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Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2627/2015*, **

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<i>Alleged victims:</i>	The authors
<i>State party:</i>	Chile
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<i>Subject matter:</i>	Seizure of an artistic work by the Carabineros of Chile
<i>Procedural issues:</i>	Victim status
<i>Substantive issues:</i>	Right to freedom of expression; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), 14, 19
<i>Article of the Optional Protocol:</i>	1

* Adopted by the Committee at its 121st session (16 October–10 November 2017).

** The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



1. The 15 authors of the communication are Claudia Andrea Marchant Reyes, Erika Cecilia Hennings Cepeda, Felipe Esteban Aguilera Rodríguez, Gloria Raquel Elgueta Pinto, Juan Francisco Ilarraza Vergara, Juan René Maureira Moreno, Karen Glavic Maurer, Leopoldo Montenegro Montenegro, Magdalena Mercedes Navarrete Faraldo, Miguel Alberto Ávila Pino, Paulina Andrea Bravo Castillo, Viera Stein Melnick, María José Pérez Bravo, Libio Eduardo Pérez Zúñiga and Daniela Andrea Cornejo Cornejo, all nationals of Chile and members of Londres 38, Espacio de Memorias (hereinafter “Londres 38”). They claim that the State party has violated their rights under articles 2 (3) (a), 14 and 19 (2) and (3) of the Covenant. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 27 May 1992.

The facts as submitted by the authors

2.1 Londres 38 is a Chilean non-governmental organization that investigates and disseminates information on human rights violations. It is based at No. 40 (formerly No. 38) calle Londres, Santiago de Chile, which used to be the headquarters of the Socialist Party. During the military dictatorship of General Augusto Pinochet Ugarte, the building was used by the National Directorate of Military Intelligence¹ as a secret centre for detention, torture, disappearances and extrajudicial executions, as part of a policy of repression and extermination especially directed against political organizations of the left.

2.2 On 6 September 2013, on the occasion of the fortieth anniversary of the 1973 military coup against the Government of the then President, Salvador Allende, Londres 38 installed an artistic work entitled “Bridges of Memory” on nine bridges over the Mapocho River² in Santiago de Chile. The work consisted of 17 banners painted by national artists on the subject of the coup d’état of 1973 and the defence of human rights in a democracy. The aim of the work was to draw the attention of passers-by to the serious human rights violations of the past and to show how these were connected with current violations.³ The artistic installation had received the required administrative authorization from the municipalities of Santiago and Providencia⁴ and a permit from the National Monuments Council.⁵

2.3 On 6 September 2013, a number of squads of Carabineros de Chile, the uniformed police of Chile, approached the authors of the communication on three occasions during the course of the day, on the bridges where the banners were hung, requesting them to show their permits. On each occasion, the permits were shown.

2.4 On 8 September 2013, the authors were sent a video taken by members of the public showing Carabineros taking down the works hanging on one of the bridges. The same day, Londres 38 learned that all the works containing texts — 15 banners — had been removed from all the bridges, so that the only remaining works were the ones containing pictures, on three bridges. The same day, Londres 38 put out a press release condemning these actions and calling on the authorities to make a statement on what had occurred. On 9 September, the mayors of Providencia and Santiago publicly condemned the actions and called for the banners to be put back.

¹ General Augusto Pinochet’s secret police.

² The Mapocho River, which runs through Santiago, is crucial to the reconstruction of sociopolitical memory in Chile, since it was used during the first years of the dictatorship to dispose of the bodies of persons extrajudicially executed by the military regime. The banners were installed on the following bridges: La Paz, Bombero Mártir, San Antonio, Patronato, Loreto, Purísima, Pío Nono, Racamalac and Teatro del Puente.

³ Specifically, there were 2 banners containing representational art and 15 with texts reading “40 years of struggle and resistance”, “Where are the disappeared?”, “Civilians and the military: those who know should speak out”, “Those who tortured and killed should speak out”, “Those who gave the order to kill should speak out”, “They should break the pact of silence”, “Impunity guarantees today’s repression” and “Mapuche and a mobilized public resist repression”.

⁴ A municipality in the metropolitan area of Santiago de Chile.

⁵ In the case of Teatro del Puente, permission was obtained from the private company “Teatro del Puente”, which administers the bridge.

2.5 On 10 September 2013, the authors wrote a letter to the then Minister of the Interior and Public Security, Andrés Chadwick Piñera, who was the person in charge of the Carabineros, requesting information on the removal of the banners, but they received no reply. Subsequently, Mr. Chadwick issued press statements saying that “it was the responsibility of the authorities to inform the Carabineros of the installation of the works”.

2.6 Also on 10 September, the municipality of Santiago informed Londres 38 that it had retrieved four of the banners that had been removed and that they could be put back. Londres 38 did not agree to the proposals to put back their banners; it considered that the partial installation of the work did not constitute adequate redress, since the work needed to be appreciated as a whole. Despite this, the municipality of Santiago proceeded to rehang the four banners.

2.7 The authors lodged applications with the Carabineros and the Ministry of the Interior on 8 and 9 September and on 6 and 14 October 2013, requesting information about the missing banners, on the basis of Act No. 20285 on access to public information. The Ministry of the Interior, however, said that it was not authorized to provide that information. The Carabineros replied on 25 and 30 September, and on 5 November 2014, confirming that, on 8 September 2013, the Carabineros had carried out checks on a number of banners hanging on the bridges over the Mapocho River and observed that officers from the Central and Northern Prefectures were engaged in removing banners. The authors were also informed that the order to remove the banners had been issued by the Head of the Area Law and Order Command Centre on the basis of article 101 (2) of the Constitution,⁶ with a view to protecting public order. The work was considered a “disturbance of public order”, inasmuch as the banners “might have been burned”. It was also stated that the Carabineros were unaware that the installation had been authorized. Lastly, it was stated that the Carabineros did not know the whereabouts of the complete work, having been able to locate only 4 of the 15 banners that had been taken down, which had been returned to Santiago City Hall.

2.8 On 13 September 2013, the authors applied for a remedy of protection⁷ against the Minister of the Interior and Public Security and the Director General of the Carabineros for violation of the right to freedom of expression, recognized under article 19 (12) of the Constitution and article 13 (1) of the American Convention on Human Rights. The authors claimed that the Carabineros had acted in the knowledge that the authors had received the necessary administrative permits, which had been shown on three occasions when police checks had been conducted. Moreover, the actions of the Carabineros, which had violently interrupted a commemorative act, lacked any legal basis. In the case of the Teatro del Puente bridge, which was an enclosed site that had been transferred to the Teatro del Puente company, the Carabineros required authorization to enter and none of the possible justifications for unauthorized entry applied. The National Human Rights Institute⁸ also applied for a remedy of protection against the Director General of the Carabineros, on the same grounds.⁹

⁶ Art. 101 (2): “The Forces of Order and Public Security shall comprise only Carabineros and the Investigation Service. They shall constitute the forces of law and order and their purpose shall be to give effect to the law and to guarantee public order and internal public security, in the manner determined by the relevant laws. They shall be answerable to the ministry responsible for public security.”

⁷ A remedy of protection is a judicial procedure to protect the fundamental rights contained in article 20 of the Constitution, which states: “A person who, as a result of arbitrary or illegal acts or omissions, suffers hardship, disturbance or threats in the legitimate exercise of the rights and guarantees established in article 19 ... may have recourse ... to the relevant appeal court, which shall immediately take such steps as it deems necessary to re-establish the rule of law and ensure due protection for the person affected”.

⁸ The National Human Rights Institute of Chile has “A” status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

⁹ The Santiago Court of Appeal held that “the actions described and the applications made to this court are outside the scope of matters that may be heard under this remedy, given its precautionary nature, and may not therefore go to trial”.

2.9 On 16 September 2013, the Santiago Court of Appeal ruled that both applications were inadmissible, on the sole grounds that they exceeded the material scope of a remedy of protection. Both Londres 38 and the National Human Rights Institute applied for a discretionary remedy¹⁰ against the ruling of inadmissibility before the same Santiago Court of Appeal, but both appeals were dismissed on 24 September 2013 by a hardly reasoned decision¹¹ (para. 4.5). The authors maintain that, with the application for a discretionary remedy, they have exhausted all available domestic remedies.

2.10 The authors point out that, to date, they have not been informed of the fate of the works seized or been offered full restitution of those works.

The complaint

3.1 The authors allege that the actions constitute a violation by the Carabineros of their right to freedom of expression as recognized in article 19 (2) of the Covenant. The work “Bridges of Memory” is protected by the right to freedom of expression, which includes the freedom for all persons to express and disseminate their ideas through any media and regardless of frontiers.¹² The removal and destruction of the work constituted a restriction on the right to freedom of expression, contrary to article 19 (3) of the Covenant, inasmuch as they had no legal basis or legitimate objective and were carried out in a manner that was disproportionate and wholly unnecessary in a democratic society. The Carabineros sought to justify their actions on the basis of article 101 (2) of the Constitution. The authors, however, maintain that this provision establishes a general obligation to guarantee public order that is too broad, according to the standards of the Covenant.¹³ Nor does Act No. 18.961 establishing the Carabineros of Chile constitute a specific legal basis to justify the removal of the work. The installation of the banners did not constitute an offence and a police operation could not therefore proceed on the basis of that Act (para. 4.2). The concept of “public order” as used by the Carabineros is unacceptable in a democratic State, since it puts the defence of human rights in opposition to the “normal” functioning of the State, as though human rights constituted some kind of disruption to the State. The purpose of public order is to safeguard the smooth functioning of a country’s institutions. There is thus no justification for saying that such functioning can be disrupted by an artistic work, authorized by the relevant State bodies, that commemorates the fortieth anniversary of the military coup d’état.

3.2 The authors add that the destruction of the work constituted an unjustified and disproportionate restriction on the freedom of expression that was unnecessary in a democratic society. If the aim was the protection of public order, other mechanisms could have been used.

3.3 The authors also state that the right to freedom of expression includes the right to receive ideas and information of all kinds without interference,¹⁴ so the removal and destruction of the work violated the right of those for whom the work was intended — namely the people of Santiago — to receive information.

¹⁰ A discretionary remedy is the only judicial procedure available under the Chilean legal order to contest a ruling that a remedy of protection is inadmissible. An application for a discretionary remedy must be made before the same court that ruled the remedy of protection inadmissible.

¹¹ The decision stated that “in view of the antecedents, and taking into account the fact that the arguments put forward failed to nullify the principles taken into consideration by the court in handing down the decision, the appeal for a discretionary remedy is dismissed”. The decision was adopted with one dissenting vote.

¹² The authors also point out that this right “includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (general comment No. 34 (2011) on freedoms of opinion and expression, para. 11).

¹³ *Ibid.*, para. 25.

¹⁴ *Ibid.*, para. 11.

3.4 The authors maintain that their right to the truth was violated,¹⁵ in relation to the right to freedom of expression, since the destruction of the work prevented Chilean society from commemorating the past and seeking progress in the area of truth and justice. The aim of the work was to record the serious and systematic human rights violations committed in Chile during the military dictatorship of General Pinochet between 1973 and 1990, to appeal to military and civilian authorities who were still withholding information on the whereabouts of the persons disappeared by the dictatorship to come forward with that information and to connect the human rights violations of the past with current violations.¹⁶ As a result, the destruction of the work hindered or made it difficult to engage in activities aimed at making progress in the search for truth and justice. It constituted a violation of one of the principles of the right to the truth, which is to give victims and their families the possibility of having a voice and visibility.¹⁷ Although the truth commissions are the main forum where victims can be visible, this does not exclude other forms of participation in the public debate, such as artistic works or commemorative events, where victims can show what happened to them in the past.¹⁸ Moreover, the right to the truth helps society to avoid repeating the mistakes of the past and to build an informed society that respects human rights. The victims of the violation are therefore both the authors and the citizens of Santiago.

3.5 Lastly, the authors claim a violation of their right to an effective remedy under article 2 (3) (a) of the Covenant, in relation to the right to fair trial under article 14 of the Covenant, including the right to a court hearing. This entails the right that arguments, evidence and claims made by the parties should be considered by a court when it decides a case. In the present case, the Santiago Court of Appeal dismissed the appeals for the remedy of protection and the discretionary remedy without giving its reasoning or considering the arguments and the evidence put forward.

3.6 The authors request the following measures of redress: (a) full restitution of the work “Bridges of Memory”; (b) reinstallation of the work by the Carabineros; (c) a public apology by the Carabineros, in which they acknowledge their mistake and undertake to defend and respect human rights; (d) a review of the criteria governing the admissibility of a remedy of protection, with a view to ensuring that it constitutes an effective remedy for the consideration of a violation of the right to freedom of expression; and (e) any other measure that the Committee may deem appropriate.

State party’s observations

4.1 In a letter dated 8 January 2016, the State party submitted observations on the communication.

4.2 The State party reports that, on 6 September 2013, various organizations of Chilean civil society organized activities on the occasion of the fortieth anniversary of the military coup. These activities took place peacefully and without any repressive measures that might have stopped them being carried out. Although the activity of Londres 38 had all the necessary permits from the municipalities affected and the National Monuments Council, the Head of the Law and Order Command Centre of the Carabineros, unaware that the work

¹⁵ The authors cite the updated set of principles for the promotion and protection of human rights through action to combat impunity of 2005.

¹⁶ The authors point out that the seriousness of the violations committed during the military regime and the long duration of the regime — 17 years — meant that the transition to democracy was long and complex. Thus, between 1990 and 1998, General Pinochet resumed the position of Commander-in-Chief of the army and, from that position, continued to exert pressure on subsequent presidents, while, between 1998 and 2002, he was a senator for life. Moreover, the Constitution of 1980, was “imposed by the dictatorship without proper democratic ratification” and contains authoritarian features that still constitute obstacles to the “real expression of democracy”.

¹⁷ The authors refer to the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/67/368), para. 32.

¹⁸ The authors state that commemorations and tributes to victims are recognized by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (see General Assembly resolution 60/147), in principle 22, subparagraph (g).

had been authorized, ordered that the banners should be taken down. This order was based on the Carabineros' duty to safeguard public order, pursuant to article 101 of the Constitution¹⁹ and article 3 of Act No. 18.961 establishing the Carabineros of Chile, the latter of which provides that the Carabineros may engage in any police operations that they may deem necessary in order to achieve a specific purpose. An essential feature of their remit is to engage in activities that will enhance their preventive policing role (para. 3.1).

4.3 The order by the Carabineros to remove the work was issued with the aim of preventing a threat to public order. Although the installation of the work was not considered a disruption of public order in itself, preventive action was taken in the form of the security measures for the benefit of persons who crossed the bridges in question on a daily basis, given that the banners could have been burned precisely at the times of the greatest movement of people and caused injury.

4.4 At the request of the Mayor of Santiago, the Carabineros returned four banners that were still in their possession, which were reinstalled by the municipality. In any case, the fact that the other commemorative activities that were held throughout the country over the same days proceeded normally points up the isolated and exceptional nature of the events complained of.

4.5 As regards the remedy of protection governed by article 20 of the Constitution, the State party maintains that the Santiago Court of Appeal reached its decision in accordance with the law in force at the time of the events in question, namely a decision pronounced by the Chilean Supreme Court in 1992 on the handling and determining of the remedy of protection of constitutional guarantees. Article 2 of the decision provides that, where a court determining a remedy of protection declares it inadmissible, this ruling may be subject to a discretionary remedy only before the same court, to which application must be made within three days (para. 2.9). In 2015, in order to enhance and safeguard the exercise of the right to an effective remedy, the Supreme Court amended the decision regulating the handling of the remedy of protection²⁰ to allow the Supreme Court to review appeals against decisions of appeal courts on the admissibility of a remedy of protection. The right to be heard by a higher court in such constitutional cases is thus guaranteed.

4.6 The State party wishes to express its willingness to provide the authors with measures of satisfaction. To that end, the State party proposes the establishment of a forum for dialogue among the institutions involved and the authors to discuss the content and the form of implementation of such measures. The State party also wishes to express the willingness of the Carabineros to comply with the measures requested by the authors, whereby they will declare their commitment to bear in mind the memory of what occurred and the possibility that people are defending their human rights and to prevent actions by Carabinero officers that run counter to that objective.

Authors' comments on the State party's observations

5.1 In their comments dated 22 March 2016, the authors note that the State party has acknowledged the facts and, in particular, that the work "Bridges of Memory" was destroyed and that only four banners could be recovered. Moreover, the State party does not deny that the Ministry of the Interior and Public Security, which is ranked higher than the Carabineros, took no action in defence of the victims.

5.2 The State party also acknowledges the violations of the Covenant that were the subject of the complaint, without providing arguments that might justify them. On the contrary, the State party restricts itself to repeating the arguments put forward by the Carabineros in their replies to the authors, which were vague and inadequate to justify the conduct of the Carabineros in the light of article 19 of the Covenant.

¹⁹ See footnote 6 above.

²⁰ The current article 2 of the Supreme Court decision adds the provision that, in view of the subsidiary nature of a discretionary remedy, an appeal may be brought before the Supreme Court against decisions declaring the inadmissibility of a remedy of protection.

5.3 The authors take note of the fact that the State party does not put forward arguments to justify the actions complained of by the authors concerning the violation of the right to the truth, so they would refer the Committee to their initial communication.

5.4 As regards the complaints concerning the right to an effective remedy and due process, the authors insist that, by ruling that their action, and that of the National Human Rights Institute, was inadmissible, the Santiago Court of Appeal left the authors completely helpless. When the State party claims that the Santiago Court of Appeal made its ruling in accordance with the law in force at the time, it overlooks the fact that, under article 2 (2) of the Covenant, the State is obliged to adopt legislative and other measures, as appropriate, to give effect to the rights set out in the Covenant. Moreover, article 27 of the Vienna Convention on the Law of Treaties provides that States may not invoke the provisions of their internal law as justification for their failure to perform a treaty. The authors point out that, by describing the recent procedural reform of the remedy of protection, the State party acknowledges its violation of articles 2 (3) and 14 of the Covenant.

5.5 As for the State party's offer to set up a forum for dialogue in the interests of introducing corrective measures, the authors contend that this proposal, which acknowledges that violations occurred, cannot be taken seriously. They maintain that, if the State party had had the will to remedy the violations, it would have done so immediately, for example by ordering the Carabineros to search for the banners, to repair them and to reinstall them. They therefore request the Committee to continue the procedure and to pronounce on the merits.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in the communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the authors' claims that they have exhausted all the domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes that the authors claim a violation of the right of the citizens of Santiago to the freedom to receive information and their right to the truth. The Committee recalls its jurisprudence, according to which a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his or her rights have actually been violated and no person may, in theoretical terms and by *actio popularis*, object to a law or practice that he or she holds to be at variance with the Covenant.²¹ Inasmuch as the authors formulate this claim in general terms, referring to the citizens of Santiago as victims and not as specific persons, the Committee considers the claim inadmissible under article 1 of the Optional Protocol.

6.5 The Committee's understanding is that the authors' claims under articles 2 (3) and 14 of the Covenant actually refer to the lack of an effective remedy relating to their claims under article 19 of the Covenant. The Committee therefore considers that the authors' claims relating to the violation of their own rights under articles 19 (2) and 2 (3), read in conjunction with article 19 of the Covenant, are sufficiently substantiated for purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

6.6 In the light of the foregoing the Committee declares the communication admissible, insofar as it raises issues under articles 19 (2) and 2 (3) of the Covenant, and proceeds to its examination on the merits.

²¹ Communication No. 1632/2007, *Picq v. France*, decision of 30 October 2008, para. 6.3.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the authors' claim that the removal and destruction of the artistic work "Bridges of Memory" by the Carabineros on 8 September 2013 violated their right to freedom of expression under article 19 (2) of the Covenant and that this removal lacked a clear legal basis or legitimate purpose and was disproportionate and unnecessary in a democratic society. The State party maintains that the order to remove the work of art was issued by the Carabineros in ignorance of the fact that the work had the necessary administrative permits. It also maintains that the order was based on the Carabineros' legal mandate to safeguard public order and that the aim was to prevent threats to public order relating to the installation of the work by adopting security measures to protect persons crossing the bridges in question.

7.3 The Committee recalls that the freedom of expression provided for in article 19 (2) of the Covenant constitutes the foundation stone for every free and democratic society.²² This freedom relates to political discourse, commentary on one's own and on public affairs and the discussion of human rights, among others.²³ In the present case, the Committee observes that the destruction of the artistic work — comprising both text and representation — "Bridges of Memory", which commemorated the serious and systematic human rights violations committed during the military dictatorship in Chile and which, as acknowledged by the State party, had all the required authorizations and permits, constituted a clear restriction of the authors' rights under article 19 (2) of the Covenant.

7.4 The Committee must therefore determine whether this restriction on the authors' freedom of expression was justified under article 19 (3) of the Covenant. The Committee recalls that, pursuant to article 19 (3) of the Covenant, restrictions may be imposed only when they are provided by law and are necessary for: (a) respect of the rights or reputations of others; or (b) the protection of national security or of public order, or of public health or morals. Moreover, restrictions must conform to the strict tests of necessity and proportionality and may not put in jeopardy the right itself; the relation between right and restriction and between norm and exception must not be reversed.²⁴ Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.²⁵ The Committee also recalls that States parties have the obligation to adopt effective measures of protection against attacks aimed at silencing persons exercising their right to freedom of expression and that article 19 (3) cannot be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights.²⁶

7.5 In the present case, the State party has argued that the removal of the work of art had the legitimate objective of preventing potential disruption to public order arising out of the burning of the banners and that it is the duty of the Carabineros to safeguard public order. The Committee observes, however, that a disruption of public order due to the burning of the work of art is merely speculative, inasmuch as the State party has provided no evidence of what specific information it had that gave rise to fears that the work might be burned because it contained human rights messages. Moreover, the State party has the positive obligation to facilitate the exercise of the right to freedom of expression. Thus, given that it is the function of the Carabineros to safeguard public order, it was their duty to ensure that the artistic work was not burned. The Committee recalls that the State party is obliged to demonstrate in specific and individualized fashion the precise nature of the threat and the necessity and proportionality of the specific actions taken, in particular by establishing a direct and immediate connection between the expression and the threat.²⁷ In the light of the

²² General comment No. 34, para. 2.

²³ *Ibid.*, para. 11.

²⁴ *Ibid.*, paras. 21 and 22.

²⁵ *Ibid.*, para. 22.

²⁶ *Ibid.*, para. 23.

²⁷ *Ibid.*, para. 35.

facts before it, the Committee considers that the State party has not provided a reasonable clarification of the existence of a real and specific threat to public order that might justify the Carabineros' decision to remove the work of art "Bridges of Memory".

7.6 The Committee also recalls that a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution but must provide them with sufficient guidance to enable them to ascertain what sorts of expression are properly restricted.²⁸ The Committee considers that the provisions cited by the State party to justify the actions of the Carabineros — namely, article 101 (2) of the Constitution and article 3 of Act No. 18.961, which establish the Carabineros' mandate to guarantee order and public safety and to conduct preventive policing activities — without the necessary safeguards against unfettered discretion — are insufficient in themselves to serve as the sole legal basis required by article 19 (3) of the Covenant.

7.7 With regard to the claim that the Carabineros were allegedly unaware of the fact that the work had been authorized, the Committee considers that the alleged unawareness of the legal authorization obtained cannot constitute a legitimate justification for absolving the State party from its responsibility for the removal by the Carabineros of the artwork, particularly in view of the fact that, as previously determined, there was no disruption of public order.

7.8 On the basis of the above, the Committee considers that the forcible removal of the work "Bridges of Memory" by the Carabineros constituted a clear restriction on the authors' freedom of expression. That restriction did not have a sound legal basis as required under article 19 (3) of the Covenant and occurred despite the fact that the authors had shown the Carabineros the required permits on three occasions. Moreover, the restriction, which was serious in nature, was not necessary either to ensure respect for human rights or to protect public order. The Committee therefore considers that there was a violation of the authors' right to freedom of expression under article 19 (2) of the Covenant. The fact that 4 of the 15 banners taken down were subsequently returned does not make amends for the violation, since most of them were not returned, their whereabouts is unknown and the work remains incomplete to this day.

7.9 Having concluded that there was a violation under article 19 (2) of the Covenant, the Committee will not consider separately the authors' claim concerning article 2 (3) of the Covenant, read in conjunction with article 19.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 19 (2) of the Covenant.

9. Under article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation should be made to the individuals whose Covenant rights have been violated. The State party is obliged *inter alia* to: (a) locate the missing banners and, where possible, return them or provide the authors with information on what happened to them; (b) make a public acknowledgement of the violation of their rights in accordance with the present Views; and (c) adopt any other appropriate measure of satisfaction. The State party is also under an obligation to take the necessary measures to ensure that such violations are not repeated in the future.

²⁸ *Ibid.*, para. 25.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to disseminate them widely.
