



Your Excellency,

Amnesty International would like to draw your attention to its human rights concerns in Chile as human rights issues should, in the opinion of this organization, be a priority for your government.

Amnesty International and its 2.2 million members in more than 150 different countries across the world are working to ensure that governments fulfil their human rights responsibilities fully. The organization places special emphasis on the importance of observing the international legal obligations contracted by States.

Over the years, Amnesty International has presented its concerns to the different governments of Chile out of a desire to contribute to the consolidation of human rights in the country. It is for this reason that Amnesty International hopes to be able to hold a constructive dialogue with your government in the near future, with the aim of advancing the promotion and protection of human rights.

Amnesty International recognises that your government is committed to mitigating the effects of the earthquake and tsunami of 27 February last, and that this represents an enormous and unexpected challenge for your administration. The organization considers it essential in this regard that all policies adopted with the aim of recovering from this disaster be based on the human rights principles enshrined in international treaties, in order to ensure reconstruction efforts are sustainable and fair for all people, without exception.

Despite the overriding need to focus on reconstruction efforts in the wake of the earthquake, your government must also face up to a large legacy of "unfinished business" accumulated from the era of military government. It cannot be forgotten that Chile experienced a period of serious and widespread human rights violations in its recent past. Augusto Pinochet's regime left deeply entrenched structures that not only affected, and continue to affect, the victims and/or families of torture, disappearances, extrajudicial executions, illegal detentions and other serious human rights violations but which also continue to have an impact on Chile's social fabric to this very day.

Amnesty International recognises that progress has been made in recognising and protecting human rights in Chile since the country's return to democracy. It has, however, also identified serious obstacles posed by laws that are incompatible with human rights that remain in force, and an enduring institutional culture in some sectors of the State that remains based on the rules of the past. This is why Amnesty International recommends that your government prioritise actions aimed at achieving the institutional strengthening necessary to ensure that all human rights in the country are protected. This institutionalization of human rights must have a broad vision and be reflected in all public policies, and fully implemented in national legislation. Your government will in this way be able to monitor and consolidate the processes that have been implemented to date in relation to truth, justice and reparation for human rights violations, and ensure that no further violations can occur in the future. This institutional framework will also have to address the actions and omissions of successive Chilean

governments that have led to violations and denials of the rights of other sectors of society, as in the case of indigenous peoples.

In May 2009, the human rights situation in Chile was reviewed under the UN Human Rights Council's Universal Periodic Review mechanism. The government of the time participated constructively in this review. Amnesty International would like to take this opportunity to insist on the importance of appropriate follow-up to the commitments made by Chile in relation to the recommendations that emerged from that process. Amnesty International submitted a report on Chile during the review, and the recommendations in this letter are a follow-up to these, whilst also reflecting other key issues that arose during the Chilean review and that have arisen in relation to the country's current context.

## **I. The response to the humanitarian emergency created by the earthquake**

On 4 March last, Amnesty International called on the Chilean government to ensure that the human rights of all people affected by the devastating earthquake and tsunami that occurred on 27 February be protected. This call remains a relevant one and, now that the immediate crisis following the disaster is past, the organization hopes that particular attention will be paid to the needs of the most vulnerable sectors of society in the reconstruction process.

The organization appreciates the size of the challenges facing Chile and that these will dominate the efforts of all for many years to come. It is thus all the more important to implement consensus-based, coherent and transparent plans and actions so that effective protection of human rights can be upheld, now and in the future. Efforts and actions to tackle the complex human rights scenarios that arose during the emergency aid phase must continue into the reconstruction phase. If humanitarian aid is to be effective and the recovery a lasting one then it is essential that human rights are protected. It is in situations of crisis and emergency that human rights are at most risk.

This is why Amnesty International believes that adequate priority must be given to actions that ensure a minimum level of essential food, water, sanitary facilities, education, health and decent and permanent housing for all, and efforts focused on the most needy. To ensure that aid is appropriate and of high quality, effective mechanisms need to be created, or existing ones improved, and the affected communities themselves, including the most marginalised sectors, need to be involved meaningfully in the humanitarian aid and reconstruction effort.

### **Recommendations:**

- **With their direct involvement, identify the needs of the most vulnerable sectors of society in the post-earthquake context, and ensure that the humanitarian efforts respond to their needs;**
- **Ensure a cross-cutting non-discriminatory approach to humanitarian efforts, and in the public policies that may be subsequently adopted;**
- **Conduct independent and impartial investigations into any complaints of alleged human rights violations committed in the context of the earthquake.**

## **II. National and international human rights institutions**

Amnesty International is aware of the constructive spirit behind Chile's engagement with international and regional inter-governmental institutions. Over the years, Chile has contributed

significantly to the development of a solid international framework for human rights and for the institutions that monitor their fulfilment. This can be seen, for example, on the topic of remedies and reparation for victims of serious human rights violations, in support of the system created by the Rome Statute of the International Criminal Court, in the inclusion of a gender perspective across the whole UN, and in other processes of structural reform, such as the establishment of the Human Rights Council and the Universal Periodic Review mechanism. In turn, Chile has benefited from these mechanisms, for example, your country was the beneficiary of the United Nations' first country-mandated Special Rapporteur.

Amnesty International believes it is essential that Chile maintain its support to the existing human rights mechanisms, both international and regional, as well as its leadership and support of new human rights initiatives, now and in the future.

Amnesty International is, however, concerned that it has identified a number of inconsistencies between the international standards advocated by Chile and their application within the country. It is essential that Chile adopt a coherent approach and unequivocally demonstrates the same standard of accountability to its own citizens as it shows to the international community.

Amnesty International believes that if the Chilean State wishes to demonstrate its commitment to all human rights, which are universal, indivisible and interdependent and which are firmly rooted in international law, then it must ensure that it has independent human rights institutions in place that can be relied on, for example, an independent "Ombudsman". In addition to its formal promotional and supervisory powers, if it is to operate in accordance with the criteria established in the UN *Principles relating to the status and functioning of national institutions for the protection and promotion of human rights*, known as the "*Paris Principles*", then this institution will require experienced staff committed to promoting human rights and a sufficient budget to implement its tasks. The existence of such an institution, where it fulfils the criteria established in the *Paris Principles*, as has been proven in several other Latin American countries, would play an important role in institutionalising respect for human rights, in line with the concrete needs of the country.

Greater protection of human rights could also be achieved by strengthening the human rights training provided to the staff of the civil service, Armed Forces and law enforcement agencies. Amnesty International considers that, alongside this, existing bodies such as the Ministry of the Interior's Human Rights Programme require state support and sufficient staff to be able to continue to undertake their tasks with the necessary authority. In addition, other public bodies such as the National Corporation for Indigenous Development (CONADI) need to move forward in terms of incorporating international human rights standards such as ILO Convention 169 both into domestic legislation and into their activities and tasks.

One key requirement for strengthening the country's human rights institutions, and which would have an important multiplier effect in Chilean society, is to eliminate the discrimination suffered by some people due to their ethnic origin, nationality, sex, sexual identity or religious beliefs. Amnesty International is concerned that, despite various attempts to adopt anti-discrimination legislation, the long-drawn-out legislative procedure has yet to show any results.

Lastly, in order to create confidence in its intentions and actions and to improve human rights promotion and protection for all in the country, your government must make known the actions it implements, invite the active involvement of interested individuals and groups and publish information on existing mechanisms through which individuals can demand respect for their rights.

## Recommendations:

### *At national level*

- Take all necessary measures to establish an autonomous human rights institution that effectively exercises its tasks in line with the *Paris Principles*;
- Build the capacity of staff in the civil service, Armed Forces and law enforcement agencies to respect and protect human rights, and ensure that the State institutions provide an appropriate institutional framework within which to prevent human rights violations, bringing the previous impunity for such violations to an end;
- Revitalise the legislation that prohibits discrimination of any person for their ethnic origin, nationality, sex or sexual identity and religious beliefs;
- Abolish Article 365 of the Criminal Code and make the age of sexual consent between same-sex couples the same as that for heterosexual couples;
- Reform the Internal Regulations of the Armed Forces so that they do not discriminate against people due to their sexual identity or impose any control over the marriage choices of their members.

### *At international level*

- Continue to play a positive role in reviewing, rationalising and improving the UN and regional human rights systems;
- Fully and promptly comply with the recommendations of the Inter-American Commission and the rulings of the Inter American Court of Human Rights.

## III. Justice and impunity

Amnesty International recognises that progress has been made in tackling the legacy of serious and widespread human rights violations committed during the military regime, and urges your government to continue taking steps in this direction.

The mere public acknowledgement of the violations of the past, whilst crucial, is insufficient if it does not go hand in hand with a concerted effort to address ongoing impunity, bring due justice to the victims, both individual and collective, and introduce political reforms that ensure that such violations cannot happen again in the future. In principle, Amnesty International views the re-opening of the Valech Commission in a positive light, as a way of ensuring that no victims of human rights violations will be overlooked by the corresponding truth, justice and reparation process.

Amnesty International believes that if Chile wishes to demonstrate, nationally and internationally, its serious commitment to addressing its legacy of human rights violations then it is of paramount importance that it addresses the deficiencies and incompatibilities existing between its legal framework and international law. It is of grave concern that the Amnesty Law (Decree Law 2,191) enacted during General Augusto Pinochet's regime in 1978 (and covering the period from 11 September 1973 to 10 March 1978) is still in force. The recent judicial decision in the case of Carmelo Soria shows that the existence of this kind of legislation leaves the door open to judicial decisions that are incompatible with Chile's international legal obligations, even though your government's decision to reject application of the Amnesty Law in this case was clearly expressed. Amnesty International recognises that other judicial decisions have allowed for the investigation of disappearance cases under the status of

“permanent kidnapping”, thereby circumventing the application of the Amnesty Law. They have established the Amnesty Law’s non-applicability to crimes committed abroad and crimes against humanity. Amnesty International does nonetheless consider it unacceptable that the Amnesty Law remains in force in domestic legislation, a position supported by the Inter American Court of Human Rights (*Almonacid Arellano v. Chile*) in 2006. Furthermore, as the Carmelo Soria case demonstrates, it casts a dangerous shadow on any legal proceedings initiated in relation to human rights violations committed before 1978.

Amnesty International is concerned that the statute of limitations has been applied in cases of serious human rights violations (including forced disappearances and unlawful killings) and that some judges apply it to civil claims filed within criminal proceedings. This contravenes the principles established under international law.

Amnesty International is concerned at incompatibilities between the current application of the Military Justice Code to civilians and international human rights standards. This concern has been expressed on numerous occasions, for example in the binding decision of the Inter American Court of Human Rights (*Iribarne Palamara v. Chile*). The application of the Military Code of Justice in response to alleged acts of violence within the context of Mapuche protests constitutes a clear violation of due legal process.

Amnesty International welcomed Chile’s ratification of the Rome Statute of the International Criminal Court in June 2009. Chile was the last state in South America to join this system, which enables genocide, crimes against humanity and war crimes between States party to the Statute to be investigated and the perpetrators brought to justice. In addition, the organization views the adoption of Law 20,357 adapting its provisions on complementarity positively. However, unlike other countries in the region, such as Argentina, Mexico and Peru, Chile has thus far failed to pass legislation to adapt its obligations on cooperation with the International Criminal Court.

#### **Recommendations:**

- **Nullify the 1978 Amnesty Law (Decree Law 2,191) and any other similar measures granting amnesty to alleged perpetrators of human rights violations;**
- **Join the 1968 Convention on the Imprescriptibility of War Crimes and Crimes against Humanity and adopt legislation that makes the statute of limitations inapplicable to civil suits arising out of those crimes, irrespective of the date of their commission;**
- **Bring the Military Code of Justice into line with international standards, eliminating the application of military jurisdiction to civilians, whatever the case, and to military personnel for acts that do not constitute clearly military offences.**

#### **IV. Indigenous rights**

Indigenous peoples in Chile, as in other American countries, have suffered a long history of marginalization and discrimination. Although the post-dictatorial period has brought some timely institutional reforms, and some of their rights are recognised in the 1993 Indigenous Peoples Act, Chile’s approximately 700,000 Indigenous Peoples do not enjoy constitutional recognition as such, and they remain disproportionately affected by poverty. Chile’s vote in favour of the UN Declaration on the Rights of Indigenous Peoples is a welcome sign of its commitment to these issues, but only if it is accompanied by concrete actions that apply the principles contained therein.

Amnesty International believes that ratification of ILO Convention 169 on Indigenous and Tribal Peoples has been a significant step for Chile. This is why its full implementation, through the concerted efforts of your government and clear measures agreed with Indigenous Peoples, is an essential step if Chile is to achieve real and substantial change in terms of achieving their rights.

In 2004, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people made a series of recommendations to the Chilean State in this regard. Amnesty International is disappointed at the level of compliance with these recommendations six years after they were made, and would remind your government that the Rapporteur again insisted in 2009 on the importance of taking action with regard to outstanding indigenous rights issues in Chile. Amnesty International agrees with the Rapporteur's concerns and calls on your government to prioritise the implementation of policies aimed at respecting and promoting the rights of Indigenous Peoples.

Amnesty International is concerned at the generalised situation of poverty and discrimination faced by Indigenous Peoples in Chile. Health and education indicators suggest that they are seriously disadvantaged when compared to the country's non-indigenous population. The earthquake's impact on indigenous communities in the south of Chile may increase this inequality, and Amnesty International therefore stresses that policies should be designed that do not simply focus on short-term fixes but on recognising Indigenous Peoples' individual and collective rights. The fact that the State does not routinely disaggregate the social development data that it collects masks the particular problems faced by these groups and makes it difficult to tailor policies accurately to their real needs.

Inadequate resolution of claims to ancestral land and the impact of current and future extractive industry and forestry projects have led to tensions that very often result in violence. Amnesty International has received reports of incidents in which excessive force was used in response to protests on the part of some Mapuche groups. The organization recognises the State's duty to address criminal actions and to maintain public order but emphasises that this must take place within respect for human rights. The organization repeats that the prosecution of civilians in the military courts is against the country's international obligations, and expresses its concern regarding complaints received in relation to an apparently discriminatory application of the "Anti-Terrorist Law" to Mapuche individuals.

According to the Special Rapporteur, the use of inappropriate legislation and military jurisdiction, as well as alleged excessive use of force and disproportionate police activity in certain communities, has led to an apparent criminalization of protest. Added to this concern, Amnesty International recalls the State's obligation to ensure an impartial investigation of all complaints of excessive use of force on the part of State employees.

Amnesty International emphasises the fact that if land claims are not resolved fairly, and with the free, prior and informed consent of the Indigenous Peoples themselves, then these tensions will persist.

#### **Recommendations:**

- **Revise sectoral legislation on land, water, mining and other sectors, the content of which may be in conflict with the provisions of the Indigenous Peoples Act, in order to bring their content into line with ILO Convention 169;**
- **Ensure the disaggregation of data to demonstrate the particular problems faced by indigenous peoples and ensure that this data feeds into designing policies that are accurately tailored to their needs;**

- **Ensure that police activities in indigenous communities are carried out in line with international human rights standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that effective mechanisms are put in place to investigate any complaints of excessive use of force;**
- **Implement the outstanding recommendations of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.**

## **V. Sexual and reproductive health**

Amnesty International believes that the free exercise of sexual and reproductive rights is essential to human dignity and to the physical, emotional, mental and social well-being of men and women. All people must be able to exercise their sexual and reproductive rights free from coercion, discrimination and violence. The existence of practical difficulties in accessing forms of contraception have been documented in Chile, in addition to numerous attempts to restrict their distribution, in clear contravention of Chile's international human rights obligations. A series of problems and delays in distributing emergency contraception has, over the years, had a disproportionate impact on the poorest sectors of society.

Chile, Nicaragua and El Salvador are the only three countries in Latin America that continue to maintain a total ban on abortion. Amnesty International considers this situation to be totally unacceptable. It criminalises women and health providers for undertaking abortions in rape cases, or when the life or health of the mother is at risk. Moreover, the organization fears that this criminalization may contribute to an unjustifiable number of illegal and unsafe abortions in the country, placing the lives and physical and psychological integrity of thousands of women, teenagers and young girls unnecessarily at risk.

In 2007, the Human Rights Committee expressed its concern at the unduly restrictive abortion law in Chile and called for its amendment in line with the standards established in the International Covenant on Civil and Political Rights. This task remains pending. In May 2009, Chile rejected the recommendations made by other countries during its Universal Periodic Review to bring its abortion law into line with its human rights obligations. Amnesty International deeply regrets this attitude and calls on the government to reconsider the country's intransigent position with regard to obligations that are enshrined in the international legal order.

### **Recommendations:**

- **Effectively implement Law 20,418 establishing standards for information, guidance and services with regard to family planning, ensuring access to different forms of contraception, including emergency contraception and condoms for all women and men who require them.**
- **Amend the abortion law to bring it into line with human rights standards, enabling women to access safe abortions, as a minimum, in cases of rape and/or if the health or life of the mother is in danger.**

\*\*\*\*\*

On the eve of the bicentenary of Chile's life as a Republic, it is evident that your country's transition from military regime to democracy has led to many positive developments in the enjoyment of human rights. The changes promoted by successive governments following the return to democracy have served to rebuild human rights promotion and protection. As an international player, Chile's role has also regained credibility regionally, bilaterally and in its engagement with inter-governmental bodies. In this context, Amnesty International urges you to strive to ensure that Chile consolidates an institutional framework that ensures respect for the human rights of all its citizens, making it impossible to return to the situation of the past. Amnesty International considers it important to recognise publicly your government's commitment to human rights principles when responding to the country's urgent needs and unfinished business of the past, and to address the discrimination and inequality existing between different sectors of Chilean society. Only by respecting the rights of all its citizens, and demonstrating that it is doing so by honouring its international commitments, will Chile be able to demonstrate its true commitment to this new rights-based paradigm and its full implementation.

AI Index: AMR 22/003/2010  
Ref: TG AMR 22/2010.003  
20 May 2010