



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination
Eighty-third session

Summary record of the 2236th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 August 2013, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10.10 a.m.

Informal meeting with NGOs

Dialogue with Chilean non-governmental organizations

1. **Mr. Correa Calfin** (Red de Pueblos Originarios en Chile por los Derechos de la Madre Tierra, la Biodiversidad y el Conocimiento Tradicional) said that the State party was ignoring the civil, political and social rights of the indigenous peoples whom his organization represented. In that context it was urgent to clarify the relationship between the Chilean Constitution and international instruments to which the country had subscribed. Lack of recognition in Chile of indigenous people's status was an obstacle to their enjoyment of their rights, including with regard to the natural resources located on their lands. The Anti-Terrorist Act, which had been criticized by a United Nations special rapporteur, nevertheless continued to be implemented in ways that often resulted in discrimination against indigenous people.
2. **Mr. Muñoz** (International Network of Human Rights) said that little had been done to educate Mapuche communities about, or enable them to access, international and inter-American human rights mechanisms. The State party should facilitate access to the media, particularly radio and the Internet, by indigenous communities so that inhabitants could more easily obtain information, including about safeguarding their human rights, and so that their languages would not die out. Furthermore, it was necessary to combat the stigmatization of indigenous people, in particular the Mapuche, by non-indigenous media outlets, which sometimes promoted the use of racist hate speech.
3. Regarding land issues, he said that the activities of forestry companies had a severe impact on water resources used by the Mapuche. In sanctioning the activities of such companies, the Government needed to look beyond short-term economic considerations.
4. **Ms. Manquepillan** (World Association of Community Radio Broadcasters (AMARC), International Freedom of Expression Exchange (IFEX) Latin America and the Caribbean, International Network of Human Rights) said that when setting up a radio station for Mapuche listeners in 2011 she had encountered difficulty obtaining a licence. As broadcasting without a licence was illegal, the Government had initiated legal action against her station. Many other Mapuche broadcasters had also been persecuted as there was a lack of official support for indigenous radio stations. Having their own media outlets helped indigenous peoples to promote social cohesion, preserve their languages, exercise their freedom of expression and protect their rights.
5. **Ms. Sidibé** (International Network of Human Rights) said that indigenous radio stations were crucial because they allowed members of the communities in question to share information, engage in dialogue and participate more fully in civic life. They also helped peoples such as the Mapuche, whose communities were geographically dispersed, to maintain social cohesion. In addition, local stations promoted the preservation and learning of indigenous languages. Noting that cultural radio programmes were expensive to produce and disseminate, especially with a bilingual approach, she said that more Government support was needed and that allowing Mapuche stations to accept paid advertising would help them to become financially more independent.
6. **Ms. Meraz Sepulveda** (Observatorio Ciudadano and Corporación Humanas), speaking first on behalf of Observatorio Ciudadano, said that continuing racial discrimination in Chile disproportionately affected indigenous peoples. Notwithstanding the provisions of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and anti-discrimination legislation enacted in 2012, the existence of indigenous people was still not recognized in the Chilean Constitution, and a proposal in 2009 to rectify the situation had been rejected by the Senate. The failure to reflect international norms in national legislation

contributed to a climate of legal uncertainty that perpetuated violations of indigenous people's rights.

7. Another major area of concern was the proliferation of extractive, infrastructure and development projects being approved by the Government without consulting indigenous people, obtaining their consent or enabling them to share in the benefits of those projects. Also of concern was the continuing failure to restore to indigenous people ownership of their ancestral lands.

8. Her organization recommended that recognition of indigenous people and their rights as enumerated in ILO Convention No. 169 be enshrined in the Constitution; that policies affecting lands inhabited by indigenous people be reviewed; that funding for policies aimed at improving the situation of indigenous people be increased; that complaints of violence against indigenous people by the military and police be investigated, perpetrators brought to trial and victims adequately compensated; that anti-terrorism legislation be reviewed to ensure that it was applied only in cases of terrorism; and that the right to due process be adequately protected.

9. Speaking on behalf of Corporación Humanas, she said that indigenous women who were migrants or of African descent faced particular discrimination in Chile and that there was no effective national mechanism for protecting them from such discrimination. Enumerating problems such as inadequate protection of trafficking victims, inappropriate treatment of indigenous women by police officials, and the failure to grant citizenship to children of migrants in irregular situations, she said that effective policies were needed to tackle those issues.

10. **Mr. Murillo Martínez**, noting that according to previous speakers the Chilean Constitution did not recognize indigenous peoples as such, requested confirmation that the principles contained in ILO Convention No. 169 were indeed not enshrined in the Constitution.

11. **Mr. Thornberry** requested more information about the issue of language loss. Regarding the harassment of indigenous groups by the media, he requested examples of the types of language used in such harassment and asked whether Chile had a legal framework in place to address racist hate speech. He asked whether a code of ethics existed to guide journalists and media workers in covering issues of cultural diversity.

12. **Mr. de Gouttes** (Country Rapporteur) asked to what extent the NGOs represented at the meeting had been involved in the preparation of the State party's report, and what type of cooperation existed between NGOs and the National Human Rights Institute. He asked for an assessment of the work of the Public Criminal Defender Service. Noting that no statement had been made on behalf of Afro-descendant or Roma people, and that the latter were not mentioned in the State party's report, he requested information on the treatment of those two groups.

13. **Mr. Vázquez** requested additional information regarding the claim that the Chilean Constitution prioritized other human rights over non-discrimination. It would be useful to know whether the use of the Mapuche language was prohibited in schools as well as the use of the Rapa Nui language in criminal proceedings. It would be interesting to learn whether the authorities had considered setting up a system of indigenous justice that was applicable to the Rapa Nui people. He asked whether the Government had upheld its commitment made in October 2010 not to invoke the Anti-Terrorist Act in trials conducted against members of the Mapuche community and if not, whether it had offered any explanation for its actions.

14. **Mr. Kemal** asked whether the treatment of criminal acts committed by members of indigenous communities as ordinary crimes rather than terrorist acts had had a positive

impact. It would also be useful to know whether any special measures were being taken to improve the situation of indigenous women in the State party. He asked whether they faced discrimination within their communities or from the State and society at large and what form that discrimination took.

15. **Mr. Lindgren Alves** asked when the word “Mapuche” had started to be used in the State party almost synonymously with the term “terrorist”, and why it appeared to relate to the Mapuche community only.

16. **Mr. Calí Tzay** asked why the Chilean press often referred to Mapuche territories as “red zones” (*zonas rojas*). He would appreciate clarification of reports that the police often used disproportionate force against Mapuche people during raids on communities, inflicting violence on unarmed individuals and stealing their property. The Committee would welcome updated information on follow-up to its 2009 recommendation to take immediate steps to resolve the issue of the waste dumps established in Mapuche communities without their prior consent (CERD/C/CHL/CO/15-18, para. 23).

17. **Ms. January-Bardill** requested additional information on the impact of environmental racism on people’s health in the State party, especially that of women and children. It would be useful to know whether there were any legal or administrative processes at all for the return of land to indigenous people. She asked whether the problems the National Indigenous Development Corporation (CONADI) faced were financial only, or whether other issues were involved.

18. **Ms. Crickley** said that the Committee would welcome proposals from the NGOs on how indigenous people could effectively participate in the design of programmes and legislation affecting them in the State party. It would also be useful to hear suggestions of how awareness of the human rights system could be raised within the indigenous communities. She requested additional information on the issue of trafficking of women from minority communities. Given the importance of data in designing policies to support indigenous people and minorities, she asked whether data on those groups was readily available in the State party.

19. **Ms. Manquepillan** (AMARC, IFEX and International Network of Human Rights) said that the Public Criminal Defender Service was a general service. There was no specific public defender service for indigenous communities and the Mapuche people that applied the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Indigenous Peoples Act. While the Mapuche language, Mapudungun, was not prohibited in schools, it was taught in schools on Mapuche territory only for the first four years of primary education, for two hours a week. That was clearly insufficient to promote the language. Mapuche women had access to primary education only and did not have access to decent work. Those who migrated to urban areas went into domestic service as they were not trained for any other jobs. There were no Mapuche women in Chilean politics, even at the local level. The Government should take steps to remedy that situation, including by ratifying the Convention on the Elimination of All Forms of Discrimination against Women.

20. **Ms. Meraz Sepulveda** (Observatorio Ciudadano and Corporación Humanas) said that, according to the report of the visit to Chile in August 2013 of the World Organization Against Torture, the Anti-Terrorist Act was still being invoked against members of the Mapuche community. Four such cases were pending, involving 26 individuals accused of terrorist acts, one of whom was in preventive detention. The new Regional Attorney-General for Araucanía, a region with many Mapuche communities, had recently indicated that he would not hesitate to invoke the Anti-Terrorist Act if members of the Mapuche community committed acts similar to those for which that Act had been applied in the past. It was therefore clear that the Government’s commitment not to invoke the law in such

circumstances was not being upheld, resulting in the arbitrary and discriminatory treatment of that community. The application of the Act against that community reinforced the stigmatization of the Mapuche people as terrorists.

21. Members of the Mapuche community had reported cases in which up to 100 armed police had participated in searches, inflicting violence on both the persons they detained and on all the members of their family, including women and elderly people. The police had also stolen money and destroyed musical instruments and other possessions. While the authorities were taking steps to train carabineros in human rights, such cases continued to occur. Since carabineros carrying out police work were subject to military jurisdiction, civilians wishing to bring a complaint against them had to address the military courts. Those cases were not transparent and there were no guarantees of due process, which could lead to impunity.

22. **Mr. Muñoz** (International Network of Human Rights) said that, to his knowledge, no indigenous communities had been involved in the preparation of the nineteenth to twenty-first periodic report. Mapuche territories were often referred to as “red zones” and members of the Mapuche community described as terrorists owing to the numerous campaigns they had conducted to recover their ancestral lands and territories. They had occupied lands which were farmed by the current landowners and when the carabineros had tried to dislodge them, violent confrontations had taken place. The Mapuche people were often referred to as terrorists in local and even some national media. It was no coincidence that many media outlets were owned by the landowners who had bought the ancestral Mapuche lands. Many of the borders of Mapuche territories were heavily controlled by members of the armed forces. The Mapuche community had struggled to recover its lands for many years and, in some cases, the Government had bought land back from the farmers and given it to the Mapuche. The Anti-Terrorist Act was still being invoked against members of the Mapuche community.

23. The main obstacle facing NGOs working to increase the political participation of indigenous communities was the fact that, since Chile was considered to be a wealthy country, very little overseas development assistance was allocated to raising awareness of human rights. Community leaders needed to be trained in order to ensure that individual cases were brought before international human rights bodies.

24. **Mr. Correa Calfin** (Red de Pueblos Originarios en Chile por los derechos de la Madre Tierra, la Biodiversidad y el Conocimiento Tradicional) said that, while article 5, paragraph 2, of the Constitution provided that international instruments had constitutional rank, the Government had indicated that the ILO Indigenous and Tribal Peoples Convention was considered to rank below the Constitution. Indigenous people were not recognized in the Constitution, which affected all their human rights. When violent conflicts occurred in the country, high-level officials often made statements to the press blaming the Mapuche before any investigations had been conducted. Many United Nations special rapporteurs had visited Chile and made recommendations, particularly on the application of the Anti-Terrorist Act. The Government seldom implemented those recommendations. There was a clear need to promote the establishment of indigenous media. The National Institute of Human Rights had no indigenous members of staff and there was no specific department for indigenous affairs within the Institute. While there was a Mapuche Public Criminal Defender in region IX, there were few indigenous staff and both human and financial resources were lacking. No system of indigenous justice was recognized in Chile. The Roma community in Chile suffered significant discrimination but little action was taken to address that issue.

25. While primary schools with at least 40 per cent of indigenous students had been obliged by law to teach the relevant indigenous language since 2009, the country’s indigenous languages should be taught at primary, secondary and tertiary level in order to

raise awareness of the country's cultural mix. The scholarships granted to indigenous students were insufficient to enable them to access university education. There was a need for more educational resources within indigenous communities and for increased participation from the indigenous communities in the development of the educational curriculum.

26. The Rapa Nui people in Easter Island did not have adequate access to basic services, including justice and health care. No alternatives to detention were available and individuals were obliged to travel long distances to the mainland to gain access to a hospital. Migration to the island should be more closely controlled in order to prevent the introduction of diseases by visitors and to reduce the amount of waste left behind. No policy was in place to safeguard the island's territory and traditional lifestyle.

27. The Anti-Terrorist Act, criticized by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, was being used unfairly against the Mapuche people. Since the end of the dictatorship in Chile, when the Mapuche people had started to claim their rights, they had been labelled as terrorists and were victims of institutionalized violence. The police were not trained to understand Mapuche culture and society, which was being destroyed out of ignorance. Women, elderly people and children were exposed to police misconduct.

28. Indigenous people were also prevented from maintaining their traditional health practices, including traditional methods of delivery. Women's access to education was hindered by the lack of programmes promoting girls' education and leadership development. The participation of indigenous people in Chilean political life was limited by the absence of an organization that effectively represented their interests. The National Indigenous Development Corporation was obsolete and not representative of indigenous people, with half of its members being public officials and its director being appointed by the President of Chile.

29. Environmental terrorism continued to take place in Chile. Cases were reported of groundwater contamination resulting from the industrial dumping of toxic waste in areas populated by indigenous communities, for instance in Collipulli. The local community had lodged complaints with the executive and judicial authorities in view of the resulting high rate of malformations and diseases in the area. Government policy did not provide for the consultation of local communities or their participation in combating environmental terrorism. The executive and the judiciary continued to undertake legislative reform conducive to the implementation of practices that were detrimental to indigenous peoples. Clean water, uncontaminated land and the removal of the major corporations that were causing the displacement of indigenous communities were essential to the survival of those communities.

30. The State party was taking steps to recognize the right to land, but those efforts were insufficient. Many indigenous families had been dispossessed of their lands and had been forced to move to cities, but provisions were not yet in place for the 60 per cent of indigenous people currently living in cities and who were not eligible for land restitution claims. Those people must be offered the opportunity to be able to return to their ancestral lands. Moreover, a plan should be developed to facilitate the purchase by the Government of lands intended for indigenous communities.

31. The consultation and involvement of indigenous people in the development of public policies did not comply with international standards, as noted by the Special Rapporteurs, and no indigenous population census had been conducted. The country's indigenous peoples continued to be marginalized and to live in poverty, and he urged international organizations and cooperation agencies to closely monitor their situation.

32. **Mr. Vázquez**, noting that the State party had rejected the conclusions of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, asked whether it had responded to the decisions issued in May 2013 by the Inter-American Commission on Human Rights on the definition of terrorism in the Anti-Terrorist Act. He also wondered whether the Government had provided any justification for its continued use of the Anti-Terrorist Act against the Mapuche community. When the executive branch invoked the Act against the Mapuche, the courts often dismissed the cases, therefore did the problem lie only with the executive branch, rather than with the judiciary? Furthermore, was a mechanism available in the courts to order the executive to refrain from invoking the Act?

33. **Mr. Calí Tzay** asked the representatives of the Mapuche community how they identified themselves. Did they refer to themselves as indigenous peoples, native peoples, ethnic minorities or ethnic groups?

34. **Mr. de Gouttes** said that the State party report drew attention to the fact that the Anti-Terrorist Act had been amended to eliminate the presumption of terrorist intent, reduce penalties and protect minors. The report also stated that the courts applied the Act impartially. Conversely, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had recently called on the State to refrain from applying the Anti-Terrorist Act in the context of social and territorial claims made by the Mapuche community. It appeared that the problem lay in the definition of “terrorist act”, and the question of the interpretation of the Anti-Terrorist Act and its subsequent amendments should be raised with the judicial authorities.

35. **Mr. Amir**, referring to the situation of the Mapuche minority in relation to land issues, asked whether the lands were currently occupied by non-Mapuche people and whether that occupation was official. He also enquired about the status of the Mapuche in the agricultural production chain.

36. **The Chairperson** asked why no individual communication had ever been submitted to the Committee, particularly since Chile was one of the few Latin American countries that had recognized the competence of the Committee to consider individual complaints.

37. **Mr. Muñoz** (International Network of Human Rights) said that the problems relating to the Anti-Terrorist Act stemmed from the fact that the Constitution dated back to the period of the dictatorship and that the prevailing attitude in Chile was that any act of violence was considered to be a terrorist act. He confirmed that the Anti-Terrorist Act was still being fully enforced. There were no Mapuche community representatives with sufficient knowledge of the treaty body system and of the existing procedures for the submission of complaints. Many of the Mapuche communities in which human rights violations had been committed were geographically isolated and without Internet access.

38. **Ms. Manquepillan** (World Association of Community Radio Broadcasters (AMARC), International Freedom of Expression Exchange (IFEX) Latin America and the Caribbean, International Network of Human Rights) said that the terms “indigenous” or “native” peoples referred to all the different groups present in Mapuche territory, and that the Mapuche people tended to identify themselves as the “Mapuche nation”. With regard to the land issue, the Mapuche people were living in a state of asylum in their own lands, which were occupied by non-Mapuche people. That, together with the limitations of the agricultural production system, resulted in the forced migration of Mapuche people to cities in order to find work and to gain access to education and health care. That also led to families being separated, which was particularly problematic since family life was a core value of Mapuche culture.

39. **Ms. Meraz Sepulveda** (Observatorio Ciudadano and Corporación Humanas) drew attention to the fact that the application of the Anti-Terrorist Act was part of a broader

problem, namely, the criminalization of the Mapuche people's claims for land restitution and other rights. In order to justify its application, the authorities claimed that the percentage of cases prosecuted under the Anti-Terrorist Act was very low, and that not all cases involved Mapuche people. However, the criteria governing its application were arbitrary.

40. **Mr. Correa Calfin** (Red de los Pueblos Originarios en Chile por los derechos de la Madre Tierra, la Biodiversidad y el Conocimiento Tradicional) said that there were indigenous peoples who continued to live in their territory although many had been displaced from their lands in violent ways. Measures were no longer applied to restrict the use of traditional languages and traditional justice systems were used in indigenous communities, conferring on the latter a degree of territorial autonomy.

41. The State did not recognize any traditional justice systems and indigenous people often resorted to local justice systems — which offered alternatives to detention — rather than to the State judicial system. The use of traditional justice systems was often kept secret by local communities because the resulting decisions would not be recognized by the State authorities.

42. Noting that the term “Mapuche” meant “people of the earth”, he emphasized that the Mapuche people were traditionally spiritually attached to their land. The seizure of their lands and other natural resources by major corporations for industrial purposes was perceived by the Mapuche people as land pollution. Traditional resources, including medicines, played a fundamental part in Mapuche culture but no programmes were in place to allow for their exchange with people from the same communities in neighbouring Argentina, for example, which generally led to the seizure of such goods by customs. Many non-indigenous people showed interest in traditional indigenous culture and came to local communities to receive treatment with traditional medicines, but no programme was in place to help the communities to develop such exchanges or tourism.

43. **Mr. de Gouttes** said that an informal meeting would be held after the lunch break with any NGOs wishing to continue the discussion.

The meeting rose at 1 p.m.