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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, on her visit to Chile

Comments by the State*

* The present document is being issued without formal editing.



Observations of the republic of Chile

A. Terminology

1. In several opportunities (summary, paragraphs 2, 76, 77, 81, 82, 114, and 115), the Report uses the expression “Attorney General,” a title that does not exist in Chilean law. The correct denomination is National Prosecutor of the Public Ministry or the Public Prosecutor’s Office (*Fiscal Nacional del Ministerio Público*). This denomination is contained in Article 13 of Organic Constitutional Law 19.640, which defines the National Prosecutor as the highest authority of the Public Prosecutor’s Office. The term Attorney General is inadequate and may lead to confusion, as several countries use it to refer to the Presidency’s legal advisor.

B. Paragraph 32

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

Observations

3. It is important to note that a constitutional reform bill (Bulletin 17.193-07), currently before the Chamber of Deputies, proposes to separate the administrative and jurisdictional functions of the Supreme Court and to establish a Judicial Appointments Council (*Consejo de Nombramientos Judiciales*). On several occasions, the Government has exercised its co-legislator powers to request that the bill be debated with utmost urgency (*suma urgencia*). The status of the draft law can be reviewed here: https://tramitacion.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=17193-07

C. Paragraph 41

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

Observations

5. Act No. 130-2023 allows interested persons, who have a law degree and who have held tenured or contract positions in the judiciary for more than five years (provided that they have been classified in the last two years on an outstanding list and have no demerit notes or been subject to sanction), to apply for substitutes and interim positions for judges, clerks and Court of Appeal rapporteurs. However, these interested persons are the third priority for these positions, after members of the Judicial Branch’s primary ranks or lawyers belonging to other ranks who have passed the Judicial Academy’s Training Programme (first order) and lawyers from outside the Judicial Branch who have passed the Academy’s Training Programme (second order). In addition, those in the third order must undergo a compulsory qualifying examination and a psycho-occupational assessment.

6. It should be recalled that Act No. 130-2023 was adopted in response to the complexities experienced in several jurisdictions of the country due to the lack of judges, clerks, and rapporteurs qualified to perform substitutes and interim appointments.

D. Paragraph 83

7. “She is concerned, for example, about guidance to prosecutors to seek pretrial detention when perpetrators fall into certain social categories. Together with the definition of new crimes and the establishment of mandatory penalties, these policies have apparently led to overcrowding in prisons and increased the vulnerability of certain groups, including migrants and Indigenous Peoples”.

Observations

8. It may be helpful to clarify the institutional policy regarding the request for pre-trial detention in cases involving defendants who lack identification documents or present false identities.

9. The growing number of undocumented defendants, or those using false identity documents, has created difficulties in ensuring that these individuals remain available for procedural actions, attend subsequent hearings, and comply with less intrusive precautionary measures (such as house arrest or travel restrictions). For this reason, irrespective of whether the individuals are nationals or foreigners, it has been recommended that in cases where the lack of documentation presents a flight risk, prosecutors request pre-trial detention.

10. This policy is grounded in the guidance provided by Official Instruction FN No. 298/2023, “General Instruction Establishing Guidelines for Prosecutorial Action in Cases Involving Defendants without Identification Documents”.

11. Additionally, this institutional practice has recently been codified through Law No. 21.694, which amended Article 140 of the Code of Criminal Procedure. Under this amendment, the absence of documentation enabling identification—whether concerning Chilean nationals or foreign nationals—constitutes an objective criterion indicating a risk of flight.

12. Finally, it is important to emphasize that the Public Prosecutor’s Office makes every effort to facilitate the identification of undocumented individuals through all necessary procedures and diligences.

E. Paragraph 85

13. “However, she is concerned about the lack of clear legal procedures on disciplinary actions, warning that this ambiguity could leave prosecutors vulnerable to undue pressure or interference”.

Observations

14. There are established legal procedures governing the imposition of disciplinary measures on prosecutors and staff within the Public Prosecutor’s Office (*Ministerio Público*). First, Title III of Organic Constitutional Law No. 19.640 regulates the responsibilities of prosecutors and sets forth the procedures for enforcing such responsibilities, including disciplinary actions. Second, the Administrative Responsibility Regulations applicable to prosecutors and officials of the Public Prosecutor’s Office further detail the procedures and disciplinary measures in place.

F. Paragraph 95

15. “The Special Rapporteur commends the legal assistance agencies’ work. However, their limited financial and human resources pose significant challenges, and fairness issues arise with regard to the use of unpaid law graduates. No national limits exist on the number of graduates each lawyer may supervise; combined with the excessive workload and high turnover, this disrupts continuity and expertise and risks compromising legal quality”.

Observations

16. In each office, unit, and center of the CAJ, legal services are delivered by qualified professionals—fully licensed attorneys—who are responsible for providing legal representation and advice. These professionals are supported by law graduates who are completing their mandatory professional practice to obtain their law degree and subsequent licensure as lawyers. Therefore, the primary responsibility for legal services rests with these

experienced professionals, rather than with law graduates undertaking their professional practice.

G. Chapter IV D – Accessibility of courts and tribunals

Observations

17. The Special Rapporteur did not include a reference to the broader institutional efforts undertaken by the Judiciary to rebuild public trust and improve the accessibility and quality of justice services.

18. For instance, in recent years, the Judiciary has implemented the “Justice Quality Index” (iPJUD), an annual tool designed to assess public and user perceptions of the justice system. The 2023 results identified two key dimensions: the “operational dimension,” which evaluates user experience—including quality of service, respectful treatment, and clarity in communication—and the “systemic dimension,” which reflects broader perceptions of transparency, trust, and equality before the law.

19. While the 2024 edition was paused to allow for methodological review and comparative international analysis, the Judiciary continues to prioritize efforts to respond to users’ needs. This is reflected in its participation in Chile’s Sixth Open Government Action Plan through the commitment “Open Justice for an Open State,” which aims to reduce the gap between citizens and the justice system by fostering transparency, collaboration, and public participation.

20. This initiative was recently recognized by the Open Government Partnership (OGP) as part of its “Open Gov Challenge,” which highlights ambitious reform efforts—particularly in the field of justice—for global visibility and peer learning.

H. Paragraph 99

21. “However, many middle-class individuals who do not meet the strict poverty criteria are left without viable legal options, as private legal services remain prohibitively expensive.”

Observations

22. The *Corporaciones de Asistencia Judicial* (CAJ) provide universal orientation and collaborative conflict-resolution services without any socio-economic screening. Additionally, for court representation, the CAJ applies a targeting system that also covers middle-income users facing vulnerability (older persons, persons with disabilities, victims of violence, children, etc.). Thus, the report’s statement that middle-class individuals are left without viable options should therefore be nuanced.

I. Paragraph 103

23. “This is essential because of the suspension of constitutional guarantees, fundamental freedoms, and human rights that the declaration of a state of exception authorizes”.

Observations

24. Although it is correct that States of Exception allow for such suspensions under Chilean law, it is worth noting that, since its establishment, the suspension of guarantees has been rare. For instance, regarding the state of emergency in the La Araucanía and parts of the Biobío region, the suspension of guarantees has only occurred on isolated nights of curfew (e.g., one night in April 2024, following the murder of three police officers, and three nights in February 2025 to combat wildfires). On the other hand, in February 2025, a State of Catastrophe was declared after a failure of the National Electric System, resulting in a one-night curfew. Thus, no broader or continuous suspension of rights has occurred.

J. Paragraph 104

25. “She was upset to hear allegations of excessively long periods of remand, harsh sentences and discrimination in law enforcement and proceedings against members of the Mapuche communities”.

Observations

26. The source of the Special Rapporteur's claim is a Joint Communication by the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights of Indigenous Peoples, the Special Rapporteur on contemporary forms of racism, and the Special Rapporteur on torture. However, the State has not yet provided its commentaries on that Joint Communication — due to the high number of cases mentioned and the need to obtain information from different institutions, the collection of that information has taken longer than expected. Thus, Chile hopes that the Special Rapporteur will also consider the State's response whenever it is published, to ensure that all views on this topic are taken into account.

K. Paragraph 108

27. “She was disturbed to hear about defendants coming to trial shackled and wearing yellow vests, a practice that appears not to be required by law.”

Observations

28. Handcuffs and yellow vests are standard security measures applied by the *Gendarmería* in accordance with institutional protocols, without regard to ethnic differentiation. They aim to ensure safety and order during judicial proceedings.

L. Paragraph 111

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

Observations

30. The Report did not consider the information provided by the Regional Prosecutor's Office of La Araucanía to address these challenges. Indeed, several initiatives have been developed to incorporate a cultural perspective in interactions with victims and witnesses of Mapuche origin, ensuring their access to justice in a manner that is both appropriate and culturally sensitive.

31. For instance, intercultural facilitators have been integrated into judicial procedures. These facilitators play a key role in ensuring effective communication and respect for the cultural particularities of the Mapuche people, helping to mediate between communities and judicial authorities.

32. Additionally, the Victim Support Unit of the Prosecutor's Office has implemented specific practices to assist Mapuche victims, including the possibility of conducting ceremonies with machis (Mapuche spiritual leaders). This approach enables victims to receive support within their cultural context, thereby strengthening trust in the judicial system.

M. Paragraph 116

33. “Justice users, including migrants, report that the lack of access to quality interpretation services in court further undermines their ability to participate in legal proceedings.”

Observations

34. As explained by the State in its observations to the Draft Report, the Judiciary has developed an ‘Online Translation Service’, a program that seeks to ensure proper communication between judges, officials of the Judiciary, and users who communicate in other languages or through sign language. This is done through a service of interpreters in Chilean sign language, foreign languages, and native languages, which is available on a virtual platform for hearings or requests for information and guidance.

35. Additionally, the Judiciary has taken other efforts to promote access to justice, particularly for individuals from vulnerable groups, including persons with disabilities and those who do not speak Spanish.

36. Within the framework of the Judiciary's User Service Policy, aimed at guaranteeing the human right of access to justice, the institution has committed to promoting mechanisms that ensure the right to an interpreter when an individual does not understand the language or cannot easily express themselves before a court.

37. Following a decision by the Superior Council in its session of 18 July 2024, the Department of Institutional Development is leading a new public procurement process, in coordination with the Departments of Finance and Budget and Legal Advisory, to continue the "Online Translation Service for Courts of Justice." Since 2016, this service has been available across judicial units nationwide, supporting communication between court users (with hearing disabilities and/or non-Spanish speakers) and judges or court staff. It is applied in public service counters, hearing rooms, interviews with technical advisors, video-recorded interviews, Gesell chambers, and the "Mobile Justice" program.
