CHILE

Follow-up
State Reporting - Action by Treaty Bodies, Including Reports on Missions

CCPR A/34/40 (1979)

B. Letter dated 17 August 1979 from the Chairman of the Human Rights Committee to the Minister for Foreign Affairs of Chile

The Human Rights Committee has taken note of your letter of 9 July 1979. In this connection the Committee wishes to observe the following:

The Committee has considered the two reports of the Government of Chile and the answers given by their representatives on the basis of the requirements in article 40, paragraphs 1 and 2 of the Covenant. It was assisted by the General Assembly resolutions and the reports of the Ad Hoc Working Group on the Situation of Human Rights in Chile. Throughout this examination the Committee followed its normal procedure in considering reports under article 40 of the Covenant.

As a result of this consideration the Committee found that the information contained in the reports and answers was incomplete.

Therefore, taking into account the statement of the representative of the Government made in response to the request by the Chairman on behalf of the Committee on 26 April 1979, as well as the confirmation of Chile's obligations contained in the final paragraph of your letter, the Committee trusts that your Government will submit the report requested in accordance with article 40 of the Covenant.

(Signed) Andreas V. MAVROMMATIS
Chairman
Human Rights Committee

CCPR, A/62/40 vol. I (2007)

CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [1] Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

...

Eighty-ninth session (March 2007)

...

State party: Chile

Report considered: Fifth periodic (due since 2002), submitted on 8 February 2006.

Information requested:

Para. 9: Steps to ensure that serious human rights violations committed during the dictatorship do not go unpunished; ensuring that those suspected of such acts are in fact prosecuted; review of the suitability to hold public office of persons who have served sentences for such acts; publication of all documentation collected by the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture (CNPPT) (arts. 2, 6 and 7).

Para. 19: (a) Procedures to recognize such ancestral lands; (b) Amendment of Act No. 18.314 and review of sectoral legislation contravening rights spelled out in the Covenant;
(c) Consultation of indigenous communities before granting licences for the economic exploitation of disputed lands, guaranteeing that in no case will exploitation violate rights recognized in the Covenant (arts. 1 and 27).

Date information due: 1 April 2008

Next report due: 27 March 2012

...

Note

1/ The table format was altered at the ninetieth session.

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE
Ninety-third session
SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL

...

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/93/R.1)

1. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/93/R.1.
...
4. He recommended that reminders should be sent to Barbados, Brazil, the Central African Republic, Chile and Madagascar requesting additional information...
...
39. The draft report of the Special Rapporteur for follow-up on concluding observations was adopted.

...

CCPR, A/63/40 vol. I (2008)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

194. In chapter VII of its annual report for 2003, [20] the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/62/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2008.

195. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-first, ninety-second and ninety third sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

196. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [21] Over the reporting period, since 1 August 2007, 11 States parties (Bosnia and Herzegovina, Brazil, Hong Kong Special Administrative Region (China), Mali, Paraguay, Republic of Korea, Sri Lanka, Suriname, Togo, United States of America and Ukraine), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 10 States parties (Barbados, Central African Republic, Chile, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Honduras, Madagascar, Namibia and Yemen) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

197. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2007 to take no further action prior to the period covered by this report.

198. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

21/ The table format was altered at the ninetieth session.

...

Eighty-ninth session (March 2007)

...

State party: Chile
Report considered: Fifth periodic (due since 2002), submitted on 8 February 2006.
Information requested: Para. 9: Ensure that serious human rights violations committed during the dictatorship are punished; ensuring that those suspected of being responsible for such acts are in fact prosecuted; scrutinize the suitability to hold public office of persons who have served sentences for such acts; publication of all the documentation collected by the National Commission on Political Prisoners and Torture (CNPPT) that may help to identify those responsible for extrajudicial executions, forced disappearances and torture (arts. 2, 6 and 7). Para. 19: (a) Ensure that negotiations with indigenous communities lead to a solution that respects their land rights; expedite procedures to recognize such ancestral lands; (b) Amendment of Act No. 18,314 to bring it in line with article 27 of the Covenant; review of any sectoral legislation that may contravene the rights spelled out in the Covenant; (c) Consultation of indigenous communities before granting licences for the economic exploitation of disputed lands; ensure that such exploitation will not violate the rights recognized in the Covenant (arts. 1 and 27).
Date information due: 1 April 2008
Date information received: NONE RECEIVED
Action taken: 11 June 2008 A reminder was sent.
Recommended action: A further reminder should be sent.
Next report due: 27 March 2012
...

CCPR, A/64/40, vol. I (2009)

VII. FOLLOW UP TO CONCLUDING OBSERVATIONS

237. In chapter VII of its annual report for 2003, [20] the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/63/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2009.

238. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-fourth, ninety-fifth and ninety-sixth sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

239. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [21] Over the reporting period, since 1 August 2008, 16 States parties (Austria, Barbados, Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, France, Georgia, Honduras, Hong Kong Special Administrative Region (China), Ireland, Libyan Arab Jamahiriya, Madagascar, Tunisia, Ukraine and United States of America), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 11 States parties (Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Panama, Sudan, the former Yugoslav Republic of Macedonia, Yemen and Zambia) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party. [22]

240. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2008 to take no further action prior to the period covered by this report.

241. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

...

Eighty-ninth session (March 2007)

...

State party: Chile

Report considered: Fifth periodic (due since 2002), submitted on 8 February 2006.

Information requested:

Para. 9: Ensure that serious human rights violations committed during the dictatorship are punished; ensuring that those suspected of being responsible for such acts are in fact prosecuted; scrutinize the suitability to hold public office of persons who have served sentences for such acts; publication of all the documentation collected by the National Commission on Political Prisoners and Torture (CNPPT) that may help to identify those responsible for extrajudicial executions, forced disappearances and torture (arts. 2, 6 and 7).

Para. 19: (a) Ensure that negotiations with indigenous communities lead to a solution that respects their land rights; expedite procedures to recognize such ancestral lands; (b) Amendment of Act No. 18,314 to bring it in line with article 27 of the Covenant; review of any sectoral legislation that may contravene the rights spelled out in the Covenant; (c) Consultation of indigenous communities before granting licences for the economic exploitation of disputed lands; ensure that such exploitation will not violate the rights recognized in the Covenant (arts. 1 and 27).

Date information due: 1 April 2008

Date information received:

21 and 31 October 2008 Partial reply (responses incomplete with regard to paragraphs 9 and 19).

Action taken:

11 June 2008 A reminder was sent.

11 June 2008 A reminder was sent.

22 September 2008 A further reminder was sent.

10 December 2008 A letter was sent to request additional information.

22 June 2009 The Special Rapporteur requested a meeting with a representative of the State party.
28 July 2009 The Special Rapporteur held a meeting with representatives of the State party during which some aspects in relation to paragraphs 9 and 19 were discussed. The Ambassador also informed the Special Rapporteur that the State party's replies to the Committee's additional follow-up questions are currently prepared and will be submitted as soon as possible.

Recommended action: If no information is received before the ninety-seventh session of the Committee, a reminder should be sent.

Next report due: 27 March 2012

...

20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

21/ The table format was altered at the ninetieth session.

22/ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Mali, Sri Lanka, Suriname, Namibia, Paraguay, and the Democratic Republic of the Congo.

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)

...

2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.

...

15. Chile had sent additional replies, which were being translated and would be considered at a later session.

...

24. **The Chairperson** said that, if there was no objection, he took it that the Committee wished to adopt the Special Rapporteur's recommendations.

25. *It was so decided.*

...

CCPR, A/65/40 vol. I (2010)

...

Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

...

Eighty-ninth session (March 2007)

...

State party: Chile

Report considered: Fifth periodic (due since 2002), submitted on 8 February 2006.

Information requested:

Para. 9: Ensure that serious human rights violations committed during the dictatorship are punished; ensuring that those suspected of being responsible for such acts are in fact prosecuted; scrutinize the suitability to hold public office of persons who have served sentences for such acts; publication of all the documentation collected by the National Commission on Political Prisoners and Torture (CNPPT) that may help to identify those responsible for extrajudicial executions, forced disappearances and torture (arts. 2, 6 and 7).

Para. 19: (a) Ensure that negotiations with indigenous communities lead to a solution that respects their land rights; expedite procedures to recognize such ancestral lands; (b) Amendment of Act No. 18,314 to bring it in line with article 27 of the Covenant; review of any sectoral legislation that may contravene the rights spelled out in the Covenant; (c) Consultation of indigenous communities before granting licences for the economic exploitation of disputed lands; ensure that such exploitation will not violate the rights recognized in the Covenant (arts. 1 and 27).

Date information due: 1 April 2008

Date information received:

21 and 31 October 2008 Partial reply (responses incomplete with regard to paras. 9 and 19).

28 May 2010 Supplementary follow-up report received.

Action taken:

11 June 2008 A reminder was sent.

22 September 2008 A further reminder was sent.

10 December 2008 A letter was sent to request additional information.

22 June 2009 The Special Rapporteur requested a meeting with a representative of the State party.

28 July 2009 The Special Rapporteur held a meeting with representatives of the State party during which some aspects in relation to paragraphs 9 and 19 were discussed. The Ambassador also informed the Special Rapporteur that the State party's replies to the Committee's additional follow-up questions were currently being prepared and would be submitted as soon as possible.

11 December 2009 A reminder was sent.

23 April 2010 A further reminder was sent.

Recommended action: The additional replies of the State party have been sent for translation and should be considered at a later session.

Next report due: 27 March 2012

...

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40,* vol. I (A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40,* vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

Follow-up
State Reporting - Action by State Party

CCPR A/34/40 (1979)

Annex V

Text of communications between the Government of Chile and the Human Rights Committee

A. Letter dated 9 July 1979 from the Minister for Foreign Affairs of Chile to the Chairman of the Human Rights Committee

Through its Ambassador to the United Nations, my Government has been informed of the statement [concluding observations, Chile, A/34/40, paras. 70-109] read out by you on 26 April 1979 on behalf of the Committee of which you are Chairman.

In accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights, my Government considers that the statement in question constitutes the report and general comments which the Human Rights Committee must transmit to the State concerned when it has studied the reports submitted by the latter.

Pursuant to article 40, paragraph 5, of the Covenant and with reference to rule 71, paragraph 1, of the Committee's provisional rules of procedure, my Government wishes to make the appropriate observations on the aforementioned report and general comments of the Committee.

The Committee's statement that it finds the reports submitted by the Government of Chile "insufficient" is unfounded, for the Government of Chile has conscientiously fulfilled all the obligations which it assumed in ratifying the Covenant. Its report was submitted at the proper time and in the proper form, and an addendum, which the Committee considered as a second report, was also presented setting out all the legal changes which had taken place between the date of the report and that of the Chilean representatives' appearance before the Committee. Furthermore, those representatives replied to all the questions put by the members of the Committee.

By declaring the report submitted by Chile to be insufficient, "taking into account the reports of the Ad Hoc Working Group and the resolutions of the General Assembly of the United Nations", the Committee committed a grave error of substance, because Chile is a party only to the International Covenant on Civil and Political Rights. It is not a party to the Optional Protocol to the Covenant, nor has it declared under article 41 of the Covenant that it will authorize the consideration of complaints made by other member States.

In this case, the Committee's competence is limited to the text of the Covenants and the report and addendum submitted by Chile.

Therefore, the Committee cannot transmit or endorse complaints or allegations by States,

non-governmental organizations or individuals such as in practice constitute the reports of the former Ad Hoc Group and serve as the sole basis for the resolutions of the General Assembly.

By taking into consideration reports and resolutions of other bodies with different structures and procedures, the Committee is altering its own procedure. By "considering" such material and finding the report submitted by a member State "insufficient" on that basis alone, the Committee is instituting an ad hoc procedure which Chile cannot accept.

To sum up, the Committee has declared a report submitted by a member State to be "insufficient" on the sole basis of material which lies outside its specific competence and - what is equally serious - without giving any reasons, whether based in fact or in law, to support its claim.

I cannot but convey to you, Sir, my Government's astonishment that a former member of the Ad Hoc Working Group of the Commission on Human Rights, who is now styled "Special Rapporteur for Chile" and who, by endorsing the Group's reports, prejudged the issue with regard to my country, should have participated in the study of my Government's reports and in the statement to which we refer.

My Government has declared formally that it neither recognizes nor accepts any of the ad hoc procedures which have been and are being applied in its respect by certain United Nations bodies, including the procedure of appointing a so-called Special Rapporteur. Henceforward my Government will co-operate only with such bodies as respect both their own procedure and Chile's sovereignty.

For reasons stated above, my Government will submit reports to the Committee of which you are Chairman only within the legal framework of its juridical commitments, which do not include either the Optional Protocol or the recognition of competence referred to in article 41 of the Covenant.

Accept, Sir, the assurances of my highest consideration.

(Signed) Herman CUBILLOS SALLATO
Minister for Foreign Affairs

CCPR, CCPR/C/CHL/CO/5/Add.1 (2008)

Information provided by the Government of Chile on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/CHL/CO/5)

[21 October 2008]

Paragraph 9: 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.

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.

1. In 1990, in order to ascertain the true fate of disappeared detainees and persons executed for political reasons, Chile established the National Commission on Truth and Reconciliation, which issued a report on the non-surviving victims of the military dictatorship.

2. With regard to these victims, the State has at its disposal the Human Rights Programme [1] of the Ministry of the Interior. Its purpose is to continue promoting and contributing to efforts to determine the whereabouts and the circumstances of the disappearance or death of the detainees who disappeared and of those whose remains have not been located even though their deaths have been officially recognized. This task was begun by the Programme's predecessor, the National Compensation and Reconciliation Board, which ceased to legally exist on 31 December 1996.

3. The Programme makes an active contribution to the judicial investigations into cases of enforced disappearance by supplying the courts with all the records and documentation gathered by the National Commission on Truth and Reconciliation. It also supplies the records of subsequent investigations conducted by the National Compensation and Reconciliation Board and by the Programme itself. The Human Rights Programme is an intervener in 258 cases of human rights violations.

4. At the request of the Executive, a bill establishing the National Institute of Human Rights is currently being considered by the National Congress. In one of its transitional provisions, the bill provides that "the Human Rights Programme, established by Supreme Decree No. 1005 of 1997 of the Ministry of the Interior, will continue to provide legal and judicial assistance as required by relatives of the victims referred to in article 18 of Act No. 19123, in order to give effect to the right accorded to them in article 6 of that Act". It follows that it will have the power to take all the necessary legal action, including to bring actions for the crimes of kidnapping or

enforced disappearance, and for homicide or summary execution where appropriate.

5. With regard to developments in the area of judicial proceedings, while the pursuit of truth and justice has proved difficult, there has been no let-up, and in recent years this work has been boosted by improvements in the courts' processing of cases of human rights violations. This is a result of, among other things, the new membership of the courts since 1997, the appointment of special judges to deal with such cases, and the persistence of victims' relatives and their lawyers.

6. The democratic governments have opposed the implementation of the amnesty decree-law, which unfortunately could not be repealed for lack of the necessary parliamentary majority, holding that it is for the courts to interpret the decree-law.

7. For years, the military courts responsible for trying cases of human rights violations applied the amnesty decree-law without investigating or determining responsibility; when such cases were reviewed on appeal, the Supreme Court confirmed that interpretation of the law. However, the practice of the Supreme Court began to change in 1998, and some of its rulings have set aside the application of the amnesty in cases of detainees who disappeared. Despite the fact that, in Chile, analogy is not used as a method of interpreting the law in criminal cases, since 1998 the Supreme Court has ruled the amnesty inapplicable based on the main instruments of international humanitarian law and human rights that Chile has ratified and that are in force, which provide that crimes against humanity are not subject to a statute of limitations or amnesty.

8. Another change in Supreme Court practice that has made it possible to continue pursuing judicial investigations into human rights violations committed during military rule concerns the jurisprudence that holds that detainees who disappeared are not considered victims of homicide but rather of kidnapping. As kidnapping is, according to legal scholars, a continuing offence until such time as the victim is found, dead or alive, any application for amnesty or prescription of the offence while this is not the case is considered premature.

9. This change in practice represents significant progress in dealing with such cases, making it possible to ascertain the nature and extent of involvement of the officials responsible. By the same token, progress has been made in the procedural steps of court cases, in many of which guilty verdicts have been passed in the trial court and upheld on appeal.

10. As at September 2008, according to records submitted by the Ministry of the Interior's Human Rights Programme, 342 cases of human rights violations, concerning 1,125 victims, had come before the courts. These judicial investigations had resulted in 505 State officials being tried and charged, with 2,150 indictments against them. Some 408 sentences had been handed down to 245 individual officials; 39 officials were serving prison sentences, while the remainder had been granted remission or parole.

The State party should make public all the documentation collected by the National Commission on Political Prisoners and Torture that may help identify those responsible for extrajudicial executions, forced disappearances and torture.

11. With regard to survivors, the mandate of the National Commission on Political Prisoners

and Torture states that its sole objective is to "ascertain, from information submitted, which individuals suffered deprivation of liberty and torture for political reasons at the hands of State officials or persons in the service of the State, during the period from 11 September 1973 to 10 March 1990".[2]

12. The Supreme Decree establishing the Commission limits its functions by stipulating that it cannot pass judgement, and therefore cannot "rule on individuals' possible responsibility under the law for acts that come to its attention". [3]

13. The Commission was established in response to the appeals of human rights organizations and victims' associations seeking the truth in cases of political prisoners and victims of torture and seeking reparation on their behalf. From the outset, the process aimed to provide a factual basis for recognition of these grave human rights violations, with a view to establishing a historical memory of events and recognizing and compensating the victims, for whom no compensation was available at the time. This in no way prejudices the victims' right to obtain justice through the courts.

14. For its part, the Commission deemed the information in victims' testimony to be confidential, given the intimate nature of many of the statements, which contained accounts and described the consequences of torture that many of those interviewed did not wish to make public. This was explained to those who provided statements.

15. The Commission, and subsequently the legislative authorities, had to weigh the public's need to know against the need to maintain confidentiality. Hence the decision to publicize the Commission's report and give the public the overall picture in all its magnitude and horror. The report provides information on what took place and explains the effect on people's lives, while protecting the confidentiality of the individual accounts. This was not done to protect the perpetrators, since the Commission did not have the authority to investigate those responsible, but only to hear the victims' version of events and to determine whether they were in fact victims.

16. In order to protect the privacy and honour of the individuals concerned, it was proposed that the information left out of the published report should be kept confidential for a certain period of time, as is the practice with other archives around the world in situations of this type. After the report had been published, a law was passed providing compensatory benefits for people recognized as victims. [4] The law also provided for their testimony to be kept secret for a period of 50 years, although this does not prevent people from publishing their stories or taking action through the courts to establish the criminal responsibility of the perpetrators of these crimes. Since the compensation for victims was not conditional on their foregoing civil action, they are free to go to court to establish the injury suffered and seek appropriate compensation.

Paragraph 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.

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. 18314 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.

17. According to the National Indigenous Development Corporation (CONADI), there are no cases pending involving the demarcation of indigenous lands, as these had already been duly delimited and demarcated in the various nineteenth century laws granting land titles. Likewise, the boundaries were duly determined in the land titles granted, which were divided up.
The lands that have been acquired recently for indigenous communities and persons are all delimited.

18. Chile has made every effort to resolve the land claims made by indigenous people and communities, investing a significant proportion of its budget for that purpose over many years. This is in addition to the lands that the State transfers to them through the Ministry of National Assets and other services. The delay in the acquisition procedures is due to strong demand and the lack of resources to meet it immediately. The relevant data are given in paragraph 20 below.

Land rights of indigenous communities and legal avenues for the recognition of indigenous lands.

19. The return of indigenous communities’ land, the very source of their culture and development, constitutes recognition of the land rights of which they were deprived, often in painful and abusive circumstances. The focus on an institutional approach to achieve this has facilitated progress in meeting this historical claim. The following are the main mechanisms for reclaiming indigenous heritage:

(a) Land subsidies (Act No. 19253, art. 20 (a)): used to expand land boundaries when the land area is too small for families and communities to develop. This mechanism gives access to a non-refundable contribution that is personal and non-transferable, and payable to anyone who sells property to the beneficiary;

(b) Purchase of disputed land (Act No. 19253, art. 20 (b)): this mechanism provides financing for efforts to solve land-related problems arising as a result of legal disputes over some historical act that led to the illegal loss of land by indigenous people (squatting, erection of

fences, fraudulent sales, expropriation during agrarian counter-reform, etc.);

(c) Transfer of State property to indigenous communities (Act No. 19253, art. 21): this mechanism gives CONADI the power to take possession of State lands, holdings, properties and water rights, for transfer to indigenous communities or individuals. This concerns State land that has historically been occupied or claimed by indigenous families and communities;

(d) Subsidy for upgrading and regularization of indigenous land: this subsidy aims to provide legal certainty regarding indigenous property that lacks such certainty for various reasons, and thus to consolidate the indigenous heritage.

20. Between 1994 and 2005, some 493,000 hectares of land were returned to indigenous communities, benefiting over 18,800 families, using the whole range of mechanisms at the State's disposal, as described above. Using only the mechanisms for land subsidy and purchase of disputed land, some 85,000 hectares were returned in that same period, benefiting 374 communities.

21. Between 2006 and 2007, these two mechanisms alone accounted for the return of some 23,000 hectares of land, benefiting a total of 2,200 indigenous families from 110 indigenous communities. In 2008, the total budget for the Indigenous Land and Water Fund was 23,314 million pesos (US$ 44,622,657), of which 19,555 million pesos (US$ 37,427,986) was for land purchase only.

Amendment to Act No. 18314 to bring it into line with article 27 of the Covenant.

22. While the content of this Act is exceptional, it is a regular law in that it applies to all citizens without distinction, and no discrimination was exercised against the Mapuche individuals prosecuted under it. Quite apart from the specific case of these individuals, it is necessary to understand the context of this situation, which in no way constitutes political persecution of the indigenous or Mapuche movements. The following background information must be taken into consideration:

(a) Minority groups linked to the claims over indigenous land rights began an offensive in 1999 against forestry and agricultural companies in some provinces of regions VIII and IX (Biobío and Araucanía). They carried out illegal occupations and committed robbery and theft; set fire to forests, crops, employer's buildings and houses, agricultural and forestry machinery and vehicles; attacked workers, forestry police, *carabineros* and property owners and their families; and even assaulted and threatened members of Mapuche communities who would not accept their methods. Their action bore no resemblance to that of the vast majority of indigenous organizations, which did not resort to violence to assert their legitimate aspirations;

(b) The Act has been applied in situations of the utmost seriousness in nine prosecutions since 2001. The last occasion was in July 2003, in the case of the attack on the witness Luis Federico Licán Montoya, which left him disabled for life. Nine individuals of indigenous origin were convicted under the Act; [5]

(c) The legal action taken aimed to punish the perpetrators of the crimes, not the Mapuche people; punishing those who commit crimes does not constitute "criminalizing" a social demand, and much less an entire community;

(d) Chile has recognized the legitimacy of the indigenous peoples' claims, particularly those of the Mapuche; these claims have always been taken up by the democratic governments and channelled through the institutional machinery. Accordingly, the protection of the right to land has been enshrined in the Indigenous Peoples Act since 1993, enabling the transfer of land as detailed in paragraph 20 above.

23. Nevertheless, the President of the Republic has taken the policy decision not to apply this legislation to cases in which indigenous individuals are involved on account of their ancient demands and grievances, if it is possible to try them under ordinary law in future. It should be noted that in the specific case of the crime of arson, the penalty provided for under the Criminal Code is as high as that under the Counter-Terrorism Act.

The State party should 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.

24. Chile has legislation establishing procedures for consulting and involving indigenous communities in projects that are carried out on their lands. These procedures depend on the type of licence or concession that is being sought. For example, indigenous lands are protected and can be transferred only under certain circumstances; they are imprescriptible, cannot be attached, and can be encumbered only in specific cases and with authorization from CONADI. Mining concessions have special legal status under the Constitution and the Mining Code, which regulates their ownership, use and enjoyment.

25. Moreover, the statute regulating indigenous lands is supplemented by other laws such as the Environment (Framework) Act, and establishes a consultation process for environmental impact studies. The 2006 ruling by the Temuco Court of Appeal provides an excellent example of this in its decision on the application for protection in case No. 1029-2005. [6]

26. The 1989 ratification of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), which was recently approved by Congress, will ensure that indigenous communities participate in projects involving their lands without prejudice to the protection afforded to them by the State under the Indigenous Peoples Act.

1/ Programme of Follow-up to Act No. 19123, established by Supreme Decree No. 1005 of April 1997.

2/ Supreme Decree No. 1040 of 2003, art. 1 (1), and chap. II of the Commission's report.

3/ Supreme Decree No. 1040, art. 3.

4/ Act No. 19992 of 2004, art. 15.

5/ The nine people convicted for terrorist crimes are: Jaime Marileo Saravia; Juan Marileo Saravia; Patricia Troncoso Robles; Juan Huenulao Lienmil; José Nain Curamil; Rafael Pichun Collonao; Aniceto Norin Catriman; Pascual Pichub Paillalao and Víctor Ancalaf Llalupe. The only one who is not of Mapuche or indigenous origin is Patricia Troncoso Robles.

6/ Eleuterio Antío Rivera, representing the Pedro Ancalef indigenous community, used this remedy to claim that the following constitutional guarantees had been violated: the right to life and physical and mental integrity of the person; freedom of conscience, expression of any belief and the free exercise of any form of worship not inconsistent with public morals or order; the right to live in an unpolluted environment and the right to own property. This was in response to the approval of a project for a sewage plant in the commune of Villarrica, in region IX, which had not taken into consideration the fact the sewage plant could affect the health, the productive and cultural activities, and the sacred sites located on lands bordering the plant, which are inhabited by indigenous peoples who are protected under the Indigenous Peoples Act. On these grounds, they requested that the project be halted and requested an environmental impact study.

The Court of Appeal's judgement upheld the application for protection, which was confirmed by the Supreme Court on 5 January 2006. The operative part of the judgement acknowledged that indigenous communities are regulated by the legal statute of the aforementioned Act, which recognizes their legal personality to act on behalf of the members of their indigenous community, through their legal representatives. The judgement makes reference to the opinion proffered by CONADI on the health risks to the Mapuche population as a result of the quantity and quality of the outflows, waste and emissions, and the adverse effect on natural resources such as water, soil and air which lead to changes in the way of life and customs of the population, and also affect places of cultural interest.

On these grounds, the contested decision was found to be arbitrary as it contravened the applicable laws and because the opinion of the indigenous communities had not been taken into account. Their members could be affected by the planned sewage plant owing to the proximity of their residences to the plant and to the changes to their cultural and religious rituals that take place in places that border the planned plant. The application for protection was upheld by the Supreme Court.

CCPR, CCPR/C/CHL/CO/5/Add.2 (2010)

Additional explanation submitted to the Human Rights Committee on paragraphs 9 and 19 of the concluding observations on the fifth periodic report of Chile

[28 May 2010]

I. Low number of prison sentences handed down for grave human rights violations

1. The pertinent information was sent in Note No. 343 dated 31 October 2008 by the Mission of Chile to Special Rapporteur Sir Nigel Rodley through the Office of the United Nations High Commissioner for Human Rights. Attached to the note was an alphabetical list of the victims whose cases had yet to be processed as at 30 September 2008. The list was compiled by the Human Rights Programme of the Ministry of the Interior and gives details of the 342 cases of human rights violations still before the courts on that date.

2. Supplementary information on the matter is presented below.

3. As at December 2009, only 59 State officials convicted in Chile for human rights violations were actually serving time in prison, despite the considerable number of sentences handed down by the Supreme Court for such violations. This is because, when deciding the severity of sentences for crimes against humanity and having declared that such crimes were partially prescriptible, the courts have opted to reduce the penalties for such crimes considerably and, in view of the resulting lightness of the sentences handed down, to grant benefits such as probation or suspended sentences. The Supreme Court has stated in most of its rulings that such crimes, to the extent that they fall into the category of crimes against humanity, are imprescriptible. However, in the past three years, it has ruled that, owing to the time lapsed since the crimes in question were committed, partial limitation applies in accordance with article 103 of the Criminal Code. This article allows crimes for which half or more of the statute of limitations has lapsed to be considered as attended by two or more extenuating circumstances, and by no aggravating ones, which enables the prison sentences imposed by the lower courts to be reduced to 5 years or less. This in turn paves the way for the sentence to be suspended or commuted to alternatives, such as probation or remission of sentence. In practice, between June 2007, when it applied the principle of prescription to crimes against humanity for the first time, and December 2009, the Supreme Court issued rulings of partial limitation in 42 out of 63 of its judgements, reducing penalties and granting benefits to 90 convicted persons, who today are serving their sentences outside prison.

4. It should be borne in mind that some of these sentences were imposed on members of the upper echelons of the military regime's security apparatus, including General Manuel Contreras Valdebenito (sentenced to a total of over 300 years' imprisonment) and Brigadier Pedro Espinoza Bravo, respectively the former Director and former Deputy Director of the National Intelligence Directorate (DINA), to name but two of the most emblematic figures. Both of these are currently serving prison sentences.

5. The following documents containing data updated to June 2009 are attached hereto:

(a) Table A:

(i) Presents the cases currently before the courts, the number of victims whose cases are under investigation and the stage in the proceedings that the cases have reached;

(ii) Indicates the number of victims whose cases have been closed and which of these resulted in the conviction of one or more officials; and

(iii) Shows the number of victims whose cases are not currently under investigation by the courts.

(b) Table B shows the number of victims whose cases have been closed (either because the proceedings were stayed or because they ended with a final conviction) and the cases that have been reopened during the period;

(c) Tables C, D and E detail the contents of table B in the month;

(d) Table F lists the State officials who were prosecuted and/or charged and/or convicted by the end of the period, together with an indication of the number who were convicted and are actually serving a prison sentence. The number of victims associated with these cases is also provided;

(e) The list of pending cases presents all the proceedings under way, with information on the courts and the victims whose cases are under investigation. The column headed "officials involved" shows whether (and how) any State officials have been affected by a judicial decision.

6. The alphabetical list of victims presents the same information as the list of pending cases, but in alphabetical order by victim.

7. The list of accused presents the cases which resulted in judgements that affected the State officials prosecuted in each case. The names of the officials are given, the extent of their involvement, the date of the judgement and the related victim or victims, together with details of the court and the proceedings. The list is ordered by pretrial and trial proceedings, definitive judgements, sentences passed by the court of second instance, sentences passed by the court of first instance and acquittals.

8. The summary of the list of accused persons presents the information by alphabetical order of the victims whose cases concluded with judgements that affected State officials, together with the names of those officials.

9. The alphabetical list of State officials names the officials who have been affected by one or more court decisions in alphabetical order, together with the corresponding case number and the offence and degree of involvement with which they were charged.

10. The list of convicted persons contains the names of those on the list of State officials who

have been convicted since 2000 disaggregated either by a definitive judgement or by one passed by the courts of first or second instance.

11. The prison list gives the names of persons convicted by a final judgement who are currently serving prison sentences. Their names also figure on the State officials and convicted persons lists, except for the officials convicted for the aggravated homicides of José Manuel Parada, Manuel Guerrero and Santiago Nattino, who completed their sentences prior to 2000 (unless they are currently charged under a different judicial decision).

12. The ranks document classifies those included in the State officials list by the branch of the armed, public-order or civilian forces to which they belong or belonged.

13. Lastly, a comparative table shows the status of the proceedings at the end of each period (in this case, on 31 December 2004 and on 30 June 2009).

II. Capacity of those who have been convicted of human rights violations to hold public office

14. According to general criminal law, persons are convicted of human rights violations if found responsible for perpetrating particular crimes (such as homicide, kidnapping, genocide or crimes against humanity). Under Chilean law, those crimes are subject to a specific penalty, which is accompanied by the additional penalty of being absolutely or specially, perpetually or temporarily banned from holding public office or exercising public functions.

III. Information on the publication of files compiled by the National Commission on Truth and Reconciliation and the National Commission on Political Prisoners and Torture

A. Information held by the National Commission on Truth and Reconciliation

15. The classified information not included in the Report of the National Commission on Truth and Reconciliation is available to courts upon request. Every time a judge has asked for information on a classified case, the information has been provided.

B. Information held by the National Commission on Political Prisoners and Torture

16. The Commission was established in response to the appeals of human rights organizations and victims' associations seeking the truth in cases of political prisoners and victims of torture and seeking reparation on their behalf. From the outset, the process aimed to provide a factual basis for recognition of these grave human rights violations, with a view to establishing a historical memory of events and recognizing and compensating the victims, who had received no compensation. This in no way prejudices the victims' right to obtain justice through the appropriate courts.

17. The Commission deemed the information in victims' testimonies to be confidential, given the intimate nature of many of the statements, which contained accounts and described the consequences of torture that many of those interviewed did not wish to make public. This policy

was explained to those who provided statements.

18. The Commission, and subsequently the legislative authorities, had to weigh the public's need to know against the need to maintain confidentiality. Hence the decision to publicize the Commission's final report and to give the public the full picture of events. The report provides information on what actually took place and explains the effects on victims' lives, while protecting the confidentiality of individual accounts. It was not a question of protecting the perpetrators, accomplices or accessories after the facts. The Commission was not authorized to investigate the crimes, but only to hear the testimonies and to check whether the persons making them had really been political prisoners or victims of torture.

19. In order to protect the privacy and honour of the victims, it was proposed that the information left out of the published report should be kept confidential for a certain period of time, as is the practice with historical records in other countries. A law was passed providing for testimonies to be kept secret for a period of 50 years, although this does not prevent people from publishing their statements or taking action through the courts to establish the criminal responsibility of the perpetrators. Moreover, compensation for victims was not conditional on their waiving the right to seek compensation through civil action. They are free to go to court to establish the injury they have suffered and to seek appropriate compensation.

IV. Information on land demarcation and compensation measures introduced to respect and recognize the rights of indigenous communities to their land

20. Under the indigenous land policy, the following have been recognized as indigenous lands since 1993 (Act No. 19253):

(a) Lands owned or held under specific titles;

(b) Lands historically occupied by indigenous communities;

(c) Lands recorded under this Act in the indigenous land register;

(d) Lands transferred to indigenous communities by the State.

A. Settlement of land claims

21. Under the various laws currently in force, which allow the National Indigenous Development Corporation (CONADI) and the Ministry of National Assets to transfer and regularize the possession of land by indigenous persons and communities, the Government has pursued two courses of action: (a) the expedition of the transfer of land in accordance with the Government plan *Re-Conocer: Pacto Social por la Multiculturalidad* (Re-acknowledge: a social pact for multiculturality) in order to satisfy historical claims; and (b) the review of land policy to update the criteria and procedures applied in order to guarantee efficiency and transparency.

22. The Government has recently updated its data on landholdings, and the new information is worthy of note:

1. CONADI Indigenous Land and Water Fund

23. In 2006, the budget allocated to the subsidies programme to implement article 20 (a) and (b) of Act No. 19253[1] was increased to 2,500 million Chilean pesos, a rise of 17 per cent compared with 2005. This benefited 1,475 families for a total investment of 13,239 million pesos.

24. The budget increase allowed the Indigenous Land and Water Fund to expand its activities across the country and to increase investment in land purchases in the Bío Bío, La Araucanía, Los Lagos, Los Ríos and Magallanes regions under article 20 (a) and (b) of Act No. 19253.

25. The amounts budgeted for 2008 and 2009 and the estimated budget for 2010 have been determined on the basis of the funds required to address the totality of the historical claims made to date (art. 20 (b)) by the indigenous communities of the Bío Bío, La Araucanía, Los Lagos and Los Ríos regions.

2. The Ministry of National Assets (1993-2008)

26. Since the entry into force of the Indigenous Peoples Act No. 19253 of 1993, the Ministry of National Assets has focused its activities on indigenous peoples with a view to contributing to the social development of indigenous communities and individuals through the acquisition and provision of the necessary fiscal assets and the regularization of private ownership of land and property, all in accordance with the Government's indigenous land policy. The goal is to establish a legal basis for ancestral occupation, to increase indigenous landholdings and to enable indigenous communities and families to benefit from State social programmes, which operate on the basis that land is owned by those who live or work on it.

27. The Ministry has processed individual land titles, as well as transfers of lands to communities, free of charge and has leased Government lands to individuals, communities and CONADI, also free of charge, under Decree-Law No. 1939 of 1977 (on the acquisition, administration and disposal of State assets). The Ministry has carried out these activities in the commune and province of Isla de Pascua (Easter Island), specifically under Decree-Law No. 2885 of 1979 (on the granting of deeds of title and leases for Government plots on the island). The Ministry has also regularized individual and community titles to private lands under Decree-Law No. 2695 of 1979 (on the regularization of small real-estate holdings).

28. The Ministry's land activities have mainly been pursued in regions where the density of the indigenous population is high and where that population has a history of occupying or using the land, namely: Arica and Parinacota, Tarapacá, Antofagasta, Atacama, Bío Bío, La Araucanía, Los Lagos, Los Ríos and Magallanes and the commune and province of Easter Island.

Information on the regularization and transfer of land titles

Land acquired by the Indigenous Land and Water Fund, 1994-2009					
	Article 20 (b)	*Article 20 (a)*	*Transfers of Government lands*	*Regularization of indigenous property*	***Total***
Total 1994-2009 (hectares)	**97 811**	**28 491**	**245 134**	**286 084**	**669 482**
Families	8 294	3 476	8 015	49 091	**68 876**
Communities	251	165	189	8	**613**
Individual subsidies	-	1 465	-	-	**1 465**

29. The Government's *Re-Conocer* plan provides for the handover of lands to 115 communities in the period 2008-2010.

30. In fulfilment of this plan, land was acquired in 2009 for 43 communities in the regions of La Araucanía, Bío Bío, Los Ríos and Los Lagos. This expanded indigenous landholdings by 18,416 hectares.

31. Purchases to meet the requirements of the remaining communities covered by the plan are scheduled to start in 2010, with the incorporation of other communities that are socially highly vulnerable.

32. In order to optimize its current land policy and land purchasing procedures, the Government has asked the University of Concepción, through its EULA environmental sciences centre, to update the register of indigenous land, water and irrigation systems. This will make it possible to measure the progress made as well as the work that still remains to be done to satisfy the demand for land among the indigenous communities of the country's main provinces.

33. Finally, it should be noted that a friendly agreement was reached with the Mapuche communities of Temulemu, Didaico and Pantano of Traiguén. These communities are claiming the restitution of a plot known as Santa Rosa de Colpi, which is registered as belonging to the company Forestal Mininco. The land is currently being valued for the purpose of establishing a price for its purchase from Mininco, which has agreed to sell it. Talks held between community authorities and forestry companies (including Mininco), with the support of the Inter-American Development Bank (IDB) and public promotion institutions, led to the establishment of a mixed working group comprising representatives of the communities, companies, the public sector and IDB. This group is currently drafting a joint proposal for financing investments within the

framework of community development plans. These will be carried out through commercial partnerships with forestry and other types of companies around the respective value chain. Once approved, the project will be piloted with the aforementioned communities and the companies that agree to assume specific commitments towards them.

B. Recognition of the rights of indigenous peoples over lands and natural resources

1. Ancestral lands traditionally occupied or used by indigenous peoples

34. Pursuant to Act No. 19253, State policy has aimed to protect and recover indigenous lands held under various types of title, including community ownership titles granted by the Colonial authorities (*t ìtulos de realengo*) in the case of land on the island of Chiloé. In this way ancestral lands have been recovered and returned.

35. While the *t ìtulos de realengo* granted during the Colonial period could be considered to mark the first acknowledgement of the existence of indigenous property on Chiloé, and after many changes occurring in subsequent periods, it was the Indigenous Peoples Act No. 19253 that established once and for all the mechanisms whereby the State would proceed to protect and recover ancestral lands.

36. State-owned lands have thus been transferred under the corresponding programme to indigenous communities on Chiloé as follows:

State-owned land transfer programme (Chiloé)

Indigenous community transferred	*Date of transfer*	*Hectares*
Coihuin de Compu	38659	1 132.40
Coihuin de Compu	38651	1 390.90
Coihuin de Compu	38651	703
1. Chanquen	38369	4 727.24
2. Huentemó		
Coihuin de Compu	39470	2 404.23

37. A transfer of land to the Weketrumao community is also pending but has been held up by disputes among the communities living in the area. A reconciliation process has now been launched.

38. The cases of indigenous lands covered by *t ìtulos de realengo* that cannot be resolved via the aforementioned transfer of State-owned property because the lands are currently under private ownership may be settled under article 20 (b) of Act No. 19253 pursuant to the

provisions of subparagraph (d) of the current CONADI land policy. This refers to lands, which, despite having been occupied for many years by indigenous communities, are owned by other persons under titles issued in earlier periods when the courts had ruled against the indigenous communities. In such cases, article 20 (b) of Act No. 19253 is fully applicable.

39. According to information obtained from the CONADI Indigenous Land and Water Fund, the following communities have filed claims under the aforementioned article 20 (b):

Register of land claims filed under article 20 (b). Communities of the commune of Chiloé province, Los Lagos region, having filed claims

Commune	*Community*	*Status*
Quellón	Wequetrumao	In process
	Tugueo	
	Guaipulli	
	Coihuin De Comp	

40. In addition, the Buta Huapi Chilhue community of the Compu sector, Quellón commune, Chiloé, has been declared eligible to file a claim under article 20 (b) since 2005.

41. Meanwhile, in a clear statement of the recognition of ancestral lands by Chilean law, article 12, paragraph 2, of Act No. 19253 recognizes as indigenous all lands that indigenous persons or communities have historically occupied and owned, provided that the corresponding rights have been recorded in the public register of indigenous lands upon the request of the respective community or owner of the property. In this way ancestral land occupation is recognized and protected.

V. Application of counter-terrorism laws

42. Act No. 18314, which criminalizes and establishes penalties for acts of terrorism, has only been applied on a limited number of occasions in response to acts of violence that, owing to their nature and/or the seriousness of the means used, made it necessary from the standpoint of criminal law to apply legislation carrying heavier penalties.

43. Since 2006, the Government of Chile, through the Ministry of the Interior and its land distribution programmes, has initiated three proceedings (one in 2008 and two in 2009) alleging acts of terrorism.

44. In each case in which the Ministry of the Interior has applied special criminal statutes, it has done so in consideration only of the seriousness of the acts involved and the means used for their commission and regardless of the cause that might be cited to justify them. These were the legal grounds for the proceedings initiated under the aforementioned provisions of Act No. 18314. The fact that the accused were members of indigenous communities or peoples was never

a consideration. On no occasion has the criminal law been used to discriminate on political, social, ethnic or religious grounds.

45. Legitimate demands regarding the land rights or ancestral rights of the country's indigenous communities, which many such communities claim as a cause worthy of State protection, must not be confused with isolated acts of violence committed by small minority groups of individuals who, operating outside the law, seek only to spread fear among the population with their attacks, while attempting to justify their criminal conduct by invoking the legitimate struggle of indigenous communities.

VI. Information on the practical implementation of consultation and participation procedures for indigenous communities

A. Early implementation of the right to be consulted

46. On 25 June 2008, a few months after the new indigenous policy was introduced under the *Re-Conocer* plan and almost 18 months after the entry into force of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, President Michelle Bachelet issued presidential instruction No. 5, which, among other measures, established the obligation to hold consultations on legislative and administrative initiatives that could affect indigenous peoples. The new instruction was based on: the need immediately in the activities of public agencies to mainstream consideration of suggestions put forward by indigenous peoples, through a procedure aimed at channelling relevant information to indigenous communities, collecting their observations and opinions on the initiatives that target or affect them, and establishing the duty of public agencies to provide reasoned responses. This, together with other activities set out in the plan, will gradually pave the way for the implementation of the specific measures on participation that will ensure full compliance with Convention No. 169.

47. The right to consultation was thus beginning to be implemented even before ILO Convention No. 169 entered into force, and the lessons learned (together with the results of the consultation process described in section 1.3 below) were subsequently taken into account in the drafting of the regulations on consultation procedures set out in Decree No. 124.

B. Entry into force of ILO Convention No. 169 and the passing of Decree No. 124

48. In order to comply with the obligations set forth in article 6 and article 7, paragraph 1, of ILO Convention No. 169, as soon as it came into force on 15 September 2009, the Government issued Decree No. 124, which establishes regulations for the implementation of article 34 of Act No. 19253 on the consultation and participation of indigenous peoples. The Decree was published in the Official Gazette of 25 September 2009 after being subjected to constitutional review by the Office of the Controller-General.[2]

49. The regulations were drafted taking into account paragraph 38 of the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on the international principles applicable to consultations on constitutional reforms regarding the rights of indigenous peoples in Chile, which states in the final section that when such

mechanisms do not exist formally, transitory or ad hoc mechanisms must be adopted provisionally to ensure the effective consultation of indigenous peoples.

50. The corresponding transitory article of Decree No. 124 states that once these regulations enter into force, indigenous peoples will be consulted regarding the procedures to be used for consultation and participation processes in accordance with the provisions of article 34 of Act No. 19253 and article 6, paragraphs 1 (a) and 2, and the second sentence of article 7, paragraph 1, of ILO Convention No. 169.

C. Consultation process

51. In accordance with the provisions of the transitory article of Decree No. 124 and the recommendations that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, set out in paragraph 50 of his report on Chile, the Government is currently consulting indigenous peoples on their views and ideas regarding the consultation and participation process provisionally set up under the Decree. The aim is to optimize the process, taking into account their suggestions and proposals, and thus establish a definitive consultation and participation procedure in keeping with the provisions of ILO Convention No. 169.

52. In order to ensure that that consultation procedure includes suitable modalities and activities that respond to the particular characteristics of each region and indigenous people, the Government, through the Indigenous Policy Coordination Unit of the Office of the Minister and Secretary-General of Government and in conjunction with the regional governor's offices of regions that are home to mainly indigenous populations, has held an initial round of meetings with representatives of indigenous peoples through the regional indigenous councils.

53. The goal of these meetings has been to hear the opinions and proposals of representatives of indigenous peoples regarding the characteristics, activities and calendar of the consultation process, with a view to incorporating them into the plan under which the consultation procedure will be implemented in the corresponding region. The meetings held to date are listed in the table below.

Region	*Town*	*Date*	*Attendance*
Arica	Arica	40132	14
Tarapac á	Iquique	40132	18
	Iquique	40139	
	Iquique	40148	5
Antofagasta	San Pedro de Atacama	40143	19
	Calama	40155	14
Coquimbo	La Serena	40134	21

Valparaíso	Rapa Nui	40167	14
Metropolitana	Santiago	40140	
	Santiago	40147	29
	Santiago	40161	24
Los Lagos	Osorno	40142	28
	Osorno	40163	30
Aysén	Coyhaique	40143	10

54. To keep participants informed on the progress of the talks and discussions held, the Government has presented a number of documents to the representatives of the indigenous communities on the regional indigenous councils. These include the aforementioned Special Rapporteur's report on the international principles applicable to consultations regarding constitutional reform in the area of the rights of indigenous peoples in Chile and the pertinent parts of the ILO manuals on the implementation of Convention No. 169. ILO representatives have also participated in several of the meetings to explain the content and scope of the Convention.

55. This initial stage of the consultation process is currently under way and once it has been concluded, the actual consultations process will commence.

D. Consultations held to date

56. Since the issue of the presidential instruction on 25 June 2008, two national consultations and two consultations on issues affecting specific indigenous communities have been held. These are:

(a) At the national level:

(i) Consultation on initiatives to promote the political participation of indigenous persons;

(ii) Consultation on the constitutional reform to recognize indigenous peoples currently under consideration by parliament.

(b) At the local level:

(i) Consultation on the repatriation from Switzerland of skeletal remains of members of the Kawésqar and Yaganes indigenous communities;

(ii) Consultation on the constitutional reform to permit the suspension or restriction of rights to stay or reside on Easter Island.

1. Consultation on political participation

57. This consultation aimed to determine the position of indigenous peoples regarding:

(a) The election of representatives of indigenous peoples to Congress and regional government councils;

(b) The creation of an indigenous peoples council.

58. The demand for political participation by indigenous peoples is set out in a series of documents: the Nueva Imperial Agreement (December 1989); the Report of the Historical Truth and New Deal Commission (October 2003); and the National Debate of Chilean Indigenous Peoples, which concluded with the National Indigenous Congress (October 2006) and the National Mapuche de Quepe Congress (November 2006).

59. The first stage of the consultation on political participation commenced on 5 January 2009 with the dispatch of written proposals to 4,500 indigenous organizations, whether they had legal personality or not. These proposals were accompanied by an explanation of how to participate. The consultation was publicized on national, regional and local media so that all interested communities would be informed and receive the background information necessary for preparing and submitting observations.

60. This first stage of the consultation was originally due to end on 16 February 2009, but given the high level of interest shown by indigenous organizations, the deadline was extended, initially to 2 March (as announced through a new nationwide publicity campaign), and it was subsequently decided that after that date stakeholders could continue to submit proposals in writing.

61. During the period set aside for written submissions, 522 responses, representing various indigenous peoples and their organizations and reflecting their territorial identity, had been received by 9 March 2010. These are currently under analysis and are listed in annex 2.

62. On 11 March 2009, a series of workshops and round tables were launched in all the parts of the country with an indigenous presence.

63. During this second stage, visits were made to indigenous organizations to explain the contents of the two proposals and to hear their views and suggestions for optimizing the projects. Annex 3 lists the workshops and round tables held and the number of indigenous community members who attended and contributed to the consultation on political participation.

64. The process ended with the systematic review and compilation of the conclusions of the workshops and round tables held across the country, which were published on the website www.conadi.cl. These are also presented in annex 4 together with information on the weight they were given in the Government's formulation of the proposals.

2. Consultation on the constitutional reform to recognize indigenous peoples

(a) Historical context of the constitutional recognition of indigenous peoples

65. The demand for constitutional recognition has a long history in the relations between the indigenous peoples and the State of Chile and was in fact referred to in the Nueva Imperial Agreement of 1 December 1989,[3] which states:

> "Patricio Aylwin Azocar hereby undertakes to further the claim of the indigenous peoples of Chile set out in the manifesto of the Concertación party, specifically in section a:1 on the constitutional recognition of indigenous peoples and their fundamental economic, social and cultural rights."

66. In a similar vein, the Report of the Historical Truth and New Deal Commission[4] presented on 28 October 2003 to then President Ricardo Lagos states the following:

> "In keeping with the principles outlined above, the Commission recommends the constitutional recognition of indigenous peoples: that is, the amendment of the Constitution of the State of Chile through a clause inserted into the institutional framework that declares that the indigenous peoples exist and form part of the Chilean nation and recognizes that they have their own cultures and identities ...".

67. The National Debate of Chilean Indigenous Peoples was held between June 2006 and January 2007. This debate took the form of 200 local and regional meetings and 1 national event and involved over 120 organizations representing indigenous peoples. Direct talks were also held with at least 5,000 leaders of grass-roots organizations and indigenous communities. The Debate concluded with two national meetings: the National Indigenous Congress, which ran from 3 to 5 October 2006, and the National Mapuche de Quepe Congress, held on 11 November 2006.

68. On 30 April 2007, the President of the Republic, Michelle Bachelet, endorsed the proposals made and put forward the case for constitutional recognition within the Government's new guidelines on indigenous affairs. Finally, on 1 April 2008, in the new policy on indigenous affairs as set out in the *Re-Conocer* plan, which is in force today, the President approved a chapter on the political system, rights and institutions, that details the measures to be implemented to promote the participation of indigenous peoples in the political system, including the constitutional recognition of their existence as part of the Chilean State.

69. Constitutional recognition has been demanded for many years both by indigenous peoples themselves and by various Government agencies. The proposed constitutional reform aims to right a historical wrong identified many years ago. The political consensus needed to push through that reform has yet to be achieved, however. Even in the most recent constitutional reform of 2005, which wrought major changes in the institutional framework of the Chilean political system, and despite Government efforts, the long-awaited recognition of indigenous peoples was not incorporated into constitutional law.

70. Particularly noteworthy, then, are the Senate's approval, on 7 April 2010, of an initiative to legally enshrine the recognition of indigenous peoples and the willingness shown by the

Constitution, Legislation, Justice and Regulations Commission of the Senate to further this initiative. Both mark a substantive and significant shift in attitude compared with the various discussions held on the subject in previous years.

71. The Government views the initiative in question as a historic step forward in the relations between the State and the native peoples of Chile. Not only does the Senate's approval of the proposal to recognize indigenous peoples in the Constitution mark the first vote in favour of the notion since it became the subject of parliamentary debate nearly 18 years ago, but the content of the proposal represents substantial progress in comparison with previous initiatives and with other countries' legislation on this subject.

72. One of the most progressive aspects of the proposal is the recognition of indigenous peoples as collective holders of political, cultural, social and economic rights in the first chapter of the Constitution, which lays the foundations for the State's institutional framework. This is fully in keeping with the norms and principles of ILO Convention No. 169. Notwithstanding the above, the Government is still developing new ideas for improving the initiative.

(b) Consultations held on the text of the constitutional reform to recognize indigenous peoples

73. Consultations were held from 13 April to 15 July 2009 with indigenous communities across the country on the constitutional reform bill to recognize indigenous peoples, which had been approved in general by the Senate at its session of 7 April 2009.

74. The goal of the consultations was to hear the proposals of indigenous peoples' organizations on the text approved by the Senate as the first step in the constitutional review process and to channel these to the Constitution, Legislation, Justice and Regulations Commission as input for its discussions, particularly its consideration of the constitutional reform bill.

75. The precursors to the bill are the Message from the Executive Branch (Government of Chile) that entered the legislative process on 27 November 2007 and the Parliamentary Motion initiated by opposition senators on 6 September 2007. The current proposal for the constitutional recognition of indigenous peoples clearly builds on these two initiatives, the content of which was amalgamated into a single text by the Constitution, Legislation, Justice and Regulations Commission. The report of the Commission states that over 50 indigenous leaders and organizations were interviewed in the process.[5]

76. On this matter, the Special Rapporteur, in his report, states that the consultation should be open in principle to other issues, which, in the light of international standards, domestic legislation and the legitimate demands of indigenous peoples, could be included in the aforementioned text (the one approved by the Senate).

77. The consultation concerned the content of the text approved by the Senate, but since it serves as the basis for new legislation, that text can be modified in subsequent parliamentary proceedings. The answer guide prepared for the consultation process therefore not only enabled

indigenous people to express their approval or disapproval of the measure, but also to make comments, observations or new proposals, which did not necessarily have to be limited to the proposed text of the constitutional reform approved by the Senate on 7 April 2009.

78. The same approach was applied in the information workshops held within the framework of the consultation process. The main issue under consultation was discussed, but the workshops were open, democratic forums in which stakeholders could voice their opinions on all matters of importance to them.

79. The same procedures were used in this consultation process as in the consultation on political participation: information and material were sent to the communities, including the answer guide (annex 5) and a question and answer manual (annex 6). In total, 121 workshops were held (detailed in annex 7), attended by 3,392 people, for whom a special induction video was prepared (available on http://www.conadi.cl/videos.html). Publicity and information activities were also organized through the media (see www.conadi.cl).

80. All in all, 428 observations were submitted in various formats, either by e-mail, or by post or hand-delivered to the various operative units of CONADI across the country or the offices of the Presidential Commission for Indigenous Affairs. They were then forwarded to Congress for consideration in its discussions of the constitutional reform bill.[6]

81. In this respect, and with regard to the Special Rapporteur's point that the consultation on the proposed text should be held prior to the legislative process, it should be noted that the aforementioned legislative initiatives date back to 2007, at a time when ILO Convention No. 169 had not yet been approved by Congress.

82. Moreover, as is common practice in the congressional legislative review process in Chile, representatives of indigenous communities and organizations, as well as academics and other people who were in a position to contribute to the analysis, were invited to participate in congressional hearings on the topic. The Commission thus received input from representatives of several indigenous peoples, who presented their visions, observations and expectations regarding their proposed recognition in the Constitution.

83. The Commission's report refers to the duty to consult established in ILO Convention No. 169 and to the hearings that were held in fulfilment of the obligation to hear the opinions of people, organizations and communities. Two aspects of the context in which that reference was made need to be clarified, however:

(a) The hearings were arranged prior to the entry into full force in Chile of ILO Convention No. 169;

(b) The Constitutional Court has declared that the consultation referred to in article 6 of the Convention is automatically enforceable and applicable by all State agencies, including the National Congress, from the moment the Convention enters into force, without complementary implementation measures being required.[7]

84. In the light of the Senate's approval of the initiative to enshrine the recognition of indigenous peoples in the Constitution, the Executive Branch decided to withdraw the "high urgency" status[8] attached to the bill in order to enable the Government to hold consultations on the matter.

85. The constitutional reform bill is currently in the text analysis stage, rendering it inappropriate to draw any definitive conclusions on the subject.

3. Consultation on the repatriation from Switzerland of skeletal remains of members of the Kawésqar and Yaganes indigenous communities

86. In accordance with the wishes of the Indigenous Development Council of the Magallanes Region, CONADI, through its office of indigenous affairs in Punta Arenas and with the support of indigenous policy coordination unit of the Office of the Minister and Secretary-General of Government, held consultations with the Kawésqar and Yagan communities from the southernmost region of Chile on how to proceed with the repatriation of the remains of several members of the canoe people of Tierra del Fuego that were illegally removed from the country in 1881 and displayed at exhibitions and fairs in Europe before ending up in the University of Zurich in Switzerland.

87. The consultation was held in two stages: first, from 19 to 23 October 2009, guidelines for the consultation were drafted and views were formally recorded in writing; second, participative workshops were held between 1 and 16 November 2009.[9]

88. The deadline for receiving input, comments and proposals was extended from 23 October to 23 November 2009, and in the end, 32 responses were received from organizations and 2 from family groups.

89. Additionally, between 1 and 16 November 2009, four seminars were held in Magallanes, which were attended by 44 members of indigenous organizations in the region.

90. These activities and the outcome of the consultation process made it possible to agree with the indigenous organizations on how the skeletal remains should be repatriated, which protocols needed to be followed and where the remains should be finally laid to rest.

91. Finally, on 12 January 2010, the remains were duly repatriated and buried according to indigenous rites and traditions.

4. Consultation on the constitutional reform to permit the suspension or restriction of rights to stay or reside on the special administrative territory of Easter Island

92. As part of the Ministry of the Interior's activities to establish mechanisms to regulate the migration and residence of individuals on Easter Island who are not members of the Rapa Nui people, consultations were held to reach an agreement with the Rapa Nui community on the proposed constitutional reform to regulate the transit, circulation and stays of outsiders coming to the Island, an issue which the Rapa Nui people have long wished to resolve.

93. Consultations were thus held on 24 October 2009 on Easter Island to hear the Rapa Nui people's views on the subject. On the basis of the opinions received, the Ministry of the Interior drew up a proposed plan and timetable for the process, which were endorsed by the Office of the Minister and Secretary-General of Government and CONADI, as set out in Supreme Decree No. 124.

94. As part of the consultation process, working meetings attended by leaders and representatives of the Rapa Nui community were held both on Easter Island and in Santiago. In order to keep people duly informed, several video conferences were organized with members of the Executive Branch and Rapa Nui representatives; the process was broadly publicized via local media, including radio and television; and various workshops were held the week of 19-24 October 2009 in preparation for the referendum held on 24 October 2009.

95. Three voting stations remained open from 8 a.m. to 4 p.m. on Saturday, 24 October 2009, to allow all the Rapa Nui people recorded in the electoral register kept by CONADI's Office of Indigenous Affairs of Easter Island to participate in the "One Rapa Nui - one vote" referendum, in which voters had to express their agreement or disagreement (by voting "Yes" or "No") with the proposed constitutional reform, the content of which had been previously discussed with representatives of Rapa Nui organizations.

96. Of the almost 1,300 people eligible to vote, 706 chose to do so, exceeding expectations of the community itself and approximating the number who participated in the election of Rapa Nui representatives to the Easter Island Development Commission. Of those who cast their vote, 678 voted in favour of the proposal, 26 against, and 2 submitted blank votes. This meant that 96.3 per cent approved the Government's initiative to put forward a constitutional reform bill, the final text of which was presented to Congress on 5 November 2009.

E. Participation of indigenous peoples

97. The Government has been pursuing various initiatives to create opportunities for indigenous peoples to participate in State structures. These include:

1. Creation of regional indigenous councils

98. The indigenous councils were set up as meeting points and forums for permanent and systematic dialogue between regional or provincial authorities and indigenous organizations in the various regions. They provide an opportunity for public agencies and indigenous organizations to coordinate, discuss and participate in matters and, as such, they promote the participation and influence of indigenous people and organizations in public affairs.

99. The regional and provincial indigenous round tables are presided over by the regional or provincial governor, as applicable. Currently they are functioning in the regions of Arica and Parinacota, Tarapacá, Antofagasta, Metropolitana, Bío Bío, La Araucanía and Magallanes and in the Province of Osorno. They have made it possible to analyse, coordinate and target regional governments' investments, plans and programmes in indigenous lands and territories and to

coordinate action within the consultation process.

2. Bill on the creation of an indigenous peoples council

100. On 29 September 2009, a bill on the creation of an indigenous peoples council was submitted to Congress. The purpose of the council will be to represent the interests and needs of indigenous peoples before State agencies, Congress, the Judiciary and constitutionally autonomous agencies (see annex 10).

101. The council will participate in the design and monitoring of national indigenous affairs policy, publish annual reports on the status of indigenous peoples' rights, and approve translations of official State documents into indigenous languages, among other activities.

102. The council will have 43 members chosen by the different indigenous peoples in proportion to their size and from the special indigenous voter register which will serve as a basis for the indigenous electoral roster. The bill is awaiting discussion by parliament.

3. Participation of indigenous peoples in the Chamber of Deputies and regional councils

103. As noted earlier, between January and March 2009, the Government consulted indigenous communities on a proposal to allow indigenous peoples to participate, through their own representatives, in the Chamber of Deputies and regional councils.

104. The observations and suggestions arising from this consultation with indigenous communities led to improvements being made to the initial proposal, and a new bill will be drafted and submitted by the Government to Parliament.

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[1] Article 20 of Act No. 19253 provides for the creation of an Indigenous Land and Water Fund under the management of CONADI. According to the article, CONADI may pursue the following objectives through the use of this Fund:

(a) Grant subsidies for the purchase of land by indigenous persons, communities or segments of communities, when the land area of the community in question is insufficient, subject to CONADI approval. The application process is to be different for individuals and communities. In the case of individual applicants, previous savings, socio-economic status and family situation are to be taken into account. In the case of community applications, in addition to the criteria established for individual applicants, the antiquity of the community and the number of members are to be considered;

Regulations are to establish the form, conditions and requirements of the subsidies and their administration;

(b) Finance land dispute settlement mechanisms, especially so as to implement judicial or extrajudicial decisions or transactions involving indigenous lands that constitute final decisions

regarding indigenous lands or lands transferred to indigenous peoples under grants or other titles, concessions or allocations granted by the State in favour of indigenous peoples;

(c) Finance the establishment, regularization or purchase of water rights or finance the construction of waterworks.
The President of the Republic is to issue regulations on the mode of operation of the Fund.

[2] See annex 1.

[3] Meeting of the indigenous peoples of Chile with the then presidential candidate, Patricio Aylwin, at which the agenda was set for talks between the State and the indigenous peoples within a democratic framework.

[4] Commission comprising leading personalities from indigenous and non-indigenous society, which was set up to advise the President of the Republic on the history of the indigenous peoples of Chile and to make proposals for a "new deal" between the State and indigenous peoples.

[5] The report states that representatives of the following associations and organizations were heard by the Senate Commission in fulfilment of the obligation to consult set forth in article 6 of ILO Convention No. 169: Mr. Adán Cariman and Mr. Juan Jara, respectively President and leader of the Mapuche-Moluche ethnic group; Ms. María Elena Curihuinca, Mr. Agustín Paillacán and Mr. Osvaldo Tripailaf, members of Parlamento Mapuche; Mr. Amado Painén, member of the Council of the Teodoro Schmidt commune; Ms. Amelia Mamani, member of the Quechua Sumaj-Llajta group; Mr. Andrés Millanao, Chair of Consejo de Pastores de la Araucanía; Mr. Angelino Huanca, Chair of Comisión de la Lengua Aymara; Mr. Aucán Huilcamán, member of Consejo de todas las Tierras; Ms. Blanca Camufi, teacher at school F-465 of Padre Las Casas; Ms. Cecilia Mendoza, Ms. Oriana Mora and Mr. Julio Ramos of the Atacameña Lickanantay community; Ms. María Eugenia Merino and Mr. Daniel Quilaqueo, of the Catholic University of Temuco; Mr. Dionisio Prado Huaiquil, Chair of Unión Comunal de Comunidades Mapuches de Collipulli; Mr. Domingo Marileo, *Unen Lonko* (President) of Asamblea Nacional Mapuche de Izquierda; Mr. Edmundo Antipan and Mr. Domingo Raín Anguita, leaders of Identidad Territorial Lafkenche; Mr. Francisco Vera Millaquén, member of the political committee of Identidad Territorial Lafkenche, and Mr. Myriam Yepi, member of the same organization; Mr. Edie Zegarra and Ms. Rosa Maita, representatives of the Putre and General Lagos communes, respectively, on the National Aymara Mallkus and T'allas Council; Mr. Emilio Cayuqueo, Principal of the Amul Kewün school of Nueva Imperial; Ms. Erika Cruz, intercultural adviser to the municipality of Padre Las Casas; Mr. Francisco Rivera, leader of the Poblado de Codpa indigenous community in Arica; Mr. Gustavo Quilaqueo, of the Wallmapuwen ethnic group; Ms. Nelly Hueichán and Ms. Isolde Reuque, respectively coordinator and leader of Asociación de Mujeres Mapuches Urbanas; Mr. Jaime Catriel, member of the Padre Las Casas Council; Mr. José Ignacio Llancapán, member of Consejo Indígena Urbano; Mr. José Lincoñir, Council member of Freire; Mr. Juan Carlos and Mr. José Tonko, repectively Chair and member of the Kawashkar de Puerto Edén community; Mr. Juan Carlos Guarachi, Chair of Corporación Cultural Aymara J'acha Marka Aru; Mr. Julián Mamani, Chair of Unión Comunal of the Putre commune; Mr. Luis Ojeda and Mr. Luis Jiménez, respectively Vice-Chair and member of Asociación Aymara Marka; Ms. Magdalena Choque, Chair of

Comisión Aymara de Medio Ambiente (Aymara Environmental Commission) (CADMA) of the provinces of Arica and Parinacota and head of the Bureau of Indigenous Affairs of the Putre municipality; Ms. Marcela Gómez, President of the indigenous community of Umirpa, Arica; Ms. Margarita Cayupil, member of Asociación Indígena Ñizol Mapu; Ms. María Carolina Arum, Director of Asociación Tripay Antü; Mr. Patricio Chiguay, member of the Yagán people; Mr. Rogelio Nahuel, member of the Liwen ñi Mapu coordination team; Ms. Rosa Morales, member of Asociación de Mujeres Indígenas Urbanas; Ms. Rosa Oyarzún, Mayor of Padre Las Casas; Mr. Sergio Liempi, Director of Pelom community radio, Padre Las Casas; Ms. Verónica Soto, of the ecological movement Ciclo Árbol Vida; Mr. Víctor Toledo Llancaqueo, academic from the Public Policy and Indigenous Affairs Centre of the University of Arcis; and Mr. Wilson Galleguillos, Chair of Consejo de Pueblos Atacameños. Invitations were extended on several occasions to representatives of Observatorio de Derechos de los Pueblos Indígenas, who declined to attend but submitted a document which was annexed to the report together with other documents received during the Senate Commission's examination of the matter.

[6] See the report on the consultation process presented in annex 8.

[7] Rulings ledger No. 309 of 2000 and No. 1050 of 2008.

[8] The Executive Branch has a so-called "urgency" instrument that it can use to prioritize the discussion and voting on certain draft legislation. This instrument is quite flexible inasmuch as it can be applied and withdrawn without limitation and in any procedure. Its most notable effect is its ability to influence the Senate's agenda and to instigate discussion of the projects deemed most pressing.

The high urgency status attached by the President of Chile to the constitutional reform bill on the recognition of indigenous peoples aimed to take advantage of the willingness of the Senate to generally approve the initiative and thus, for the first time, to have the recognition of indigenous peoples discussed in parliament, which would pave the way for the next stage of the process.

[9] See the final report on the consultation process presented in annex 9.