



# General Assembly

Distr.: General  
27 February 2019

English and Spanish only

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 4

### Human rights situations that require the Council's attention

## Written statement\* submitted by the *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.

[11 February 2019]

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



## The Mapuche people face genocidal policies implemented by the states of Argentina and Chile<sup>1</sup>

### I. Brief historical review

The military campaigns euphemistically known as "Desert Campaigns" in Argentina and the "Araucanian Pacification" in Chile took place between 1879 and 1885. This is the period in which the armed resistance of the Mapuche people in defense of their territorial sovereignty and independence ended. Both states called the military onslaught a war between 'civilization' and 'barbarism' to pigeonhole it within the Doctrine of Discovery.

The military occupation of Mapuche territory was accompanied by a genocidal war and the establishment of concentration camps in various parts of the territory. The prisoners, including children, were distributed as slaves for the domestic service of the victors of the war. Then the republics proceeded to proclaim themselves owners of the Mapuche territory and distribute it among themselves through the establishment of an international border.

However, the Mapuche territory, which was then known as Araucanía and Patagonia, was protected by a border treaty between the Mapuche Nation and Spain, which is known as "Parliament of Quillen." The treaty was signed on January 6, 1641 and it was officially ratified by the Spanish King Felipe IV in the Royal Decree of April 29, 1643. The firm determination of the Mapuche people to enforce this treaty allowed the border to remain in effect throughout the Spanish colonial period in the America's and for more than half a century after the declaration of independence of Argentina and Chile from Spain in 1810.

### II. The decolonization

The treaty of Quillen included the withdrawal of troops, fortresses and Spanish settlements in Mapuche territory and the exchange of prisoners. In return, the Mapuche granted permission for the Church to continue its missionary activities in their territory. The treaty of Quillen, considered binding with the principle of international *law pacta sunt servanda*, remained in force for centuries and was systematically ratified by Spain and by the states of Argentina and Chile, who passed legislation to fortify it, in addition to signing bilateral treaties with the Mapuche Nation.

Mapuche territory was made up of four territorial identities known to the Mapuche as *meli wixan-mapu* or simply Wallmapu, territory that included Pampa, Patagonia, Araucanía and *Fütawillimapu* (southern lands). In this territory people and nations were united and represented by the Koyang or parliament, an entity subjects of laws, with prerogatives to appoint the head of state called Toki, who in turn had the responsibility to organize a civic-military government.

The Koyang was the political entity of the nation, which in its representation signed international treaties and monitored their compliance, declared war and approved the terms of peace. The Koyang agreed to thirty treaties with Spain in various areas, such as trade, mutual defense, alliances, culture, diplomatic legations, etc. From the legal point of view, the Mapuche state was an entity endowed with international legal personality because it contracted obligations within the framework of the international legal system.

The nascent states of Argentina and Chile invoked the principle *uti possedetis* as a source of law to claim inheritance from Spanish possessions. Mapuche territory was excluded from its claims because it was outside the jurisdiction of the Viceroyalty of the Rio de La Plata and the Captaincy General of Chile.

The geographical reality inherited from Spain by Argentina and Chile was established in their respective original constitutions and in the Treaty of Peace, Friendship, Trade and Navigation of 1855, whose Article 39 states: "Both Contracting Parties recognize as limits of their respective territories, those that they possessed as such at the time of separation

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<sup>1</sup> Document written by Reynaldo Mariqueo, Human Rights Team – Mapuche International Link.

from Spanish domination in 1810." This same article was invoked again in the border Treaty of 1881.

### **III. The inapplicability of the doctrine of discovery**

Academics and experts in international law affirm that Chile, and by extension Argentina, used the Doctrine of Discovery to justify the annexation of the Mapuche territory. The Doctrine provides rights to the possessions of 'infidels' and 'barbarians' if their governments are not ruled by European norms or are not under the jurisdiction of a Christian prince.

However, on November 17, 1860, the Mapuche authorities, presided over by the Toki Magñil (supreme authority), assembled in a parliament agreed to establish a constitutional monarchical government and proclaimed the prosecutor Orelie Antoine de Tounens (European prince) as the first sovereign of the Mapuche state. This event gave rise to the Kingdom of Araucanía and Patagonia, the name of the Mapuche territories then known in the Western world.

This act took place decades before the annexation of Mapuche territory by Argentina and Chile and its objective was to make its government compatible with European international standards. With this measure the Mapuche prevented the application of the Doctrine of Discovery, disputing the legal arguments used by both states to colonize the Mapuche territory. After the occupation, the government was established in exile, in France, from where it has been operating ever since, an entity that today is headed by HRH Prince Federico I of Araucanía and Patagonia.

### **IV. Current situation of the Mapuche people**

After the illegal appropriation of their territory, the Mapuche were deliberately impoverished, and became subject to ethnic cleansing through involuntary exodus to urban centers for subsistence. Subsequently, Mapuche territory has often been sold to multinational corporations, such as Benetton, which acquired almost one million hectares. Other companies have sought to capitalise on the exploitation of hydrocarbon extraction in Mapuche territories, which has polluted waters with disastrous effects on the environment and the health of Mapuche communities, including animal life in the region.

The Mapuche have engaged in peaceful struggle for the restitution of their ancestral lands, while respect for their human rights have been, and continue to be, ignored. The Argentine judicial system accuses the leaders of the Mapuche Confederation of Neuquén of "repeated usurpation as instigators" for raising their voices against injustice. They isolate struggling Mapuche communities from the rest of society, and persecute the activists, both Mapuche and non-Mapuche, who sympathize with their cause. In a recent case, the activist Santiago Maldonado was missing 70 days before his body was discovered after being persecuted by the Argentine police. Santiago was not Mapuche, but he lost his life because of his solidarity with them.

Today, the Mapuche are stigmatized and accused of being foreigners in their own land by the media and officials of the current Argentine government. Their leaders are persecuted, detained, intimidated and tortured. Others are killed and made to 'disappear'. Mapuche organizations have denounced that over hundred Mapuche have 'disappeared' since the return of democracy in Argentina in 1983, while others are classified as 'suicide', as was the case of Lonko Mapuche-Ranquel, Fermín Acuña, in July 2018. The Special UN rapporteur Mr. Mutuma Ruteere, in his Report to the Human Rights Council in June 2017, described the situation of indigenous peoples in Argentina as "alarming by the severity".

The Lonko Facundo Jones Huala, Moira Millán, Ivana Huenelaf (Argentina), the Lonko Juana Calfunao and the Machi Francisca Linconao (Chile) are just some of the many Mapuche authorities persecuted and harassed judicially and politically. The "case" of the Lonko Juana is discussed today by the Inter-American Human Rights Commission. Meanwhile, Machi Linconao recently traveled to the Human Rights Council to meet with various UN reporters to explain the situation.

In the case of Lonko Facundo, despite having a precautionary measure from the Human Rights Committee to prevent him from being extradited to Chile due to the danger to his physical integrity and the lack of procedural guarantees and due process, the Argentine government ignored this demand and proceeded with the extradition. Lonko Facundo is currently on a hunger strike in protest in a Chilean jail, after a flawed trial and an unjust sentence, while his lawyer has appealed to the Chilean Supreme Court.

Rafael Nahuel (21 years old) was killed by the Argentine police on November 25, 2017, during a protest in which families participated with their children. The justice condemned the murder as a "homicide for excess in self-defense" classifying the peaceful protest, as an armed confrontation. The demonstrators were accused of "crimes of usurpation and attacks against the aggravated authority because they were committed by an armed force," despite the fact that the expert witnesses showed that the Mapuche were unarmed. Camilo Catrillanca (24 years old) was murdered in his community by the police when he was traveling on his tractor. The government and the police reported that his death came after a confrontation, and then retracted this claim because of the existence of videos showing that he was unarmed.

Both states apply repressive laws to the Mapuche, such as anti-terrorist laws. Their territory is militarized, their legitimate claims are criminalized and even their defence lawyers are harassed. The Mapuche are the object of a clearly genocidal policy aimed at exterminating them as a people. Aware of this reality, HRH Prince Federico I of Araucanía and Patagonia appealed to the International Criminal Court to act urgently against the respective presidents and their governments for violation of the Rome Statute and for causing genocide and crimes against humanity against the Mapuche people.

## **V. Recommendations**

1. End the Mapuche genocide;
2. End political persecution against Mapuche leaders, sanction authorities and police who abuse their power;
3. Respect ILO Convention 169, international conventions and covenants;
4. Truth, justice and fair treatment of indigenous peoples;
5. Restitution of their ancestral lands,
6. End the sale of their territory and the exploitation of their natural resources without their consent.