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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 the Europe-Third World Centre (CETIM), 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.


[18 August 2017]

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

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Rights of the Mapuche people in Chile: violations, non-recognition and denial of otherness¹

On the occasion of the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and in the light of the current very difficult situation of the Mapuche people, CETIM wishes, in the following written statement and in constructive dialogue with the Chilean State, to recall the commitments that have been made to indigenous peoples.

I. Constitutional recognition of the Mapuche people and indigenous peoples

The current situation facing the Mapuche people is the outcome of a long history of marginalization, discrimination and exclusion (cf. report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr. Rodolfo Stavenhagen, on his mission to Chile, submitted in accordance with Commission on Human Rights resolution 2003/56 - E/CN.4/2004/80/Add.3, para. 8). Between 1862 and 1885, the States of Chile and Argentina annexed the territory of the Mapuche by force, even though the independence of the Mapuche people and the borders of its territory had been recognized by the Spanish Crown in the Treaty of Quillen of 6 January 1641, as well as in many later treaties. Following the election of President Salvador Allende in 1970, reforms were undertaken and the land reform process, including the restitution of indigenous lands, accelerated. After the coup d'état led by General Augusto Pinochet on 11 September 1973, the military dictatorship dismantled the reforms and privatized the lands of the indigenous peoples. In addition, social movements were fiercely repressed, including those representing indigenous peoples and in particular the Mapuche.

In December 1989, presidential candidate Patricio Aylwin Azocar signed a formal pledge to do everything possible to ensure that the indigenous peoples' status was recognized and protected under the Chilean Constitution, along with their fundamental economic, social and cultural rights. For their part, the indigenous peoples who signed the agreement undertook to support and defend the future government of the Coalition for Democracy, of which Patricio Aylwin Azocar was the Chair, and its work to bring about the restoration of democracy in Chile.

More than 27 years on, there is still no constitutional recognition of the indigenous peoples.

On the contrary, the level of violence and the number of human rights violations against the Mapuche communities have only intensified over time, and women and children have not been spared. Since the annexation of their territory, the Mapuche communities have constantly struggled to defend their rights and recover their lands.

II. Use of lead shot by Carabineros against defenceless Mapuches

Based on information received, CETIM is particularly concerned about the situation of Brandon Hernández Huentecol, a youth of 17 at the time who, during a police check on 18 December 2016, found himself face down on the ground, immobilized by a carabinero's foot on his back. Though he was completely unable to move, the carabinero shot him at point-blank range. He had to have several surgical operations and nearly died. He still has lead pellets in his body. The Carabineros doggedly maintain that it was an accident.

In January 2017, the Human Rights Department of the Medical College of Chile issued a "Medical Report on Brandon Hernández Huentecol under the Istanbul Protocol", at the request of the Chilean National Human Rights Institute (NHRI). According to this report, the young man's injuries were extremely serious; in such a severe case, with this degree of violence, given the damage caused by this kind of weapon fired at close range and the part of the body impacted, death would normally ensue. The NHRI also filed a complaint against the police officer concerned.

¹ Statement prepared in collaboration with Ms. Giselle Toledo Vera, jurist, and Ms. Ana Vera Vega, human rights activist.

However, in spite of the Medical College report and the complaints lodged by the NHRI and the family, Hernández Huentecol's lawyer Manuela Royo believes that, given the slow progress of domestic proceedings, the policeman who fired at her client has been granted de facto impunity.

Another worrying situation brought to CETIM's attention is that of Mr. Waikilaf Cadin. On Saturday, 28 January 2017, he was on his way to visit his mother Juana Calfunao in prison. He was carrying a stick. Carabineros shot him with a rifle without warning and at a range of only a few metres. The carabineros left him lying on the ground with more than 30 pellets in his left leg. He managed to drag himself to the house of a Lonko community chief about a hundred metres away. He called an ambulance, which came two hours later with an escort of five carloads of carabineros, including at least one heavily armed team of the Special Operations Group. Mr. Waikilaf Cadin was violently arrested and handcuffed by the carabineros, who claimed that he had been caught in the act of attempted homicide. He was accused of attacking the carabineros with a machete. In the course of the arrest, the regional head of the NHRI, who was present, demanded that medical personnel examine Mr. Waikilaf Cadin, a request that was ignored. Mr. Waikilaf Cadin was eventually admitted to hospital, though his left hand was kept handcuffed to his stretcher. His detention was terminated at 7 p.m. on 28 January 2017 and the handcuffs removed. At the hospital, Mr. Waikilaf Cadin spent more than 24 hours on a stretcher trolley in the corridors of the emergency department and received no proper medical care. It was only on Sunday, 29 January 2017, at around 5.30 p.m., that he was taken to a room in the regional hospital, where he stayed until 15 February 2017, during which time the only treatment he received was antibiotics and painkillers.

These incidents are the subject of complaints lodged by the representatives of Brandon Hernández Huentecol and Mr. Waikilaf Cadin with the United Nations Special Rapporteur on the rights of indigenous peoples and, in the second case, the Special Rapporteur on the situation of human rights defenders. The complaints are currently being considered.

These are not isolated incidents. Given the practice of totally disproportionate use of force within the Chilean police, there is an urgent need for Chile to establish a mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with its international commitments in this regard and with the express requests of Chilean civil society, in particular the Ethics Committee against Torture.

III. Araucania Bill: remedy of protection invoked at Temuco Court of Appeal; bill criticized by Board of National Indigenous Development Agency (CONADI) in public statement on the consultation on indigenous peoples' constitutional recognition - latest attempts by members of the Mapuche communities to assert their right to be heard and to participate in public decisions concerning them

Last June several public statements by the Government suggested that a bill on the Araucania region would soon be tabled. The bill would seek to regulate, among other things, the conditions under which private companies, which would have exclusive rights to operate in the region and would set up in Araucania's poorest communities, could obtain special financial incentives from the State. On the basis of these statements and given that the bill was said to be on the point of adoption, members of the Mapuche communities filed for a remedy of protection with the Temuco Court of Appeal against certain Chilean Members of Parliament and Senators. The appeal has been declared admissible as to form.

In addition, in a public statement issued on 7 August 2017, the Board of CONADI expressed disagreement with the substance and form of the initial stages of the consultation on constitutional recognition for the indigenous peoples. It criticizes the Chilean State for having issued for consultation texts and statements that continue to deny, among other things, the indigenous peoples' right to be recognized as peoples or nations, their territorial rights and their right to self-determination. The Board also calls for the creation of a properly defined, legitimate and dedicated body to effectively ensure a genuine dialogue between the Government and the indigenous peoples.

It is extremely worrying that recognized members of the Mapuche people have no alternative but to bring legal action or appeal to public opinion in order to exercise their right to be heard and their right to be involved in decisions that affect their communities. Full information, and effective consultation of all the Mapuche communities concerned, should be guaranteed by the State of Chile throughout the processes of adoption of the Araucania bill and of constitutional recognition for the indigenous peoples.

In light of the above, CETIM urges the State of Chile to grant constitutional recognition to the indigenous peoples and their social, economic and cultural rights, in accordance with the pledges made at the end of the dictatorship, in order to ensure full implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Moreover, it is imperative that the agents of the Chilean State desist forthwith from all acts of torture and all cruel, inhuman and degrading treatment such as firing lead shot at members of the Mapuche communities. In particular, respect for Mapuche minors' right to physical, psychological and moral integrity should be ensured.

Finally, CETIM calls on the State of Chile to establish, as soon as possible, a mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment and to take no official action on Araucania without effective consultation of the Mapuche people. The State of Chile must honour its international human rights commitments to the Mapuche people.
