



**Alternative Report submitted to the  
UN Committee on the Economic, Social and Cultural Rights  
at the 47<sup>th</sup> Session during the consideration of the 3<sup>rd</sup> Periodic Reports of Argentina**

**Jointly Submitted by:**

**Unrepresented Nations and Peoples Organization  
in collaboration with the Mapuche community in Europe**

**August 2011**

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## Section A: Introduction to the Report

This alternative report submitted by the Unrepresented Nations and Peoples Organization (UNPO) in collaboration with the Mapuche community in Europe on the occasion of the 47<sup>th</sup> Session of the United Nations Committee on the Social, Economic and Cultural Rights (henceforth, “the Committee”) during which the Third Periodic Report of Argentina will be considered.

The framework of this report will comment upon the articles of the International Covenant on Economic, Social and Cultural Rights sequentially. The final section of the report raises questions that should be posed and recommendations regarding concerns which are intended to inform the discussions taking place within the International Convention on Economic, Social and Cultural Rights (henceforth, “ICESCR” or “the Convention”) and between the Committee and the Argentinian delegation at the 47<sup>th</sup> Session.

This alternative report will focus on the situation of the Mapuche population in Argentina, and the Argentinian government’s compliance with and implementation of the provisions in the International Convention on the Convention as it affects this particular group.

The Concluding Observations of the Committee second Periodic Report of Argentina note the importance of specific attention towards the Mapuche as an indigenous people and the protection of rights accorded to them as such by other covenants. Argentina is recognized for its positive steps in the restitution to the Mapuche of some of their traditional lands, but is called on to make these efforts more far-reaching and to put into practice their legislation which legally mandates equal rights for the indigenous Mapuche.

*The Hague, August 2011*

## Section B: Introduction to the Mapuche

The Mapuche are an indigenous people who have historically occupied a vast territory, encompassing most of the southern continent of South America and trace their ancestry to over 12,000 years. After withstanding conquest by the Incan empire and Spanish colonialists, the 1641 Treaty of Quilin established the independence of the Mapuche and set geographical boundaries to their sovereign territory. These agreements were eventually disregarded by Chile and Argentina. In late 18<sup>th</sup> century, Argentine president, Julio Roca, engaged in a campaign referred to as the ‘Conquest of the Desert’ in which tens of thousands of Mapuche were massacred in order to secure control over the region of Patagonia by eradicating its indigenous people. Roca’s ideology is best summarized when he proclaimed,

“Our self-respect as a virile people obliges us to put down as soon as possible, by reason or force, this handful of savages who destroy our wealth and prevent us from definitely occupying, in the name of law, progress and our own security, the richest and most fertile lands of the Republic.”<sup>1</sup>

At the end of the military campaigns, historic Mapuche lands were confiscated and the people have since experienced social and economic marginalization and face difficulties resulting from state assimilation policies. Currently, the Mapuche in Argentina are concentrated in the provinces of Neuquén and Río Negro and live in poverty, without access to infrastructure and services such as hospitals. Consequently, the Mapuche have greater than average rates of illiteracy, chronic disease and unemployment. The lack of trained teachers hampers efforts to create bilingual education opportunities for Mapuche youth.

For years, the Mapuche people have been engaged in peaceful protests and campaigns for their human and indigenous rights as accorded to them in the Argentine Constitution, and through Argentina’s vote for the adoption of the United Nations Declaration on the Rights of Indigenous People in 2006 and the International Labour Organization Convention 169 in 2000.

Argentine society isolates the Mapuche people as well. Non-indigenous Argentines tend to doubt whether a “real” indigenous identity exists today in Argentina as evidenced by debates that often appear in newspaper op-ed pieces and letters to the editor. In the *Diario Río Negro*, the primary newspaper of Neuquén and Río Negro, letters that either contest or defend Mapuche identity are regularly published. The dominant view as showed in these editorials is that Mapuche people are in fact Chileans who migrated to Argentina and are therefore not deserving of indigenous rights in Argentina.<sup>2</sup>

Despite legislation dedicated to affirming and protecting indigenous rights, the Mapuche continuously call for their economic, social and cultural rights to be upheld as their way of life is increasingly faced with endangerment.

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<sup>1</sup> Roth, K. (2002). *Annihilating difference: the anthropology of genocide*. University of California Press.

<sup>2</sup> Warren, S. (2009). How will we recognize each other as Mapuche? Gender and ethnic identity performances in Argentina. *Gender & Society*, 23(6), 768-789.

## Section C: Compliance with ICESCR

### Article 1 – Right to Self-Determination and Protection from Exploitation

Article 1.1 states that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Article 1.2 guarantees that “[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

Article 75, subparagraph 17 of the Argentine Constitution states that its Congress will,

“recognize the ethnic and cultural pre-existence of indigenous peoples of Argentina. To guarantee respect for the identity and the right to bilingual and intercultural education; to recognize the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments. To guarantee their participation in issues related to their natural resources and in other interests affecting them.”

However, as evidenced by political, social and economic marginalization of the Mapuche people, legal resolutions and state actions disregard their indigenous rights, especially those enshrined in covenants ratified by Argentina such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on Civil and Political Rights, and the International Labour Organization Convention 169. Argentina has also pledged to uphold the United Nations Declaration on the Rights of Indigenous Peoples.

Among the direst of issues faced by the Mapuche in Argentina is that of indigenous lands. Law 26.160, passed by the Argentinian Parliament in 2006, declared a four-year moratorium for land inhabited by indigenous communities, which suspends evictions between 2009 and 2013. However, it is apparent these rights are not uniformly protected because the Mapuche are repeatedly and violently targeted as well as forcibly evicted from their land so that natural resources can be exploited.<sup>3</sup>

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<sup>3</sup> Committee on Civil and Political Rights, (2010) *Consideration of reports submitted by State parties under article 40 of the Covenant: Argentina* (CCPR/C/ARG/CO/4) para. 25.

In 2009, the forcible removal of Mapuche families from their ancestral territory in Currumil, in the province of Neuquén, was accompanied by police brutality via the use of beating sticks and rubber bullets, as well as police efforts to provoke violence by burning flags of the Mapuche nation hanging from residences.<sup>4</sup>

The seizure of traditional Mapuche lands without the use of consultation or negotiation mechanisms that would otherwise provide free, prior and informed consent of the community through effective representation that may be affected by development projects or natural resource exploitation is a direct violation of Article 16 of ILO Convention 169. The Argentinian constitution clearly enshrines these values in Chapter 1, Section 17:

“Property may not be violated, and no inhabitant of the Nation can be deprived of it except by virtue of a sentence based on law. Expropriation for reasons of public interest must be authorized by law and previously compensated. Only Congress levies the taxes [...]. No personal service can be requested except by virtue of a law or sentence based on law. Every author or inventor is the exclusive owner of his work, invention, or discovery for the term granted by law. The confiscation of property is hereby abolished forever from the Argentine Criminal Code. No armed body may make requisitions nor demand assistance of any kind.”

However, the repeated incidents of violence and unlawful seizures demonstrate a failure on the part of Argentine officials to uphold indigenous rights. The emergence of multiple instances of forced and violent evictions of Mapuche families in light of legislation and state mechanisms (such as the Institution for Indigenous Issues, or INAI) to protect rights suggests that the situation has worsened, with the responsibility for the failure suggesting deep bias against the Mapuche within state institutions.

*Recommendation: Enforce indigenous rights as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Civil and Political Rights, and the International Labour Organization Convention 169*

### **Article 2.2 – Protection from Discrimination**

Article 2.2 mandates that “States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Despite Law 26.260, Argentinian judges continue to issue eviction notices to Mapuche communities. The Institution for Indigenous Issues, or INAI, while made responsible for the legality and transparency of land disputes, has not demonstrated the capacity or intention to comply with the law, as seen by the continued opposition and obstacles in place by provincial authorities. The Observatory of Human Rights of Indigenous Peoples (ODHPI) noted at least 40 ongoing land dispute cases where approximately 200 Mapuche community members have been arrested after protesting the seizure of their traditional lands and invoking their rights. Notably, no provincial official or institution has been implicated for these human rights

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<sup>4</sup> Centro de Estudios Legales y Sociales. (2009). *Evaluación sobre el cumplimiento del Pacto Internacional de Derechos Civiles y Políticos en Argentina en el marco de la presentación del Cuarto Informe Periódico ante el Comité de Derechos Humanos 98o Período de Sesiones*. p. 43.

violations, which suggests a culture of discrimination against indigenous peoples where victims are criminalized for acting within their rights.<sup>5</sup>

The frequency of conflicts between indigenous peoples and security forces would be avoided if the Argentine government had adhered to its obligations to consult with the Mapuche communities prior to engaging in development projects with corporations. Mapuche communities hold the potential for positive consultation on sustainable land use, as their traditions have taught them to live with respect for the environment without exploiting it for capital gain for its own sake.<sup>6</sup> Argentina also fails to uphold its constitutional responsibilities to ensure the rights of the Mapuche regarding full participation in the management of their lands and resources. The implementation of the constitutional protection is delegated to Argentina's 23 provinces, of which only 11 recognize indigenous rights within their constitutions.<sup>7</sup>

The fact that such violations occur suggests a lack of acceptance of indigenous peoples and their historical legacy.<sup>8</sup>

*Recommendation: Argentinian national government should devote more resources to INAI*

*Recommendation: Conduct anti-discrimination trainings for officials and workers from institutions who regularly interact with indigenous communities*

*Recommendation: Supplement provincial governments with observers from the national government and representatives from indigenous communities*

### **Article 11 – Sustainable Standard of Living**

Article 11 ensures “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

After their forced displacement, many Mapuche communities are left vulnerable in harsh and intolerable lands that are allocated to them by the Argentine state. Due to the strong winds characteristic of the southern regions that limit visibility and inhibit breathing, working in the fields is a difficult and dangerous endeavor. This has been especially trying for the Mapuche communities who are facing environmental challenges in addition to the recent Puyehue-Cordón Caulle volcanic eruption. Representatives of 15 Mapuche communities in the affected areas have been requesting for assistance such as feed for their livestock, while denouncing the dearth of government attention paid to distant regions. Government-

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<sup>5</sup> Observatorio de Derechos Humanos de Pueblos Indígenas (2009) *Informe de situación de los Derechos Humanos del Pueblo Mapuche en la Provincia de Neuquén*. p. 39.

<sup>6</sup> Dean, N. (2011). *Ancestral Land Rights – A People Hungry for Change*. Retrieved from <http://www.mapuche-nation.org/english/html/articles/art-25.htm>

<sup>7</sup> United States State Department, Bureau of Democracy, Human Rights and Labor. (2010). *2010 country reports on human rights practices – Argentina*. Washington, DC. p. 27-28.

<sup>8</sup> Amnesty International. (2011) *Sacrificing rights in the name of development: indigenous peoples under threat in the Americas*.

supplied animal feed to these communities was considered inedible and included litter and waste products.<sup>9</sup> These communities have additionally been facing an extensive drought that has been ongoing for five years. As 80% of the affected population are Mapuche, and small business owners, the communities consistently feel that their voices are not heard.

Extreme weather conditions coupled with the challenges of volcanic ash harming grazing pastures and water sources, contamination from resource extraction, and other land disputes have resulted in more than 250 claims for restitution according to the ODHPI. As exploitation and seizure of the ancestral lands and their resources continue, the Mapuche are left in situations where their traditional means of coping with challenges are removed, leaving them vulnerable and reliant on assistance.

Another challenge faced by Mapuche communities is lack of access to infrastructure. Roads in regions populated by the Mapuche are often in poor condition, do not extend beyond main trunk routes and not serviced by sufficient fueling stations. These circumstances highlight the active impoverishment, abandonment and discrimination of the Mapuche people.

*Recommendation: Invite Mapuche community leaders and small business-owners to offer solutions and assist in the coordination of relief efforts to natural disasters and other circumstances*

*Recommendation: Improve infrastructure in areas populated by Mapuche communities to assist their sustainable growth and development in an environmentally sensitive manner*

### **Article 12.b – Environment**

Article 12.b calls for “[t]he improvement of all aspects of environmental and industrial hygiene.”

Mapuche ancestral lands are also subject to deforestation both by corporations that are granted access by provincial governments, as well as by the provincial governments themselves. In an example of the latter, the governor of the Salta province ordered the clearing of forested areas despite a 2008 Argentine Supreme Court ruling that ordered him to stop. In 2007, the Argentine government passed a national law suspending all logging in native forests that would prevent the exploitation of regions where indigenous communities depend on natural resources. On April 22, 2008, Mapuche representatives met with Supreme Court justices to advocate for the enforcement of the anti-logging law in light of continuing encroachment. They also highlighted the lack of laws, national and international, that protect indigenous land rights against encroachment by soy farming and logging companies and other business interests. On September 15, the Supreme Court rejected a request from the indigenous communities to investigate and verify claims of deforestation in Salta using satellite images of the province.<sup>10</sup>

*Recommendation: Address both the lack of national and international laws that protect indigenous land rights against encroachment by business and other interests*

<sup>9</sup> Parlamento de Río Negro. (2011). *Puelmapu: Comunicado Parlamento Mapuche de Río Negro, por situación de emergencia tras erupción del volcán Puyehue*. Retrieved from <http://www.mapuexpress.net>

<sup>10</sup> United States State Department, Bureau of Democracy, Human Rights and Labor. (2010). *2010 country reports on human rights practices – Argentina*. Washington, DC. p. 28.



### Article 12.d – Availability of Medical Facilities

Article 12.d requires “[t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

The Mapuche people, especially women, children, the elderly and invalid, continue to be extremely vulnerable to health issues due to the lack of rights enforcement. Families are often in poor health because of inadequate living conditions, lack of vaccination access, and poor diets that are consequences of unemployment, limited education, and economic marginalization. Infant mortality in regions populated by Mapuche is also known to be high and easily preventable.

Indigenous communities also experience major health issues as a direct result of pollution from resource extraction projects on or near their lands. The Mapuche community in the Loma de la Lata region is settled over high quality gas and mineral deposits that were sought by the Spanish corporation, Repsol-YPF. Despite a lawsuit in favor of the affected Mapuche communities, they continue to lack access to clean drinking water and face health damage that has included the development of learning disabilities in children, progressive eyesight loss, painful joints and kidney complaints. The Neuquén provincial government’s analyses discovered that the Mapuche who live there, and especially young children and the elderly have high concentrations of heavy metals in their blood and urine. The Repsol extraction plants have contaminated the drinking water and damaged the surrounding ecosystem. The Argentine government had ordered the Neuquén government to provide the affected Mapuche communities with a daily supply of 250 liters of potable water per person, but community members maintain that they never received their full entitlement.

Political institutions responsible for these communities must consider prioritizing basic services and social welfare for them. This is especially critical for distant and isolated regions that do not have access to medical centers with sanitary conditions, basic equipment and sufficient personnel. It is also crucial that medical staff is able to communicate with Mapuche patients, either by understanding their native language Mapudungun, providing translation services, or encouraging training for Mapuche medical personnel. Medical staff must also be trained in cultural sensitivity and anti-discrimination in regards to Mapuche patients, especially women.

*Recommendation: Address the lack and poor quality of medical care in distant regions and those with large concentrations of Mapuche*

*Recommendation: Task state institutions with the resources and responsibilities to assist Mapuche who are living with long-term health problems due to water contamination.*

*Recommendation: Provide training for medical staff to be able to communicate in Mapudungun (the Mapuche native language) or provide translation services*

*Recommendation: Train medical staff in cultural sensitivity and anti-discrimination towards their Mapuche patients*

## Article 13 – Education Rights

Article 13 states that “States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

The Committee on the Rights of the Child notes the existence of discrimination in schools against Mapuche children, who bear the additional stigma of impoverishment and having parents who are migrant workers, which are denied equal education opportunities. In addition, dropout and repetition rates for Mapuche students are disproportionately high.<sup>11</sup>

Mapuche students do not get to experience trained teachers, work with quality learning materials, or receive a bilingual education that cements their identities as equal Argentine citizens and Mapuche. Schools, often the only government presence in many remote Mapuche communities, serve an assimilatory function which work to distance an impressionable Mapuche youth from their native culture and identity.<sup>12</sup>

Educational textbooks often glorify Julio Argentino Roca’s ‘Conquest of the Desert’ in the late 18<sup>th</sup> century, which entailed several years of military campaigns to exterminate the Mapuche from Patagonia. It remains problematic and alienating for many young Mapuche that schools and streets are frequently named in honour of Roca, and that in Mapuche heartlands such as Bariloche, statues to Roca occupy prominent positions. Historic attitudes against the Mapuche are clearly prevalent in the institutions which the Mapuche must rely on because of their diminished right to self-determination. Textbooks emphasize the ‘Europeanness’ of Argentina and dismiss the historical legacy of the Mapuche by often referring to ideology from Domingo Faustino Sarmiento, Argentine president from 1868 to 1874.<sup>13</sup> He is largely viewed as the creator of Argentina’s education system and said of the Mapuche,

“Above all, we would like to remove the savages from all American social questions, as for them we feel, without being able to remedy it, an unconquerable loathing, and [...] despite the civilized and noble robes in which Ercilla clothed them, are no more than disgusting Indians, whom we would have had hanged...”<sup>14</sup>

*Recommendation: Collaborate with Mapuche community leaders and indigenous institutions that ensure the development of the Mapuche identity and its contributions to Argentinian society*

*Recommendation: Address cultural sensitivities in history textbooks which reflect discriminatory and racist views through collaboration with Mapuche community leaders and non-governmental organizations*

<sup>11</sup> Committee on the Rights of the Child, (2010). *Consideration of Reports submitted by State Parties under article 44 of the convention: Argentina*. (CRC/C/ARG/CO/3-4) para. 31

<sup>12</sup> Observatorio de Derechos Humanos de Pueblos Indígenas (2009) *Informe de situación de los Derechos Humanos del Pueblo Mapuche en la Provincia de Neuquén*. p. 68.

<sup>13</sup> Gordillo, G. and Hirsch, S. (2003). Indigenous Struggles and Contested Identities in Argentina – Histories of Invisibilization and Reemergence. *Journal of Latin American Anthropology* 8(3) 4-30.

<sup>14</sup> Sarmiento, DF. (1844 September) *El Progreso*. Speech, Argentina.

## Article 15.2 – Cultural Rights

Article 15.2 requires that “[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”

Mapuche religion is deeply linked to their ancestral land. Their socio-cultural and political relations have always been shaped by their spirituality, their religious beliefs and the strong relationship between humans, land and nature. A Mapuche tenet holds that “the land does not belong to the Mapuche, the Mapuche belong to the land”. Argentina has so far failed to ensure the Mapuche’s freedom to practice their culture and religion. The lack of access to holy sites, shrines and graves due to the privatization of land breaches Article 18 of the ICCPR despite Argentina’s ratification. Argentina’s failure to protect this right is also in violation of Article 6(a) of the 1981 declaration of the UN General Assembly which provides that “(t)he right to freedom of thought, conscience, religion or belief includes the freedom, to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.”

Recommendations made by UN Special Rapporteur on Freedom of Religion Abdelfattah Amor after his visit to Argentina in 2001 on the right of the Mapuche to access sacred sites to pursue and establish principles of tolerance and nondiscrimination have not been adhered to. Amor recognized that for the Mapuche, the land as the source of identity holds a deep religious meaning for them. There has been an inconsistent application of indigenous land recognition in this aspect where some provinces have granted definitive community property titles to land while others have recognized indigenous lands without granting titles, which creates foundations for land disputes.<sup>15</sup>

Resolution 2005/40 of the UN Commission on Human Rights urging states “(t)o ensure [...] the right of all persons to worship or assemble in connection with a religion or belief”, and Article 12 of the Declaration on the Rights of Indigenous Peoples which provides that “Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites,” have also been disregarded and left unapplied by the Argentinian government.<sup>16</sup>

*Recommendation: Enforce existing national legislation and international covenants which protect the Mapuche’s right to free expression of culture and religion by allowing unrestricted land access*

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<sup>15</sup> Amor, A. (2002) *Civil and Political Rights, Including the Question of Religious tolerance, Report submitted by Mr. Abdelfattah Amor, in accordance with Commission on Human Rights resolution 2001/41, Addendum, Visit to Argentina* (E/CN.4/2002/73/Add.1) para. 113.

<sup>16</sup> Unrepresented Nations and Peoples Organization, (2008) Universal Periodic Review Submission: Argentina.

## Section D: Summary of Questions and Recommendations

### **Article 1 – Right to Self-Determination and Protection from Exploitation**

*Recommendation: Enforce indigenous rights as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Civil and Political Rights, and the International Labour Organization Convention 169*

### **Article 2.2 – Protection from Discrimination**

*Recommendation: Argentinian national government should devote more resources to INAI*

*Recommendation: Conduct anti-discrimination trainings for officials and workers from institutions who regularly interact with indigenous communities*

*Recommendation: Supplement provincial governments with observers from the national government and representatives from indigenous communities*

### **Article 11 – Sustainable Standard of Living**

*Recommendation: Invite Mapuche community leaders and small business-owners to offer solutions and assist in the coordination of relief efforts to natural disasters and other circumstances*

*Recommendation: Improve infrastructure in areas populated by Mapuche communities to assist their sustainable growth and development in an environmentally sensitive manner*

### **Article 12.b – Environment**

*Recommendation: Address both the lack of national and international laws that protect indigenous land rights against encroachment by business and other interests*

### **Article 12.d – Availability of Medical Facilities**

*Recommendation: Address the lack and poor quality of medical care in distant regions and those with large concentrations of Mapuche*

*Recommendation: Task state institutions with the resources and responsibilities to assist Mapuche who are living with long-term health problems due to water contamination.*

*Recommendation: Provide training for medical staff to be able to communicate in Mapudungun (the Mapuche native language) or provide translation services*

*Recommendation: Train medical staff in cultural sensitivity and anti-discrimination towards their Mapuche patients*

### **Article 13 – Education Rights**

*Recommendation: Collaborate with Mapuche community leaders and indigenous institutions that ensure the development of the Mapuche identity and its contributions to Argentinian society*

*Recommendation: Address cultural sensitivities in history textbooks which reflect discriminatory and racist views through collaboration with Mapuche community leaders and non-governmental organizations*

### **Article 15.2 – Cultural Rights**

*Recommendation: Enforce existing national legislation and international covenants which protect the Mapuche's right to free expression of culture and religion by allowing unrestricted land access*