

**Alternative Report submitted to the United Nations Human Rights Committee
for the consideration of the Sixth Report of the Republic of Chile
during the 111th session (7-25 July 2014)**



Unrepresented Nations and Peoples Organization

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I. INTRODUCTION TO THE REPORT

This follow-up report was submitted by the Unrepresented Nations and Peoples Organization (UNPO), commenting on the compliance of the State Party of the Republic of Chile with the International Covenant on Civil and Political Rights, to be discussed during the 111th Session of the Human Rights Committee (HRC; hereafter referred to as “the Committee”) from July 7-25, 2014.

This report discusses the International Covenant on Civil and Political Rights (ICCPR; hereafter referred to as “the Covenant”) and the application of its articles with respect to the Republic of Chile. The articles considered to have been violated shall be discussed sequentially, taking into account the information supplied by the Chilean response to the List of Issues. Recommendations will be provided to inform the discussions between the Committee and the delegation of the Republic of Chile at the 111th session.

The major issues as identified by UNPO’s Alternative Report on the Republic of Chile in 2013 submitted to the Human Rights Council were the discriminatory application of anti-terrorism laws, the stereotyping of the Mapuche as terrorists, the lack of constitutional recognition of the Mapuche, and the failure to consult indigenous leaders in policy matters concerning indigenous issues.

Several of these issues have been addressed by the Chilean government since the 108th Session of the Human Rights Committee in 2013. After the most recent hunger strike marathon (April 7 – May 15), the government agreed to review the antiterrorism laws within a period of sixty days¹. The outcome of this revision remains to be established, but the revision session provides an opportune moment for the Chilean government to work towards a better compliance with the Covenant. Similarly, the constitutional recognition of the Mapuche and the foundation of a Council of Indigenous Peoples are on the Chilean political agenda, but concrete results are lacking so far.

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II. INTRODUCTION TO THE MAPUCHE

The Mapuche are the largest indigenous group in Chile, with over 1.4 million people and making up approximately 8.7 per cent of the population of Chile.² The Mapuche are among the poorest and most marginalised groups in Chilean society. Around one-third of all Mapuche live below the poverty line (43,712 CLP per capita in urban areas; 29,473 CLP in rural areas). Approximately 80 per cent of heads of rural Mapuche households have less than four years of schooling. Less than three per cent of the entire Mapuche population receive any further educational training beyond high school.³ Due to their current abysmal situation, and the systematic expropriation of Mapuche land, many Mapuche feel as though they are owed a “historical debt” by the Chilean government.⁴

Historically, the Mapuche resisted colonisation for centuries, defeating Incan, Spanish and Chilean forces. However, between 1861 and 1883, the Chilean waged a war against the Mapuche known as the *Pacificación de la Araucanía*, which ended the Mapuche rebellion and with it their independence. The Chilean government created slightly fewer than 3000 *reducciones*—pockets of land onto which the Mapuche could live their lives, distanced from national politics—which were later sub-divided and sold to wealthy elites and corporations, leaving the Mapuche with just over five per cent of their original territory.⁵ However, while under colonial rule, the rights of the Mapuche to independence and independent sovereignty were officially recognised by the Spanish government.⁶ Furthermore, until 1962 the Chilean State maintained “border relations” with the Mapuche, in effect bestowing upon them a form of recognition.⁷

Throughout the 1960s and 1970s, successive governments instituted policies of land reform, which restored some ancestral land to the Mapuche. However, the coup in 1973 essentially reversed the land reform policies by offering Mapuche lands to international investors so as to bolster Chile’s economy.⁸ The Mapuche themselves were vilified under the Pinochet regime, often classified as “communists”, and assimilation programmes were pursued with renewed fervour.

The *Concertación* government, elected in 1989, campaigned on a platform of indigenous rights.⁹ The Mapuche petitioned the new government about their land rights and their previous vilification. The new government however, focused more on remedying the damage directly caused by the Pinochet regime, failed to address historical indigenous grievances. Mapuche expectations such as land

² “Resultados Censo 2012,” Instituto Nacional de Estadísticas, <http://www.censo.cl/>.

³ Claudio A. Agostini, Philip H. Brown, and Andrei C. Roman, “Poverty and Inequality among Ethnic Groups in Chile,” *World Development* 38, no. 7 (2010). 1028.

⁴ Gilda M. Waldman, “Historical Memory and Present-Day Oblivion: The Mapuche Conflict in Post-Dictatorial Chile,” *Time & Society* 21, no. 1 (2012). p64.

⁵ David Carruthers and Patricia Rodriguez, “Mapuche Protest, Environmental Conflict and Social Movement Linkage in Chile,” *Third World Quarterly* 30, no. 4 (2009). 744.

⁶ Patricia 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. 01 (2010). p61.

⁷ *Ibid.* p62.

⁸ Waldman, “Historical Memory and Present-Day Oblivion: The Mapuche Conflict in Post-Dictatorial Chile.” 58–59.

⁹ Carruthers and Rodriguez, “Mapuche Protest, Environmental Conflict and Social Movement Linkage in Chile.” 745.

reform, constitutional recognition, and an element of control over natural resources were not met. Organised Mapuche political and social protests began in the early 1990s, and have been escalating ever since.¹⁰

Presently, many Mapuche live in abject poverty, and those who continue to campaign for land rights are designated as terrorists by the media, and prosecuted as such under unjust anti-terrorism laws. This violation of the Mapuche's human rights, and other infringements, are outlined in this alternative report.

¹⁰ Waldman, "Historical Memory and Present-Day Oblivion: The Mapuche Conflict in Post-Dictatorial Chile." p61.

III. COMPLIANCE WITH ICCPR

ARTICLE 1: THE RIGHT TO SELF-DETERMINATION

Article 1.1: *All 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: *All 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.*

1.1 As explained in UNPO's Alternative Pre-Sessional Report¹¹, the indigenous peoples of Chile are not recognized by the Constitution^{12 13}, despite the Mapuche's historical claims to land and their history of self-determination. The lack of constitutional recognition of the right to self-determination of the other indigenous peoples in Chile constitutes a violation of international law.¹⁴ This constitutional recognition is essential to the economic, social and cultural development of the indigenous peoples of Chile, and the lack thereof causes the hindrance of the economic, social and cultural development of these peoples.

However, the Republic of Chile's response to the List of Issues (article 9) did state that legislation concerning the constitutional recognition of indigenous people (Bulletin 2360-07) and the creation of a Council of Indigenous People (Bulletin 6743-07) is in the process of being reviewed prior to its presentation to the parliament. Though these efforts are commendable, the manner in which they have taken place can be criticized. Indigenous leaders remain sceptical with regards to the establishment of these laws, since they have not been consulted during the process¹⁵. In doing so, the measures aimed at creating more self-determination for the indigenous peoples of Chile end up retaining the same non-involvement of indigenous peoples that they are supposed to combat.

1.2 Due to the Mapuche's lack of possession over their ancestral lands, they have been deprived of their traditional way of life and means of subsistence. Promising steps have been taken by the Chilean government to rectify this situation. One of these is the foundation of the *Corporacion Nacional de Desarrollo Indigena* (CONADI)¹⁶ which was to stimulate the socio-economic development of indigenous peoples, and several attempts at land restitution (Chile's Reply to the List of Issues, art. 10-14). However, these attempts still lack several elements. First, the assumption that

¹¹ UNPO Alternative Report on the Republic of Chile, 2013

¹² "Decreto 100 - Fija El Texto Refundido, Coordinado y Systematizado De La Constitucion Politica De La Republica De Chile," ed. Congreso Nacional de Chile (2005).

¹³ "Decreto 100 - Fija El Texto Refundido, Coordinado y Systematizado De La Constitucion Politica De La Republica De Chile," ed. Congreso Nacional de Chile (2005).

¹⁴ Instituto Nacional de Derechos Humanos INDH, "Human Rights Situation in Chile: Executive Summary," in *Annual Report* (Instituto Nacional de Derechos Humanos (INDH), 2012). p4

¹⁵ Resource Centre for the Rights of Indigenous Peoples, "Indigenous Peoples View Chilean Government with Deep Distrust" (2013).

¹⁶ National Corporation for Indigenous Development.

the Mapuche's problems originate in their weak socio-economic status is a misconception. Placing the problems of indigenous peoples' into historical context leads to the conclusion that colonization and the loss of land has contributed to their present abject socio-economic situation. Secondly, taking this same history into account leads to the necessity of revising the current land restitution programs. These have taken the territory ascribed to the Mapuche after the *Pacificación* as defining the concept of the 'indigenous lands', though this constituted only 6.4% of original Mapuche territory – thereby depriving them of their livelihood building up to their economic distress today. Hence, a rethinking of 'indigenous territory' is useful and may contribute to limiting violations of Article 1.2.

Recommendations

- *Grant constitutional recognition of the Mapuche and other indigenous peoples.*
- *Consult the Mapuche and other indigenous peoples concerning all measures the process of indigenous council formation*
- *Establish a mechanism by which to enable the restitution of ancestral land to the Mapuche and other indigenous peoples, with appropriate compensation for affected third parties.*
- *Create legislation to safeguard the Mapuche's and other indigenous peoples' right to use ancestral land, even if not exclusively occupied.*
- *Establish legal safeguards of ancestral lands from environmental damage which is detrimental to the traditional Mapuche lifestyle.*

ARTICLE 2: THE RIGHT TO NON-DISCRIMINATION

Article 2.1: *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 2.2: *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

2.1 Discrimination of the Mapuche is common throughout Chilean society and remains present in media and public discourse¹⁷. Public discourse tends to portray the Mapuche as troublemakers and terrorists. This causes a framing of the Mapuche as a group causing problems in society, thereby placing the burden of improvement on the Mapuche and not on the State. The voice of the Mapuche is underrepresented in the media, and reporting on indigenous issues is often thwarted by State intervention.

2.2 The abolition of Supreme Decree 124, which set the framework for any negotiation with indigenous peoples and was heavily criticized for failing to meet several international standards, is a

¹⁷ DoS, "Chile," in *Country Reports on Human Rights Practices* (United States of America Department of State, 2011). p11

fruitful step towards legislative representation of the Covenant's principles as advocated in Article 2.2. The foundation of the National Congress of Indigenous Peoples (Reply to List of Issues, Art. 15) in August, 2013 has the potential to address several issues of discrimination and political participation for indigenous peoples in enforcing the rights of the Covenant. However, how this will play out in practice remains to be seen.

Recommendations:

- *Establish initiatives for the portrayal of indigenous peoples in a positive light.*
- *Implement educational programmes at primary and secondary school levels to teach students about Mapuche history, culture and tradition.*
- *Ensure fair and unbiased media representation of the Mapuche and their land claims.*
- *Promote the development of indigenous media, including by increasing opportunities for indigenous journalists.*

ARTICLE 6: THE RIGHT TO LIFE

Article 6: *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Between 2002 and 2010, at least three Mapuche protestors, all youths, were shot dead by police.¹⁸ Police practices of this nature should be condemned, and mechanisms to safeguard against its recurrence should be implemented and/or strengthened. Human Rights Watch has linked the loss of Mapuche lives with police brutality and 'excessive and unjustified force'.¹⁹ Examples of police brutality against Mapuche citizens are all too common, and are a cause of great concern.

More detail on instances of police brutality used against the Mapuche can be found in the discussion of Article 7.

Chile's response to the List of Issues does not mention the deaths of Mapuche at the hands of police.²⁰

Recommendations:

- *Investigate thoroughly, and take punitive action where appropriate, all reported instances of police brutality, especially where loss of life, or women and children are present.*
- *Encourage fair police practices, especially with regards to justified and proportionate uses of force.*
- *Where police brutality leads to loss of life, provide compensation to the families of the deceased.*

¹⁸ Richards, "Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile." p74

¹⁹ DoS, "Chile." p17.

²⁰ "Examen De Los Informes Presentados Por Los Estados Partes En Virtud Del Artículo 40 Del Pacto: Chile." [31]–[51].

ARTICLE 7: CRUEL, INHUMAN OR DEGRADING TREATMENT

Article 7: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Chile's report to the Committee outlines several praiseworthy initiatives which the government has taken in order to better uphold human rights, however further measures can be taken. While the inclusion of a human rights component in the *Gendamería de Chile* training programme,²¹ the creation of a human rights department within the *Carabineros de Chile*,²² the adoption of a Memorandum of Understanding with the International Committee of the Red Cross,²³ and an enhanced communication mechanism with the INDH²⁴ are all to be applauded, the fact that at least 212 complaints were recorded against the *Gendarmería* for 2010 and 2011 alone highlights the problem that much work remains to be done.²⁵

With regards to the indigenous peoples, a wide range of sources have reported raids on Mapuche communities with accompanying police brutality and human rights abuses.²⁶ The incident of 23 July 2012 is indicative of the situation. At a forced eviction of a group of Mapuche occupying a plot of agricultural land, *carabineros* fired buckshot rounds and tear gas, injuring protestors which included women and children.²⁷ When a group of demonstrators gathered outside the hospital to which the injured had been taken, police again fired buckshot rounds and rubber bullets, without provocation or warning, at close range, into youths.²⁸

Also, on May 22 the military police raided a school in Temucucui, using tear gas and firing bullets over the heads of Mapuche children and parents, mostly mothers. The parents were gathered at the school for a meeting with the municipality to discuss options for a new school.²⁹

In addition to the misuse of less-than-lethal riot-suppression equipment, other sources report further instances of cruel, inhuman degrading treatment. For example, Amnesty International reports beatings and threats of sexual violence,³⁰ and *El Observatorio Ciudadano* (OC) has received reports of 'firing rubber bullets, tear gas, beatings, [and an] abduction by a helicopter'³¹ being attributed to the

²¹ Ibid. [63].

²² Ibid. [65].

²³ Ibid. [66].

²⁴ Ibid. [67].

²⁵ Ibid. [62].

²⁶ Richards, "Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile." p74.

²⁷ AI, "Amnesty International Report 2012: The State of the World's Human Rights."

²⁸ HRW, "Chile," in *Country Summary* (New York: Human Rights Watch, 2013). p2.

²⁹ "Urgente: Allanamiento policial en escuela Temucucui, niños bajo gases tóxicos y estruendos de disparos", May 23, 2014.

³⁰ AI, "Amnesty International Report 2012: The State of the World's Human Rights." p107.

³¹ CONAPACH, "Informe Alternativo 2010 Respecto Del Cumplimiento Del Convenio 169 Sobre Pueblos Indígenas Y Tribales De La Oit, Al Cumplirse Un Año De Su Entrada En Vigencia En Chile " (Confederación Nacional de Pescadores Artesanales de Chile, 2010). p36 '*el disparo de balines, gases lacrimógenos, golpizas, secuestro en un helicóptero, imputables a efectivos policiales del Estado*'.

State police and directed against Mapuche civilians in Araucanía. Indeed, so serious were these incidents that UNICEF sought an injunction from the Inter-American Commission on Human Rights.³²

The report produced by Chile mentions *Ley 20.477* and the reform of military tribunals.³³ For more information on this topic please see the discussion of Article 14.

Recommendations:

- *Investigate thoroughly, and take punitive action where appropriate, all reported instances of police brutality, especially where loss of life, or women and children, are present.*
- *Encourage fair police practices, especially with regards to justified and proportionate uses of force.*

ARTICLE 9: THE RIGHT TO LIBERTY AND SECURITY

Article 9.1: *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived on his liberty except of such grounds and in accordance with such procedures as are established by law.*

Article 9.2: *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

Article 9.3: *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

9.1 *El Observatorio Ciudadano* has reported several instances of warrantless police searches of Mapuche homes and the ‘arrest and release of Mapuche individuals without a detention control hearing’.³⁴ This behaviour is a clear contradiction to the rights enshrined in Article 9.1 of the Covenant. Furthermore, when compiling information for a 2009 report on the situation of human rights in Chile, warrantless raids and associated house destruction and animal and property confiscation were reported as common practices.³⁵

9.2 The selective application of *Ley 18.314* (also referred to as “the anti-terrorism law”)³⁶ on Mapuche citizens has repercussions with regards to Article 9 of the Covenant. This law allows the

³² Ibid.

³³ "Examen De Los Informes Presentados Por Los Estados Partes En Virtud Del Artículo 40 Del Pacto: Chile." [72].

³⁴ DoS, "Chile." p17.

³⁵ CONAPACH, "Informe Alternativo 2010 Respecto Del Cumplimiento Del Convenio 169 Sobre Pueblos Indígenas Y Tribales De La Oit, Al Cumplirse Un Año De Su Entrada En Vigencia En Chile ". p46.

³⁶ "Ley 18.314 - Determina Conductas Terroristas Y Fija Su Penalidad," ed. Congreso Nacional de Chile (1984).

State to keep the investigation a secret for up to six months, denying the defendant knowledge of the allegations against which he must defend.³⁷

9.3 The anti-terrorism law authorises detention for up to 10 days, circumventing Article 9.3 and proper judicial oversight.³⁸

The points of clarification requested by the List of Issues concerning the injury of minors in police raids have not been granted attention in the Chilean response to the List of Issues.

Recommendations:

- *Abandon the practice of warrantless raids.*
- *Condemn and punish the practice of house destruction and property confiscation during raids.*
- *Abolish the practice of Mapuche arrest and release without a detention control hearing.*
- *Stop the discriminatory prosecution of the Mapuche people under Ley 18.314.*
- *Where police brutality leads to loss of life, provide compensation to the families of the deceased.*

ARTICLE 14: EQUALITY BEFORE THE COURTS

Article 14.1: *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

In the past, antiterrorism laws have been used to discriminate the Mapuche in ways breaching both national and international law³⁹. However, after the last hunger strike (April 7 – May 15, 2014) of Mapuche prisoners, the Chilean government promised to review the antiterrorism laws in an attempt to comply with international legal standards⁴⁰. It is strongly advised that they take into account the recommendations of this report during the revision process.

National law (e.g. Ley 20.159): Chilean national law states that minors cannot be tried before a military tribunal. In military tribunals there may be secret inquisitorial aspects, the criminal

³⁷ Gonzalo Berríos Díaz, "Los Adolescentes Mapuche Y Las Reformas a La Ley No. 18.314 Sobre Conductas Terroristas," in *Anuario De Derechos Humanos* (Santiago: Universidad de Chile, 2012). p148.

³⁸ *Ibid.* p148.

³⁹ UNPO Alternative Report on the Republic of Chile, 2013

⁴⁰ *The Santiago Times*, "Chile to review anti-terrorism laws after marathon hunger strike", May 16, 2014.

proceedings are largely conducted in writing rather than in person, the use of wire-tapping is permitted, and due to the testimony of “faceless witnesses”, opportunities for cross-examination are scarce.⁴¹ Yet Amnesty International reports that at the end of 2012—one year after the adoption of *Ley 20.519*—five Mapuche minors were still being prosecuted under the anti-terrorism laws.⁴²

Also, the anti-terrorism laws mandate the handing down of aggravated sentences to the convicted. The punishment handed down under the anti-terrorism act may be up to three grades higher than under the standard criminal code.⁴³ Moreover, a threat to commit a crime governed by the anti-terrorism act can be prosecuted as an attempt to commit the crime (which often carries the same sentence as a completed crime)—an erroneous and farcical stretch of criminal law.

Art. 14.2 Prosecution under the anti-terrorism laws operates from a presumption of guilt, rather than a presumption of innocence. This enhances the onus of the defendant, by altering the burden of proof in relation to criminal intent, and violates Article 14.2 of the Covenant.⁴⁴

Art. 14.3 The use of “faceless witnesses” violates the accused’ right to have the witnesses questioned in the same manner as the accused. The untrustworthiness of this approach is exemplified by a case where a witness was later discovered to be an undercover agent attempting to infiltrate Mapuche groups.⁴⁵

Recommendations:

- *Stop the discriminatory prosecution of the Mapuche people under Ley 18.314.*
- *Prosecute all cases involving civilians in the civilian justice system.*
- *Drop the charges being prosecuted under the anti-terrorism law that are levied against minors.*
- *Revise the anti-terrorist laws addressing the issues of the use of faceless witnesses, the disproportionality of sentences, and shifting the burden of guilt.*
- *Develop proper mechanisms to punish misuse of this law*

⁴¹ Ibid. 3.

⁴² AI, “Amnesty International Report 2012: The State of the World’s Human Rights.” 106.

⁴³ CONAPACH, “Informe Alternativo 2010 Respecto Del Cumplimiento Del Convenio 169 Sobre Pueblos Indígenas Y Tribales De La Oit, Al Cumplirse Un Año De Su Entrada En Vigencia En Chile ”. 38.

⁴⁴ CONAPACH, “Informe Alternativo 2010 Respecto Del Cumplimiento Del Convenio 169 Sobre Pueblos Indígenas Y Tribales De La Oit, Al Cumplirse Un Año De Su Entrada En Vigencia En Chile ”. 37–38.

⁴⁵ *The Santiago Times*, “‘Terror’ case collapses as witness admits to being an informant’, February 17, 2014.

ARTICLE 21: THE RIGHT OF PEACEFUL ASSEMBLY

Article 21: *The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Several human rights agencies have published reports of large demonstrations ending in confrontations with police.⁴⁶ The OC summarises the situation succinctly:

The authorities have limited this right [of peaceful assembly] pursuant to the Executive Decree 1086 of 1983, an infra-legal standard that infringes the right to assemble without permission and without bearing arms recognized in article 19 N° 13 of the Political Constitution of 1980 (CP 1980). In addition there has been a heavy police crackdown against demonstrations which has been denounced not only by civil society organizations but also by the Human Rights National Institute [sic] itself [INDH], which concludes, in a report on police action during demonstrations between March and August 2011, that: *the police do not distinguish between people who pacifically exercise their right to assemble and express their opinion, from those who use violent acts in the same demonstrations; that in police procedures in manifestations, the police do not apply criteria of proportionality in the use of deterrent methods; that, in the police buses and vehicles, the detained were subjected to abuse and aggression which are not subject to control or supervision; that in police stations the procedures are slow, ineffective, and contrary to the current regulations; and that the treatment given to minors under 18 and over 14 years of age are contrary to current regulations.*⁴⁷

The aforementioned use of buck shot, rubber bullets and tear gas against demonstrations further illustrates the situation. Moreover, reports of water cannon use against students and forcible detention provide further evidence for human rights violations.⁴⁸ As a result of the jurisdiction of military tribunals where cases of police brutality are involved, disciplinary procedures are often less severe than if the proceedings would be undertaken by an independent body.⁴⁹

UNPO supports the further monitoring of *Carabinero* practices and, where applicable, denouncement of poor behaviours, as mentioned in the report submitted by the Republic of Chile.⁵⁰

ARTICLE 25: THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

Article 25: *Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

(a) *To take part in the conduct of public affairs, directly or through freely chosen representatives;*

⁴⁶ AI, "Amnesty International Report 2012: The State of the World's Human Rights." 106.

⁴⁷ Ciudadano, "Human Rights Situation in Chile 2011." (emphasis added). [10]

⁴⁸ DoS, "Chile." pp7–8

⁴⁹ Ciudadano, "Human Rights Situation in Chile 2011." pp5–6 (emphasis added).

⁵⁰ "Examen De Los Informes Presentados Por Los Estados Partes En Virtud Del Artículo 40 Del Pacto: Chile." [112].

- (b) *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) *To have access, on general terms of equality, to public service in his country.*

Notwithstanding the wide representation mentioned in the report submitted by the Republic of Chile,⁵¹ there is a noticeable and significant absence of Mapuche at all levels of political representation. While indigenous people have the legal right to participate in the political process, the systemic and institutional framework inhibits their active participation at any level other than the municipal level.⁵² For example, in the region of la Araucanía—the region in Chile with the greatest percentage population of Mapuche—there is a telling underrepresentation in parliament. In 2005, out of a total of 35 candidates for parliament, only two were Mapuche. In 2009, the number of Mapuche candidates increased to seven (with the total number of candidates remaining at 35).⁵³ Nevertheless, 31.3% of the population in la Araucanía is Mapuche,⁵⁴ and the proportion of Mapuche candidates were 6% and 20% respectively—far short of equal representation. Furthermore, the numbers above only refer to the candidates, not the actual parliamentarians. The Mapuche are represented by one regional councillor, two mayors (out of 32 municipalities), and one tenth of the municipal councillors, all of whom are in the region of la Araucanía.⁵⁵ The Mapuche are not represented in either of the two houses of Congress. These statistics clearly show the absence of equal representation, and the need for redress. Finally, even though the ILO Convention No. 169 was adopted, few reforms were affected, thus prolonging the difficulties indigenous communities faced when attempting to participate in the political arena.⁵⁶

Recommendations:

- *Implement all reforms necessary in order to give effect to the ILO Convention No 169.*
- *Reform the system of political representation so as to give a voice to indigenous communities.*

ARTICLE 26: EQUALITY BEFORE THE LAW

Article 26: *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effect protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statuses.*

For more information on the anti-terrorism laws, see the discussions of Articles 9 and 14.

⁵¹ Ibid. [126].

⁵² DoS, "Chile." p9

⁵³ Andrés Jouannet Valderrama, "Participación Política Indígena En Chile: El Caso Mapuche," (Bolivia: Fundación Konrad Adenauer, 2011). p126.

⁵⁴ "Resultados Censo 2012." p192.

⁵⁵ Peter Marimán, "La Exclusión Política De Los Mapuche," [elciudadano.cl](http://www.elciudadano.cl/2011/12/11/45310/la-exclusion-politica-de-los-mapuche/), <http://www.elciudadano.cl/2011/12/11/45310/la-exclusion-politica-de-los-mapuche/>.

⁵⁶ CONAPACH, "Informe Alternativo 2010 Respecto Del Cumplimiento Del Convenio 169 Sobre Pueblos Indígenas Y Tribales De La Oit, Al Cumplirse Un Año De Su Entrada En Vigencia En Chile ". 47.

As mentioned elsewhere in this alternative report, a cause of great concern is the selective prosecution of Mapuche citizens under the anti-terrorism laws. These legal relics of Chile's military government enable the handing down of more severe sentences than the standard criminal code by the mere imputation of a terrorist intent.⁵⁷ Several hundred Mapuche have been arrested under the pretence of these laws.⁵⁸

Moreover, the anti-terrorism legislation has been used in cases to prosecute minors. UNPO applauds the passing of *Ley 20.519* which amends the anti-terrorism legislation so as to make it inapplicable to minors;⁵⁹ however reports of adolescents awaiting trial under this legislation as of the end of 2012 are a cause for concern.⁶⁰ The Inter-American Commission on Human Rights has petitioned the Inter-American Court of Human Rights to condemn the unjustified and discriminatory application of the anti-terrorism laws against the Mapuche.⁶¹ Exacerbating the injustice with which these laws are applied is the nature of the crimes for which they are invoked. The severity of crimes range from land trespass through to arson—neither of these nor anything in-between qualifies as terrorism by any international standard.⁶²

Further causes for concern are the sentences handed down on police convicted for committing crimes against Mapuche. This issue is linked with the jurisdiction of military tribunals in situations where crimes are committed by members of State police. In April 2011 a report was undertaken by the Equitas Foundation's Barometer of Politics and Equality which determined that the sentences handed down on police who had committed crimes against Mapuche were much more lenient than those handed down on Mapuche.⁶³ This is a grievous injustice which flies in the face of the right of equality before the law.

Recommendations:

- *Stop the discriminatory prosecution of the Mapuche people under Ley 18.314.*
- *Prosecute all cases involving civilians in the civilian justice system.*
- *Drop the charges being prosecuted under the anti-terrorism law that are levied against minors.*

⁵⁷ Berríos Díaz, "Los Adolescentes Mapuche Y Las Reformas a La Ley No. 18.314 Sobre Conductas Terroristas." p148.

⁵⁸ Richards, "Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile." P73

⁵⁹ "Ley 20.519 - Modifica Disposiciones De La Ley No 18.314 Y Otro Cuerpo Legal, Excluyendo De Su Aplicación a Conductas Ejecutadas Por Menores De Edad." Artículo 1.

⁶⁰ AI, "Amnesty International Report 2012: The State of the World's Human Rights." 106.

⁶¹ Ibid. 106.

⁶² HRW, "Chile." 3.

⁶³ Domingo Namuncura, "Condensas a Mapuche. El Inicio De Una Nueva Etapa De Resquemores," in *El Primer Año. Modelo Para Armar, Barómetro De Política Y Equidad* (Santiago, Chile: Fundación Equitas, 2011). 160.

ARTICLE 27: MINORITY RIGHTS

Article 27: *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

While the mechanisms mentioned in Chile's report to the Committee are to be commended, there are issues of contention concerning the protection of indigenous culture.⁶⁴ Firstly, as mentioned elsewhere in this alternative report, there is no constitutional recognition of the Mapuche or other indigenous peoples of Chile. Constitutional recognition and Aboriginal title land rights are two steps which would help ensure the right of minorities to enjoy their own culture. Furthermore, the prioritisation of neoliberal development above indigenous rights must be examined. The fact that the construction of hydroelectric dams, airports, highways, agricultural and aquacultural industries, and refuse facilities are given priority over Aboriginal title, and that logging companies own more than three times as much land as the Mapuche, exemplify the issue.⁶⁵ The introduction of foreign flora (specifically pine and eucalyptus plantations) causes severe environmental damage which hinders the ability of the Mapuche to enjoy their culture.

In addition to this, there are various State initiatives (operated through municipalities and CONADI) which seek to commercialise Mapuche culture.⁶⁶ The concept of "ethno-tourism" and the marketing of indigenous textiles are nothing more than the exploitation of indigenous culture. These practices act as a disincentive and possess the potential for ridicule, thereby infringing the right for minorities to enjoy their own culture. Moreover, this feeds into conceptions held by local elites that Mapuche are "inventing" culture—such as inventing words and creating new ceremonies—in order to claim land.⁶⁷ This causes a further basis for discrimination and inflames tensions between the Mapuche and the *latifundistas*.

The disappearance of the Mapuche's language (*Mapudungun*) and indigenous knowledge is also of great concern. A study completed by UNICEF and the *Ministerio de Desarrollo Social* revealed that approximately 89% of the indigenous children in Chile cannot speak or understand their native tongue.⁶⁸ Several factors act as force multipliers, accelerating the loss of Mapudungun: there are a very limited number of scholars working on its preservation; there is controversy as to the alphabet used for its romanisation; and there are at least seven different dialects.⁶⁹ The disappearance of

⁶⁴ "Examen De Los Informes Presentados Por Los Estados Partes En Virtud Del Artículo 40 Del Pacto: Chile." [140]

⁶⁵ Richards, "Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile." p68.

⁶⁶ Ibid. p69.

⁶⁷ Ibid. p84.

⁶⁸ EFE, "El 89 % De Los Menores Indígenas De Chile No Habla Ni Entiende Su Lengua Originaria," *elmostrador.pais*, <http://www.elmostrador.cl/noticias/pais/2012/01/23/el-89-de-los-menores-indigenas-de-chile-no-habla-ni-entiende-su-lengua-originaria/>.

⁶⁹ Patricio R. Ortiz, "Indigenous Knowledge and Language: Decolonizing Culturally Relevant Pedagogy in a Mapuche Intercultural Bilingual Education Program in Chile " *Canadian Journal of Native Education* 32, no. 1 (2009). pp 94, 97.

Mapudungun in itself is a tragic loss of culture, let alone a failure to ensure the Mapuche's ability to practise their right to language.

In April 2013 CONADI announced that it would provide funds for a number of communities in la Araucanía for the purposes of teaching indigenous language and knowledge.⁷⁰ This is a commendable action, however, the fact that only communities in la Araucanía benefit means that the Mapuche in other regions of the country miss out on these opportunities. Due to urban migration, almost 80% of the total Mapuche population now lives in proximity to five urban centres,⁷¹ with over 37% of all Mapuche live in the Santiago metropolis alone.⁷² In addition to forgoing the benefit of the CONADI funds, this urban migration has a further impact on the loss of Mapudungun. As of 2013, schools where at least 20% of the enrolment is indigenous are required to teach indigenous languages.⁷³ While this is an improvement on the previous threshold of 50%, 20% is not representative of the indigenous population.⁷⁴ As the Mapuche comprise approximately 8.7% of the Chilean population, a threshold of 20% effectively limits the teaching of indigenous languages to areas that are already disproportionately-highly inhabited by Mapuche. For the 80% of the Mapuche population living in urban centres, it is unlikely that the indigenous enrolment at the local schools would be greater than 20% of the total. These demographics, combined with the pressures of assimilation that urban Mapuche youth face, combine to severely impede upon the freedom of the Mapuche to learn, use and enjoy their own language.⁷⁵

Recommendations:

- *Grant constitutional recognition of the Mapuche and other indigenous people.*
- *Establish a mechanism by which to enable the restitution of ancestral land to the Mapuche and other indigenous peoples, with appropriate compensation for affected third parties.*
- *Create legislation to safeguard the Mapuche's and other indigenous people's right to use ancestral land, even if not exclusively occupied.*
- *Consult with Mapuche communities regarding the commercialisation of their culture, in order to come to a mutually satisfactory arrangement.*
- *Encourage the use, study and learning of indigenous languages, including Mapudungun.*

⁷⁰ CONADI, "Conadi Lanzó Programa Para Que 120 Comunidades Mapuches De La Araucanía Aprendan Su Lengua Originaria," CONADI, <http://www.conadi.gob.cl/index.php/2-noticias/972-conadi-lanzo-programa-para-que-120-comunidades-mapuches-de-la-araucania-aprendan-su-lengua-originaria/>.

⁷¹ Ortiz, "Indigenous Knowledge and Language: Decolonizing Culturally Relevant Pedagogy in a Mapuche Intercultural Bilingual Education Program in Chile ". p97.

⁷² "Resultados Censo 2012." p185.

⁷³ "Educación Para Preservar Nuestra Diversidad Cultural: Desafíos De Implementación Del Sector De Lengua Indígena En Chile ", (Santiago: Ministerio de Educación, 2012).

⁷⁴ EFE, "El 89 % De Los Menores Indígenas De Chile No Habla Ni Entiende Su Lengua Originaria."

⁷⁵ Ortiz, "Indigenous Knowledge and Language: Decolonizing Culturally Relevant Pedagogy in a Mapuche Intercultural Bilingual Education Program in Chile ". p101.

IV. RECOMMENDATIONS

1. *Grant constitutional recognition of indigenous peoples.*
2. *Ensure the consultation of indigenous peoples in all decisions of relevance*
3. *Grant self-determination through the foundation of an Indigenous Peoples' Council*
4. *Condemn and punish all cases of misconduct by the police – be it warrantless raids, destruction of property, property confiscation, or otherwise.*
5. *Where police brutality leads to loss of life, provide compensation to the families of the deceased.*
6. *Revise the Anti-Terrorism Act, addressing the following issues:*
 - *The use of 'faceless witnesses'*
 - *Arrest and release without a detention control hearing*
 - *The aspect of proportionality of crime and sentence*
 - *Drop charges against minors being prosecuted under this law*
 - *Prosecute all cases involving civilians in the civilian justice system.*
7. *Create legislation to safeguard the Mapuche's and other indigenous people's right to use ancestral land, even if not exclusively occupied.*
8. *Establish a mechanism by which to enable the restitution of ancestral land to the Mapuche and other indigenous peoples, with appropriate compensation for affected third parties.*
9. *Consult with Mapuche communities regarding the commercialisation of their culture, in order to come to a mutually satisfactory arrangement.*
10. *Encourage the use, study and learning of indigenous languages, including Mapudungun.*
11. *Ensure fair and unbiased media representation of the Mapuche and their land claims.*
12. *Establish approaches designed to portray indigenous people in a positive light.*
13. *Implement educational programmes at primary and secondary school levels to teach students about Mapuche history, culture and tradition.*
14. *Promote the development of indigenous media, including by increasing opportunities for indigenous journalists.*
15. *Implement all reforms necessary in order to give effect to the ILO Convention No 169.*
16. *Reform the system of political representation so as to give a voice to indigenous communities.*
17. *Legal safeguarding of ancestral lands from environmental damage which is detrimental to the traditional Mapuche lifestyle.*