

## **The ruling on the Napalpí Massacre in Argentina: justice for the past and inspiration for the present**

*The Truth Trial for the Napalpí Massacre that took place in 1924 recognised the State's responsibility in the crimes of aggravated homicide and subjection to servitude as crimes against humanity committed as part of a process of genocide. In addition, it stipulated a series of reparatory measures such as progress in identifying the location of the mass graves and the establishment of a memorial site.*

**By Carlos Salamanca Villamizar - 1<sup>st</sup> June 2022**

On 19 May last, the Resistencia Federal Court recognised the Napalpí Massacre as a crime against humanity that took place in the context of a genocide of the Qom and Moqoit peoples. Those attending in the courtroom, the crowd outside and those following the trial online all celebrated the outcome of a process that had begun, in its most recent form, some two decades earlier on the dusty roads of Colonia Aborigen Chaco (former Napalpí Reservation).

The very existence of the trial set a highly significant legal and political precedent and gave reason to hope for an equally significant outcome. And yet neither the Indigenous teachers who began to collect the testimonies of survivors back in 2004, nor anyone else who knew as well as they did the depth and solidity of the structures on which discrimination against Indigenous Peoples in Argentina is based, could have imagined such a breakthrough. So is there much to celebrate? Indeed there is. But is there still much to do? Unfortunately yes.

### **Responsibility, reparation and interculturality**

In addition to recognising the State's responsibility, the judgement set out a series of measures that offer far-reaching possibilities for imagining and creating new avenues for memorialising and paying reparation for systematic and large-scale State-instigated

violence against Indigenous Peoples. States must recognise, both through the courts and socially and culturally, their responsibility in the numerous genocides, genocidal practices and crimes against humanity committed against Indigenous Peoples throughout their 200-year history: not only in the Chaco or in Argentina but across the entire American continent.

As contributions from Indigenous and non-indigenous scholars and activists from Argentina, Brazil and Colombia demonstrate in *Genocidios Indígenas en América Latina* [“Indigenous Genocides in Latin America”], every Latin American state has been responsible for systematic violence against Indigenous Peoples, conducted with impunity and indifference. This forthcoming publication emphasises this historical truth, deepens the discussion on large-scale violence against Indigenous Peoples and considers how this issue can be addressed. Indigenous genocides were, in fact, an intrinsic condition for the emergence and consolidation of the Latin American nation state.

The trial also set an important precedent in terms of process. In addition to ensuring the significant participation of victims and their descendants, these people were also enabled to give their testimonies in hearings held in Resistencia, the provincial capital, or in Machagai, a municipality near Colonia Aborígen Chaco, the site of the massacre. The provincial government’s Secretariat of Human Rights furthermore ensured all the victims were offered counselling.

This counselling began two months prior to commencement of the trial. One of the places in which the team was located was the very building in Machagai where the hearings were to take place. This enabled the Indigenous people to familiarise themselves with the language, space, staging, actors and protocols of court practice. This counselling made it possible to create a space in which to accommodate the victims and family members who were participating as witnesses. These professionals were instrumental in enabling the most elderly to express their fear at speaking and remembering the massacre *in advance*: one elderly woman even asked if she would be arrested once she had testified.

Finally, the court was provided with Qom and Moqoit interpreters who communicated both what the victims had to say to the court and what the court said when passing judgement. The involvement of these interpreters enabled the Qom and Moqoit to hear this acknowledgement of the State's responsibility in their own Indigenous language. Describing State violence and challenging it in their own language is a fundamental act of recognition.

## **Warp and weft that weaves the threads**

There had already been other precedents for these important steps on the path to legal interculturality. In 2019, the Federal Justice system recognised the State's responsibility in the [1947 Rincón Bomba Massacre of the Pilagá people](#) and, in 2020, the Resistencia Federal Court of Appeal ordered the State to pay compensation for the Napalpí Massacre.

On 16 January 2008, the 107<sup>th</sup> birthday of Melitona Enrique, one of the last survivors of the massacre, Chaco State acknowledged the truth and apologised for what had happened. The provincial government had, at that time, promoted the erection of a memorial near the site of the massacre and was cooperating in a process to return the bodies of Indigenous people killed in the context of the Conquest of the Desert in the late 19<sup>th</sup> century. Up until 2018, these bodies formed part of a collection at the Natural Science Museum in La Plata.

To ensure the participation of non-indigenous researchers, the court organised a day of sessions in the city of Resistencia plus two days in Buenos Aires, thus facilitating their involvement. The court chose a symbolic location in Buenos Aires: the former *Escuela Superior de Mecánica de la Armada* [Higher School of Naval Mechanics], which operated as a major secret detention and disappearance centre under the last military dictatorship but which now forms the [Espacio para la Memoria y para la Promoción y Defensa de los Derechos Humanos \[Space for Memory and for the Promotion and Defence of Human Rights \(ex-ESMA\)\]](#).

By allowing testimony to be given at the former ESMA, the court highlighted the links between the struggle for memorialisation, truth and justice and the last Argentine civil-military dictatorship. *Other* memories generated by *other* forms of violence have begun to emerge in recent years, with Indigenous Peoples playing a leading role. The Napalpí trial was only made possible by the group of actors who participated in it, each contributing a missing piece of the puzzle in order to shed light on the truth.

## **Today's lives and territories under threat**

The winds of change are not all blowing in the same direction, however. At precisely the same time as the Napalpí Truth Trial was taking place, [a series of media statements](#), political actions and legislative initiatives was being instigated against the Mapuche people in Argentine Patagonia. This roll-back of their rights is taking place against a backdrop of growing territorial tensions in recent years.

The origin of these tensions can be traced back to the effects of colonial violence and [territorial dispossession consolidated over the two centuries since the birth of the nation state](#). It is also linked to a lack of progress in repaying one of the State's historical debts to the Indigenous Peoples: a law on Indigenous land ownership that respects the international human rights standards to which Argentina is a signatory.

On the same day that the State was declared responsible for crimes against humanity in the Napalpí Massacre, 25 investigation teams from all over the country were therefore publishing a press release denouncing [“the violence and stigmatising and racist campaign against the Mapuche people and all native peoples”](#). This veritable anti-Mapuche campaign is taking place alongside legislative initiatives that are threatening the legitimacy of Indigenous territorial demands.

In 2021, another coalition of organisations had already denounced the lack of progress in the Indigenous territorial survey initiated in 2006 and highlighted how its delay was undermining the exercise of other human rights. Sixteen years on since the enactment of a land survey law that was already long overdue, compliance with this law is an historic debt owed by the Argentine State to Indigenous Peoples. [A suspension of](#)

[evictions and protection of their fundamental rights must be the bare minimum, not the maximum, of any historic claim.](#)

## **Past, present and future**

All Latin American governments, regardless of their political colour, continue to support an economic model focused on monocropping, the exploitation of raw materials and extractivism, all of which are threatening the territories and lives of Indigenous Peoples across the continent. Whatever the result of the national elections in Colombia and Brazil this year, and Argentina next, these are challenging times.

Whether in government or in opposition, there is a conservative and violent movement that is deliberately set on ignorance, prejudice and the erasure of the past. This movement threatens to challenge and question the legitimacy of Indigenous demands and the varying degrees of progress that have been achieved in these recognition processes over the last three decades.

As long as these conservative movements remain at the table, Indigenous people and societies will face not only a lack of progress in their rights but potentially even a roll-back of those rights. Although important events such as the Napalpí Truth Trial are giving favourable results that enable us to draw strength for the struggles to come, it remains essential to ensure that justice for the deaths of the past drives the struggle for the lives of current and future generations across the region.

**Carlos Salamanca is an Independent Researcher at CONICET and at the “Romualdo Ardissoné” Institute of Geography in the University of Buenos Aires. He is Director of the Spaces, Policies and Societies Programme of the Rosario National University and he participated in the Truth Trial as a witness.**