



Unrepresented Nations and Peoples Organization (UNPO) Individual Stakeholder Submission to the Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of Argentina during the 14th Session, October – November 2012

Introduction to the Mapuche People

The Mapuche are a recognized indigenous people in Argentina who trace their ancestry in the southern cone of South American to over 12,000 years. Despite never having been conquered by Spain and having agreements recognizing their sovereignty, the ancestral lands of the Mapuche were forcibly annexed after the independence of Argentina. A Mapuche tenet holds that “the land does not belong to the Mapuche, the Mapuche belong to the land,” and thus demonstrates the spiritual connection to their land which is a cornerstone for their indigenous culture and identity. Many of the problems that the Mapuche face are connected to the violent seizure of their ancestral lands by the Argentinian state which removes opportunities for traditional communities to sustain themselves. Mapuche activists are consequently criminalized for their efforts to uphold human rights for their communities and experience threats and violent repression.¹ Their resulting poor quality of life, compounded by the lack of access to services such as hospitals and schools due to the remote areas in which they live, further adds to the discrimination that they face in Argentina.

Main Issues of Concern

1. Political Representation of Mapuche Issues

Article 75 (17) of the Argentinian constitution acknowledges indigenous peoples in Argentina and their rights to protect their identity via bilingual and intercultural education and recognizes the legal standing of their communities and possession of traditionally owned lands. Yet the continued lack of political representation of the Mapuche has led to discrimination against Argentina’s indigenous peoples in discussions of political issues. Mapuche consultations or considerations in decisions that affect their communities are few and far between despite constitutional assurances that indigenous peoples are to participate in the related administration of their natural resources and of other interests affecting them. The Inter-American Commission on Human Rights noted that in practice, there are no procedures or political will in Argentina to guarantee the fundamental collective rights crucial to the development and support of indigenous peoples.²

The Argentinian state not only fails in its obligations to actualize indigenous land rights, but [indigenous] communities claim that in many cases their efforts to uphold their rights are met with violent responses from the State, including the criminalization of their protests, repression, and extrajudicial killings by individuals or members of security forces.³

The Argentinian government’s passing of a powerful Anti-Terrorism Law in 2011 raises significant concerns that currently legal forms of social protest could be criminalized under politically-charged interpretations of vague legislation. Currently, the Anti-Terrorism Law doubles punishments for crimes that aim to terrorize the population or

¹ Centro de Estudios Legales y Sociales (2012) Audiencia en la CIDH por la situación de los pueblos indígenas en la Argentina. Retrieved from <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1489>

² La Mañana Neuquén (2012) CIDH analiza la situación de los indígenas en Argentina. Retrieved from http://www.lmneuquen.com.ar/noticias/2012/3/23/cidh-analiza-la-situacion-de-los-indigenas-en-argentina_141327

³ *ibid*

Contact Information:

Unrepresented Nations and Peoples Organization
International Secretariat
Laan van Meerdervoort 70
2517 AN The Hague, The Netherlands

Website: www.unpo.org
Email: unpo@unpo.org



that force authorities to perform or abstain from performing an act, while neglecting to provide a definition of terrorism.⁴ Mapuche activists are concerned that even with additional legislation specifically preventing the law's use against "an exercise of human and/or social rights or any other right," police repression will continue, at least in the provinces outside Buenos Aires. 2011 has seen various cases of police repression of social protest throughout Argentina despite government efforts, such as the creation of a Ministry of Security and implementing police training programs.⁵ According to an Amnesty International report published in 2011, approximately 150 Mapuche individuals faced criminal charges in connection to protests over land rights and against judicial orders in Neuquén Province.⁶

Mapuche representation is also hindered by the lack of accurate data gathering regarding population statistics. The Committee on Economic, Social and Cultural Rights raised concerns in its 2011 Concluding Observations that methodology is not always publicly available, and discrepancies between certain provincial and national figures pose challenges for ensuring that all Argentinians, including the indigenous Mapuche, are enjoying the full protection of their economic, social and cultural rights.⁷

2. Resource Exploitation

The Neuquén and the Rio Negro region, where there are high concentrations of Mapuche communities, contain vast natural resources that have been exploited by the Argentinian state at the expense of the indigenous Mapuche. The presence of numerous multinational corporations has caused the Mapuche to be subjected to displacement through violent evictions from their ancestral territory. In 2010, the UN Human Rights Committee acknowledged the link between the violence faced by the Mapuche and the struggle for control over natural resources on their ancestral land.⁸ Despite Argentina's ratification of the UN Declaration on the Rights of Indigenous People and ILO Convention 169, the right of the Mapuche to free, prior and informed consent has been violated on multiple occasions. The Mapuche community in Gelay Ko in the Neuquén province protested in November 2011 that they were not consulted on a large-scale drilling and fracking project on their lands by US oil company, Apache; the community called for commissions to evaluate the social, cultural, and environmental impact, and to control and monitor the project.⁹ During a 2011 visit to Argentina, the Special Rapporteur on the Rights of Indigenous Peoples shared his concerns regarding the negative effects of multinational corporations extracting natural resources on the environment and the physical health of the Mapuche.¹⁰ Mapuche communities have experienced the destruction of their lands, such as in 2010 when lithium mining was conducted without free, prior and informed consent. "To find lithium, mining companies came in and conducted searches, tapped fresh water wells resulting in spills, damaged the landscape, and dug out embankments, all without asking our opinions. The government never consulted us."¹¹

⁴ Valente, M. (2011) Anti-Terrorism Law Upsets Harmony Between Government and Activists. *Inter Press Service*. Retrieved from <http://ipsnews.net/news.asp?idnews=106291>

⁵ Charlie Ramsey (2012) Anti-Terrorism Law Causes Rights Concerns. *The Argentina Independent*. Retrieved from <http://www.argentinaindependent.com/socialissues/humanrights/anti-terrorism-law-causes-rights-concerns/>

⁶ Amnesty International (2011) Argentina – Amnesty International Report 2010: Human Rights in Argentine Republic. Retrieved from <http://www.amnesty.org/en/region/argentina/report-2010>

⁷ Committee on Economic, Social and Cultural Rights (2011) Consideration of reports submitted by States parties under Articles 16 and 17: Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3) para.11

⁸ Human Rights Committee (2010) Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding Observations of the Human Rights Committee (CCPR/C/ARG/CO/4) para.25

⁹ Scandizzo, H. (2012) Oil Drilling Threatens Indigenous Mapuche in Argentina. *Intercontinental Cry*. Retrieved from <http://intercontinentalcry.org/oil-drilling-threatens-indigenous-mapuche-in-argentina/>

¹⁰ Anaya, J. (2011) Declaración a los medios del Relator Especial de las Naciones Unidas sobre los derechos de los pueblos indígenas al concluir su visita a Argentina. Retrieved from: <http://unsr.jamesanaya.org/statements/declaracion-a-los-medios-del-relator-especial-de-las-naciones-unidas-sobre-los-derechos-de-los-pueblos-indigenas-al-concluir-su-visita-a-argentina>

¹¹ Observatorio de Derechos Humanos de Pueblos Indígenas (2012) Corte Suprema, minería y pueblos indígenas. Retrieved from <http://odhpi.org/2012/03/corte-suprema-mineria-y-pueblos-indigenas/>



3. Property Rights

Despite Article 75 (17) of the Argentinean constitution, reality does not reflect the respect for Mapuche issues and their concern about property rights, especially when land disputes are a key issue affecting Argentina's Mapuche population. On multiple occasions, the Mapuche have been denied the right to continue living on their ancestral territory due to unjust occupation and sales of their land, even when land titles are in order. Evictions and forced displacements on one hand, and public auctions and judicial rulings on the other, point towards a culture of discrimination against indigenous peoples even when legislation to protect their rights is in place. Law 26.160 declared that evictions would be suspended between the periods of 2009-2013 while questions of legal ownership of lands by indigenous peoples would be resolved in courts on a case-by-case basis. However, this law has not been fully implemented, as evidenced by the continuing evictions.¹² In 2011, the Organization of American States' Inter-American Commission on Human Rights granted precautionary measures for the Mapuche families of Lof Paichil Antriao community who faced eviction and denial of access to religious sites (a place sacred to the Mapuche known as Rewe is located on disputed land in question). The Inter-American Commission specifically requested Argentina to adopt necessary measures to guarantee protective legal measures for Rewe and to allow community members unhindered access to the religious site.¹³

4. Violence Against Mapuche

Discrimination against minorities and indigenous people in Argentina has led to alarming incidents of violence over the past few years, attracting the attention of human rights defenders around the globe. The Mapuche have suffered discrimination and violence not only from the Argentinian government, including its armed forces, but also from private citizens.¹⁴ The use of threats and police violence to circumvent official judicial proceedings against the Mapuche has developed into a common practice in Argentina. It is unclear what steps Argentina has taken or with what degree of success Mapuche are able to seek justice for crimes committed against them.¹⁵

The Special Rapporteur on the Rights of Indigenous Peoples brought to the attention of the Argentinian state an incident in 2009 where 70 police officers arrived at the Mapuche community Paisil Antreao in Villa la Angostura, Neuquén; the officers violently removed families from their homes, tore down buildings, and occupied strategic locations in the community. The community members reported that they were not notified of the police's intention to evict them. In the days following the evictions, police behavior ranged from disrespectful (it was reported that the Mapuche nation flag was burned by police officers and that they also engaged in sexual harassment of Mapuche women) to intentionally aiming to harm the physical wellbeing and sustainability of the Mapuche community (children were threatened with weapons and the communal water reserves were destroyed).¹⁶ Instances of discrimination and violence at the hands of fellow citizens are not isolated incidents according to the Mapuche, who recently protested against the robbery and desecration of a tomb belonging to a lonko, or Mapuche chief in late February 2012.¹⁷

¹² Committee on Economic, Social and Cultural Rights (2011) Consideration of reports submitted by States parties under Articles 16 and 17: Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3) para.8

¹³ Organization of American States (2011) PM 269/08 – Members of the Lof Paichil Antriao Community of the Mapuche Indigenous People. *Inter-American Commission on Human Rights*. Retrieved from <http://www.oas.org/en/iachr/decisions/precautionary.asp>

¹⁴ Committee on Economic, Social and Cultural Rights (2011) Consideration of reports submitted by States parties under Articles 16 and 17: Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3) para.13

¹⁵ Equipo Latinoamericano de Justicia y Género (2010) Comentarios a las respuestas brindadas por el Gobierno Argentino respecto a la lista de cuestiones (CCPR/C/ARG/Q/4) que deben abordarse al examinar el cuarto informe periódico del gobierno de Argentina (CCPR/C/ARG/4). Retrieved from http://www2.ohchr.org/english/bodies/hrc/docs/ngos/ELA_Argentina98.pdf

¹⁶ Human Rights Council (2010) Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya: Addendum, Cases examined by the Special Rapporteur (June 2009-July 2010). (A/HRC/15/37/Add.1) para. 10.

¹⁷ Diario Rio Negro (2012, February 29) Denuncian ataque a tumba de lonko mapuche, Retrieved from <http://www.rionegro.com.ar/diario/rn/nota.aspx?idart=825111&idcat=9525&tipo=2>



Recommendations

The Unrepresented Nations and Peoples Organization strongly urges Argentinian authorities to consider the following recommendations:

Ensure that all relevant legislation reflects the affirmation and protection of indigenous rights as protected by Article 75, paragraph 17 of the Argentinian constitution.

Consider the repeal of the December 2011 revisions to Article 41 of the state penal code, which as currently written threatens the right to peaceful civic protest due to vague language open for discriminatory interpretation.

Ensure that Mapuche communities are consulted and their concerns are addressed in a manner compliant with the principle of free, prior and informed consent before allowing natural resource extraction companies to begin work on Mapuche ancestral land.

Assemble commissions, jointly staffed by state officials, Mapuche representatives, and independent observers to evaluate the social, cultural, and environmental impact of extraction projects, as well as to control and monitor the project for its adherence to national law protecting indigenous rights.

Open formal investigations on legal hearings that result in the further marginalization of Mapuche individuals and communities.

Conduct anti-discrimination and cultural sensitivity trainings for officials and workers from institutions who regularly interact with indigenous communities.

Supplement provincial governments with observers from the national government and representatives from indigenous communities as a measure to prevent and address civil and political rights violations faced by the Mapuche.