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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 Europe-Third World Centre, a non-governmental organization in general consultative status

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

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Violations of collective human rights and environmental rights by the Chevron, Total and Shell oil companies in Argentine Patagonia¹

Introduction

Since the discovery in late 2010 of one of the largest shale oil and gas deposits in the world, in the Vaca Muerta formation in Patagonia, in Argentina, serious inroads have been made into sensitive areas of the region. Operations carried out by transnational companies with links to State-controlled oil companies have triggered a range of impacts such as the violation of the rights of indigenous Mapuche communities, the displacement of farming productive activities, flouting of environmental law and numerous accidents and leaks. The situation is particularly serious because the area has been extensively used for the experimental technique of “fracking”, which exacerbates the risk of soil and air pollution and of contamination of the groundwater that supplies the population of Patagonia. All this has gone ahead in the absence of any comprehensive assessment of the potential environmental and social impact of fracking, or of any detailed study to establish what recoverable reserves of non-conventional hydrocarbons are available.

Chevron and the State violate Mapuche rights

In July 2013 the parastatal company YPF teamed up with the American corporation Chevron to develop the first pilot project to extract non-conventional hydrocarbons in the Vaca Muerta formation. The project got under way at the end of the year in the indigenous Mapuche community of Campo Maripe, and more than 500 wells have been drilled at the time of writing, making this community the territory most affected by fracking anywhere in the world outside the United States.

The whole process took place without free, prior and informed consultation with the community, in violation of Law No. 24,071, which ratifies ILO Convention 169, nor the Declaration on the Rights of Indigenous People. The parliamentary session at which the agreement between the province and YPF was approved, ratifying and approving the YPF-Chevron agreement, was conducted sight unseen, and the deputies of the Neuquén provincial legislature had no idea what they were voting on. The justification given for withholding this information was that it was necessary in order to protect trade agreements between private parties; the agreement is still secret. A demonstration involving 5,000 people was suppressed and a teacher was shot and wounded. At the same time four houses in the Campo Maripe community were set on fire. Since then there have been repeated police crackdowns in the community, in response to protest blockades of roads within the community’s traditional lands.²

Moreover, the wholesale takeover of land in connection with the continued drilling has led to a succession of accidents such as spills and breakdowns in the machinery operating in the area. At the same time there has been a number of leaks, causing fires at the sites. The occupation has also displaced livestock farming, though that is a traditional occupation among communities in the area. Residents are especially concerned about the long-term effects this activity may have on their territory, particularly that it might contaminate surface and underground water sources.³

Total and Shell do not comply with environmental legislation

Fifty km to the north of the Mapuche community lies Auca Mahuida, one of the most outstanding sites of mammal diversity of the entire steppe. The reserve is extremely rich and comprises species that have disappeared or are very rare in other parts of the region: it has been declared an Area of Importance for the Conservation of Birds. In addition, the

¹ This statement was prepared in collaboration with the OPSur and the Argentine Association of Environmental Lawyers. See also book (in French only) *La passion du schiste. Capitalisme, démocratie, environnement en Argentine*, PubliCetim n° 40, CETIM publisher, Geneva, 2016, 978-2-88053-115-7.

² <http://www.pagina12.com.ar/diario/ultimas/20-227770-2013-08-28.html> <http://www.opsur.org.ar/blog/2014/07/15/comunidad-campo-maripe-alambra-su-territorio-exigiendo-el-respeto-de-acuerdos-con-ypf/> <http://www.laizquierdadiario.com/Nueva-PROvocacion-contra-los-derechos-mapuches>

³ <http://www.rionegro.com.ar/diario/neuquen-ypf-controla-la-fuga-de-gas-en-loma-campana-4099981-9701-nota.aspx> <http://www.8300.com.ar/2014/09/08/lo-que-dejo-la-fuga-de-gas-en-el-pozo-no-convencional-de-loma-campana/> <http://www.anred.org/spip.php?article8587> <http://www.laizquierdadiario.com/Nuevo-derrame-de-petroleo-en-Vaca-Muerta>

Cerro Auca Mahuida is a mythological, ritual and ceremonial site for Creole and Mapuche villagers. There are also archaeological sites with petroglyphs and rock paintings.

The Area, which is home to some nine families who raise goats, was created in 1996 but ratified only in 2008, following the enactment of the provincial Law on Protected Natural Areas (ANP). It is true that drilling started before the ANP was created but once it had been declared nothing was done to halt the extractive activity; rather, permission was given for it to expand, which is a mortal threat to the Area, whose whole *raison d'être* is to conserve biodiversity in perpetuity. A report by the Directorate of Natural Protected Areas (DANP) prepared in early 2012 recorded 11 hydrocarbon concessions within the present boundaries of Auca Mahuida. It noted the existence of 69 wells, six of them in the inviolable area, and found violations at most of them. In addition to the infrastructure associated with gas and oil extraction, oil highways totalling more than 1,000 km are having a big impact on the fauna and flora supposedly being protected. This situation involves not only the provincial government but also operators and owners such as YPF, Shell, Total Austral, ExxonMobil, Wintershall, Pan American Energy, GYP, EOG Resources and Medanito.

In order to improve the management of the ANP, a general management plan was drafted by DANP technicians in 2000. The plan states that, to optimize the conservation of the Patagonian steppe, the Area should be expanded from 77,000 to 120,000 ha. In another example of State neglect of Auca, the plan has not yet been approved by DANP officials, as a result of which the Area remains on the front line of the rush for non-conventionals. In the Aguila Mora formation, for example, Anglo-Dutch Shell has drilled five non-conventional wells. It is important to note that these projects are in an area with no previous history of hydrocarbon activities. The wells are close to the present boundaries of the ANP, but should the general management plan be approved, they would then fall within it. One of them would even be in the inviolable area. Other examples involve ExxonMobil. Near the ANP there are many Creole families who have also been affected. Several of these families are in Sierras Blancas, a Shell concession, and have reported, among other things, the opening up of roads for fracking operations, loss of animals, clearance and discharge of liquid waste by the operators.

Although the Law on Protected Areas was passed in 2008, no regulations were ever drafted, and the province relies on this legal vacuum to allow fracking in Auca Mahuida. One example is the PLY.x-1 well in the Pampa Las Yeguas II block. It was drilled by Total in early 2013 in an area where until then the industry had not been active. Total did this in association with the Neuquén state oil company, whose contracts are signed without informing the public, so the terms and constraints imposed by operators are not fully disclosed. This withholding of information by the state authorities is compounded by corporate silence, since Total does not advertise the techniques it uses or the extent of its non-conventional operations in the country. Thus the population finds it difficult to know for certain what terms and constraints the companies impose. This problem of access to information and Total's discretion to act were highlighted in the case of the well drilled in the Pampa Las Yeguas II in the Auca Mahuida area.

The company started the well drilling and fracturing process in 2012, in the north of the ANP, and in a part that until then had not seen activity by the industry. The concession holder is Gyp, the Neuquén state company, with Total as operator, the contract being shared by them and YPF. The well was fractured before approval had been obtained from the Ministry of the Environment, on the basis of a "conditional permit". The main reason for the delay in approval was that the plans to use groundwater had not been approved; the use of groundwater is permitted only if it is not drinking water and the quality had not been reported in the documentation.

There was a further irregularity having to do directly with the authority responsible for protected areas, DANP, and affecting regulatory powers as a whole. Since this was a protected area, a ruling by DANP was a prerequisite for the granting of an environmental permit. However, such a ruling is made after the Ministry of the Environment approval, so the company started work without having all the paperwork in order.⁴

While this case of fracking by Total inside a protected area is unique in the world, the risks of its non-conventional operation go beyond Auca Mahuida. At the Aguada Pichana site, also in the province of Neuquén, the company lost a radioactive pellet down a well, which meant that the well had to be sealed off.⁵

⁴ <http://www.opsur.org.ar/blog/2014/05/20/el-avance-no-convencional-de-shell-en-argentina/>

⁵ <http://www.rionegro.com.ar/diario/pierden-otra-pastilla-radiactiva-en-un-pozo-petrolero-3080637-9574-nota.aspx>

In fact, in application of the precautionary principle, it is for the companies and government to demonstrate that hydraulic fracturing technologies are harmless. Otherwise the principle would be applied in reverse.

Need to comply with ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the precautionary principle

Several Mapuche communities have been affected by conventional hydrocarbon exploitation for 10 years and are now affected by non-conventional exploitation as well. The role of the Neuquén judicial system, which is working hand-in-glove with political and economic interests, is crucial in this situation, for ILO Convention 169 is not being applied, which implies a wholesale rejection of international legislation to protect indigenous peoples. Nor is the United Nations Declaration on the Rights of Indigenous Peoples, in particular articles 19, 28.1, 28.2 and 32.2 on the need to obtain free, prior and informed consent, being applied. The country's first fracking well was sunk in the province of Neuquén. In 2013 there were approximately 80 non-conventional gas wells, and by the end of 2015 there were over 1,000. The first fracking operation was carried out in the territory of the Mapuche community of Gelay Ko, near Zapala, without consulting the population affected. In this territory, the American company Apache went in without permission from the indigenous communities, when the communities were busy with the "veranada" - taking their animals to the high summer grazing grounds. There was also no prior environmental impact study. This first fracking well alone used 30m litres of water.

It should be recalled that in a similar case, *Kichwa Indigenous People of Sarayaku vs. Ecuador*, the Inter-American Court of Human Rights confirmed the need to obtain the free, prior and informed consent of indigenous communities for projects or infrastructure likely to have an impact on their land, their culture, their way of life or their rights. This case could be seen as a precedent.⁶

Moreover, after his visit to Argentina in 2011, the Special Rapporteur on the rights of indigenous peoples drew particular attention to the worrying situation of the Kaxipayiñ community in Loma Lata, Neuquén province, where he noted signs of pollution resulting from oil exploration activities.⁷ He also noted the absence of federal or provincial legislation to set up a procedure for consultation with the indigenous peoples.⁸ He pointed out that, while some communities have negotiated for extractive companies to provide services such as access to water, the State is the authority responsible for providing such services.⁹

We are alarmed to see that, in Argentina, innovative environmental principles such as the principle of prevention and the precautionary principle, are repressed and even interpreted in such a way as to counter any legal objection that might be raised to try to regulate fracking, even minimally. The lack of scientific certainty, rather than creating an obligation to act with caution, is used to legitimize most of the new substances and activities that are authorized by the authorities without constraint. Worse, it is the communities affected who are required to shoulder the enormous burden of scientifically proving that these chemicals are dangerous, whereas under the precautionary principle and other environmental principles, it is those that introduce a technique to extract hydrocarbons who have the responsibility to prove beyond doubt that they are harmless.

In view of the above, CETIM urges the Argentine Government to respect its international obligations, including the two international covenants on human rights, the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169. We ask it to take all measures to protect the rights of the Mapuche people.

CETIM also urges the governments of States where multinational companies have their legal base to oblige them to respect the rights of indigenous peoples in the context of their activities in Argentina, and to consider punishing those responsible in accordance with their obligation to prevent human rights violations committed abroad by third parties under their jurisdiction.

CETIM requests the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on the right to health and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to carry out a joint visit to Argentina to investigate the cases mentioned above.

⁶ See in particular §§ 290 y 300, http://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf

⁷ See document A/HCR/21/47/Add.2, para. 43.

(<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/149/47/PDF/G1214947.pdf?OpenElement>)

⁸ Ibid, para. 45.

⁹ Ibid, para. 47.