

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: AMR 22/001/2009
12 June 2009

Chile: Indigenous Peoples must be consulted about constitutional reform

On the eve of debate in the Chilean Congress on the constitutional reform bill that seeks to recognize Indigenous Peoples, Amnesty International is calling attention to the Chilean State's responsibility to respect the right of such Indigenous Peoples to free, prior and informed consent during the debate. If there is no such consultation, the initiative will be at great risk of losing legitimacy and exacerbating the marginalization that Indigenous Peoples in Chile have experienced historically.

Amnesty International points to the commitment made by the Chilean State to the rights of Indigenous Peoples through its signing of the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ratification of International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples (2008). The fundamental principle of carrying out free, prior and informed consent with Indigenous Peoples on all matters affecting their rights and interests is established in both international instruments. Compliance with that principle is incumbent on all three branches of the Chilean State. In a speech on the occasion of her annual report, President Bachelet made a personal promise to "put the principles laid down in Convention 169 into practice, in honour of the people of our country and the undertaking made".

Given the enormous institutional and political importance of an initiative such as constitutional reform, Amnesty International requests the Chilean Congress to honour its international commitments regarding the rights of Indigenous Peoples by respecting the principles of free, prior and informed consent and giving them the historic opportunity to play a leading role and make a significant contribution in drafting the constitutional reform that in fact seeks to recognize their own rights.

On 24 April 2009, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, urged the Chilean State to conduct the process of constitutional reform in accordance with international standards on consent-giving processes, including Convention 169 and the Declaration on the Rights of Indigenous Peoples. Amnesty International endorses the specific observations he made on consultation principles and procedures.

Also, during its recent universal periodic review, the United Nations Human Rights Council recommended that the Chilean State should incorporate recognition of Indigenous Peoples into its constitution but that it should do so without neglecting to carry out the consultations that the government itself promised it would undertake.

If the current government were to carry out such consultations effectively and directly with the Indigenous Peoples of Chile, it would leave a significant legacy and serve as an example for the region. The need for the views of Indigenous Peoples, as a fundamental part of society, to be respected and taken on board are non-negotiable principles that are necessary to ensure the legitimacy of any text granting them constitutional recognition.

Additional information

In November 2008 Amnesty International visited Chile and handed over to President Bachelet a series of recommendations regarding the rights of Indigenous Peoples, including the recommendation that Convention 169 be effectively implemented.

Under ILO Convention 169, which was ratified by Chile in September 2008, the Chilean State is obliged to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly”.

Chile voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples which establishes the obligation to encourage the participation of such peoples through the principles of free, prior and informed consent.

The constitutional reform bill has been under discussion since November 2007.

Chile is one of three Latin American States (the others being Costa Rica and El Salvador) which have not given full constitutional recognition to their Indigenous Peoples.

END/