

CHILE

**JOINT CIVIL SOCIETY REPORT TO THE
UNIVERSAL PERIODIC REVIEW
HUMAN RIGHTS COUNCIL
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The Coalition for Strengthening of Human Rights in Chile:

Asociación de Municipalidades con Alcalde Mapuche

Consorcio Ticca

Informativo Mapuexpress

Ong Lumbanga

Movimiento Acción Migrante

Observatorio Ciudadano

The Coalition for the Strengthening of Human Rights in Chile

The Coalition for the Strengthening of Human Rights in Chile (hereinafter the Coalition) groups civil society organizations, indigenous peoples, people of African descent and migrant people that work in the promotion and advocacy of human rights. This Coalition was created in May 2018 with the aim of presenting a joint report to the Universal Periodic Review of the State of Chile that will be held in January 2019. However, its members have been working for several years on joint actions to strengthen human rights in Chile.

This report was prepared through a participatory process, which included workshops, meetings and systematization of the information. These activities were developed under the coordination of the Observatorio Ciudadano (Citizen Observatory), a non-governmental organization of promotion, documentation and advocacy of human rights.

A.- Presentation

1. This Report analyses the compliance by the Chilean State with its obligations and voluntary agreements on the field of human rights, since the last Universal Periodic Review (UPR) that the Human Rights Council (HRC) carried out in Chile in January of 2014 until now. For its preparation, it has been taken into consideration the recommendations made on that occasion by the Working Group on the UPR.¹ Specifically, in reference to the country's institutional framework on human rights, in relation to the rights of the most discriminated sectors in the country, as indigenous peoples, Chilean African descent and migrant population, and in relation to business and human rights.

B.- Compliance with international obligations in the field of human rights.

B.1- Ratification of international treaties and the creation of human rights institutions (Recommendations 121. 1 a 21; 121.27; 121.29)

2. Among the positive aspects in complying with the international obligations of the State regarding human rights institutions, since the last UPR to this date, we highlight the ratification of the Optional Protocol of the Convention on the Rights of the Child of the United Nations; the ratification of the ILO 189 Convention; the end of the accession process to the Convention relating to the Status of Stateless Persons of 1954 and to the Convention on the Reduction of Statelessness of 1961, both of the United Nations. However, Chile still does not ratify the remaining international conventions identified in the 2014 UPR.

3. We highlight as well the creation and implementation of the Under Secretary for Human Rights of the Ministry of Justice and Human Rights through the Law 20.885 of 2016. Also, the preparation by this entity of a National Plan for Human Rights in 2017, and the preparation of the National Action Plan on Human Rights and Business (PANDHE, 2017).

4. Recommendations:

- a.- Ratify the international human rights treaties that are still pending.
- b.- Effective implementation of human rights plans created by the State in recent years with the participation of citizenship, indigenous peoples and other discriminated sectors of the population.

¹ See the Report of the Working Group on the Universal Periodic Review about Chile dated 2 April 2014 (A/HRC/26/5)

B.2.- Harmonisation of the national legal system to the international treaties (Recommendation 121.18)

5. Attention should be drawn to the persistence of the Political Constitution of the Republic of 1980 (PCR), imposed during the dictatorship, which, despite its numerous modifications², has not been harmonized with the international treaties on human rights ratified by Chile, and therefore it limits them in multiple ways. Thus, the PCR does not contain an acknowledgment of the economic, social and cultural rights, nor establishes mechanisms to make them enforceable. It conceives the role of the State in economic matters as subsidiary, which restricts the possibilities of giving impetus to public policies to make these rights, effective. It does not recognize indigenous peoples (that according to the 2017 Census constitute the 12.8% of their population) nor their rights. The same PCR, in combination with the current electoral system, hinders its reform by establishing supra majority quorums³ that limit the right to self-determination of the peoples who inhabit the country.⁴ In addition, it establishes a Constitutional Court where 3 out of a total of 10 members are appointed by an undemocratic body, such as the Supreme Court. The Constitutional Court oversees the constitutionality of laws approved by a democratic body, which affects the legal modifications in human rights matters.⁵ These are serious human rights deficits that have been recognized by the National Institute for Human Rights (2014)⁶, and the United Nations System bodies such as the Human Rights Committee (2014) and the Committee on Economic, Social and Cultural Rights (2015)

6. As a consequence of a social mobilization that started in 2011, the Presidency of Michelle Bachelet promoted in 2014 a "constituent process" aimed at the elaboration of a new Political Constitution through "participatory, institutional, democratic and incidental" mechanisms. This process included the announcement in 2016 of a set of dialogues and citizen consultations on the principles, rights, duties and responsibilities of the citizens and the State and State institutions to be established in a new Constitution, in which more than 200.000 people participated. However, the expectation of a constitutional change through participatory channels was frustrated. Thus, although the document called "Citizen Bases for the New Constitution" emerged from this process, recognizes human rights, including economic, social and cultural rights, and indigenous peoples, this was prepared by a very small group of advisers, contradicting the participatory and incidental principles of the process. On the other hand, the new Constitution draft was sent by President Bachelet to the National Congress on March 6, 2018, five days before the end of the term, without the possibility of following up. The government of President Piñera, who took office on March 11, 2018, does not consider a new Constitution in his government program.

7. The viability of the proposed new constitution in this context is low. Particularly when this constitutional reform bill sent to the National Congress at the beginning of 2017, President Bachelet left in the hands of the National Congress the power to call a Constitutional Convention⁷, which has not

² 39 reforms in more than 250 articles.

³ According to the 1980 Constitution, the reform of the constitutional text requires three fifths as a general rule and two thirds for the bases of institutional operation.

⁴ Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (UN). Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples. All of them have been ratified by Chile.

⁵ Provisions on gratuity in education established in the 2016 Budget Law (2015); provisions on union ownership rights in the labor reform (2016).

⁶ 2014 Annual Report, National Institute for Human Rights- INDH.

⁷ That would be the body in charge of elaborating the new Constitution.

been approved so far. This due to the composition and quorums referred to these effects. The impossibility of obtaining a new fundamental charter elaborated in a participatory and democratic manner, which could allow the internal legal order to be adapted to the human rights treaties ratified by Chile, constitutes a serious limitation to the exercise of the right to self-determination of peoples.⁸

8. Recommendation:

Promote a transparent and participatory process including all sectors of the population, particularly the civil society and the indigenous peoples, in order to launch a new Political Constitution that allows the harmonisation of the domestic legal system to international human rights treaties. This will permit the exercise of the right to self-determination of the peoples.

C.- Equal rights and non-discrimination

9. Chile has ratified the main international treaties on human rights that establish the equality of rights for all people. However, discrimination against the most vulnerable groups of the population persists, such as indigenous peoples, African descent people and migrants, among others. This occurs because the legislative and administrative measures required to prevent them from discrimination in order to fully exercise their rights, have not been adopted. Also, there are no plans neither actions developed in order to reduce the existing social inequality gap among different groups of the population.⁹ On the contrary, in some cases the State has contributed to stigmatize and discriminate these vulnerable sectors even more.

C.1.- Rights of the indigenous or native peoples¹⁰

10. The State of Chile has not complied with its obligations assumed with the indigenous peoples according to the various international instruments that has ratified¹¹ or adhered¹². And still does not recognize the indigenous peoples and their collective rights in the Constitution. Moreover, the state has launched a criminalization process towards the indigenous social protest for the recognition of their rights, by the abusive use of the police forces. It has also judicially persecuted the leaders of the Mapuche people through the use of special legislation, as the Law on Terrorist Conduct¹³ (hereinafter Counter-Terrorist Law) violating the exceptional character of this legislation when is used as an ordinary Act.

⁸ In this regard, it should be noted that the UN Human Rights Committee, the oversight body of the Covenant on Civil and Political Rights, has underlined the importance that not only constitutions have but also the processes in which these are elaborated. Thus, It declares that the States Parties must "describe the constitutional and political processes that allow in practice their exercise" in their reports referred to the exercise of this right. (UN Human Rights Committee, General Comment No. 12, paragraph 4)

⁹ The Committee on Economic, Social and Cultural Rights - CESCR, Final Observations on the fourth period review of the State of Chile, 2015. Paragraph 12 and 24.

¹⁰ Henceforth we will use only "indigenous peoples" for the limited extent of this document, but we are referring also with this term to the indigenous peoples, native peoples, indigenous communities and any other self-designation that indigenous peoples consider.

¹¹ 169 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries.

¹² United Nations Declaration on the Rights of Indigenous Peoples and American Declaration on the Rights of Indigenous Peoples.

¹³ Law Number 18.314

11. Regarding the **constitutional recognition of indigenous peoples (recommendation 121. 163)**, although this was promoted through the New Constitution project, but as it was mentioned, this remain unfinished. The initiative to obtain such recognition was promoted by the government in what was called the Indigenous Constituent Process. Although the contents of the New Constitution project were consulted with the indigenous peoples, the proposals that these peoples had identified as priorities were not collected.¹⁴ The consultation did not take place in a climate of trust either. As some indigenous organizations denounced, the government forced the end of the process with threats.¹⁵ In fact, the Court of Appeals of Iquique rendered invalid the results of the consultation of the Indigenous Constituent Process, after the writ of protection presented by the communities of the Tarapacá Region was accepted, which indicated that the consultation violated their fundamental rights.

12. In relation to the **non-application of the Counter-Terrorist Law to persons of the Mapuche community in the context of intercultural conflicts (recommendations 121. 168; 121.167)**, during 2017, this law was invoked against 23 Mapuche persons in the Luchsinger-Mackay, Iglesias (Churches) and Huracán (Hurricane) cases, in which they were charged with the commission of terrorist crimes. In addition, these processes were sustained with serious violations of due process guarantees, including the absence of direct evidence and the inclusion of evidence with insurmountable defects, multiple and sustained criminal prosecution and the abuse of pre-trial detention. In the Luchsinger-Mackay case, three Mapuche persons were convicted for crimes considered in this law.¹⁶ The high rate of acquittals in the mentioned trials (18 people) or the conviction for common crimes (2 people in the case of churches) put in evidence the discretionary and political use by the State of this Law against Mapuche defenders, a situation that was verified by the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT) in their observation reports of these trials.¹⁷

13. Likewise, the criminalization of social protest has been extended to Mapuche members and leaders who have been victims of the violation of their rights to security and privacy, through the intervention of personal and institutional telephone lines, such as the case of the members of the Association of Municipalities with Mapuche Mayors -AMCAM-. Given this situation, they resorted to legal remedies for the protection of their security and privacy.¹⁸

14. Regarding to the **investigation of complaints and acts of violence committed by the police and Carabineros against indigenous communities (recommendation 121.81), the persistence of acts of violence against Mapuche children** is particularly concerning (**recommendation 121.56**). An example is the case of the child B.H.H. aged 17, who on December 18, 2016, within the framework of a police operation led by Carabineros Special Forces, on the public road of Villa Las Águilas, Curaco Sector, commune of Collipulli, was reduced by Carabineros. Being on the ground and completely immobilized,

¹⁴ Statement of the CONADI (National Corporation on Indigenous Development), of the Tirua Communities, of Aucan Huilcaman from the Consejo de Todas las Tierras organization, among others.

¹⁵ Public announcement of the communal assemblies of Colchane, Camiña, Huara, Pica, Pozo Almonte, Iquique and Alto Hospicio. Also, the Assembly of the Quechua People that participated on this process of Indigenous Constituent Consultation on November 3rd 2017.

¹⁶ The ruling in this case is still pending as the defense filed an appeal for annulment.

¹⁷ First report of the FIDH available on the link:

https://www.fidh.org/IMG/pdf/nota_chile_misionobsjud_181017.pdf

Second Report of the FIDH available on the link:

https://observatorio.cl/wp-content/uploads/2018/04/nota_chile_200418.pdf

¹⁸ <http://www.amcam.cl/amcam-presenta-recurso-por-escuchas>

he received shotgun shots on his back, a situation that almost cost him his life.¹⁹ Also, on March 22, 2018, three Mapuche boys, between 14 and 12 years old, and a 12-year-old girl, students of a public school in the commune of Ercilla, were intercepted by three Carabineros when they returned to their homes. They were subjected to an identity check and taken to an empty place, where they were forced to undress under threats and intimidation.²⁰

15. As for the **right to consultation (recommendations 121.170 to 172; 121.175; 121.177)**, a consultation mechanism for the preparation and approval of legislative initiatives has not been implemented at the National Congress. This is especially critical in the case of legislative initiatives that are created in parliament, but also affects the legislative initiatives coming from other sectors that are approved by the Congress. For example, the first bill that creates the Service of Biodiversity and Protected Areas (SBAP) and the National System of Protected Areas (SNAP)²¹ was unaware of the close relationship that exists between the conservation of biological diversity and the indigenous peoples. Thus, its legislative procedure began without indigenous prior consultation. After various advocacy actions by indigenous and civil society organizations, in January 2016 the Ministry of Environment consulted the project.²² However, although some results of the consultation were incorporated, they were insufficient and restrictive regarding the approaches made by indigenous peoples²³ and the international standards on the rights of indigenous peoples.

16. Likewise, the investment projects that directly affect indigenous peoples as they are located in indigenous lands and territories, such as mining in northern Chile and hydroelectric, salmon and forestry industry in the south of the country²⁴, are environmentally evaluated by the State through the Environmental Impact Assessment System (SEIA)²⁵ which has not been consulted. This system regulates the right to consultation in an insufficient and inadequate manner, without complying with the standards established by ILO 169 Convention and other international instruments²⁶, and without considering the right to free, prior and informed consent. It is neither contemplated an adequate compensation for the damages or the participation of those affected in the benefits of the economic activity.

¹⁹ Because of this, on January 4th 2017, the National Institute of Human Rights (INDH) opened a criminal case against those responsible for the crime of attempt of murder, RIT 1520-2016. Court of Collipulli.

²⁰ In response to this, on March 22, 2018, the Center for Investigation and Defense South (CIDSUR) and the INDH presented an *Habeas Corpus* against Carabineros at the Court of Appeals of Temuco. The *Habeas Corpus* was dismissed by the Court of Appeals, but subsequently was admitted by the Supreme Court. The resolution of the Supreme Court established that Carabineros de Chile must act in accordance with the detention protocols, according to the law, with the rights of the child and with the international treaties signed by Chile, forcing the completion of an internal summary to specify responsibilities.

²¹ The bill is in process since June 2014 according to the newsletter number 9.404-12 of the National Congress.

²² *RE number 5, January 8th 2016*

²³ The consultation results are available on: <https://consultaindigena.mma.gob.cl>

²⁴ See: Canadian Mining Projects in the Territory of the Agricultural Community of the Huasco Altino People in Chile. Human Rights Impact Assessment. Santiago- Temuco, Observatorio Ciudadano, 2016. Available on: <https://observatorio.cl/2199-2/>

²⁵ Recently the President Piñera government entered a bill to reform the SEIA, which would consider ending the Regional Evaluation Commissions, and create three Macro Zones that would concur with the three Environmental Tribunals jurisdiction. These will be the only administrative instances for the assessment of a project.

²⁶ Supreme Decree number 66 that approves the regulation of the Indigenous Consultation procedures.

17. No progress has been made in relation to **developing processes of effective dialogue and negotiation regarding issues linked to land and natural resources (recommendation 121.175)**. As noted, the process of consultation of the Indigenous Constituent Process opened a dialogue on these issues between indigenous peoples and the State. Regrettably, the constitutional proposal of President Bachelet did not include the proposals of the indigenous peoples in this matter. Also, the government of President Bachelet looked for an approach with the Mapuche people through the Presidential Advisory Commission of the Araucanía. This Commission drafted a Plan for Recognition and Development of the Araucanía, which the Government of President Piñera announced will continue. This process of dialogue, however, suffered from serious shortcomings, since it was done without respecting the Mapuche forms of representation and did not address the historical demands of the Mapuche people, including those linked to the land and ancestral territories.

18. There has not been a dialogue with indigenous peoples within the debate on the bill for the reform of the Water Code²⁷. This bill was approved by the Plenary of the Chamber of Deputies in 2016 and is currently under analysis by the Senate. Although it advances in the recognition of water as a human right and in a new mechanism for its temporary concession, eliminating the right of private domain for not granted sparse waters and protecting indigenous waters, the bill has not been known, discussed, or consulted with indigenous peoples so far. This is a serious omission as much of the waters of traditional use of indigenous peoples have been severely affected by forestry activity and hydroelectric companies.²⁸

19. With regard to **improving the situation of indigenous peoples by making special efforts to combat poverty (recommendation 121.165)** and applying measures that promote the **participation of indigenous peoples in economic development (recommendation 121.166)**, the Law that creates Marine Coastal Spaces for Native People (ECMPO), or the Lafkenche Law,²⁹ constitute an important advance for coastal indigenous communities. However, it has been applied in a slow, arbitrary and bureaucratic way. This happens because most of the applications overlap the interests of the fishing industry, mainly the salmon industry. Ten years after its promulgation, 81 ECMPO have been requested by indigenous

²⁷ On 2011, the Parliament submitted a bill that seeks to reform the Water Code (Decree Lay number 1122 of 1981) Newsletter 7543-12 of the National Congress.

²⁸ The hydroelectric power plants hold more than 85% of the non-consumptive rights to use surface water in the country. Among these is the case of ENDESA, which owns 81% of the rights, and the remaining 19% is distributed among small electric companies, speculators and industry and fisheries companies. Chile Sustentable, "Water in Chile: Between the rules of the market and human rights", 2005, Page 7. Available on: http://www.chilesustentable.net/wpcontent/uploads/2011/07/El-agua-en-Chile-entre-las-reglas-del-mercado-y-losderechos-humanos-Cartilla_Agua2.pdf

It is estimated that the new law will only apply to the 10% of the surface water and 40% of the groundwater that has not been granted by the State in concession to date. Only in the Araucanía region, 100 thousand people, 10% of the population, mainly Mapuche, must be supplied with water by trucks, due to the drying up of the water as a consequence of forestry activity. In the same region there are 36 hydroelectric projects that are waiting to be approved, most of them affecting Mapuche communities. In Observatorio Ciudadano: Human Rights and Indigenous Peoples in Chile today: The threats to water, biodiversity and social protest. Temuco, 2017. Available on: <https://observatorio.cl/derechos-humanos-y-pueblos-indigenas-en-chile-hoy-las-amenazas-al-agua-a-la-biodiversidad-y-a-la-protesta-social/>

²⁹ Law number 20.249

communities and only 9 have been approved.³⁰ The processing time exceeds 4 years on average, with high management costs for the requesting communities. There is also concerns about the creation of an inter-sector commission³¹ that is not recognized by Law No. 20,249 and that intervenes directly in the decisions of the Regional Commissions for the Use of the Coastal Border (CRUBC).³² This is in contrast to the high number of salmon farming concessions that have been granted in areas of traditional use of indigenous communities.³³

20. Recommendations:

a.- Prioritize the preparation of a new Political Constitution through a process that guarantees the participation and consultation of the indigenous peoples. This shall recognise indigenous peoples as well as the plurinational and intercultural nature of the Chilean State, and also shall guarantee the collectives rights of the indigenous peoples which are recognized in the International Law. (recommendation 121.163)

b.- End the criminalization of the indigenous social protest in demand of their rights and generate in-depth changes in the ways that the conflict with indigenous communities has been addressed. This implies the end of the application of the Counter-terrorist Law to members of indigenous peoples, as well as monitoring the discriminatory effects that the application of this Law could have on indigenous peoples. (recommendations 121.168; 121.167)

c.- Create administrative procedures within the police that allow a serious and impartial investigation of violent acts perpetrated by the police, in order to clarify and identify internally the responsible and apply the corresponding sanctions. (recommendation 121.81; 121.56).

d.- Implement an effective legislative mechanism of consultation in accordance with international standards, in conjunction with the representative institutions of indigenous peoples. Also, free, prior and well-informed consultation process shall be carried out in order to achieve agreements or the consent of indigenous peoples before authorizing any investment project that could affect their collective rights. (recommendations 121.170 to 172; 121.175; 121.177)

³⁰ To date, there are only 9 decrees on destination in force. Meza-Lopehandia, M. 2018: Lafkenche Law: Analysis and perspectives 10 years after its entry into force. Parliamentary Technical Advisory, Library of the National Congress. June 2018.

³¹ The Commission is led by the Ministries of interior and Economy.

³² The declarations of important representatives of the business sector, such as SOFOFA and aquaculture associations, are concerning. They are asking to the current government to make changes on the Lafkenche Law, as they note this affects the investment and therefore the economic growth of the sector.

- <http://www.latercera.com/la-tercera-pm/noticia/informe-reservado-de-sofofa-critica-pasajes-oscuross-de-la-ley-lafkenche-y-sera-presentado-al-gobierno/216494/>
- <http://www.aqua.cl/2017/09/12/gremios-firmas-acuicolas-exigen-modificaciones-ley-lafkenche/#>

³³ According to figures reported by Subpesca on May 2018, there are 1,257 salmon farming concessions granted on the regions of Los Lagos (407 concessions), Aysén (724 concessions) and Magallanes (126 concessions). List of concessions for salmonid aquaculture by grouping concessions in the regions X, XI and XII (May 2018) Available on: <http://www.subpesca.cl/portal/619/w3-article-81329.html>

e.- Launch dialogue processes that promote a new relationship between the State and the indigenous peoples, in which indigenous institutions are acknowledged and the collective rights of indigenous peoples -recognised by the international law- are guaranteed. Specifically, it is recommended that this dialogue mechanisms are used to manage conflicts with indigenous peoples in matters of restitution of ancestral waters and territories, channelling the conflict within the framework of democratic governance and the respect for human rights. (recommendation 121.175)

f.- Adequate and effective application of the Lafkenche Law, facilitating and accelerating the granting processes of the ECMPOs (Marine Coastal Spaces of Native Peoples) recognizing the customary use and historical connection that the indigenous peoples have with the coastal spaces, as well as the different uses they have in terms of fishing resources, prioritising the human consumption and the sustainability of resources. (recommendation 121.165; 121.166)

C.2.- Rights of the tribal people of African descent

21. The tribal people of African descent in Chile that principally inhabit the Arica and Parinacota region in the north of the country³⁴ has fought 18 years for their inclusion, visibilization and recognition by the Chilean state. It was during the Continental Conference against racism, discrimination and xenophobia and all forms of related intolerance carried out in Santiago de Chile in the year 2000 that the social, political and cultural afro Chilean movement emerged. With almost two decades since this process, the African descent people has accomplished an intense political agenda to achieve those purposes, whose central advocacy actions has been the fight for its legal and political inclusion in the statistics.

22. Since the year 2004, bills for the **recognition of the African descent people in Chile** have been presented, without success. Currently there is a bill that grants legal recognition to the tribal people of African descent that was approved by the Chamber of Deputies³⁵, but still has to be voted by the Senate. Although this bill is appreciated, it worries how slow the Congress has taken its discussion and approval, as well as the lack of support of the current government.

23. The Chilean State has subscribed diverse agreements such as the Durban Declaration and Programme of Action and the Montevideo Consensus on Population and Development³⁶, through which is committed to include the **African descent people as variable in the census**, as well as their issues in the national statistics. However, Chile has refused to include the African descent people in the national census, home surveys, health surveys and other statistical instruments which hinders their visibilization. Therefore, the Committee on the Elimination of Racial Discrimination - CERD (2013) recommended to Chile to include the African descent variable in the population and housing census³⁷. Also, the African

³⁴ In 2012, the estimated population was 8.412 people of African descent only in the Arica and Parinacota region. INE Census 2012.

³⁵ <https://www.biobiochile.cl/noticias/nacional/chile/2017/10/13/diputados-otorgan-reconocimiento-legal-a-pueblo-tribal-afrodescendiente-chileno.shtml>

³⁶ Montevideo Consensus on Population and Development. Paragraph 92 and 96. Montevideo, August 2013.

³⁷ "The Committee regrets that the bill that recognize the afro descent community in Chile has not yet been approved (CERD / C / CHL / CO / 15-18, paragraph 13). While noting the characterization survey to be done, it expresses its concern about the lack of official information on the human rights situation of people of African descent in the State party, which would prevent the State from better understanding their situation and developing appropriate public policies in their favor. "(Articles 1, 2 and 5). In the light of its general

descent organizations have demanded to the National Institute of Statistics (INE) their inclusion in the 2017 census³⁸.

24. In 2014, the Chilean state included the participation of the African descent people as tribal people in the prior consultation for the creation of the Ministry of Cultures, Arts and Patrimony, thus **applying the Convention 169**. However, Chile has denied their inclusion in other prior consultations processes that have affected them directly as the consultation on the constituent process, arguing that since they are not legally recognised as people, this convention cannot be applied.

25. During 2011, it was created the **Communal Office for the development of African descent people** (in the local municipality of Arica, where the most Chilean African descent population is concentrated) and it was extended in 2014 with the creation of a rural link in the Azapa Valley, an ancestral and/or traditional territory of African descent people. However, in 2017 this office was closed down by the current mayor of Arica without foundation.

26. With the arrival of massive migrant African descent population from other countries of the region to Chile, racial prejudgments and stereotypes against them, have increased. This is manifested in **racists and discriminatory attitudes that the State has not prevented (recommendations 121.34; 121.51; 121.52;121.66; 121.67)**. Moreover, the State has launched communicational campaigns especially on health and sexually transmitted diseases, HIV and leprosy. These diseases have been called “Caribbean” diseases, and African descent people appear in brochures as carriers of those diseases, increasing the racism and discrimination towards these people.

27. After three years of the **International Decade for People of African Descent (2015-2024)**, Chile has not created a coordination body to effectively implement the action plan of this Decade. Although there is a counterpart formed by the United Nations and the civil society, there is no institutional body to articulate the actions to be implemented. This deficiency determines that there is no progress related to justice, development and recognition for people of African descent, breaching thus the agreements signed by the State.

28. Recommendations:

a.- Promote the approval of the bill for the recognition of the African descent population as priority, and advance in the preparation of a proposal for its regulation, guaranteeing the international commitments that the Chilean State has subscribed on the human rights of the tribal afro-descendant people.

b.- Include the African descent variable in the population and housing censuses as well as in the official statistics.

recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee reiterates the request made to the member State to provide information on African descent people. The Committee recommends that the member State accelerates the bill that recognizes the African descent population, also to include the African descent variable in the population and housing censuses, and to adopt programs and measures, including special measures to ensure the enjoyment of rights of African descent people. Final observations on the 19th to 21st periodic reports of Chile, approved by the Committee at its 83rd session (August 12 to 30, 2013), Committee on the Elimination of Racial Discrimination, paragraph 17.

³⁸ See Annexes E-4 and E-5.

c.-Effective application of the ILO Convention 169 to the tribal people of African descent on every occasion their rights are affected.

d. Promote and strengthen the creation of an institutional office for the people of African descent, in charge of the effective implementation and application of various actions and public policies in favour of the development and inclusion of people of African descent.

e.-Consider special measures and campaigns to combat racial discrimination as well as adopt special programs and measures to guarantee the effective enjoyment of the rights of people of African descent. **(recommendations 121.34; 121.51; 121.52;121.66; 121.67).**

f.- Comply with the various commitments taken on international instances in relation to the guarantee of the rights of the people of African Descent, prioritising the compliance of the Plan of Action for the International Decade for People of African Descent.

C.3.- Rights of migrant people

29. Over the last years, Chile has experienced growing and dynamic migration flows, particularly from Latin American and the Caribbean countries, reaching a total of 1.119.267 of migrant people to December 2017. However, the Chilean State has not updated its migration law that dates back to 1975. It has not foster public policies either that generate more inclusion, development and wellbeing for migrant people and their families which has restricted the exercise of their political and social rights and limited its fundamental guarantees as people in situation and context of human mobility in the country, particularly concerning the right to proper housing³⁹.

30. In relation to the efforts to provide a **new law to update the migratory regime (recommendations 121.179; 121.181)**, currently a migration bill is under the legislative process. However, this bill does not provide a human rights-based approach that allows migrant communities to enjoy their civil, political, economic, social and cultural rights in the country in accordance with the agreements ratified by Chile. This bill is more inspired in the national security approach which also reveals a utilitarian approach towards migration. This is against the multiple international instruments subscribed by Chile, and even against with what it is declared in the same bill, in regard to assume human mobility as right.

31. With respect to **protecting and promoting the rights of migrant people (recommendation 121.181)**, the government is currently carrying out an extraordinary regularization process whose implementation has been deficient and problematic and rather corresponds to a registry of foreign people than a regularization process. Deadlines have been really brief and shortcomings in the access and delivery of the information have been detected. What is concerning about this process is that it can take over a year, time in which migrants registered in this process cannot work. This violates their rights and does not acknowledge the recommendations provided by the International Labour Organization in relation to the measures on the regularization of migrant workers and their families⁴⁰.

³⁹See Annex 3: Movimiento Acción Migrante Report to the United Nations Special Rapporteur on the Adequate Housing Leilani Farha. Also, see the note in Spanish: El Ciudadano. "Lejos de casa: El drama de la vivienda entre los migrantes en Chile". Available in: <https://www.elciudadano.cl/reportaje-destacado/lejos-de-casa-el-drama-de-la-vivienda-entre-los-migrantes-en-chile/06/12/>

⁴⁰"Promote an equitable migration" International Labor Conference 105.A meeting, 2016. General Study on the migrant workers instruments. International Labor Office, Geneva. Pages 116-119.

32. In regard to the necessary measures to tackle the **social exclusion and vulnerability of migrant women (recommendation 121.182)** preoccupies the lack of implementation of policies directed to migrant women⁴¹ such as women employed in precarious jobs with two or three shifts, and particularly women whose visas depend on their husbands, because this type of visa prevents them from working with a salary and a contract. This violates their right to work and breaches the General Recommendation No. 26 of the CEDAW committee that establishes the member States must safeguard that women obtain their travel documents independently and in equal conditions⁴².

33. Currently there are approximately 1500 **migrant children (recommendation 121.180)** institutionalized in the National Service for Minors (SENAME)⁴³, this institution has faced heavy criticism and problems due to the systematic violation of children and adolescents' rights. It is particularly concerning the situation of migrant children and adolescents in irregular status that despite of accessing pre-school, primary and secondary school and having a registry number (Provisional School Identifier-IPE), when they turn their legal age cannot access to higher education and State aid⁴⁴.

34. Currently human trafficking and smuggling are regulated by the Law N° 20.507⁴⁵, which has permitted diverse improvements in this matter⁴⁶. However, in spite of the progress, human trafficking victims have increased the last years. While in 2013, trafficking cases were up to 43, this number increased six times in 2015, reaching over 250 cases.⁴⁷

35. Recommendations:

a.-Guarantee the new migration law includes measures in accordance with the human rights based-approach and international standards subscribed by Chile in matters of human mobility.

b.- Launch and promote a migratory regularization process with clear rules and information and public access to interested parties, as well as training for public officials that implement that process

⁴¹“Regarding policies directed to migrant women during 2016, only 1.3% of actions were directed to this population which is insufficient considering that they represent the 52.4% of the total”. In: Alternative Report for the Review of the State of Chile before the CEDAW Committee in its No. 69 Session (Seventh Periodic Report) February, 2018. Page 7. Available in:

[Http://Tbinternet.Ohchr.Org/Treaties/Cedaw/Shared%20documents/Chl/Int_cedaw_ngo_chl_30005_s.Pdf](http://Tbinternet.Ohchr.Org/Treaties/Cedaw/Shared%20documents/Chl/Int_cedaw_ngo_chl_30005_s.Pdf)

⁴² General Recommendation No. 26 on migrant workers. Paragraph 24. e) page 11. In:

<http://www.acnur.org/fileadmin/Documentos/BDL/2012/8337.pdf?file=fileadmin/Documentos/BDL/2012/8337>.

⁴³ EMOL. “Ingreso de menores extranjeros al sistema de protección del SENAME se triplicó en los últimos ocho años”. See more in: <http://www.emol.com/noticias/Nacional/2018/06/08/909155/Ingreso-de-menores-extranjeros-al-sistema-de-proteccion-del-Sename-se-triplico-en-los-ultimos-ocho-anos.html>

⁴⁴ EMOL. “Migrantes piden al MINEDUC eliminar requisito de permanencia definitiva para optar a la gratuidad”. Available on: <http://www.emol.com/noticias/Nacional/2017/09/04/873863/Migrantes-piden-al-Mineduc-eliminar-requisito-de-permanencia-definitiva-para-optar-a-la-gratuidad.html>

⁴⁵ This law was enforced in 2011 and “Categorizes the Crimes of Illicit Trafficking and Smuggling of Migrants and Establishes Norms for its prevention and more effective Criminal Persecution.”

⁴⁶ It was created a Brigade Specialized on Trafficking that depends on the Investigations Police of Chile; it was open a shelter for women victims of trafficking and a specialized center to take care of victims of trafficking. There is also an Inter Sector Group on Trafficking composed of public and private organizations, and National Action Plan against Human Trafficking was implemented (2015-2018)

⁴⁷ Economía y Negocios online newspaper. “Cifras revelan alza de casos de tráfico de migrantes y trata de personas a nivel nacional”. Available in : <http://www.economiaynegocios.cl/noticias/noticias.asp?id=360834>

c.-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, labour and social security, considering specifically the situation of migrant women.

d.- Recognise the “*Ius solis*” principle granting the nationality to boys and girls born in Chile. And also incorporate the intercultural approach to evaluate cases of children derived to retention centres as SENAME or other public institutions, guaranteeing family reunification using a wide concept of family.

e.- 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 such as boys, girls, adolescents, persons with disability, refugees, victims of human trafficking, migrant women, among others.

D.- Business and Human Rights (Recommendations 121.177; 121.184)

36. There are not substantial improvements to reduce the impacts of the activities of companies in human rights, especially in the most vulnerable sectors such as indigenous peoples and local communities. There are no improvements about justice and reparation of environmental deterioration generated by companies activity as a result of an economy open to international markets.⁴⁸ Chile has received in the last decades an important quantity of foreign investment which is mainly concentrated in the natural resources exploitation as mining, forestry and salmon farming.⁴⁹ Investments located mostly in lands that the Convention 169 defines as “traditionally occupied by indigenous”, which has generated heavy impacts in the rights of indigenous peoples.

This is the case of exotic forestry which has three million of hectares planted in the centre south of the country, half of them located on the lands traditionally and legally occupied by mapuche. This has had an impact on their ecosystems, waters and ancestral territory.⁵⁰ And also the case of mining developed by national and foreign companies in the north of the country, on the land traditionally occupied by Andean peoples such as Aymara, Lickanantay, Quechua, Coya and Diaguita, affecting the scarce waters whose subsistence economy relies on and prevents them from maintaining their traditional way of living. Moreover, these activities have not been consulted as it was mentioned before.

37. The activities of companies have generated high social unrest in the last years. There have been 102 socio environmental conflicts to 2015 due to investment projects from private and public companies as

⁴⁸ To this date, the Chilean State has subscribed 25 commercial agreements in force with a total of 64 states, among them the most developed economies that represent the 64.1% of the world population and the 86.3% of the global GDP. General Directorate of International Economic Relations (DIRECON), Ministry of Foreign Affairs of Chile. Available in: <http://www.direcon.gob.cl/>. This year subscribed the TPP 11 along with 10 states of the Pacific Asia which replaces the TPP subscribed years ago with the participation of the United States but it did not thrive. In 2017 it subscribed an agreement to renovate and update the commercial agreement with Canada, whose approval by the Congress is in process.

⁴⁹ The 74.6% of the Chilean exports in 2014 were concentrated in three sectors (mining with 62%, cellulose and wood industry with 8%, and salmon farming with 4.6% of the total). CIPERCHILE. Available in: <http://ciperchile.cl/wp-content/uploads/GraficoExp1.pdf>

⁵⁰ See: The impacts of the companies on the human rights of the mapuche people in Chile. Santiago-Temuco: Observatorio Ciudadano-IWGIA, 2015; Rosamel Millamán and Charles R. Hale (coordinators); José Aylwin, Margarita Canío, Yerko Castillo, Héctor Nahuelpan, Carlos Oyarzún, and Rubén Sánchez (researchers), The forestry industry of Chile, FSC Certificate and Mapuche Communities 2017.

a consequence of their effects on the right to environment, water, consultation and political participation, among others.⁵¹

38. The effects on human rights due to the activity of companies, has negatively impacted on the perceptions of citizens about companies. According to the UNDP Report, at 2016 trust around private companies reached 13%, while 45% of the citizens had the perception that private companies were involved in corruption.⁵² In this context, the Chilean State, during the government of the President Bachelet, launched the design of the National Action Plan on Business and Human Rights (PANDHE), that was released the year 2017. While this Plan is valued, citizen participation in the process of its preparation was very precarious and it was not carried out an indigenous consultation as the ILO Convention 169 requires. In terms of its contents, PANDHE focused mainly on the duty of the State to protect human rights within the framework of business activities, and very weakly on the responsibility of companies to respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights. Regarding the State duties, PANDHE does not contain proposals aimed at enforcing domestic laws or proposals for constitutional and legal reform that would allow to address the omissions and contradictions of the internal legal order to ensure the respect of human rights against companies. As for the trade agreements, it proposes to incorporate in these agreements a language that demonstrates a commitment to the respect of human rights; but it does not consider the implementation of human rights impact studies developed by the State for the approval process of the commercial agreements.

39. It does not address either the need that the State adopts legislative and administrative measures to ensure the legal responsibility of companies and its subsidiaries located in Chile in relation to the economic, social and cultural rights (ESCR) in its activities abroad as the ESCR Committee recommended to Chile in 2015.⁵³ On the other hand, even though on April 2018 an Inter Ministry Commission was constituted in charge of its monitoring and follow-up, until now there is no Multi-Party Committee with civil society representatives, unions, business sector, indigenous peoples, among others, to assess the improvements and collaborate in the effective implementation of the Plan.

40. Recommendations:

⁵¹ INDH, Map of socio environmental conflicts, 2015. Available in www.indh.cl

⁵² UNDP. Audit to democracy. More and better democracy for an inclusive Chile. IV National Survey, 2016. Available in www.auditoriaalademocracia.org

⁵³ The Economic, Social and Cultural Rights Committee – ESCRC, Final Observations of the fourth periodic review of the State of Chile, 2015. Par. 11. “Although the Committee notes with satisfaction to the information provided on the creation of a National Plan on Business and Human Rights, is concerned that the State party does not have a framework that safeguards the full respect of human economic, social and cultural rights by the companies that develop their activities in the State party and those subjected to its jurisdiction that carry out their activities abroad.” In that regard, it recommends in the same paragraph that “b) Adopts the adequate legislative and administrative measures to insure the legal responsibility of the companies and its subsidiaries that have the headquarters in the territory of the State party or are managed from here, in relation to the violations of the economic, social and cultural rights in their projects abroad.”

a.- Adopt legislative and administrative measures that guarantee the State effectively protects human rights affected by the economic activity, particularly extractive companies, guaranteeing the reparation due to the caused damages.

b.- Ensure the legal responsibility of companies and its affiliated businesses in Chile in relation to the violation of the economic, social and cultural rights of its activities abroad.

c.- 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 and the sectors most affected by the activities of companies.

E.- ANNEXES

E.1.-Information of the signing organizations:

Name	Asociación de Municipalidades con Alcalde Mapuche
Creation Date	January 14th 2014
Acronym	AMCAM
Address	<u>Pasaje Antumalal N°01060, Temuco</u>
Phone Number	(+56-45) 2483734
Email Address	<u>contacto@amcam.cl</u>
Website	<u>www.amcam.cl</u>
ECOSOC Status	NO

Name	Consorcio TICCA
Creation Date	October 13th 2010
Acronym	ICCA
Address	Cousin 2016, Santiago de Chile
Phone Number	(+56) 9 79892455
Email Address	<u>loreana@iccaconsortium.org</u>
Website	<u>www.iccaconsortium.org</u>
ECOSOC Status	NO

Name	Informativo Mapuexpress
Creation Date	April 1st 2000
Acronym	Mapuexpress
Address	<u>Arturo Prat N° 350, Oficina 413, Temuco</u>
Phone Number	(+56) 998765596

Email Address	mapuexpress@gmail.com
Website	http://www.mapuexpress.org
ECOSOC Status	NO

Name	ONG AFROCHILENA LUMBANGA
Creation Date	June 23rd 2003
Acronym	LUMBANGA
Address	Valle de Azapa km 6, Arica
Phone Number	(+56) 989624940
Email Address	onglumbanga@gmail.com
Website	NO
ECOSOC Status	NO

Name	Movimiento Acción Migrante
Creation Date	March 15th 2013
Acronym	MAM
Address	Carlos Antúnez 2329 Providencia
Phone Number	(+56) 998220955
Email Address	contactomamchile@gmail.com
Website	www.mamchile.cl
ECOSOC Status	NO

Name	Observatorio Ciudadano
Creation Date	November 12th 2010
Acronym	OC
Address	Antonio Varas 428, Temuco, Chile. Cousin 2016, Santiago de Chile
Phone Number	(+56-45) 2213963 /218353
Email Address	observatorio@observatorio.cl
Website	www.observatorio.cl
ECOSOC Status	NO

E.2- Note from the Judicial Observation Mission on the Luchsinger-Mackay case of the FIDH-OMCT.

E.3- Report of the Movimiento Acción Migrante (Migrant Action Movement) for the United Nations Special Rapporteur on Adequate Housing Leilani Farha.

E.4- Habeas Corpus presented by the Lumbanga NGO against the National Institute of Statistics for violating the constitutional guarantees established in the article 19 (numerals 2 and 14) of the Political Constitution of the Republic, this is equality before the law and the right to submit petitions to the authority.

E.5- Press release on the presentation of the Habeas Corpus presented against the National Institute of Statistics (INE) for the refusal to include the category "Afro-descendant / Black" in the question referred to indigenous peoples of the next Census.

E.6- Observatorio Ciudadano: Human Rights and Indigenous Peoples in Chile today: The threats to water, biodiversity and social protest. Temuco, 2017. Available on: <https://observatorio.cl/derechos-humanos-y-pueblos-indigenas-en-chile-hoy-las-amenazas-al-agua-a-la-biodiversidad-y-a-la-protesta-social/>