

Observations on the State of Indigenous Human Rights in Chile

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Summary

Chile has failed to adequately align its national legislation with international standards of Free, Prior, Informed Consent. This lack of consultation with Indigenous Peoples on mining, dams, and agribusiness has led to deep conflict. In turn, Mapuche efforts to protect their land, culture and people along with their rights to self-determination, autonomy, and freedom are discredited by the State's ongoing discriminatory application of the anti-terrorism laws criminalizing peaceful protest and is indicative of deep-rooted discrimination against Indigenous groups in Chile, and is reflected in mainstream media.

II. Background Information

Chile is the only South American country that does not recognize Indigenous Peoples in its constitution. According to Chile's 2017 census, 13% of Chileans identify as Indigenous. 79.8% identify as Mapuche, the largest Indigenous group in the country.ⁱ The Aymara, Quechua, Atacameño, Kolla, Diaguita, Yaghan, Rapa Nui, and Kawaskhar are recognized by Chilean law as Indigenous. Over the past ten years, the number of people who identify as Indigenous has increased by 50%. According to the Ministry of Social Development, 30.8% of the Indigenous population live in poverty, in comparison to 19.9% of the non-Indigenous population.ⁱⁱ

Despite the creation of the Special Commission of Indigenous People (1993), the National Corporation for Indigenous Development (1993), the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 and ILO Convention 169 in 2008, Chile's Indigenous Peoples are the poorest sector in society. Indigenous Peoples in Chile continue to face oppression and marginalization as their rights are threatened by anti-terrorism legislation, land rights abuses, and conservation issues.

III. Previous UPR Recommendations

Chile has not implemented several recommendations made in the 1st and 2nd cycle, including; minimizing the environmental impact of economic activities affecting Indigenous Peoples; ensuring justice and reparation for victims of the effects of environmental degradation; conducting investigations related to crimes and violence by the police and the Carabineros against communities of Indigenous Peoples; refraining from applying anti-terrorist legislation against Mapuche people; deepening respect for Indigenous Peoples, strengthening measures to combat prejudices and negative stereotypes affecting Indigenous Peoples.

III. Ongoing Violations

a. Criminalization of Protest, Unequal Access to Justice

The labelling of Mapuche protesters as “terrorists” continues to be a major problem, leading to raids on communities, the disruption of everyday lives and the illegal detention of Mapuche leaders. The 1984 Anti-Terrorist Law enacted by Pinochet was intended to crush political dissent and has now allowed for the detention of Indigenous human rights defenders without due process. The UN Special Rapporteur on Counter-Terrorism and Human Rights, in 2013, reported that “Mapuche protests account for the vast majority of prosecutions under the anti-terrorism legislation.”ⁱⁱⁱ In 2014, the IACHR condemned the Chilean State for issuing sentences to a Mapuche woman based on anti-terrorism legislation, finding that sentences were “based on stereotypes and prejudices, in violation of the principles of equality and non-discrimination.”^{iv} In October 2017, a group of human rights experts from the Special Procedures of the Human Rights Council urged the Chilean government not to try Mapuche protesters under the Anti-Terrorist Law, arguing it did not guarantee a fair trial and risked the stigmatization of Indigenous communities while undermining the presumption of innocence until proven guilty.^v Despite all of these and UPR recommendations, in March 2018, President Piñera doubled-down by amending the Anti-Terrorism Law, allowing the government to use drones, undercover agents, GPS tracking, and phone tapping against those it suspects of terrorism,^{vi} the hardening penalties for terrorism, and for “apology of terrorism,” which could conceivably be used against solidarity activists or journalists. The law also categorizes “acts that destabilize the democratic institutional order” as terrorist crimes.^{vii}

Within the last four years, Mapuche activists have continued to be charged with terrorism, and these cases have been plagued by human rights violations, including the falsification of evidence by police forces in order to incriminate the Mapuche. On September 23, 2017, eight prominent Mapuche leaders were detained by the Chilean National Intelligence Agency (ANI) and the Chilean national police force, the *Carabineros*. They were accused of “illicit terrorist association” without any formal detention order other than a “verbal detention warrant.”^{viii} Later it was revealed that Carabineros had planted and fabricated evidence against the Mapuche leaders. This took place in addition to the illegal monitoring of telephone communications of individuals with ties to Mapuche communities. Three days before their arrest, a report entitled *Informe 130* completed by the Special Operations Intelligence Unit (UIOE) of the Carabineros was presented to Temuco District Attorney Luis Arroyo citing incriminating evidence against the eight Mapuche leaders for planning to commit arson, referencing intel gathered from the surveillance of their cell phone conversations. The report resulted in the immediate arrest of the eight Mapuche leaders for illicit terrorist activities.^{ix} While they were in custody, Captain Leonardo Osses of the UIOE collaborated with civil servants to plant photos and text messages on their phones. The eight individuals remained in custody for close to a month before being released after it was discovered by an investigative entity outside of the UIOE that the compromising evidence found on the confiscated cell phones was planted. The

investigation into the Mapuche leaders ended on January 25, 2018. The planting and fabrication of evidence resulted in the resignation of Carabineros General Director Bruno Villalobos and Director of Intelligence Gonzalo Blu. Additionally, Gonzalo Blu, Leonardo Osses, and ten others will appear in court on July 9, 2018 for illicit association, falsification by a public employee, and obstruction of an ongoing investigation.^{x,xi} Despite the attentive response by the Chilean judicial system to the violations committed, the operation itself, known as ‘Operación Huracán’ encapsulates a broader theme of the state’s violations of the right to due process, equal representation under the law, and the right to privacy of correspondence. This abuse against Indigenous Peoples was orchestrated by multiple high level state actors with complicity of staff, indicative of a climate of systemic racism.

On May 8, 2018, Indigenous leaders and human rights defenders José Peralino, José Tralcal, and Luis Tralcal, were convicted under charges of terrorism, however the rights of the defendants were argued to have been violated through the use of torture to acquire a confession and the falsification of evidence by police. Seven others charged in the case were found innocent.^{xii,xiii} In 2014, several cases were overturned after an anonymous witness was discredited and claimed to have been a police informant.^{xiv}

Tensions between the Mapuche and security forces has also led to increases in police brutality, for example, in June 2017, police used tear gas in close proximity to a school in the Temucuiqui Mapuche community where children were attending class. Violence is often inflicted against Indigenous People during police raids into communities as part of criminal investigations; police abuse and harassment also occur during protests and demonstrations. Because these violations are tried in military courts, the rate of investigations opened is low. In the Santiago Second Military Court, only 0.3% of reported cases of abuses against demonstrators (14 out of 4,551) were investigated in 2005, 2008, 2011, and 2014. Even when police are convicted of criminal wrongdoing, sentences are often reduced through appeals. In June 2016, Mapuche leader Víctor Queipul Hueiquil was abducted, blindfolded, tied up and beaten. He was demanded to stop his work fighting for the rights of Indigenous Peoples in Chile. By May 2017, the investigation was closed after authorities gave up on finding those responsible for his abduction. The closure of this case sets a dangerous precedent of impunity that could open the door to more incidents of violent silencing of Indigenous human rights defenders.

b. Land Rights and FPIC

Extractive industry, hydroelectric, and agribusiness contracts issued on Mapuche land without their free, prior, informed consent has led to environmental degradation, economic disenfranchisement, cultural loss, and conflict.

Consultation mechanisms have been established through Supreme Decrees that regulate Law N° 19.300, however these mechanisms do not meet the standard of Free, Prior and Informed

Consent and were established without the participation of Indigenous Peoples. Fundamental problems with the process include not making explicit to which government institutions it applies. Indigenous consultation is built into a system of Environmental Impact Assessments, however investment projects are exempt from its scope of consideration and Indigenous communities are involved only after the Environmental Impact Evaluation is completed. This excludes Indigenous communities from the planning and designing of the project; the consultation is not sufficiently prior, as it does not allow for Indigenous Peoples' input at the initial stages of the project.^{xv} Consultation processes that do take place are not culturally appropriate, as mandated by the Inter-American Court in the case of the *Saramaka People v. Suriname*. Rather, the Chilean law requires that each stage of the project must be completed within twenty working days, neglecting to respect Indigenous time frames for decision making.^{xvi}

The National Geology and Mining Service of Chile (Sernageomin) stated that in 2016, 15.4 million hectares of land were used for mining about 41% of the country. Dictatorship-era mining laws favor mining companies over Indigenous communities. The Chilean mining industry, protected under the 1980 Constitution and the 1983 Mining Code and Law 18.248, has been allowed to use land without government interference, in disregard of Indigenous land claims; concessions can be renewed indefinitely with an annual payment.^{xvii} Indigenous communities that oppose mining projects are subject to bribery and coercion, interfering with their right to make informed decisions. A Chilean anthropologist stated, "Mining [companies] and the government manipulate Indigenous communities, sometimes taking advantage of their poor education to make them believe nonsense. This is how mining companies continue to take land and water from the community... The companies give money to win over the communities and to quiet the leaders, money that in the end does not actually support the goal of the community." Karen Luza, president of the fourth irrigation group (Sequitor-Coyo) of the Indigenous Association of Irrigators and Farmers of the San Pedro de Atacama River, commented on the effects of the mining industry on traditional territories: "Right now we are dealing with the nightmare that is lithium extractive companies that are extracting from one of the most important salt flats in South America, our dear Salar de Atacama, a place until very recently used for pasturing."

On January 17, 2018 the state-owned company Corfo and the mining company Soquimich (SQM) signed an agreement to extending SQM's mining access to the Salar de Atacama until 2030.^{xviii} Although the executive vice president of Corfo stated that the contract was signed after consulting with some of the closest communities to the affected area, the turnout of Indigenous protesters and statements from Indigenous leaders condemning the contract point to the contrary. Indigenous leader Luza called the contract "insufficient" leaving Indigenous Peoples "unprotected [attempting to] gain respect for ancestral water and land." Lithium mining in the Salar de Atacama has resulted in the contamination of Indigenous

community water sources and the decreased presence of plants and wildlife, threatening the livelihoods and cultural practices of Indigenous Peoples.

The widespread construction of hydroelectric dams also presents a threat to Indigenous economies through biodiversity loss and displacement due to flooding and the disruption of natural flows of water.^{xix} The construction of massive dams is facilitated by the Pinochet-era 1981 Water Code, which grants concession of water rights without payment, prioritizing private ownership of water, allows for the owner(s) to use or change the water as desired, and separates water rights from land ownership.^{xx} It has allowed for the monopolization of water sources by private companies and threatens Indigenous Peoples rights to Free, Prior, and Informed Consent regarding ancestral lands. It also is in direct contrast to Indigenous beliefs by separating water and land; stated Luza, “[the two] are impossible to separate according to our beliefs and culture.” Increased impact from hydroelectric projects has forced Indigenous people to migrate to other parts of the country in search of economic opportunity.

Government subsidies for the forestry sector, a cornerstones of the Chilean economy, have permitted large forest plantations to expand onto Indigenous lands. Private as well as State-owned logging industries have appropriated millions of acres without the Free, Prior, and Informed Consent of the Mapuche, threatening Mapuche culture and livelihoods, hunting and gathering practices, spiritual life and the social fabric of communities. Mass cultivation of non-native, invasive monocrops (especially pine and eucalyptus) that alter the soil chemistry make it difficult to grow other plants in that area, and pesticides and herbicide runoff has degraded the local environment and led to health impacts for surrounding communities. Two of the largest forestry corporations, CMPC and Bosques Arauco, own over two million hectares while the Mapuche Nation owns less than 500,000 hectares.^{xxi} The Wallmapu, ancestral land of the Mapuche, has become increasingly militarized as forestry plantation projects increase. The Chilean national police force set up heavily armed checkpoints and uses military tanks in areas surrounding plantations. The ceremonial sites of Indigenous Peoples have also been threatened. On February 28, 2016 unidentified individuals set fire to a *Guillatuwe* (ceremonial site) of the Ranquilco community. On December 31, 2015 unidentified individuals destroyed a *Rewe* (a sacred altar) located in the Entuco and Curiqueo Queupumil communities and on October 13, 2015 the *Rewe* of the Wentelolen community was reported to have been destroyed by the Police Special Operations Group.^{xxii}

In state protected areas that overlap with Indigenous land, Indigenous communities are often excluded from decisions concerning land management and development. The Marine and Coastal Areas for Indigenous People law, passed in 2008 with law 20.249, aims to protect Indigenous Peoples’ right to customary uses of the area and its resources. However, in the past ten years, only 5 of 79 requests by Indigenous Peoples for protected status have been fully approved, due in part to systemic inequalities in which Indigenous Peoples lack sufficient

financial, geographic, and technological resources to develop requests. Corporations, in contrast, have extensive resources to interact with government institutions, shown in the 1,350 licenses approved for salmon aquaculture just in the Patagonia region.^{xxiii}

c. Freedom of expression

Mainstream media in Chile often perpetuates racist discourse and terrorist language to discredit the Mapuche's struggle for political and land rights, making the need of Indigenous community media all the more necessary. According to the International Freedom of Expression Exchange (IFEX), Article 36B of the General Telecommunications Law severely limits community media and thus Indigenous media by criminalizing the operation of unlicensed broadcasting. Broadcasting without a legal frequency is punished with fines and even imprisonment. The law has led to the arrest and harassment of community media operators many of whom are Indigenous. Community radio stations in southern Chile, predominantly inhabited by the Mapuche people, are "singled out due to their role in protests against commercial forestry and hydroelectric projects in the region" [IFEX]^{xxiv}. A 2015 raid was conducted on Indigenous community radio stations by state forces on the pretext that they were broadcasting illegally.

Located in a remote part of Mapuche territory, Kimche Mapu was run by the Indigenous Association Kimche Mapu, an organization formalized under the Indigenous Peoples Law. The station was denied the ability to formally legalize its broadcasting and was shut down. In 2013, Mireya Manquepillán Huanquil, a representative of Kimche Mapu submitted a report, "Situation of Indigenous Community Radio Broadcasting in Chile: the case of the Kimche Mapu del Valle de Puquiñe radio station" to UN CERD Committee noting the experience of Kimche Mapu community media violates international standards on broadcasting and it demonstrates the lack of free expression of Indigenous Peoples in Chile.

The Telecommunications Law makes it difficult for community media to legalize their operations. Costs are high, signals are weak in remote areas, and services are often interrupted. It is particularly hard for Indigenous radio stations to meet the demands under the law.

VI. Recommendations

1. Comply with recommendations from various UN bodies to terminate the use of the Anti-Terrorist Law used to persecute Mapuche leaders and protesters fighting for political and land rights.
2. Ensure that Free, Prior and Informed Consent of Indigenous communities is obtained before any development projects take place on their land.

3. Conduct human rights and Indigenous Peoples rights trainings with police forces; hold police accountable for excessive use of force committed against Indigenous communities during protests, raids and interrogations. Ensure that the victims of these crimes are given full access to the judicial system.
4. Facilitate and promote right of Indigenous Peoples to their own forms of media by decriminalizing community radio.
5. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to do a follow up visit to Chile.

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