

Convention on the Elimination of Racial Discrimination
Alternative Report Submission
Indigenous Rights Violations in Chile

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Discrimination

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I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*, and on its website: www.cs.org. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

I. Executive Summary

Chile has failed to adequately align its constitution and national legislation with international standards of Indigenous rights. Efforts towards consultation with Indigenous Peoples have been multiple but lack coordination and direction, and depth of engagement with Indigenous Peoples according to their own forms of decision making and on issues of importance to them. Meanwhile, ineffective or absent consultation with Indigenous Peoples on issues affecting land and territory has led to deep conflict. In turn, Mapuche efforts to protect their land, culture and people along with their rights to self-determination, autonomy, and freedom are discredited by the State's ongoing discriminatory application of the anti-terrorism laws criminalizing peaceful protest and is indicative of deep-rooted discrimination against Indigenous groups in Chile. Discrimination in the justice system is intertwined with systematic corruption in national police forces who use excessive force and engage in unlawful activities to harm, criminalize, and imprison Indigenous Peoples. Discrimination is normalized in the mainstream media, which marginalize speakers of Indigenous languages. Alternative media, including Indigenous community radio stations used for language revitalization, are not being appropriately supported and facilitated by the government, in conflict with previous CERD recommendations.

II. Background Information

Chile is the only South American country that does not recognize Indigenous Peoples in its constitution, which was established in 1980 during military dictatorship. Instead, nine Indigenous Peoples are recognized by statute including: Mapuche, Aymara, Diaguita, Atacameño, Quechua, Colla, Kawésqar, Rapanui, and Yámana or Yagán. According to Chile's 2017 census, 13% of Chileans identify as Indigenous. Of that group, 79.8% identify as Mapuche.¹ This represents an increase by 50% in the past ten years in the number of people who identify as Indigenous. In 2016, a process for constitutional reform was launched which included mechanisms for civic education and consultation. Although some progress was made between 2017-2018, the constitutional reform effort in Chile, including the Indigenous Consultation Process, is currently stalled due to a lack of political will from the new Piñeda administration. Instead, Indigenous Peoples rights remain still regulated by Law No. 19,253 of 1993. Not only does this law fails to meet international standards for protection of Indigenous rights, but certain Indigenous Peoples, such as the Changos and Chonos, as well as Afro-descendant tribal Peoples, are not recognized in the statute.

As of 2017, Indigenous Peoples had Chile's highest rates of poverty, under-development and illiteracy. Most Indigenous people live in urban areas, but 25% reside in rural zones. One-fourth of the Araucanía Region, which is the region with the highest poverty rate (17.2%) is Mapuche. According to the Ministry of Social Development, in 2017 the poverty rate of the Indigenous population is 18.3% compared to 11% of the non-

Indigenous population. Despite the creation of the Special Commission of Indigenous People (1993), the National Corporation for Indigenous Development (1993), the endorsement of the UN Declaration on the Rights of Indigenous Peoples in 2007 and ratification of the ILO Convention 169 in 2008, Chile's Indigenous Peoples are the poorest sector in society. Indigenous Peoples in Chile continue to face oppression and marginalization as their rights are threatened by anti-terrorism legislation, land rights abuses, and conservation issues.

III. Progress towards Indigenous Rights and Continuing Rights Violations

A. Efforts towards Constitutional Reform (CERD Article 2c)

As reported in the State report, between May 2016 and October 2017, Chile conducted a series of consultations with Indigenous Peoples regarding the drafting of a new constitution to replace the existing constitution created in 1980 under Pinochet's military dictatorship, which does not recognize the rights of Indigenous Peoples.

In October of 2017, a national meeting with elected Indigenous delegates occurred to conclude this process, from which certain recommendations were included in the Feb. 2018 draft for a new constitution. The wording of the outcome of this meeting (and the Indigenous Consultation Process which preceded it) was approved by those present at that time, representing the Aymara (from the region of Arica y Parinacota and the region of Tarapacá), Lican Antai, Kolla, Diaguita, Quechua (from the region of Antofagasta), Williche de Chiloé, Williche de Magallanes (Southern region), Mapuche-Williche de Osorno, Mapuche-Williche de Aysén and Mapuche Peoples. Not present, not signing, or non-participating representatives included those from the Quechua, Yagán and Kawéskar Peoples. However, a number of issues were left in disagreement or only partial agreement.

While the Indigenous Consultation Process was generally recognized as a positive step toward Indigenous engagement, there were a number of issues identified by Indigenous participants and Indigenous members of CONADI. A major issue was on the framework allowed for the dialogues: the agreements reached reflect the awarding only of cultural rights, rather than political rights and self-determination, which are the fundamentally important aspects of Indigenous rights.

According to a study conducted by the ILO of the Indigenous Consultation Process of 2017,

“It was an unpleasant surprise to realize that the subjects raised during the participation process were not reflected in the measures proposed for consultation. Those subjects were transversal and concerned political rights, self-determination, territory, the council of the Peoples, from which substantive rights would be derived. But from the beginning the consultation was a deception because of how the State, the Government once again summarized the rights, and only referred to cultural rights, not political rights. The measures proposed for consultation bore no resemblance to the outcome of the participation process. If the discussion was opened up and included new measures it was as a result of the different types of pressure that we exercised as the National Council of the CONADI.” (National Councillor of the CONADI)

Importantly, there remains disagreement over the criteria and procedures for the establishment and demarcation of Indigenous territories where appropriate, the bodies and mechanisms through which those territories would be administered, and the procedures and ways through which Indigenous Peoples shall enjoy full exercise and benefit of those territory rights, including access to land and natural resources.

Other criticisms of the process include a lack of sufficient time allotted for Indigenous Peoples to develop adequate understanding of complicated legal mechanisms, to obtain and consult with technical and legislative advisors, and to consult with their own and other Indigenous communities before votes were called. This rush risks an outcome that treats Chile's many and distinct Indigenous Peoples as the same, and which threatens the process of consensus decision-making, an important element of Indigenous self-determination and culture.

“Before a consultation of this magnitude, the authorities should inform people more. If there had been more information, the communities would not have appointed any leader without their consent. It is necessary to provide more information, send out the invitations earlier, provide better facilities ... Our facilitators, without going further, who were placed in the communities, could not accompany us to Santiago, so we had to go it alone. It would be welcome if this were improved, because it would show that the State is acting in good faith and that it wants to treat its communities, or in this case its native population, differently.” (Representative of the Mapuche People)

“The Mapuche People has its problems, its way of seeing things, its distinct cosmo-vision, as does the Aymara People ... Each people. But they make us believe that there will be a single proposal for all nine Peoples, and I think that is a mistake. The State of Chile made a mistake in calling for a national agreement of Indigenous Peoples, because their spirituality, cosmo-vision and territories are not the same. We are distinct.” (Representative of the Aymara People)

Additional concerns included inadequate number and type of advisors, a lack of funding or capacity by some institutions to participate, and an overly centralized process which should have had greater support for regional levels of engagement over the year-long process. These concerns are evident in the viewpoints expressed by representatives from smaller Indigenous Peoples in Chile:

“It was also a little frustrating for us that we always have to depend on the majority people, which in this case is the Mapuche, in terms of timing and working methods, as I also think that we should work in a way that makes good use of the time available. I think that we should work in the territories at the rhythm of each people, and then when the proposal has been prepared and agreed upon, take it to a national body.” (Representative of the Lican Antai People)

“Legal terminology excludes people because, when you choose someone as a representative, it is not because they are a lawyer or understand legal matters, but because they have been Indigenous leaders for many years. There are many legal concepts that you don't understand and so when you reach the final discussion with the State you have to have your advisers.” (Representative of the Kawéskar People)

“Thank goodness we had a young person in the Aymara People who was studying law, because they did not allow our lawyer and adviser to enter. We needed our adviser. Although clearly we knew about some aspects of Convention No. 169, we don't know it all because we are not professionals. That's why we needed our adviser.” (Representative of the Kolla People)

B. Criminalization of Protest, Anti-Terrorism Laws: Unequal Access to Justice (CERD Article 5 a,b,c, 6)

In their State report, Chile noted that between 2014-2016 there were no attempts at criminalizing the assertion of Indigenous Peoples' rights under Act No. 18314. This statement creates a misleading view of the current situation related to criminalization of Indigenous rights defenders. Although the state report by Chile acknowledges two trials under the Anti-Terrorism Act (Act #18314), the report suggests that because the suits were lost and accused were acquitted, there is no further problem. Chile's report states, “With regard to the implementation of Act No. 18314 between 2014 and 2016, the Ministry of the Interior and Public Security reports that there were 18 complaints related to offences covered by the Act, but none of these were brought

with the aim of criminalizing the assertion of Indigenous Peoples' rights." However, the atmosphere of oppression, fear, and bullying by jungle-trained, anti-terrorist police for dealing with public protest or low level crimes is an egregious abuse of Indigenous rights, regardless of the purported "aim" of the police in question.

The labelling of Mapuche protesters as "terrorists" continues to be a major problem, leading to raids on communities, the disruption of everyday lives and the illegal detention of Mapuche leaders. The 1984 Anti-Terrorist Law enacted by Pinochet was intended to crush political dissent and has now allowed for the detention of Indigenous human rights defenders without due process. The UN Special Rapporteur on Counter-Terrorism and Human Rights, in 2013, reported that "Mapuche protests account for the vast majority of prosecutions under the anti-terrorism legislation."² In 2014, the IACHR condemned the Chilean State for issuing sentences to a Mapuche woman based on anti-terrorism legislation, finding that sentences were "based on stereotypes and prejudices, in violation of the principles of equality and non-discrimination."³ In October 2017, a group of human rights experts from the Special Procedures of the Human Rights Council urged the Chilean government not to try Mapuche protesters under the Anti-Terrorist Law, arguing it did not guarantee a fair trial and risked the stigmatization of Indigenous communities while undermining the presumption of innocence until proven guilty.⁴ Chile has received 12 UPR recommendations on this specific issue, including 6 at the recent 2018 session. Despite all of these, in March 2018, President Piñera doubled-down by amending the Anti-Terrorism Law, allowing the government to use drones, undercover agents, GPS tracking, and phone tapping against those it suspects of terrorism,^{vi} hardening penalties for terrorism, and for "apology of terrorism," which could conceivably be used against solidarity activists or journalists.

The state's report on Act 18314 explains that the legislation "provides that a terrorist offence is an offence in which the aim of the perpetrator is to undermine or destroy the democratic institutional order or seriously disrupt public order; to impose demands on or obtain decisions under duress from the political authority; or to instil widespread fear in the population of the loss or deprivation of fundamental rights." Such broad language can be used to capture, intimidate, and harm Indigenous community members exercising rights of free speech.⁵

Since the last review under CERD, Mapuche activists have continued to be charged with terrorism, and these cases have been plagued by human rights violations, including the falsification of evidence by police forces in order to incriminate the Mapuche, which were omitted in the State report's reference to these cases. On September 23, 2017, eight prominent Mapuche leaders were detained by the Chilean National Intelligence Agency (ANI) and the Chilean national police force, the *Carabineros*. They were accused of "illicit terrorist association" without any formal detention order other than a "verbal detention warrant."⁶ Later it was revealed that Carabineros had planted and fabricated evidence against the Mapuche leaders. This took place in addition to the illegal monitoring of telephone communications of individuals with ties to Mapuche communities. Three days before their arrest, a report entitled *Informe 130* completed by the Special Operations Intelligence Unit (UIOE) of the Carabineros was presented to Temuco District Attorney Luis Arroyo citing incriminating evidence against the eight Mapuche leaders for planning to commit arson, referencing intel gathered from the surveillance of their cell phone conversations. The report resulted in the immediate arrest of the eight Mapuche leaders for illicit terrorist activities.⁷ While they were in custody, Captain Leonardo Osses of the UIOE collaborated with civil servants to plant photos and text messages on their phones. The eight individuals remained in custody for close to a month before being released after it was discovered by an investigative entity outside of the UIOE that the compromising evidence found on the confiscated cell phones was planted. The investigation into the Mapuche leaders ended on January 25, 2018. The planting and fabrication of evidence resulted in the resignation of Carabineros General Director Bruno Villalobos and Director of Intelligence Gonzalo Blu. Additionally, Gonzalo Blu, Leonardo Osses, and ten others are scheduled to appear

in court for illicit association, falsification by a public employee, and obstruction of an ongoing investigation.^{x,xi} Despite the attentive response by the Chilean judicial system to the violations committed, the operation itself, known as ‘Operación Huracán’ encapsulates a broader theme of the state’s violations of the right to due process, equal representation under the law, and the right to privacy of correspondence. This abuse against Indigenous Peoples was orchestrated by multiple high level state actors with complicity of staff, indicative of a climate of systemic racism. This example of falsification of charges against Mapuche leaders does not appear to be isolated: On May 8, 2018, Indigenous leaders and human rights defenders José Peralino, José Tralcal, and Luis Tralcal, were convicted under charges of terrorism, however the rights of the defendants were argued to have been violated through the use of torture to acquire a confession and the falsification of evidence by police. Seven others charged in the case were found innocent.⁸⁹ In another example, in 2014, several cases were overturned after an anonymous witness was discredited and claimed to have been a police informant.¹⁰

Tensions between the Mapuche and security forces has also led to increases in police brutality, for example, in June 2017, police used tear gas in close proximity to a school in the Temucuicui Mapuche community where children were attending class. Violence is often inflicted against Indigenous People during police raids into communities as part of criminal investigations; police abuse and harassment also occur during protests and demonstrations. On November 14, 2018 a Carabinero operation murdered Camilo Catrillanca, grandson of Mapuche leader. Carabineros said Catrillanca, 24, was “accidentally shot in the head during an operation against local car thieves”.

Because these violations are tried in military courts, the rate of investigations opened is low. In the Santiago Second Military Court, only 0.3% of reported cases of abuses against demonstrators (14 out of 4,551) were investigated in 2005, 2008, 2011, and 2014. Even when police are convicted of criminal wrongdoing, sentences are often reduced through appeals. In June 2016, Mapuche leader Víctor Queipul Hueiquil was abducted, blindfolded, tied up and beaten. He was demanded to stop his work fighting for the rights of Indigenous Peoples in Chile. By May 2017, the investigation was closed after authorities gave up on finding those responsible for his abduction. The closure of this case sets a dangerous precedent of impunity that could open the door to more incidents of violent silencing of Indigenous human rights defenders.

C. Land Rights and Free, Prior and Informed Consent (CERD Articles 2.2, 5i, 5v, 5vi, Gen. Rec. #23)

CERD General Recommendation No 23 on Indigenous Peoples calls on States parties to ensure that no decisions relating directly to Indigenous Peoples are to be taken without their informed consent, with specific reference to land and resource rights. The state report does not mention the right of Indigenous Peoples to Free, Prior and Informed Consent, but briefly mentions regulations in place regarding Indigenous consultation as per Convention 169 of the ILO. Yet even this minimum standard has been called into question. In 2018, some in the Piñera administration called for Chile to pull out of Convention 169 of the ILO citing concerns it was anti-development, that it slows the economy, and that it constitutes reverse-discrimination against non-Indigenous Peoples.¹¹

Consultation mechanisms have been established in Chile through Supreme Decrees that regulate Law N° 19.300, however these mechanisms do not yet meet the standard of Informed Consent as laid out under CERD and were established without the participation of Indigenous Peoples. From 2009 to 2017, 45 consultations with Indigenous Peoples have taken place, however this number represents only .4% of the total projects presented for development¹² A fundamental problem with the current process is that it is not made explicit to which government institutions it applies and when. There is no central agency who coordinates consultation processes

with Indigenous Peoples. Indigenous consultation is built into a system of Environmental Impact Assessments, however investment projects are exempt from its scope of consideration and Indigenous communities are involved only after the Environmental Impact Evaluation is completed. This excludes Indigenous communities from the planning and designing of the project; the consultation is not sufficiently prior, as it does not allow for Indigenous Peoples' input at the initial stages of the project.¹³ Another issue is that often, the consultation processes that do take place are not culturally appropriate, as mandated by the Inter-American Court in the case of the *Saramaka People v. Suriname*. Rather, the Chilean law requires that each stage of the project must be completed within twenty working days, neglecting to respect Indigenous time frames for decision making.¹⁴ Chile's National Human Rights Institute, which has observed consultations, has denounced that the government has violated Indigenous rights during the processes of consultation, particularly in cases in which public figures act as members of assemblies during consultations, and the attempts to sign contracts regardless of whether consensus has been reached on a particular plan.¹⁵ As mentioned in the State report, Chile conducted a review of the consultation process during 2017-2018. The results of that study have not yet been made widely available. Meanwhile, extractive industry, hydroelectric, and agribusiness contracts issued on Indigenous Peoples land without their Free, Prior and Informed Consent has led to environmental degradation, economic disenfranchisement, cultural loss, and conflict.

The National Geology and Mining Service of Chile (Sernageomin) stated that in 2016, 15.4 million hectares of land were used for mining about 41% of the country. Dictatorship-era mining laws favor mining companies over Indigenous communities. The Chilean mining industry, protected under the 1980 Constitution and the 1983 Mining Code and Law 18.248, has been allowed to use land without government interference, in disregard of Indigenous land claims; concessions can be renewed indefinitely with an annual payment.¹⁶ Indigenous communities that oppose mining projects are subject to bribery and coercion, interfering with their right to make informed decisions. A Chilean anthropologist stated, "Mining [companies] and the government manipulate Indigenous communities, sometimes taking advantage of their poor education to make them believe nonsense. This is how mining companies continue to take land and water from the community... The companies give money to win over the communities and to quiet the leaders, money that in the end does not actually support the goal of the community." Karen Luza, president of the fourth irrigation group (Sequiton-Coyo) of the Indigenous Association of Irrigators and Farmers of the San Pedro de Atacama River, commented on the effects of the mining industry on traditional territories: "Right now we are dealing with the nightmare that is lithium extractive companies that are extracting from one of the most important salt flats in South America, our dear Salar de Atacama, a place until very recently used for pasturing."¹⁷ On January 17, 2018, the state-owned company Corfo and the mining company Soquimich (SQM) signed an agreement to extend SQM's mining access to the Salar de Atacama until 2030.¹⁸ Although the executive vice president of Corfo stated that the contract was signed after consulting with some of the closest communities to the affected area, the turn-out of Indigenous protesters and statements from Indigenous leaders condemning the contract point to the contrary. Lithium mining in the Salar de Atacama has resulted in the contamination of Indigenous community water sources and the decreased presence of plants and wildlife, threatening the livelihoods and cultural practices of Indigenous Peoples.

The widespread construction of hydroelectric dams also presents a threat to Indigenous economies through biodiversity loss and displacement due to flooding and the disruption of natural flows of water.¹⁹ The construction of massive dams is facilitated by the Pinochet-era 1981 Water Code, which grants concession of water rights without payment, prioritizing private ownership of water, allows for the owner(s) to use or change the water as desired, and separates water rights from land ownership.²⁰ It has allowed for the monopolization of water sources by private companies and threatens Indigenous Peoples rights to Free, Prior, and Informed Consent regarding ancestral lands. It also is in direct contrast to Indigenous beliefs by separating water and land;

stated Luza, “[the two] are impossible to separate according to our beliefs and culture.” Increased impact from hydroelectric projects has forced Indigenous people to migrate to other parts of the country in search of economic opportunity. The water code was reformed in 2005, but Indigenous leaders, including Luza, call this reform insufficient in protecting Indigenous Peoples rights to their ancestral resources. Further amendments to the Water Code have been pending before Chilean senate during 2014-2019, but these reforms have not been adequately consulted with Indigenous Peoples.

Government subsidies for the forestry sector, a cornerstone of the Chilean economy, have permitted large forest plantations to expand onto Indigenous lands. Private as well as State-owned logging industries have appropriated millions of acres without the Free, Prior, and Informed Consent of the Mapuche, threatening Mapuche culture and livelihoods, hunting and gathering practices, spiritual life and the social fabric of communities. Mass cultivation of non- native, invasive monocrops (especially pine and eucalyptus) that alter the soil chemistry make it difficult to grow other plants in that area, and pesticides and herbicide runoff has degraded the local environment and led to health impacts for surrounding communities. Two of the largest forestry corporations, CMPC and Bosques Arauco, own over two million hectares while the Mapuche Nation owns less than 500,000 hectares.²¹ The Wallmapu, ancestral land of the Mapuche, has become increasingly militarized as forestry plantation projects increase. The Chilean national police force set up heavily armed checkpoints and uses military tanks in areas surrounding plantations. The ceremonial sites of Indigenous Peoples have also been threatened. On February 28, 2016 unidentified individuals set fire to a *Guillatuwe* (ceremonial site) of the Ranquilco community. On December 31, 2015, unidentified individuals destroyed a *Rewe* (a sacred altar) located in the Entuco and Curiqueo Queupumil communities and on October 13, 2015 the *Rewe* of the Wentelolen community was reported to have been destroyed by the Police Special Operations Group.²²

In state protected areas that overlap with Indigenous lands, Indigenous communities are often excluded from decisions concerning land management and development. The Marine and Coastal Areas for Indigenous Peoples Law (‘ECMPO’ by its Spanish acronym), passed in 2008 with law 20.249, aims to protect Indigenous Peoples’ right to customary uses of the area and its resources. However, due to a lack of political will, along with the pressure exerted by large business interests and the political sectors aligned with them, the process of granting ECMPOs has been extremely difficult and slow: currently more than 80 applications are pending, and fewer than 10 ECMPOs have been effectively granted.²³ Slow progress towards ECMPOs is also due in part to systemic inequalities in which Indigenous Peoples lack sufficient financial, geographic, and technological resources to develop requests. Corporations, in contrast, have extensive resources to interact with government institutions, shown in the 1,350 licenses approved for salmon aquaculture just in the Patagonia region.²⁴

D. Obstacles to Freedom of Expression: CERD Articles 5a, 5(d)(vii), 5(d)(viii), 5(d)(ix)

Mainstream media in Chile often perpetuates racist discourse and terrorist language to discredit the Indigenous Peoples’ struggle for political and land rights. It is also almost entirely broadcast in Spanish, excluding and marginalizing Indigenous language speakers. Indigenous Peoples have the right to their own forms of media, and in its 2013 review of Chile, the CERD recommended Chile to “adopt the necessary legislative and other measures to reduce the constraints faced by Indigenous Peoples with regard to the use of community-based media in order to promote the use of Indigenous languages.” Chile makes no mention of community radio in their 2018 State report.

Chile's Community Radio Law (2010) created a legal framework for the operation of the sector. But since then, Indigenous community radio stations have not been able to equitably access these frequencies. The first concessions made under that law did not open for application until 2013. Between 2013 and 2015, 40% of the frequencies opened for concession were not allocated. It is particularly hard for rural Indigenous radio stations to meet the bureaucratic demands under the law due to lack of capital for processing applications and access to legal advisory. Implementation of the 2010 law has also been held up in part by the failure of Chile's largest commercial radio network, Iberoamericana Radio Chile, to cooperate with the communications regulator, the Subsecretariat of Telecommunications (Subtel), on the reallocation of frequencies.

Until October 2018, Chile's Telecommunications law criminalized unlicensed community media broadcasting. The law, Article 36 B, imposed fines and imprisonment for broadcasting without a legal frequency, a condition that applies to most community media operators, and has been used to arrest or harass station operators.

Between 2013 and 2018, while stations were pending access to licenses, many community radio stations, particularly Indigenous radio stations, were raided for broadcasting illegally. For example, in February 2015 authorities confiscated the equipment of the Mapuche station La Voz de Nueva Braunau, in Puerto Varas, and four radio workers were detained overnight. Community radio stations in southern Chile – an area primarily populated by the Indigenous Mapuche people – have frequently been singled out due to their role in protests against commercial forestry and hydroelectric projects in the region.²⁵

According to data from SUBTEL, between 2010 and 2015, 116 complaints were filed with the public prosecutors office for the crime of broadcasting without a license. Among those, only 2 were broadcasting in an area that had been opened for applications for frequency concessions; the vast majority of cases were stations broadcasting in a legal gray area awaiting implementation of the 2010 law and which lacked the possibility of applying for a legal frequency.²⁶

In 2013, after the review by the CERD, Chile announced a fund of 10 million pesos to 30 Indigenous community radio stations during three years. According to Mireya Manquepillán, a Mapuche journalist and director of a radio station Kimche Mapu who was charged with illegally operating a radio station, and who spoke in Geneva on this issue in 2013, this fund did not materialize. "The State made an announcement in Geneva... but in concrete terms, nothing has been done. There are inconclusive promises that are not concrete. We have been in meetings with the director of CONADI, and they ask us for more time, but we want them to comply with their announcement. We were going to do a pilot project on Indigenous radio-broadcasting in Chile, but in practice, there is nothing," she said.²⁷

IV. CERD Recommendations from last review in 2013:

The CERD made a number of urgent recommendations of Chile in 2013 that have not been resolved:

12. Constitutional recognition and consultation of Indigenous Peoples

Recalling its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/15-18, para. 16) and urges the State party to :

(a) Place priority on recognizing the rights of Indigenous Peoples in the Constitution as a first step towards arriving at a consensus-based settlement of their claims ;

(b) Fulfil its obligation to ensure that consultations are held with Indigenous Peoples and serve as a vehicle for their genuine participation in respect of any legislative or administrative decisions that may directly impinge upon their rights to the land and resources that they possess or that they have traditionally used, as established in the relevant international instruments ;

(c) Take into account the recommendations made by the Special Rapporteur on the rights of Indigenous Peoples with regard to consultations with Indigenous Peoples ;

(d) Expedite the establishment of an institutionalized mechanism for consultation in accordance with international standards.

13. Ancestral lands

The Committee reiterates the recommendations it has made to the State party and encourages it to:

(a) Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting Indigenous Peoples ' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments and the treaties signed by the State party with Indigenous Peoples (CERD/C/CHL/CO/15-18, para. 21);

(b) Increase its efforts to ensure that the restitution of Indigenous Peoples ' lands forms part of an overall strategy for the restitution of their rights ;

(c) Undertake environmental impact assessments on a systematic basis and hold free, prior and informed consultations with a view to obtaining Indigenous Peoples ' free and fully informed consent before authorizing any investment project that could negatively affect their health or livelihoods in the areas that they inhabit (ibid., paras. 22 and 23);

(d) Take steps to provide redress for the damage sustained and place priority on resolving the environmental problems caused by such activities, which, according to a number of reports received by the Committee, are having harmful effects on the lives and livelihoods of Indigenous Peoples (ibid. , para. 24).

14. The Counter-Terrorism Act and excessive use of force by agents of the State against Indigenous Peoples

The Committee recommends that the State party should, as a matter of urgency:

(a) Amend the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers ;

(b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social demands;

(c) Implement the recommendations made in this respect by the Human Rights Committee (2007) and by the Special Rapporteur on the rights of Indigenous Peoples (2003 and 2007) and take into account the preliminary recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2013) ;

(d) Investigate allegations that government employees have used violence against Indigenous communities , particularly in the case of the Mapuche and Rapa Nui Peoples ;

(e) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on Indigenous Peoples ;

(f) Intensify and expand the human rights training provided to law enforcement officers and judicial officials to ensure the proper performance of their duties.

15. Indigenous languages and education

The Committee recommends that the State party allocate sufficient resources to revive Indigenous languages and ensure that Indigenous Peoples have access to education. The Committee also recommends that the State party consider fostering the use of Indigenous languages in primary and secondary education and promote the involvement of Indigenous teachers. It also urges the State party to adopt the necessary legislative and other measures to reduce the constraints faced by Indigenous Peoples with regard to the use of community-based media in order to promote the use of Indigenous languages.

16. Marginalization of Indigenous Peoples

The Committee reiterates its earlier recommendation and urges the State party to take the necessary steps to provide Indigenous Peoples with effective protection from racial discrimination. It also encourages the State party to work side by side with Indigenous Peoples to develop policies for raising the educational levels and attaining the full-fledged participation in public affairs of Indigenous Peoples, especially Indigenous women. The Committee encourages the State party to take into account its general recommendation s No. 25 (2000) on gender-related dimensions of racial discrimination and No. 32 (2009) on the meaning and scope of special measures in the Convention in connection with the development and adoption of such measures.

V. Other UN Body Recommendations

Chile has not implemented several recommendations made in the first and second cycle of the Universal Periodic Review, including; minimizing the environmental impact of economic activities affecting Indigenous Peoples; ensuring justice and reparation for victims of the effects of environmental degradation; conducting investigations related to crimes and violence by the police and the Carabineros against communities of Indigenous Peoples; refraining from applying anti-terrorist legislation against Mapuche people; deepening respect for Indigenous Peoples, strengthening measures to combat prejudices and negative stereotypes affecting Indigenous Peoples.

The third cycle review took place in January 2019. Chile received 6 UPR recommendations regarding its anti-terrorism laws, summarized by Norway's recommendation, "Ensure that the application of the antiterrorism law does not violate the human rights of Indigenous Peoples." Chile noted these recommendations, rather than accepting them. 50 recommendations related to violations of Indigenous Peoples' rights.

VI. Recommendations

1. Continue a process of engagement with Indigenous Peoples regarding the construction of a new constitution, but with the following recommendations:
 - a. State actors should travel to Indigenous territories to engage with Indigenous leadership directly and on their terms.
 - b. Consultation with Indigenous Peoples should establish the UNDRIP as the minimum standard for defining Indigenous Rights and should move forward with the declaration as a starting point.

- c. Indigenous Peoples must be consulted regarding the functional operationalization of Indigenous political rights into new Chilean law, rather than simply cultural rights.
2. Comply with recommendations from various UN bodies to terminate the use of the Anti-Terrorist Law used to persecute Indigenous leaders and protesters fighting for political and land rights.
 3. Establish mechanisms for transparency in the reviewing of applications under the The Marine and Coastal Areas for Indigenous Peoples Law to facilitate the implementation of this law.
 4. Ensure that Free, Prior and Informed Consent of Indigenous communities is obtained before any development projects take place on their land.
 5. Facilitate the licensing and funding of Indigenous community radio stations in compliance with 2013 CERD recommendations and promises.
 6. Take necessary steps to investigate the full extent of corruption within the Carabineros in light of Operation Huracan, and review other cases where similar illegalities may have taken place.
 7. Conduct human rights and Indigenous Peoples rights trainings with police forces; hold police accountable for excessive use of force committed against Indigenous communities during protests, raids and interrogations. Ensure that the victims of these crimes are given full access to the judicial system.
 8. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to do a follow up visit to Chile.

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