



OPEN LETTER FROM AMNESTY INTERNATIONAL TO THE CHILEAN AUTHORITIES

Introduction

In the face of the COVID-19 pandemic, Amnesty International is concerned about the precarious situation of people deprived of their liberty throughout the Americas.

Widespread overcrowding in prisons in the region makes it impossible for those detained to take measures to prevent infection, including physical distancing and isolating people who may already be infected with the virus. In addition, there is limited access to health services, adequate food and a lack of sanitation and/or access to water. All of this increases the risks of exposure to the virus and limits the chances of recovery of those infected.

States have an obligation to guarantee the right to health of all those deprived of their liberty (whether in prisons or other places of detention) and to ensure that they have access to the same standards of health care as those available in the community, without discrimination of any kind.

Situation in Chilean prisons

This concern regarding the region as a whole also applies to Chile.

Less than a year ago, in its Third Study of Prison Conditions in Chile,¹ the National Human Rights Institute identified serious shortcomings, as indicated above: almost half of prisons exceeded their capacity, 11 of them to a critical level, and there was a conspicuous lack of beds and basic material conditions for inmates. Many facilities were experiencing problems with lighting and electricity, heating and insulation, ventilation and humidity and a lack of sanitation. In addition, there were reports of people being deprived of access to water for 24 hours, a persistent lack of adequate cleaning services and a shortage of available health professionals.

This situation of overcrowding and precariousness was experienced by both people convicted of various crimes – including minor offences – and people in preventive detention, among whom are people at risk should they contract COVID-19.

Chile must urgently adopt a strategy to prevent infection among those deprived of their liberty, including by reducing overcrowding in prison facilities. This requires that all possible measures be taken to prevent the transmission of COVID-19 in these facilities and, where people have been infected, ensuring that detainees can isolate themselves and access specialized medical care without unnecessary restrictions. In addition, specific funds and resources should be allocated to ensure the implementation of health and hygiene measures in places of detention. If such resources are not available, States have a duty to request them through international cooperation.

Depending on the particular circumstances of the case, Chile should consider the early or conditional release of prisoners at risk should they become infected, including older people as well as those with underlying medical conditions or a weakened immune system. For people in preventive detention awaiting trial, house arrest or some other alternative measure that guarantees their rights to health, physical integrity and life should be considered.

¹ <https://www.indh.cl/informe-indh-malas-condiciones-de-vida-hacinamiento-castigos-y-violencia-persisten-en-carceles-chilenas/> (Spanish only).

Finally, those detained on politically motivated charges, including prisoners of conscience detained solely for exercising their human rights, must be released immediately and unconditionally, whether they are held in pretrial detention or serving a sentence.

Particular situation of people in preventive detention, especially for acts of protest

Hundreds of people are in preventive detention after being arrested for offences connected with acts of protests during the period of social unrest that began in October 2019.

In the case of people in preventive detention awaiting trial, who therefore must be considered innocent until proven otherwise, the Chilean authorities should analyse their situation case by case and consider whether their continued detention is necessary and proportionate in the current situation. The authorities should consider the possibility releasing them pending trial or substituting other precautionary measures instead of detention.

Amnesty International has learned that hundreds of people are being deprived of their liberty for minor offences such as “disturbing public order” in connection with the 2019 protests. Many others are in prison as a result of the misuse and disproportionate implementation of the criminal law, following the application of laws such as the State Internal Security Law. Likewise, Law 21208, known as the “Anti-Bullying and Anti-Barricade Law”, of January 2020 has raised serious concerns because, for example, it criminalizes obstructing public roads in the context of social protests.

Amnesty International reiterates its call to the Chilean authorities to immediately and unconditionally release all those detained solely for exercising their right to peaceful assembly and to consider other alternative measures to incarceration for those in pretrial detention or who are at risk because of the COVID-19 pandemic.

In the case of people who remain detained or imprisoned, Chile must provide a level of health care that meets the individual needs of each of individual and guarantees the maximum possible protection against the spread of COVID-19.

Specific situation: positive and negative signs

Amnesty International welcomes several recent initiatives aimed at guaranteeing the rights of those deprived of their liberty, but is concerned about certain worrying trends.

As regards positive initiatives, the organization welcomes the announcement by the Public Defender (Criminal Matters) that applications are to be submitted to the courts throughout the country calling for a review by the Judicial Branch of the precautionary measures imposed on individuals who have been charged and who are currently serving those measures in preventive custody and belong to an at-risk group regarding COVID-19.²

Also noteworthy is a government initiative of 25 March 2020 to introduce a bill for urgent and immediate discussion,³ to approve a commutative general pardon under certain circumstances for persons deprived of liberty. Specifically, those who are over 65 years old; pregnant women; women residing in a penal unit with a child under the age of two; as well as people who are serving sentences of night-time confinement and partial night-time confinement in special establishments or who are serving a custodial sentence and been granted temporary release on licence.

Lastly, the bill proposes that people who are serving a custodial sentence and have a Sunday or weekend release licence should temporarily serve their sentence under strict house arrest for a term of six months.

Likewise, Amnesty International welcomes the initiatives taken by some courts, such as those pursued by the Seventh Supervisory Court in Preliminary Proceedings of Santiago, where the Committee of Judges, in response to the health emergency and for humanitarian reasons, decided that all judges would review ex officio cases where people were held in preventive detention, each judge analysing a percentage of such cases, so that in all cases where an alternative measure could be imposed, preventive detention would be replaced by another appropriate and

² <https://www.latercera.com/nacional/noticia/defensoria-penal-ingresara-solicitudes-en-todo-el-pais-para-modificar-la-cautelar-de-cerca-de-800-imputados-presos-y-que-son-de-grupos-de-riesgo/YFZJT35STFDWVMYCPF4J63KV6A/> (Spanish only).

³ Official Gazette 13.358-07.

proportionate measure that safeguarded the aim of the process and the health of the accused and of society as a whole.

However, it is worrying that, after issuing a decision within the framework of this agreement, a Judge of the Seventh Supervisory Court, Daniel Urrutia Laubreaux, was suspended and his decision overturned by the Plenary of the Santiago Court of Appeals.

On 25 March 2020, Judge Urrutia decided to replace preventive prison with house arrest in the cases of 13 people accused of public order offences in the context of the protests that started in October 2019.

According to the ruling, the judge's decision was based on the declaration of a State of Catastrophe (*Estado de Excepción Constitucional por Catástrofe*); the high possibility of contagion in prison facilities due to overcrowding and the lack of minimum levels of sanitation; the right to health of the accused; the judicial power to substitute preventive detention for other precautionary measures that guarantee the protection of the physical integrity of the accused, including the power to exceptionally grant release on licence for the time strictly necessary, based on current legislation; as well as the reasonable probability that, if convicted, the 13 defendants would not serve their sentences in a custodial setting.

That same day, and just hours after Judge Urrutia issued his decision, the Plenary of the Court of Appeals, in an extraordinary session and by a majority decision, found him to have behaved negligently in the performance of his duties, without providing any explanation of what would constitute such negligence, under the provisions of article 544 (3) of the Judicial Code. In its ruling, the Plenary suspended the effects of the Judge's decision and any other decision of the same nature he may have issued. Furthermore, the Plenary of the Court of Appeals, exercising its disciplinary powers, immediately gave instructions for a summary administrative investigation and suspended Judge Urrutia from carrying out his duties pending the completion of that investigation.

Amnesty International is concerned that the ruling of the Court of Appeals may have been arbitrary and unlawful, given the lack of arguments supporting the alleged negligence and the consequent decision to suspend Judge Urrutia as well as the possible lack of competence of the Plenary to suspend the effects of his decision (this requires a decision by the Chamber at the request of a party). Although the organization does not as a rule take a position on the content of judicial decisions, respecting judicial independence, an exception to this principle may be made when a judicial ruling is or appears to be arbitrary, which the organization believes may be the case here.

The organization also notes with concern that if the aggrieved party wished to lodge an appeal against the ruling of the Plenary, which was a majority decision, it would seem effectively impossible from them to challenge ruling, since it does not set out any reasoning for arriving at its decision. In other words, the declaration of negligence is asserted. It is also important to note that this ruling could have a deterrent effect on other judges who might apply measures to prevent the spread of COVID-19 in prisons and thus protect the right to health of all those deprived of their liberty as well as of prison staff.

Furthermore, Amnesty International regrets the lack of any statement by the Attorney General's Office regarding the urgent need to revise precautionary measures for those who are most at risk during the COVID-19 emergency.

Finally, the organization is concerned at statements made by the Attorney General's Office regarding the possibility of imposing custodial sentences on those who fail to comply with the restrictive measures issued by the government in response to the pandemic – such as the mandatory quarantine – since this could result in new prison terms, including preventive detention. Given the high risk of transmission of COVID-19 in prisons and other places of detention, the imposition of custodial sentences would further aggravate the public health problems caused by the pandemic, resulting in disproportionate measures in relation to the objective sought.

Recommendations to the Chilean authorities:

- Adopt an urgent strategy for the prevention of infection among people deprived of their liberty, including the reduction of overcrowding in the country's prisons, by:
 - Immediately and unconditionally releasing all those detained solely for the peaceful exercise of their human rights, whether they are provisionally detained or serving a sentence;

- Take all necessary steps to ensure that preventive detention measures are reviewed as quickly as possible and consider replacing custodial measures with other precautionary measures that do not involve remaining in a detention facility, including the possibility of adopting non-custodial measures for people accused of non-violent crimes;
- Consider early or conditional release for prisoners who are at particular risk should they be infected, including older prisoners and those with underlying medical conditions or a weakened immune system.
- Take all necessary measures to prevent the spread of COVID-19 where people are detained, including ensuring access to water, sanitation and personal hygiene and, in the event of infection, ensure that inmates have access to specialized medical care without unnecessary restrictions.
- Allocate specific funds and resources exclusively to guarantee the implementation of health and hygiene measures in places of detention.
- Through the appropriate processes, void *in toto* the decision of the Plenary of 25 March 2020.
- Approve the necessary legislation to facilitate implementation of the above as quickly as possible.

Sincerely,

Erika Guevara-Rosas
Americas Director
Amnesty International