

INTRODUCTION TO THE MAPUCHE

1. With 1.5 Million people, the Mapuche make up approximately 9% of the population of Chile.¹ Not only are they the largest indigenous peoples, but they also are among the poorest and most marginalized groups in the country. More than one-third of the Mapuche live below the poverty line.² Less than three per cent of the entire Mapuche population received any further educational training beyond high school.

2. Historically, the Mapuche lost their independence in 1881 after the war known as the *Pacificacion de la Araucania*. Following that day, they were resettled in *reducciones* or *reserves* and their land were sold to wealthy elites and corporations, leaving the Mapuche with just over five per cent of their original territory. Later, they were victims of the “Indigenous Peoples Law” instituted by the regime under Pinochet in 1979 with the aim of destroying the Community.

3. In spite of the democratisation process in Chile and the promises made by governments succeeding the Pinochet regime, there remain serious human rights abuses that deserve international discussion and observation. Improving the people’s standard of living, preserving Mapuche culture, restudying ancestral Mapuche lands, allowing the Mapuche to exercise their rights of self-determination and representation, and protecting them from violence abuses and impunity are among issues that need to be tackled.

MAIN ISSUES OF CONCERN

A. Standard of Living: economic and social rights

4. Despite Chile's international reputation as one of the most stable and prosperous countries in South America, not all have benefited equally from the impact of its democratic and economic development. Hiding behind this mask of progress, the largest ethnic group in Chile, the Mapuche, has long suffered from poverty and discrimination. In 2009, 19.9% of the indigenous were living under the official level of poverty, while this was the case for only 14.8% of the non-indigenous population of Chile.³

5. A study realized by the PNUD in October 2012 reflected the important differences between the achievement of the Millennium Development Goals for indigenous people in Chile and for the rest of the country. The report underlines three fundamental points that should be improved: Education, gender equality, and alphabetization⁴. The rate of students finishing middle school is for example

¹ Instituto Nacional de Estadísticas. (2012). *Resultados Censos 2012*. Retrieved from <http://www.censo.cl/>

² Agostini, C. A., Brown, P. H., & Roman, A. C. (2008). Poverty and Inequality among Ethnic Groups in Chile. *World Development* 38, no7. p.16

³ Gobierno de Chile, Ministerio de Planificación. (2009). *Pueblos Indígenas, Encuesta Casen*. Santiago de Chile. p.8

⁴ Passi, F. (2012, October 03). *Estudio de la ONU revela "importantes diferencias" entre el desarrollo de los indígenas chilenos y el resto del país*. Retrieved from La Tercera: <http://www.latercera.com>

10% lower in the case of the indigenous population (73,7% vs. 82,1%).⁵ The situation of indigenous women is critical as they face triple discrimination on the basis of their gender, indigenous background and reduced economic status⁶. The 2009 national census showed that the average salary of an indigenous woman is 2.3 times lower than that of a non-indigenous man.⁷ The percentage of illiteracy among the population older than 15 was also almost twice as high for indigenous people (6.1% vs. 3.3%) as for the rest of the population.⁸

B. Constitutional Recognition and cultural rights

6. As the situation stands currently, there is no constitutional recognition of the indigenous people of Chile.⁹ Despite a statement made by President Piñera earlier this year suggesting the imminent creation of a bill to grant such recognition, so far the indigenous people of Chile remain unrecognized.¹⁰ As the Mapuche and other indigenous peoples have not been afforded constitutional recognition, their right to self-determination—as provided by international law¹¹—has been violated. The constitutional recognition is also a necessary condition for the respect of other rights held by indigenous peoples such as the right to freely pursue their economic, social and cultural development.¹²

7. As a result of this non recognition, cultural and linguistic diversity in Chile is threatened. The Congress of Indigenous Languages mentioned the necessity to take into account interculturality in Public policies.¹³ The lack of respect of this diversity is leading to a considerable loss in indigenous culture. The ILO convention 169, adopted by Chile in 1989 and ratified in 2009, establishes that education plays a part important in preserving indigenous identity. Yet the recognition of indigenous peoples' rights to learn and use their own language as well as to receive cultural education is far from being achieved in Chile. Indigenous people's traditional knowledge and languages have been eliminated from school as part of colonial conquest, and assimilation programs intensified after the independence of 1810. Studies show that nowadays more than 3/4 of the Mapuche have none or very little knowledge of Mapudungun (Mapuche language).¹⁴ The situation is even more critical among urban Mapuche youth as this percentage reaches 90% among the 0-17-year-old.¹⁵

C. Environmental concerns

⁵ PNUD. (2012). *Medición del estado de los objetivos de desarrollo del milenio de la población indígena en Chile*. Santiago de Chile.

⁶ United States Department of State; Bureau of Democracy, Human Rights and Labor. (2011). *Country Reports on Human Rights Practices for 2011*. Washington. p.16

⁷ Gobierno de Chile, Ministerio de Planificación. *Op. cit.* p.23

⁸ *Ibid.* p.9

⁹ Ministerio Secretaría General de la Presidencia. (2005, September 22). Decreto 100 - Fija el texto refundido, coordinado y sistematizado de la Constitución Política de la República de Chile. Congreso Nacional de Chile.

¹⁰ MercoPress. (2013, January 23). *Piñera prepared to grant constitutional recognition to Chile's indigenous groups*. Retrieved from MercoPress: <http://en.mercopress.com/2013/01/23/pinera-prepared-to-grant-constitutional-recognition-to-chile-s-indigenous-groups>

¹¹ UN General Assembly. (2008). *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations. Article 3-4

¹² Instituto Nacional de Derechos Humanos INDH. (2012). Executive Summary. In INDH, *Annual Report 2012. Human Right Situation in Chile*. p4

¹³ Congreso de las Lenguas Indígenas de Chile. (2011). *Resoluciones del Segundo Congreso de las Lenguas Indígenas de Chile*. Santiago de Chile: RED EIB Chile.

¹⁴ Gobierno de Chile, Ministerio de Planificación. *op.cit.* p.4

¹⁵ *Ibid.* p.5

8. At the end of the *Pacificación de la Araucanía* war (1861-1883), the Mapuche lost not only their independence but also approximately 93% of the 10 millions hectares of land where they previously lived. This land was sold off cheaply to non-indigenous peoples.¹⁶ Through the land reform of the government of Salvador Allende (1970-1973), the Mapuche received back 700 000 hectares of land. However, the military regime of Pinochet implemented the “Indigenous Peoples Law” and reversed the land reform policies by offering these lands to international investors.

9. Despite the creation of the Law 19.253 in 1993 and the creation of the *Corporación Nacional de Desarrollo Indígena* (CONADI, the organization in charge of land issues), the indigenous land problem is still critical. The indigenous law stimulates conflicts to get prioritization of claim and focuses on the damages caused by the Pinochet regime¹⁷. The land that is available to be purchased by indigenous people is only the one that was granted to the Mapuche after the Pacification (which represents only 6.4% of their original land)¹⁸. Another major issue is the insufficiency and arbitrariness in the use of public funds earmarked for land claims. The actual implementation of the Land and Water Funds by the CONADI reached only 24% in autumn 2011¹⁹. In 2010 CONADI gave back 100 million of a budget that could have been used to purchase lands for indigenous people.²⁰

10. Nowadays, the two biggest forestry companies in Chile, Forestal Arauco and Forestal Mininco, own fourteen times as much lands as the “people of the lands”.²¹ The indigenous private sector controls only 2% of the plantations in Chile and 2% of the native forests, the rest being controlled by the State or by non-indigenous private actors.²² The culture and traditions of the Mapuche continue to be seriously affected by the expansion of forestry companies, hydroelectric dams and highway constructions. In October 2012, a court of appeal lifted an order suspending the controversial HidroAysen hydroelectric dam project in Patagonia and the Supreme Court rejected two further appeals.²³ The exploitation of natural resources and the introduction of non-native species, such as the Eucalyptus, cause severe environmental damage while drying out water supplies and eroding the soil.²⁴ This has generated serious water conflicts in the country.

D. Under-Representation and Participation

11. The dearth of political representation and the lack of participation of indigenous people in political life are issues that need to be tackled urgently. While indigenous people have the legal right

¹⁶ Spain, T., & Mike, G. (2012, September 01). *Chile accused of racist use of anti-terrorism laws against Mapuches*. Retrieved from Latin American Bureau: <http://lab.org.uk/chile-accused-of-racist-use-of-anti-terrorism-laws-against-mapuches>

¹⁷ Confederación Nacional de Pescadores Artesanales de Chile (CONAPACH). (2010). *Informe Alternativo 2010 respecto del cumplimiento del Convenio 169*. p.11

¹⁸ Richards, P. (2010). Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile. *Journal of Latin American Studies*, 59-90.

¹⁹ Instituto Nacional de Derechos Humanos INDH. (2012). *op. cit.*. p.9-10

²⁰ Reyes, J. (2011). A legal Perspective on the Juridical Procedures Faced by the Mapuche People. *The Mapuche in Chile*. Brussels: UNPO.

²¹ Spain, T., & Mike, G., *op.cit*

²² PNUD, *op. cit.* p.42

²³ Amnesty International. (2012). *Amnesty International's Report 2012 : The State of the World Human Rights*. London: Amnesty International Ltd, p.106

²⁴ Instituto Nacional de Derechos Humanos INDH. (2012). *Op.cit.* p.5

to participate in the political process²⁵, the systemic and institutional framework keeps them from being effectively active at any level other than the municipal level.²⁶ Although the Mapuche represent 9% of the population in Chile, they have no representative either in the chamber of deputies or in the Senate.²⁷ This obviously hampers the opportunity to address their outstanding demand.

12. Beside, despite the “Decreto n° 124” passed under the government of Bachelet in 2009 in order to regulate the consultation and participation of Indigenous people, few reforms were actually implemented. The Decree itself does not uphold the standards of the ILO Convention 169 that Chile finally ratified in 2008 and the Decree n° 124 did not involve indigenous people.²⁸

13. The government proposed on 8 August 2012 a new regulation on the consultation and participation of indigenous peoples to replace the current Decree 124. More recently, in March 2013, a Consensus Meeting (*Mesa de Concesus*) started to be held between the government and indigenous leaders. However, according to the INDH, these proposals still fail to meet international standards in various important aspects.²⁹ One highly controversial area concerns the consultation processes on investment projects in indigenous land and territory. Indigenous groups keep rejecting the regulation of these projects by the Environmental Impact Evaluation System (SEIA), as this regulation is not submitted to a consultation process in line with international standards and does not uphold the minimum standards of a free, prior and informed consent.³⁰

E. Anti-Terrorism Laws

14. Another aspect of the discrimination faced by the Mapuche is the selective application of the Ley 12.314, also called “Leyes antiterroristas” (Anti-Terrorism Laws). Established under the Pinochet regime, these laws were intended to enable the swift processing of dissidents. Over the last ten years, several hundred Mapuche have been prosecuted under these laws, with charges ranging from trespass to arson, charges that do not fall within any international definition of terrorism.

15. The use of Law 12.314 lacks conformity with both international standards and the Chilean Constitution. First, the anti-terrorism laws permit the use of so-called “faceless witnesses” whose identities are withheld and consequently less accessible for cross-examination.³¹ Second, prosecution under the anti-terrorism laws operates from a presumption of guilt rather than a presumption of innocence, which alters the burden of proof in relation to criminal intent.³² Furthermore, the

²⁵ Ministerio Secretaría General de la Presidencia. (2005, September 22). Decreto 100 - Fija el texto refundido, coordinado y sistematizado de la Constitución Política de la República de Chile. Congreso Nacional de Chile. Artículo 1

²⁶ United States Department of State; *op.cit.* p.9

²⁷ Crellin, O. (2013, February 07). *The Rights of Chile's Mapuche Population*. Retrieved from Americas Quarterly: <http://americasquarterly.org/content/rights-chile%E2%80%99s-mapuche-population>

²⁸ CONAPACH. (2010). *op.cit.* p.7

²⁹ INDH, *op.cit.*

³⁰ Comunidades y Organizaciones Indígenas de los Pueblos Indígenas en Chile. (2013, April 25). *Comunidades y Organizaciones Indígenas mantiene su rechazo a procesos viciados de consulta que realiza el Estado de Chile*. Retrieved from Mapuexpress: <http://www.mapuexpress.net/?act=publications&id=7716>

³¹ CONAPACH (2010). *op.cit.* p37-38

³² *Ibid.*

punishment handed down under the anti-terrorism act may be up to three grades higher than under the standard criminal code.³³ Finally, the practice of trying civilians in front of military tribunals is another violation of the right to a fair trial, due to their lack of independence and absence of due process.

16. In July 2010, 30 Mapuche awaiting trial went on Hunger strike to protest their prosecution under the antiterrorism law and the violation of due process by the military system.³⁴ The agreement signed by the government at the end of the hunger strike, by means of which they agreed to reclassify the “terrorist” charges filed against the Mapuche, has only been partially fulfilled. As of 2013, 28 Mapuche are still political prisoners.³⁵ Recently, the Inter-American Court of Human Right has held hearings on various cases of State abuses against Mapuche land rights activists who were imprisoned under these controversial anti-terrorist laws.³⁶

F. Police Brutality

17. Despite several initiatives taken by the government to uphold the respect of human rights, lots of efforts remain to be made regarding violence against the Mapuche. Police raids carried out with brutality and violating human rights are commonplace in Mapuche Communities and are conducted under the pretext of antiterrorist investigations.³⁷ Many instances of cruel, inhuman and degrading treatment, such as beatings, threats of sexual violence, and the misuse of less-than-lethal- riot-suppression equipment have been reported by Amnesty International³⁸, Human Right Watch³⁹ and El *Observatorio Ciudadano*⁴⁰. Children, women and old people are often victims of these intimidations and bear the brunt of distress caused by the incursion of the police. So serious were these incidents that UNICEF sought an injunction from the Inter-American Commission on Human Rights in 2010.⁴¹ Since 2002, three young Mapuche protesters have been shot dead by police officers.⁴²

Furthermore, despite the reform introduced by Law 20.477⁴³, preventing some cases involving civilians to be tried in front of military tribunals, such tribunals retain jurisdiction when State police officer are involved.⁴⁴ This often results in more lenient sentences than those handed down on the Mapuche. The murders of the three Mapuche people committed by the police still remain unpunished.⁴⁵

³³ Ibid. p38

³⁴ United States Department of State, *op.cit.* p.18

³⁵ Meli Wixan Mapu. (2013). *Listado de Prisioneros Políticos Mapuche 2013*. Santiago: Meli Wixan Mapu.

³⁶ Toensing, G. C. (2013, June 03). *Inter-American Court Hears Mapuche Human Rights Case against Chile*. Retrieved from Indian Country Today Medianetwork: <http://indiancountrytodaymedianetwork.com/2013/06/03/inter-american-court-hears-mapuche-human-rights-case-against-chile-149677>

³⁷ Richards, P. (2010). *op. cit.*, p.74.

³⁸ Amnesty International. (2012). *op.cit.*, p.106-107

³⁹ Human Right Watch. (2012). *Country Summary: Chile*. HRW. p.2

⁴⁰ CONAPACH. (2010). *op.cit.* p.36

⁴¹ Ibid.

⁴² Human Right Watch. (2012). *op.cit.* p.2

⁴³ Ministerio de Defensa Nacional. (2010). *Ley Núm. 20.477 : Modifica Competencias de Tribunales Militares*. Santiago: Congreso Nacional de Chile). Artículo 1.

⁴⁴ Human Right Watch. (2012). *op.cit.* p.2

⁴⁵ France Libertés: Fondation Danielle Mitterrand and Mouvement contre le Racisme et pour l’Amitié entre les Peuples (MRAP). (2013, February 26). *Mapuche: UN General Assembly Warned About Disrespect of Human Rights By Chile’s State*. Retrieved from Unpo.org: <http://www.unpo.org/article/15557>

Recommendations

The Unrepresented Nations and Peoples Organization urges Chile to consider the following recommendations:

- *Create legislation to safeguard the Mapuche's and other indigenous people's right to use ancestral land, even if not exclusively occupied.*
- *Establish a mechanism by which to enable the restitution of ancestral land to the Mapuche and other indigenous peoples, with appropriate compensation for affected third parties.*
- *Consult with Mapuche communities regarding the commercialization of their culture.*
- *Encourage the use, study and learning of indigenous languages, including Mapudungun.*
- *Implement educational programmes at primary and secondary school levels to teach students about Mapuche history, culture and tradition.*
- *Ensure fair and unbiased media representation of the Mapuche and their land claims.*
- *Promote the development of indigenous media, including by increasing opportunities for indigenous journalists.*
- *Grant constitutional recognition of the Mapuche and other indigenous people.*
- *Reform the system of political representation so as to give a voice to indigenous communities.*
- *Implement all reforms necessary in order to give effect to the ILO Convention No 169.*
- *Ratify the Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women.*
- *Investigate thoroughly, and take punitive action where appropriate, all reported instances of police brutality, especially where loss of life, or the presence of women and children, is present.*
- *Prosecute all cases involving civilians in the civilian justice system.*
- *Stop the discriminatory prosecution of the Mapuche people under Ley 18.314. Abandon the practice of warrantless raids.*
- *Drop the charges being prosecuted under the anti-terrorism law that are levied against minors.*
- *Abolish the practice of Mapuche arrest and release without a detention control hearing.*
- *Condemn and punish the practice of house destruction and property confiscation during raids.*
- *Encourage fair police practices, especially with regards to justified and proportionate uses of force.*