

National Development and Indigenous Rights in Latin America: Analysis of the tensions produced with the Chilean State by the Mapuche demand for self-determination*

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Abstract

This paper explores the tensions generated in Chilean politics by Mapuche responses to the promotion of development and the protection of indigenous rights since the end of the military dictatorship in 1990. Working within the norm diffusion model, the present paper will analyze the concept “Indigenous Development” existing at the United Nations Permanent Forum on Indigenous Issues and its incorporation into government policy for the period 2008-2011, considering its interaction with the national political context. The first section analyzes the transformation of the United Nations position on indigenous peoples, then characterizes the notion of indigenous development and the norm diffusion model. We then analyze government reports to the United Nations’ Universal Periodic Review, International Labor Organization, and the United National Permanent Forum on Indigenous Issues to identify the advances. We conclude with a discussion of the tensions present in Chile.

Keywords: Mapuche, Chile, indigenous rights, norm diffusion, development, United Nations.

Since the 1950s, ‘development’ has been a controversial yet influential idea that is strongly promoted by international organizations and presently structures economic, political y social relations in virtually every country although not without critics. In the 1950s and 1960s, dependency theorists argued that the industrialized center had underdeveloped Latin America (Gunder-Frank 1966). In response to these and other criticisms, the definition of development was debated and transformed over the last 50 years, remaining the principal orientation, especially for national economic policies.

At the same time, most indigenous peoples in Latin America still associate development with environmental degradation, loss of territorial autonomy, and poverty. Indeed, in Bolivia and Ecuador, government discourse has replaced the term of development with indigenous concepts such as *Sumak kasway* (“living well”). At the same time, due to the increasing incorporation of indigenous territories into the global economy, indigenous peoples have increasingly participated in global governance

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structures that recognize their rights but that also promote development, including both the United Nations and the World Bank. In this way, and especially since the end of the 20th Century, governmental and non-governmental organizations have begun to adopt a rights-based discourse to development and public policy (Crawford and Andreassen, 2015). It is within this framework that many indigenous organizations have begun to accept, interpret and demand the incorporation of indigenous rights in development policies and projects although not without conflict.

More than 600 indigenous peoples (40 million persons) live throughout Latin America, although they have a greater presence in Mexico, Guatemala, Bolivia, Peru and Ecuador. In contrast, in other countries, their presence is limited. For example, only 4% of the Colombia population are indigenous, although there are 70 distinct indigenous peoples (IWGIA, 2017). In Chile, 9% of the total population identify themselves as indigenous, and principally with the Mapuche people (Government of Chile, 2018). Consequently, it is unsurprising that the Chilean government has defined its indigenous policy principally in response to Mapuche demands (Figueroa 2014).

Considering the importance of the Mapuche in Chile, the present chapter explores the tensions generated in Chilean politics by Mapuche demands and responses to the promotion of development and the protection of indigenous rights since the end of the military dictatorship in 1990. Working within the norm diffusion model, the present paper will analyze the concept “Indigenous Development” existing at the United Nations Permanent Forum on Indigenous Issues and its incorporation into government policy for the period 2008-2011¹, considering its interaction with the Chilean political context. The paper is organized as follows. In the next section, we analyze the transformation of the United Nations position on indigenous peoples. The third and fourth sections characterizes the notion of indigenous development and the norm diffusion model, respectively. The fifth section analyzes the manner that two Chilean governments have addressed indigenous development based on national reports to the United Nations’ Universal Periodic Review, International Labor Organization, and the United National Permanent Forum on Indigenous Issues. We conclude with a discussion of the tensions present in Chile.

I. The United Nations and Indigenous Peoples

Throughout the planet, indigenous peoples have resisted and many continue to resist the forms that development has taken over the last 50 years: natural resource extraction, the imposition of capitalist production, religious conversion, and even well-meaning “development” programs. Historically, indigenous resistance has been understood as the principal obstacle to the achievement of progress, although indigenous culture is increasingly perceived as the innovative answer to the problems generated by

¹ This period corresponds to two governments: President Michelle Bachelet (2008-2010) of the center-left *Concertación para los Partidos por la Democracia* (Concertation) and President Sebastian Piñera (2010-2014) of the center-right *Coalición para el cambio* (Coalition for Change).

globalization and especially environmental destruction.

The Universal Declaration of Human Rights and the decolonization processes after World War II did not transform this situation because indigenous peoples were not considered to be self-determining people. Consequently, during this period, many governments continued to implement assimilation policies to promote the incorporation of the indigenous population into national society because traditional cultural practices and language were considered pre-modern. Indeed, the United Nations considered indigenous populations as minorities, promoted non-discrimination, encouraged recognition as equal citizens and workers and incentivized development in indigenous lands, as exemplified in Article 6 of the International Labor Organization Convention (ILO) N° 107:

The improvement of the conditions of life and work and level of education of the populations concerned shall be given high priority in plans for the over-all economic development of areas inhabited by these populations. Special projects for economic development of the areas in question shall also be so designed as to promote such improvement. (Article 6, ILO 1957)

In this way, the United Nations promoted state intervention and paternalism towards indigenous peoples. However, authors like Hall and Fenelon (2008) question ulterior motivations, arguing that state intervention in indigenous territory has been violent and remains motivated by the need for and availability of natural resources. Rather than protect indigenous peoples' cultural practices, the State promotes intervention in the name of development. Indeed, in Latin America, even when many governments idealized ancestral cultures, their policies promoted assimilation and development projects were intentionally designed to promote the adoption of Western ways of life. Consequently, in the 1960s and 1970s, indigenous peoples often accepted that they were peasants to obtain government recognition of their territories.

Subsequently, In the 1970s and 1980s in Chile and most of Latin America, the introduction of neoliberal policies, and especially the privatization of state companies and social policies based in the economic logic of individual economic agents, emphasized individual effort and gain over social solidarity. From this perspective, the Chilean government in 1979 facilitated the legal division of communal indigenous lands into individual land titles, which created a formal equality with non-indigenous property but also resulted in community division (Bengoa 1999). The Chilean government also legally created individual water property titles, which are sold separately from land rights, removing indigenous control of this important resource.

At the same time, neoliberal policies, and especially fiscal austerity measures and the increased demand for natural resources located on indigenous lands, are associated with increased State and private promotion of development projects in or near indigenous communities. Since the principal and orienting demand of indigenous peoples, including

the Mapuche, is the right to control their lands and environment due to their vital importance for their cultural and physical survival, indigenous communities have actively and passively resisted external intervention facilitated by neoliberal policies, especially when faced with forced displacement (World Commission on Dams 2000; Brysk 2000, Hall and Fenelon 2004).

During this same period, the transnational indigenous movement achieved important international recognition of the distinctiveness of indigenous peoples. Their questioning of ILO Convention N° 107 resulted in the organization of an expert group (without indigenous representatives) that consulted with indigenous peoples and proposed its replacement with the ILO Convention N° 169, a negotiated document that served as a partial advance towards the recognition of self-determination that was achieved in the Declaration of the Rights of Indigenous Peoples in 2007 (Larsen, 2016).

Specifically, the transnational indigenous movement lobbied the ILO and questioned the promotion of development as part of a continued colonization process that seeks to justify their actions as improvement. Consequently, the Preamble of the ILO Convention N° 169 (1989) explicitly indicates the need to remove the “assimilationist orientation of the earlier standards” and recognizes the aspirations of indigenous peoples “to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live”. This new perspective is present in Article 7 of the Convention, where their rights are specifically recognized:

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. (Article 7, ILO Convention N° 169, 1989)

They also successfully lobbied the United Nations to establish the Working Group on Indigenous Populations (WGIP) with representatives from many indigenous peoples in 1983. The WGIP was replaced by the United Nations Permanent Forum on Indigenous Issues (UNPFII), which has emerged as an important forum for indigenous voices at the global level. In a relatively short period, the transnational indigenous movement achieved significant changes in the legal language and rights of indigenous peoples/persons at the international level, established indigenous peoples as distinct from ethnic minorities and institutionalized the most important elements of the indigenous perspective in the ILO Convention 169 and the United Nations Declaration of Rights of Indigenous Peoples (UN-DRIP).²

In addition to the UNPFII, the United Nations also created the Special Rapporteur on Indigenous Issues and the Expert Mechanism. The Inter-American Court of Human Rights has also played an important role in interpreting how national governments should act to respect indigenous rights, especially with respect to national development projects on indigenous territories. At the same time, indigenous movements in Ecuador and Bolivia were able to place their demands in the governmental agenda as well as achieve important political changes as part of the democratization processes in the 1990s (Yashar, 2005).

Since 2002, the UNPFII meets annually in the United Nations in New York City, and has emerged as an important space for indigenous peoples, facilitating their 1) articulation between continents, 2) visibilization of their histories of economic, political, ecological and cultural oppression; and 3) critical analysis of national policies and the contemporary regime of human rights. In contrast with the state-centered character of the United Nations, the UNPFII provides the space where representatives of non-state indigenous cultures can meet and debate issues, elaborating orientations for state action with respect to indigenous self-determination.

The UN-DRIP and ILO Convention 169 are the cornerstone of the emerging indigenous rights regime and both seek to assure the participation of indigenous peoples in the development process, although their importance is primarily limited to Latin America. ILO Convention N° 169 is legally binding for 22 countries that have ratified it and the InterAmerican Court of Human Rights has employed Convention 169 as the interpretive standard in claims related to: collective title for the ancestral lands; the right to be consulted on decisions are made that may affect their rights and interests; and in criminal law (Courtis, 2009). On the other hand, the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2007) more clearly expresses the right of indigenous peoples to self-determination within the integrity of already existing states, although it is not legally binding. Other mechanisms, such as the UNPFII, the special rapporteur and the expert mechanism, have contributed to growing global recognition, valuing and protection of indigenous practices and the creation of international standards and national legislation that require development programs to mitigate the costs and

² For a detailed description of the process, see Tramontana 2012.

contribute to an improved quality of life for the affected families and communities.

Since 2010, the UNPFII seeks to encourage national states to promote “Development with Culture and Identity”, an emerging norm constructed with input from indigenous peoples but that must be implemented by national governments with United Nations supervision. However, effective recognition of indigenous rights has faced opposition in national contexts because the United Nations Declaration on the Rights of Indigenous Peoples specifically associates the loss of ancestral land to the loss of cultural rights. Still, Neoliberalism (market and property rights) and the human rights regime find common ground in human development and the right to development, although Crawford and Andreassen (2015) have shown that there are powerful actors within all societies that can obstaculize a rights-approach to development.

II. United Nations Development Goals and “Indigenous Development”

The United Nations system has played an important role in the discussion and debate on development in the 20th Century. Under the umbrella of the United Nations (UN), the economists Mahbub ul Haq and Amartya Sen developed the indicators of human development, placing people at the center of development as the real wealth of nations (UNDP, 1990). The United Nations system also developed the Millennium Development Goals in 2000 and then the Sustainable Development Goals (2015) to orient the achievement of and measure advances in development in different countries. The United Nations Development Program (UNDP), created in 1965, plays a significant co-ordination role for the UN's activities in the field of development.

As we mentioned earlier, the UNPFII has met yearly since 2002. In the sessions held between 2005 and 2008, the UNPFII analyzed several issues specifically related with the United Nations' development goals. In 2010, the Secretariat of the UNPFII prepared the concept paper on “Development with Culture and Identity” (UNPFII, 2010) to further define the contents of Articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples. According to this document, indigenous peoples' concept of development embraces a holistic approach which includes their aspirations, respect and protection of their diversity and uniqueness. The emphasis is on self-determination because “indigenous peoples want to become *agents of their own development* and have the foresight to promote a development paradigm that is self-determining, . . . it could be a holistic vision that includes economic growth, sustainable development of the environment and affirmation of the social, economic and cultural rights of indigenous peoples.” (p.2).

More than a definition of indigenous development, this concept paper provides a critique of many UN and government efforts to promote development for indigenous peoples. First, they argue for the need to incorporate a human rights-based approach to development into the Millennium Development Goals (MDGs) which were the principal orientation for development until 2015. In short, they indicate that development should be considered to be a process and not only an end result measured in quantitative

indicators. Further, the paper argues that governments should also develop (new) indicators that allow us to understand indigenous development, and not only compare indigenous and non-indigenous peoples, although this was not achieved with the Sustainable Development Goals (SDGs), which are the principal orientation for development until 2030 (IWGIA 2015).

Second, the concept paper also critiques the dominant vision of national development that considers only the economic value of land and nature, often ignoring that these “also form an important basis for indigenous peoples’ social and cultural integrity” (p.4). They specifically question “the incessant pursuit of economic growth without the integration of cultural development, social justice and environmental sustainability” (p. 4). At the same time, they do recognize that development involves “constructive engagement with the private sector” and requires advancing in standard setting processes, suggesting a willingness to adopt INGO supervision of development processes.

Third, this concept paper recognizes the need for indigenous peoples to participate in national policy dialogues in order to prevent unnecessary and often damaging intervention on indigenous land. Further, human rights and cultural issues should be included in these national development dialogues because current economic development models rarely recognize and could even threaten the sustainability of indigenous economic strategies. This position implicitly suggests that the objective of these dialogues is to develop a shared vision of development as consisting in the integration of (or complementarity between) the diverse development models present in a country rather than a separate indigenous development policy. The paper also criticizes that government action often threatens indigenous authority structures and practices, and thus indigenous participation in national politics and dialogues should seek to strengthen indigenous authority structures and practices. At the same time, the paper argues, the State needs to promote the diversity and resilience of indigenous peoples through the increased recognition of collective rights and indigenous control of development processes at the local level.

As can be seen, the concept of indigenous development includes central elements of the United Nations’ rights-based approach to development, such as the reduction / elimination of discriminatory structures and practices. At the same time, it adds new elements to this approach to development: respect for the indigenous vision of land and nature; indigenous participation in national policy dialogues on development; and compatibility of national and indigenous models of development. The document also recognizes the need to compensate for prior processes of assimilation and marginalization and to propose policies that will strengthen indigenous authority structures and local control of development processes. Further, it proposes two procedures that should favor indigenous development: free, prior and informed consent as well as the creation and use of objective indicators to measure indigenous development. During each annual session, the UNPFII continues to work on recommendations and strategies for governments to continue advancing towards a rights-based approach to indigenous development that respects their self-determination.

For example, James Anaya (2013), in his last report as Special Rapporteur for the rights of indigenous peoples, addresses the human rights concerns of indigenous peoples relating to extractive industries, building upon points of consensus that he has found in relation to human rights standards.

III. Indigenous Rights Regime and Governmental Implementation of Indigenous Development

As we saw in the previous section, present-day indigenous movements participate in the emerging international indigenous rights regime (IRR) developed principally in United Nations forums. In their influential book, Keck and Sikkink (1998) analyzed the transnational networks of environmental protection and women rights, highlighting their importance in the creation of shared values or norms. Implicit in this approach, and clearly present within the world society approach, is the idea that these norms derive from “worldwide models constructed and propagated through global cultural and associational processes”, which are principally related with Western practices promoted as universal standards (Meyer et al., 1997: 144). In the present section, we briefly trace how the dominant norm of development is being challenged and transformed by the transnational indigenous movement at the international, national and local levels.

At the international level, the World Bank is one of the principal international organizations that promotes development at the national level. In response to the lobbying of the transnational and national indigenous movements, the World Bank also modified its understanding of national development. At the end of the 20th Century, the World Bank presented the Comprehensive Development Framework (CDF), which emphasized the interdependence of social, structural, human, economic, environmental and financial elements. It also incorporated poverty reduction strategies and the participation of civil society and indigenous peoples. In this way, the World Bank began to encourage the introduction of new governance structures, incorporating indigenous actors into the design and implementation of public policies at the national level.

However, at the same time, the World Bank remains government-focused and does not explicitly consider the conflicts that can be generated when development policy comes into conflict with non-governmental needs / interests. Further, the lack of coordination between different public organizations and their limited understanding of indigenous culture have complicated decision-making, especially with respect to development models and projects in indigenous territory. Additionally, many non-governmental organizations that promote development came to use their relations with indigenous organizations negatively affected by development projects to obtain funding while providing an international platform for their resistance (Brysk, 2000).

At the same time, and despite the limited governmental actions to ensure the continuing existence, development and wellbeing of indigenous peoples as distinct collectivities, World Bank recognition of indigenous rights as well as national legislation has opened up certain spaces. Indeed, new mechanisms and procedures allow indigenous

organizations to challenge these projects through institutional means, where indigenous peoples often work together with human rights and environmental protection movements as a means of resistance. Still, when indigenous resistance uses non-institutional protests to challenge projects or defend their right to self-determination, national governments have increasingly criminalized these actions and have responded with repression and violence throughout Latin America (Seider and Barrera, 2017). At the same time, according to Larsen (2016), since continuing conflict is untenable for governability and national development, the private sector has begun to interpret the ILO Convention 169 with respect to their business realities and national development priorities. In this way, contestation over and grounding of indigenous rights will structure future debates over development, especially in countries that have ratified the Convention.

Further, even when state action should reflect the aspirations of indigenous peoples concerned to protect, maintain and develop their cultures and identities, customs, traditions and institutions, tensions in its achievement is present. One of the principal tensions emerges from the conflict between traditional cultural practices (a collective right) that do not respect individual rights, such actions and attitudes towards women's and LGBT individual rights, where individual rights are considered priority. Indeed, the United Nations favors the incorporation of cultural practices, traditions and values of indigenous peoples when "they are in line with human rights principles" (Barelli 2010).

In this way, indigenous peoples are subject to multiple legal systems: international law, national law and their own indigenous justice systems. According to international human rights law, they have a right to maintain their distinctive identities, cultures, languages and ways of life, where collective land rights are directly associated with their right to self-determination and to development, which is understood as their right to decide the kind of development that takes place on their lands and territories in accordance with their own priorities and cultures. Considering the plurinational nature of states, indigenous peoples should not be subject to any form of discrimination, should receive equal treatment and should be able to participate fully in public life in the national context even when they do not fully share all national values. Considering the differences between these different legal systems, governments progressively need to transform national law and state action to improve right protection and coherence.

According to Finnemore and Sikkink (1998), the establishment of a human rights regime puts into place a set of procedures that enables international organizations to promote government implementation of an emerging norm, such as indigenous rights and development. For example, once a state becomes a signatory of ILO Convention 169 or UN-DRIP, the supervising international organizations require periodic governmental reports on advances in implementation. Secondly, the Universal Periodic Review (UPR), an UN mechanism that began functioning in April 2008, consists of the examination of the human rights practices (including indigenous rights) by UN-designated experts who analyze government and civil society reports, producing recommendations that need to be addressed in the 54-month period between reviews. In this way, international orientations should facilitate progress in norm incorporation into

national systems over time.

IV. Promotion and Respect of Indigenous Development in Post-Authoritarian Chile

Chile is a middle income Latin American country, which was ruled by a military dictatorship that implemented orthodox neoliberal policies. Since the return to democracy in 1989, international financial institutions consider Chile to be a model in Latin America for how to achieve sustained economic growth (with an annual average of 4.1% between 1990 – 2005, falling to 2% in the last 10 years) in a democratic context. Chile presents itself as a country with the political and economic stability required for direct foreign investment. Indeed, the Chilean government argues that the country can continue to grow while also protecting the environment and human rights. Similar changes in the international private sector have also encouraged many of the transnational and national companies operating in Chile to incorporate social responsibility into their strategic planning (Carrasco 2012).

With the end of the dictatorship, Chilean governments have discursively promoted human rights at the national and international level. Consequently, the Chilean state seeks to demonstrate they respect human rights, including the rights of indigenous peoples, in their reports.³ Indeed, all the democratic governments confirm their “seriousness with which they assume international commitments”. Consequently, the MDGs form part of the Chilean development strategy and Chile is proud of achieving the best results in Latin America (Government of Chile – United Nations, 2014).

However, it is only since 2012 that Chile can differentiate between indigenous and non-indigenous populations for 23 of the 49 MDG indicators, visibilizing important differences between the two populations even when the indicators have shown continuous improvement over time (Government of Chile – United Nations, 2012). To address these issues, the Chilean governments have introduced intercultural bilingual education and scholarships to address discrimination and improve educational results; targeted social policies; and invested in infrastructure and access to basic services for rural indigenous communities.

Further, Egaña (2011), then indigenous affairs commissioner, identifies 2008 as a turning point because it resulted in a new approach and the ratification of ILO Convention 169, setting into motion a series of actions to begin to develop and define public actions and programs using the UN approach. Prior to this period, the Chilean governments thought that the only problem that indigenous peoples faced was poverty. Since then, the government has understood the need to recognize indigenous rights and to change government institutions to better address these issues. Consequently, during this period, there is an attempt to incorporate indigenous issues into each Ministry

³ At the same time, the same review process also contemplates civil society participation to balance out the perspectives.

rather than only through the National Corporation for Development (CONADI). Further, the government recognized that a significant (and previously unaddressed) part of the problem was the relations of non-indigenous Chile with indigenous persons, principally with respect to prejudices and discrimination (Egaña 2011), although there is resistance to legally recognizing them as peoples or nations. Still, there remain important tensions in three areas.

V. National Development policies appear in contradiction to Indigenous Development

Even with the end of 17 years of military dictatorship, the dominant development paradigm continues to be neoliberal economic growth although this has been slightly modified by representative democracy and multicultural policies as already discussed. Indeed, even when the role of the State is limited (and complementary to the market), public spending was incrementally increased in both social and economic policies (Simon 1999), improving income and living standards for the poorest Chileans while allowing private companies relative freedom to pursue their economic activities.⁴

Differing from the previous authoritarian regime's emphasis on the market and a reduced social spending, the new democratic governments argued that social spending and economic growth are compatible.⁵ The democratic governments conceptualized social spending as investment that would develop the capacities necessary for sustainable and more equitable growth. Consequently, they increased state funding of social programs, especially to the poorest 20%, which includes most people living in indigenous communities. The Chilean government implemented an active policy promoting education and technology use, increasing the society's participation in a globalized world. Furthermore, the Chilean State decreed the Indigenous Law (D.L. 19.253) providing additional resources and new institutions especially designed for indigenous populations to promote "development with identity", whose formal objective is to generate economic and social development while respecting their cultural identity.

Despite this discourse open to indigenous rights, governmental development programs, including those targeted to indigenous populations, sought to include all citizens in the process of national economic development based on the promise of greater (economic) opportunities for all; in turn, the citizens had the responsibility to be as productive as possible and to take care of themselves. As they indicated in UNPFII debate in 2009, the Chilean government's approach was to "create the economic and social conditions so that all rights can be effectively exercised." (Marifin, 2009).

Similarly, in their 2014 Universal Periodic Review (UPR) Report, the Government

⁴ Critics of Chilean neoliberal economic policies (e.g. Tosa 2009) often use the term democratic neoliberalism to highlight the elements of continuity with the dictatorship, although the proponents (e.g. Alejandro Foxley) of Concertation policies do not.

⁵ This position is best captured by Ricardo Lagos's presidential campaign slogan *Crece con Equidad* ("Growth with equity").

of Chile (2014) indicates that its indigenous policy has a holistic approach that does not create dependency and seeks to promote “participation, empowerment and entrepreneurship” as well as to assure indigenous peoples have “access to opportunities that allow them to develop while also respecting their rights, traditions, identity and culture” (p.14). Even when the UPR Report (Government of Chile, 2014) indicates that government programs are targeted to local territories where there is a relevant indigenous population, it does not identify mechanisms to integrate indigenous perspectives into national development plans.

Further, as can be seen, the governmental perspective looks to the future and tends to ignore problems caused by past actions. Although many indigenous organizations decided to accept this position, others refused and new points of resistance emerged, especially although not limited to indigenous territory. These elements remained unchanged even with the change in the governing coalition.

Both UPR reports of the Government of Chile (2009; 2014) specifically recognize that the protection of human rights is responsibility of the State and the society and that ILO Convention 169 can be an instrument to favor sustainable development. At the same time, the Chilean government maintains the dominant discourse: the Chilean development model seeks to combine economic growth and social equity, which has brought higher standards of living with little differentiation for ethnic, gender or other categories. Further, the report indicates that social policy has been transformed into a development tool that is synchronized with national macroeconomic priorities and that is highly sensitive to the specific realities facing various groups who do not have sufficient opportunities to enjoy the fruits of economic growth or sufficient autonomy to be able to satisfy their needs in ordinary markets.

Further, and despite governmental recognition of the special relationship to land present in the Indigenous Law (D.L. 19.253), the 2014 UPR report explicitly identifies that their role is to promote the “productive use” of land through technical assistance. At the same time, the Chilean government recognizes that more than 70% of the indigenous population lives in urban areas, and government policy needs to assure their rights, principally through anti-discrimination measures. Finally, neither report mentions legal instruments that have incorporated a human rights view of development. The Chilean Indigenous Law formally recognizes the indigenous special connection to land, but this is not replicated in practice as we will see in the next section.

VI. Property Rights and Indigenous Rights in Conflicts over Development Projects in Indigenous Territories

In conflicts between indigenous peoples and private sector companies, such as in the cases of hydroelectric dam construction and forest companies, all governmental coalitions have protected the property rights of the private companies with a strong police presence, arguing that this position is necessary to ensure Chile’s economic

development.⁶ Further, indigenous rights are often ignored when in conflict with the production of lumber and associated products, which are one of the principal motors of the Chilean economy.⁷ Chile, in international economic negotiations, has prioritized the expansion of lumber plantations in order to assure future growth of this sector despite the fact that this expansion takes place in Mapuche ancestral territory. Additionally, the Chilean government continues to finance research to improve the efficiency in this sector.⁸

Several explanations emerge to explain resistance to the recognition of indigenous rights. On one hand, there is the fear of losing their property, which echoes the 1960s agrarian reform that resulted in obligatory expropriation of significant portions of large land holdings. Secondly, since Mapuche territorial use is considered “unproductive” and does not significantly contribute to the Gross National Product, the government prefers to ensure the conditions required for this sector rather than protect Mapuche ways of life. In short, within this democratic neoliberal model, the people and companies who are productive have rights; while unproductive people are considered obstacles to development. Several authors (e.g. Patricia Richards, 2010) characterize this combination of targeted social policies (often used to encourage acceptance of government positions among vulnerable populations) limited by the priority of economic growth as neoliberal multiculturalism, where neoliberal values dominate over indigenous rights.

Rodrigo Egaña, who was the indigenous commissioner from 2008 to 2009, recognizes three principal indigenous demands for this period: political rights, recovery of ancestral land, and protection with respect to investment projects on indigenous territory (Egaña 2011). To address this last demand, the Chilean government in 2009 developed a proposal for a regulatory framework, which the private sector rejected. Due to the global economic crisis in 2008, the government decided to not push the issue. Subsequently, in the 10th Meeting Report (Government of Chile, 2011), the Chilean government indicates that it created new instruments to facilitate private investment on indigenous lands for both productive development and housing.

Consequently, it is not surprising that some Mapuche leaders increasingly perceive that Chilean economic growth has not been beneficial, and is indeed incompatible with their way of life and cultural practices (reflecting UNPFII conceptualization), resulting in increased protests and other acts of resistance during this period. Indeed, indigenous persons believe in government promises and even less believe that the government is well intentioned due to the often violent State presence in the “communities in conflict”.⁹ All governments maintain the argument that these conflicts are the principal obstacle to

⁶ See discussion in Simon and González 2010.

⁷ Chile's principal exports are minerals (60%), wood-related products (6%) and fish-related products (5%) (www.bccentral.cl).

⁸ See for example the research financed for research centers like INFOR (www.infor.cl) as well as different universities, such as the University of Concepcion.

⁹ For an excellent discussion of the history of the conflicts see Bengoa (1999).

national and indigenous development.

Since the emergence of greater (and often violent) resistance to extractive industries in the late 1990s, the media have also played an important role by marginalizing Mapuche voices and creating a negative public opinion towards Mapuche resistance because it clashes with the dominant political rationality that prefers incremental over systemic change, values institutional channels over public protests, and considers that conflicts should be addressed through institutional mechanisms (Simon 1999; InterAmerican Development Bank 2006).

In response, the government, together with the private sector involved, have implemented a two-pronged strategy. On the one hand, they increasingly assign funds to programs targeted to indigenous populations in order redress previous grievances and to mitigate problems associated with development projects. The 10th UNPFII Meeting Report presented by the Government of Chile (2011) reflects the perspective that constantly confirms their objective to strengthen “transparent and objective” assignment of resources and benefits to the indigenous population (p.2), suggesting a criticism of the prior’s government distribution especially with respect to inefficient land purchases for indigenous communities. Further, they have also transformed governmental procedures designed to improve attention to indigenous persons and reduce the times required to achieve government benefits.

On the other hand, seeking to control and limit violent resistance, the Chilean governments have only used the Anti-Terrorist Law (Law 18.314 developed during the dictatorship and modified twice in democracy) with Mapuche defendants. This Law allows the government to maintain defendants in preventive prison for extended times periods without presenting formal charges as the prosecution builds their case. Law 18.314 also maintains witness anonymity and allows longer sentences when found guilty. The InterAmerican Court of Human Rights considered that the judgements’ reasoning was based on stereotype, was a violation of the principle of non-discrimination, and resulted in the annulment of seven judicial decisions. (IACHR, 2014). Despite extensive questioning of Law 18.314, Chile continues to use of this law only against Mapuche, including several machi.

VII. Exclusion from National Policy Dialogues

In all the government reports (Government of Chile, 2009, 2010, 2011, and 2014) presented to the United Nations, there is a significant number of mentions of actions to support participation and dialogue processes. These include new governmental resources assigned in national budget for dialogues with indigenous organizations to “rebuild trust and identify important issues” as well as financial support for indigenous participation in UN events, such as the 2014 world conference. However, these consultation processes are considered as separate from national development processes. Further, they separate policy design and implementation from indigenous representation and do not contemplate indigenous development as based in self-determination. Indeed, in

general, the government uses indigenous participation as a mechanism to address the 'problems' faced by indigenous people, understood as poverty, social marginalization, and unproductive economic activities. Some funding has been assigned to promote indigenous entrepreneurship individually as well as through the support of indigenous business organizations and centers.

An additional issue is related to state recognition of indigenous authorities. The Indigenous Law (D.L. 19.253) weakened traditional political structure with the creation of the figure of community leader, but did not legally recognize traditional Mapuche authorities, such as *longko* and *machi*. Traditionally, *Longkos* are socio-political authorities of a *lof*, which is a territorial space corresponding to an extended family group, while the *machi* are spiritual leaders and healers who maintain balance in the physical and spiritual worlds. Due to the *machi*'s spiritual relationship to the natural environment, their role has become an important figure in Mapuche resistance to lumber plantations in their territory (Bacigalupo 2010). At the same time, neither the *longko* or *machi* are democratically elected but rather are chosen for their traditional knowledge and wisdom; in contrast, the indigenous community leader is elected by the majority of votes. Still, even when they are not legally recognized, traditional indigenous authorities have recently been invited to participate as political authorities in governmental ceremonies, although not at a national level.

VIII. Indigenous control of Development Processes in their territories

The Chilean government has proposed and created different mechanisms designed to protect indigenous participation in their territories. In 2008, the Lafkenche Law (20.249) created the possible establishment of Indigenous Coastal Areas as small territories under indigenous control. In 2013, Sebastian Piñera's government has also proposed the establishment of territorial management programs for the already existing figure of indigenous development areas. These indigenous territorial development programs would be collaboratively designed with the government, although there has been little advancement in the implementation.

With the ratification of Convention N° 169 in 2008, the Chilean State has slowly advanced in the implementation of consultation processes. As part of the evaluation impact assessment, Decree No. 66 (2013) established a separate consultation process for indigenous communities affected by development projects, although indigenous organizations perceive that it is limited and does not respond to their demand to have the right to deny authorization for the project on or near their lands. The position of the Chilean government remains constant: the promotion of indigenous self-determination is mainly understood as greater integration into Chilean society: valorization of indigenous contributions to Chile, indigenous participation in national political processes (but not in the definition of national development policy), strengthening of dialogue with indigenous peoples and elimination of discriminatory practices.

IX. Final Reflections

The search for economic development, especially with neoliberal policies, seems to dominate state action in Latin America, where indigenous rights are a second priority. Indeed, virtually every state (even Ecuador and Bolivia) continues to violently repress the resistance of rural indigenous communities to capitalist economic activities practices (mining, lumber plantations, etc.) in their territories. Consequently, authors like Richards (2013) use the term “Neoliberal Multiculturalism” to emphasize that the territorial rights of indigenous peoples are only respected when they are not in conflict with economic priorities, especially energy development. Specifically, these authors question whether the existence of a democratic regime and culturally pertinent social policies are sufficient to transform a “national” state and respect the indigenous right to self-determination recognized in the United Nations Declaration of the Rights of Indigenous Peoples (United Nations, 2007). If not, it is expected that indigenous peoples in Latin America will continue to resist all ‘development’ initiatives that affect their self-determination.

Still, as we have seen, the United Nations Permanent Forum on Indigenous Issues continues to evaluate the advances and proposes recommendations and strategies for governments. In Chile, there is a strong consensus among Mapuche leaders that they are vulnerable to economic actors and that the government should protect their rights, suggesting greater opening towards a rights-based approach to development as promoted by the United Nations. Indeed, in interviews with Mapuche economic leaders, they perceived that indigenous and capitalist values can be complementary and 67% indicate that the principal problem is that the State denies the rights of indigenous peoples to their territories and natural resources, limiting their self-determination (Simon and González-Parra, 2017).

Further, analyzing multicultural and neoliberal policies in different countries, Kymlicka (2013) highlights that there is a mutually defining relationship between society and economy, arguing that social relationships “. . . condition the impact of neoliberalism just as neoliberalism has impacted those relationships” (p. 99). Further, Kymlicka shows how neoliberal policies could even strengthen multicultural policies, suggesting that the “embeddedness” of ethnic identities in public institutions and narratives is key in achieving complementarity. Still, for the case of Chile, the transversal presence of racism remains an important obstacle to the recognition of the rights of indigenous peoples (Richards, 2013). Consequently, multicultural policies that seek to promote development in Chile have been unsuccessful and neoliberal policies appear to weaken them.

In this way, we conclude that indigenous peoples will increasingly resist development projects that do not recognize rights to self-determination. International legal and normative instruments that promote a right-based approach to development will reduce the tensions that are commonly present in the promotion of development in indigenous

territories. Still, these tensions will remain if present-day states and societies do not begin to recognize the diversity of cultural identities both between and within peoples and nations.

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