

**Submission of the Unrepresented Nations and Peoples
Organization to the Expert Mechanism on the Rights of Indigenous
Peoples -
Promotion and Protection of the Rights of Indigenous Peoples
with Respect to their Cultural Heritage**

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1. MAPUCHE

1.1. INTRODUCTION: WHO ARE THE MAPUCHE?

The Mapuche are indigenous people of southern Chile and Argentina who have lived on their ancestral lands for centuries before the arrival of the Incas and later the Spaniards. They are known for having resisted the Spanish conquest, and for being politically independent and autonomous.

The Mapuche adapted their lifestyle to the region and developed a unique cultural identity based on their traditions and beliefs. They are considered an ethnically distinct group, who share similar values in terms of religion, culture and economic and social structure. Their communities in Chile are mainly located in the provinces of La Araucanía, Los Lagos, Los Ríos, Bío Bío and Valparaíso. In Argentina, they are mostly concentrated in the provinces of Chobut, Neuquén, Río Negro, La Pampa and south of Buenos Aires and Mendoza. There are approximately 1.5 million Mapuches living in Chile (with 37.4% living in Santiago), and a little over 250.000 in Argentina.¹

Mapuche culture is known to have first appeared in the south of Chile, at least 500 years BC.² Their government system allowed them to quickly develop and spread their influence throughout the Southern Cone. With the Spanish arrival in the 17th century, the Mapuche once again rose up, refusing to be conquered. Their resistance to colonial efforts lasted two centuries, and is a testimony of their strength and determination as a people.

The relationship between the Spanish and the Mapuche was especially unique because, contrary to custom, the Mapuche were recognized by the Spanish as an independent people with a sovereign territory.³

The independent republic of Chile also maintained border relations with the Mapuche until 1862 when they began to wage a war known as the '*Pacificación de la Araucanía*'. The war ended in 1883 with the defeat of the Mapuche and ushered in an era of Mapuche disenfranchisement. In the

¹ UNPO. 2013. "Mapuche". Available at: <http://unpo.org/members/7895> [Last accessed 1 February 2015].

² UNPO. 2013. "Discovering the Mapuche - Exploring the Ancient Culture of the Mapuche People".

³ P. Richards, "Of Indians and Terrorists: How the State and Local Elites construct the Mapuche in Neoliberal Multicultural Chile", *Journal of Latin American Studies* 42, no. 1 (2010), p. 61.

aftermath of the war, the Mapuche's land was appropriated and sold to Chileans and immigrants, leaving the Mapuche with just over 6% of their original territory.⁴ The root of discrimination against the Mapuche at this particular time lay in the fact that the Chileans saw their culture as homogenous. This mono-cultural view essentially meant that the Mapuche had to assimilate. This approach was so prevalent at the time that it was in fact the ideological justification for the '*Pacificación*'.⁵

1.2. MAPUCHE CULTURE

The word '*Mapuche*' means 'people of the land' and reaffirms their strong connection to the soil and to ancestral values. The harmonious relationship between man, land and nature is an important concept in their society. Traditionally, the Mapuche are subsistence farmers, hunters and fishermen. Their land is known for its fertile valleys, from which many make their living.

The social basis of Mapuche society is the family, united in what they call the *lof* or *caví*. Mapuche tribes are composed of several extended families and live in villages, centred around a *ruka*, a large straw hut, which serves as a meeting place. Throughout history, no families have attempted to exert control over others, as the Mapuche society is based on the principle of equality. There are, however, traditional authority figures, such as the *lonco*, the tribe's chief leaders; the *machi*, the healer; and the *werkén*, the messenger.

The Mapuche language, also known as *Mapudungun* (from '*mapu*' meaning 'land' and '*dungun*' meaning 'speech'), is a unique language spoken in parts of southern Chile and western Argentina. Today, there are approximately 100 to 200 thousand speakers of *Mapudungun* in Chile.⁶

The first description of the language dates back to 1606. It was the only linguistic system used in central Chile at the time of the Spanish arrival. To this day it constitutes the foundation of Mapuche identity. The Mapuche had no writing system and relied entirely on a rich oral tradition. Under Spanish influence, a written form of *Mapudungun* was developed using the Latin alphabet.

⁴ Richards 2010, p. 62.

⁵ Waldman 2012, p. 57.

⁶ *Observador Ciudadano* 7 (16): 12.

Despite the variety of Mapuche cultural material, examples of poetry and written literature in *Mapudungun* are hard to find. However, efforts have been made to preserve it. One such example is the publication of *Epu mari ñlkantufe ta fachantü* (“Twenty Contemporary Mapuche Poets”) in 2003. As a result, Mapuche poetry became better known and poets gained notoriety for their work. Mapuche poetry has a strong focus on the observation of nature, the attachment to ancestral land and Mapuche culture.

Music is an important part of the Mapuche cultural heritage. More than a mere artistic expression, it is an intrinsic aspect of their culture and society. Ritual music is traditionally believed to provide humans with a connection to the gods and spirits, but it may also be used to fulfil medical functions. While music and dance are occasions full of joy and togetherness, they are also a source of cultural pride for the Mapuche. Mapuche music is divided into *ñlkantú*, which refers to all types of vocal music, and *purrun*, instrumental Mapuche music used for dancing and other festivities.

Some of the individual dances include the *Lonco Purrun*, a dance performed by the head of the household; *Machi Purrun*, a dance performed by the Mapuche spiritual leader; and the *Rewe Purrun*, a dance performed for the introduction of the *rewe*, the Mapuche sacred altar. Group dances also play an important role in the Mapuche society, as they encourage community members to gather, strengthen the feeling of belonging and serve a religious purpose.

Being an ancient culture, the Mapuche have developed a unique set of beliefs, values and traditions, which constitute the Mapuche philosophy. The Mapuche society is based on the idea that Mapuche men and women are an essential component of nature, neither superior nor inferior to their environment. Because of this, Mapuche understanding of nature opposes the use of resources for generating profit, but rather that they should be protected and contribute to an exchange and ongoing cycle in which both men and nature mutually benefit.

According to Mapuche spirituality, all beings live under a great spirit, which consists of the amalgamation of the celestial family (*Elmapun*, *Elchen*, *Ngunemapun* and *Ngunechen*). The physical dimension in which men and animals live is the ‘*Naq Mapu*’, and the deities and the ancestral spirits are in the ‘*Wenu Mapu*’, or the sky as the spiritual dimension. This division is represented on the *Kultrun*, the Mapuche sacred drum.

The Mapuche have held on to their spiritual heritage, which is deeply engrained in their everyday lives and in the very structure of their communities. Unique traditional ceremonies, an integral part of Mapuche rich

cultural heritage, mark the passing of seasons and the bond between communities and the Mapuche deities.

The *Machi* is a key figure in Mapuche culture, as she serves as a spiritual and medical healer for the community. She is believed to have strong spiritual power, and therefore presides over most ceremonies and serves as an intermediary between the dimension of people and the spiritual dimension. The *Machi* is believed to be able to communicate with these deities while in trance, also bringing positive energy to the community. Important ritual ceremonies include the *Ngillatun*, *Machitun* and *Wentripantu*.

Living close to nature, the Mapuche are skilled at working wood, clay, metal and textile. These skills incorporate the Mapuche aesthetic imbued with cultural identity. Traditional craftsmanship is a significant expression of their ideology and derives from indigenous techniques, which have been passed down through generations. Metal work is one of the most renowned forms of art produced by the Mapuche. It does not, however, only have an ornamental meaning for its people. It is also closely linked to mythology and religion. Woodwork items range from ritual objects, such as the *Chemamüll* or the *Rewe*, to domestic utensil, such as bowls, spoons and platters. Textile work of traditional woven products involves a series of stages, such as washing, dyeing, spinning and weaving the wool. The patterns, colours and designs are rich in expression inspired by traditional symbolism. Pottery is also still very popular as an art form among the Mapuche.

1.3. IS MAPUCHE CULTURAL HERITAGE PROTECTED?

The question of indigenous rights of the Mapuche community in Chile encompasses myriad issues: land rights, environmental protection of ancestral lands, the right to consultation and participation, enduring poverty, educational attainment, access to health, cultural and linguistic preservation etc. The issues seem ongoing, characterized by a deadlock of conflict and accusations, and aggravated by discrimination and prejudice.

A history of marginalization and social exclusion, exacerbated in the era of Augusto Pinochet's military dictatorship, has meant that despite reforms, the Mapuche people are still not benefiting from Chile's fast economic growth. Historical racism and other prejudices have created distorted images of the "violent Mapuche" and the "good Mapuche", generating widespread misunderstanding and laying the foundations for justifications for the controversial anti-terrorism law. It is important to understand that Mapuche communities face very different concerns, their political positions are diverse, and therefore, they have distinct visions of how to realize their political, social, economic and cultural struggles.

A) CULTURAL & LINGUISTIC ASSIMILATION

Unfortunately, since the absorption of Mapuche territories into Chile after the Spanish occupation, and with the onset of cultural homogenisation, Mapuche culture and language have been threatened. The idea of a 'homogenous culture' led to the idea of '*mestizaje*', which was very prevalent in 20th century Latin America. '*Mestizaje*' essentially entailed the mixing of different races and cultures in order to foster a single cultural identity. This forced assimilation left the Mapuche economically and culturally devastated, weary and distrusting of outsiders. The struggle of the Mapuche is not only for their ancestral land, but also for the survival of their culture.

However, in post-Pinochet Chile, there has been a strong focus on Chile's multicultural identity. Though initially this seemed to be a positive development for the Mapuche, in practice, this notion of multiculturalism was a hollow one. Essentially, this new approach of multiculturalism was seen as the preferable mode of discourse, which would appease everyone and not

prevent tensions. Both the mono-cultural and the multicultural view of Chile have led to the same conclusion, namely the marginalization of the Mapuche.⁷

The loss of Mapuche culture and language go hand in hand. While the older generations still converse in *Mapudungun*, many children do not learn their ancestral language, as they are educated in Chilean schools where the curriculum is in Spanish. The Mapuche indigenous language is a language in resistance, maintained voluntarily by *Mapudungun* speakers. This has led to a general loss of identity as some Mapuche youth come to consider themselves Chilean rather than Mapuche, especially because of the suffering endured due to widespread discrimination.

In Chile, 11 languages are recognized among Chile's nine indigenous communities, however *Chango*, *Atacameño*, *Diaguita*, *Selk'nam*, *Yagan* and *Chono* languages have already vanished, and many Mapuche activists fear that *Mapudungun* faces the same fate. With only 115,000 fluent speakers of *Mapudungun* of the estimated 1.5 million Mapuche living in Chile,⁸ it is apparent that there is an absence of concrete and effective measures dedicated to the support and promotion of indigenous languages.⁹

In Chile, all schools in which at least 20% of enrolled pupils are of Mapuche origin must include *Mapudungun* as a language of instruction. This includes 4 extra hours of classes per week (Decree No. 2.960). In the region of Araucanía, 732 schools reach or surpass this percentage of enrolled Mapuche pupils, but only 214 schools implement the additional bilingual education.¹⁰ Chile has around 400 bilingual schools, however, these face additional obstacles such as a lack of specialists and instructors.

Furthermore, indigenous communities in Chile have campaigned to have indigenous languages recognized for official use in administrative and legal procedures in the regions where they are most commonly spoken.

Mapuche communities and local organizations have called for the normalization of the use of *Mapudungun* and active promotion of indigenous languages in a multilingual and multicultural Chile. Despite the protections enshrined in Chile's Indigenous Law (Ley Indígena No. 19.253), Chile's indigenous cultures face an uncertain future.

⁷ See more: <http://unpo.org/downloads/673.pdf> [Last accessed 12 February 2015].

⁸ See more: <http://santiagotimes.cl/indigenous-communities-demand-legislation-protect-mother-tongues/> [Last accessed 2 February 2015].

⁹ *Observatorio Ciudadano* 7 (16): 12.

¹⁰ *Observatorio Ciudadano* 7 (16): 13.

B) THE CONTROVERSIAL EDUCATIONAL REFORM

The current President Michelle Bachelet has made it a priority to reform Chile's educational system, a legacy of the Augusto Pinochet regime, which remodelled public education and imposed a market-based system, privatizing many educational institutions. According to Minister of Interior, higher education will be tuition-free in Chile from March 2016 onwards due to a significant increase in corporate tax, which is expected to generate up to \$8.2 billion in State revenue.¹¹

The current educational reform, which excluded the Mapuche community and the Mapuche student movement, attracted both public attention and criticism. The political debates have generally marginalized indigenous voices in how the educational reform should be implemented. Instead, it has centralized the roles played by Government officials. It also displays a lack of political will to incorporate the diversity and richness of Mapuche culture, language, knowledge and epistemology into the Chilean educational system. Many Mapuche activists have complained that the current assimilationist educational system is steeped in racist ideology, which justifies and reproduces colonial attitudes towards indigenous issues.

The lack of indigenous participation in the important national discourse on educational reform is particularly alarming, and in violation of ILO Convention 169. According to some Mapuche activists, the lack of indigenous participation in the education reform constitutes "a new form of invisibility, which sustains a hierarchical and racist education system".¹²

One of the most vocal critics has been the Mapuche Federation of Students (FEMAE - *Federación Mapuche de Estudiantes*), which is calling for greater participation of the Mapuche student movement in deciding the type of education offered to Mapuche communities and their future generations. They call for greater inter-culturalism in higher education, the creation of a Mapuche University, greater incorporation of *Mapudungun*, and a distinct education model for Mapuche communities, which will be formulated by "e/

¹¹ Attn.: 2015. "Chile Is Doing Something Huge For Its Students That We Wish America Would Do". Available at: http://www.attn.com/stories/836/chile-makes-college-tuition-free?utm_source=social&utm_medium=social&utm_campaign=usu [Last accessed on 12 February 2015].

¹² See more: <http://federacionmapuchedeestudiantes.es.tl/No-m%E1s-educaci%F3n-racista-y-colonial-para-el-Pueblo-Mapuche.htm> [Last accessed on 5 February 2015].

wallmapu” and not imposed from above.¹³

The Mapuche University, which would be a nationally funded educational institution, would place greater emphasis on indigenous knowledge and history. The demand first emerged in 1910 with the Caupolican Society, was reborn in 1940s with the Arucana Corporation, and later promulgated by the Federation of Indigenous Students in 1970s and the Indigenous Homes in 1990s.¹⁴

The idea for a Mapuche University made headlines and captured the attention of some key figures in Chilean Government, but despite this, FEMAE activists have not yet been incorporated in constructive political dialogue they had been seeking. Nevertheless, the National Federation of Students of Chile (CONFECH), have expressed their support for the Mapuche University initiative.

“/W/e have been ignored by the curriculum of Chilean education, we did not exist within it...this education, over 100 years, at least within the Mapuche community, has served as a homogenizing force, negating the possibility of a heterogeneous society. Here there is an intercultural post-war society, and that is the Arawakan society. Chilean education has ignored that and obliged us to forget that we are Mapuche, that we are a different people,”¹⁵ FEMAE leader Yonatan Cayulao.

The Program of President Michelle Bachelet stipulates that “the State shall promote the appreciation and dissemination of cultural expressions of indigenous peoples, who are entitled to their own education, and an intercultural and bilingual education system, according to their socio-cultural characteristics, values and traditions”.¹⁶ Whether the Bachelet Government will implement a truly participatory intellectual discussion and a recuperation of Mapuche culture and language remains to be seen.

¹³ See more: <http://eldesconcierto.cl/federacion-mapuche-de-estudiantes-esta-es-una-reforma-racista/> [Last accessed on 5 February 2015].

¹⁴ See more: <http://indiancountrytodaymedianetwork.com/2011/08/10/mapuche-students-fight-indigenous-university-chile-46586> [Last accessed on 5 February 2015].

¹⁵ See more: <http://indiancountrytodaymedianetwork.com/2011/08/10/mapuche-students-fight-indigenous-university-chile-46586> [Last accessed 5 February 2015].

¹⁶ 2014. “Programa de Gobierno 2014-2018 – Michelle Bachelet”. Page 32. Available at: <http://michellebachelet.cl/programa/> [Last accessed 12 February 2015].

C) LOSS OF ANCESTRAL LANDS

Chile has ratified the ILO Convention 169 and voted in favor of UNDRIP, and yet, few steps have been taken to ensure effective implementation of these international standards. Social conflicts arise when various development projects, natural resource extraction and infrastructure projects are carried out without prior consultation with the affected indigenous communities. When the right to consultation is not adequately observed, indigenous rights cannot be fully implemented, despite possible legal guarantees or an official prohibition of discrimination.

The fact that many Mapuche communities have had been disconnected from their ancestral land and forced to co-habit with the modern, globalised population of Chile has led to a gradual amalgamation of some Mapuche populations into the dominant Chilean culture, and to a general loss of Mapuche culture and values. Considering that Mapuche culture is closely tied to the harmonious relationship between man, land and nature, the destruction of their 'home-scapes' and the violent evictions from their ancestral lands have regrettably led to the destruction of their cultural practices and traditions.

The story of Chile's forests is a painful one for the Mapuche communities.¹⁷ The encroachment on Mapuche ancestral lands began with the passing of the Forest Ordinance 701 (Decreto Ley 701) in 1974, during the reign of General Augusto Pinochet. The ordinance subsidized the expansion of tree plantations, giving away Mapuche lands to the National Forestry Corporation. This initiated the quick expansion of monoculture plantations of pines and eucalyptus trees for paper manufacturing and timber.

Since then, many corporations have bought land, destroyed the once abundant forests, evicted and marginalized indigenous inhabitants. During Pinochet's regime, the area of 10 million hectares allocated to the Mapuche was reduced to only 350,000 hectares.

Since the fall of the regime, some Mapuche land has been seized, and some returned, leaving behind a scattered patchwork of indigenous lands, which were once part of the "*Nación Mapuche*". According to many Mapuche, land restitution efforts have been minimal.

¹⁷ See more: <http://unpo.org/article/17898> [Last accessed on 10 February 2015].

Not only did the forestry expansion evict Mapuche communities from their lands, it also impoverished these communities with the disappearance of native forests, sources of water, and biodiversity. These foreign plant species absorb a much greater quantity of water than native species, which renders the surrounding land unsuitable for small-scale agriculture - the mainstay of many Mapuche households. It also dries up wells used by Mapuche communities for drinking, cooking, cleaning and laundry.

The loss of ancestral lands has led to many resistance protests and occupations. For example, in November 2014 an estimated 30 Mapuche families occupied 2000 hectares of replanted pine forest in Paicavi estate as a peaceful demonstration to reclaim Mapuche ancestral lands and improve the lives of the indigenous people. The organizers of the occupation made it clear that they are committed to keeping the demonstration peaceful, and expressed their willingness to restart dialogue between the Chilean Government and the forestry company in order to reach a viable solution.¹⁸

Another example delineating the connection between the environment and culture is the destruction of sacred spaces in the Mapuche community of *Chilkoko* by the forestry company Forestal Arauco. On 13 December 2014, news broke out that the machinery used by Forestal Arauco partially destroyed and cracked the ancient rock *Llalinkura*, endangering the spiritual heritage of the Mapuche community.¹⁹ The community claims that their lands were usurped in the 19th century, first by foreign landowners, then by the University of Concepción (*Universidad de Concepción*), and now the company Forestal Arauco in complicity with CONAF (*Corporación Nacional Forestal*). The Mapuche community has spoken out against the destruction of native forests, arguing that it also depletes and pollutes food, water, plant (used for nutritional and medicinal purposes) and animal supply. It also destroys sacred lands and the *rewes*. Furthermore, the company regularly burns vast tracts of land for plantations of monoculture forests of pines and eucalyptus trees, violating the inalienable rights of the Mapuche. Forestal Arauco is also destroying land to build or broaden roads with heavy machinery disrupting the lives and *cosmovisión* of the Mapuche.

In Chile, many hydroelectric projects and mining enterprises go hand in hand with serious human rights violations of the Mapuche communities, whose ancestral lands are threatened, primarily in the regions of Bío Bío, Araucanía and Los Ríos. These regions are home to many Mapuche communities, but are

¹⁸ See more: <http://unpo.org/article/17685> [Last accessed on 10 February 2015].

¹⁹ See more: <https://www.veoverde.com/2014/12/pueblo-mapuche-denuncia-destruccion-de-piedra-ancestral-en-chilcoco/> [Last accessed on 5 February 2015].

also characterized by a large quantity of water sources, such as lakes and rivers shaping a bio-diverse and complex ecosystem. It is precisely the abundant natural resources, which have attracted various national and international entrepreneurs to explore possibilities for exploitation. There are approximately 30 projects being implemented in the region and encroaching on indigenous communities.

One of the most prominent cases of hydroelectric projects invading Mapuche ancestral lands is the Pilmaiquén Central Hidroeléctrica Osorno project.²⁰ The company Pilmaiquén S.A in its environmental impact study maintained that there were no existing communities or sacred spaces in need of protection during the construction of the three hydroelectric dams in the regions of Los Lagos y Los Ríos. It also stated that the project would have “zero impact on cultural, archaeological and historical heritage” of communities living in the regions.

However, the Mapuche communities of Maihue, El Roble and Carimallín - among others - argue that all communities living in the region will be directly impacted by the project, since these lands give and sustain their life and the Mapuche *cosmovisión*. According to Lonko Juana Cuante, hydroelectric projects lead not only to changes in the ecosystem, but the flooding of vast tracts of land inundates Mapuche ceremonial spaces. Therefore, Mapuche culture and spirituality are at stake. The blatant disregard for indigenous rights has already led communities such as Pilmaiquén, Rupumeica, Mehuín and Trafún to actively reclaim their territories with occupations.

“We hold the company [Pilmaiquén S.A] responsible for criminalizing our territorial claim of this sacred space and creating a climate of division and manipulation within our communities. We will continue to resist capitalist megaprojects. We understand this as a new invasion carried out today by transnational corporations. There are a number of approved projects, which will cause the river to flood over sacred ancestral territories. This includes hydroelectric, forestry, mining and salmon fisheries” (Machi Millaray Huichalaf of the El Roble-Carimallín community).²¹

²⁰ Radio Universidad de Chile. 2014. “Machi Millaray Huichalaf acusa de “proyecto genocida” a Central Pilmaiquén”. Available at: <http://radio.uchile.cl/2014/09/19/machi-millaray-huichalaf-acusa-de-proyecto-genocida-a-central-pilmaiquen> [Last accessed on 11 February 2015].

²¹ Weichan Pilmaiquén. 2011. “Pilmaiquén resiste”. Available at: <http://weichanpilmaiquen.blogspot.be/2011/12/pilmaiquen-resiste.html> [Last accessed on 6 February 2015].

According to the leaders of the affected communities, if the hydroelectric plants will be installed, the flooded lands will represent a “cultural genocide”, with the disappearance of lands, which hold great historic, cultural and religious symbolism and meaning for the Mapuche.

Cases of tension between (trans)national corporations on the one side and indigenous communities on the other, highlight the need for strengthening the participation and consultation process, which should precede the construction and implementation of any projects of natural exploitation on Mapuche ancestral lands.

There are currently two regulations on how business enterprises must be evaluated: the environmental declaration and the environmental impact study. The latter does include a citizen participation process, but in practice, the environmental impact study does not provide for meaningful participation and has been heavily criticized for being unsubstantial. Meetings are arranged simply to prove that regulations have been followed, but rarely are the opinions of communities taken into account.

The Supreme Court of Chile has also concluded that the process of participation within an environmental impact study is not enough to imply “indigenous consultation”. Indigenous consultation should be conducted separately to ensure the respect and protection of indigenous peoples’ rights.

On the first day of the Mapuche new year [June 2014], Ms Bachelet announced a new series of reforms, including broadening their political representation and returning Mapuche ancestral lands by buying back privately-owned land. Due to Chile’s obligation under ILO Convention 169 to consult indigenous peoples on matters, which affect them, a Council of Indigenous People was set up to oversee this consultation process. This measure was again deemed as unrepresentative by many Mapuche representatives. Therefore, some representatives decided not to participate, as this would legitimize a process they do not consider meaningful.

D) ANTI-TERRORISM LAW

Another aspect of the discrimination faced by the Mapuche is the selective application of the ‘*Ley 18.314*’, also called “*Leyes antiterroristas*” (Anti-Terrorism Laws). Established under the Pinochet regime, these laws were intended to enable the swift processing of dissidents. Some Mapuche communities have been accused of violent forms of protest, which has led to

excessive use of force by the police. Over the last ten years, several hundred Mapuche have been prosecuted under these laws, with charges ranging from trespass to arson.²²

Despite the fact that Chile is not facing any direct threats of terrorism, indigenous peoples are accused of committing crimes considered ‘terrorist acts’. The notorious anti-terrorism law is applied disproportionately against Mapuche communities protecting or repatriating (“*recuperación*”) their ancestral lands. According to the UN Human Rights Committee, the Mapuche represent more than 60% of those investigated or prosecuted on terrorism charges. One of the greatest concerns is that the definition of ‘terrorism’ is very broad, covering crimes that are not usually considered ‘terrorist’ internationally, such as simple arson.

While some individuals succumb to violent forms of protest to further their claims, the militarization of police is particularly alarming for several reasons.²³

Firstly, all over Chile, police responses to peaceful manifestations tend to be disproportionate. Chile violates international law, which clearly limits any restrictions to peaceful assemblies only for the purposes of protecting public order and the rights of others. Any use of force by the police must be kept to the minimum level required to diffuse any threats to peace, safety and stability.

Secondly, police raids in Mapuche communities can escalate and turn extremely violent, targeting entire communities. The police has been accused of stealing property, firing gunshots and using tear gas against children, pregnant women and the elderly. However, despite the existence of evidence to support claims of police brutality, impunity persists.

Thirdly, Chilean police protocols have only been made public several months ago. Until recently, it was unknown whether police forces were following protocol or not. However, questions remain about how these police protocols will be enforced and how possible police violence will be investigated. Currently, police violence claims are not investigated in ordinary courts, but instead in military courts, where low sentences are passed to those found guilty of excessive use of force.

Furthermore, the violation of due process of law with the use of protected witnesses is particularly alarming. The use of anonymous witnesses hinders

²² See more: <http://unpo.org/downloads/661.pdf> [Last accessed on 12 February 2015].

²³ See more: <http://unpo.org/article/17877> [Last accessed 12 February 2015].

the right to a defense by making it difficult to counter interrogate or question the credibility of witnesses, among other reasons.

The United Nations Special Rapporteur on human rights and counter-terrorism, Ben Emmerson stated that:

"[anti-terrorist law] has been applied in a confused and arbitrary fashion that has resulted in real injustice, has undermined the right to a fair trial, and has been perceived as stigmatizing and de-legitimising the Mapuche land claims and protests."²⁴

However, in late July 2014, in a landmark decision by the Inter-American Court of Human Rights, Chile's anti-terrorism law was condemned.²⁵ The Court decided that Chile violated several articles of the American Convention on Human Rights, including the principle of legality, presumption of innocence, right to freedom of expression, right to an impartial judge, equality before the law and non-discrimination against seven members of the Mapuche community and a human rights defender. It obligated Chile to provide all necessary support to the victims who were accused and arrested, including eliminating the effects of the terrorism sentences and to provide reparations to the victims.

E) LACK OF POLITICAL REPRESENTATION

Lack of political representation is one of the major obstacles in ensuring adequate protection of cultural heritage. Although the Mapuche represent 9% of the population in Chile, they have no representative either in the Chamber of Deputies or in the Senate.

To counter this gap, on 24 June 2015 President Michelle Bachelet presented her indigenous agenda. Her Program ("*50 Compromisos para los primeros 100 días de Gobierno*") includes commitments to send a bill to Congress for the creation of a Ministry of Indigenous Affairs, which would be tasked with assisting the President in defining an indigenous policy for Chile, as well as a

²⁴ UN News Center. 2013. "Chile must stop using anti-terrorism law against Mapuche indigenous group - UN expert". Available at: <http://www.un.org/apps/news/story.asp?NewsID=45538#.VNzbpoe4nBK> [Last accessed 12 February 2015].

²⁵ See more: <https://intercontinentalcry.org/inter-american-court-human-rights-orders-chile-annul-sentences-anti-terrorist-law-25431/> [Last accessed on 12 February 2015].

bill for the establishment of a Council of Indigenous Peoples, which would be autonomous and representative of various peoples in Chile.

Additionally, the Government Program of 2014-2018 declares, “Chile is indivisible and multicultural. Chile includes indigenous peoples, who enjoy their own identity and culture”.²⁶ Furthermore, it states that “collective rights are related to the environment in which [indigenous] people live”.²⁷ It also reiterates the right of indigenous groups “to preserve, develop and strengthen their identity, language, institutions and social and cultural traditions”.²⁸

To achieve this, Chile undertook an important reform of the electoral system. On Wednesday 14 January 2015, the Chilean Senate voted in favor of repealing the binominal electoral system set up in 1989 in the final years of the Pinochet dictatorship. The electoral reform will increase the number of deputies and senators, and change the voting mechanism to a proportional electoral system. Some argue that this reform may open up a space for new political movements.

However, others claim that this reform does not address the dire need for greater diversity in political representation. Many Mapuche organizations have argued that this reform will not provide them with greater electoral opportunities. According to the Minister of Interior, Mr Rodrigo Peñailillo, the new system did not take into account the representation of indigenous communities, because prior indigenous consultations would put the adoption of the reform before the deadline at risk.

On 5 February 2015, it was announced that in March of this year, the Chilean Government would start discussing a proposal on direct parliamentary representation of indigenous peoples in Chile’s Congress. The process will include consultation with indigenous peoples before the drafting of a proposal. However, many indigenous critics believe that this will not ensure real political power for indigenous peoples, until their right to self-determination or some degree of autonomy is guaranteed.²⁹

Mr Diego Ancalao, a Mapuche, recently became the national Vice-President of left-wing party (“*Izquierda Ciudadana*”) after serving as the President of one of its regional branches. He is the first Mapuche to occupy such a high-level

²⁶ 2014. “Programa de Gobierno 2014-2018 – Michelle Bachelet”. Available at: <http://michellebachelet.cl/programa/> [Last accessed on 12 February 2015].

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ See more: <http://www.nationalia.info/en/news/2072> [Last accessed 9 February 2015].

position within a political party in Chile. Mr Ancalao believes in a change of approach, both on a national level and within his community, where younger Mapuche should get involved in the fight for greater indigenous contributions to the political life of Chile.³⁰

Ministry of Indigenous Affairs

Following the prior consultation process (“*Consulta Previa Indígena*”) regarding the proposed creation of a Ministry for Indigenous Affairs (“*Ministerio de Pueblos Indígenas y de los Consejos de los Pueblos Originarios*”), the proposal was approved by 9 indigenous groups and will be submitted to the Congress for debate, scheduled for the first half of 2015. The prior consultation process commenced in September 2014 and was carried out over a period of 5 months by the Ministry of Social Development. The consultation was extended to the Aymara, Quechua, Atacameño, Colla, Rapa Nui, Diaguita, Mapuche, Yagan and Kawéskar peoples.³¹

During the consultation process, the functions of the Ministry for Indigenous Peoples were determined: to define the national indigenous policy, to create nine Councils (one for each indigenous group), as well as the establishment of a National Council. The Ministry will plan, develop and coordinate the implementation of policies and special measures to ensure indigenous peoples benefit from the rights and opportunities provided by law on an equal footing with other members of the Chilean population. The agreement reached provides the institutional framework and specific policies to solve the problems and needs of indigenous peoples in the country, according to the Regional Ministerial Secretary, Mr Eduardo Lara.³² It was also agreed that the current National Indigenous Development Corporation (Corporación Nacional de Desarrollo Indígena - CONADI), would be incorporated into the Ministry as an executive agency of public policy.

Despite the final approval of the proposal, questions over legitimacy and representation plagued the process, since the regulatory framework used (Decree No. 66) does not comply with the principles of ILO Convention 169. In the course of the consultation process, the Ministry of Social Development announced that the Decree No. 66 would be revised, but did not indicate

³⁰ See more: <http://unpo.org/article/17900> [Last accessed 9 February 2015].

³¹ See more: <http://www.eldinamo.cl/ambiente/2015/02/02/pueblos-originarios-aprueban-creacion-de-ministerio-indigena/> [Last accessed 9 February 2015].

³² See more: <http://diarioeldia.cl/articulo/social/valoran-acuerdo-que-busca-crear-ministerio-indigena> [Last accessed 9 February 2015].

when, how these regulations would be revised, and how indigenous participation in the reform processes would be guaranteed.

The consultation process only included 122 out of 3,213 indigenous communities. In addition, the process demonstrated the absence of protocol for dealing with traditional indigenous authorities, the lack of preparation of teams, the inability to speak indigenous languages, the lack of information, the misuse of unrelated meetings for consultation purposes, short deliberation times, unwillingness to reach agreements, arbitrary appointments of representatives, and inadequate filing of counter-proposals, among many other problems.³³ The President of the Indigenous Association Kallfulican, Ms Marcela Lincovil said that this draft proposal was adopted under the structure and pressure of political parties.³⁴

F) CONSTITUTIONAL RECOGNITION

As the situation stands currently, there is no constitutional recognition of indigenous peoples in Chile. Constitutional recognition is a necessary condition for the respect of other rights enjoyed by indigenous peoples, such as the right to freely pursue their economic, social and cultural development.³⁵

With regards to culture, the program of Chile's current President recognizes that,

“Chile must repay its historic debt to its indigenous peoples, recognizing their identity and indigenous roots. This will be confirmed in constitutional recognition of indigenous peoples, their traditions, languages, customs, contributions to culture and collective rights.”³⁶

³³ See more: <http://www.elciudadano.cl/2015/02/05/144523/los-vicios-de-la-consulta-en-chile-y-el-incumplimiento-de-estandar-de-derechos/> [Last accessed on 12 February 2015].

³⁴ See more: <http://www.biobiochile.cl/2015/02/01/ministerio-de-pueblos-indigenas-ya-tiene-aprobacion-de-comunidades-segun-consulta-del-gobierno.shtml> [Last accessed on 12 February 2015].

³⁵ See more: <http://unpo.org/downloads/661.pdf> [Last accessed on 12 February 2015].

³⁶ 2014. “Programa de Gobierno 2014-2018 – Michelle Bachelet”, page 34. Available at: <http://michellebachelet.cl/programa/> [Last accessed on 12 February 2015].

Constitutional reform is currently a hot topic in Chile, not only because of questions around its legitimacy and origins, but also regarding the actual content, particularly the organization of the State, democratic principles, as well as individual and collective human rights. For indigenous people, constitutional recognition is key; it defines the type of recognition, the protected fundamental rights, and establishes the ways in which protection will be offered and guaranteed.

Another crucial aspect affecting the implementation of indigenous rights in Chile is the lack of explicit indication regarding the hierarchy of international norms in relation to domestic legislation in the Constitution. This is crucial in determining the status of ILO Convention 169 within Chilean legislation, for example.

1.4 RECOMMENDATIONS

Below are recommendations UNPO proposed in two Alternative Reports: 1) Alternative Report submitted by UNPO to the UN Human Rights Committee for the consideration of the 6th Report of the Republic of Chile during the 111th Session;³⁷ 2) Alternative Report submitted by the UNPO, in cooperation with the Mapuche Foundation FOLIL and the Asociación Tierra y Libertad para Arauco, to the Committee on the Elimination of Racial Discrimination for the consideration of the 19th to the 21st Report of the Republic of Chile during the 83rd Session.³⁸

1. *Grant constitutional recognition of indigenous peoples*
2. *Ensure the consultation of indigenous peoples in all decisions of relevance*
3. *Implement all reforms necessary in order to give effect to the ILO Convention No. 169*
4. *Reform the system of political representation so as to give a voice to indigenous communities*
5. *Grant self-determination through the foundation of an Indigenous Peoples' Council*
6. *Condemn and punish all cases of misconduct by the police – be it warrantless raids, destruction of property, property confiscation, or otherwise*
7. *Thoroughly investigate, prosecute, and when appropriate, take punitive measures in instances of abuse by the Carabineros, specially in cases when women, children and the elderly were present*
8. *Revise the Anti-Terrorism Act, addressing the following issues:*
 - *The use of 'faceless witnesses'*
 - *Arrest and release without a detention control hearing*
 - *The aspect of proportionality of crime and sentence*
 - *Drop charges against minors being prosecuted under this law*
 - *Prosecute all cases involving civilians in the civilian justice system*
9. *Provide more due process safeguards under the Anti-Terrorism Act*
10. *Encourage fair police practices, especially with regards to justified and proportionate uses of force*
11. *Guarantee the Mapuche's the right to peaceful protest*
12. *Create legislation to safeguard the Mapuche's and other indigenous people's right to use ancestral land, even if not exclusively occupied*
13. *Establish a mechanism by which to enable the restitution of ancestral land to the Mapuche and other indigenous peoples, with appropriate compensation for affected third parties*
14. *Legally safeguard ancestral lands from environmental damage, which is detrimental to the traditional Mapuche lifestyle*
15. *Implement stricter environmental legislation to guarantee the Mapuche a healthier living environment and decreasing any health risks they might face*
16. *Implement affirmative action programs to provide Mapuche with equal opportunities with respect to work and education*

³⁷ See more: <http://unpo.org/downloads/920.pdf> [Last accessed 13 February 2015].

³⁸ See more: <http://www.unpo.org/downloads/673.pdf> [Last accessed 13 February 2015].

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17. *Implement programs to alter the general stereotyping of Mapuche*
 18. *Consult with Mapuche communities regarding the commercialisation of their culture, in order to come to a mutually satisfactory arrangement*
 19. *Encourage the use, study and learning of indigenous languages, including Mapudungun*
 20. *Promote the development of indigenous media, including by increasing opportunities for indigenous journalists*
 21. *Ensure fair and unbiased media representation of the Mapuche and their land claims*
 22. *Implement educational programmes at primary and secondary school levels to teach students about Mapuche history, culture and tradition.*

2. BATWA

2.1. INTRODUCTION: WHO ARE THE BATWA?

The Batwa people, also known as *Twa* or Pygmies of Central Africa, are an indigenous people living across the borders of the Democratic Republic of Congo, Uganda, Burundi and Rwanda. Their name derives from the term ‘*twa*’, used in the Bantu languages of most sub-Saharan Africa to designate people who are primarily hunter-gatherers (or former hunter-gatherers) recognized as the original inhabitants of the area and have a very low social status.³⁹

The Batwa are dispersed over an area of approximately 100,000 square kilometres and originally inhabited the mountainous forested areas around Lake Kivu and Lake Edward in the Great Lakes Region, often at the periphery of mixed communes. Since their eviction from their lands, they established themselves in various rural areas.

They are estimated to be between 86,000 and 112,000 Batwa, among which between 33,000 and 35,000 live in Rwanda, although estimation remains difficult since data is not disaggregated by ethnicity in Rwanda. They represent one of the three ethnic groups living in the country and make up for only 0.4% of the population, whereas the Hutu and the Tutsi amount for respectively 85 and 14% of Rwanda’s total population. Discrimination, extreme poverty and lack of access to health services led to a sharp and quick decrease of the Batwa population. Between 1978 and 1991, the Batwa population in Rwanda declined by around 40% despite the growth of the population rising by about 50%.

In short, the Batwa form a disadvantaged and extremely vulnerable group within Rwandan society. Most Batwa find themselves with neither a viable traditional lifestyle nor access to the benefits of modern society. The Batwa wish, above all, to be recognized and treated equally with equal benefits, entitlements and rights as their fellow citizens.⁴⁰

³⁹ Lewis, Jerome, "The Batwa Pygmies of the Great Lakes Region", *Minority Rights Group International*, (June 2000).

⁴⁰ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 12 February 2015].

2.2. BATWA CULTURE

The Batwa speak several languages, including Bantu languages and Kinyarwanda for those living in Rwanda, or the language of the dominant ethnic group in the region where they reside.⁴¹

The forest is at the core of the cultural identity and way of life of the Batwa. The Batwa believe that they are in an intimate, nurturing relationship with the forest. They consider it is the source of all life and prosperity, and this is maintained by an exchange between people and forest spirits through song and dance rituals meant to ensure the support of spirits in sustaining their life. Yet, this traditional lifestyle has been threatened over the past decades.

Traditionally, Batwa societies are considered as "immediate-return" societies, strongly oriented towards the present. This means that people obtain a direct and immediate return for their labour, consuming most of their food production immediately and rarely storing anything for future use. This functioning of the Batwa economy helps to explain why their culture is relatively incompatible with agriculture, considering the need for sharing excess production, investing and saving.⁴²

Traditional Batwa societies are nomadic and value movement. Their social organization is based on a temporary settlement composed of around 60 people divided into approximately 10 huts. In resolving conflicts with others, the Batwa often use the "avoidance strategy", moving away from those with whom they have problems. They also tend to move away to avoid hunger, illness or political domination, for example.⁴³

Non-reciprocal sharing is a moral principle for regulating social inequality within traditional groups. As a result, traditional Batwa communities are among the most egalitarian in terms of gender and elders-juniors relations.⁴⁴

Leadership positions exist in Batwa communities, but it is based on one's experience and skills in a specific context and on a specific topic. Claims of authority are only accepted on the basis of consensus. The Batwa thus tend to reject leaders who they feel have gone beyond their competence, failed to

⁴¹ *Ibid.*

⁴² Lewis.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

consult with those they represent or benefit from the situation more than others.⁴⁵

Their non-hierarchical and collective way of making decisions applies to the field of property and land rights as well. This explains the difficulties encompassing Batwa communities in the framework of post-colonial individualistic property law.

Today, the Batwa distinguish themselves in three main groups depending on their dominant lifestyles⁴⁶:

The Foresters or *Impunyu*

Today, very few Batwa have direct and regular access to forests. *Impunyu* usually live in forests and agricultural lands. They are mainly based in southwestern Uganda, northern and southern Rwanda and in the Kivu province of DRC. They are semi-nomadic, and mainly depend on a hunter-gatherer lifestyle, although some of them choose day labour or exchange of labour for food.⁴⁷ Groups usually consist of approximately 50 people. When a group member dies, they are buried before the group leaves the camp. Much of their traditional religion is based on the forest, collectively owned by the clan. They make offerings at sacred caves, hills, valleys, swamps or trees.⁴⁸ The *Impunyu* also have an exceptional knowledge of plants and animals, as well as unparalleled skills in medicine.

The Fisherfolk

The majority of them live around Lake Kivu and on Idjwi Island in DRC. Some also live on the shores of Lake Tanganyika and Lake Rweru. They represent a very small proportion of the Batwa. Their economy is oriented towards fish-trading against food, money or craftwork. Some also make pottery work and take care of small farms. They are considered to be the first inhabitants of their territories, yet very little is known about them or about their lifestyle.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Lewis.

The Potters

Today, most contemporary Batwa are potters. The craft of pottery is the result of immigrants arriving in Batwa forests and turning them into pasture or farmland, forcing the Batwa to diversify their activities.⁴⁹ The craft of pottery is now considered as synonymous with Batwa ethnic identity. Men collect and carry the clay to the women who then make and fire pots before they are sold. The fact that pottery is essentially a woman's task increased the importance of women in the groups' survival. With the man's diminishing role in supporting families, their self-esteem and social value have also decreased significantly.⁵⁰

2.3. OBSTACLES IN PROTECTING BATWA CULTURAL HERITAGE

A) LOSS OF FORESTS & ECONOMIC AUTONOMY

The first obstacle in the protection of Batwa cultural heritage is the loss of their lands and housing. With the loss of their forests, the Batwa also lost their economic autonomy fuelling society-wide discrimination against them. As a result of the creation of national parks and economic development, they were displaced from the forest without compensation, making them the poorest and most marginalized section of Rwandan society.⁵¹

The first wave of forced migration suffered by the Batwa took place when arable farmers and cattle keepers migrated and started to cultivate a large portion of Batwa lands. Later on, in the colonial period of the 1970s and 1980s, the emergence of commercial agricultural projects, national parks, conservation projects and tourism forced the removal of the remaining Batwa from their lands. As an example, in 1990, the Ugandan Government released a policy on biodiversity and conservation and later on, UNESCO declared the area in which they lived a World Heritage Site, even though the Batwa's forest

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 13 February 2015].

lifestyle had always worked in harmony with the conservation of the environment, leaving most Batwa homeless.⁵²

Especially after the 1994 Rwandan genocide, the Batwa lost land to the thousands who came back from exile. Newly-established land bills gave far-reaching powers to the Government to confiscate lands that seemed unused, including the forests and wetlands the Batwa depended upon for hunting or gathering clay. Today, the Batwa are still waiting to receive the compensation and land settlements that will allow them to rebuild their everyday lives.⁵³ The few Batwa who were compensated, received it in the form of cheques, which were rendered useless as the Batwa had little or no experience of handling money.⁵⁴

Neighboring non-Batwa communities began extending the boundaries of their fields to incorporate Batwa land, especially if this land was forested or fallow. This has often been done subtly and over extended periods, but has also occurred in leaps and bounds, often accompanied by threats and intimidation. Only exceptionally do Batwa who have lost land in this way go to local authorities to complain. This is because they do not believe they will be given a fair hearing, since in some cases, local authorities are themselves implicated in the attrition.

This type of land grabbing enterprise rendered the majority of the Batwa population landless and without the adequate skills to adapt to their new environments. The huge majority of Batwa now live as squatters in various rural areas. 43% of Batwa families have no access to land, compared to 12% of families nationally.⁵⁵ Without their lands many Batwa have been forced into slavery-like conditions and begging in order to make a living, often working the land of other Rwandans in exchange for food.

Two separate policies of land allocation have been put in place by the Rwandan Government, but have failed to properly include the Batwa. On the contrary, they have further exacerbated the challenges, and resulted in ancestral lands being taken away from the Batwa. In September 2005, a new national land law aimed at enhancing agricultural productivity removed more Batwa off their lands. The national Government defined marshes in which Batwa produced clay for their potteries as underutilised land. The 2005 law, as well as previous land policies, which follow mainstream views of private

⁵² Harrisberg, Kim, "Uganda's Batwa, and conservation's double-edged sword", *Daily Maverick*, (September 2014).

⁵³ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 13 February 2015].

⁵⁴ *Ibid.*

⁵⁵ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 13 February 2015].

property, disregard cultural mapping and ignore the customary rights of the Batwa to designated sites, especially wetlands and forests.

Legal recourses for the Batwa are inexistent since Rwandan property law gives little room for unofficial African land rights of ancestry. In addition, their lack of education also results in them having few or no knowledge of their customary and constitutional rights.

Another factor contributing to their lack of economic autonomy is their lack of vocational and/or occupational skills. 91% of Batwa have no formal education as a result of poverty, hunger and discrimination.⁵⁶ Overall, the Batwa suffer severe impoverishment and their socio-economic and health indicators are exceptionally low.

The loss of their lands has not only affected the Batwa way and quality of life, but has also had an important impact on their culture. Considering that the Batwa are traditionally hunter-gatherers, but suffer from the loss of their forested lands, they have had to turn to other life-supporting activities.

Pottery has thus become a means of generating income for the Batwa. Many Batwa turned to pottery to sustain themselves, leading to a new lifestyle and culture. However, this livelihood is threatened by the influx of cheap metal and plastic crockery. Those who are not potters are day labourers, small-scale cultivators or beggars.

B) SOCIETAL & INSTITUTIONALIZED DISCRIMINATION

The Batwa also suffer from societal and institutionalized discrimination. Society perceives the Batwa as backwards, unintelligent or lazy. This casual, but deeply damaging discrimination perpetuates their social exclusion and all its debilitating consequences.

Harmful and dehumanizing stereotypes, which characterize the Batwa as being 'immoral' and 'depraved', form justifications for the disrespect of Batwa's rights. And yet, instead of supporting the Batwa, the international community has ethnically stereotyped the Batwa as well.

⁵⁶ Daily Monitor, Discrimination forces Batwa out of school, 2010, retrieved from: <http://www.monitor.co.ug/News/National/-/688334/929040/-/x0a6cn/-/> [Last accessed 13 February 2015].

Article 9 of the current Constitution of Rwanda (2003) acknowledges the rights of “marginalized and excluded groups”. However, the Government refused to recognize the Batwa as a marginalized group, and this has led to their exclusion in Government programs providing social welfare and development services, such as primary healthcare, shelter and clean water.

This State-sponsored discrimination directly affects the Batwa in all fields, including health care and economic development. In Rwanda, development and assistance programs intended for the most vulnerable populations are often purposefully directed away from Batwa communities towards higher income-generating projects. The Batwa often don’t meet the minimum requirements to access these kinds of programs, even though their community faces severe levels of poverty.

Because of their low social status, the Batwa have very limited access to education. Consequently, most Batwa are illiterate, falling below the educational attainment average in Rwanda. Those Batwa who are literate, are oftentimes discriminated against on the job market, making their opportunities for quality employment slim.

C) SUPPRESSION OF BATWA ETHNIC IDENTITY

The grievances affecting Batwa’s daily life are further aggravated by the fact that some governments refuse to recognize the Batwa as a distinct ethnic group, particularly in post-genocide Rwanda. All ethnic identification has been banned in Rwanda since 1994. Therefore, the Batwa are not recognized as ‘indigenous peoples’ or even as an ‘ethnic group’.⁵⁷

In the name of defeating tribalism, ethnic strife, and advancing State unity and societal harmony, the Government refuses to recognize the Batwa as a distinct ethnic and cultural group. Instead, the term used by the Government of Rwanda to describe the Batwa and other vulnerable groups is “historically marginalized people”.⁵⁸ The Government’s line of argument for not recognizing the Batwa is that it hopes to strengthen national unity by promoting a homogenous Rwandan identity and avoiding the fostering of

⁵⁷ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 13 February 2015].

⁵⁸ African Commission’s Working Group On Indigenous Populations/Communities (2010). Report Of The African Commission’s Working Group On Indigenous Populations/Communities: Mission To The Republic Of Rwanda 1 – 5 December 2008. Banjul, The Gambia. p. 8.

‘divisionism’, which, in the past, has led to the genocide. In 2003, the Rwanda Constitution outlawed discrimination on ethnic grounds, thus theoretically making the Government and civil society ethnic-blind.

This measure on the part of the Government obscures the unique problems endured by Batwa communities, since they are not recognized as a distinct group with very distinct hurdles in achieving sustainable and meaningful development. Anyone referring to ethnic identity in Rwanda is susceptible to being charged with “divisionism” which carries severe punishment despite the fact that the crime is not clearly defined.⁵⁹

This lack of recognition affects the Batwa in a negative way since NGOs are also prevented from addressing the specific challenges the Batwa face. The circulation of information on Batwa through the media is also made more difficult by such legal stipulations, which ‘white-wash’ their underprivileged and discriminated indigenous status.

The Rwandan Government claims that it makes no sense in the Rwandan context to talk about indigenous peoples, since all Rwandese share the same territory, language and culture. It is indeed the case that physical, linguistic, and religious differences between the Batwa, Bahutu and Batutsi are negligible. However, the Batwa stand out for their cultural distinctiveness. Batwa tradition is rich in songs, dance, music and cultural gatherings, which are firmly ingrained into their social life.⁶⁰

Rwandan Batwa do not feel like they are a part of Rwandan society. According to a report submitted to the Senate by the Commission in charge of Social Affairs on the living conditions of the Batwa in July 2007, Batwa communities “do not feel that they are Rwandans like other citizens. This transpires through their comments such as “our relationship with Rwandans”, “natives of the land” (*Abasangwabutaka*), “those are citizens, and we are Batwa”.⁶¹

According to Minority Rights Group International,

“/a// national social protection efforts have got to pay particular attention to the particular situation the Batwa currently face. This will give the Batwa a sense of

⁵⁹ MINALOC, National Social Protection Strategy (draft) (2010). Pg 12: “The challenge of high poverty levels is exacerbated by rising and high levels of inequality. Inequality as measured by the Gini coefficient rose from 0.47 in 2000 to 0.51 in 2006.6 To put this in perspective, a Gini coefficient of 0.40 is regarded as high inequality”.

⁶⁰ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 13 February 2015].

⁶¹ Commission in charge of Social Affairs, Human Rights and Social Issues, *Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History*, (July 2007).

national belonging as well as uphold their right to identify themselves as a distinct community".⁶²

D) LACK OF POLITICAL PARTICIPATION

The Batwa are almost entirely absent from grassroots, regional and national governing structures, and face challenges to participate in local decision-making procedures, as a result of widespread discrimination, and a general lack of recognition of their distinct ethnic or cultural identity. This is still the case despite Article 82, Paragraph 2 of the Rwandan Constitution (amended by revision no. 2 on 8 December 2005), which stipulates that 8 members of the Senate should be appointed by the President to ensure representation of historically marginalized groups.

The Batwa are also facing challenges in participating in local decision-making procedures. Since they form such a small proportion of the electorate, any electoral campaign advocating for a better protection of Batwa communities wins few votes.

Furthermore, the criminalization of discourse on ethnic issues in Rwanda hampers the establishment of associations and community projects that would tackle Batwa-specific problems or challenges. Whilst there is a multitude of associations, forums, NGOs, programs, scholarships and institutions for other vulnerable groups, such as women, youth, people with disabilities, genocide survivors, and widows, no such national institution exists for the Batwa.

Their absence from decision-making processes is detrimental to their community in various policy fields. To combat this, the Batwa would need their Batwa organizations, representing local communities to external institutions like State structures, intergovernmental organizations and NGOs.⁶³ However, as a result of their marginalization and high levels of

⁶² Minority Rights Group International, "As Rwanda mourns, the government must do more to address specific needs of vulnerable Batwa community", *Minority Rights Group International*, (April 2014).

⁶³ Minority Rights Group International (2000). *The Batwa Pygmies of the Great Lakes Region*. London, UK. p. 26.

illiteracy, active participation in Rwanda's political life is currently
inconceivable for many Batwa.⁶⁴

⁶⁴ UNPO (1995). UNPO Mission Report, Investigating the situation of the Batwa People of Rwanda. The Hague, The Netherlands, p. 41.

2.4 RECOMMENDATIONS

Below are recommendations UNPO proposed in the Alternative Report submitted to the UN Committee on the Economic, Social and Cultural Rights for the consideration of the Initial Report of Rwanda during the 50th Pre-Sessional Working Group.⁶⁵

1. *Ensure full representation of the Batwa in government and other public institutions*
2. *Consult the Batwa before taking any measures that may affect their lives*
3. *Allow the Batwa to be identified as a group and allow them to form organizations using their own means of identification, which can specifically target Batwa communities for poverty reduction projects, cultural preservation initiatives and community learning schemes*
4. *Ensure that data collected about distribution of materials and management of poverty reduction projects is disaggregated along ethnic lines to ensure that Batwa communities*
5. *Combat the discrimination against the Batwa in education system, media and government institutions, as well as by establishing awareness raising campaigns to combat racist stereotypes*
6. *Cease the destruction of homes immediately until residents are consulted, compensated and provided with new housing*
7. *Distribute land to the Batwa as a landless group under Article 87 of the Land law.*
8. *Use participatory and transparent methods to comprehensively 'map' the historic dispossession of the Batwa from their lands and devise appropriate and equitable remedies*
9. *Modify property laws to respect collective rights, especially access to forests and wetlands*
10. *Adopt measures to address the severe poverty of the Batwa caused by the government resettlement policy, including the provision of vocational training and micro-finance schemes*
11. *Increase access to health care facilities and combat discrimination against the Batwa in social services*
12. *Construct schools closer to the Batwa communities and develop a curriculum adapted to their way of life.*

⁶⁵ See more: <http://unpo.org/downloads/516.pdf> [Last accessed 15 February 2015],

ABOUT UNPO

UNPO is an international, nonviolent, and democratic membership organization established in 1991. Its Members are indigenous peoples, minorities, and territories who have joined together to protect and promote their human rights through nonviolent solutions.