



Unrepresented Nations and Peoples Organization (UNPO) Communication Universal Periodic Review: Argentina

Mapuche people

Lack of Precision

Argentina's Mapuche population of Mapuche is of approximately 250.000 people. The Mapuche are an indigenous people with a strong connection to nature and their land both in their beliefs and in their economic subsistence.

The Argentinean Constitution recognises the place and the pre-existence of the indigenous nations in Argentina. Chapter 4, Section 75, Point 17 of the Constitution recognizes "*the ethnic and cultural pre-existence of indigenous nations in Argentina*" and "*guarantees for the identity right to bilingual, the right intercultural education*". The Constitution also gives the state a duty "*to recognize the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments. To guarantee their participation in issues related to their natural resources and in other interests affecting them*".

There are however no precisions as to what criteria are used when referring to adequate land for human development and what consideration was given concerning the productivity of the lands allocated.

Compensation

Similarly, according to Chapter 1, Section 17 of the Constitution: "*Property may not be violated, and no inhabitant of the Nation can be deprived of it except by virtue of a sentence based on law. Expropriation for reasons of public interest must be authorized by law and previously compensated. Only Congress levies the taxes [...]. No personal service can be requested except by virtue of a law or sentence based on law. Every author or inventor is the exclusive owner of his work, invention, or discovery for the term granted by law. The confiscation of property is hereby abolished forever from the Argentine Criminal Code. No armed body may make requisitions nor demand assistance of any kind.*"

However, Argentinean law fails to clearly define mechanisms for economic compensation as was illustrated in the dispute over land rights opposing Mapuche organizations to the Benetton corporation about lands acquired to the Companias de Tierras Sud Argentino (CTSA).

Economic and Religious Rights

In recent years, Argentina has made efforts to take into account the unique situation of indigenous peoples, including the Mapuche, with the establishment of INAI (National Institute for Indigenous Issues). Now under the authority of the Ministry of Social Development, INAI aims at ensuring the participation of indigenous communities in the management of natural resources. The recognition of the Mapuche's legal personality as indigenous people in Argentina is a positive step forward; it is not clear however what their participation in the management of vital natural resources will consist in.

Pursuant to Article 1 (2) of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) which Argentina has ratified in 1986, "*(a)ll peoples may, for their own ends, freely dispose of their natural wealth and resources*" and "*(i)n no case may a people be deprived of its own means of subsistence.*" In order to comply with this article the mechanisms set up by the INAI should be clarified to allow Mapuches to be at the center of decisions concerning the use of their ancestral land.

Pursuant to Article 18 of the ICCPR, "*(e)veryone shall have the right to freedom of thought, conscience and religion*" and "*(n)o one shall be subject to coercion which would impair his freedom to have [...] a religion*". The Mapuche's religion is deeply linked to their ancestral land. A Mapuche tenet holds that "*the land does not belong to the Mapuche, the Mapuche belong to the land*".



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Despite Article 6(a) of the 1981 declaration of the UN General Assembly which provides that “*(t)he right to freedom of thought, conscience, religion or belief includes the freedom, to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes*”, despite recommendations made by UN Special Rapporteur on Freedom of Religion Abdelfattah Amor after his visit to Argentina in 2001 on the right of the Mapuches to access sacred sites, despite resolution 2005/40 of the UN Commission on Human Rights urging states “*(t)o ensure [...] the right of all persons to worship or assemble in connection with a religion or belief*”, and despite Article 12 of the Declaration on the Rights of Indigenous Peoples which provides that “*Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites*”, Argentina has so far failed to ensure the Mapuche’s freedom to practice their religion. The lack of access to holy sites, shrines and graves due to the privatization of land does indeed prevent the full exercise of the traditional Mapuche religion and thus constitutes a breach of Article 18 ICCPR.