

CHILE

A human rights review based on the International Covenant on Civil and Political Rights

I. SUMMARY OF AMNESTY INTERNATIONAL'S CONCERNS related to the Chilean government's implementation of the International Covenant on Civil and Political Rights

Introduction

Chile has submitted four reports to the Human Rights Committee since 1978. The first three in 1978, 1984 and 1989 were submitted by the military government of General Augusto Pinochet. The fourth periodic report on the status of implementation of the International Covenant on Civil and Political Rights (ICCPR) due in 1994, was submitted in December 1998. It was the first submitted under civilian rule.

While the International Covenant on Civil and Political Rights was ratified by Chile in February 1972 and promulgated by Decree 778 in November 1976, the procedure to incorporate international conventions into the domestic legal framework was not completed until 29 April 1989. On that date the Covenant and the promulgation decree were published in the Official Gazette, giving thus the Covenant full validity in Chilean law.

Equally, in July 1989 a number of amendments to the 1980 Chilean Constitution, adopted during the military government, were enacted giving constitutional status to international conventions ratified by Chile¹.

During the nine years of civilian government, following the end of 17 years of military regime in 1990, Chile has become more integrated into the international community performing a role in international human rights fora and ratifying international instruments.

¹The Chilean Constitution states on Article 5(2) "The exercise of sovereignty is acknowledged to be limited by respect for the fundamental rights that have their origin in human nature. It is the duty of the organs of State to respect and promote the rights guaranteed by the Constitution and by the international conventions ratified by Chile and currently in force".

A number of human rights conventions and protocols were ratified under the first civilian government of President Patricio Aylwin Azócar. In December 1990 and August 1992 respectively, it recognized the competence of the Human Rights Committee under Article 41 of the ICCPR and the Optional Protocol to the Covenant ratified in August 1992. Also, during 1990 Chile withdrew its reservations to the Inter-American Convention to Prevent and Punish Torture and to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment².

More recently, in 1994, under the government of President Eduardo Frei Ruiz-Tagle, Chile co-sponsored a draft resolution submitted by Italy calling for a worldwide moratorium on the imposition of the death penalty with a view to its complete abolition by the year 2000. Chile took an active part in the drafting of the Inter-American Convention on Forced Disappearance of Persons and signed the Convention in June 1996. Its ratification is currently before Congress for approval. In September 1998, Chile signed The Rome Statute of the International Criminal Court.

Within the national human rights concerns and the legal framework, following the return of civilian government, President Patricio Aylwin Azócar created the *Comisión Nacional de Verdad y Reconciliación*, National Commission for Truth and Reconciliation, to deal with the legacy of human rights violations from the period of military government. The National Commission was set up to gather evidence that would make it possible to identify, determine their fate or whereabouts of individual victims of "disappearances", extrajudicial executions and deaths resulting from torture. A successor body, the *Corporación de Reparación y Reconciliación*, Corporation for Reparation and Reconciliation, was established in February 1992 to continue the work on unresolved cases and to receive and investigate new cases. The Corporation mandate was extended until 1996. The combined findings of the two bodies brought the number of "disappearances" to 1,102 and extrajudicial executions and death under torture to 2,095, making a total of 3,197 cases that were officially recognized by the Chilean State. The victims of these human rights violations included real, potential or suspected ideological opponents of the military government. Cases of torture not resulting in death were not investigated.

²The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Chile under the military government in 1988 but with reservations related to Articles 2(3), 3, 20 and 30. Reservations under Article 30 are still in force.

While neither the Commission nor the Corporation had formal legal powers, they transmitted information on cases within their mandate to the courts for judicial investigation. However, proposals for legislation have been presented to Congress in 1993 and 1995 to curtail judicial proceedings against the perpetrators of past human rights violations, and to restrict judges' investigations into such cases to locating the remains of the "disappeared"³. Civilian and military courts have persistently closed human right violations cases by applying the Amnesty Law (Decree 2191 of April 1978), passed by the military government of General Augusto Pinochet. The vast majority of the perpetrators have remained unpunished.

Over the years of civilian government a number of proposed reforms to modify domestic legislation have been put forward. These have included the abolition of the death penalty, and reforms to legislation which had seriously undermined the right to a fair trial of prisoners charged with politically motivated offences. The proposed reforms included provisions to prevent statements extracted under torture from being used as evidence, reduce penalties for politically motivated offences, transfer of cases to civilian courts and restrict the jurisdiction of military justice to military offences. Although a number of the proposals have been blocked in Congress, there have been developments related to human rights which should allow Chile to comply with its obligations under the ICCPR.

Although since the civilian government took office in March 1990, the human rights situation in the country has not registered the widespread or systematic practice of "disappearance", extrajudicial executions and torture recorded under the military government, there remain several concerns related to the full protection of all fundamental rights.

Amnesty International's major concerns in Chile with regard to the implementation of the provisions of the ICCPR include torture and ill-treatment of detainees mainly by members of the security forces (*Carabineros*, uniformed police, *Investigaciones*, civilian police and *Gendarmeria*, prison guards), the lack of thorough, independent and conclusive investigation into such reports, the jurisdiction of military courts in cases of prisoners charged with politically motivated offences, the application of the 1978 Amnesty Law to close cases of human rights violations committed during the military government and the application of death sentences by the courts.

Article 6 Right to Life

³See "*Chile - Transition at the crossroads - Human rights violations under Pinochet rule remain the crux*", AI Index: AMR 22/01/96, March 1996

The Death Penalty

Amnesty International is unconditionally opposed to the death penalty as the ultimate cruel, inhuman or degrading punishment, which constitutes a violation of the right to life. Chilean civil and military legislation carries the death penalty for more than 20 offences. Although in recent years no executions have been carried out, as death sentences have been commuted to life imprisonment, prosecutors continue to call for the death sentence and courts have handed down such a sentence for both political and common prisoners. Since 1992 proposals to widen its scope have been studied in Parliament. Attempts to abolish the death penalty have been thwarted by the Senate.

In two of the most recent cases **Cupertino Segundo Andaur Contreras**, who was found guilty of raping and killing a nine-year-old boy in December 1992, was sentenced to death in May 1996 by the Santiago Appeals Court. The Supreme Court confirmed the death sentence which was subsequently commuted to life imprisonment by presidential pardon. In April 1998 **Juan Zenón Soto Campos** was sentenced to death by the Third Penal Court in Concepción for the kidnapping, rape and murder of a five-year-old girl. The Second Chamber of the Supreme Court commuted the death sentence to life imprisonment.

Amnesty International has repeatedly expressed concern at the application by the courts of the death sentence and the legislative moves to extend its scope. The organization has called for the total abolition of the death penalty in Chile.

Death in Custody

There have been reports that detainees have died as a result of torture while under the custody of *Carabineros*. Two of such cases are recorded in the UN Special Rapporteur on Torture report issued in January 1996 (U.N.Doc. E/CN4/1996/35/ add.2, paras 22 and 23). In January 1997 **Raúl Palma Salgado** died as a result of torture. He was arrested by *Carabineros* and taken to *Investigaciones*. A few hours later he was transferred to a hospital where he died. Reportedly the autopsy report recorded facial bruises and a fractured spine. Four members of *Investigaciones* have been discharged and an investigation has been initiated by a military Court. A legal complaint (*Querrela*) for death under torture has been filed by relatives of Raúl Palma Salgado. Another detainee, **Luis Vásquez Ramirez**, who has also complained of having been tortured at *Investigaciones* during the same period is a witness to the case of the death of Raúl Palma Salgado.

Article 7 Prohibition of Torture

Article 19(1) of the Chilean Constitution guarantees to all persons the right to life and to the physical and psychological integrity ... the use of unlawful coercion is prohibited ("*La Constitución asegura a todas las personas: el derecho a la vida y a la integridad física y psíquica ... Se prohíbe la aplicación de todo apremio ilegítimo*"). However, complaints of torture and ill-treatment to detainees have continued.

Despite repeated announcements by the government that torture would not be tolerated and legal reforms, which have been in place since 1991 to limit incommunicado detention and provide for medical examination of detainees, complaints of torture have continued to be reported over the nine years of democratic government. Most of the cases have remained unresolved and those responsible for torture have not been brought to justice.

The ICCPR, which has been ratified by Chile, requires the prompt and thorough investigation of all allegations of torture and ill-treatment with those responsible brought to justice. The Human Rights Committee, the body of 18 experts which monitors implementation of the ICCPR has explained that Article 7 of the treaty requires that complaints of torture and ill-treatment "must be investigated promptly and impartially by the competent authorities"⁴.

Amnesty International has published reports in September 1991 and March 1993 which documented over 50 cases of torture⁵. Complaints of ill-treatment and torture have also been raised with the authorities through letters and Urgent Actions appeals. The organization has repeatedly called for full investigations to be carried out and for the authorities to ensure that those responsible are brought to justice. In the light of Amnesty International's experience in working to stop torture, it has found that failure to provide effective remedies for complainants, facilitate the continuing incidence of torture. During 1996 Amnesty International received over 20 complaints of torture and ill-treatment from Chilean non-governmental organizations. These included:

In July 1996, **Alfredo Alegría Saavedra**, **Wilson Pérez Melgarejo**, **Rufino Pérez Abayay** and a pregnant woman, **Ana Ayala Medina**, were arrested by members of the *Investigaciones* police. They were kept blindfolded, handcuffed and chained to a wall. They were deprived of food and water for three days and not allowed to use the toilet. Reportedly, they were beaten on the face and the stomach, subjected to torture with electric shocks on the temples and the men on the genitals. Ana Ayala Medina

⁴General Comment 20, para.14, UN Doc. HRI/GEN/1.

⁵See: "*Chile: Reports of torture since March 1990*", AI Index: AMR 22/03/91, September 1991 and "*Chile: Torture and ill-treatment continue*", AI Index: AMR 22/01/93, March 1993.

subsequently had a miscarriage. They were taken to the hospital but reportedly were not examined by a doctor. They were released after a few days without charges.

In July 1996, **Cristina Poblete Cerda** was taken from her home by the *Investigaciones* police. Reportedly, at the time of her arrest she was slapped on the face and pulled by the hair. She was kept blindfolded, tortured with electricity and subjected to sexual harassment. She was subsequently released without charges.

The above cases were reported by a Chilean non-governmental organization to the General Director of *Carabineros* and the Ministry of Interior. No investigation was known to have been initiated.

A report by the UN Special Rapporteur on Torture issued in January 1996, cited evidence of police ill-treatment of common detainees which the Special Rapporteur considered common enough not to be seen as isolated acts. It recorded the need to bring provisions for incommunicado detention fully into line with the provisions of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. The Special Rapporteur recommended, *inter alia*, ensuring prompt access for all detainees to medical examination by an independent physician and prohibiting the blindfolding of detainees⁶.

Ill-treatment and torture by security forces involving military conscripts were also reported.

In April 1997, four 19-year-old conscripts, **Johnny Pérez Torres, Andrés Serrano Leiva, Dagoberto Contreras Llanes** and **Guillermo Saavedra Aguilera**, were arrested as a result of the investigation into the killing of another conscript. The four were allegedly subjected to torture during interrogation by army officials. A parliamentary deputy complained that the four had been beaten, verbally abused, deprived of sleep and threatened in order to extract confessions. Dagoberto Contreras' mother stated that her son had been beaten, tied around the neck and tortured with electric shocks. These allegations were categorically denied by the military authorities. No investigation was known to have been initiated into the allegations of torture. (See also under Military Courts below.)

Article 2 The right to effective remedy

The Amnesty Law

⁶U.N.Doc. E/CN4/1996/35/ add.2, paras 73 and 76(e), (f) and (g).

In 1978, the military government of General Pinochet decreed an amnesty (Decree 2191) designed to shield those responsible for human rights violations committed between 11 September 1973 and 10 March 1978 from prosecution. This decree has made it impossible for the relatives to find the answers on the whereabouts of those “disappeared” and to obtain justice. Those responsible for committing human rights violations played a major role in dictating the terms of transition to civilian rule to ensure immunity from prosecution for human rights violators. Those seeking truth and justice have been sidelined, often violently. The Amnesty Law was declared constitutional by the Chilean Supreme Court on 28 August 1990. This self-amnesty has effectively guaranteed the impunity of those responsible for human rights violations committed in Chile between September 1973 and March 1978.

Amnesty International considers that it is important to note that the Inter-American Commission on Human Rights has stated that the Chilean Amnesty Law is incompatible with the international obligations of the Chilean State under international law and considered that “the legal effects were part of a general policy of human rights violations in Chile” (Inter-American Commission on Human Rights, Report No. 25/98, para. 76; *see also* Inter-American Commission on Human Rights, Report No. 36/96). The Human Rights Committee, has also considered this kind of amnesty law incompatible with the international obligations of states under the international human rights law⁷.

The Vienna Declaration and Programme of Action, adopted by states on 25 June 1993, during the UN World Conference on Human Rights, reaffirmed the need for states to “abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violation, thereby providing a firm basis for the rule of law”⁸.

The Amnesty Law remains in place. Amnesty International has long been concerned that the application of the 1978 Amnesty Law has obstructed full investigations into human rights violations committed during the military government and has contributed to persistent impunity for such violations. The Supreme Court has repeatedly supported the transfer of investigations from civilian courts to military courts which have claimed

⁷ Views of 19 July 1994, Case Hugo Rodríguez, Communication 322/1988, UN Doc. CCPR/C/51/D/322/1988; Preliminary observations of the Human Rights Committee - Peru, 25 July 1996, UN Doc. CCPR/C/79/Add.67, para. 20; Observations of the Human Rights Committee - France, UN Doc. CCPR/C/79/Add.80, para. 13; Observations of the Human Rights Committee - Uruguay, UN Doc. CCPR/C/79/Add.19, para. 7, Observations of the Human Rights Committee - Argentina, UN Doc. CCPR/C/79/Add.46, para.10; Human Rights Committee - El Salvador, UN Doc. CCPR/C/79/Add.34, paras 7 and 12; General Comment No. 20, para. 15.

⁸UN Doc. A/CONF.157/23, para. 60.

jurisdiction over cases of human rights violations committed in the period 1973-1978. Hundreds of cases have been closed in civilian and military courts by the Amnesty Law.

A case in point is that of **Carmelo Soria Espinoza** a UN official of dual Chilean-Spanish nationality who was abducted and killed by the security forces in Santiago in 1976. The investigation into Carmelo Soria's case was closed, reopened and passed between different jurisdictions and judges on a number of occasions. Several attempts had been made to apply the 1978 Amnesty Law to it. Finally, in June 1996, a Supreme Court judge classified the crime as "homicide" and closed the case under the Amnesty Law. As a state party to the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Chile is obliged to make crimes against people protected under the treaty punishable by penalties which take into account their grave nature. In August 1996 the Supreme Court upheld the June verdict pronouncing the case closed⁹.

Military Courts and Human rights violations

Human rights violations committed by members of the army and *Carabineros*, fall under the jurisdiction of military justice according to Chilean legislation. Amnesty International has come to the firm conclusion that such a system generates impunity and denies the right of effective recourse before the law, to victims and relatives of victims of human rights violations.

The Inter-American Commission in its 1985 report on the Situation of Human Rights in Chile stated that military courts in Chile do not guarantee the right to justice and "the actions of these courts have served to provide a veneer legality to cover-up the impunity which the members of the Chilean Security Forces enjoy when they are found to be involved in flagrant violations of human rights" (Organization of American States document OAS/Ser.L/V/II.66, para. 180). The military legislation remains substantially unchanged and continues to be the source of impunity as established by the Special Rapporteur on Torture, Mr. Nigel Rodley, in his 1996 report to the Human Rights Commission¹⁰.

The Human Rights Committee and the Inter-American Commission on Human Rights have repeatedly stated that the trial of members of the armed forces on human rights

⁹See also: "Chile: Supreme Court continues to block investigations into past human rights violations: *The Chanfreau case*", AMR 22/17/92, November 1992

¹⁰U.N. Doc. E/CN.4/1996/35/Add.2, paras 62, 68, 74 and 76.

violations by military courts is incompatible with the States' obligations under international law ¹¹.

¹¹Human Rights Committee: Concluding observations - Colombia, UN Doc. CCPR/C/79/Add.2, para. 5 and CCPR/C/79/Add.76, para. 18; Concluding observations - Brazil, UN Doc. CCPR/C/79/Add.66, para.10; Concluding observations - Peru, UN Docs CCPR/S1519 and CCPR/C/SR1521; Concluding observations - Lebanon, UN Doc. CCPR/C/79/Add.78, para.14. Inter-American Commission on Human Rights, OEA/Ser.L./V/II.66, para.139; OEA/Ser.L/V/II.84, Doc. 39 rev, 14 of October 1993; OEA/Ser.L/V/II.97, 28 September 1997) .

The Draft Declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers¹², stated in Article 5 (f) that the jurisdiction of military courts is limited to infractions of military discipline by members of the armed forces ("*la compétence des tribunaux militaires se limite aux infractions d'ordre militaire commises par des membres des forces armées*"). The UN Commission on Human Rights, in its Resolution 1989/32, invited Governments to take into account the principles set forth in the draft declaration in implementing the Basic Principles on the Independence of the Judiciary.

The UN Declaration on the Protection of All Persons from Enforced Disappearance (adopted by the UN General Assembly in Resolution 47/133 of 18 December 1992) provides that persons alleged to have committed enforced disappearances "shall be tried only by the competent ordinary courts in each State, and not by any special tribunal, in particular military courts" (Article 16 (2)).

Article 14 Right to a fair trial

Military Courts and Political prisoners

There is particular concern that most of the prisoners charged with politically motivated offences currently held in Chile are tried by military courts despite the fact that they are civilians. There are currently over 70 political prisoners held at the *Carcel de Alta Seguridad*, High Security Prison for males and the *Centro de Orientación Femenina*, Female Detention Centre in Santiago, accused of collaborating with or being members of armed opposition organizations. Some have been charged with violent acts or the unauthorised possession of arms. Several of the political prisoners were subjected to torture during the initial period of detention.

When the civilian government took office in March 1990 a number of proposals for reforming legislation that had given rise to serious irregularities in the trials of the political prisoners were put forward. A number of these reforms were rejected by the Senate including the proposal to restrict the scope of military justice to military offences. In October 1992 a motion was tabled in Congress to give civilian courts the power to try both common offences committed by military personnel and military offences committed by civilians and to limit military courts to try only offences under the Code of Military Justice committed by military personnel. The motion was defeated.

¹²UN Doc. E/CN.4/Sub.2/1988/Add.1 and Add./Corr.1 (the Singhvi Declaration).

Currently, civilians are tried by military courts for offences punishable under the Anti-terrorist Law, Arms Control Law and the State Security Law¹³. Amnesty International believes that military courts do not guarantee the right to justice. The rendering of a fair trial under military justice has become an area of grave concern for Amnesty International as political prisoners do not benefit from minimum guarantees with regard to their basic rights, such as the right to be judged by an independent and impartial court, the chance to fully exercise the right to defence and the right to equality of all parties at the trial. There is particular concern that military courts can and have passed death sentences.

The practice of trying civilians in military courts, while not expressly prohibited by international standards, raises fair trial issues. Amnesty International upholds that both laws and judicial process must comply with the rules adopted by the international community to protect human rights, such as the ICCPR. This instrument is among those which set out the basic precepts on which laws and the legal process in each country should be based. The Human Rights Committee has called for the removal of military court jurisdiction over civilians. For example, recently, the Human Rights Committee has expressed concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians¹⁴.

The Human Rights Committee has stated that "[i]n some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of Article 14 which are essential for the effective protection of human rights"¹⁵. In 1985 the Inter-American Commission stated that in Chile the continuing expansion of the military courts' jurisdiction over civilians and members of the security forces accused of common crimes was gradually eroding the jurisdiction of the ordinary courts and adversely affected the exercise of the right to a fair trial¹⁶.

¹³*Conductas Terroristas*, Anti-terrorist Law (Law No.18.314 of May 1984); *Ley sobre Control de Armas*, Arms Control Law (Supreme Decree No.400 of April 1978, Law No. 17.798 of August 1982) and the *Ley sobre Seguridad del Estado*, State Security Law, (Supreme Decree No.890, Law 12.927 of August 1975).

¹⁴Concluding observations of the Human Rights Committee - Lebanon, UN Doc. CCPR/C/79/Add.78, para.14, 5 May 1997.

¹⁵Human Rights Committee General Comment 13, para.4, UN Doc. HR1/GEN/1

¹⁶Report on the Situation on Human Rights in Chile, OEA/Ser.L/V/II.66,doc.A,1985,p.183

Equally, in 1994, the Inter-American Commission stated that placing civilians under the jurisdiction of the military courts is contrary to Articles 8 and 25 of the Inter-American Convention and that military courts are special and purely functional courts designed to maintain discipline in the military and police and ought therefore to apply exclusively to those forces¹⁷.

Amongst those in detention and tried by military courts are **Guillermo Osandon Cañas**, **Jorge Gallardo Trujillo**, **Patricio Pardo Bravo**, **Jaime Pinto Angloni** and **Patricio Celis Adasme** for whom the military court has recommended the death sentence. Several others have been tried and sentenced by civilian courts and have parallel proceedings pending before the military court.

Political prisoners are still subjected to ill-treatment and become targets of harassment when they file complaints. Following the escape on 30 December 1996 of four political prisoners, members of the *Frente Patriótico Manuel Rodríguez* (FPMR), Manuel Rodríguez Patriotic Front, from the maximum security prison (*Carcel de Alta Seguridad*) in Santiago, there were reports of reprisals and ill-treatment of the remaining detainees by members of *Gendarmería*. **Juan Aliste Vega**, **Oscar Cruces Espinoza**, **Carlos Gutiérrez Quiduleo**, **Carlos Plaza Villaroel** and **Juan Tapia Olivares** were reportedly injured after being beaten on 2 January 1997. On 17 January, **Marcos Andrade Sánchez** was reportedly passing blood, suffered wounds on the forehead, bruising over the body and four loose teeth. Reports were received of threats made should the prisoners complain of the beatings. There is no information indicating that an independent investigation into the complaints was initiated.

Again in February 1999 there were reports of ill-treatment of the political prisoners by prison guards during a transfer of 56 prisoners from Colina I to Colina II. Prisoners were thrown to the ground and beaten with fists and rifle butts and doused with water and tear gas. Many of them were trodden on and beaten about the head. At least two were reportedly tortured with an electric prod. Some others had their heads forced under water. All were hand-cuffed at the time. There was particular concern for the health of **Marcelo Gaete Mancilla** and **Dante Ramirez Soto**. Amnesty International has called on the authorities to carry out a thorough and independent investigation into the complaints, to provide all necessary medical care to those prisoners injured and grant access to relatives and lawyers.

¹⁷Annual Report of the Inter-American Commission, 1993,OEA/Ser.L/V/II.85doc.9rev.1994.at 502, (Peru)

II. CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

During the 65th Session of the United Nations Human Rights Committee held on 24 March 1999 the Human Rights Committee considered the fourth periodic report of Chile, related to the implementation of the International Covenant on Civil and Political Rights. On 30 March 1999 the Committee adopted a number of concluding observations.¹⁸

Under the Introduction and Positive Aspects of its public document, the Human Rights Committee welcomed Chile's comprehensive fourth periodic report and noted the useful information it contained concerning draft legislative proposals. However, it regretted the lateness in the submission of the report and the core documents. It welcomed the progress made since considering the State party's third periodic report and the initiatives for reform of legislation which is incompatible with Chile's obligations under the Covenant. It welcomed as positive developments the establishment of the National Women's Service, the National Commission for Family and the adoption of the Domestic Violence Act, as well as the National Committee on Child Labour Eradication and the Judicial Academy.

While appreciating the political background and dimensions of the terms of transition to civilian rule, The Human Rights Committee noted that the constitutional arrangements made as part of the political agreements for the transition hinder full implementation of the Covenant by Chile. The Human Rights Committee stressed that internal political constraints cannot serve as a justification for non-compliance by the State party with its international obligations under the Covenant.

The Human Rights Committee underlined the principal areas of concern, including the Amnesty Law of 1978, the reports of torture, the jurisdiction of the military courts and the right to a fair trial setting out its recommendations as follows:¹⁹

The Amnesty Decree Law, under which persons who committed offences between 11 September 1973 and 10 March 1978 are granted amnesty, prevents the State party from complying with its obligation under article 2, paragraph 3, to ensure an effective remedy to anyone whose rights and freedoms under the Covenant have been violated. The

¹⁸ - Concluding observations of the Human Rights Committee: Chile, 30/03/99, UN Doc. CCPR/C/79/Add.104

¹⁹Ibid, paras 7, 8, 9, 10, 11, 12, 13 and 26

Committee reiterates the view expressed in its General Comment 20, that amnesty laws covering human rights violations are generally incompatible with the duty of the State party to investigate human rights violations, to guarantee freedom from such violations within its jurisdiction and to ensure that similar violations do not occur in the future.

The Committee is deeply concerned by the enclaves of power retained by members of the former military regime. The powers accorded to the Senate to block initiatives adopted by the Congress and the powers exercised by the National Security Council, which exists alongside the Government, are incompatible with article 25 of the Covenant. The composition of the Senate also impedes legal reforms that would enable the State party to comply more fully with its Covenant obligations.

The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that began in the civilian courts contribute to the impunity which such personnel enjoy against punishment for serious human rights violations. Furthermore, the continuing jurisdiction of Chilean military courts to try civilians does not comply with article 14 of the Covenant. Therefore:

The Committee recommends that the law be amended so as to restrict the jurisdiction of the military courts to trial only of military personnel charged with offences of an exclusively military nature.

The Committee is deeply concerned by persistent complaints of torture and excessive use of force by police and other security personnel, some of which were confirmed in the State party's report, as well as by the lack of independent mechanisms to investigate such complaints. The sole possibility of resort to court action cannot serve as a substitute for such mechanisms. Therefore:

The Committee recommends that the State party establish an independent body with authority to receive and investigate all complaints of excessive use of force and

other abuses of power by the police and other security forces.

While the Committee welcomes the reform of the Criminal Procedure Code, it is deeply concerned that many of the provisions, some of which will strengthen compliance with the fair trial guarantees provided under article 14 of the Covenant, will not come into force for a long period of time. Therefore:

The State party should consider shortening the period before the new Criminal Procedure Code comes into force in all parts of the country.

The law and practice of pre-trial detention, under which large numbers of persons accused of offences are held in preventive detention pending completion of the criminal process, raises issues of compliance with articles 9, paragraph 3, and 14, paragraph 2, of the Covenant. In this regard:

The Committee recommends that the law be amended immediately so as to ensure that pre-trial detention will be the exception and not the rule, and will be used only when necessary to protect compelling interests, such as public safety and ensuring the appearance of the accused at their trials.

The power to hold detainees incommunicado, while limited by recent legislative reforms, remains a matter of serious concern. Therefore:

The State party should reconsider its law on this issue with a view to eliminating incommunicado detention altogether.

The Committee sets the date for the submission of Chile's fifth periodic report as April 2002. It requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated within Chile and that the next periodic report be disseminated among non-governmental organizations operating in Chile.