

Intercultural Conflict and Peace Building: The Experience of Chile

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With nine distinct Indigenous Peoples and a population of 1.8 million, which represents 11% of the total population of the country,¹ conflicts between Indigenous Peoples and the Chilean state have increased substantially in recent years. Such conflicts have been triggered by different factors including the lack of constitutional recognition of Indigenous Peoples; political exclusion; and the imposition of an economic model which has resulted in the proliferation of large developments on Indigenous lands and territories without proper consultation, even less with free, prior, and informed consent, and with no participation of the communities directly affected by the benefits these developments generate. The growing awareness among Indigenous Peoples of the rights that have been internationally recognized to them, and the lack of government response to their claims—in particular land claims—also help to explain this growing conflict.

Chile is one of the few, if not the only state in the region, which does not recognize Indigenous Peoples, nor does it recognize their collective rights, such as the right to political participation or autonomy or the right to lands and resources, in its political Constitution. The current Chilean Constitution dates back to 1980, when it was imposed by the Pinochet dictatorship.

Indigenous Peoples have also been severely impacted by the market economy prevalent in the country. In recent decades, Chile has signed free trade and investment agreements with more than 60 other countries, in particular large economies from the Global North including the United States, Canada, the European Union, China and Japan, among others. As a consequence of these trade agreements, direct foreign investment in natural resource extraction or in infrastructure

1. “Los pueblos indígenas en América Latina: Avances en el último decenio y restos pendientes para la garantía de su derechos,” Comisión Económica para América Latina y el Caribe (CEPAL) (Santiago, Chile: United Nations, 2014), http://repositorio.cepal.org/bitstream/handle/11362/37222/S1420521_es.pdf;jsessionid=F0DDC9D4D9880ECEB501261E07899608?sequence=1

projects—roads, dams, and so on—related to extractivism, has grown at a fast pace. Mining investment has increased steadily in the north of the country, in the traditional territory of the Andean peoples (Aymara, Quechua, Lickanantai, Diaguita and Coya), with severe impacts such as the appropriation and contamination of water resources. Forestry and salmon farming, as well as hydro dams, have proliferated in the south of Chile in the traditional territory of the Mapuche people.² These investments have been made not only by transnational corporations domiciled in the Global North, but also by Chilean corporations, which have benefited from new markets opened up by these trade agreements³.

Such is the case with forest plantations, which currently occupy 2.5 million hectares of Chilean land, 1.5 million of them overlapping lands claimed by the Mapuche people on the basis of traditional occupation or legal titles granted to their communities by the state. Two Chilean conglomerates, Arauco and Mininco (CMPC), own 1.8 million hectares of land. This is in stark contrast to the approximately 850,000 hectares registered by the state as lands belonging to the Mapuche. Pine and eucalyptus monocultures have resulted in the destruction of native forests as well as of related ecosystems, which are central to Mapuche survival. They have also impacted water sources existing in the area, most of which have disappeared. Regions and municipalities where forest plantations are located are among the poorest in the country, a reality that triggers Mapuche migration to large cities. As a result, today 80% of the Mapuche population is concentrated in large cities.⁴

2. Approximately 74.6% of Chile's exports in 2014 came from three sectors (mining with 62%, cellulose and wood products with 8%, and fish farming with 4.6% of the total). Sourced from CIPERCHILE (Centro de Investigación e Información Periodística), <http://ciperchile.cl/wp-content/uploads/GraficoExp1.pdf>
3. According to the Chilean Foreign Ministry's General Directorate of International Economic Relations (DIRECON), 94% of Chile's exports go to countries with which Chile has signed trade agreements, which proves that the Free Trade Agreements have opened up markets for Chilean products. "El 94% de las exportaciones chilenas van hoy a mercados con acuerdos comerciales vigentes," (Santiago, Chile: DIRECON, Gobierno de Chile, July 8, 2015), <http://www.direcon.gob.cl/2015/07/el-94-de-las-exportaciones-chilenas-van-hoy-a-mercados-con-acuerdos-comerciales-vigentes/>
4. José Aylwin, "El caso de Chile," *Las Directrices desde América Latina voluntarias y su aplicación*, ed. Sergio Gomez E. (Santiago, Chile: Organización de Naciones

The Chilean state has violently repressed and criminalized Mapuche peoples' social protests in defense of lands and natural resources threatened by resource extraction. Confrontation between the police and protesters is common in Mapuche communities as they relate to conflicts with forest corporations or infrastructure projects. Many community members, including children, women, and elderly people, have been injured as a consequence of police brutality. Four Mapuche were been murdered by the police in recent years. Such crimes are adjudicated by military tribunals, and consequently their perpetrators remain in impunity. Mapuche leaders involved in social protests have been prosecuted under an antiterrorism law initially enacted during the military regime. According to the UN Special Rapporteur on Terrorism and Human Rights, Ben Emmerson, 48 people have been charged under this antiterrorism legislation between 2010 and 2011 alone; 32 of these 48 people are Mapuche or their actions were connected to the Mapuche struggle.⁵ In the case of *Norin Catriman et al. vs. Chile*, the Inter-American Court of Human Rights (IACHR) condemned Chile for prison sentences issued by the judiciary against the Mapuche for "terrorist" crimes on the basis of antiterrorist legislation, a law which, according to the IACHR, violates the principle of legality and the right to the presumption of innocence. The IACHR also held that these sentences were based on stereotypes and prejudices, in violation of the principles of equality and non-discrimination. Additionally, the Court found that trials based on the antiterrorist legislation in Chile violated due process requirements.

In recent years, confrontation on Mapuche territory has increased. Violent actions, particularly against forest plantations and trucks that transport forest products, have been orchestrated by Mapuche organizations. Other actions, including the burning of farmhouses and agricultural machinery, are generally attributed to the Mapuche by authorities and media prior to any judicial investigation. In one of these

Unidas para la Alimentación y la Agricultura Santiago, 2015),182–216, <http://www.fao.org/3/a-i5037s.pdf>

5. A/HRC/25/59/Add.2, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Mission to Chile" (United Nations, April 14, 2014), paras. 72–74.

actions, a couple of settlers of European origin died when a farmhouse was burned. A Mapuche *machi* or shaman was sentenced to 18 years in prison for that crime. Currently, eleven other members of Mapuche communities are being prosecuted under charges of terrorist crimes for that episode. State policies to confront the so-called “Mapuche conflict”—as if the Mapuche were the only ones responsible for its existence—have been contradictory. However, governments in power since the democratization of the country in 1990 have acknowledged Chile’s debt to Indigenous Peoples in general and the Mapuche in particular, as a consequence of past dispossession and assimilationist policies. They have also implemented a policy aimed at restituting lands, in particular to the Mapuche, in accordance with the Land and Water Fund created by law N° 19.253 in 1993. This Fund considers both the acquisition of lands by non-Indigenous individuals who currently own them in accordance with the law, as well as the transfer of state-owned or “fiscal” lands.

Lands purchased for Mapuche communities through this Fund from 1994 to 2014 total 170,000 hectares, according to official statistics.⁶ Such purchases, though, have mainly been limited to those lands previously recognized as Mapuche property by the state after the military occupation of the Araucanía in the second half of the XIX century. This amounted to half a million hectares, which is only 5% of the traditional Mapuche territory of which their communities have been dispossessed. Consequently, state policy has not considered the acquisition of lands of traditional occupation, in accordance with Convention 169 of the ILO on Indigenous and Tribal Peoples ratified by Chile in 2008; forest corporations own much of this land. Moreover, the lack of sufficient funding by the state, as well as speculative prices set by current land owners for such purchases,⁷ has left many

6. “Situación de los Derechos Humanos en Chile: Informe Anual 2014,” (Santiago, Chile: Instituto Nacional de Derechos Humanos, 2014). An additional 70,000 hectares of state-owned lands which were lands traditionally occupied by the Mapuche that the state considers as its property, have been transferred to Mapuche communities during this same period.
7. A conservative think tank, Libertad y Desarrollo, admitted in 2010 that prices of land purchases made by CONADI, the state agency in charge of Indigenous policies, in the Araucanía region, have increased by 826% between 1994 and 2009.

Mapuche land claims without a state response. Expropriation with fair compensation, a mechanism considered in the Constitution in cases of “national interest,” has not been used by the state as a means of restituting Mapuche lands claimed by them. In contrast, it has been used as a means of imposing roads and dams on Mapuche lands.

The implementation of ILO Convention 169 on the duty of the state to consult regarding administrative measures which could directly affect Indigenous Peoples, has been insufficient as it relates to large developments impacting the Mapuche. Regulations approved in recent years to regulate the application of this right (DS N° 40 of 2013 and DS N° 66 of 2014) have restricted the Convention’s standards on this matter, resulting on many occasions in the imposition of these measures without encouraging Indigenous free, prior, and informed consent. Although some judicial decisions initially halted investment projects on Indigenous lands on the basis of lack of consultation with the communities impacted, such jurisprudence has been reversed in recent years.

In 2014, the current Chilean President appointed a Mapuche advocate, Francisco Huenchumilla, as governor of the region of the Araucanía, the heartland of the Mapuche territory. This symbolic appointment, as well as his initial apology to the Mapuche people for past wrongs of the Chilean state which negatively affected them, generated hopes of a new peaceful relationship between the Mapuche and the state, based on dialogue and respect, at least at the regional level. However, Huenchumilla’s resignation from this role was triggered by a lack of central administrative support for his plans to enforce human rights standards in forest activities on Mapuche traditional territory; to reconstitute lands of traditional occupation back to their communities; as well as to apply the rights inherent in ILO Convention 169 and UNDRIP to consultations with Indigenous peoples with the aim of obtaining free, prior, and informed consent and participation in benefits from development projects affecting them.

The appointment of a new governor in 2015 with support from the Ministry of the Interior, the office in charge of security policy, has been interpreted as a step backward in the dialogue process necessary to build interethnic peace with the Mapuche. This security policy is

reflected in a recent report of the Ministry of the Interior to the Deputy Chamber. According to this report, the number of police agents in the Araucanía region has increased from 612 in 2014 to 1,785 in 2016. The amount of police vehicles and armored cars in this region has also increased from 96 to 146 in the same period of time. Those arrested for their participation in acts of violence in the context of conflicts with the Mapuche were numbered at 194 in 2014, 221 in 2015, and 49 in the first two months of 2016.⁸

In order to address the growing conflict between the state and Indigenous Peoples, a *Comisión de Verdad Histórica y Nuevo Trato* (Historic Truth and New Deal Commission) was established in 2001. The Commission had the mandate of reviewing the history of Indigenous Peoples' relations with the state and making recommendations for the construction of a new form of relationship based on the recognition of Indigenous Peoples as distinct peoples. In its final report issued in 2003, the Commission acknowledged the many injustices committed against Indigenous Peoples at the hands of the Chilean state, including Indigenous dispossession of ancestral lands. The Commission recommended the constitutional recognition of Indigenous Peoples as distinct peoples, as well as the protection of their lands and resource rights. As for Mapuche lands, the Commission proposed the creation of a public agency aimed at repairing dispossession of lands previously recognized by the Chilean state as their property. The lands seized from the Mapuche by non-Indigenous people should be identified, stated the Commission, and reconciliation among these parties in conflict was encouraged. When conciliatory arrangements were not possible, expropriation by law, with fair compensation, was proposed as the final means to retribute to the Mapuche the lands previously acknowledged as theirs by the state. Through this procedure, speculation on the land price set by private land holders—a common practice under the current framework of Corporation for Indigenous Development's Land and

8. F. Díaz, et al., "Carabineros casi triplicó su dotación en zonas de ataques en el sur desde 2014," *La Tercera* (March 3, 2016), <http://www.latercera.com/noticia/nacional/2016/03/680-672467-9-carabineros-casi-triplico-su-dotacion-en-zonas-de-ataques-en-el-sur-desde-2014.shtml>

Water Fund— was to be avoided.⁹ Unfortunately, these proposals were never implemented.

To confront the persistence of interethnic conflict—in particular the conflict between the Chilean state, investors and the Mapuche—the National Human Rights Institute proposed that the government invite Indigenous Peoples to a high-level dialogue process in 2014, at the beginning of President Bachelet’s term. Such dialogue, with an open agenda where Indigenous Peoples could determine their own representation, should be guided by the contents of ILO Convention 169 and UNDRIP, which Chile signed in 2007. Unfortunately, this dialogue has still not occurred.

Early in 2016, two law proposals, one aimed at creating a Ministry of Indigenous Affairs and another at creating a National Council of Indigenous Peoples as well as different Indigenous Peoples Councils, were sent to Congress by the current government. The Indigenous Peoples’ Council would have Indigenous representation and similar participatory and consultative powers to those granted to the Sami Parliament in Norway. Although relevant to opening spaces for the institutionalization of Indigenous-state relations in Chile, it is unlikely that these initiatives, created after consultation with the Indigenous Peoples in 2014, will reduce conflicts with the Mapuche related to land and resources impacted by large investments.

In October 2015, President Bachelet, as a consequence of long-term pressure by social movements, called for a constituent process aimed at replacing the 1980 Constitution with a new democratic, plural and inclusive Constitution. Although the mechanism through which a new Constitution will be established is still uncertain,¹⁰ different sectors of society, including some Mapuche organizations, are proposing the establishment of a constituent assembly for this purpose. Active involvement and participation of Indigenous Peoples in constituent assemblies in Latin America in recent decades has resulted in the

9. “Informe de la Comisión Verdad Histórica y Nuevo Trato de los Pueblos Indígenas,” (Santiago, Chile: Comisión de Verdad Histórica y Nuevo Trato, 2003).

10. The 1980 Constitution does not acknowledge a referendum or other forms of citizens’ participation as a mechanism for its reform, or for the elaboration of a new Constitution.

inclusion of Indigenous Peoples' rights in the new political Constitutions of several states. Of particular relevance are the cases of Ecuador and Bolivia, whose Constitutions approved by referendum in 2008 and 2009 respectively, acknowledged the plurinational nature of the state, Indigenous Peoples' rights to autonomy and self determination, their rights to lands and resources, as well as their rights to good living (*buen vivir*).

Although the implementation of these two Constitutions is still pending in many aspects, a fact that has generated frustrations among the Indigenous Peoples in these Andean states, the structural reform of Indigenous-state relations recognized in them is known by many Indigenous leaders and intellectuals in Chile. Consequently, this process is seen by some organizations, including Mapuche organizations,¹¹ as a possible avenue for the recognition of Indigenous collective rights, including political and territorial rights denied today. In the absence of any other mechanisms to deal with the increasing interethnic conflict and violence between the Mapuche and the Chilean state, the constituent process opens space and hope for its peaceful resolution.

11. Identidad Lafkenche and Walmapuwen, a Mapuche political party, among other Mapuche organizations.