GENERAL OVERVIEW OF THE COMMUNICATIONS ADDRESSED BY THE UN SPECIAL PROCEDURES TO CHILE BETWEEN 2014 AND 2018

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The Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights. The system of Special Procedures covers all human rights: civil, political, economic, social and cultural. There are currently 44 thematic and 12 country mandates. These experts send communications to States in which they bring alleged violations or abuses to their attention.

About the communications sent to and received from Chile between 2014 and 2018

Between Chile’s last Universal Periodic Review in January 2014 and April 2018, the Special Procedures sent 7 communications to the Chilean government among which 4 were left unanswered. Among these 7 communications, 3 were related to health and 3 to indigenous peoples.

Analysis of each communication

1. Complaint about financial complicity during dictatorship, 26th May 2015 (CHL 1/2015)

During the years of Augusto Pinochet’s dictatorship, the Chilean government received loans from various States in a context of constant violations of the Chilean citizens’ human rights. These loans allegedly contributed to these violations and the Special Procedures asked the Chilean government what measures would be taken to implement investigation on these loans and urged to formulate new juridical norms with the aim of evaluating the potential guilt of the moneylenders that provided money to the government during those years.

This communication is still left unanswered.

2. Dismissal request of Mrs Lorena Fries Monleón and criticism of the National Human Rights Institution (NHRI), 8th July 2015 (CHL 2/2015)

There had been an alleged dismissal request of the director of the INDH Mrs Lorena Fries Monleón and public criticism of the INDH after the publication of a human rights scholar report entitled “Report on Human Rights for Students” that criticized the action of the “Carabineros de Chile.” The House of Parliament eventually opposed this request and, in the meantime, the NHRI received a lot of criticism which damaged its image. The Special Procedures requested to know the actions taken to guarantee the independence and the autonomy of NHRI which are necessary for democracy.

Reply to CHL 2/2015, 12th October 2015

The government recognised that a group of parliamentarians had pushed for the dismissal of Mrs Fries Monleón but this came to nothing. However, it insisted on the fact that this process was regulated by the law. The reply added that the training program of the “Carabineros de Chile” respected human rights. They recalled the article 7 of law N°20.405 which created the NHRI and which clearly affirms that the authorities can submit a dismissal request in the most legal way.

However, the Commission of Constitution, Legislation, Justice and Rules of Procedure stopped the process of dismissal because no procedure could guarantee the accused to obtain the minimum norms and constitutional procedures. The government explained that this result showed that the
counsellors of the NHRI were able to fulfil their activities without any fear or interference from the Chilean government.

They emphasized the good will of the State with the creation of an under-secretary of human rights as well as an inter-ministerial committee in which the NHRI could participate and speak. This committee will be able to consult the annual report on human rights by the NHRI and to make suggestions based on its content, which could be potentially be included in the National Plan of Human Rights.

3. Violations of Human Rights of Rapa Nui People, 15th January 2016 (CHL 1/2016)

The communication reported alleged violations of the rights of the Rapa Nui people on the Easter Island including detention of some leaders. The area of the national park represents 40% of the island, including places of great importance to the Rapa Nui people. However, the management of the park and the benefits of tourism are questions which are still debated. In 2015, an agreement was signed so that sacred places remain administrated by the Rapa Nui people and that the benefits of these sacred places be sent to the Rapa Nui people entity to manage them. There seemed to be a problem between the agreement and another proposal between the National Forest Corporation (CONAF) and the Commission for the Development of the Easter Island (CODEIPA) that did not adjust to the agreement. The Rapa Nui people were arrested for seeking contribution from visitors. Another leader was also arrested at the airport of Santiago de Chile and taken to prison despite his weak health.

Reply to CHL 1/2016, 14th March 2016

The government reminded that, in order to establish a positive dialogue with the Rapa Nui people, a development plan for the Easter Island had been created in 2014. The government also began to work with the CONAF to establish a new model of administration of the Rapa Nui Park. Regarding the draft law on Migration (Law of Residence, Stay, Transfer of People to the Easter Island) which was first opposed by the government but then reached an agreement with the CODEIPA leaders, a few changes were introduced to the project to make it legally and politically viable. The draft was eventually approved in an ordinary session of CODEIPA and the process was finalized on 24th January 2016 through a dialogue with the State and the assistance of 1411 members of the Rapa Nui community. The Ministry of Home Affairs is currently drafting the text to be debated at the National Congress.

The reply also gave more details about the new participative model of administration of the Rapa Nui Park. Elections for approval took place in 2015 and the functions of the CODEIPA were extended for a purpose of economic, social and cultural development. The working reunions resumed in July 2015. However, in August 2015, three anonymous persons were reported for having refused the access to the Park to tourists. They were subsequently arrested. The CONAF filed a lawsuit as current legal administrator of the National Park charging Mr [redacted] of threats against Public Prosecutor’s Department. CONAF managed to bring the services of the park back to normal.

About the procedural status of Mister [redacted], the reply adds to the report sent to the Inter-American Commission of Human Rights. After the official procedures, a hearing took place on January 21st 2016 of the accused [redacted] and [redacted]. During the hearing, the Public Prosecution Service stopped investigating the offense of conspiracy. Regarding the currently submitted preventive measures, the people consulted issued one involving a preventive custody inside the insular territory. According to the provided information, the hearing for the closing of the investigation should have taken place on 18th February 2016, but was likely to be suspended because of the impending designation of a new judge of the Easter Island.
Regarding the information of the State on the investigations of the Indigena He Reo o te Rapa Nui and Parlamento Rapa Nui associations, the reply claimed that there was not such investigation against these organizations.

About the potential agreement of co-management of the park and the results of the process of consultation after the vote of 25th October of 2015, the reply insisted on the large participation of the Rapa Nui community to the vote, thanks to the provision of information by the government. It also affirmed that there was an agreement to work in parallel with CODEIPA to move forward in a contract of association made possible by the process of co-management. However, CODEIPA and the Rapa Nui people have not yet agreed on the legal person to be assigned to the model and they have not shown any interest yet in the subscription of a partnership with CONAF.

About the legislative, administrative or political measures regarding the establishment of protected areas in the country, the reply stated that there were currently no measures to create such areas on indigenous lands. The process of creating protected areas must be done with the consultation of indigenous peoples to know how they could be affected. If the response is positive, prior consultation would be necessary. In that sense, a Protocol of conservation of the sea in the Easter Island for the protection of biodiversity should also be submitted for prior consultation by the Rapa Nui People. In that sense, the reply recalled that the Executive was pushing for a bill to create a Service of Biodiversity and Protected Areas in which the creation or modification of protected areas would have to be approved by organizations of the indigenous community.

4. Suspicion of upcoming human rights violations in the aftermath of the signature of the Trans-Pacific Partnership (TPP), 20th April 2016 (CHL 2/2016)

On 4th February 2016 was signed the Trans-Pacific Partnership Agreement, a trade agreement between Chile, Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States. This agreement is pending ratifications by all signatory countries. Civil society organisations complained about several issues: a denial of its participation in the negotiation process and a lack of transparency; the potential delay in the making and selling of medicines and increasing prices; the postponement of the deadline for provision of intellectual property which might damage public access to creative and scientific works; the considerations of intellectual property that did not seem to provide recognition or protection of indigenous property; the allegedly abusive system of suppression of internet content and; the framework of dispute of settlement in which indigenous peoples will not have the juridical power to push for their rights.

Reply to CHL 2/2016 by New Zealand on behalf of Chile as well as Brunei, Japan, Malaysia, Mexico, Peru, Singapore, Vietnam, and the United States (Australia and Canada willing to reply separately), 30th June 2016

New Zealand affirmed that in regard to the negotiation process, each TPP country had undertaken consultations with the well-established policies of each State. In response to the allegation of non-disclosure, they asserted that although the draft text and related documents had been kept confidential, the States were open to the “issues under negotiation and the substance of the issues under discussion.” New Zealand, on behalf of all countries except Australia and Canada, declared that none of the signatory countries would have become party of a treaty that would impact its “ability to promote the highest attainable standard of physical and mental health or unduly constrained access to affordable medicines” but did not responded precisely to the concerns about the price increases.

New Zealand declared that no obligation in the TPP weakened a country’s ability to protect indigenous rights. Article 18.16 of the agreement states that the relevance of intellectual property is
recognised by all parties and that these parties commit to cooperate through their respective institution to enhance the understanding of traditional knowledge associated with genetic resources. They also affirmed that the provisions of the agreement represented an important step forward for issues linked to the intellectual property system.

The reply also addressed the issue of Internet Service Providers (ISPs), recognising the importance of including obligations related to ISPs to facilitate the development of legitimate online services. Specific safeguards are included in the provisions. For example, when ISPs receive allegations of copyright infringement, the notice must include sufficient information to protect against false claims.

About dispute settlement, there is no consideration that the provisions within the TPP would prevent the parties to meet their obligations under international human rights law as opposed to what was claimed in the communication. New Zealand also affirmed there has never been a decision by any arbitral tribunal in relation to a trade agreement, including the World Trade Organization that has detrimentally affected human rights. They declared that they want to establish a predictable legal and commercial framework for trade and investment through mutually-advantageous rules. They insisted on their will to promote transparency, good governance and the rule of law, including through establishing dispute settlement mechanisms. Those do not fail to ensure the protection and promotion of other public interest concerns.

5. Delay in the adoption of the bill on Voluntary Interruption of Pregnancy, 28th July 2017 (CHL 1/2017)

The Chilean Constitution previously forbade the Voluntary Interruption of Pregnancy implying that Chilean women were being deprived of their highest standard of health, including their sexual and reproductive rights. A draft law was passed by the House of Parliament stating that a pregnancy can be interrupted in case of rape, danger to the woman’s life or unviability of the foetus. In July 2017 the draft was blocked in the Chamber to be examined by a commission composed of senators and members of parliament.

There were concerns that the draft kept being stopped in the process and that its adoption would never take place. The communication referred to the report of the Working Group on discrimination against women on its visit to Chile, underlining that the current limitations in Chile contributed to unsafe abortions that affected especially poor and socially marginalized women.

The approval of the bill by the Executive was requested as soon as possible. It was asked to the Government to send information on the current stage of the adoption of the bill and on the measures that could be taken to make sure that the law will eventually be implemented.

This communication was left unanswered.

In August 2017, the bill was approved, becoming a law one month later. Abortion is now permitted within the first 12 weeks of pregnancy (14 if the woman is under 14 years old) if the mother’s life is at risk, if the foetus will not survive the pregnancy or if case of rape.


The draft text “On the right to gender identity” was introduced to the Senate in 2013 and is currently in the process of being approved. The Senate approved the bill in 2014 and transferred it to the Commission of Human Rights, Nationality and Citizenship for a general revision. The Commission added more than a hundred directions and approved the draft text in 2017.
There were complaints about several directions that brought significant differences to the first draft: the applicant must have had a confirmation issued by an expert to ensure that he or she met the psychological conditions to request a gender reassignment and a change of name; underage persons were denied the right to request a written rectification of one’s gender identity papers; applicants could not have any marital bond or must have terminated the marriage with his or her spouse in a maximum of 30 days following the application.

The need to prove to be healthy to formulate a request could imply a pathologizing of his/her gender identity, especially for transgender persons and the first draft text affirmed that every single Chilean citizen could request a modification of his or her gender identity.

Despite some welcomed measures like the monitoring or the process of the change of name aiming at avoiding practices involving physical exams that might harm the integrity and dignity of transgender persons, those new directions still perpetuate the stigmatization of transgender people and prevent children and teenagers of benefiting of the highest level of health.

This communication is still left unanswered.


In September 2017 eight Mapuche leaders were accused of arsons and terrorist affiliations and arrested during the political and intelligence “Hurricane Operation”. The arrests allegedly took place based on a verbal order and the accused as well as their relatives suffered from disproportionate use of violence, including three children.

Members of the Mapuche community Alfredo Tralcal, his brothers Ariel, Benito, and Pablo Trongol were arrested allegedly for burning down an evangelical church. They went on a hunger strike and requested among others the recognition of a right to a fair judgement, and the non-application of the antiterrorist law that was used to arrest them. Only after the hunger strike the complaint was requalified so that the conducts were configured under the criminal offences of the penal code.

Francisca Linconao and 10 members of the Mapuche community were arrested under the Antiterrorist law for arson of the Luchsinger-Mackay estate which killed the married couple. The accusation came from an alleged accomplice who later declared that he gave his testimony under pressure and harassment from the investigation police. The 60 years old machi woman Francisca Linconao was put in jail despite her weak health and then transferred to a hospital centre.

There was an alleged use of violence in the arrests within a context of still ongoing stigmatization of the Mapuche people. The two previous Special Rapporteurs on the rights of indigenous peoples already mentioned this aspect in their mission reports to Chile from 2003 and 2009.

The CERD (Committee on the Elimination of Racial Discrimination) already expressed in 2013 its concern that the Antiterrorist ley was disproportionately applied to the Mapuche people. The Human Rights Committee observed that despite the information from the government, this law was not used for the penal persecution of the Mapuche community, as there were alternative reports claiming otherwise. On the other hand, the Inter-American Court of Human Rights also condemned the Chilean state for violating due process, the principle of legality and the right to presumption of innocence. A reply to protect the rights of the victims is required.

This communication is still left unanswered.
Conclusion

Chile has shown that answering every communication is not part of its top priorities as it has answered only 3 out of 7 communications since its last UPR. It seems that Chile is willing to answer the communications only once it has gathered the necessary information to dismiss them. The replies can be twice the length of the communication but still sometimes subtly avoid to directly address concerns or alleged human rights violations.

Chile takes care in providing mostly relevant information especially when it comes to legislation but obviously avoids questions on the use of force especially against indigenous peoples. In some other countries of South and Central America, much more communications can be sent on a 4-year period and many are often related to torture and human rights defenders. This is not the case here, but this does not mean that there is no violation to denounce. But Chile will apparently not reply unless it can supply evidence to prove that the government is not at fault.