

**Alternative Report submitted to the
Committee on the Elimination of Racial Discrimination
for the consideration of the 19th to 21st Report of the Republic of Chile
during the 83rd session (12-30 August 2013)**



Unrepresented Nations and Peoples Organization

In cooperation with:

Mapuche Foundation FOLIL

Asociación Tierra y Libertad para Arauco

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I. INTRODUCTION TO THE REPORT

This alternative report is submitted by the Unrepresented Nations and Peoples Organization (UNPO), the Mapuche Foundation FOLIL, and the Asociación Tierra y Libertad para Arauco on the occasion of the 83rd Session of the United Nations Committee on the Elimination of Racial Discrimination (hereinafter: the Committee) during which the nineteenth through the twenty-first Periodic Reports of Chile will be considered.

This report is structured to comment upon the articles of the International Convention on the Elimination of all Forms of Racial Discrimination thematically. The final section of the report provides recommendations that should be made to the Chilean delegation at the 83rd Session.

This alternative report will focus on the situation of the indigenous Mapuche people in Chile, looking specifically at their experiences, and the Chilean government's compliance with and implementation of the provisions in the International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter: ICERD or the Convention) as it affects this particular group. The Mapuche are the largest indigenous group in Chile, and comprise a significant part of the entire population of Chile, yet they remain constitutionally unrecognized. They are disenfranchised within Chile, where they experience systematic discrimination at civil, political, social and economic levels.

The major issues that will be discussed in this report are the discriminatory application of the anti-terrorism laws and the far-reaching implications this discriminatory practice has on the Mapuche and their cause. Furthermore, this report will also discuss the fact that decisions affecting their ancestral lands are often made without consulting the Mapuche, and in favor of corporations in an attempt to strengthen Chile's economic standing. When the Mapuche protest their discrimination and marginalization, they are branded as terrorists. This selective use of anti-terrorism laws is a blatant exercise of racial and ethnic discrimination, and violates many of the rights enshrined in the Convention.

The Hague, August 2013

II. INTRODUCTION TO THE MAPUCHE

The Mapuche are an indigenous people in Chile who, with a population of just over 1,5 million, account for 9% of the Chilean population.¹ The Mapuche are the largest indigenous group in Chile but also among the poorest and most marginalized people in the country. Around one-third of all Mapuche live below the poverty line with the average income around 43,712 CLP per capita in urban areas and 29,473 CLP in rural areas. Approximately 80% of heads of rural Mapuche households have less than four years of schooling and less than 3% of the entire Mapuche population receives any further educational training beyond high school.² In addition to these disadvantages the systematic expropriation of Mapuche land in favor of foreign investors has severely damaged the Mapuche way of life and many Mapuche feel as though they are owed a “historical debt” by the Chilean government.³

Historically the Mapuche have successfully fended off the Incan empire, the Spanish conquistadors, and later the independent republic of Chile’s attempts of colonization. The relationship between the Spanish and the Mapuche was especially unique because, contrary to custom, the Mapuche were recognized as an independent people with a sovereign territory by the Spanish.⁴ The independent republic of Chile also maintained border relations with the Mapuche until 1862 when they began to wage a war known as the ‘*Pacificación de la Araucanía*’. The war ended in 1883 with the defeat of the Mapuche and ushered in an era of Mapuche disenfranchisement. In the aftermath of the war the Mapuche’s land was appropriated and sold to Chileans and immigrants, leaving the Mapuche with just over 6% of their original territory.⁵ The root of the Mapuche discrimination at this particular time lay in the fact that the Chileans saw their culture as homogenous.⁶ This mono-cultural view of Chile essentially meant that the Mapuche had to assimilate and could not be viewed as a separate part of Chilean culture. This state of mind was so prevalent at the time that it was in fact the ideological justification for the ‘*Pacificación*’.⁷

This idea of a homogenous culture led to the idea of ‘*mestizaje*’, which was very prevalent in twentieth century Latin America. Mestizaje essentially entailed the mixing of different races and cultures in order to ‘create’ a homogenized people and foster a single cultural identity. As a consequence of this there was no room for claims for indigenous rights as this would interfere with the homogenous national identity.⁸ Throughout this period the Mapuche’s land was subdivided and sold to non-indigenous buyers. This forced assimilation left the Mapuche economically and culturally devastated, weary and distrusting of outsiders, and distanced from national politics.⁹ Though the

¹ “*Resultados Censo 2012*”, Instituto Nacional de Estadísticas, <http://www.censo.cl/>.

² C.A. Agostini, P.H. Brown and A.C. Roman, “Poverty and Inequality among Ethnic Groups in Chile”, *World Development* 38, no. 7 (2010), p. 1038. (Hereinafter: Agostini et al. 2010)

³ G.M. Waldman, “Historical Memory and Present-Day Oblivion: The Mapuche Conflict in Post-Dictatorial Chile”, *Time & Society* 21, no. 1 (2012), p. 58-59 & 64. (Hereinafter: Waldman 2012)

⁴ P. Richards, “Of Indians and Terrorists: How the State and Local Elites construct the Mapuche in Neoliberal Multicultural Chile”, *Journal of Latin American Studies* 42, no. 1 (2010), p. 61. (hereinafter: Richards 2010)

⁵ Richards 2010, p. 62.

⁶ Waldman 2012, p. 57.

⁷ Waldman 2012, p. 57.

⁸ Richards 2010, p. 62-63.

⁹ D. Carruthers and P. Rodriguez, “Mapuche Protest, Environmental Conflict and Social Movement Linkage in Chile”, *Third World Quarterly* 30, no. 4 (2009), p. 744. (Hereinafter: Carruthers and Rodriguez 2009).

second half of the twentieth century began with land reform that saw the Mapuche regaining some of their lands, this progress was essentially undone during Pinochet's regime.¹⁰

In post-Pinochet Chile there has been a strong focus on Chile's multicultural identity however. Though initially this seemed to be a positive development for the Mapuche, in practice this notion of multiculturalism is a hollow one. Essentially this multiculturalism, and the ideological plurality that came along with it, was seen as the preferable mode of discourse because it would appease everyone and not create tensions. As a consequence this meant that consensus needed to be a hallmark of Chilean society and for the Mapuche this meant that their social movement had to be demobilized and depoliticized.¹¹ So factually it seems that both the mono-cultural and the multicultural view of Chile have led to the same conclusion, namely the marginalization of the Mapuche.

Currently, many Mapuche live in dire poverty, and those who continue to campaign for their human rights are designated as terrorists by the media, and prosecuted as such under unjust anti-terrorism laws. This disproportionate and discriminatory application of these laws and other forms of discrimination suffered by the Mapuche are outlined in this alternative report.

¹⁰ Waldman 2012, p. 58-59.

¹¹ Waldman 2012, p. 59-60.

III. COMPLIANCE WITH ICERD

ARTICLE 1.1 - DEFINITION OF RACIAL DISCRIMINATION

Article 1.1 - *“In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*

In its 2012 State Report to the CERD, Chile declares that the principles of equal treatment and non-discrimination are enshrined in its Constitution which states in article 1 that “people are born free and equal in dignity and rights”.¹² Chile then goes on to enumerate legislation in which these principles are reaffirmed. However there is only one provision that Chile mentions which actually prohibits discrimination, namely the Labour Code. The Labour Code contains a definition of (racial) discrimination which is very similar to the one provided in article 1.1 ICERD.¹³ There is however one conspicuous omission in the text of this definition namely the phrase “ethnic origin” which would be the category the Mapuche would be included in.

Though Chile did not have adequate anti-discrimination legislation, on 24 July 2012 Chile passed an Anti-Discrimination Law known as the Law Establishing Measures against Discrimination (Ley 20.609 Establece Medidas Contra La Discriminación). Article 1 of this law states that its purpose is to create a legal mechanism to combat arbitrary discrimination and to that end tasks all of the State organs to develop and implement policies that ensure everyone the enjoyment of their rights provided under the Chilean constitution, the laws and the international treaties ratified by Chile, without arbitrary discrimination.

Article 2 of the Anti-Discrimination Law defines arbitrary discrimination as:

“[A]ny distinction, exclusion or restriction made without reasonable justification by agents of the State or private individuals that causes deprivation of, interference with or threats to the legitimate exercise of the fundamental rights established in the Constitution or in international human rights treaties ratified by and implemented in Chile, in particular when based on grounds such as race or ethnic origin, nationality, socioeconomic status, language, ideology or political opinion, religion or beliefs, union membership or participation in trade organizations or lack thereof, sex, sexual orientation, gender identity, marital status, age, filiation, personal appearance and disease or disability.”

This definition seems to be compatible with the one provided in article 1.1 ICERD. Since this law has only been instated recently it remains to be seen what its impact will be in practice.

¹² Committee on the Elimination of Racial Discrimination, “*Combined nineteenth to twenty-first periodic reports of States parties due in 2012*”, Chile (28 September 2012), p. 8. (Hereinafter: Chile State Report 2012).

¹³ [D]istinctions, exclusions or preferences based on race, colour, sex, age, marital status, union membership, religion, political opinion, nationality, national extraction or social origin which have the purpose of nullifying or impairing equality of opportunity or treatment in a person’s employment or occupation

ARTICLE 2.1 - ELIMINATION OF RACIAL DISCRIMINATION

Article 2.1 - “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;(...)
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”

Discrimination against the Mapuche is historically embedded in their relationship with the Chileans. As mentioned earlier it can be traced back to Chile’s earliest days as an independent republic. One of the most critical ways in which the Mapuche are discriminated against is through the disproportionate use of the anti-terrorism laws. As a response to the political and social protests, which have been escalating since the early 1990s,¹⁴ Chile has applied its anti-terrorism laws against Mapuche protestors. Trials under these anti-terrorism laws, which were made into law by the Pinochet regime, make use of, inter alia, anonymous witnesses and are held by a military tribunal rather than by a civilian court.¹⁵

Article 1 of the Anti-Terrorism Act (Ley 18.314 Determinada Conductas Terroristas y Fija Su Penalidad) states that the acts enumerated in article 2 only constitute an act of terrorism if it is done with the intention to create a well-founded fear within (a part of) the population that they might become victims of a similar act. The Mapuche’s protests are not done with this intent and would therefore not constitute an act of terrorism in the first place, yet the Anti-Terrorism Act is widely used against them. Most of the people that are accused of terrorism under this law are members of *Coordinadora de Comunidades en Conflicto Arauco Malleco* (hereinafter: CAM) an organization that undertakes to support all communities involved in land conflicts and which receives most of their support from Mapuche communities.¹⁶

The disproportionate use of this act against the Mapuche has led to criticism from the UN and the regional human rights bodies¹⁷, including by the Special Rapporteur on Human Rights and Counter-

¹⁴ Waldman 2012, p. 61.

¹⁵ J.M. Moran Faundes, ‘La Ley Antiterrorista y La Protesta Social Mapuche: Una Mirada Desde La Gubernamentalidad y La Soberanía’, *Espaço Amerindio* 6, no. 1 (2012), p. 54. (hereinafter: Moran Faundes 2012).

¹⁶ Human Rights Watch and the Observatorio de Derechos de los Pueblos Indígenas (Indigenous Peoples’ Rights Watch), ‘*Undue Process : Terrorism Trials, Military Courts, and the Mapuche in Southern Chile*’ (2004), p. 19-20. (Available at: <http://www.hrw.org/sites/default/files/reports/chile1004.pdf>) (Hereinafter: HRW&ODPI 2004)

¹⁷ Human Rights Watch, ‘Chile’, *World Report 2013* (2013). (Available at: <http://www.hrw.org/world-report/2013/country-chapters/chile?page=1>) (Hereinafter: HRW World Report 2013)

Terrorism following his recent country visit to Chile¹⁸. As a form of protest against their prosecution under the Anti-Terrorism Act, 30 Mapuche held a hunger strike in July 2010.¹⁹ Consequent to these criticisms and protests the Act was amended to exclude the application of the law to minors and strengthened some due process safeguards. However it did not remove the provision which includes arson and destruction of property, which are the acts the Mapuche are mostly accused of²⁰, and at the end of 2012 five Mapuche minors were still being prosecuted under the anti-terrorism laws.

The use of the terrorist label by Chile has far-reaching implications for the Mapuche, one of which is the normalization of violence against them. Though only a marginal number of protests by the Mapuche are in fact non-peaceful, the police oftentimes are indiscriminate in their use of violence against Mapuche protestors.²¹ Additionally, the use of the terrorist label shapes the public image of the Mapuche and their cause as dangerous and illegitimate. This type of language has also been adopted by the media, which leads to a reinforcement of this notion among the public opinion.²²

Though Chile claims to have undertaken certain policies in an attempt to curb discriminatory practices in its State Report, it is evident that the Mapuche still suffer from widespread discrimination at the hands of Chile. The use of the anti-terrorism laws in cases that do not warrant its use have left the Mapuche feeling unjustly persecuted. Regardless of the Chilean Government's lofty ambitions, the historic dichotomy between the homogenous Chilean race and the indigenous people seems to be the prevalent one in practice.²³

ARTICLE 5(A) – THE RIGHT TO EQUAL TREATMENT BEFORE THE JUDGE

Article 5 – *“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

(a) The right to equal treatment before the tribunals and all other organs administering justice”.

Though Chile's Constitution states that all people are equal in rights, the practice indicates differently. The most blatant discrepancy between the law and practice lies within the application of the Anti-Terrorism Act. As mentioned earlier this law has been disproportionately used to target Mapuche protestors. Though there have been instants in which sympathizers of non-Mapuche descent were also indicted under the Anti-Terrorism Act, it has been almost exclusively Mapuche who have been prosecuted under the Act.²⁴ Though there were several due process guarantees

¹⁸ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13599&LangID=E>

¹⁹ Moran Faundes 2012, p. 49.

²⁰ HRW World Report 2013 & Richards 2010, p. 74.

²¹ HRW&ODPI 2004, p. 16.

²² Richards 2010, p. 75 & Waldman 2012, p. 65.

²³ J. Barandiarán, 'Researching Race in Chile', *Latin American Research Review* 47, no. 1 (2012), p. 165. (Hereinafter: Barandiarán 2012).

²⁴ S. Vidal Parra, 'Re-Conocer: Pacto Social por la Multiculturalidad – Towards a New Treatment for Mapuche People in Chile', *Vienna Online Journal for International Constitutional Law* 4, no. 2 (2010), p. 314. (Hereinafter: Vidal Parra 2010).

enacted under the new Criminal Code in 2000 to safeguard the equality before the law, these guarantees are not applied to the Mapuche as they are prosecuted under the terrorism laws.²⁵

Additionally The Chilean Supreme Court has been known to reverse Mapuche acquittals and being pressured by the government to undertake action against the Mapuche.²⁶ An example of this which showcases the specific targeting of the Mapuche is the so-called trial of the Lonkos, which was named after the heads (Lonkos) of Mapuche communities. This case concerned a trial against Lonko Aniceto Norin of Didaico, Lonko Pascual Pichun of Temulemu and Patricia Tronsoco a non-Mapuche sympathizer. The three were accused of committing terrorist threats and arson on the property of the former minister of Agriculture. They were initially acquitted but after petitions from the plaintiffs, which included the Chilean State, they were retried. Ms Tronsoco was once again acquitted but the Lonkos however were sentenced to 5 years.²⁷ The defendants in this case have successfully lodged a complaint with the Inter-American Court of Human Rights and the case will be brought before the Court. Unfortunately this case is more of a rule than the exception. It remains to be seen how the Inter-American Court of Human Rights interprets Chile's abuse of judicial power²⁸, especially since the Court has previously indicated that it considers the use of military tribunals in cases concerning civilians contrary to article 8.1 of the American Convention of Human Rights.²⁹

ARTICLE 5(B) – THE RIGHT TO SECURITY OF PERSON

Article 5(b) – *“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.*

As a consequence of the Mapuche's social activism, the State has reacted aggressively. Widespread instances of random police brutality have been documented and the State has failed to combat this behavior. One such example of unwarranted police violence against the Mapuche is the firing of rubber bullets by 'Carabineros', the uniformed police, on a crowd in front of a hospital where doctors were checking the injuries of Mapuche protestors who were detained during a land eviction.³⁰ During the land eviction there were as many as 12 wounded, amongst which a 12-year-old boy, and during the attack at the hospital seven additional people were wounded, including a 13-year-old girl and two 17-year-old boys.³¹ The Carabineros additionally subject their detainees to abuse and aggression in their police vehicles where there is no control or supervision.³² Unfortunately these examples are not isolated incidents but a regular occurrence in the Carabineros' modus operandi.³³ There are more

²⁵ N. Bialostozky, 'The Misuse of Terrorism Prosecution in Chile: The Need for Discrete Consideration of Minority and Indigenous Group Treatment in Rule of Law Analyses', *Northwestern Journal of International Human Rights* 6, no. 1 (2007), p. 88-89. (Hereinafter: Bialostozky 2007).

²⁶ Bialostozky 2007, p. 86.

²⁷ Richards 2010, p. 73.

²⁸ Another example of such a case is the Poluco Pidenco case which is discussed in Boalostozky 2007, p. 86-87.

²⁹ Vidal Parra 2010, p. 306.

³⁰ HRW World Report 2013.

³¹ HRW, 'Chile: Investigate Police Violence Against Mapuche', 10 August 2012 (*Available at:* <http://www.hrw.org/news/2012/08/10/chile-investigate-police-violence-against-mapuches>) (Hereinafter: HRW Police Violence 2012).

³² Observatorio Ciudadano, "Human Rights Situation in Chile 2011", December 2011. (Hereinafter: OC 2011).

³³ HRW&ODPI 2004, p. 47.

than twenty cases a year of reported abuses by the Carabineros, with reports varying from unjustifiable use of force to the beating and the threatening of women, children and the elderly.³⁴

It may be interesting to note that officers accused of police brutality against the Mapuche are oftentimes either not convicted for their actions or given very lenient sentences.³⁵ An example of this is the recent acquittal of a police officer of the murder of a 24-year-old Mapuche, which was met with some suspicion regarding the impartiality of the Military Courts in cases concerning police and military violence against civilians.³⁶ In instances of police brutality against non-Mapuche however there seems to be more outrage and actions taken by the Government. Examples of this include the blinding of a 49-year-old mechanic as a consequence of the use of metal shotgun pellets by the Carabineros and the fatal shooting of a 16-year-old student. Both incidents were met with great negative response by the government and were immediately investigated, contrary to the incidents concerning the Mapuche.³⁷

ARTICLE 5(D) (V) – THE RIGHT TO OWN PROPERTY

Article 5(d) (v) – *“Other civil rights, in particular: (...) The right to own property alone as well as in association with others”.*

The root of Mapuche disenfranchisement lies with the expropriation of their ancestral lands. It is the very reason for their ongoing social protest and as such the indirect reason for Chile’s discriminatory behavior towards the Mapuche. As was mentioned in the introduction Chile had taken ancestral lands from the Mapuche and sold it to European immigrants and Chileans in the late 19th century. Though there have been certain attempts at land reform, the Mapuche have not been able to regain land in meaningful numbers.

The sale of Mapuche ancestral lands to forestry companies started during the Pinochet regime as a means to generate a stronger economic standing and the Concertación government, which came in to power after the fall of Pinochet, kept subsidizing the forestry industry.³⁸ The continued promotion of the forestry industry in ancestral Mapuche lands is draining the soil of water and nutrients and as a consequence affecting the small-scale agriculture of the neighboring Mapuche communities.³⁹

Initially, after the fall of Pinochet, some Mapuche leaders attempted to compel the government to implement mechanisms that would prevent further corporate occupation of the Mapuche’s ancestral land but this was to no avail.⁴⁰ An attempt by a group of 85 Mapuche families to reclaim land that once belonged to their ancestors, via a provision in the Indigenous Law, was thwarted in the

³⁴ Vidal Parra 2010, p. 309.

³⁵ HRW Police Violence 2012

³⁶ Amnesty International Country Report: Chile 2013. (Available at: <http://amnesty.org/en/library/asset/AMR22/002/2013/en/ee894ce8-3d73-4368-958d-0d4e40c1874b/amr220022013en.pdf>) (Hereinafter: AI Country Report 2013).

³⁷ HRW World Report 2013.

³⁸ Carruthers and Rodriguez 2009, p. 748.

³⁹ Richards 2010, p. 68.

⁴⁰ Carruthers and Rodriguez 2009, p. 749.

courtroom.⁴¹ This event and several similar ones caused the Mapuche to become disillusioned with the State's willingness to aid their cause and led to them taking matters into their own hands via land occupations and other such measures.

ARTICLE 5(D) (VIII) (IX) – FREEDOM OF OPINION AND EXPRESSION, AND THE RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Article 5(d) (viii) (ix) – *“The right to freedom of opinion and expression; the right to freedom of peaceful assembly and association”.*

The Mapuche's organized social and political protests have been growing since the early 1990's. Consequently Chile has been obstructing and impeding these protests in a disproportionately violent manner. While truck drivers, students, doctors, and teachers have been allowed to engage in protests, the Mapuche have been consistently targeted and criminalized by the Chilean government.⁴² While only an approximate 2.4% of Mapuche communities seem to be involved with non-peaceful forms of protest, 100% of Mapuche communities suffer from the retaliatory practices of the Chilean police.⁴³ The police do not make any distinction between groups that peacefully protest and the groups that use violence and as a consequence all Mapuche are equally targeted.⁴⁴

Aside from the police violence another way the Mapuche protests are being impeded is through the anti-terrorism legislation. As mentioned earlier this legislation makes it possible for the State to prosecute the Mapuche outside the ambit of the criminal code and provides fewer safeguards for the defendants. Because of this legislation and the consequent criminalization of the Mapuche, the government has been enabled to confine the debate about Mapuche rights to the areas they wish to address.⁴⁵ Additionally it has delegitimized the Mapuche cause, making it harder for the average Chilean to identify with the Mapuche plight.⁴⁶

⁴¹ Carruthers and Rodriguez 2009, p. 749.

⁴² Waldman 2012, p. 61.

⁴³ Richards 2010, p. 68.

⁴⁴ OC 2011.

⁴⁵ Vidal Parra 2010, p. 313.

⁴⁶ Waldman 2012, p. 67.

ARTICLE 5(E) – ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

Article 5(e) – “*Economic, social and cultural rights, in particular:*

- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (...)*
- (iv) the right to public health, medical care, social security and social services;*
- (v) the right to education and training”.*

With respect to the working place the Mapuche are stigmatized as being lazy and incompetent.⁴⁷ Mapuche living in urban areas generally hold low-paying jobs, work long hours, are discriminated against, and mistreated based on their appearance.⁴⁸ Discrimination with respect to employment opportunities is very common and the preferred profile for higher level job applicants in Chile seems to be that of a white European who is preferably blond.⁴⁹ Consequently most of the Mapuche in the urban areas work as laborers in construction, shopkeepers, and domestic helps.⁵⁰

Consequent to Chile’s prioritization of the forestry industry the environment surrounding these industrial areas has been affected. These plantations drain the soil of water and the aerial distribution of herbicides and pesticides are damaging to the public health of the neighboring Mapuche communities. Additionally the installation of water treatment facilities has contaminated local rivers and lakes, and the presence of 28 solid waste dumps in and around Mapuche communities poses both an environmental and public health risk.⁵¹ Chile’s continued support for the forestry industry has disproportionately exposed the local Mapuche communities to health risks other Chileans are not faced with. In general indigenous people have a shorter life-expectancy and a higher child mortality rate than non-indigenous people and this discrepancy is only furthered by the pollution of the environment the Mapuche live in.⁵²

Concerning Mapuche’s access to education it should be noted that there is a significant difference between the level of education of the Mapuche and that of the Chileans. As mentioned above approximately 80% of heads of rural Mapuche households have less than four years of schooling and less than 3% of the entire Mapuche population receive any further educational training beyond high school.⁵³ Family lineage is important with respect to access to education and the fact that the Mapuche have little access to higher education to begin with, only diminishes the Mapuche’s opportunity of ever gaining access.⁵⁴ Additionally the school curricula are discriminatory towards the Mapuche. Though the Mapuche have a longstanding history with Chile there is no education on Mapuche history and cultural traditions in primary and secondary school.⁵⁵ This denial of the Mapuche contribution to Chilean culture is another form of marginalization by Chile.

⁴⁷ Richards 2010, p. 86-87.

⁴⁸ Waldman 2012, p. 65.

⁴⁹ Barandiarán 2012, p. 166 & Y. Park and P. Richards, ‘Negotiating Neoliberal Multiculturalism: Mapuche Workers in the Chilean State’, *Social Forces* 85, no. 3 (2007), p. 1319. (Hereinafter: Park and Richards 2007).

⁵⁰ Waldman 2012, p. 65.

⁵¹ Carruthers and Rodriguez 2009, p. 750 & 756.

⁵² Agostini, et al. 2010, p. 1038.

⁵³ Agostini, et al. 2010, p. 1038.

⁵⁴ Barandiarán 2012, p. 166.

⁵⁵ Waldman 2012, p. 67.

IV. RECOMMENDATIONS

As can be seen above the discriminatory use of the Anti-Terrorism Act against the Mapuche bears heavy consequences for them. From their depiction in the media to the excessive and unwarranted use of violence against them by the Carabineros, the Mapuche are constantly faced with adversity. In order to curb the discrimination suffered by the Mapuche we recommend the following:

Article 1.1 – Definition of Racial Discrimination

1. Ensure that the definition of racial discrimination provided under the Anti-Discrimination Law (Ley 20.609) is compatible with that of the ICERD.
2. Ensure effective implementation of the Anti-Discrimination Law.

Article 2.1 – Elimination of Racial Discrimination

3. Reform the Anti-Terrorism Act (Ley 18.314) to exclude arson and destruction of property.
4. Prosecute civilians indicted under the Anti-Terrorism Act in civilian courts rather than military tribunals.
5. Provide more due process safeguards under the Anti-Terrorism Act.
6. Drop the charges being prosecuted under the anti-terrorism law that are levied against minors.
7. Ensure fair and unbiased media representation of the Mapuche and their land claims.
8. Promote the development of indigenous media, including by increasing opportunities for indigenous journalists.

Article 5(a) – The Right to Equal Treatment Before the Judge

9. Ensure the Mapuche have access to the due process safeguards provided under the new Criminal Code.
10. Provide the Mapuche with trials before a fair and impartial judge.
11. Counter the unfounded reversals of Mapuche acquittals by the Chilean Supreme Court.

Article 5(b) – The Right to Security of Person

12. Thoroughly investigate, prosecute, and when appropriate, take punitive measures in instances of abuse by the Carabineros, specially where loss of life or the presence of women and children is present.
13. Encourage fair police practices, especially with regards to justified and proportionate uses of force.

Article 5(d) (v) – The Right to Own Property

14. Implement a mechanism which enables the restitution of ancestral lands to the Mapuche, with appropriate compensation for affected third parties.

Article 5(d) (vii) (ix) – Freedom of Opinion and Expression and the Right to Peaceful Assembly and Association

15. Guarantee the Mapuche's the right to peaceful protest.
16. Promote education about the Mapuche's cause and ensure that their protests are being depicted in a fair and honest fashion.

Article 5(e) – Economic, Social and Cultural rights

17. Implement programs to alter the general stereotyping of Mapuche as being lazy and incompetent.
18. Implement affirmative action programs to provide Mapuche with equal opportunities with respect to work and education.
19. Implement stricter environmental legislation to guarantee the Mapuche a healthier living environment and decreasing any health risks they might face.
20. Implement educational programs at primary and secondary school levels to teach students about Mapuche history, culture and tradition.