Observatorio Ciudadano - OC (coordinating organisation)

Asociación de Comunidades Mapuche de San José de Mariquina

Asociación de Inmigrantes por la Integración Latinoamericana y del Caribe APILA

Asociación Indígena Ayün Mapu

Centro de Derechos Humanos, Universidad Diego Portales

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Parlamento Mapuche de Coz Coz

Partido Autonomista Mapuche Wallmapuwen

Pueblos Indígenas Unidos de la cuenca de Tarapacá, Quebrada de Coscaya, Aroma y Miñe Miñe

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Report by Civil Society and Indigenous Peoples of Chile to the UN Committee on the Elimination of Racial Discrimination in relation to the review of the 19th to 21st Periodic Reports of the State of Chile (CERD/CCHL/19-21)

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PRESENTATION

This Report has been prepared by a number of civil society, academic, indigenous peoples' and migrants' organisations in Chile, and coordinated by the Observatorio Ciudadano, a Chilean non-governmental organisation with a mandate to promote and defend human rights.

The Report has been prepared in relation to the review of the periodic reports 19 to 21 of the State of Chile by the UN Committee on the Elimination of Racial Discrimination (here forward "the Committee"). It analyzes the level of compliance by the State of Chile with the obligations it agreed to by ratifying the Convention on the Elimination of Racial Discrimination (here forward "the Convention") between the year 2009, when it was last reviewed, and the present period.

In this Report it is held that the conditions of structural racial discrimination persist in Chile, which, according to the evidence gathered, mainly affects indigenous peoples and migrants. In effect, even with the entry into effect in September of 2009 of the Convention 169 of the ILO (here forward "Convention 169"), and the adoption of the Law on Measures to combat Discrimination (Law 20,609 of 2012), the discrimination affecting members of these populations based on their race, ethnic or national origin, undermining their human rights and fundamental liberties, has not successfully been overcome. Additionally, public policies promoted by the State and financial resources allocated to the same by its agencies remain largely insufficient and have not succeed in addressing the existing inequities in the country caused by the same factors identified in the Convention as constituting "racial discrimination".

We note, additionally, that most of the recommendations made by the Committee have not been complied with, and therefore we suggest that these recommendations, as well as others which we identify in each of the issues addressed, be incorporated by the Committee in its report of 2013.

We hope that this Report can contribute toward advancing the legal and political implementation of the obligations under the Convention by the State of Chile.

ANALYSIS OF THE LIST OF ISSUES IN THE REPORT

1.- The Convention in domestic legislation and the legal and institutional framework, and in public policies for its compliance (articles 2, 4, 6 and 7).

b) Information on the status of various draft laws, including:

ii) Draft law on the constitutional recognition of indigenous peoples (CERD/C/CHL/19-21, paragraph 51);

Indigenous peoples remain unrecognized by the Constitution of Chile. The reform project, which has been under discussion in the Senate since 2009 – and which brings together two proposals presented by President Bachelet and Parliamentarians – remains unapproved.[1] These reform initiatives have been criticized by organisations representing indigenous peoples because they were designed without their prior consultation or participation, and do not reflect the aspirations of these peoples nor refer to the international human rights instruments ratified by Chile.

The constitutional reform bill has a number of limitations that restrict the rights of indigenous peoples recognized under international law. Among these it provides that the Chilean nation "is one, indivisible and multicultural" – a formula which, far from recognizing indigenous peoples, rather works toward their negation. This definition arbitrarily limits the exercise of their rights to strengthen their social organizations and the cultural and personal particularities of their identities, subordinating them to a unified national legal framework and restricting the recognition of their rights to ownership of lands and waters by omitting constitutional recognition of those rights derived by ancestral possession of their lands recognized in the Convention 169 of the ILO.

In 2011 the government of President Piñera included this proposed constitutional reform among the legislative initiatives to be submitted for consultation with indigenous peoples. However, this process was suspended due to the criticism from indigenous peoples that it does not conform to the standards for consultation set out in Convention 169. Despite not having submitted it for consultation, the President granted top priority and urgency to the reform in January 2013. In his message to Congress in May 2013, he acknowledged this objective had not been met, and that this remains an outstanding challenge for the Chilean State[2].

Recommendation:
-That priority be given to constitutional recognition of indigenous peoples and to their rights; that the contents of this project be consulted with these peoples, in good faith, through appropriate procedures and their representative institutions, and with a view to reaching agreement or obtaining their consent, in accordance with the provisions of Convention 169 of the ILO ratified by Chile.

[1] Boletines N°s 5324-07 y 5522-07.
[2] Presidential message of 21 of May http://www.lanacion.cl/lea-el-mensaje-presidencial-de-este-21-de-mayo/noticias/2013-05-21/164716.html [Consultada el 10 de junio de 2013]

f) Information on the implementation of Convention 169 of the International Labour Organization (ILO) concerning Indigenous peoples and free, prior and informed consent, and the measures taken to effectively implement the convention;

Since the ratification by the State of Chile of ILO Convention 169 and its full entry into force in 2009, we have been witness to deficient enforcement by and compliance with it by state bodies, in particular by the Executive and Parliament. This has been true especially regarding the right to prior consultation with indigenous peoples in relation to administrative measures, which the Bachelet government tried to regulate in a restrictive manner and without consultation, by Supreme Decree No. 124 of the Ministry of Planning and Cooperation (Ministry of Planning) at the time of entry into force of the Convention. The Decree, which regulated the participation of indigenous peoples established in article 34 of Law No. 19.253 of 1993 on indigenous peoples, and which had not been regulated until then, has continued to guide the actions of public agencies at odds with the standards of the Convention 169 in the field.

Criticism of this legislation by indigenous peoples' organizations led the government of President Piñera, in early 2011, to initiate a process of consultation which incorporated, among other matters, the reform to provide constitutional recognition; the creation of an Development Agency for Indigenous Peoples; the creation of a Council of Indigenous Peoples; the definition of a consultation mechanism which would regulate future processes; and, the amendment of the regulations of the System of Environmental Impact Assessment (SEIA) to include mandatory consultation with communities affected by projects submitted for evaluation.

In September 2011, following criticism from indigenous communities, the government suspended the consultation process to concentrate on the definition of the consultation mechanism, a task that was entrusted to a committee formed within the National Council of the National Indigenous Development Corporation (CONADI), and making a commitment not to undertake any other consultations pending resolution of the proceedings of the committee.

Despite this commitment, in May 2012 the Council of Ministers for Sustainability passed a new version of the draft Regulation of the System of Environmental Impact Assessment (SEIA), which was part of the unconstitutional consultation process suspended in September 2011. This regulation, which has been forwarded to the Comptroller General's Office in January 2013 pending its registration, contains rules on consultation with indigenous peoples of investment projects submitted to the SEIA, which are merely forms of sharing information on projects. This has motivated legitimate criticisms from indigenous peoples, based on the fact that the procedure for passing this law has not allowed them proper consultation and that it contains rules that do not comply with international standards.

In August of 2012 the Government presented a Proposal for a New Regulation for Consultation to the Council of CONADI so that it would be disseminated among indigenous peoples with the intention of initiating a consultation process. This proposal establishes mechanisms which violate the rights of indigenous peoples as it allows for submission of investment projects and socialization procedures established in the new

SEIA regulation, which itself was not been submitted to consultation (Article 5). This moreover has a reduced definition of administrative procedures subject to consultation, since it applies only to certain state agencies, within which municipalities are excluded, and since it provides that consultation is optional for decentralized state agencies (Article 4). In light of all the above, as well as the fact that the call to this consultation process has not included organizations representing indigenous peoples in conformity with ILO Convention 169, has motivated objection to this proposal.

The lack of recognition of international standards which Chile has undertaken to respect by national legislation, along with the deficiencies of the proposals for the regulation of the process of consultation, has created a climate of legal uncertainty which has resulted in the violation of the rights of indigenous peoples. This has forced these peoples to seek the protection of their rights before the courts, which in recent years, and in a gradual way, have begun taking international standards into account in their decisions. These decisions, however, in the Chilean legal system, are only binding in the specific cases. Additionally, it is worth noting that the upper courts still maintain certain restrictive interpretations which violate the rights of indigenous peoples, such as the exclusion of prior consultation in cases of procurement and concessions to natural resources located in ancestral indigenous lands.

Another worrying situation is the delay of Parliament in amending sectoral legislation to conform to the provisions of Convention 169. Moreover, Congress still has not made any significant progress in processing draft laws such as the constitutional recognition of indigenous peoples and their rights referred to above. Neither has there been, to date, a consultation procedure for processing laws that may directly affect these peoples in accordance with art. 6 of Convention 169. Indeed, despite the calls made by the National Congress for meetings with representatives of indigenous peoples to explore mechanisms to establish a procedure of this nature, and the creation in January 2013 of a Bicameral Commission for this purpose, there is still no agreed procedure for fulfilling this international obligation by Parliament.

It is of concern, in this sense, that Parliament continues to adopt, without any proper consultations, various legislative initiatives that have direct implications for indigenous peoples, such as the ratification of the International Convention for the Protection of New Varieties of Plants (UPOV 91) and adoption of the Law on Fisheries and Aquaculture, a law which establishes fishing quotas in aquaculture resources and which ignores the rights of indigenous peoples recognized in Law 20.249 of 2008 that created the Maritime Coastal Areas of Indigenous Peoples, which the government has yet to enforce. Equally worrying is the decision of the Constitutional Court referring to the lack of consultation, issued on January 23, 2013, in which the Court determined that international human rights treaties only rank under simple legality and therefore its violation by Congress in the case of the Fisheries Law, does not imply a constitutional breach.

Another concern is the increasing threat of extractive, productive or infrastructure projects in indigenous lands and territories, which have been approved or are in the process of being approved by the State without a consultation process and without indigenous peoples' free, prior and informed consent and without their participation in the profits of the economic activities in question. This is prompted by public policies

that incentivized Chile's entry into global markets, through free trade treaties that are themselves also adopted without consultation with indigenous peoples, and sectoral legislation (Code of Waters, Code of Mining, among others) that has not been modified to comply with ILO Convention 169, which allows for third parties to acquire rights over natural resources of ancestral indigenous property.

Another worrying situation affecting the exercise of the rights enshrined in ILO Convention 169, mainly regarding Mapuche indigenous communities, is the existence of environmental racism, caused by the establishment of garbage dumps and sewage plants (PTAS)

Furthermore, a situation that raises concerns as to the exercise of the rights enshrined in Convention 169, mainly regarding the Mapuche people, is that today there remains a situation of environmental racism, produced by the creation of landfills and wastewater treatment plants (PTAS) in Mapuche communities, which was reported to the Committee in the review of 2009 for the State of Chile, from which explicit recommendations on the matter emerged, especially in Observation No. 23.

Regarding this matter, it is important to take into account the fact that communities affected by sites and PTAS were by mid-2010 received by the regional authorities represented by Mayor Andrés Molina, who committed to developing a program that would seek to provide a response to the above recommendation. He mandated various public bodies to carry out the coordination of the preparation of this plan which to date has not been carried out, and there is currently no program and / or policy or scientific investigation with the characteristics required to address the problems of communities directly affected by this situation, as was raised at that time. Thus, currently there are several communities that continue to live surrounded by garbage dumps, without any efforts of the state to remedy or put an end to this situation. Among these, the most paradigmatic case is that of the communities in the Boyeco sector of Temuco, where contamination from the landfills has negatively affected the health of their children.

Recommendations:

-Urgent attention by both the government and the legislature, to achieve compliance with the international obligations assumed by signing the ILO Convention 169, especially those arising from the duty to consult with indigenous peoples in good faith, through their representative institutions, and with a view to reaching agreement or consent, whenever legislative or administrative measures that may affect them directly are being adopted, specifically also incorporating, where appropriate, the standard for obtaining free, prior and informed consent.

-Carry out the necessary legislative reforms to enable the full exercise by indigenous peoples of their rights under the ILO Convention 169.

-Implement the necessary measures to end the situation affecting communities near landfills and PTAS, creating tools that mitigate damage and compensate for the injuries of those affected.

2. The situation of indigenous peoples, ethnic communities and other minorities (Articles 1, and 2 through 7)

c) The measures of various kinds, including special or temporary positive measures, to remedy racial and ethnic discrimination in the field of economic, social and cultural rights, including the right to land, housing and access to drinking water;

As in previous years, the state sector policy towards indigenous peoples, which drives CONADI, has continued to focus, from 2009 to the present date, on those which have been referred to as indigenous lands. Unfortunately in this area, the State of Chile has not welcomed the concerns of this Committee, and continues without taking steps to accelerate the process of restitution of ancestral lands to indigenous peoples in accordance with the Convention and other relevant standards consistent with Convention 169 of the ILO[3]. Nor has it increased the budget of CONADI so that this entity would be able to perform its functions adequately.

In effect, the policies promoted by CONADI remain insufficient for resolving problems related to land issues affecting various indigenous peoples, including the Mapuche and Rapa Nui people. A restrictive interpretation of the concept of indigenous lands by the public body has determined that the Fund for Land and Water finances initiatives intended to restore only the lands exclusively recognized as such through title granted as a concession by the State to the Mapuche, or those that were in the possession of Mapuche communities in the process of reform that was reversed after the 1973 military coup. The demands regarding ancestral lands or customary use provided in accordance with applicable international law do not fit into this interpretation.

Furthermore, the budget allocated by the State to finance this fund has remained insufficient. In 2013 CONADI has a budget of just over $182 million USD, of which close to 48% are used to finance land acquisitions and grants falling within Article 20 letter a) and b) of the Law on Indigenous Peoples, which do not permit them to address land claims for ancestral occupation for lands which indigenous peoples have been deprived of. The annual budgets of the Fund within three years of the current government have been less than the amount that was assigned in 2010 and when it reached an amount close to $100 million USD[4]. The current year the Fund's budget amounts to nearly $87 million USD, 13% less than the prior year indicated.[5]

A situation of particular concern in this regard is the one referred to in claims of Rapa Nui peoples on the land on Easter Island. Despite having been annexed by Chile in a treaty or "Agreement of Voluntary Will" that the Rapa Nui reserved to themselves the ownership of their ancestral lands, the State of Chile registered the lands of the island

[3] This situation was reiterated in 2013 by the Commission of Experts in the Application of Conventions and Recommendations of the ILO in their observations to the State of Chile relative to compliance with Convention 169 of the ILO (Conferencia internacional del Trabajo, 2013)

[4] See the Ministry of the Treasury, budgeting section (Dipres): *Informe de Ejecución Trimestral Período 2010: Corporación Nacional de Desarrollo Indígena*. Available at: http://www.dipres.gob.cl/595/articles-71979_doc_pdf.pdf [fecha de consulta 26-07-2013]

[5] See the Ministry of the Treasury, budgeting section (Dipres): *Informe de Ejecución Trimestral Período 2013: Corporación Nacional de Desarrollo Indígena*. Available at: http://www.dipres.gob.cl/595/articles-104660_doc_pdf.pdf [fecha de consulta 26-07-2013].

in the name of the Treasury in 1933. From the 1960s various laws have been passed to regularize land for the Rapa Nui via the transfer of lands of small holdings through individual titles, in contravention of the community property of this people, and even these are allocated in very small sizes, limited to the urban areas of the Island, with the Rapa Nui being owners of only 13%, and with over 70% of the territory of the island continuing in ownership of the Treasury. Effective public policies to reverse this reality have not been initiated since 2009 to the present date, an issue that has further fuelled the social protest actions by the Rapa Nui, which in turn, as discussed below, were subsequently further criminalized by the State[6].

Recommendations:

-Reform the public policies relating to indigenous lands in order to allow the restitution of ancestral lands to these peoples in a manner consistent with ILO Convention 169.

-Increase the budgets for CONADI's Fund for Lands and Waters so that it can meet the government commitments to acquire land for 115 communities, in a first stage, and 308 other communities, in processes that must have deadlines.

-Consider using mechanisms such as expropriation for public interest, in order to ensure the speed and effectiveness of state action to achieve restitution of ancestral land occupation of indigenous peoples.

e) Statistical data on the excessive use of police force which native peoples are victims of – particularly the Mapuche and the Rapa Nui peoples – and women, as well as the measures taken to prevent, investigate and punish its use;

Demonstrations by indigenous peoples in support of legitimate social protest against the denial of their collective rights, particularly to land and natural resources, have been violently repressed and criminalized by the state. Within the framework of these violent actions by the police against members of indigenous peoples there are frequent occurrences of warrantless raids, and indiscriminate use of tear gas and weapons in indigenous communities, including actions that systematically result with injuries to indigenous peoples including girls and/or women as a result of these police actions.

Police violence against Mapuche population is one of the most serious and unpunished abuses, as it takes place in a context of historical discrimination that this indigenous population has suffered, as well as a permissive government policy, along with criminalization of the demands of the Mapuche, which tolerates and justifies the police interventions within these communities. Such situations generally affect disadvantaged members of the population more acutely, particularly indigenous peoples, workers, children, and others. Such events occur not only when these people try to exercise their

[6] See: "*Los derechos del pueblo Rapa Nui en Isla de Pascua: Informe de Misión Internacional"*, IWGIA Observatorio Ciudadano, 2012. Available at http://www.iwgia.org/publicaciones/buscar-publicaciones?publication_id=598 [Consultada el 10 de julio de 2013]

rights to freedom of expression and peaceful assembly, but, often, when they are in their communities, neighbourhoods, and in their own homes, where they are subjected to raids, sometimes without court orders or search warrants, or are victims of discriminatory treatment by members of the police (Carabineros) or the investigating police forces (Policía de Investigaciones, or PDI).

Raids in communities far from large urban centers and the media are frequently accompanied or undertaken with massive violent actions followed by general impunity. These searches are performed by large contingents of police special forces who travel in buses and service cars, accompanied by gas cannons and tanks. Some of these raids take place during the early morning hours and include random searches of houses and sheds and physical and verbal assaults on women, the elderly and children.

Regarding the excessive use of force by police against persons belonging to the Mapuche people in the period from 2009 to the first half of 2013, there have been 70 cases in which both the Police forces (Carabineros) and Investigating Police (PDI) have used excessive force. Women, children and men in the communities have been victims of these arbitrary actions.[7]

In 2009, according to data collected through various sources for data collection, there were a total of 19 cases of violence, which were reported by victims and their family members. Of these cases, most acts of violence were exercised towards the male with a total of 13 cases (68%), while in the case of women, the figure rises to 4 cases (22%) in the other cases the sex of the victim was not identified, or includes the entire community.

During 2010, there was a total of 15 cases of police violence presented, in which both men and women were variously affected; according to the data, 6 cases included violence against females (40%) and 6 against male representatives (40%) caused by the state police.

Unlike previous years, in the data collected during 2011, according to the standard files on police violence, there were only 7 cases. Of these, 44% were actions that affected women, 3 cases, the majority for those reporting gender, followed by actions affecting men making up 28% of cases (2). It should be noted here that in two cases the sex of the victim was not identified.

During 2012, there were a total of 16 cases, according to the information compiled, in which there were 5 cases of violence against women, and 11 cases of violence against men (68%), double that of women.

During the present year, information has been gathered on 13 reports of police violence in data gathered through the first semester of 2013. Of these cases the information gathered reflects that of the acts of violence that have been registered, 54% of them refer to violence against men (7 cases) while 23% of them (3 cases) refer to violence against women. In the remaining cases there is no information regarding the gender of

[7] This information was raised by the Observatorio Ciudadano in 2013 in its "*Report on Police Violence Against the Mapuche People 2009-2013"* ("*Informe violencia policial en contra del Pueblo Mapuche 2009-2013"*).

those affected, and none of the information provides details on the ages of those affected.[8]

In the case of the Rapa Nui peoples, the peaceful demonstrations that they undertook at the end of 2010 and beginning of 2011 in seeking to reclaim their ancestral lands were met by the State with a strong and repressive police response, undertaking searches during which they detained members of this community, including children and elderly persons, and resulting with approximately 20 persons injured by beatings and gun shot pellets. These events motivated the Inter-American Commission on Human Rights (IACHR) to issue an interim measure and a statement to the State of Chile on behalf of James Annaya, the UN Special Rapporteur on Indigenous Peoples' Rights in January 2011.[9]

The Military Code is the legal text which regulates Military Justice, and it provides jurisdiction to Military Tribunals for adjudicating various subject areas. Article 5, No. 1 defines military crimes for the effects of military justice such as "those provided in this Code", within which the crime of abuse by Police (Carabineros) is provided. Furthermore No. 3 of the same Article describes how the Military Tribunals should understand "the causes for ordinary offenses committed by members of the military (…) during military service (…)". This is the basis for which Military Tribunals maintain their exclusive jurisdiction over police abuses such as torture, homicide, or unjustified use of force by the Police, if these acts are committed during military and police service or in military or police premises. As with the members of the police who stand accused, the Judges of the Military Tribunals are officials in the active service of the Armed Forces, which do not necessarily have a legal education, and which are also subjects to the military chain of command. Beginning simply with these facts, these tribunals lack the minimum independence necessary to guaranty a fair trial.

In practice, the great majority of claims against the Police for offense, mistreatment, or excessive use of force are not taken up. In cases with evidence of participation by on-duty police officers, prosecutors regularly transfer the case to the Military jurisdiction. The investigations are then prolonged for years without resolution or are closed, and rarely are those responsible brought to justice. Furthermore, the Military Tribunals exercise exclusive jurisdiction where civilians are accused of violence against the police. The Mapuches who have been victims of police violence or mistreatment appear before the Military Tribunals. These tribunals do not enjoy the independence or impartiality necessary to guarantee that the Mapuches in whichever of these situations receive a fair trial or a "just compensation" opportunity.

Recommendations:

- That the State party investigate the claims of abuse and violence against members of indigenous communities committed by members of the armed forces;

- That those responsible for these acts be processed and sanctioned and that reparations are provided to the victims or the families of the victims;

[8] Ibid.

[9] See: Los *derechos del pueblo Rapa Nui en Isla de Pascua: Informe de Misión Internacional*, IWGIA Observatorio Ciudadano, 2012, *op. Cit*.

- That legislative reforms necessary for ensuring the efficacy and impartiality of investigations are undertaken and that sanctions are undertaken against police officers responsible for excessive use of force.

f) Detailed information on the application of the Antiterrorist Law No. 20467, in particular against the Mapuche Peoples.

The criminalization of indigenous social protest and the application of laws of exception to pursue members of the Mapuche community, whose supposed participation in violent acts within the framework of conflicts related to territories in the south of the country during the last decade, has been pursued legally and with the involvement of the Prosecutor's office and by the Government. In effect, both the Prosecutor's Office and the Ministry of the Interior have had an active role in the persecution of crimes imputed to members of this community, frequently applying laws of exception, such as the "Antiterrorist Law" (Law 18.314 of 1984), for such cases. It is important to note that this law contains a broad definition of criminal offenses and weakens the due guarantees of fair trial.

This situation can be seen manifested in the fact that to date from 2009 close to 80 members of the Mapuche People which have participated in processes seeking to claim their rights have been detained in prisons of the State. From the year 2009 to date there have been 8 criminal cases opened, in which 55 members of the Mapuche peoples have been implicated in crimes of a terrorist character. Of the 8 criminal cases, 4 have been adjudicated by the courts, three which resulted in acquittals and one in which the accused was indicted for 4 of the 19 charges for ordinary crimes. Even if the qualification of terrorist actions understood in the Antiterrorist Law was not applied in any of the cases of those indicted, the evidence used in their sentences were derived through a legal process pursued in the framework of this law, because testimony of witnesses with concealed identities was used in these proceedings. This shows a serious violation of the principle of due process. The high percentage of acquittals obtained recently in the cases under the Antiterrorist Law which have been pursued against Mapuches proves that they are being used in a selective and politicized manner by the State. It is important to note that the Antiterrorist legislation has been applied for a decade almost exclusively against members of the Mapuche community, many of them leaders of communities which are defending their rights to land and political participation.

For the year 2010, since the beginning of the administration of President Sebastián Piñera (2010-2014) a total of 40 Mapuche leaders have been deprived of their liberty for being charged in terrorist actions in the context of social protests relating to property rights. 34 of these, detained in various places of detention in the south of the Country, initiated a hunger strike during which they sought that this legislation not be applied in relation to the acts they were charged with, and that they be tried in accordance with the norms of ordinary criminal law. They also sought the termination of double jeopardy which was a product of the fact that some of the acts they were charged with were recognized at the same time by ordinary courts and military courts. It is important to note that the Antiterrorist legislation has been applied for a decade almost exclusively against members of the Mapuche community, while it has not been

applied to non-indigenous persons charged with more serious crimes, which indicates an evident discrimination in the cases of the former.

This hunger strike, which lasted for close to 80 days, resulted in a reform of the law which eliminated the presumption of commission of terrorist crimes, impeded the trial of minors for the crimes which it covers, reduced the penalties for these offenses and established norms for the interrogation of protected witnesses. According to the National Human Rights Institute however, the legislation as amended in October 2010 leaves open the possibility that it can be applied to offenses affecting destruction of property, which is not in line with international standards, and restricts due process guarantees by limiting the possibility of cross-examining protected witnesses[10]. Despite the provisions that exclude minors, the Prosecutor's office maintained its application in four cases involving minors. This prompted a new legal reform (Law 20.519 of the 21 June 2011) which provides for a clear exclusion of these minors from the application of the law.

Currently, there are still four open proceedings under the Antiterrorist Law, charging 26 persons for participation in terrorist crimes, four of which were minors at the time of being charged. All are currently awaiting trial, with one being held in pre-trial detention.

Recommendations:
- That the Antiterrorist Law 18.314 be reformed in order to ensure that it is only applied in offences of terrorism which deserve to be treated as such and that due process guarantees be ensured;

- That the Antiterrorist Law not be applied to members of the Mapuche community for acts of social protest.

3. Effective participation of diverse ethnic groups in Chile in political and public life.

a) Mechanism for the effective participation by indigenous peoples and afro descendent communities in all areas of governance (CERD/C/CHL/CO/15-18, paragraphs 20 and 21);

Indigenous peoples are not represented in either of the two chambers of the Congress, even though the number of independent or party-affiliated indigenous candidates has increased since the return of democracy. Institutional and legal obstacles contribute to this situation, including the binomial electoral system, which creates electoral districts of two party lists which exclude political actors that do not reach majorities in either of the primaries, and the law on political parties, which impedes the creation of such parties on a purely regional basis. Contrary to this, and while a proportional electoral system and multi-party political administration was in place – up until the military coup of 1973 – indigenous peoples and in particular the Mapuche had even achieved victories in nine parliamentary elections.

[10] National Institue of Human Rights, Annual Report for 2010. Available at: www.indh.cl.

Neither do the indigenous peoples enjoy political representation in the regional councils (Cores) in any of the regions which constitute their historical and ancestral territories, which is particularly serious in the case of the Mapuche, whose territory and half of their population extends over four regions in the south of the country (in the Regions of Bío-Bío, Araucanía, Los Ríos, and Los Lagos). At the municipal level, even if the number of unaffiliated mayors and councillors of indigenous descent increased after the municipal elections of 2012, numerous indigenous candidates could not effectively compete, which in large measure was the effect of the limited possibilities that the electoral system allows to independents, disincentivizing participation and weighting electoral competitions in favour of candidates through the national political parties.

During 2013, the government and the two grand political coalitions have discussed reforms of the political system without including the participation of indigenous peoples or considering their specific situation. One reform to the electoral system for regional councils, which allows for these to be elected directly through a proportional formula, was approved by the Congress in June 2013 without consulting indigenous communities only to reject a later motion which would have allowed them to have representation via the application of special measures. The same law has re-drawn electoral districts, which produced further obstacles for the future participation of indigenous candidates due to the physical extension of the districts' territories, except if they were to have the financial means, which the law does not make available. Independent candidates are also affected by this given that they cannot form alliances and are obligated to compete individually against lists of coalition parties.

The legalization of the independentist Mapuche party Wallmapuwen has been barred by the legal framework in force to date related to the requirements that forces them to register itself in at least three contiguous regions, gather close to 5,000 signatures of party members and eliminate any references to political objectives linked to rights such as "autonomy" in relation to the right to self-determination from its statutes. At the same time it has to do without the use of words from Mapuzungun, the Mapuche language, in reference to its authorities, its symbols, and its territory.

Recommendations:

- Significantly increase the percentage of the national budget allocated for use to finance public policies directed toward indigenous peoples;

- Implement the directives of the sentence in the decision of the Inter-American Court of Human Rights in Yatama vs. Nicaragua in Chile, in order to enable indigenous peoples to participate in electoral processes with their proper organisations (without the need to create political parties);

- Implement special measures which allow for the political participation of indigenous peoples in the National Congress and in the regional councils under formulas of reserved seats or redistricting which allows for indigenous peoples to achieve electoral majorities.

Information on those submitting this Report:

1- Observatorio Ciudadano
Email: jaylwin@observatorio.cl

2- Centro de Derechos Humanos, Universidad Diego Portales
Email: judith.schonsteiner@udp.cl

3.- Asociación de Comunidades Mapuche de San José de Mariquina
Email: javiernahuelpan@gmail.com

4.- Asociación Mapuche Ayün Mapu
Email: ivan.reyes.alcaman@gmail.com

5.- Comité de defensa del Mar
Email: comitedefensadelmar@gmail.com

6.- Parlamento Mapuche de Coz Coz
Email: jweke@hotmail.com

7.- Partido Autonomista Mapuche Wallmapuwen
Email: wallmapuwen@gmail.com

8.- Pueblos Indígenas Unidos de la cuenca de Tarapacá, Quebrada de Coscaya, Aroma y Miñe miñe
Email: ajcapetillo@gmail.com

9.- Asociación de Inmigrantes por la Integración Latinoamericana y del Caribe, APILA
Email: manhival@hotmail.com

10.- Mesa Temática por los Derechos de los Migrantes
Email: rwilson@senado.cl