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Transitional (In)Justice: Human Rights
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The (Un)just Integration of Unconquered Mapuche Territory into the Chilean Nation-State

Introduction

Indigenous peoples have historically been marginalized in Chile, a country in which over 90% of the population self-identify as white or mestizo. Indigenous peoples make up between 4.6% and 10.3% of Chile's population (Ratzlaff). There are nine officially recognized indigenous peoples in Chile: Mapuche, Aymara, Rapa Nui, Likan Antai, Quechua, Colla, Diaguita, Kawesqar, and Yagán or Yámana (Ratzlaff). The largest of these groups is the Mapuche, constituting 83.5% of the total indigenous population of the country (Ortiz 97). The history of the Mapuche people is particularly fascinating because they were never colonized (Parks and Richards 1321). Chile was colonized by Spain during the sixteenth and seventeenth centuries, but the Mapuche people resisted colonization and managed to maintain control over their territory and preserve their culture during this period. Chile gained independence from Spain in 1818, but the Mapuche territory was not officially annexed until 1888, seventy years later, when Chile succeeded in the military conquest, termed the "pacification" in history books, of the Araucanía region (Stavenhagen 7). At this time, the Mapuche people were relegated to small parcels of their original territory and experienced marginalization, discrimination and exclusion from Chilean society that was linked to "oppressive forms of exploitation and plundering of [Mapuche] land and resources" (Stavenhagen 7). Only in the last fifty years have some of the injustices that Mapuche people have suffered begun to be mitigated by multicultural legislation, including land reform efforts in the 1960s, the institution of the Indigenous Peoples Act of 1993, and the ratification of the International Labor Organization's (ILO) Convention No. 169, concerning the rights of indigenous peoples, in 2008.

Territorial Justice: Redressing socioeconomic exclusion with land rights

Context

For thirty years after Chile annexed the Mapuche territory in the late nineteenth century, the Mapuche people were “relegated to 3,000 small parcels of land called ‘reductions,’” thereby reducing the indigenous territory to just 6.4 percent of its original area (Park and Richards 1321). This period resulted in a loss of Mapuche territory, resources, and sovereignty, and an “accelerated process of assimilation imposed by the country’s policies and institutions” (Stavenhagen 8). In the early twentieth century, the Mapuche people began demanding the “recognition of lands traditionally used but excluded from the reservations” (Haughney 202). In its section on policies for redressing socioeconomic exclusion, the UN Human Development report on cultural liberty stresses the importance of “recognizing legitimate claims to land and livelihoods.” It states: “The right to own, occupy and use land collectively is inherent in the self-conception of indigenous people, and this right is generally vested not in the individual but in the local community, the tribe or the indigenous nation” (67). The redistribution of ancestral Mapuche territory to Mapuche communities has been one of the most pressing concerns of Mapuche movements.

Agrarian Reforms: The first meager attempt at reparation

The first attempt at addressing disputes over indigenous Mapuche territory in Chile was through the agrarian reforms in the 1960s and 1970s. Prior to the 1960s, Chilean land ownership was dictated by an “antiquated” hacienda system (Bellusario 2). The agrarian reform took place in two phases: the first, implemented by President Frei from the Christian Democrat Party, “intended to make restructuring of the agrarian property regime the basis for capitalist modernization of agriculture” and the second, implemented by socialist President Allende of Popular Unity (UP) sought to “expropriate expeditiously the totality of *latifundia* and to strengthen *campesino* organizations” (Bellisario 2, 14). The Corporación de Reforma Agraria (CORA), the government agency for agrarian reform, “expropriated

and subsequently redistributed 5809 estates of almost 10 million hectares, or 59 per cent of Chile's agricultural farmland" (Bellisario 1). The reforms under President Allende "speeded up the process of land reform" which included "the return of land to indigenous communities" (Stavenhagen 7). The Popular Government's policy of expropriation "clearly explicated the restitution of usurped lands to the indigenous reservations" (Berdichewsky 23). While only around 1,443 hectares of land had been restored to the indigenous communities during President Frei's "bourgeois" phase of agrarian reform, "in the first two years of the 'revolutionary' Agrarian Reform of Allende around 70,000 hectares were restored to the indigenous communities" (Berdichewsky 24). It is also worth noting that while the first phase of agrarian reform emphasized the creation of "small and middle-sized peasant property owners," the second phase established "large collectivist or cooperative production units, reducing individual private property of land to a minimum" which "made a distinct impact on the indigenous community" (Berdichewsky 20, 21). The agrarian reforms were the first tangible attempt at righting the wrongs that the Chilean government had inflicted on the Mapuche people, the significance of which should not be dismissed or discounted. However, considering the expanse of the original Mapuche territory, 70,000 hectares is actually rather small. In fact, if the 510,000 hectares they were forced onto in the early twentieth century constitutes only 6.4% of their original territory, then the total 71,443 hectares of land restored to the Mapuche during the period of agrarian reform only amounts to about 0.9% of their original territory (Park and Richards 1321).

Though the agrarian reform certainly made progress in redressing territorial injustices, the redistribution of land also had negative economic and social consequences for the Mapuche people. As land was restored to the Mapuche people, the economic structure of their communities changed from communal owned property with a subsistence economy to "individualization" of privately owned land with more ties to the market economy (Berdichewsky 14; Parraguez and Barton 6). The process of agrarian reform "introduced into Chilean agriculture a

modernizing capitalist structure,” which was characterized in part by the “commercialization of agriculture” and the “invasion of industrial products into the rural area,” a process that made the Mapuche people more dependent on the market economy (Berdichewsky 22). As Mapuche hunter-gatherer practices were restricted and indigenous communities became reliant on market mechanisms, poverty grew (Parraguez and Barton 6). Aside from these economic consequences, the agrarian reforms also affected Mapuche communities socially. The changes in the economic structure “[undermined] the social structure based on kinship... which [pushed the] entire culture and identity values into a profound crisis” (Berdichewsky 14). The economic strain put on these communities worsened the class struggle and led to more social conflict (Berdichewsky 22). However, one social benefit of the agrarian reform and subsequent industrialization was that it was accompanied by unionization and the organization of peasant and indigenous communities into social movements, which fostered increased social and political consciousness among these communities (Berdichewsky 22). The economic and social injustices “provoked the Mapuche communities to react and raise, and to start an active struggle to recover their usurped lands” (Berdichewsky 23). Though the agrarian reform was essential to the development of indigenous peoples consciousness, it was by no means sufficient in providing justice to the historically excluded indigenous communities:

“On more than one occasion we have heard the Mapuche peasants say that the Agrarian Reform was made for the Chileans, and that their usurped lands should be returned to them by the landowners” (Berdichewsky 23).

Privatization Under Pinochet: A step backward in the road to territorial justice

By 1972, President Salvador Allende had made the most progress in politically addressing indigenous claims to land to date. However, in 1973, he was overthrown by a military coup led by General Augusto Pinochet. During the dictatorship, “Pinochet reversed the reforms and privatized indigenous land, cracking down on social movements, including those representing indigenous people and the Mapuche

in particular” (Stavenhagen 7). The dictatorship returned much of the land that had been expropriated, some of which had been returned to the Mapuche people during Allende’s presidency, to their former Chilean owners in the form of “fully returned estates” or “reserves” (Haughney 202; Bellisario 18). The government also “assigned individual productive parcels” to some peasants, “auctioned off some of the land into the private market” and “ assigned some of the land to public institutions” (Bellisario 18). In 1978, Pinochet’s regime “decreed the subdivision of Mapuche communities into individual plots free to be sold in 20 years” (Haughney 202). Mapuche organizations mobilized to stop the decree, but ultimately nearly all communities were subdivided, eroding traditions of communal land use by “permitting indigenous families no more than six hectares of land each” (Haughney 202; Carruthers and Rodriguez 745).

The neoliberal policies that Pinochet’s regime instated, besides fragmenting communities and reclaiming indigenous lands, also exacerbated the tension between the capitalist market economy and the traditional reciprocity-based economy. The process of “transculturation,” in this case the merging and converging of the Chilean and Mapuche cultures, resulted in the transition to the use of monetary payment in Mapuche communities, thus “eroding the cultural practices of *trafkintu* and *trueque* both associated with Mapuche reciprocity” (Parraguez and Barton 7). Additionally, the Pinochet government “prioritized industrial forestry in southern Chile... [and] created subsidies for companies to establish plantations on former Mapuche lands acquired through privatization” (Carruthers and Rodriguez 748). Occupation of Mapuche territory by extractive industries has been detrimental to the environment, severely polluting and depleting the regions natural resources. This environmental degradation has contributed to the socioeconomic exclusion of Mapuche peoples by diminishing their water sources used for drinking and irrigation, the “woodland fauna” that forms a major part of their diet, and the “vegetation traditionally used for ritual, medicinal and nutritional purposes” (Stavenhagen 10). This environmental degradation continues to be one of the main focuses of Mapuche protests today. In regards to land ownership, communal rights,

and environmental conservation, the period of dictatorship constituted a major setback in the fight for land rights for the Mapuche people.

1993 Indigenous Peoples Act: Establishing land recovery mechanisms

Not long after Chile's return to democracy in 1990, the first law to explicitly acknowledge indigenous rights was passed. In 1993, the Indigenous Peoples Act, which, recognized indigenous peoples' rights to participation and land as well as cultural rights and the right to "development within the framework of the State's responsibility for establishing mechanisms to overcome... marginalization," was passed into law (Stavenhagen 7). One such mechanism intended to help indigenous peoples overcome marginalization by the State was the National Indigenous Development Commission (CONADI), operating within the Ministry of Planning, which would be tasked with promoting "diverse initiatives," representing indigenous interests, and ultimately managing land settlement claims (Parraguez and Barton 3). Another component of the Indigenous Peoples Act that facilitated the resolution of land disputes is the Land and Water Fund, which was established to "expand indigenous lands" (Stavenhagen 9). Due to the institution of the Indigenous Peoples Act, 255,000 hectares of disputed land were acquired, transferred, or regularized between 1993 and 2006 (Stavenhagen, 9).

Despite this progress in addressing land claims and providing the first legal recognition of indigenous peoples and their rights, the Indigenous Act was not entirely successful. The mechanism for recovering land "proved inadequate, in part because of speculative price increases and procedural delays, which left indigenous populations frustrated and disappointed" (Stavenhagen 9). The Act was also criticized for not doing enough to guarantee indigenous rights, specifically with respect to customary or traditional rights. The policies related to land-ownership during this time were very much tied to the liberal idea of individualism. Thus, although the *Concertación* government claimed to prioritize the "protection of indigenous lands and respect for indigenous cultures" in their political agenda, the reality was that the government systematically "rejected the [Mapuche's] demands

for collective rights to territory or political autonomy,” diminishing their right to self-determination (Haughney 202). The law recognized indigenous communities, associations, and individuals but not peoples and therefore not their collective rights (Haughney 203). As a result, there has been a “gradual change in indigenous demands, not only referring to the land but also to issues of health, education, and culture” (Parraguez and Barton 3).

Convention 169: Towards more autonomous land ownership

In 1991, the ILO’s Convention No. 169 was the first international legally binding document to recognize and promote the rights of indigenous peoples. Article 14 of the Convention states:

“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities... Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. Adequate procedures shall be established within the national legal system to resolve land claims by peoples concerned” (International Labor Organization).

Chile finally ratified the Convention in 2008 due to internal pressures from indigenous communities and external pressures from the international community, including the UN’s Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples who in his 2006 report on indigenous issues in Chile explicitly wrote that he recommends the prompt ratification of ILO Convention No. 169 (Stavenhagen 20). Though the ratification of the Indigenous and Tribal Peoples Convention has not resolved the land dispute conflict in Chile, it has given the Mapuche people and other indigenous communities leverage to be

used in their claims over traditional territory and objections to development on their ancestral lands. For example, Haughney notes that “Mapuche organizations seeking an effective voice on major industrial projects that would impact their communities invoked Convention 169 of the International Labor Organization (ILO), which requires the free prior informed consent of indigenous peoples to projects on their traditional lands” (Haughney 203). Hopefully as more cases of injustice against indigenous peoples invoke the Convention in judicial settings, laws restricting access to land or inhibiting customary collective property rights will be updated and reformed.

Final Remarks

Chile has made substantial progress in promoting and securing the rights of indigenous peoples, especially in relation to rights to land. The agrarian reforms of the 1960s and 1970s were necessary but not sufficient to initiate the process of reparation for lands that had been forcibly taken from the Mapuche people over a century ago. The neoliberal policies instituted during Pinochet’s regime constituted a major setback in this process, but when the Indigenous Peoples Act was passed into law in 1993, the first legal mechanism for recovering Mapuche territory was established, enabling more land to be rightfully restored to Mapuche communities. Finally, in 2008, Chile ratified the ILO’s Convention No. 169, significantly increasing the leverage of Mapuche claims to land through international legal support. However, despite this progress, Chile still has much room for improvement on its path to becoming a multicultural democracy.

Recommendations for further progress

Land rights

Pursuant to the ILO’s Convention No. 169, the Chilean government should:

- Revise and improve the mechanism for restoring land to the Mapuche people
- Reform policies to reflect the Mapuche tradition of communal land ownership

- Defer to Mapuche communities on decisions related to development projects to be carried out on their territory
- Devise and implement policies to conserve natural resources, especially on Mapuche territory

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