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**amnesty international**

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# **Chile**

## **Submission to the UN Universal Periodic Review**

**Fifth session of the UPR Working Group of the  
Human Rights Council**

**May 2009**



## Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.<sup>1</sup>

- Under section B, Amnesty International raises concern in relation to national human rights mechanisms; the investigation, prosecution and reparation of past human rights violations; the International Criminal Court and other international criminal courts; and reform of Military Code of Justice.
- Section C highlights Amnesty International's concerns over violence against women and violations of the human rights of **Indigenous Peoples**.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Chile

## Amnesty International submission to the UN Universal Periodic Review

Fifth session of the UPR Working Group, May 2009

### Introduction

Despite some positive developments, a large legacy of “unfinished business” from the era of military government has been accumulated, entrenched in laws and institutional culture that persists in some sectors of state institutions, severely hindering Chile’s ability to comply with the international human rights standards to which it aspires. Moreover, government action and inaction have allowed new patterns of violations and denial of rights which affect both victims of the dictatorship period as well as making new victims of other sectors of Chilean society.

### B. Normative and institutional framework of the State

#### National human rights mechanisms

In 2005 Amnesty International called upon all candidates to the presidency to commit to a process of drafting a comprehensive national action plan for human rights, as recommended under the 1993 Vienna Declaration and Programme of Action.<sup>2</sup> The current Chilean government took this commitment upon itself in its 2006-2010 *Programa de Gobierno*, but the process has not yet been initiated.

Chile is one of the few Latin American countries not to have a national human rights institution as envisaged in the *Paris Principles*.<sup>3</sup> Despite the campaigning of civil society organisations, and several attempts to pass initiatives through the legislature, the issue has proved problematic. Amnesty International does not believe that the proposal to establish an Ombuds Office, recently approved by the Chamber of Deputies, fulfils the criteria of the *Paris Principles*.

#### Justice and impunity

Although significant advances have been achieved under the four democratically-elected governments that succeeded General Pinochet in tackling the legacy of serious and widespread violations committed during the military regime, many of the tasks that are essential to the process of post-dictatorship transition have yet to be addressed by the government. These include concerted efforts to address ongoing impunity, to bring justice to individual and collective victims, and to introduce political reform to ensure that similar violations cannot happen in the future.

#### Investigation, prosecution and reparation of past human rights violations

Amnesty International is concerned that the Amnesty Law (Decree Law 2191), enacted during Pinochet’s regime in 1978 and covering the period 11 September 1973 to 10 March 1978, is still in force.<sup>4</sup> Although some judicial decisions have allowed for the investigation of disappearance cases as crimes of “permanent

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<sup>2</sup> paragraph 71

<sup>3</sup> *Paris Principles* defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

<sup>4</sup> See *Chile: Legal brief on the incompatibility of Chilean decree law No.2191 of 1978 with international law*. Also, application of Amnesty Law by Supreme Court in December 2007 in the case of Hector and Guido Barria Bassay (X Region, area de Rio Negro)

kidnapping”, thereby circumventing the application of the Amnesty Law, and establishing the law’s non-applicability to crimes committed abroad and crimes against humanity,<sup>5</sup> the continued presence of the Amnesty Law on the statute books is incompatible with Chile’s international legal obligations.

Furthermore, it is crucial that crimes under international law be recognised under Chilean law, in order that the courts are able to investigate and prosecute crimes against humanity, war crimes and other human rights violations without having to draw analogy or assimilate with common offences which may be subject to statute of limitations.

Amnesty International is concerned that statute of limitations have been applied in cases of serious human rights violations, including disappearances and unlawful killings, and that some judges persist in arguing for the application of statutes of limitations to civil claims filed within criminal proceedings. These contravene the principles established under international law.

The victims recognised as such in the Report of the “Valech Commission” (National Commission on Political Imprisonment and Torture) are eligible for a compensatory pension as well as a series of measures aimed at rehabilitation under Law 19.992, “Law on reparations for recognized victims of political imprisonment and torture” (24 December 2004). However, Amnesty International shares concerns expressed by the UN Committee Against Torture, including the limited mandate of this Commission and the short time period within which alleged victims could register, and considers that the policy on reparations falls short of international principles on the right to a remedy and reparation for victims of gross violations of international human rights and humanitarian law.

#### **The International Criminal Court and other international criminal courts**

Successive Chilean administrations have failed to ratify the Rome Statute of the International Criminal Court, although it was signed on 11 September 1998. Chile is the only South American state not to have ratified the Statute. Amnesty International welcomes recent indications that the government is willing to see the Statute ratified and hopes that this will go ahead without any additional measures, such as the constitutional amendment and potential unilateral declaration proposed in 2003, both of which could undermine the object or purpose of the Statute.

#### **Reform of Military Code of Justice**

Amnesty International welcomes recent indications that the government is developing a proposal to reform the Military Code of Justice. The incompatibility of the current application of the Military Code to cases involving civilians with international human rights law has been made in many fora, including recently in a binding decision by the Inter-American Court of Human Rights (*Iribarne Palamara v. Chile*).

### **C. Promotion and protection of human rights on the ground**

#### **Violence against women**

The persisting prevalence of violence against women in Chile is of serious concern to Amnesty International, in particular the high number of femicides. At the current rate, more women will die in such acts of violence in 2008 than in 2007. In an increasing number of cases firearms have been used in threats against and killings of women. There is evidence that women face difficulties in reporting violence to the authorities and that they in turn fail to adequately investigate cases and prosecute those responsible. This indicates that government initiatives aimed at highlighting the problem and addressing its root causes have been insufficient.

#### **Indigenous Peoples**

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<sup>5</sup> Eg Fallo Caso Gral Carlos Prats, 30 June 2008, Judge Solis p461

Indigenous Peoples in Chile, as in other American countries, have long suffered marginalisation and discrimination. Despite some timely institutional reforms and the 1993 Indigenous Peoples Act, Chile's approximately 700,000 Indigenous Peoples do not enjoy constitutional recognition and remain disproportionately affected by poverty. This affects their ability to exercise their economic, social and cultural, as well as civil and political rights. According to information available to Amnesty International, the state does not routinely disaggregate data to identify the particular problems faced by Indigenous Peoples and therefore is not able to tailor effective policies to combat discrimination against Indigenous Peoples.

Inadequate resolution of claims to ancestral land combined with the impact of extractive industry and forestry projects have led to tension in Indigenous communities some of which have erupted into violence. Amnesty International recognises the duty of the State to maintain public order; however, this should be carried out with respect to human rights and ensure free, prior and informed consent of the Indigenous Peoples.

Amnesty International has repeatedly expressed concern at the application of the "Anti-Terrorist Law" – enacted during General Pinochet's regime – against members of the Mapuche Peoples participating in activities in support of Indigenous Peoples' land rights. In recent times, this legislation has only been applied in relation to cases involving Indigenous Peoples, which suggests a discriminatory approach. Despite assurances by the Chilean government that its application does not constitute a state policy or practice, the charges against individuals under the Law still remain. Amnesty International was very concerned to learn that this Law was invoked again, by a Regional Prosecutor in Temuco on 4 November 2008.

#### **D. Recommendations for action by the State under review**

Amnesty International calls on the government of Chile:

##### *National human rights mechanisms*

- To prioritise the process of developing a national human rights action plan through a broad consultative process in line with recommendations made in the Vienna Declaration and Programme of Action;
- To take all possible measures to expedite the legislative process that will endorse the establishment of an autonomous human rights institution in line with the Paris Principles.

##### *Investigation, prosecution and reparation of past human rights violations*

- To nullify the 1978 Amnesty Law (Decree Law 2191) and other measures granting amnesty to alleged perpetrators of gross human rights violations;
- To make the statute of limitations inapplicable for crimes under international law and civil suits arising from those crimes, irrespective of the date of their commission;
- To award full reparations to victims of human rights violations and to their relatives, including those living outside of the country.

##### *The International Criminal Court and other international criminal courts*

- To promptly ratify and fully implement the Rome Statute of the International Criminal Court;
- To ratify and implement fully the Agreement on the Privileges and Immunities of the International Criminal Court;
- To enact legislation implementing the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture, the Geneva Conventions and Optional Protocols I and II, and the Convention on the Prevention and

Punishment of the Crime of Genocide that prohibits conduct proscribed within these treaties, in full accordance with international law;

- To enact legislation on cooperation with other international criminal courts, in particular on surrendering persons allegedly responsible for crimes under international law.

#### *Reform of Military Code of Justice*

- To bring the Military Code of Justice into line with international standards and the Inter-American Court on Human Rights ruling in *Palamara Iribarne v. Chile*;
- To eliminate the application of military jurisdiction to civilians;
- To ensure that human rights violations in which military personnel are implicated are tried in civilian courts;
- To abrogate the death penalty as a sanction in the Military Code of Justice.

#### *Violence against women*

- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- To enact and enforce domestic legislation on violence against women;
- To publicly condemn violence against women and exercise due diligence to prevent, investigate and punish such acts, whether perpetrated by the State or by private persons;
- To establish an effective system for registering cases of violence against women that activates mechanisms to treat and protect victims as well as investigating all complaints promptly and impartially;
- To uphold standards in the collection of evidence from victims of violence in line with the World Health Organization's *Guidelines for medico-legal care for victims of sexual violence*;
- To ensure that the collection of qualitative and quantitative data is standardized and disaggregated according to gender and other factors, and that it is open to verification. Such data should be collected, shared and published by all relevant government departments, and subsequently used by policy-makers to devise effective policies and programmes to address the problem.

#### *Indigenous Peoples*

- To implement without further delay the outstanding recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, including:
  - To revise sectoral legislation on land, water, mines and other sectors that may be in conflict with the provisions of the Indigenous Peoples Act, and ensure that the principle of the protection of the human rights of Indigenous Peoples takes precedence over private commercial and economic interests;
  - To expand and expedite the work of the Land Fund managed by the National Corporation for Indigenous Development (Corporación Nacional de Desarrollo Indígena, CONADI) for the acquisition of land for Indigenous Peoples, substantially increasing its resources so that it can meet the needs of Indigenous families and communities;
  - To desist from outlawing or penalising legitimate protest activities or social demands by Indigenous organizations and Peoples. Charges for offences in other contexts, such as "terrorist threat" or "criminal association", should not be applied to acts related to the social struggle for land and legitimate complaints of Indigenous Peoples;

- To promptly derogate Law 18.314, known as the “Anti-Terrorist Law”;
- To ensure the full implementation of ILO Convention 169, involving the input and participation of Indigenous Peoples in the design, implementation and monitoring of any policy interventions that arise from it;
- To work constructively with Indigenous Peoples to advance a national declaration that builds on existing international standards for the protection of indigenous peoples’ rights, including the UN Declaration on the Rights of Indigenous Peoples;

## **Appendix: Amnesty International documents for further reference<sup>6</sup>**

- Chile: Chile: Memorandum to the Chilean Government (AI Index AMR 22/009/2008)
- Chile: The case against Augusto Pinochet (AI Index: AMR 22/004/2008)
- Chile: Testimonies of victims of the Pinochet government (AI Index: 22/005/2008)
- Chile: The historical responsibility of the Chilean Supreme Court (AI Index: 22/004/2007)
- Chile: Fujimori Case: the Supreme Court of Justice must comply with obligations of international law contracted by Chile (AI Index: 22/006/2007)
- Chile: A call to Protect Human Rights in Chile: An open letter from the Secretary General to the presidential candidates (AI Index 22/004/2005)
- Chile: Probes of Pinochet-Era Crimes Face Shut Down: Ensure Mandate of Special Judges to Continue Their Investigations (AI Index: 22/003/2005)
- Chile: Concerns on Torture and other cruel, inhuman or degrading treatment: Implementation of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (AI Index: 22/006/2004)

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<sup>6</sup> All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/chile>