



# CHILE: A LONG ROAD AHEAD

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 32<sup>ND</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2019

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Chile in January-February 2019. In it, Amnesty International evaluates the implementation of recommendations made to Chile in its previous UPR, including in relation to impunity for past crimes under international law and human rights violations, the use of military courts to try civilians, discrimination against LGBTI people and Indigenous Peoples, decriminalization of abortion, and national human rights institutions.

It also assesses the national human rights framework with regard to the continued use of the Amnesty Law, the lack of reparations to victims of torture and other ill-treatment, delays in efforts to establish a national preventive mechanism, as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the failure to allow same-sex couples to adopt children, and the continued application of the Anti-Terrorism law to Mapuche Peoples.

With regard to the human rights situation on the ground, Amnesty International raises concern in relation to the use of force against demonstrations and protests, gaps in access to sexual and reproductive health, and attacks on Indigenous leaders.

# FOLLOW UP TO THE PREVIOUS REVIEW

In 2014, Chile accepted 180 of the 185 recommendations it received during the previous review.<sup>1</sup> Amnesty International considers, however, that some of these recommendations have been only partially implemented.

## IMPUNITY FOR PAST CRIMES UNDER INTERNATIONAL LAW AND HUMAN RIGHTS VIOLATIONS

Chile supported recommendations to abrogate the 1978 Amnesty Law,<sup>2</sup> to ratify and implement relevant treaties,<sup>3</sup> and to combat impunity for human rights violations of the past.<sup>4</sup> Amnesty

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<sup>1</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/26/5, 2 April 2014, paragraph 122. Opinions on conclusions and/or recommendations, voluntary commitments and responses filed by the examined State. *Corrigendum*. Chile, 30 May 2014. Most of the rejected recommendations were related to common interpretation of human rights law, such as those that recognized rights of the unborn from conception and those specifying that a family can only be formed by a man and a woman.

<sup>2</sup> A/HRC/26/5, recommendations 121.116 (Italy).

<sup>3</sup> A/HRC/26/5, recommendations 121.16, 121.19, 121.20, 121.21 (Ghana, Hungary, Tunisia, Belgium).

<sup>4</sup> A/HRC/26/5, recommendations 121.114, 121.115, 121.117 (France, Italy, Mexico).

International acknowledges some progress; however, providing truth, justice and reparation for the victims of crimes of the past has yet to be achieved. Chile has ratified the Rome Statute of the International Criminal Court,<sup>5</sup> the Convention on the Protection of All Persons against Enforced Disappearance (CPED),<sup>6</sup> and has also recognized the competence of the Committee on Enforced Disappearances (CED). However, it has not yet implemented CPED into national law and the Amnesty Law is still in force.

## **USE OF FORCE, TORTURE AND OTHER ILL-TREATMENT, ACCOUNTABILITY FOR SUCH CRIMES**

Chile accepted recommendations to strengthen accountability for human rights violations perpetrated by the police,<sup>7</sup> and to take measures to eradicate torture.<sup>8</sup> These included calls for legal reforms to ensure such violations are not tried in military courts.<sup>9</sup> Amnesty International is concerned that in the context of demonstrations and protests the police continues to use excessive force, and that such incidents are not fully investigated.<sup>10</sup> New legal powers granted to the police in 2016 may lead to arbitrary arrests based on appearance or other discriminatory factors.

Chile accepted recommendations to end the use of military courts to try civilians for non-military crimes, to try human rights violations in ordinary civilian courts, to abolish the use of the death penalty in this context, and to ensure due process and impartiality in military courts.<sup>11</sup> In 2016, Chile passed a law making torture criminal under the Penal Code,<sup>12</sup> as well as establishing that civilians and minors, under no circumstances, can appear before military courts, either as defendants or as victims.<sup>13</sup> However, military justice is still not limited to breaches of military discipline committed by military personnel - to the exclusion of ordinary criminal offences, human rights violations and crimes under international law. In addition, the criminal procedures do not guarantee the basic principles of due process and allow for the application of the death penalty in some cases.

Chile also accepted a recommendation to introduce a national preventive mechanism against torture. A bill creating a National Mechanism for the Prevention of Torture is currently before Congress.<sup>14</sup>

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<sup>5</sup> A/HRC/26/5, recommendations 121.19, 121.20 (Hungary, Tunisia)

<sup>6</sup> A/HRC/26/5, recommendation 121.21 (Belgium)

<sup>7</sup> A/HRC/26/5, recommendations 121.48, 121.76, 121.77, 121.78, 121.80 (Morocco, Cuba, Cyprus, Czech Republic, United Kingdom).

<sup>8</sup> A/HRC/26/5, recommendations 121.26, 121.74, 121.75, 121.79 (Australia, Iran, Belgium, Norway).

<sup>9</sup> A/HRC/26/5, recommendations 121.109, 121.110, 121.112 (Czech Republic, Iran, Uruguay).

<sup>10</sup> See Amnesty International, "I did not know there were two justices. Military jurisdiction and police violence in Chile", April 2016, AI Index AMR 22/3209/2019. Available at: <https://www.amnesty.org/en/documents/amr22/3209/2016/en/>

<sup>11</sup> A/HRC/26/5, recommendations 121.110, 121.109, 121.112, 121.111 (Islamic Republic of Iran, Czech Republic, Uruguay, Switzerland)

<sup>12</sup> Law N°20.968, 22 November 2016, establishes the crimes of torture and cruel, inhuman or degrading treatment.

<sup>13</sup> Law N°20.968, 22 November 2016, which modifies article 1 of Law N°20.477, 10 December 2010.

<sup>14</sup> Bulletin 11245-17, filed 29 May 2017, designates the National Human Rights Institute as National Mechanism for Prevention of Torture and other cruel, inhuman or degrading treatment.

## DISCRIMINATION

Chile accepted all recommendations to address discrimination<sup>15</sup>, including to implement the Anti-Discrimination Law and to eliminate discrimination against LGBTI people.<sup>16</sup> In 2015, Chile passed legislation creating the option of a civil union, including for same-sex couples. It does not, however, amount to equal marriage or family rights. Legislation on legal gender recognition has been pending in Congress since 2013.<sup>17</sup> The Anti-Discrimination Law has yet to be reformed.

Chile also accepted several recommendations on migrant rights, including to overhaul its current migratory framework and to create new visa categories and a new institutional structure.<sup>18</sup> However, to date, though no legal changes have been made.

## SEXUAL AND REPRODUCTIVE RIGHTS

Chile accepted the recommendations related to sexual and reproductive rights and the decriminalization of abortion.<sup>19</sup> In 2017, Chile passed a bill that decriminalizes abortion under three circumstances: when a woman or girl's life is at risk, when the foetus is unable to survive outside the womb, and in cases when pregnancy results from rape.<sup>20</sup> This is a step forward in the right direction though the UN human rights treaty bodies have also called on states which allow abortion only on such "minimum grounds", to liberalize their laws in order to protect the human rights of women and girls, including their rights to life and health.<sup>21</sup> States have also an obligation under international law to ensure that legal abortion services are available and accessible in practice. In this regard, Amnesty International is concerned, however, that the practice of conscience-based refusals to provision of legal abortion services (i.e. in the circumstances outlined in the law) by entire healthcare institutions or entire health teams creates huge barriers to women and girls accessing legal abortion, including by increasing the risk that women and girls cannot find facilities willing to perform safe abortions.<sup>22</sup>

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<sup>15</sup> A/HRC/26/5, recommendations 121.51, 121.52, 121.54, 121.55, 121.56, 121.57, 121.58, 121.59, 121.60 (Czech Republic, Canada, United Kingdom, Germany, Argentina, China, Egypt, Tunisia, Spain, Bulgaria).

<sup>16</sup> A/HRC/26/5, recommendations 121.69, 121.70, 121.71, 121.72, 121.73 (Uruguay, Colombia, Czech Republic, the Netherlands, Spain). Chile also rejected recommendations that could be construed against LGBTI rights. A/HRC/26/5, recommendations 121.121, 121.122 (Holy See, Bangladesh).

<sup>17</sup> Bulletin 8924-07, filed 7 May 2013, Recognises and gives protection to the right to gender identity.

<sup>18</sup> A/HRC/26/5, recommendations 121.123, 121.156, 121.179, 121.180, 121.181, 121.182 (Afghanistan, Spain, Guatemala, Colombia, Djibouti, Sri Lanka).

<sup>19</sup> A/HRC/26/5, recommendations 121.133, 121.134, 121.135, 121.136, 121.137, 121.138, 121.139, 121.140, 121.141, 121.142, 121.143 (Finland, Belgium, Czech Republic, Finland, France, Germany, Norway, Slovenia, Sweden, Switzerland, Belgium). Chile also rejected a recommendation which may have been interpreted as against abortion rights. A/HRC/26/5, recommendation 121.37 (Holy See).

<sup>20</sup> Law N°21.030, 23 September 2017, Regulates decriminalization of abortion in three causes.

<sup>21</sup> See Human Rights Committee, Concluding Observations: Poland, para. 8, (2004); CESCR Committee, Concluding Observations: Poland, para. 29 (2002); CEDAW Committee, Concluding Observations: New Zealand, para. 34, (2012); CRC Committee, Concluding Observations: Zimbabwe, para. 60(c) (2016); CRC Committee: Poland, para. 39(b) (2015).

<sup>22</sup> See Amnesty International, "Submission to the United Nations Committee on the Elimination of Discrimination Against Women, 69<sup>th</sup> Session, February- March 2018", page 8, Index AMR 22/7727/2018, available at [www.amnesty.org/download/Documents/AMR2277272018ENGLISH.pdf](http://www.amnesty.org/download/Documents/AMR2277272018ENGLISH.pdf)

## INDIGENOUS PEOPLES

Chile accepted recommendations to eliminate discrimination against Indigenous Peoples,<sup>23</sup> to stop police violence against them,<sup>24</sup> to ensure their right to consultation on matters that affect them, and to refrain from applying Counter-Terrorism Law to inter-cultural conflicts, including land disputes.<sup>25</sup> However, the Counter-Terrorism Law has not been reformed and continues to be applied to criminalize Mapuche people defending their land and territory.<sup>26</sup>

## NATIONAL HUMAN RIGHTS INSTITUTIONS

Chile accepted several recommendations to strengthen national institutions, including to create an Under-Secretariat for Human Rights and a National Human Rights Plan.<sup>27</sup> The government also accepted recommendations to ratify human rights treaties, including the Optional Protocols to the Convention on the Eradication of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights.<sup>28</sup> Although Chile has yet to undertake the ratifications, a law was passed in 2016 to create the Under-Secretariat for Human Rights<sup>29</sup> which started functioning in 2017. The first National Human Rights Plan was also created in 2017. However, Chile still does not have an Ombudsperson in accordance with the Paris Principles.

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<sup>23</sup> A/HRC/26/5, recommendations 121.66, 121.67, 121.68 (France, Azerbaijan, Bangladesh).

<sup>24</sup> A/HRC/26/5, recommendations 121.81 (Uzbekistan).

<sup>25</sup> A/HRC/26/5, recommendations 121.160, 121.161, 121.162, 121.163, 121.164, 121.165, 121.166, 121.167, 121.168, 121.169, 121.170, 121.171, 121.172, 121.173, 121.174, 121.175, 121.176, 121.177 (Ecuador, Greece, Trinidad and Tobago, Uzbekistan, Brazil, Slovenia, Canada, Cuba, United States, Germany, Norway, Bolivia, Peru, Sweden, Austria, Australia, Angola, Belarus).

<sup>26</sup> See Amnesty International, “Chile: Authorities must stop criminalizing Indigenous Mapuche people under the Anti-Terrorism Law”, 5 May 2018, available at: [www.amnesty.org/en/latest/news/2018/05/chile-autoridades-deben-dejar-de-criminalizar-personas-mapuches-a-traves-de-ley-antiterrorista/](http://www.amnesty.org/en/latest/news/2018/05/chile-autoridades-deben-dejar-de-criminalizar-personas-mapuches-a-traves-de-ley-antiterrorista/)

<sup>27</sup> A/HRC/26/5, recommendations 121.24, 121.25, 121.27, 121.28, 121.29, 121.41, 121.42, 121.43, 121.44, 121.45, 121.46 (Portugal, Australia, Indonesia, Peru, Turkey, Honduras, Mexico, Slovakia, Australia, Azerbaijan, China).

<sup>28</sup> A/HRC/26/5, recommendations 121.1, 121.2, 121.3, 121.4, 121.5, 121.6, 121.7, 121.10, 121.11, 121.12, 121.13 (Philippines, France, Portugal, Ireland, Netherlands, Spain, Uruguay, Madagascar, Montenegro, Uruguay).

<sup>29</sup> Law N°20.886, 5 January 2016, Creates the Undersecretariat for Human Rights and adjusts the Organic Law of the Ministry of Justice.

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

## IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Amnesty International is concerned that Decree Law 2191 of 1978,<sup>30</sup> also known as the “Amnesty Law”, which the Inter-American Court of Human Rights found ‘ has no legal effects<sup>31</sup>, grants amnesty for the perpetrators of human rights violations committed between 11 September 1973 and 10 March 1978.<sup>32</sup> Although it has not been applied in recent years, it could still be used to acquit members of the armed forces accused of crimes under international law or human rights violations.

The Human Rights Program, previously within the Ministry of Interior, was transferred to the Ministry of Justice, specifically the new Under-Secretariat for Human Rights. It continues to provide legal and social assistance to victims of past human rights violations, as well as providing reparations to victims of such crimes. However, the reparations are limited to cases included in the Truth Commission report and only for cases of enforced disappearances and extrajudicial executions. A bill to provide reparation to victims of political imprisonment and torture and other ill-treatment is currently before Congress, after an attempt by the government to withdraw the bill.<sup>33</sup>

## USE OF FORCE, TORTURE AND ACCOUNTABILITY FOR SUCH CRIMES

A new law allowing “preventive identity checks” was passed in 2016.<sup>34</sup> Amnesty International is concerned that this new legal provision may lead to arrests based on appearance or other factors.

In 2016 Chile passed a law to criminalize torture, inhumane and degrading treatment.<sup>35</sup> This was a step towards the full implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in domestic law. However, the bill creating the national preventive mechanism, as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is still pending in

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<sup>30</sup> Decree Law N°2191, approved on 18 April 1978, “Concede amnistía por los delitos que señala” (grants amnesty for the crimes it indicates), provides amnesty for crimes committed between 11 September 1973 and 10 March 1978.

<sup>31</sup> IACTHR, Inter-American Court of Human Rights, Case of Almonacid-Arellano et al v. Chile, Judgement of September 26, 2006, para.145

<sup>32</sup> In 2006, the Inter-American Court of Human Rights declared this law to be incompatible with the American Convention on Human Rights. Inter-American Court of Human Rights, Case Almonacid Arellano and others Vs Chile, ruling 26 September 2006, available at: [www.corteidh.or.cr/docs/casos/articulos/seriec\\_154\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf)

<sup>33</sup> Bulletin N°11.619-17, filed 6 March 2018. In April 2018, the government announced that it would withdraw the bill from discussion. A process of interpellation to the Ministry of Justice and Human Rights before the Chamber of Deputies resulted in the decision by the Chamber to restart the discussion of the bill.

<sup>34</sup> Law N°20.931, 5 July 2016, article 12 (see: [www.minjusticia.gob.cl/media/2016/07/Ley20931.pdf](http://www.minjusticia.gob.cl/media/2016/07/Ley20931.pdf)).

<sup>35</sup> Law N°20.968, 22 November 2016, Establishes the crimes of torture and cruel, inhuman or degrading treatment.



Congress.<sup>36</sup> Concerns have been raised about its effectiveness being hampered by a lack of resources and because the mechanism is part of the National Human Rights Institute, rather than an independent institution.

## DISCRIMINATION

Since the adoption of the Anti-Discrimination Law in 2012,<sup>37</sup> Amnesty International has had concerns about the lack of a clear plan for its implementation, including in relation to preventive measures, affirmative actions and a mechanism for reparation for victims of discrimination.

In 2015 Chile passed a bill allowing same-sex couples to enter into a civil union.<sup>38</sup> Although Amnesty International welcomes this development, same-sex couples still are not allowed to adopt, to be recognized as joint parents or to enter into a civil marriage. Recent judicial attempts by same-sex couples to both be recognized as parents of a child have been rejected in court.<sup>39</sup>

In the case of migrants, current legislation regulating entry requirements, visas and deportation does not guarantee human rights, including to non-discrimination, due process, and economic, social and cultural rights. A draft law currently before Congress aims at improving migration regulations, however, Amnesty International is concerned that the draft law does not set statutory standards for the recognition of migratory rights, allowing for potential discretionary administrative rulings and undue restrictions on the access to health services and social security.<sup>40</sup> In 2018, through an administrative decree, the government has imposed new restrictions for regularization of current irregular migrants and for entry into the country by certain nationals. Amnesty International is concerned that this will lead to further discrimination.<sup>41</sup>

## SEXUAL AND REPRODUCTIVE RIGHTS

Amnesty International welcomes the recently passed bill to decriminalize abortion on three grounds: when a woman or girl's life is at risk, when the foetus is unable to survive outside the womb, and in cases when pregnancy results from rape – as a necessary step forward in ensuring women's and girls' human rights. However, the Constitutional Court decided that the conscientious objection clause should apply not only to individuals, but also to entire healthcare

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<sup>36</sup> Bulletin 11245-17, filed 29 May 2017, designates the National Human Rights Institute as National Mechanism for Prevention of Torture and other cruel, inhuman or degrading treatment.

<sup>37</sup> Article 1 of Law N°20.609 establishes a general obligation of the State to “create and implement policies destined to guarantee all persons, with no arbitrary discrimination, the enjoyment and exercise of their rights and freedoms recognized by the Constitution, the laws, and international treaties ratified by Chile and that are in force”.

<sup>38</sup> Law N°20.830, 21 April 2015, Creates the Civil Union Agreement.

<sup>39</sup> See Protection Recourse N°74926-2017, Santiago Court of Appeals, De Ramon v. Civil Registry and Identification Service.

<sup>40</sup> Bulletin N°8970-06, filed 4 June 2013. This bill was filed during the first government of President Sebastián Piñera. The second government of President Michelle Bachelet filed a different bill on 2017 (Bulletin N°11395-06, filed 23 August 2017). However, current government has decided to continue the discussion of the former bill, with some amendments. Both bills raise concerns regarding a lack of recognition of migrant rights according to international standards.

<sup>41</sup> See: Minute: Migratory Reform and National Policy on Migration, issued by the government in April 2018. Available at [cdn.digital.gob.cl/filer\\_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva\\_ley\\_de\\_migracion.pdf](https://cdn.digital.gob.cl/filer_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva_ley_de_migracion.pdf)

institutions.<sup>42</sup> This conscience-based refusal may in practice become an obstacle in accessing the procedure, especially for women and girls in rural or more isolated communities.<sup>43</sup>

In August 2018, a group of Congresswomen, working with *Corporación Humanas* and the Action Table for Abortion, introduced a bill to legalize abortions beyond the three legal grounds that were approved in 2017. Amnesty International is part of the Action Table, and considers this bill should be debated openly and approved by the congress.

## **ENVIRONMENTAL AND LAND DEFENDERS – INDIGENOUS PEOPLES**

Following ratification in 2008 of ILO Convention 169 concerning Indigenous and Tribal Peoples and its support of the UN Declaration on the rights of Indigenous Peoples, the right of Indigenous Peoples to consultation and to free, prior and informed consent to legislation or investment projects that affect them continue to be breached.

Application of the Anti-Terrorism Law to Mapuche leaders defending land and territory continues leading to violation of their human rights.<sup>44</sup> Reform of the Anti-Terrorism Law has been under discussion in Congress since 2014,<sup>45</sup> however, these proposals continue to place limitations on due process guarantees, such as extensive pre-trial detention, prolonged periods of secrecy of the investigation, and withholding of the identity of witnesses from the defence.

Chile has no formal protection mechanism in place for human rights defenders, including defenders of land, territory and the environment. Protection measures are taken on a case-by-case basis and at the discretion of the relevant authority. Amnesty International is concerned this allows for arbitrary decisions that do not comply with human rights standards.

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<sup>42</sup> See ruling by the Constitutional Court on the appeal filed by a group of Senators regarding the constitutionality of the law for the decriminalization of the voluntary interruption of a pregnancy, 28 August 2017, roll number 3729 (3751)–17-CPT.

<sup>43</sup> See Amnesty International, “Submission to the United Nations Committee on the Elimination of Discrimination Against Women, 69th Session, February- March 2018”, page 8, Index AMR 22/7727/2018, Available at [www.amnesty.org/download/Documents/AMR2277272018ENGLISH.pdf](http://www.amnesty.org/download/Documents/AMR2277272018ENGLISH.pdf)

<sup>44</sup> Inter-American Court of Human Rights, Case Norin Catriman and others Vs Chile, ruling 29 May 2014.

<sup>45</sup> Bulletin N°9692-07, filed 4 November 2014, Determines terrorist conducts and its sanctions and modifies the Penal Code and Criminal Procedure Code. Discussed together with Bulletin N°9669-07. Current government filed modifications to this bill on April 2018, and gave urgency to its discussion.

# HUMAN RIGHTS SITUATION ON THE GROUND

## USE OF FORCE, TORTURE AND ACCOUNTABILITY FOR SUCH CRIMES

Amnesty International is concerned that the police continue to use excessive force in the context of demonstrations and protests, and that these incidents have not been fully and promptly investigated.<sup>46</sup> Police protocols for maintaining public order, made public in 2014,<sup>47</sup> are not in line with international standards on the use of force and crowd control.<sup>48</sup>

There have been persistent allegations of excessive use of force, including beatings, use of tear gas, paintball guns and water cannons, ill-treatment in detention, and gender-specific violence against women and girls involved in the protests by whom police officers. Mass arrests have frequently been reported, leading to unlawful detentions. Human rights observers and media workers have also been attacked by the police.<sup>49</sup> In May 2015, a student suffered serious brain damage after being thrown to the ground by a water cannon.<sup>50</sup> In December 2016, a minor was hit by over 100 shotgun pellets on the back by a police officer, while held face down on the floor.<sup>51</sup> Both cases are being tried in civilian courts, but so far nobody has been found guilty.

Amnesty International is also concerned that such abuses by the police are not adequately investigated. Although since 2016 these cases are no longer tried in military courts, there are still concerns regarding the capacity and willingness of the civilian courts to prioritize these cases and to ensure thorough and impartial investigations. The creation, in 2017, of a Human Rights Unit in the Attorney General's Office is to be welcomed. However, it is yet to be seen if the Unit is able to ensure that investigations of police violence and torture are adequately resourced and carried out by a separate unit, taking into account the close working relationship in Chile between the Attorney General's Office and the police.

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<sup>46</sup> See Amnesty International Chile, "Amnistía Internacional manifiesta su preocupación por casos de uso excesivo de la fuerza policial en manifestaciones estudiantiles", 25 May 2018, available in Spanish at: [www.amnistia.cl/noticia/amnistia-internacional-manifiesta-su-preocupacion-por-casos-de-uso-excesivo-de-la-fuerza-policial-en-manifestaciones-estudiantiles/](http://www.amnistia.cl/noticia/amnistia-internacional-manifiesta-su-preocupacion-por-casos-de-uso-excesivo-de-la-fuerza-policial-en-manifestaciones-estudiantiles/)

<sup>47</sup> Protocols had been requested by the National Human Rights Institute, Amnesty International and several other local NGOs, and repeatedly denied. In 2014, the police agreed to provide the protocol to the National Human Rights Institute, which made it available on their website. See: [www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf](http://www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf)

<sup>48</sup> See Amnesty International, "I did not know there were two justices. Military jurisdiction and police violence in Chile", April 2016, AI Index AMR 22/3209/2019. Pages 19 and 50. Available at: [www.amnesty.org/en/documents/amr22/3209/2016/en/](http://www.amnesty.org/en/documents/amr22/3209/2016/en/)

<sup>49</sup> See Amnesty International, "I did not know there were two justices. Military jurisdiction and police violence in Chile", April 2016, AI Index AMR 22/3209/2019. Available at: [www.amnesty.org/en/documents/amr22/3209/2016/en/](http://www.amnesty.org/en/documents/amr22/3209/2016/en/)

<sup>50</sup> Id., case: Rodrigo Avilés.

<sup>51</sup> See Amnesty International, Annual Report 2017/2018, Chile chapter, case: Brandon Hernández Huentecol. [www.amnesty.org/es/countries/americas/chile/report-chile/](http://www.amnesty.org/es/countries/americas/chile/report-chile/)

## SEXUAL AND REPRODUCTIVE RIGHTS

Research carried out by Amnesty International in 2017 shows clear gaps in the provision of comprehensive sexuality education and access to sexual and reproductive health information for individuals to make informed sexual and reproductive choices.<sup>52</sup> This is a particular concern in more remote regions. The research found that sexuality education in schools tends to reinforce gender stereotypes among young people and leaves them with little or no knowledge of their sexual and reproductive rights, which highlights the need for evidence-based, age appropriate, non-sexist and gender-responsive, and human rights-based comprehensive sexuality education.

## ENVIRONMENTAL AND LAND DEFENDERS

Amnesty International has documented a number of attacks on Indigenous leaders and other communities who are defending rights to land, territory and the environment. These attacks include police violence, death threats, physical attacks, kidnapping and the misuse of criminal law and the criminal justice system to harass defenders.<sup>53</sup>

The leaders of the Mapuche, Indigenous Peoples from the centre-south of Chile and Argentina, are among the most affected. In addition to the above, the Anti-Terrorism Law continues to be used to target members of Mapuche communities involved in land disputes for alleged crimes, such as arson. In 2017 and 2018, Amnesty International observed two high-profile trials conducted under this legislation. In both cases, the organization observed the Anti-Terrorism Law being applied to the Mapuche, including pre-trial detention, prolonged periods of secrecy of the investigation, and withholding the identity of witnesses from the defence. Most of the accused in the two cases were held in pre-trial detention for almost two years. In one of the cases, two of the four accused were found not guilty, while the other two were convicted for common crimes (not terrorist-related), based on witnesses whose identities were withheld from the defence. In the second case, out of the 11 individuals accused, eight were acquitted and three were convicted for terrorism. Although the Supreme Court has recently changed the terrorism charges to ordinary crime charges, two of the three people convicted have to serve 18 years of imprisonment. The convictions were based on the testimony of one of the three people convicted for the crime, who later recanted his statement claiming he was harassed by the police to provide that testimony. These allegations have not been properly investigated.<sup>54</sup>

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<sup>52</sup> See Amnesty International and Corporación Opción, “Youth and Sexuality”, 2017. The study covers 2593 cases of young people aged 13-19, in eight regions of Chile (Magallanes, Aysén, Biobío, Maule, O’Higgins, Metropolitana, Coquimbo, Tarapacá). Available in Spanish at: [www.amnistia.cl/informe/juventud-y-sexualidad/](http://www.amnistia.cl/informe/juventud-y-sexualidad/)

<sup>53</sup> See Amnesty International, “Speak Out 4 Defenders Platform”, Cases, Rodrigo Mundaca, Víctor Queipul, Karina Riquelme, available at: [www.speakout4defenders.com/](http://www.speakout4defenders.com/)

<sup>54</sup> See Amnesty International, “Pre-Juicios Injustos: Criminalización del Pueblo Mapuche a través de la Ley Antiterrorista chilena”, August 2018, Index: AMR2288622018, Available at: [www.amnesty.org/download/Documents/AMR2288622018SPANISH.PDF](http://www.amnesty.org/download/Documents/AMR2288622018SPANISH.PDF)

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF CHILE TO:

### IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

- Revoke the 1978 Amnesty Law (Decree Law 2191) and all other similar measures of impunity for past human rights violations;
- Revoke any provision on statute of limitations regarding crimes under international law and civil suits arising from those crimes, irrespective of the date of their commission;
- Ensure full access to reparation for victims of crimes under international law;
- Enact legislation implementing the International Convention for the Protection of All Persons from Enforced Disappearance into national law;
- Enact legislation implementing the obligation to cooperate fully with the International Criminal Court.

### USE OF FORCE, TORTURE AND ACCOUNTABILITY FOR SUCH CRIMES

- Ensure that legislation on public order and public demonstrations does not unduly limit the rights to freedom of expression and assembly;
- Ensure that all reports of police violence are duly investigated by the specialized unit in the Attorney General's Office that investigates cases of police violence and torture involving police officers, and that all those suspected of criminal responsibility are brought to justice in fair trials;
- Ensure that the specialized unit is adequately resourced and managed separately, taking into account the close working relationship between the Attorney General's Office and the police when investigating crimes;
- Take measures to combat excessive use of force by the police, including by adopting public protocols in line with international standards, providing effective training of police, and monitoring of compliance with such protocols;
- Ensure effective redress to victims of human rights violations committed by police forces, including compensation, rehabilitation, satisfaction measures and guarantees of non-repetition.

### DISCRIMINATION

- Develop an action plan to ensure the effective implementation of the Anti-Discrimination Law, including preventive measures, affirmative actions and a mechanism for reparation for victims of discrimination;
- Ensure that migratory legislation includes the protection of their human rights, including the right to an identity and to documentation, movement, work and social security, nationality, family, education, health and housing, and respect of the principle of *non-refoulement*;
- Approve the Gender Identity Law to protect the rights of transgender persons;

- End discrimination in civil marriage laws on the grounds of sexual orientation.

#### SEXUAL AND REPRODUCTIVE RIGHTS

- Approve the bill to legalize free access to abortion up until the 14<sup>th</sup> week of pregnancy, thereby changing the three grounds regime currently in force that limits legal access to abortion to cases where there is risk to the life of the mother, where the fetus is unviable, or where the pregnancy resulted from rape;
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Ensure that legal abortion services are available and accessible in practice, and that the regulation of conscientious objection limits conscience-based refusals only to individual medical professionals directly involved in performing the service and does not apply to entire health care centres or institutions;
- Ensure that sexual and reproductive rights are respected and protected in Chile, including by ensuring individuals can access without discrimination, coercion or barriers comprehensive sexual and reproductive health information and services, including modern contraception and emergency contraception;
- Ensure adequate and effective comprehensive sexuality education in school across the country, particularly in remote areas, as well as outside schools through civil society and community based organisations to cover also children outside school. Sexuality education should be evidence-based, age-appropriate, non-sexist and gender-responsive, and human rights-based.

#### ENVIRONMENTAL AND LAND DEFENDERS

- Revise the Anti-Terrorism Law and its application to ensure it is fully compliant with international human rights standards, particularly with regard to Mapuche Indigenous Peoples involved in inter-cultural and land disputes;
- Ensure the effective implementation of the right to consultation to obtain Indigenous Peoples' free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, taking concrete measures to ensure Indigenous Peoples can express their opinions freely and without fear of reprisal or violence;
- Develop formal policies and protection mechanisms regarding human rights defenders, which are publicly available and include obligations by the authorities to recognize their work and ensure the ability to carry it out in a safe environment;
- Ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

#### NATIONAL HUMAN RIGHTS INSTITUTIONS

- Ensure adoption and adequate implementation of the National Human Rights Plan, including civil society participation in any follow up mechanism.
- Ensure the creation of an Office of the Ombudsperson that is in accordance with the Paris Principles.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>55</sup>

Chile: “Pre-Juicios Injustos: Criminalización del Pueblo Mapuche a través de la Ley Antiterrorista chilena”, August 2018, (Index: AMR2288622018).

Amnesty International Report 2017/18. Chile. (Índex: POL106700201)

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<sup>55</sup> All these documents are available on Amnesty International’s website:  
<https://www.amnesty.org/en/countries/americas/chile/>

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
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TO ONE PERSON, IT  
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