

CHILE
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HUMAN RIGHTS COUNCIL, 132^o SESSION.
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THE COALITION FOR STRENGTHENING OF HUMAN RIGHTS IN CHILE

ASOCIACIÓN DE MUNICIPALIDADES CON ALCALDE MAPUCHE
CONSORCIO TICCA
COLECTIVO MAPUEXPRESS
ONG LUMBANGA
MOVIMIENTO ACCIÓN MIGRANTE
OBSERVATORIO CIUDADANO

Compliance with international obligations in the field of human rights: Ratification of international treaties and the creation of human rights institutions

- In our report we acknowledge:
 - The ratification of international conventions by the Chilean state
 - The creation of the Under-Secretary for Human Rights in the Ministry of Justice and Human Rights in 2016.
 - And the creation of a National Plan for Human Rights in 2017, as well as the preparation of the National Action Plan on Human Rights and Business, both in 2017
- We recommend:
 - The ratification by Chile of those international human rights treaties that are still pending - OP-CEDAW, Protocol of San Salvador, OP-CESC, OPIC-CRC; and withdraw reservations on CMW, withdraw the reservation on OP-ICCPR, and pass law establishing the NPM, ensuring its independence and participation of civil society in its development and functions.
 - The effective implementation, with a broad public participation, including by indigenous peoples and other discriminated sectors of population, of human rights plans recently elaborated.

Harmonisation of the national legal system to the international treaties

- The Political Constitution of the Republic of 1980 (PCR), imposed during the dictatorship, despite its numerous modifications, has not been harmonized with international human rights treaties ratified by Chile. This is important in particular on the acknowledgment and enforceability of economic, social and cultural rights;
- The same PCR, which establishes the need for supra majority quorums for its reform, in combination with the current electoral legislation, has impeded its substantial reform, consequently limiting the exercise of the right to self-determination of the peoples that inhabit the country;
- The Presidency of Michelle Bachelet promoted in 2014 a broad-based constituent process aimed at the elaboration of a new Political Constitution through "participatory, institutional, democratic" mechanisms, including citizens dialogues and consultation with indigenous peoples;
- The bill for a new Constitution was sent to Congress by President Bachelet in March of 2018, a few days before she left office. Lack of support for this bill by the new government and the requirement of supra majority quorums in Congress makes its approval uncertain.

We recommend

- The implementation of a transparent and participatory process, including all sectors of the population, particularly civil society and indigenous peoples, in order to enact a new Political Constitution that enables the full harmonisation of the domestic legal system with international human rights treaties ratified thus far by Chile.
- The enactment of a new Political Constitution through this process should invite and therefore enable the full exercise of the rights of peoples to self-determination in Chile.

Equal rights and non-discrimination

- We highlight:
 - The persistence of multiple forms of discrimination against the most vulnerable groups, in particular against indigenous peoples, people of African descent, and migrants.
 - That legislative and administrative measures required to prevent such discrimination have not been adopted by the State.
 - The lack of any credible plans or actions that can reduce the growing socio-economic inequalities between different groups of the population.

Rights of the indigenous or native peoples

- The State of Chile has not complied with its obligation to indigenous peoples of Chile in accordance with the various international instruments that it has ratified or acceded to to date;
- The PCR does not recognize indigenous peoples and their collective rights;
- The State has sought to criminalize indigenous peoples' social protest actions in defence of their rights by allowing the use of excessive force by regular and militarized police forces;
- For example, acts of violence even against Mapuche children occur regularly;
- Mapuche leaders have been judicially persecuted through the use of special legislation, in particular the Counter-Terrorist Law.

- Congress has not adopted a mechanism to consult indigenous peoples prior to the approval of legislation that may directly affect them, thus weakening the right to be consulted established by ILO Convention 169 and other international instruments;
- Administrative measures in the context of the approval of investment projects on indigenous lands and territories, have not been adequately consulted in accordance with the same standards, and have not considered indigenous peoples' right to free, prior and informed consent;
- No progress has been made in relation to developing processes of effective dialogue and negotiation with indigenous peoples' regarding issues linked to land and natural resources;
- Little progress has been achieved in the combat against the poverty and marginalization of indigenous peoples, which continue to be among the poorest communities in Chile;
- The same can be repeated regarding indigenous peoples' participation in economic development of the regions where they live and work.

We recommend:

- The preparation of a new Political Constitution, through a process that guarantees the participation and consultation of all indigenous peoples of Chile, where the plurinational and intercultural nature of the Chilean State is recognized, and where these peoples' collective rights are guaranteed;
- An end to the criminalization of the indigenous social protest, in particular by ending the application of the Counter-terrorist Law to members of indigenous peoples;
- Implementation of an effective mechanism of consultation with indigenous peoples on legislative measures affecting them;
- Consideration of implementation, in accordance with international standards, of the right to free, prior and informed consent before authorizing any investment project that could affect indigenous peoples' collective rights;
- The launch of a credible process of dialogue with indigenous peoples' that promotes a new relationship between the State and the indigenous peoples of Chile.

Rights of the tribal people of African descent

- There is a group of African descent which has inhabited the Arica and Parinacota region in Chile for centuries and considers itself as a tribal people
- Such existence has historically been denied by Chile, and their members have been discriminated against in numerous ways over the years (economically, culturally, politically).
- Bills for the recognition of the African descendent peoples in Chile have been presented to Congress for their approval since 2004, but without success.
- Chile has refused to include the African descendent peoples as a category in the national census, home surveys, health surveys or other statistical instruments, which effectively renders them invisible.
- The obligation of consultation of legislative and administrative measures that affect them, in accordance to Convention N° 169 of the ILO, has not been recognized or implemented.
- Currently there is no State institution responsible for African descent people in Chile.

We recommend

- The approval of a law that recognizes African descendent populations in Chile as a priority;
- The inclusion of African descendent peoples categories in relevant the population and housing census operations as well as in the official statistics;
- The effective application of the ILO Convention 169 including enabling the tribal people of African descent to enjoy their right to consultation on all situations in which their rights are affected;
- The creation of a State institutional office responsible for serving and addressing the concerns of people of African descent in Chile;
- Elaboration and implementation of special measures aimed at combatting racial discrimination and guaranteeing the effective enjoyment of all relevant human and collective rights by people of African descent;
- That Chile should comply with the Action Plan for the International Decade for People of African Descent.

Rights of migrant people

- Migrant people in Chile, particularly from the Latin American and the Caribbean countries has increased the last years, reaching a total of 1.119.267 people.
- The Chilean State has not updated its migration law that dates back to 1975 which contravenes multiple international standards and recommendations, and limits the exercise of the political and social rights of migrant people. It is particularly preoccupying their right to proper housing.
- The migration bill that currently is being discussed is inspired in the national security approach instead of a human rights-based approach.
- Public policies that generate more inclusion, development and wellbeing for migrant people and their families, and particularly for migrant women, are absent.
- It is concerning that currently there are approximately 1500 migrant children institutionalized in the National Service for Minors (SENAME).
- Human trafficking in Chile has increased six times the last years.

We recommend

- The approval of a new migration law in accordance with the human rights based-approach and international standards subscribed by Chile in matters of human mobility.
- Ensure the State implements comprehensive, intercultural and inclusive public policies for migrant people and their families, particularly in regard to access to housing, education, health, labor and social security, considering specifically the situation of migrant women.
- Recognise the “*ius solis*” principle granting the nationality to boys and girls born in Chile.
- Incorporate the intercultural approach to evaluate cases of children derived to retention centers as SENAME or other public institutions, guaranteeing family reunification using a wide concept of family.
- Apply the “*pro personae*” principle in relation to the rights of migrant people, particularly when it concerns to vulnerable groups protected by the International Law.

Business and Human Rights

- Chile has received in the last decades a large amount of foreign investment mostly aiming for exploitation of natural resources or development, including mining, forestry and fisheries.
- In 2015 there were 102 active socio-environmental conflicts due to development and/or investment projects by private and public companies as a consequence of these development projects' impacts on the rights to environment, water, consultation and political participation, among others (NHRI).
- A majority of these investments are taking place in or affecting lands that the ILO Convention 169 defines as “traditionally occupied by indigenous”, and these have had heavy negative impacts on the rights of indigenous peoples.
- The National Action Plan on Business and Human Rights (2017) was prepared with highly limited civil society participation and no participation by or consultation with indigenous peoples.
- The Plan's contents are weak, in particular with regards to the duty of the State to protect human rights, as well as with regards to the responsibility of companies to respect human rights.

We recommend:

- The adoption of legislative and administrative measures that oblige the State to protect human rights affected by any economic activity, particularly those of extractive industries, and that guarantee and enable reparations for any and all damages caused and suffered as a result.
- The full pursuit of legal responsibility for any companies or affiliated businesses domiciled in Chile in relation to the violation of the economic, social and cultural rights in the context of their activities at home, on borders, and abroad.
- The effective implementation of the National Action Plan on Business and Human Rights and start the Multi Actor Committee with the participation of the civil society actors and communities most affected by the activities of companies.



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