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Human rights situations that require the Council's attention

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

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* Issued as received, in the language(s) of submission only.



The Chilean government promotes the genocide of the Mapuche people

Introduction

Despite the fierce and possibly unanimous opposition of the Mapuche communities, the current Chilean President Sebastián Piñera insists on carrying out a consultation with indigenous peoples. The objective of this is to amend Indigenous Law No. 19,253, and in particular Article 13 which states: "The lands, (...) in accordance with the national interest, shall enjoy the protection of this law and may not be alienated, seized, encumbered or acquired by prescription, except within indigenous communities or between indigenous persons of the same ethnic group."

The Chilean state applies repressive laws to the Mapuches, such as the anti-terrorism law and the state's internal security law. Their territory is militarized, many of their leaders are imprisoned and even their lawyers are persecuted.

Indigenous law 1993

The plan of the government is: "To modify the indigenous law to promote the productive use of the lands given to members of the Mapuche people by reducing or eliminating the prohibitions of selling, mortgaging, leasing, or disposing of their land." With this aim in mind, the government is promoting, by means of what has been called 'Plan Impulso Araucanía', the transfer of the lands that are presently in the hands of the indigenous peoples. The government affirms that it seeks to eradicate poverty in Araucanía and promote development and peace, but the Mapuche authorities say that the dispossession of their lands will plunge them even further into poverty, in addition to producing an exodus of Mapuches to the urban centres and so consummate the policy of assimilation.

Racism and discrimination

The misrepresentation of the history of the Mapuche nation, the demonization of their culture and the criminalization of their peaceful struggle for their rights promoted by the Chilean authorities and the media are aimed at devaluing their demands. Added to this, neo-Nazi and xenophobic nationalist groups continue to stereotype and promote racial hatred through social media without the authorities taking punitive measures against them.

The process of cultural assimilation has been ongoing since the military occupation of Mapuche territory in 1883. This has impeded the initiatives of Mapuche communities to promote their culture, language, spirituality and cosmology. Sacred places are not respected, while political prisoners and Mapuche migrants to cities are not provided with facilities for practicing their religious rites and ceremonies or to celebrate important historic events.

Inequality

Official statistics indicate that in Araucanía: "8.4% of the population are destitute, 23.6% are living in poverty compared to 11.7% nationally, 8.4% are living in extreme poverty compared to 3.5% nationally and the unemployment rate is 8.4% compared to the national rate of 6.7%". The Mapuche authorities have persistently pointed out that this poverty is due to the limited territory to which they have been deliberately confined and complain that the sale or lease of their land is not only aimed at expanding the lands of the landowners and forestry companies but also at stimulating the emigration of the Mapuche to urban centres in search of a better economic situation.

Appeal to the ICC

HRH Prince Federico I of Araucanía and Patagonia sent a letter to the International Criminal Court (ICC) on February 20, 2019 condemning the government of Chile and Argentina for promoting the genocide of the Mapuche people. In his letter he states: "In the past, the states of Argentina and Chile coordinated the physical genocide of the Mapuche population to destroy the Mapuche state, today they cooperate to criminalize and repress their just demands for their rights. They use laws of exception and anti-terrorist laws to violate their individual and collective human rights and cause a huge number of raids, detentions, injuries and even deaths, techniques aimed at exterminating them as a different people."

There are numerous examples of how a mere anonymous formal complaint against a Mapuche leader is enough for them to be detained during the entire course of the investigation that can go on for years. For example, this is the true of the case of Lonko Alberto Curamil and Werken Álvaro Millalen, who have been imprisoned since 15th August 2018. Both are members of the Mapuche Territorial Alliance.

The governments of Chile and Argentina openly violate Articles 6 and 7 of the Rome Statute of the International Criminal Court. Article 6 on genocide, which is applicable to contemporary Mapuche reality, states that: "For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:" The clauses a, b and c of Article 6 of the Rome Statute, describe situations of which the Mapuche have systematically been and are subject.

Article 7 on 'crime against humanity' which means acts when are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Clauses *a, e, f* and *i*, in addition to clause *h* which states: 'Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.'

In addition to the violation of the Rome Statute of the ICC, the Mapuche are faced with the threat of dispossession of their lands and resources aimed at making them disappear as a distinct people. By deregulating the protection of Mapuche territories, the Chilean government is openly promoting the genocide of the Mapuche people.

Conflict of interest

The Mapuche argue that they have not asked for the consultation about the amendment of the Indigenous Law, but that it has been imposed on them and can be seen as a manipulative device to strip them of even more of their ancestral lands. The Mapuche are not opposed to a dialogue, but they want it to proceed with good intentions and cover the issues that concern them, such as the restitution of their ancestral lands, the problems surrounding the lack of water, bilingual education, autonomy and self-determination. All these are general demands that the Mapuche people have persistently maintained since the occupation of their territory in 1883.

Besides this there is a general awareness amongst the Mapuche people that the legislations implemented in the territory occupied by the Chilean state are *de facto*. This is because the Mapuche territory was protected by an international border treaty [pacta sunt servanda] between the Mapuche State and the territories under the rule of the Spanish Crown. The aforementioned treaty [Treaty of Quillen] remained in force since 1641, which means that the border remained in force throughout the colonial period and for more than fifty years after Chile's declaration of independence from Spain in 1810.

During the consultation process, numerous communities and the media have discovered that a large number of representatives of the current government and / or relatives of these have pending land disputes with Mapuche communities, related to lands protected by the Merced Titles and the Indigenous Law of 1993, which indicates that there is a conflict of interests.

Chilean President Sebastián Piñera himself has been condemned by Mapuche-Williche communities for having acquired lands that indigenous communities consider their own. In a letter addressed to him when he was running for president, he was told: "We, the Williche people, have ancestral and legal rights related to these territories [...] Our legal rights are based on the Just Titles granted to our communities by the Spanish state, which after the end of the war between Chile and Spain in 1826, were protected indefinitely in the International Treaty of Tantauco."

According to the historical memory and the objective reality of the Mapuche state, the Bio-Bio River remained in force as a border until the 1880s. All the laws that gave the feeling of the existence of a political, administrative and territorial Chilean **regime** south of this river, were symbolic, fictitious or supranational. The Vienna Convention on the Law of Treaties establishes in its Article 27 on domestic law and the observance of treaties, that: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

In effect, Chile was legislating for the inhabitants of another state for which it lacked jurisdiction and its legislation could only be implemented arbitrarily, after the process of effective occupation through military invasion of Mapuche territory was concluded in 1883, which brought the armed resistance of the Mapuche state to an end.

Recommendation

We call upon the Human Rights Council to arrange, as soon as possible, a visit *in situ* in both Chile and Argentina of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, to verify these and other complaints of Mapuche and other civil society representatives.
