



REPORT OF THE CIVIL SOCIETY AND INDIGENOUS PEOPLES ORGANIZATIONS TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS DUE TO THE REVIEW OF THE FOURTH PERIODIC REPORT OF THE STATE OF CHILE (E/C.12/CHL/Q/4)

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Presentation

The Observatorio de Derechos de los Pueblos Indígenas (Indigenous People's Rights Watch), henceforward ODPI, a non-governmental organization of promotion, documentation and advocacy of indigenous peoples' human rights, along with representative organizations of indigenous peoples, analyze thereupon the compliance of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the State of Chile, within the framework of its fourth periodic report (E/C.12/CHL/Q/4). This report is focused on the situation of the Economic, Social and Cultural Rights (ESCR) recognized in the ICESCR of the indigenous peoples inhabited in Chile.

I. Matters related to the general provisions of the Covenant (Articles 1 to 5)

“Article 1. All peoples may, for their own ends, freely dispose of their natural wealth and resource.”

Indigenous Peoples' Constitutional Recognition

1. Indigenous Peoples are still not recognized by the Political Constitution. The President Michelle Bachelet in her electoral program stated: *“We will guarantee the full participation of indigenous peoples in the entire process of debate and decision on a New Constitution, bearing in mind the idea of a Pluricultural State that guarantees the collective rights.”*¹ Michelle Bachelet's government has delayed until now the announcements about a new constitution process, which has affected the absence of debate in relation with the indigenous peoples' constitutional recognition.

2. The constitutional reform bill that *“recognizes the Indigenous Peoples of Chile”* (Bulletin Report 5522-07), initiated 23 November 2007 via Presidential Message is still under consideration in the National Congress. This project in September 2009 merged with the *“Project of Constitutional Reform that recognizes the contribution of native peoples to the conformation of the Chilean Nation”* (Bulletin Report 5324-07) presented by parliamentary motion.² In 10 October 2012, the government withdrew the extreme urgency of this bill. From that date onwards, no advance has been produced in the proceedings of this reform.

3. In that time, this initiative was questioned by representative organizations of indigenous peoples³ due to this proposal was elaborated by the Executive and the Legislative powers without the prior consultation. Also, its proceedings have not included the indigenous participation, according to the international standards. In regards to the content, this bill suffers from a series of limitations that restrict the rights recognized to indigenous peoples and, limits arbitrarily the exercise of right to strengthen indigenous peoples' social organizations and its cultural and identity particularities, and submits them to the national juridical regulation. Moreover, it restricts the recognition of lands and

1 Electoral Program, Chapter Indigenous Peoples, See: <http://michellebachelet.cl/wp-content/uploads/2013/10/Pueblos-Ind%C3%ADgenas-172-177.pdf> (Reviewed 27 April 2015)

2 Motion presented by the Honorable Senators Mr. Alberto Espina Otero, Mr. Andrés Allamand Zavala, Mr. Carlos Cantero Ojeda, Mr. José García Ruminot and Mr. Sergio Romero Pizarro, presented in 6 September 2007.

3 See: Indictment: Conflict on Racist Project of Indigenous Peoples' Constitutional Reform in Chile and illegal and corrupted consultation process: <http://www.mapuexpress.net/content/publications/print.php?id=2243> (Reviewed 27 April 2015)

waters rights, and leaves out the constitutional recognition of those rights emanated from their ancestral possession of the lands recognized in the ILO Convention 169.⁴

4. It is important to mention that the “*Constitutional reform that established the special territories of the Eastern Island and the Juan Fernandez Archipelago*”, Law No. 20.193⁵, which provides the status of special territory to the Eastern Island, not in consideration of the Rapa Nui People that inhabits it – which is not recognized in this reform- but due to the remoteness of the territory from the continent.

5. Recommendation:

- Prioritize the constitutional recognition of indigenous peoples and their rights. Also the contents of this project shall be consulted to these peoples, in good faith, through proper proceedings and by their representative institutions, with the aim of achieving an agreement or their consent, in accordance with the ILO Convention 169.

Indigenous Peoples’ Right to political participation⁶

6. Although indigenous peoples have run in political elections for popular representation through independent candidacies or Chilean political parties, they still have no representatives in the National Congress and/or the Regional Councils, where their ancestral territories are located. With regards to the local governments, in spite of the fact that in the last municipal elections the number of indigenous majors elected, particularly Mapuche, increased significantly, their representation is still low in relation to the percentage of their population. Thus they are deprived of participating of the decisions adopted by these organs that affect them.

7. There are not legislative advances that allow reverting to the reality aforementioned. Although in 2009 the government submitted to consultation an initiative to create reserved seats for indigenous peoples in the Chamber of Deputies and the Regional Councils, under the proportional criteria of their population. This initiative has not been submitted to legislative procedure. In 2012 a bill for constitutional reform was presented by the Parliament to the National Congress establishing special indigenous representation in both Chambers, as well as proportional indigenous representation in relation to their population, both in the Regional and Municipal Councils, which has not progress in the proceedings.⁷ 8. In June 2013 the Parliament approved the democratic election of the Regional Counselors, without consulting the indigenous peoples,⁸ which is an important step for regional democratization. Nonetheless, the Congress rejected a motion aimed at incorporating measures that

4 Report of the Civil Society and Indigenous Peoples’ Organizations about the Universal Periodic Review of the State of Chile by the United Nations Human Rights Council (2014), Paragraph 2, See: <http://www.observatorio.cl/plibro/ficha/9571> (Reviewed 27 April 2015). For further information see: Document No. 9: Constitutional Recognition and Fundamental Rights of Indigenous Peoples (with special reference to the right to consultation) by Matías Meza-Lopehandía Glaesser. See: <http://www.observatorio.cl/plibro/ficha/284> (Reviewed 27 April 2015)

5 Published in Diario Oficial, 30 July 2007.

6 Report of the Civil Society and Indigenous Peoples’ Organizations about the Universal Periodic Review of the State of Chile by the United Nations Human Rights Council (2014), Paragraphs 22-25, See: <http://www.observatorio.cl/plibro/ficha/9571> (Reviewed 27 April 2015)

7 Bulletin Report 8438-07.

8 Law No. 20.678 that “*Establishes the direct relation with the Regional Councils,*” published in Diario Oficial, 19 June 2013.

favor the indigenous representation; also it did not reform the law of political parties, in order to regional and indigenous population organize locally to face these elections. Therefore the only option for indigenous peoples to participate in the regional election processes is running as independents, in a clear disadvantage with the political parties' lists or integrating a national party due to the advantages the law grants, discouraging the indigenous political organization. 9. Relating to the legal reforms, it is important to highlight also the serious omission in relation to indigenous peoples in the bill that "*Replaces the binomial electoral system for a proportional and inclusive one that strengthens the representation of the National Congress*" (Bulletin Report 9326-07⁹) which modifies the binomial electoral system.¹⁰ In fact, this bill contemplates as explicit objective the conformation of a National Congress that reflects the diversity of the country and, thus considers establishing quotes for female candidates promoting a major representation of women, which is absolutely relevant, but on the other hand, it does not consider analogous mechanisms that enable indigenous representation. Also it did not introduce complementarily reforms to the law of political parties¹¹ that has impeded thus far the creation of regional parties establishing as minimum to conform a political party the 0.5% of the electorate adherence that voted in the last election of deputies, in 8 regions of the country or at least in 3 contiguous regions. Also in order to present independent candidacies is required to be included in an electoral pact with a political party or obtain individually the sponsorship of the 0.5% of the voters. In both situations, these high percentages make significantly complex the election of members of the parliament that do not participate in majority electoral pacts. This law clearly hinders the parliament representation of indigenous peoples.

8. Recommendations

- **The implementation in Chile of the guidelines from the Yatama vs. Nicaragua sentence of the Inter-American Court of Human Rights, in a sense that indigenous peoples can participate in electoral processes with their own organizations (without the obligation of creating political parties)**
- **The implementation of special measures that allow the political participation of indigenous peoples in the National Congress and/or Regional Councils, under formulas such as reserved seats or redistricting that allow indigenous peoples counting with the majority of voters.**

Situation of the Indigenous Lands

9. The mechanisms used by the State to comply with the return of ancestral lands of the indigenous peoples, are established in the Law 19.253, known as "*Indigenous Law*."¹² This law establishes a

9 Enacted by the National Congress. Currently it is under the proceedings of the presidential approval.

10 According to this law, each electoral circumscription selects two representatives for Senate, and each electoral district selects two representatives in the Chamber of Deputies. In order that two candidates of the same list are elected, it is required that these candidates double in votes the contrary (ies) list(s). This creates an over-representation of candidates that belong to pacts with minority votes in relation to the pacts with majority votes. For this reason, the possibilities for the citizens to see their candidates elected are diminished.

11 Constitutional Organic Law No. 18.603 de 1987.

12 "Establishes Norms About the Protection, Promotion and Development of Indigenous Peoples and Creates the National Corporation for Indigenous Development."

mechanism named “*Lands and Waters Fund*”, whose aim is to extend the lands of the indigenous peoples and their communities through the grant of subsidies to acquire lands (Article 20, letter A) and financing mechanisms to solve the land problems (Article 20, letter B). This mechanism, more than a restitution mean is “*a mechanism to purchase lands for indigenous that do not recognize the legitimate right that indigenous peoples have to claim and rebuilt their territories.*”¹³

10. The commercial nature of this instrument has generated serious deficiencies that violates the right of indigenous peoples to their territories as is shown in “*the lack of transparent proceedings in the mechanisms of restitution and/or granting of lands, the inexistent pre-established criteria, the pressure and intervention that exist during the process of selection of land to be acquired, the use of the market as the main mean of land restitution and the lack of productive support to the communities that receive the land*”¹⁴. Moreover, the National Corporation for Indigenous Development (Corporación Nacional de Desarrollo Indígena - CONADI) has provided a restrictive interpretation of the concept of indigenous lands, permitting that this Funds merely finance initiatives aimed at restitution of lands recognized as indigenous because they derived from a title emanated from the State, excluding from this interpretation the ancestral lands or customary use, in accordance with the international law.¹⁵

11. The fact that the satisfaction of the land demand is subjected to the offer of lands, regardless of those lands are historically indigenous or not, causes “*the forced experience –not new in history- of moving and settling communities in lands which are part of the ancestral territories of other communities.*”¹⁶ Frequently these lands are far away from their origin territories which causes estrangement and conflicts with the other communities because the other territorial vindications are superposed. For example, from a total of “*268 purchases, which means, adjudications of lands to communities with historic conflicts (...) 94 cases of the beneficiary communities had to move to a different commune from the original community, so the 35% of the cases of land purchase correspond to transfers of communities or relocations.*”¹⁷ This number does not contemplate those transfers carried out within the same commune.

12. Other serious deficiency regarding to the land policy, is the lack of quantification of the total demand of indigenous lands. “*The information about the total of applications presented (accepted, rejected and under consultation) before CONADI is not systematized because it is only within the*

13 González P, Karina; Meza-Lopehandía G., Matías; Sanchez Curihuentru, Rubén; Document No. 6: Land Policies and Territorial Rights of Indigenous Peoples in Chile: the case of “Carimán Sánchez and Gonzalo Marín” Communities and “Manuel Contreras” Community, Page 6; See: <http://www.observatorio.cl/plibro/ficha/203> (Reviewed 27 April 2015)

14 Rivas, Antonia; Land Public Policy and Indigenous Territories, El Mostrador, published 2 November 2014. See: <http://www.elmostrador.cl/opinion/2014/11/02/politica-publica-de-tierras-y-territorios-indigenas/> (Reviewed 27 April 2015)

15 Report of the Civil Society and Indigenous Peoples’ Organizations about the Universal Periodic Review of the State of Chile by the United Nations Human Rights Council (2014), Paragraph 19, See: <http://www.observatorio.cl/plibro/ficha/9571> (Reviewed 27 April 2015).

16 González P, Karina; Meza-Lopehandía G., Matías; Sanchez Curihuentru, Rubén; Document No. 6: Land Policies and Territorial Rights of Indigenous Peoples in Chile: the case of “Carimán Sánchez and Gonzalo Marín” Communities and “Manuel Contreras” Community, Page 46; See: <http://www.observatorio.cl/plibro/ficha/203> (Reviewed 27 April 2015).

17 González P, Karina; Meza-Lopehandía G., Matías; Sanchez Curihuentru, Rubén; Document No. 6: Land Policies and Territorial Rights of Indigenous Peoples in Chile: the case of “Carimán Sánchez and Gonzalo Marín” Communities and “Manuel Contreras” Community, Page 26; See: <http://www.observatorio.cl/plibro/ficha/203> (Revisado Reviewed 27 April 2015)

*application folders of each community.*¹⁸ According to the figures presented by CONADI to the National Institute for Human Rights,¹⁹ since the Indigenous Law came into force, a total of 14 annual tenders have been organized for the land subsidy of the Article 20, letter A. The applications, both as individuals and as communities, have increased to 30,650 awarding only 1.125 subsidies (3.7%), which reveal the high demand of lands unsatisfied. Regarding to the subsidy of the Article 20 letter B, *“It is difficult to find definite data over the quantity of demanded land because this increases year after year (...) likewise, many communities that received land through the mechanism of the Article 20 letter b) argue that their demand is incomplete and they are going to request the land purchase again.”*²⁰ Another concern is the slowness of the mechanism. In relation to the Article 20 letter B, up to October 2014 there are 158 communities whose subsidy is approved (applicability resolution) without the land purchase been concreted yet by CONADI. In some cases *“waiting for this response has took 17 years and until now they have not have any satisfactory response.”*²¹

13. The budget designated by the State for financing this mechanism has been insufficient. Since the Law 19.253 was created *“a total of 187,173 hectares have been granted by the investment of 275,714,809,751 Chilean pesos according to the information provided by CONADI – 70,555,355,444 Chilean pesos by the article 20 a) and 205,159,454,307 Chilean pesos by the article 20 b)-. With respect to the fiscal lands granted since 1994, 278,000 hectares have been transferred.”*²² This budget is insufficient which has been exacerbated by the real estate speculation generating an excessive rise of prices and *“low return of the invested money in relation to the hectares acquired.”*²³

14. Recommendations:

- Adequate the public policy in relation to the indigenous lands so that indigenous peoples could access to the restitution of their ancestral lands.**
- Increase the budget assigned to the Land Fund of CONADI so this institution can comply with the governmental commitments in processes that shall be defined by deadlines.**
- Consider the use of mechanisms such as expropriation deemed to be as the public interest, with the purpose of guarantying celerity, effectiveness and fair price to carry out the restitution**

18 Diego Portales University, Center for Human Rights; Annual Report of Human Rights in Chile 2014, Chapter: Indigenous Territories and Land Grant Public Policy in Chile, Page 183. See: <http://www.indh.cl/wp-content/uploads/2014/12/Territorios-y-derechos-humanos-INDH-2014.pdf> (Reviewed 27 April 2015).

19 National Institute for Human Rights; Annual Report of the Situation of Human Rights in Chile 2014, Chapter 5: Territories and Human Rights. See: <http://www.indh.cl/wp-content/uploads/2014/12/Territorios-y-derechos-humanos-INDH-2014.pdf> (Reviewed 27 April 2015)

20 Diego Portales University, Center for Human Rights; Annual Report of Human Rights in Chile 2014, Chapter: Indigenous Territories and Land Grant Public Policy in Chile, Page 183. See: <http://www.indh.cl/wp-content/uploads/2014/12/Territorios-y-derechos-humanos-INDH-2014.pdf> (Reviewed 27 April 2015)

21 National Institute for Human Rights; Annual Report of the Situation of Human Rights in Chile 2014, Chapter 5: Territories and Human Rights. See Page 240. See: <http://www.indh.cl/wp-content/uploads/2014/12/Territorios-y-derechos-humanos-INDH-2014.pdf> (Revisado el 27 de abril del 2015)

22 Rivas, Antonia; Public Policy of Land and Indigenous Territories, El Mostrador, published 2 November 2014. See <http://www.elmostrador.cl/opinion/2014/11/02/politica-publica-de-tierras-y-territorios-indigenas/> (Reviewed 27 April 2015)

23 National Institute for Human Rights; Annual Report of the Situation of Human Rights in Chile 2014, Chapter 5: Territories and Human Rights. See Page 240. See: <http://www.indh.cl/wp-content/uploads/2014/12/Territorios-y-derechos-humanos-INDH-2014.pdf> (Reviewed 27 April 2015)

of the ancestral lands of indigenous peoples by the State.

Indigenous Consultation

15. Since the ILO Convention 169 came into force in Chile and the United Nations Declaration on the Rights of Indigenous Peoples is ratified, we have witnessed its deficient application and compliance by the organs of the State, especially about the right to prior consultation of indigenous peoples relating to administrative and legislative measures. When the ILO Convention 169 came into effect, Michelle Bachelet in her first term enacted the S.D. No. 124,²⁴ which ruled until its derogation, and it was oriented to the action of the public agencies in open contradiction with the international standards in this matter. The critics to this norm led to the government of President Sebastián Piñera to drive in 2011 a consultation process that incorporated, among other matters, the definition of a consultation mechanism that regulates future processes.²⁵

16. In 15 November 2013 the Ministry of Social Development (former MIDEPLAN) dictated rules to regulate the indigenous consultation through the Supreme Decree No. 66.²⁶ These regulations are questioned by the representative organizations of indigenous peoples because limit the consultations to legislative projects that have “*direct and significant impact*” on indigenous peoples. Also, considers the consultation accomplished even when no agreement or consent from indigenous peoples is achieved, and does not establish procedures culturally proper. Plus, these rules were not consulted prior its approval through the adequate procedures with the representative institutions of indigenous peoples.¹⁸ While these rules were under revision, the President Sebastián Piñera committed himself waiting for the determination of the consultation mechanism that replaced the S.D. No. 124, in order to study afterward “*the most feasible alternative in order to define...the incorporation of the new mechanism to the SEIA Regulations.*”²⁷ In spite of this commitment, in 28 May 2012 the Council of Ministers for Sustainability approved the draft project “*Regulations on the Environmental Impact Assessment System (Regulaciones del Sistema de Evaluación de Impacto Ambiental - RSEIA)*” approved and then published in 12 August 2013 by the Supreme Decree No. 40 of the Ministry of Environment.²⁸ More than consultation processes, the mechanism established by these regulations is a manner to socialize investment projects with environmental implications. This is reflected on the 3rd

24 Supreme Decree No. 124 of the Ministry of Planning and Cooperation. Published in Diario Oficial in 25 September 2009. This decree regulated the indigenous participation established in the article 34 of the Law No. 19.253, which to the date was not regulated.

25 Report of the Civil Society and Indigenous Peoples' Organizations about the Universal Periodic Review of the State of Chile by the United Nations Human Rights Council (2014), Paragraphs 10 and 11, See: <http://www.observatorio.cl/plibro/ficha/9571> (Reviewed 27 April 2015).

26 Published in Diario Oficial in 4 March 2014.

27 Final Report about the indigenous consultation process in relation to the SEIA Regulations, Procedure Guidelines to Citizen Participation and Support to the significant alternations assessment of native peoples. Ministry of Environment, Environmental Assessment Service. 2012. Paragraph 1.2, Page 18. See: http://www.sea.gob.cl/archivos/contenidos/02_Informe_Final_Consulta_Indigena_RSEIA_SEA.pdf (Reviewed 27 April 2015)

28 Observatorio Ciudadano. The Right to Consultation of Indigenous Peoples. Analysis of the Domestic, International and Comparative Law. Page 39. See: http://www.observatorio.cl/sites/default/files/biblioteca/libro_consulta_indigena_oc.pdf (Reviewed 27 April 2015)

section of the article 85 of these regulations,²⁹ which establishes in case of not coming to agreement with indigenous peoples in regards to the investment projects that affect them, these could be approved anyway by the environmental authority.³⁰ To date, the National Congress has no consultation procedure to process laws susceptible of affecting directly indigenous peoples. In January 2013 is constituted a “*Bicameral Commission in charge of the compliance with the article 6 of the ILO Convention 169*,”³¹ being in session that year 6 times. In 2014 held one session, and during January 2015 had 3 sessions. The few sessions held; the absence of reports published and, the fact that indigenous peoples’ representative organizations have not been received yet in hearings, account for the lack of interest of the legislative power to comply with its consultation duty imposed by the ILO Convention 169.

17. In this sense it is preoccupying that the National Congress is still legislating without prior consultation, measures that generate a direct effect on indigenous peoples and their rights.

Within the bills enacted without prior consultation are:³²

i. Law No. 20.573: “*Constitutional Reform on the special territories of Eastern Island and Juan Fernández Archipelago*.”³³ Prior to the parliamentary discussion, this bill was discussed with organizations of the Rapa Nui People and approved through plebiscite with wide participation. Subsequently through a substitute amendment of President Piñera, the bill modified its central ideas approving a different proposal from the bill endorsed by plebiscite.

ii. Law No. 20.657, the Fishing Law.³⁴ This bill is initiated in 14 December 2011 through presidential message. In spite of the insistent request from the indigenous organizations, this bill was not submitted to the consultation process. Once the Congress enacted this bill, a requirement was presented before the Constitutional Court due to the violation of the right to prior consultation but was rejected.³⁵ Although the Court considered that the violation on the indigenous consultation existed, exhorting the Congress to create a proper consultation mechanism, pointed out that that violation was not part of the control of the constitutionality because the ILO Convention 169 has not has constitutional status, but supra legal status instead.

29 “[i]n the consultation process... will participate indigenous peoples exclusively affected and shall be carried out with the purpose of coming to agreement or consent. Nevertheless, if this purpose is not achieved it does not imply that affects the right to consultation.”

30 Observatorio Ciudadano, Report: The impacts of the companies on the Mapuche people’s human rights in Chile. See: http://www.iwgia.org/iwgia_files_news_files/1174_LOS_IMPACTOS_DE_LAS_EMPRESAS_EN_LOS_DERECHOS_HUMANOS_DEL_PUEBLO_MAPUCHE_EN_CHILE.pdf (Reviewed 27 April 2015).

31 Ver: http://www.senado.cl/appsenado/index.php?mo=comisiones&ac=ficha&id=968&tipo_comision=10 (Reviewed 27 April 2015).

32 Observatorio Ciudadano and others, Civil Society and Indigenous Peoples’ Organizations of Chile to the UN Committee on the of Racial Discrimination due to the Periodic Report Review 19° to 21° of the State of Chile (CERD/CCHL/19-21) See: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHL/INT_CERD_NGO_CHL_14779_S.pdf (Reviewed 27 April 2015)

33 Published in Diario Oficial, 6 March 2012.

34 “*Modifies the sustainability of the hydrobiological resources, access to the industrial and local fishing activity and regulations to investigate and control the general law of fishing and aquaculture contained in the law No.18.892 and its modifications.*” Published in Diario Oficial, 9 February 2013.

35 Sentence of 23 January 2013, Constitutional Court, Rol No. 2387-12 and 2388-12. See: http://www.tribunalconstitucional.cl/wp/descargar_expediente.php?id=45081 (Reviewed 27 April 2015).

iii. Law No. 20.701 about “*Procedures to grant electric concessions*”³⁶ did not consider the consultation of indigenous peoples in its legislative debate. The law text only considers that indigenous peoples shall be considered once the concession is granted and before the construction of works.

18. Within the bills currently under legislative debate without prior consultation, we highlight –because affect the territorial rights of indigenous peoples- the following:

i) Bill that “*Regulates the Electric Highway*” (Bulletin Report 8566-08) initiated in 4 September 2012;

ii) Bill about “*Forest promotion that modifies and extends L.D. No. 701*” (Bulletin Report 8.603-01), in the Congress since 2 October 2012.

iii) Bill that “*Creates the Service for Biodiversity and Protected Wildlife Areas and the National System for Protected Wildlife Areas*” (Bulletin Report 7487-12) in the National Congress since 18 June 2014.

iv) Bill that “*Introduces modifications to the Law No. 19.657 about concessions of geothermic energy*” (Bulletin Report 6379-08 and Bulletin Report 7162-08) entered in the Congress in 21 January 2009 and in 1 September 2010.

19. In 1 February 2015, after 5 months, the pre-legislative consultation process for indigenous peoples, in relation to the preliminary draft of the bill that creates the Ministry of Indigenous Affairs and the Council for Indigenous Peoples, finished. Diverse organizations decided from the beginning not participate in this because is regulated exclusively by the S.D. No. 66. Other organizations that participated in the process abandoned it, denouncing irregularities and arbitrariness by the officials of the Ministry of Social Development that infringe even the norm questioned. Hence it was not an atmosphere of mutual trust to develop genuine and constructive negotiations that allow indigenous peoples to participating efficiently in the decisions taken coherently with their cultural and social traditions.³⁷

20. Recommendations:

- Comply with the obligations assumed by the ILO Convention 169, both the Government and the Legislative Power, in relation to the duty of the State to consult indigenous peoples in good faith through their representative institutions, and with the aim of coming to an agreement or consent every time that administrative or legislative measures susceptible of affecting them directly, are taken, incorporating, in the corresponding cases, the standard of the prior, free and informed consent as well.

- Adequate the internal normative of consultation (SD 40 and SD 66) to comply with the international standard of the right to consultation incorporating, in the corresponding cases the prior, free and informed consent as well.

36 Published in Diario Oficial, 14 October 2013.

37 Observatorio Ciudadano. The indigenous consultation process of the Ministry of Social Development and the absence of an atmosphere of trust. See: <http://www.observatorio.cl/2015/el-proceso-de-consulta-indigena-del-ministerio-de-desarrollo-social-y-la-ausencia-de-un-clima> (Reviewed 27 April 2015).

Investment Projects³⁸

21. The indigenous territories in Chile are affected by a great amount of investment projects as fish farming, forest plantations, mines, hydroelectric power plants, among others, approved without consultation processes or the free, prior and informed consent of these peoples who are excluded of the economic benefits that these activities generate. This occurs due to the incorporation of Chile to the global markets through Free Trade Agreements approved without consultation of indigenous peoples, and sectoral legislation³⁹ that has not been adapted to the standards of the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, in order to avoid that third parties have rights on the natural resources of ancestral properties of indigenous peoples.

22. In case of the Mapuche territory⁴⁰, the forest plantations have generated disputes over lands and environmental conflicts, which have turned to *“migration of rural population to towns or close cities where the indexes of unemployment and urban poverty are increased.”*⁴¹ In regards to the dispute over lands, as the forest model expands, the companies monopolize the ancestral property of Mapuche, denying its restitution and pressuring in judicial instances the criminalization of Mapuche leaders as a strategy to neutralize these demands. As a consequence of the forest activity, the company Celulosa Arauco aims at building a pipeline with access to the sea in order to dispose wastes, in direct collision with the territorial rights of the Mapuche-Lafkenche communities. Once the company achieved the environmental authorization, the sea concessions to build the pipeline are under process.

23. In Mapuche territories have proliferated hydroelectric projects. One of the emblematic cases is the Hydroelectric Power Plant Neltume owned by the Transnational ENDESA-ENEL, a USD 781 millions of investment project that will be located in Neltume Lake.⁴² The water from the hydroelectric power plant will be released to the lake increasing its level, threatening to flood the *nguillatue*, the ceremonial site where the main Mapuche spiritual ceremony is held. Also, the touristic productive activities of the communities will be affected and thus their priorities in matter of development. Currently the State carries out a consultation process that is been seriously questioned by the communities of the territory, and therefore the communities affected disputed it through judicial actions, but the Courts of Justice rejected.⁴³ The argument is since the consultation process has not finished yet, no violation of their rights has been committed. Other emblematic case is the construction of the Hydroelectric Power Plant Osorno owned by the Electric Company Pilmaiquén S.A., a USD 75 millions of investment

38 Report of the Civil Society and Indigenous Peoples' Organizations about the Universal Periodic Review of the State of Chile by the United Nations Human Rights Council (2014), Paragraphs 22-25, See: <http://www.observatorio.cl/plibro/ficha/9571> (Reviewed 27 April 2015)

39 Water Code, Mining Code, DFL 701, among other.

40 Bío Bío (8th), Araucanía (9th), Los Ríos (14th) and Los Lagos (10th) Regions.

41 *“Hacia un nuevo Modelo Forestal en Chile”* by Cristián Frêne Conget and Mariela Núñez Ávila, in *Bosque Nativo Journal* 47: 25 - 35, 2010, See: http://www.bosquenativo.cl/descargas/Revista_Bosque_Nativo/RBN_47_art_op2web.pdf (Reviewed 27 April 2015)

42 Territory of the Mapuche communities Juan Quintuman, Inalafken and Valeriano Cayicul. Commune of Panguipulli, 14th region.

43 Court of Appeal of Valdivia Rol No. 147-2014, Supreme Court Rol No. 12450-2014.

project.⁴⁴ This project⁴⁵ considers the construction of a dam that will flood the religious and ceremonial complex where the *Ngen Mapu Kintuante* inhabits, a place with fundamental cultural meaning for the Mapuche-Williche community. The 2009 environmental authorization of the project, and the authorization of the General Directorate of Waters (Dirección General de Aguas - DGA) to carry out the hydraulic works in 2014, was granted, without prior consultation processes or the consent of the affected communities. As a consequence, these communities presented a petition for a writ of habeas corpus⁴⁶, judicial action dismissed by the Courts arguing that there is no direct impact because the *Ngen Mapu Kintuante* is located in lands whose legal property now is not from indigenous but particulars.

24. In the territory of the Aymara, Lickanantay, Quechua, Colla and Diaguita Peoples⁴⁷ continues the boom of large scale mining operations that also extracts the control of water resources from indigenous communities hindering the preservation of their cultures in territories of extreme drought. Among the projects that have generated the most serious conflicts is important to mention the mining project Paguanta (1st region) that risks the Tarapacá basin, endangering the flow and quality of water in the territory where the Aymara community live. Also the mining projects El Morro and Pascua Lama, in the territory of the Diaguita people of Huascoalinos (3rd region), are large scale projects that make unviable the agricultural activities developed from time immemorial. Besides it compromises the indigenous territorial rights generating the displacement of huascoalinos cattlemen (Andes Mountain shepherds). The approval of these mining projects has violated fundamental rights in particular the right to consultation and protection of indigenous property, therefore these projects have been impugned through judicial actions. As a result of these actions⁴⁸, the Court ordered to suspend the approval of these projects as long as the legal infractions that imply the ignorance of these rights are not solved, in accordance with the standards set by the ILO Convention 169. 29. Within the context of the Environmental Assessment of the aforementioned investment projects in indigenous territories the State has initiated diverse processes of indigenous consultation led by the Environmental Assessment Service (Servicio de Evaluación Ambiental - SEA). These processes have been seriously questioned by the indigenous communities and organizations that live in the territories threatened by these projects, arguing that these have not been executed in consideration of the international standards of the right to indigenous consultation.

25. Recommendations:

44 See: http://seia.sea.gob.cl/expediente/ficha/fichaPrincipal.php?modo=ficha&id_expediente=2369587 (Reviewed 27 April 2015)

45 Located in the provinces of Valdivia (14th region) and Osorno (10th region).

46 Court of Appeal of Santiago Rol No.: 12.625-2014, Supreme Court Rol No.: 23.046-2014.

47 Andean zone of the north of Chile (15th, 1st, 2nd, 3rd, and 4th regions).

48 Sentence of 30 March 2012, Supreme Court, Rol No. 11.040 – 2011; Sentence of 17 February 2012 of the Court of Appeal of Antofagasta, Rol No.181-2011, ratified entirely by the Ex. Supreme Court in Rol No. 2211-2012. Sentence of 7 October 2014, Rol No. 11.299-2014, Supreme Court.

-Promote initiatives of juridical reform in discussion with indigenous peoples in order to assure their right to natural resources which have been appropriated by non-indigenous third parties, and are threatened by investment projects that violate their right.

-Adequate the national legislation so the duty to previously consult to indigenous peoples about the granting of concessions or other rights to third parties in their lands and territories, is included. Incorporate also in the corresponding cases the standard for the prior, free and informed consent.

Article 2, paragraph 2. Non-discrimination.

Measures against discrimination⁴⁹

26. The Law No. 20.609 in relation to the Measures against Discrimination has a more symbolic content than effective tools to tackle discrimination. The purpose of this law does not state clearly how to prevent, sanction, eradicate and amend discrimination. Also, the law lacks of a public institution for equality and non-discrimination, budget resources, preventive measures and affirmative action measures, among others. Moreover, it presents the inclusion of a norm that subordinates the equality and non-discrimination rights to other constitutional guarantees. The ignorance of the justice operators about the international standards of human rights is shown in the presence of ethnical, racial and gender stereotypes during their performance, which constitutes an obstacle for indigenous peoples' access to justice. There is no information about the number of judicial actions initiated, under process or solved by the application of this normative because there is not a system of record or information in regards to the application of the penal sanctions.

27. Recommendations:

- Correct the deficiencies of the Act against Discrimination, especially incorporating a public institution for equality and non-discrimination, budget resources, preventive measures and affirmative action measures. Also eliminate the norm about hierarchy of rights over the equality and non-discrimination rights.

- Permanent training in human rights, specifically on indigenous human rights and international standards, for justice operators and officers of the administration of justice.

Criminalization of the indigenous social protest⁵⁰

28. There is a criminalization of the Mapuche social protest and the application of norms of exception, as the "*Counter-Terrorist Act*"⁵¹ to pursuit leaders, activists and Mapuche ancestral authorities, in the framework of land conflicts. This legislation contains very wide criminal proceedings that weakens the guarantees of due process through the use of anonymous witnesses which affects directly the right to

49 Observatorio Ciudadano and others, Civil Society and Indigenous Peoples' Organizations of Chile to the UN Committee on the of Racial Discrimination due to the Periodic Report Review 19° to 21° of the State of Chile (CERD/CCHL/19-21) See: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHL/INT_CERD_NGO_CHL_14779_S.pdf (Reviewed 27 April 2015)

50 Ídem.

51 Law N° 18.314: "*Determines terrorist behavior and establishes punishment,*" published 17 May 1984.

defense of the accused; establishes extremely heavy sentences; extend the times of detention of the accused without the access to counsel and very long time in preventive prison. In this sense, it is important to highlight the sentence of the Inter-American Court of Human Rights in regards to the case of the application of this Act in which declares the responsibility of the State that condemns Mapuche people based on stereotypes and prejudices.⁵²

29. From 2009 until now there are 8 open lawsuits, in which 55 Mapuche people are charged for participating in terrorist crimes.⁵³ From these cases, 6 were absolved and 2 were sentenced for local crimes.⁵⁴ Although none of the convicted was sentenced for terrorist acts, the proofs for their conviction are the result of judicial processes under the wing of this legal body, due to the use of testimonies of anonymous witnesses violating the right to due process. The high number of absolutions obtained recently in the Counter-Terrorist Act processes reveals its discretionary and political use. The Minister of Interior Rodrigo Peñailillo, in November 2014, when presented a bill to modify the counter-terrorist legislation⁵⁵, stated the bill *“pretends to be an efficient law aims at prosecuting terrorists and sanctions them (...) where a terrorist act occur, this legislation will be present.”*⁵⁶ It is important to mention that this bill contemplates the inclusion of terrorist offenses within the Penal Code, maintaining extremely heavy sentences for terrorist acts. It also incorporates the figure of covered police agent, facilitates the means to intervene private communications, and maintains the figure of anonymous witnesses.

30. The high presence of policemen in the Mapuche territory, especially in the 7th and 9th regions is very disturbing. *“The communities speak of a “militarization” of the area for the constant presence of policemen in their communities with Carabineros clearly and heavily armed in the access paths to the communities or helicopters overflying the communities.”*⁵⁷ The High Court of Justice has received several remedy of *amparo* in favor of Mapuche families in the framework of raids in their communities and for being victims of police violence. In 12 March 2015, the Court of Appeals of Valdivia, in the case No.14-2014, stated: *“it is possible to deem that in effect, as the appellants claim, the actions of Carabineros de Chile when adopted the procedure abovementioned were not proportional, and the use of dissuasive means was outside the institutional protocols.”* In spite of the reiteration of these sentences, these incidents still happen and no penal or administrative sanctions are established for the officers involved. At the time of writing this report, there are 18 Mapuche political prisoners⁵⁸, and 4 of them are in hunger strike, demanding better prison conditions and change of the precautionary measures that affect them.

52 IACHR. Case Norín Catrimán and others (Leaders, members and activists of the Mapuche People) Vs. Chile. Fund, Reparations and Costs. Sentence 29 May 2014. Serie C No. 279

53 Information based on fiscal accusations of the 8 cases by the Counter-Terrorist Act occurred in 2009 and 2014.

54 First to Héctor Llaitul to 14 years of prison, Ramón Llanquileo Pilquimán, José Henuche Reimán, Jonathan Huillical Méndez to 8 years of prison; in the second lawsuit 18 years of prison to the Machi Celestino Cordoba.

55 Bill that *“Determine terrorist behavior and its sentences and modifies the Penal and Procedure Codes”*(Bulletin Report No. 9692-07)

56 See: <http://www.latercera.com/noticia/politica/2014/11/674-603028-9-gobierno-envia-modificacion-a-ley-antiterrorista-que-contempla-agentes.shtml> (Reviewed 2 May 2015)

57 International Amnesty; Human Rights Standards and the Mapuche people. See: <http://amnistia.cl/web/wp-content/uploads/2015/02/Est--ndares-de-derechos-humanos-y-el-pueblo-mapuche.pdf> (Reviewed 2 May 2015).

58 More information in: <http://meli.mapuches.org/spip.php?article3342>

31. Recommendations:

- Review Law No. 18.314 that “*Determines the terrorist behavior and establishes punishment*” and ensure that this law is applied only in cases of terrorist offences deemed as such and, guarantee effectively the right to due process; - Also investigate and sanction police violence acts against the Mapuche communities. Adopt police procedures in accordance with the standards of human rights.

Article 11. Right to an adequate standard of living

Situation of poverty of indigenous peoples

32. According to the data from the CASEN Survey 2013⁵⁹, indigenous peoples reached a population of 1,565,195 people equivalent to the 9.1% of the Chilean population, from which 924,560 correspond to Mapuche people equal to the 84% of the indigenous population. 74% of indigenous peoples live in urban areas, and the 26% in rural areas. Poverty is a reality that affects indigenous peoples, whose population has the highest levels of poverty and extreme poverty in comparison to the non-indigenous population of the country. According to the CASEN Survey 2013, the percentage of indigenous people in situation of poverty depending on the level of incomes reaches the 23.4%, and the non-indigenous people the 13.5%, existing 9.9 points of difference. In regards to extreme poverty, indigenous peoples duplicate proportionally the non-indigenous people in this situation because the 8.2% of the indigenous population live in extreme poverty depending on the level of incomes, versus the 4.1% of non-indigenous people. From a multidimensional perspective⁶⁰, exists a 31.2% of indigenous people in poverty and, the non-indigenous reaches the 19.3%, 11.9 points of difference. It is important to state that the mechanisms to measure poverty as well as the public policies aimed at reverting it are developed without consultation or participation of indigenous peoples.

Forestry and poverty in the Mapuche territory

33. The investment projects installed in indigenous territories have not contributed to diminish poverty and generate better standards of living for indigenous peoples. A clear example is the forestry sector that “*after mining constitutes the second most important activity (INFOR 2008).*”⁶¹ During 2014 (January - November) forest products exports reached USD 5,496,8 millions equal to an increase of 3.7% in relation to 2013 in the same period.⁶² The 7th, 9th, 14th and 10th regions that comprise the

59 See:

http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013_Pueblos_Indigenas_13mar15_publicacion.pdf (Reviewed 27 April 2015)

60 “*Multidimensional Poverty: it is introduced in Chile the measurement of poverty with a multidimensional approach that allows to identifying the situation of poverty in homes and people that suffer from scarcities in dimensions such as education, health, labour, social security and housing that affect their wellbeing and quality of living.*” CASEN 2013. Presentation of a new methodology to measure poverty and summary of the main results, Page No. 3. See: http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013_Situacion_Pobreza_Chile.pdf (Reviewed 27 April 2015).

61 Frêne Conget, Cristián and Núñez Ávila, Mariela: “*Hacia un nuevo Modelo Forestal en Chile*”, in Bosque Nativo Journal 47: 25 - 35, 2010, See: http://www.bosquenativo.cl/descargas/Revista_Bosque_Nativo/RBN_47_art_op2web.pdf (Reviewed 27 April 2015).

62 Bulletin of Chilean Forestry Exports. See:

Mapuche territory have the highest concentration of forestry plants with 1,403,919 hectares. The most concentrated areas are the 8th and 9th regions with 919,793 hectares⁶³ and 484,126 hectares⁶⁴, respectively.

34. The forestry investments and its high profits from an economic and social perspective, contrast to the poverty indicators that exist in the areas where these forestry plants are located, territories inhabited by the Mapuche. The 9th region concentrates the highest percentage of population in poverty depending on the level of incomes, with a 27.9%. The following region is the 14th with 23.1% of people in situation of poverty, then the 8th region with 22.3% and, finally the 10th region with 17.6%. In regards to the people in extreme poverty, according to the level of incomes, the 9th region still is at the top of the index nationally with the 10.6%; then are the 8th and 14th regions with 8% each and, finally the 10th region with a 5.7%. All these numbers are above the national average in a 4.5%. From a multidimensional perspective, the Araucania region still has the highest rate of population in poverty with 28.5%, then is the Bio Bio region with 22.4%; Los Ríos region with 22.9%; and finally Los Lagos region with 26.1%, all above the national average, which reaches the 20.4%.

35. Recommendations:

- Establish mechanisms to measure poverty and public policies to tackle it with the participation of indigenous peoples.

-Generate mechanisms of participation in relation to the benefits that the investment projects produce in indigenous territories, respecting their territorial rights and their own processes of development.

Article 15. Cultural Rights

Education and Linguistic Rights

36. According to the data provided by the CASEN Survey 2013 in matters of education, illiteracy rates in indigenous peoples reach the 5% versus the 3.6% of non-indigenous people. The average rate of years of education of indigenous people over 18 years-old is 9.7% in contrast to the 10.9% of the non-indigenous population. Indigenous people over 18 years-old with unfinished secondary studies reach 51.1%, while the percentage of non-indigenous people in the same situation is 40.6%, having with 10.5 points of difference. Numbers are even with respect to the attendance of pre-school, primary and secondary levels between 2011 and 2013, among boys and girls, and adolescents from 0 to 17 years-old revealing similar levels of access in these educational levels in indigenous and non-indigenous population. In relation to superior education differences arise again, because the rate of net attendance to superior education of people from 18-24 years-old is 29.3% for indigenous people and 37.4% for non-indigenous people, revealing a difference of 8.1 points.

<http://wef.infor.cl/publicaciones/exportaciones/2014/11/Exportaciones201411.pdf>

63 See: http://wef.infor.cl/estadisticas_regionales/estadisticasregionales.php, (reviewed 18 March 2015).

64 See: http://wef.infor.cl/estadisticas_regionales/estadisticasregionales.php, (reviewed 18 March 2015).

37. The General Law of Education, Law No. 20.370⁶⁵ enacted without indigenous consultation, collected some of the requirements carried out by indigenous organizations but without the further analysis requested, as the incorporation of interculturality as principle in the Chilean education, narrowed it down only to indigenous peoples; the incorporation of Intercultural Bilingual Education for indigenous peoples in Pre-school, Primary and Secondary Education, in those schools with “*high percentage*” of indigenous people, without specify how is determined that “*high percentage*.”⁶⁶ Moreover, these advances “*are overshadowed by the lack of economic resources and human resources trained to implement the Intercultural Bilingual Education (EIB - Educación intercultural Bilingüe)*”. In practice, *the demand exceeds the institutional advance, and the instruments exclude part of the indigenous population.*”⁶⁷ An example is the Decree No. 280 of 20 July 2009 of the Ministry of Education that gradually incorporates Indigenous Language as subject beginning in 1st grade in 2010 and ending with 8th grade in 2017, at the end of the primary education. In 1st grade this subject is mandatory for those classes where the indigenous population reaches the 20%; in the subsequent levels, the percentage of indigenous students that may apply to the program is 50%. With these requirements of minimum population to teach indigenous language courses, excludes an important portion of indigenous people that live in areas where the levels of population required to implement this program, are insufficient. Moreover, this program does not address secondary education.

38. In April 2015, the discussion about the bill that “*Regulates the admission of students, eliminates co-financing in education and prohibits profiteering in educational institutions that receive contributions from the State,*” (Bulletin Report 9366-04⁶⁸), project that is part from the “*Educational Reform*” that the current government is driven, was not consulted with indigenous peoples, in spite of the requirement carried out by 2 Deputies⁶⁹, and did not incorporate norms to strength education for indigenous people under the provisions of the Article 27 of the ILO Convention 169.

39. The CASEN Survey 2013 expresses that only 10.9% of the indigenous population speaks and understands their native language. Other 10.4% understands it but does not speak it, while the 78.7% declare they do not speak or understand the language of their people. Comparing the data with the previous surveys (CASEN 2009 and 2011), is confirmed that the loose of the use of indigenous languages is worsen progressively. This situation is the result of the marginalization of the indigenous languages within the educational system, the public administration and the mass media, maintaining indigenous languages in a situation of inferiority or exclusion. The initiatives in regards to the protection, dissemination and teaching of indigenous languages promoted by different public services are scattered and disconnected to each other, which allows to doubting about its efficiency facing towards the critical context that the indigenous languages experience.

65 Published in Diario Oficial, 12 September 2009.

66 Loncon, Elisa; “*Derechos educativos y lingüísticos de los pueblos indígenas de Chile*”, Isees Journal No. 7, July 2010, 79-94. See: <http://www.isees.org/file.aspx?id=7555> (reviewed 27 April 2015)

67 Ídem.

68 The promulgation and publication in Diario Oficial is pending.

69 Ordinary Official Letter No. 4035 of 2014 of the Under-Secretary of Social Services, in response of the Ordinary Official Letter No. 1170 of 2014 of the Under-Secretary of Education in which a report about the indigenous consultation by requirement of the Deputy Camila Vallejos and the Deputy Giorgio Jackson, Official Letter No. 3.190 of 2014.

40. The main actions to revert this situation are originated from the indigenous people's organizations, but only in the last year these have been considered by the State. In May 2014 the Network for Indigenous Peoples Educational and Linguistic Rights,⁷⁰ with the support of 3 Senators, entered to the Parliament the Bill of Linguistic Rights (Bulletin Report 9424-17) whose aim is to recognize indigenous peoples' languages as national languages, to recognize the linguistic rights of indigenous peoples and create the Institute for Indigenous Languages. Almost a year later, the only procedure in the Congress in relation to the bill has been its transfer from the Committee of Education, Culture, Science and Technology to the Committee of Human Rights, Nationality and Citizenship, to be studied.

41. On the other hand, Mapuche organizations of the 9th region have developed an intense activity to promote the official recognition of Mapuzugun (Mapuche language) at regional and communal level. The Municipality of Galvarino accepted the demands of the local Mapuche organizations and through a Municipal Ordinance recognized officially Mapuzugun in its territory, decision validated by the Comptroller General of Chile. This order revealed that *"there is no general disposition within the national judicial order that establishes Castilian as the official language for legal effects."* Encouraged by this initiative the municipality of Padre Las Casas replied this idea and other communes of the region are working on that as well. Also a Regional Round-Table Discussion was constituted for the Official Recognition⁷¹ of the Mapuche language, which during the year 2014 agreed upon a proposal of official recognition, handed in to the Regional Intendant, and in March 2015 the plenary session of the Regional Council approved the idea of recognizing Mapuzugun as official language in the region. The regional government has requested to the plenary session a set of regulations which is carried out separately by Mapuche organizations and governmental representatives; then, the Intendant will announce the implementation of this measure.

42. The absence of indigenous languages in the media is another disturbing situation. Radios with coverage in the indigenous territory use the radio electric spectrum of those territories without the consent or the indigenous participation, there is no generation of spaces for transmitting the information and contents in indigenous languages, so the use of these languages remain only in the family or community circles, excluded by the media from the public sphere. This worsens by the existing barriers to create and maintain indigenous media. The law that *"Creates the Services for Community Citizen Radios"*, Law No. 20.433,⁷² was not consulted in its proceedings, although regulates expressly the access of indigenous peoples to radio concessions, equal situation occurred with the Law No. 20.750 that *"Permits to introduce the Digital Terrestrial Television."*⁷³ The Law of Community Radios imposes a limited territorial range to a commune or group of communes, low power with only 25, 30 and 40 watts; and a restricted space of the dial to be reserved so indigenous communication projects have to compete with community radios projects. These obstacles to *"the right*

70 Conformed by Mapuche, Aymara, Rapa-nui and Licanantay experts.

71 Composed by the Political Mapuche Movement Wallmapuwen, the Academy of the Mapuche Language and the Mapuche Student Federation that called to demonstrations to create awareness in regards to the official recognition of Mapuzugun in the Araucanía Region. As official counterparts, this table is composed by the Ministry Regional Secretary of Education and the Regional Intendency.

72 Published in Diario Oficial, 4 May 2010.

73 Published in Diario Oficial, 29 May 2014.

*of all citizens to use a public good as is the radio electric spectrum and operate a radio... has permitted the criminalization which is known at international level as human right: communication.”*⁷⁴
This is the case of the Mapuche-Williche radio of Puerto Varas “*The voice of Nueva Braunau*” (*Weñauka*) under process of regularizing its legal status after the raid suffered in 24 February 2015, resulting 4 Mapuche communicators detained.⁷⁵

43. Recommendations:

- **Establish public policies with the participation of indigenous peoples, to protect, disseminate and teach indigenous peoples’ languages, including sufficient resources.**
- **Promote the official use of indigenous languages, mainly in the regions with indigenous territories.**
- **Give urgency, previous indigenous consultation, to bills aimed at strengthening the linguistic and educational rights of indigenous peoples.**
- **Promote the creation of indigenous media and the use of indigenous language in mass media.**

74 Declaración pública del Colegio de periodistas rechazando allanamiento de radio "La voz de Nueva Braunau". Ver http://www.colegiodeperiodistas.cl/2015/02/declaracion-publica-del-colegio-de_26.htm (Revisado el 27 de abril del 2015).

75 Rubén Loncomilla, Sergio Quintul, Francisco Loncomilla y Yasna Levicán

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