

# Chile: Discrimination directed against the Mapuche Indians

## Mapuche Set Up Autonomous Legal Defence Unit

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SANTIAGO - As tensions mount in Chile's Mapuche territories, the indigenous people have created a new legal defence body for cases involving resistance against the state, as they put little stock in the justice system for working out cases such as land disputes.

"Practically everyone in our family is in prison, and those of us who aren't are subject to restraining orders that restrict our movements," Antonio Cadín, "werkén" (spokesman) for the Juan Paillalef community 730 kilometres south of the capital, told IPS.

The Mapuche activist is serving a five-year sentence under which he is only locked up at night, for defiance of authority and disorderly conduct. His wife, Juana Calfunao, the "lonko" (maximum traditional authority) of the community, is serving four-and-a-half years on the same charges. Their youngest daughter, 12-year-old Relmutray, has applied for political asylum in Switzerland.

"There is ample evidence indicating that since her birth, Relmutray has lived in an environment of relentless police tension and harassment," reads a document that the Mapuche International Link (MIL) submitted to the United Nations in 2008. "She has witnessed police brutality against her parents and her community as well as personally suffering inhumane, cruel, and degrading treatment."

Relmutray is living with her aunt Flor Rayen, who has resided in Geneva since 1996 and is an activist and a human and indigenous rights researcher for the United Nations. The young girl's asylum petition has the support of a number of human rights organisations around the world.

Cadín says his people are protesting against the neglect, discrimination and harsh treatment they have faced since the earliest days of the Chilean state, for which no solutions have been found in the 20 years of democracy that have followed the 1973-1990 dictatorship.

"There has been no recognition of our people's political, social and legal structures; our traditional authorities have not been respected, and our territorial rights have not been recognised," he said.

In order to fight for their rights and overcome the injustices they complain of, the Juan Paillalef community has coordinated with more than 20 other Mapuche communities to form the Defensor Jurídico Social Autónomo Mapuche (Autonomous Mapuche Legal and Social Defence unit).

The unprecedented legal defence body is headed by the traditional authorities, and is made up of “six lawyers and a multidisciplinary team that includes psychologists, a social worker, an anthropologist and a sociologist, to lend support to defence testimony in the courts when our people are on trial,” said Cadín, the coordinator of the Defensor Jurídico unit.

According to Matías Meza-Lopehandia, a lawyer with the non-governmental Observatorio Ciudadano (Citizen Observatory), the creation of the “autonomous” legal defence unit is an indication of the maturity of the movement for indigenous rights and autonomy.

“What it shows is that indigenous people are taking care of their own problems, and creating and strengthening their own organisations,” said the lawyer.

The Mapuche are the largest indigenous group in Chile, numbering about one million people in a total population of 16 million. Nearly half of them live in the capital city, and the rest live mainly in the southern region of Araucanía, a roughly 10-hour drive from Santiago.

In this southern region, the ongoing struggle of the Mapuche for land that they claim as their ancestral territory has sparked conflicts, with activists staging land occupations and setting fire to trucks that extract logs from forests they regard as their own, on one hand, and rampant police brutality on the other.

Six arson attacks have occurred so far in 2010. Responsibility for four of them has been claimed by the Coordinadora Arauco-Malleco (CAM), a radical Mapuche organisation.

“We have no doubt that the police and prosecutors will succeed in catching these criminals and putting them behind bars; and we expect the justice system to punish them, as in all previous cases, to the utmost extent of the law,” acting Interior Minister Patricio Rosende told the press in response to the latest incident.

Four Mapuche, including a minor, were formally charged in January under the Anti-Terrorism Law for allegedly taking part in an arson attack. Another 23 Mapuche were ordered to appear before justice authorities to answer allegations of making threats and belonging to an “illegal terrorist association.”

But two lawsuits have also been filed by indigenous people against the authorities on the grounds of abuse. One is against members of the police, for allegedly torturing a Mapuche man from the Temucuicui community, and the other was lodged by the Mapuche Autonomous Legal and Social Defence unit against prison guards, for alleged torture and illegal coercion of a Mapuche woman from the Juan Paillalef community.

In Meza-Lopehandia’s view, it does not necessarily follow that the conflict in Araucanía has intensified, nor that all the incidents they are charged with have in fact been carried out by the Mapuche.

At present 52 indigenous people – who see themselves as political prisoners – are in prison, charged with acts of violence in pursuit of their demands.

Forty of them have been indicted or are serving sentences of up to 10 years for “terrorist” crimes, although according to Meza-Lopehandia, they never showed “disregard for human life,” and no one was ever killed as a consequence of their actions, as the term “terrorism” would imply.

In contrast, a military tribunal handed down only a two-year suspended sentence to the police officer who two years ago shot and killed Matías Catrileo, a young indigenous protester, during a land occupation.

Human rights groups complain that the Anti-Terrorist Law, issued during the 1973-1990 military dictatorship of the late General Augusto Pinochet, should not be invoked against the Mapuche protesters.

Secret judicial investigations, the use of anonymous witnesses preventing legitimate and timely defence, longer periods of arrest on remand and doubly heavy penalties for those convicted are some of the Law's draconian provisions.

Meza-Lopehandia said its provisions negate the principle of presumption of innocence, so that indigenous people are held in detention and "presumed guilty" even though often there is no evidence against them.

Another concern is that it lowers standards of practice and respect for basic rights on the part of police and prosecutors.

The logic behind the Anti-Terrorist Law is of "a criminal law for the enemy," said the lawyer. "Suspects are dehumanised to the point that they are no longer persons with rights, so they can be tortured."

In October 2009, the representative of the United Nations Children's Fund (UNICEF) in this country, Gary Stahl, made an appeal "for a halt to the violence involving children, whichever side is responsible for it," after meeting with three government ministers to convey UNICEF's deep concern over grave reports of police brutality against Mapuche children.

Many indigenous people have lost all faith in the state and in the public defenders they are offered, and instead seek independent defence counsel of their own, like the kind the Autonomous Mapuche Legal and Social Defence unit will provide.

"There are no guarantees of due process in these trials manipulated by the state," Cadín, the coordinator of the legal defence unit, told IPS. "We are persecuted by state police, and the state appoints both the prosecutors and the public defence lawyers, who operate within a system and comply with a political model that favours vested economic interests in this country."

### **Prospects under a new government**

Mapuche organisations do not believe that state policy will be any different under the incoming Sebastián Piñera administration, which they expect will continue to deny their rights, although they do fear increased repression and use of the Anti-Terrorist Law. Rightwing president-elect Piñera, who will succeed socialist President Michelle Bachelet in March, may undermine Mapuche ways of collective organising as a strategy to quell the protests, activists say.

He has said that his land policy will focus on individual subsidies rather than recognition of collective rights, which could further fuel the conflicts.

Piñera also plans to restructure public institutions devoted to indigenous affairs, in order to make them more efficient, he says.

But “no change can be made to institutions dealing with indigenous peoples nowadays without consulting native peoples themselves,” said Meza-Lopehandia, referring to International Labour Organisation (ILO) Convention 169 which came into force in Chile in 2009.

The United Nations Special Rapporteur for the rights of indigenous peoples, James Anaya, expressed concern about the use of the Anti-Terrorist Law and about the violence in Araucanía, among other issues, and called on the new government to respect international law on indigenous peoples’ rights.

According to Meza-Lopehandia, certain steps are essential, such as “demilitarising Mapuche territory, issuing an amnesty for the prisoners,” and acknowledging and asking forgiveness for “not only the atrocities committed 100 years ago, but also those that have been perpetrated in the last 20 years.”

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