

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

**UNIVERSAL PERIODIC REVIEW, 5<sup>TH</sup> SESSION  
CHILE (FINAL)  
REVIEWED ON 8 MAY 2009, MORNING**

## Overview

The review of Chile under the UPR took place on the morning of 8 May 2009. The delegation of Chile was headed by Minister Secretary General of the Presidency, Jose Antonio Viera Gallo, who provided a detailed and occasionally self-critical presentation to the Working Group. He then deferred to experts within the medium-sized delegation to answer questions. The delegation appeared well-prepared and addressed most, although not all, of the issues put to them.

Over 50 States took part in the review. The questions and recommendations drew heavily from the UN compilation and the summary of reports by other stakeholders, and recommendations were generally quite specific and measureable. The major focus of questions related to the rights of indigenous peoples, which linked to other issues, including freedom of assembly, police abuse, counter terrorism, women's rights, and children's access to education.

Overall, the review seemed to be treated seriously by Chile, which accepted a number of shortcomings in both its national report and presentation, provided one new commitment in the form of a standing invitation to UN special procedures, and addressed a number of difficult questions relating to military justice, domestic violence, political participation of indigenous peoples and others.

## General information on Chile

- Chile is a member of the Human Rights Council (1<sup>st</sup> term, 2008 – 2011)
- The members of the troika for the examination of Chile were Senegal, Qatar and Cuba.<sup>1</sup>
- According to the national report, Chile held national consultations with civil society, although additional information is not provided. An online forum was also set up 'to collect views on the human rights situation in the country over recent years' and constructive criticisms were taken into account.

## Information submitted to the Working Group

The **national report** of Chile<sup>2</sup> first outlines the national legal framework for the protection and promotion of human rights, and explains recent amendments designed to lessen the rule of 'authoritarian enclaves'. The

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<sup>1</sup> Chile did not request that a member of its regional group be among its troika. There were no objections by Chile or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>2</sup> A/HRC/WG.6/5/CHL/1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/CL/A\\_HRC\\_WG6\\_5\\_CHL\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/CL/A_HRC_WG6_5_CHL_1_E.pdf)

effect of the binominal electoral system is only briefly mentioned. Concerning human rights bodies, the report expresses the Government's commitment to establishing a national human rights institution.

The next section, on civil and political rights, begins by explaining changes in law and practice since 1990, including a new criminal code and the abolition of the death penalty. Most attention is given to the rights of indigenous peoples, with an outline on structural measures to address representation. Other issues include gender equality (where the pay gap is acknowledged), prison conditions, child rights, migrant workers, and rights of persons with disabilities. Only two paragraphs address military justice, although the Government readily admits that regulations 'are not in line with international standards'.<sup>3</sup> A shorter section on economic, social and cultural rights addresses poverty and the rights to health, work, education and housing, providing a more statistical analysis of developments.

The report recognises many institutional areas where the State is lagging and attempts to explain developments in each case, noting that this is often blocked by not attaining majorities in parliament.

The OHCHR **compilation of UN information** contained comments from a wide range of treaty bodies, as Chile is party to the majority on human rights treaties and is relatively timely in its reporting.<sup>4</sup> Positive observations included the abolition of the death penalty, reform of the criminal procedure, and improvements in social indicators. On institutional protection, many called for the establishment of a national human rights institution in conformity with the Paris Principles.<sup>5</sup> A section on the rights of indigenous peoples deals with requests for constitutional recognition<sup>6</sup> and ownership of land and territorial rights. Other issues included legal reform for full gender equality;<sup>7</sup> a definition of torture in conformity with Convention against Torture;<sup>8</sup> the need to abolish the Amnesty Law and the trying of civilians by the military courts; the adverse effect of the binominal electoral system;<sup>9</sup> restrictive abortion laws;<sup>10</sup> inadequate access to education in rural areas; and the need for a narrower definition of terrorism.

Thirteen other stakeholders submitted information for the OHCHR **summary of stakeholders' information**,<sup>11</sup> including four joint submissions.<sup>12</sup> The majority of points in the compilation of UN information were reflected in the summary, which provided more specific information on the facts of violations in Chile. These included that the draft bill of the Ombudsman Office was not in compliance with the Paris Principles;<sup>13</sup> the need to expedite the creation of a national human rights institution;<sup>14</sup> the need to publish investigations into complaints against police abuses;<sup>15</sup> arbitrary detention and ill treatment of sexual minorities;<sup>16</sup> a high prevalence of violence against women;<sup>17</sup> overcrowding in prisons and inhuman and

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<sup>33</sup> Ibid. at para. 41.

<sup>4</sup> A/HRC/WG.6/5/CHL/2, available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCLSession5.aspx>

<sup>5</sup> Ibid. at para. 5. HRC, CESCR, CRC and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

<sup>6</sup> Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ILO Committee of Experts, CESCR, CRC.

<sup>7</sup> CEDAW

<sup>8</sup> CAT

<sup>9</sup> HRC

<sup>10</sup> HRC, CEDAW

<sup>11</sup> A/HRC/WG.6/5/CHL/3, available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCLSession5.aspx>

<sup>12</sup> Corporación Humanas (Joint submission), Observatorio Ciudadano (Joint submission), Inisiativa por los Derechos Sexuales (Joint submission), Center for Reproductive Rights (Joint submission).

<sup>13</sup> Observatorio Ciudadano (Joint submission)

<sup>14</sup> Observatorio Ciudadano (Joint submission)

<sup>15</sup> Human Rights Watch, Observatorio Ciudadano (Joint submission).

<sup>16</sup> Corporación Humanas (Joint submission), Inisiativa por los Derechos Sexuales.

<sup>17</sup> Corporación Humanas (Joint submission).

degrading treatment;<sup>18</sup> the need to nullify the Amnesty Law and eliminate military trials of civilians;<sup>19</sup> freedom of assembly for public demonstrations;<sup>20</sup> the need to expedite the constitutional recognition of indigenous peoples and to amend domestic law in compliance with *ILO Convention No 169*;<sup>21</sup> the slow addressing of indigenous land issues and the misuse of counter terrorism law to suppress actions, as well as serious police violence against indigenous farmers.<sup>22</sup>

The summary was not available in Spanish by the time of the review on 8 May.

## **Interactive dialogue<sup>23</sup>**

### **Presentation by the State**

The 30 minute presentation by the Minister Secretary General of the Presidency, Mr José Antonio Viera-Gallo, outlined the State's approach to the promotion and protection of human rights. During the presentation, Chile did not explicitly answer the questions submitted in advance and did not add much to the national report. Following a brief historical introduction of Chile's recovery from dictatorship, and a proclamation that Chile strove to 'create economic and social conditions under which...rights could be effectively exercised', the Minister then focused on reforms undertaken or ongoing by the Government, all of which were already elaborated in the national report.

Among other positive steps undertaken, the following were raised: judicial and penal reform; measures taken to overcome impunity through the work of the truth and reconciliation commission and other bodies; the right to reparation for the victims of torture; progress in elimination of discrimination against women and the reinforcement of the constitutional recognition of men and women's equality; the recognition of indigenous peoples with the introduction of a 'Social Pact for Multicultural Re-cognition'; and the reduction of poverty with the new 'social protection system'.

Further, the delegation presented the remaining tasks that the Government aims to undertake, including the finalisation of a new penal code, improving prison conditions, reforming the system of military justice, and elaborating a national human rights plan. The Minister informed that the establishment of a national human rights institute in accordance with the Paris Principles was being debated in Congress and was now in its final stages. In addition, the delegate highlighted the expected ratification of the *Rome Statute* in the near future, as Chile was currently approving the typification of the crimes of genocide, crimes against humanity and war crimes.

At the conclusion of his presentation, Mr Viera-Gallo announced the Government's decision to extend permanent invitations to all special procedures of the Human Rights Council to visit Chile.

### **Themes and issues**

The focus of the review tended towards the rights of indigenous peoples. Many noted that ratification of *ILO Convention No. 169* had been an important recent step. Sweden and others recommended that the State

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<sup>18</sup> Observatorio Ciudadano (Joint submission).

<sup>19</sup> CDHUDP, Amnesty International, International Commission of Jurists, Human Rights Watch.

<sup>20</sup> Observatorio Ciudadano (Joint submission)..

<sup>21</sup> Corporación Humanas (Joint submission)

<sup>22</sup> CDHUDP and Observatorio Ciudadano.

<sup>23</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

demarcate and restore indigenous lands, and consult with indigenous peoples before granting licences for land use. Denmark also asked for follow up on the Human Rights Committee's 2007 recommendation in this regard. Austria called for new legislation to further strengthen indigenous rights, while Turkey recommended increased budget allocation. Bolivia, Colombia, Mexico, Finland, Pakistan and others recommended increased efforts to ensure indigenous representation in political affairs, while New Zealand called for assurance of freedom of assembly and expression for indigenous groups. Chile explained that laws were presently going through congress in relation to the above, as well as the creation of a council of indigenous peoples for political representation.

The Netherlands, the Czech Republic and Canada reiterated the concern of treaty bodies on Chile's definition of terrorism and misuse of the counter terrorism law, and urged that police be held accountable for abuses. Uzbekistan also recounted allegations of police torture. Chile responded that the law is only applied on the basis of the alleged act committed, and that police excesses are dealt with by the courts.

Concerning women's rights, Algeria, Japan and Pakistan called on the State to take effective measures increase women's presence in the labour market and to ensure equal pay for equal work. Switzerland and Norway questioned the efforts being made to combat domestic violence and recommend that targets be set for its decrease. Sweden and Finland recommended that abortion laws be amended to comply with obligations under CEDAW and the ICCPR. In contrast, the Holy See called for Chile to 'adhere to the religious and cultural elements that make up the country'. The delegation responded that this is currently an issue of discussion in wider society.

Ecuador questioned access to healthcare and education for immigrant children. Austria welcomed penal reforms but urged that persons under 16 be deprived of their liberty only as 'a last resort'.

Sweden, Netherlands and New Zealand called for sexual orientation to be included as grounds for discrimination in the draft anti-discrimination bill. Bangladesh called for Chile to uphold the right of the family by incorrectly claiming that Article 16 of the Universal Declaration for Human Rights identifies the family as being between a man and a woman.

While States appreciated that the process of creating a national human rights institution was underway, Malaysia, the United Kingdom, Mexico called on the Government to expedite the process and to create an institution in accordance with the Paris Principles. Germany asked how civil society was being involved in the process.

Azerbaijan, Canada, France and Switzerland called for an end to trials of civilians by military courts as their jurisdiction is not in conformity with international norms.

The Minister declared at the close of his statement that Chile would issue a standing invitation to all special procedures, and this was welcomed by a number of States. Others called for ratification of the *Rome Statute*, the *Convention on Enforced Disappearances* and the Optional Protocol to *Convention on the Elimination of Discrimination against Women*. The United Kingdom advised that Chile expedite the process of identifying a national mechanism for monitoring the OPCAT, in discussion with civil society. Brazil also recommended that Chile should define torture in accordance with the definition under the Convention against Torture.

Other issues raised included immigration policy (Morocco, Guatemala), freedom of religion and belief (Algeria), the rights of national minorities, particularly the Arab community (Egypt), efforts to combat trafficking (Japan), poverty and disparity between urban and rural populations (Malaysia, Latvia), prison conditions (Nicaragua, Holy See), training of police on human rights (United States), and the rights of persons with disabilities and older persons (Ukraine).

## **Adoption of report**

The UPR report on Chile was adopted by the Working Group at midday on 12 May 2009. The delegation of Chile stated that it had accepted ‘virtually all recommendations’, 71 of 77, and that it was determined to implement these. It explained that it saw the UPR as an ongoing exercise and would continue its engagement with all relevant parties in Chile.

Chile identified four recommendations that were pending consideration by the Government. These concerned ratification of the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, and the recommendation to protect the rights of the family as being the natural group of society based on a stable relationship between a man and a woman, based on Bangladesh’s incorrect reading of Article 16 of the *Universal Declaration of Human Rights*, investigating cases of arrest and deportation of journalists reporting on Mapuche peoples, and the amendment of counter-terrorism legislation to ensure that it is not misused against indigenous peoples.

Chile rejected only two recommendations, both relating to reviewing decriminalisation of abortion in all cases.

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