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Report of the Director-General

Fifth Supplementary Report: Report of the tripartite Committee set up to examine the representation alleging non-observance by Chile of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

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► I. Introduction

1. By communications received by the International Labour Office on 12 March and 13 May 2023, the National Federation of Education Workers (FENATED) and Ruka Pillán Enterprise Trade Union of the Araucanía Teaching Foundation (FMDA) made a representation under article 24 of the ILO Constitution alleging non-observance by the Government of Chile of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Convention was ratified by Chile on 15 September 2008 and remains in force.
2. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the [Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution](#), the Director-General acknowledged receipt of the representation, informed the Government of Chile thereof, and brought the representation before the Officers of the Governing Body.
4. At its 348th Session (June 2023), the Governing Body decided that the representation was receivable and set up a tripartite committee for its examination, composed of Ms Sannie Maribel Portillo Vargas (Government member, Paraguay), Mr Guido Ricci (Employer member, Guatemala) and Mr José Enrique Oñate Vera (Worker member, Mexico).
5. The Government of Chile sent its observations on the representation in communications received on 26 January 2024 and 4 August 2025.
6. Regarding the possibility of opting for voluntary conciliation, the Office, by a communication dated 18 July 2023 and in accordance with article 4(1)(c) of the Standing Orders concerning the procedure for the examination of representations, notified the parties that they may engage in optional voluntary conciliation. In that regard, the complainants, in a communication dated 22 July 2023, stated that they did not consider it possible to launch an optional voluntary conciliation process. In January 2024, officials of the International Labour Standards Department visited the country and reminded the parties of the option of addressing the issues raised in the representation through a voluntary conciliation process at the national level. The Government expressed willingness, while the complainants decided not to take advantage of such a process.

7. The Committee met on 19 March 2025 and 4 September 2025 to examine the representation and adopt the respective report.

► II. Draft decision

8. **In the light of the conclusions and recommendations set out in the report of the Committee contained in document GB.355/INS/16/5, the Governing Body:**
 - (a) **approved the report of the Committee and, in particular, the conclusions formulated in paragraphs 50 and 55;**
 - (b) **requested the Government to provide to the Committee of Experts on the Application of Conventions and Recommendations information on the subjects raised in the report and the Committee's conclusions;**
 - (c) **decided to make the report publicly available and to close the representation procedure.**

► III. Examination of the representation

A. The complainants' allegations

9. The complainants allege the violation of Articles 2(1) and (2)(b), 4(1), 5(a) and (b), 6, 7(3) and (4), 13(1) and 14 of the Convention, for the reasons stated below.
10. The complainants state that in 1908 the State of Chile granted Legal Title No. 1530 to *Lonko*¹ Marta Cayulef in what is now the commune of Pucón in the Araucanía region. That Legal Title covers approximately 260 hectares, which in 1930 were divided into six plots by the Indigenous Court, under Act No. 4802 on indigenous courts and the division of indigenous legal titles, with a plot covering 74.975 hectares allocated to *Lonko* Marta Cayulef. They specify that the hectares allocated to *Lonko* Marta Cayulef encompassed sacred and ceremonial sites and places, which the Marta Cayulef *lof*² demands be returned to it for protection and control.
11. The complainants indicate that in 1980 Mr Juan Luis Eltit Zerené, entrepreneur and owner of Holding Eltit, (hereinafter "the entrepreneur") bought from Mr Antonio Coliman (husband of *Lonko* Marta Cayulef's daughter) various areas of land and that there was a very close relationship between the two men. Based on statements from elders, the complainants indicate that those transactions did not constitute normal land acquisitions, but the payment, using land sold for very low prices, of fake debts and for some basic products that the entrepreneur would deliver to Mr Coliman. In that connection, they refer to several public instruments and notarial documents signed between Mr Coliman and Mr Eltit Zerené.
12. The complainants present detailed information indicating that the land allocated to *Lonko* Marta Cayulef represents a significant and ancient residential, ceremonial and commercial centre, with the presence of large numbers of ceremonial and domestic objects made of stone

¹ Community leader or chief.

² The basic social structure of the Mapuche people consisting of a family clan or lineage that recognizes the authority of a *Lonko*.

and ceramic, as well as 11 sacred sites. Specifically, using information provided by the *lof*, particularly findings made on the ground, the complainants describe the following sacred places located on the lands of the Marta Cayulef *lof*:

- two *rewes* (narrow symbolic statues carved from native wood whose location is sacred);
- two *eltúns* (cemeteries);
- one *nguillatuwe* (space where the biggest and most significant intra- and extra-community ceremony takes place);
- one *kurrewen wur-wur* (a sacred ceremonial site whose name can be translated as “place where women give birth”);
- one *treng-treng* (a sacred place linked to the founding legend of the Mapuche people);
- one *lukutuwe* (literally, “kneeling place”: a place of seclusion where individuals carry out *lellipun*, or prayer, rogation or reflection);
- one *llufkewe* (“place of lightning”, where stones belonging to *tokis*, or war chiefs, have been found);
- one *kuifirukawe* (ancient dwelling, the first housing settlement of the kind encompassed in the 1908 Legal Title);
- one *llankapiwkewe* (“place of pearl hearts”: a wetland where the hearts of sacrificed animals are placed).

13. In Appendix IV to the representation, the complainants provide a map detailing the location of the centre of the sacred and ceremonial sites and places and their approximate minimum size, based on the elders’ accounts and topographical readings.
14. Furthermore, the complainants indicate that despite being aware of the existence of these sacred places, in the 1980s the entrepreneur began to operate on the lands where the sacred and ceremonial sites and places are located, without the authorization of the *lof* or the competent authorities. Similarly, they maintain that in the early 2000s he built a supermarket on a ceremonial site (a *llankapiwkewe*, literally “place of pearl hearts”) where the hearts of sacrificed animals were placed during ceremonies. The site was levelled using machines that broke and scattered pieces of pottery, and deep foundations were dug for the supermarket. They also indicate that the construction of a motocross track and warehouses and storage facilities for the supermarket affected other sacred and ceremonial places of the *lof* and an indigenous forest, which were built on without the necessary permits.
15. The complainants also state that in April 2021 the entrepreneur decided to build a road without the necessary permits and to fell an indigenous forest without a management plan. That work, in addition to the construction of a metal fence to separate “the entrepreneur’s property” from the space controlled by the *lof*, was authorized after the fact by the National Forestry Corporation. The complainants state that sacred trees marking the boundaries of one of the cemeteries (*eltún*) were felled, work was undertaken on the cemetery, and pieces of pottery and stone were destroyed. Undamaged pieces that were left in good condition were removed from the *lof*’s sacred and ceremonial sites and places without the Ministry of Culture, Arts and Heritage being notified of their existence.
16. The complainants indicate that the *lof* gathered some of those pieces and requested the Austral University of Chile to analyse them. The University issued a report on 13 September 2021 indicating that the pieces had been made during the time of the Pitrén (300 BCE–1200 CE)

and that knowledge of early pottery period settlements is a subject of significant historic and scientific interest given the frequency with which they are identified.

17. Moreover, the complainant organizations indicate that in April 2021, the *lof* reported the destruction of sacred sites and places to the Ministry of Culture, Arts and Heritage (Council for National Monuments entry No. 2081 of 12 April) and that the entrepreneur initially refused to allow representatives of the Council for National Monuments to enter the site, later granting them access to only a strip of land where the fence was being built. Consequently, the Ministry's National Cultural Heritage Service issued ordinary memorandum No. 4721 of 20 October 2021, through which: (i) the entrepreneur was informed of the existing archaeological findings on two sections of the land to the north of the supermarket: alongside the path providing access to the central part of the motocross track and in the general cleared areas of internal paths in the centre of the track and in the southern part of the track; (ii) since the archaeological findings' had been declared National Monuments, it was requested that any work that could disturb the surface or subsoil in the area of one of the two findings was halted and that no work was carried out on any part of the archaeological site; and (iii) the technical details of the road project and of future projects in the area were requested.
18. The complainants report that the entrepreneur's work to demarcate the property was carried out in the presence of police officers. They indicate that on 14 July 2021 members of the *lof* had met at the site to perform a ceremony (*wichacar*) when workers from Holding Eltit attacked them, throwing bricks and stones at them and threatening to use force against them and to report them for violent occupation and terrorism. As a result of this incident, a girl aged 17 suffered an injury to her face and another member of the community suffered an injury to the hand.
19. The complainants state that on subsequent occasions law enforcement officers fired gases directly into the faces of some of the community's women, shot pellets and launched tear-gas canisters and pepper spray. Furthermore, several members of the community were detained while they were explaining to the police officers that they were destroying sacred and ceremonial sites; some were freed that day, while others have been summoned to appear before the Pucón Court (evidence of the injuries suffered is contained in the Appendix).
20. The complainants state that, given the circumstances, members of the community lodged an appeal for protection with the Temuco Court of Appeal on 11 August 2021 and subsequently appealed to the Supreme Court on 8 June 2022, arguing in particular that the desecration of the *lof*'s sacred and ceremonial sites and places had stemmed from the transfer of the lands and that the competent national authorities had failed to ensure compliance with the provisions of national legislation and international instruments (including Convention No. 169), invoking the primacy of international law. They believe that the religious and spiritual importance of the *lof*'s sacred and ceremonial sites and places has not been considered, that the *lof*'s rights and interests have not been protected and that the right to consultation has been denied. The complainants state that none of the legal arguments submitted were considered by the aforementioned courts. They also mention that on four occasions the *lof*'s leaders visited, without success, the Office of the Public Prosecutor for Pucón to obtain information on the memoranda issued between April and October 2021 ordering police officers to "protect the workers and machinery" that were destroying the sacred and ceremonial sites and places. They state that, throughout almost the entire period of repression, Holding Eltit benefited from protection orders issued by the Office of the Public Prosecutor while the sacred sites and places were being destroyed.

21. The complainants indicate that on 13 March 2023 new work was carried out using backhoes that destroyed a cemetery and pieces of stone and ceramics used in ceremonies and to make offerings, while surveillance cameras trained on one of the sacred and ceremonial sites have been installed.
22. Furthermore, they state that Araucanía is the country's poorest region with the highest concentration of the Mapuche and that, because most of the *lof*'s members are workers or independent artisans, it has been affected since 2021 – when the work that defiles and desecrates its sacred and ceremonial sites and places started – because its members have been unable to carry out their work in a regular manner while defending their sacred sites. They state that the Marta Cayulef *lof* is the country's smallest Mapuche community, composed mainly of women, and that one of its particular characteristics is that it is located inside the urban limits of the small city of Pucón and surrounded by private land, which has worsened the discrimination that it faces.
23. The complainants state that the *lof*'s control, administration and management of its sacred locations and ceremonial sites, as well as respect for its religious leaders and ceremonial objects, are inherent to its enjoyment and real and effective exercise of its right to religious freedom.
24. The complainants believe that the current situation stems from the fact that none of the competent government authorities has fulfilled its obligation to hold consultations on authorization for the work that allowed backhoes and heavy machinery to enter the sacred and ceremonial sites and places within the land covered by the Legal Title granted to *Lonko* Marta Cayulef.
25. The complainants request that the administration, control and management of the Marta Cayulef *lof*'s sacred and ceremonial sites, including of those sites located in the Pucón archaeological zone and adjacent areas not included on the Pucón municipal zoning map, are handed over to it, notwithstanding any rights that may be held by the supposed owner of the lands that have been given archaeological status, who must refrain from undertaking work on them and who must also demolish the illegal constructions built on the area to preserve its value as a sacred and ceremonial site.

B. The Government's reply

26. In its communication dated 29 January 2024, the Government indicates that although the complainants allege that Chile has violated several Articles of the Convention, they do not adequately explain how the rights cited are being infringed or provide details of the facts giving rise to the representation, insofar as they do not specify the manner and circumstances in which that infringement is alleged to have occurred. The Government states that the complainants have submitted an ambiguous and imprecise account of how the acts deemed arbitrary and illegal allegedly affected their rights. The Government indicates that the Marta Cayulef *lof* recognizes expressly that the facts are alleged to have occurred on land belonging to the entrepreneur's family and that there are no background information or elements that establish the allegation that the purchase of that land was of dubious legality and paid for via the delivery of certain basic products. Similarly, with regard to consultation with indigenous peoples, the Government states that there is nothing to suggest that such a process is required since no legislative or administrative measures are under consideration that may affect them directly, and such consultation does not, therefore, appear to be applicable in this case.
27. In relation to the action taken by the courts, the Government clarifies that the appeal for protection lodged by representatives of the Marta Cayulef *lof* addressed the same facts

submitted in this representation and that it was couched in general terms, without referring to precise, specific factual circumstances. It states that the Temuco Court of Appeal determined that it had not been established that there had been an infringement of collective rights or disruption to access to sacred sites. The Court rejected the appeal, considering that there had been no arbitrary or illegal acts affecting the appellants' indubitable rights.

28. The Government reports several actions that have had direct and indirect effects on matters allegedly giving rise to this representation. In that connection, the Government indicates that, by virtue of the need to effectively protect and prevent damage to the sacred and ceremonial sites of the Marta Cayulef *lof*, since November 2022 the Araucanía office of the National Sub-Directorate for Indigenous Peoples has been undertaking a cultural significance study requested by *Lonko* Rosa Quiñenao in light of the potential work by the owner of the property at the locations of the *lof*'s sacred and ceremonial sites and the risk of their destruction. It adds that, based on the background information studied, an area recognized as an *eltún* (an ancient Mapuche cemetery) was identified as being present since at least 2004, matching the archaeological site identified by the Technical Secretariat of the Council for National Monuments. It also clarifies that a second archaeological site was recorded that encompasses a significant part of a motocross track, as well as another five sites of cultural significance to the *lof* which are being studied by the National Sub-Directorate for Indigenous Peoples, a technical unit of the National Cultural Heritage Service.
29. The Government indicates that, as at the date of its communication, nine sites of cultural significance have been identified: two *nguillatuwes* (ceremony sites), one *kurrewen wurr-wurr* (a place where women give birth), two *eltuns* (cemeteries), one *trengr-trengr* (a place of tradition and memory), one *llufkewe* ("place of lightning"), one *kuifirukawe* (a settlement of ancient *rukas*, or traditional Mapuche houses) and one *llankapiwkewe* (a site where hearts are left following a *nguillatun* ceremony).
30. With regard to the declaration of Historic and/or Archaeological Monuments, the Government states that it has undertaken a range of actions that have had direct and indirect effects on matters allegedly giving rise to this representation, including in particular:
 - (i) the launch in November 2022 of a cultural significance study by the National Sub-Directorate for Indigenous Peoples of the Ministry of Culture, Arts and Heritage in response to a request by *Lonko* Rosa Quiñenao. It indicates that through its *werken*,³ Carlos Quiñenao, the *lof* requested the National Sub-Directorate to declare the nine sites of cultural significance to be Historic and/or Archaeological Monuments. In that connection, the Government clarifies that it is gathering background information in order to produce a study in the form of a dossier to be submitted to the Council for National Monuments by members of the *lof*. In that regard, in April 2024 the Regional Directorate of the National Cultural Heritage Service sent a memorandum (ordinary memorandum No. 081) to the entrepreneur's holding company to request access for the team undertaking the study, as well as members of the Marta Cayulef *lof*, to determine the correct location of the sites identified;
 - (ii) the ongoing consideration of the request to the Council for National Monuments submitted by the Marta Cayulef *lof* in March 2023 to declare 11 sites of Mapuche cultural significance and one archaeological site as National Monuments in the Historic Monument category (Council for National Monuments entry No. 2001 of 3 April 2023). The

³ One of the Mapuche people's traditional leaders.

Government states that once the Council for National Monuments has reached a decision, the Ministry of Culture, Arts and Heritage will be requested to issue a decree declaring the site a Historic Monument.

31. The Government also states that the implications of a Historic Monument declaration are regulated by Part III of Act No. 17.288 on National Monuments. This normative framework suggests that any declaration of the sites of cultural significance to the *lof* as National Monuments in the Historic Monument category could help support the process of their acquisition by the State. In that regard, it mentions that under article 21 of Act No. 17.288, by virtue of the Act locations, ruins, archaeological sites and anthropological and archaeological objects on or under the surface of the national territory are Archaeological Monuments belonging to the State.
32. The Government also indicates that, in the case of the Marta Cayulef *lof*, by virtue of the Act the heritage currently protected under the Act comprises archaeological assets constituting National Monuments in the Archaeological Monuments category and that, therefore, no declaration process is necessary. Moreover, any damage, disturbance or appropriation constitutes a crime (articles 21, 38 and 38 *bis* of the Act).
33. With regard to the State's action in the area of indigenous peoples' rights, the Government states, in relation to the right to consultation, that it has made effort to ensure the participation of indigenous peoples and people of African descent in consultation processes. It specifies that consultation processes are regulated through two instruments: Supreme Decree No. 66 of 2014 establishing the five stages of the consultation process (planning, information, deliberation, dialogue and communication) and Supreme Decree No. 40 of 2012, which focuses on investment projects submitted to the Environmental Impact Assessment System. The latter provides for in section 85 the consultation of indigenous peoples in relation to the environmental assessment of an investment project that directly affects them, through a mechanism that is totally distinct from citizen participation. It establishes a process of intercultural dialogue with the indigenous communities directly affected with the aim of reaching agreements or obtaining consent on the environmental assessment of a particular project and allowing for the issuance of an environmental qualification decision, which is, in this case, the administrative measure that may have a direct effect on indigenous peoples. Furthermore, in its communication of 4 August 2025, the Government refers to the adoption of Supreme Decree No. 12 of 2023, which regulates the consultation process with tribal peoples of African descent. The Government also provides a list of 76 indigenous consultation processes carried out, or to be initiated, under Supreme Decree No. 66 since 2022, as well as a list of 30 consultation processes regarding projects submitted to the Environmental Impact Assessment System carried out under Supreme Decree No. 40.
34. Regarding the consultation applicable to the particular situation of the Marta Cayulef *lof*, the Government indicates that, in line with the standards set out in Convention No. 169 and Supreme Decree No. 66, there is no information that suggests that a consultation process was required since no consideration was being given to legislative or administrative measures that may have a direct effect on the Marta Cayulef *lof*, and such consultation does not, therefore, appear to be applicable in this case.
35. In reference to the actions of the law enforcement and security forces, the Government states that it has promoted human rights training for them, training more than 8,363 officials since 2020 and issuing 4,835 certificates. Moreover, as part of the friendly settlement agreement in the case of *Gabriela Blas-Blas v. Chile*, the Government committed to implementing a national training programme for various judicial and security institutions with the aim of educating

officials on the human rights of indigenous peoples, particularly the rights of indigenous women and protection for indigenous children and adolescents.

36. Lastly, regarding the management plans for the indigenous forest, the Government states that in relation to the Tres Esquinas property in Pucón, the entrepreneur's holding company applied for and obtained permits for the relevant management plans in line with the applicable legislation governing forest management plans. Although an application was initially rejected in 2020 owing to technical shortcomings, a new management plan was approved in 2021 for the felling of 0.62 hectares of indigenous oak forest and its reforestation on land elsewhere in the commune. The permits were issued by the National Forestry Corporation, and it was not established that the entrepreneur's actions affected ceremonial sites or prevented or hindered the complainants' ability to practise their beliefs or undertake religious events. The Government concludes that the permits to fell indigenous species and undertake the planned work were duly processed by the competent administrative authority.

► IV. The Committee's conclusions

37. The Committee's conclusions are based on its examination of the allegations made by the complainants and the observations submitted by the Government in these proceedings.
38. The Committee observes that the complainants' main allegations are: the desecration of sacred and ceremonial sites and places of the community of *Lonko* Marta Cayulef owing to the activities undertaken on private property acquired in an irregular manner; and the failure to protect the community's rights with respect to those sites and places (including a lack of consultation) and the use of violence in that context.
39. Before analysing the matter of the sacred and ceremonial sites and places, the Committee observes that both the complainants and the Government indicate that those sites are located on private property on land that was allocated through Legal Title No. 1530 to *Lonko* Marta Cayulef (of an indigenous Mapuche community). The Committee observes that the complainants consider that the acquisition of the property by Mr Eltit Zerené (an entrepreneur) in the 1980s was irregular. In that connection they reproduce accounts of community elders that, in summary, state that Mr Antonio Coliman (husband of *Lonko* Marta Cayulef's daughter) sold areas of land to Mr Eltit Zerené at very low prices to pay off fake debts owed to Mr Eltit Zerené for basic products.
40. The Committee takes note that the Government indicates that the Marta Cayulef *lof* recognizes expressly that the property is under outside control given that it accepts that the events allegedly took place on the property of the entrepreneur's family. The Government also considers that the allegations are ambiguous and imprecise and that there is no information that allows the complainants' claims to be established.
41. The Committee observes that the complainants refer to Article 14 of the Convention which establishes the rights of ownership and possession of indigenous peoples over the lands which they have traditionally occupied. The Committee notes, however, that the complainants do not submit any demand for the restitution of land or make specific demands in relation to ownership rights deriving from the indigenous nature of the land on which the sacred and ceremonial sites and places are located. Additionally, the Committee observes that the complainants recognize the entrepreneur's ownership despite the irregularities that they outline.

42. The Committee consequently considers that the representation does not raise questions relating to ownership rights. Furthermore, the Committee considers that it is not competent to decide whether irregularities existed with regard to the legality of the transfers of ownership.
43. In these circumstances, the Committee considers that it must focus on examining the way in which the work undertaken by the entrepreneur on the land in his ownership affected the rights of the members of the Marta Cayulef *lof*, an indigenous Mapuche community, particularly with regard to the recognition and protection of, and access to, the community's sacred and ceremonial sites and places and the measures adopted by the competent authorities in that regard, including the allegations concerning a lack of consultation and the actions of law enforcement in the conflict.

Recognition and protection of the sacred and ceremonial sites

44. Before analysing the facts, the Committee recalls that several of the Articles of the Convention that the complainants allege to have been violated refer to the protection of indigenous peoples' social, economic and cultural rights, particularly their social and cultural identity and their customs and traditions. Specifically:

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - ...
 - (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
 - ...

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- ...

Article 14

1. [...] In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.
- ...

45. In relation to the sacred and ceremonial sites and places of the Marta Cayulef *lof*, the Committee observes that the complainants indicate that:
- (a) in the area allocated to *Lonko* Marta Cayulef there are large numbers of ceremonial and domestic objects made of stone and ceramic and 11 sacred sites;
 - (b) despite being aware of the existence of these sacred and ceremonial sites and places, the entrepreneur who owns the land began to undertake work in the areas in which they are located, without the authorization of the *lof* or the competent authorities. In the 2000s, he built a supermarket on a ceremonial site, which was levelled using machinery that broke and scattered pieces of pottery. In April 2021 the entrepreneur decided to build a road, erect a metal fence to separate his property from the space controlled by the *lof* (without the necessary permits) and fell an indigenous forest, whose management plan was approved after the fact. Sacred trees were felled, and work was undertaken on a cemetery;
 - (c) given the circumstances, members of the community: (i) informed the Ministry of Culture, Arts and Heritage of the destruction of the sacred and ceremonial sites and places; (ii) requested the Austral University of Chile to analyse some of the objects that were removed from the *lof*'s sacred and ceremonial sites and places; and (iii) lodged an appeal for protection with the Temuco Court of Appeal on 11 August 2021 in which they requested, inter alia, the recognition and protection of the sacred and ceremonial sites and access to them for members of the community. That appeal was rejected;
 - (d) the Ministry's National Cultural Heritage Department issued ordinary memorandum No. 4721 of 20 October 2021, through which: (i) the existence of archaeological findings in the National Monument category was recognized; (ii) the entrepreneur was informed of that fact; and (iii) it was requested that any work that could disturb the surface or subsoil in the area of one of the two findings was halted and that no work was carried out on any part of the archaeological site;
 - (e) on 13 March 2023, the entrepreneur began new work using backhoes that affected sacred and ceremonial sites of the *lof* and installed cameras trained on one of the last ritual sites controlled by the *lof*.
46. The Committee also takes note that the Government, for its part, indicates that:
- (a) the appeal for protection submitted by members of the *lof* did not refer to precise, specific factual circumstances and that the Temuco Court of Appeal rejected it, considering that the existence of arbitrary or illegal acts violating collective rights had not been established;
 - (b) since 2022, the Araucanía office of the National Sub-Directorate for Indigenous Peoples has been undertaking a cultural significance study at the request of the *Lonko* of the Marta Cayulef *lof*. Based on the background information studied, an area recognized as an *eltún* (an ancient Mapuche cemetery) was identified, matching the archaeological site identified by the Technical Secretariat of the Council for National Monuments;
 - (c) in March 2023, the *lof* requested that the Council for National Monuments make a declaration regarding 11 sites of Mapuche cultural significance and one archaeological site on the land in question (Council for National Monuments entry No. 2001 of 3 April 2023);

- (d) nine sites of cultural significance have been identified which the members of the *lof*, through their *werken*, requested be declared Historic Monuments and/or Archaeological Monuments by the National Sub-Directorate for Indigenous Peoples;
 - (e) the competent bodies are gathering background information in order to produce a study in the form of a dossier, which will be submitted to the Council for National Monuments;
 - (f) in April 2024 the Regional Directorate of the National Cultural Heritage Service sent a memorandum (ordinary memorandum No. 081) to the entrepreneur's holding company to request access for the team undertaking the study, as well as members of the *lof*.
- 47.** The Committee observes that, according to the information submitted by the complainants, since April 2021, the entrepreneur has made changes and undertaken activities on his property, and the authorities have been informed by representatives of the Marta Cayulef *lof* of those changes' possible effect on places deemed sacred or ceremonial by the *lof*. The Committee notes that, consequently, and in follow-up to a visit by the regional technical office of the Technial Secretariat of the Council for National Monuments, the National Cultural Heritage Service of the Ministry of Culture, Arts and Heritage recognized the presence of archaeological findings on the property that constituted National Monuments and requested that activities were halted or not carried out on the entirety of the area in which the archaeological objects identified might be found (ordinary memorandum No. 4721 of 20 October 2021). The Committee also observes that various studies have been launched that have confirmed the cultural significance of nine sacred and ceremonial places and the possibility, based on the relevant studies, of declaring those sites Historic or Archaeological Monuments.
- 48.** Similarly, the Committee takes note of the information provided by the Government on the normative framework ⁴ concerning the declaration of Historic Monuments and welcomes the fact that, according to the Government, any declaration of sites of cultural significance to the *lof* as National Monuments in the Historic Monument category could support the process of their acquisition by the State.
- 49.** Lastly, the Committee observes that, despite an order issued by the National Cultural Heritage Service requesting the suspension of work in the archaeological zone, in March 2023 the entrepreneur allegedly began new work using backhoes that, according to the complainants, affected the *lof*'s sacred and ceremonial sites.
- 50. In these circumstances, the Committee requests the Government, in line with the provisions of Articles 4 and 5 of the Convention, to continue to take all the necessary measures to:**
- (a) **ensure that no activities are undertaken that affect or could jeopardize the sacred and ceremonial sites of the Marta Cayulef *lof* in the locations identified by the competent authorities;**
 - (b) **continue to follow the administrative procedures that guarantee the protection, the preservation and, if necessary, the rehabilitation of the sacred and ceremonial sites and places of the Marta Cayulef *lof*, in cooperation with that community;**

⁴ Act No. 17.288 of 1970 on National Monuments.

- (c) **guarantee access to those sites for the Marta Cayulef *lof* so that it may effectively exercise its cultural, religious and spiritual practices, in harmony with the property right of the entrepreneur.**

Allegations on the lack of consultation

51. With regard to the allegations concerning the lack of consultation of the members of the Marta Cayulef *lof* by the competent authorities, the Committee observes that the complainants consider that the effects on the *lof*'s sacred and ceremonial places stem from the fact that none of the competent authorities has fulfilled its obligation to hold consultation as set out in the Convention in relation to authorization for the work that allowed backhoes and heavy machinery to enter the sacred and ceremonial sites and places of the *lof*. The Committee observes that, for its part, the Government indicates that there is nothing to suggest that a consultation process is required since no legislative or administrative measures are under consideration that may affect the Marta Cayulef *lof* directly, and such consultation does not, therefore, appear to be applicable in this case.
52. In that connection, the Committee notes that the complainant organizations do not refer specifically to the administrative measure or measures that may affect the Marta Cayulef *lof* directly and that have not been the subject of consultation, or to their possible dates of adoption, or to the authorities that allegedly adopted them. In these circumstances, and based on the available information, the Committee does not note a violation of Article 6 of the Convention, which provides that governments must consult indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly. In general, the Committee wishes to emphasize the importance of that Article, bearing in mind that recognition of the cultural significance of sacred and ceremonial sites implies the adoption of measures to ensure their protection and preservation, and access to them, as illustrated by the preceding paragraphs.

Intervention of the police in the conflict

53. Furthermore, the Committee observes that, according to the complainants, between April and October 2021 the Office of the Public Prosecutor for Pucón adopted protection measures in favour of the entrepreneur's workers and machinery while the entrepreneur was marking out his property by erecting a fence. They allege that the entry onto the sites by members of the *lof* in order to protect them led to conflict and the use of gases, pellets, tear-gas canisters and pepper spray by the police, and that members of the *lof* were detained while they were explaining to the police officers that they were destroying sacred and ceremonial sites.
54. In that regard, the Committee takes note that the Government, in relation to the action of the law enforcement and security forces, indicates that it has promoted human rights training for them, training more than 8,363 officials since 2020 and issuing 4,835 certificates. Moreover, it committed to implementing a national training programme for various judicial and security institutions with the aim of educating officials on the human rights of indigenous peoples, particularly the rights of indigenous women and protection for indigenous children and adolescents.
55. The Committee is fully aware of the difficulty of resolving conflicts when there are conflicting interests in relation to effective protection for social, cultural, religious and spiritual values and practices. In that connection, the Committee recalls the need to apply the Convention as a

whole and believes that Article 3(2) ⁵ thereof is particularly important when the protection of the rights set out in the Convention may create conflict between indigenous communities and third parties, as demonstrated by the information provided in the present case. ***The Committee recalls that it is the State's responsibility to ensure a climate free from violence where dialogue and trust between all parties is promoted, and it therefore encourages the Government to continue to provide training to the security forces on the rights enshrined in the Convention.***

► V. The Committee's recommendations

56. In light of the conclusions set out in paragraphs 50 and 55 of the document in relation to the issues raised in the representation, the Committee recommends that the Governing Body:
- (a) approve the present report and, in particular, the conclusions set out in paragraphs 50 and 55;
 - (b) request the Government to provide to the Committee of Experts on the Application of Conventions and Recommendations information on the subjects raised in the report and the Committee's conclusions;
 - (c) publish the report and close the procedure initiated by the representation.

Geneva, 4 September 2025

(signed) Ms Sannie Maribel Portillo Vargas
(Government member)

Mr Guido Ricci
(Employer member)

Mr José Enrique Oñate Vera
(Worker member)

⁵ Article 3(2). No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.