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INDIGENOUS RIGHTS POLICY AND TERRORIST DISCOURSE:
A STRATEGY TO STIFLE MAPUCHE SELF-DETERMINATION
IN CHILE

by
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the Degree of Bachelor of Arts

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1. Introduction

On 12 August 2009, as Mapuche *comunero*¹ Jaime Mendoza Collio fled the scene of a land occupation, he was fatally shot in the back by Chilean police officer Miguel Patricio Jara Muñoz.² Collio died when he was 24 years old. He was the third Mapuche activist to be killed by the police while fighting for indigenous rights to ancestral territory and self-determination since the 1990 transition to democracy.³ Just over one month later, on 15 September 2009, the International Labour Organisation Convention 169 went into effect in Chile, signaling the government's official commitment to protecting indigenous rights. How can we explain the Chilean State's decision to declare its support for indigenous rights while simultaneously deploying deadly force to combat Mapuche activists in their struggle for these same rights?

From the time of Patricio Aylwin's democratic election in 1990 up until the implementation of Convention 169, the government dealt with its contradictory stance on Mapuche rights within a frame of neoliberal multiculturalism.⁴ That is, the state would only pass policies to support indigenous rights insofar as they did not challenge free market capitalism. This meant that the Mapuche gained limited levels of cultural recognition and economic empowerment, but no meaningful collective political rights such as those for which Collio died. For those members of the Mapuche political movement who demanded more, the government responded with legal and police force in a confrontation that has become known as the "Mapuche Conflict."

¹ Spanish for "community member"

² "Mapuche: Communities Remember Jaime Mendoza Collio", *Unrepresented Nations and Peoples Organisation*, 16 August 2011, <unpo.org/article/13041>, visited on 1 March 2016.

³ J. Pinto, 'Brotos de violencia en la Araucanía justicia e injusticia en el conflicto Estado-Pueblo Mapuche', 1:11 *Espacio Regional* (2014) pp. 111.

⁴ P. Richards, 'Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile', 42 *Journal of Latin American Studies* (2010) pp. 59-90.

With the passage of ILO Convention 169 under President Michelle Bachelet in 2008, it appeared the situation of the Mapuche would improve. In 2010 the newly elected president, Sebastián Piñera of the Coalición⁵, had the opportunity to expand indigenous rights by ensuring that the Mapuche were involved in governmental and corporate decisions that would impact their communities through a process of prior consultation. However, the murder of Jaime Mendoza Collio by a police officer foreshadowed how the next five years would unfold. According to prominent Mapuche activist Salvador Penschulef, “oppression under Piñera was worse than under [President] Bachelet,” Piñera’s predecessor.⁶

Continuing the pattern of previous administrations, President Piñera used indigenous rights policy and “terrorist” discourse to delegitimize the Mapuche demand for self-determination in order to safeguard corporate interests. Despite the potential benefits of ILO Convention 169, Piñera’s implementation of the treaty served to define prior consultation in the narrowest way possible in order to prevent the Mapuche from having the power to challenge corporate rights under neoliberalism. At the same time, the Piñera administration cultivated a narrative of Mapuche activists as terrorists in order to delegitimize their radical protest strategies that posed a threat to corporate profitability.

2. The Chilean Government’s Commitment to Capital

Chilean free market capitalism is the primary barrier to Mapuche rights. Originally introduced to the Mapuche during colonisation by the Chilean state in 1883, capitalism has caused the

⁵ Coalición is a conservative parliamentary party coalition led by Sebastián Piñera. All the post-Pinochet presidents before Piñera were part of the Concertación, a centre-left party coalition. The presidents include Patricio Aylwin, Eduardo Frei, Ricardo Lagos, and Michelle Bachelet.

⁶ Salvador Penschulef, interview by Reyna McKinnon, May 2015.

impoverishment of Mapuche communities and the loss of traditional economic systems.⁷ The government's commitment to corporate welfare over indigenous rights became more entrenched when the military regime adopted a neoliberal economic system in the mid 1970s.⁸ More recently neoliberalism in Chile has taken the form of State endorsement of mega development projects that are meant to expand corporate profitability and economic growth.

The Ralco hydroelectric dam case demonstrates the willingness of the State to support corporate interests even when it will force indigenous people off their ancestral land. In 1997, during the presidency of Eduardo Frei, the National Electrical Company (ENDESA), a Spanish transnational corporation, began the Ralco hydroelectric dam project. The project would force the relocation of 500 Pehuenche Mapuche community members off their ancestral territory in order to flood it for the hydroelectric dam. Despite protest from Mapuche leaders and initial rejections of the Environmental Impact Study for the project by the National Environmental Commission (CONAMA) that signaled hope for Mapuche activists, President Frei intervened. In 1997 he removed leading Ralco opponents from their jobs as Director of the National Corporation of Indigenous Development (CONADI) and CONADI's leading lawyer in order to replace them with people who would support the dam. When the new director indicated his opposition to the dam, President Frei intervened again, replacing him with the first non-indigenous Director of CONADI. He voted to approve the Ralco project and move forward with the relocation of the Pehuenche community. The Ralco dam was completed in 2003.⁹ This case

⁷ D. Haughney, *Neoliberal Economics, Democratic Transition, and Mapuche Demands for Rights in Chile*, (University Press of Florida, 2006), pp. 23.

⁸ Neoliberalism is characterized by an "export based economic strategy, opening of the economy to international investment, elimination of trade barriers, decentralisation, privatisation, and elimination of universal social services" (ibid., pp. 71). This model reduces the responsibility of the State to ensure the wellbeing of its citizens, and instead trusts that market forces and the circulation of capital will resolve inequities and social problems.

⁹ D. Carruthers & P. Rodriguez, 'Mapuche Protest, Environmental Conflict and Social Movement Linkage in Chile', 30:4 *Third World Quarterly* (2009) pp. 743-760.

is one of the most blatant examples of a State partnership with transnational companies and the government's disregard for the wellbeing of Mapuche people in Chile.

The State-subsidized development of the forestry industry in the region of the Araucanía over the past 40 years exposes another major partnership between the government and transnational corporations. As of 2010, wood product exports make up 15 per cent of total Chilean exports, making forestry the second most lucrative industry in the country after copper mining.¹⁰ The prominence of the forestry industry is a result of State intervention during the dictatorship of Augusto Pinochet.¹¹ In 1974, Pinochet ratified Law 701, which provided tax breaks to logging companies and subsidized 75 percent of the costs of establishing a tree plantation.¹² Since the dictatorship, little has changed in regard to support for the forestry industry. In 1998, Law 701 was renewed by the Chilean Congress to last until 2011. Between 1974 and 2014 the State paid USD 875 million in subsidies to the forestry industry. Seventy-five percent benefitted the largest companies. Two forestry companies, Matte Group of Forestal Minico and Angelini Group of Forestal Arauco, both Chilean companies, control 80 per cent of the logging sector in Chile and across the world.¹³ This signals the involvement of transnational capital.

By funding the forestry industry, the Chilean government contributed to the environmental, cultural, and health degradation of rural Mapuche communities that has resulted from corporate encroachment on their land. The majority of forestry plantations are located in

¹⁰ J. Aylwin, N. Yáñez & R. Sánchez, 'Pueblo mapuche y recursos forestales en Chile: devastación y conservación en un contexto de globalización económica' *Observatorio ciudadano iwgia* p. 7.

¹¹ The military dictatorship in Chile lasted from 1972 to 1990. It began with a United States supported military coup of Salvador Allende's democratic socialist government. During the years of the military regime thousands of Chileans were tortured and "disappeared" (killed).

¹² T. Tricot, 'Democracia formal y derechos indígenas. Una aproximación a la relación actual entre el estado chileno y el pueblo mapuche', 12 *Historia Actual Online* (2007) p. 46.

¹³ A. Seguel, 'US \$ 875 millones de dólares se han destinado en Chile a intereses forestales vía DL 701 en menos de 40 años', *Mapuexpress*, <www.mapuexpress.org/?p=6269US%20875%20millones%20de%20d%25C3%25B3lares%20se%20han%20destinado%20en%20Chile%20a%20intereses%20forestales%20v%25C3%25Aa%20DL%20701%20en%20menos%20de%2040%20a%25C3%25B1os>, visited on 29 November 2015.

the regions of the Araucanía and Bío Bío, with 434,185 and 878,970 hectares respectively.¹⁴ These same regions are where the majority of rural Mapuche live. Although all land in these regions is ancestral Mapuche territory, in the current day logging companies own three times as much land as the Mapuche. According to a 2007 study, the forestry industry owns 1,715,910 hectares of land, while indigenous property is only 584,063 hectares.¹⁵ Logging corporations plant pine and eucalyptus trees, both non-native trees that grow very quickly. The overwhelming presence of these invasive species has led to the loss of native trees. This is devastating to Mapuche culture that relies on the medicinal uses of native plants. The pines and eucalyptus are also very dry trees that are prone to fires and require lots of water. They endanger Mapuche communities' safety and contribute to a drought that has harmed communities for years. Furthermore, the use of pesticides on tree plantations contaminates the water and the soil in Mapuche communities causing health problems. There is also a territorial dispute between logging companies and Mapuche communities, who claim that much of the land currently in the hands of the forestry industry belongs to the Mapuche according to Agrarian Reform of 1972.¹⁶ Mapuche activists who have come together in resistance to the detrimental impacts of the forestry industry have been named "terrorists" by the State in retaliation for posing a legitimate threat to corporate interests.

Despite the injuries to Mapuche communities and the government's supposed commitment to indigenous rights under ILO Convention 169, President Sebastián Piñera sent another bill to Congress in 2012 proposing to extend Law 701 to subsidize the forestry industry for 20 more years. After decades of protest, Mapuche activists were able to convince eight

¹⁴ Aylwin, Yanéz & Sánchez *supra* note 10.

¹⁵ *Ibid.*, p. 13.

¹⁶ J. Pinto, 'Conflicto Estado-Pueblo Mapuche, Desarrollo Económico y Empresarios Regionales, la Araucanía en el Siglo XX', in L. C. Marquez, *Revista de Historia del Instituto de Historia y Ciencias Sociales de la Universidad de Valparaíso 2014* (Universidad de Valparaíso, Valparaíso Chile, 2014) p. 26.

senators to vote against extending Law 701 and this time it did not pass.¹⁷ Nonetheless, there are numerous other ways that the government continues to support the forestry industry beyond Law 701: State-funded universities have conducted studies to make species more resistant to pest control, highways have been constructed to make plantations accessible at the expense of Mapuche rural sectors, many millions of liters of drinking water have been given to plantations that should have been given to the people living in those regions, and daily, repressive police forces are deployed to guard plantations from the protest of Mapuche activists.¹⁸ The modern Mapuche political movement faces a difficult path to combat the influences of corporate encroachment on their land and gain their rights as a *pueblo indígena*. They must fight, not only against the corporations that injure their communities, but also against the government that chooses to support companies at the expense of its own citizens.

3. Fragmentation Under Neoliberalism in The Mapuche Political Movement

In the current day, Mapuche leaders disagree on the best strategies to reclaim their identity as a distinct indigenous people. Some Mapuche activists call for the creation of an autonomous Mapuche nation, while others hope for more moderate reform within the Chilean government that will provide cultural recognition and economic empowerment. The State has used the fragmentation of the Mapuche political movement to advance its neoliberal project and delegitimize Mapuche claims for self-determination.

The Chilean government is both the beneficiary and the creator of divisions within the Mapuche political movement. State-imposed assimilationist policies and racism over the last century and a half that have endangered Mapuche identity. In conjunction with the detrimental

¹⁷ Seguel, *supra* note 13.

¹⁸ A. Seguel, 'Decreto Ley forestal 701 ¿Llega a su fin uno de los bastiones de la dictadura y del neoliberalismo chileno?', *Mapuexpress*, 11 November 2015, <www.mapuexpress.org/?p=6393>, visited on 29 November 2015.

impacts of capitalism, land distribution policies have separated Mapuche families from their communities and from their ancestral territory.¹⁹ For a people whose name means “people of the land,” this is an explicit act of violence towards their culture and identity.²⁰ Throughout the 20th century, Mapuche children were often tormented for their heritage to the point that many of them as adults have chosen not to teach their own children about Mapuche culture. As a result, few young Mapuche grow up speaking the Mapuche language of Mapudungun.²¹ Reclaiming their land, language, and way of life constitutes a powerful and inherently political act for the Mapuche people.

In response to conditions of heightened oppression during the dictatorship, Mapuche communities came together with the goals to regain ancestral territory, improve public health and education, and to reawaken their culture. In her memoir, *A Flower is Reborn*, Rosa Isolde Reuque Paillalef talks about the cultural practices, such as storytelling, speaking Mapudungun, and playing Pallin (a Mapuche sport), that the Mapuche used in order to build pride and self-esteem within the movement.²²

Paillalef says that the Mapuche political movement was actually stronger during the dictatorship than after the transition.

For me, between 1978 and 1983, our struggle had teeth. We battled furiously, with intensity and conviction, and we didn't seek personal advantages of any kind. Our main objective was to elevate, to honor, and to increase the participation of the Mapuche people...With the arrival of democracy we entered a slump, I don't know if it was from exhaustion, relief, disenchantment, or disillusionment. But the great majority of those

¹⁹ T. Tricot, “Democracia Formal y Derechos Indígenas. Una Aproximación a la Relación Actual Entre el Estado Chileno y el Pueblo Mapuche,” *Historia Actual Online* (2007), pp. 43-61.

²⁰ In the Mapuche language of Mapudungun “Mapu” means land, and “che” means people. Therefore, Mapuche means people of the land.

²¹ Members of Chapod Community, personal communication, April 2015.

²² R. Isolde Reuque Paillalef, *When a Flower is Reborn: The Life and Times of a Mapuche Feminist*, ed. Florencia E. Mallon, (Duke University Press, Durham and London, 2003) pp. 115.

who fought, Mapuches and non-Mapuches, accepted positions in government. ... So you get this rupture between government officials and movement leaders, deeper for some than for others, which instead of facilitating cooperation between the two groups makes them into adversaries, even enemies, because if you're not with me, you're against me.²³

Some Mapuche leaders joined the government after the 1990 transition, trusting that in a democratic system Mapuche needs would be recognized and accommodated for by the government. However, in reality, the fragmentation of the Mapuche movement worked to the advantage of the State because it would have control over the treatment of indigenous rights.

Recognizing that the Chilean State, even under democracy, had no plan to grant indigenous rights in a way that would fully enable the Mapuche to reclaim their identity, some Mapuche activists formed a new faction of the Mapuche movement. An organisation called *Aukiñ Wallmapu Ngulam* (*Consejo de Todas Las Tierras*, or All-Lands Council) created another meaning of pueblo that bypassed traditional political parties. "They called for the reconstitution of the Mapuche nation (*pueblo-nación*), with its own history, memory, and territory."²⁴ This was the first time that the Mapuche movement explicitly demanded autonomy and self-determination. Mapuche activists in this sector of the movement believe that they will not be able to secure their rights through traditional institutional pathways. As a result, they use strategies such as land occupations, marches, and sabotage of industrial logging equipment, in order to challenge free market capitalism, which they see as one of their most significant obstacles.

Current fragmentation within the Mapuche movement has enabled neoliberal multiculturalism to function in Chile in a way that challenges Mapuche activists' ability to gain self-determination. Using Charles Hale's neoliberal multicultural framework, Patricia Richards has defined two Mapuche actors that the Chilean government has discursively created: the

²³ *Ibid.* pp. 222.

²⁴ J. Crow, *The Mapuche in Modern Chile*, (University of Florida Press, Gainesville, FL, 2013), pp. 182.

“authorized” Mapuche, those who do not protest against state indigenous policies, and the “terrorist” Mapuche, those who do.²⁵ Using these two actors the government is able to publicly condemn the Mapuche activists who demand collective political rights, and continue to maintain its reputation for supporting indigenous rights. The existence of the “authorized” Mapuche makes this dichotomy possible – if there are indigenous people who do not argue against the government’s treatment of indigenous rights, the government is able to frame political dissent of these policies as illegitimate. It is important to note that the fault for the treatment of Mapuche activists does not belong to the so-called “authorized” Mapuche, but rather it belongs to the government, which has made a concerted effort to create divides within the Mapuche movement.

4. Mapuche Self-Determination Under International Law

When the Chilean government signed United Nations Declaration on the Rights of Indigenous People (UNDRIP) in 2007 and the International Labour Organisation Convention 169 in 2008, it seemed that the State was making an effort to meet the demands of both of the post-democratisation factions of the Mapuche movement. These two laws had the potential to protect the Mapuche right to self-determination.

UNDRIP is tremendously important for indigenous rights globally as it is the first and only piece of international legislation to officially recognize the indigenous right to self-determination, showing that the international human rights community validates Mapuche political demands.²⁶ The creation of UNDRIP involved many years of deliberation with

²⁵ P. Richards, ‘Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile’, 42 *Journal of Latin American Studies* (2010) pp. 59-90.

²⁶ In Article 3 UNDRIP states, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.” Similarly, in Article 4 it states, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (United Nations Declaration on the Rights of Indigenous Peoples 2007, p. 3).

indigenous representatives at the U.N. and by signing the Declaration in 2007, the Chilean government pledged to protect indigenous political rights. However, the Declaration is not an international treaty, so there is no mechanism by which international organisations can hold the Chilean government accountable for protecting the indigenous right to *autodeterminación*. As a result, during Piñera’s presidency, from 2010 to 2014, little was done to uphold indigenous rights outlined in UNDRIP.

In 2008, the Chilean government under the leadership of President Michelle Bachelet finally ratified International Labour Organisation Convention 169, The Indigenous and Tribal People’s Convention. Mapuche organisations had been fighting for the ratification in Chile for nearly twenty years, since its original adoption by the International Labour Organisation (ILO) in 1989. After three Chilean presidential administrations rejected their demands, finally Bachelet answered their call for ratification. The Mapuche, like many other indigenous peoples, sought the ratification of Convention 169 because it is the main instrument of indigenous rights in international law and countries that ratify the Convention are legally obligated to enforce it.²⁷ Therefore, the Convention’s protection of the indigenous right to prior consultation is much more meaningful than the protection of the right to self-determination under UNDRIP.

Unlike UNDRIP, Convention 169 does not directly protect indigenous political rights. Rather, it protects indigenous prior consultation, which can serve to advance *autodeterminación mapuche*. Article 6(1) of the Convention obligates the Chilean State to consult indigenous peoples when governmental programs directly impact their communities and establish means by which they can participate freely in the decision-making process for these programs. Articles 15 and 16 regulate consultation for mega industrial projects. Article 15 states, “The rights of the

²⁷ G. Bustamante, ‘The Right to Consultation and Free, Prior, and Informed Consent in Latin America: The Governmentality of the Extraction of Natural Resources’, *Revue québécoise de droit international* (2015) pp. 185-6.

peoples concerned to the natural resources pertaining to their lands shall be specifically safeguarded...includ[ing] the right of these peoples to participate in the use, management, and conservation of these resources.”²⁸ Similarly, Article 16 states, “Where the relocation of these peoples is considered necessary as an exceptional measure, such relocations shall take place only with their free and informed consent.”²⁹ Both Article 15 and 16 provide Mapuche people with a legitimized institutional path to challenge neoliberalism. Furthermore, Article 6(2) clarifies that consultation must be carried out in “good faith” and “with the objective of achieving agreement or consent to the proposed measures.”³⁰ These protections of indigenous prior consultation under Convention 169 seem to represent a step closer to achieving the right to self-determination. They provide the Mapuche with an opportunity to participate in the formulation of programs and projects that impact their communities, thus granting them more control over their future. Of course, the ability of Mapuche people to reap the benefits of Convention 169 is dependent on the policies that the State issues to enforce it.

5. Chilean Indigenous Policy Undermines Mapuche Self-Determination

The obligation of the Piñera administration to protect indigenous prior consultation as defined in Convention 169 conflicts with the State’s interest in promoting corporate profitability. If the Mapuche were given the right to prior consultation they would have the power to challenge mega development projects. In the 2013 report on the implementation of the Convention, the Piñera administration acknowledges this contradiction. At the very beginning of the report it states, “the Government indicates that the ratification of the Convention presents the challenge of

²⁸ International Labour Standards Department, ‘Indigenous & Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169’, *ILO Geneva* (2009) p. 109

²⁹ *Ibid.*

³⁰ International Labour Standards Department, *supra* note 27, pp. 58-66.

reconciling the application of indigenous peoples' right to be consulted with the productive development of the country."³¹ In this case, productive development refers to the extractive and infrastructural projects on Mapuche land. By using such language the government places *autodeterminación mapuche* in opposition to the national interest.

In Chile, the ratification of ILO Convention 169 was actually part of a strategy to advance the state-sponsored neoliberal project.³² For both the Bachelet administration that ratified it and the Piñera administration that had the obligation to enforce it, Convention 169 functioned as a policy that would define and limit the scope of indigenous participation in government in order to limit Mapuche power to challenge corporate encroachment on their land. First of all, the mere fact that the Convention is a policy that must be implemented by the government represents an inherent limitation. The implementation of policy is, by definition, a top-down process, in which the State is in the position to control how the Mapuche will participate, rather than a grassroots effort defined by Mapuche actors themselves. Similarly, when the power to define legitimate participation is in the hands of the State, the government also has the power to define which types of participation are illegitimate.

Furthermore, the content of the Convention restricts the extent to which the State must grant *autodeterminación* and therefore limits the power of Mapuche activists to challenge corporate interests. While prior consultation does bring Mapuche activists closer to their goal of self-determination, the Convention does not explicitly protect this right. In fact, it does not recognize indigenous peoples as *peoples*, and thus does not recognize indigenous collective political rights. In Article 1(3) there is a disclaimer: "The use of the term *peoples* in this Convention shall not be construed as having any implications as regards to which may attach to

³¹ Committee of Experts on the Application of Conventions and Recommendations, *Application of International Labour Standards 2014* (International Labour Office, Geneva, 2014) pp. 558-559.

³² Bustamante, *supra* note 27, p. 186.

them under international law (like in UNDRIP).”³³ Its creators justified this by considering political rights to be out of the scope of the Convention, for which the main objectives were to mandate indigenous social and economic rights. As a result, Convention 169 simultaneously expands and limits indigenous rights.³⁴

Prior consultation has limited power to advance *autodeterminación mapuche*. While the Mapuche can be involved in decision-making processes, they do not have veto power, making it legal for the government or transnational corporations to carry out projects without Mapuche consent. As a result, Mapuche activists have a reason to continue fighting for more effective and direct protections of their political rights, like the right to self-government, which is an explicit demand of Mapuche activists fighting in the “Mapuche Conflict.” Once the Piñera administration has protected the right to prior consultation under Convention 169 it has upheld its promise to protect indigenous rights under enforceable international law and has no obligation to fully meet the demands of the Mapuche political movement. This works to the advantage of President Piñera by making him appear to be in support of indigenous rights without endangering corporate profitability.

Similarly, the Convention plays an important role in defining the “authorized” as opposed to “terrorist” Mapuche actors. Through the Convention the State defines prior consultation as a legitimized mechanism of Mapuche participation and discursively labels those who use it as “authorized” or “good” Mapuche. From the perspective of the Piñera administration, it does not matter that prior consultation does not actually guarantee better outcomes for Mapuche communities in the ways that substantial protection of political rights would. Rather, the fact that through indigenous prior consultation the government has defined some form of legitimized

³³ International Labour Standards Department, *supra* note 28, p. 25.

³⁴ S. Sawyer & E. T. Gomez, *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State* (Palgrave Macmillan, Basingstoke, 2012) pp. 26.

participation creates a space for the State to delegitimize other forms of Mapuche participation, such as radical protest tactics used by Mapuche activists fighting for territory and self-government. In other words, after ratifying and implementing Convention 169 the Chilean government has more power to delegitimize undesirable Mapuche protest that poses a threat to corporate interests.

The Piñera administration also used policy implementation of ILO Convention 169 as a strategy to block Mapuche self-determination. Since 2009 the government has passed three separate decrees to regulate the Convention: Decree No. 124, Decree No. 66, and Decree No. 40. All of these decrees have been denounced by Mapuche organisations for failing to meet international standards and violating their rights as an indigenous people because they do not adequately protect the right to prior consultation. Instead, these policies empower the government and corporations to control the consultative process.

4.1. Decree No. 124

The first piece of legislation, Supreme Decree No. 124, issued in 2009 during the Bachelet administration, was strongly criticized by national and international organisations for failing to meet the standards of Convention 169. For one, the government did not consult indigenous peoples in the creation of the decree. By excluding indigenous people from participating, the State had full power to define the consultative process. This directly contradicted the Convention's specification that consultation must be through representative institutions and not state-defined procedures.³⁵ Additionally, the *Instituto Nacional de Derechos Humanos de Chile* (INDH), an autonomous state agency, found that Decree 124 was inadequate because it only allowed a very narrow timeframe for consultation to happen and restricted the issues that

³⁵ R. Alorda, 'Decree limits prior consultation', *Latin America Press*, 17 July 2011, <www.latinamericapress.org/articles.asp?art=6425>, visited 5 November 2015.

consultation could concern, explicitly excluding mega development projects.³⁶ Decree No. 124 represents the most blatant effort by the State to limit the power of Mapuche people to use prior consultation to protect their communities against corporate encroachment.

4.2. Decree No. 66

In 2011, in response to criticism, the Piñera administration began a consultation process to involve indigenous peoples in the creation of a more consensus-based regulatory framework to replace Decree No. 124. The Ministry of Social Development financed and involved indigenous people in organizing workshops and provided them with logistical and technical support for their own group meetings. The dialogue lasted two years, from 2011 to 2013. In November 2013, the Ministry of Social Development issued Supreme Decree No. 66 based on the decisions made in the dialogue. It clarifies that all organs of the State must consult indigenous peoples in the adoption of legislative or administrative measures that directly affect them and, in detail, defines each step of the consultation process.³⁷ At the very least, the effort of the State to involve indigenous organisations in the formation of this decree represents an improvement on previous indigenous legislation.

However, Mapuche organisations take serious issue with both the way in which the State involved indigenous organisations in creating Supreme Decree No. 66 and the substance of the decree. First of all, they argue that in creating the “Consensus Committee” that carried out the consultative process, not all indigenous sectors were invited. Therefore, the State cannot say that they involved the representative indigenous organisations. Furthermore, the committee was never able to reach consensus on three essential issues: how to determine if indigenous peoples

³⁶ P. Richards, *Race and the Chilean Miracle: neoliberalism, democracy, and indigenous rights* (University of Pittsburgh Press, Pittsburgh, Pa, 2013) pp. 213.

³⁷ Ministerio de Desarrollo Social, ‘Decreto 66’, *Biblioteca del Congreso Nacional de Chile* (2014).

are “affected” by a legislative or administrative measure, the types of measures that are subject to previous consultation, and the types of investment projects that are subject to previous consultation.³⁸ Despite these objections, the Ministry of Social Development signed Decree No. 66 into law, defining these issues in ways to which indigenous organisations did not consent. For example, the Convention requires that the state provide indigenous consultation for all measures that “may affect [indigenous peoples] directly.” In contrast, in Article 7 of Decree No. 66, it states that only legislative and administrative measures that “directly cause a significant and specific impact on indigenous peoples because of their status as such” shall be required to provide consultation.³⁹

While the Piñera government prides itself on executing a consultation process for the creation of the decree, Mapuche organisations argue that Decree No. 66 does not meet international standards because the circumstances under which indigenous consultation is required are too narrowly defined. Similarly, the South American Regional Commissioner of the United Nations High Commissioner for Human Rights, Amerigo Incalcaterra, recommended that the Chilean government review Decree No. 66 at a meeting in Santiago in August 2014, a year after the decree went into effect.⁴⁰

4.3. Decree No. 40

Supreme Decree No. 40 defines the consultation process for investment projects that directly affect indigenous peoples. It is the main instrument for the implementation of Convention 169 that serves to protect corporate interests. This decree went into full effect near the end of Piñera’s

³⁸ J.C. Pacheco & V.M. Bennet, ‘Country Study: Chile’, *Americas Quarterly*, Spring 2014, <www.americasquarterly.org/content/country-study-chile>, visited on November 30 2015.

³⁹ Ministerio de Desarrollo Social, *supra* note 37.

⁴⁰ ‘OHCHR receives information about process of indigenous consultation in Chile’, *United Nations Human Rights Office of the High Commissioner*, 14 August 2014, <acnudh.org/en/2014/08/ohchr-receives-information-about-process-of-indigenous-consultation-in-chile/>, visited on 8 November 2015.

term, on December 25, 2013 and is an expansion of Environmental Law 19.300 that was passed in 1994 and reformed to fit Convention 169 in 2010. Before the enactment of Decree No. 40 the participation rights in the Environmental Impact Assessment Process was the same for indigenous and non-indigenous people, a clear violation of Convention 169. Under the decree, only projects that are considered to have a “strong impact” on indigenous peoples and have been submitted to the Environmental Impact Assessment System as Environmental Studies require consultation. It is problematic that indigenous peoples do not decide which projects have a “strong impact” on their communities, but rather it is the Environmental Assessment Department, a government agency, that decides.

Additionally, the decree states that the consultation process must be: “in good faith, through procedures appropriate to the sociocultural characteristics of each people, through their representative institutions, informed, and with the purpose of achieving agreement or consent.”⁴¹ While these guidelines for the consultation process do fit with language of the Convention, ultimately Decree No. 40 gives the Environmental Assessment Department the power to design each consultation process. Furthermore, in an attempt to match Article 16 of the Convention, Decree No. 40 stipulates that projects must obtain free, prior, and informed consent (FPIC) in order to move forward when the relocation of indigenous peoples is “necessary.” While FPIC should enable indigenous peoples to fully and meaningfully participate in decision-making related to their land and have a voice that substantially influences the final decision, by allowing corporations to relocate communities even without consent this decree profoundly undermines

⁴¹ P. Gajardo, ‘Free, Prior, and Informed Consent (FPIC) Under the New Chilean Impact Assessment Regulations’, presentation at the 34th Annual Conference of the International Association of Impact Assessment, Viña del Mar, Chile (8-11 April 2014) pp. 2-3.

indigenous participation.⁴² In these ways Decree No. 40 gives indigenous peoples very little power to contest mega development projects that affect their communities, and instead gives the power to control consultation to the State and corporations.

In the context of a new court precedent, Decree No. 40 also serves to enhance legal certainty for corporations investing in developmental projects and thereby serves to advance the neoliberal interests of the State. Since 2010, the Chilean courts have set a precedent to rule in favour of indigenous peoples in cases about consultation, on the grounds that corporations violate Convention 169 when they fail to involve indigenous peoples in the decisions for projects that will affect them. As a result, various development projects have been halted.⁴³ While for the Mapuche this court precedent represents an important victory in their struggle, the State and corporations see it as a problem. They fear that it will lead to legal uncertainty for corporations that are considering investing in a project on indigenous land. By defining a process for how corporations must go about consulting indigenous peoples, through Decree No. 40, the government clarifies what corporations must do in order to avoid a lawsuit, and thus provides them with legal assurance for investing in mega development projects.

In the government's 2013 report on the implementation of the Convention this motive becomes clear:

The contributions from the Confederation of Production and Commerce (CPC), the Mining Council, and the Chilean Wood Corporation (CORMA) express the hope that both the draft

⁴² A. Parellada (ed.), 'Chile', in C. Mikkelsen (ed.), *The Indigenous World 2014* (International Work Group for Indigenous Affairs, Copenhagen, Denmark, May 2014), p. 206

⁴³ In 2011, the corporation Ecopower tried to develop a wind farm on the island of Chiloé. Their plan was to build the energy plant on land where there have been archeological findings of Mapuche ancestors. The company never consulted with the community, thus violating Convention 169. The Community Antu Lafquen de Huentitike sued Ecopower in court on the grounds that there had been an inadequate environmental impact study in accordance with the national environmental law 19.3. The Supreme Court ruled that Ecopower would have to halt their project until they conducted an environmental impact study that follows methods of citizen participation conforming to the national environmental law and indigenous consultation conforming to Convention 169 (justiciaindigena.wordpress.com/cases/).

legislation on consultation of indigenous peoples and the Environmental Assessment Service Regulations (adopted by means of Decree No. 40 published in August 2013) will become tools for enhancing the legal certainty of investment projects in the country.⁴⁴

Importantly, this statement comes at the beginning of the report – directly after the government expresses the troubles indigenous consultation has caused for the “productive development” of the country and before there is any talk of protecting the rights of indigenous peoples. Ahead of indigenous rights, the State prioritizes protecting corporate interests as a strategy of safeguarding the neoliberal national interest. From this perspective it is less surprising that the substance of Decree No. 40 allows for corporations and the government to have more control over the consultation process than indigenous people themselves.

Mapuche organisations denounce Decree No. 66 and Decree No. 40 as “*fraudulenta consulta indígena*” (fraudulent indigenous consultation) for their failure to protect the indigenous right to prior consultation in a way that aligns with international standards.⁴⁵ To voice their grievances, in 2014, the representatives of Mapuche organisations solicited U.N. Special Rapporteur, James Anaya, to request that the Chilean State repeal Decree No. 66 and Decree No. 40 for violating indigenous rights. In their request the representatives stated: “Both regulations were imposed without regard to the consent of the indigenous peoples. And worse, they do not comply with the minimum standards of international law or the purpose of the inquiry, which is to safeguard the rights of indigenous peoples. On the contrary, they are instruments that openly violate indigenous rights.”⁴⁶ Convention 169 had the potential to be a policy that would expand

⁴⁴ Committee of Experts on the Application of Conventions and Recommendations, *supra* note 31.

⁴⁵ ‘Chile, 2014: Pueblos Indígenas Chile: La Derogación De La Fraudulenta Consulta Indígena – Informe Recopilación Noticias’, *Liwen ñi Mapu y Asoc.*, 27 March 2015, <liwenmapu.wordpress.com/2014/03/31/chile-2014-pueblos-indigenas-chile-la-derogacion-de-la-fraudulenta-consulta-indigena-informe-recopilacion-noticias/>, visited on 15 November 2015.

⁴⁶ ‘Chile: Organizaciones Mapuche solicitan intervención de Relator de la ONU ante fraudulentos reglamentos sobre consulta indígena en Chile’, *El Puelche*, 2 April 2014, <www.elpuelche.cl/2014/04/02/chile-organizaciones-

indigenous rights in Chile. Instead, under the leadership of Sebastián Piñera, the Chilean government used Decree No. 66 and Decree No. 40 to maintain the government and corporations' control of indigenous prior consultation so that Mapuche activists will not have the power to challenge corporate interests.

6. State Policies of the “Terrorist” Mapuche

The Piñera administration, in partnership with business leaders, has also implemented policies of oppression such as the Anti-Terrorist Law and militarisation of Mapuche communities as another policy-based strategy to delegitimize the Mapuche demand for self-determination. These policies are specifically enforced against Mapuche activists involved in radical protest against the logging plantations surrounding their communities that cause severe cultural and environmental damage.⁴⁷ The Chilean mainstream media has labelled the tense relationship between Mapuche protestors and business leaders who are supported by the State the “Mapuche Conflict.”

In their efforts to challenge mega development projects on their land Mapuche activists use tactics including marches, land occupations, fires set to plantations, and equipment sabotage.⁴⁸ The Mapuche organisation that is most known for these forms of radical protest is the *Coordinadora Arauko Malleko (CAM)*, whose goals include “territorial control” and the “reformation of the Mapuche nation.”⁴⁹ While all Mapuche people do not support these forms of protest, some Mapuche activists view political violence as a necessary tactic to challenge colonialism and neoliberalism. After experiencing decades of oppression and inadequate

mapuche-solicitan-intervencion-de-relator-de-la-onu-ante-fraudulentos-reglamentos-sobre-consulta-indigena-en-chile/>, visited on 10 November 2015.

⁴⁷ Activists also protest the construction of hydroelectric dams, airports, industrial fisheries, and highways on their ancestral land.

⁴⁸ P. Richards & J. A. Gardner, ‘Still Seeking Recognition: Mapuche Demands, State Violence, and Discrimination in Democratic Chile’, 8:3 *Latin American and Caribbean Ethnic Studies* (2013) p. 262.

⁴⁹ *Ibid.*, p. 266.

responses from the State to their demands for rights, working outside of the political system is the next tactic they must try.⁵⁰

Business owners and the government treat these protests as criminal rather than political acts. The Piñera administration, as well as all post-dictatorship administrations preceding it, has used militarisation of Mapuche communities as a tool to punish political protest. Militarisation takes the form of police raids of communities that aim to locate and detain the perpetrators of property damage, usually equipment sabotage and fires set to plantations. Mapuche activist, Gabriela Calfucoy, spoke about the severe impacts of police raids on Mapuche communities.

The police do a lot to find a single person... They will take over the community, never showing a document stating the reason for the raid or what they are looking for... They do not respect women or children or the elderly. The police torture, abuse, and insult everyone... We say that it is State terrorism.⁵¹

Police abuse can take the form of shooting community members with rubber bullets, punching or hitting them with weapons, and dragging them across the ground. In some cases children's limbs have been broken and homes have been destroyed.⁵² Through extensive use of state terror, the Chilean government sends a clear message that it values corporate property over indigenous people.

Notably, logging corporations have been known to set fires on their own plantations in order to blame Mapuche activists and claim insurance payments.⁵³ With this in mind it is unsurprising that militarisation is a joint effort by the government and corporations as business leaders themselves are often the ones to report violent acts of protest and call on the State to send police to Mapuche communities. The State, in an effort to protect corporate interests, uses

⁵⁰ F.P. Padilla & R. A. Vallejos, 'Arauco's New War: the Coordinadora Arauco Malleco and the new movements mapuche in Chile, 1997-2009', *Consejo Latinoamericano de Ciencias Sociales* (2011) pp. 66-84

⁵¹ Gabriela Calfucoy, interview by Reyna McKinnon, May 2015.

⁵² Richards, *supra* note 36, p. 126

⁵³ Pinto, *supra* note 16.

militarisation as a tactic to control Mapuche communities and to reprimand Mapuche activists who protest mega development projects in a way that is inconvenient for corporations.

Militarisation also contributes to the image of the criminal or “terrorist” Mapuche portrayed by the Chilean media. For example, in October 2015, a headline in *La Tercera*, one of Chile’s most well respected newspapers, reads, “Police create a new unity to combat crimes in the zone of the Mapuche Conflict.”⁵⁴ As in this article, the media portrays Mapuche protest as criminal activity and it is the job of the *carabineros* (police) to put a stop to criminal Mapuches in order to promote public safety. Even though in reality the police presence in Mapuche communities is characterized by brutal treatment of innocent community members, through the media the Chilean general public is led to believe that militarisation is a necessary step to combat dangerous Mapuche people.

In certain cases, the State has implemented the Anti-Terrorist Law as a more severe policy to reprimand suspected perpetrators of violent protest. The Anti-Terrorist Law is a remnant of the Pinochet military regime. It was adopted in 1984 to prosecute people who resisted oppression under the dictatorship. Since the return to democracy the Anti-Terrorist Law has been used almost exclusively against Mapuche activists for radical forms of protest that aim to harm property, not people – actions that do not constitute terrorism according to international treaties. Some provisions under the Anti-Terrorist Law include unlimited detainment without a charge, the use of protected witnesses by the prosecution, and much longer sentences than other criminal offenses.⁵⁵ While President Piñera amended the law to protect due process, by prosecuting

⁵⁴ A. Lopez, S. Rodriguez, & B. Blanco, ‘Carabineros crea nueva unidad para combatir delitos en zona del conflicto mapuche’, *La Tercera*, 17 October 2015, <www.latercera.com/noticia/nacional/2015/10/680-651745-9-carabineros-crea-nueva-unidad-para-combatir-delitos-en-zona-del-conflicto.shtml>, visited on 30 November 2015.

⁵⁵ Richards, *supra* note 25, p. 74

Mapuche activists under the Anti-Terrorist Law the State violates their rights to equal protection under the law.

The application of the Anti-Terrorist Law has caused extreme hardship for individuals and communities. Mapuche activists who have been prosecuted under this law have been held in jail for months without a trial and often without adequate medical attention. During this time their families and communities suffer due to the loss of a breadwinner or a leader, many of the activists prosecuted have been *lonkos* (leaders of indigenous communities) or *machi* (Mapuche spiritual healers).⁵⁶

Since the ratification of ILO Convention 169, conditions have not improved. In 2010, there were nine Mapuche activists convicted under the Anti-Terrorist Law and another 53 prosecuted.⁵⁷ In 2013, during the Piñera Presidency, *machi* Celestino Córdova was prosecuted under the Anti-Terrorism Law as the only suspect in the murder of the Luchsinger-Mackay couple, a wealthy Swiss couple in the province of Vilcún. However, while the Supreme Court found Córdova guilty of homicide and sentenced him to 18 years in prison, he was not convicted under the Anti-Terrorist Law.⁵⁸ Piñera and the Minister of the Interior condemned this decision.⁵⁹ The fact that the Supreme Court, which has convicted Mapuche activists as terrorists in the past, did not find the Luchsinger-Mackay murder to be an act of terrorism sheds light on the prejudicial nature of the Piñera administration's treatment of Mapuche protest.

Business leaders vocally support the prosecution of Mapuche activists under the Anti-Terrorist Law. For example, when Michelle Bachelet announced that she would not use the Anti-

⁵⁶ Calfucoy, *supra* note 21.

⁵⁷ P. Molina, 'Los problemas de Chile y su ley antiterrorista', *BBC Mundo*, 1 August 2014, <www.bbc.com/mundo/noticias/2014/08/140801_chile_ley_antiterrorista_nc>, visited on 15 November 2015.

⁵⁸ 'Tribunal entrega sentencia completa para machi Celestino Córdova', *Diario Uchile*, 18 February 2014, <radio.uchile.cl/2014/02/28/tribunal-entrega-sentencia-completa-para-machi-celestino-cordova>, visited on 14 November 2015.

⁵⁹ *Ibid.*

Terrorist Law in her second term as president during her 2013 campaign, she was denounced by Multigremial of the Araucanía, a private company that represents major logging and industrial fishing corporations. The president of Multigremial, Emilio Taladriz, stated that “it is a contradiction” for Bachelet to not apply the Anti-Terrorism Law in her next presidency because “she did previously and now [proposes] to give impunity in these cases.”⁶⁰

Like militarisation, the application of the Anti-Terrorist Law has two tactical functions: to punish Mapuche activists and to portray them as terrorists in order to delegitimize their challenges to corporate interests. The Anti-Terrorist Law by name has a particular power to discursively create the image of the “terrorist” Mapuche. By prosecuting Mapuche activists under this law, the State imprints the idea that Mapuche activists are terrorists in the minds of the Chilean public. Regardless of whether or not their actions do constitute terrorism or they are actually convicted of a crime, by implying that this is a possibility through prosecution under the Anti-Terrorist Law, the State exercises its power to delegitimize the demands of Mapuche activists.

In response to the Mapuche Conflict, the Piñera government also used policy to reframe the conversation around Mapuche rights in order to divert it away from political rights that give the Mapuche the power to challenge corporate encroachment. After the death of the Luchsinger-Mackay couple the government created more services that would promote economic development and celebrate Mapuche culture in the areas of the region where there is the most tension. For example, the President announced the implementation of a multicultural technical college, an increase in the number of scholarships available to Mapuche students, the

⁶⁰‘Multigremial de La Araucanía criticó a Bachelet por haber dicho que no aplicará Ley Antiterrorista’, *Soy Chile*, 24 April 2013, <www.soychile.cl/Temuco/Sociedad/2013/04/24/169855/Multigremial-de-La-Araucania-critico-a-Bachelet-por-haber-dicho-que-no-aplicara-Ley-Antiterrorista.aspx>, visited on 10 November 2015.

construction of five new hospitals, and increased promotion of tourism in the region.⁶¹ While these policies could have the potential to improve the daily lives of Mapuche people, they do not address the political aims of Mapuche activists that would actually lead to self-determination. Like all political policies, these served a discursive as well as a practical purpose. Through these policies the government was able to co-opt the conversation about Mapuche rights in the Araucanía to emphasize poverty and culture while ignoring collective political and land rights.

7. Discourse of the “Terrorist” Mapuche

Through a series of public statements, the Piñera administration and business leaders took advantage of the death of the Luchsinger-Mackay couple to create a narrative of Mapuche activists as terrorists. This is the most powerful case in which Piñera used discourse to delegitimize Mapuche efforts to gain self-determination in order to safeguard corporate interests. After the incident, Piñera declared that the Araucanía is plagued by “brutal, merciless terrorism” and he proposed to improve the situation in three ways: “economic development, the valuing and promotion of Mapuche culture, and the battle against a ‘minority of criminals and terrorists.’”

Using this strategy, Piñera created a discursive battle against the “terrorists” in the Araucanía. In one statement he asserted that Mapuche activists are working under external terrorist influences: “We think that there are foreign hands, institutions or terrorists that are collaborating or participating in this situation...I cannot say categorically who, where and when.”⁶² To make Piñera’s assertions more clear, the Minister of the Interior Andrés Chadwick stated that violent Mapuche activists are influenced by the Zapatista army, drug traffickers

⁶¹ F. Maza, ‘Between Conflict and Recognition: The construction of Chilean indigenous policy in the Araucanía region’, 34 *Critique of Anthropology* (2010) p. 360.

⁶² ‘Sebastián Piñera asegura que “terroristas extranjeros” agitan el conflicto mapuche, sin embargo no sabe quién, donde y cuando. Trascendió que Speedy González sería uno de los investigados’, *Maupexpress*, 29 August 2009, <www.mapuexpress.net/content/news/print.php?id=4590>, visited on 20 May 2015.

involved in the Colombian FARC, or are simply terrorists who want to take advantage of the situation in the Araucanía and cause harm.⁶³ Of course, Piñera attempted to clarify that he is not prejudiced towards Mapuche people by saying, “the aim of the Anti-Terrorist Law is not to persecute the Mapuche people, but to punish terrorists of whatever ethnic group, colour, or Region.”⁶⁴ However, President Piñera never claimed that any other homicide should be qualified as terrorism during his tenure.

In all of these declarations the Piñera administration failed to acknowledge the legitimate political aims of Mapuche activists for their rights to land and self-determination, both of which are indigenous rights that the government promised to uphold by signing the UNDRIP in 2007. They also did not acknowledge the fact that the fire that caused the death of the Luchshinger-Mackay couple was carried out by one individual and is the only act by a Mapuche activist that has killed anyone. Instead, the State used this one act to declare Mapuche protest terrorism and to make unsubstantiated claims about its connections to other supposedly terrorist indigenous movements and guerilla fighters, the Zapatistas and the FARC, that would further serve to delegitimize Mapuche claims for political rights.

The corporation Multigremial of the Araucanía also contributed to the “terrorist” Mapuche narrative during Piñera’s time in office. In the media Multigremial repeatedly referred to Mapuche activists as terrorists. Some newspaper headlines include: “Multigremial of the Araucanía: ‘There are terrorists who must be removed from the region,’”⁶⁵ and “Multigremial of the Araucanía appeals to the House of Representatives [to investigate terrorist] links to the

⁶³ Pinto, *supra* note 16, pp. 18-19

⁶⁴ Maza, *supra* note 61, pp. 359-360.

⁶⁵ ‘Multigremial de La Araucanía: ‘Aquí hay gente terrorista que hay que sacar de la región’, *Ahora Noticias*, 12 October 2015, <www.ahoranoticias.cl/chile/regiones/155703-multigremial-de-la-araucania-aqui-hay-gente-terrorista-que-hay-que-sacar-de-la-region.html>, visited on 9 November 2015.

FARC.”⁶⁶ As a private association that represents various corporations responsible for mega development projects in the Araucanía, Multigremial’s main objective is to protect corporate interests.⁶⁷ Therefore, when Multigremial denounces Mapuche protest against mega development projects as terrorism one must understand that it is within their interest to paint Mapuche activists as criminals. In fact, Multigremial publishes a tri-yearly “Barometer of conflict with indigenous connotation.” This document consistently portrays Mapuche protest as a hindrance to the development of the Araucanía.⁶⁸ In the report of the first trimester of 2013, after the death of the Luchsinger-Mackay couple, Multigremial stated that 2013 was the most violent year yet. This report as well as the association’s statement declaring that Celestino Cordóva is a terrorist made national news.⁶⁹

The Piñera administration and business leaders also developed a parallel dialogue about “Peace in the Araucanía” in order to portray Mapuche activists as the opponents of peace in the region. In the first half of 2013, after the death of the Luchsinger-Mackay couple, the campaign posted its symbol, a green ribbon, and slogan on signs, bumper stickers, and on social media all over the region. The slogan “Peace in the Araucanía” was an ironic choice considering the war in which Chile defeated the Mapuche and took their land was called the “Pacification of the

⁶⁶‘Multigremial de La Araucanía interpela a la Cámara por nexos de las Farc’, *La Nación*, 3 August 2015, <www.lanacion.cl/noticias/regiones/la-araucania/multigremial-de-la-araucania-interpela-a-la-camara-por-nexos-de-las-farc/2015-08-03/155455.html>, visited on 9 November 2015.

⁶⁷ Multigremial is a private association made up of eight industrial corporations in the region of the Araucanía. Some corporations include: the Chilean Wood Corporation (CORMA), which represents the forestry industry; SalmonChile Araucanía, which represents industrial salmon companies in the region, and the Industrial Association of Malleco and Cautín, which works to protect industrial activities in the provinces of Malleco and Cautín. On their website, Multigremial explains that their four main objectives include: promoting development in the private sector, strengthening the image of entrepreneurs, creating a follow-up legal process in favour of private property and the rule-of-law, and contributing to the design of public policies that improve the quality of life of both rural Mapuche and non-Mapuche families (www.multigremialaraucania.cl).

⁶⁸‘Barómetro de conflict’, *Multigremial de la Araucanía*, <www.multigremialaraucania.cl/es_barometro_de_conflicto.php>, visited on 12 November 2015.

⁶⁹‘Conflicto mapuche: Multigremial informó que el primer trimestre de 2013 ha sido el más violento’, *Soy Chile*, 23 April 2013, <www.soychile.cl/Temuco/Sociedad/2013/04/23/169587/Conflicto-Mapuche-Multigremial-Informo-Que-El-Primer-Trimestre-De-2013-Ha-Sido-El-Mas-Violento.aspx>, visited on 12 November 2015.

Araucanía.” Like Multigremial’s “Barometer of conflict,” the campaign portrayed Mapuche activists involved in the conflict as a threat to the peace and development of the region. Of course, it did not acknowledge that this very form of development, by way of mega development projects, is directly connected to the degradation of Mapuche communities in the region.

While the government and business owners portray Mapuche protestors as the cause of unrest, in reality the oppressive structures of neoliberalism are at the root of the violence. As elite actors in Chilean society with access to mainstream news outlets, the President and corporations like Multigremial have the power to frame the conversation about Mapuche activism. During Piñera’s tenure, both actors used their power to portray Mapuche activists as “terrorists” who threaten stability and economic development in the region. All of this can be traced back to the State’s interest in protecting corporate profitability from the challenges posed by indigenous rights claims.

7. Conclusion

The Mapuche political movement during the years of the Piñera administration experienced repeated setbacks in their struggle for political rights. President Piñera’s actions reflected his unyielding support for the Chilean neoliberal project, even when it was to the detriment of the Mapuche people. When implementing ILO Convention 169 through Decree No. 66 and Decree No. 40, the government narrowly defined the right to prior consultation in order to limit Mapuche self-determination and protect mega development projects. Similarly, in his treatment of the “Mapuche Conflict” Piñera used strong policy and harsh language to reprimand Mapuche activists for challenging neoliberalism. Through the militarisation of Mapuche communities, support for the use of Anti-Terrorist Law, and a discourse of terrorism, the Piñera administration worked to delegitimize Mapuche political aims for self-determination and territory that would

pose a threat to the neoliberal project. Corporations, like Multigremial of the Araucanía, were also significantly involved in the effort to create a narrative of Mapuche terrorism.

Following dismal indigenous rights outcomes under Piñera's leadership, the election of Michelle Bachelet, a more progressive politician, for her second term as president in 2014 brought new hope for the Mapuche political movement. In her campaign she pledged to review Decree No. 66 and Decree No. 40 and that she would not implement the Anti-Terrorist Law. On 5 November 2014 the Minister of Social Development announced a revision of both decrees. The content of these revisions remains to be seen. Furthermore, in her efforts to better implement Convention 169, in 2014 President Bachelet began a new consultation process to involve indigenous peoples in the "Creation of a New Cultural Institutionalism." The process lasted two years, ending recently in March 2015. Over the course of the two years The Ministry of Culture, Art, and Heritage (CNCA) held 501 regional meetings with indigenous organisations. In their report of the process the *Instituto Nacional de Derechos Humanos* (INDH) called for the Ministry of Social Development to set a schedule for when and how they will involve indigenous peoples in the review of both decrees. This process also remains to be seen.

Part of Bachelet's commitment to indigenous rights is a result of increasing international pressure. Her plans came after a meeting in August of 2014 with U.N. representatives who recommended that the State carry out an inclusive consultation process with indigenous peoples and that it also reviews Decree No. 66.⁷⁰ Similarly, in 2014 the Inter American Court on Human Rights ruled in favour of eight Mapuche activists in *Norín Catrimán et al. v. Chile*, effectively declaring that the Anti-Terrorist Law violates human rights.

While it seems that progress is being made, it is essential to recognize that all of these efforts are still in progress. It would not be uncharacteristic for the Chilean government to

⁷⁰United Nations Human Rights Office of the High Commissioner, *supra* note 40.

conduct a consultation process that signals improved protection of indigenous rights, but then pass policy that negates all the work that has been done, as in the case of Decree No. 66.

Similarly, there is no sign that the Bachelet administration has any plans to dismantle the Chilean neoliberal economic system. In fact, even after Congress voted down an extension of Law 701 in 2013, in 2015 Bachelet announced that the government would finance the forestry industry for three more years, until 2018 when her term is over. To announce her decision, she said, “A State policy has been developed to promote the development of the forestry sector given the positive externalities that it generates for the inhabitants of the national territory.”⁷¹ Again, the Chilean government ignores the negative externalities the forestry industry generates for indigenous peoples, the original inhabitants of the national territory. Bachelet’s continuing commitment to corporate welfare indicates that any indigenous policy to advance indigenous rights will be implemented within the frame of Chilean neoliberalism, just like Decree No. 40 and Decree No. 66.

Until the Chilean government agrees to make meaningful systemic change to the neoliberal model, there is reason to be sceptical that the government will meaningfully protect the Mapuche right to self-determination. In the meantime, the Mapuche political movement, in tandem with indigenous movements all across Latin America, will continue in their struggle to challenge neoliberalism in order to regain their rights as a *pueblo indígena*.

⁷¹Seguel, *supra* note 13.