

**AMNESTY
INTERNATIONAL**



Your Excellency,

Chile enjoys an increasingly prominent profile in the international arena, and successive governments, including your own, have stewarded many important human rights issues at inter-governmental level.

Chile in 2008 looks radically different to the country first visited by Amnesty International's Secretary General thirty years ago. Seventeen years of dictatorship ruptured the process of nation-building underway since Chile became a republic in 1810, and tarnished its image internationally. The Pinochet regime left deep-rooted structures and scars that affected and continue to affect not only the direct victims of torture, disappearances, extrajudicial executions, illegal detentions and other unspeakable violations of civil and political rights, but also the social fabric of Chilean society to this day.

Amnesty International recognizes that the cultural and structural changes required to break from a past of systematic, gross violations of human rights poses an enormous challenge for any government. Since 1990, and especially since the arrest of Augusto Pinochet ten years ago, much has been achieved, but the demand for greater progress is legitimate and should be given priority by your government.

Amnesty International last presented its concerns to a Chilean president in 2000. At that time, your predecessor President Ricardo Lagos and his government made a number of commitments to address the issues raised by the then Secretary General, Pierre Sané. Eight years later, in preparation for this visit, Amnesty International examined the extent to which Chile has lived up to those promises.

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

Amnesty International notes many other significant contributions made by Chile to the development of a solid framework for international human rights and the institutions that enforce it: as a champion to the process to develop international legal principles around remedies and reparations for victims of gross violations of international human rights law; through supporting the mainstreaming of gender throughout the work of the United Nations, as well as other processes of structural reform such as establishing the Human Rights Council and Universal Periodic Review,

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and the rationalisation and improvement of the mandates of Special Procedures. Chile has also taken a leadership role in spearheading regional and international efforts to uphold peace and democracy, through support to MINUSTAH and recently as president *pro temporis* of the Union of South American Nations (UNASUR); reinforcing the political traction around international commitment to achieving the Millennium Development Goals; and by highlighting new possibilities for “south-south” international cooperation on specific issues, such as maternal mortality.

Nevertheless, Amnesty International is concerned to have identified several examples of inconsistency between international standards heralded by Chile, and how these are implemented domestically. With international scrutiny of its actions coming up under the new Universal Periodic Review process in April 2009, and as a current member of the Human Rights Council, it is essential that Chile demonstrate a consistent approach and prove unequivocally its willingness to be held equally accountable by its own citizens as it is by the international community for its commitment to human rights.

At the United Nations General Assembly in 2007, you called for sustainable development with greater justice and equity, and on many occasions you have promised to introduce policies based on these principles, answering a clamour for real reform and for the remaining vestiges of the Pinochet-era past to be addressed. Amnesty International urges your government now to fulfil the promises it made when it took office, taking the opportunity of its last year in power to lay strong foundations to ensure that future generations can continue the process of addressing the past and ensuring the respect for human rights in the future. For Chile to show to its citizens and the world alike its determination to uphold the values and rights enshrined in its constitution and to which it has subscribed internationally would be a fitting way to celebrate its 200th year as an independent republic. It would also honour Chile’s commitment to the Universal Declaration of Human Rights in its sixtieth year, a document that owes much to the contribution of your country at the time of its conceptualization.

With this context in mind, and its vision of the indivisibility and interdependence of all human rights, Amnesty International sets out its main concerns in three main areas.

I. National and international human rights institutions

In 2005 Amnesty International called upon all candidates to the presidency to commit to a process of drafting a comprehensive national action plan for human rights, as recommended under the 1993 Vienna Declaration and Programme of Action. Your predecessor, Ricardo Lagos, promised to work on such a plan. Several of Chile’s Latin American neighbours have already taken this important step towards introducing an overarching human rights agenda, including Ecuador (1998) and Brazil (1996). The current Chilean government took this commitment upon itself in its 2006-2010 *Programa de Gobierno*, but the process has not yet been initiated.

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

Amnesty International is aware of the constructive spirit behind Chile’s engagement with international and regional inter-governmental institutions, in relation to specific human rights

issues as well as the structural reform of these bodies. Your country was the beneficiary of the United Nation's first country-mandated Special Rapporteur and at the inauguration of the United Nations Human Rights Council, your government made reference to the decisive role of this and other United Nations Special Procedures in helping Chile overcome a dark period of its history. Chile's supportive role to Special Procedures, as well as its leadership and support to new initiatives on current and future human rights topics is key to the continuing ability of the international community to address common human rights concerns.

Amnesty International believes that the Chilean State should ratify and implement all of the main human rights treaties in order to demonstrate its commitment to upholding the full complement of universal, indivisible and inter-dependent human rights firmly grounded in international law. It should also demonstrate its commitment to complying fully and promptly with the binding rulings rendered by the Inter-American Court of Human Rights. Without such actions, political promises to uphold the rights of its citizens are hollow.

By ratifying and implementing treaties such as those on disappearances, Chile can mark its clean break from its nefarious actions of the past, acknowledge its failure to respond to the plight of many victims, and demonstrate future commitment to redressing these wrongs. In this way Chile would be able to contribute to international efforts to eradicate such practices in the future.

Recommendations:

At national level

- **Prioritise the process of developing a national human rights action plan through a broad consultative process in line with recommendations made in the Vienna Declaration and Programme of Action;**
- **Take all possible measures to expedite the legislative process to establish an autonomous human rights institution in line with the Paris Principles.**

At the UN:

- **Issue a standing invitation to the Special Procedures, and facilitate outstanding requests to visit by the Special Rapporteurs on the Right to Education, Freedom of Religion, and on the Sale of Children, Child Prostitution and Child Pornography;**
- **Continue to play a positive role in the review, rationalization and improvement of the UN Special Procedures system, leading discussions and initiatives within the GRULAC (Latin American and Caribbean Group) at the Human Rights Council and more widely, including to strengthen country-based Procedures;**
- **Ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance;**
- **Ratify the 1968 UN Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.**

At regional level:

- **Ratify and implement the Inter-American Convention on the Forced Disappearance of Persons;**
- **Fully and promptly comply with the rulings rendered by the Inter American Court of Human Rights;**
- **Continue promoting efforts towards regional solidarity through UNASUR, ensuring that human rights concerns are at the forefront of these efforts.**

II. Justice and impunity

Amnesty International recognises several significant advances achieved under the four democratically-elected governments that have succeeded Pinochet in tackling the legacy of serious and widespread violations committed during the military regime. Among these, the work of the Rettig and Valech Commissions, criminal investigations and prosecution, and the provision of health, educational and psychotherapeutic assistance to victims.

However, the organization is disappointed to note that many of the tasks that are essential to the process of post-dictatorship transition – tasks it raised with the government during its mission in 2000 and on other opportunities – have yet to be addressed by the government. The mere public acknowledgement of the violations of the past is insufficient without being accompanied by a concerted effort to address ongoing impunity, bring justice owed to the individual and collective victims, as well as introduce political reform that sets down the essential foundations that ensure similar violations cannot happen in the future.

A) Investigation, prosecution and reparation of past human rights violations

For Chile to demonstrate a serious commitment to addressing its legacy of human rights violations, Amnesty International considers it of paramount importance that it address the deficiencies and incompatibilities of its legal framework with international law.

It is of grave concern that the Amnesty Law (Decree Law 2191) enacted during General Augusto Pinochet's regime in 1978 and covering the period 11 September 1973-10 March 1978 is still in force. Although some judicial decisions have allowed for the investigation of disappearance cases under the figure of "permanent kidnapping", thereby circumventing the application of the Amnesty Law, and established its non-applicability to crimes committed abroad and crimes against humanity, the continued presence of the Amnesty Law on the statute books is incompatible with Chile's international legal obligations. Furthermore, it casts a dangerous shadow on any legal proceedings initiated in relation to human rights violations committed before 1978. The possibility that these cases may be closed by a court decision based on the Amnesty Law will remain as long as it is in force.

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

Crimes under international law cannot be subject to statute of limitations. Amnesty International is therefore concerned that statute of limitations have been applied in cases of serious human rights violations (including disappearances and unlawful killings) and that some judges persist in arguing for the application of statutes of limitations to civil claims filed within criminal proceedings. These contravene the principles established under international law.

Those victims (political prisoners and torture victims) recognised as such in the Report of the "Valech Commission" (National Commission on Political Imprisonment and Torture) are eligible for a compensatory pension as well as benefitting from series of measures aimed at rehabilitation under Law 19.992 "Law on reparations for recognized victims of political imprisonment and torture" (24 December 2004). However, Amnesty International shares concerns expressed by the UN Committee Against Torture that the limited mandate of this Commission, the short time period in which alleged victims could register, and a series of other obstacles that, compounded with the "austere and symbolic" approach taken by the State, constitute an inadequate policy on reparations. Furthermore, difficulties faced by torture survivors and former political prisoners in passing on benefits to their children and heirs must be addressed. Amnesty International believes that Chile's actual policy falls short of the principles on the right to a remedy and reparation for victims of gross violations of international human rights and humanitarian law promoted at the UN by Chile itself. Bringing perpetrators of human rights abuses to justice is a key element of reparations, and the Chilean State must face up to its responsibility to victims by addressing all of the remaining obstacles left in the path to justice.

In addition to such legal measures, Amnesty International believes that a personal meeting with victims' groups, given your own personal experience, would give strong moral support to victims and provide an opportunity for them to discuss their experiences of and demands for a justice process that can bring an end to ongoing impunity from the past.

Recommendations:

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

B) Reform of Military Code of Justice

Amnesty International understands that your government is developing a proposal to reform the Military Code of Justice and this are welcome, yet such an initiative is long overdue and so should be expedited. The incompatibility of the current application of the Military Code to cases involving civilians with international human rights law has been demonstrated in many fora, including recently in a binding decision by the Inter-American Court of Human Rights (*Iribarne Palamara v. Chile*). Its application in response to alleged acts of violence within the context of Mapuche protests, contributes to a situation in which the right to due process is compromised.

Recommendations:

- **Bring the Military Code of Justice into line with international standards, and the Inter-American Court on Human Rights ruling in *Palamara Iribarne v. Chile*;**
- **Eliminate the application of military jurisdiction to civilians;**
- **Prosecute human rights violations in which military personnel are implicated in civilian courts;**
- **Abrogate the death penalty as a sanction in the Military Code of Justice.**

C) International Criminal Court and cooperation with other international criminal courts

The failure of successive Chilean administrations to ratify the Rome Statute of the International Criminal Court since it was signed on 11 September 1998 relegates Chile to the unenviable position of being the only South American State not to have ratified the Statute. Recent indications of the your government's willingness to see the Statute ratified are welcome and Amnesty International hopes that this will go ahead without any additional measures – such as the constitutional amendment and potential unilateral declaration proposed in 2003 – that could undermine the object or purpose of the Statute. Similarly, the need to enact implementing legislation is crucial to the ratification of the Rome Statute, as well as subsequent cooperation with the International Criminal Court itself.

Recommendations:

- **Promptly ratify and implement fully the Rome Statute of the International Criminal Court;**
- **Ratify and implement fully the Agreement on the Privileges and Immunities of the International Criminal Court;**
- **Enact legislation implementing the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture, the Geneva Conventions and Optional Protocols I and II, and the Convention on the Prevention and Punishment of the Crime of Genocide that prohibits conduct proscribed within these treaties, in full accordance with international law;**
- **Enact legislation on cooperation with other international criminal courts, in particular on surrendering persons allegedly responsible for crimes under international law.**

III. Violence against women

The persisting prevalence of violence against women in Chile is of serious concern to Amnesty International, which campaigns globally to uphold the rights of women and girls, who are disproportionately affected by violence. The organization is extremely concerned by the high number of femicides in Chile, and the likelihood that at the current rate, more women will die in

such acts of violence in 2008 than in 2007. It is also concerned by the increasing number of cases in which firearms have been used in threats against and killings of women in the context of domestic violence. These shocking figures, coupled with evidence of the difficulties faced by women in reporting violence against women to authorities and the failure to investigate cases and prosecute those responsible, demonstrate that government initiatives aimed at raising the profile of the problem and addressing its root causes and effects have been insufficient. Amnesty International calls on your government to demonstrate its commitment to the eradication of violence against women by taking positive measures to empower women, publicly condemning violence as well as exercising due diligence to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

Recommendations:

- **Ratify the Optional Protocol to the Convention on Discrimination Against Women;**
- **Enact and enforce specific legislation on violence against women;**
- **Uphold standards in the collection of evidence from victims of violence in line with the World Health Organization's *Guidelines for medico-legal care for victims of sexual violence*;**
- **Establish an effective system for registering cases of violence against women that activates mechanisms to treat and protect victims as well as investigating all complaints promptly and impartially;**
- **Ensure that the collection of qualitative and quantitative data is standardized and disaggregated according to gender and other factors such as their relationship to their aggressor, and that it is open to verification. Such data should be collected, shared and published by all relevant government departments, and subsequently used by policy-makers to devise effective policies and programmes to address the problem.**

IV. Indigenous Peoples

Indigenous Peoples in Chile, as in other American countries, have suffered a long history of marginalization and discrimination. Although the post-dictatorship 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, and its participation in the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples are welcome signs of its commitment to the issues. Its recent ratification of ILO Convention 169 is a significant step, but will require the concerted effort of your government to implement it effectively, or it will make no real change to the lives of Chile's Indigenous Peoples.

Amnesty International is concerned about the generalised situation of poverty and discrimination faced by Indigenous Peoples in Chile, and the effect of this on their ability to exercise their economic, social and cultural rights. The impact of large scale extractive industry and forestry projects on the livelihoods of Indigenous Peoples is being felt across Chile, affecting their access

to land and water, causing environmental degradation and contamination, migration to cities and tensions within communities themselves.

Health and education indicators suggest that Indigenous Peoples are seriously disadvantaged when compared to the non-Indigenous population of Chile. However, the fact that the State does not routinely disaggregate social development data that it collects masks the particular problems faced by Indigenous Peoples 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 resulting very often in violence. Amnesty International received reports of apparent “militarisation” of communities through disproportionate law enforcement activities, and the excessive use of force in response to protests by some Mapuches. Amnesty International recognises the duty of the State to address criminal actions and to maintain public order, but emphasises that this must be carried out with respect to human rights and without recourse to inappropriate legislation. The failure to resolve land claims fairly and with free, prior and informed consent of the Indigenous Peoples themselves, means these tensions will not dissipate.

In particular, Amnesty International has repeatedly expressed its concern about the application of the “Anti-Terrorist Law” – enacted during General Pinochet’s regime – against Mapuche peoples who have participated in activities in support of Indigenous Peoples’ land rights. The fact that recent application of this legislation has only been in relation to such cases suggests a discriminatory approach. Despite President Lagos’ denial that its application constituted a state policy, nor a discriminatory practice, and your subsequent statements stipulating that the government will not ask for it to be applied, charges against individuals under the Law still remain. Amnesty International was particularly disappointed to hear that this law was invoked once again, by a Regional Prosecutor in Temuco on 4 November.

Amnesty International calls on your government to make a categorical commitment to derogating this law: without its removal from statute books, the possibility that it may be applied remains.

The use of inappropriate legislation and military jurisdiction, as well as alleged excessive use of force and disproportionate police activity in certain communities, lead to an apparent criminalisation of protest that is of serious concern to Amnesty International.

During its visit, Amnesty International met with Mapuche, Atacameño and Diaguita Huascoaltino Indigenous Peoples in Temuco, Collipulli, Calama and Chiu Chiu – in order to assess for itself the situation in which they live. In this way it has been able to confirm for itself the continuing validity of many of the recommendations made to the Chilean State in 2004 by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Amnesty International is disappointed by the level of compliance with these recommendations four years after they were made.

Recommendations:

▪Ensure the full implementation of ILO Convention 169, involving the input and participation of Indigenous Peoples themselves in the design, implementation and monitoring of any policy interventions that arise from it;

▪Derogate Law 18.314 known as the “Anti-Terrorist Law” so that it cannot be applied to acts related to the social struggle for land and legitimate complaints of Indigenous Peoples;

▪Ensure the disaggregation of data to demonstrate the particular problems faced by Indigenous Peoples, and that this data feeds into designing policies that are accurately tailored to their needs;

▪Ensure that policing activities in Indigenous communities are carried out in line with international human rights standards, in particular the United Nations 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;

▪Undertake to implement the outstanding recommendations of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, including:

- Revise sectoral legislation on land, water, mines and other sectors that may be in conflict with the provisions of the Indigenous Peoples Act;
- Expand and expedite the work of the Land Fund managed by CONADI for the acquisition of land for Indigenous Peoples;
- Desist from outlawing or penalising legitimate protest activities or social demands by Indigenous organizations and Peoples.

▪Work constructively with indigenous peoples to advance the American Declaration on the Rights of Indigenous Peoples to ensure that is consistent with, does not fall below, and further elaborates on existing international standards for the protection of indigenous peoples' rights, including the recently adopted UN Declaration;

▪Take an active part in negotiations on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, supporting the creation of a strong binding treaty that does not fall under existing standards.

On the eve of the 200th anniversary of Chile's life as a Republic, it is evident that your country's transition from dictatorship to democracy has led to many positive developments in the enjoyment of human rights for its citizens. Changes instigated by your government have built on the process initiated with the return to democratic governance in 1990. As an international player, Chile's role has also regained credibility regionally, bilaterally and in its engagement with inter-governmental bodies. Amnesty International urges you to continue this process through your last full year of government, prioritising the pending tasks set out above so as to leave in place firm foundations on which your successors can build. Only by respecting the human rights of all of its citizens, and demonstrating that it is doing so by honouring its international obligations, can Chile demonstrate its true commitment to this new rights-based paradigm and its full implementation.