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

Written statement* submitted by Auspice Stella, a non- governmental organization in special consultative status

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

[30 May 2016]

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

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Violation of national and international legislation to protect the rights of indigenous peoples in Chile

Introduction

Our organisation welcomes the practical recommendations suggested in the “annual report of the UN High Commissioner for Human Rights, as well as the reports of the Office of the High Commissioner and the Secretary-General [A/HRC/32/20] related to the “creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned.” In this regard, we should note that several reliable sources emanating from the Chilean civil society have however, pointed out the transgression and violation of the “maintenance of a safe environment” as a result of “developing” projects carried out in the territory of indigenous peoples.

The Mapuche communities, an indigenous nation, whose territory was illegally occupied and colonised 135 year ago by the Chilean military forces, are now adversely affected due to harmful development projects established without the required, free, prior and informed consent. The process of colonisation was accomplished transgressing several bilateral treaties such as the Tapiwe Treaty, 1825, in which Mapuche Nation and Chile ratified the border established in a former treaty signed with Spain Crown in 1641, in force at the very moment of the Chilean independence declaration of 1810. This is the historical core of the conflict between the Mapuche people and Chile and the primary reason of the persistent struggle for the recuperation of their traditional ancestral territory and restitution of their autonomy and self-determination in accordance with the UN Charter, Article 73.

Violation of domestic laws

Furthermore, Chile’s Indigenous Law 19.253 established protective specifications to promote and develop indigenous laws. On 31st of January 2008, Law 20.249 of Chile established the marine and coastal zone of indigenous peoples. However, the communities of Lafkenche, sited in the coastal areas, are affected by the privatization of marine zones that prevents them from their traditional fishing activities, which had previously been conducted for many centuries. Article 3 states that a marine coastal zone should be established for indigenous people, the primary goal would be to safeguard the customary use of these zones in order to maintain native traditions and the use of those natural resources by indigenous communities linked to these coastal areas.

Yet to date, Law No. 20.240 has not been actively implemented in practice within the Lafkenche-Williche region, whose community members also include non-mapuche traditional fishermen, who are also being adversely affected by the indiscriminate proliferation of the salmon industry which limits their fishing activities and destroys wild fish and crustacean species. Documentary films show Norwegian salmon farms facilities, belonging to Marine Harvest, pumping sewage water with chlorine into the ocean causing contamination and the death of any living creature residing within affected waters, as evidenced on the island of Melinca, reported by local witnesses.

Despite the ecological disaster attributed, to a large extent, to the action of salmon farming, there are many other planned projects to be expanded for the North of Mapuche Ancestral territory. Official reports pointed out that now there are 72 requests made by companies such as Salmenes Caleta Bay, Marine Harvest and Mainstream Chile to settle on the Bio-Bio region, regardless of the opposition of local communities and authorities. Currently, out of 24 requests, 13 have been approved to harvest oyster, mussel and algae. The customary rights of Mapuche-Lafkenche communities, according to the Article 3 of the Law on Free Coastal Zone, have not been considered nor the right to free, informed prior consultation as established under ILO Convention 169.

In addition the construction of several hydroelectric dams in the Mapuche-Williche region, with a broad and overall rejection by the indigenous and non-indigenous people’s consensus, a wind power industry project named “Parque Eólico Pililín” has been promoted in Los Rios region. The “Environmental Impact Assessment” (EIA) of the project was adverse to proposals of the company Acciona Energía. However, this company received an extension of time until August 8th in order that they were able to make the necessary amendments in compliance with the recommendations made by the EIA.

The EIA stated that the project would cause a significant and negative impact on the ecosystem and fauna as it does not

take into consideration sanctuaries such as Isla Tres Bocas and Estero Cua Cua, as a power line would pass through them, also possible stranding problems would be caused due to concrete blocks placed on the river bed. Furthermore, social organization indigenous communities claim that the EIA committed serious mistakes and legal loopholes at the environmental evaluation of the project. They say that the project is incompatible with the biological and cultural value of the area and in particular due to prevalence of specially protected areas, Sitio Ramsar and indigenous communities.

Transgressions of International Laws

Mapuche peoples' human rights are consistently violated by the Chilean establishment. Police, prosecutors and even judge's racism and abuse of authority is a testing and exhaustive reality of everyday life for the Mapuche people.

Torture, blackmail and death threats made to obtain confessions are methods largely rejected by any civilized and democratic society; however, it appears to be an accepted daily practice in Chile. On January 4, 2013 the husband and wife Luchsinger-Mackay was sadly the subject of an arson attack in which the couple tragically died. On grounds of mere suspicion and in the absence of evidence the military police has so far arrested 12 Mapuche men, including machi (spiritual leaders) Celestino Córdova and Francisca Linconao.

José Manuel Peralino Huinca was the main witness in the Luchsinger-Mackay case. This testimony was the basis used to charge 11 Mapuche men in relation to the aforementioned case. Peralino, the witness, in the trial on 30 of March stated that his confession was obtained by PDI (police and investigation department) as a result of the use of torture and death threats. In the court room the witness exhibited the signs of torture inflicted by the police and reported that a policeman named Vilches and his superior coerced him into signing a confession falsely manufactured by the PDI in order to indict the suspects allegedly involved in the crime. Peralino stated that after the police coerced him "the prosecutor Chiffelle entered the room and said 'Peralino, sign here'. I couldn't see it properly (the document) because I was trembling with fear and nervous".

The methods used to obtain the confession of Peralino indicate that the police violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which criminalizes those practices. The Article 1st defines torture as "any act by which induces severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession [...] when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

The Convention is clear in this respect as it states that under no circumstances may an order from a public servant or any superior authority be invoked as a justification of torture [Art. 2, 3]. That is, the principles of individual responsibility of torture are clearly established in this article, in this case, the actions of the PDI's public officer and the prosecutor Alberto Chiffelle breach these principles due to their attitude of passive acceptance of a confession extracted under these illicit circumstances derived from the sole witness of the case.

Furthermore, Article 15 states that every State shall ensure that any statement proven to have been made under conditions of torture cannot be invoked as evidence in any trial, nor may any judicial or police state actor accept such evidence as lawful in a court of law. Such officials have ultimate responsibility to identify any visible signs that mental or physical torture has been committed. Therefore, the 11 Mapuche men charged with the crime, sentenced by the judge Alejandra García Bocaz, based on the declaration of the witness Peralino Huinca, is inadmissible according to the Convention. In addition, the judge and the prosecutor of the case omitted their legal obligations, thus calling into question their legal obligations, professional ethics and their impartiality as a direct result of failure to take into consideration this convention.

Recommendations

We Request a fair and impartial trial for the accused, that they be judged by impartial and independent judges respecting their due procedural guarantees in full compliance with both national and international law;

We Strongly recommend that the UNHRC dispatch the Special Rapporteur on torture and other cruel inhumane and degrading treatment, to visit the victims in situ in order to record their individual testimonies;

We Urge the Government of Chile to respect and fully adhere to Law 20.249 on the Marine and Coastal Zone of the Indigenous People;

We Call upon the Chilean government to urgently investigate and to punish the public officers responsible for such criminal acts of torture and abuse of authority.

Mapuche Human Rights Commission, Mapuche International Link, Juan Paillalef Community, NGOs without consultative status, also share the views expressed in this statement.
