

# **International Agreements and Indigenous Peoples’ Rights: the Chilean Panorama**

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# International Agreements and Indigenous Peoples' Rights: the Chilean Panorama

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## Abstract

Although indigenous peoples represent 12% of the global population, they comprise 15% of the international impoverished community (Instituto Nacional de Estadísticas [INE], 2018b). The arrival of colonizers and their disregard for indigenous peoples' rights and culture created social, political, and economic inequalities. Chile is no exception. For decades, Chile has fostered unjust environments for their indigenous populations, and the effects of such acts are still felt today. Fortunately, international spaces emerged during the second-half of the 20th century to discuss and protect indigenous peoples' human rights. These international forums produced documents that address indigenous peoples' human rights. The following policy paper will overview the details of three international documents and verdicts from an international court. It will then analyze Chile's implementation of policies, laws, and programs in relation with these international documents.

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## Introduction

### ***Ancient history of indigenous peoples in Chile (1535 - 1980)***

The indigenous peoples of Chile date back thousands of years. Chile's current largest indigenous population are the Mapuche, or the ancestors of the Pitrén (600 - 1100 CE) and the El Vergel (1100 - 1450 CE) (Museo Chileno de Arte Precolombino [MCAP], 2012). The Mapuche were resilient fighters, escaping the attempted invasions of the Incas and even a Spanish conquistador, Diego de Almagro, who quickly fled Chile in 1531 when forced to face the Mapuche (Spanish Wars, 2012; Memoria Chilena, 2018). The Mapuche encountered a stronger Spanish force led by Pedro de Valdivia, who arrived and managed to found the city Santiago in 1541 (BBC, 2012). Valdivia even initiated the Arauco War (1536 - 1810) by setting out to claim more Mapuche territory; however, he was ambushed and killed by Mapuche in 1553 (BBC, 2012; Spanish Wars 2012). Despite Mapuche efforts, Spain continued to claim northern and central parts of current-day Chile until 1810 when Napoleon overthrew the Spaniard king (BBC, 2012). This shift in power weakened Spain's control over their colonies, leading to Spain's recognition of Chile as an independent State in 1840 (BBC 2012). The Mapuche continued to defend their territory in Southern Chile until 1882 when the Army of the Republic of Chile successfully implemented their campaign to "civilize" Mapuche people (MCAP, 2012). This campaign led to stolen Mapuche territory, government dependence, and the degradation of Mapuche society (MCAP, 2012). The direct consequences of this history are apparent in Chile's modern history and societal issues today (MCAP, 2012).

### ***Modern history of indigenous peoples in Chile (1980 - 2013)***

The Mapuche people unsuccessfully protested for the redress of their land from 1960 to 1973; furthermore, the military government passed the Law of Community Division in 1976 to further demarcate Mapuche land by privatizing it (MCAP, 2012). By 1980, "70% of the Mapuche people lived in urban areas," demonstrating a substantial increase in the migration of thousands of Mapuche, who sought professional opportunities, from rural territories (MCAP, 2012). These migration patterns were exacerbated by the continued social inequality in Chile, causing more Mapuche people to feel the crippling effects of poverty (MCAP, 2012). In addition, the Chilean government's disregard for indigenous peoples' human rights was affirmed by the adoption of the 1980 Constitution, which does not recognize indigenous peoples (Ministry Secretary General of the Presidency, 2011).

### ***Demographics of indigenous peoples in Chile today (2013 - Present)***

In spite of the Chilean government's refusal to recognize indigenous peoples, indigenous people comprise a substantial portion of the Chilean population. The 2017 Chilean census determined that approximately 17.5 million people live in Chile, and indigenous peoples represent 13% of the total population, or 2,284,620 individuals (INE, 2018b). The census identifies nine distinct indigenous

communities while also acknowledging the other minority groups (see Table 1) (INE, 2018b). The Mapuche comprise approximately 80% of the indigenous population, or 1.8 million individuals (INE, 2018a). The census distinguishes the regions in which distinct indigenous groups reside (see Figure 1); 87.8% of Chileans reside in urban areas while the remaining 12.2% reside in rural areas (INE, 2018a). The Arica and Parinacota region located in northern Chile possesses the greatest concentration of indigenous peoples with an estimated 35.7% followed by the Araucanía region located in southern Chile with an estimated 34.5% (INE, 2018a).

**Table 1: Indigenous Communities in Chile**

<b>Indigenous Community</b>	<b>Representation in Total Chilean Population</b>	<b>% in Indigenous Populations</b>
Mapuche	~1.8 million	79.8%
Aymara	164,492	7.2%
Diaguita	93,669	4.1%
Quechua	36,554	1.6%
Lican Antai	31,985	1.4%
Colla	20,562	0.9%
Rapa Nui	9,138	0.4%
Kawésqar	22,846	0.1%
Yagán o Yámana	22,846	0.1%
Other	29,700	1.3%
Ignored	70,823	3.1%

*INE (2018a) & Minority Rights Group International (2017)*

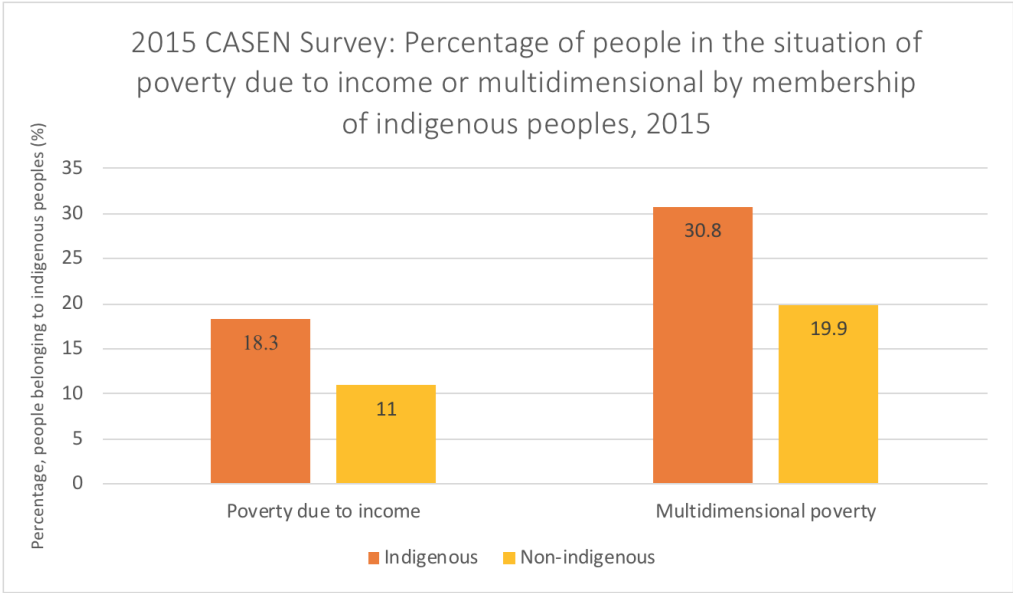
### ***Education, Income, and Health Inequalities***

Similar to other nations, the indigenous peoples of Chile have suffered from social inequalities: a lack of education, lower incomes, and poorer health. For example, in February of 1994, data demonstrates that 10% of the Chilean population escaped poverty during President Aylwin’s time in office (Minorities at Risk Project [MRP], 2004). Yet, “the poverty and literacy levels of indigenous peoples remained the same” (MRP, 2004). Approximately every two years since 2006, the Ministry

of Social Development has conducted national surveys through the Chilean Government. These CASEN surveys serve to provide quantitative data about the well-being of Chileans based on socioeconomic factors (Ministerio de Desarrollo Social, n.d.). The results of the 2015 CASEN survey demonstrate that inequities between indigenous and non-indigenous peoples continue to exist – especially regarding income, education, and health. Even though the inequities have significantly decreased between 2006 and 2015, which is a testament to the effectiveness of the government and various indigenous advocacy programs and organizations, more efforts still need to be achieved.

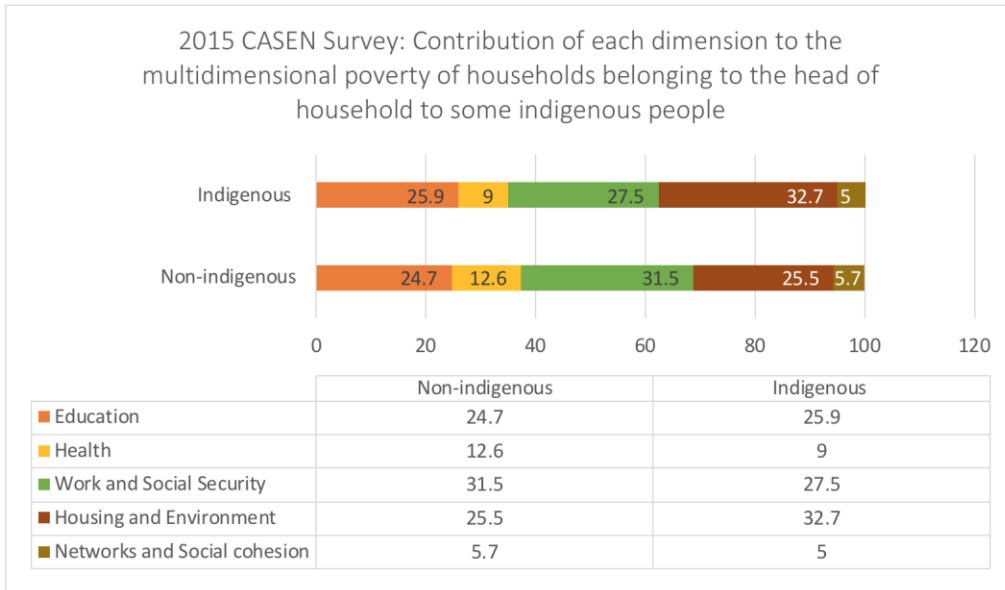
The 2017 Chilean Census reveals that the average Chilean has eleven years of education (INE, 2018a). Those who have seventeen years of education earn triple the income of those with twelve years of education; consequently, indigenous people face stark income inequality due partly to a low quality of education, thus condemning indigenous peoples to higher income poverty and multidimensional poverty in comparison to non-indigenous peoples (see Figures 2 & 3) (INE, 2018b). According to Undersecretary Berner, there is a direct correlation between students who drop out of school and the lag indicator of multidimensional poverty (MDS, 2017). Even though the amount of people affected by income-based poverty has decreased for both indigenous and non-indigenous peoples, the disparity has increased from 1.57:1 in 2006 to 1.66:1 in 2015 (MDS, 2017).

**Figure 2: Income Poverty Between Indigenous and Non-Indigenous Peoples**



*Ministerio de Desarrollo Social (2017)*

**Figure 3: Causes of Multi-Dimensional Poverty in Indigenous and Nonindigenous Peoples**



*Ministerio de Desarrollo Social (2017)*

The 2015 CASEN survey revealed more specific disparities within education. 4.7% of indigenous peoples over the age of 15 are illiterate, a rate that remains higher than non-indigenous peoples (MDS, 2017). The overall difference in illiteracy rates has decreased by 1.4% between 2009 and 2015 (MDS, 2017). When the illiteracy rate trends are investigated further, there is a .1% difference, or 1.1:1 ratio, between indigenous and non-indigenous peoples who are between fifteen and twenty-nine years of age (MDS, 2017). These disparities become more significant when analyzing the age categories of forty-five to fifty-nine and sixty or older, which both possess an approximate 2:1 ratio of illiteracy. This breakdown exhibits how younger generations are benefiting from advocacy programs that aim to support the education of indigenous peoples. Despite these improvements, indigenous peoples continue to receive higher education at a lower rate. Even though 6.8% more non-indigenous peoples earned a higher education, this inequality has decreased since 2011 (MDS, 2017). However, indigenous students receive more government assistance for technical colleges in comparison to non-indigenous students who receive more government assistance for private universities, such as Universidad de Católica.

Indigenous peoples experience higher rates of unemployment when compared to non-indigenous peoples (MDS, 2017). Even though the overall amount of unemployed indigenous peoples has decreased since 2009, the disparity persists between indigenous and non-indigenous peoples (MDS, 2017). In 2015, indigenous peoples' average annual income was 372,074 Chilean pesos in comparison with 551,321 Chilean pesos for non-indigenous peoples (MDS, 2017). This same trend recurs with the average household income of indigenous and non-indigenous families (MDS, 2017).

According to the 2015 CASEN Survey, non-indigenous peoples receive better healthcare, especially in regards to malnutrition and the ability to access adequate healthcare. Furthermore, indigenous children between the ages of zero and six are more overweight than non-indigenous children, exemplifying the impacts of lackluster healthcare services and subpar education on the long-term wellbeing of indigenous populations (MDS, 2017). In addition, 35.1% of indigenous peoples reported issues accessing healthcare when in need of medical attention when compared to 29.1% of non-indigenous peoples (MDS, 2017). When indigenous people received medical care, 42.9% of indigenous peoples expressed problems when compared to 35.3% of non-indigenous peoples (MDS, 2017).

### ***Overview of international spaces and documents***

International forums on protecting indigenous peoples' human rights commenced during the latter-half of the 20th century. The forums produced international documents that nations signed, agreeing to uphold equal human rights for their indigenous peoples (see Figure 4). Meanwhile, the Inter-American Commission on Human Rights (IACHR) is an international court that addresses cases regarding indigenous peoples' rights. The following policy paper will focus on international court rulings by IACHR and three international documents: International Labour Organization (ILO) Convention 169, United Nations Declaration on the Rights of Indigenous Peoples, and the Organization of American States (OAS) Declaration on the Rights of Indigenous Peoples (Organization of States [OAS], 2018; International Labour Organization [ILO], 1989; United Nations Department of Economic and Social Affairs – Division for Inclusive Social Development Indigenous Peoples [UNDESA], 2008; Organization of American States [OAS], 2016).

**Figure 4: Timeline of National Legislation and International Documents, Forums, and Court Cases**

October 25, 1974	<ul style="list-style-type: none"> <li>• First Report on the Status of Human Rights in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
June 28, 1976	<ul style="list-style-type: none"> <li>• Second Report on the Status of Human Rights in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
February 11, 1977	<ul style="list-style-type: none"> <li>• Third Report on the Status of Human Rights in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
September 11, 1980	<ul style="list-style-type: none"> <li>• Constitution of the Republic of Chile</li> </ul>
September 9, 1985	<ul style="list-style-type: none"> <li>• Fourth Report on the Situation of Human Rights in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
June 7, 1989	<ul style="list-style-type: none"> <li>• C169 Indigenous and Tribal Peoples Convention</li> <li>• International Labor Organization</li> </ul>
September 28, 1993	<ul style="list-style-type: none"> <li>• Chile passes the Indigenous Law (Law No. 19,253)</li> </ul>
October 6, 1998	<ul style="list-style-type: none"> <li>• Session 100 – Case 11.856 – Mapuche Indigenous People, Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
March 3, 1999	<ul style="list-style-type: none"> <li>• Session 102 – Case 11.856 – Mapuche Indigenous People, Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
March 3, 2005	<ul style="list-style-type: none"> <li>• Session 122 – Case 11.856 – Human Rights Situation of the Mapuche People of Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
September 13, 2007	<ul style="list-style-type: none"> <li>• United Nations Declaration on the Rights of Indigenous Peoples</li> <li>• United Nations</li> </ul>
March 10, 2008	<ul style="list-style-type: none"> <li>• Session 131 – Situation of human rights defenders of the Mapuche People in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
September 15, 2008	<ul style="list-style-type: none"> <li>• Chile ratifies the C169 Indigenous and Tribal Peoples Convention</li> <li>• International Labor Organization</li> </ul>
September 2009	<ul style="list-style-type: none"> <li>• The ILO Convention No. 169 goes into effect in Chile</li> <li>• International Labor Organization</li> </ul>
March 27, 2014	<ul style="list-style-type: none"> <li>• Session 150 – Indigenous Peoples' Right to Prior Consultation in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
March 17, 2015	<ul style="list-style-type: none"> <li>• Session 154 – Extractive Industries and Human Rights of the Mapuche People in Chile</li> <li>• Inter-American Commission on Human Rights</li> </ul>
October 22, 2015	<ul style="list-style-type: none"> <li>• Session 156 – Reports of Violence against Mapuche Indigenous Children and Impunity</li> <li>• Inter-American Commission on Human Rights</li> </ul>
June 14, 2016	<ul style="list-style-type: none"> <li>• American Declaration on the Rights of Indigenous People</li> <li>• Organization of American States</li> </ul>

### ***Why does it matter?***

Research demonstrates that Chile has failed to abide by the standards of the documents that they have signed; therefore, it is important to understand how the country's decisions continue to affect the wellbeing of indigenous populations. There have been several incidents in recent decades, and particularly in the past five years, in which indigenous peoples' human rights were violated. The Chilean government continues to break the treaties in spite of reprimanding from international organizations affiliated with the United Nations as well as continuous protests by indigenous peoples. This policy paper will describe how Chile has not fully protected their indigenous peoples' rights in three categories: land and territory, the Anti-Terrorism Act and police brutality, and constitutional recognition and political representation. There will also be several policy



recommendations to ensure that proper implementation of the international documents occurs in the future.

## **Methodology**

An online investigation was carried out to determine how Chile has abided by the international documents that they have signed in efforts to protect indigenous peoples' rights.

1. The Inter-American Human Rights sessions were reviewed and the three international documents were analyzed: International Labor Organization (ILO) Convention 169, United Nations Declaration on the Rights of Indigenous Peoples, the Organization of American States (OAS) Declaration on the Rights of Indigenous Peoples. The articles listed in each document were categorized into land and territory, the Anti-Terrorism Act and police brutality, and constitutional recognition and political representation.
2. Other resources were used to assess when Chile has failed to protect their indigenous peoples' human rights in recent years – including the Indigenous World Group in Indigenous Affairs (IWGIA) World Reports, United Nations follow-up reports, and news articles.
3. After assessing Chile's successes and failures in upholding the international documents, policy recommendations were drafted. In order to propose quality recommendations, in-depth research was conducted to understand the impact of current indigenous organizations advocating for indigenous peoples' rights as well as how other countries are addressing similar issues.

## **International Forums**

As aforementioned, the three international documents are products of international forums that discussed how to protect indigenous peoples' human rights (see Figure 4). The International Labour Organization (ILO) was established in 1919 as a subsector of the United Nations. Its aim is to “set labor standards, develop policies, and devise programs that promote decent work for all women and men” (ILO, 2018). In 1989, the ILO hosted an Indigenous and Tribal Convention (No. 169). However, Chile did not adopt nor implement the resulting treaty until 20 years later in 2009 (ILO, 2018). In 2007, the United Nations procured the Declaration on the Rights of Indigenous Peoples (DRIP), and it was adopted on September 13, 2007 by 144 states in favor – including Chile (UNDESA, 2008). According to the United Nations, the Declaration is “the most comprehensive international instrument on the rights of indigenous peoples” (UNDESA, 2008). The Organization of American States' 2008 Declaration on the Rights of Indigenous Peoples (OAS DRIP), which Chile and thirty-five other nations adopted, even recycled articles from the UN DRIP (OAS, 2018). Besides producing a DRIP, OAS also contains different sectors, such as the Inter-American Court on Human Rights (IACHR). As aforementioned, IACHR is an international court that reviews cases regarding human

rights violations. Between 1998 and 2015, IACHR reviewed seven cases in which the rights of Mapuche were violated in Chile (OAS, 2018).

**Figure 5: United Nations & Indigenous Peoples**



*UNDESA (n.d.)*

The three international documents can be analyzed into three categories: land and territory, the Anti-Terrorism Act, and constitutional recognition and political representation (see Table 2). After comparing each international document, the primary<sup>2</sup> articles are listed below in each respective category. The “X’s” denote whether each international document incorporates the same or similar regulations. Because the Inter-American Court of Human Rights is not an international document, the X denotes that the court reviewed a case that regarded the related article.

<sup>2</sup> Not only does “primary” refer to the articles that are repeated the most among the documents but also the articles Chile has repeatedly violated based on research.

**Table 2: Breakdown of international documents and court cases**

Articles	ILO 169	UNDP Dec.	OAS Dec.	IACHR <sup>3</sup>
<b>Land &amp; Territory</b>				
In conjunction with indigenous peoples, the State will protect and preserve the environment of their territories with necessary measures.	X	X	X	X <sup>4</sup>
“States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs” (OAS, 2016).	X	X	X	
Indigenous peoples’ will elect representatives to collaborate with the State on projects regarding their land and territories. In addition, the State will consult with them about its use and management.	X	X	X	X <sup>5</sup>
<b>Anti-Terrorism Act</b>				
States will enact special measures to ensure that indigenous peoples are able to freely-express their wishes and concerns.	X	X	X	X <sup>6</sup>
<b>Constitution Recognition &amp; Political Representation</b>				
Right to a nationality.	X	X	X	
Right to self-determination.	X	X	X	
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.	X	X	X	X <sup>7</sup>
“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them” (UNDESA, 2008).	X	X	X	X <sup>8</sup>

<sup>3</sup> For the Inter-American Court for Human Rights, the “X” denotes that the court reviewed a case regarding the selected article. Please see the footnote for more specifics about the case.

<sup>4</sup> “Session: 154 Period of Sessions; Date: Tuesday, March 17, 2015: Extractive Industries and Human Rights of the Mapuche People in Chile” (OAS, 2009).

<sup>5</sup> “Session: 150 Period of Sessions; Date: Monday, March 27, 2014: Indigenous Peoples’ Right to Prior Consultation in Chile” (OAS, 2009).

<sup>6</sup> “Session: 131 Period of Sessions; Date: Monday, March 10, 2008: Situation of human rights defenders of the Mapuche People in Chile”; “Session: 156 Period of Sessions; Date: Thursday, October 22, 2015: Reports of Violence against Mapuche Indigenous Children and Impunity in Chile” (OAS, 2009).

<sup>7</sup> “Session: 150 Period of Sessions; Date: Monday, March 27, 2014: Indigenous Peoples’ Right to Prior Consultation in Chile” (OAS, 2009).

<sup>8</sup> “Session: 150 Period of Sessions; Date: Monday, March 27, 2014: Indigenous Peoples’ Right to Prior Consultation in Chile” (OAS, 2009).

## **Analysis of Chile In Relation to International Documents**

Despite adopting multiple international documents regarding the rights of indigenous peoples, Chile still does not meet international standards on multiple levels (see Table 2). The incidents detailed in the following sections exhibit how Chile's efforts have been insufficient and at times more detrimental to their relationship with indigenous peoples, resulting in several international organizations admonishing the State's actions. For example, in April of 2013 the United Nations' Human Rights Council "recommended that Chile actually abide by their agreements" in their Universal Periodic Review (United States Department of State [USDS], 2014, p. 16). There are other organizations that have published reports of indigenous peoples' rights in Chile over time: International Work Group for Indigenous Affairs and Amnesty International (Amnesty International, 2018).

### ***Land & Territory***

Chile has a long history of seizing indigenous peoples' land with unjust policy. Throughout the 1990s, the Mapuche led numerous protests against the occupation of their lands (MRP, 2004). After 144 indigenous peoples were convicted "on charges of illicit association and occupation of lands," which were forcibly taken from Mapuche people originally, Mapuche leaders accused the Chilean government of violating the recent ILO Convention No. 169 in March of 1993 (MRP, 2004). In early 1995, the United States Department of State reported that Chilean policies strip indigenous peoples of their ability to control their land (MRP, 2004). By the late 1990s, indigenous communities were being affected by extreme desertification of their land (MRP, 2004). For example, in June of 1997, Aymara communities in northern Chile were experiencing high rates of poverty due to the copper mines removing the majority of their water and resources (MRP, 2004). Meanwhile, the government still approved the construction of another dam in the Biobio River located in southern Chile despite Mapuche protests (MRP, 2004). By April of 1999, President Ricardo Lagos created a development program for indigenous communities, which included a redress of approximately 120,000 acres of land to Mapuche Indians by 2001 (MRP, 2004). Yet, the unjust use of indigenous land persisted throughout the 2000s.

A 2013 investigation by the National Institute of Human Rights determined that 70% of Mapuche land would be negatively affected by large forestry projects (USDS, 2014). It even reported how indigenous people "encountered serious obstacles to exercising" their right to influence decisions in regards to their land (USDS, 2014). This infringement of indigenous peoples' rights led to President Michelle Bachelet' public apology in June of 2017: "I want, solemnly and with humility, to ask forgiveness from the Mapuche people for the errors and horrors committed or tolerated by the state in our relation with them and their communities" (The Santiago Times, 2017). In spite of this apology, Chile continued to infringe upon indigenous rights in 2017 according to the Indigenous

World Group in Indigenous Affairs (IWGIA) 2018 World Report (Citizen's Observatory & Aylwin, 2018).

In 2017, the State approved mining, forestry, salmon farming, and hydroelectricity projects throughout Chile to proceed on indigenous land with the Environmental Impact Evaluation System (Citizen's Observatory & Aylwin, 2018). According to a study being conducted by a team of academics at the University of Chile and coordinated by Milka Castro, there have been 142 consultations – both for investment projects and for administrative measures or laws– in Chile since 2013. But, indigenous peoples still have not reaped any benefits from the economic output of projects nor have granted the State consent to commence these projects; therefore, Chile violated international law (Citizen's Observatory & Aylwin, 2018). In addition, the International Forestry Stewardship Council conducted an investigation which confirmed that the State approved projects to be carried out on Mapuche land, which is in direct violation with ILO Convention 169 (Citizen's Observatory & Aylwin, 2018). Beyond the unnecessary health risks and income cuts that indigenous peoples face, the repercussions of Chile's actions have also manifested into a heightened distrust between the State and the indigenous groups. The election of Sebastián Piñera for the 2018 - 2021 presidential term will generate more conflicts between indigenous communities and the State since he intends to significantly reduce indigenous claims to land and privatize federally recognized indigenous land (Citizen's Observatory & Aylwin, 2018).

Therefore, the following recommendations address Chile's violations of their indigenous peoples' human rights in regards to land and territory:

- a. The State should fully abide by the mandate of indigenous peoples' right to consultations regarding the use of their territory.
  - i. The representatives for indigenous communities who were not appropriately elected based on international law should be immediately removed from their positions. An appropriate election of new representatives should ensue.<sup>9</sup>
  - ii. Indigenous representatives should be held accountable with revised contracts that explicitly outline punishments for insufficiently protecting indigenous peoples' rights – regarding land and territory – by approving projects that either do not abide by international law or inhibit proper consultations and adequate representation.
- b. The State could report to an international organization quarterly to ensure that the priorities of indigenous communities are actually included in government reforms, legislations, and policies. This recommendation will also facilitate the reestablishment of trust between the State and indigenous communities.

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<sup>9</sup> The 2017 Araucanía Recognition and Development Plan, which was created to address “the history of misunderstandings and delays that has affected the La Araucanía region and the Mapuche people for centuries,” was developed by the Araucanía Presidential Advisory Commission. Although it included Mapuche representatives, the representatives were not chosen by the Mapuche peoples as international law mandates, but instead they were designated by the Commission (Citizen's Observatory & Aylwin, 2018).

- i. The Ministry of the Environment could create a non-partisan committee with leading interdisciplinary experts who will ensure that the State accurately evaluates and approves projects in conjunction with international agreements. This committee could report to an international organization.
- ii. The Anti-Terrorism Act should be removed to allow indigenous communities to more freely express their concerns regarding their land and territory.
- c. The State should subsidize the healthcare of indigenous peoples due to the usurpation of their resources and the desertification of their land.
- d. The State should work with indigenous representatives, the Ministry of Justice and Human Rights, and an international organization to determine a standard minimum percentage of post-tax profits from land projects to give to indigenous communities. These profits could be used to support impactful social development organizations and programs beneficial to indigenous peoples.
- e. The Ministry of Justice and Human Rights should create a committee to practically address the redress of indigenous lands currently in use by the government. They should also ensure that indigenous land that is not currently in use will immediately return to indigenous communities.

### ***Anti-Terrorism Act & Police Brutality***

The Anti-Terrorism law was introduced during Augusto Pinochet's dictatorship (Vice News as cited by Unrepresented Nations and Peoples Organization [UNPO], 2014). Despite the end of Pinochet's reign, the anti-terrorism law was still applied to Mapuche people in the early 2000s (Vice News as cited by UNPO, 2014). In 2014, the Anti-Terrorism Act was passed, allowing the government to criminalize Mapuche protests by stigmatizing protestors as terrorists (Citizen's Observatory & Aylwin, 2018). Since the Anti-Terrorism Act permits the "extended detention of suspects without charge and greater sentences upon conviction as well as [ ...] anonymous witness testimony as primary evidence," numerous unjust arrests and punishments ensued (Vice News as cited by UNPO, 2014). The anonymous witness testimony facilitates the State's abuse of power by granting them the opportunity to plant witnesses who convict Mapuches. This discrimination by the State also encourages police brutality against indigenous men, women, and even children.

A non-governmental organization named Citizen's Observatory, for example, reported seventy cases of "excessive force by police" between 2009 and 2013 (Vice News as cited by UNPO, 2014). On May 29, 2014, the Inter-American Court for Human Rights reviewed the case *Norín Catrimán et al. v. Chile*. The court determined that the Chilean government was "guilty of misapplying the Pinochet-era anti-terrorism laws" against Mapuche activists among other international law violations<sup>10</sup> (USDS, 2014; Amnesty International, 2018). Despite reprimanding by international organizations, Chile continued to disregard the international documents they have signed.

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<sup>10</sup> See Inter-American Court of Human Rights (2014) for more details of other human rights violations.

In 2017, an intelligence operation called “Huracán” resulted in the arrests of eight Mapuche leaders on the grounds of terrorist conspiracy and terrorist arson (Citizen’s Observatory & Aylwin, 2018). During the arrest, the Mapuche men and their families – including women and children – were victims of police brutality (Citizen’s Observatory & Aylwin, 2018). The police also used tear gas in dangerously close proximity to an ongoing class in a Mapuche community school (Amnesty International, 2018). “Huracán” was authorized by an Appellate Court Judge using Law No. 19,974 which allows government officials to intercept private communications (Citizen’s Observatory & Aylwin, 2018). On October 19, 2017, the Chilean Supreme Court granted an appeal because the judge illegally authorized the operation since there was no legal basis for the arrests (Citizen’s Observatory & Aylwin, 2018). The police officers never received adequate punishment for their inappropriate actions. This is due to the fact that military courts handle cases in which their security forces violate human rights (Amnesty International, 2016). The Director of Amnesty International in Chile, Ana Piquer, outcried, “Chile’s military courts should not be allowed to investigate, prosecute and punish members of its own ranks – that is simply a no-brainer. It is akin to courts allowing criminals to be judged by their own families” (Amnesty International, 2016).

These incidents demonstrate blatant violations of indigenous peoples’ rights. The Anti-Terrorism Act prevents Mapuches from protesting and exercising their right to freely express their concerns in spite of three international documents and an international court mandating this right. The police brutality against Mapuches infringes indigenous peoples’ right to not be victims of discrimination, especially the endangerment of women and children. The following recommendations address Chile’s violations of their indigenous peoples’ human rights:

- a. The State should immediately eliminate the Anti-Terrorism Act.
- b. An anti-terrorism law should be created and adopted that still prevents terrorism while upholding indigenous peoples’ rights.
  - i. A committee within the Ministry of Justice and Human Rights could draft this law.
  - ii. The new law should be reviewed by international organizations before being adopted and implemented to ensure that it meets international standards of indigenous peoples’ rights.
- c. Police departments should adopt lack of force policies to prevent excessive force.<sup>11</sup>
- d. In efforts to reduce implicit bias, the School of Carabineros de Chile should incorporate mandatory cultural awareness courses. This education should be supplemented by

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<sup>11</sup> The United States has garnered international media attention due to their police brutality against African-American citizens. There were only fourteen days in which the police did not kill someone in 2017; meanwhile, African-American individuals are three times more likely to be killed by the police (Mapping Police Violence, 2018). United States police departments documented 5% to 25% fewer killings when they included the following *police use of force* policies: “Requires warning before shooting, restricts shooting at moving vehicles, duty to intervene if another officer uses excessive force, requires de-escalation, has use of force continuum, bans chokeholds and strangleholds, requires all use of force to be reported, and requires officers to use all other means before shooting (Mapping Police Violence, 2018; Use of Force Project, 2018).

mandatory, annual cultural awareness courses and trainings once police officers enter the workforce.<sup>12</sup>

- e. Police officers who do not uphold indigenous peoples' rights to non-discriminatory interactions should be punished – as average citizens – with a trial that is in accordance with the severity of their actions.
- f. Detailed reports of incidents of police brutality with indigenous communities should be shared with an international organization to review. If deemed necessary, the international organization should be permitted to conduct separate investigations. If police wrongdoing is confirmed, then the State should provide appropriate compensation to the affected families.

### ***Constitutional Recognition & Political Representation***

In 1980, Chile adopted an updated Constitution which does not recognize indigenous people, therefore, inhibiting indigenous peoples' right to a nationality (Ministry Secretary General of the Presidency, 2011). As a result, indigenous peoples do not have representation nor participation in Chile's national government. In March of 1995, the U.S. Department of State reported how the Chilean Congress has only one self-identified indigenous<sup>13</sup> representative (MRP, 2004). Almost ten years later, even though some indigenous people were elected at the municipal level, there were still no self-identified indigenous people elected to national government positions (USDS, 2014). Although Chile signed multiple international documents that prioritize indigenous peoples' right to a nationality, Chile still has not reformed its Constitution, resulting in international admonishment.

On July 24, 2013, the Universal Periodic Review Working Group recommended that Chile quicken the process of indigenous peoples' constitutional recognition (USDS, 2014, p. 18). Although President Michelle Bachelet acknowledged the report, Chile still has not followed-up (USDS, 2014, p. 18). In 2016, the Constitutional Assembly Process – a new committee whose intention is to develop a new constitution that recognizes indigenous peoples – was promoted (Citizen's Observatory & Aylwin, 2018). Yet, the committee was suspended in 2017 due to a lack of interest by the National Congress and executive branch, clearly demonstrating how the national government still is not interested in granting indigenous peoples the right to a nationality (Citizen's Observatory & Aylwin, 2018). In August of 2017, the Ministry of Social Development initiated consultations with indigenous peoples to gather their perspectives regarding their concerns for the new constitution

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<sup>12</sup> Research in the United States demonstrates the positive effects of the continued education for law enforcement officers. According to "Improving Law Enforcement Cross Cultural Competencies and Continued Education," Christine Sereni-Messinger and Nancy Wood share how law enforcement's understanding of different cultures generates more appropriate responses to situations with those communities (Serine-Messinger & Wood, 2016). In addition, cultural awareness courses should include elements critical thinking and interpersonal communication since higher education –typically where the aforementioned skills are honed – is not a requirement for Chilean carabineros (Serine-Messinger & Wood, 2016).

<sup>13</sup> Note the distinction of a self-identified indigenous individual. An indigenous person is not recognized by the Constitution. However, a self-identified indigenous person declares their indigenous heritage in a census.



(Citizen's Observatory & Aylwin, 2018). The results of the consultation process display how none of the priorities that indigenous peoples identified were included in the development plan (Citizen's Observatory & Aylwin, 2018). Multiple indigenous organizations and representatives denounced the outcome of the consultations, describing it as "clearly insufficient given the advance on rights recognized by the international community in several international legal instruments" (Citizen's Observatory & Aylwin, 2018). The indigenous community, especially indigenous representatives and community leaders, lost significant trust in the Chilean government. The disregard of their priorities created a situation in which indigenous leaders were forced to accept some rights or not accept the proposed rights in efforts to insist that their priorities were acknowledged. Indigenous leaders who accepted the development plan were disowned by the communities that they represented (Citizen's Observatory & Aylwin, 2018).

Self-identified indigenous people garnered more political representation. The 2017 elections resulted in the successful elections of a Mapuche female representative, a Mapuche male senator, and a Diaguita female senator into National Congress (Citizen's Observatory & Aylwin, 2018). Although their elections will have limited influence as they are three out of a 205-member parliament, self-identified indigenous political representation is progressing. The 2017 election also resulted in the election of Sebastián Piñera as the Chilean president for the 2018 - 2021 presidential term. Since he desires to constitutionally recognize indigenous peoples, his election will potentially facilitate indigenous political representation and participation in Chilean government.

In 2014, the United Nations Human Rights Committees provided Chile a list of recommendations in order to ensure that indigenous peoples' rights were being upheld. The first recommendation was for Chile to "grant constitutional recognition of indigenous peoples" (USDS, 2014). The following recommendations echo this suggestion.

- a. The State should resurrect the Constitutional Assembly despite the lack of interest by National Congress
- b. The State should carry out consultations with indigenous community leaders or elected indigenous representatives to ensure that their rights to proper recognition and self-determination are included.
- c. The State should create a minimum quota of the number of self-identified indigenous people in office to resemble the indigenous representation in Chile's overall population.

## Conclusion

The policy paper presents information regarding the ways in which Chile has not fully protected the rights of their indigenous peoples. Although there have been great strides in the social development of indigenous peoples as well as efforts to ensure that their opinions are included in national discourse, Chile can still improve. Even though it may not be convenient for the national government to redress the land and territory of indigenous peoples or recognize them in their Constitution, for example, Chile must still be held accountable for their inadequate efforts to meet international standards that they have agreed to in multiple international documents. It is important that the preceding policy recommendations are seriously considered to prevent Chile from continuing to infringe upon the rights of their indigenous peoples.

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