

Evolution of Strategies for an Evolution of Indigenous Rights: Shifting Mapuche Activism onto International Platforms

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Chapter One

Introduction

As human rights values evolve within the international environment and permeate national societies, disparities in their implementation are disproportionately experienced by indigenous peoples. Indigenous peoples and their situations are unique “by reference to identities that pre-date historical encroachments by other groups and the ensuing histories that have challenged their cultural survival and self-determination as distinct peoples” (Anaya, 2004, p. 14). As such, various international human rights doctrines, such as the United Nations Declaration on the Rights of Indigenous Peoples and principles enshrined in human rights treaties recognize the need for their special consideration. Yet as many states continue to deny indigenous peoples many of their rights, even though contrary to international norms, they undergo political, economical, and social marginalization, which leaves many indigenous peoples fighting for their survival. Many indigenous peoples can identify with the need for self-determination, a restructuring of state policies on political representation, rights to territory and the resources present therein, and an end to discriminatory violence by police and military (Van Cott, 2000, p. 7). Therefore, it is valuable to understand what kind of strategies will be most successful for indigenous peoples to assert these rights.

Despite that within Latin America indigenusness is prominent in national identities, many communities continue to exist on the fringe of society and therefore have little to no representation regarding issues that directly affect them. This is true for the Mapuche, a people indigenous to the region now known as Chile and Argentina. In practice, successive Chilean governments have not prioritized the sustainable development of Mapuche communities, even though their living standards are far below the national average on all social indicators (Human Rights Watch, 2004, p. 2). The Mapuche claim that Chilean policies, such as those regarding their ancestral lands without their free, prior and informed consent, threaten their identity as an indigenous people. The Mapuche also blame their frequent subjection to state sponsored violence on pervasive racism in Chile.

Many states wrestle with the evolution of the international system that increasingly grants opportunities for the ruled rather than the rulers (Cole, 2005, p. 473), the abandonment of Westphalian values and standards, and face pressure from the international society to accept and implement specific rights for indigenous peoples. Chile, considered a stable and developed democracy in Latin America, has ascended to many international instruments on human rights and

has pledged to develop independent and effective national institutions to ensure compliance with
80 human rights standards. Yet despite these pledges, Mapuche in Chile continue to be treated as
second-class citizens. Rather than wait for Chile's enlightenment, the Mapuche have been proactive
in employing a series of evolving strategies to assert their rights in order to change their
marginalized status within Chile. Therefore, the aim is to discuss how the Mapuche have tried to
improve their indigenous rights, to what extent they have succeeded and why.

Through tracing previous Mapuche campaigns under different Chilean regimes historically, we can
observe their shifting strategies and the rate of their success in realizing their indigenous rights.¹ It is
evident that Mapuche local and national approaches have had only limited success in this regard.
Among the challenges faced by the Mapuche is the Chilean government's unreceptiveness to protect
indigenous rights, largely in part of Chile's emphasis on its neo-liberal economic model and Chilean
90 society's views on indigenous peoples. As international forums and mechanisms are developed for
non-state actors to call states' accountability to indigenous rights into question, many Mapuche
activists prefer and continue to use local and national-level strategies, feeling that Chile is
"responsive enough" (Kiel, 2011, p. 92). This hesitation can also come from distrust of international
instruments such as the United Nations because they are associated with prioritizing states' interests
and are susceptible to "neo-liberal [ideals], the dark side of globalization and the power of big
transnationals" (Morrissey, 2011, p. 439). Considering the questionability of Chile's democratic
values (Waldman, 2012, p. 65) and disingenuous or failing national mechanisms (Gallantine, 2008), it
is clear that the emphasis on local and national approaches has not been sufficient to bring the
change sought by the Mapuche.

100 However, the evolving nature of the international system and human rights can offer many
opportunities for the Mapuche. The creation of new international forums and mechanisms allow
the dynamic involvement of new actors, namely stakeholders, human rights advocates and
defenders, to join discussions originally thought to be the exclusive domain of states. By augmenting
their national strategies by working via international human rights standards and mechanisms and
its normative community, the Mapuche and other indigenous peoples are likely to experience better
rates of success in improving their indigenous rights.

¹ Indigenous rights, as opposed to universal principles of human rights, give more emphasis to collective rights, including that of self-determination, for indigenous peoples (self-identified) because of historic injustices stemming from colonization, dispossession of their lands, territories, resources, etc. which have prevented them from developing according to their distinct needs and interests.

Structure

The following section highlights the main issues in the discussion regarding indigenous rights, their evolution as an international issue, and why international approaches in upholding them can be more effective than local and national ones. The last section in this chapter is a method of analysis, which lays out how this research will answer how the Mapuche have tried to improve their indigenous rights and to what extent have they succeeded and why.

Chapters two and three are a historical analysis of Mapuche local and national approaches and an evaluation of their efficacies during the Allende regime (1970-1973) and Pinochet (1973-1990) regime respectively. The Allende administration was marked by a new ideology towards Chile's indigenous communities, and a political environment that encouraged land redistribution benefitting the Mapuche. Mapuche strategies to reclaim ancestral lands ultimately resulted in policies to their advantage. In contrast, the Pinochet dictatorship imposed a neo-economic model that effectively denied indigenous peoples' their existence and their rights. Mapuche strategies during this period were not effective in changing policies, but were crucial in strengthening their identity as a people. Chapter four also evaluates Mapuche local and national approaches, but in response to the four successive presidencies belonging to the left-wing Concertación coalition between 1990 and 2010. During this period of re-democratization, the Mapuche saw a continuation of major obstacles to their indigenous rights (Carter, 2010) despite Concertación presidents promoting respect for indigenous cultures and establishing national institutions to assist indigenous communities. However, strategies employed by some Mapuche activists during this period had sparked violent reactions from the state and resulted in a decrease of their rights.

Chapter five instead focuses on Mapuche approaches that have included international actors and mechanisms during the Concertación presidencies, as well as the present Piñera presidency that belongs to a right-wing coalition. When the Mapuche create strategic alliances resulting in international platforms for their movements, their concerns are brought to the international agenda, legitimizing their grievances. Chapter six includes a summary of the research and conclusions about Mapuche strategies. This chapter will also include potential implications of the Mapuche issue in Chile. Appendices are located following the bibliography.

Theoretical Framework

The indigenous Mapuche people in Chile have been historically subject to policies that favor the development of an ethnic majority at the expense of their welfare. In protecting their traditional lifestyles and their rights, the Mapuche have employed various strategies, including social protest

and the enlistment of the law and legal process, to change their disenfranchised status. However, when the state politically or legally blocks agents of change, Mapuche activists and other transnational human rights organizations² have numerous international mechanisms exist at their disposal to call for state accountability. These mechanisms affirm the power of non-state actors to rise above the state to influence policy changes from an international platform through human rights principles “assaulting, challenging, besieging, undermining, busting, weakening, chipping away at, compromising, contradicting, breaking down, breaching, perforating, [and] eroding” (Donnelly, 2004) the once state-centric international system.

Realists and neo-realists disagree with the idea that the international regime should prioritize humanity and democracy rather than states’ monopolization of their sovereignty (Solana, 1998). The international regime should be a tool for enhancing states’ capacities to gain power, such as through facilitating power alliances rather than a place for non-state actors to call for adherence to human rights principles for the collective global interest. For example, Mearsheimer suggests that the United Nations Security Council reflects the security interests of its permanent members rather than the collective global interest (1995, p. 82). International institutions designed for cooperation are undermined by the desire for relative gains and opportunities for power maximization (Jackson & Sorensen, 1999, p. 131). Therefore according to this understanding, the normative power of human rights values held by the international community or regime, could not alter or control state behavior.

“If rules of sovereignty (mainly that states should respect the territorial integrity of other states) were to guide state behavior, why have these rules been broken repeatedly...[?] Stephen Krasner, for example, argues that although states sometimes seem to adapt to rules and do what is considered appropriate, they nonetheless seldom hesitate in violating those rules if this suits their security interests best. For example, the United States, under President Bush Junior, defected from the Kyoto Agreement on greenhouse gas emissions because it was not willing to go against domestic industrial interests” (Kjaer, 2004, p. 82).

This research assumes that the realist line of thinking regarding the international system is incorrect and affirms that non-state actors, such as transnational human rights organizations and the marginalized communities that they represent, working to change state behavior from an international platform would result in a system where “not only the existence of universal human

² Within the scope of this paper, ‘transnational human rights organizations’ pertain to organizations working in the promotion and protection of human rights and that focus resources and attention on the Mapuche people. These organizations are external actors, different from ‘Mapuche activists’ who have the same goals as organizations, but are comprised of ethnic Mapuche individuals or organizations run by them.

rights protected by states, but also the creation of a mandatory core of rights which individuals may
 170 claim, as well as duties vis-à-vis global institutions” (Kjaer, 2004, p. 93).

Once all national channels for change are exhausted, the Mapuche’s partnership with transnational
 human rights organizations and their adoption of internationally-oriented strategies would comprise
 of demanding target states, Chile in this case, to improve policies negatively affecting indigenous
 peoples via international mechanisms or normative pressure. This is contingent on the assumption
 that target states and their perceptions are susceptible to norm implementation applied by
 coordinated networks of transnational and international social relations (Keck & Sikkink, 1998, p. 3).

Cole tests this assumption by studying what determines states’ commitments to ratify and
 implement international human rights treaties, which legally bind signatories to align their national
 policies with principles enshrined in the respective treaties. He observed that states essentially work
 180 to balance the cost of ratifying such treaties in two ways; first, countries failing to honor treaty
 values and commitments risk damaging their reputations in international relations; second, treaties’
 requirement to bring divergent policies and practices into conformity with treaty provisions will be
 costlier as discrepancies arise (Cole, 2005, p. 474). Cole concluded that newly democratic countries
 express a largely symbolic commitment to human rights by ratifying human rights covenants, or at
 least those they determine to have weak enforcement mechanisms (2005, pp. 485,492). Therefore,
 despite an initial lack of genuine commitment, international pressures stemming from normative
 beliefs do push states to change their behavior (at least nominally). Therefore, human rights
 defenders, such as transnational human rights organizations, work to further promote specific
 normative values in calculated ways until there is the desired state behavior, such as addressing
 190 policies negatively impacting indigenous peoples, is achieved.

“What distinguishes principled activists [...] is the intensely self-conscious and self-reflective
 nature of their normative awareness. No mere automatic ‘enactors’, these are people who
 seek to amplify the generative power of norms, broaden the scope of practices those norms
 engender, and sometimes even renegotiate or transform those norms themselves” (Keck &
 Sikkink, 1998, p. 35).

Debate on Indigenous Rights

While the words “all peoples have the right to self-determination” are present within many
 international treaties, states and indigenous peoples continue to debate on their meaning and
 implications. The two most authoritative documents regarding indigenous rights are the
 200 International Labor Organization’s 1989 Convention 169 on the Rights of Indigenous and Tribal
 Peoples in Independent Countries and the United Nations’ 2007 Declaration on the Rights of

Indigenous Peoples. Broadly, both recognize that indigenous peoples have the collective right to self-determination and to maintain their distinct political, legal, economic, social, and cultural institutions.

In practice, Anaya suggests that there are two general categories of self-determination sought by indigenous peoples, though each can have their own unique understanding based on their circumstances (Anaya, 1990, pp. 837-838). The first category calls for nondiscrimination and equal treatment for a group of people within the national context. The Khmer Krom for example, an indigenous people in Vietnam marginalized in favor of the Kinh ethnic majority, call for equal application of Vietnamese law and opportunity in the spirit of “peace, harmony, respect, understanding and cooperation between the Khmer Krom and others, including the Vietnamese people” (Khmer Kampuchea-Krom Federation, 2009). The second category calls for degrees of separation or autonomy from the state that claims sovereignty over the peoples and territories inhabited by them. For example, Abkhazia considers international recognition of their declaration of independence as a means to achieve “meaningful autonomy” for its people (Unrepresented Nations and Peoples Organization, 2008). An assumption may be that states are more hostile to the second category of self-determination than the first. However, states can be equally repressive to demands that fall in line with the first category of self-determination because of the slippery-slope belief that such rights can threaten their national and territorial integrity.

220 “At the international level, both indigenous peoples and states arrive with opposing claims. Both national and internationally, indigenous peoples are increasingly focusing their struggles on the right to self-determination, principally over their lands and resources which continue to be threatened by international and national economic interests. [...] Meanwhile, in contrast with the claims to self-determination continually being made by indigenous groups, nation states continue to employ policies of reconciliation and nation building as a peacemaking paradigm” (Cirkovic, 2007, p. 376).

In Shehadi’s consideration of this debate, the clash between self-determination and sovereignty includes a “violent and destructive side to it in the realm of international law and interethnic relations” (1997, p. 148). UN Secretary General U Thant stated in 1970, “As an international organization, the United Nations has never accepted and does not accept and I do not believe will ever accept the principle of secession of a part of its Member State” (as quoted in Shehadi, 1997, p. 230 140). This goes in hand in hand with Lâm’s concern that states do not have the “material and ideological flexibility” to respond to claims of indigenusness (1992, p. 610). The apprehension to indigenous issues on the basis that indigenous rights and self-determination principles may weaken national sovereignty was reflected during the lead-up to the United Nations Declaration on the

Rights of Indigenous Peoples. Dissenting states Canada and New Zealand, joined by the United States, made clear their criticisms and worries regarding proposed principles in the defense of indigenous rights by calling them “confusing, unworkable, contradictory and deeply flawed” (United States joins Australia, 2007, p. 212).

240 Normative Strategy

Even when indigenous communities have exhausted all available recourse through national institutions, or are prevented and unable to use them to change policy negatively affecting them, there exists still methods to bring about behavior changes from governments. There is where international forums can be used to exert pressure on states from the outside. Transnational human rights organizations experienced in utilizing what Keck and Sikkink describe as the ‘boomerang’ strategy therefore partner with or work on behalf of these marginalized indigenous communities to draw attention to amplify their demands at the international level, often using organizations’ better resources and capacities (Keck & Sikkink, 1998).

250 Authoritative and credible transnational human rights organizations are generally practiced in such strategies employable at the international level whereas indigenous activists or grassroots indigenous organizations are unlikely to be familiar these approaches.³ When indigenous activists, grassroots organizations, or communities reach out for assistance or partnerships with such transnational human rights organizations, they gain access to these methodologies, resources, and even extended networks. Some of these strategies, identified by Keck and Sikkink include:

260 (1) *Information politics*, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact; (2) *symbolic politics*, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away; (3) *leverage politics*, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and (4) *accountability politics*, or the effort to hold powerful actors to their previously stated policies or principles (1998, p. 16).

As previously noted, many states are apprehensive towards indigenous rights, mainly after considering the most extreme interpretation of ‘self-determination’ to be secession and an erosion

³ Among the credible transnational human rights organization that advocate issues concerning the Mapuche are Amnesty International (AI), Minority Rights Group (MRG), Human Rights Watch (HRW), Unrepresented Nations and Peoples Organization (UNPO), and International Federation for Human Rights (FIDH). These organizations work within the broader scopes of human rights as opposed to specifically focusing on gender, region, environment, etc.

to their sovereignty. When states repress indigenous rights, indigenous peoples are refused ownership of or fair compensation for their ancestral lands, the ability to protect and practice their traditional lifestyle and beliefs, and are socially and economically marginalized, leaving them unable to participate as engaged citizens of their state. Some state governments even go as far as denying recognition to indigenous peoples within their states so they are not held accountable to indigenous rights standards.⁴

270 Therefore, transnational human rights organizations strategically know to reframe or repackage indigenous issues in a manner that is approachable and acceptable to targeted states and the international audience. This has the effect of removing emphasis from indigenous rights to other rights, such as human, civil, environmental, etc., while still protecting the underlying principles. By avoiding discussions centered on contentious or complex issues such as indigenous rights or self-determination, the focus is now on “complex interactions among actors, on the intersubjective construction of frames of meaning, and on the negotiation and malleability of identities and interests” (Keck & Sikkink, 1998, p. 4). This reframing advantage is evident in Mamdani’s study of politics in labeling ethnic conflicts, where he found a consolidated, apolitical, and moral campaign was key in bringing support for action in Darfur (2007). In another example, indigenous Ogoni leader

280 Ken Saro-Wiwa recognized “what could be done by an environment group [in the developed world] to press demands on [the Nigerian] government and companies” (as quoted in Bob, 2002, p. 40). Therefore, following the advice of partner transnational human rights organizations, grievances over civil and political rights held by the indigenous Ogoni against the Nigerian government and Shell were reframed to appeal to environmental activists. After attracting the support of influential environmental organizations (such as Greenpeace and the Sierra Club), their cause was advanced through international denouncement of the Nigerian dictatorship, boycotts against Shell, and improved Ogoni access to governments and media in Europe and North America (Bob, 2002, pp. 40-41). Other contexts can also include individual and collective rights to free expression, assembly, association, and religion. The overall effect to reframing issues according to Shehadi is the reduction

290 of “ammunition” that can be used by adversaries (state governments in this instance) because

⁴ At the tenth session of the United Nations Permanent Forum on Indigenous Issues in 2011, Raja Devasish Roy, a forum member from Bangladesh, noted that the Bangladesh’s government was one of the few in the world that “officially denied the existence of indigenous people within its borders.” He was referring to separate statements from the Prime Minister and Law Minister of Bangladesh insisting that there were no indigenous people within Bangladesh. See: Department of Public Information, News and Media Division New York (2011) Press Conference to Mark Close of Tenth Permanent Forum on Indigenous Issues. Retrieved from http://www.un.org/News/briefings/docs/2011/110527_Indigenous.doc.htm

alternative or reframed interpretations of self-determination no longer undermine the principle of state sovereignty (1997, p. 142).

International Human Rights Mechanisms

Another international strategy is the use of human rights mechanisms, such as those through the United Nations and other international institutions. Both transnational human rights organizations and indigenous activists are welcome to participate in these mechanisms where they can bring issues to before international panels and committees, and often times to the immediate attention of state representatives, to whom they would have not reached had they gone through national mechanisms. The two international mechanisms which will be discussed are the United Nations human rights treaties and the Universal Periodic Review.⁵

The ratification of any of the nine human rights treaty bodies opens a state government to scheduled reviews of their implementation of treaty body provisions where party states submit regular reports to the treaty body's monitoring committee. Because stakeholders can submit additional information following a state report, many non-governmental organizations, including transnational human rights organizations and indigenous activist groups, take this opportunity to reinforce their position that the state is not fulfilling its obligations under the respective treaty body. During review sessions, these stakeholders also have opportunities to make interventions and lobby committee members to their perspectives of the state's adherence of responsibilities to the respective treaty body. While indigenous activists and organizations generally submit reports, without training or experience, some reports' poor presentation detracts from what would otherwise be valuable first-hand experiences of negative policies towards indigenous peoples.⁶ Access to resources through transnational human rights organizations, or collaborating with such organizations on reports and interventions, strengthens the credibility of indigenous peoples' claims against states that largely present a positive picture regarding their responsibilities. Following review sessions, treaty body committees issue their concluding observations that include recommendations and concerns which should be addressed before the next review cycle. While a committee's concluding observations do not have a binding effect, the treaty itself is legally binding.

⁵ This section will focus on mechanisms for direct participation by stakeholders such as transnational human rights organizations and indigenous activists. .

⁶ In 2008, a group called the Islamic Human Rights Commission (no relation to an official Iranian government body of the same name, though its relation to a UK group of the same name is unclear) submitted a one-page report to the Universal Periodic Review's first session on the occasion of the Philippines' review. Despite the scale of situation between the Islamic Moro people, indigenous to southern Philippines and Mindanao, the report consisted of three short paragraphs lacking any credible sources. The report can be retrieved here: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PH/IHRC_PHL_UPR_S1_2008_IslamicHumanRightsCommission_uprsubmission.pdf

Therefore, as each committee is the most authoritative interpreter of the treaty in question, “a finding of a violation by a UN human rights treaty body may be understood as an indication of the State party being under legal obligation to remedy the situation” (as quoted in O’Flaherty, 2006, p. 34). These concluding observations can further be used by activists or other institutions. For example, concluding observations from the Human Rights Committee (responsible for the monitoring the International Covenant on Civil and Political Rights) for Israel’s review in 1998 and 2003 were used by the International Court of Justice to form an Advisory Opinion regarding construction practices within Palestinian Territory (O’Flaherty, 2006, p. 36).

The Universal Periodic Review has a similar reporting structure and participation mechanism to those of the human rights treaty bodies where all United Nations members are put under broad review regarding the state of human rights within each country. As such, there are no legally binding mechanisms within this exercise. Yet its strength as an international mechanism for encouraging changes to state practices comes from the involvement of all United Nations members during each review. This is to say that during each review, 192 member states are invited to pose questions, concerns, and recommendations to a state under review. Information brought forward by stakeholders, like transnational human rights organizations and the indigenous activists and organizations they represent or are partnered with, can impact reviewers’ assessments of the state under review. For states that are concerned with their international image and their position within a normative community, bringing to light infractions of human rights principles can have profound consequences.

Chapter Two

The Mapuche People & Background

History & Marginalization

The Mapuche people, whose name means ‘people of the land’ (*mapu* – land, *che* – people), are descendants of an Araucanian tribe that moved to the region now known as Chile and Argentina over 12,000 years ago. Traditionally, the Mapuche lived in both settled and nomadic communities, and as hunters, shepherds, and farmers, living in small family groups under the authority of a *lonko* (a Mapuche chief). All Mapuche social and political institutions are shaped by their spirituality, their religion, and the relationship between humanity and nature. As such, their relation to the land is not measured by ‘ownership’ or ‘property’, but rather through the communal benefit of resources while maintaining balances with nature around them.

350 A century after struggling with Spanish conquistadors, the 1641 Treaty of Quilin recognized the independence of the Mapuche and their sovereign territory south of the Bío-Bío River (Unrepresented Nations and Peoples Organization, 2008). Following the founding of the independent Chilean republic in 1810, the Mapuche resistance continued to prevent subjugation until in 1852 and 1866, a series of land allotment acts unilaterally imposed Chilean rule over previously legally recognized Mapuche territory. The violent military campaigns known as the ‘Pacification of Araucanía’ in the mid-nineteenth century furthered the Mapuche loss of ancestral lands in favor of Chilean landowners of European-descent and national and transnational corporations (Carter, 2010, p. 62).

360 “The main consequence of military defeat for the Mapuche was the literal and figurative experience of ‘reduction’. In a process lasting from 1883 to 1929, the Chilean state awarded thousands of land-grant titles to the scattered remnants of Mapuche society, frequently dividing families and communities by forcing them to live on *reducciones* (reservations). As a result, the Mapuche were subordinated, stigmatized, and forgotten, becoming progressively poorer and more disadvantaged in relation to the rest of Chilean society. Their expanding population and decreasing space meant that many had no choice but to migrate to cities such as Concepción or Santiago, where they experienced the double stigma of being both poor and Indian” (Carter, 2010, p. 62).

370 Despite adopting democratic values after openly disenfranchising indigenous peoples for centuries, successive Chilean governments continue to prioritize the exploitation of resources on indigenous lands at the expense of indigenous peoples’ traditional livelihoods and cultural identities. The Mapuche claim projects such as dams, hydroelectric plants, mines, and forestry and fishing activities and all related negative environmental effects (such as pollution, dumping, contamination, etc.) and legal effects (such as forced relocation, lack of fair compensation, etc.) disproportionately affect indigenous communities. Concretely, compared to non-indigenous populations, indigenous populations in Chile experience higher rates of poverty (35.6 percent versus 22.7 percent respectively), make half as much income compared to non-indigenous families, have lower school attendance rates (2.2 years less than average for non-indigenous children), low accessibility to basic infrastructure (41 percent of indigenous households have drains, 58 percent running water, and 65 percent electricity), and high rates of infant mortality (exceeding 50 percent in some municipalities) (Stavenhagen, 2003, p. 16).

380 As such, the basis of the Mapuche struggle rests on the recognition and respect of indigenous rights in Chile, especially in regards to land rights and control over their natural resources.

Mapuche Rights & Chile's Obligations to Indigenous Peoples

There have been varying degrees of political action to improve the Mapuche situation within Chilean modern history. For example, the Allende administration's reallocation of land greatly benefitted the Mapuche in the early 1970s. In the early 1990s, the Aylwin administration passed laws creating national institutions dedicated to indigenous development. While under Bachelet's administration between 2006 and 2010, Chile ratified International Labor Organization Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries, and also signed the United Nations Declaration on the Rights of Indigenous Peoples. Yet many indigenous communities found that these targeted national mechanisms were not independent or failed to uphold their mandates. Indigenous communities found that despite laws protecting their right to participate in discussions regarding the development of their ancestral lands and their resources (such as a 1994 environmental law that allowed citizen commentary on proposed projects), government officials tended to "portray local communities' objections as those of a minority that should yield to the interests of the nation" (Haughney, 2012, p. 7).

In the face of discrepancies between the legal position of the Mapuche within Chile and their actual situation, Mapuche activism works towards four principle goals: (1) the constitutional recognition of indigenous peoples; (2) the right to protect and develop their traditional identity; (3) the protection of Mapuche ancestral lands and the resources therein; and (4) the end of policies and practices that endorse state-sponsored violence and discrimination against the Mapuche. These four goals will be discussed within the scope of Chile's national and international obligations to indigenous rights and broader human rights.

At the time of this writing, Chile's constitution does not recognize indigenous peoples, though legally and in practice, indigenous peoples receive additional consideration and protection from the Chilean government on the basis of their indigenous nature.⁷ Yet constitutional recognition of indigenous peoples would oblige Chile to higher standards of indigenous rights as called for by international mechanisms. While Chile has ratified both the United Nations Declaration on the Rights of Indigenous Peoples and International Labor Organization Convention 169 on Indigenous and Tribal Peoples, there has been little political will to implement provisions in the legally-binding ILO convention and the principles in the non-legally binding declaration. As policies prioritizing resource and land exploitation damage the ability of the Mapuche to enjoy their social rights, current Chilean

⁷ While there are legal requirements for additional consideration and protection, many indigenous communities, independent human rights organizations, and even several United Nations committees have expressed concerns that they are not implemented in practice.

standards of recognition and protection for their ethnic and cultural diversity are meaningless. Full constitutional recognition in this regard would offer the Mapuche and other indigenous communities due protection considering the nature of problems that they face collectively. The other push for constitutional recognition of indigenous peoples comes as a defense from discriminatory attitudes within Chilean society that emphasizes the “civilizing influence of the [European] settler” (Carter, 2010, p. 62). According to Waldman, because the majority of Chileans view their society as mono-cultural, Christian, western, and racially homogenous, the exclusion of Mapuche in the national scheme was inevitable (2012, p. 57). As such, the recognition of the

420 Mapuche as a separate people was rejected by the Chilean congress as it contradicted the national constitution which recognizes only the ‘Chilean’ people (Aylwin, 2006, p. 9). Constitutional recognition of a multicultural or a plurinational state, like many other Latin American countries who have embraced the history and inheritance of pre-Hispanic peoples, would open paths to less discriminatory practices against indigenous peoples.

As a result of long-standing discrimination against indigenous peoples in Chile, the Mapuche have felt their traditional identity and culture were under threat. Because much stigmatization and discrimination are directed at indigenous peoples, many Mapuche feel compelled to conceal their ethnic identities.

430 “Historically, the incorporation of Mapuche into economic, social and symbolic systems effected acculturation through mono-cultural and mono-lingual education. Migration to the cities accelerated processes of cultural loss. In urban environments, infrastructure that permits a stronger presence of educational, health and consumer services has undermined the traditional authority of figures such as the *lonkos* [Mapuche chieftains] or the *machi* [Mapuche healers]. Likewise, better access to consumer goods has led to changes in Mapuche life styles. The contact with urban institutions and values has led some Mapuche to re-evaluate their world views” (Waldman, 2012, p. 66).

Estimates suggest that only about twenty-two percent of Mapuche people are able to speak their traditional language, *mapudugun*, and few official institutions are involved in the dissemination of Mapuche language and culture (Morrissey, 2011, p. 2). Damage to the Chilean environment and

440 landscape from industrial projects also threatens the Mapuche culture and identity. The gradual disappearance of indigenous plants has led to a decline in traditional medicine practices, exhausted water resources from industrial tree plantations prohibit traditional Mapuche communities to carry out their agrarian livelihoods, and flooding due to dams have removed access to religious and sacred locations to the Mapuche (International Federation for Human Rights, 2003, pp. 19-23).

These concerns about protecting Mapuche identity spill-over into the need to recognize Mapuche traditional lands because land for indigenous peoples, through their distinctive spiritual relationship is basic to their existence as such. As Mapuche ancestral lands are rich in natural resources, successive Chilean governments have created policies encouraging private companies to exploit these resources, often without the free, informed and prior consent of affected communities or providing fair compensation as required by Chilean law and binding international agreements.⁸ Mapuche communities also remark that they hold legal claims to lands being used by resource extraction companies based on ancestral occupation prior to the imposed reduction system during the post-Pacification era, land deeds entitling later them to specific land plots under the reduction system, and the fact that non-indigenous owners, especially in the 20th century, appropriated deeds to reduction plots through corrupt or non-transparent practices who later illegally sold ownership to private companies (Aylwin, 2006, p. 19).

Finally, the recent practices of the Chilean government, including the disproportionate use of police force and discriminately applying terrorist charges to Mapuche activists under the Pinochet-era 'Anti-Terrorism' law have drawn grave concerns from the international community. As Mapuche communities and activists tried to draw attention to their cause, protest activities have varied from non-violent demonstrations (such as marches, rallies, and occupation of public buildings) to acts involving force (such as road blockades, occupation of disputed lands or properties, and sabotage of industrial machinery or equipment). Yet due to the high presence of discrimination against indigenous peoples in Chile, legal and police responses have been disproportionately harsh and often failed to distinguish peaceful and legal protest from illegal actions that posed real threats to the public.

"With some notable exceptions, Mapuche activists often face an unsympathetic and uncomprehending attitude from government officials, politicians, and the press. They are often seen as violent agitators who are opposed to the economic development of the country and advocate secession of the Araucanía from the state" (Human Rights Watch, 2004, p. 16).

The Anti-Terrorism law (Law 18.314) has been invoked exclusively on Mapuche activists since Chile's re-democratization, where during the Pinochet dictatorship it was created to stifle political dissent against the regime by allowing prolonged pretrial detention, anonymous witnesses, and harsher sentences. In its selective application on Mapuche activists, crimes such as the destruction of tree

⁸ Chile has ratified human rights treaties, several of which protect the right of peoples to freely dispose of their natural wealth and resources and prohibit the deprivation of its own means of subsistence. For more information, please see Table One on page 35.

plantations and industrial machinery are characterized as terrorism (Haughney, 2011, p. 11). Its usage against the Mapuche, where other non-indigenous offenders responsible for homicide, rape, or other grave crimes enjoy more legal and civil guarantees than Mapuche defendants, and often receive lower sentences represents clear discriminatory treatment (Human Rights Watch, 2004, p. 480 23). Furthermore, in search of ‘terrorists’, the Chilean government has deployed teams of heavily armed forces into rural Mapuche communities, often resulting in violence and fear-tactics against Mapuche families, including the elderly and children.

The Chilean state and its emphasis on its neo-liberal economic models have prevented the full implementation of indigenous rights enshrined in national and international law. The Mapuche have pointed to the relationship between their status as second-rate citizens and policies that in practice “exclude certain sectors regardless of undeniable economic success and democratic achievements. The Mapuche movement has shed light on critical issues such as the destruction of natural resources, the weakness of democracy, the lack of equal opportunities, social exclusion, respect for citizens’ human rights and, most of all, the political failure to adequately resolve the Mapuche conflict” (Waldman, 2012, p. 64). Chilean governments have also raised concerns about the potential secessionist nature of indigenous goals, as many Mapuche activists have called for self-determination and increased autonomy over their ancestral domain and communities. To this, Mapuche leader, Francisco Caquilpan, explains:

“Our struggle has two directions, the defense of our territory and the change of a system. The Mapuche struggle to reconstruct themselves as a people, as a national society... When we talk about the Mapuche struggle, we do not mean separatism. We are part of this territory, but we are conscious that we need to construct a just, fraternal, plurinational, multicultural society, a democratic society” (Iñiguez, 2008).⁹

Instead of waiting for the enlightenment of the Chilean state and society, the Mapuche have been 500 actively working towards the recognition of their indigenous rights over the course of several political regimes. Although Mapuche demands are the same in principle, approaches differ vastly, from land occupations, negotiating with the Chilean government, to demonstrations. Generally, the Mapuche have prioritized local or national approaches as communities feel that the Chilean government is “responsive enough” (with the exception to the Pinochet regime) and thus do not

⁹ All translations by the author will be accompanied by the original text. Excerpt from an interview with Francisco Caquilpan Lincuante, a Mapuche activist. Original Spanish: *Nuestra lucha tiene dos vertientes, la defensa de nuestro territorio y otra la del cambio del sistema. El Mapuche lucha por reconstruirse como pueblo, como sociedad nacional... Cuando hablamos de la lucha Mapuche no hablamos de separatismo. Somos parte de este territorio, pero somos conscientes de que necesitamos construir una sociedad justa, fraterna, plurinacional, multicultural, una sociedad democrática.*

need help from the international community (Kiel, 2011, p. 92). There is an apprehension towards using international institutions and even reaching out to large international human rights organizations. The fact that it took approximately twenty years for the United Nations Declaration on the Rights of Indigenous Peoples to be approved convinced some Mapuche that the United Nations is more concerned about states rather than the protection of human rights (Morrissey, 2011, p. 439). Transnational non-governmental organizations could similarly be inferred as having other priorities or answering to the state in which they are located.

Method of Analysis

In order to understand how the Mapuche have tried to improve their indigenous rights, to what extent have they succeeded and why, this research will trace Mapuche activist strategies in response to Chilean policies and determine their success in securing their indigenous rights. Mapuche strategies will be characterized as being either local or national in nature, or having an international scope. This research hypothesizes that Mapuche strategies that have an international scope, meaning that they encompass actors outside Chile, are more successful in asserting indigenous rights rather than locally or nationally focused strategies.

The following chapter will discuss Mapuche local and national strategies in response to three distinct political regimes in Chilean modern history: Salvador Allende's Marxist regime (1962-1973), the military dictatorship under Augusto Pinochet (1973-1990), and successive democratic governments under the five administrations belonging to the liberal Concertación coalition (1990-2010). Afterwards, Mapuche strategies that utilized international approaches will be discussed as they took place intermittently during the Concertación administrations and the current administration under Sebastián Piñera (2010-current) who belongs to a right-wing coalition. In order to determine the comparative success between local/national and international strategies employed by the Mapuche, the outcome of these strategies will be weighed against the aforementioned four goals of Mapuche activism:

- (1) the constitutional recognition of indigenous peoples;
- (2) the right to protect and develop their traditional identity;
- (3) the protection of Mapuche ancestral lands and the resources therein; and
- (4) the end of policies and practices that endorse state-sponsored violence and discrimination against the Mapuche.

The realization of these goals is appropriate as an indicator of success because they are held in accordance with international indigenous rights standards and are in principle, enshrined in Chilean national law though poorly implemented. Essentially, Mapuche activism for indigenous rights, especially in the context of these four goals, pushes Chile to adhere to its own laws and agreements. Where local and national strategies fail, external pressure from international platforms can encourage Chile to implement and uphold indigenous rights.

Chapter Three

Allende's Marxist Regime

The land reduction policies following the Pacification period left the Mapuche people disenfranchised minorities in their own land. This situation was reinforced through practices of non-indigenous landowners, after settling on lands confiscated from the Mapuche, often disregarded the official boundaries of *reducciones* (reservations) and incorporated prime reservation properties into that of their own. Therefore, when Salvador Allende's Popular Unity coalition came to power in 1970 and focused on land redistribution, the Mapuche saw an opportunity to reclaim lost lands. Allende's pro-Mapuche administration included influential individuals such as Chilean poet Pablo Neruda and sociologist Alejandro Lipschutz who championed Mapuche culture and their contributions to the greater Chilean identity and history. Lipschutz, for example, denounced the idea that the Mapuche were biologically inferior and that their uniqueness came from their culture and language rather than their skin color or racially based claims of physical and intellectual limitations (Crow, 2007, pp. 325-326).

Fighting Land Dispossession

Despite the emphasis on addressing Mapuche concerns for land through its agrarian reform program, many Mapuche communities, dissatisfied with the rate of expropriations and the low level of genuine political representation, participated in illegal farm occupations and seizures. Knowing that the government was reluctant to use the police against them, 694 illegal seizures took place within the first year of the program (Gall, 2002). Allende saw these "almost necessarily" Mapuche actions as no surprise given the discrimination they faced (Crow, 2007, p. 332). However, the rate of seizures, pushed forward with the assistance of radical and oftentimes militarized leftist groups, quickly outpaced the readiness of Mapuche families to properly use their new lands. Not wanting to lose Mapuche political support, Allende's government proceeded to expropriate many of the occupied farms and offered the new Mapuche owners a "generous dose of government help,

including technical advice, provision of tools and fertilizers, and tractors to replace oxen” (Carter, 2010, p. 65). Although the administration ultimately accelerated expropriations, at the same time it publicly condemned the land invasions because such actions could destabilize the political environment and invite attacks from the Right. Allende appealed to the Mapuche communities in
570 Temuco,

“And I want to tell out Mapuche companions that they should completely end the *tomas* [land seizures], because they are exploited politically by the enemies of the People’s Government and they hamper a rational and technical application of the agrarian reform. I want to tell you that the agrarian reform will be accelerated, that in this province of Cautín this accelerated process of land reform will begin by my own personal order. And I have told my friend, Minister of Agriculture Jacques Chonchol, that he should establish himself in the province of Cautín for a period of one or two month if necessary, beginning on January [second], to set in motion an emergency path” (as quoted in Gall, 2002).

In response to Mapuche frustrations, the Allende administration also passed Law 17.729, known as
580 the *Ley Indígena* (Indigenous law) of 1972 that officially recognized Chile’s cultural and ethnic diversity and that indigenusness was linked to self-identification and adherence to a distinct culture and identity rather than a poor socio-economic status. The Indigenous law also protected communal indigenous lands by prohibiting the further division of Mapuche lands without prior consent of the respective community (Aylwin, 2006, p. 6). Law 17.729 also established the Institute of Indigenous Development (IDI) and its main objective of promoting indigenous peoples’ social, educational and cultural development in tandem with their beliefs and respect for their customs.

Assessing Success & Implications

The Allende administration lasted only three years before Pinochet’s military coup took power in 1973, so long-term assessments of its policies towards Mapuche communities and the protect of
590 their rights are not available. Yet during this short period, the Mapuche’s usage of specific strategies led to concrete, even positive, changes in policies affecting them.

As Mapuche communities saw that they could address their land issues with the leftist Popular Unity coalition, they became an important source of political support for the Allende administration. Taking advantage of their strategic position, the Mapuche sped up land restitution policies with land occupations and seizures and was able to participate in the drafting of the 1972 Indigenous law. As such, improvements experienced by indigenous communities had origins with Mapuche responses to existing policies. For example, via the 1972 Indigenous law, the Mapuche were able to obtain legal recognition of their indigenous character and identity. The Institute of Indigenous

Development, created by this law, brought educational reform to improve accessibility by Mapuche students, and provided resources to develop and disseminate traditional Mapuche culture, history, and language (Crow, 2007). Given the administration's relationship with indigenous peoples, constitutional recognition would have only been a matter of time if not for the Allende administration's lack thereof. The Mapuche were also able to secure ownership and protection of their ancestral land via the sped-up implementation of land reform policies and the Indigenous law. The Agrarian Reform process ultimately resulted in the expropriation of 163 privately owned plots, totaling 152,000 hectares in favor of the Mapuche in two provinces (Aylwin, 2006, p. 6). In regards to addressing discrimination against the Mapuche, Allende's presentation of the drafted Indigenous law to the Chilean congress included a speech stressing that "the problems faced by Chile's indigenous community were quite distinct to those faced by the rest of the peasantry. For this reason [...] Chile needed separate laws and institutions to address their specific needs" (Crow, 2007, p. 332).

In this political environment where the Chilean government was receptive to Mapuche concerns, the usage of local and national strategies sufficed in improving policies or creating new ones to benefit Chilean Mapuche. The success achieved through these strategies (although limited in its historical scope) set precedents for later Mapuche activism, especially during the Chilean re-democratization.

Pinochet's Military Dictatorship

A military coup in 1973 headed by former Commander-in-Chief Augusto Pinochet overthrew Allende's government and installed a military dictatorship known for its violent suppression of its political opponents that included "executions, disappearances, torture, and incarceration" (Waldman, 2012, p. 58). The newly imposed economic neo-liberal model drastically affected indigenous communities by pushing economic development at the expense of their indigenous rights to their ancestral lands and identities. The Mapuche saw a full reversal of their land gains, as well as the dismantling of educational reforms and assistance programs in their favor. Only 16 percent of previously recovered lands remained in Mapuche hands (Carter, 2010, p. 67) and additional following decree laws 2568 and 2760 in 1978 and 1979, Mapuche ownership of indigenous lands was rescinded. From the point of view of the Mapuche,

"With the dictatorship begins the very negation of the existence of the Mapuche people, first in the sense that the constitution speaks of Chile as a country where we are all Chilean. And furthermore the [indigenous law 2568] also states that once the land has been measured and carved up, it is no longer indigenous, and neither are its occupants. We are

completely left out. Our existence as a people is denied straight away” (as quoted in Carter, 2010, p. 68).

These decree laws allowed division of land plots (reductions) which were collectively owned by Mapuche communities in favor of entitling plots to private enterprises, drastically reducing Mapuche access to land, now averaging only one hectare of land per person (Aylwin, 2006, p. 9). As these plots were no longer considered indigenous lands by nature of their occupants, they were now subject to taxation. At the same time, Mapuche lost support institutions and access to social and health services as resources were channeled towards private industries pursuing forestry, mining, fishing, and hydroelectric projects as a means to buildup Chile as an international economic player.

640 For example, forestry businesses expanded into lands traditionally owned by Mapuche communities grew thanks to continued appropriations by the military government, often under the pretext that the lands were not fit for agricultural use (International Federation for Human Rights, 2003, p. 11).

The Mapuche were also targets of repression as the Pinochet regime considered them political enemies and rekindled racist sentiments towards them. Mapuche communities experienced coordinated police attacks and many Mapuche individuals and leaders were targeted for arbitrary detention where they were often tortured or executed (Urta, 1999, p. 86).

650 “The Mapuche and peasants are driven by extremist groups... A result of this direction is their confrontational manner to outsiders. At first glance they do not appear to own any weapons other than clubs. There is no question that they use firearms, but they are concealed. They threaten and intimidate strangers, they shout in their language and move as to surround intruders. They are suspicious and do not abandon their stolen farms. They fear, in practice irrationally, the prospect of their leaders getting arrested” (as quoted in Urta, 1999, pp. 90-91).¹⁰

Surviving By Strengthening Identity

Given the brutality of the military government, open political discussion or opposition was met with detention and likely with state-sanctioned violence. As such, Mapuche activists were limited in their capacity to employ any strategy aimed at protecting indigenous rights. Instead, local and national strategies were refocused within their communities as a means of survival. However, a discussion on Pinochet’s policies and how they affected the Mapuche remains relevant because many of these

¹⁰ Original Spanish: *Los Mapuche y también los campesinos chilenos, están instruidos por dirigentes [extremistas]... Fruto de esta instrucción es la aparente cohesión del grupo ocupante para enfrentar a los visitantes. En primera instancia parecen no poseer otras armas que bastones (...) No es un misterio que disponen de armas de fuego, pero las mantienen ocultas. Se presentan amenazadores, tratan de amedrentar a los extraños, gritan en su lengua y algunos de sus movimientos llevan la intención de rodear a los intrusos. Son desconfiados y no abandonan los fundos tomados; temen –el la practica sin razón- que algunos de sus dirigentes sean encarcelados.*

660 policies, especially the emphasis on private sector development, have continued during Chile's re-democratization. Their internal response to the Pinochet era ultimately shaped their activism strategies during into the new democratic period.

During the dictatorship, rather than pressuring the government to deliver changes through protests and petitions (which were no longer viable options), communities worked to resist the state through a strengthened awareness of their Mapuche identity (Carter, 2010, p. 67). This was important because as Pinochet famously declared in 1979 when unveiling the law that would deny collective land rights to indigenous communities, *Ya no existen mapuches, porque todos somos Chilenos* (There are no Mapuche because we are all Chilean), the Mapuche needed to ensure the survival of their distinct indigenous culture. In response, Mapuche communities looked to traditional activities as a
670 mechanism to cope emotionally and encourage social support systems:

“The strength of the movement really came from the fact that the communities used their own cultural practices to rebuild solidarity and pride. [...] It helped us get in touch with our roots, and we said it loud and clear: our culture gives us pride and self-esteem... If the dictatorship had any positive effect, it was to reawaken our culture. I think in times of great repression people look for ways to connect to each other and unify. When the repression was greatest, the Mapuche movement was strongest: with militant revivals of our language, our traditions, our traditional organizations. People respected the *lonko* [traditional chief or leader of a community] and the *machi* [traditional medicine woman]; they looked to the traditional leaders of the communities” (as quoted in Carter, 2010, pp. 67-68).

680 [Preparing for Democracy](#)

As political opposition to Pinochet grew in Chile towards the end of the dictatorship, the Mapuche sought allies to address their concerns. In the 1980s, Mapuche activists tentatively took steps to advance their issues and often partnered with other civil society organizations while maintaining a ‘safe distance’ from indigenous issues which would have attracted negative attention from the regime. An early Mapuche organization, *Ad Mapu* for example, started as a legal organization under the umbrella of the Catholic Church in Chile. Other partners provided assistance to Mapuche communities by offering workshops and helped drive local initiatives in agriculture, fishing, and rural development (Rodriguez & Carruthers, 2008, p. 4).

In the lead-up to a plebiscite in 1988, the Mapuche forged a relationship with *Concertación de*
690 *Partidos por la Democracia*, a coalition of left and moderate parties, and their candidate Patricio Aylwin who would eventually become president following Pinochet. A signed agreement known as *Nueva Imperial* between Aylwin and indigenous communities promised political support for

Contertación in exchange for consideration of indigenous recognition in the constitution and the creation of a special commission for indigenous issues (Contesse, 2006, p. 142)

Chapter Four

Addressing Indigenous Concerns during Re-democratization

Despite the shift to democracy in 1990, the economic model introduced by Pinochet, which opened Chile's economy to international markets, encouraged foreign investment and exports, and prioritized natural resource exploitation, continued with the proliferation of large development projects that encroached on indigenous lands and rights (Aylwin, 2006).

“[Chile's redemocratization era] is characterized by progressive disillusionment with government promises, continuation of land usurpation, and the criminalization of protest. There have been speeches about inclusion of ethnic minorities, but no constitutional commitment to recognize the Mapuche as a people, let alone talk of any kind of multinational diversity within the political community” (as quoted in Carter, 2010, p. 71).

Indigenous Law 19.253 & CONADI

In accordance with the earlier *Nueva Imperial* agreements, Law 19.253, also known as the 1993 Indigenous law, was passed and offered recognition of the Mapuche and seven other indigenous peoples as ‘ethnic groups and communities’ and called on the Chilean government to respect, protect, and promote the development of indigenous cultures, lands, and communities. Specifically, Law 19.253 provided (1) recognition of the cultural value of land to indigenous communities and thus the need to protect it, (2) oversight of indigenous land rights by a body known as *Corporacion Nacional de Desarrollo Indigena* (National Corporation for Indigenous Development) or CONADI, especially against ‘national interests’, and (3) a fund to assist the expansion of land and water for indigenous communities.¹¹ CONADI's mission to work with the state to benefit the development of indigenous individuals and communities, including promoting indigenous participation in national mechanisms, was originally welcomed as indigenous leaders were invited to co-manage the institution.

Unfortunately CONADI failed to live up to expectations as it eventually was branded a weak institution susceptible to political pressure prioritizing neo-liberal economic policies over indigenous rights. When *Empresa Nacional de Energia* (ENDESA) opted to build a hydroelectric dam in the Alto Bío Bío highlands in the early 1990s, the Pehuenche people, a Mapuche community, faced relocation

¹¹ Please see A. in the Appendices section for a detailed obligations contained within Law 19.253.

as the proposed Ralco dam would flood over three thousand hectares of forest, including their traditional homes and lands (Newbold, 2004, p. 179). In order to move forward with the project, CONADI had to approve ENDESA's obtainment of land titles from the Pehuenche, which according to the 1993 indigenous law, could not be forced to sell their land or be removed from it. When CONADI would not authorize the land swaps, the new Concertación President Frei (inaugurated in 1994) intervened and removed Ralco opponents from their CONADI offices, including two subsequent directors. Frei's installation of the third director, the first non-indigenous Chilean, ultimately secured authorization for relocations, the dam project, and the loss of trust from the indigenous community in Chile (Carruthers & Rodriguez, 2009, p. 748).

CONADI was now refocused to "avoid political entanglement altogether [...] and serve instead to facilitate a larger economic agenda of promoting market and entrepreneurial opportunities in indigenous communities" (Rodriguez & Carruthers, 2008, p. 9). However, its redirected aim to purchase land for indigenous communities failed to address the context of Mapuche needs and demands. For example, in 2004, 70 percent of CONADI's budget went to land purchases while only 20.75 percent of Mapuches lived in rural locations according to the 1992 national census (Newbold, 2004, p. 181). This model grew to be financially unsustainable as land prices rose. In 1994, US \$4.2 million bought 7,036 hectares while in 2004; US \$16.4 million bought a slightly higher amount of land, 7,629 hectares. Additionally, CONADI's procured lands were often of poor quality and failed to consider whether recipient families had financial or technical capacity to take advantage of the land (Aylwin, 2006, p. 16). According to one CONADI official,

"The Ministry of Finance pressed us to tell them about the economic return of such and such land devolution, when what we evaluated were the sociological and anthropological links between the community and a plot of land, the moral nature of the reparation.... In principle, it was the same to us if [the indigenous communities] got the land and did not do anything with it" (as quoted in Rodriguez & Carruthers, 2008, p. 11).

ILO 169 & Constitutional Recognition

The *Nueva Imperial* agreement also stipulated that the recognition of indigenous peoples must be a government priority. This ambition was highlighted by the new International Labor Organization Convention 169 on Rights of Indigenous and Tribal Peoples (ILO 169) in 1989. Aylwin's Law 19.253 originally included a proposal for a constitutional amendment formally recognizing indigenous peoples in Chile, and the ratification of ILO 169, but this failed pass through Chilean congress at the time (Contesse, 2006, p. 143).

The Chilean government hesitates to recognize indigenous peoples as distinct ‘peoples’ as this challenges the notion of Chile as a unitary state and society. Furthermore, Chilean congress envisioned legal repercussions to granting collective rights on the basis of an indigenous character as was required by ratification of ILO 169:

760 “...We must reject the concept of a ‘people’ as having implications regarding rights under international law attached to the aforementioned term, as set forth in Article 1, Section 3, in the treaty under consideration...

“[The above considerations regarding the treaty] and especially the terms in question used by Convention 169, is sufficient for this panel to reach the deep conviction that the term ‘indigenous peoples’ thereof, should be considered as a group of people or groups of people from a country with common cultural characteristics, which do not endow them with public powers or the entitlement to participate or be consulted on matters affecting them, strictly adhering to the Supreme Law of the State as part of the population. They do not constitute an autonomous collective amongst individuals and the State” (Tribunal Constitucional de Chile, 2000).¹²

770 The Chilean government also considered that ILO 169 ratification would repel private businesses from doing business in Chile as they would be bound to protect indigenous rights regarding land (Ibarra, 2011, p. 110). Ultimately, as the Chilean government believed that its own democratic model was sufficient to protect indigenous communities (such as through Law 19.253), there was no need to grant indigenous peoples distinct rights. Rather than explicitly state that indigenous communities can carry on their traditions and culture, the constitutional affirmation that ‘Chile is a democratic republic’ is enough (Ibarra, 2011, p. 99). However, the problem with this assumption is that the Mapuche people in Chile are effectively unable to “intervene in the process of social transformation” as legal and political dynamics allow the indigenous concerns to be “systematically disregarded” (Contesse, 2006, pp. 136, 149).

780 President Lagos, the third president from Concertación inaugurated in 2000, launched the *Comisión Verdad Histórica y Nuevo Trato* (‘Historical Truth and New Deal Commission’) in 2001 to review the relationship between indigenous peoples and the state and to provide recommendations regarding

¹² Original Spanish: (...) *debemos desestimar que el concepto ‘pueblo’, tenga implicación alguna en lo que atañe a los derechos que pueda conferirse a dicho término en el derecho internacional, ya que lo establece en esas mismas palabras el artículo 1º, N° 3, del tratado en estudio. And (...) Que todo lo expuesto y, especialmente los propios términos de la Convención N° 169 cuestionada, es suficiente para que este Tribunal llegue a la íntima convicción que la expresión la expresión “pueblos indígenas”, debe ser considerada en el ámbito de dicho tratado, como un conjunto de personas o grupos de personas de un país que poseen en común características culturales propias, que no se encuentran dotadas de potestades públicas y que tienen y tendrán derecho a participar y a ser consultadas, en materias que les conciernan, con estricta sujeción a la Ley Suprema del respectivo Estado de cuya población forman parte. Ellos no constituyen un ente colectivo autónomo entre los individuos y el Estado;*

the recognition of indigenous people as distinct (Aylwin, 2006, p. 17). When the Commission delivered its findings in 2003 acknowledging the historic injustices experienced by indigenous peoples and urged congress and the president to pass legislation recognizing the constitutional rights of indigenous peoples, no government action was taken on these recommendations (Rodriguez & Carruthers, 2008, p. 14). It was not until fourth Concertación President Bachelet (2006-2010) that Chile ratified ILO 169 in 2008.¹³ However, as the Chilean government remained reluctant to grant constitutional recognition to indigenous peoples, congress removed this obligation after
 790 ratifying the convention by ruling that ILO 169 was non-binding (Carter, 2010, p. 73), especially since they believed ILO 169's provisions were already protected by existing legislation (Perricone, 2010, p. 101).

Social Protest as Terrorism

Despite legal rights enshrined in the 1993 Indigenous law and CONADI designed to enforce them, the Ralco incident demonstrated the continued vulnerability of indigenous rights despite the new era of democracy. The Mapuche found they were unable to exert pressure on the government or on businesses, and without assistance as CONADI lacked the means to engage Mapuche communities in order to help them. CONADI and the Chilean government quickly lost credibility regarding their sincerity to address indigenous issues.

800 "CONADI lacks the institutional capacity to defend the interests of the Pehuenche communities. Its single lawyer does not have a staff and receives a gasoline allowance of only 150 dollars for the entire fiscal year; his regional office is 300 km from Pehuenche territory. The Pehuenche do not have travel funds to meet with him. CONADI has been ineffective in dealing with small conflicts and is already overwhelmed by the negotiations with ENDESA over the issue of land exchange in Ralco-Lepoy, which is only one part of the overall resettlement planning problem" (as quoted in Skaevestad, 2008, p. 7).

When CONADI, unsurprisingly to the Mapuche communities, failed again in 1997 to resolve land conflicts or recover ancestral land from Forestal Arauco, one of the largest forestry companies in Chile, many frustrated Mapuche families reactivated protest and land-seizure strategies from the
 810 1970s. Grassroots Mapuche organizations often responded with peaceful mass protests, nonviolent land occupations, and continued legal assertions to their rights (Haughney, 2012, p. 4). While some Mapuche activists use civil lawsuits, political roundtables, and negotiations to raise their concerns, the majority of Mapuche activists participate in social protests in the forms of marches and demonstrations to road blockades and acts of arson on plantations or machinery sabotage (Terwindt,

¹³ Under Bachelet, Chile also ratified the United Nations Declaration on the Rights of Indigenous Peoples in 2007. This declaration is not legally binding.

2009, p. 239). However, when a Mapuche group captured and set fire to three logging trucks in late 1997, the Frei administration responded by arresting Mapuche activists and charging them with the same Anti-Terrorist & Internal Security Law that Pinochet created and used to silence his political opponents (Rodriguez & Carruthers, 2008, p. 10).

820 This 1984 law was originally created in response to “kidnappings, assassinations, and attacks on police stations using assault rifle and rocket-propelled grenades” by doubling normal sentences, making pretrial release more difficult, and allowing the prosecution to withhold evidence from the defense for up to six month and to use anonymous witnesses (Human Rights Watch, 2004, p. 3). Yet even though Mapuche social protest does occasionally result in arson or damage to private property, “Mapuche activists have avoided attacking landowners or logging company workers, and when they use force, resort to slingshots and traditional wooden *palin* sticks to defend themselves when they are occupying land” (Haughney, 2011, p. 11). While a small number of activists have engaged in more extreme forms of protests (estimated to be less than 3 percent), most Mapuche share their grievances (Richards, 2010, p. 68). Therefore, as Mapuche crimes in this context do not qualify as terrorism, especially according to international standards such as the Inter-American Convention
830 against terrorism (Richards, 2010, p. 74), the Chilean government’s application of the anti-terrorism law is seen as systematic discrimination. One Mapuche activist noted,

“The problem that we face is that we have no access to a fair justice system. Mapuche who are arrested are immediately and inevitably condemned. We have no right to the presumption of innocence before proven guilty. There have been instances of violence attributed to the Mapuche community without having done any investigations. This has been the norm for Concertación officials” (Iñiguez, 2008).¹⁴

The Mapuche point to all levels of legal discrimination, such as in the 2002 case of two *lonkos* and a non-Mapuche activist charged with making terrorist threats and committing arson on property belonging to a former agricultural minister. After their acquittal, the Chilean Supreme Court
840 declared a mistrial in response to a petition from the plaintiffs, which included the state (Human Rights Watch, 2004, p. 38). In 2004, when a lower-court judge ruled that the terrorist charges were inapplicable to five Mapuche activists accused of terrorist arson in association with fires set on a

¹⁴ Excerpt from an interview with Francisco Caquilpan Lincuate, a Mapuche activist. Original Spanish: *El problema que enfrentamos es que no tenemos acceso a un juicio justo. Mapuche que es encarcelado, mapuche que es condenado. No tenemos derecho a la presunción de inocencia. Se han dado casos donde se ha cometido un atentado y sin haber hecho investigación, prácticamente en menos de 24 horas se ha acusado a nuestra gente mapuche de haberlo cometido. Esto es un practica normal de las autoridades del gobierno de la Concertación.*

pine plantation owned by a logging company, she was removed from the case by the Supreme Court (Richards, 2010, p. 73).

The Chilean government and society also perpetuate the notion of Mapuche as terrorists. The Chilean media regularly presents situations with the Mapuche in terms of ‘rural terrorism’, ‘racial conflict’, and ‘spiral of violence’ (Skaevestad, 2008, pp. 4-5). Some sensational news headlines promoted by conservative groups include: “‘Alert in Arauco, Fearing Wave of Mapuche Violence’, ‘The Mapuche Intifada: The Indigenous Uprising Worsens’, ‘Mapuches Threaten’, and ‘Indigenous
850 Communities on the War Path’” (Richards, 2010, p. 75). This terrorist characterization helps to grant the state legitimacy in using violent force against the Mapuche. Many Mapuche rural communities throughout Chile experience police violence and occupation by national military units. Mapuche families connected to individuals arrested or under suspicion of crime report that police repeatedly raid their homes and make threats to their physical wellbeing. Such police raids, they report, are characterized by excessive and disproportionate violence against family members, including women, children, and elderly Mapuche. Their complaints later receive little consideration (Anaya, 2009, p. 42).

All Chilean governments since 2002 have invoked the anti-terrorism law or have authorized the use of force and harsher laws against Mapuche activists.¹⁵ Current President Piñera, who belongs to a
860 right-wing coalition, is an outspoken supporter of the anti-terrorism law as has used it several times since his inauguration in 2010. It was most recently used in December 2011 against a Mapuche group implicated in a wildfire that killed seven firefighters even before an official cause of the fire had been determined (Carlyle, 2012). The harsh state response to Mapuche claims for their rights has caused a deep distrust toward the judiciary that the Mapuche perceive as discriminatory and racist. Most attempts to go through legal avenues encompass multiple barriers to participation, such as language, financial, and Chilean legal culture only to end with higher court reversals of decisions favoring Mapuche defendants, especially in terrorism cases (Contesse, 2006, p. 149).

Limitations of Local and National Strategies

Though the *Nueva Imperial* agreement showed promise for Mapuche political influence, once
870 Concertación was in power, it was highly unlikely that congress would support the constitutional

¹⁵ During the Lagos administration alone, approximately 300 Mapuche from one region have been criminally tried for participation in “violent actions in the context of land conflicts involving their communities” where 10 percent were prosecuted under the anti-terrorism law (Aylwin, 2006, p. 21). Although during her campaign, Bachelet promised to no longer invoke the anti-terrorism law, her administration used it several times against Mapuche activists (Richards, 2010, p. 74).

recognition of indigenous peoples and ratify ILO 169 (Contesse, 2006, p. 143). The political weight of the Mapuche vote again elicited campaign promises from Bachelet, who was herself a victim of repression under Pinochet (Haughney, 2012, p. 5). Though Bachelet's administration was responsible for the ratification of ILO 169, it also recast the convention as non-binding in order to continue development projects that infringed on Mapuche collective rights. Thus, the Mapuche strategy to participate in Chilean politics as a means to obtain recognition as a people has been unsuccessful, largely in part due to the lack of political will among Chileans.

880 Many solutions offered by modern (in this context meaning post-Pinochet) administrations have been ineffective because they are often in direct conflict with Chile's neoliberal model. While on the surface acknowledging indigenous cultures and heritages in Chile and the need to assist indigenous communities in rising out of poverty, modern Chilean governments could not envision efforts outside simply incorporating them into the neoliberalized economy (Haughney, 2012, p. 6). This contradiction was evident during the build-up to the construction of the Ralco dam. CONADI, originally created to encourage the economic and cultural development of indigenous communities, ultimately played a part in supporting the expansion of global economy into indigenous lands without indigenous participation (Aylwin, 2006, p. 22). Therefore, national mechanisms in order to secure indigenous peoples' right to free, informed, and prior consent regarding policies affecting their ancestral land and their identities have failed.

890 Attempts to protect indigenous rights through legal recourse have also been largely unsuccessful. In some courts, indigenous laws are overruled by laws on electricity or water. The conservative nature of the Chilean legal system also results in judges rarely applying international human rights standards to their decisions (Skaevestad, 2008, p. 19). The Mapuche have also seen political agendas at play when high courts take action to ensure the application and prosecution of Mapuche 'political prisoners' under the anti-terrorist law. Therefore, many Mapuche communities see social protest as the only approach to assert their indigenous rights.

"The only way for communities to be heard is through demonstrations. There is no other way" (as quoted in Gallantine, 2008, p. 22).¹⁶

900 However, social protest as a tool is no longer effective as it was during the Allende administration. In addition to the lack of political will of modern Chilean governments to address indigenous issues, the state has successfully reframed Mapuche social protest as extremism and terrorism. As such,

¹⁶ Excerpt from an interview with Iván Carilao, Mapuche leader from the Lafkenche (coastal Chile) community. Original Spanish: *La única forma de que se han logrado de que alguna manera las comunidades sean escuchados es a través de [las] movilizaciones, no existe otra en la actualidad.*

the state is able to employ force and other policies such as the anti-terrorism law against the Mapuche without ‘moral recoil’ from the Chilean public (Richards, 2010, p. 77). Recent years have seen Chilean police responses grow increasingly harsher, including “heavily armed community presences, helicopter overflights, house searches and even lethal force” (Minority Rights Group International, 2011, p. 105).

Local & National Strategies with International Ripples

910 However, one local and national strategy within the realm of social protest has had promising effects for advancing the Mapuche cause: hunger strikes. In 2003, activist Patricia Troncoso Robles (an activist for the Mapuche though not herself ethnically Mapuche) initiated a hunger strike while in preventive detention awaiting charges. Her hunger strike, denouncing the application of the anti-terrorism law and Chile’s policies that criminalized Mapuche social protest, lasted 55 days and resulted in her release (Haughney, 2011). After being arrested a second time and found guilty of ‘terrorist arson’, she was sentenced to ten years imprisonment. Patricia Troncoso, along with three other imprisoned activists, began another hunger strike demanding the release of Mapuche political prisoners, the revision of their case, and the repeal of the anti-terrorism law. This and other hunger strikes by Mapuche ‘political prisoners’ caught the attention of international human rights organizations, the United Nations, and the European Parliament which resulted in wide condemnation of Chile and Bachelet. The following is a sample of the international outreach towards Mapuche hunger strikes:

920 (22 July, 2010) The Association of American Jurists, nongovernmental organization in consultative status with the UN Economic and Social Council: “The declaration of the Mapuche prisoners on hunger strike is based on the legitimate demands for objective and impartial justice, for the right on a due process, and especially for the no application of the Antiterrorist Law.”

(29 July, 2010) Joe Higgins, member of the European Parliament, “I’m conscious about the repression the Mapuche people suffer in Chile, I visited Chile in 2008 and expressed my support to Elena Varela, persecuted for making a documentary about the Mapuche people.”

930 (17 August, 2010) Adolfo Esquivel, Recipient of Nobel Peace Prize: “I’m surprised that today, after so many years of democracy in your country, a law created during military dictatorship, is still in use. The Anti-terrorism Law condemns Mapuche as if they were subversives, while they are only defending their rights.”

(23 August, 2010) Esteban Beltrán, Chairman of Amnesty International Spain: “I don’t know any country, except from Chile, where after 20 years of democracy, still exist laws created during dictatorship which are used against the Mapuche. Even if these laws would be used

against other people, it would be unacceptable as they do not agree with international standards.”

940 (24 September, 2010) Press Release of Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, Mr. James Anaya: “I have expressed my deepest concern over this situation and the need to move towards resolving the various issues related to the demands of the hunger strike. [...] I urge the Government to start a dialogue in good faith with the representatives of the Mapuche prisoners as a key step in the search for constructive solutions aimed at addressing the concerns and demands that originated the hunger strike.” (Observatorio Ciudadano, 2010)

Hunger strikes by Mapuche prisoners and activists proved to be an effective tactic to delegitimize the government’s harsh responses to Mapuche protests because of hunger strikers’ willingness to put themselves at risk, symbolizing “the indomitable resistance of the Mapuche movement and to challenge the justice of the government’s policy [and] no longer indisputably frame of the actions as ‘terrorist’” (Haughney, 2011: 11). Coupled with international pressure, demands made by Mapuche hunger strikers in 2010 resulted in changes to the anti-terrorism law.¹⁷ While these changes still do not bring Chilean law and practices to international standards on judicial rights, it is an important first step towards recognizing indigenous rights. The hunger strikes have also brought positive attention to the Mapuche movement through a narrative different that the state’s interpretation of the Mapuche as terrorists and ultimately rallied the international community around the Mapuche and their struggle.

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Chapter Five

Reaching Out to International Activists

The international attention garnered from the Mapuche hunger strikes did not represent the only time the Mapuche cause was strengthened by allies in the international community. One of the more notable episodes regards the struggle of the Lafkenche (a Mapuche coastal community) against a Chilean pulp manufacturer *Celulosa Arauco y Constitucion* (CELCO). In the 1990s, CELCO began construction of a plant in southern Chile which would have dumped effluents into the ocean via a pipeline near a small fishing village, Mehuin. Non-indigenous fishermen and the Lafkenche community joined to protest against the plant believing it would reduce their fish stock and successfully prevented the pipeline’s construction near Mehuin. Unfortunately, CELCO’s new location for the pipeline not only recreated the same environmental problems, chemicals now being

¹⁷ Reform to the anti-terrorism law removed a section of Article 1 which presumes the defendant has ‘terroristic’ intent which trumped the presumption of innocence (Observatorio Ciudadano, 2010).

fed into a nature sanctuary began to severely damage one of the largest populations of rare black-necked swans in South America in 2005 (Kiel, 2011, p. 68). At this point, local activists reached out to international actors for assistance. Their search for influential voices led them to members of European Parliament, especially because of a free trade agreement between Chile and the EU which included provisions for environmental protection (Kiel, 2011, p. 68). Riding on the disappearance of swans that were “so emblematic of innocent victims” (Haughney, 2012: 11), many environmental groups were also invited which helped spark demonstrations, new impact studies, and a temporary court-ordered shut down. The international pressure, especially from the European Commission, ultimately drove CELCO to change its plans regarding the waste pipeline, especially after a newly founded national environmental commission fined CELCO for illegally dumping waste (Kiel, 2011, p. 89).

The success in hindering CELCO’s construction of the waste pipeline can be accredited to the presence of international actors who were invited to participate via frameworks that were easily accessible to a broader audience (environmental framework in this case). These international actors additionally offered their organizational capacity to increase mobilization of local actors, such as the Mapuche. Without these influential transnational organizations, experienced in dealing with powerful actors, such as state governments, local inexperienced actors can often lose cohesion. When the international campaign against CELCO’s pipeline near the nature reserve ended, CELCO was able to take advantage of the local Mapuche and fishermen communities by splitting them through offering individual financial settlements (Haughney, 2011, p. 11).

Accountability through International Forums

As attention to indigenous rights grows, Chile is put under increased scrutiny to conform to international indigenous rights standards. While the ratification of ILO 169 may have been interpreted as non-binding with regards the Chilean constitution, its requirement to submit a report detailing their implementation of ILO 169 provisions remained clear (the first report is due one year after ratification and then repeats every five years unless additional information is requested of the state). In 2010, the first state report detailed the changes to Chilean law made to give effect to each of the Convention’s provisions. However, noting the Chilean government’s attitude towards the prevalence of national law over international human rights treaties,

“The main deficit of the official report would be avoiding the Convention’s application in virtue of the pretense that the [1993] Indigenous Law already complies with it. Such position is absurd, especially considering the 17-year long path that was necessary in order

to ratify the Convention, and the controls of constitutionality requested [of] it [on] two occasions” (Perricone, 2011: 164).

1000 The Chilean government is therefore in the difficult position of justifying its policies not only to the ILO Committee of Experts on the Application of Conventions and Recommendations (henceforth, ILO Committee) reviewing its implementation, but also to the normative community that subscribes to the values enshrined by the ILO 169. As the ILO Committee reviewed the state’s report, it noted several contradictions between the intent of indigenous laws and their capacity. For example, while Chilean national law upholds the indigenous communities’ right to free, informed and prior consent as required by ILO 169, the committee noted that other legal decrees “appear to leave the decision to the administrative bodies to determine whether it is appropriate to start a consultation or participation process,” and “appears to limit consultations to the initial formulation of legislation” (Committee of Experts on the Application of Conventions and Recommendations, 2010, pp. 2-3).

1010 [Disparity between Legal Obligations and Practices towards the Mapuche](#)

A similar process takes place within United Nations human rights mechanisms that Chile has subscribed itself to via the ratification of several international human rights conventions. The following are several conventions which Chile has ratified:

Name	Signature	Accession
International Convention on the Elimination of All Forms of Racial Discrimination	1966	1971
International Covenant on Economic, Social and Cultural Rights	1969	1972
International Covenant on Civil and Political Rights	1969	1972
International Convention on the Rights of the Chile	1990	1990
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1987	1988

Table One

While none of these treaties are specific to indigenous rights, they protect thematic rights which are at the core of indigenous rights. For example, Article 1.4 in the International Convention on the Elimination of All Forms of Racial Discrimination which calls for special consideration for a racial or ethnic group in order for them to attain an equal enjoyment of all human rights is often used to call

1020 on the Chilean government to legally recognize indigenous peoples.¹⁸ The International Covenant on Economic, Social and Cultural Rights' Article 15.2 on the state party's obligation to ensure all the realization and development of a cultural life for all peoples is often used in reference to Chile's obligation protect the Mapuche's accessibility to their ancestral lands, especially for cultural purposes, and the dissemination of their language, customs, etc.¹⁹ For more specific complaints, such as practices in the anti-terrorism law which has been applied against Mapuche defendants, Article 14.3.e of the International Covenant on Civil and Political Rights can be used to demonstrate Chile's requirement to protect the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" (United Nations General Assembly, 1966).

1030 In recent years, Mapuche activists have been partnering with transnational human rights organizations in participating in the review processes of the human rights treaty bodies subscribed to by the Chilean state. As a result, representatives from Mapuche communities are able to bring their concerns directly to respective committees for each treaty body as well as to the attention of Chilean officials who attend review sessions as part of an official delegation. Where Mapuche activists may be politically blocked from addressing government officials; ministers, directors, secretaries, and other politicians are present and often in the same room with Mapuche activists during review sessions. Organizations such as Amnesty International and the International Federation for Human Rights (FIDH) have participated with local and national Mapuche activist groups not only to submit detailed and authoritative reports, but also to prepare oral interventions which are followed by direct discussions and lobbying with treaty body committee members. The
1040 final outcome of this work are the concluding observations which human rights treaty body

¹⁸ Article 1.4 says, "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination [...]" (United Nations General Assembly, 1965). The CERD Committee's official recommendation regarding its application to indigenous peoples recognizes that "the recognition of some and the refusal to recognize others, may give rise to differing treatment for various groups within a country's population" (United Nations Committee on the Elimination of All Forms of Racial Discrimination, 1997)

¹⁹ Article 15.2 says, "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture" (United Nations General Assembly, 1966). General comments from the CESCR Committee on this article explicitly note that this is a collective right, especially for indigenous peoples, and its implementation should agree with principles in the Universal Declaration on the Rights of Indigenous Peoples and ILO Convention 169 (Committee on Economic, Social and Cultural Rights, 2009).

committees issue at the end of each review. While not legally-binding, concluding observations have often demonstrated the validity of Mapuche grievances in light of legally-binding treaties.²⁰

However, because United Nations treaty bodies have no means of enforcement and can do little more than condemn the Chilean government, many fairly criticize that they are an unsuccessful vehicle for change. Yet highlighting the Chilean government's accountability to Mapuche's indigenous rights at the international level remains crucial, other they "leave with clean hands".²¹ The benefit of these review mechanisms, despite their lack of teeth, lies in publicly revealing a state as an "example of bad practice in the international arena" (Perricone, 2010, p. 170).

Raising International Awareness of Human Rights Violations

1050 The Universal Periodic Review (UPR) is another mechanism which can highlight Chile's accountability to international human rights standards. Rather than working with legally-binding treaties, Chile's international peers participate in a process in order to highlight needed areas of improvement for Chile within a broader human rights mandate. As all other United Nations members are able to 'cross-examine' Chile and provide recommendations, this provides an opportunity for Mapuche activists and partnered transnational human rights organizations to lobby country permanent missions who send representatives to the UPR so that questions directed to the Chilean delegation will be on indigenous rights issues. For example, during Chile's first UPR in 2009, the United Kingdom submitted the following questions:

- 1060
- What steps is Chile taking to address the discrimination faced by indigenous children in accessing healthcare and education? Has the bilingual intercultural program for indigenous people been expanded?
 - In line with the 2004 CESCR recommendation what is Chile doing to improve the standards of living amongst the indigenous community and people living in rural areas? What steps have Chile taken to integrate these people into society?
 - In line with the ILO Committee of Experts findings in 2007 what is Chile doing to improve access to education for indigenous people, refugees and children living on poverty and rural areas? (Office of the High Commissioner for Human Rights, 2009)

1070 Ultimately, twenty-five different states provided thirty distinct recommendations to Chile regarding indigenous peoples. Though UPR has no enforcement mechanisms, Chile as the State-Under-Review, pledged to implement all approved recommendations regarding indigenous rights. However, a

²⁰ For a complete list of electronic submissions and concluding observations addressing indigenous concerns, please see 'B. Mapuche at United Nations Human Rights Treaty Mechanisms' in the Appendices section.

²¹ Excerpt from meeting 'La coordinacion en Europa en apoyo al pueblo Mapuche en Chile/Argentina' on 25 February 2012, Amsterdam, the Netherlands. Original Spanish: *Si no hacemos nada, Chile se limpia las manos y se va.*

follow-up mid-term implementation assessment report found that Chile had not fully implemented any of the approved recommendations on indigenous peoples (twenty-five recommendations were found to be partially implemented, five recommendations were not to be not implemented at all) (UPR-Info.org, 2012). “The disparity between the Chilean government’s positive responses regarding implementation and NGOs’ concerns that the human rights situation remains the same and in some situations has worsened, highlights the importance of NGO participation within international mechanisms” (Unrepresented Nations and Peoples Organization, 2012). Despite the lack of implementation during Chile’s first UPR cycle, Mapuche participation within this review has been successful in “generating awareness within the Chilean state on the need to comply with international human rights” (UPR-Info.org, 2012). Since the first review for example, the Chilean government announced the creation of a Human Rights Under-Secretariat within the Ministry of Justice.

“We believe the process is helpful’, says Aylwin. ‘It identifies the shortcoming that Chile has on human rights. The information emerging from Chile’s UPR can be remarked when making specific claims concerning the non fulfillment of international human rights obligations. [The UPR] supports the perspective of human rights NGOs on many issues, providing more strength to our claims’” (UPR-Info.org, 2012).

Changes in Chile for Indigenous Rights

Despite Chile’s position as the “good student, in the messy classroom that is Latin America” (Contesse, 2006, p. 131), the state’s relationship with indigenous peoples in Chile eclipses the successes otherwise held by this transitional democracy. Chile’s lack of implementation of indigenous rights enshrined in international human rights treaties and mechanisms therefore raises questions as to whether unwillingness or incapacity are responsible for failing to apply indigenous rights (Perricone, 2010, p. 169).

As compliance to international indigenous rights does not necessary lead to concrete changes in Chilean policies and practices towards the Mapuche, it is difficult to determine international activism’s effect. While Chile has indeed been ‘compliant’ with its international obligations, such as those regarding participating in reviews by submitting reports or sending delegations to committee sessions, the ideal forms of compliance that can hope to be achieved in this case are “compliance with the substantive obligations outlined in treaties, and compliance with the spirit of the treaty” (Hathaway, 2002). While it is clear that the act of ratifying a treaty in and of itself does not equate to changes in country practices, it is important to see whether participation within the treaty mechanisms can propel changes in country practices.

Despite Mapuche activists and transnational human rights organizations successful campaign in highlighting persistent negative trends experienced by the Mapuche in Chile (as acknowledged in treaty body committees' concluding observation reports and other UN human rights mechanisms), the overall situation has not improved, despite the passing of indigenous legislation. This lack of improvement is highlighted by Chile's autonomous National Institute of Human Rights, established in 2010, in a 2011 report that includes concerns about the lack of progress regarding indigenous rights, land restitution, the use of force by police during protests, and the continued application of the anti-terrorism law against indigenous peoples.

“The Ethical Commission Against Torture’s annual report noted that, as of May [2011], 62 Mapuche individuals had been jailed, indicted, or convicted for actions that included destruction of property, attacks on farms, or confrontations with police. The Equitas Foundation’s Barometer of Politics and Equality report in April [2011] noted that sentences for police convicted of crimes against Mapuche were noticeably more lenient than those for Mapuche individuals” (United States, 2012, p. 17).

Other transnational human rights organizations point out that Chilean government officials intrusively monitor and harass human rights defenders, such as law firms that defend Mapuche tried under the anti-terrorism law. In late 2010, the Public Prosecutor’s office of the Araucania region served a summons against lawyer Karina Riquelme Viveros who worked for such a law firm, indicating that she was being investigated for “illegally practicing her profession” for a period in 2009 where she signed documents as a legal advisor prior to obtaining a legal license (International Federation for Human Rights, 2011). Additionally, the ILO Committee of Experts on the Application of Conventions and Recommendations’ call for additional scrutiny of Chile’s first review under ILO 169 in 2010 (meaning that its implementation of the Convention was unsatisfactory) inevitably demonstrate Chile’s lack of willingness to comply with international standards on indigenous peoples’ rights.

Chile’s reservations against acknowledging indigenous ‘peoples’ rather than ‘communities’, for example, are deeply rooted within national institutions. The long path to ratifying ILO 169 because of its requirement to constitutionally uphold the recognition of indigenous peoples sends a “message about the Chilean way” in addressing indigenous peoples living within the state (Perricone, 2010, p. 173). Conservative opinions regarding indigenous peoples, which hold great influence at the highest judicial levels, continue to insist that the Chilean nation is “one, indivisible, and multicultural” while at the same time recognizing indigenous “communities, organizations and members – not the peoples per se – were subjects of rights, and insisted that indigenous ways of life must not contradict Chilean law” (Richards, 2010, p. 71). This same judicial culture is also

responsible not for ensuring equal protection and application of the rule of law, but rather for “ruling by law” by differentiating the application and interpretation of the anti-terrorism law in order
 1140 to pursue these economic policies (Bialostozky, 2007, p. 90). Finally, the consideration of indigenous land rights and its natural resources constitute an obstacle to Chile’s expansion of its neoliberal economic model that is based on the exploitation of natural resources. Assistance in developing and protecting indigenous culture (such as promoting bilingual education) also promotes ideals contrary to this economic model, such as cutting or eliminating social services.

Despite the lack of progress regarding the legal recognition of indigenous peoples, the right to protect and develop their traditional identity, the protection of ancestral lands and their resources, and no end to policies and practices that discriminate against indigenous peoples, international strategies to improve the Mapuche’s indigenous rights still can still attract stronger success than local and national strategies of social protest or using national or legal institutions. Because pressure
 1150 from within is therefore unlikely to be successful due to these political blocks, pressure from international platforms stand a greater chance at effectiveness. In 2011, Mapuche activists and their partnered transnational human rights organizations lobbied the European Parliament to consider the problems faced by indigenous peoples in Chile. A representative from the International Federation for Human Rights mentioned to MEPs in a statement,

“If you have invited the representatives of Chilean government and they have not showed up, it is typical. They do not want to know what is happening. They do not want to see what is happening. They do not want to hear what is happening. They do not want to confront people from the European Parliament. It is a shame, because if they had been here [at the European Parliament] we would have urged them to revise the antiterrorism law, to change
 1160 the jurisdictional system. We would also urge them to reform the military code, so that the military or soldiers who commit crimes could also be brought to civil court. We know, for instance, that 3 Mapuche youngsters have been executed and the soldiers responsible have not been punished. Provided that legal conservatism continues to be encouraged at the highest judicial levels, there stands little recourse that Mapuche activism from within will make any impact” (International Federation for Human Rights, 2011).

Social protest strategies are rarely unified and rarely show any ‘new’ characteristics (Contesse, 2006).²² Eventually, Mapuche local and national strategies of protests against logging companies, dams, and infrastructure projects which included occupations, sit-ins, take-overs of public buildings, mass marches, road blockades, public communiques and legal actions, (all of which invoke past

²² Contesse refutes the idea that differences exist between ‘old’ and ‘new’ social movements. Despite the idea that novelty lies in “values, forms of organization, mobilization, action, sociopolitical objectives and cultural contents,” old and new movements are the same provided that participants aim to intervene in the process of social transformation (2006, pp. 135-136).

1170 strategies which were successful during the Allende period) were challenged by government claims of needing to defend law and order (Haughney, 2011, p. 4). Keeping the advancement of the neoliberal economic model and corporate interests prioritized, the Chilean government succeeded in transforming Mapuche social protest as “violent, ‘terrorist’ organizations threatening the peace of society, the investment climate of the region, and the rule of law” (Haughney, 2011, p. 6). As such, this characterization as ‘terrorists’ have opened government justifications of excessive force and harsher punishments towards the Mapuche.

1180 “The construction of the Mapuche as either [conformist to Chilean ideology on neoliberal economics] or terrorist is consistent with Robinson’s characterization of the role of peripheral neoliberal states as maintaining social order on behalf of capital; if subjects will not consent to what the state offers through (neoliberal multicultural) development policies, they face direct coercion” (Richards, 2010, pp. 72-73).

Compared to local and national level social protest, international activism by the Mapuche cannot be so easily reconstructed by the Chilean government. The credibility and authority held by international institutions such as the United Nations or the European Parliament, along with endorsement from influential transnational human rights organizations provides vehicles for Mapuche grievances to be taken seriously. Once involved, these organizations bring expertise, resources, and international attention to issues faced by the Mapuche. In 2005, several transnational organizations sent a legal support team for 16 Mapuche protestors charged under the anti-terrorism law. In 2007, a coalition of regional and international organizations drafted and submitted a report detailing violations against Mapuche activists, including confirmed and documented cases of police abuse (Carruthers & Rodriguez, 2009, p. 752).

1190 While it is difficult to ascertain how international activism strategies have directly contributed to policy changes leading to an improvement in indigenous rights, it provides stronger prospects for addressing issues faced by the Mapuche.

Chapter Six

Summary of Research

Throughout the history of the Chilean state, the Mapuche people and the Mapuche identity have been relegated in favor of the idea of a “monolithic block of national membership,” where all people born on Chilean soil are united by a common culture and historic ancestor (Perricone, 2010). This sentiment led to systematic disregard for the Mapuche’s human and indigenous rights, which

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resulted in the confiscation of their ancestral lands, ultimately threatening the Mapuche identity. Their political influence during Allende's Marxist administration in 1970 strengthened the idea of the Mapuche as masters of their destiny, especially through local and national strategies of social protest and literally taking back their lands. Pinochet's dictatorship from 1973 to 1990 not only reversed Mapuche land gains, but introduced the neoliberal economic model that further eroded Mapuche culture in favor of private enterprises. Following a series of partnerships forged towards the end of Pinochet's regime, the Mapuche placed much hope in a newly democratic Chile which promised respect for indigenous rights. Unfortunately, despite the adoption of several 'face-saving' laws and policies intended to protect indigenous rights, re-democratized Chile continued the neoliberal economic model to the detriment of the Mapuche. As national institutions and legal processes continued to favor resource exploitation on Mapuche lands despite contradicting legislation requiring their participation in decision-making processes affecting them, the Mapuche reemployed local and national social protest campaigns.

In response, the Chilean government utilized a Pinochet-era anti-terrorism law against Mapuche activists that in addition to eroding the civil and political rights of Mapuche defendants, also promotes the advancement of economic policy interests (Bialostozky, 2007, p. 85). Despite being typecast as terrorists to justify subjection to harsher security responses, once the Mapuche were able to legitimize their grievances through the credibility of transnational human rights organizations via international platforms, Chile became exposed to increasing levels of external pressure to change its policies and practices towards indigenous peoples. While concrete changes regarding the constitutional recognition of indigenous peoples, assistance in protecting the traditional Mapuche identity, indigenous land and its resources, and securing an end to discriminatory policies that target the Mapuche for excessive force and criminalize their protest are not yet realized, political unwillingness on part of the Chilean government prevents the effectiveness of local or national strategies.

Conclusions

Chile's shift to democracy surprisingly has not resulted in an improved relationship with the indigenous peoples within its borders. Long-awaited developments in indigenous rights are met with cynicism and remarks of "more of the same"²³ as Mapuche communities believe that the Chilean government only wants to "smooth over relations with the indigenous movement with views

²³ Original Spanish: *Mas de lo mismo*.

that we do not share” (as quoted in Gallantine, 2008, pp. 26-27).²⁴ President Piñera’s recent remark on indigenous culture as a “legitimate source of pride for the Chilean nation,” rather than “thinking about [it] as a threat or a problem,” contrasts sharply with the continued application of the anti-terrorism law on Mapuche activists who say they are struggling to preserve their distinct indigenous culture and identity (Green, 2012). Affected communities’ concerns continue to take a second seat to corporate profits, whereas Mapuche notions of wealth are not measured by money, but by “well-being, reciprocity, and mutual aid” and the balanced relationship man has with nature (Iñiguez, 2008). This is not to say that indigenous peoples in Chile are opposed to development and the positive growth of the state. The main point of contention for the Mapuche and all indigenous peoples in Chile is the uneven development which has resulted in increased poverty for indigenous communities while transnational corporations prosper by exploiting resources on ancestral lands. This prosperity has come with the additional cost of environmentally damaging culturally important lands, displacing and breaking up communities, and persistent threats and assaults on indigenous leaders and organizations supporting them (Chihuailaf, 2011).

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The question still remains as to what will truly move Chile to respect indigenous rights. Mapuche strategies of local and national social protest movements are unlikely to yield improvements in the implementation of indigenous rights while Chilean institutions remain unwilling to cooperate despite their general mandate to do so (Perricone, 2010, p. 176). International mechanisms that offer condemnation or the imposition of moral obligations in lieu of enforcement mechanisms carry mostly symbolic meaning. Yet as Chile strives to move forward, especially as a leader in Latin America, even symbolically failing to meet international standards will have negative consequences. Chileans have recently seen their democratic freedoms challenged (such as harsh police responses to mass student protests for educational reform) and have expressed their high levels of discontent with recent administrations. Piñera’s approval ratings have reached its lowest in April 2012 at twenty-six percent (Ulmer, 2012) while opposition Concertación’s approval ratings were recently as low as nineteen percent (Daugherty, 2012). As long as Mapuche activists and the international community are able to amass stronger support, Chile can be pushed to listen to indigenous concerns which may provide environmentally sustainable with Chilean nature and improve the Chilean democratic model to be one devoid of discrimination, exclusion and inequality towards indigenous peoples.

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²⁴ Original Spanish: [...] blanquear la relacion con el movimiento indigena con anuncios que no compartimos.

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Appendices

A. Law 19.253

(Article 1) Recognition that land is vital for indigenous communities' existence and culture, and as such requires the state and society to protect indigenous lands by ensuring its adequate exploitation, ecological balance, and promoting its expansion;

(Article 12) Identification of indigenous lands as those having been legally acknowledged as such by the state; the inclusion of their historic occupants in a new register of lands; and the historic occupants' continued recognition as indigenous into the future;

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(Article 13) Legal protection of indigenous lands from being seized, sold, taxed, or acquired by non-indigenous people in the context of national interests;

(Article 15) Limits on the renting out of indigenous lands (communally owned lands may not be rented out and individually-held indigenous land may be rented out for a maximum period of five years); Provisions for exchanging indigenous land for other non-indigenous land provided they are of similar value and authorized by CONADI;

(Article 16) Mandatory judicial processes and a majority agreement of all stakeholders before dividing indigenous lands;

(Article 17) Protection against automatic division of indigenous lands in the event of ownership secession or death;

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(Article 20) The foundation of a land and water fund to be maintained by CONADI for (a) providing subsidies to acquire land for indigenous communities in need, (b) creating financial

mechanisms to solve land conflicts, especially regarding adherence to legal standards, (c) financing the constitution, regulation, or purchase of water rights or projects to that end;

(Article 21) Financial support for the aforementioned fund via existing legal mechanisms and donations;

(Article 23) Funding to assist the development of indigenous communities and individuals for the purposes of (a) financing property improvements, legal restitutions, and legal fees resulting from litigations regarding in the use, ownership, or administration of indigenous lands, (b) establishing credit lines to fund initiatives that move away from sharecropping, (c) financing projects for the preservation or restoration of land quality, and (d) purchasing fishing licensing authorizations and relevant equipment for its sustainable expansion (Ministerio de Planificacion y Cooperacion, 1993).

B. Mapuche at United Nations Human Rights Treaty Mechanisms

The following table is created based on electronic resources available on the websites of each respective treaty body.

Treaty Body	Year	Session	Stakeholder Submissions mentioning indigenous rights/Mapuche	Concluding Observation mentioning indigenous rights/Mapuche
International Convention on the Elimination of all Forms of Racial Discrimination	1999	55 th	<i>Alternative Reports not digitally available</i>	<p>“10. The Committee expresses its concern at the absence of specific legislation to enforce some of the provisions of the Convention. The Committee, taking note that the 1993 Indigenous Act contains a specific article declaring intentional discrimination against indigenous persons an offence punishable by law, and that the National Security Act prohibits fascist organizations, recalls the proposals for reform of the Constitution and the Penal Code, but remains concerned about the current absence of a comprehensive legislation in full accordance with articles 2, paragraph 1 (d) and 4, of the Convention.”</p> <p>“11. The Committee is concerned about land disputes which occurred during the period under examination between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and, allegedly led to arbitrary arrests of members of the indigenous population.”</p> <p>“13. The Committee commends the State party for having recognized its part in the discrimination experienced by the indigenous population, recalls its general recommendation XXIII and requests that the State party consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which,</p>

				<p>inter alia, will significantly contribute to the process of reconciliation in the society as a whole.”</p> <p>“14. As part of the ongoing legislation reform process, the Committee recommends that the Constitution be amended to incorporate a prohibition of racial discrimination and that the scope of the Indigenous Act be extended to cover discrimination in effect in accordance with article 1, paragraph 1, of the Convention.”</p> <p>“16. The Committee recommends that the State party use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities. It encourages the State party to continue to provide instruction on human rights standards in schools and organize training programs for, in particular, law enforcement officials, in the light of general recommendation XIII.”</p> <p>“17. In its forthcoming report, the State party should include detailed information relating to the following: the work and activities of the Indigenous Development Corporation; the system of land distribution; the judicial system in place for the indigenous population; the situation of migrant workers, the implementation of articles 4 and 5 of the Convention and, ongoing legislative reforms.” (CERD/C/304/Add.81)</p>
International Covenant on Civil and Political Rights	1999	65 th	<i>Alternative Reports not digitally available</i>	<p>“22. The Committee takes note of the various legislative and administrative measures taken to respect and ensure the rights of persons belonging to indigenous communities in Chile to enjoy their own culture. Nevertheless, the Committee is concerned by hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant.</p> <p>Therefore: When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and</p>

				way of life and to the participation of members of indigenous communities in decisions that affect them.” (CCPR/C/79/Add.104)
International Convention on the Rights of the Child	2002	29 th	<i>Alternative Reports not digitally available</i>	<p>“18. The Committee, while acknowledging that there have been efforts to disseminate the Convention during the process for the development of regional plans for children and to train professionals working with and for children in line with its previous recommendation (ibid, para. 18), nevertheless expresses its concern that these measures need to be strengthened, in particular in rural areas and among indigenous children.”</p> <p>“19. The Committee recommends that the State party: (a) Increase its efforts to translate informative material into the main indigenous languages and disseminate it; (b) Develop more creative methods to promote the Convention, including through audiovisual aids such as picture books and posters, in particular at local level, and through media; (c) Continue and strengthen its efforts to provide adequate and systematic training and/or sensitization on children’s rights of professional groups working with and for children, such as judges, lawyers, law enforcement and health personnel, teachers and school administrators; (d) Debate and discuss the principles and provisions of the Convention with a view to integrating them into the curricula at all levels of the educational system; and (e) Seek technical assistance from, among others, UNICEF, UNESCO and OHCHR.”</p> <p>“26. The Committee, while noting the development of the National Plan to Overcome Discrimination in Chile 2001-2006, is concerned that the principle of non-discrimination is not fully implemented for children belonging to indigenous groups, poor children, girls, children with disabilities and children living in rural areas, especially with regard to their access to adequate health care and educational facilities.”</p> <p>“27. The Committee recommends that the State party: (a) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination; and (b) Develop, on the basis of the results of this</p>

			<p>monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination, including racial and xenophobic discrimination against indigenous children, and implement the National Plan to Overcome Discrimination in Chile 2001-2006.”</p> <p>“28. The Committee requests that specific information be included in the next periodic report on the measures and programs relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment No. 1 on article 29 (1) of the Convention (aims of education).”</p> <p>“39. While noting the decrease in the infant and child mortality rates and the reform process which has been under way since the early 1990s, the Committee is nevertheless concerned at the great disparities existing within these rates, in particular with regard to indigenous children, those living in rural areas, those with a lower socio-economical origin and those with a mother with a low level of education. It further notes that maternal mortality rates may not reflect actual cases related to complications resulting from illegal abortions, in particular those affecting pregnant adolescents.”</p> <p>“40. The Committee recommends that the State party: (a) Allocate appropriate resources and develop comprehensive policies and programs to improve the health situation of all children without discrimination, in particular by focusing more on primary health care and decentralizing the health-care system; (b) In order to prevent child mortality and morbidity and lower the maternal mortality rate, provide adequate antenatal and postnatal health-care services and develop campaigns to inform parents about basic child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, family planning and reproductive health, especially in rural</p>
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				<p>areas.”</p> <p>“45. The Committee, while noting the increase in the school attendance rate, expresses its concern at the difficult access to education, high drop-out and repetition rates which affect in particular indigenous children, poor children and the ones living in rural areas; the low enrolment rate for pre-school education; the low rate of children reaching secondary education and the treatment of children with behavioral problems. It further notes with concern the important number of pregnant children who are excluded from school and that government measures to avoid this situation are not implemented, especially in private schools.”</p> <p>“46. In light of articles 28 and 29 of the Convention, the Committee recommends that the State party: (a) Ensure regular attendance at school and the reduction of drop-out rates, especially with regard to indigenous children; (b) Develop appropriate measures to deal with children with behavioral problems without resorting to expulsion from school; (c) Ensure that measures are effectively implemented in order for pregnant girls to continue attending school both during and after their pregnancy; (d) Improve the quality of education in order to achieve the goals mentioned in article 29 (1), in line with the Committee’s General Comments No. 1 on the aims of education.” (CRC/C/15/Add.173)</p>
International Covenant on Economic, Social and	2004	33 rd	<i>Alternative Reports not digitally available</i>	<p>“13. The Committee notes with concern the lack of constitutional recognition of indigenous peoples in the State party and that indigenous peoples, despite the existence of various programs and policies to improve their situation, remain disadvantaged in the enjoyment of their rights guaranteed by the Covenant. It also regrets that the State party</p>

Cultural Rights			<p>has not ratified ILO Convention No. 169 (1989) concerning indigenous and tribal peoples, and that unsettled claims over indigenous lands and national resources remain a source of conflict and confrontation.”</p> <p>“14. The Committee is deeply concerned about the application of special laws, such as the Law of State Security (No. 12.927) and the anti-terrorism law (No. 18.314), in the context of the current tensions over the ancestral lands in the Mapuche areas.”</p> <p>“33. The Committee recommends that the State party include recognition of its indigenous peoples in the Constitution, ratify ILO Convention No. 169, and continue to strengthen its efforts to ensure the effective enjoyment by indigenous people of their economic, social and cultural rights.”</p> <p>“34. The Committee recommends that the State party fully take into consideration the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80/Add.3) on the implementation of the New Deal Policy 2004-2010, namely that the Land Fund be substantially increased; that efforts to recover indigenous lands be strengthened, especially in Mapuche areas; and conditions of rural indigenous people be improved, especially in the health and educational sectors.”</p> <p>“35. The Committee recommends that the State party not apply special laws, such as the Law of State Security (No. 12.927) and the anti-terrorism law (No. 18.314), to acts related to the social struggle for land and legitimate indigenous complaints.”</p> <p>“50. The Committee recommends that the State party continue to strengthen its efforts to reduce poverty, especially among indigenous peoples, and to integrate economic, social and cultural rights in all its poverty alleviation programs. In this regard, it refers the State party to the Committee’s statement on poverty, adopted on 4 May 2001. It also</p>
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				recommends that the State party ensure that adequate resources are allocated towards meeting the goals and targets set under the Chile Solidarity (Chile Solidario) and the Chile Neighborhood (Chile-barrio) programs.” (E/C.12/1/Add.105)
International Covenant on Civil and Political Rights	2007	89 th	<ul style="list-style-type: none"> ● Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer ● International Federation for Human Rights (“The Other Chilean Transition: Rights of the Mapuche People, Politics of Criminal Law and Social Protest in a Democratic State”) ● International Federation for Human Rights (“Possibilities for Political Changes Regarding Indigenous Peoples”) ● International 	<p>“7. The Committee is concerned about the definition of terrorism contained in the Counter-Terrorism Act No. 18.314, which may be excessively broad. It is also concerned that this definition has allowed charges of terrorism to be brought against members of the Mapuche community in connection with protests or demands for protection of their land rights. The Committee also notes that the procedural guarantees set out in article 14 of the Covenant have been restricted by the application of this Act (articles 2, 14 and 27 of the Covenant).</p> <p>The State party should adopt a narrower definition of crimes of terrorism, so as to ensure that it is not applied to individuals for political, religious or ideological reasons. Such a definition should be limited to offences which can justifiably be equated with terrorism and its serious consequences, and must ensure that the procedural guarantees established in the Covenant are upheld.”</p> <p>“19. While it notes the intention expressed by the State party to give constitutional recognition to indigenous peoples, the Committee is concerned about the variety of reports consistently indicating that some claims by indigenous peoples, the Mapuche in particular, have not been met, and about the slow progress made in demarcating indigenous lands, which has caused social tensions. It is dismayed to learn that “ancestral lands” are still threatened by forestry expansion and megaprojects in infrastructure and energy (arts. 1 and 27).</p> <p>The State party should: (a) Make every possible effort to ensure that its negotiations with indigenous communities lead to a solution that respects the land rights of these communities in accordance with article 1, paragraph 2, and article 27, of the Covenant.</p>

			Federation for Human Rights & Corporacion de Promocion y Defensa de los Derechos del Pueblo	The State party should expedite procedures to recognize such ancestral lands; (b) Amend Act No. 18.314 to bring it into line with article 27 of the Covenant, and revise any sectoral legislation that may contravene the rights spelled out in the Covenant; (c) Consult indigenous communities before granting licenses for the economic exploitation of disputed lands, and guarantee that in no case will exploitation violate the rights recognized in the Covenant.” (CCPR/C/CHL/CO/5)
International Convention on the Rights of the Chile	2007	44 th	<i>Alternative Reports not digitally available</i>	<p>“16. The Committee welcomes the increased allocation for social expenditure, in particular in the areas of education and health, however remains concerned that unequal distribution of State funds continues to have a negative impact on the well-being of children, in particular affecting those from more vulnerable sectors of society, such as indigenous peoples and female headed households.”</p> <p>“54.The Committee recommends that the State party continue and provide further resources for the AUGE health system and enhance the access to medical services in rural areas, among low-income families and indigenous peoples. The Committee recommends that the State party increase and strengthen strategies to promote the use of indigenous traditional medicine. Finally the Committee recommends the State party to take necessary measures to reduce and prevent the incidence of obesity among children.”</p> <p>“61. The Committee welcomes the increase in the enrolment at all levels in the educational system, the considerable budget allocations for education and that free education during twelve years in school is enshrined as a constitutional right since 2003. The Committee also welcomes the priority given to education in the preschool years. The Committee recognizes the measures taken to improve the quality of education in order to prepare children for their role in a productive and democratic society and notes the affirmative action undertaken to improve equal access to education, however it is concerned that access for children belonging to vulnerable groups, such as indigenous</p>

			<p>peoples, refugees and children living in poverty and rural areas is still inadequate.”</p> <p>“62. The Committee recommends that the State party: (a) Continue to increase budget allocations to the educational sector; (b) Focus on an overall improvement in the quality of education provided, in particular in rural areas; (c) Ensure the expansion of the bilingual intercultural program for indigenous peoples and maintain consultations with indigenous communities in order to evaluate the program; (d) Compile statistics disaggregated by urban/rural areas, ethnicity and sex in order to monitor the impact of anti-discrimination measures; (e) Invest further resources in incorporating human rights education in school curricula.”</p> <p>“73. The Committee regrets that the Constitution still does not contain specific provisions recognizing indigenous peoples and their rights. The Committee is concerned over the high level of correlation between poverty and indigenous origins and the de facto discrimination indigenous children continue to face, in particular in the areas of education and health. The Committee welcomes the positive steps taken to establish a bilingual education program, however it notes that the coverage and resources are limited and that dropout rates remain high. The Committee is concerned over reports that indigenous youth have been victims of police brutality. Finally, the Committee regrets the lack of detailed information on indigenous children in the State party report.”</p> <p>“74. The Committee recommends the State party; (a) Incorporate recognition of indigenous peoples and their rights in the Constitution; (b) Ratify ILO Convention 169 on indigenous and tribal peoples in independent countries; (c) Take affirmative measures to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the area of education and health; (d) Ensure that indigenous youth are not victims of police brutality and take both preventive and corrective action when abuse is suspected; (e) Take due account of the recommendations adopted by the Committee after its day of general discussion in September 2003 on the rights of indigenous children and pay</p>
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				particular attention to the recommendations presented in the report of the 2003 mission to Chile of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80/Add.3); (f) Provide further detailed information on the implementation of article 30 in the next periodic State party report.” (CRC/CHL/CO/3)
International Convention on the Elimination of all Forms of Racial Discrimination	2009	75 th	<ul style="list-style-type: none"> ● Amnesty International, Centro Derechos Humanos, Centro Regional de Derechos Humanos y Justicia de Genero, Observatorio Ciudadano, Wallmapuwen ● Mesa de Trabajo Mapuche sobre Derechos Colectivos, Autoridades Políticas de la Nación Mapuche, Organización Meli Wixan Mapu, Grupo de Trabajo por los Derechos Colectivos, Asociación Mapuche Ayun Mapu, Consejo 	<p>“15. The Committee notes with concern that the Counter-Terrorism Act (No. 18.314) has been mainly applied to members of the Mapuche people for acts that took place in the context of social demands relating to the defense of their rights to their ancestral lands (art. 2).</p> <p>The Committee recommends that the State party should: (a) reform the Counter-Terrorism Act (No. 18.314) to ensure that it is applied only to terrorist offences that deserve to be treated as such; (b) ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts of protest or social demands; and (c) put into practice the recommendations made in this regard by the Human Rights Committee in 2007 and by the special rapporteurs on the situation of human rights and fundamental freedoms of indigenous people, following their visits to Chile in 2003 and 2009. The Committee draws the State party’s attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)).”</p> <p>“16. While noting the efforts made by the State party to undertake constitutional reform in the area of the rights of indigenous peoples, such as the consultations held with indigenous people, the Committee is concerned at the slow pace of this process and the fact that not all indigenous peoples have been adequately consulted on decisions related to issues that affect their rights (arts. 2 and 5).</p> <p>The Committee recommends that the State party should: (a) step up its efforts to speed</p>

			<p>Comunitario Melipeuco</p> <ul style="list-style-type: none"> ● Red de Acción por los Derechos Ambientales 	<p>up the process of granting constitutional recognition to the rights of indigenous peoples and, to this end, conduct effective consultations with all the indigenous peoples, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention No. 169; (b) take the necessary measures to establish a climate of trust conducive to dialogue with indigenous peoples; and (c) take effective measures to involve indigenous peoples in the work on a human rights action plan and in all areas, including legislative proposals, that might affect their rights.”</p> <p>“18. The Committee notes with concern that, as pointed out by the State party, in recent years Chile has seen incidents of discrimination against and violent attacks on indigenous people and migrants, among others, by totalitarian groups. The Committee is concerned that racism, discrimination and xenophobia are not classed as criminal offences in Chilean law (art. 4).</p> <p>The Committee recommends that the State party should: (a) speed up the adoption of the anti-discrimination bill that would make discriminatory acts punishable by law; (b) step up its efforts to prevent and combat xenophobia and racial prejudice among the various groups in society, and also to promote tolerance among all ethnic groups; and (c) present in its next periodic report further information on investigations, indictments and sentences related to racially-motivated offences, as well as on compensation obtained by the victims of such acts.”</p> <p>“19. The Committee notes with concern the accusations of ill-treatment and abuse of members of the Mapuche people by the police during police raids and other operations. The Committee notes with dismay the death of a young Mapuche man, José Facundo Mendoza Collio, on 12 August 2009, as a result of police gunfire (art. 5 (b)).</p> <p>The Committee recommends that: (a) the State party should investigate accusations of ill-treatment and abuse of indigenous people by some members of the armed forces; and</p>
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			<p>(b) those responsible for such acts should be tried and punished and compensation granted to the victims or their families. The Committee also urges the State party to take prompt steps to prevent such acts, and in that regard recommends that it should boost training for its armed forces in human rights, including the provisions of the Convention.”</p> <p>“20. The Committee notes with concern the low level of participation in political life by the indigenous peoples and the poor representation of indigenous peoples in parliament (art. 5 (c)).</p> <p>In the light of its general recommendation No. 23 (1997), section 4 (d), the Committee recommends that the State party should redouble its efforts to ensure full participation by indigenous people, especially women, in public affairs, and that it should take effective steps to ensure that all indigenous peoples participate in the administration at all levels. “</p> <p>“21. The Committee notes the measures taken by the State party to transfer ancestral lands to indigenous peoples, but it is concerned about the slow progress made in demarcating lands and the lack of a specific mechanism for recognizing the right of indigenous peoples to the land and to their natural resources (art. 5 (d) (v)).</p> <p>The Committee recommends that the State party should take the necessary measures to speed up the restitution of ancestral lands to indigenous peoples and that it should establish a specific mechanism for recognizing the rights of indigenous peoples to lands and natural resources, in accordance with the Convention and the other relevant international standards. Specifically, the State party should ensure that land-purchasing policies conform fully with ILO Convention No. 169 and should consider increasing the budget of CONADI so that it is able to carry out its work properly.”</p> <p>“22. While noting the measures taken by the State party to regulate investment in</p>
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			<p>indigenous lands and indigenous development areas, the Committee notes with concern that indigenous peoples are affected by the exploitation of subsoil resources in their traditional lands and that in practice the right of indigenous peoples to be consulted before the natural resources of their lands are exploited is not fully respected.</p> <p>The Committee urges the State party to hold effective consultations with indigenous peoples on all projects related to their ancestral lands and to obtain their consent prior to implementation of projects for the extraction of natural resources, in accordance with international standards. The Committee draws the State party's attention to its general recommendation No. 23."</p> <p>"23. The Committee reiterates its concern about the situation of the Mapuche communities in the Araucanía region affected by activities that are harmful to the environment, health and their traditional ways of life, including the establishment of waste dumps and plans to set up sewage-treatment plants there (art. 5).</p> <p>The Committee urges the State party to spare no effort to develop a specific policy, in line with international standards, to deal with the environmental impacts affecting indigenous peoples. To this end, the Committee recommends that scientific assessments should be carried out regularly. The Committee further recommends that the State party should amend its legislation on land, water, mining and other sectors so that it does not conflict with the Indigenous Peoples Act (No. 19.253) and ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests. The Committee urges the State party to take immediate steps to resolve the issue of the waste dumps established in Mapuche communities without their prior consent."</p> <p>"24. The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular the Mapuche, are among</p>
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				<p>the poorest and most marginalized groups (art. 5 (e)).</p> <p>The Committee recommends that the State party should take the necessary steps to assure effective protection against discrimination in various areas, particularly in employment, housing, health and education. It also calls on the State party to include in its next report information on the impact of programs designed to guarantee economic, social and cultural rights to the indigenous population, as well as statistics on progress made in this regard.”</p> <p>“27. While noting the programs implemented by the Department of Diversity and on-Discrimination, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, as revealed by surveys carried out by the University of Chile (art. 7).</p> <p>The Committee recommends that the State party should take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among the various racial groups in the State party. The Committee further recommends that the State party should reinforce information campaigns and educational programs on the Convention and its provisions, as well as strengthen its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination.” (CERD/C/CHL/CO/15-18)</p>
International Convention against Torture and	2009	42 nd	<ul style="list-style-type: none"> ● Amnesty International, Centro Derechos Humanos, Observatorio 	<p>“23. The Committee takes note of the text of the constitutional amendment now before Congress which accords recognition to indigenous peoples. The Committee also welcomes the establishment of an ombudsman’s office for indigenous peoples specializing in criminal matters. Nevertheless, the Committee is concerned by the many</p>

Other Cruel, Inhuman or Degrading Treatment or Punishment			<p>Ciudadano, Centro de Salud Mental y Derechos Humanos, Opcion, Centro Regional de Derechos Humanos y Justicia de Genero</p> <ul style="list-style-type: none"> ● International Federation for Human Rights, Corporacion de Promocion y Defensa de los Derechos del Pueblo 	<p>reports that it has received regarding the continuing commission of abusive acts by police officers against members of indigenous peoples, especially members of the Mapuche people. The Committee is particularly concerned by the fact that the victims of these acts include women, children and older persons. The Committee also notes with concern that the State party has on occasion applied the Counter-Terrorism Act to members of indigenous peoples in connection with acts of social protest (art. 16).</p> <p>The State party should: (a) Take all necessary steps to carry out prompt and effective investigations into abuses committed against members of indigenous peoples and to bring to trial and punish any police officers who commit such abuses; (b) Provide detailed statistics, with breakdowns by age, sex and geographical location, on all complaints of acts of torture or ill-treatment committed by law enforcement officers against members of indigenous peoples, as well as on the corresponding investigations, trials and convictions; (c) Provide detailed data on the cases involving indigenous persons in which the Counter-Terrorism Act has been applied.” (CAT/C/CHL/CO/5)</p>
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