



LIBERAR ASSOCIATION

For the human rights freedom and defense

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OUR TEAM

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INTRODUCTION

The Association for the Freedom and Defense of Human Rights, LIBERAR, it's an organization that aims to encourage, promote and defend equality of rights and human dignity in all its contexts. It's a non-profit institution that promotes the overcoming of discrimination in all its forms, regardless of its origin or cause (sex, race, origin, occupation, etc.), favoring the full development in all human beings. LIBERAR arises to promote the principles proposed in the new humanism and fully assert the Universal Declaration of Human Rights, in a social context where the dehumanization grows, restricting human development and freedom.

INDIGENOUS PEOPLES PROGRAM

The project is aimed to encourage, promote and defend Human Dignity and equality of indigenous people rights in Chile, in view of the deficient help y support given by the State to those who are part of this historic culture of our country. The development of this project allows giving a free of charge service to indigenous peoples' members that are defenseless, in front of discrimination and actions that attempt against Human Rights, by which legal support, information and communicational support will be provided to people or organizations that are in economic or social incapability, to provide the defense of their rights by themselves and to take charge of its judicial or extrajudicial representation when appropriate.





BACKGROUND



The current situation has been led by many factors. First, a bloodshedding history of more than a century of usurpation and extermination, of domination and submission; a very recent harm against the mapuche people, remembered painfully by the older ones and passed on to their younger generations. Second, the

incapacity of our society and the State that represents us, to recognize the harm caused and to properly compensate it, in the same way that we have demanded against the atrocities of the dictatorship. Third, a constitutionality that defends the property rights over the human life and the economic progress over the human development. Fourth, the governments in office have defended this institutionality character, making laws of exception to hold back social demands, like the Antiterrorist Law applied in excess, with the purpose of legally repressing any popular demand, protecting themselves under the democratic power. As a consequence, this has been resulted into the criminalization of the mapuche demands, the discrimination of our society towards the mapuche people and the persecution and imprisonment for them.

In 1993, the Indigenous Law was enacted in Chile and establishes the rights for natives, as well as the creation of a public institutionality of this sector, the National Indigenous Development Corporation (CONADI in Spanish), that encourages the enforcement of public politics regarding restitution and protection of lands and waters, of productive development, of cultural and educational assertion, that recognizes the existence of eight races: Mapuche, Aymara, Rapa Nui, Atacameño, Quechua, Collas, Kawésqar and Yagán living in austral waters. In this law, their existence is valued for being an essential part of the Chilean nation roots, its integrity and development according to its customs. However, it doesn't recognize indigenous peoples or its traditional organizations as such; it does it only as "races". It neither recognized politic rights — as the autonomy and the indigenous justice systems — nor its territorial rights — as those regarding natural resources.

Every race in Chilean territory has had to struggle for the recuperation of their rights, where the mapuche people has been one of the most affected communities. The mapuche communities start mobilizing as a protest against the Chilean

State inaction, regarding the solution of territorial demands, and the revindication of social, political, cultural and environmental rights. In a progressive impoverishment context, the parcel takeovers arise, as a result of this situation, the governmental authorities face "comuneros" (members of the mapuche community) through local police, using excessive violence in raids and captures against alleged people involved in fires, parcel takeover, etc., causing fear within mapuche communities.

The number of people under arrest is increasing, who are no longer accused by the Law of Internal Security of the State, but by the Antiterrorist Law; thus the State has reduced the conflict to just a judicial topic, criminalizing the revindications of the indigenous rights, using the social mass media to stigmatize the mapuches as violent people and terrorists, exacerbating its punitive authority with the purpose of maintaining control in the Araucanía Region. In this methodology of the Antiterrorist Law implementation, the mapuche people are punished as well, with long periods of preventive custody, during the time the prosecutor's office is investigating. The mapuche is sent to prison either way, whether he is innocent or guilty. The implementation of the Antiterrorist Law in Chile has been observed by international organizations, and its inapplicability in the mapuche demand has been frequently recommended in the light of international treaties ratified by Chile, regarding human rights.

The police organisms make use of physic and psychological torture, as well as plots of incriminatory objects; these facts arise as frequent methods through which condemnatory evidence is hoped to be achieved. The submission of communities that fight for their ancestral rights through terror establishment, pretending to intimidate and threaten the physic integrity of a person, his relatives and close ones, is used to achieve the



psychological breaking down of victims. The proof of it is the infinity of protection resources, interposed by our association, favoring mapuche "comuneros" and their families.

The Prosecutor's office makes use of undercover witnesses, who generally are young people that receive distraints, at the same time that safety measures, remunerations, identity and home changes, are offered to them in case they cooperate in the position of witness. Many times, they have to prosecute themselves for that purpose, constituting a protected witness while they are confessed accused individual that will obtain a substantial sentence reduction, absolved of preventive custody. Then, he or she should give their partners away, without being certain of their guiltiness, to save his or her integrity, favoring the delation between communities and families. The presence of prosecutors and the absence of defense attorneys have been troubling in instances of pressure.

The realization of a proper process has definitely not been ensured for the imprisoned mapuche people. In addition, a double prosecution and judging have been executed in this cases, where the Civil and the Military Justice system have been applied to a same event, given that the Chilean law doesn't count with the necessary independence and impartiality to judge civilians. On the other hand, the most absolute violation of their human rights is showed, violating the Constitution and the International Treaties ratified by the Chilean State.

CURRENT SITUATION OF THE MAPUCHE CONFLICT

María Tralcal, Spokesperson



On July 12, 38 mapuche comuneros started a hunger strike. To end this extreme measure, the political prisoners on hunger strike demanded the end of the Antiterrorist Law enforcement, of double judging, the demilitarization of mapuche areas where the communities vindicate social, political and cultural rights, and the liberation of the imprisoned mapuches. Although their immediate demands consider substantial modifications to the Antiterrorist Law that guarantee the due process, the application of the ordinary justice of causes in process, the end of double justice and the

implementation of a social dialogue committee between mapuche and government authorities that address the background issues of their demands. Of course, in this case they addressed requests that not only referred to the personal situation of each one of them, but also their demands address the vindication of the demands of a

whole community, subdued, pursued and sued today by the Chilean state.

This strike finally ends, after 88 days of intense negotiations with the government, who accepted to introduce some changes to the Antiterrorist Law, and remove the double judging which the comuneros have been submitted at the present time (civil and military), laws that date from Pinochet dictatorship and designed to be enforced exceptionally. These modifications, however, aren't enough to substantially change the contents of this law, which limits the crime characterization on one hand, and confirms, on the other, the participation of protected witnesses introducing moreover, the figure of an undercover agent and promotes the compensated delation. Finally, nothing is said about the background problem, which is the fundamental demand of the mapuche people, its recognition as an indigenous community, an ancestral demand that seeks to recover its autonomy, its territoriality and the respect that deserves as a diverse community, its culture and its worldvision, guarantees all protected by the international treaties regarding human rights and indigenous peoples that the Chilean State doesn't respect.

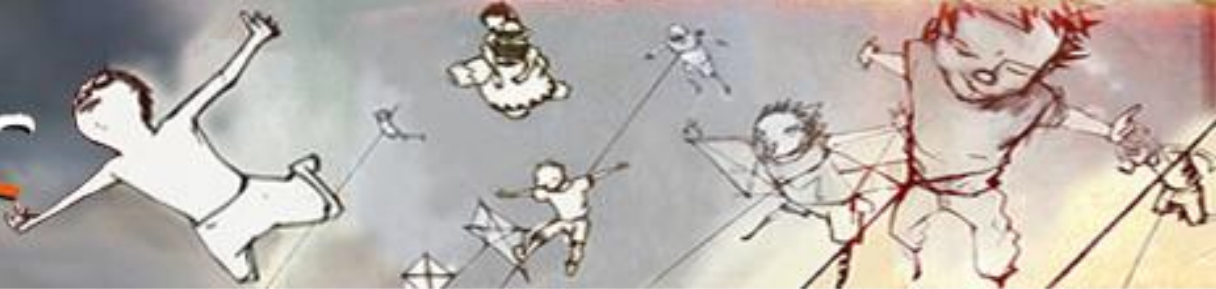
This new scenario, moves the discussion about the demands of the mapuche people to the political and the judicial sector. The political sector will face these demands against a conservative majority, where every territorial, political, social or cultural discussion will progress with great difficulty due to important economical and strategic interests that get in the way of the mapuche conflict. The judicial sector will be longer and more unequal, where the autonomy of the Judicial Power and the Public Prosecutor's Office will attempt against the government's "good will" to avoid the enforcement of exception laws. The prosecutors will be responsible for interpreting the new legislative changes according to their investigative interests and the Supervisory Courts in Preliminary Proceedings have to decide if the enforcement of the Antiterrorist Law corresponds or not; so, the no enforcement of exception laws in the future are not guaranteed.

The above introduces a set of changes in the agenda and in the committing of trials instructed today against mapuche comuneros, given that this will imply an extension of around six months to end these trials, as well as the refilling of charges. This will also mean the adjusting to these changes of our project of indigenous public defense, which will suffer a substantial delay in its costs and its projection.

LIBERAR DEFENSES AND ACTIVITIES

Support and assistance of causes, Remedies of Protection, Interposed Protection and Complaints by the LIBERAR association during 2009 and 2010.

Up to this date, our association supports the defense of 27 mapuche comuneros accused in different causes, imprisoned in different prisons of the country. Since this project started in May 2009, the majority of these supports have been kept, during the period of investigation, carrying out all the management of evidence collection for their defenses, expert's report, liberation



appeals, background studies and assistance for the accused individuals and their families. To these comuneros, we should add the support to 4 accused individuals whose trials were carried out and were absolved of their charges.

Along with this, 13 protection remedies, 5 complaints in the Civil Justice and 4 in the Military Justice have been presented.

At the present time, the majority of our supported people are being accused for over 4 charges. Many of them are in trial preparation y their oral proceedings should be carried out during this year.

The accomplished actions are presented in detail below:

Juridic Team:

**Pablo Ortega M., Karina Riquelme V.
Sebastián Saavedra**



LIST OF SUPPORTS UP TO AUGUST 2010

THREATS CASE

- 1.- Mauricio Huaiquilao Huaiquilao
- 2.- José Sergio Tralcal Coche

CASE SAN LEANDRO

- 3.- José Sergio Tralcal Coche
- 4.- Miguel Tapia Huelulef
- 5.- Angel Reyes Cayupan
- 6.- Eliseo Ñirripil Cayupan
- 7.- Francisco Cayupan Ñirripil
- 8.- José Antonio Ñirripil
- 9.- Andrés Gutiérrez Coña
- 10.- Elvis Millán Colicheu
- 11.- Jorge Cayupan Ñirripil

CASE CHOQUE

- 12.- César Parra
- 13.- César Painemil Peña

CASE TUR BUS BY PASS

- 14.- Marcos Millanao Mariñan
- 15.- Daniel Canio
- 16.- José Queipul
- 17.- Luis Tralcal Quidel

CASE PEAJE VICTORIA

- 18.- José Queipul Huaiquil
- 19.- Víctor Hugo Queipul

CASE FUNDO BRASIL

- 20.- Elvis Millán Colicheu
- 21.- Jorge Cayupan Ñirripil
- 22.- José Antonio Ñirripil

TERRORIST THREATS

- 23.- Luis Tralcal Quidel
- 24.- Marcos Millanao Mariñan

OTHER CASES

- 25.- Emilio Berkhoff
- 26.- José Llanquileo
- 27.- Karina Riquelme Viveros



FILED APPEALS

1.- Lof Muco Children against the PDI (Investigations Police of Chile in English)



On April 14 of the present year (2010), in support of two children whose initials are K. R. C. and V. C. Ñ., both of them were housed in the indigenous community of Muko Bajo, registered in the Blanco Lepín School, were interrogated by two people – probably from the police – asking them directly about names and destinations of certain people. This situation doesn't constitute an isolated event in the Muko

Bajo community. Resolution: The filed appeal was declared ADMISSIBLE in support of the children and against the Investigations Police of Chile, for that matter, they must abstain thereafter of making requirements or interrogations to the children for whose benefit is recurred, under any manner, without respecting the precepts protecting them that guarantee the Convention on the Rights of the Child just quoted.

2.- Andrés Gutierrez and Miguel Tapia Huenulef against the Chilean gendarmerie. Preventive detention centre, Valdivia.

Appeal filed on February 10, 2010 before the Court of Appeal of Valdivia, by Andrés Gutierrez Coña's mother – Lina Coña Huaiquimil – and Eduardo Mella-Sequel, on behalf of the Liberar Association, due to systematic harassment and search and seizure to their cells. Resolution: The Court dismisses the appeal, denying the petition.

3.- Protection remedy of Luis Tralcal Quidel against the Supervisory Judge and the Assistant Public Prosecutor of Lautaro, officers of the Investigations Police of Chile and of the gendarmerie.

Due to the hidden extracting of voice samples from the private accused individual LUIS TRALCAL QUIDEL, without his consent and in the prison grounds. This procedure never was notified to the appellant. Resolution: The appeal was finally declared inadmissible, considering that the nullity of the authorization to record Luis Tralcal's voice without his consent had to do with the Court of due process and constitutional rights.

4.- Temuicui children submit a Protection Remedy against the police.

The children Damari (6) and Matias (10) witnessed the aggression of two civilians against their family, whom were accompanied by the police. The aggressors walked discriminately towards them, with insults regarding their race. The police had a passive attitude and could act in a more active manner defending the integrity and the development of the children. Violating their integrity, as the father or the relatives were reduced or arrested in situations that could have been avoided. Resolution: The appeal was dismissed by two votes against one, on May 31, 2010.

5.- Mauricio Huaiquilao Hauiquilao against the Chilean gendarmerie.

On Friday, April 30, 2010, the accused individual, Mauricio Huaiquilao, suffered physical mistreatments y racial discrimination inside the prison. Gendarmerie kept him in inhuman conditions inside the solitary confinement cell, which are full of human feces and urine, place where he had to stay for three days, thus, the absolute unhealthy conditions made it difficult to eat food due to the existing odor. Resolution: the filed appeal was rejected. However, the defense submitted a remedy of appeal which was granted on June 18, 2010, therefore, the backgrounds and the appeal were transferred before the Supreme Court.

6.- Ángel Reyes Cayupan against PDI

On January of the current year, a Protection Remedy was submitted due to illegal distrains, in the Lautaro Court of due process and constitutional rights. Resolution: the filed appeal was rejected.

7.- Mapuche Political Prisoners against the Police and PDI

A Protection Remedy was filed for attempting an offense against the people's honor, declarations, showing evidence of investigations and trials under development and obstruction to the normal development on the enforcement of justice. Resolution: Granted and is currently under consultation.

8.- Mapuche Political Prisoners against Channel 13 and the television program "Contacto"

A Protection Remedy was filed for attempting an offense against the people's honor, image use without consent and obstruction to the normal development on the enforcement of justice. Resolution: Granted and is currently under consultation.



9.- Eliseo Ñirripil Cayupan against PDI

A Protection Remedy was filed for illegal distrains and torture during a detention procedure. Resolution: The filed appeal was rejected.

10.- Humberto Marileo Cariqueo against the police

A Protection Remedy was filed for illegal distrains and torture during a detention procedure. Resolution: The filed appeal was rejected.

11.- Elvis Millán against PDI

A Protection Remedy was filed for illegal distrains and torture during a detention procedure. Resolution: The filed appeal was rejected.

12.- Mario Millanao Millape against René and Héctor Urban

A Protection Remedy was filed for illegal distrains, kidnapping and injuries against his family and children. Resolution: The filed appeal was rejected.

13.- Karina Riquelme against Lautaro Supervisory Judge and Prosecutor's office.

A Protection Remedy was filed for violation of rights. Resolution: The filed appeal was rejected.

COMPLAINTS IN FAVOR OF:

1.- Angel Reyes Cayupan.

A criminal complaint was filed on January, 2010 in the Lautaro Court of due process and constitutional rights against the officers of the Investigations Police of Chile and against all people that turn out to be responsible for the crime of torture, torment or illegal distrains, either physical or psychological.

2.- Elvis Millán

A criminal complaint was filed on January, 2010 in favor of Elvis Millán, and against the officers of the Lautaro Investigations Police of Chile for the crime of torture, torment or illegal distrains, either physical or psychological.

3.- Mario Millanao Millape

A criminal complaint was filed on May 14, 2010 in the Court of due process and constitutional rights of Collipulli for lesser injuries and kidnapping against René Urban Pagnard and those who turn out to be responsible for kidnapping and lesser injuries.

4.- Lorenzo Alex Curipan Levipan

Rodrigo Curipan Levipan filed a criminal complaint on April 1, 2010 in the Angol Military Prosecutor's Office in favor of his brother, Lorenzo Curipan.

5.- Felipe Huenchullan

Against the Investigations Police and those who turn out to be responsible for torments (Victoria Court of due process and constitutional rights).

COMPLAINTS AND REMEDIES IN THE MILITARY PROSECUTOR'S OFFICE

Our association keeps the support to Lorenzo Curipan Levipan, Felipe Huenchullan Cayul, Emilio Berkhoff and Luis Tralcal Quidel on complaints and protection remedies in the Santiago and Temuco Military Prosecutor's Office. This causes remain in stage of investigation.

EXECUTED TRIALS

1.- Vania Queipul



Oral proceeding filed against her on June 11, in the city of Collipulli, accused of throwing a rock and breaking a glass of the Office of a Government's

Attorney Building of that city, when a funeral march was taken effect and was accompanying the remains of Jaime Mendoza Collio, killed by the police on August 13, 2009. Investigations Police officers – PDI – took her out of the educational building in front of her classmates and teachers, without considering the psychological consequences that this type of arbitrary proceedings imply, that attempt against the children's dignity and their rights. Resolution: The judge Claudio Campos, absolves Vania Queipul from all charges. The prosecutor's office appealed this resolution and the Temuco Court of Appeal confirmed it. Despite being satisfactory for the defense, this trial has caused heavy disorders over the student's life, regarding her school classmates, who have harassed and mistreated her accusing her as a terrorist, in addition to the maltreatment from teachers and school inspectors.



2.- Luis Tralcal Quidel

Oral proceeding filed against Luis Tralcal Quidel for a terrorist fire in Las Praderas rustic farm, Cholcol. In this case, the Prosecutor's Office introduced the same evidence and the same witnesses of the trial executed on 2008, against Hector Llaitul and Roberto Painemil, for the same charges, which, at that time, were absolved from all of them too. Resolution: Absolved from all charges.

3.- Elena Varela (Domumentalist)



Oral against Elena Varela, Kenny Sánchez and Sergio Reyes, proceeding executed in the city of Villarica for conspiracy charges, and robbery with homicide.

In this case, the prosecutor's office submit an accusation based on a

protected witness that refuses to show up before the Court and ratify the previous declarations, so the prosecutor only protects his accusations with the statements by hearsay of Investigations officers. Our association supports Kenny Sánchez and collaborates in the defense of the remaining accused individuals. Resolution: Absolved from all charges.

TRIALS UNDER DEVELOPMENT

1.- Case "Incendio Santa Rosa", "Incendio Lautaro" and "Amenazas": against Mauricio Huaiquilao and Luis Tralcal Quidel. Current status: Closing of investigations and waiting for trial committing.

2.- Case "Tur-Bus Bypass Temuco": Attack against a public vehicle on duty and threats against Marcos Millanao Mariñan, Daniel Canio, José Queipul, Luis Tralcal Quidel. Current status: Closing of investigations and waiting for trial committing.

3.- Case "Fundo San Leandro": Home invasion, violent usurpation, burglary and fire against José Sergio Tralcal Coche, Miguel Tapia Huelulef, Angel Reyes Cayupan, Eliseo Ñirripil Cayupan, Francisco Cayupan Ñirripil, Jose Antonio Ñirripil, Andrés Gutiérrez Coña, Elvis Millán Colicheu, Jorge Cayupan Ñirripil. Current status: Closing of investigations and waiting for trial committing.

4.- Victoria Toll Robbery, "Terrorist illegal conspiracy": against José Queipul Huaiquil, Víctor Hugo Queipul. Current status: Waiting for the closing of investigations.

5.- Case "Choque": Terrorist fire in a property of Forestal Mininco, Ranquihue sector, 2005: against César Parra, César Painemil Peña. Current status: Waiting for oral proceedings.

6.- Case Fundo Brasil: Terrorist fire, burglary with intimidation, 2009: againts Elvis Millán Colicheu, Jorge Cayupan Ñirripil, José Antonio Ñirripil.

7.- Terrorist Threats: Terrorist fire, burglary with intimidation, 2009: againts Luis Tralcal Quidel, Marcos Millanao Mariñan.

MONITORING OF CAUSES

Our lawyers have been monitoring, procedures before the prosecutor's office, expert's report in the following cases: in the case against Lorenzo Curipan for disorderly conduct and violent usurpation; in the case of Leonardo Quijón, Luis Marileo Cariqueo, Jorge Mariman Loncomilla for linkage in the Case "Tur Bus Bypass of Temuco" and in the case of Elena Varela and Sergio Reyes.