



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

CHILE

1. The Committee considered the fifth periodic report of Chile (CCPR/C/CHL/5) at its 2429th and 2430th meetings (CCPR/C/SR.2429 and SR.2430), held on 14 and 15 March 2007, and adopted the following concluding observations at its 2445th meeting (CCPR/C/SR.2445), held on 26 March 2007.

A. Introduction

2. The Committee welcomes the fifth periodic report of Chile, despite the four-year delay in its submission. The Committee appreciates the detailed information about the State party's legislation and draft legislation, but regrets that the report provides insufficient information about the effective implementation of the Covenant. The Committee appreciates the fact that the written responses were submitted well in advance, allowing them to be translated into the Committee's other working languages on time. The Committee also welcomes the quality of the replies given by the State party's delegation, as this allowed for an honest, open and constructive dialogue about the various problems that exist in Chile.

B. Positive aspects

3. The Committee welcomes the major legislative (2005) and institutional changes that have been introduced in the State party with a view to consolidating the rule of law following the recommendations made by the Committee in 1999. These changes include:

(a) The constitutional reform that put an end to the system of appointed senators and senators for life and did away with the provision under which chiefs of the armed forces could not be removed from office by the President of the Republic, and the reform relating to the National Security Council;

(b) The constitutional reform establishing legal equality between men and women;

(c) The reform of the Code of Criminal Procedure, and the separation of functions between the authorities responsible for prosecution and those responsible for rendering judgements;

(d) Policies to improve the prison system;

(e) The provision in the new Civil Marriage Act permitting divorce, and the criminalization of sexual harassment and domestic violence.

4. The Committee welcomes the fact that the death penalty was abolished in 2001.

C. Principal areas of concern and recommendations

5. The Committee reiterates its concern regarding the 1978 Amnesty Decree-Law No. 2.191. While noting that according to the State party this decree is no longer applied by the courts, it considers that the fact that the Decree-Law remains in force leaves open the possibility that it might be applied. The Committee draws attention to its general comment No. 20 concerning the prohibition of torture and other cruel, inhuman and degrading treatment or punishment, which states that amnesties for human rights violations are generally incompatible with the State party's duty to investigate such violations, to guarantee freedom from such violations within their jurisdiction and to ensure that similar violations are not committed in the future (article 2 of the Covenant).

The State party should make greater efforts to incorporate the jurisprudence of the Supreme Court regarding 1978 Amnesty Decree-Law No. 2.191 into domestic positive law as soon as possible, in order to ensure that serious violations of human rights do not go unpunished.

6. While recognizing the State party's efforts in this respect, the Committee notes with concern that a national human rights institution has still not been established in Chile (article 2 of the Covenant).

The State party should establish a national human rights institution as soon as possible, in full conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) annexed to General Assembly resolution 48/134. To that end, it should hold consultations with civil society.

7. The Committee is concerned about the definition of terrorism contained in the Counter-Terrorism Act No. 18.314, which may be excessively broad. It is also concerned that this definition has allowed charges of terrorism to be brought against members of the Mapuche community in connection with protests or demands for protection of their land rights. The Committee also notes that the procedural guarantees set out in article 14 of the Covenant have been restricted by the application of this Act (articles 2, 14 and 27 of the Covenant).

The State party should adopt a narrower definition of crimes of terrorism, so as to ensure that it is not applied to individuals for political, religious or ideological reasons. Such a definition should be limited to offences which can justifiably be equated with terrorism and its serious consequences, and must ensure that the procedural guarantees established in the Covenant are upheld.

8. The Committee reiterates its concern about Chile's unduly restrictive abortion laws, particularly in cases where the mother's life is in danger. The Committee regrets the fact that the Chilean Government has no plans to legislate in this area (article 6 of the Covenant).

The State party should amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk. The State party should also bring its abortion laws into line with the Covenant.

9. The Committee welcomes the fact that the State party has taken steps, such as the establishment of the National Commission on Political Prisoners and Torture (CNPPT) in 2003, to ensure that victims of the human rights violations committed by Chile's military dictatorship receive compensation, but is concerned by the lack of official investigations to determine direct responsibility for the serious human rights violations committed during this period (articles 2, 6 and 7 of the Covenant).

The State party should see to it that serious human rights violations committed during the dictatorship do not go unpunished. Specifically, it should ensure that those suspected of being responsible for such acts are in fact prosecuted. Additional steps should be taken to establish individual responsibility. The suitability to hold public office of persons who have served sentences for such acts should be scrutinized. The State party should make public all the documentation collected by CNPPT that may help identify those responsible for extrajudicial executions, forced disappearances and torture.

10. The Committee notes with concern that there continue to be cases of ill-treatment by the security forces, primarily at the moment of arrest and against the most vulnerable, including the poor (articles 7 and 26 of the Covenant).

The State party should take immediate, effective action to put an end to such abuse and should monitor, investigate and, where appropriate, try and punish police officers who ill-treat vulnerable groups. The State party should extend human rights training to all members of the security forces.

11. The Committee reiterates its concern regarding the system of legally authorized detention incommunicado, which can last for up to 10 days (articles 7, 8, 9 and 10 of the Covenant).

The Committee recommends once again that the necessary legislative measures should be adopted in order to eliminate prolonged detention incommunicado.

12. The Committee notes with concern that Chile's military tribunals continue to have jurisdiction to try civilians in civil matters, a situation that is incompatible with article 14 of the Covenant. The Committee is also concerned about the wording of article 330 of the Code of Military Justice, which may be interpreted as allowing the use of "unnecessary violence" (articles 7 and 14 of the Covenant).

The State party should expedite the adoption of the law amending the Code of Military Justice, limiting the jurisdiction of military tribunals solely to military personnel charged exclusively with military offences, and ensuring that the new law does not contain any provisions that could allow rights established in the Covenant to be violated.

13. The Committee notes the State party's intention to adopt a law recognizing the right of conscientious objection to military service, but continues to be concerned that this right has still not been recognized (article 18 of the Covenant).

The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment and recognizing that conscientious objection can occur at any time, even when a person's military service has already begun.

14. Although it is aware of the labour law reform that took place in 2005, the Committee is still concerned about continuing restrictions on trade union rights in Chile and about reports that in practice, changes are made unilaterally to the working day, striking workers are replaced, and threats of dismissal are used to prevent the formation of trade unions. In many cases, it would not be practicable for workers to bring complaints because trials are excessively long and costly (article 22 of the Covenant).

The State party should remove all legislative and other obstacles to the full exercise of the rights established under article 22 of the Covenant. The State party should streamline employment procedures and make legal aid available to workers to enable their complaints to be successfully heard.

15. While it notes that the reference to the binominal system has been removed from the Constitution, the Committee observes with concern that, as the State party indicated, the electoral system in use in Chile can hamper the effective parliamentary representation of all individuals (articles 3 and 25 of the Covenant).

The State party should make greater efforts to overcome the political obstacles to amendment of the Constitutional Act on Popular Votes and Vote Counts, in order to guarantee the right to equal, universal suffrage established under article 25 of the Covenant.

16. While it observes with satisfaction that the laws criminalizing homosexual relations between consenting adults have been repealed, the Committee remains concerned about the discrimination to which some people are subject because of their sexual orientation, for instance, before the courts and in access to health care (articles 2 and 26 of the Covenant).

The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law and in access to health care. It should also launch awareness-raising programmes to combat social prejudice.

17. Although the Committee takes note of the progress made in the legal field to eliminate gender discrimination, it remains concerned because laws pertaining to the family remain in force which discriminate against women as administrators of their property, such as the joint property marital regime (articles 3 and 26 of the Covenant).

The State party should hasten the adoption by the Senate of the act repealing the joint property marital regime and replacing it with a community property regime.

18. While the Committee observes that a Code of Conduct in the public sector has been adopted, it remains concerned about discrimination against women in the workforce, especially in the private sector (articles 3 and 26 of the Covenant).

The State party should redouble its efforts to combat discrimination against women in employment, through such measures as reversing the burden of proof in discrimination cases to favour women employees, so that employers must explain why women hold positions of lower rank, have lesser responsibilities and earn lower wages.

19. While it notes the intention expressed by the State party to give constitutional recognition to indigenous peoples, the Committee is concerned about the variety of reports consistently indicating that some claims by indigenous peoples, the Mapuche in particular, have not been met, and about the slow progress made in demarcating indigenous lands, which has caused social tensions. It is dismayed to learn that “ancestral lands” are still threatened by forestry expansion and megaprojects in infrastructure and energy (arts. 1 and 27).

The State party should:

(a) Make every possible effort to ensure that its negotiations with indigenous communities lead to a solution that respects the land rights of these communities in accordance with article 1, paragraph 2, and article 27, of the Covenant. The State party should expedite procedures to recognize such ancestral lands;

(b) Amend Act No. 18.314 to bring it into line with article 27 of the Covenant, and revise any sectoral legislation that may contravene the rights spelled out in the Covenant;

(c) Consult indigenous communities before granting licences for the economic exploitation of disputed lands, and guarantee that in no case will exploitation violate the rights recognized in the Covenant.

20. The Committee requests that the initial report of the State party and the present concluding observations be published and widely disseminated in the official languages of the State party.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the evaluation of the situation and the follow-up to the Committee's recommendations made in paragraphs 9 and 19 of these concluding observations.

22. The Committee requests the State party to include in its next periodic report, which should be submitted before 1 April 2012, information on the remaining recommendations and on the Covenant as a whole.
