necul dated November 23, 2002. Page 546 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>4</sup> According to the petitioners, the Lemun Saavedra family lived in a modest dwelling; the father was dedicated to tilling the land and the raising of animals and the mother taking care of the children, household chores and the vegetable plot. They also indicate that despite difficult economic conditions, Mr. Lemun Necul encouraged his children to study and respect ancestral traditions.

<sup>5</sup> Annex 3. Police Statement of Adolfo Esteban Neculpan Huentecol dated November 26, 2002. Page 541 of file 233-2002 added by the petitioners on August 5, 2011. Annex 5. Police Statement of José Ignacio Neculpan Escalona dated December 2, 2002. Page 543 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>6</sup> Annex 3. Police Statement of Adolfo Esteban Neculpan Huentecol dated November 26, 2002. Page 546 of file 233-2002 added by the petitioners on August 5, 2011. Annex 4: Police Statement of José Ignacio Neculpan Escalona dated December 2, 2002. Page 543 of file 233-2002 added by the petitioners on August 5, 2011. Annex 5: Police Statement of Juan Neculpan Colihuinca dated November 26, 2002. Page 545 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>7</sup> The Chilean *Carabineros* are a military and technical institution of a military character, is part of the security forces and exists for law enforcement purposes; its objective is to guarantee and maintain public order and internal public security throughout the territory of the Republic and to fulfill the other functions entrusted to it by the Constitution and the Law. Article 1 of the Constitutional Organic Law of the *Carabineros* of Chile No. 18961 published on March 7, 1990 with its last amendment dated December 31, 2014 (Law 20801). Source: Chile National Library of Congress. Available at: [www.bcn.cl](http://www.bcn.cl)

<sup>8</sup> Annex 6: Protective Measure dated September 3, 2002. Page 717 of file 233-2002 added by the petitioners on August 5, 2011. The measure stated verbatim: "That officers from your squadron conduct all necessary patrols to prevent the extraction of timber from the property indicated, and to provide protection for its removal by the affected party once the Prosecutor's Office issues the corresponding order."

<sup>9</sup> Annex 7: Statement before the Angol Military Prosecutor by Major Marco Aurelio Treuer Heysen dated November 11, 2002. Page 15 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>10</sup> Annex 7: Statement before the Angol Military Prosecutor by Major Marco Aurelio Treuer Heysen dated November 11, 2002. Page 15 of file 233-2002 added by the petitioners on August 5, 2011. Annex 8: Statement before the Public Ministry, Angol Prosecutor's Office, by Major Treuer Heysen dated November 9, 2002. Page 266 of file 233-2002 added by the petitioners on August 5, 2011. Annex 9: Additional Statement before the Public Ministry, Collipulli Prosecutor's Office by Major Treuer Heysen, dated November 16, 2002. Page 475 of file 233-2002 added by the petitioners on August 5, 2011. Annex 10: Police Statement before the Angol Investigatory Brigade by Major Treuer Heysen dated December 6, 2002. Page 561 of file 233-2002 added by the petitioners on August 5, 2011.

Mapuche conflict scratched into it, he quickly noticed that a large number of eucalyptus trees had been cut down and the presence of between 25 to 30 people with "Mapuche features" around a bonfire.<sup>11</sup>

33. What follows is the IACHR's account of the central elements of the statements by the *Carabineros* and by the Mapuche community members on the circumstances surrounding Alex Lemún's death.

34. According to the statements of the *Carabineros* officers:

- A "lookout" alerted their presence to the community members who began to insult and threaten them, and to throw stones with *boleadoras*. Some hooded individuals and others with their faces uncovered advanced towards them, so that Major Treuer fired several tear gas canisters "in order to produce a smokescreen between the aggressors and us to help us leave the area."
- They continued to retreat in order to return to the vehicle and were followed by approximately 25 Mapuche community members who continued throwing stones with *boleadoras*, so that *Carabiniero* Miguel Angel Castillo Díaz fired tear gas and Major Treuer used his riot shotgun, firing 12 caliber rubber pellet cartridges.
- As they continued to withdraw towards the police vehicle they heard a gunshot fired from the Mapuches, whereupon Major Treuer fired the shotgun with "lead shot cartridges" from a distance of approximately 70 to 100 [meters] so the community members stopped advancing and the *Carabineros* managed to reach their transport. In his statement, Major Treuer stated that when he realized the severity of the situation, he resolved to "defend" his officers and himself because they were not wearing their bulletproof vests.<sup>12</sup>

35. According to the statements of the Mapuche community members:

- When the community group was preparing something to eat, three *Carabineros* arrived, stood on a burned bridge passing a gate, and without warning fired tear gas at them. The women, children and the elderly left for the Aguas Buenas community and about 20 unarmed young people chased the *Carabineros* and threw stones at them. Then, when Alex Lemun "joined the incident" he was shot in the head by one of the *Carabineros* and fell on the road. After being shot, Alex Lemun rejoined the group to continue throwing stones but almost immediately fell again, this time on his side and did not stand up again. Blood was already visible on his forehead and face and the wound was evident on his forehead.
- While the Mapuche community members tried to help Alex Lemun, the *Carabineros* continued firing.<sup>13</sup>

<sup>11</sup> Annex 11: Statement before the Angol Military Prosecutor by Major Marco Aurelio Treuer Heysen dated November 11, 2002. Page 15 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>12</sup> Annex 12: Statement before the Angol Military Prosecutor by *Carabiniera* officer Ariela Noemí Melian Sanhueza dated November 11, 2002. Page 18 of file 233-2002 added by the petitioners on August 5, 2011; Annex 8: Statement before the Public Ministry, Angol Prosecutor's Office, by Major Treuer Heysen dated November 9, 2002. Page 266 of file 233-2002 added by the petitioners on August 5, 2011; Annex 11: Statement before the Angol Military Prosecutor by Major Marco Aurelio Treuer Heysen dated November 11, 2002. Page 15 of file 233-2002 added by the petitioners on August 5, 2011; Annex 13: Statement before the Public Ministry, Angol Prosecutor's Office by *Carabiniero* Miguel Ángel Castillo Díaz dated November 9, 2002. Page 270 of file 233-2002 added by the petitioners on August 5, 2011; Annex 14: Statement before the Angol Military Prosecutor of *Carabiniero* Miguel Ángel Castillo Díaz dated November 11, 2002. Page 22 of file 233-2002 added by the petitioners on August 5, 2011; Annex 15: Statement before the Public Ministry, Angol Prosecutor's Office by *Carabiniera* Ariela Noemí Melian Sanhueza dated November 9, 2002. Page 272 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>13</sup> Annex 4. Police Statement of José Ignacio Neculpan Escalona dated December 2, 2002. Page 543 of file 233-2002 added by the petitioners on August 5, 2011; Annex 5. Police Statement of Juan Neculpan Colihuinca dated November 26, 2002. Page 545 of file 233-2002 added by the petitioners on August 5, 2011; Annex 16: Police Statement of José Ambrosio Mendoza Meleñir dated December 2, 2002. Page 544 of file 233-2002 added by the petitioners on August 5, 2011; Annex 3. Police Statement of Adolfo Esteban Neculpan Huentecol dated November 26, 2002. Page 541 of file 233-2002 added by the petitioners on August 5, 2011; Annex 17 Statement before the Military Prosecutor by Adolfo Esteban Neculpan Huentecol dated October 30, 2003. Page 1,127 of file 233-2002 added by the petitioners on August 5, 2011; Annex 2. Police Statement of Edmundo del Carmen Lemun Necul dated November 23, 2002. Page 546 of file 233-2002 added by the petitioners on August 5, 2011.



36. Regarding the moments after Alex Lemun fell down, the community members stated that they carried him to an ox-cart and moved him about 100 meters to a place where an ambulance received him.<sup>14</sup>

37. Alex Lemun's parents stated that some children told them that the *Carabineros* had shot their son, so they immediately called the emergency number 133 – to contact the *Carabineros* - but their call was cut off. They then called the hospital to send an ambulance, which arrived 40 minutes later.<sup>15</sup>

38. With regard to the above, Alex Lemun's mother stated the following:

39. Then I left my house alone and I found an ox-cart carrying my son in the back accompanied by another of my sons, Arturo, who was confronted with this scene after returning home from school. Then my other children, Loreto, Sofia and Carlos, also home from school, came behind the cart. Arturo, Loreto and I took the injured boy with the cart to a wooden bridge, located a kilometer and a half from our property. There paramedics took care of Alex (...).<sup>16</sup>

40. From the information available, the Commission understands that Alex Lemun was assisted by community members and that the *Carabineros* failed to provide help. This conclusion is consistent with statements by the *Carabineros* themselves according to which they returned to the police vehicle after the shooting where Lance Corporal Rozas Arias told them that he had heard shots and had requested reinforcements. According to the official version, before the reinforcements arrived, Major Treuer returned with the same two *Carabineros* to the location from where he had fired in order to verify whether the community members were still there and to decide whether to remain in the area or to withdraw. According to their statement, once the reinforcements arrived, they went to the place of the incursion to assess the damage and observed that the community members had dispersed. They then returned to Angol. It was only in that place where at 8:00 pm there were reports of "a young Mapuche man with a bullet wound in his head."<sup>17</sup>

41. The available information indicates that the ambulance took Alex Lemun to the Angol Hospital and later to the Temuco Hospital,<sup>18</sup> from where he was finally transferred to the German Clinic of Temuco. He was in a deep coma with clinically "SERIOUS-EXTREMELY SERIOUS" injuries "consistent with brain death and incompatible with life".<sup>19</sup>

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<sup>14</sup> Annex 5. Police Statement of Juan Neculpan Colihuinca dated November 26, 2002. Page 545 of file 233-2002 added by the petitioners on August 5, 2011; Annex 16. Police Statement of José Ambrosio Mendoza Meleñir dated December 2, 2002. Page 544 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>15</sup> Annex 18. Police Statement of Blanca Sonia Saavedra Horia dated November 23, 2002. Page 547 of file 233-2002 added by the petitioners on August 5, 2011; Annex 19. Statement of Edmundo del Carmen Lemun Necul before the Angol Public Prosecutor dated November 8, 2002. Page 205 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>16</sup> Annex 18. Police Statement of Blanca Sonia Saavedra Horia dated November 23, 2002. Page 547 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>17</sup> Annex 11: Statement before the Angol Military Prosecutor by Major Marco Aurelio Treuer Heysen dated November 11, 2002. Page 15 of file 233-2002 added by the petitioners on August 5, 2011; Annex 20: Statement before the Angol Military Prosecutor by Lance Corporal Domingo Gerardo Rozas Arias dated November 11, 2002. Page 20 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>18</sup> Annex 18. Police Statement of Blanca Sonia Saavedra Horia dated November 23, 2002. Page 547 of file 233-2002 added by the petitioners on August 5, 2011; Annex 19. Statement of Edmundo del Carmen Lemun Necul before the Angol Prosecutor dated November 8, 2002. Page 205 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>19</sup> Annex 21. Medical Report No. 1.710-2-2002 dated November 11, 2002 signed by Dr. René Gutiérrez Luengo addressed to Angol local Prosecutor. Page 243 of file 233-2002 added by the petitioners on August 5, 2011. Annex 22: see also certification dated November 11, 2002 signed by assistant attorney to the Angol Local Prosecutor. Page 235 of file 233-2002 added by the petitioners on August 5, 2011.

42. Alex Lemun died on November 12, 2012.<sup>20</sup> The death certificate states as the cause of death: "CRANIAL BRAIN TRAUMA CAUSED BY BULLET WOUND/HOMICIDE."<sup>21</sup>

43. According to the petitioners, after Alex Lemun's death, his brothers suffered accusations and harassment by the *Carabineros*. The available information indicates that the Requiem Lemun Community changed its name to Alex Lemun after his death. On November 12, 2003, the family made a public statement expressing that "Alex was only 17 years old, his youth, his strength, his blood, even the call of his ancestors always urged him to partake in the struggle for land and Mapuche dignity."<sup>22</sup>

## **B. Judicial and Administrative Proceedings in Connection with Edmundo Alex Lemun Saavedra's Death**

### **1. Civilian Court Proceedings**

44. On November 8, 2002, Alex Lemun's parents filed a complaint about his death with the Public Prosecutor's Office in Angol.<sup>23</sup> On the same day, the Provincial Governor of Malleco filed another complaint with the Public Prosecutor's Office.<sup>24</sup> On November 8, the Angol Prosecutor decided to consolidate the allegations regarding "the serious-extremely serious injuries" to Alex Lemun and on November 9 and 11, 2002, ordered a series of procedural steps.<sup>25</sup> On November 12, the Angol Prosecutor was informed of Alex Lemun's death, converting the case into the crime of homicide. As a result, he ordered new procedural steps be taken, among them, to hand over Alex Lemun's body to his relatives or to those who showed sufficient title or cause, as soon as the relevant autopsy had been performed.<sup>26</sup> On November 13, 2002, a Special Prosecutor was appointed for the investigation.

45. On November 14, 2002, the Special Prosecutor requested the Temuco Homicide Brigade of the Investigatory Police to conduct approximately 17 investigatory proceedings, including: to establish a link, to identify and take statements from all the individuals present at the entrance to the Santa Alicia estate of the Angol commune owned by the Forestal Mininco SA between 5:00pm and 8:00 pm on November 7, 2002; to determine precisely how many firearms were used; to carry out expert analysis, including a ballistics report.<sup>27</sup>

46. The preliminary autopsy report indicates that the injury caused by the projectile was critical, and although death was not instantaneous, it was inevitable.<sup>28</sup>

<sup>20</sup> Annex 23: Health status report signed by the medical director of the German Clinic of Temuco addressed to the Local Prosecutor's Office of Angol. Page 236 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>21</sup> Annex 24: Death Certificate of the Civil and Identification Registry. Page 661 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>22</sup> Annex 25: Public Statement of the Lemun Saavedra family. Ercilla, November 12, 2003. Available at: *En Enlace Mapuche Internacional*: <http://www.Mapuche-nation.org/espanol/html/noticias/cmdo-103.htm>

<sup>23</sup> Annex 19: Statement before the Angol Prosecutor by Edmundo del Carmen Lemun Necul dated November 8, 2002. Page 205 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>24</sup> Annex 26: Page 215-218 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>25</sup> Among them: to coordinate with the *Carabineros* Criminal Laboratory (LABOCAR) of Temuco, everything related to the compilation of background information and reconstitution of scene; to establish according to the forest ranger's declaration from MININCO S.A. that after the departure of the *Carabineros* from the Santa Alicia estate security guards from La Forestal arrived at the place to take a statement from them. Cite them; to determine the origin of Edmundo Alex Lemun Saavedra injuries, to register and to summon eyewitnesses; to request from the director of the German Clinic of Temuco a medical progress report; to inform on the type of bullet lodged in Alex Lemun's head; to carry out planimetric and photographic surveys at the scene, and a reconstitution of with the officials from the health service that were present at the time of the events. Annex 27: Page 221-224 / 231 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>26</sup> Annex 28: Page 239-242 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>27</sup> Annex 29: Page 344 – 348 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>28</sup> Annex 32: Preliminary Report Autopsy Protocol No. 558/2002 signed by Dr. Viera and Riquelme of the Temuco Legal Medical Service to the Special Prosecutor, dated November 14, 2002. Annex 31: Page 351 of file 233-2002 added by the petitioners on August 5, 2011.

47. The Special Prosecutor viewed the results of the procedural steps and expert reports requested by both him and his predecessor and on November 19, 2002, decided to refer the background history of the investigation to the Malleco Military Prosecutor's Office "for its consideration and decision" in accordance with Article 80A of the Constitution of the Republic; and Articles 1, 5 No. 1 and 3 and Article 6 of the Code of Military Justice, pursuant to which jurisdiction to review these events lay with the Military Courts.<sup>29</sup>

## 2. Proceedings in the Military Courts

48. On November 7, 2002, Major Superintendent Marco Aurelio Treuer Heysen informed the Malleco Military Prosecutor's Office of "the attacking and assaulting of *Carabineros* while on duty".<sup>30</sup> He details the events that occurred at the Santa Alicia estate. He indicates that on returning from the operation, in the city of Angol, he learned that a male person later identified as Edmundo Alex Lemun Saavedra had been admitted to the local hospital with serious life-threatening injuries.<sup>31</sup> He added that in the operation "05 canisters of 37 mm tear gas, 22 rubber pellet cartridges and 04 12-gauge riot cartridges "had been used and that the weapons used "were in the custody of this unit's Weapon's Room, awaiting any possible expert examinations."<sup>32</sup>

49. On November 8, 2002, the Military Prosecutor of the Malleco-Angol Military Prosecutor's Office of the Army and *Carabineros* (hereinafter "the Military Prosecutor") ordered that the first procedural steps be taken, including:

- Submitting a copy of the complaint to the IV Military Court-Valdivia, for its consideration and legal decision, proposing investigation of the case against N.N for the crime of violating Article 416 *bis*<sup>33</sup> and others of the Code of Military Justice.
- Issuing an order to the investigating police, the criminal investigation unit, in order to carry out expert photographic and planimetric reports.
- To request an expedited hearing on November 11, 2002, for the following officers, under penalty of forfeiture of rights: Major Marco Aurelio Treuer Heysen; Lance Corporal Domingo Gerardo Rozas Arias, Miguel Ángel Díaz Castillo and Ariela Melian Sanhueza.
- To request that the First Angol *Carabineros* Police Station send sealed certifications of the Station's Duty Records, of the Population or other certifications for these events; an officer roster participating in the said proceedings, with their matching service records; a report on expenditure of ammunition; handing over the weapons used, spent cartridges and in general any artifacts involved in the events.
- To request the Military Prosecutor's Office of Cautín/Temuco to question Edmundo Alex Lemun Saavedra, to recover his medical history and to order that the Forensic Service of Temuco evaluate him.
- To request that the Regional Criminal Laboratory of the Temuco Investigatory Police issue expert photographic, chemical and ballistic reports of the evidence made available to this Court. Obtain from the Civil Registry Edmundo Alex Lemun Saavedra's birth and parentage certificate, and his background record.<sup>34</sup>

50. On November 11 and 12, 2002, Major Marco Aurelio Treuer Heysen, Lance Corporal Domingo Gerardo Rozas Arias, and *Carabineros* Miguel Ángel Díaz Castillo and Ariela Melian Sanhueza made statements to the

<sup>29</sup> Annex 32: Page 503 – 517 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>30</sup> The same information, but with the report number 1516 was referred to the Local Angol Prosecutor. Annex 33: Page 262 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>31</sup> The IACHR notes that although in this report it is said that Alex Lemun was 18 years old, the record of the case shows that the teenager was 17 years old at the time of his death.

<sup>32</sup> Annex 34: Report No.04 signed by Major Marco Aurelio Treuer Heysen addressed to the Malleco Military Prosecutor dated November 7, 2002. Page 1 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>33</sup> Article 416*bis* of the Code of Military Justice: "Whoever injures, strikes or assaults a *carabini*ero in the exercise of his duties shall be punished: ...".

<sup>34</sup> Annex 35: Page 3 of file 233-2002 added by the petitioners on August 5, 2011.

Military Prosecutor.<sup>35</sup> On November 12, 2002, the Military Prosecutor ordered new procedural measures, including:

- To request that the Public Prosecutor's Office, Chief Prosecutor of the Angol Public Prosecutor's Office, to send the records in his possession regarding the events under investigation.
- Obtain from the Civil Registry Major Marco Aurelio Treuer Heysen's parentage certificate and background record and Edmundo Alex Lemun Saavedra's death certificate.
- To request that the director of the German Clinic of Temuco send the clinical records in connection with the medical assistance provided to Edmundo Alex Lemun Saavedra.<sup>36</sup>
- Request from the Angol *Carabineros* Superintendent a copy of the protection order issued by the Local Attorney of Angol in favor of the Santa Alicia estate.
- To request from the Malleco Prefecture of *Carabineros* a complete list of officers who were present at the Santa Alicia estate on November 7, 2002.

51. On the same day, Major Marco Aurelio Treuer Heysen, Lance Corporal Domingo Gerardo Rozas Arias, *Carabineros* Miguel Ángel Díaz Castillo and Ariela Melian Sanhueza requested to be declared an aggrieved party, and the publicity of the investigation;<sup>37</sup> and they appointed a lawyer to represent them.<sup>38</sup> On November 14, 2002, the lawyer for the *Carabineros* requested the Military Prosecutor, among other procedural steps, that the Angol Regional Hospital report the treatment administered to Edmundo Alex Lemun Saavedra and the name of the ambulance driver who drove him. On November 20, 2002, the Military Prosecutor ordered the appearance of the 22 *Carabineros* officers present at the Santa Alicia estate on November 7, 2002 in response to the call for reinforcements, in order to make statements.<sup>39</sup>

52. On November 19, 2002, the Military Court of Valdivia ordered the Prosecutor's Office of Malleco to open an investigation for violation of Article 416bis of the Code of Military Justice against N.N.<sup>40</sup> On the same day, the Military Prosecutor's Office received the background history into the investigation by the civil courts.<sup>41</sup> On November 26, 2002, both cases were consolidated.<sup>42</sup>

53. On December 13, 2002, the Temuco Homicide Brigade of Investigatory Police forwarded to the Military Prosecutor's Office the results of the investigation order issued on November 8, 2002. The report contains: three expert photographic reports, two plan surveys, one topographic altimeter, one ballistic and two chemical analysis reports. It also contains the individual breakdown of the 18 persons interviewed whose statements sent to the Military Prosecutor's Office. Based on this investigation, the investigating officer established that Alex Lemun died of an open cranial injury consequent upon a gunshot wound matching a shotgun used by the Major of the *Carabineros* Marco Treuer Heysen and that the shots were fired from a distance of about 100 meters.<sup>43</sup>

54. The Chemical Expert Report No. 4 of November 28, 2002, carried out by the Temuco Regional Crime Laboratory of the Investigatory Police, on the samples taken from the hands of Alex Lemun concluded that

<sup>35</sup> Annex 36: Page 15 a 24 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>36</sup> Annex 37: Page 24 and 30 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>37</sup> They were not granted access to the investigation because any publicity was prejudicial to the success of the investigation. Annex 38: Page 34 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>38</sup> Annex 39: Page 33 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>39</sup> Annex 40: Page 71 of file 233-2002 added by the petitioners on August 5, 2011. *Carabineros* officials testified before the Military Prosecutor between November 25 and December 2, 2002, as it appears between Pages 77-82 and 116-134 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>40</sup> Annex 41: Page 76 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>41</sup> Annex 42: Page 503 – 517 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>42</sup> Annex 43: Page 519 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>43</sup> Annex 44: Page 530 of file 233-2002 added by the petitioners on August 5, 2011.

"there were no traces of nitrate residues (nitrite) in the samples".<sup>44</sup> On the other hand, according to the Expert Analysis and Ballistics Investigative Report of the *Carabineros*, after sweeping the site of the incident and the surrounding area, they found only traces or signs of criminal interest matching projectiles and cartridges used by the *Carabineros* in the operation of November 7, 2002.<sup>45</sup>

55. On January 13, 2003, Alex Lemun's parents filed a complaint with the Military Prosecutor's Office for the offense of undue use of force resulting in the death of their son and requested that they be considered as an injured party, as well as procedural steps and access to the investigation. In addition, they appointed an attorney. In the complaint, they report that when they filed a prior complaint with the Angol Prosecutor's Office they were informed that that office had not issued an eviction order issued on the day that Alex Lemun was fatally wounded. They also indicate that "the seriousness of the events warranted a detailed investigation and appropriate punishment, especially given the context in which they occurred".<sup>46</sup> The complaint was consolidated with case No. 233-2002 by a decision of the Fourth Military Court of Valdivia dated January 30, 2003.<sup>47</sup>

56. On June 24, 2003, the Angol Prosecutor informed the Military Prosecutor that in case 0200106124-3 the Santa Alicia property owned by the Forestal Crecex S.A. company was in dispute with the Agua Buena, Requen Lemun, Requen Pillan and Requen Cabrapan Mapuche communities.<sup>48</sup> On June 26, 2003, the Military Prosecutor requested from the No. 21 Malleco Prefecture of *Carabineros* the administrative investigation into these events and from the Angol Public Prosecutor's Office an authorized copy of case 0200106124-3.<sup>49</sup>

57. On June 26, 2003, once the Military Prosecutor confirmed Alex Lemun's parentage to be the complainants Blanca Sonia Saavedra Horia and Edmundo del Carmen Lemun Necul, granted them access to the investigation.<sup>50</sup> On July 7, 2003, the General Military Prosecutor requested that the Military Public Prosecutor be joined as a party in the case and that Major Treuer should testify before the Prosecutor's Office on the circumstances surrounding the following facts: (1) Why, when faced with the mob coming towards him and his officers on the day of the events, did he change the shotgun ammunition from rubber pellets to shot pellets; 2) to tell the court if at the time of the shooting he was aware that this could have caused injury or other damage to the group of persons targeted.<sup>51</sup>

58. The Military Prosecutor ordered other procedural steps between June and August 2003, including: i) that the Malleco Prefect of *Carabineros* submit the regulations issued by the General Directorate *Carabineros* dated August 25, 1988, with instructions on the use of anti-riot and/or anti-disturbance institutional weaponry, particularly Winchester shotguns, and whether these regulations were fully known by Major Treuer;<sup>52</sup> ii) That the Malleco Prefecture of *Carabineros* report the period during which Major Treuer served as Angol

<sup>44</sup> Annex 45: Page 522 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>45</sup> Annex 46: Page 353 -432 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>46</sup> They add: "Especially, it is still very painful to remember that my son weeks before being wounded indicated to us that he was being shadowed and watched. He was even detained once, accused of a theft that never took place. All this makes us fear that his death was not accidental. We do not want to advance judgment, just point out the doubts we have and we hope this court will clarify." Annex 47: Page 655 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>47</sup> Annex 48: Page 659 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>48</sup> Annex 49: Page 724 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>49</sup> Annex 50: Page 725 of file 233-2002 added by the petitioners on August 5, 2011. The administrative investigation was referred to the Military Prosecutor on July 17, 2003. Annex 51: Page 851 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>50</sup> Annex 52: Page 726 - 727 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>51</sup> Annex 53: Page 731 of file 233-2002 added by the petitioners on August 5, 2011. On July 4, 2003, Major Treuer replied to questions in a statement before the Military Prosecutor. Annex 54: Page 743 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>52</sup> Annex 55: Page 740 of file 233-2002 added by the petitioners on August 5, 2011. The answer was received on July 14, 2003. Page 752 of file 233-2002 added by the petitioners on August 5, 2011.



Superintendent of *Carabineros*; <sup>53</sup> 3) That the Malleco Prefecture of *Carabineros* refer the rules or written instructions issued by that authority on actions to be taken by the Unit Chiefs in its jurisdiction vis-a-vis the occupation of, or attacks on, estates by Mapuche communities;<sup>54</sup> 4) That Lieutenant Colonel Alberto Rolando Galleguillos be questioned whether on November 7, 2002, he ordered Major Treuer to verify a Mapuche occupation in the area, what instructions were given, if he ordered or indicated the number of officers and equipment to be used, and what was reported by Major Treuer once the mission was achieved.<sup>55</sup>

59. On August 29, 2003, the Malleco-Angol Military Prosecutor decided to indict Major Treuer. In the resolution it indicates that this decision is grounded on reports, statements, expert reports on photography, ballistics, injuries, histology, gunpowder, autopsy, as well as the investigations carried out by the *Carabineros* and the Investigatory Police, the death certificate, among other documents, as detailed in the resolution. It also states that "at the time of the fatal shooting by Major Treuer there was no real and imminent danger to his physical integrity and that of his subordinates justifying discharging the shotgun in the manner he did, and therefore the violence exercised at the time of the events was completely unnecessary and lacks a rational justification". Therefore, the Prosecutor finds that the above events constitute the crime of unnecessary violence resulting in death, as provided for and sanctioned in Article 330 No. 1 of the Code of Military Justice. The indictment adds that "the requirements of Article 274 of the Code of Criminal Procedure being satisfied, Major Marco Aurelio Treuer Heysen is hereby subject to trial as author of the crime of unnecessary violence causing the death of Edmund Alex Lemun Saavedra", and subject to preventive detention at *Carabineros* headquarters in the dependencies of the Prefecture of *Carabineros* in Malleco No. 21, as necessary for the success of the investigations.<sup>56</sup>

60. On September 2, 2003, Mayor Treuer was notified of his indictment and arrest warrant. That same day he was admitted as a detainee to the Prefecture of the *Carabineros* in Malleco No. 21. Also on September 2 the indictment was notified to the legal representative of Alex Lemun's parents and to the Military Public Ministry.<sup>57</sup> Mayor Treuer successfully appealed this decision before the Court Martial. He also made an oral request for the exemption from preventive detention, which was granted on payment of 100,000 pesos surety.

61. The case was reviewed before the Court Martial on September 9, 2003. On that date, the representative of the Military Public Ministry presented allegations, which appear in the file of the case.<sup>58</sup> On same date the Court Martial established, in a brief unreasoned resolution, that "based on the elements in the file, there is no duly justified reason for the existence of the offense under investigation", reversed the appealed decision and

<sup>53</sup> Annex 56: Page 745 of file 233-2002 added by the petitioners on August 5, 2011. The answer was received on July 9, 2003. Page 748 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>54</sup> Annex 57: Page 750 of file 233-2002 added by the petitioners on August 5, 2011. The reply was received on July 30, 2003, and the following documents were sent to the Military Prosecutor: 1) Strategic Plan No. 1 of August 13, 1998 to address the Mapuche ethnic problem in the Malleco Prefecture of *Carabineros* No. 21 taking into consideration the conflicts that arising at the national level. 2) Service Order No. 1 of June 21, 1999, instructing officers in the reaction picket groups and is injured during the operation. 3) Note No. 4 of January 5, 2001, sending operations manual for compliance with judicial protection orders for logging companies, including instructions by *Carabineros* Area Chief, General Mauricio Catalán Devlahovich. 5) Note No. 139 of February 5, 2001, with general order No. 1387 of January 18, 2001 on the manual of procedures in situations of public order. Modifies use of the anti-riot shotgun by *Carabineros*. 6) Resolution No. 340 of December 13, 2001, due to the notable growth of Mapuche problems. 7) Message No. 28 of January 2002 on procedures in Mapuche communities. Page 1015 - 1046 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>55</sup> Annex 59: Page 750 - 751 of file 233-2002 added by the petitioners on August 5, 2011. The reply was received on August 11, 2003. In it, *Carabineros* Lieutenant Colonel Galleguillos Urbano stated by judicial request that he ordered Major Treuer to go to the Santa Alicia estate "in order to verify a productive occupation of Mapuches of the sector." In the statement he added that he did not give specific instructions because he did not know if the place was occupied and the characteristics of the occupants. He also stated that he did not give instructions on the number of officials, ammunition and weapons because "they were given in writing in advance". Annex 60: Page 1074 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>56</sup> Annex 61: Page 1078 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>57</sup> Annex 62: Page 1081 -1086 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>58</sup> Annex 63: Page 1090 -1086 of file 233-2002 added by the petitioners on August 5, 2011.



declared in its place that Major Treuer was not to be prosecuted, ordering his immediate release.<sup>59</sup> On September 9, 2003, Major Treuer was released.<sup>60</sup>

62. On October 13, 2003, Alex Lemun's parents' legal representative requested that witnesses be summoned to testify and a reconstitution of the crime scene be made, in view of the fact that Major Treuer had not proven that a bullet came from the Mapuche. The Military Prosecutor ordered the witnesses to be summoned and refused a crime scene reconstitution on the ground that it had previously been carried out.<sup>61</sup> After gathering witness testimony, Alex Lemun's parents' legal representatives requested the indictment of Major Treuer for the crime of unnecessary violence resulting in death, alleging that "there are NO ELEMENTS IN THE CASE leading to the conclusion that Mayor Treuer's statement is true, in view of the separate investigations by police investigators and experts who searched the scene without finding any other ammunition than that used by the accused himself." <sup>62</sup> On this occasion, the Military Prosecutor decided to dismiss the claim because "based on the elements in the file, there is no duly justified reason for the existence of the offense under investigation." <sup>63</sup> This decision was appealed and upheld by the Court Martial on May 25, 2004, in a reasoned decision.<sup>64</sup>

63. Subsequently, on October 17, 2004, the Military Judge decided to dismiss totally and temporarily the case regarding the alleged wrongful act of assaulting of *Carabineros* while on duty, as well as the case of unnecessary violence resulting in death. On the 27 October, this decision was notified to the parties, and later reviewed by the Court Martial and upheld on March 18, 2005.

64. On July 25, 2005, after the experts' examinations Alex Lemun's parents' legal representatives requested that the Military Prosecutor return the clothes Alex Lemun was wearing when he died.<sup>65</sup> This request was sent to the Military Judge who granted it, <sup>66</sup> becoming effective on June 7, 2006.

### 3. Administrative Proceedings

65. On November 8, 2002, by order No. 416, the Prefect of the Malleco *Carabineros* ordered that the Investigating Officer Lieutenant Colonel René Osvaldo Castro Leyton of the *Carabineros*, carry out an exhaustive investigation in connection with the police proceedings of November 7, 2002. On November 15, 2002, the Investigating Officer reported the results of the investigation to the Angol Prefecture of *Carabineros*. The report offers an account of the facts and a number of conclusions, among them: that the police planning and tactics used did not follow previous instructions; that the identification, assessment and appraisal of the risks involved was inadequate; that Major Treuer's strategy departed from the guidelines established by the Malleco Prefecture and from the IX *Carabineros* "Araucanía" District to "confront the Mapuche communities in conflict." The report indicates that it was not possible to obtain "statements from the Mapuche community involved in the investigated events, as a result of the hostile attitude towards *Carabineros* officers." <sup>67</sup>

<sup>59</sup> Annex 64: Page 1097 -1086 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>60</sup> Annex 65: Page 1105 -1086 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>61</sup> Annex 66: Page 1107 -1109 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>62</sup> Annex 67: Page 1136 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>63</sup> Annex 68: Page 1137 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>64</sup> Annex 69: Page 1138 and 1148 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>65</sup> Subsequently, on February 14, 2006 case 233-2002 was archived. It was later de-archived in order to provide delivery of the requested garments; to provide a brief from the State Defense Council requested on July 22, 2008 to become a party and to provide a request for information from the Supreme Court dated August 11, 2008.

<sup>66</sup> Annex 70: Page 1205, 1238 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>67</sup> Annex 71: Page 939 of file 233-2002 added by the petitioners on August 5, 2011.

66. On November 19, 2002, the prefecture's legal adviser suggested the adoption of new procedural steps.<sup>68</sup> Once carried out, on December 22, 2002, the Malleco Prefect of the *Carabineros*, Gustavo Castro Arriagada, by resolution No. 46, decided to sanction Major Treuer with one day's arrest for non-compliance with "the instructions given by the Bureau, relating to security measures, personnel reinforcement and sufficient logistical means."<sup>69</sup>

67. This decision was contested<sup>70</sup> before the Chief of the Araucanía Area, General José Bernales Ramírez of the *Carabineros*, who decided to uphold the punishment by Resolution No. 3 of January 17, 2003.<sup>71</sup> Major Treuer then filed an appeal with the Director of Order and Security, General Mauricio Catalán Devlahovich of the *Carabineros*, who upheld the disciplinary sanction through Resolution No. 34 of February 2003.<sup>72</sup>

### C. Background Information on the Use of Force by The Carabineros in the Context of the Mapuche People's Protests

68. The file contains several documents issued by the *Carabineros* authorities, referring to the so-called "Mapuche conflict"<sup>73</sup> between 1998 and 2002:

- Strategic Plan No. 1 of August 13, 1998 "to address the (sic) Mapuche ethnic problem in the *Carabineros* Malleco Prefecture No. 21, taking into account the conflicts occurring at the national level." In the background of this strategic plan, for example, it states that "since 1991, some organizations within the Mapuche people, such as the "Consejo de Todas las Tierras", have instigated a climate of agitation geared towards a campaign to recover territory ("retaking"), extolling the belief that it is an oppressed people, discriminated against by the State of Chile, which, according to them, has meant the loss of their identity." Further on it indicates that "the current problem of the Mapuche people is similar to that experienced throughout the national history in previous governments and different political stages of the nation. According to the Mapuche people, this is based on the fact that the State and society have negated and excluded the indigenous peoples both politically and culturally, preventing the recovery of their lands, thus engendering socioeconomic problems and lack of resources to satisfy their basic needs". The instruction forecasts "a climate of permanent social tension in the localities indicated, with the corresponding concern and constant vigilance on the part of the Chilean *Carabineros*, with the objective of guaranteeing order and public safety."<sup>74</sup>

<sup>68</sup> Annex 71: Page 946 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>69</sup> Annex 73: Page 968 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>70</sup> Annex 74: Page 974 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>71</sup> Annex 75: Page 985 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>72</sup> Annex 76: Page 996 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>73</sup> The so-called "Mapuche conflict" in connection with the situation of these people, the social demonstrations connected with the ancestral land and the State's answer have been dealt with in detail by the Commission in Report No. 176/10, Cases 12.576, 12.611 and 12.612. Segundo Aniceto Norín Catrیمان, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe and others. Merits, Chile, November 5, 2010. Paras. 41-48. I/A Court H.R., *Case of Norín Catrیمان et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014, para. 75 to 81. The IACHR has also received information on the situation of the Mapuche people in public hearings. See: IACHR, Situation of the human rights of the Mapuche people in Chile. 122nd Period of Sessions, March 3, 2005; Situation of human rights defenders of the Mapuche people in Chile, 131st Period of Sessions, March 10, 2008; Situation of Mapuche children in Chile, 141st Period of Sessions, March 25, 2011; Right to prior consultation of indigenous peoples in Chile, 150th Ordinary Period of Sessions, March 27, 2014; Extractive industries and human rights of the Mapuche people in Chile, 154th Ordinary Period of Sessions March 17, 2015. This situation has also been referred to by international organizations. See for example: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2003/56. Addendum - Mission to Chile. UN Doc. E / CN.4 / 2004/80 / Add.3, November 17, 2003; Committee on Economic, Social and Cultural Rights: Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant - Concluding observations of the Committee on Economic, Social and Cultural Rights - Chile. UN Doc. E/C.12/1/Add.105, December 1, 2004; Human Rights Committee: Reports presented by State Parties in accordance with Article 40 of the Covenant - Final Observations of the Human Rights Committee, Chile, April 17, 2007, UN Doc CCPR/C/CHL/CO/5.

<sup>74</sup> Annex 77: Page 1015 of file 233-2002 added by the petitioners on August 5, 2011.

- Resolution No. 4 of January 5, 2001 includes the "Manual of operations for the fulfillment of judicial mandates for the protection of forest lands". This manual details how the *Carabineros* should operate to protect the workings of forestry companies and indicates, for example, that they must ensure "permanent control of the external areas, to detect the presence of leaders of Mapuche communities in conflict" and that given "the presence of the press, to foresee possible actions on the part of the Mapuches, as well as, if this is not determined, to establish the reason for the appearance of the mass media and to inform the superior officers."<sup>75</sup>
- Instructions of the General of the *Carabineros*, Area Chief Mauricio Catalán Devlahovich, regarding the above-mentioned manual. The General points out that: subordinates must be instructed on the ideological tendencies in the Mapuche conflict; sacred places and symbols of this ethnic group must be identified and respected at all times, avoiding their destruction, since that could trigger for a new conflict; that in all circumstances officers must avoid the offense of unnecessary violence and that the commanders must be inflexible in rejecting and severely punishing it, should it occur; that the use of firearms by officers operating in the area should be avoided, since anyone wounded or killed by weapons used by the *Carabineros* could become a trigger that the leaders of the ethnic groups in conflict are waiting for, in order to turn a local issue into a national one with unusual violence, "with no end in sight"; and that the Officer in Charge must at all times show professionalism and a willingness to solve problems for Logging Companies.<sup>76</sup>
- Resolution No. 340 of December 13, 2001, which states verbatim: "given the notorious growth of the Mapuche issue jurisdictional sector, this office. It is decided, for the Superintendents to conveniently plan preventive police services in sectors with greater conflict with community members, with the purpose of avoiding alterations in public order and prevent damages against public and private property (sic)."<sup>77</sup>
- Message No. 28 of January 2002 on operations in Mapuche communities, indicating that whenever officers visit Mapuche communities or surrounding areas they must adopt the maximum security and have sufficient personal and logistical reinforcement.<sup>78</sup>

69. The Commission takes note of the United Nations' pronouncements on the death of the Mapuche adolescent Alex Lemun, as well as a more general context on the use of force against indigenous peoples and, in particular, the Mapuche people in the context of their social protest. The statements described below point to the fact that Alex Lemun's case was the beginning of a close follow-up by different United Nations agencies and authorities and by other international organizations on this issue which, from the information available, has been kept up to the present.

70. Thus, in his report on the mission to Chile, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (hereinafter "the Special Rapporteur") indicated that he was able to talk to the relatives of the 17-year-old Alex Lemun, who was killed in November 2002 by gunshot wounds fired by the *Carabineros*. In his report of November 2003, the Special Rapporteur regrets that, by that date, the necessary measures had not been taken to punish those responsible nor to provide reparations to the family. In the same report, the Rapporteur took note of general information according to which the security forces maintained a permanent presence in the communities during the gathering of evidence, which brought "physical and verbal violence" and consequently "fear in the community".<sup>79</sup>

<sup>75</sup> Annex 78: Page 1034 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>76</sup> Annex 79: Page 1030 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>77</sup> Annex 80: Page 1045 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>78</sup> Annex 81: Page 1046 of file 233-2002 added by the petitioners on August 5, 2011.

<sup>79</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Sr. Rodolfo Stavenhagen, November 17, 2003. Mission to Chile. Available at: <http://www.politicaspUBLICAS.net/panel/re/docs/9-Report-mision-a-chile-relator-especial-dpi-2003.html>.

71. A 2004 Human Rights Watch report stated that:

(...) the Mapuche have often been victims of physical abuse and degrading treatment by the police. This has occurred during operations to evict squatters and during raids in communities to capture suspects and obtain evidence, as well as during protests in cities of Araucanía, especially in Temuco.<sup>80</sup>

72. In 2007, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated again that "in Chile, the Mapuche communities continue to be raided and mistreated by police forces."<sup>81</sup> In the same year, the Committee on the Rights of the Child made the following observations regarding:

The Committee is concerned about reports that young indigenous people have been subjected to mistreatment by the police. Finally, the Committee regrets that detailed information on indigenous children has not been provided in the State party's report

The Committee recommends that the State party: (...) (d) Ensure that indigenous youths are not victims of ill-treatment by the police and take preventive and corrective measures in cases of alleged ill-treatment (...).<sup>82</sup>

73. In 2009, the Committee on the Elimination of Racial Discrimination indicated the following with regard to Chile:

The Committee notes with concern the allegations of abuse and violence by the *Carabineros* against members of the Mapuche people in the context of raids and other police operations. The Committee notes with consternation the death of the young Mapuche José Facundo Mendoza Collio on August 12, 2009, as a result of shooting by the *Carabineros* (...).

The Committee recommends that: (a) The State party investigate complaints of abuse and violence against persons belonging to indigenous peoples by members of the armed forces; B) that the persons responsible for such acts be prosecuted and punished and that reparation be granted to the victims or to the next of kin of the victims. The Committee further urges the State party to take appropriate measures to prevent such acts and, in this regard, recommends that it strengthen human rights training for the armed forces of the State, including the provisions contained in the Convention.<sup>83</sup>

74. Also in 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people issued a follow-up report to the recommendations made to Chile by the previous Rapporteur. The report indicates the following:

(...) During his visit, the Special Rapporteur received information on allegations of violence or police mistreatment of Mapuche people in recent years since the Special Rapporteur's visit in 2003. One aspect of the allegations received is the searches carried out against Mapuche families and individuals in relation to cases of alleged crimes under investigation (...) in some of these raids has been reported excessive and disproportionate use of firearms and tear gas, as well as the existence of beatings and insults by the police against the indigenous population, affecting women, children and the elderly

<sup>80</sup> Annex 82: *Undue Process: Terrorism Trials, Military Courts and the Mapuche in Southern Chile*. Human Rights Watch, October 2004. Available at: [http://www.hrw.org/sites/default/files/reports/chile1004sp\\_0.pdf](http://www.hrw.org/sites/default/files/reports/chile1004sp_0.pdf)

<sup>81</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Sr. Rodolfo Stavenhagen, February 27, 2007.

<sup>82</sup> Committee on the Rights of the Child. Concluding Observations in the context of the consideration of reports submitted by States Parties under Article 44 of the Convention. Chile. April 23, 2007. CRC/C/CHL/CO/3.

<sup>83</sup> Committee on the Elimination of Racial Discrimination. Concluding Observations in the Context of the Examination of Reports presented by the States Parties under Article 9 of the Convention. Chile. September 7, 2009. CERD/C/CHL/CO/15-18.

(...)According to the information, police action has resulted in numerous injuries. The Special Rapporteur also notes with concern that police actions have resulted in the shooting death of the young Mapuche Matías Catrileo in January 2008 and, more recently, of the young Mapuche Jaime Facundo Mendoza Collio in August 2009

(..)the Special Rapporteur receives with concern allegations of abuse and violence by the police against members of the Mapuche people in the context of raids and other police operations

(...) the Special Rapporteur calls upon the competent authorities to investigate complaints of abuse and violence against indigenous persons committed by members of the police, to prosecute and punish those responsible for such acts, and to The victims or the relatives of the victims. In addition, the Special Rapporteur urges the competent authorities to take the necessary measures to prevent such acts.<sup>84</sup>

75. In 2013, the Committee on the Elimination of All Forms of Racial Discrimination expressed its concern about "the undue and excessive use of force against members of Mapuche communities, including children, women and older persons by the *Carabineros* and the Investigative Police during raids and other police operations" as well as the impunity with which such abuse is committed. The Committee also noted that "the undue and excessive use of force on members of the Mapuche people could have negative and discriminatory impacts on indigenous peoples that go beyond their impacts on the individuals suspected of having committed a offence." Accordingly, the Committee recommended that the Chilean State, inter alia, investigate allegations of violence committed by state officials against communities of indigenous peoples, particularly the Mapuche and Rapa Nui peoples; and intensify and expand human rights training and educational efforts for security officers for the proper performance of their duties.<sup>85</sup>

76. Recently, in 2015, the Committee on the Rights of the Child again commented on the situation evaluated years ago, indicating that "[t]he Committee remains deeply concerned with the enduring situation of inequality, discrimination and violence against indigenous children, in particular Mapuche children". It therefore urged the State to "take immediate steps to stop all violence by the police against indigenous children and their families, including in the context of development activities; (...) Promptly investigate and prosecute all cases of violence against indigenous children perpetrated by police officers."<sup>86</sup>

## V. LEGAL ANALYSIS

77. The Commission recalls that international protection of human rights should not be confused with criminal justice. International human rights law is not intended to impose penalties on individuals responsible for their violations, but rather to determine whether the State in question has fulfilled its international obligations and, if not, to protect the victims and provide reparation for the damages that have been caused to them by conduct attributable to the State. In that sense, the Commission clarifies that it is not its role to establish whether the *Carabineros* officers are criminally responsible for the death of the teenager, Alex Lemun, but to assess in accordance with the available information and in compliance with the duties under the American Convention and the applicable rules on burden of proof, whether the actions of such agents involved the international responsibility of the State.

78. The Commission will analyze the positions of the parties and the facts established in the following order:  
A. Rights to life, personal integrity, rights of the child and equality and non-discrimination with regard to the

<sup>84</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya. The situation of indigenous peoples in Chile: follow up the recommendations made by the previous Special Rapporteur. October 5, 2009. Para. 62 (official translation unavailable)

<sup>85</sup> Committee on the Elimination of Racial Discrimination. Concluding Observations on the Periodic Reports No. 19<sup>o</sup> to 21<sup>o</sup> of Chile, approved by the Committee in its 83rd Period of Sessions. September 23, 2013.

<sup>86</sup> Committee on the Rights of the Child. Concluding Observations on the combined fourth and fifth periodic reports of Chile. October 30, 2015. CRC/C/CHL/CO/4-5.



events that occurred on November 7, 2002; B. Rights to judicial guarantees and judicial protection in respect of domestic proceedings; and C. Right to personal integrity and equality and non-discrimination with respect to the family of Alex Lemun and the community to which he belonged.

**A. Rights to Life, Personal Integrity, Rights of the Child, to Equal Protection, and Non-Discrimination (Articles 4.1<sup>87</sup>, 5.1<sup>88</sup>, 19<sup>89</sup>, 24<sup>90</sup>, 1.1<sup>91</sup> and 2<sup>92</sup> of the American Convention)**

79. The Commission recalls that the right to life is a prerequisite for the enjoyment of all other human rights and without the respect of which all others are meaningless.<sup>93</sup> In that sense, compliance with Article 4 in relation to Article 1 (1) of the American Convention not only presupposes that no person is arbitrarily deprived of his or her life, but also requires that States take all appropriate measures to protect and preserve the right to life, under its duty to guarantee the full and free exercise of the rights of all persons under its jurisdiction.<sup>94</sup> For its part, the European Court has pointed out the importance of the right to life being interpreted and applied in such a way that its safeguards are practical and effective.<sup>95</sup>

80.

81. Both the Commission and the Inter-American Court have indicated that in any cases in which State agents have caused the death or injury of an individual, it is appropriate to analyze the use of force.<sup>96</sup> In that sense, the Commission will analyze the facts of the case taking into account the Inter-American jurisprudence on the right to life, in relation to the duty to respect and ensure such right and in the area of the use of force. To this end, the IACHR will take into account a number of international instruments in this area, and in particular the Basic Principles on the use of force and firearms by law enforcement agents and the Code of Conduct for Law Enforcement Agents (hereinafter "Principles on the use of force" and "Code of Conduct" respectively). Following the methodology used by the Commission and the Court in cases on alleged excessive use of force, the use of force by agents of the Chilean State against the teenager Alex Lemun will be analyzed taking into account three stages: 1) preventive action measures; 2) actions at the time of the events; and (3) subsequent actions.<sup>97</sup>

<sup>87</sup> Article 4.1 of the American Convention provides that: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>88</sup> Article 5.1 of the American Convention provides that: 1. Every person has the right to have his physical, mental, and moral integrity respected.

<sup>89</sup> Article 19 of the American Convention states that: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

<sup>90</sup> Article 24 of the American Convention states that: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

<sup>91</sup> Article 1.1 of the Convention provides that: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition

<sup>92</sup> Article 2 of the American Convention establishes that: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

<sup>93</sup> IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 185.

<sup>94</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80. Also, see: IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 186.

<sup>95</sup> ECHR, Case *McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 146.

<sup>96</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 123; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 123.

<sup>97</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281; para. 124; and *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, para. 78; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 189.



## 1. Analysis as to Whether the Chilean State Undertook Preventive Actions

82. The Inter-American Commission has maintained that, in the context of operations involving police or military agents, international law imposes a series of requirements derived from the protection under the Convention, inter alia, the right to life.<sup>98</sup> States should take the necessary measures to establish an adequate legal framework to deter any threat to this right.<sup>99</sup> The Commission and the Inter-American Court have pointed out that there is a duty on the State to adapt its national legislation and to "ensure that its security forces, which are entitled to use legitimate force, respect the right to life of the people under their jurisdiction".<sup>100</sup>

83. From this duty, the Court has pointed out that the following obligations emerge: (i) that the State is "clear when defining domestic policies on the use of force and pursu[ing] strategies to implement the Principles on the use of force and Code of conduct"; (ii) provide agents of various types of weapons, ammunition and protective equipment to allow for a materially adequate and proportional reaction to the situations in which they have to intervene and to restrict as much as possible the use of lethal weapons that can cause injury of death;<sup>101</sup> and iii) instruct their agents regarding the legal provisions in force on the use of firearms so that they are adequately trained and in possession of all necessary information to make a judgment in the event of having to decide on their use.<sup>102</sup>

84. The Inter-American Court has pointed out that in cases where this kind of authority must be used, "state agents, as far as possible, should carry out an assessment of the situation and a plan of action prior to their intervention."<sup>103</sup> On this same obligation, the European Court has emphasized that State agents acting in an "irregular and arbitrary manner is incompatible with the effective respect of human rights". In the words of the European Court:

(...)in accordance with the importance of Article 2 [right to life], in a democratic society, the Court must submit allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the action of agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under review (...).<sup>104</sup>

85. In the present case, there is no indication in the file on the existence of a regulation and training on the use of force by the *Carabineros* military police, in accordance with international standards in force for 2002, when the death of the teenager Alex Lemun took place.

86. As stated in the section on the position of the parties, the Chilean State indicated that it was in 2011 that the Department of Human Rights of the *Carabineros* was established to promote human rights within the organization. One of the purposes of this department was to review the standards on the use of force, in light

<sup>98</sup> IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 168.

<sup>99</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 81; and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 66.

<sup>100</sup> IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 168. Also, see: I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 66.

<sup>101</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 80.

<sup>102</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 84.

<sup>103</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 81.

<sup>104</sup> ECHR, *Case Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 59.

of international standards. This information, coupled with a lack of additional documentary evidence to the contrary, allows the Commission to infer that by 2002, there were insufficient preventive measures in place to ensure that the use of force by the *Carabineros* complied with the standards previously described in this report.

87. This situation is in itself inconsistent with Article 4.1 of the American Convention in connection with the duty to ensure this right and to adopt provisions of domestic law as established in Articles 1.1 and 2 of the same instrument.

## **2. Analysis of Actions Accompanying the Events: the Use of Lethal Force against the Adolescent Alex Lemun**

88. The IACHR has indicated that while the State has the right and obligation to provide protection against threats and for that purpose may use lethal force in certain situations, that power must be restricted to where it is strictly necessary and proportionate. If it does not, the use of lethal force may constitute an arbitrary deprivation of life or summary execution. This amounts to saying that the use of lethal force must necessarily be justified on the basis of the right of the State to protect the security of everyone.<sup>105</sup>

89. When it is alleged that a death has occurred as a result of the use of force, the Inter-American Court has established clear rules on the burden of proof. In the words of the Court:

(...) whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.<sup>106</sup>

90. In a similar vein, the UN Human Rights Committee has indicated that in cases where the clarification of the facts falls exclusively on the State, complaints may be considered as proven in the absence of satisfactory evidence or explanation refuting the petitioners' claims.<sup>107</sup> The above is related to the European Court's statement that in cases of death resulting from the lethal use of force, it is necessary to apply the strictest test on the imperative nature of such use of force.<sup>108</sup>

91. In this regard, in order for an explanation of the lethal use of force to be considered satisfactory, it must be the result of an investigation consistent with the guarantees of independence, impartiality and due diligence and, in addition, must comply with elements conforming to Inter-American jurisprudence justifying such use of force, namely:

- i. Legitimate purpose: the use of force must be addressed at achieving a legitimate purpose (...)
- ii. Absolute necessity: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that it is sought to protect, according to the circumstances of the case (...)

<sup>105</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Para. 88.

<sup>106</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Para. 108; *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 291; and *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. Para. 132.

<sup>107</sup> UN, Human Rights Committee. *Case of Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay*. Communication No. 30/1978, UN Doc. CCPR/C/OP/1, March 29, 1982, para. 13.3; *Case of Albert Womah Mukong v. Cameroon*. Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, July 21, 1994, para. 9.2, and *Case of Turdukan Zhumbaeva v. Kyrgyzstan*. Communication N° 1756/2008, UN Doc. CCPR/C/102/D/1756/2008, July 29, 2011, para. 8.7.

<sup>108</sup> ECHR, *Case McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 149.

iii. Proportionality: The level of force used must be in accordance with the level of resistance offered, which implies establishing a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused.<sup>109</sup>

92. Based on the foregoing, the legitimate purpose, absolute necessity and proportionality of the use of force must be demonstrated by the State in the light of the particular circumstances of the case. Also, as a consequence of these principles, the Commission recalls that State agents involved in operations must apply criteria of "differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required."<sup>110</sup>

93. In order to determine whether the State has provided a satisfactory explanation of the lethal use of force in the light of the above elements, the Commission notes that in the Inter-American proceedings, Chile has merely indicated that Major Treuer had to use a firearm to defend himself and his officers, because a shot was fired from the location of the Mapuche villagers. As is clear from its briefs, this explanation on the part of the State was based on the information contained in the reports drawn up by the authorities directly involved in the events.

94. In addition, the Commission recalls that the entire criminal investigation was carried out in the military courts. This instance, as will be indicated below, does not meet the independence and impartiality requirements required by the American Convention for the clarification and punishment of events such as those in this case.

95. The State's explanation based on the version of the individuals involved and on the findings of the military criminal justice system lacking independence and impartiality does not constitute a satisfactory explanation for the strict observance of the principles of legitimate aim, necessity and proportionality in the lethal use of force in the case at hand. This determination alone would be sufficient to establish the international responsibility of the State for the violation of the right to life to the detriment of the teenager Alex Lemun.

96. Notwithstanding the foregoing, the information available in the case file confirms this determination.

97. First, as regards the manner in which the operation was carried out, the State acknowledged that the Malleco Prefecture undertook an administrative investigation, concluding that the police planning and tactics used in the operation failed to comply with previous instructions, causing Major Treuer to be sanctioned with one day's arrest. Regardless of the proportionality of this sanction vis-a-vis the lethal outcome of the operation, the Commission considers that this information confirms that it was conducted in an irregular way.

98. Secondly, the Commission observes that the versions of what happened appear from statements made, on the one hand, by the *Carabineros* and, on the other, by the Mapuche community members who were at the scene. The statements coincide: that three *Carabineros* arrived at the place where there was a group of approximately 40 indigenous Mapuche men, women, old people and children. Likewise, the versions indicate that Mapuche villagers threw stones with *boleadoras* while the *Carabineros* fired tear gas. They also coincide in affirming that approximately 20 young community members chased the *Carabineros*, throwing stones at them and that when the adolescent Alex Lemun joined in he was shot in the head by a firearm from one of the *Carabineros* at a distance of approximately 100 meters. The difference between the versions centers on the fact that the *Carabineros* stated they heard a gunshot coming from the community members, whereas the latter confirm that they were unarmed.

99. With regard to this discrepancy, two relevant aspects arise from the proven facts. The first is that Alex Lemun's hands had no traces of residue showing that he had fired the shot. The second and more relevant

<sup>109</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 134.

<sup>110</sup> I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 85.

aspect, in relation to the version of the agents involved, is that according to the technical tests set out in the section of proven facts, after performing a thorough search at the site, the only signs relevant to the criminal investigation found were projectiles and shell casings used by the *Carabineros*.

100. It follows from this that: (i) Alex Lemun was shot in the head by a state agent belonging to the military police institution called the *Carabineros*; (ii) the State did not provide a satisfactory explanation of such lethal use of force - despite the fact that the agents had rubber bullets - by relying on the version of the agents involved and conducting the investigation before the military courts; (iii) the only information in the file on the existence of a shot fired by the community members is the statement of the *Carabineros* contradicting the version of the community members; (iv) from the forensic tests performed, it turns out that Alex Lemun did not fire a shot, and that at the scene, there were no indications of shots other than those fired by the *Carabineros*.

101. In addition, the proven facts show that the *Carabineros* officers knew of the presence of young people in the area, including adolescents, despite which they did not act in accordance with the duty of special protection established in the American Convention. On the contrary, they used lethal force incompatible with that instrument.

102. In view of the above, taken as a whole, the Commission concludes that the use of lethal force to the detriment of the adolescent Alex Lemun did not comply with the principles of legitimate aim, necessity and proportionality. Thus, the Commission considers that Alex Lemun was extrajudicially executed and was therefore arbitrarily deprived of his life, in violation of Articles 4.1 and 19 of the American Convention in relation to the obligation of compliance established in Article 1.1 of the same instrument. This conclusion derives from the fact that the fatal outcome to the detriment of the victim, who died five days later, was caused as a result of the shot fired by the *Carabiniro* agent, without prejudice to the analysis below of the actions subsequent to the use of force.

### 3. Analysis of the Subsequent Actions

103. Taking into account that the teenager Alex Lemun did not die immediately after being shot, in the present case, the analysis of the subsequent actions is related to the state agents' response to the fatal injuries one of them caused to the victim.

104. In this regard, the Principles on the use of force stipulate that officers who use force "shall behave in such a way as to render medical assistance and services to wounded or affected persons as soon as possible".<sup>111</sup>

105. In this regard, the Commission considers that the Chilean State had a duty to provide Alex Lemun with timely and immediate medical attention, since he was alive and wounded as a result of being shot by a *Carabiniro* officer. There is no dispute that the state agents did not render any aid to the injured teenager. On the contrary, the same state agents involved stated that after the shot they retreated to call for reinforcements in order to search the area and not to help Alex Lemun. In fact, it was only in the evening that the *Carabineros* recorded that a Mapuche had been injured in the operation. This meant that the aid had to be given by the community members in the area and by his parents who stated that even they telephoned the *Carabineros* for help without any assistance forthcoming, which resulted in a 40-minute delay while an ambulance arrived.

106. The Commission considers that the State has failed to fulfill its obligation to provide assistance and immediate medical attention for the injuries caused by the use of force. In addition, the Commission considers that between the time of his shooting and the day of his death, the adolescent Alex Lemun suffered extreme physical pain incompatible with his personal integrity, which is attributable to the Chilean State. Accordingly, the Commission considers that the State violated the rights to life, personal integrity and the rights of the child established in Articles 4.1, 5.1 and 19 of the American Convention, in relation to the obligations of respect and

<sup>111</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

guarantee established in Article 1.1 of the same instrument, to the detriment of the teenager Alex Lemun; in addition, for the suffering in the moments between being shot and his death, as well as for the omission of the State to immediately seek medical attention.

#### 4. Analysis of the Principle of Equal Treatment and Non-Discrimination

107. In Admissibility Report 81/12, the Commission indicated that in its decision on the merits it would consider the case in the light of the principle of equality and non-discrimination, in view of the fact that the events are connected with a member of the Mapuche community in the context of a territorial claim.

108. In this regard, the Commission observes that, from the circumstances surrounding Alex Lemun's death, it is possible to state that this occurred in the context of the "Mapuche conflict". In 2003, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people indicated that the so-called "Mapuche conflict" in Chile can not be understood "without reference to the history of their relations with Chilean society" because "[t]he current situation of indigenous peoples in Chile is the product of a long history of marginalization, discrimination and exclusion, linked mainly to various oppressive forms of exploitation and dispossession of their lands and resources dating back to the sixteenth century to the present day."<sup>112</sup>

109. In this context, the pronouncements of international organizations cited in this report make clear that the military police institution called the *Carabineros* - which ensures order and internal security - has been repeatedly denounced for acts of police abuse to the prejudice of people belonging to the Mapuche community in the context of the "Mapuche conflict" relating to the territorial claims of these peoples. The Commission takes into account that several of the internal documents of the *Carabineros* referred to in the proven facts between 1998 and 2002 include contents about the Mapuche people that seem to question the nature of their territorial claims and generalize them as sources of conflict. Even in some of these documents reference is made to the need to respect their integrity and sacred or culturally relevant sites because, if affected, they could trigger even more conflict. These types of views on an indigenous people and its members in the orders of a security body, coupled with the lack of regulation over the use of force in accordance with international standards - as already concluded in this report - constitute a source of risk of violence with discriminatory overtones.

110. The Commission considers that the extrajudicial execution of the teenager Alex Lemun cannot be separated from these risk factors of a discriminatory use of lethal force. In addition, Alex Lemun's case is not an isolated event, since after his death, other similar events have been recorded, which, as already explained, have been a source of concern for many international organizations.

111. In light of the foregoing considerations, the Commission considers that there is sufficient evidence to conclude that, in addition to the violation of the rights to life and personal integrity as described above, in this case the State also violated the principle of equality and non-discrimination to the detriment of Alex Lemun.

#### **B. Rights to a Fair Trial and Judicial Protection and the Duty to Adopt Provisions in Domestic Law (Articles 8.1<sup>113</sup>, 25.1<sup>114</sup>, 1.1 and 2 of the American Convention)**

<sup>112</sup> Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Mr. Rodolfo Stavenhagen. Mission Chile, November 2003.

<sup>113</sup> Article 8.1 of the American Convention provides that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>114</sup> Article 25.1 of the American Convention establishes that: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."



112. Whenever the death or injury to an individual occurs in violent circumstances, the Commission and the Inter-American Court have held that Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention oblige the State to conduct *ex officio* a serious, impartial and effective investigation without delay, as a fundamental and conditional element for the protection of the rights affected.<sup>115</sup> This obligation under Article 1 (1) of the American Convention, obliges the State to provide a prompt and simple remedy to ensure, *inter alia*, that those responsible for human rights violations are tried, and to obtain reparation for the harm suffered.<sup>116</sup> Article 2 of the Convention, for its part, requires the State to eliminate rules and practices incompatible with the guarantees provided for in the Convention, as well as to enact laws and to develop practices conducive to the effective and appropriate investigation.<sup>117</sup>

113. In cases where death may have resulted from the lethal use of force by state agents, the European Court has pointed out that "the most careful scrutiny" must be carried out, taking into account "not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination." <sup>118</sup> In this way, "any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard."<sup>119</sup>

114. The Commission will assess whether, in the domestic proceedings, the Chilean State provided the victims with effective judicial remedies in accordance with due process guarantees to clarify the death of the teenager Alex Lemun at the hands of *Carabineros* agents.

115. The Committee recalls that special jurisdictions, such as the military criminal justice system, must be restrictive and exceptional in scope and must be aimed at protecting special legal interests linked to the entity itself.<sup>120</sup> For its part, the Inter-American Court has analyzed the structure and composition of special tribunals, such as military courts, in the light of the United Nations Basic Principles on the Independence of the Judiciary. Some relevant factors are: i) the fact that its members are officers in active service and are subordinated hierarchically to their superiors through the chain of command; (ii) the fact that their appointment is not dependent on professional competence and suitability to perform judicial functions; and (iii) the fact that they do not have sufficient guarantees of stability. This has led to the conclusion that such courts lack independence and impartiality to hear cases involving human rights violations.<sup>121</sup>

116. Taking into consideration the above criteria, the Commission and the Inter-American Court have referred to the incompatibility of the American Convention with the use of the military criminal jurisdiction to clarify potential human rights violations, and the difficulties in ensuring independence and impartiality whenever the armed forces themselves are "charged with judging their own peers for the execution of civilians".<sup>122</sup> Thus, in the case of special jurisdictions, such as military courts, the Inter-American Court has

<sup>115</sup> IACHR, Report No. 85/13, Case 12.251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, para. 242; and I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 75.

<sup>116</sup> I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, para. 169; *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. para. 91.

<sup>117</sup> I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154., para. 118; and *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 85.

<sup>118</sup> ECHR, *McCann and Others v. the United Kingdom*, Application No. 27229/95, September 1995, § 150.

<sup>119</sup> ECHR, *Mikhalkova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42.

<sup>120</sup> IACHR. Report 53/01. Case 11.565. Ana, Beatriz and Cecilia González Pérez. Mexico. April 4, 2001, para. 81.

<sup>121</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C, No. 135, paras.155-156.

<sup>122</sup> IACHR. Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. 2007. Para. 167; I/A Court H.R., *Case of Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, para. 53; IACHR, Report on the Situation of Human Rights in Peru (OEA/Ser.L/V/II.106), June 2, 2000.



pointed out that only active soldiers must be tried “for the commission of crimes or offences based on their own nature threaten the juridical rights of the military order itself.”<sup>123</sup>

117. The Chilean military justice system has been scrutinized by the organs of the Inter-American human rights system. In 1985, the IACHR in its Report on the Situation of Human Rights of Chile stated that “prior to the military pronouncement of 1973, the scope of military criminal jurisdiction was particularly wide in Chile,” an area that was steadily expanded during the military dictatorship (1973-1990). This broad scope was explained by the following:

first, that the classification of criminal acts in the Code of Military Justice includes crimes that may be committed by civilians; second, that it may include common crimes committed by military personnel or by civilians employed by the Armed Forces, under a given set of circumstances; and third, that military law extends to civilians as partners in crime, accessories or by means of a combination of crimes.<sup>124</sup>

118. With the advent of democracy in Chile in 1990, a number of reforms were implemented in the area of military justice, some with the aim of restricting its scope of application. However, as will be seen, those reforms were limited.

119. In the mid-1990’s, the Chilean criminal justice system underwent substantial reform, a reform that replaced the inquisitorial system with an accusatory and oral system with the primary objective of guaranteeing due process. However, military justice through constitutional reform was excluded. Article 83 para. 4 of the Chilean Constitution as amended in 1997, on Public Prosecutors, expressly excludes from this institution cases under the jurisdiction of the military courts.

120. Until fairly recently, Chilean military justice was competent even to try civilians in certain cases. In 2007, the Inter-American Court had the opportunity to rule on the Chilean military justice system, in the *Case of Palamara Iribarne v. Chile*.<sup>125</sup> In relation to the organizational structure and composition of military tribunals in Chile, the Court considered that they lacked independence and impartiality:

121. The Court deems that the organic structure and composition of military courts as described in the foregoing paragraphs implies that, in general, they are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command, that their designation does not depend on their professional skills and qualifications to exercise judicial functions, that they do not have sufficient guarantees that they will not be removed, and that they have not received the legal education required to sit as judges or serve as prosecutors. All this implies that said courts lack independence and impartiality.<sup>126</sup>

122. In this regard, in 2010, under Law 20477, enacted in response to the aforementioned *Palamara Iribarne* case, Chilean legislation was amended to exclude civilians and minors from the jurisdiction of military tribunals. In spite of the above, the military courts continue to have jurisdiction to hear common crimes committed by the military, including cases of human rights violations. Specifically, Article 5 of the Chilean Code of Military Justice is still in force. This provides that it is for the military courts to try cases of common crimes committed by military personnel in active service or on occasion thereof.

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<sup>123</sup> I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 272.

<sup>124</sup> IACHR, *Report on the Situation of Human Rights in Chile*, May 8, 1985, Chapter VIII, D., para. 108.

<sup>125</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135.

<sup>126</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135. Para. 155.

123. In the present case, concerning the potential violation of the right to life of a civilian, which affects legal interests unconnected with military discipline, the Commission considers that the application of the military criminal justice system to the specific case violated the right to a competent, independent and impartial authority to obtain justice in cases of human rights violations. The Commission further observes that the application of military justice to the specific case was due to the legal framework and to the practice in force at the time of the events, which is why the State also failed to comply with its obligation to adopt domestic legal provisions.

124. Taking into account the previous findings on the incompatibility of the integrity of the criminal investigation and trial before the military criminal justice system with the Convention, it is not necessary to analyze other more specific violations of the duty to investigate with due diligence.

125. In light of the foregoing considerations, the Commission concludes that the Chilean State is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Alex Lemun's next of kin, namely: Edmundo del Carmen Lemun Necul (father); Blanca Sonia Saavedra Horia (mother); and Juan, Jose, Ines del Carmen, Armando Arturo, Loreto, Carlos, Loren Sofia and Rodrigo Esteban, all of them surnamed Lemun Saavedra (siblings).

### **C. Right to Humane Treatment and Equal Protection and Non-Discrimination with regard to Alex Lemun's Next-of-Kin and his Community (Articles 5.1, 24 and 1.1 of the American Convention)**

126. With regard to the relatives of victims of certain human rights violations, the Commission and the Inter-American Court have indicated that they may, in turn, be considered as victims.<sup>127</sup> In this regard, the Court has stated that they may be affected in their mental and moral integrity as a result of the particular circumstances surrounding the victims' deaths, as well as of the subsequent actions or omissions of the domestic authorities in the face of these events.<sup>128</sup>

127. In the present case, the Commission found that the teenager Alex Lemun died in circumstances in which State agents used lethal force unnecessarily and disproportionately without any justification for such action. These circumstances are in themselves a source of suffering and impotence for his relatives, aggravated by the fact that his parents and siblings saw him in intense pain while being transported in an ox cart, and then seeing him in a coma for five days until he finally died.

128. In addition, the Commission also concluded in this report that in the present case there was no due diligence investigation by a competent, independent and impartial authority. In these circumstances, the Court has indicated that:

[...] the absence of a complete and effective investigation into the facts constitutes a source of additional suffering for victims and the next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>129</sup>

<sup>127</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Para. 227; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and *Case of Bueno Alves v. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164. para. 102.

<sup>128</sup> I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and *Case of Vargas Areco v. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155. para. 96.

<sup>129</sup> I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102; *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, para. 195; and *Case of Heliodoro-Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146.

129. The Commission also considers the impact on the Requien Lemun Mapuche Community of the death of one of its members who also took an active part in community life and in the territorial claims of the Mapuche people. This impact is reflected, among other things, in the renaming of the Community as Alex Lemun.

130. Accordingly, the Commission considers that the loss of a loved one in circumstances such as those described in this report, as well as the absence of truth and justice, caused suffering and distress to the detriment of the family members of the teenager Alex Lemun, in violation of their right to the mental and moral integrity established in Article 5.1 of the American Convention in relation to the obligations contained in Article 1.1 of the same instrument. The Commission also considers that the Requien Lemun Mapuche community, currently Alex Lemun Mapuche community, was also affected

## VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 31/17

131. The Commission adopted merits report No. 31/17 on March 21, 2017 and forwarded it to the State on May 10 that year. In said report the Commission recommended:

1. Provide full reparation for the human rights violations declared in the instant report both materially and morally. The State must adopt measures of economic compensation and satisfaction of moral damages; as well as rehabilitation for the family members, should they so desire.
2. Open an effective investigation within a reasonable period of time under ordinary criminal jurisdiction, in order to fully elucidate the facts, identify all potential liability and impose the appropriate punishments for the human rights violations declared in the instant report. The State cannot invoke the application of the principle of *ne bis in idem* in order to avoid compliance with this obligation, taking into account that the final decision at the domestic level was the result of a process that violates the guarantees of natural justice, independence and impartiality.
3. Adopt administrative, disciplinary or criminal measures vis-a-vis the actions or omissions of state officials contributing to the denial of justice and impunity in this case.
4. Adopt non-repetition measures that include legislative, administrative and other measures aimed at: i) preventing the excessive use of force by the *Carabineros* within the framework of the territorial claims of indigenous peoples, particularly the Mapuche people, including training, coordination and supervision measures, as well as the establishment of adequate mechanisms of accountability; and (ii) ensure that military criminal justice refrains, in all circumstances, from hearing cases involving human rights violations, including events such as those in this case.

132. After notice was served of the report on the merits, the Commission received several communications from the parties on compliance with the recommendations issued by the IACHR and, in particular, regarding the signing of an Agreement on Compliance with Recommendations. Over this period, the Commission granted the State a total of three extensions suspending the time period provided for under Article 51 of the American Convention. The State expressly waived its right to file preliminary objections because of its failure to comply with the aforementioned time period, in the event that the case was referred to the Inter-American Court.

133. Hereunder, the IACHR lists the major items of the Agreement on Compliance with Recommendations entered into by the parties on March 9, 2018:

### **1. Recognition of international responsibility**

The State recognizes the facts laid out in Report on the Merits No. 31/17, on March 21, 2017, issued by the IACHR, and recognizes its international responsibility for violation of the human rights stemming from that set of facts, as provided for in Articles 4.1, 5.1, 24, 19, 8.1 and 25.1, in connection with Article 1.1 of the American Convention on Human Rights (ACHR), to the detriment of Alex Lemun and his next of kin.

In order to publicize this recognition of responsibility, the State will post the Agreement entered into between the Parties on the websites of the Ministry of Foreign Relations, the Ministry of the Interior and Public Security and Carabineros de Chile, except for the portions pertaining to the family's compensation. Said posting must remain viewable and accessible for a period of one year from the time of the signing of the Agreement.

### **2. Economic reparation**

The State will compensate the victims with payment of an amount equivalent to USD\$300,000 US dollars.

(...)

The payment shall be made within a maximum period of one month, as of the day of the signing of the instant Agreement.

### **3. Other measures of reparation**

#### **a) Measures to enable the family to gain access to land**

The State accepts the victims' proposal to take steps to ensure that they have access to the acquisition of land. In view of the fact that the victims have filed with the National Corporation of Indigenous Development (CONADI), the State undertakes to continue, through this institution, to process the application filed by the Alex Lemun Indigenous Community, dated August 5, 2009, which acknowledged the existence of the land issue, and the possibility of addressing it through said institution. The acquisition shall be executed as provided for under Article 25 and of Law 19.253 itself and DS 395.

(...)

In the event that the procedure proves to be ineffective for gaining access to land as described herein, the State undertakes to propose alternative ways to comply with the reparation.

Compliance with this measure does not preclude the Community from filing future applications for access to lands other than those granted by the State in this transaction.

(...)

#### **b) Adopt measures to provide the family with access to machinery to work the land**

The State pledges to take the necessary steps for the victims to gain access to farming machinery, including a tractor with baler, conditioner, plow, fumigator, planter, clearer, chisel plow, an automated thresher and harvester through the instruments of the Development fund, as provided for in Law No. 19.2553, Article 23 and DS 396 (...).

Additionally, the State makes available to the family members the Indigenous Development Fund, established in Article 23 of Law 19.253 (...). Once the family has applied, the State undertakes to take the necessary steps for the development subsidy to be approved (...).

The State undertakes to execute this measure within a period of three months from the time of the signing of the Agreement.

#### **4. Guarantees of Non Repetition**

##### **a) Approve a Presidential Decree setting forth general guidelines on the use of police force**

The State undertakes to issue before March 11, 22018 a Presidential Decree establishing guidelines on the use of force in keeping with international human rights standards on this subject matter.

(...)

Training

On-the-ground training program for Carabineros officers assigned to the Araucanía

(...)

Tailoring the offer of training and professional development courses to the judges of the judicial branch.

(...)

Measures of satisfaction and rehabilitation

Scholarships

The State undertakes, through the Ministry of Education, to take the necessary measures so that Rodrigo Lemun, the brother of Alex Lemun, is able to continue his middle school and higher education (...). The State shall conduct an assessment and will submit to the victims and their representatives the available implementation options within a period of 30 days of the signing of the Agreement.

Physical and mental health care for the family

The State undertakes to provide the victims with physical and mental health assistance, as well as with any transportation and medications that may be necessary (...).

Measures to mitigate the impact of the impunity of the death of Alex Lemun

On October 2, 2017, the Plenary Supreme Court issued a ruling ordering (i) transfer the criminal proceeding (...) today dismissed without prejudice by a military court, to move it under the purview of the ordinary judiciary system (...); (ii) vacate the dismissal without prejudice (...); (iii) and to restore the proceedings to the stage of the preliminary investigation, with the original case file to be forwarded to the Local Prosecutor of the Office of the Public Prosecutor of the town of Angol, in order to proceed to examine and rule as appropriate under the law.

(...)

Based on the case file forwarded by the Supreme Court, a criminal investigation shall be opened in the ordinary jurisdiction.

(...)

## 5. Costs and expenses

(...)

134. The Commission welcomes the signing of the Agreement on Compliance with Recommendations, which includes all of the areas of full reparation, in keeping with the recommendations issued in report on the merits No. 31/17. Notwithstanding the foregoing, and in view of item 7 of said Agreement, which refers to “approval of the Agreement by the IACHR,” the Commission clarifies that the instant stage is not a friendly settlement proceeding as provided for in the Convention and the Rules of Procedure, but rather is a subsequent stage to the determination of international responsibility of the State and, therefore, the IACHR plays a role of overseeing compliance with its recommendations, which in this instance have been put in writing by the parties in the Agreement described above. Accordingly, in view of the stage at which the instant case currently stands, oversight of compliance shall be carried out by issuing the instant final report, subsequent publication and appropriate follow up.

135. After assessing the available information on the Agreement of Compliance with Recommendations and both parties’ willingness for the IACHR to continue with its supervisory role of compliance, the Commission decided on April 10, 2018 by absolute majority to not refer the case to the Inter-American Court and proceed to publish the merits report. As of the present date, the Commission does not have detailed information on compliance with the items of the Agreement and, therefore, asks the Chilean State to provide said information, in view of the fact that many of the deadlines set forth therein have lapsed.

## VII. FOLLOW-UP TO REPORT No. 67/18 AND COMPLIANCE INFORMATION

136. The Commission approved final report No. 67/18 on May 10, 2018. In that report, the Commission took into account the compliance agreement signed between the parties, the acknowledgment of responsibility made and the financial compensation made effective in April 2018. In its report, the IACHR reiterated its recommendations contained in Report No. 31/17. Said report was notified to the parties on August 23, 2018 with a one-month deadline for them to submit their observations on compliance with the recommendations. The State submitted its observations on February 20 and September 29, 2019 and the petitioning party submitted several written observations between September 2018 and October 2020. The IACHR held a working meeting with the parties on December 4, 2018.

137. **In relation to the first recommendation**, regarding the economic reparation, the State informed that this was made effective in the proportions consigned in the compliance agreement and the checks were withdrawn by the victims, on April 9 of that year. In this regard, the petitioner party agreed. In this regard, the Commission assesses the State's compliance with this aspect of the first recommendation.

138. With regard to the rehabilitation measures, the State reported having carried out actions to guarantee that the victims receive physical and psychological health care and to have carried out individual diagnoses of the victims in order to prepare their respective health programs, which operate through the Health and Indigenous Peoples Program with cultural relevance. He reported having taken steps to provide free and timely care in the public system to victims in the FONASA system; the dissemination of the compliance agreement to all health facilities in the health care network of the Northern Araucania Health Service; the incorporation of the PRI LEMUN status in all computer systems of the Northern Araucania Health Service; and having delivered the certificates that guarantee the PRI LEMUN status to the victims who have been hospitalized, as well as the credentials that identify them as beneficiaries of the program. It reported on the dissemination of the compliance agreement in the related health establishments and on the preventive medical examinations carried out on the family as well as on different care, indicating that cultural relevance has not been requested and that there is an offer to transfer them to the Mapuche medical system if requested. It indicates that the monitoring of this recommendation is carried out by the Special Program for Health and Indigenous Peoples.



139. In this regard, the petitioner party reported that the members of the Lemun family faced some obstacles in accessing this measure, such as incurring expenses in order to have access to the benefits, as well as the lack of medical, dental and psychological diagnoses.

140. The Commission appreciates the progress made by the State in complying with this end of the recommendation and notes the importance of making its best efforts to overcome the obstacles to access and free of charge identified by the petitioner.

141. Regarding access to scholarships for Rodrigo Lemun, it reported that he entered the Catholic University of Temuco with the scholarship and other support with a PACE quota, omitting the regular application procedure because it was a case of reparation of rights. He informed that the student did not pass the subjects in the first semester, has no courses enrolled in the following semester and did not request the suspension or resignation, so it is essential to return to make accompaniment and take measures so that he does not lose the quota at the university. In this regard, the petitioner indicated that it is essential for the State to move forward on this measure, as it may be the only way to develop support that takes into account Rodrigo Lemun's real needs. In addition, the State proposed to approve in the Regulations of the Higher Education Scholarship Program a reparation scholarship for cases associated with judgments of the IACHR Court or other mechanisms of a similar nature, which was noted with optimism by the petitioner.

142. The petitioner party reported that due to the repeated bureaucratic obstacles and demands that prevented Rodrigo Lemun from receiving all the necessary support to be able to carry out his university studies, he decided to suspend his studies at the University. It considers that the State made no commitment other than to grant the same benefits to Rodrigo Lemun as to any person with economic needs in order to be able to study, which ignores the fact that he is a victim of human rights violations and the need to implement all the measures necessary to comply with international reparation.

143. The Commission appreciates the actions implemented by the State to comply with this end of the recommendation; however, it notes that these actions were not sufficient to ensure that Rodrigo Lemun can continue his higher education, and therefore urges the State to reach an agreement with him and the petitioner to comply with this recommendation.

144. On the other hand, the Commission appreciates the State's initiative regarding the approval of a scholarship for cases associated with judgments of the IACHR Court and recommendations of the IACHR in the Regulations of the Higher Education Scholarship Program, as a mechanism to facilitate compliance with the decisions of the organs of the Inter-American System for the protection of human rights as a measure of reparation for the victims.

145. By virtue of the foregoing and the nature of the first recommendation regarding scholarships and rehabilitation measures, the Commission considers that it has been partially complied with, and will continue to follow up on its compliance.

146. **In relation to the second recommendation**, on initiating an effective investigation in the ordinary criminal jurisdiction the State reported that in October 2017 the Plenary of the Supreme Court annulled the temporary dismissal of the case and ordered to reopen it, referring it to the Public Prosecutor's Office, where from this decision it also created the Specialized Unit on Human Rights, Gender Violence and Sexual Crimes. It indicated that a serious investigation was initiated against Marco Treuer Heysen as the perpetrator of homicide, with a series of proceedings being carried out, including new testimonies and the imposition of preventive detention since September 2018.

147. Subsequently, the State indicated that from the investigative point of view, there would be no new proceedings to be carried out. It pointed out that the times that the defense has requested a review of the pretrial detention have been rejected. Regarding the issue of the statute of limitations, he indicated that the defense requested the definitive dismissal of the case, which was rejected in the Guarantee Court and confirmed in the Courts. He indicated that the investigation has not been closed because the defense has

requested several diligences aimed at exonerating the accused and that a final testimony was awaited, with which the investigation should be closed and an indictment should be filed and then the oral trial should be scheduled to determine the responsibilities corresponding to this case. The petitioner indicated that this represents a significant step forward in clarifying the facts and reversing impunity.

148. The Commission appreciates the efforts of the State's justice administration bodies to comply with this recommendation and remains attentive to the State's submission of information on the oral trial and to the prompt progress of this process. Therefore, the Commission considers that this recommendation has been partially complied with.

149. **With respect to the third recommendation**, regarding administrative, disciplinary or criminal measures to address the actions or omissions of the officials who contributed to the denial of justice and impunity in which the facts of the case are found, the State did not present information. In this regard, the IACHR emphasizes the importance of compliance with this recommendation and urges the State to report on the measures adopted to comply with it. By virtue of this, the Commission considers that this recommendation is pending and will continue to follow up on its compliance.

150. **With respect to the fourth recommendation**, on adopting measures of non-repetition that include legislative, administrative and any other measures to: i) prevent the excessive use of force by Carabineros in the context of the territorial claims of indigenous peoples, particularly the Mapuche people, including training, coordination and oversight measures, as well as the establishment of suitable accountability mechanisms, the State reports that in compliance with the agreement, it approved Presidential Decree No. 1.364 of 2018 of the Ministry of Interior and Public Security, in consultation with the INDH and the National Council of Civil Society of the Ministry of Interior. It indicates that the Decree "Establishes provisions regarding the use of force in Police Interventions for the maintenance of public order" and orders the revision of the Carabineros Protocol on Maintenance of Public Order. Article 2 of the Decree orders the "revision and updating" of the aforementioned protocol. It indicates that Article 3 establishes the requirement for the Carabineros to "submit biannual reports ... containing statistical information regarding the use of force and violent episodes." He argues that based on said norm, the protocols for the use of force were thoroughly reviewed and as a result, the following were issued: Circular No. 1,832 ("Use of Force: Updates instructions in this regard") and General Order No. 2,635, both dated March 1, 2019 ("Protocols for the maintenance of public order"). It argues that these three rules, which are binding on the police, are based on human rights instruments and on the principles of legality, absolute necessity and proportionality for the use of force and that they reflect human rights standards.

151. In this regard, the petitioner party considers that although the Decree represents an important advance in the commitments assumed, it does not entirely comply with what was agreed upon, in addition to not reflecting international principles and standards on the matter. It questions that its guidelines on the use of force are not precise, the lack of consultation with civil society for its approval and that it does not mention that in order for the use of force to be justified, the principles of legality, absolute necessity and proportionality must be respected.<sup>130</sup> It considers that the regulations governing the use of force do not form a clear, complete and adequate legal framework that complies with the principle of legality because they include contradictory rules and frameworks that do not have sufficient legal hierarchy to reach and regulate all the security forces of the State. It argues that these are rules issued internally by Carabineros, which does not generate adequate guarantees for civilian oversight and control of their actions and that the applicability of these rules to other security authorities, such as the Investigative Police, the Chilean Gendarmerie or the

<sup>130</sup> It indicated that the INDH reported that out of a total of 68 observations issued by the Institute on the content of the protocol, only 10 were collected. The main aspects that generate concern to the INDH are: "the distinction between authorized and unauthorized demonstrations, which gives rise to a differentiated intervention by officials; the maintenance of the obligation for adolescent girls and women to hand over their bra prior to entering the cells; the suppression of an instruction regarding the use of lethal weapons; and the eventual elimination of 11 protocols, among which are: Use of compressed air shotgun, Driving of heavy, light and tactical vehicles, Working in battering rams, Working in squads, Operations with tactical support vehicles, Protective elements, Use of compressed air launcher, Recording of procedures, Eviction in open place and Use of security handcuffs. It is worth mentioning that it is not known if these protocols are eliminated or if they continue to exist and become reserved, in which case there would be a prejudice from the perspective of transparency and access to this information of public interest by the INDH and the general public".

armed forces themselves, who frequently perform public order tasks, as occurred during the state of emergency issued in 2019, is not clear.

152. Among other issues, the petitioner party is concerned that the Protocol includes references to procedural manuals<sup>131</sup> that do not appear to be public knowledge, nor are they accessible on the Carabineros or Ministry of the Interior websites. Despite having been requested by the INDH, the Carabineros have denied access to these manuals, invoking national security and/or the secrecy regime set forth in Article 436 of the Code of Military Justice, Article 8 of the Constitution, and Article 21 of Law 20.285, which it considers to be a serious violation of access to information of public interest. It considers that the protocol introduces distinctions between authorized and unauthorized meetings in contradiction with international standards, generates possible authorizations for the use of force with respect to protected meetings and that its central concept is the lawfulness or unlawfulness of the protests and not their peaceful nature. In view of this, it considers it urgent that the State assume the commitment and implement a process to regulate the use of force by its law enforcement agents through a formal law, based on a consultation process that includes the INDH, civil society, victims of the use of force and academia.

153. The Commission appreciates the adoption of Presidential Decree No. 1.364 of 2018 of the Ministry of the Interior and Public Security, Circular No. 1.832 and General Order No. 2.635 of 2019 (Protocols for the Maintenance of Public Order). The IACHR notes that the aforementioned Decree, refers in its section of Vistos to the IACHR Preliminary No. 31/17 and Final No. 67/18 merits reports and to the compliance agreement signed between the parties. It also notes that in its three articles this Decree establishes: general guidelines that apply to the Forces of Order and Public Security on the use of force in police interventions for the maintenance of public order; the review and updating every four years of the protocols of action of the Carabineros, by the same institution, which should seek the involvement of civil society and the INDH; and the submission of semi-annual reports to the Ministry of the Interior and Public Security, with statistical information on the use of force and violent episodes.

154. The Commission also notes that General Order No. 2.758 contains the principles of legality, necessity, proportionality and responsibility. The Commission also notes that this Order establishes that "all persons are authorized to participate in lawful assemblies, that is, peaceful and unarmed, in accordance with the guarantees conferred by the Constitution, the laws and the rights enshrined in the main international legal instruments on human rights"<sup>132</sup> and that "[a] demonstration is understood to be lawful when it takes place in public spaces in peace, security and respect for the orders of the police authority, whether it has prior authorization or is a spontaneous, unauthorized activity".<sup>133</sup>

155. On the other hand, the IACHR takes note of the issues raised by the petitioner. Regarding the general guidelines for the use of force established in the above-mentioned Decree, the Commission notes that the terms "authorized" or "unauthorized" meetings and reminds the State that the exercise of the right of assembly through social protest should not be subject to authorization by the authorities or to excessive requirements that make it difficult to carry out. Legal requirements that provide a basis for an assembly or demonstration to be prohibited or limited, such as, for example, through the requirement of a prior permit, are not compatible with the right of assembly or with the exercise of freedom of expression in the Inter-American system.<sup>134</sup>

156. In relation to the lack of access to public information, the IACHR reminds the State that the jurisprudence of the IACHR Court has established that "in a democratic society it is indispensable that the State authorities be governed by the principle of maximum disclosure",<sup>135</sup> so that all information in the State's

<sup>131</sup> The Operations Manual for the Control of Public Order and the Manual of Police Procedures with Children and Adolescents.

<sup>132</sup> Protection of demonstrators. General concepts right of assembly or demonstration 1. General Order 2.635 of March 1, 2019, Protocols for the Maintenance of Public Order.

<sup>133</sup> Protection of demonstrators. General concepts right of assembly or demonstration 1. General Order 2.635 of March 1, 2019, Protocols for the Maintenance of Public Order.

<sup>134</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Protest and Human Rights, OEA/Ser.L/V/II IACHR/RELE/INF.22/19, September 2019, para. 56.

<sup>135</sup> I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. para. 92.

possession is presumed to be public and accessible, subject to a limited regime of exceptions,<sup>136</sup> and that the concept of national security must be interpreted under the parameters of the "just demands of the common good in a democratic society"<sup>137</sup>, an indispensable rule to guarantee an adequate balance between the right to information and the protection of legitimate national security interests.<sup>138</sup> The Commission remains attentive to the State's submission of the manuals on Operations for the Control of Public Order and Police Procedures with Children and Adolescents, referred to by the petitioner, and any additional relevant information so that it can conduct a comprehensive analysis of compliance with the present measure of non-repetition.

157. In relation to training measures, coordination, supervision and the establishment of accountability mechanisms, the State reported that between 2016 and 2018, 72.4% of the carabineros in the Araucanía region were trained on the use of force and the creation of the human rights training department in the Araucanía region. He also reported on the implementation of the National Training Program on Human Rights and Police Intervention Techniques, approved by General Order No. 2,675 of 2019, whose purpose is to continue and strengthen the professional skills of all operational personnel of the Institution. He indicated that this program is part of the update of the institutional policy on the "use of force", as of Supreme Decree No. 1,364 of 2018. He indicated that the "Intervention Protocols for the Maintenance of Public Order" were modified, through General Order No. 2635 of 2019, which safeguard the right of assembly and its maintenance. He informed that the program addresses the special reality and police procedures generated in the Araucanía area, incorporating within the course "Human Rights applicable to the Police Function", with emphasis on: human rights and carabineros, application of human rights in the police function, groups subject to vulnerability, violation of human rights and role of the INDH and that it has national scope, having trained more than 6 thousand Carabineros officers by September 2019, of which 600 belong to the police area of Araucanía. He added that in 2019 an inter-institutional roundtable was formed, comprising the INDH, the Children's Ombudsman Office, the Undersecretariat for Human Rights, the Ministry of the Interior and Public Security and Carabineros de Chile, which has developed proposals for improvements to the training programs for human rights instructors and for the course for operational personnel. Additionally, it reported on training provided in the training program "Performance and competencies of law enforcement in criminal proceedings", aimed at judges, which has been given to 117 judges between 2014 and 2019.

158. The petitioner did not know whether the training to Carabineros was carried out under the conditions provided for in the Agreement, the continuity and frequency with which it is planned to implement them, and the concrete progress of those who have participated and what impact they have had. Regarding the agreement on the production of publicly available information on the levels of lethality in police actions, he indicated that he has not been able to verify its compliance.

159. The IACHR appreciates the training provided by the State and remains attentive to updated information on the last few years indicating its continuity and frequency. Likewise, it is attentive to the State's submission of information on the coordination and supervision measures and the mechanisms established for accountability, as recommended by the IACHR. By virtue of the foregoing, the Commission considers that this recommendation has been partially complied with and will continue to follow up on it.

160. Regarding item ii) referring to ensuring that the military criminal justice system cannot hear cases of human rights violations, including facts such as those in the present case, the State did not submit information. By virtue of the foregoing, the Commission considers that this recommendation is pending compliance.

161. Regarding the other measures of integral reparation established in the compliance agreement, regarding the delivery of agricultural machinery to the Lemun family, the State indicated that it has requested

<sup>136</sup>I/A Court H.R., Case of Gomes Lund et al. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 230.

<sup>137</sup>IACHR. Final Allegations in Case 11.552, Julia Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, June 21, 2010, para. 75; Report No. 116/10 (Merits), Case 12.590, José Miguel Gudiel Álvarez et al ("Diario Militar"), Guatemala, February 18, 2011, para. 455; Report No. 117/10 (Merits), Case 12.343, Edgar Fernando García et al, Guatemala, February 9, 2011, para. 147; Application to the I/A Court H.R. in case 11.324, Narciso González Medina v. Dominican Republic, May 2, 2010, para. 159.

<sup>138</sup>IACHR, Office of the Special Rapporteur for Freedom of Expression, Right to Information and National Security OEA/Ser.L/V/II CIDH/RELE/INF.24/20, July 2020, para. 76.

the budget from the Ministry of Finance to acquire what was agreed upon. In this regard, the petitioner referred to the damages caused to the Lemun family by the State's delay in compliance, given that it has had to lease agricultural equipment for planting and harvesting and is claiming reimbursement.

162. Regarding access to land for the benefit of the Lemun family, the State indicated that it has continued to take steps to purchase the land agreed upon for an area of 400 hectares that belong to two companies and that have expressed their willingness to sell, but has yet to define with the Lemun family the method of acquisition, whether by community or joint ownership. In this regard, the petitioner indicated that given these options, José and Juan Lemún must decide whether they would change their community of ownership in order to benefit from the purchase and expressed concern about the lack of clarity in the options offered to the family and the consequences of each option. It considered that this remedy is also unfulfilled. In view of this, the Commission remains attentive to the State's submission of information on compliance with the agreed measures pending compliance and will continue to follow up on them.

163. It also indicated that the Compliance Agreement was published in part, as agreed, on the websites of the Carabineros and the Ministries of Foreign Affairs and of the Interior and Public Security. In this regard, the Commission notes that the petitioner agreed, and therefore considers this aspect of the compliance agreement to have been fulfilled.

## VIII. FINAL CONCLUSIONS

164. Based on the considerations of fact and law set forth throughout the instant report, the Inter-American Commission concludes that the State of Chile is responsible for:

1. The violation of the right to life, personal integrity and equality and non-discrimination, established in Articles 4.1, 5.1 and 24 of the American Convention, in relation to Articles 19 and 1.1 of the same instrument, to the detriment of Edmundo Alex Lemun Saavedra.
2. The violation of the rights to judicial guarantees and judicial protection, established in Articles 8.1 and 25.1 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument, to the detriment of the next of kin of Edmundo Alex Lemun Saavedra, identified in this report.
3. The violation of the right to personal integrity and equality and non-discrimination, enshrined in Articles 5.1 and 24 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Edmundo Alex Lemun Saavedra's next of kin, identified in this report, and the Mapuche community Requien Lemun, now called Alex Lemun.

## IX. RECOMMENDATIONS

165. The Commission has taken into account the Agreement on Compliance and recognizes the efforts of the parties to achieve it. Given that many of the commitments are at the initial stage and based on the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF CHILE,**

1. To provide comprehensive reparations for the material and more damage caused by the human rights violations found in this report. The State must adopt measures to provide economic compensation and satisfaction of moral damages; as well as rehabilitation measures for the next of kin should they so wish.

2. To initiate an effective investigation within a reasonable time in the ordinary criminal jurisdiction, in order to clarify the facts in full, identify all possible responsibilities and impose corresponding sanctions regarding human rights violations declared in this report. The State cannot invoke the application of the principle of *ne bis in idem* in order to avoid compliance with this obligation, taking into account that the

final decision at the domestic level was the result of a process that violates the guarantees of natural justice, independence and impartiality.

166.

3. Adopt administrative, disciplinary or criminal measures vis-a-vis the actions or omissions of state officials contributing to the denial of justice and impunity in this case.

167.

4. Adopt non-repetition measures that include legislative, administrative and other measures aimed at: i) preventing the excessive use of force by the *Carabineros* within the framework of the territorial claims of indigenous peoples, particularly the Mapuche people, including training, coordination and supervision measures, as well as the establishment of adequate mechanisms of accountability; and (ii) ensure that military criminal justice refrain, in all circumstances, from hearing cases involving human rights violations, including events such as those in this case.

## **X. PUBLICATION**

168. Pursuant to the foregoing and in accordance with the provisions of Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms established in the instruments that regulate its mandate, will continue to evaluate the measures adopted by the State of Chile with respect to the above recommendations, until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed): Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.