

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 89TH SESSION (NEW YORK, 12-30 MARCH 2007) CHILE (5TH PERIODIC REPORT)

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Information submitted to the Committee

Chile submitted its fifth periodic report with written replies to the list of issues provided by the Human Rights Committee (the Committee).¹ Chile ratified the *International Covenant on Civil and Political Rights* (the

¹ The list of issues, replies to the list of issues, NGO and academic parallel reports and the Concluding Observations of the Committee are available at <http://www.ohchr.org/english/bodies/hrc/hrcs89.htm>.

Covenant) in 1972, but faced a number of internal political hurdles in attempts to comply with its obligations during the Pinochet regime.²

Parallel reports were submitted to the Committee by several non-governmental organisations (NGOs) and an academic institution.³ They highlighted issues relating to the treatment of lesbians, gays, bisexuals and transgender (LGBT) people in Chile,⁴ particularly in relation to marriage, adoption, right to health, and right to property, as well as hate crimes. In addition, despite the fact that Chile is building new prisons and attempting to improve the conditions of the imprisoned, the Committee expressed its concern about prisoners' treatment.

Although Chile was one of the first 25 signatories of the Covenant in February 1972,⁵ legal steps necessary to incorporate the Covenant into their domestic legal framework did not commence until 1989, when the promulgation decree in the Official Gazette gave the Covenant full validity in Chilean law.⁶ In addition, in the same year a number of amendments to the 1980 Chilean Constitution were enacted, giving constitutional status to the international conventions ratified by Chile.⁷

Chile's ratifications include the *International Convention on the Elimination of All Forms of Racial Discrimination*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *Convention on the Rights of the Child*; and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (which was ratified on 25 May 2005).⁸

Themes and issues⁹

Constitutional and legal framework

The Committee discussed at some length the continuing existence of an Amnesty Decree Law which, despite its lack of use, remains on the books. Despite explanations by the delegation as to why they are unable to revoke or abolish the law, the Committee stressed that the current situation was precarious, unacceptable, and open to abuse.

The delegation and the Committee discussed the separation of military and civilian courts in depth. The Committee repeatedly emphasised the importance of removing the possibility of abuse of the system, noting Article 14 of the Covenant. The delegation explained that a committee was set up on 9 January 2006 to study ways of reforming the military justice system and to bring it into line with constitutional and international

² In 1978, Chile submitted its initial report, followed by two more under the regime of Augusto Pinochet in 1984 and 1989. The fourth periodic report on the status of implementation of the ICCPR, due in 1994, was submitted in December 1998. It was the first submitted under civilian rule.

³ Indiana University, School of Law, Indianapolis; Global Rights; Conscience and Peace Tax International; The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM); International Federation of Human Rights (FIDH).

⁴ Available at <http://www.iglhrc.org/site/iglhrc/section.php> and http://www.ohchr.org/english/bodies/hrc/docs/ngos/shadow_report.pdf.

⁵ Available at <http://www.ohchr.org/english/countries/ratification/4.htm>.

⁶ Numerous amendments to the Chilean constitution have followed since, in 1991, 1997, 1999, 2000, 2003 and 2005, resulting in some significant changes to the implementation of the Covenant over the years.

⁷ Chile ratified the first Optional Protocol to the ICCPR in 1992, with the reservation that the Protocol was not to apply until the Protocol entered into force, nor prior to 11 March 1990. Chile signed the Second Optional Protocol of the ICCPR on 15 November 2001, but has not yet ratified it.

⁸ Please visit <http://www.ohchr.org/english/countries/ratification/13.htm>.

⁹ For a more detailed description of the dialogue between the Committee and the State, please see the press release of the proceedings, available at <http://www.un.org/News/Press/docs/2007/hrct685.doc.htm>.

standards. Specifically, this committee was tasked with analysing the way in which military offences are categorised.

Constitutional reforms of 2005 brought the military courts under the authority of the Supreme Court and the delegation did note that the offence of 'undue sedition' was removed, under which journalists had previously been charged whilst exercising their freedom of speech. The Committee repeatedly noted its grave concern that civilians might still be tried by military courts.

The Committee requested further information regarding the Judicial Academy, such as who undertook the training, who was accepted, and the subsequent independence of the judiciary. The delegation explained that an enormous investment has been made in reforming the judicial processes, including the establishment of a Public Defenders Office (one of three new institutions established under Chilean parliament), which has provided legal aid to over 5,000 clients. The gender composition of the judiciary was also explored, with the Committee suggesting that more women be employed.

Measures to combat terrorism

The Committee inquired about charges of terrorism which the government had allegedly brought against the Mapuche¹⁰ community in connection with acts of protest and social demands relating to the protection of their land rights. The delegation refuted that it had ever used terrorist laws to undermine minority rights. The delegation stated that guarantees of judicial process were respected in proceedings in Chile and stated that the terrorist law, enacted in 1994, dealt with all kinds of terrorism and not just the incidents to which were being referred. This point was not pressed by the Committee.

Gender discrimination

Discussion of the follow-up to a draft law on sexual offences took some time, evoking a response from the delegation that the pending legislation is currently between government chambers, with a likelihood of being considered in March 2007. The Committee commented that the delay between the last report in 1998 and the consideration of the legislation in 2007 was too long. The Committee expressed its concern in regard to equal opportunities in the sphere of private employment, particularly in relation to disparate pay and high levels of unemployment of women. The delegation noted that anti-discriminatory workplace legislation was introduced in 2004, and that since its introduction, over 250 complaints have been made, the vast majority by women.

The institution of marriage was also discussed at some length, with the delegation explaining that a new 'option' of joint ownership of property was introduced by law in 1994. Since then, 30,000 of the past 64,000 marriages have chosen this type of marriage, the remainder continuing to give full ownership of property to the male in the relationship. The Committee commended Chile for raising the age of marriage from 14 for boys and 12 for girls to 16 for both genders. The delegation stressed that its culture was at times held hostage by old traditions which were very difficult to change, particularly in the context of gender relations.

Right to life

Despite the Committee's consternation, the delegation noted that an overall ban on abortion is unlikely to be lifted. The Committee noted that this was contrary to the mother's right to life under Article 6 of the Covenant, placing medical personnel in a difficult situation, and threatening women's lives.

Prohibition of torture

¹⁰ The South American Indian people inhabiting south-central Chile. http://www.mapuche-nation.org/english/main/feature/m_nation.htm; <http://www.hartford-hwp.com/archives/41/index-dib.html>.

The Committee requested the definition used for 'reparation to victims' by the National Commission on Political Prisoners and Torture. The delegation responded with information about collective and individual reparation for various losses. Much of this work will be continued by the Human Rights Institute, which, once established, will also play a crucial symbolic role. The Committee sought further written clarification regarding the terms which triggered reparation, and the delegation promised to provide these in the near future.

Right to humane treatment of persons deprived of their liberty

The condition of Chilean prisons was discussed in relation to Article 10 of the Covenant and particularly in relation to the delegation's report. The report focused on cooperation between the State and the private sector, particularly in relation to the recent construction of a number of new prisons.

Although the delegation explained that there has been an enormous investment in new prisons since that time, the Committee expressed concern about the condition of the remaining old prisons and their inmates.

The government recently revised criminal procedures to include new procedures, including more regular inspections of prisons, where people are held before being brought to trial, and that prisoners can no longer be held *incommunicado*. Detainees may now speak with their family or legal counsel, who may seek permission from the courts.

Regular visits by government officials, attorneys and Supreme Court judges who visited prisons for the purposes of overseeing prisoners' rights, including assessing the state of hygiene and security as well as the safety of the prisoners, numbered more than 17,000 in northern Chile alone last year. In addition, recent procedures provide for formal complaints to the government, of which there are some 4000 each month. The national directorate of the gendarmerie is also provided with compulsory training and information to cooperate with the criminal judiciary, and attempts are made to ensure full respect for these administrative proceedings.

The Committee observed that the mentally disabled are particularly vulnerable to being imprisoned without good reason. The delegation explained that there is an administrative process in place to address this issue.¹¹

Right to a fair trial, independence of the judiciary and protection of children

Although a new penal procedure for juvenile offenders aged 12 to 16 was enacted on 8 June 2006, the law will not enter into force until June 2007. The Committee expressed its concern about what it described as an undue delay.

Right to vote and be elected

The delegation responded to the Committee's request for an explanation of the 'binominal electoral system' in light of Article 25 of the Covenant. The delegation explained how the 'binominal electoral system' worked and acknowledged that the system results in a lack of minority representation, increases minority competition, and discourages political alliances.

¹¹ The delegation explained that if a person requires diagnosis and treatment, but treatment does not occur and the person continues to pose a threat to themselves or others, then 72 hour surveillance is required. After this period, individuals must be released from internment.

The Committee expressed its serious ongoing concern about the status of the electoral system and the fact that it requires a 60 per cent majority vote for change, and sought further clarification in writing on how the system works even following the delegation's explanation.

Principle of non-discrimination

Legislation is currently being drafted in Chile to ensure that State policies are not discriminatory to any group, including the prohibition of arbitrary discrimination, which, although currently detailed in the Constitution, requires the establishment of a criminal offence of discrimination.

The Committee suggested that Chile may need to reassess its labour code and asked what steps were being made to improve the situation of workers. The delegation noted that more information would be forthcoming on this topic, but that there is a new 'Law of Solidarity' protecting the rights of workers.

Rights of indigenous peoples

Indigenous rights consumed a large portion of the presentation time of Chile. The delegation admitted that this discrimination continued up until the 1980s, but insisted that a change in laws regarding indigenous peoples has since then recognised the right to land and water, the right to language, the right to health, the right to intercultural education, and the right to participate in development, to name a few. The delegation emphasised that one of the main objectives of the law is the maintenance and enhancement of indigenous lands. The Committee responded in quite strong language that the current regimes for indigenous people are outdated and inadequate, and strongly suggested that Chile ratify the *Convention No.169 on Indigenous and Tribal Peoples*.¹²

The delegation emphasised *Act No.19253* of October 1993, regulating 'ancient' lands and expanding indigenous peoples' right to land into a broader right to ownership of, use of or access to all of their natural resources in accordance with Article 27 of the Covenant and the Committee's General Comment No. 23 on the rights of minorities. In 2005, a law was drafted with the participation of Mapuche organisations regarding the use of the coastal lands, included the creation of indigenous communes and a special Statute regarding Easter Island. The law now provides for indigenous rights to some 16,000 hectares of water and marine resources, however mineral resource rights remain with the State.

The Committee explained that non-recognition of these ancient lands is one of the catalysts for the poverty and resulting inequality for the Mapuche people. The Committee also emphasised that the Mapuche require additional resources to land rights, and that this remained a major issue for Chile.

Rights of sexual minorities

The Committee asked questions specifically related to the material provided by a number of the NGOs on LGBT rights, noting widespread patterns of discrimination against sexual minorities, such as lack of access to schools and lack of adequate healthcare (for sufferers of HIV/AIDS in particular), to which the delegation responded that a non-discrimination draft bill is underway for same-sex couples.

The Committee expressed its concern that the rights of sexual minorities and those with disabilities might fall by the wayside given the heavy legislative load of the Chilean government. The Committee highlighted that legislative steps would not correct very wide social prejudice, and suggested that the State party also address the issue with other methods, including through public education.

Dissemination of the Covenant

¹² Please visit <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

The delegation noted that Chile has a past, present and future commitment to the Covenant, and to the entire system of human rights. The Committee stressed that although Chile appeared to be responsive in strengthening legal regimes, the Covenant requires dissemination and education, on which much remained to be done.

Conclusions and next steps

The Committee highlighted that Chile relies heavily on the development of its legal structures, which was its strength, but also criticised the State for a lack of other educational steps and broader implementation, also required by the Covenant. The Committee encouraged Chile to sign on to the *Second Additional Protocol* of the Covenant, as well as the *Convention No.169 on Indigenous and Tribal Peoples*. In addition, the Committee commented that there is much progress to be made on gender and sexuality issues.

The delegation emphasised the progress which it has made since the move from a dictatorship to a democracy, and that these steps continue, including modifications of the Constitution in 2005, and highlighted local human rights education and the cessation of the death penalty.¹³ Chile promised to provide further information on the binominal electoral system, the electoral lists, and conscientious objection to military service in written form. The delegation's presentation was extremely tight, and the Committee was very thorough and focused in their questions and follow-up to the delegation's responses. A lot of information was exchanged in the two short sessions.

The Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) had discussed many of the issues regarding inequality of women in Chilean society, particularly noting the absence of women at high levels.¹⁴ The Committee on the Elimination of Racial Discrimination (CERD) observed numerous issues pertaining to indigenous peoples in Chile which required attention.¹⁵ The Committee on the Rights of the Child (CRC) also emphasised the need for improvement to juvenile treatment.¹⁶ The Committee Against Torture (CAT) noted its concern regarding the treatment of prisoners in Chile, particularly military detainees, and also questioned how judges could be dismissed or brought under scrutiny.¹⁷

Currently, the Committee's advance version of the Concluding Observations are only available in Spanish.¹⁸

¹³ The Committee provided its concluding comments in Spanish, and they are available at http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/chile89_co_sp.doc.

¹⁴ Details available at http://www.bayefsky.com/.html/chile_t4_cedaw.php.

¹⁵ Details available at http://www.bayefsky.com/.html/chile_t4_cerd.php.

¹⁶ Details available at http://www.bayefsky.com/.html/chile_t4_crc.php.

¹⁷ Details available at http://www.bayefsky.com/.html/chile_t4_cat.php.

¹⁸ The Concluding Comments (CCPR/C/CHL/CO/5/CRP.1) are available at http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/chile89_co_sp.doc.

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ABOUT THE PUBLICATION

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the seven treaty bodies and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

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