The Rapa Nui People and the constituent process

After 130 years of systematic breaches with the Agreement of Wills, the Constitutional Convention has opened a window of hope for the Rapa Nui people to achieve their right to self-determination and for the State of Chile to become a "friend of the island". Through extended open councils held on the island, the Rapa Nui are elaborating a special article that takes into account their specificities. This article is to be included in the new Constitution, with the objective that their voices finally be heard.

By Tiare Aguilera Hey - March 1st, 2022

Since its independence, Chile has been shaped as a monocultural nation that does not take into account its Indigenous roots or its mixed roots. In this framework, it has built its history from the prism of a single nation – the Chilean people – homogenizing all its inhabitants and relegating the Indigenous to the past and to the folklore. The relations between the State and the Indigenous peoples of Chile are diverse, but they share the common feeling of distrust and suspicion due to the systematic breaches of the State. The lack of constitutional recognition of Indigenous peoples and their collective rights is a paradigmatic case.

The Chilean state only recognizes ten Indigenous "ethnic groups" and denies them the status of peoples: Aymara, Lickanantay, Quechua, Diaguita, Chango, Kolla, Rapa Nui, Mapuche, Kawésqar and Yagán. The Selk’nam people are still awaiting recognition. The last census in 2017 indicates that just over 2.2 million people – 12.8% of the country's population – consider themselves to belong to an Indigenous people. Out of the total Indigenous population, the Rapa Nui people represent 0.4%, which constitutes around 3,100 people.

A country that denies its plurinationality

Rapa Nui o Te Pito O Te Henua is an insular, isolated, bordering, Polynesian, overseas and special territory, which demands political, legal and administrative autonomy. It is a non-autonomous territory with a colonized Indigenous people, which today demand recognition
of their right to self-determination. This does not imply independence from the State of Chile, but rather acknowledgement of their collective rights and compliance with the commitments made between the two nations.

Since the end of the 19th century, the link between the Chilean State and the Rapa Nui people has had a long history of encounters and disagreements. On September 9, 1888, the Rapa Nui, represented by their King Atamu Tekena, signed a bi-legal document with Chile: The Agreement of Wills. Any attempt to understand the relationship between both parties must take this agreement, which meant the annexation of the Rapa Nui territory to the Chilean territory, as a framework.

The agreement, conformed by a cession document and a proclamation document, both written in Spanish and a mixture of Rapa Nui and Tahitian, contained four main elements: the ceding of sovereignty of the island to the State of Chile; the commitment to respect the investiture of the ancestral chiefs; the reservation of the right to collective ownership of their lands; and finally, Chile’s commitment to protect and to provide welfare and development to the inhabitants, acting as a "friend of the island”.

Shortly thereafter, the State of Chile breached the agreement by leasing the entire island to the Easter Island Exportation Company, which used the island as a large sheep ranch and confined the population to live on a small portion of its territory. In 1933, without the knowledge or consent of the Rapa Nui people, the island was registered as fiscal property in the Valparaíso Real Estate Registry. In this way, the Rapa Nui people were stripped of their land ownership, under the argument of *Terra Nullius* or "no man's land", enshrined in article 590 of the Civil Code.

The outrages did not cease as the State continued to ignore the autonomy of the Rapa Nui people over their own territory. In 1935, the Ministry of Lands and Colonization declared part of the territory as a National Park and, later, the Ministry of Public Education declared it a National Historic Monument. In 1973, under the dictatorship of Augusto Pinochet, a fraction of the territory was granted free use to the National Forestry Corporation in Easter Island. None of these actions were consulted with the Rapa Nui people. It was only in 2016, after an Indigenous consultation, that they were granted the administration of their cultural heritage.
In the legislative sphere, Law No. 16,441 was passed in 1966, which created the Department of Easter Island and recognized full citizenship of the Rapa Nui people. In 2007, through a constitutional reform of Article 126 Bis, Rapa Nui was declared a special territory, due to its "extreme geographic location". However, none of these legal reforms responds to the historical demands of the Rapa Nui for their rights to self-determination.

**The path of the Rapa Nui in the Constitutional Convention**

In October 2019, the social crisis that shook Chile exposed the situation of extreme inequality and emphasized the need to carry out structural changes in the prevailing country model. From these massive protests, the establishment of a Constitutional Convention emerged as a solution, which was finally constituted on July 4, 2021. Composed of 155 constituents on a basis of gender parity, 17 seats are reserved for indigenous peoples, of which only one is for the Rapa Nui people.

The reserved seats have successfully installed the demands of plurinationality, interculturality, multilingualism and the recognition of the individual and collective rights of Indigenous peoples. In particular, they have made territorial autonomies, collective ownership of territories and natural assets, land restitution, the right to political participation and legal pluralism visible in the public debate.

At the same time, the possibility of a Rapa Nui article for the new Constitution began being discussed in the island. With this objective, an effort of active collaboration was initiated with the Rapa Nui Municipality, with the purpose of rethinking and deliberating a new relationship with the State which constitutionally recognizes the particularities that distinguish them from the other Indigenous peoples of the country. Since the second semester of 2021, the local efforts were initiated and multiple days of reflection and deliberation were followed through.

The drafting of the proposed article was carried out through extended meetings, where the traditional authorities, leaders, and local organizations met to deliberate. Hence, the content of the article was elaborated from Rapa Nui, with the participation of its institutions and community, taking into account the aspirations and demands of the locals that have been passed on from generation to generation.
The self-determination of an overseas territory

In comparison with the other Indigenous peoples of Chile, the specificity of Rapa Nui lies in the fact that it is a non-autonomous territory located overseas. Thus, to speak of self-determination for Rapa Nui implies considering different instruments of international law: the Charter of the United Nations (1945); Resolutions 1514 and 1541 of the United Nations General Assembly (1960), the United Nations Covenants on Civil and Political Rights and Economic and Social Rights (1966), Convention 169 on Indigenous and Tribal Peoples of the International Labor Organization (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

The Chilean state’s reference to the Rapa Nui means that it recognizes its particularities without this implying the renunciation of self-determination. It is necessary to build a relationship of respect with Chile in which no group of people imposes itself on another. In short, the Rapa Nui’s right to self-determination derives and is based on different instruments of international law, which must be interpreted in a broad, extensive and unrestricted manner. Rapa Nui has the right to autonomy in a broad sense – it must maintain and enhance its Polynesian relations and roots, and it must be strengthened and not be limited by its status as an Indigenous people.

The alternatives for implementing self-determination are wide-ranging and of varied consequences. On the one hand, in accordance with Chapter XI of the United Nations Charter and General Assembly Resolution 1514, a path of decolonization and independence could be initiated. On the other hand, taking into account the aspirations of the representative institutions, the traditional and elected authorities and the members of the Rapa Nui people, the constitutional regulation of an autonomous legal status could be chosen, through the ratification of the Agreement of Wills within the framework of the current constituent process.

In conclusion, the aspirations of the Rapa Nui people are the ratification and implementation of the 1888 Treaty of Wills and the fulfillment of the commitments, duties and obligations assumed by the Chilean State within the framework of international law. We also demand that the State recognize the collective ownership of the Rapa Nui over their territory or
Finally, we wish for the constitutional text to make clear that the Rapa Nui people are entitled to the right to self-determination, both in its external and internal dimension. Furthermore, we wish that the constitutional text states the creation of a Rapa Nui Assembly, with a deliberative character and with legislative competences for the insular territory.

In this sense, we have already had our first victory. Recently, the "Maritorio" was approved by 111 votes: a concept that recognizes Chile’s “ecosystemic” relationship and interdependence with the sea. We, the native peoples and coastal communities, are aware of our close relationship with the sea and its coasts. Faced with the injustices of fishing quotas for artisanal fishermen and the indiscriminate pollution of salmon farms, the State must ensure the conservation, preservation and restoration of marine and oceanic ecosystems.

We, the members of the Rapa Nui people, trust that the constituent process will allow us to advance in a proposal for a new diverse and plurinational Constitution with gender parity. From our insular territory, we glimpse with optimism into a future in which the Agreement of Wills will be ratified. In this way, the hope of initiating a path towards full autonomy and a new way of relating to the State of Chile will be kindled: as a true “friend of the island”.

Tiare Aguilera Hey is a lawyer and Constitutional Conventional Constituent for the Rapa Nui people. Among her main proposals are to include an environmental approach in the new Constitution and to make the island and Polynesian territories more visible.