



Statement by the UN Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, at the end of her official visit to Chile (9 August 2024)

Chile's Judicial System is Strong Enough to Embrace Needed Reforms

Chile has built a justice system widely recognized for its strong institutions. I was fortunate to witness this strength, first-hand, during my visit, and in my many discussions with interlocutors. Judges told me they enjoy a commendable level of independence in their day-to-day work, with minimal political interference. At the Centro de Justicia, I saw the substantial resources Chile has invested in modernizing its criminal judicial infrastructure. I heard that Chile's judicial system has been digitized, with a web portal providing access to information and proceedings, as well as enabling virtual proceedings in remote areas. I was impressed by the professional work carried out by the Defensoría Penal Pública and the commitment of the defensores. I also found that Chile has an effective resource in its Judicial Academy, which allows meritorious judicial candidates to dedicate themselves to preparing full time for this important career. I am also very impressed by the efforts adopted by the Secretaria Técnica Igualdad de Género y no Discriminación del Poder Judicial de Chile to improve gender representation among the judiciary.

These successes are to be celebrated. They owe much to the work Chile has done to overcome the legacy of the military dictatorship by establishing a sound institutional and legal framework. Nevertheless, it must be asked: do Chile's robust institutions offer justice to everyone on equal terms?

During my visit, I spoke with groups in vulnerable situations and organizations working with them, including those living in insecure housing [*pobladores*], the elderly, LGBT persons, Afro-descendants, and persons with disabilities. I was informed that these groups experience significant challenges in accessing justice for ordinary problems such as seeking protection from family violence, accessing services for children with disabilities, and obtaining secure housing. For some groups, the problems are severe: migrants face family separation when they cannot afford or obtain legal assistance, and victims of the dictatorship endure lengthy legal proceedings to obtain basic remedies. More profoundly, Indigenous Peoples in Chile have no recognition in the constitution and face fundamental challenges concerning their lands and territories; many see no way to achieve their basic human rights through the legal system.

However, these problems are not confined to the most vulnerable. Chile is an unequal society: 1% of the population owns 49.6% of the wealth. And research shows that the "impoverished middle class" also has difficulty obtaining legal assistance, since it does not qualify for free legal aid but often cannot afford the high cost of a private attorney.

Interlocutors – including a number of judges – have also told me there is one justice for the rich and another for the poor, where the experiences of justice users hinge on their financial means, social class and connections. From enjoying expedited handling of their cases to avoiding jail time, I was told that wealthy individuals benefit from an efficient judicial system while those less fortunate find themselves ensnared in lengthy procedures and harsher penalties. This differentiated experience is compounded when economic

hardship intersects with discrimination, with racial profiling hampering fair treatment for Indigenous Peoples, migrants and Afro-descendants.

Many of these issues erupted in the *estallido social* of 2019–2020, as encapsulated in the slogan, “this is not about 30 pesos, it is about 30 years”. Seeking a way forward in light of deep discontent, Chile commenced a constitutional reform process. Two separate efforts were made to tackle the hardest issues. While both constitutional drafts were rejected, leaving in force the Pinochet-era Constitution, neither conflict nor chaos resulted. Instead, certain diagnoses that had long been discussed became the subject of fresh attention: the sense of abandonment of Chile’s poor and “impoverished middle class”, the historical wrongs and internationally-recognized rights of Chile’s Indigenous Peoples, and, most relevantly for this mandate, the risks of the Supreme Court’s centralised powers and oversight.

The Supreme Court’s role in Chilean society and legal system has captured particular public attention in light of allegations of influence peddling in appointments to the Supreme Court and the Office of the Attorney General. As details of these allegations have emerged, they have intensified public skepticism and painted a troubling picture of a judiciary where political or personal considerations may overshadow merit-based appointments.

I believe these problems can be solved: Chile’s institutions are robust, the country has ample resources, and Chileans want to find ways forward. I heard widespread agreement on the need for reform to strengthen the judicial system. Bold action and genuine political will are necessary to address the problems upon which all agree, and to implement changes before the public gives up on a system it currently views as flawed but redeemable.

The Supreme Court

There is a strong consensus – from the bottom to the top – that the administrative and jurisdictional functions for which the Supreme Court is responsible must be separated. Currently, the Supreme Court sits at the apex of a hierarchical system in which it reviews the decisions of lower court judges, issues directives, provides economic oversight, and oversees the discipline and evaluation of those same judges. Aside from contributing to the overburdening of the Supreme Court, this hierarchy impedes the internal independence of judges. The Supreme Court itself supports the changes required, which were also included in both draft constitutions. For these reasons, I urge Chile to adopt the needed constitutional amendments to remove the administrative and supervisory responsibilities from the Supreme Court on an expedited basis.

The urgency of reforming the judicial appointment system has been made clear by recent journalistic investigations. These revealed messages pointing to influence peddling in the nomination of judges and other judicially-appointed positions. While such impropriety has been an issue of concern in the past, it has dominated national debate since the messages were published. I welcome the opening of investigations into these allegations, and I urge the Supreme Court to conclude its work on this issue shortly, adopting concrete actions to ensure the transparency, ethical comportment, and integrity of the judiciary.

Reform proposals have addressed the involvement of the Supreme Court and Court of Appeals in appointing, evaluating and disciplining judges in the first instance and guarantee courts. As stated earlier, I concur that these powers must be vested in an organ outside the judicial hierarchy. I heard from many sectors that there is value in involving all three powers in judicial appointments; should such involvement be retained, the spaces for undue influence must be eliminated. Because constitutional amendments may take time, I encourage the adoption of transitional procedures for any judicial appointments. Such procedures should be transparent, based on pre-established, merit-based criteria, and should involve the active participation of civil society to eliminate improper influences. Further, I recommend that decrees on appointment decisions clearly reflect the reasons for each appointment.

I note and share the concerns about the possibility for councils of the judiciary to be politicized, and I recommend that Chile carry out frank discussions on the model that best fits its needs. I am encouraged by the number of proposals for a future model for judicial appointment, evaluation and discipline that already exist, including from the judiciary and from academia, and I believe they may contribute to this very urgent conversation. I urge Chile to make sure that judges themselves may participate in reform design and decisions, alongside the legal profession and the academy, civil society, and court users.

I was encouraged to learn that there is a draft bill under consideration which would reassign responsibility for the appointment of non-judicial positions from the Supreme Court, such as *conservadores* and notaries. I urge the authorities to move forward on this initiative, since the lifetime high income linked to these posts can create improper incentives for interference in the appointment process.

The Chilean judiciary should ensure that the strong work of the Judicial Academy is preserved; retaining the good practices and working methods of this institution should be considered in any reform.

Restoring trust and ensuring integrity in the Judiciary

I was impressed by the insightful analyses that emerged in my frank discussions with judges, prosecutors, lawyers, and civil society. Justice operators are keenly aware of their important responsibilities and many are dismayed by the public distrust revealed in recent surveys. Judges at all levels emphasized their heavy workload, expressed dissatisfaction with the delays in justice that this causes, and are concerned about how this impacts those engaging with the judicial system. In addition to recommending infrastructure improvements and better resource distribution nationwide, they identified issues related to appointments and ethical conduct, which may be further undermining public trust.

A role reportedly born to address the need for judicial substitutes, the “abogado integrante”, appears to have become obsolete. The lack of established and transparent merit-based criteria for their appointment combined with the perception that the position may allow abogados integrantes to benefit their clients as lawyers contributes to distrust. As a result, the position opens the door for conflicts of interest while providing only some small relief and sporadic expertise to an overloaded judiciary. I strongly recommend that Chile eliminate the figure of the “abogado integrante”.

Having heard from many judges that they strongly support a binding Ethics Code, I was pleased to hear that the Supreme Court also recognized this need, in addition to the public ledger of meetings, and I hope to see both in place soon. I encourage the Supreme Court to ensure that this process is inclusive, allowing input from judges at all levels, and that the resulting rules are applied uniformly across the judiciary, including at the highest levels.

The work of justice operators and concerns about security

Although it is true that Chile is facing complex new challenges, responses to organized crime and related criminal phenomena should be evidence-based and not reactive. Judges and prosecutors facing threats should be protected immediately. However, I am concerned that those shaping criminal justice policy are favouring a punitive approach over a human rights-based one, placing further pressure on the justice system.

For example, I was concerned to learn about guidance to prosecutors to seek pre-trial detention when perpetrators fall into certain social categories. Together with the creation of new crimes and the establishment of mandatory penalties, these policies have apparently led to overcrowding in prisons and the increased vulnerability of certain groups, such as migrants and Indigenous Peoples.

I was pleased to learn that the Attorney General’s office shares my assessment that the prosecution of human rights violations and corruption is an institutional commitment, and not one left to individual brave prosecutors. I recall the great value of setting the tone from the top in this regard.

I was concerned to hear about online and mainstream media coverage of ongoing cases that presumes the guilt of alleged perpetrators or fails to explain the legal standards involved. In the context of heightened public concern about security, such coverage may put undue pressure on judges and prosecutors and possibly weaken public trust in the administration of justice. I was especially disturbed by threats and abusive comments against prosecutors who are seeking accountability for excessive use of force in the *estallido social*. International standards provide that justice operators should not be attacked or threatened for exercising their functions.

Accountability

I was dismayed to hear that many pending cases of grave human rights violations such as torture, summary executions and enforced disappearances from the Pinochet era remain ongoing. Victims continue to wait for reparations, families still search for their loved ones, and society awaits the truth. I was especially concerned to hear that because these cases are handled under Chile's previous criminal procedure code, secrecy and obscure procedures are complicating matters. Victims have waited a long time for justice, and if more decisive action is not taken soon, the advanced age of the dictatorship's victims may result in impunity. I was encouraged to learn that the Court of Appeals in Santiago sets itself a target of considering 400 cases per month in order to address the backlog and encourage further measures in this regard.

The slow progress of cases concerning excessive use of force and torture by Carabineros during the *estallido social* is especially concerning when compared with the rapid progress on cases of destruction of property for the same or related events. I am particularly concerned to hear that in many cases, the statute of limitations will expire for the alleged crimes in October 2024, adding to the frustration of those enduring prolonged waits for justice.

Situation in Araucania

Although I recognize and salute the great achievements by the Chilean justice authorities, I was dismayed by what I learned of the situation in Araucania. I could not travel there due to the storm last week; however I met with many counterparts online and I thank them for their understanding.

At the outset, I note that violence and conflict are not reasons to set aside the due process guarantees that underpin the right to a fair trial through special legislation. In addition, the state of exception in the region of La Araucanía and the provinces of Arauco and Bío Bío in the Bío Bío region must be lifted without delay.

I deplore the murder of the three carabineros in April 2024 and the cases of arson and armed violence. But I was upset to hear allegations of excessively long periods of remand, harsh sentences, and discrimination in law enforcement and proceedings. I was even more concerned when I heard about defendants coming to trial shackled and wearing yellow vests, a practice that appears to have no legal basis. I was alarmed to hear of numerous Mapuche detainees resorting to hunger strikes, as such drastic actions should be rare in a well-developed legal system that has the capacity to treat all equally. Some of these strikes reportedly related to requests for benefits in detention to which individuals may already be entitled.

Although reports indicate that counter-terrorism legislation is no longer being used against the Mapuche, I was distressed to hear that the same practices continue under different legislation. Further, the framing of the situation under the state of exception in legislative debate and in the media may distort perceptions of the security situation, further placing judges working in the region under pressure. I will be looking more closely at these allegations for my report.

Justice should be one of the main pillars to any solution to the conflict. For that reason, the judicial system should be active in providing just responses to the claims that underpin the conflict in the region and should be provided the resources and support to provide adequate, culturally sensitive access to justice.

I was very encouraged to hear about the progress of the Commission of Peace and Understanding set up in 2022. Its broad composition and consensus-based approach is to be commended. I look forward to the recommendations the Commission will present in October and I encourage Chile to continue to build on this progress.

Enhancing the Quality of Administration of Justice and Accessibility of Legal Services

Ensuring high-quality, accessible justice services is crucial for building greater trust and legitimacy in the judicial system.

I was concerned to learn that specialized judges are being temporarily reassigned to courts outside their areas of expertise due to judicial vacancies and absences in the lower courts, and that these vacancies are occasionally filled by individuals lacking judicial training, despite the existence of a pool of candidates who have graduated from the judicial academy. I recommend that judicial academy graduates be prioritized in mechanisms to fill vacancies; judicial training and appointment should be coordinated and linked to merit.

Many first interactions with the justice system occur through the Juzgado de Policía Local, an entity that operates outside the formal judiciary. It is particularly troubling that appointments to these positions do not require specific legal training. Additionally, these courts are facing significant resource constraints, which further undermines their ability to administer justice effectively and fairly.

During my visit, many actors identified the lack of ethical courses in law schools and the absence of a strong ethical framework applicable to all lawyers as major concerns impacting the quality of legal services. Bar association membership remains non-mandatory in Chile for historical reasons. However, since the ethics code for lawyers applies solely to members of the bar, there is near-unanimity in the assessment that not enough is being done to safeguard the integrity of the legal profession. Notably, there are currently no procedures for the suspension of lawyers who commit serious ethical or professional infractions from the practice of law. Both judges and lawyers agree this is a serious shortcoming, and several judges noted the disproportionately negative impact this can have on vulnerable and marginalized populations. I encourage a collective discussion on the ethical framework applicable to all lawyers and on the composition, governance and functions of the Chilean bar associations.

The Defensoría Pública has earned well-deserved international and national prestige for its outstanding criminal legal aid. This recognition is grounded in its high-quality work, is supported by rigorous, region-specific training, attractive salaries for its members, and comprehensive internal and external audits that ensure an objective assessment of its services. The institution's specialized offerings to various populations are commendable, and its provision of free criminal defence to a remarkable 99% of its clients. To maintain and improve this excellent work, I recommend strengthening the Defensoría Penal Pública by granting it institutional autonomy.

The Corporación de Asistencia Judicial (CAJ) is mandated to train aspiring lawyers, to provide legal consultation to all, and legal aid to those who cannot afford it. However, a significant lack of financial and human resources hinders the achievement of these objectives. There are no national limits to how many trainees each lawyer may supervise, making it impossible to ensure uniform quality of supervision. Staff told me that lawyers must handle enormous caseloads which, when combined with strained supervision and the rapid turnover of trainees, could result in substandard legal work. The CAJ's efforts are further compromised by the lack of specialized legal services available uniformly across all regions. It has also been reported that certain lawyers are assigned cases beyond their areas of expertise due to insufficient staffing resources.

Access to justice is fundamental to a healthy democracy. I commend the proposal to establish a professionalized Servicio Nacional de Acceso a la Justicia, which promises fair compensation for its members and enhanced service quality for its users. I urge a comprehensive review of the allocated resources; increased funding is urgently needed to ensure that lawyers can effectively provide quality legal work and receive adequate training on emerging issues such as human trafficking and violent crime. Additionally, it is imperative that the reform revisit the criteria for free legal representation in civil and

family cases. The current criteria appear to be onerous and reports indicate many Chileans are unable to afford legal services due to the high costs of legal proceedings and attorneys' fees.

I would like to point out specific examples of barriers faced by some in accessing justice, particularly due to their inability to afford legal representation.

I was deeply concerned to learn that authorities are implementing excessively repressive policies toward migrants, that may restrict their right of defence. Of particular concern is the reported administrative detention of migrants at the airport without any access to legal representation. Justice users report that the lack of access to quality interpretation services in court further undermines the ability to participate in legal proceedings. I urge Chile to provide certified interpretation in all legal proceedings involving non-Spanish-speaking migrants and to ensure the respect of their right to a defence in accordance with applicable international law standards.

I have also heard that the LGBT community, particularly the trans community, faces significant challenges in the justice system because judges often do not fully understand the unique difficulties these communities experience. This vulnerability is exacerbated by the inadequate application of international law standards and the lack of accessible, high-quality legal representation.

I heard that people with disabilities are unable to participate fully in the justice system due to a lack of physical infrastructure and appropriate training for judicial personnel. I was told that while many courts provide some level of access to individuals with reduced mobility, accommodations rarely surpass the bare minimum. I learned that courts are unable to provide sign language interpreters in most cases, and that judges are granted full discretion on procedural adaptations, with no guidelines setting clear standards. I urge Chile to ensure that persons with disabilities have access to justice on an equal basis, including through procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants. Chile should also promote appropriate training for those involved in the administration of justice, including police and prison staff.

Youth and children are especially vulnerable in criminal proceedings or when they are unaccompanied migrants. While the new program, Mi Abogado, is a commendable step forward, authorities must ensure it has adequate funding and resources.

I understand there is widespread agreement among judges regarding the need for a reform of civil proceedings, which are governed by a civil code dating from the 19th century. Many spoke about the impact that lengthy and costly proceedings have on ordinary citizens in areas such as banking and health care. I urge Chile to prioritize the reform of civil proceedings, modernizing the legal framework and taking decisive action to eliminate barriers to justice, in order to ensure timely and affordable access for everyone.

Civil society in Chile is active, involved, and committed to supporting access to justice and a strong, independent judiciary. For instance, they have created a manual on access to justice for people with disabilities; they actively engage in supporting the work of brave judges and prosecutors; and universities have organized clinics providing specialized legal services to the public. I encourage authorities to make the most of their expertise and involve them in reform efforts.

Indigenous Peoples

I heard about the many challenges Indigenous peoples face when engaging with Chile's judicial system. The information I received made clear that training is needed for judges and court personnel on the rights of Indigenous Peoples under international law.

I learned about threats against Indigenous environmental defenders, and I was told about developments in Indigenous territories in which free, prior, and informed consultation had not been respected. I was told that the juridical institutions of Indigenous Peoples do not have legal status in Chile.

As a first, crucial step, I strongly recommend that the constitution be amended to formally recognize the Indigenous Peoples of Chile.

Closing

In closing, I am profoundly impressed by Chilean society's remarkable efforts and bravery in restoring democracy after the dictatorship. Chile has made a resilient return to democratic governance, exemplified in its two recent constitutional reform processes. The progress toward building a democratic society has given rise to a vibrant and robust civil society. Nevertheless, it is vital to recognize that enduring societal inequalities need to be addressed to fulfil the promise of a just and inclusive democracy. These debates are occurring amidst unprecedented challenges for Chile, including the impacts of a changing climate, the expanding influence of extractive industries, and novel security concerns that appear to dominate other national discussions. I caution, however, against taking an overly zealous approach by emphasizing security at the expense of human rights.

I am encouraged by the genuine determination across various sectors of society to address these challenges, reflecting the Chilean people's unwavering commitment to democracy.
