



**ALTO LOA ATACAMEÑO INDIGENOUS COMMUNITIES
JOINT PRESENTATION
UNIVERSAL PERIODIC REVIEW – CHILE, FEBRUARY 2014**

TAIRA ATACAMEÑO INDIGENOUS COMMUNITY

Constituted on November 27, 2003

RUT: 65402310-7

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SAN FRANCISCO DE CHIU CHIU ATACAMEÑO INDIGENOUS COMMUNITY

Constituted on June 10, 1995

RUT: 72.912.100-2

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The aforementioned indigenous communities have been constituted according to law n° 19.253 and are part of the Alto Loa indigenous Development Area. The defense and promotion of the Atacameño People's collective rights are inherent to our nature, as well as the actions tending to achieve equal access to the exercise of human rights and the preservation of our culture and our material, cultural and social heritage.

ATACAMEÑO INDIGENOUS COMMUNITIES JOINT PRESENTATION EPU CHILE – FEBRUARY 2014.

Key words: indigenous peoples' rights; constitutional recognition, territorial and water rights.

Executive Summary

1. Alto Loa Taira and San Francisco de Chiu Chiu Atacameño indigenous communities want to make The United Nations acquainted with our present situation, in which the human rights of the indigenous peoples of the North of Chile have been ignored.

2. The State has disregarded the peoples' seeking the recognition of their rights and the pacific settlement of situations in which such rights have been affected. While acknowledging the attempts to initiate the corresponding processes in order to regulate the consultations and respond to the demands of the Mapuche people, we have been neglected, and the measures to reduce the socioeconomic development breaches affecting the Atacameño indigenous communities have not been taken.

3. We denounce the flagrant procrastination of compliance with legal commitments that would have allowed a better safeguard of our rights, i.e. the constitutional recognition of Atacameño peoples and the acknowledgement of boundaries of indigenous territories. Moreover, the Chilean State, by action and omission, has neglected its obligation to guarantee our right to life both in an individual and a collective fashion, by adopting measures that do not meet the requirements to prevent, mitigate and compensate our people in view of pollution and vital resource extraction, putting our health at serious risk and forcing us to migrate to cities, thus abandoning our traditional agro pastoral activities. These conditions have made us remain in a vicious cycle of impoverishment so pressing our survival as Atacameño peoples.

4. It is urgent that the Chilean State grants constitutional recognition to indigenous peoples and their water rights, both in an individual dimension and as a special protection to the collective rights of indigenous communities, particularly those living in desert areas.

5. Both legislators and the government should advance in the legal amendments that allow the full implementation of Convention 169, harbor and promptly solve the issue of territorial boundaries, build fair and equitable forms of mitigation and compensation for harmful effects of mining operations, assuming diagnose and treatment costs of diseases derived from water pollution and suspended particles, as well as the economic damage to the development and productivity of the communities' agro pastoral activities resulting from the extraction of water.

6. In addition, it seems necessary that public institutions and associated companies generate a new relationship with the Atacameño peoples, avoiding paternalism and establishing the necessary conditions for their autonomy and self-determination on developmental and cultural matters, making it possible for the communities to participate in the benefits that such productive activities generate (ILO Convention 169, art. 15.2), and also acknowledging the communities' property over archaeological heritage, thus amending the National Monuments Law and the Indigenous Law.

I. ACCOMPLISHMENTS OF COMMITMENTS EPU 2009

7. Chile has not granted **constitutional recognition to the indigenous peoples** (EPU 2009, 96.58 + 96.59), such situation maintains us in a state of vulnerability and meager protection of our rights, due to the insufficient legal framework provided by the Indigenous Law (Law N° 19.253) to acknowledge us as subjects of full collective rights and to exercise our autonomy and self-determination.

8. Such situation occurs in the context of the **Rights of the indigenous peoples in general**, which particularly affect the communities of the North of Chile, as we lack the necessary public visibility and political pressure capacity to be incorporated in the policies of development and protection of indigenous rights. In these last four years, there has been no advance in a plan or other measures that address our reality (EPU 2009, 96.16 + 96.18) and the government has only made progress with the Plan Araucanía¹. This situation is deplorable, since we have privileged the path of dialogue and the use of established mechanisms to channel our demands and observations. However, this has become a barrier, since internal mechanisms have been exhausted, without achieving the protection of our rights.

9. We are concerned about the **Right to Education** of our boys, girls and youth. State scholarships do not suffice either in quantity or funding, as they do not manage to break the educational segmentation affecting the country²; therefore, you can only access lower quality education (EPU 96.55 + 96.56), which causes lower results and opportunities in both attaining further studies and becoming part of the labor force. In fact, net attendance figures have dropped from 2009 to 2011 between 1 and 2 %, with equivalent rates to those of non-indigenous population, while unemployment has remained virtually unchanged at around 10.6% and average incomes have remained stagnant, while the non-indigenous population declined in almost 3 percentage points and their average income increased by more than 8% (Casen 2011). This constitutes an example of the neglect of commitments to politically and institutionally support our communities in order to overcome the **significant disparities between the socioeconomic indicators between the indigenous and non-indigenous populations** (EPU 2009, 96.60 + 96.61) and make that effort to “the maximum extent of resources available” to provide “full realization” to our rights, as described by the Special Rapporteur in his 2009 report, paragraph 63.

10. The land and water programs have not recorded any advances. Large scale copper mining performed by both state and private enterprises, extracts resources without complying with the provisions established in art. 15, numeral 2 of 169 ILO Convention, regarding the participation in economic benefits. Besides, it does not consider the observations we presented concerning the negative effects of its operations on our health, the preservation of our ancient lifestyle and our cultural, archaeological, historical and immaterial heritage. There has been no adequate attention to either national regulations or the situation of indigenous communities in the system of evaluation of environmental impact. On the contrary, we have witnessed constant reassertion of the power asymmetry between these enormous economic capitals and the indigenous communities (EPU 2009, 96.57 + 96.62 to 67) in administrative and legal measures taken when solving the multiple conflicts arising from the constantly growing demand for the exploitation of mining

¹ For any further information, see <http://araucania7.cl/el-plan/>

² Special Rapporteur on the Rights of Indigenous Peoples Report, 2009, p.63

resources and their need for water to carry out their productive processes. It has been estimated that their need for water will double in the next decade (Yañez y Molina, 2009, p. 169; Larraín y Poo, 2010, p. 22)³.

II. VIOLATION OF RIGHTS OF SPECIAL CONCERN FOR ATACAMEÑO INDIGENOUS PEOPLES.

11. The monitoring of the commitments made by the State of Chile in EPU 2009 which has been briefly referred to in previous paragraphs, shows a chain of situations that keep the indigenous peoples in a state of inequity and vulnerability, in particular those belonging to the Atacameño culture. Among this series of overlapping violations, we think that the lack of guarantees on the rights over the land of indigenous peoples is the one that has the greatest impact and affects the rights to education, an adequate standard of life, the right to health and life. This is the reason why we want to refer to two situations which particularly affect our communities of Taira and Chiu Chiu, both resulting from the activities performed by large scale copper mining, operated by state owned company Codelco and the limited regulation of the operations of private companies.

12. In spite of the fact that the General Water Supply Office stated that Loa river was a “saturated resource” (DGN N°197/2000), it has allowed the extraction of superficial waters and underground aquifers, thus favoring the mining industry, particularly in the case of Codelco Norte. By doing so, it has disregarded the Indigenous Law N°19.253, article 64 subsection 2, which specifically prohibits to grant new water rights over aquifers which supply various indigenous communities, if not previously ensuring the normal supply of water to such communities, by means of Resolution DGA N° 859 on October 3, which indicates an average annual flow of 300 liters per second, and an instant-flow of 399 liters per second, making reference to the low concentration of population (Yañez y Gentes, 2005, p. 35)⁴. Additionally, in the studies of environmental impact, the presence of some indigenous communities living in those territories was disregarded, as it reads in the Study of Impact Evaluation, Construction, Submission and Adduction of Agua Pampa Puno⁵, which makes no specific reference about those communities which are subject to impact, as established by Law N°19253. Besides, there is the constant theft of water by means of

³ Nancy Yañez y Raúl Molina (2008). *La gran minería y los derechos indígenas en el norte de Chile*. Santiago. LOM.

Sara Larraín y Pamela Poo (2010) *Conflictos por el agua en Chile. Entre los Derechos Humanos y las Reglas del Mercado*. Programa Chile Sustentable y Fundación Heinrich Böll. Taken from: <http://www.chilesustentable.net/2011/06/13/conflictos-por-el-agua-en-chile/>, June 6, 2013.

In 2011, Collahuasi Mining Company presented to environmental evaluation a project to pump water from Lequena- Ujina, where Loa river is born. Fortunately, such project was dismissed due to the massive opposition of local communities and authorities. (http://seia.sea.gob.cl/expediente/ficha/fichaPrincipal.php?id_expediente=6283681&idExpediente=6283681&modo=ficha). On March 15, 2013, Codelco Chuquicamata published a new application for a permit to explore underground waters in Pampas Quinchamales, in what they defined as “state owned land” which has been occupied by Atacameño communities since ancient times. These waters may probably be affluents to Loa river.

⁴ Nancy Yañez e Ingo Gentes (2005) *Derechos Locales sobre las aguas en Chile: Análisis Jurídico y político para una estrategia de gestión pertinente en territorios indígenas*. WALIR Santiago de Chile. Taken from www.eclac.cl/drni/proyectos/walir/doc/walir52.pdf, May 15, 2013.

⁵ To become acquainted with the full record of the Pampa Puno project, including annexes and addenda of observations of the citizens participation, by means of which the communities presented their observations and differences, see: http://seia.sea.gob.cl/expediente/expedientesEvaluacion.php?modo=ficha&id_expediente=1041745#-1

reinjection due to the ineffective measures to protect the indigenous communities. The legislative amendment that would reduce this effect is nowadays non-urgent parliamentary debate.⁶

13. The Taira Atacameño indigenous community bases its identity in the activity of shepherding in high lands; therefore pasture and water are vital to its survival. The Pampa Puno Project of water adduction started in 2005 with the purpose of setting a new Codelco mine. The community expressed its dissatisfaction and concerns regarding the effect that the extraction of water resources would have in the community, by means of an environmental impact study (Law 19.300). The observations were rejected and the project was accepted (RCA N° 2603, December 14, 2005) not including the necessary guarantees to prevent and mitigate the effects that the community indicated, in order to safeguard their traditional activities as well as their ceremonial and archaeological heritage. Judicial mechanisms were presented, but the court rejected the appeals as it considered that the observations had been adequately considered. The Supreme Court did not rule on the merits of the case. The project started its building in 2011, when ILO Convention 169 was in full force and not applying any measures of consultation for that stage.

14. The above mentioned building of the project affected a cemetery of the formative period, fact which confirmed the observations of the community which intended to modify the original outline of the project. An infant's body, identified in his cultural context as a payment to rain, was removed from the site, thus breaking the traditions and henceforth the balance that the community maintains with the Earth. These facts were not duly informed to the Community, in spite of the presence of residents 1km. from the site. On June 14, 2012, the Community requested the re-burial of the infant to the National Monuments Council, which accepted the general request, though it has not authorized the procedures yet. Codelco has not presented any remedies to the Community for this damage, which would not have occurred had the company taken into account consideration 5.15 of the RCA, in which such risk was clearly indicated and an alternative outline was proposed.

15. A similar response has been provided concerning the compensations for the damage inflicted on agro pastoral activities. The Commission of Evaluation of Environmental Impact disregarded the fact that the Community of Taira's lifestyle might be affected, which was confirmed by the courts. However, there has been no rainfall (69% Deficit, DGA 2013)⁷, animals have not bred and many have become sick due to the degradation of water quality, the lack of pasture, the increase of airborne dust and the disruption of peace in grazing areas resulting from machinery and truck traffic. The burden of proof lies with the community enhancing power imbalances by dismissing the shepherds' ancient knowledge and arguing that these facts could have been considered by Codelco only if veterinarian studies were provided, being such tools alien to our culture and whose cost we cannot pay.

16. The Chiu Chiu community lives from agriculture. Its health and socioeconomic development has been strongly affected by the various extractions of water. Moreover, the Talabre tailings dam was erected in the vicinity. Such dam receives the waste from Codelco Chuquicamata (RCA N°126/2000; RCA RE N° 311/2005), and has a surface over 50 km². It

⁶ Newsletter N° 8149-09, National Parliament Library.

⁷ Data about Embalse Conchi. DGA (2013) Newsletter 421. Rainfall Information, states of dams and aquifers. May 2013. Taken from:
http://www.dga.cl/productosyservicios/informacionhidrologica/Informacin%20Mensual/Boletin_052013.pdf, June 10, 2013.

has been calculated that it leaks at a speed of 30 to 70 liters per second (KP-DCN 2010)⁸, such leaks may contaminate the Loa river, due to its high acidity (ph 3, 2007). Besides, the strong winds in the area carry the toxic airborne dust from the overburden and waste rock to the Community's settling.

17. In spite of the various presentations of this problem to environmental authorities and Codelco itself, no measures have been taken, nor have any public health studies been conducted in order to monitor the population's health condition. The Community of Chiu Chiu has been told that they are to carry on these studies by themselves, though it is not possible due to their complexity and cost, which cannot be paid by the community, as it should be the responsibility of the region's environmental and public health authorities. In May 2013, the Major of Calama, city whose jurisdiction includes the Chiu Chiu community, announced the licitation of an independent environmental study to evaluate the pollution that the tailings dam produces.

18. The various administrative authorities in charge of land boundaries have dilated their approval in breach of Article 3 transient Law 19.523, which established a three-year term to regularize Atacameño communities land titling and the reestablishing of ancestral water rights. The official term expired in 1995. Additionally, the corresponding legal procedures for legal applications have not been settled yet, as in the case of the Chiu Chiu community, whose approval decree N°023TE418413 has been awaiting for a signature for a whole year, even after the legal procedures have concluded. There are other cases in which applications have been rejected due to formalities. Ancestral Atacameño lands still maintain the status of state owned land as a means to avoid the remedy demands and the participation in the economic benefits derived from extraction activities, in disregard of Article 15.2 of ILO Convention 169.

19. Codelco's corporate policy of sustainable development concerning the indigenous peoples does not suffice to safeguard our territorial rights and has been narrowly implemented as a predefined portfolio of projects and areas of work, without consultation to or agreement with the communities, thus engendering serious constraints to autonomy and self-determination, neglecting key domains concerning the full social inclusion of indigenous peoples, such as education, transport and connectivity.

III. RECOMMENDATIONS

20. Provide constitutional recognition to indigenous peoples, establishing the multicultural and plurinational character of Chile, in the shortest term possible.

21. The Ministry of National Assets and the Registrar of Land, Mines, and Industrial Properties should solve in a term not exceeding six months the legal procedures to comply with the applications of land boundaries setting presented by the communities, by means of processes that are accessible, transparent and clear to the communities and that consider collective property over the land and water, as well as property shared by the communities, consistently with the models of discontinuous ground use, a characteristic of transhumant pastoral societies.

⁸ Knight – Piésold (2010). Modelamiento Hidráulico Tranque Talabre y su Relación con los Acuíferos y Cauces Superficiales.

22. The state should provide full implementation of the ILO Convention 169 through its Evaluation of Environmental Impact System as well as its mining companies and agencies responsible for natural resources, particularly DGA, as regards: a) Duty of consultation and prior and informed consent of all the phases of the development of projects in indigenous lands and territories; b) Remedy and fair, equitable and bona fide compensation for environmental damage and damage to heritage resulting from these productive/extractive and associated activities without conditioning the resources considered in such compensation.

23. The State, should immediately implement the corresponding studies to determine health condition of indigenous communities and their livestock in the territories already affected by the waste from the state mining company and the pollution derived from the works of construction associated with it, through its Ministry of Health and its Agricultural and Livestock Service. Besides, it should ensure prompt access to health care and treatment necessary to restore the health of the affected population.

24. Codelco state mining company shall immediately design and implement a mechanism that allows complying with the obligation to facilitate the participation in the benefits that productive activities that are being developed in indigenous territories produce, even if territorial boundaries have not been established yet, according to Art. 15.2 of ILO Convention 169.

25. Amend Art. 21 of Law 17.288 of National Monuments and Art. 29 Letter C of Law 19.253, prior to consultation to indigenous peoples and within a period not exceeding one year, in order to protect archaeological, historical and immaterial cultural heritage of indigenous peoples, recognizing such assets as stated in Art. 31 of The United Nations Declaration on the Rights of Indigenous Peoples, by establishing informed consent for research development, and rescue excavations in burial and ceremonial archaeological sites located in the territories of indigenous use or ownership.