



General Assembly

Distr.: General
XX February 2017

English only

Human Rights Council

Thirty-four session

Agenda item 3

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

Written statement* submitted by Society for Threatened Peoples, 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.

[13 February 2017]

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

Human Rights Violations and the use of the Anti-Terrorism Law against the Mapuche in Chile

Society of Threatened People is highly concerned about the constant human rights violations against the Mapuche Community in Chile, which is committed by members of the Chilean government, as well as by the PDI (Investigations Police of Chile, for its Spanish acronym) and the *carabineros*, the uniformed police.

The long-lasting so-called “Mapuche conflict” erupted in Chile in the mid-1990s, as a consequence of the incursion of the neoliberalist policies that allowed for the domination and exploitation of the original territories of the Mapuche, forcing them to move either to urban peripheries or isolated southern regions and leaving them without their natural resources. The Mapuche life vision and religion is based upon their relationship with their environment, with nature, and the principle of respect for all living things. Therefore are current the economic policies incompatible with the Mapuche way of life. This conflict is, as well, the result of the marginalization, discrimination and exclusion of the Mapuche in current Chilean society, which stills considers them to be uncivilized.

Ever since the conflict broke out, violence in the region increased dramatically. The Mapuche community suffered from most of the violent acts, including but not limited to brutal quelling (arrests, violent raids, expulsion of Mapuche from recovered lands), arbitrary detentions, police brutality against Mapuche children, constant monitoring and surveillance by the PDI and the almost exclusive use of the Chilean Anti-terrorism Law. This law is a repressive measure used by the Chilean government to hinder the Mapuche from recovering their lands, sovereignty and legitimacy.

The application of the Anti-terrorism Law (n°18,314), enacted during Pinochet’s dictatorship, has been broadly questioned for incompliance with minimum standards and due process and for violation of the right to social protest.

According to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, Ben Emmerson, on this mission in Chile in 2014, this act has been invoked by the local public prosecutors and by the Ministry of the Interior and Public Security in a total of 19 cases, involving 108 individuals. In addition, official statistics from the Office of Public Prosecutor in 2010 and 2011 show that 32 of the 48 people charged under the Counter-Terrorism Act belong to indigenous communities. In relation to the Mapuche protests, 300 cases were reported in 2012 in Region IX (Araucanía) and from 2004 to early 2013, 113 Mapuche related cases in Region VIII (Biobío).

The use of the Anti-Terror Law also undermines the presumption of innocence. When applied at early stages of investigation, the accused may face significant disadvantages, such as the use of anonymous (unidentified) witnesses, compromising telephone tapping or interception of correspondence (including e-mails). Moreover, in terrorist cases the accused may be held in police custody up to 10 days and will typically have to wait six months before his or her lawyers are served with the evidence and statements in support of the charge. This represents a substantial obstacle in the build of a consistent defense for the accused. In several cases against the Mapuche, including Mapuche

defendants accused of terrorism, judges cite the terrorist charges as grounds for rejecting defense requests for the accused to be released on bail.

The Machi Francisca Linconao, spiritual leader and healer of the Mapuche community, is one of the most controversial cases involving the Anti-terrorist Law. She was violently detained in March 2016 with regard to the arson attack in 2013 that resulted in the deaths of the couple Luchsinger-Mackay. Despite the fact that she was absolved in this same case in 2013, she is currently facing terrorism charges and a sentence to life imprisonment is being requested by the authorities. The only proof so far against her is the testimony of one sole witness, José Peralino Huinca, who already confessed to having given his testimony under threats and police torture. Francisca Linconao has been in detention for more than seven months. On three occasions she was allowed to come back home under house arrest and on three occasions her petition was revoked for her being considered a dangerous subject. This doesn't seem credible given the fact that she's 60 years old and severely ill. Her condition has worsened after a hunger strike protesting against her situation that lasted 14 days.

Francisca Linconao's case unfortunately is no exception. There are multiple victims of the Anti-Terrorism Law. The current president of Chile, Michele Bachelet, announced during her election campaign that she would abolish the law and introduce measures to stop the conflict between the Mapuche community and landowners. However, during her time as president, Bachelet showed a preference not to face the issue. Hence, so far she has not taken measures to end the conflict. Moreover, instead of abolishing the Anti-Terrorism Law, its use has become a constant during her presidency.

There have been numerous cases in which Mapuche have been tortured or violently forced to sign a confession. The National Institute for Human Rights (INDH) denounced in 2016 that *Carabineros* subjected eight members of the Mapuche community to torture after detaining them without explicit reasons. This is just one example of the excessive and disproportionate use of police force, including the use of firearms deployed by the *Carabineros* to unarmed Mapuche civilians, including elderly, women, children and even infants. Amnesty International recently denounced the excessive use of force in the case of Brandon Hernández Huentecol, a 17-year-old Mapuche shot by the police with over 140 pellets as he tried to protect his brother after he had been stopped violently by a police officer. In regard with the use of excessive police force, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, Ben Emmerson, also found that "the most alarming feature of the situation was the almost complete absence of accountability for the crimes allegedly committed by law enforcement officials".

Society for Threatened Peoples calls on Human Rights Council to urge the Chilean government to:

- Abolish the Anti-Terrorism Law. This Law, applied against the Mapuche people renders fair process in the judicial system impossible,
- Respect Mapuche territories,
- Stop police violence and discrimination against Mapuche,
- Urgently acknowledge the conflict and take the appropriate steps towards a resolution,
- Take account of the crimes committed by the government and the police against Mapuche. The aggressors should not remain unpunished,

- Respect the rights that are clearly established in Convention 169 of the International Labor Organization, ILO, regarding indigenous peoples.
-