



# General Assembly

Distr.: General  
12 September 2011

English, French and Spanish only

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## Human Rights Council

Eighteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Joint written statement\* submitted by the France Libertés :  
Fondation Danielle Mitterrand, a non-governmental  
organization in special consultative status, the Mouvement  
contre le Racisme et pour l'Amitié entre les peuples, a non-  
governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Violations of Mapuche indigenous peoples' human rights and: Testimony from Juana Calfunao, Longko of the community Juan Paillalef**

### **1. The situation of Mapuche indigenous people in Chile**

When the Human Rights Council carried out its universal periodic review of Chile in 2009 (A/HCR/12/10), member states invited the Chilean state to assume its obligations regarding human rights. They also asked Chile to take necessary measures to stop discrimination against vulnerable people: minorities, women and indigenous people. To do so, it is necessary to stop using abusively the anti-terrorist law to sue indigenous peoples' political claims. But the priority remains the concrete application of the ILO C169 Indigenous and Tribal Peoples Convention.

This text defends the idea that indigenous peoples have to freely enjoy their human rights and fundamental liberties, without any hindrance or discrimination, without using force or coercion. The Chilean state must be constrained to apply the fundamental norms related to human rights towards Mapuche people in general and the community chief (Longko) Juana Calfunao in particular.

The situation of Juana Calfunao, described below, is similar to many other people in the Mapuche community. It illustrates the human disaster resulting from the Chilean state's discriminatory policy towards these peoples. As the representative of her people, Juana Calfunao claims the right to dignity: the right of Mapuche indigenous people to live on their ancestral territories, the right to be consulted and associated with every decision affecting them. In other words, she claims the respect of Mapuche people's economic, social, cultural, politic and environmental rights, recognized by the ILO C169 Indigenous and Tribal Peoples Convention, the United Nations Declaration on the Rights of Indigenous peoples, or the International Covenant on political and civil rights. Concerning this last Covenant, the UN Human Rights Committee, during its 88<sup>th</sup> session, (CCPR/C/CHL/Q/5), underlined that the Chilean state had to commit itself to applying this Covenant to Mapuche people, especially articles 26 and 27 related to the principle of non-discrimination and minorities' rights. Thus, the Human Rights Committee highlighted the inappropriate application of the anti-terrorist law against this people, while recognizing discriminatory practices concerning their access to public services and the progressive process of expropriation from their lands. This results in a human development rate inferior to that of non-indigenous people and in violations of their right to dispose of their lands and natural resources.

### **2. Testimony from the Longko Juana Calfunao**

In 1913, the Paillalef community received title deeds on a 120 hectare-territory for 8 families, under the authority of the Longko (ancestral authority) Juan Paillalef. Now, the Mapuche community is led by the Longko Juana Calfunao, who has always defended and still defends their territorial rights against a usurpation process undertaken by neighbouring landowners, which started in the 40s. Since then, assaults and violence have never stopped and led many members of the community to be killed or arrested. For example, Juana Calfunao had her house burnt down in 1998 by armed landowners she couldn't stop: so far, none of her criminal complaints was examined by Chilean authorities. An opposite process has even led her into a vicious circle: Juana Calfunao had to appear before Chilean court several times and was sentenced to imprisonment, like her husband and two of her sons. Her house was burnt down three times; an electricity company used their territory without their consent and with no compensation so as to set up overhead power lines; the

neighbouring landowners have never stopped trying to expel them from their ancestral territories with extreme violence; when they were arrested, they were subject to violence and assaults from Chilean police... Nevertheless, Chilean Justice found Juana Calfunao guilty of causing a breach of the peace in 2007. When the verdict was given, violence burst within the courtroom; she was arrested and also sentenced for contempt of court. On the 8<sup>th</sup> of September 2010, Temuco's Appeal Court finally decided to release Juana Calfunao on parole.

These extreme situations have led Juana Calfunao to implement many initiatives in favour of human rights. She co-funded the Ethic Commission against torture (Chilean NGO defending human rights) and she contributed to creating in 2010 the Mapuche Autonomous Defender (new legal and social instrument to defend Mapuche people).

Juana Calfunao was in Switzerland several months ago with her youngest daughter who sought political asylum there in 2008. After facing many problems to return to her country, she is currently in Chile with her daughter. However, the residence permit she was granted to look after her sick daughter in Switzerland had expired and as a consequence, she risks being prosecuted or going to jail now she's back in Chile: being deprived of her liberty once again would prevent her from defending her people's rights against forced displacement, violence and human rights violations. Moreover, her daughter, suffering from post-traumatic disorder after the violence she experienced during her childhood in Chile, is afraid of having to face it once again; even though this persecution against children fully breaks the international law protecting children's rights. Thus, they are not finished claiming the protection of their people's rights to self determination and children's rights, because their peoples are still victims of discrimination, violence and the application of the anti-terrorist law.

These abuses are recognized by national institutions such as the Chilean Human Rights Institute and international bodies including the Committee on economic, social and cultural rights, the UN Human Rights Council, the UN Committee against torture and many civil society organizations including Human Rights Watch, the International Federation for Human Rights, the Movement against Racism and for Friendship between peoples and Amnesty International. These organizations report the lack of dialogue that impedes the consideration of their territorial, cultural, and economic demands. These claims are criminalised by the Chilean state which repeatedly applied the antiterrorist law against them. As mentioned during the Human rights Council past sessions (A/HRC/13/NGO/30 for example), applying the antiterrorist law (law No.18.314) against them implies many restrictions on their right to a fair trial and their rights of defence. This situation, coupled with the exploitation of their lands without their consent, the violation of international texts protecting indigenous peoples' rights<sup>1</sup>, repeated police violence towards the elderly, minors and women such as Juana Calfunao, only fosters these peoples' feeling of distress.

Mr President, we ask for your immediate intervention with Chile in order to solve this situation:

- The Chilean state must apply economic, political, social, environmental rights the Mapuche people and hence the community chief Juana Calfunao have to enjoy, in accordance with the ILO C169 Indigenous and Tribal Peoples Convention, the United Nations Declaration on the rights of indigenous peoples, and the International Covenant on political and civil rights.

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<sup>1</sup> Convention No.169 related to Indigenous and Tribal Peoples, the United Nations Declaration on the rights of indigenous peoples and the International Covenant on political and civil rights.

- The Chilean state must stop criminalising indigenous communities' claims.
  - The Chilean state must ensure to Juana Calfunao and her daughter the respect of their rights and to drop any form of prosecutions, pressures, imprisonments or violence.
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