

The Mapuche Movement and the State:
Indigenous Rights in 21st Century Chile

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Chapter One

Introduction

During the 1980s and 1990s, the context of economic globalization and political liberalization in Latin America provided both the opportunity and incentive for indigenous mobilization.¹ While indigenous mobilization was not unprecedented, the late 20th century saw the emergence of new discourses of collective rights and cultural diversity. Indigenous movements have sought to create political openings and to be recognized as distinct peoples rather than as impoverished and marginalized minorities.² They have been empowered by the International Labour Organisation's (ILO) and the United Nation's (UN) framework for indigenous rights which have legitimized their struggles.

Despite their distinct geographical and cultural contexts, indigenous movements throughout Latin America tend to share common demands. Van Cott identifies four demands which she considers characteristic of most indigenous movements: "Self-determination and autonomy, political reforms, including the restructuring of the State, territorial rights and access to natural resources, control over economic development and an end to police and military discrimination".³ These demands for collective rights have presented a significant challenge to the nation State. Although State responses to multiculturalism and indigenous demands for rights have differed throughout the continent, during the 1990s there was a wave of 'multicultural constitutionalism'.⁴ Sixteen Latin American States have amended their constitutions, recognizing indigenous rights and redefining the legal status of indigenous people, thus redefining their relationship with the State.⁵

¹ Yashar, J. Deborah. 2005. *Contesting Citizenship in Latin America: The rise of Indigenous Movements and the Post-liberal Challenge*. Cambridge, Cambridge University Press.

² Warren, Kay. B. and Jean E Jackson. 2002.(eds). *Indigenous Movements, Self-Representation, and the State in Latin America*. University of Texas Press, Austin.pg 13

³ Van Cott, Donna Lee in Ibid. pg 7

⁴ Van Cott, Donna Lee. 2000. *Friendly Liquidation of the Past: the politics of diversity in Latin America*. Pittsburgh, University of Pittsburgh Press. Pg17

⁵ Warren, B and Jackson, E. Pg 13

The Mapuche movement

In Chile there are eight indigenous populations, constituting 4% of the Chilean population.⁶ The Mapuche represent 87% of that percentage and they are the only politically active indigenous group in Chile.⁷ The Mapuche movement's current struggle focuses principally on demands for collective political and territorial rights.⁸ Despite the growing force of the movement, the indigenous question in Chile has been neglected in academic literature. Most scholarship regarding indigenous rights and indigenous-State relations in Latin America has focused either on countries with large indigenous populations, where mobilization has been on a larger scale, such as Ecuador, Mexico and Guatemala, or on countries where multicultural constitutional reforms have been particularly far-reaching such as Colombia and Bolivia.⁹ In Chile, since the transition to democracy, there have been no constitutional reforms recognizing indigenous peoples or their rights; nor has the government succeeded in ratifying international indigenous rights tools such as the ILO Convention 169. This lack of recognition and reform may help explain why there is less scholarship written about indigenous rights in Chile.

Indigenous Rights in Chile

Mapuche leaders, activists, human rights groups and academics have acknowledged the insufficient level of human rights protection for indigenous peoples in Chile as compared to international standards.¹⁰ They call for the ratification of ILO Convention 169 and for constitutional reforms recognizing indigenous peoples. Such changes would create a legal framework for a new Mapuche-State relationship based on dialogue and participation.

Since the late 19th century, following the military defeat of the Mapuche, the State's policy objectives towards the Mapuche population have been twofold: the 'opening up' of Mapuche land to colonial settlers, land owners and transnational companies and the assimilation of indigenous people into a 'culturally homogeneous nation'.¹¹ Under Pinochet's dictatorship the Mapuche were heavily repressed and were considered an obstacle to economic growth. A large percentage of Mapuche land was divided

⁶ Haughney, Diane. 2006. *Neoliberal economics, democratic transition and Mapuche demands for rights in Chile*, University Press of Florida, Florida. Pg 4

⁷ Ibid. pg4.

⁸ Ibid. Pg9

⁹ Hale, Charles. 2002. 'Does Multiculturalism Menace? Governance, Cultural Rights and the politics of identity in Guatemala.' *Journal of Latin American Studies*, Vol. 34., Yashar, 2005, Van Cott, Donna Lee. 2000.

¹⁰ Stavenhagen, Rodolfo. 2003, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Economic and Social Council, United Nations.

¹¹ Haughney, D.2006 Pg18

into individually owned plots which significantly reduced the amount of hectares owned by each family. Consequently, many rural Mapuches were forced to migrate to urban areas.¹² Today, the level of poverty among indigenous populations is higher than among the non-indigenous and a high percentage of indigenous families continue to live without running water or mains electricity.¹³

Since the transition to democracy, the Concertación Governments¹⁴ have made a break from the repressive policies of the dictatorship and have been willing to recognize cultural diversity. Moreover, the Indigenous Peoples' Act (Ley 19.253 1993),¹⁵ which is the most significant Chilean law regarding indigenous peoples, has allowed for the recovery of some indigenous land. However, there remain limited opportunities for mechanisms of participation and dialogue for indigenous populations. Chile's neoliberal economic model and its emphasis on individual rights are incompatible with Mapuche demands for collective rights.¹⁶ In protest, communities have organized and mobilized. However, in many cases their protests have been violently repressed by police forces.¹⁷

A new dawn for indigenous rights?

Two legislative developments during Michelle Bachelet's Government (2006-) suggest a new dawn for indigenous rights and the beginning of a new relationship between the Mapuche movement and the State.

The first legislative development is a new law: "*La ley que crea el espacio costero marino de los pueblos originarios*" (La Ley 20.249)¹⁸ which was approved by Congress in October 2007. This new law recognizes the Lafkenche (Coastal Mapuches)¹⁹ communities' rights to use the coast, beaches and the sea as an area for economic, religious, cultural and recreational activity. It is the first law that recognizes the

¹² Aylwin, Jose. 2006. *Land Policy and Indigenous peoples in Chile: Progress and Contradictions in a context of Economic Globalisation*, Paper for conference on "Land, Poverty, Social Justice and Public Action", Institute of Social Studies, The Hague, The Netherlands, pg8

¹³ Stavenhagen, R. 2003. paragraph 16.

¹⁴ The Concertación is the coalition of center-left parties. Since the end of military rule, each Chilean president has belonged to the Concertación.

¹⁵ CONADI, La Ley Indígena/ Ley 19.253, Website: <http://www.conadi.cl/leyindigena.html>

¹⁶ Haughney, D 2006 Pg9

¹⁷ Human Rights Watch, 2004. 'Indebido Proceso: Los juicios Antiterroristas, los tribunales militares y los Mapuche en el Sur de Chile.' *Human Rights Watch*. Octubre 2004, Vol.16, No.5(B).

¹⁸ My translation: The Law which creates the Indigenous people's Coastal area

¹⁹ The Lafkenche are one of the 6 territorial identities that make up the Mapuche people. The Lafkenche, people of the sea (Lafken: Sea, Che: People) live in communities along the coast in the South of Chile from the Arauco Golf to Palena, Chiloé

cultural rights of indigenous populations in Chile and the contents were shaped by the Lafkenche community leaders themselves.²⁰

The second development is the ratification of the ILO Convention 169 by the Senate. After eighteen years in Congress, the process was accelerated and the Senate finally ratified the convention in March 2008.²¹ Both of these developments are indicative of a positive change for indigenous rights in Chile.

Objectives

The aim of this dissertation to consider the relationship between the Mapuche movement and the State from the perspective of the Mapuche-Lafkenche movement. The subject of the research is the Mapuche-Lafkenche movement and the study will analyse its demands for collective rights, its interaction and dialogue with the state and its views on recent State policies and legislative developments.

The principal aim of the research is to consider the recent legislative developments and determine the significance they hold for indigenous rights and Mapuche-State relations.

The study will focus on four research questions:

- What are the Mapuche and the Mapuche-Lafkenche movement's principal demands and how do they articulate these?
- What are the limitations of indigenous rights in Chile and the obstacles to securing greater human rights protection for indigenous peoples?
- What are the indigenous policies under President Bachelet's government and have they made a break from past indigenous politics?
- What is the perspective of the Mapuche-Lafkenche movement regarding the State's indigenous politics? How do the leaders perceive the recent legislative developments and their significance for Mapuche-State relations?

²⁰ Lafken Ni Zugvn, La Voz del Mar: La Ley del Borde Costero. Programme 9. April 2008

²¹ CONADI, *Se aprobó en el Senado el Convenio 169 de la OIT*, Website: <http://www.convenio169.cl/index.htm>

Research Setting

The research setting for this study is the county of Tirúa Sur, in the Arauco province, south of the Bío Bío river.²² Tirúa itself has a population of approximately 10,000 and is the urban centre for many Lafkenche rural communities whose economies depend on subsistence agriculture, fishing and collecting shellfish and algae.²³

Seventy percent of the population in Tirúa are Mapuche-Lafkenche.²⁴ The Mayor of Tirúa, Adolfo Millabur, is also a Mapuche-Lafkenche leader. The Mayor and the Town Council's political strategy promotes and supports the community's participation in its own development, Lafkenche autonomy and the reconstruction of territorial identities. This has been empowering for indigenous communities and the Lafkenches have become a referent of indigenous politics in Chile.²⁵ These factors make Tirúa an appropriate setting to research the Mapuche-Lafkenche movement.

Methodology

This study relies on a combination of primary and secondary sources. The primary sources used are semi-structured interviews, original documents from the Town Council and interviews from the Lafkenche organisation '*Identidad Territorial Lafkenche's*' monthly radio programme, *Lafken Ñi Zugvn* (La Voz del Mar).²⁶ The main secondary sources used are online journalistic articles produced by the Mapuche movement, international human rights organization reports and academic literature written by both local and international academics.

In order to gain an insight into the perspective of Mapuche-Lafkenche movement this study has taken an anthropological approach. Considering the time and practical limitations, the preferred research method for the study was semi-structured interviews with Mapuche-Lafkenche leaders and Lafkenches working with the Mapuche-Lafkenche organization '*Identidad Territorial Lafkenche*'.²⁷ Three semi-

²² See Appendix

²³ Reyes Bernardo y Jara, Daniela. 2004. *Gobernanza Ambiental: mensajes desde la periferia*. Instituto de Ecología Política, Seminario 776, Nuñoa, Santiago. Pg7-8

²⁴ Ibid. Pg7

²⁵ Toledo Llancaqueo, Víctor. 2001. "Esto también va haciendo autonomía" La estrategia territorial de las comunidades lafkenches de Tirúa. In: "Espacios Locales y Desarrollo de la ciudadanía". Centro de Análisis de Políticas Públicas Universidad de Chile, FUNASUPO, Santiago, 2001Pg22

²⁶ *Identidad Territorial Lafkenche* began to broadcast its monthly radio programme '*Lafken Ñi Zugvn (La Voz del Mar)*' in August 2007. The programme is directed and produced by young Lafkenches and Lafkenche leaders. The programme promotes Mapuche culture, covers regional news and includes interviews with Lafkenche leaders. It is transmitted via local radio stations in the Lafkenche region.

²⁷ www.identidadlafkenche.cl

structured interviews with Lafkenche leaders were carried out in the Tirúa town hall and one interview at the headquarters of *Identidad Territorial Lafkenche*.²⁸ Where these interviews are quoted, they have been left in Spanish, italicised and separated from the main body of the text. Data from these interviews is supported by data from other interviews with Lafkenche leaders broadcast on *Lafken Ñi Zugvn*.

Ethical considerations

Each interviewee understood that information from the interviews would be used in the study. They all agreed that their full names would appear in the research.

Practical limitations

Time constraints were the principal limitation for this piece of research. During my two weeks in the Tirúa region, it was only possible to arrange four interviews.

Identidad Territorial Lafkenche expressed a mistrust of academics and students which made organizing and conducting interviews challenging. Ideally, this kind of research would be carried out over an extended period of time which would allow a relationship of trust to develop between the researcher and the research subjects.

Time constraints restricted the possibilities of achieving a larger and more representative sample and the opportunity to combine interviews with other research methods such as participant observation. To overcome this limitation, the fieldwork interview data has been supported by qualitative data taken from the radio programme recordings.

Shortcomings of the research approach

The anthropological approach, relying primarily on qualitative data, can be problematic with regards to maintaining objectivity. This study attempts to represent the perspective of the Mapuche-Lafkenche. However, it does not aim to adopt an activist stance. Where appropriate, the position of the Chilean Government is also represented.

Structure

This study is divided into three parts. Chapter two analyses the existing legislation regarding indigenous peoples in Chile and presents the current obstacles to securing indigenous rights. The third chapter

²⁸ For details see appendix

describes and analyses the evolution, demands and strategies of the Mapuche and the Lafkenche movement. The last chapter focuses on *La Ley* 20.249 and the Senate's ratification of the ILO Convention 169. It considers the process of negotiations leading to these legislative developments and the significance they hold for the Mapuche-Lafkenche movement and for the future of indigenous rights in Chile.

Chapter Two: Indigenous Rights

This chapter explores indigenous rights in Chile. The first section analyses the benefits and limitations of the Indigenous Peoples' Act. To date, this is the most significant piece of legislation regarding indigenous populations in Chile. The second section briefly identifies five principal problems that threaten the rights of indigenous peoples today in Chile. It will draw on examples that are specific to the Mapuche-Lafkenche communities.

The Indigenous Peoples' Act

"As it stands, the Indigenous Peoples' Act does not provide adequate mechanisms to protect indigenous people's human rights."²⁹

The Indigenous Peoples' Act approved by Congress over 15 years ago, continues to be the most significant piece of legislation regarding indigenous rights in Chile. However, it is widely recognised as being insufficient in its provisions for the protection of indigenous rights, particularly regarding land rights and rights to natural resources.³⁰ This section will look at the process leading to the Indigenous Peoples' Act, the benefits it has brought for the Mapuche people and its limitations. It will also examine the shortcomings of 'La Corporación Nacional de Desarrollo Indígena' (CONADI), the national state agency for indigenous development, established as a result of the Indigenous Peoples' Act, whose purpose is to resolve land disputes and to act as a mechanism for the participation of indigenous peoples.

During the transition to democracy, the Mapuche movement took the opportunity to call for a new relationship between the Mapuche and the State. In 1989, the movement's mobilisation led to the signing of the 'New Imperial Agreement' between the presidential candidate, Patricio Aylwin and leaders of the indigenous movement. In the agreement, Aylwin made several promises to the movement and committed himself to propose new legislation regarding the indigenous peoples and

²⁹ Stavenhagen, R. 2004. Paragraph 41.

³⁰ Ibid. Paragraph 41,

their rights. On his election as president, Aylwin set up the Special Commission of Indigenous Peoples (CEPI) which would work alongside the indigenous movement on the draft of the Indigenous Act.³¹

The Indigenous Peoples' Act was subsequently approved by Congress and ratified in 1993. The new law, which recognised the existence of Chile's indigenous populations, marked a significant break from the Pinochet regime's oppressive indigenous policies. However, several amendments were made to the original draft of the Law which diluted its potential for securing the protection of indigenous rights:³²

- **Recognition as a people**

The first article of the Act recognises the 'indigenous', i.e the seven different ethnicities in Chile and their communities. However, the term 'indigenous peoples' was removed from the original draft. This term was contested and consequently removed by members of the Congress who viewed the term 'people' as synonymous with 'nation'. This provoked a fear that Chile would become divided into many nations. In the act 'indigenous peoples' were only recognised as 'communities' who held ancestral titles to land and could apply as a corporate body for funds or projects.³³ More significantly, communities are not permitted by law to form associations. These restrictions have meant that it is difficult for the Mapuche people to make demands for 'collective rights' as they are not recognised as a collective ethnic group.

- **Land Rights in the Indigenous Act**

"(...) the law did not fulfil all our aspirations (...) it allows us to think about recovering that which belongs to us" Jose Millao³⁴

The Indigenous Act did not fulfil the expectations of the Mapuche movement. It did, however, mark a positive change in the State's policies regarding indigenous land. The Act recognises indigenous ancestral lands, the need to recuperate lands for subsistence farming and the need for their protection. The law set up a new state agency: CONADI, which was made responsible for administering a new fund: the Fund for Land and Water. CONADI is responsible for resolving land disputes through mediation and funding to subsidize the purchase of land by

³¹ Reuque Paillalef, Rosa Isalde; Edited, translated and with Introduction by Florencia Mallon 2002. *When a flower is reborn; the life and times of a Mapuche feminist*, Duke University Press, United States of America pg182-3

³² Haughney, D. 2006. Pg78

³³ Haughney. 2006. Pg82-83

³⁴ Jose Millao, leader from Ad-Mapu in Haughney, D. 2006 pg92

indigenous communities. CONADI also purchases state-owned lands for indigenous communities or individuals.³⁵

CONADI: A tool of the State

CONADI's achievements regarding the recovery of land for the Mapuche people must be acknowledged. Between 1994 and 2001, 170.357,81 hectares of land were acquired and transferred to indigenous families and communities. The Mapuche of the Bío Bío and Arauco regions were the main beneficiaries of the land transfers.³⁶

Despite this achievement, the benefits of CONADI's land recovery programme have been severely hindered by several factors. Firstly, CONADI's resources are insufficient to keep up with rising land prices and the needs and demands of the Mapuche rural population. Secondly, the decisions on which an individual or community receive the funds or projects are arbitrary and lack transparency. Often communities or individuals who gain funds are those who have greater political influence and are most capable of lobbying and mobilising rather than those who are in the greatest need of land. Thirdly, the benefits that the subsidies for land or land transfers have brought to the Mapuche have been limited largely due to the poor quality of the land. Moreover, communities are rarely given sufficient technical support and resources to work the land effectively.³⁷

Concepts of Participation and Development

The concepts of participation and development expressed in the Indigenous Act are incompatible with the Mapuche visions of autonomy and participation. According to the Indigenous Act, participation for indigenous peoples implies participating in projects via CONADI, not participating in local politics or decision-making. According to Stavenhagen, the mechanisms for the participation of indigenous populations are insufficient, *"nor have they managed to expand opportunities for autonomy as demanded by many indigenous groups"*.³⁸

CONADI's programmes generally focus on the insertion of the Mapuche people into the market. The projects aim at alleviating poverty among indigenous peoples with short-term solutions. Haughney argues that the projects rarely attempt to tackle the larger structural problems which affect the small

³⁵ Ibid. Pg94-5

³⁶ Aylwin, Jose, 2002. *Tierra y territorio Mapuche: un análisis desde una perspectiva jurídica*. Proyecto Mapu Territorialidad, Universidad de la Frontera, Temuco, Chile pg17

³⁷ Aylwin, J. 2006. pg13

³⁸ Stavenhagen, R. Paragraph 17

landowner in a neoliberal economy. The concept of development in the Indigenous Act subordinates the Mapuche vision of development and *“reflects the hierarchy of values and control over capital and productive resources inherent in the neoliberal political economy”*.³⁹

The amendments made to the original draft of the Indigenous Peoples’ Act have limited its potential for securing indigenous rights in Chile. As a result of the amendments, the Mapuche movement is not empowered by the Act and its members do not feel a sense of ownership.

“En las comunidades nosotros discutimos un orden de ley pero era más o menos una aspiración, luego llegó al parlamento y salió una cosa que no tiene nada que ver. Cambió totalmente.” Damasio⁴⁰

Ultimately, the Act, CONADI and the State’s efforts to recover Mapuche land have failed to provide sufficient protection for indigenous rights. This argument is supported in the second section of this chapter which considers the five principal problems which threaten indigenous rights in 21st century Chile.

Five Threats to Indigenous Rights

Constitutional reform and the ratification of ILO Convention 169

Neither the Indigenous Peoples’ Act nor the Chilean Constitution formally recognise indigenous peoples. Adolfo Millabur argues that without these reforms *“no es posible avanzar hacia el reconocimiento de derechos colectivos”*⁴¹. Constitutional reform would provide a framework for the collective demands of the Mapuche people and for a new relationship between the Mapuche and the State. Furthermore, the ILO Convention 169 concerning the rights of Indigenous and Tribal Peoples still awaits ratification by the executive. The ratification of this Convention would, in theory, bring indigenous rights in Chile into line with international standards.⁴² The Mapuche movement argues that the existing legislative framework is insufficient for the protection of their rights. Consequently, it calls for constitutional reform and the ratification of the ILO 169.⁴³

³⁹ Haughney, D 2006. Pg 98

⁴⁰ Interview with Don Damasio, Lafkenche Leader, 14/06/08, 3pm, Puente, Tirúa

⁴¹ Millabur in Reyes B & Jara, D. 2004. Pg 16

⁴² All except five Latin American countries have ratified the Convention.

⁴³ Organizaciones Territoriales Mapuches 2006. *Propuesta de Organizaciones Mapuche Territoriales al Estado de Chile*, Wall Mapu, Pegun. Website www.observatorio.cl/contenidos/naveg/doc7/Propuesta_organizaciones_mapuches.doc pg17.

Access to land and natural resources

Limited access to land forms the basis of Mapuche demands for territorial rights. Historically, the state's policies towards Mapuche land have emphasised opening up and privatising communally-owned land. After the return to democracy the State attempted to reverse the land expropriations which took place under the military regime via CONADI's land recuperation programmes. However, these programmes have had a limited effect. Furthermore, Chile's neoliberal economic policies contradict the benefits of the State's land recovery programmes as the economy's growth heavily relies on the exploitation of Chile's natural resources, particularly in the South of Chile. The exploitation of natural resources and the expansion of the export industry has resulted in the encroachment of the forest and fishing industries onto Mapuche lands. Consequently, there is increasingly less cultivable land for small landowners and Mapuche communities.

During the 1990s, the forestry industry expanded rapidly in the Arauco region. In Tirúa, in the South of the Arauco region, sixty percent of the land is owned by three forestry companies; Arauco, Mininco and Voterra Ltd.⁴⁴ These companies have contributed little to the local economy in the way of income or employment. This has provoked feelings of resentment in the communities particularly as a large percentage of families in Tirúa are reliant on subsistence agriculture.⁴⁵ The communities usually attempt to negotiate with CONADI and the local government. However, this process is often slow and frustrating and has often culminated in demonstrations which sometimes spiral into conflict.⁴⁶

Since 1991, the Lafkenche communities' access to the sea and the coastal areas has been limited by the Fisheries and Aquaculture Act.⁴⁷ The Act privatised the use of the sea and its natural resources, requiring that the Lafkenche Communities form unions to carry out their traditional economic activities. This law has disregarded the Lafkenche's traditional organisational structures and their historical use of the sea for economic, religious, cultural and medicinal purposes. It has provoked a long struggle by the Lafkenche movement to regain access to the sea and control over its natural resources.⁴⁸ Limited access to the land and sea remains one of the principal causes of poverty among the Mapuche population and has generated intense mobilisation in the communities.

⁴⁴ Reyes, B. & Jara, D. 2004. Pg7

⁴⁵ Toledo Llancaqueo, Victor. 2001. Pg7

⁴⁶ Reyes, B & Jara, D 2004. Pg16

⁴⁷ La Ley General de Pesca y Acuicultura, 1991.

⁴⁸ Toledo Llancaqueo, Victor. 2005 *Pueblo Mapuche Derechos Colectivos y Territorio: Desafíos para la sustentabilidad democrática.* Lom Ediciones, Chile. Pg 112

State-supported development projects

The Chilean Government's development model strongly conflicts with the Mapuche's cosmovision. Large State-supported development projects such as the Temuco Bypass, the Coastal road and the construction of hydro-electric dams on or around Mapuche land have led to feelings of resentment and protests by the Mapuche communities. In the case of RALCO, the hydro-electric dam on the upper Bío Bío river, the authorities failed to consult Mapuche communities regarding its construction and displaced many Mapuche -Pehuenche families.⁴⁹ Nor the needs or rights of the Pehuenche were taken into account during the construction of the dam.⁵⁰

In the Lafkenche coastal region, despite protests by Lafkenche leaders and communities, the Government continues to support the construction of the Coastal road. The route of the road is designed to pass through several Mapuche communities and several sacred areas known as *Nguillatue*.⁵¹ Leader Domingo Rain explains that for the Lafkenches, the construction of the road signifies "*la pérdida de la identidad lafkenche que nosotros decimos la pérdida de nuestra cultura, porque al ser penetrado nuestro territorio por una obra como esta va a haber una entrada muy grande de otra gente de otras ideas y vamos a comenzar a perder nuestra identidad*".⁵² Ironically, the project has been renamed '*Carretera Lafkenche*', as the Government has made a commitment to modernize roads which connect Lafkenche communities. However, the State has not agreed to amend the original route of the coastal road.⁵³

State-supported development projects contradict the States indigenous policies which emphasise 'multiculturalism'. They threaten the cultural rights of the Mapuche and limit the possibility of securing territorial rights.

⁴⁹ The Pehuenche are another territorial identity of the Mapuche. They live in the Andean regions of the Araucanía.

⁵⁰ Stavenhagen, R. 2004. Paragraph 24.

⁵¹ Identidad Territorial Lafkenche. 2008. 'Preocupación por reactivación de construcción de la ruta costera' *Periódico Rakizuam Lafkenche*_1st Edition. Temuco, Chile. Pg3. *Nguillatue* is the sacred site where Mapuche communities gather to carry out religious ceremonies.

⁵² Domingo Rain in Lafken Ni Zugvn. Proyecto de Ley Que creo el Espacio Costero Marino de los Pueblos Originarios. Programme 1. August 2007.

⁵³ Identidad Territorial Lafkenche. 2008.pg3

Police repression and the criminalisation of Mapuche protest

According to the Human Rights Watch Report, *'Indebido Proceso'*, Mapuche protesters are often subject to abusive and violent treatment by police officers. This has occurred during police raids on communities to make arrests and during attempts to remove protesters from occupying private land.⁵⁴

The violence perpetrated by the police is frequently disproportionate to violence used by the Mapuche movement during protests. Two young Mapuche protesters, Alex Lemún and Matías Catrileo, were killed as a result of police violence, in 2002 and 2008 respectively. Police crimes in Chile continue to be processed by the military courts: this has resulted in the police officers responsible for these crimes being treated with impunity.⁵⁵

Moreover, there is often a large and permanent police presence surrounding private lands and forestry companies to protect the land from thieves and protesters. Many Mapuche communities are situated near land owned by forestry companies. The constant police presence can be seen as threatening and has further aggravated feelings of resentment within Mapuche communities towards large land owners and the State.⁵⁶ This contrasts with the insufficient police presence in the urban areas of Tirúa and Quidico. The local inhabitants demand a greater police presence to deal with growing crime rates in the area. The State's response to this demand is that *"no existe la dotación policial ni los vehículos necesarios"* for the region.⁵⁷ This demonstrates the State's tendency to prioritise the protection of privately-owned land over that of the local communities.

One of the State's responses to the land disputes and Mapuche protests has been the criminalisation of Mapuche protest. Under President Lagos' Government (2002 -2006) the State began to apply the Anti-Terrorist Law to Mapuche leaders who were accused of acts of vandalism and damage to public property. The Anti-terrorist law is a legacy from Pinochet's dictatorship and was used to control violent guerrilla groups.⁵⁸ When the Anti-terrorist law is applied, it impinges upon the defendant's rights to due process. The law allows for indefinite periods of custody before trial. Furthermore, key witnesses are hidden from the defence lawyers, making a fair trial impossible.⁵⁹

⁵⁴ Human Rights Watch, 2004. Pg51

⁵⁵ Ibid. pg 8 and *Lafken Ni Zugvn: Criminalización*. Programme 6. January 2008

⁵⁶ Adolfo, Millabur. *Letter from Alcalde Municipalidad de Tirúa to Señor Edmundo Perez Yoma, Ministro del Interior; 'Informa Acción Policial Comuna de Tirúa'*. Ord. No. 303, Municipalidad de Tirúa, Alcaldía 11/6/2008 pg1

⁵⁷ Ibid. pg2

⁵⁸ Human Rights Watch. 2004 pg25

⁵⁹ Ibid pg25-46

The State's response to Mapuche protest has turned this social conflict into a judicial one. Moreover, the application of the Anti-Terrorist law and the police repression of Mapuche communities violate basic human rights and indicate that discrimination is pervasive in the Chilean criminal justice system. More importantly it demonstrates the State's prioritisation of neoliberal and business interests over the rights of indigenous populations.

Mechanisms for participation

Two of the key problems and causes of frustration for the Mapuche movement are the limited opportunities to pursue dialogue with the State and the lack of mechanisms for political participation. Neither the transition period of the nineties nor the Indigenous Peoples' Act provided adequate mechanisms for the political participation of Mapuche peoples: *"The participatory mechanisms envisaged in the Indigenous Peoples' Act have not had the desired result"*⁶⁰

The Mapuche movement feels forced to resort to other forms of protest and demonstration due to its lack of opportunity to communicate or negotiate with the State. In July 2008, 100 members of 35 communities in the provinces of Budi, Ercilla, Collipulli, Curarrehue and Traiguén occupied CONADI's central office in Temuco to protest against the lack of established outlets for dialogue with the government. They also complained that they had been let down by CONADI and Roberto Egaña, the commissioner for indigenous affairs, who had made promises regarding their claims for land. With respect to their land claims, the protesters claimed no representative of CONADI had been available or willing to represent the leaders in their struggle.⁶¹

The five problems which this chapter has identified describe the threats to the culture and livelihoods of the Mapuche and the general disregard for Mapuche rights. These problems are exacerbated by the limited legislative protection for indigenous rights in Chile. Until there are legislative reforms which are implemented and secure greater rights for indigenous peoples, it will become increasingly difficult to bring an end to the conflict between the Mapuche and the State.

⁶⁰ Stavenhagen, R. 2004.paragraph 17

⁶¹ Gabriela Rodríguez, 23/07/08. *Comunidades movilizadas por demandas de tierras se toman CONADI* Website: http://www.nodo50.org/azkintuwe/jul22_09.htm

Chapter Three: The Mapuche Movement

Chapter two presented the limitations of indigenous rights in Chile and this part of the study will demonstrate how these limitations provoke Mapuche protest and form the basis for the movement's demands. The aim here is to provide an analysis of the Mapuche and the Mapuche-Lafkenche movement's discourse, demands and strategies. Firstly, the chapter will briefly describe the key stages in the evolution of the Mapuche movement during the dictatorship, transition and post-transition. It will then analyse the movement's 'identity discourse' and its principal demands. The second half of the chapter will focus specifically on the Mapuche-Lafkenche movement, considering its strategies and ability to open up space for political participation and dialogue.

The Emergence and Evolution of the Mapuche Movement

Yashar accounts for the emergence of new forms indigenous mobilization in late twentieth Century Latin America as a response to the continent-wide change to a neo-liberal citizenship regime.⁶² The rise of the neoliberal model in Latin America encouraged the liberalization of land markets: this provided a threat to the communal land holdings of indigenous peoples and their cultural and economic survival.⁶³

In Chile, the military dictatorship's free market policies clearly provoked Mapuche mobilization. The movement emerged in response to the 1978 Decree Law 2568 which was approved under Pinochet's regime. The decree sought to divide Mapuche community lands into individual and privately-owned landholdings which threatened the cultural survival of the Mapuche communities.⁶⁴ Initially, the protest movement gathered widespread support from the Mapuche communities, despite the military regime's repressive policies. Under the wing of the Catholic Church the cultural survival movement, '*Centro de Movimientos Culturales*' was formed. A few years later, in the early 1980s, the movement gained its autonomy from the church and became known as '*Ad-Mapu*', one of the strongest and best-known Mapuche organisations of the dictatorship.⁶⁵ The movement had limited success during this period as it

⁶² Yashar, J D. 2005.

⁶³ Assies, Willem in Assies, W, Van der Haar, G and Hoekama, A. (eds) 2000. *The challenge of diversity: indigenous peoples and the reform of the state in Latin America*. Thela-Thesis, Amsterdam.pg8

⁶⁴ Haughney. 2006 pg 60

⁶⁵ Cereso, Karen. 2005. *The politics of being Mapuche in Chile: Communities, identities and contested frontiers*. Phd.Thesis, University of Sussex, School of Social Sciences and Cultural Studies. pg12

was heavily repressed by the regime and unable to prevent the division of the community lands. Furthermore, when the communities realized that the Decree Law did mean they would lose their lands, many Mapuches lost interest in the movement and as a consequence it was weakened. Nevertheless, a number of key Mapuche activists and leaders continued to mobilize in opposition to the divisions which would cause significant land loss and disruption for community life.⁶⁶ United by their struggle, these leaders began to make collective demands for autonomy and recognition as a people. These new demands for collective rights represent a landmark in the evolution of the vision, political thought and demands of the Mapuche movement.⁶⁷

In its early stages the Mapuche movement was united, however, from the mid-1980s onwards, it became increasingly fragmented by partisan differences. The agenda of the leaders tended to reflect the ideological differences of the political parties rather than the genuine demands of the Mapuche communities. Nonetheless, these divisions led several Mapuche leaders to fight autonomously from political parties for collective rights of the Mapuche people.⁶⁸

“Rompiendo eso siempre que los mapuches en Chile no estábamos para adornar ni mucho menos los gobiernos de turno ni tampoco para poder ser presa fácil de los movimientos sociales y que no éramos para eso.” Carilao⁶⁹

Transition to Democracy

Transition to democracy in Chile created a political opening for the Mapuche movement. The Mapuche vote held significant weight for the election of the president and the movement was able to take advantage of this. Prior to the elections, in 1989 the New Imperial Agreement was signed between the leaders of the Mapuche movement, other indigenous leaders and the presidential candidate, Patricio Aylwin. The agreement had particular significance for the indigenous movement as it united indigenous people around a common goal and it led to the *“first commitment to the indigenous peoples of Chile (...) that was actually fulfilled”*.⁷⁰ In the agreement, the presidential candidate made several commitments: to create a law regarding indigenous rights in Chile, to submit a proposal for constitutional reform recognizing the legal status of indigenous peoples, to ratify the ILO Convention 169 and to create an

⁶⁶ Haughney 2006.pg61

⁶⁷ Ibid. pg15

⁶⁸ Ibidpg 62 & Reuque Paillalef. Pg314

⁶⁹ Interview with Iván Carilao, Lafkenche leader and Councilor, 11/06/08, 2pm, Tirúa Town Hall

⁷⁰ Reuque Paillalef.2004 pg182

institution *“with broad participation from the indigenous social movement and from all the indigenous peoples, an institution that listened to them and respected their rights and values”*⁷¹.

In 1993, the Congress approved the Indigenous Act, however, several amendments were made to its contents, which the movement itself had drafted. These amendments weakened the significance of the Act for the Mapuche movement. One of the most damaging changes involved the removal of the terms ‘indigenous territory’ and ‘indigenous peoples’ from the draft. The Indigenous Act did not recognize ‘indigenous peoples’ or their collective rights.⁷² This caused a great sense of disillusionment among the Mapuche leaders and communities. The transition had failed their expectations for a new relationship with the Chilean state.⁷³

Identity discourse

“Se visten con traje tradicional mapuche; se reúnen públicamente en nguillatunes y trawunes,”⁷⁴ hablan públicamente en Mapudungun”.⁷⁵

In the 1980s, the Mapuche movement began to articulate its demands for collective rights using a discourse of ethnic difference and symbolic expressions of identity. The movement’s use of cultural symbols in public, such as the traditional Mapuche dress, and frequent references in speeches to its religious beliefs and the sacredness of the land became central to its collective identity. This reinforced unity across the Mapuche movement and contributed to a process of cultural reconstruction and revitalization of the Mapuche identity.⁷⁶

“nosotros somos Mapuches, tenemos una forma de ver el mundo distinta, tenemos nuestra cultura, nuestra religión, esas son las palabras que nos guían..”. Linco⁷⁷

The Mapuche movement’s identity discourse also highlights the boundaries between the Chileans and the Mapuche. According to Cereso, this greater sense of “Mapucheness” has led to the collective

⁷¹ Ibid. pg183

⁷² Haughney pg78

⁷³ Reuque, paillalef 2004 pg200

⁷⁴ *Nguillatunes* are Mapuche religious ceremonies and *Trawunes* is Mapudungun for meetings.

⁷⁵ Toledo 2005. Pg88

⁷⁶ Tricot, Tito. 2008. *‘Identidad y política en el Nuevo movimiento mapuche’ Historia Actual On line*, No. 15, pg31

⁷⁷ José Linco, Lafkenche leader and Councillor, 12/06/08, 8.30am, Tirúa Town Hall

actions of communities who make demands regarding the recovery of their lands and their cultural rights.⁷⁸

A shared history is also commonly referred to in Mapuche discourse. The historical referent unites the Mapuche people and reminds them of their common history and suffering. It also reinforces their need to mobilize against ongoing repression and discrimination. Relationships with the Chilean state are often defined as violent, discriminatory and based on unequal grounds.⁷⁹

“(…) el tenor de la relación nunca fue relación, siempre fue subordinación bajo el estado con su política, subordinando a las comunidades” Carilao

The repression of Mapuche leaders, the criminalization of Mapuche protest and the police discrimination in the 21st Century, indicate the continuation of this unequal relationship with the State and form the basis of Mapuche demands for rights and reparations.

Collective demands: from ‘tierra’ to ‘territorio’

The year 1997 is identified as marking the beginning of a new phase and a new political agenda of the Mapuche movement. Mobilisation by the communities of Lumako⁸⁰ to recover land from the encroaching forestry companies is considered as the first of a new phase of mobilizations and land occupations. Frustrated by the lack of mechanisms for negotiation and dialogue with the state, the Movement’s mobilizations intensified and often resulted in confrontation with the police forces.⁸¹ Intense protests and land occupations have exerted significant pressure on State and have obliged the government to open up some space for dialogue and negotiation.⁸²

The recovery and protection of ancestral lands has always been central to the Mapuche movement’s objectives and demands. As stated, in 1997, the movement’s political agenda and their demands evolved. Claims for land were increasingly framed as demands for territory and demands for recognition were reframed as demands for autonomy. Territorial rights not only imply land rights but also demands for the collective ownership of fertile land and natural resources and control over local development.⁸³ The movement argues that such rights would allow for the reconstruction of traditional organizational

⁷⁸ Cereso, Karen. 2005. Pg137

⁷⁹ Ibid. pg137

⁸⁰ During these mobilizations, two lorries belonging to the forest company were set alight.

⁸¹ Tricot 2008. Pg37

⁸² Toledo, 2005 pg 104

⁸³ Ibid Pg107

and administrative structures such as the *'lof'*, the *'ayllarew'* and the *'butalmapu'*.⁸⁴ Furthermore, the Mapuche protest to protect their land from environmental damage and the encroachment of development projects on their land. This has facilitated their capacity to portray themselves as “ethical custodians of the environment”.⁸⁵ The movement’s stance on environmental issues and the globalization of its struggle has allowed movement to expand its solidarity network and gain the support of other indigenous movements facing similar struggles in Latin America.⁸⁶

The Mapuche movement is united by its common demands, shared Mapuche identity and vision of a Mapuche nation. However, it remains a heterogeneous movement. There are many different Mapuche organizations which use different strategies to articulate their demands. One of the best-known organizations within the Mapuche movement is the *'Consejo de todas las tierras'* which uses a direct and confrontational method of land occupations to recover land.⁸⁷ In contrast, the Lafkenche organization, *'Identidad Territorial Lafkenche'* relies on opening spaces for dialogue and participation and negotiating with the local and national government. The organizations that work autonomously tend to be the most persecuted and repressed by the State.⁸⁸

“La gente que está luchando autónomamente son los que tiene el estado la pata encima, perseguidos y todo el asunto, en cambio los otros no, están protegidos” Damasio

They are in favour of complete autonomy and are highly critical of Mapuche organizations which choose to negotiate with the Government.⁸⁹ According to Ivan Carilao, a leader of the Lafkenche Movement, demonstrations have recently been the most successful way to obtain a response from the State.

“La única forma de que se han logrado de que alguna manera las comunidades sean escuchadas es a través de la movilizaciones, no existe otra en la actualidad”. Carilao.

Despite the internal divisions within the movement, the Mapuche organizations share five principal demands. Firstly, they call for a formal constitutional recognition and for the approval of the ILO Convention 169. Secondly, they demand the legalization and reconstitution of Mapuche territory. In addition, they call for an end to the expansion of capitalist enterprises such as forestry and mining on

⁸⁴ Painemal, Millaray & McFall, Sara 2000. Cultural Resistance: Being a Mapuche woman in Chile 2000. Website: http://www.lolapress.org/elec1/artenglish/pain_e.htm Lof, Ayllarehue and Butalmapu: are the extended family community, the organization of 9 communities and the larger prehispanic territory

⁸⁵ Cereso, 2005. Pg261

⁸⁶ Reyes, B. 2004 pg12

⁸⁷ Cereso, 2005. Pg261

⁸⁸ Human Rights Watch. 2004.pg21

⁸⁹ Cereso, 2005 Pg285

Mapuche lands. Moreover, they demand provisions for autonomy and participation. Finally, they denounce repression and discrimination.⁹⁰

The Mapuche- Lafkenche Movement

“Recién nos dimos cuenta que los Mapuche también tenía otras identidades; que por ejemplo su territorio era básicamente el llano, el valle y nuestros viejos decían que estos viejos se llaman ‘Ngache’, los que viven en el sur son ‘Huilliches’ y los que viven en la cordillera son ‘Pehuenches’” Carilao

Ivan Carilao, a leader of the Lafkenche movement, explains that within the ‘Mapuche nation’ there are several different territorial identities. Over the last two decades there has been a move towards the cultural reconstruction of these territorial identities. While each identity has its geographical location and particular demands, each sees itself as part of the Mapuche people.

“Los lafkenche, no somos pueblo, somos ‘una identidad.’ Ahora, nosotros somos una identidad adentro del pueblo mapuche que nos unifica” Carilao

In their discourse, the leaders of the Lafkenche movement describe their identities and cultures as being inextricably linked to the land and the sea.

“Es la forma de vida particular que lo caracterizaba precisamente nuestra ubicación geográfica que es un poco de mar y todo lo que es tierra. Esa es nuestra concepción de vida y esto es el espacio territorial que nosotros hoy reivindicamos” Linco

In the early 1990s, the Lafkenche people began to organise. The movement initially formed in response to the Fishery and Aquaculture act which failed to recognise the rights of the Lafkenche communities to use the sea and the coastal regions for productive, recreational and religious purposes. By limiting their access to the land, sea and natural resources, the Act threatened the survival of the Lafkenche culture. Leaders of the communities formed a political organization ‘*Identidad Territorial Lafkenche*’ to represent the Lafkenche communities and to defend their cultural and ancestral rights to the coastal region.⁹¹

⁹⁰ Ibid. Pg285

⁹¹ Identidad Territorial Lafkenche, *¿Quiénes somos?* Available from: <http://www.identidadlafkenche.cl/quienes%20somos.html>

During the 21st Century the movement has grown. Improvement in local communications and transport has enabled the movement to unite fifteen Lafkenche communities that are situated in the coastal areas of the VIII, IX and X regions of Southern Chile from the Arauco Golf to Palena, Chiloé.⁹²

Lafkenche Demands: “La estrategia territorial de las comunidades Lafkenches”⁹³

The Lafkenche movement has two principal demands for collective rights: the control and management over its land, sea and natural resources and demands for local autonomy. Both of these demands require the State’s recognition of collective rights and ultimately a new relationship between the Mapuche- Lafkenche and the State.⁹⁴

The denial of the Lafkenche’s rights to access the sea provoked the emergence of the Lafkenche movement. However, the Lafkenche communities also face several other threats to their cultural rights, their rights to access the land and to control natural resources, which form the basis of their claims. The expansion of the timber industry on Lafkenche territory makes it increasingly difficult for the communities to recover land. Moreover, the expansion of eucalyptus and pine plantations has caused significant environmental damage to the surrounding soil and water supply.⁹⁵ State-supported development projects, such as the construction of the ‘Coastal road’, which is destined to be built through several Lafkenche religious sites, also disregard the Lafkenche communities’ cultural rights.⁹⁶

The movement’s strategies have involved creating strategic alliances with members of Congress, international NGOs and members of the media. They have presented their demands to CONADI, the local and national Government and the President. Through a relentless process of negotiations, dialogue and lobbying, the Lafkenche leaders have managed to create new platforms for the Movement and they have brought their demands and local issues to the government’s public agenda. In the process, they have managed to strengthen and unite their own organisations in the Lafkenche territory.⁹⁷

⁹² Hualme, B and Millabur, A. 2003. ‘El derecho mapuche al lafkenmapu’ In. Aylwin Jose (Ed) *Derechos humanos y pueblos indígenas tendencias internacionales y el contexto chileno.* (CD Rom)_Universidad de la Frontera, Temuco, Chile. Pg15

⁹³ Toledo, Llancaqueo. 2001. Pg1

⁹⁴ Ibid. Pg1

⁹⁵ Reyes B & Jara, D. 2004. Pg8-9

⁹⁶ Identidad Territorial Lafkenche, *¿Quiénes somos?*

⁹⁷ Toledo 2001 pg10

A referent of indigenous politics

Adolfo Millabur, the Mayor of Tirúa, has been elected for three consecutive four-year terms. This demonstrates the significant and unprecedented political participation by the Lafkenche communities and the movement. The Mayor's political discourse supports the Lafkenche demands for territorial autonomy and promotes the reconstruction of territorial identities. Millabur's and the town council's alliance with the Lafkenche movement has been essential for the participation of the Lafkenche communities, the strengthening of the Lafkenche movement and its insertion into national politics. The council has directed resources, funds and projects directly to indigenous communities in the region. More importantly, it has opened up space for participation in the planning of development projects and has created alliances between the municipality, indigenous communities and the State, becoming a key interlocutor between the different actors. Consequently, the Lafkenches have become a referent of indigenous politics in Chile.⁹⁸

Undoubtedly, the Lafkenche movement has been strengthened by the political position and actions of the Lafkenche Mayor and the town council. Furthermore, the self-esteem of the Lafkenche communities has been lifted by the political presence of a Lafkenche mayor who prioritises their demands and interests.⁹⁹

The Mayor embodies the achievements of the Lafkenche movement and its success in the political arena. The movement demonstrates the potential and possibility for securing greater rights for indigenous peoples in Chile in the future.

⁹⁸ Ibid pg22

⁹⁹ Toledo 2001 pg22

Chapter Four: The Mapuche-Lafkenche Movement and the State

New Indigenous Politics

After her election in 2006, Michelle Bachelet's governmental programme recognized the urgent need for the constitutional recognition of indigenous peoples and for the ratification of International Convention ILO 169.¹⁰⁰ In April 2008, after two years in government, President Bachelet announced the Concertación's new Indigenous programme which would be implemented in the final two years of her administration. The programme, '*Re-conocer; pacto social por la multiculturalidad*', aims to develop the political system to ensure greater political rights for indigenous peoples and improve opportunities for political participation by increasing their representation at all levels of government. The programme also emphasizes the importance of recognizing indigenous peoples and their cultures, with an aim to ending discrimination and poverty.¹⁰¹

In June 2008, a public ceremony was held to announce the new programme. In her speech, President Bachelet reaffirmed the Concertación's goals for indigenous participation stating that "*Es la hora de asumirnos como una diversidad.. Yo quiero que haya representantes indígenas en el Parlamento.*"¹⁰² She also drew attention to the benefits brought to indigenous peoples by the two recent legislative developments: the ratification of '*La ley que crea el espacio costero marino de los de los pueblos originarios*' (La Ley 20.249) and the Senate's ratification of the ILO Convention 169. According to the Government, these legislative developments combined with the State's new indigenous politics will mark a new stage in the relation between the State and indigenous peoples which will be based on a new agenda of dialogue and participation.¹⁰³

The response of the Lafkenche movement to the announcement of the new programme was cynical and hostile. "*Más de lo mismo*" was the one of the statements released by leaders of *Identidad Territorial Lafkenche*.¹⁰⁴ Adolfo Millabur adds that the new indigenous policies demonstrate that the Government

¹⁰⁰ Michelle Bachelet, *Programa de gobierno: Pueblos Originarios*. Website: <http://www.observatorio.cl/contenidos/naveg/doc4/bachelettprograma.pdf>

¹⁰¹ CONADI, *Re-Conocer. Pacto Social por la Multiculturalidad*. Website: http://www.origenes.cl/_presidencia.htm

¹⁰² Michelle Bachelet in *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Gabriela Rodríguez, 11/7 /08. *Lafkenches rechazan acuerdo entre gobierno y Naciones Unidas*. Available from: http://www.nodo50.org/azkintuwe/jul11_06.htm

wants to *“blanquear la relación con el movimiento indígena con anuncios que no compartimos.”*¹⁰⁵ The Lafkenche movement points to the failure of the State to bring an end to the police repression and violence towards Mapuche protesters and leaders.

It is evident that the Mapuche-Lafkenche movement does not share the same views as the State regarding the indigenous-State relationship. The study will now explore the Lafkenche movement’s perspective; the chapter focuses on the two aforementioned legislative developments and looks at each one as a case study. Each study examines the demands of the Lafkenche movement, the actions of the State and the dialogue between the two. It will then analyse the significance of the legislative processes for the movement, for indigenous rights and for the relationship between the Lafkenche movement and the State.

The two main objectives are: to analyse the significance of these legislative changes for the movement and secondly to ascertain to what extent the Mapuche-Lafkenche leaders consider the developments as indicative of a new relationship between the indigenous populations and the State.

La Ley 20.249

The emergence of the Lafkenche Movement was provoked by the 1991 Fishery and Aquaculture Act. This Act, which was implemented in order to regulate economic activities and natural resources in the coastal region, does not acknowledge the collective rights of the Lafkenche people to access the sea and coastal areas.¹⁰⁶

“(…) porque la ley que se hacía no era para los mapuches sino para los pescadores (…)” Damasio

The Lafkenche communities have traditionally used the sea, beaches and coastal areas, not only for economic and subsistence purposes, but also for cultural and religious practices. According to Adolfo Millabur, *“Esta ley nos empuja a organizarnos de una manera distinta a como hoy los Lafkenche nos organizamos, esto es, como comunidades.”*¹⁰⁷ In order to continue fishing and collecting sea fish or algae, the Lafkenches from the coastal communities had to form syndicates and pay a form of rent based on each hectare they fished. This has imposed a change in the organization of the Lafkenche’s economic activities and has generated conflicts with local fishermen and between leaders in the

¹⁰⁵ Adolfo Millabur in Ibid.

¹⁰⁶ Toledo 2005pg112

¹⁰⁷ Hualme & Millabur, A. 2003.pg329

communities. Moreover, on certain stretches of coastal waters, specifically in parts of Tirúa and in Puerto Saavedra there are now forbidden entry zones for the local people.¹⁰⁸

The Act brought the Lafkenche community leaders together to articulate their concerns over the pernicious effects of the law on their communities. Through organizing, negotiation and lobbying they have managed to articulate their concerns and place them on the public agenda of the Chilean Government.¹⁰⁹ In November 2007, *La Ley 20.249* was approved, recognizing the Lafkenche communities' rights to access the sea for productive, social and religious purposes.

This new law is unprecedented as it is the first law in Chile proposed and drafted by indigenous leaders. It is also the first law to recognize the existence of the collective rights of indigenous communities and their cultural differences.¹¹⁰

Lafkenches in Congress

The process leading to the ratification of *La Ley 20.249* was a long struggle for the Lafkenche movement. According to Adolfo Millabur, it was not without "*dificultad interna y con forcejeo entre el gobierno y el movimiento lafkenche.*"¹¹¹ The process began with initial meetings in the Lafkenche region, where the leaders expressed their concerns about the Fishery and Aquaculture Act. The movement began to formulate claims for territorial autonomy, access to the sea and control of their natural and embarked on a process of articulating their demands through both dialogue and mobilization. In 2002 they managed to coordinate a series of meetings with the President, Ricardo Lagos, which provided the Lafkenche leaders with a rare opportunity to articulate their demands directly to the cabinet.¹¹²

"(...) logramos un momento de instalarnos en una mesa de negociaciones con el gobierno y eso fue básicamente para decir que eso está mal hecho (...)" Carilao

In 2005, after a further meeting with the Lafkenche leaders, President Lagos committed himself to support the proposal for a new law to replace the Fishery and Aquaculture Act and promised to submit the proposal to the Chilean Congress. The drafting of the proposal for the New Coastal Law was a participative process and its contents were formulated exclusively by the Lafkenche leaders with the

¹⁰⁸ *Lafken Ni Zugvn: Programme 1.* Proyecto de Ley Que creo el Espacio Costero Marino de los Pueblos Originarios. August 2007.

¹⁰⁹ Interview with Adolfo Millabur. Ibid.

¹¹⁰ Interview with Bernardo Pardo in *Lafken Ni Zugvn: Programme 9.* 'Reglamento de la Ley 20.249 Espacio del borde costero marino de los pueblos originarios.' April 2008.

¹¹¹ Interview with Adolfo Millabur in *Lafken Ni Zugvn: Programme 1.* 2007.

¹¹² *Identidad Territorial Lafkenche.* 2008 'Ley que crea el Espacio Costero Marino de los Pueblos Originarios' *Periódico Rakizuum Lafkenche*, 1st Edition. Temuco, Chile. Pg 6&7

support of technicians; scientists and lawyers. According to Millabur, the contradiction between the Mapuche's integral vision of the sea, land and resources and the Government's understanding of these same elements as separate entities was the principal point of contention during these negotiations.¹¹³ Despite these difficulties, La Ley 20.249 was approved by the chamber of deputies in 2005 and in November 2007, it was ratified by the Senate and the Executive branch.

Significance of La Ley 20.249

The new law is highly significant for the Lafkenche movement for several reasons. Firstly, it recognizes them as subjects with collective rights. Secondly, it recognizes their cultures, traditions and communal forms of organization which were previously denied to the Lafkenche people by the Fishery Act. Thirdly, the new law will recognize the rights of Lafkenche people to access the sea. Lastly, the Law recognizes the association of communities, which the Indigenous Act did not allow.¹¹⁴ The new law indicates an important step in the Mapuche-Lafkenche's struggle towards territorial autonomy and the management of their land and natural resources. However, Don Damasio, a Lafkenche leader, reserves doubts about the significance of the law for the communities. He fears that unless the Lafkenche communities are informed about the law, participate in its legislation and become empowered by their rights, the new law will not be implemented or regulated.¹¹⁵

"(...) mire, yo creo que mientras la gente no tenga la consciencia y no haya una instancia de participación va a ser una ley muerta (...)". Damasio

Strengthening the movement

The process leading to the ratification of the new law has demonstrated the ability of the Lafkenche movement to 'do politics': *"muestra la gran plasticidad de sus organizaciones para actuar en política, en la gestión de los recursos, generar procesos de negociación y diálogo con distintos niveles de gobierno y construir nuevas ciudadanía territoriales con profundo arraigo cultural"*. They have been able to bring a local issue, which was previously given little importance or regard by the Chilean State, to the public agenda of the government. The movement was able to take advantage of political allies and political openings and put relentless pressure on the national government.

¹¹³ Interview with Adolfo Millabur in *Lafken Ñi Zugvn: Programme 1* 2007

¹¹⁴ Interview with Bernardo Pardo in *Lafken Ñi Zugvn: Programme 9*. 2008.

¹¹⁵ Interview with Don Damasio

“Íbamos a instalarnos prácticamente en el senado... éramos verdaderos bichos raros ahí porque nunca pensaron que los Mapuches íbamos a llegar a ir allá.. decimos ‘esta ley viene para reparar una situación que ustedes provocaron’ ”. Carilao

The Fishing and Aquaculture Act acted as a catalyst, drawing the Lafkenche communities and leaders together with the common goal of reclaiming their rights to access the coastal area. The process of negotiations and mobilization which followed over the period considerably strengthened the Lafkenche movement.

A new era?

“El gobierno ya puede jactar que fue una legislación que hicieron ellos, pero fue la presión de la dirigencia que logró que esto se instalara y creo que para nosotros ha sido una experiencia.” Carilao

Iván Carilao argues that the new law was ratified due to the constant work, pressure and participation of the Lafkenche movement, not to the decisions of the Government. The new law is unprecedented in history as it was formulated and elaborated by the Lafkenche leaders.

“(...) tiene una genesis y construcción distinta y por eso creemos que va a tener repercusiones importantes para las comunidades”. Linco

Without the ongoing pressure, collective actions and political strategies of the Lafkenche movement, a new law would not have reached parliament. It is difficult to foresee whether *La Ley 20.249* suggests a new relationship between the Mapuche and the State. Nevertheless, it is undeniable that the political will of the Lagos Government and the Bachelet Government to support the legislative process has also played an important part in the advances. Furthermore, the participative nature of the formulation of the law suggests a deepening and strengthening of the democratic process towards a *“democracia [que] no sólo implica votar, sino que también discutir y construir en conjunto.”*¹¹⁶ The new law and the demands of the Lafkenche movement have widened the notion of territorial autonomy for the entire Mapuche movement.¹¹⁷ It has demonstrated that its strategies of seeking opportunities for dialogue and work with the government can have significant results for indigenous rights in Chile.

¹¹⁶ Adolfo Millabur in *Identidad Territorial Lafkenche*. 2008pg7

¹¹⁷ Toledo. 2001, pg16

The ILO Convention 169 in Chile

“10 years after the adoption of the Indigenous Peoples’ Act, there are still gaps in the actual protection of indigenous people’s human rights” concluded Special Rapporteur for the UN, Rodolfo Stavenhagen in his report on indigenous rights in Chile.¹¹⁸ Chile is one of only five countries in Latin America yet to fully ratify the ILO Convention 169. This international instrument for tribal peoples provides a framework which recognises indigenous peoples’ rights to their lands and natural resources, autonomy, self determination and to practise their own culture, religion, tradition and customary law, free from discrimination.¹¹⁹

The Convention was submitted to the Chilean Congress in 1990 by the Aylwin administration. It was ratified by the Chamber of Deputies in 2000 and remained ‘dormant’ in Congress until March 2008 when it was voted upon and ratified by the Senate. It now awaits the ratification of the Executive. There were negotiations and debate in Congress regarding the possibility of including an interpretative declaration of an article of the Convention.¹²⁰ This has had repercussions for the relationship between the indigenous populations and the State and has caused indigenous leaders to doubt the political will of the Government to promote indigenous rights.¹²¹

The demands of the Lafkenche movement

The Lafkenche movement makes demands for the control and management of their land and natural resources and they fight for the right to exercise self-determination and autonomy. These demands require the state’s recognition of indigenous peoples as subjects of collective rights which would lead to a new relationship between the Mapuches and the State. For this relationship to develop, constitutional reform involving the constitutional recognition of indigenous peoples in Chile and the ratification of the ILO Convention 169 are essential first steps. According to Gabriela Rodríguez, journalist for *Identidad Territorial Lafkenche*, the Lafkenche leaders consider the ratification of ILO 169 as an important step towards ensuring that their rights are protected in accordance with international standards. However:

“no ven la ratificación del Convenio como la única solución a sus problemas”. Rodríguez¹²²

¹¹⁸ Stavenhagen, R. paragraph 52

¹¹⁹ ILO, A guide to ILO Convention 169, website: www.ilo.org/public/english/standards/egalite/itpp/convention/index.htm

¹²⁰ Toledo Llancaqueo. 8/01/2008. *La “declaración interpretativa” de Chile al Convenio 169. Un desconocimiento de derecho internacional*. Website <http://www.convenio169.cl/victor%20toledo.html>.

¹²¹ Gabriela Rodríguez, 11/7/08.

¹²² Interview with Gabriela Rodríguez, Journalist, 24/06/08, 5pm, Casa Lafkenche, Temuco

Each Concertación Government has made commitments to the indigenous movement to ratify the ILO Convention 169, beginning with Patricio Aylwin's commitments in the Nueva Imperial Agreement.¹²³ The fact that these commitments have not been kept has led to an attitude of despondency within the Lafkenche movement. When asked if he believed the ILO Convention 169 would be ratified in Chile, Lafkenche leader Miguel Cheuqueman responded: *"no hay voluntad política real, ni del poder legislativo, ni del ejecutivo para poder ratificar este tema"*.¹²⁴

Ratification or Reservation?

One of President Bachelet's commitments to Chile's indigenous populations was to accelerate the ratification of the ILO Convention 169. To a certain extent, she has fulfilled this promise: in March 2008, after 18 years, the Senate voted upon and ratified the Convention.

However, this progress was not without debate or reservations. In January, 2008 the 'Senate's Commission of foreign relations of the Senate', having held several meetings to discuss the 'ILO 169' in the months before, voted unanimously to ratify the ILO 169. Nevertheless, the commission's unanimous vote was dependent on their decision to ratify including an 'interpretative declaration' of Article 35 of the Convention. The interpretative declaration effectively diminishes and restricts the evolutionary potential of Article 35 of the convention in International Human Rights law. Article 35, is an evolutionary tool which states that; *"the application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements"*.¹²⁵

The declaration has provoked criticism from the Mapuche movement, academics and members of Congress themselves. According to Bartolome Clavero, a UN human rights specialist, the sole purpose of the interpretative declaration is to act as a shield to protect Chile from securing a higher standard of indigenous rights. He considers that it is highly improbable that the ILO will recognize the interpretative declaration as this would not only undermine indigenous rights in Chile and the Convention, it would also set a dangerous precedent for International Human Rights law.¹²⁶

¹²³ Interview with Miguel Cheuqueman in *Lafken Ni Zugvn: Programme 2: Convenio 169*. September 2007.

¹²⁴ Ibid.

¹²⁵ Office of the High Commissioner for Human Rights, *Convention (No.169) Concerning indigenous and Tribal peoples in Independent countries* <http://www.unhchr.ch/html/menu3/b/62.htm>

¹²⁶ Cayuqueo, Pedro. 19/06/08. Convenio 169: Entre luces y sombras. Website: http://www.nodo50.org/azkintuwe/junio_rep1.htm

When the Senate voted on the convention in March, they ratified the Convention without the interpretative declaration. Despite this development, four months later, the Convention still awaits the ratification of the executive branch. It is, therefore, a decision of the executive to decide whether to include the declaration in the final ratification.

Mapuche-State Relations

The ratification of the ILO Convention 169 by the Senate after 18 years in Congress, demonstrates that some political will exists among the legislative and the executive to begin a new relationship with indigenous peoples in Chile.

For indigenous peoples the ratification of ILO 169 is a significant tool which would secure greater protection for their rights and provide a greater basis for dialogue with the State. However, Lafkenche leader Miguel Cheuqueman acknowledges that while the international tool would allow the Lafkenche people to better defend their rights, *“el Convenio 169 de la OIT no es la solución a los problemas de los Mapuches ni muchos menos de los Lafkenches, sino la solución es defender nuestros derechos de manera colectiva”*.¹²⁷

The debates regarding an interpretative declaration and the fact that it has taken 18 years for the Senate to ratify the ILO Convention reveal that real political will is limited. It is evident that conservative members of the senate continue to fear the implications of securing rights for indigenous peoples, which hinders the possibility of opening opportunities for dialogue between the Mapuche and the State.

This is the official statement released by the *Identidad Territorial Lafkenche* in response to the new indigenous politics:

*“La deuda histórica no se salda con sólo re-conocer, sino también con un ejercicio de derecho y autodeterminación que implica aprobar por ejemplo el Convenio 169 sin negociaciones ocultas, reformar la Constitución para el reconocimiento real de nuestro pueblo, e impulsar una relación distinta entre el Estado chileno y los pueblos originarios”*¹²⁸

¹²⁷ Miguel Cheuqueman in *Lafken Ñi Zugvn: Programme 2*. 2007

¹²⁸ Identidad territorial Lafkenche in Gabriela Rodríguez, 11/7 /08.

The statement serves to reinforce the movement's determination to defend indigenous rights and its discontent with the State's indigenous politics. It also demonstrates how the likelihood of a new relationship between the State and indigenous peoples is far from certain in the near future.

Conclusion

Summary of research

The principal aim of this study was to determine whether *La Ley 20.249* and the Senate's ratification of ILO Convention 169 indicate a new dawn for indigenous rights and a positive change for the relationship between the Mapuche and the Chilean State.

The dissertation was based on four main questions which were addressed in its four chapters. The first chapter introduced the aims and research questions, the research setting and the chosen methodology. Chapter two analysed the existing legislation regarding indigenous peoples and presented the current obstacles to securing indigenous rights in Chile. The third chapter analysed the evolution, demands and strategies of the Mapuche and the Mapuche- Lafkenche movement. The last chapter presented a case study of *La Ley 20.249* and the ratification of the ILO Convention 169. It considered the Lafkenche's demands regarding these legislative developments, the process of negotiations leading to the ratifications and the significance they hold for the Lafkenche movement and for the future of indigenous rights in Chile in general.

Conclusions

The study concludes that the ratification of *La Ley 20.249* and the Senate's ratification of ILO Convention 169 are positive developments for indigenous rights in Chile and for the Mapuche-Lafkenche movement. Nevertheless, due to the recent nature of these developments, it is too soon to determine how far-reaching their consequences will be for indigenous rights or to what extent they will change the relationship between the Mapuche and the State.

The Senate's ratification of the Convention in March 2008 was a long-awaited development. The process leading to the ratification was accelerated by the Bachelet Government. This indicates the Concertación's political will to increase protection for indigenous rights. However, the debate that emerged among members of Congress regarding Article 35 of the Convention soured the process. It reflects how conservative members of the opposition continue to delay and restrict the possibility of achieving collective rights for indigenous peoples in Chile.

The research has shown that Lafkenche leaders consider the full ratification of ILO 169 as a necessary step towards securing rights for indigenous populations in Chile. Nevertheless, they do not consider the recent legislative development as indicative of a new relationship between the Mapuche and the State. For the Lafkenche, the debate surrounding the ratification of the Convention is yet another example of the State's lack of political will to afford rights to indigenous peoples.

The ratification of *La Ley 20.249* is without doubt significant for indigenous rights in Chile, particularly for the Mapuche-Lafkenche movement. The law is unprecedented for a variety of reasons. Firstly, it recognises the collective rights of the Mapuche to access the sea and also acknowledges the existence of different cultures. The legislative process was highly participatory and the Lafkenche leaders themselves drafted the proposal and the contents of the law. Thirdly, the process has strengthened the Lafkenche –Mapuche movement and widened the notion of territorial rights in Chile. The Mapuche-Lafkenche movement's mobilization and lobbying provided the driving force behind the ratification of the new law. The fact that the Lagos and Bachelet Governments recognized the need for the new law and supported the legislative process indicates their political will to resolve territorial conflicts.

The unique process which led to the ratification of the law has the potential to empower the Lafkenche communities. The movement will have to continue to mobilize if it is to ensure the law is implemented and that the communities are informed of their new rights. If this does not happen, it is likely that the benefits of the law will be lost. A study of the implementation and the consequences of this law for the Lafkenche communities would be an interesting theme for future study.

La Ley 20.249 points to the beginning of a new relationship between the Mapuche and the State involving greater indigenous participation. It is not yet clear whether the unprecedented, participatory process leading to the new law will be a unique case or whether future laws will involve equally high levels of participation, negotiation and collaboration between the Mapuche and the State. In order to draw more accurate conclusions, further study of the Mapuche-Lafkenche movement and their dialogue with the State is required.

Until the Chilean State makes constitutional reforms regarding the legal status of indigenous peoples and executive fully ratifies the ILO Convention 169, the relationship between the Mapuche and the State is likely to remain uneven. These changes would demonstrate a political will of the State to embark on a new relationship based on dialogue and participation.

This study's research on indigenous rights in Chile has shown that any legislative advances in this field are likely to be limited as long as the State perseveres with its neoliberal economic policies, exploitation of natural resources and state-supported development projects which are incompatible with Mapuche demands for territorial autonomy. While legislation is essential to protect indigenous rights, it must be part of a wider solution to address the conflict between the Mapuche and the State, which stem from the historical disregard for the Mapuche's basic human rights, the Mapuche's growing need for land and the lack of existing mechanisms for political participation.

The Lafkenche movement

During my time spent in Chile, my general observations, interviews and informal conversations with the indigenous and non-indigenous alike, gave me insight into the frustrations and the often hostile attitudes of civil society towards the Government and its policies. Student and teacher protests, occupations and Mapuche demonstrations, all of which were repressed by the police, gave the impression of a civil society with limited available mechanisms for participation and a Government which is less than willing to negotiate. The Lafkenche leaders who I interviewed, shared these cynical and hostile attitudes towards Government policy. They were proud of the movement's recent achievements and optimistic about rebuilding a Lafkenche identity. However, they are also aware of the challenges they face in the future and they recognize the gradual nature of their struggle, particularly in the current economic climate.

The uniqueness of the Lafkenche movement within the wider Mapuche movement must be recognised. It has been able to form strategic alliances and open up space for political participation. The lobbying and protest of the Lafkenche movement have challenged the state and have successfully brought local issues to the Government's public agenda. Its achievements, demonstrated in the elaboration of *La Ley 20.249*, indicate the movement's potential for securing greater indigenous rights and political participation in the future. The political ground gained by the Lafkenche movement has marked it as a referent of indigenous politics in Chile and make it an ideal subject for further future research on indigenous movements in Latin America.

Appendix

Semi-structured Interviews

- Iván Carilao, Lafkenche leader and Councillor, 11/06/08, 2pm, Tirúa Town Hall
- José Linco, Lafkenche leader and Councillor, 12/06/08, 8.30am, Tirúa Town Hall
- Don Damasio, Lafkenche Leader, 14/06/08, 3pm, Puente, Tirúa.
- Gabriela Rodríguez, Journalist, 24/06/08, 5pm, Casa Lafkenche, Temuco

Map of Lafkenmapu: The Lafkenche Region

[image withheld]

Source: *Identidad Territorial Lafkenche ¿Quiénes Somos?* Website:

<http://www.identidadlafkenche.cl/quienes%20somos.html>

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