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## 人权理事会

## 第五十九届会议

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议程项目 3

促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

## 对智利的访问

## 法官和律师独立性特别报告员玛格丽特·萨特思韦特的报告\*\*

## 概要

法官和律师独立性特别报告员玛格丽特·萨特思韦特于 2024 年 7 月 29 日至 8 月 9 日访问了智利。

特别报告员肯定智利在克服军事独裁遗留问题以及建立以强有力机构著称的司法体系方面取得的诸多成就。但特别报告员也呼吁智利采取措施，处理关于在最高法院任命中以权谋私的指称，并加入关于有必要将最高法院的行政和司法职能分开的广泛共识。

特别报告员欢迎关于限制最高法院和上诉法院参与初审法院和保障法院法官的任命、评估和纪律处分的改革提议。应将相关权力赋予司法系统之外的机构，智利应决定该机构的构成。

特别报告员欢迎总检察长发言强调对侵犯人权行为和腐败指称的起诉是体制层面的工作重点。特别报告员告诫称，虽然智利面临着复杂的新挑战，但应避免偏向于惩罚性办法，应采用基于人权的办法。检察官们强调，在应对有组织犯罪方面，需要更好的保护和更多的国际合作。

特别报告员了解到，在获得优质法律服务方面普遍存在困难，有报告称法律费用高昂、缺乏对律师不当职业行为的问责。她建议制定对所有律师适用的道德框架，并建议智利考虑恢复关于加入自主独立的律师协会的要求。

\* 因技术原因于 2025 年 6 月 23 日重新印发。

\*\* 本报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文和西班牙文分发。



特别报告员指出，需要改革法律援助提供方面的制度。她关切诉诸司法的机会，特别是移民、男女同性恋、双性恋和跨性别者以及土著人民诉诸司法的机会。她还关注人权案件的拖延如何影响问责。她呼吁取消阿劳卡尼亚大区和比奥比奥大区的非常状态。她敦促智利维护土著人民的土地权，并在《宪法》中正式承认土著人民。

在报告的最后，特别报告员提出多项建议。

## 附件

# 法官和律师独立性特别报告员玛格丽特·萨特思韦特关于对智利的访问的报告

## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, visited Chile from 29 July to 9 August 2024.
2. During her visit, the Special Rapporteur met with representatives of the Ministry of Foreign Affairs, the President of the Chamber of Deputies and the President of the Senate, the Minister of Justice and Human Rights and staff of the Office of the Minister and Secretary-General of the Office of the President. She also met with the Attorney General and the regional prosecutor of Antofagasta; the National Public Defender in Santiago and the regional public defenders of Antofagasta and Temuco; and representatives of three legal assistance agencies, in Santiago, Temuco and Antofagasta. She also met with the justices of the Constitutional Court and the Supreme Court and with judges of the appeal courts of Santiago, Temuco and Antofagasta. She met with representatives of the following entities: the State Defence Council, the Judicial Academy, the military tribunals, the Administrative Department of the Judiciary, the first environmental tribunal and the Presidential Commission for Peace and Understanding. She also met with judges and prosecutors in the capital and beyond. She visited the Centro de Justicia courthouse complex in Santiago and a local police court, also in Santiago, but was unable to visit the civil courts.
3. The Special Rapporteur met with a wide range of civil society representatives, including of non-governmental organizations, the bar association and associations of judges, users of the court system and academics.
4. The Special Rapporteur reiterates her gratitude to the authorities of Chile for the invitation and for their excellent support in the preparation of the visit, and to the Resident Coordinator and the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights for the exceptional support provided before, during and after the visit. She expresses her appreciation to all the judges, prosecutors, lawyers, academics and civil society representatives who took the time to share their expertise and opinions with her.

## II. Legal and institutional framework

### A. International obligations

5. The fundamental right of everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law is set out in article 14 of the International Covenant on Civil and Political Rights and in article 8 of the American Convention on Human Rights, which Chile ratified on 10 February 1972 and on 10 August 1990, respectively.
6. The Constitution of Chile of 1980, which has been amended over 60 times, was promulgated during General Augusto Pinochet's military regime. It enshrines human rights protections in chapter III, article 19. Article 5 mandates that the State respect and promote the rights guaranteed by the Constitution, including "the international treaties ratified by Chile that are in force"; article 54 grants the National Congress the exclusive power to approve or reject international treaties submitted to it by the President of Chile before their ratification.
7. The Constitution guarantees, in article 19, equality before the law and due process protections, including the rights to legal defence, legal advice and counsel to those who are

unable to afford them, the presumption of innocence, protection against arbitrary arrest and detention, and judicial review; and, in article 21, the right to habeas corpus.

## **B. National framework for the justice system**

8. The Chilean judiciary operates within a legal framework established by the Constitution and Act No. 7421,<sup>1</sup> the Courts Organization Code.

9. Chapter VI, article 76 (3), of the Constitution provides for the independence of the judicial branch and makes clear that it can “issue direct orders to the security forces or exercise the means of action at their disposal”. The Constitution establishes, in article 76 (4), that the authorities must comply with injunctions without further formality or delay.

10. According to article 77 (2), the constitutional organic act governing the organization and powers of the courts may only be modified after prior consultation with the Supreme Court, in accordance with the provisions of the respective organic act. The 1943 Courts Organization Code governs the organization, jurisdiction and functioning of the courts within the judicial branch and defines the status and functions of auxiliary judicial personnel. Article 4 of the Code reiterates the principle of judicial independence, which is further underscored in its article 12.

11. Chile is divided into 17 jurisdictional territories, each overseen by a court of appeal, with 465 subordinate courts operating throughout the national territory under their supervision.

12. At the highest level stands the Supreme Court, which, in accordance with article 82 of the Constitution, exercises executive, correctional and economic supervision over all the courts within the judicial branch. Its supervisory powers extend to those courts that are not part of its administrative structure, including the Competition Court, the Public Procurement Court, the environmental tribunals, the Industrial Property Court and the local police courts.

13. The Constitutional Court is a judicial body composed as a collegiate court, autonomous and independent of any other authority or power, the main function of which is to exercise control over the constitutionality of laws. Of the Court’s 10 justices, 3 are appointed by the President, 4 are elected by the National Congress and 3 are chosen by the Supreme Court. The Constitutional Court exercises jurisdiction only upon request by authorized parties or ex officio, in accordance with the Constitution and organic law. Its rulings are final and are not subject to appeal.

14. The Ministry of Justice and Human Rights serves as a liaison between the executive and judicial branches; advises the President of Chile on the appointment of judges, judicial officers and other judicial employees; and ensures the organization and functioning of the courts. It oversees the establishment of sector policies and programmes, particularly regarding the legal defence of the State’s interests, the treatment and rehabilitation of incarcerated persons, and critical analysis of constitutional standards and legislation in the areas of civil, criminal, commercial and procedural law, proposing any needed reforms to the President.

## **III. Positive developments**

15. The Special Rapporteur recognizes that Chile has built a justice system that is recognized for its strong institutions. This success owes much to the country’s efforts to overcome the legacy of the military dictatorship by establishing a sound institutional and legal framework.

16. She commends the notable level of judicial independence that judges reported in their day-to-day work, with minimal political interference.

<sup>1</sup> See <https://www.bcn.cl/leychile/navegar?idNorma=25563> (in Spanish).

## **A. Modernization of the justice system and institutional strengthening**

17. Chile has substantially modernized its criminal justice infrastructure. During her visit to the Centro de Justicia, the Special Rapporteur learned that Chile had digitized its judicial systems, enabling remote access to information and the holding of virtual proceedings. She notes that these advancements have enabled access for the wider public, and she welcomes the efforts made to reform the Criminal Code.

18. The Special Rapporteur welcomes the creation, in 2016, of the Technical Secretariat for Gender Equality and Non-Discrimination in the Supreme Court and its mission to promote gender equality and non-discrimination in the Chilean judiciary.

19. The Special Rapporteur was encouraged by the progress made by the Presidential Commission for Peace and Understanding set up in 2022. Its broad composition and consensus-based approach is commendable.

20. The Special Rapporteur commends the State Defence Council, a collegiate body responsible for the judicial defence of State interests, for its composition and way of working. The Council has 12 counsellors who are appointed by the President and have security of tenure until they reach 75 years of age. The Special Rapporteur appreciates the independence of this body and the constructive collaboration of these eminent persons with their varied perspectives.

## **B. Successful institutional models**

### **1. Public Criminal Defender Service**

21. The Special Rapporteur was impressed by the professionalism demonstrated by the Public Criminal Defender Service and by the commitment of public defenders to fulfilling their mission to ensure quality legal defence without discrimination. Created in 2001 by Act No. 19.718 as a legal entity with its own assets, the Service is subject to the supervision of the President through the Ministry of Justice and Human Rights. Its public criminal defence services are provided both by public defenders on staff and private defenders selected through public procurement. Its annual budget is prepared by the National Public Defender, who consults with the Tenders Council on the amount of funds to be allocated for external contracting. This Council includes the Minister of Justice, the Minister of Finance, the Minister of Social Development and two academics.

22. The Public Criminal Defender Service has earned well-deserved international and national prestige for its outstanding criminal legal aid. This recognition is grounded in its high-quality work, supported by rigorous, region-specific training, attractive salaries and comprehensive internal and external audits that ensure an objective assessment of its services. The institution's specialized offerings are commendable, and its provision of free criminal defence to a significant portion of the population that requires a criminal defence is remarkable. Its specialized units include intercultural facilitators for Mapuche communities in La Araucanía and a migrants' unit in Antofagasta. In addition, since 2023, the Service has been implementing a specialized gender-sensitive approach.

23. The National Public Defender is appointed for three years by the President through a competitive examination held in accordance with the system for senior public servants, a merit-based selection procedure that is welcomed by the Special Rapporteur.

24. Despite its strong institutional framework, the lack of full autonomy of the Public Criminal Defender Service, since it operates under the Ministry of Justice and Human Rights, poses potential vulnerabilities. The reliance on a public procurement funding system exposes the Service to budgetary fluctuations, potentially affecting its long-term planning. The Special Rapporteur heard that the lack of autonomy could also have an impact on the trust of some of its clients.

## 2. Judicial Academy

25. Chile has an effective resource in its Judicial Academy, which enables meritorious judicial candidates to fully dedicate themselves to preparing for this important career.

26. Created in 1994 by Act No. 19.346, the Judicial Academy is a public corporation responsible for the selection and training of future members of the judiciary and the provision of ongoing education to judges. It offers a full-time initial training programme for aspiring judges, a qualification programme and a further education programme for further specialization.<sup>2</sup> It also offers additional programmes, such as on current legal topics and practical court management skills.

27. The Special Rapporteur heard that the Academy's impact was limited by vacancy-filling and other appointment practices whereby some temporary posts are filled with candidates who have not graduated from its initial programme, leaving some Academy graduates waiting several years for their first appointment. In addition, many judges noted the need for further specialization, particularly in areas such as financial crimes. The Academy appears to be best placed to respond to those needs.

## IV. Challenges to an independent and impartial justice system

28. Many counterparts highlighted the timeliness of the visit, as public attention was focused on the justice system due to extensive media coverage of what is known as the "Hermosilla" case. In this case, a well-known lawyer was under investigation for an unrelated matter but examination of his instant messages had revealed numerous instances of presumed influence peddling in appointments to the Supreme Court and exchanges of information on proceedings at the Supreme Court with candidates he had supported. Additional media coverage, such as on the swift release of a parliamentarian's father who was accused of sexual abuse, reinforced the widespread perception that there were two kinds of justice in Chile: one for the rich and one for the poor. Although in the latter case the criminal justice system sentenced the person accused to prison time, both cases fuelled public debate on judicial integrity and the broader need for systemic reforms.

### A. Judiciary

#### 1. Centralized powers of apex courts

29. According to article 78 of the Constitution, the Supreme Court is a collegiate court composed of 21 justices, 1 of whom is appointed as President by his or her peers for a two-year term. Of these 21 justices, 16 come from the judicial service and 5 are lawyers who are not involved in the administration of justice, must have been licensed for at least 15 years, have a distinguished record in legal practice or academia and have fulfilled the other requirements set out in the relevant constitutional organic act.

30. Article 82 of the Constitution grants the Supreme Court the executive, correctional and economic supervision of all the courts of the nation.<sup>3</sup> It carries out this task with the support of the Administrative Department of the Judiciary, which administers the human, physical, financial and technological resources of the judicial branch. The Administrative Department is managed by the High Council, which is composed of the President of the Supreme Court and four justices elected by their peers for a two-year term. The Special Rapporteur was impressed by the professional management of the Administrative Department and hopes that it can be considered a resource in any effort to restructure the judiciary.

31. The 17 courts of appeal in Chile oversee the civil courts, the guarantees courts and the criminal courts, as well as the family courts, labour courts, courts specializing in labour and social security issues and, in times of peace, the military courts. The courts of appeal operate

<sup>2</sup> See <https://academiajudicial.cl/english/the-academy/who-we-are/>.

<sup>3</sup> With the exception of the Constitutional Court, the Electoral Commission and the regional electoral courts.

under the supervision of the Supreme Court. Beyond their adjudicative activities, they play a key role in the selection, appointment and evaluation of judges within their jurisdiction. Article 78 of the Constitution mandates that court of appeal judges are to be appointed by the President of Chile, on the basis of the proposal of the Supreme Court. In turn, article 75 of the Constitution establishes that lower court judges are to be appointed by the President on the basis of the proposal of the relevant courts of appeal.

32. The Special Rapporteur notes, and joins, the broad consensus across all levels of the judiciary on the need to separate the administrative and jurisdictional functions of the apex courts, especially those of the Supreme Court. The dual role of the Supreme Court justices, who must balance adjudicative with administrative and disciplinary duties, may overburden the justices and compromise their ability to focus on their judicial duties. This concentration of powers may infringe on judges' internal independence, as the apex courts review lower courts' rulings and oversee their human resources, directly managing judicial careers.

33. The Special Rapporteur highlights that the Supreme Court itself has recognized the need for this reform since at least 2014 and that two attempts to reform the Constitution included restructuring plans. The Special Rapporteur welcomes the reform proposals made by the judiciary and academia to limit the involvement of the Court and the courts of appeal in appointing, evaluating and disciplining judges in the lower courts. These powers must be vested in an organ outside the judicial hierarchy, the specific composition of which it is for Chile to determine.

## **2. Judicial appointments**

### **(a) Lack of transparency in the appointments of Supreme Court justices**

34. Article 78 of the Constitution specifies that the justices and judicial prosecutors of the Supreme Court are to be appointed by the President of Chile from a shortlist of five persons proposed by the Court, with the agreement of the Senate. The Senate elects the candidates by a two-thirds majority of its current members in a session specially convened for this purpose. If the Senate does not approve the President's proposal, the Court must complete the shortlist by proposing a new candidate to replace the one rejected, with the procedure being repeated until an appointment is approved. The Special Rapporteur believes that this procedure requires urgent review.

35. While concerns over judicial impropriety are not new, the disclosure of instant messages between Supreme Court justices and lawyer Luis Hermosilla showed that he had used his connections to push certain judicial candidates forward, thus revealing scope for undue influence in the Court's appointment process.

36. These revelations triggered criminal investigations into influence peddling, disciplinary proceedings by the Supreme Court and constitutional impeachment charges. One of the justices was ultimately removed in a unanimous vote by the Court. The Special Rapporteur supports the application of accountability measures in the light of the evidence and highlights the importance of transparency in the removal of judges. Each case needs to be considered on its own merits and the reasons for impeachment or removal should be clearly communicated to the public to restore confidence in the judiciary.

37. The Special Rapporteur heard from many sectors that there is value in involving all three branches of power in high-level judicial appointments; should such involvement be retained, it would be important to eliminate vulnerabilities that enable influence peddling to occur. The Special Rapporteur strongly recommends that the appointment procedures be reformed by integrating the system for senior public servants into the preparation of candidate lists as a measure to safeguard the procedure from political influence. As has been noted by the European Commission for Democracy through Law, procedures should also ensure that the merits and qualifications of each candidate are made available to the parliament and to the general public to the furthest extent possible,<sup>4</sup> as this may facilitate merit-based appointments. The Special Rapporteur also recommends adopting the practice of the

<sup>4</sup> *Compilation of Venice Commission Opinions and Reports concerning Judges* (CDL-PI (2025)003), p. 16.

Constitutional Court of appointing alternates in order to address vacancies in the Supreme Court and avoid reliance on the judicial prosecutor or the *abogado integrante* (see paras. 43–45 below) to achieve a quorum in chambers.

**(b) Lack of transparency in appointment processes for lower courts**

38. Article 78 of the Constitution grants the Supreme Court and the courts of appeal the authority to recommend the appointment of judges. Judicial appointment processes are regulated under title X, articles 279–291, of the Courts Organization Code. To fill a vacancy, the respective court calls a competitive examination. The relevant court of appeal then compiles a shortlist of three qualified candidates during a plenary session in which each member can vote for two candidates. The final list is submitted to the President, who appoints one candidate.

39. There are no objective standards for selection and appointment. Judges reported that such decisions often lacked transparency, with unclear criteria and reasoning for the final candidate lists. Many expressed the view that, under the current system, influence and contacts were decisive for career advancement, thus incentivizing judges to seek favour with those involved in the process to improve their chances of selection.

40. The Special Rapporteur highlights the need for a merit-based appointment system with clear, objective and transparent criteria concerning ability, training and integrity. This would help to dispel concerns about favouritism in promotions.

41. The Special Rapporteur was surprised to learn that some temporary vacancies were occasionally filled by individuals without judicial training, despite the availability of qualified Judicial Academy graduates. This practice risks bypassing standardized training and could be especially concerning in cases of temporary appointments to the courts of appeal, as such positions can enhance promotion prospects. The Special Rapporteur calls for the establishment of an objective system that prioritizes graduates from the Judicial Academy so as to ensure a transparent, merit-based process to fill temporary vacancies.

42. Lastly, the Special Rapporteur was concerned to learn that specialized guarantees judges are being temporarily reassigned to courts outside their area of expertise due to judicial vacancies and absences.

**(c) *Abogados integrantes***

43. The Special Rapporteur believes that the institution of the *abogado integrante*, originally introduced to address the need for judicial substitutes, has become obsolete. Under title VIII of the Courts Organization Code, *abogados integrantes* are lawyers who participate in cases when a court of appeal or the Supreme Court lacks the members necessary to hear cases due to absence or ineligibility. The Special Rapporteur believes that the appointment processes lack transparency; currently, the President selects *abogados integrantes* from a shortlist of professionals that is prepared by the Supreme Court and the courts of appeal. No formal tests, interviews or merit-based assessments are conducted. Placement on this roster is for a period of three years for the Supreme Court and one year for the courts of appeal.

44. The Special Rapporteur finds that the lack of established, transparent, merit-based criteria, combined with the perception that these *abogados integrantes* may use their judicial role to benefit their clients, undermines public trust. As a result, the position opens the door to distrust, while providing only some small relief and sporadic expertise to an overloaded judiciary.

45. She notes complaints from litigants, who said they felt that the *abogados integrantes* system compromised due process and the principle of impartiality. She also notes that the Constitutional Court eliminated this figure in 2009, replacing it with substitute justices.

**(d) Registrars and notaries**

46. The Special Rapporteur urges reform of the appointment processes for registrars and notaries; their appointment by the Administrative Department of the Judiciary and the courts of appeal, through a process lacking in transparent criteria, combined with their lifetime tenure and exceptionally high salaries, may create improper incentives. The Special



Rapporteur stresses the urgent need to remove discretion in making these appointments and establish a transparent, merit-based and independently supervised selection process.

### 3. Evaluation and discipline

47. The Special Rapporteur heard that the judiciary lacked an objective evaluation system to adequately assess judges' skills and capacities. While all judges receive scores, the overwhelming majority have the same grade, depriving those involved of a potentially valuable criterion for differentiating between candidates for promotion.

48. The Special Rapporteur acknowledged the efforts of the Supreme Court to standardize evaluations through lists and a scoring system. However, judges raised concerns about the objectivity of the process, citing instances where evaluations had allegedly been based almost entirely on the number of resolutions issued.

49. The Special Rapporteur fears that reliance on hierarchical superiors for evaluation could discourage substantive dissent and push judges seeking promotion towards self-censorship, especially in emblematic or controversial cases.

50. The Special Rapporteur recalls the warning of the European Commission for Democracy through Law that the evaluation of court and justice systems is generally seen as a good means of implementing managerial or political decisions aimed at improving these systems, whereas the evaluation of the performance of individual judges is often seen as infringing judges' independence. Although this danger may well exist, it should not prevent an evaluation from taking place.<sup>5</sup> She encourages Chile to set up an independent evaluation system, with clear criteria and a grading system, led by judges but operating outside the judicial hierarchy.

51. Regarding disciplinary sanctions, the courts of appeal and the Supreme Court are in charge of both investigating and punishing misconduct and reviewing case resolutions. The Special Rapporteur is of the view that this dual role may create harmful incentives for judicial decision-making, similar to the concerns raised about the evaluation process.

52. The Special Rapporteur emphasizes that disciplinary decisions leading to suspension or removal from judicial office must be subject to independent review, as guaranteed by international<sup>6</sup> and regional<sup>7</sup> standards. States have a duty to establish grounds for appeal<sup>8</sup> and to establish clear grounds for the removal of judges from office and adequate procedures for this purpose.<sup>9</sup>

### 4. Code of ethics

53. The Special Rapporteur was surprised to hear that there is no Chilean code of ethics for the judiciary, despite the Supreme Court norms on judicial ethics.<sup>10</sup> She welcomes the fact that judges are encouraged to rely on the Ibero-American Code of Judicial Ethics but highlights its non-binding nature and the importance of clearly defining unethical conduct in the national context. Such a code would allow for self-regulation, discourage specific actions, provide guidance for judges in their day-to-day work and serve as an objective basis for disciplinary procedures.

54. Many judges strongly support having a binding code of ethics. The Special Rapporteur was pleased to hear that the Supreme Court had also recognized this need, in addition to having a public ledger of meetings and periodic declarations of assets, measures that are already in place to address concerns of improper influence. She encourages the Court to

<sup>5</sup> Ibid., p. 28.

<sup>6</sup> Basic Principles on the Independence of the Judiciary, principle 20.

<sup>7</sup> Inter-American Court of Human Rights, *Constitutional Court v. Peru (Aguirre Roca, Rey Terry and Revoredo Marsano v. Peru)*, Judgment, 31 January 2001, para. 70.

<sup>8</sup> Basic Principles on the Independence of the Judiciary, principle 20. See also Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas* (December 2013), para. 235.

<sup>9</sup> Basic Principles on the Independence of the Judiciary, principle 19.

<sup>10</sup> Act No. 262-2007 of 14 December 2007.

ensure that the process of drafting a code is inclusive, allowing for input from judges at all levels, and that the resulting rules are applied uniformly across the judiciary, including at the highest levels.

55. The Special Rapporteur found that the provisions for recusal required some adjustment.<sup>11</sup> Recusal is the legal process by which a judge withdraws from participating in a case due to potential bias, conflict of interest or appearance of impropriety. The Special Rapporteur notes with concern that, in Chile, records of recusals are not publicly available.

## 5. Working conditions

56. Judges at all levels highlighted heavy workloads, delays in justice and the impact of both of those aspects on those engaging with the judicial system. Judges emphasized the urgent need for infrastructure improvements and better resource distribution nationwide. They also spoke about the insufficient nature of current retirement schemes, which only provide for 10 per cent of the salary received at the time of retirement.

57. Concerns about the security and protection of judges, in particular with rising numbers of cases of organized crime, were raised. The Investigative Police has already carried out studies that could serve as a basis for the creation of an effective protection scheme.

58. Many judges are dismayed by the level of public distrust revealed in recent surveys. In the Organisation for Economic Co-operation and Development study *The Drivers of Trust in Public Institutions in Chile*, it was revealed that only 25 per cent of respondents reported high or moderately high trust in justice institutions, which is 29 percentage points below the Organisation for Economic Co-operation and Development average (54 per cent).<sup>12</sup>

59. Judges in rural areas in particular need stronger support. The Special Rapporteur heard that such judges must cover all adjudication tasks, as well as administrative ones, and use their own cars for travel. She also heard that some courtrooms were not up to standard, despite investments in the very modern Centro de Justicia. For example, some labour courts reported lacking heating or electricity in courtrooms, while, in Colina, a fire had forced the court to relocate to inadequate municipal facilities, where it had remained for over a year.

## 6. Financial autonomy

60. The Special Rapporteur notes with concern that the judiciary must seek approval from the Ministry of Finance before presenting its yearly budget to the National Congress. She also notes that the judiciary's budget remains below 1 per cent of the country's total public spending and that judicial salaries have been stagnant for the past 14 years, despite significant increases in the cost of living. She notes with particular concern that the national budget adopted for 2025 reduced the financial resources allocated to the judiciary.<sup>13</sup>

61. It has repeatedly been emphasized by previous mandate holders that judicial budget management should be entrusted directly to the judiciary or to an independent body such as a judicial council.<sup>14</sup> Similarly, the European Commission for Democracy through Law has stressed that decisions on the allocation of funding to courts should be taken with the strictest respect for the principle of judicial independence and has recommended that the judiciary be given the opportunity to express its views on the draft budget before the parliament, possibly through the judicial council.<sup>15</sup>

62. The administrative and support staff of the judiciary play a crucial role; they should be included in discussions on judicial reform and strengthening.

<sup>11</sup> Courts Organization Code, title VII, chap. 11.

<sup>12</sup> See <https://www.hacienda.cl/noticias-y-eventos/noticias/ministerio-de-hacienda-y-ocde-presentan-primer-estudio-sobre-confianza-en> (in Spanish).

<sup>13</sup> See <https://www.pjud.cl/prensa-y-comunicaciones/noticias-del-poder-judicial/120136> (in Spanish).

<sup>14</sup> A/HRC/11/41, paras. 43 and 101.

<sup>15</sup> European Commission for Democracy through Law, "Draft report on the independence of the judicial system: part I – the Independence of judges" (5 March 2010), paras. 54 and 80 (9).

## 7. Other tribunals

63. The Special Rapporteur also observed challenges in other tribunals that are not part of the judiciary but are involved in the administration of justice, as outlined below.

### (a) Local police courts

64. Many first interactions with the justice system in Chile occur through the local police courts, which operate outside the formal judiciary. Judicial modernization programmes, including the implementation of a unified digital support and electronic processing system and increases in the levels of transparency in management, have not reached this level. These courts have no judicial academy or nationally standardized protocols for public interaction.

65. Appointments to positions in these courts do not require specific legal training and face significant resource constraints. The judges in these courts are appointed by the mayor from a shortlist drawn up by the relevant court of appeal. They are independent of municipal authority in the performance of their duties; however, their funding and premises rely on the municipal authority.

66. Given the jurisdiction of these courts over infractions that touch on the everyday lives of Chileans, such as housing and consumer issues, the Special Rapporteur calls for better support for and oversight of them. She also highlights difficulties in ensuring access to adequate legal representation in these courts, especially in cases involving banking or consumer disputes.

### (b) Military tribunals

67. Military tribunals have jurisdiction over crimes under the Code of Military Justice and the Aeronautic Code, including offences committed by military personnel in the course of duty. The Special Rapporteur was surprised to learn that the governing legislation is 150 years old, with past attempts at reform having failed.

68. The so-called “Conscripts” case has highlighted issues with military jurisdiction. On 27 April 2024, a soldier died during a training exercise in the Arica y Parinacota Region and 45 others experienced health complications, 7 of whom were hospitalized. Initially, the Judicial Prosecutor’s Office of the Supreme Court suggested that the investigation should remain in the hands of military justice bodies. However, an injunction filed by the National Institute of Human Rights requested that the case be kept in the ordinary courts, citing instances of cruel and inhumane treatment during military training and emphasizing the need for independent and impartial justice.<sup>16</sup> In June 2024, the Supreme Court ruled that the investigation must remain under ordinary jurisdiction.

69. The Special Rapporteur recalls the 2005 judgment of the Inter-American Court of Human Rights in the case *Palamara-Iribarne v. Chile*, by which the State was ordered to limit the scope of military justice “only to crimes committed by military personnel in active service”. The Court also concluded that “the State must guarantee due process in the military criminal jurisdiction, and judicial protection regarding the actions of military authorities”.<sup>17</sup>

70. The Special Rapporteur endorses the decision of the Inter-American Court of Human Rights and highlights the urgent need to clarify the scope of jurisdiction of the military tribunals and to ensure the due process rights of those accused under military jurisdiction.

### (c) Environmental tribunals

71. The Special Rapporteur welcomes the establishment of three environmental tribunals – one each in Santiago, Antofagasta and Valdivia – the function of which is to resolve environmental disputes.

<sup>16</sup> See <https://www.indh.cl/indh-sobre-caso-conscriptos-aqui-hubo-derechamente-una-violacion-de-derechos-humanos/> (in Spanish).

<sup>17</sup> Inter-American Court of Human Rights, *Palamara-Iribarne v. Chile*, Judgment, 22 November 2005, para. 269 (14) and (15).

72. Each tribunal is composed of three judges and two alternates appointed by the President, with Senate approval. Candidates are selected by the Supreme Court from a pool of candidates who apply through the system of senior public servants. Two of the judges must hold a law degree, while the third must be a science graduate specialized in environmental matters and have at least 10 years of professional practice.

73. Appointment procedures for these tribunals are less susceptible to allegations of influence peddling. However, the Senate has delayed appointments in some cases, leaving the Antofagasta tribunal without two judges.

74. The Special Rapporteur notes that the limited jurisdiction of the environmental tribunals could hinder their ability to address key environmental issues. She stresses the need for measures to be taken to strengthen the tribunals' effectiveness, in particular given the number of cases being brought by Indigenous communities. To ensure that the principle of equality of arms is duly observed and address the high costs that may be incurred when litigating before these specialized courts, it may be wise to consider shifting the burden of proof in appropriate cases, for example by ensuring that wealthy corporations bear the burden when facing communities that do not have extensive scientific support. Training should be offered to lawyers and communities on the tribunals' complex jurisdiction. Lastly, the Special Rapporteur notes issues concerning the appellate courts' lack of environmental expertise, and she recommends that Chile consider modalities to invite experts to court of appeal proceedings, as is done under military jurisdiction, where a military prosecutor joins the appeals chamber.

75. The Special Rapporteur welcomes the national plan to implement the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement),<sup>18</sup> which includes a strategic line on access to justice in environmental matters.

## B. Prosecutors

76. Chapter VII of the Constitution and the Organic Act on the Public Prosecution Service establish the legal framework for the Attorney General's Office. As an autonomous body, its function is to direct the investigation of crimes, prosecute accused individuals, as appropriate, and provide protection to victims and witnesses. The Public Prosecution Service operates independently of the three branches of government.

77. According to article 85 of the Constitution, the Attorney General is to be appointed by the President from a shortlist of five candidates proposed by the Supreme Court, with the agreement of two thirds of the Senate, which meets in a session specially convened for this purpose. If the Senate does not approve the proposal of the President, the Court is to complete the shortlist by proposing a new candidate to replace the one rejected, with the procedure being repeated until an appointment is approved. Deputy prosecutors are appointed by the Attorney General on the basis of a shortlist of three candidates proposed by the relevant regional public prosecutor; the shortlist is drawn up through a public competitive process.

78. The Special Rapporteur welcomes the public examination involved in the appointment of regional prosecutors, as it contributes to public trust and ensures a merit-based selection.

79. She was concerned to hear about cases of prosecutors who have faced harassment on social media, including from elected officials or political party representatives, due to their work in investigating grave human rights violations or cases of excessive use of force during the social unrest of 2019–2020. She was concerned to hear that they had been accused of having political affiliations, had been harassed in their homes or had faced calls for their removal.

80. The Special Rapporteur was also concerned to hear about online and mainstream media coverage of ongoing cases that presumed the guilt of alleged perpetrators or failed to

<sup>18</sup> See <https://mma.gob.cl/wp-content/uploads/2024/04/Plan-Nacional-de-implementacion-participativa-del-Acuerdo-de-Escazu-Chile-2024-2030.pdf> (in Spanish).

explain the legal standards involved. In the context of heightened public concern about security, such coverage may put undue pressure on judges and prosecutors and weaken public trust in the administration of justice. International standards provide that justice operators should not be attacked or threatened for exercising their functions.

81. The Special Rapporteur welcomes the Attorney General's statement emphasizing that the prosecution of human rights violations and of allegations of corruption is an institutional commitment and not one left to brave individual prosecutors. The Special Rapporteur notes the great value of setting the tone from the top in this regard and recalls that the impartiality of the prosecution service is a guarantee to all individuals.

82. The Special Rapporteur takes note of the Attorney General's authority under article 19 of the Organic Act on the Public Prosecution Service to transfer cases involving criminal acts when warranted by their seriousness or investigative complexity. She cautions, however, that such transfers, particularly in emblematic cases or those with high media coverage, may fuel negative public perceptions.

83. Although it is true that Chile is facing complex new challenges, responses to organized crime and related criminal phenomena should be evidence-based and not reactive. The Special Rapporteur warns those shaping criminal justice policy against favouring a punitive approach over a human rights-based one in order to avoid placing further pressure on the justice system. She is concerned, for example, about guidance to prosecutors to seek pretrial detention when perpetrators fall into certain social categories. Together with the definition of new crimes and the establishment of mandatory penalties, these policies have apparently led to overcrowding in prisons and increased the vulnerability of certain groups, including migrants and Indigenous Peoples.

84. Prosecutors emphasized the need for better protection and greater international cooperation to respond to organized crime, rather than more punitive legislation. In particular, they stressed the importance of having effective tools, including training on complex financial transactions, the ability to freeze assets and access to adequate technological resources for investigations and prosecutions.

85. The Special Rapporteur welcomes reports indicating that prosecutors can conduct investigations independently, without supervisors' instructions. However, she is concerned about the lack of clear legal procedures on disciplinary actions, warning that this ambiguity could leave prosecutors vulnerable to undue pressure or interference.

## **C. Lawyers**

86. The free exercise of the legal profession contributes to ensuring access to justice, oversight of State power and protection of due process guarantees. International standards require States to guarantee that those who practise law can do so free from intimidation, obstacles, harassment or interference and that accused persons have adequate time, access to facilities and unrestricted ability to communicate with counsel of their choice in order to prepare their defence.

87. In Chile, the title of lawyer is awarded in a public hearing by the Supreme Court once the candidate has met the requirements established by articles 523 and 526 of the Courts Organization Code. This includes holding a law degree and having completed six months of professional practice in a legal assistance agency.

88. The Special Rapporteur was surprised to learn of widespread difficulties in gaining access to quality legal services, reports of legal costs so high that even middle-class Chileans could not afford a lawyer and a lack of accountability for professional misconduct.

### **1. Bar association and lack of an ethics code**

89. Bar association membership remains non-mandatory in Chile, a policy rooted in the restrictions on freedom of association of the Pinochet regime and its suppression of trade unions. Since the code of ethics for lawyers applies only to members of the bar, the Special

Rapporteur found near-unanimous agreement that existing measures are insufficient to safeguard the legal profession's integrity.

90. Notably, no profession-wide standards exist to discourage or prevent unethical behaviour, nor are there any procedures to suspend lawyers who commit serious ethical or professional violations. Both judges and lawyers acknowledged that as a serious shortcoming. Several judges noted the disproportionately negative impact that it can have on vulnerable and marginalized populations.

91. The Special Rapporteur was alarmed by the lack of effective avenues for clients seeking to address lawyers' misconduct. For instance, in criminal proceedings, a judge may declare the "abandonment" of a case by a lawyer who is not carrying out his or her professional duties but, in civil proceedings, the only available remedy for the client is to file a lawsuit, which would be financially difficult for many to pursue.

92. Many actors identified the lack of mandatory ethics courses in law schools and the absence of a strong ethical framework applicable to all lawyers as major concerns affecting the quality of legal services. The Special Rapporteur calls upon law schools to consider requiring that all students receive training on ethics.

93. The Special Rapporteur encourages a collective discussion on the ethical framework applicable to all lawyers and on the composition, governance and functions of bar associations. She recommends that Chile look favourably on reinstating the obligation on lawyers to join an autonomous and independent bar association in order to strengthen professional standards and accountability, allowing the profession to monitor itself. She notes the urgent need to provide that bar association with the tools necessary to respond to allegations of unethical behaviour.

## **2. Legal assistance and the legal assistance agencies**

94. The four legal assistance agencies are mandated to provide supervised work placements for law students who have finished their studies and law graduates, legal consultations for all and legal representation to those who cannot otherwise afford it. Funded by the Ministry of Justice and Human Rights and by the municipalities, each agency includes at least one lawyer, a social worker and law graduates.

95. The Special Rapporteur commends the legal assistance agencies' work. However, their limited financial and human resources pose significant challenges, and fairness issues arise with regard to the use of unpaid law students and graduates. No national limits exist on the number of students and graduates each lawyer may supervise; combined with the excessive workload and high turnover, this disrupts continuity and expertise and risks compromising legal quality. Requiring all law students and graduates to work for free for an extended period risks having a more severe impact on those who have the fewest means, erecting additional barriers to entry to the profession.

96. In addition to staffing shortages, the uneven distribution of specialized legal services across regions affects the effectiveness of the legal assistance agencies. Only the agency in the Metropolitan Region has a human rights unit. New legislation expanding the responsibilities of these agencies – without adequate resources – has exacerbated these issues.

97. The Special Rapporteur welcomes the adoption by the Chamber of Deputies of the bill introduced in November 2023 to create a national service for access to justice, with the aim of enhancing and professionalizing legal assistance services. It also seeks to address the financial constraints of the legal assistance agencies, thereby ensuring fair remuneration and full-time employment for legal professionals. She hopes that the Senate will approve the bill and that, once adopted, it will be promptly implemented.

## **D. Accessibility of courts and tribunals**

### **1. Legal costs**

98. Many Chileans cannot afford legal services due to high litigation costs, attorneys' fees and lengthy court proceedings. The Special Rapporteur notes that free legal representation is

often contingent on meeting the strict eligibility criteria of the *privilegio de pobreza* (poverty privilege).<sup>19</sup> This “privilege”, granted by judicial decision or through evaluation by a social worker from a legal assistance agency, allows beneficiaries to receive legal services free of charge.

99. The Courts Organization Code provides, in its article 600, that individuals represented by the legal assistance agencies can also benefit from this exemption. However, many middle-class individuals who do not meet the strict poverty criteria are left without viable legal options, as private legal services remain prohibitively expensive. The Special Rapporteur highlights the need for structural reforms to bridge this accessibility gap.

## 2. Overdue civil procedure reform

100. The Special Rapporteur notes widespread agreement among judges and civil society regarding the need for reform of civil proceedings, which are governed by the Code of Civil Procedure, which dates back to the nineteenth century. Lengthy and costly proceedings negatively affect ordinary citizens, especially in areas such as banking and healthcare.

101. The current system is widely regarded as overly bureaucratic, with many perceiving it as having deviated from its main function, instead serving primarily as a debt-collection system for banks and corporations. Statistics show that an overwhelming majority of the cases in civil proceedings relate to collection proceedings, mainly from banks and in the form of executive judgments and pretrial measures.<sup>20</sup>

## 3. Due process in La Araucanía Region

102. Although she was unable to visit the region due to a severe storm, the Special Rapporteur expresses her concern about the prolonged state of exception in the Region of La Araucanía and the Provinces of Arauco and Biobío, which has been in effect since 2022. She notes that the executive reports every 15 days to the Senate and that the regime is extended by the Senate every 30 days.

103. Under article 4 of the International Covenant on Civil and Political Rights, States Parties must recognize the exceptional nature of emergency measures when declaring or renewing them. This is essential because of the suspension of constitutional guarantees, fundamental freedoms and human rights that the declaration of a state of exception authorizes. In addition, the principles of necessity and proportionality must be respected with regard to the duration and scope of the state of exception as well as any derogation measures to which the State may have resorted. International law does not permit the indefinite restriction or suspension of fundamental rights and freedoms.

104. The Special Rapporteur deplors the murder of three Carabineros (police) in April 2024 and the cases of arson and violence in the region. She was upset to hear allegations of excessively long periods of remand, harsh sentences and discrimination in law enforcement and proceedings against members of the Mapuche communities.<sup>21</sup> She was concerned to learn of the lack of clarity and support for victims of violence in rural areas.

105. Violence and conflict are not reasons to set aside the due process guarantees that underpin the right to a fair trial through special legislation.

106. Although reports indicate that counter-terrorism legislation is no longer being used against the Mapuche, the Special Rapporteur was distressed to hear that some of the same practices, such as the use of protected witnesses, which poses obstacles to preparing an effective defence, and racial profiling in policing, continue under different legislation. Furthermore, the manner in which discussion of the situation under the state of exception is described in legislative debate and in the media may distort perceptions of the security situation, which could have an impact on judges working in the region.

<sup>19</sup> Code of Civil Procedure, title XIII, book I, on provisions common to all proceedings, arts. 129–137; and Courts Organization Code, art. 591 ff.

<sup>20</sup> See <https://numeros.pjud.cl/Competencias/Civil> (in Spanish).

<sup>21</sup> See communication CHL 1/2025 (in Spanish), available at <https://spcommreports.ohchr.org/TmSearch/Results>.



107. The Special Rapporteur was also concerned to hear allegations of inequality of arms with regard to proceedings in emblematic cases in which the Ministry of the Interior and Public Security had joined the proceedings in accordance with article 3 of Decree Law No. 7.912 on article 111 of the Code of Criminal Procedure. She notes that this provision would allow other interested parties to join, such as timber companies or the Prison Service (Gendarmería de Chile). She was informed that this could result in criminal proceedings in which a defendant might face up to five lawyers on the side of the prosecution, without adequate means to mount a defence.

108. She was disturbed to hear about defendants coming to trial shackled and wearing yellow vests, a practice that appears not to be required by law. She was alarmed to hear of Mapuche detainees resorting to hunger strikes, as such drastic actions should be rare in a well-developed legal system that has the capacity to treat all equally. Some of these hunger strikes reportedly related to requests for benefits in detention to which individuals may be entitled.

109. The Special Rapporteur congratulates Chile for the efforts made to establish the Presidential Commission for Peace and Understanding, which is looking into all requests for land restitution in order to understand the scale of the situation and make recommendations on the way forward. However, she highlights that more needs to be done, in particular by the justice system, to address the situation in the region, in line with the obligations of Chile towards Indigenous Peoples.

110. This Commission was delayed in the submission of a document, that was expected to include proposals to address Mapuche land claims, now due to be presented to the President in April 2025.

#### **4. Indigenous Peoples**

111. The Special Rapporteur learned from Indigenous people that they faced many challenges when engaging with the judicial system, primarily due to their lack of constitutional recognition. This lack of recognition is coupled with obstacles to gaining access to their internationally recognized right to land.

## **V. Accountability**

112. The Special Rapporteur was dismayed to hear that many pending cases of grave human rights violations, such as torture, summary executions and enforced disappearances, dating from the Pinochet era, remain ongoing. Victims continue to wait for reparation, families still search for their loved ones and society awaits the truth. Because these cases are being handled under the previous Code of Criminal Procedure, secrecy and obscure procedures complicate matters. Victims of the dictatorship have waited a long time for justice and, if more decisive action is not taken soon, the advanced age of victims and alleged perpetrators may result in impunity. The Special Rapporteur welcomes the target set by the court of appeal in Santiago to consider 400 cases per month in order to address the backlog. She encourages further such measures.

113. The slow progress of cases concerning excessive use of force and torture by Carabineros during the social unrest of 2019–2020 is especially concerning when compared with the rapid progress made on cases of destruction of property for the same or related events. The statute of limitations has expired for many alleged crimes occurring in October 2024, adding to the frustration of those awaiting justice.

114. The Special Rapporteur was concerned to hear that of the 3,233 complaints filed by the National Institute of Human Rights for alleged human rights violations committed during the social unrest, between 17 October 2019 and 18 March 2020, 2,068 cases have been closed.<sup>22</sup> The majority (61 per cent) were closed by the Attorney General's Office for lack of information. Some 64 per cent of the remaining cases reached the statutory limitation period

<sup>22</sup> See <https://www.ciperchile.cl/2024/10/18/estallido-social-accion-penal-de-688-querellas-que-presento-el-indh-por-violacion-de-dd-hh-comenzara-a-prescribir-a-partir-de-hoy/> (in Spanish).



on 17 October 2024. Furthermore, over 600 cases, including 590 allegations of torture or excessive use of force, remain open without formal charges having been filed; in the absence of prosecutorial action, these may become time-barred by March 2025.

115. The Special Rapporteur was deeply concerned to learn that, in February 2025, the Attorney General's Office decided not to proceed with 1,509 cases of human rights violations occurring during the social unrest, citing a lack of sufficient evidence. States have an international obligation to investigate, prosecute and provide remedies for human rights violations. The Special Rapporteur warns that this decision may leave serious offences unpunished.

### **Access to legal services**

116. The Special Rapporteur was deeply concerned to learn that the authorities are implementing excessively repressive policies towards migrants that may restrict their right to a defence. Of particular concern is the reported administrative detention of migrants at the airport without any access to legal representation, a practice which may also prevent individualized consideration of cases. Justice users, including migrants, report that the lack of access to quality interpretation services in court further undermines their ability to participate in legal proceedings.

117. The Special Rapporteur heard that the lesbian, gay, bisexual and transgender community, particularly the transgender community, faces significant challenges in the justice system because judges often do not understand this community's unique challenges. This vulnerability is exacerbated by the inadequate application of international law standards and the lack of accessible, high-quality legal representation.

118. Persons with disabilities face challenges due to a lack of adequate physical infrastructure and appropriate training for judicial personnel. While many courts provide some level of access to individuals with reduced mobility, reasonable accommodations reportedly rarely surpass the bare minimum. Advocates reported that courts were unable to provide sign language interpreters in most cases and that judges were granted full discretion on procedural adaptations, with no standard guidelines to follow.

119. Young people and children are especially vulnerable in criminal proceedings or when they are unaccompanied migrants. While the new "My Lawyer" (Mi Abogado) programme is a commendable step forward, authorities must ensure that it has adequate resources.

## **VI. Conclusions**

120. The Special Rapporteur recognizes that Chile has built a justice system widely recognized for its strong institutions, including a well-prepared, professional and independent judiciary. However, Chile is still an unequal society: 1 per cent of the population owns 49.6 per cent of the wealth, and vulnerable groups experience significant challenges. Many interlocutors – including a number of judges – expressed their concerns over the existence of one justice for the rich and another for the poor, whereby the experiences of justice users hinge on their financial means, social class and connections.

121. The Special Rapporteur notes that the social unrest of 2019–2020 laid bare long-standing grievances, prompting Chile to make two separate attempts to tackle the hardest issues through constitutional reform. While both constitutional drafts were rejected, leaving in force the Pinochet-era Constitution, certain issues that had long been discussed received fresh attention: the sense of abandonment of the poor and "impoverished middle class" of Chile; the historical wrongs against Indigenous Peoples and their internationally recognized rights; and, of most relevance for this mandate holder, the risks of the centralized powers and oversight of the Supreme Court.

122. The Special Rapporteur emphasizes that the problems can be solved: the institutions of Chile are robust, the country has ample resources, and Chileans want to find ways forward. The Special Rapporteur found widespread agreement on the need

for reform to strengthen the judicial system. She believes that the judiciary must take steps to address the perception – and the experience, where relevant – that access to justice and legal outcomes vary depending on the individual’s financial status and social standing. More needs to be done at the structural level to combat cronyism in the administration of justice.

123. The Special Rapporteur notes that the lack of regulation of and ethics training for the legal profession is affecting the integrity of the justice system as a whole. This gap is particularly concerning as it touches upon due process guarantees.

124. In conclusion, bold action and genuine political will are necessary to address the problems upon which all agree and to implement changes before the public gives up on a system it currently views as flawed but redeemable.

## VII. Recommendations

125. Chile should take advantage of the widespread agreement to reform the powers of the Supreme Court. The Special Rapporteur recommends that the Government of Chile:

(a) Adopt constitutional amendments to remove the administrative and supervisory responsibilities of the Supreme Court and consider the creation of an entity, such as a council of the judiciary, to assume these functions. In this regard, the Special Rapporteur welcomes the constitutional reform bill,<sup>23</sup> currently under discussion in the National Congress, which addresses the separation of administrative and jurisdictional functions within the judiciary, noting that it includes a proposal for the establishment of a judicial appointments council. Judges at all levels should be included in this council, and it should insulate the judicial profession from all pressure;<sup>24</sup>

(b) Eliminate the figure of the *abogados integrantes*. As a transitional measure, the Special Rapporteur recommends that minimum transparent and merit-based criteria be agreed for their appointment and that more stringent exclusion criteria be adopted to avoid even perceptions of conflict of interest;

(c) Work with judges to revise and adopt, where necessary, new modalities on judicial appointments, evaluation and discipline that protect the status of judges and the independence of the judiciary and insulate judges’ appointments, careers and evaluations from political pressure;

(d) Remove miscellaneous functions, such as the licensing of lawyers and the appointment of non-judicial positions, such as registrars and notaries, from the purview of the Supreme Court. These functions should be assigned through new, transparent procedures. The Special Rapporteur recommends the swift adoption of the bill under consideration by which responsibility for the appointment of non-judicial positions, such as registrars and notaries, would be reassigned from the Supreme Court.

126. The Special Rapporteur also recommends that Chile assign a specific percentage of its national budget to the judiciary.

127. With regard to judicial careers and appointments, the Special Rapporteur recommends the following:

(a) For apex courts, Chile should take steps to insulate the appointment procedure from the possibility or perception of political influence, for example, by using the system of senior public servants to prepare shortlists for open vacancies. The composition of the lists should follow clear, pre-established, merit-based requirements that are made public. Furthermore, Chile should consider following the good practices of other tribunals, such as the environmental tribunals and the Constitutional Court, by appointing substitute magistrates to take up any temporary vacancies;

<sup>23</sup> Bulletin No. 17.193-07.

<sup>24</sup> [A/HRC/38/38](#), paras. 66 and 67.

(b) For all other tribunals, the judiciary should set up a procedure to create shortlists without the involvement of the courts of appeal, for instance, by using the system of senior public servants. These shortlists should follow clear, pre-established and merit-based requirements that are made public. Presidential decrees on appointment decisions should clearly reflect the reasons for each appointment. Clarity in the criteria for shortlisting may aid in this purpose;

(c) Judicial training and selection and appointment procedures should be coordinated;

(d) Chile should rely on Judicial Academy graduates for temporary vacancies, if substitutes are not appointed;

(e) Since constitutional amendments take time, transitional procedures should be adopted for apex court appointments. Such procedures should be transparent, based on pre-established, public and merit-based criteria and involve the active participation of civil society. The Special Rapporteur urges Chile to make sure that judges themselves can participate in reform design and decisions, alongside the legal profession, academia and civil society;

(f) Pending appointments, such as those to the environmental tribunals, should be carried out expeditiously. Considering the very specialized profile required for these positions, however, Chile should consider measures to address any vacancies that may arise when a judge ends his or her appointment.

128. The Special Rapporteur urges the judiciary to adopt a code of ethics to ensure the transparency, ethical conduct and integrity of the judiciary. The code should be drafted with input from judges at all levels.

129. She also urges Chile to improve judicial protection and retirement schemes, while ensuring that courtrooms are up to standard.

130. The Special Rapporteur further urges Chile to pursue the reform of military jurisdiction in line with the relevant jurisprudence of the Inter-American Court on Human Rights.

131. She urges Chile to ensure the protection of prosecutors and to provide them with the tools necessary to do their job. She advises Chile to review the disciplinary procedure for prosecutors to ensure that it cannot be used as a tool of reprisal.

132. With regard to accountability, the Special Rapporteur recommends that:

(a) Chile advance expeditiously in the cases of grave human rights violations and excessive use of force committed during the social unrest of 2019–2020 by taking concrete measures, such as setting time-bound goals to bring cases to trial;

(b) Chile consider taking steps to ensure that the new environmental jurisdiction is accessible to all and, in particular, to Indigenous Peoples.

133. Taking into consideration that adequate protection of the human rights to which all persons are entitled requires that all persons have effective access to legal services provided by an independent legal profession,<sup>25</sup> the Special Rapporteur recommends that the Government of Chile:

(a) Conduct a comprehensive review of the resources allocated to the entities involved in providing legal services, including the new national service for access to justice. Increased funding is urgently needed to ensure that lawyers can effectively provide quality legal work and receive adequate training on emerging issues, such as trafficking in persons and violent crime;

(b) Revisit the criteria for free legal representation in civil and family cases to ensure that those who need free or low-cost legal help can access it;

(c) Establish the national service for access to justice;

<sup>25</sup> Basic Principles on the Role of Lawyers, principle 1.

(d) Grant the Public Criminal Defender Service institutional and financial autonomy.

134. The Special Rapporteur highlights the fundamental role that bar associations play in strengthening the integrity and independence of the legal profession, safeguarding the professional interests of lawyers, ensuring access to justice and protecting due process and fair trial guarantees.<sup>26</sup> She recommends that Chile:

(a) Reinstate mandatory membership of a bar association, considering the need to bolster the integrity of the legal profession in the country;<sup>27</sup>

(b) Work with the bar association to ensure that it is free from external influence and pressure on matters such as the regulation of the profession, the development and implementation of codes of professional conduct and the right of lawyers to join the association;

(c) Work with stakeholders to ensure that an autonomous entity, governed by lawyers and functioning in a transparent manner, can establish conditions for entry to the legal profession, develop and implement minimum standards of professional behaviour for lawyers, provide initial and continuing education to members of the legal profession and handle and enforce disciplinary proceedings against lawyers;<sup>28</sup>

(d) Ensure the inclusion of appropriate ethical training in all law schools.

135. The Special Rapporteur recommends that Chile prioritize the reform of the Code of Civil Procedure, modernizing the legal framework and taking decisive action to eliminate barriers to justice in order to ensure timely and affordable access for everyone.

136. With regard to access to justice, the Special Rapporteur urges Chile to:

(a) Provide certified interpretation in all legal proceedings involving non-Spanish speakers to ensure respect for their right to a defence in accordance with applicable international law standards;

(b) Ensure that persons with disabilities have access to justice on an equal basis to others, including through procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants;

(c) Promote appropriate cross-cultural and equality training for those involved in the administration of justice, including police and prison staff.

137. The Special Rapporteur urges Chile to recognize the Indigenous Peoples of Chile in the Constitution and to resolve their land claims, in line with international law.

138. In the Araucanía Region, justice should be one of the main pillars in any solution to the conflict. For that reason, the judicial system should be active in providing just responses to the claims that underpin the conflict in the region. The resources and support necessary to ensure adequate, culturally sensitive access to justice should be provided. Further steps should include:

(a) Lifting the state of exception in the southern macrozone without further delay. The Special Rapporteur recalls that the Human Rights Committee has clarified that measures derogating from the provisions of the International Covenant on Civil and Political Rights must be of an exceptional and temporary nature;<sup>29</sup>

(b) Ensuring closer judicial supervision of the compliance of law enforcement officers with human rights standards in the region, particularly with respect to the Prison Service (Gendarmería) when transporting detainees to hearings and in managing places of deprivation of liberty. The Special Rapporteur particularly

<sup>26</sup> A/73/365, paras. 2 and 21.

<sup>27</sup> Ibid., para. 8.

<sup>28</sup> Ibid., paras. 25 and 44.

<sup>29</sup> General comment No. 29 (2001), para. 2.

recommends that close attention be paid to the cultural specificities of Indigenous Peoples in proceedings and in detention;

(c) Addressing the overuse of pretrial detention in the country, noting that, under article 9 (3) of the Covenant, pretrial detention should be exceptional and be as short as possible. According to the Human Rights Committee, “pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Neither should pretrial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity”;<sup>30</sup>

(d) Ensuring that courts in the region take all measures available to ensure equality of arms in cases in which Mapuche defendants face the Ministry of the Interior and Public Security on the prosecution side.

139. With regard to other tribunals, the Special Rapporteur recommends that the Government of Chile:

(a) Implement the decision of the Inter-American Court of Human Rights in the *Palamara-Iribarne v. Chile* case;

(b) Ensure that, in the local police courts, the appointment procedure for judges and the proceedings themselves are in line with relevant international human rights standards;

(c) Take steps to address concerns related to environmental tribunal jurisdictional limitations, equality of arms and timely appointments.

140. The Special Rapporteur recalls that public commentary about public figures, including judges, is a feature of a free, democratic society and that such speech is protected under the Covenant. However, although judges are lawfully subject to public critique, as well as requirements concerning transparency and accountability, they do not entirely waive their right to privacy.<sup>31</sup> The Special Rapporteur stresses that judges and their families must be protected from threats from any quarter.

<sup>30</sup> General comment No. 35 (2014), para. 38.

<sup>31</sup> See European Commission for Democracy through Law and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, joint opinion on the Kyrgyz draft law “on introduction of amendments and changes to the Constitution” (October 2016) (CDL-AD(2016)025).