

# *Chile's Forestry Industry, FSC Certification and Mapuche Communities*

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## Introduction

At the end of February 2012 the Board of Directors of FSC International held a meeting in Chile during which Director General Andrés de Freitas and his fellow members met with a highly representative group of Mapuche authorities in Temuco. It is a decisive moment in the history of the FSC in Chile, because the news is already spreading that the two largest forestry companies – MININCO and ARAUCO – are at an advanced stage in the process of gaining certification. There have been a number of questions and objections emanating from within the FSC, expressing concern over the ability of these companies to bring about such a major change in their behaviour given their abysmal track record on social and environmental issues. In the letter of invitation to the meeting, these same concerns are expressed by Mapuche authorities not part of the FSC. In the first instance they ask that the FSC guarantee

(...) true compliance with the principles and criteria which you yourselves promote during the certification process of the mega companies Forestal Mininco and Forestal Arauco, which we are convinced DO NOT COMPLY EVEN IN THE SLIGHTEST with these certification requirements.

In the second instance they request

(...) an independent study, with Mapuche participation, into the situation of the Mapuche people with regard to the presence of these forestry companies and to their certification processes, and that this serve as a reference and guide for certifying bodies and possible certification processes in Chile.

De Freitas publicly consents to this demand,<sup>2</sup> and in December 2012 and September 2013 respectively, Mininco and Arauco are awarded certification. The call for the study is made during 2013, and by the end of the year the proposal put forward by study coordinators Rosamel Millaman (Universidad Católica de Temuco) and Charles R. Hale (University of Texas at Austin) is accepted by the FSC. Following more than a year of bureaucracy and delays, the study commences in April 2015.

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<sup>2</sup> As a third item they request "(...) resources to familiarise Mapuche leaders of all territories with the FSC instrument, as a means of addressing the certification processes of the forestry companies in our territories." We do not know whether this point was accepted, and if it was, we cannot find any evidence of compliance. See: <http://www.mapuexpress.net/content/publications/print.php?id=6224>

The mandate of the study, according to the terms of reference, is in line with the original request made by Mapuche authorities. As a general objective it asks the team to describe

(...) the social, economic, religious and cultural situation of the Mapuche people in relation to the presence of FSC certified and non-certified forestry companies, and the requirements of the FSC Principles and Criteria for Forest Stewardship, so as to create a reference or guide for FSC certification in Chile.

More specifically, it requests that we describe

(...) the sociocultural impacts on indigenous territories resulting from FSC certification (i.e. according to the interpretation of the Mapuche and the researchers) and infer possible future implications of these interpretations according to the sociocultural reality of the Mapuche identified in the above objectives.

And that we propose "(...) recommendations, by way of a reference or guide, for the FSC certification process in indigenous Mapuche territory, based on what is described, revealed and identified (...)"<sup>3</sup> In our explanation of these objectives at public presentations and in requested interviews, we have summarised the overarching question of the study as follows: "Given that the majority of forestry companies in Chile have acquired certification, and that this certification guarantees that these companies recognise and respect indigenous rights, why is there so much conflict between Mapuche communities and the forestry companies?"

## Methodology

Being a multidisciplinary and "multi-site" study, the methodology comprised a number of facets and phases. As a first step, the coordinators had to ensure the administrative and operative foundation of the project in Chile, given that the primary contracted entity – the University of Texas – does not have this capacity. The NGO Desarrollo Mapuche Y Asesoría Técnica Newen (Newen Mapuche Development and Technical Consultation) was selected based on the organisation's strengths in terms of proximity and connection to the Mapuche community.<sup>4</sup> Following this, the research team was assembled, with special consideration given to the original

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<sup>3</sup> ToR General Objective "Study: Forestry Companies, FSC Certification Processes and the Mapuche", Version 1.0 (undated) Specific objective 1.2.4 and 1.2.5.

<sup>4</sup><http://www.mercantil.com/empresa/o-n-g-de-desarrollo-Mapuche-y-asesoria-tecnica-newen-/Temuco/300363118/esp>

requirement stipulated during that first meeting: that of "Mapuche participation". In addition to coordinator Mr. Millaman, three key members of the research team are Mapuche specialists: Héctor Nahuelpan (historian and anthropologist), Margarita Canio (linguist and expert on Mapuche culture) and Rubén Sánchez (cartographer). To complement the required specialist areas, indigenous law expert José Aylwin was brought in, along with experts in environmental sciences from the Universidad Austral in Valdivia, Yerko Castillo and Carlos Oyarzún. Appendix A contains a summary of the CVs of each team member, as well as those of special consultants Martín Correa and Juliana Vidal, and collaborator Ximena Ancamil Huentemil.<sup>5</sup>

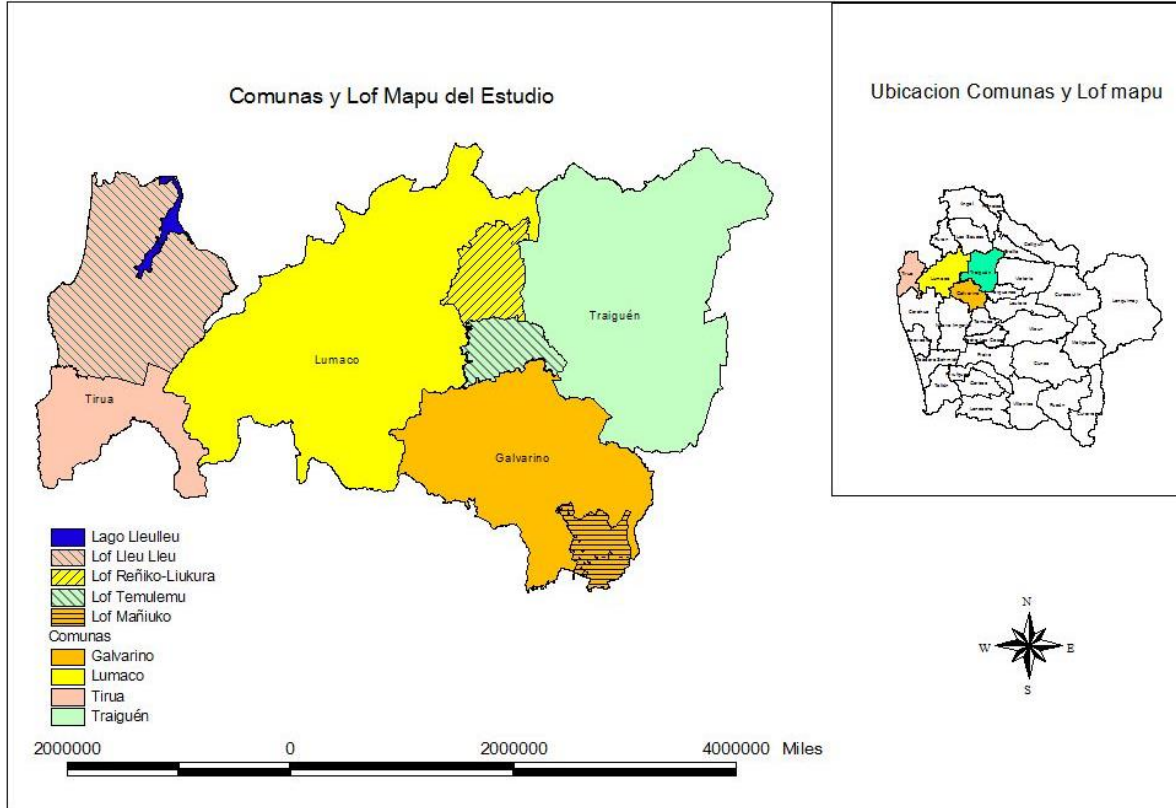
Once the team had been assembled, the methodology was fine-tuned through group work and the significant decision was taken to combine "macro" analysis with detailed and intensive research across four Mapuche territories. There were two reasons behind this approach. Firstly, a great deal of study has already taken place on the macro level, and as a result, greater opportunities for new discoveries existed through intensive local study. Secondly, local research provided for the possibility of broad Mapuche participation which would otherwise have been minimal and superficial. In selecting areas for the study, an effort was made to encompass multiple territorial identities, as well as the following criteria: a) consent of Mapuche authorities to work on the study, b) ongoing conflicts with forestry companies, c) Mapuche proposals for conflict resolution, and d) complementary information (legal, historical, journalistic) surrounding the land claim. In the end we selected four districts, which captured three historical territorial Mapuche identities out of the seven that exist: Galvarino (Wenteche / Nagche<sup>6</sup>), Traiguén (Nagche), Lumaco (Nagche), and Tirúa (Lafkenche) [see Map 1]. Following numerous meetings and conversations with the authorities in these districts, the decision was taken to focus on one local territory situated within each district. As we will go on to explain, this local territory is known as "*lof mapu*" in Mapudungun (the language of the Mapuche).

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<sup>5</sup>Pablo Huaiquilao participated as forestry advisor, at the request of FSC International.

<sup>6</sup> In the 2003 Commission for Mapuche Autonomous Work (COTAM) study, members of the Mañiuko *lof mapu* were shown to belong to the Wenteche identity.

Map 1: Districts and *Lof Mapu* of the Study



The research for this study, both field work and desk work, took place between June 2015 and August 2016, in a series of phases with breaks for analysis and joint reflection. Field work carried out in the four territories – encompassing oral history, cultural documentation and cartographic data gathering – began with a series of meetings, initially with local authorities and later with all parties involved. Once the study had yielded preliminary results, another plenary "report" meeting helped us to refine and further our analysis. Finally Millaman carried out in-depth meetings with prominent leaders from each territory. In order to gain an understanding of the vision and experiences of the forestry companies, Hale visited each of the main companies (in Santiago, Los Ángeles and Temuco), interviewed various officials and accompanied them on field visits expressly designed for observing the relationship between the company and the neighbouring Mapuche communities. These qualitative and participatory methods were complemented by the study of the scientific data, particularly that concerned with the environmental impact of the forestry companies, an analysis of the extensive body of legal



records – both national and international – involved in associated land claims, and archival work in Temuco and Santiago to enrich the historical analysis.

The breaks for reflection and presentation of preliminary results were crucial to building a comprehensive analysis of the main themes, and to enhancing the results obtained by the team. Although each member of the team had their own area of specialisation, key points of the study were formed through input from multiple perspectives. The best example of this is the emergence of the pivotal concept of the study, the *lof mapu*. While the Mapuche cultural expert played a key role in its identification and conceptualisation through interviews in Mapudungun with Mapuche intellectuals, our understanding of the *lof mapu* evolved and was confirmed as a political-historical and socio-historical category through internal dialogue supported by important contributions from cartography, anthropology, history, law, and environmental study.

In March 2015 we presented the research proposal to the Board of FSC Chile, and received a mix of comments. A year later the team made an oral presentation of the preliminary results to an audience of some 60 individuals each with close links to the FSC, which was followed by a critical and productive discussion. On 22<sup>nd</sup> March 2015 we submitted a draft of this report to the FSC, and two months later received written comments from five anonymous reviewers, offering a broad range of support and criticism of the content. It is also important to highlight the visits from Vanessa Linforth (Project Manager at FSC International) and Juan Carlos Ocampo (Nicaraguan Miskito, representative of the FSC Permanent Indigenous Peoples' Committee – PIPC- Project Steering Committee) in March 2016. We received valuable written and conversational input from both. During the creation of this final version of the study we made every effort to respond to the criticisms and take on board the suggestions.

### General Overview: A Region in Conflict

Since 2012, tensions between Mapuche communities and the dominant society have been worsening, and several politicians – among them Francisco Huenchumilla, first Mapuche Intendant of La Araucanía region – have presented proposals for establishing peace. However, central government has neither the will nor the capacity to seriously consider these proposals, and on 25<sup>th</sup> August 2015, Huenchumilla was replaced by Andrés Jouannet, a member of the traditional political elite. The new Intendant has attempted to minimise conflict and tackle the

interethnic tensions in La Araucanía through police repression. A few days after taking up his post he shamelessly declared: "There is no Mapuche conflict. These people are criminals."<sup>7</sup> His statements have all consistently denied the legitimacy of Mapuche territorial claims. On 30<sup>th</sup> June 2016 he told a television channel: "(...) territory is one thing, land is another. I do not recognise any territorial claims, absolutely not. The Mapuche are a part of the Chilean people."

The significance of this statement lies not so much in its attempt to erase the harsh reality of recent years, but in its desire to redefine it. Every summer there are tens – if not hundreds – of forest fires reported, some of which may have been started accidentally, but the majority of which are clearly deliberate and associated with the deep discontent of the neighbouring communities. These fires often also affect harvesting and transport machinery as well as the companies' local bases, following a pattern which started dramatically in Lumaco in 1997. Alongside these burns, there are various types of occupation: some are temporary, announcing the initiation of a claim, others have specific economic objectives such as disrupting the harvest and sale of disputed land, and some – far more significantly – have the intention of remaining, of taking ownership of the territory and effecting its "recovery". In some of these local scenarios, the National Indigenous Development Corporation (CONADI) intervenes and enforces the law, initiating a long and cumbersome process through which the protesting community will eventually receive a piece of land, often located far from the disputed site, in the hope that this will defuse the situation. However in a significant and probably growing number of cases, the controversy does not even reach State level. The community protests and makes demands, the company negotiates, sometimes reaching a provisional agreement (for example a payment in exchange for the right to harvest), and when negotiations collapse, both sides regroup in preparation for the next round of confrontation.

Given these conditions – the details of which can easily be verified through a review of newspaper articles, reports from the "Multigremial" group of businesspeople and farmers, the ubiquitous signs demanding "Peace for La Araucanía", and the counter-protests of hauliers, among numerous other sources – Jouannet's statement sounds, at first hearing, somewhat out

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<sup>7</sup> Paúl, Fernando. (Sunday 13th December 2015). There is no Mapuche conflict. These people are criminals. *El Mercurio*. Chile. Available at: <http://www.elmercurio.com/blogs/2015/12/13/37734/Andres-Jouannet-intendente-de-la-Region-de-La-Araucania-No-existe-conflicto-mapuche-Estas-personas-son-delincuentes.aspx>

of place. It is, however, a robust announcement of the government's new regional policy following the dismissal of Huenchumilla. As will be detailed in Chapter 2, this policy puts emphasis on police and even military response to the protests, particularly when they threaten productivity. When companies are unsuccessful in negotiating conditions for undisturbed planting or harvesting, they proceed under military guard, and when occupation of land fails to make CONADI's ever growing case list, eviction by force becomes the next resort, often culminating in open battles between well-armed *Carabineros* (the Chilean police force) and young Mapuches, with volatile results. In the language of the media, this does not constitute "Mapuche conflict". Far from being seen as people demanding their rights, the protagonists are branded delinquents and criminals, whose actions merit an appropriate disciplinary response. In the absence of a "Mapuche conflict", the historical gaps in the State's response to it become less noteworthy.

Of course, not all of the "conflict" involves FSC certified forestry companies. As we will explain in Chapters 2 and 3, the Mapuche claim is historical, focusing on a wide range of actors, both individuals and institutions, involved a century and a half ago in the military invasion and colonisation. The four local claims based on the *lof mapu*, which we document in Chapter 3, address not only the areas of land within their borders owned by forestry companies, but also a series of "private actors" who arrived as "colonists" at some point in history. However, the forestry companies play a central role in this study, not only due to the project's basic mandate, but because of the fact that they – unlike those private actors – have committed to respecting indigenous rights as part of their certification. They are prominent contributors to the daily suffering which motivates so many Mapuche communities to protest, contributing to the critical scarcity of water, environmental decline, the breakup of local economies, and ultimately the destruction of a way of life. Without a doubt, it was in consideration of these facts that Huenchumilla, shortly before taking up the post of Intendant assumed the position that, for the good of the Mapuche people, the forestry companies should leave the region [and as Intendant proceeded to put forward a comprehensive proposal to radically transform – through negotiations – the "footprint" of the forestry companies in the region]. He proposed that "lands belonging to the large forestry companies should be returned to neighbouring Mapuche

communities". Despite the assertions of the new Intendant, it is hard to deny that this study addresses a region of deep-rooted conflict, where there is little state capacity for response.

## The Roots of the Conflict

With the return to democracy, there began a process of citizen participation aimed at restoring and democratising society following the 17 years of military dictatorship (1973-1990). The milestone marking the initiation of relations between the State and the Mapuche community in this process was the Nueva Imperial Agreement, established by presidential candidate and ex-President of Chile Patricio Aylwin Azocar, who upon taking up office as president, committed to enacting a law relating to indigenous peoples, and to giving constitutional recognition to the indigenous communities of Chile. The first agreement was formalised in 1993 with the passing of the Indigenous Peoples Act (Law 19,253) which is still in effect today. However, with the passage of time this law has demonstrated its own weaknesses, shortcomings and failures to embrace the combined needs and demands of Mapuche communities, and there is general agreement that it is exhausted to the point of being dysfunctional. A series of factors came to frame relations between the State and the Mapuche community, some opening up space for reconciliation – such as proposals for constitutional recognition of indigenous peoples, State decentralisation, multicultural policies and the ratification of Convention 169 of the International Labour Organization (ILO) (2008)<sup>8</sup> – and others exacerbating tensions – such as the continuation of neoliberal economic policies, commercial agreements and the investment that these generate, including investment in forestry, the growing threat which these agreements generate regarding the communities' natural resources, and the criminalisation of the Mapuche movement culminating in the application of the Pinochet-era anti-terrorism law against those who protest.

These and other factors gave rise to a process of protest and resistance in the mid-90s. These manifestations of local and regional discontentment became increasingly commonplace with the democratisation of institutions, including the reconfiguration of census categories to measure the indigenous population in Chile. The 1992 census revealed a Mapuche population of close to a million, representing approximately 10 per cent of the national population. This

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<sup>8</sup> Note that ILO 169 entered into effect in 2009.

revelation of the size of the indigenous population had a considerable effect on the country, provoking special public and political attention on the part of the State, generating an increase in governmental plans, intercultural policies and recognition of indigenous rights. This situation, combined with the factors previously outlined, were instrumental in the growing Mapuche rebellion against corporate forces; far from suppressing the protest, these new government policies would only serve to deepen the Mapuche movement's resolve.

Amid some recognition of the specificity of Indigenous rights claims, the central government generally continued to implement one-size-fits-all policies for the rural sector and to interpret rural people's problems as a symptom of their own economic and social shortcomings. In practice, Mapuche communities had to appeal to programmes designed for small-scale farmers and peasants in order to receive state support. Even CONADI, founded to address indigenous demands, only ran its land acquisition programmes through a "Land and Water Fund" which operated strictly according to market criteria, and only granted land claims based on deeds of ownership previously recognised by the State. CONADI processes were frequently governed by political manipulation from above, although in some instances they also responded to pressure and mobilisation of the Mapuche communities. By 2014 CONADI had acquired around 170,000 hectares of land for Mapuche communities and families. This policy is without doubt the most significant achievement of the Indigenous Peoples Act, although there are detractors from both the Mapuche and non-Mapuche worlds who argue that it offers no material support for making these acquired lands productive.

The presence and expansion of forestry operations in the ancestral territory of the Mapuche, along with the weakened indigenous policy, have led to protest by indigenous organisations, who combine a historical anti-colonial critique with claims to the contemporary legitimacy of Mapuche rights. Many of these organisations have put in place aggressive land recovery programmes, including lands which the State had in the past recognised as theirs, as well as traditionally occupied lands which formed part of their *lof mapu* and which were later appropriated by the forestry companies, Chilean Creoles and colonisers. These communities put pressure on the State with demands for self-governance, but in some cases, they also accept State policies focused on social welfare.

The human and material resources that CONADI has at its disposal are limited, and many communities which have requested lands have waited decades for their claims to be considered and resolved. It is impossible to rule out cronyism, corruption and biased intervention on the part of governments in the implementation of these policies. Evidence of action aimed at gaining control of political and cultural practices are clearly demonstrated, as the communities, seeing themselves being restricted by their requirements, promote intercultural policies such as including the teaching of Mapuche history, language and culture in the curricula of schools within the community. In other instances, faced with the impossibility of accessing public health services, Mapuche organisations have sought to install an intercultural or complementary system of health, making strategic use of the local resources provided by the State itself or by the district at a local level. This strategy of setting up intercultural health operations has been hugely successful both regionally and internationally, and is recognised throughout Latin America.

The only significant governmental policy is related to the so called Indigenous Development Areas (ADI), a concept contained in the current Indigenous Peoples Act and which aims to focus state action on the "harmonious development of the indigenous peoples and their communities". The second paragraph of article 26 of this framework establishes that:

At the proposal of CONADI, the Ministry of Planning and Cooperation can establish areas of indigenous development, which will be territorial spaces in which the State coordinates its institutions to encourage the effective and beneficial harmonious development of indigenous peoples and their communities.

These ADIs, some of which have been established in areas of significant forestry company presence (such as Lleu Lleu and Ercilla) have not enabled what Convention 169 recognises as "the right of indigenous peoples to define their own development priorities." Instead these areas have been managed by public organs and, as such, have not inspired participation of the communities where they have been established.

Years of policy experience point to a need to return to the drawing board and implement new public policies directed towards greater indigenous participation, and to give new status to the administration of these policies. This would be the case with the creation of a Ministry of Indigenous Affairs, supported by a National Council of Indigenous Peoples. These policies put forward by the current government must resolve questions of indigenous participation and

representation if they are to be successful. Separately from the government plan, the possibility has been raised of creating a representation of indigenous delegates in the Chilean Parliament. The Mapuche movement is watching this new State initiative with caution and concern, as none of these initiatives – a Ministry for Indigenous Affairs, a Council of Indigenous Peoples and a parliamentary representation – offer guarantees that rights and economic and cultural self-governance projects will materialise under the principle of autonomy or self-determination as demanded by the *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>9</sup>

For these and other reasons, Mapuche organisations and communities have favoured pursuing their claims through direct action, in the form of occupation of land, road blocks and occupation of forestry company territory. These actions have come in response to the absence of effective policies that are consistent with the global claims of the Mapuche people, who seek a structural reform of governmental practices and policies with regard to indigenous peoples. In this sense, Mapuche organisations have sought to reset state policies relating to indigenous peoples, seeking to strengthen the identity of the communities, schools and pro-development activities. The repeated failure of government policies in the past has given rise to this approach. Many communities promote the recovery of cultural values such as the revival of the Mapuche language, traditional ritual practices such as the *palin* (Mapuche sport), the celebration of *wetripantu* (New Year) and the identification of areas of cultural significance within their territories. These initiatives that emphasise community autonomy, revival of ceremonies, traditional medicine and schools with an intercultural orientation, are the ones which tend to last, and to have the greatest success, both in the communities and urban areas.

This reality is common the world over. Mapuche cultural identity has its own local expressions but also develops in unpredictable ways. This identity, which in the past was suppressed, is expressed today as "Mapuche pride", as territorial claims, and in efforts to salvage Mapuche ancestral knowledge denied by the official history. These expressions of identity are manifest in the revival of nutritional customs, respect for nature and everyday social practices that help to consolidate the religious and social world of the Mapuche people.

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<sup>9</sup> *United Nations Declaration on the Rights of Indigenous Peoples* Article 4: "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."

Needless to say, land claims are the predominant demand of the Mapuche movement. In recent decades this demand has constituted the cornerstone of community political action, leading to a steady consolidation of Mapuche identity, and to demands for the recognition of the Mapuche people or nation. As a result, these demands have been transformed from a debate about land to a political debate surrounding the concept of territory; from community land claims to claims to nationhood; from the demand for welfare to the demand for self-governance or self-determination. This struggle for self-determination unites and binds the communities, organisations, associations, leaderships and emerging rural and urban organisational nuclei. This situation has direct and indirect implications for the Mapuche movement, which is undergoing extensive social, political and economic change. The two most important implications are, first, that territorial claims are not limited to the land declared by the State as Mapuche "reductions" or reservations through the "*Título de Merced*." The current demands of the movement surpass this colonial notion of legal property, now including ancestral settlements and recuperation of the kinship system that the Mapuche "reductions" never recognised. Second, the Mapuche "reductions" established by the Chilean State (1883-1930) have been illegally occupied by colonisers and farming groups in the region; consequently, a significant number of Mapuche communities demand the "recovery of usurped lands." These lands often passed through many owners, and after successive sales now form part of the forestry companies' patrimony.

The organisations have employed diverse strategies to bring this situation into public view. First, the symbolic occupation of usurped Mapuche lands which today are the property of the State, forestry companies and national colonials. Second, the formalisation of the Mapuche claims with support from legal documents, oral history, and ethnohistoric, historical and anthropological data. Third, the integration of local claims into larger territorial claims and associated territorial identities (Nagche, Wenteche, Lafkenche, Pehuenche, and others), or into the global territorial claim of the Wallmapu.

In light of all this we could ask ourselves: What do the forestry companies represent to the Mapuche communities, and what possible solution exists to resolve Mapuche conflicts with the companies? Mapuche common sense<sup>10</sup> dictates that massive forestry company presence is a

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<sup>10</sup> Mapuche common sense is a generalization based on interviews, participant observation, and many years of



new form of colonialism, a means to control territory and natural resources that belong to the Mapuche. Their reasoning lies in the following observations:

1. The forestry companies favour single crop farming over the interests and collective objectives of communities, which traditionally subsist through a diversified multiple crop system, closely linked to the environment.
2. The forestry companies, as part of their expansion plans, have installed concepts and ideas in the public mind, maintaining that they are necessary and indeed essential to the national economy, and that they benefit the Mapuche world and its communities. The facts demonstrate that this assertion is false: these companies remain present in the region and indeed have expanded into other sectors and capital investments which, far from benefiting neighbouring communities has in fact made them poorer. This is reflected in the fact that La Araucanía continues to be the poorest region of the country.
3. The communities that previously have had or currently have contact with the forestry companies hold these companies responsible for the "militarisation of Mapuche territory". This longstanding conflict has subjected the Mapuche to detention, torture and persecution, and to scare tactics, threats against the population, raids, and violent treatment of Mapuche children, elderly people and women, with the aim of paralysing the Mapuche movement.
4. The Mapuche population does not participate in the creation of public policy, which the State designs and implements in the region. A long series of government policies meant to remedy this shortcoming have failed: the "Communal Dialogues" of the Frei government, the "Historical Truth and New Deal Commission" of the Lagos government, the "Recognise: Pact for Multiculturalism" of Bachelet's first government, and the indigenous dialogues of the Piñera government. In each case, political manipulation and a lack of guarantees of real Mapuche participation have prevailed.

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cumulative research and life experience, especially on the part of the four Mapuche researchers.

## The State and the Forestry Companies in the Study

The State has played an important role in the promotion of forestry company activity in the centre-south of the country, in the lands traditionally occupied by the Mapuche. The consideration of the role of the State in this report is based on the requirement found in the specific objectives, which states a need for analysis of the current tools of international indigenous rights.<sup>11</sup> The parties most able to influence these international legal instruments or tools are States. The analysis is carried out particularly in Chapter 2 where milestones in the history of appropriating traditionally occupied Mapuche territories are identified, in Chapter 3 where we analyse these milestones in the context of the four *lof mapu*, and in Chapter 6 where we address the implications of FSC standards on the behaviour of the certified companies. However, the study of the State's role in the current situation of the Mapuche, and the implications of its actions or failings for current social, economic and cultural conditions, should not be assigned greater significance than the behaviour of the companies themselves, especially those certified by the FSC.

First, we must analyse the relationship between these companies and the Mapuche. Secondly, as will be explained in greater depth in Chapter 6, upon becoming a member of the FSC, the forestry companies voluntarily commit to respecting national laws and international agreements to which the State is a signatory. The latter are of particular relevance, as they include the rights granted to indigenous peoples by ILO Convention 169 and by the UN Convention on Biological Diversity. In particular, in terms of the rights of indigenous peoples and in line with Principle 3 of the FSC Principles and Criteria, certified companies commit to recognising and respecting "the legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources (...)." <sup>12</sup> Consequently, by adopting the FSC seal, certified companies take responsibility for respecting the rights that States have put in place across a range of fields. Thus in our analysis of the implications for the Mapuche community of

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<sup>11</sup> "Identify the main concepts relating to indigenous peoples contained within the FSC's Principles and Criteria and in the current instruments of international indigenous law". Ibid, Specific objective 1.2.3

<sup>12</sup> Under the new Principles and Criteria of FSC the right to free, prior informed consent considered in the UNDRIP, is also an obligation of certified companies.

the actions of FSC certified forestry companies, we must address the compliance or non-compliance with commitments made by these companies relating to indigenous rights.

This is consistent with the directives of international and human rights law which are applicable today to the activity of these companies. We refer particularly to the United Nations' Guiding Principles on Business and Human Rights, approved by the Human Rights Council in 2011, which as well as obligating the State to protect against human rights abuses committed by third parties – including businesses – obliges companies to respect human rights, refrain from infringement of the human rights of third parties and accept responsibility for negative human rights consequences that they in some part caused.<sup>13</sup> These are not isolated directives, but rather guidelines which have been adopted by other constituents of the United Nations System, such as the Food and Agriculture Organization (FAO). In 2012 this entity created the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security, which are particularly applicable to activities of forestry companies.<sup>14</sup> Consistent with the Guiding Principles identified above, these Directives stipulate that alongside the State's obligation to defend human rights, businesses, regardless of where they operate, must comply with all current legislation and respect human rights<sup>15</sup>.

The forestry companies' obligation to respect human rights is also in line with the guidelines followed today by the majority of companies as part of Corporate Social Responsibility

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<sup>13</sup> Guiding Principles on Business and Human Rights, United Nations, Human Rights Council. Resolution 17/4 of 16<sup>th</sup> June 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) According to these Principles the responsibility also requires that business enterprises "Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." (*Ibid*, Principle 13).

<sup>14</sup> *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security*, Food and Agriculture Organisation of the United Nations, 2012, available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

<sup>15</sup> In relation to businesses, the voluntary guidelines specify: "Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved." (*Ibid*, General Principles 3.2).

(CSR) strategies. Although many of them have been subject to doubts regarding their voluntary nature, CSR initiatives such as the United Nations Global Compact<sup>16</sup> or the International Council on Mining and Metals (ICMM),<sup>17</sup> among others, also recognise respect for human rights as a fundamental duty of businesses, including standards referring to indigenous rights, due diligence obligations regarding these rights, and their responsibility for the repair of damage caused as a consequence of their actions or omissions. This has prompted us to analyse, alongside the role and behaviour, past and present, of the State in the situation of the Mapuche (Chapter 2), the role and responsibility of forestry companies, in particular those with FSC certification (Chapters 5 and 6). In accordance with the mandate of this study, our recommendations, although principally regarding FSC certified businesses, also consider the possible changes which the Chilean State could promote in the interest of tackling the critical situation of the Mapuche people and their rights.

We hope that this section will serve to clarify any confusion regarding the focus of our study, and the complementary nature of our analysis of the principal actors – the State and the forestry companies – in the forestry sector operating in traditionally Mapuche occupied lands, and their responsibilities in the critical situation of the Mapuche community today.

### Principal Findings of the Study

The FSC Chile certification system, in its relationship with the Mapuche community, is in crisis. This crisis has many symptoms: the FSC seal's loss of credibility on an international level due to the number of complaints and conflicts which involve certified Chilean patrimony; weaknesses in the offices of FSC Chile and representational imbalances between the three Chambers; problems of coordination and division of labour between FSC Chile and FSC International; weaknesses and lack of preparation exhibited by auditors in terms of indigenous rights; the fact that some businesses are looking into the possibility of leaving the FSC and seeking new markets in China where accreditation is not a requirement; serious questioning of the close link between auditor and company; and the almost complete absence of a Mapuche presence in the organisation, among others. However none of these symptoms are definitive and none of

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<sup>16</sup> See <https://www.unglobalcompact.org/>

<sup>17</sup> See <https://www.icmm.com/en-gb>

them identify the principal cause of the crisis: the Mapuche way of life, their philosophy, culture, society and economy, have been suppressed and marginalised since colonisation. The Mapuche way of life is at present severely threatened by environmental, political and economic factors. One of the key components of this threat has been the stripping of lands and territories traditionally occupied by the Mapuche, and the forestry companies have taken advantage of these conditions to establish operations in Mapuche lands. At the same time, calls for these lands and territories to be returned have been neither heeded nor even registered by FSC audits of these forestry companies.

All of this has happened despite the fact that Principle 3 of the FSC standards states that: "The legal **and customary** rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected", and despite the fact that Principle 1 obliges organisations that are part of the FSC to respect ILO Convention 169 which recognises the rights of indigenous peoples to the lands and resources which they traditionally occupy and use, their development priorities, the right of consultation and respect for their environment.

There has been a great deal of technical legal discussion regarding the applicability of both principles, and these intensified with the planned transition to the new standard (v.5) which strengthens the commitment of the FSC via the principle of prior, free and informed consent with regard to forest management in lands traditionally occupied by indigenous populations. Similarly, it requests a response from the Chilean State concerning pending historical commitments, which this study concludes have not been met. Despite the important role of the State, this report focuses principally on the FSC, and we conclude that **there is an essential and urgent need for FSC certification to recognise and seriously consider Mapuche claims over their traditionally occupied territories, which we will from now on refer to as the *lof mapu*.**

The *lof mapu* is a Mapuche concept and practice which encompasses social organisation, the natural world, their economy, and the land which supports life. Within this broad sense, we find that on a community level there is an ongoing and strong link to the local territory, corresponding more specifically to that which international legislation on indigenous peoples refers to as "the traditionally occupied lands (or territories)". We associate these land claim movements with the *lof mapu*, which we define *in part* as the local unit of territorial division. A

full definition must encompass all of the facets of the *lof mapu* beyond simply the notion of territory, and above all, beyond the characteristics (borders, property, etc.) that western positive law requires. The concept of *lof mapu*, as a basis for local land claims, is crucial to the central argument of the study.

As will be shown in the following pages, within the area of each *lof mapu* are a series of properties belonging both to forestry companies and to other private owners. Lands belonging to forestry companies have FSC certification, almost without exception. The contradiction represented by this presence goes to the heart of the problem which we address in this study. Our argument revolves around the general "historical conflict", but more specifically is based on detailed analysis of the four *lof mapu*: the identification of land belonging to forestry companies (and other private actors) located within their territory, the general perception that the presence of forestry operations does serious damage to the Mapuche way of life, and the growing desire to reclaim this territory for themselves. In this context, FSC certification not only offers few resources for resolving the conflicts, but in fact tends to conceal them, compounded by the fact that the forestry companies are failing to comply with the internationally recognised legal principles applicable to indigenous peoples.

As we emphasise in Chapters 5 and 6, although there are numerous procedural and structural problems with FSC certification, we do not believe that the main explanation for the contradiction can be found at this level of the system. In general, businesses are complying with the standard, at least according to their auditors, and this compliance drives meaningful (although limited) improvements for some sectors of the Mapuche community. Ultimately the problem persists because neither the auditors nor the FSC itself are prepared to address the meaning of the *lof mapu*. We believe that the lack of effort to confront this problem represents the loss of a historic opportunity. In the seventh and final chapter of this report, we offer recommendations aimed at encouraging behaviour that complies with current FSC Principles and Criteria (and of course with the new principles that FSC Chile must adopt), while also recognising Mapuche historical claims. This in turn could open possibilities for an eventual resolution of the conflict.

## Mapuche Outlook for the Future

Today, the local and regional Mapuche movement has two strategic goals. The first is to legally establish the foundations of autonomy, including control and use of political spaces and resources which would facilitate a discussion of constitutional reform, the application of ILO Convention 169, public policy reform and the recognition of a Mapuche political representation in order to negotiate with the State. This strategic goal adopts as its political framework the United Nations Declaration on the Rights of Indigenous Peoples. The second goal, taking into account the complexity of the Chilean political system and the unlikely possibility of achieving change within the State itself, posits the need to exercise autonomy through the occupation and transformation of local institutions, such as district governments.

The recovery or re-appropriation of territories belonging to Mapuche communities which are currently in the hands of landowners, colonisers and the State is a practical demonstration of the first strategy, the exercise of autonomy. Since the return to democracy there have been several successful examples of this, where communities and organisations have applied social and political pressure to force the return of thousands of hectares of land which had previously been recognised by the State as belonging to them, and also of lands traditionally occupied by the Mapuche. This political approach generates the greatest conflict with businesses, as the claims involve not only recuperation of lands from the forestry companies, but also of rights to territory and natural resources. In particular, the claim to recover land may become a global claim which surpasses the limits of ownership recognised by the Chilean State.

Ejection of the forestry companies from the *Wallmapu* (Mapuche territory) is not the only objective expressed by the daily activities of the Mapuche movement. The presence of these companies has been extensively exposed to public opinion by the media. However, with the current energy crisis experienced in Chile and in the world, the arrival of “extractivist” companies in the region threatens new forms of control and direct appropriation of natural resources, many of which lie within Mapuche lands and territories. Mapuche organisations and communities come up against a range of companies involved in mining exploration, salmon farming and hydroelectric power generation, as well as the infrastructure projects which accompany these forms of production and resource capture. At the end of the 90s this situation was presented by

the Mapuche movement as "the fourth colonial invasion," following on from the Inca, Spanish and Chilean invasions.

One branch of self-governance linked to the self-determination project can be seen in the various experiences of control of resources and of public policies which the State implements in the territory, and of others which arise as local innovation initiatives. The strategy of gaining local control through district elections is a good example. This experience has constituted a landmark in districts with large Mapuche populations such as Tirúa, Puerto Saavedra, Chol-Chol, Galvarino, Lumaco, Currarehue and Renaico. The election of Mapuche mayors has formalised the Mapuche presence in the machinery of the State, and has permitted public policy influence in these districts. This can be seen through the introduction of intercultural public policies, promoting the revival of Mapuche culture. This is the greatest advance in Mapuche self-governance and autonomy. It allowed the Mapuche mayors to form their own institution in 2013, known as the Association of Municipalities with Mapuche Mayors (AMCAM), which has provided representation of the Mapuche world to the State and the public. This new institutional framework opens spaces for territorial proposals, for direct relations with the State, and for creating a centre of opinion regarding the resolution of conflicts with forestry companies.

The communities and organisations are, in a structured and gradual way, testing initiatives for self-governance, revival and reform in order that their ancestral and contemporary rights be exercised by the will and decision of the communities themselves, as part of their right to self-determination. There is no single solution for the recovery of rights, but instead combinations of strategies are evaluated according to the behaviour of the actors involved. Through this action, the Mapuche movement observes and defines the presence of the companies – including forestry companies – as a major obstacle to exercising the right to self-determination, recognised as theirs by international law.



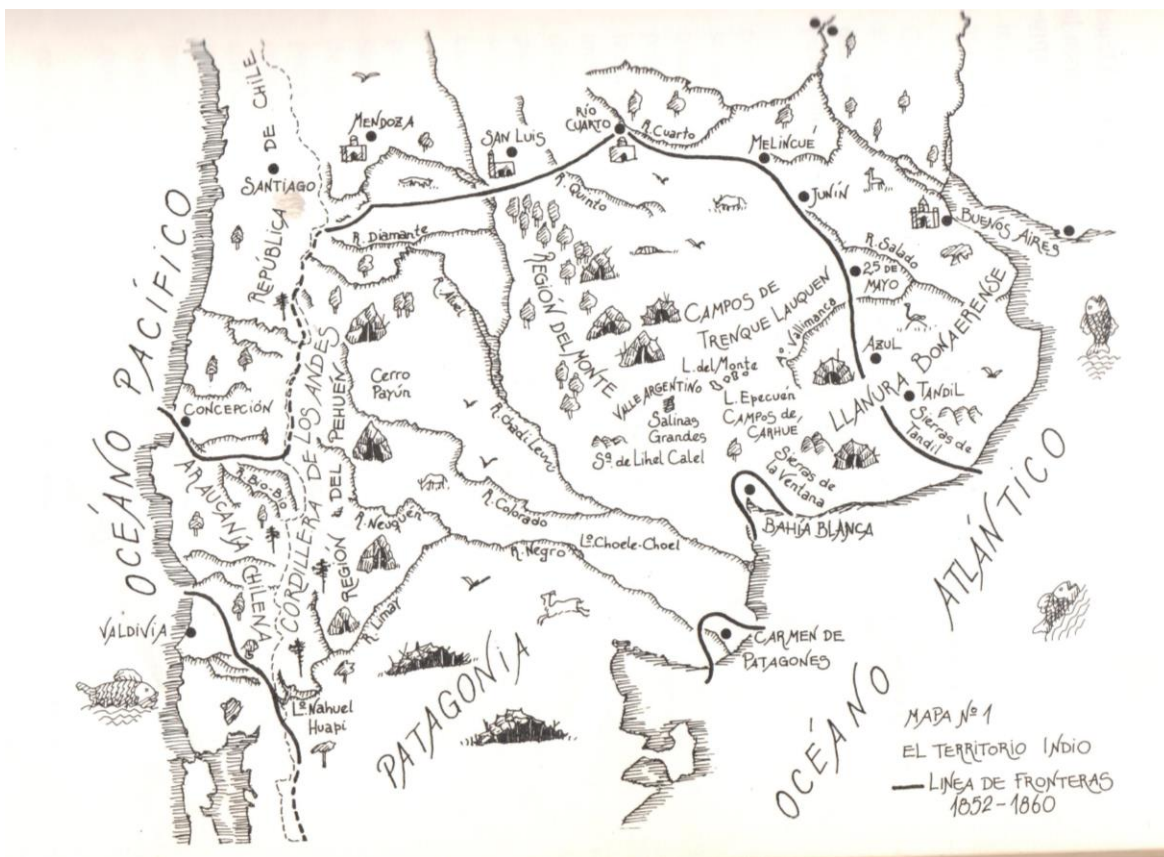
## Chapter 1 – Mapuche Rakizuam: Mapuche Thought in the Four *Lof Mapu*

Prior to the arrival of the Spanish, the Mapuche had their own economic, social and political structure within the Wallmapu, understood as the great ancestral territory of the Mapuche (see **Map 2**). Despite the subsequent reduction of the Wallmapu, the qualities of this space are maintained through the *kimün*, *rakizuamy*, *mogen* (knowledge, thought and life) of Mapuche people. The purpose of this first Chapter is to define the fundamental elements of the Mapuche Rakizuam (Mapuche thought), particularly in relation to their territory, in the broad sense of the word. It attempts to answer this key question: Which components make up the *lof mapu* and why do they come into conflict with the forestry companies? In the next section we offer an explanation of the *lof mapu*, referring on the one hand to anthropological literature, and on the other to Mapuche knowledge. Then we delve into the heart of the *lof mapu*, detailing its key components with reference to the Mapuche language and thought. Finally we offer conclusions as to the relevance of the *lof mapu* to the current grievances and conflict.

### The *Lof Mapu* in the Context of the Social and Political Structure of the Mapuche

Mapuche society has been characterised historically by political decentralisation and by the occupation of a diverse territory which enabled Mapuche people to establish and maintain their culture across a significant portion of the Southern Cone of America. It featured the development of an economy based on gathering, hunting and agriculture, under culturally specific principles of economic reciprocity, exchange and redistribution. The territorial settlement area encompassed arid regions (desert), large areas of temperate forest, higher altitude areas (the Andes), and low-lying zones bordering the Pacific. The environmental peculiarities of each of these areas promoted diversification of economic activities and the well-being of the population as a whole. Economic exchange (*trafkin*) and cultural exchange took place on a grand scale, with the existence of institutionalised practices across all fields of economic and cultural development, for example between marine gatherers (*Lafkenches*) and Andean *piñon* (pine nut) gatherers (*Pehuenches*). The system operated through complex routes and exchange networks including "interregional corridors" (Mases 2002), as was the case of salt coming from the Argentine Pampa to the *Guluche* territory (which is now Chile).

## Map 2: Wallmapu



Source: Section of Colonisation Map, Arauco Province. Drawn between 1921 and 1923, completed in 1927. Ministry of Land and Colonisation

Through their thought and religion, Mapuche society comprehended the universe, their territorial space and their own relationship with these as one dialectical unit. Each unit was understood as an assemblage of forces which supported life and the existence of the *Itrofilmogen* (the concept of the life in its entirety). The Wallmapu or Mapuche territory (*Mapuche Mapu*) was understood as a global expression of interacting spatial units under the notion of the *Wallontu Mapu* (the whole earthly space) and in close relation to the *Miñche Mapu* (the earth's interior), *Raíng Wenu Mapu* (the space between the land and the sky), the *Wenu Mapu* (blue space) and the *Wente Wenu Mapu* (space above the Wenu Mapu).<sup>18</sup> On a general level, the Andes mountain range delimited two separate spaces. On the western side they called themselves Guluche (Mapuche from the West, Chile), and on the eastern side as Puelche (Mapuche from the East,

<sup>18</sup> For further information, see COTAM (2003).

Argentina). However the natural boundary of the Andes never represented a border in the sense of a division between separate states. In fact, this high-altitude space enriched the development of the culture, giving birth to the Andean Mapuche culture (Pehuenche), who were crucial in establishing communication, trade routes and patterns of cultural exchange.

Anthropological literature has defined the Mapuche as a tribal society; in other words, their social and political structure was decentralised, hierarchical and autonomous. However more recent data confirm that while Mapuche society did indeed involve tribal elements, on a certain level it was also a chiefdom. According to Service's (1966) classical definition, a tribe is an association of a large number of related segments made up of families and their respective local residences. In the case of the Mapuche, the continuation of political representation was determined by a lineage-based system of succession. Political authorities were selected according to their *Kupalme* (family lineage) and in exceptional cases according to the human qualities of the *Che* (person).

At the beginning of the 19<sup>th</sup> Century this reality had already been recognised by the historians of the age. One author asserts that:

At the time of the Spanish arrival, the country was divided into small territorial factions, each governed by a hierarchy of representatives, the lesser subordinate to the greater. These chiefs obtained their authority through inheritance, as opposed to generals who were elected.<sup>19</sup>

At the time of colonisation, Mapuche society was experiencing complex cultural development, and historical and anthropological sources show that it was both egalitarian and hierarchical in nature, with defined ranks and statuses. This sociopolitical structure was decisive in the Mapuche people's resistance to the colonisers, who found it impossible to gain full control of the Mapuche population.

In particular, finding themselves under siege from the colonisers, the Mapuche put in place a highly centralised political structure of *butalmapu*, across the great territory (*Futal Mapu*). It was the highest level social, political and military organisation of the Mapuche, and was involved in communication and treaty making with the Spanish State. This system of social and

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<sup>19</sup> Ruiz Aldea (1902)

political representation was seen regularly as part of the ceremonial pacts or treaties between Spanish and Mapuche military forces, in which the four *butalmapu*, representing regions or territories such as the *Lafkenches* and *Wenteches*, would participate. Each *Butalmapu* represented extensive territorial areas and thousands of inhabitants, under the identity and autonomous political representation of dozens of *rewes*. These *rewes* were identified as social and political units governed under a religious and symbolic system. The *rewe* represented the cultural essence of the Mapuche people, and during the colonial period it constituted the Mapuche anti-colonial resistance force. According to a study by COTAM (2013), the *rewes* are still in existence today and are represented in the most important of the Mapuche ceremonies, the *nguillatun*.

Mapuche society contains four levels of political organisation: *lebo* or *lof*, *rewe*, *ayllarewes* and *butalmapu*. Researchers are unable to agree on how these sociopolitical entities were manifested during the first encounters with the Spanish. Ethno-historical records mention the existence of the *rewe* drawing on extensive descriptions of their first encounters with colonial power during the 16<sup>th</sup> Century. For example, the existence of the *rewes* or *reguas* (in the colonial terminology of the time) can be seen in the 1605 parliaments of Concepción, Arauco and Yumbel. One ethno-historian cites a chronicler who wrote:

These Indians divided up the land into provinces, and each of these provinces into nine *reguas*, or some that were not so large into seven and others into five. They call the province with nine *ayllaregua* because *aylla* means nine in their language, and the one with seven they call *relgueregua* because *relgue* means seven in their language, and they call the province of five *reguas* the *quecheregua* because *quechi* means five.<sup>20</sup>

This emphasis on the *rewe* is probably due to the fact that during the anti-colonial struggle, the Mapuche people gave greater power to this structural system – more than to the basic political units like the *lof*. That said, in 1551 Pedro de Valdivia alluded to the existence of the *lof* (referring to it as *lebo*), they being associated with local distribution and command (Zavala y Dillehay, 2010). The sociopolitical and territorial units of the *rewe* could be configured variously, from the *Epu Rewe* (two *rewes*) and so on, all the way up to the *Ayllarewe*, the largest amalgamation of *rewe*. However, historical documents make mention of the *lof* as the Spanish

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<sup>20</sup>Zavala, 2015: 59

State expands and continues its rule into the 18<sup>th</sup> Century (Zavala, 2008). It seems that the Spanish came to identify the *lof* as a local entity after they gained a greater understanding of Mapuche social structure during the colonisation process, rather than through the immediate military encounters that they had with the Mapuche people upon arrival.

In terms of its internal composition, the *lof* comprises two interacting and interdependent dimensions: the *lof che* and the *lof mapu*. The first, the *lof che*, has to do with the relationships and social interdependence of the families which make up the *lof*, characterised by a "residence" or cluster of directly related families (*furen*), comprising *Reyñima* (maternal and paternal family) and *Xokinche* (people who are not necessarily related). In this social unit, the extended family predominates, under the traditional authority of elders (*Wenenk Xem*) who regulate the residences, exogamy and predominating patrilocality.<sup>21</sup> In contrast, the concept of *lof mapu* refers to the sovereignty of the territory and to the social relationship that families and their descendants have with this territory, from which they gain their identity and engage in social and cultural practices under the political authority of the *Longko*. In other words, the *lof mapu* is based on the *lof che*, which provides the basis for social interaction and cultural expression. In terms of the internal identity of a *lof*, we can highlight the *Az Che*, an identity and a personality of the people, and an *Az Mapu*, a law relating to its natural surroundings and to its relationship with the social world of the area. Mapuche identity is derived from interaction with nature and with the social world, within the context of a *lof*. Finally, the system which coordinates the two dimensions – *lof mapu* and *lof che* – is the combination of natural and spiritual forces known as *newen* (force), *ngeñ* (owner of the space) and *pulli* (spirit). These forces coexist with the Mapuche family, and a series of ritual frameworks and practices stem from this coexistence.

Today, the *lof mapu* sustains the social practices, and provides the natural or material foundation upon which the whole of Mapuche culture is built. This entity comprising territory and identification can also be referred to in people's daily conversation as *xokinmapu* (all of space), *kiñelmapu* (a territory) and *kiñeltuwunmapu* (the land where we all live). In anthropological terms the *lof* or *lebo* can be defined as a sociopolitical unit comprised of one or more systems of extended patrilineage, all residing in the same territory and based on lines of

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<sup>21</sup> Personal communication with *Longko Quidel*.

male succession (Zavala y Dillehay, 2010). It often occurred under colonisation that the political status of the maternal line gradually disappeared as patriarchal principles became the dominant lineage rule (Leacock, 1980). This was the case for the Mapuche, where the patriarchal line took precedence over the matriarchal line, as the Chilean State imposed a system of reservations.

The interviews and Nutram (conversations) held as part of our research in the four territories helped us to form a picture of the social and cultural foundation expressed by the *lof*. One of the characteristics of this sociopolitical unit is the kinship system, which has the following general features:

- A framework to manage the social relationships between the members of a *lof*, such as the rules of exogamy, dowry and marriage alliances.
- A system to determine Mapuche position and status, since they involve family lineages (*Kupalme*) and influences of the natural landscape (*Tuwun*). In other words, the personality of each person is shaped by both the natural landscape where he or she grew up and developed, and by his or her genealogy, manifested in behaviour.
- Political and religious leadership is determined by family ancestry. Political authorities like the *longko* and the *machi* (shamans) are dictated through lineage or heredity, and are permanently endorsed by the *lof*.
- Kinship defines the social, religious and political inheritance system. It regulates the behaviour of individuals, and establishes the norms and internal and external jurisdiction of the *lof*. The law of Mapuche custom or *Az Mapu* is exercised most precisely in the *lof*. This can be verified through experience of the Mapuche and as a component of the current Mapuche claim (Antona, 2014).

In terms of the natural landscape, the *lof* is:

- A spatial concept in which the *Az Mapu* (Mapuche law), the frameworks which regulate knowledge (*Kimun*) and learning (*Kimeltuwun*), the relationship with surroundings *Ixofilmogen* (biodiversity), development of the individual (Che), and the *Rakizuam* (thought) and *Kume Mogen* (Mapuche well-being) are all configured.
- A whole, comprising themes linked to life (*Mogen*), a constellation of forces (*Newen*) and Ngeñ (the supernatural "owner" of the space), which together give identity to the territory.
- Particular expressions of constituent forces, such as the *Menoko* (area of natural force conversion), *Paliwe* (*Palin* playing field), *Eltun* (cemeteries) and *Mallin* (wetlands). Each of these symbolic units embody Mapuche relations with their surroundings. This identification of the social world with natural forces constitutes a map of rules of typically standardised and ritualised interdependence.

Moreover, each *lof* has its own identity, comprising a distinct whole consisting of symbols (flag colours), dances (*Purrun*) stories (*Epew*), myths and ceremonies such as the *Mafun* (wedding) or the *Nguillatun* (prayer ceremony) in which several *lof* participate, each bringing their own local identity. Consequently, in each *lof*, the collective identity of the Mapuche people is expressed through ceremonial discourse. For the *nguillatun*, the most important of the Mapuche ceremonies, hundreds or even thousands of participants congregate, representing different *lof*. The identities of the different *lof* are shared, nurturing Mapuche thought and personality, as the ceremony seeks an interaction with the earthly and cosmic worlds through sacrifice, discourse and the intervention of powers and ancestral leaders in order to perpetuate the *Mogen* or *Kume Feleal* (good living). In other ceremonies, such as the *Eluwun* (burial ceremony) they draw on the legacy of the deceased in search of the social and cultural continuation of the Mapuche of the *lof*. The exploits and collective memory of the *lof* are recounted through discourse and the *Ngulam* (council) led by the *longko* and the *machi* in a ritual in which the great leaders (*Ulmen*) and their local or regional legacy are celebrated. Each *lof* forms a qualitative link with the forces of nature, and these are expressed in the specific knowledge of the traditional authorities such as the *Kimche* (wise men), *lawentuchefe* (doctors) or *rukantufe* (house builders). And finally, in each *lof* particular aspects of social, political and religious identity are expressed through social relationships and the practice of rituals before the *Winkul Mapu* (hill) or in the *Nguillatun* (group ceremony) and the *Palin* (Mapuche sport).

### *Meli Lof Mapu Mew: Inside the Territories*

The great Mapuche territory – *Wallmapu* – extends along the south-eastern shore of the Pacific Ocean from the Limarí river to the North, all the way to the Chiloé archipelago to the south, and along the south-western shore of the Atlantic Ocean from the latitude of Buenos Aires south to Patagonia. It is divided into four sectors: *Ngulumapu* (lands currently on the Chilean side), *Wüllimapu* (lands in the South, today encompassing both Chilean and Argentine territory), *Puelmapu* (located to the East of the *kuyfi Wallmapu*, which is now in Argentina), and *Pikunmapu* (in the North). Our study focuses on *Ngulumapu*, which itself is divided into four territorial identities: *pehuenche* (people who live among the araucarias or monkey-puzzle trees), *wenteche* (highlanders who occupy the central plain up to the foothills of the Andes), *nagche* (lowlanders

who live in low-lying areas among the spurs and valleys of the *Nahuelbuta* range), and *lafkenche* (who live along the coast of Arauco, Malleco and Cautín) (Mariman 2007). In terms of the four *lof mapu*: Mañiuko<sup>22</sup>, Temulemu and Liukura-Reñico are part of the *nagche* identity, while Lleu Lleu belongs to the *lafkenche* (see Maps 1 & 2).

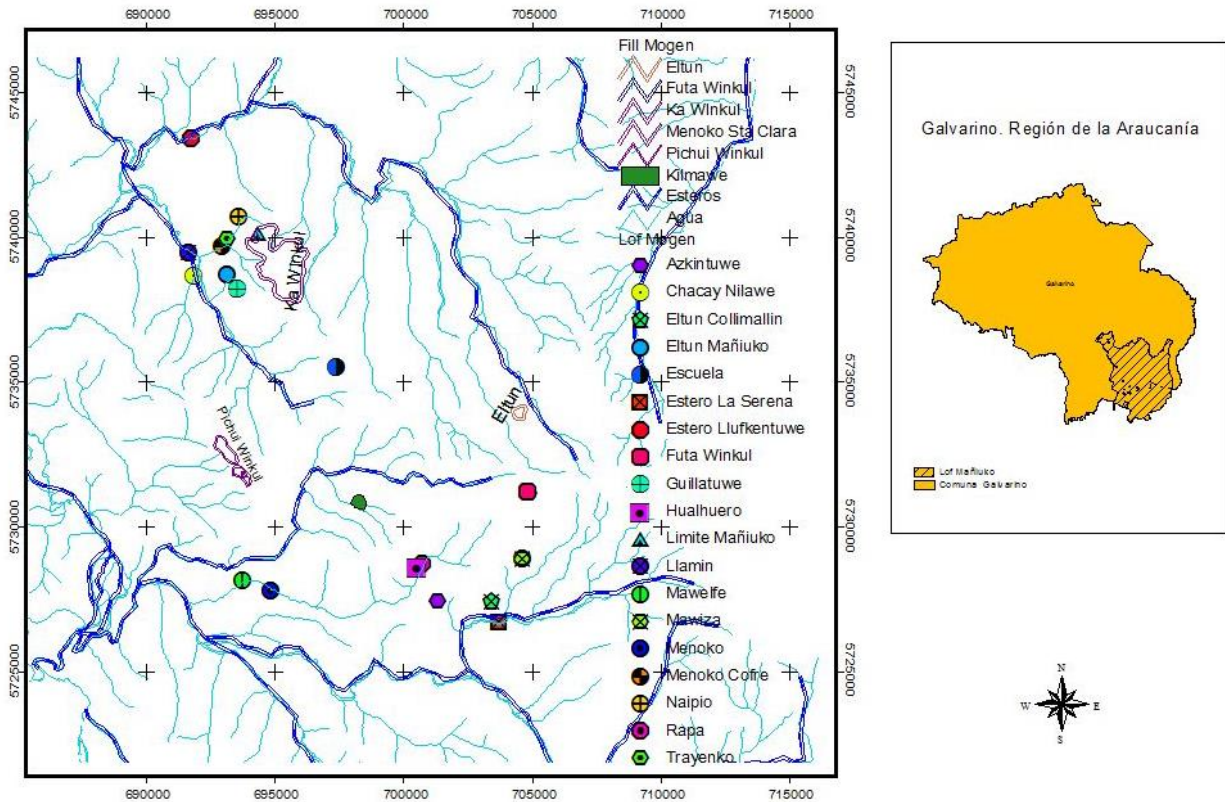
The Mapuche ancestral territory is founded principally on the concept of *mapu* (land in the tangible sense). In terms of the *Mapuche kimün* (sense of Mapuche culture) the *mapu* addresses much more than materiality: it is a complex whole or universe, the space in which all social, cultural and religious interactions take place. The *lof mapu* follows this same logic but on a local level: it is the traditional unit of territorial, social and political structure, encompassing the tangible and intangible, and in particular, transcendental spiritual aspects. Despite the significant transformations brought about by colonial processes in the four *lof mapu* which we studied, we were able to document many of the enduring components, for example: the *Mapuchegen* (people), the *mawizantu* (woodland or forests), *ko* (water), *menokos* (area of natural force conversion), *trayenko* (waterfalls), and the *trenq trenq* (hills). Thus the *lof mapu* is the space comprising both natural and social geographical elements, without a sharp distinction between the two. Numerous families live within the *lof mapu*, and generally speaking they tend to be related. It is governed by one (or more) *longko* who exercise leadership primarily through ceremonial activities such as the *nguillatun* and the *palikantun*, which are still practised today. The established tradition within a *lof mapu* is the shared use of the land and its resources.

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<sup>22</sup>In the 2003 Commission for Mapuche Autonomous Work (COTAM) study, members of the Mañiuko *lof mapu* were shown to belong to the Wenteche identity.

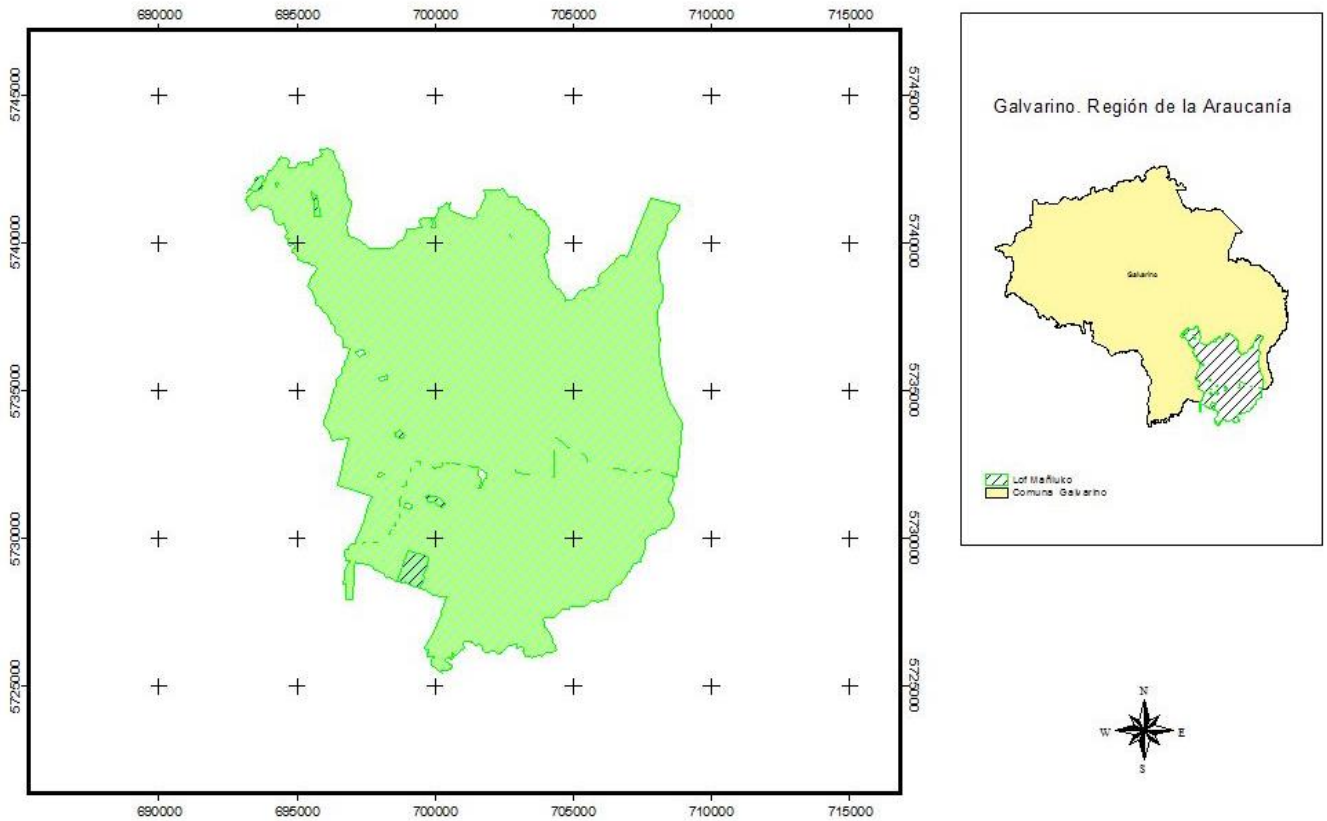


**Map 3: Lof Mapu Mañiuko: Area of Cultural Influence**



Taking into consideration this definition of *lof mapu*, it is difficult to distinguish between the "area of cultural influence" and the "claimed territory". **Map 3** of the Mañiuko *lof mapu* (above) illustrates this distinction. The "area of cultural influence" is more inclusive, covering the whole space to which the inhabitants ascribe importance, be it cultural, spiritual or economic. The "claimed territory" is a more pragmatic concept: it is the boundary which defines the territory which the inhabitants claim as "traditionally occupied" (**see Map 4**). Although the latter has been imposed by the western legal system, above all in terms of linear borders, it is a modification which the inhabitants have adopted in order to support the advancement of their rights claim before the State and related institutions.

Map 4: *Lof Mapu* Mañiuko: Claimed Territory



In the course of our research, having determined the borders of the territorial claim, we identified the cultural significance of each space. Finally we documented non-Mapuche presence within the *lof mapu* in order to analyse the fundamental grounds of the conflict. In Chapter 3 we present an in-depth history of each *lof mapu*, offering a historical and legal background for the current claims.

### Key Components of the *Lof Mapu*

In this section we detail the most significant cultural components of the *lof mapu*, which themselves contribute to the justification of the claim. Each can be found in one or more of the *lof mapu* and they are identified in the map representing "cultural significance" (**Map 3, above**). Although the majority of the concepts came from the Mañiuko *lof mapu*, they are representative of those found across all *lof mapu*.

- *Witrunko* (stream): this water should not run out or dry up at any point during the year, although during the summer months they carry less water. Throughout the year, they support a large amount of native or indigenous vegetation, and thus are a constant source of *lawen* (medicinal herbs).

- *Azkintuwe* (lookout point): this space must be respected because it is where many of the ancestors died, leaving behind their knowledge. In addition, there is a requirement of respect for all the forms of life which inhabit that place.

- *Mawelfe* (space which permits rain): it is a climatic indicator that depends on sound and the clouds which form there. It is held that if people make a request to this space, it will grant rain. The value of the *mawelfe* also comes from the spiritual beings who live in the space, which generate rain in a time of devastation.

- *Mawiza Wingkul* (wooded hill): these spaces deliver a multitude of ways of living. Forests and large hills are important for their size and diversity. Everything to do with health and water is dependent on these places, as they allow for food sovereignty.

- *Menoko* (area of natural force conversion): In addition to providing an ever-present source of water, great worth is given to these areas because of the fact that *ngeñ* (spiritual protectors) exist there, enabling them to endure. For the *machis*<sup>23</sup> this place is of great importance, as it is here that the elements necessary for preparing traditional medicines are found. This quality of the *menoko* should never change. The channels of water should never dry up, even during warm periods or in the summer.

- *Trayenko* (waterfall): Culturally this is a very important space, as it is where people perform their *ngillanmawün* (prayers) during the *nguillatun* ceremony. During one interview, a member of the Mañiuko *lof mapu* mentioned that the *trayenko* has other far more complex characteristics, but preferred not to divulge them as the only people permitted to speak about them are the *fütakeche* (elders, both male and female) who are the keepers of the deep knowledge. It also constitutes a sacred space owing to its closeness to the *ngillatuwe* (ceremonial place).

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<sup>23</sup> The machi (who can be male or female) are people responsible for healing. In some territories they are also in charge of leading the nguillatun ceremonies.

- *Eltun* (cemeteries): these are prominently sacred places for collective use. They reflect the concept of the close relationship between individuals, the people and nature. It is also made sacred by its closeness to the *ngillatuwe*.

- *Ngillatuwe* (ceremonial space in which prayer ceremonies take place): In this place, one of the most transcendental activities of the Mapuche people takes place. It is sacred owing to its designation by the spiritual beings which inhabit the space and communicate through *pewma* (dreams and premonitions) with the *longko* or another sensitive person. It is important that there be flowing water nearby, whether *witrunko*, *trayenko* or *menoko*.

## Conclusions

Ka bey llemay ta duamtugeki felein, feymu lle ta mogelein ka feymu inchiñ kom müleiñ mapu mu, femechi anümgepayu, ka femechi anümgepayiñ inchiñ, fey ta ñi rulpa antüleal mogeleal túbachi mapu mew Mapuchegen mew femechi ta elgepayiñ femgechi ta ti. Fey ta re femechi ta elgelaiñ, müli ta chumechi ta ñi azküleal, mogeleal, chemu am ta chegeiñ, chemu am ta mapu pikein, chemu am ta duamkefiin, llidekein mapu, ta ñi kümeleal. Femechi ta elkupain mew nawg Ngünechen mu, tüfachi nagw mapu...

This is how we show respect, and for this reason we are alive here. We all live in this *Mapu*: this is our destiny and we were left here to live every day in our *lof mapu*, because this is our Mapuche being. We were left in some ordered way, so that we could live in an ordered fashion, knowing why we are people and why we call it land. We must understand why we love and respect the *Mapu* – it is for our well-being. Thus we were granted this land by the Ngünechen being who looks after people...<sup>24</sup>

Over the course of three centuries of anti-colonial struggle against the Spanish armies and then against the Chilean State, cultural changes and influences occurred on various levels of the social, political, economic and cultural reality of the Mapuche. However, historical evidence shows that the Mapuche people maintained their traditional social and political structure through the end of the 18th and into the beginning of the 19<sup>th</sup> Century. Later, and under the direct influence of the State, the Mapuche developed strategies to help them hold on to basic structures of social organisation, like the *lof* and the *rewe*. This is apparent, for example, at the parliaments of Tapihue (1774) and Negrete (1793) where the traditional Mapuche leadership of

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<sup>24</sup> Juan Nahuelpi, *longko* of Liukura.

the four Butalmapu, the highest and most centralised expression of traditional political organisation, came together.

In the next phase of this process – independence and the formation of the Chilean State – the Mapuche suffered their most significant changes in social organisation. The Butalmapu ceased to exist as a political authority and as a collective voice against the colonisers and the State. Military defeat – the so called Pacification of La Araucanía, and the Conquest of the Desert in the case of Argentina (Hernández, 2003) – established the basis for de facto occupation of Mapuche territory. Throughout this process the *lof* prevailed and adapted, and the *rewe* took on a social and religious character, providing the basis for ceremonies of great importance and historical transcendence. One Chilean writer of the early 20<sup>th</sup> Century, referring to the *lof* following the implementation of the reservations, indicated that:

The tribe, or collection of related homesteads in an area, remained in place throughout much of the territory following subjugation, each with their traditional characteristics. In other words, they continued as autonomous societies existing independently of others in the region.

From this we can deduce that the *lof* as a Mapuche sociopolitical unit lived on through social, political and religious practices. In some instances it is possible to identify a *lof* within a group of reservations, and in others the reservation can incorporate the fundamental basis of a *lof*.

This situation is apparent today in general claims of Mapuche territories and organisations, which in turn are a factor in the recovery of collective historical memory and of Mapuche knowledge about their violated history and laws. From all this we can deduce that in the present day, the *lof* represents the fundamental territorial and cultural basis of Mapuche society. Thus the Mapuche claim to territorial rights is based on the local unit of the *lof*, constituting the area of Mapuche ancestral settlement, and not on the colonial criteria of the indigenous reservations or communities as imposed by the Chilean State. The Mapuche drive to preserve the *lof* as an expression of organisation cannot be interpreted as an "invention of tradition" as Hobsbawm (1983) proposed; its denial and suppression by the State following the military occupation of 1883 suggests that the *lof* constituted a threat that, in the eyes of the State, was all too real.

The four *lof mapu* identified in this and the coming chapters serve as an example of the local sociocultural and spatial units into which the Mapuche are organised throughout the Wallmapu. It is crucial to re-emphasise that the *lof mapu* is not simply a territory in the western sense. It is an area of cultural significance where a group of inhabitants maintain an intense relationship with their surroundings and where, by means of this interaction, they produce their world. In this sense, the *ngillatuwe* offers the best guide to understanding the composition of a *lof mapu*: it is the space in which the families that make up one or more *lof mapu* converge, and the hub of all of the cultural significance which the inhabitants ascribe to their surroundings.

The *rakizuam* is formed of a respectful relationship with the environment, along with *poyen mapun* (affection) and a sense of belonging to the land. People are connected to everything else and the world is a living whole. The Mapuche converse with the water of the rivers and streams, with the trees, with the rocks, with the air: with every element that has life and *ngeñ* spirits. Many or all of the spaces and places in the *lof mapu* are guarded by these *ngeñ*. It is important that people from neighbouring Mapuche communities respect them and do not trespass by entering without requesting permission. In this sense, the Mapuche people have a duty to care for and protect the *lof mapu*. With the "reduction" and subsequent dismemberment of these *lof mapu*, many of the culturally significant spaces have been under occupation to the point of being almost destroyed.

In the next Chapter, we offer a historical account of the process, culminating in a map of each *lof mapu*, complete with indications of all of the non-Mapuche large property owners. As part of this recovery process, the inhabitants have found it necessary to represent the *lof mapu* as an area with fixed borders, corresponding to their current claims, and to differentiate it from the area of cultural influence, the concept more closely linked to the *Mapuche rakizuam*.

## Chapter 2 – The Mapuche People, the Chilean State and the Forestry Industry: Historical Perspectives

To gain a full understanding of the relationships between the Mapuche, the Chilean State and the forestry industry over the course of recent decades, it is vital to consider certain long-running historical realities which have evolved over the last two centuries. Indeed, any effort to understand and address these relationships would otherwise be futile owing to the complexity and magnitude of the phenomenon. We must begin by understanding that while in 19<sup>th</sup> Century Latin America there existed autonomous indigenous populations in territories claimed by sovereign States, the Mapuche was the only one to have negotiated its political and territorial autonomy with both the Spanish – through more than forty treaties – and with the Chilean State at the Parliament of Tapiwe which took place in January 1825. This autonomy was exercised throughout an extensive territory located in the southern cone of America, known as the *Wallmapu* (Mapuche territory), encompassing both the *Gülumapu* (Chile) and the *Puelmapu* (Argentina), and in whose broad geography there existed diverse ecological zones including pampas (humid and dry), marine and lake coastlines, coastal and Andean mountain ranges, humid jungles and river courses, among others (see **Map 2**).<sup>25</sup> These ecological zones provided for a Mapuche life of abundance based on an economy which combined agriculture, farming, hunting, fishing and gathering, together with exchange through forms of nomadic occupation and circulation within the extensive territory. Mapuche oral history, cultivated by current generations, keeps alive this history of autonomy, the treaties which recognised that autonomy, and the abundance of life.

The story of the Mapuche in the *Wallmapu* is also the ancient story of the native forests that covered this vast territory, and indeed the autonomous and independent *Wallmapu* existed to a great extent in the presence of these temperate forests. The construction of *ruka* or houses was done with the use of diverse native resources from the forest, and the large quantity of trees ensured that there was plenty of firewood and energy for heating and food preparation. Hard, white, flexible and rigid timber allowed the manufacture of a variety of instruments for hunting,

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<sup>25</sup> Marimán, Pablo and José Aylwin. “Las identidades territoriales Mapuche y el Estado chileno: conflicto interétnico en un contexto de globalización”. In: Xochitl Leyva et. al., “Gobernar en la diversidad: experiencias indígenas desde América Latina. Hacia la investigación de co-labor,” CIESAS / FLACSO, México, 2008, pp. 111-150.

collecting shellfish, cultivating the land and building *wampo* or canoes, used for moving around and for productive activities on rivers, lakes and the sea.<sup>26</sup> As part of their defence against Spanish conquistadors and colonisers, the forest also served as a place of refuge from attacks by hostile armies. All things considered, the history of the Mapuche as a sovereign people until the 19<sup>th</sup> Century is interwoven with the history of the native forests which covered the vast Mapuche territory.

### Civilisation versus savagery, cleared lands versus forest: the military occupation

Following the declaration of "independence" from Spain through the First Government Junta in 1810, the colonisers began to integrate territories over which they did not exercise sovereignty, spelling the start of the military conquest in the mid-19<sup>th</sup> Century. In political, intellectual, business and landowner circles, the enterprise was seen as an opportunity to do lucrative business through the appropriation of land, timber, livestock, natural resources and Mapuche labour to the south of the Bío Bío River, the river course which had been established as the political and military frontier between the Mapuche and Hispanic Creole societies.

In 1848, an important Chilean politician by the name of Antonio Varas was put in charge of carrying out a study of "the peaceful reduction of the Araucanian territory". Varas, influenced by the policy of colonisation unfolding in the United States at the time, proposed – amongst other approaches – the introduction of a *civilised population*, the subjugation into *reservations* or "*reductions*" of the Mapuche population, along with an effective policy of *education and pacification* which should start at infancy.<sup>27</sup>

Nineteenth Century merchants, landowners and political and intellectual elites were convinced as to the need for a military conquest and occupation of the Mapuche territory, and the suppressing or killing of the inhabitants, while simultaneously justifying geopolitical and economic interests by reference to *civilisation* and *progress* as a means to eradicate *savagery* and *barbarism*, terms with which they identified the Mapuche.

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<sup>26</sup> Otero, Luis. *La huella del fuego*, Pehuen Editores, Santiago, p. 22.

<sup>27</sup> Varas, Antonio. "Informe presentado a la cámara de diputados por don Antonio Varas, visitador judicial de la república en cumplimiento del acuerdo celebrado en la sesión del 20 de diciembre del año 1848, sobre la reducción pacífica del territorio araucano." In: Saavedra, Cornelio. *Documentos relativos a la ocupación de Arauco*, Imprenta de la Libertad, Santiago, 1870, Annexes, pp. 18.



The Indian is completely uncivilisable: nature has focused on the development of his body, while his intellect has remained on a par with that of preying animals, whose qualities he possesses in great quantity having never achieved moral emotion... How do men safely approach beasts, how does the peaceful and industrious population approach the forest in which lurks such ferocity and barbarism?... They live uselessly and like wild animals, without any sign of the human gene... and an association of barbarians so barbaric as the Pampans or the Araucanians is no more than a hoard of beasts which must urgently be chained or destroyed in the interests of humanity and for the good of civilisation.<sup>28</sup>

Up until the middle of the 19<sup>th</sup> Century, many factors had created the necessary conditions for the launch of a military invasion campaign into the Mapuche territory, which in the language of the time and of official historiography was defined as a *Conquest or Pacification of la Araucanía*.<sup>29</sup>

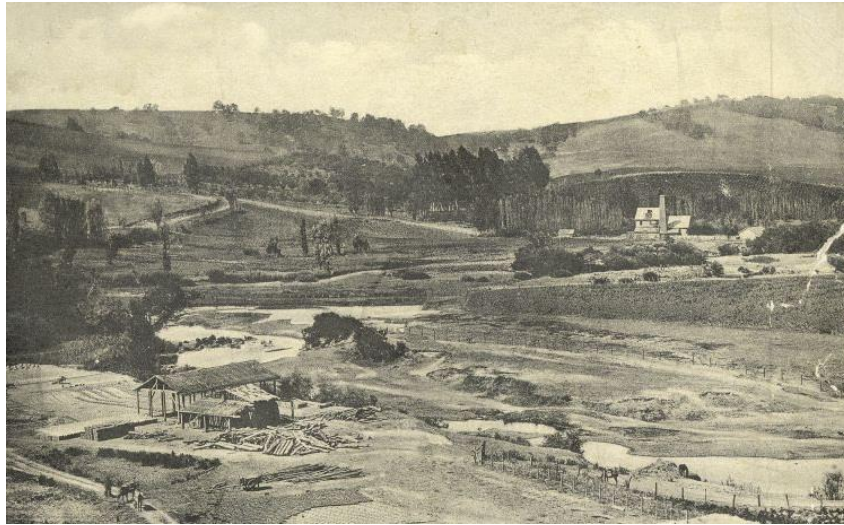
Alongside the military invasion came other equally violent actions, such as the seizure of land and resources, the creation of a state bureaucracy and imposition of a new political system, the construction of forts which gradually grew into new cities, the building of transport and communication routes, and the creation of schools and missions. The establishment of this new colonial geography in the *Wallmapu* had dramatic effects on the forest between 1862 and 1883. Large areas were burned in attempts to corral and exterminate the Mapuche families hidden in the mountains, and to clear spaces for the construction of forts. At the same time, the colonists that entered Mapuche lands began indiscriminately cutting down trees to fuel construction throughout the occupied territory.

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<sup>28</sup> Biblioteca Nacional de Chile, Sección Periódicos, “*La conquista de Arauco*”, El Mercurio de Valparaíso, 24th May 1859.

<sup>29</sup> Among the factors which formed the basis of this military invasion campaign was, on the ideological plain, the colonialist discourse and imaginary which, influenced by positivism and social Darwinism, saw the Mapuche as an *inferior race* which represented an obstacle to the future of the State and the nation which the Creoles planned to create. To this were added the factors of the administrative appropriation of the Mapuche territory by means of the creation of the Province of Arauco in 1852, the need to expand the productive area of the nation in order to escape an economic crisis which affected Chile in 1857, and the desire to punish the Mapuche groups for their participation in the revolutions of 1851 and 1859. For further information, see the works of: Bengoa, José. *Historia del Pueblo Mapuche*, Ediciones Sur, Santiago, 1985; Leiva, Arturo. *El primer avance a la Araucanía: Angol 1862*, Ediciones Universidad de la Frontera, Temuco, 1984; Pinto, Jorge. *La formación del Estado, la Nación y el Pueblo Mapuche: de la inclusión a la exclusión*, DIBAM, Santiago, 2003.

### Exploitation of native forest in Traiguén (La Araucanía), 1919



Source: Museo Histórico Nacional

With the re-founding of Villarrica in 1883 the conquest of the *Gülumapu* was complete, and Mapuche society would now undergo a forced transition to internal colonialism. This is the forced integration of a population into a nation-state, in this case subordinating the Mapuche to the Chilean nation-state. One of the most significant aspects of this process was the Mapuche people's loss of their vast territory, which was declared as "government-owned lands" by legislation in 1866. These were later auctioned off, or granted or assigned to businesses and individuals with the aim of establishing private and agricultural property in the region. Meanwhile the Mapuche population was condemned to live in small areas of land known as "reservations" or "reductions". This history is the source of Mapuche demands for the return of lands which until the middle of the 19<sup>th</sup> Century had belonged to them, and which subsequently the Chilean State appropriated and passed into the hands of foreign and Chilean colonists. As the years went by, these lands changed hands numerous times, some of them ending up under the ownership of the forestry companies of today.

#### Mapuche Reduction, Loss of Native Forest and State Incentives for Forestry Activity

By 1883, the colonists had acquired a considerable proportion of the land belonging to the Mapuche, and in the same year the Indigenous Settlement Commission was created. This allowed the initial implementation of the Law of 1866, resulting in the settlement of indigenous

populations in reservations or *reductions* by means of the *Títulos de Merced*.<sup>30</sup> In 1884 there began a process of demarcation of land considered to be the property of the indigenous people, although these areas were significantly smaller than those which had originally made up their socio-territorial jurisdiction. In order to receive the *Títulos de Merced*, the Mapuche were obliged to prove effective and continuous possession for at least a year. Once the demarcated zones were established, the Settlement Commission passed an act "granting" the Mapuche a *Título de Merced* in the name of the Republic.

The settlement process was colonialism, in the literal sense of the term. As such it is no coincidence that the terminology – *Título de Merced* (deed of kindness), *Reducción* (reduction) and *Cacique* (chieftain) – was the same as that used by the Spanish government in the 16<sup>th</sup> and 17<sup>th</sup> centuries in reference to the reorganisation and relocation of the indigenous populations in their other colonies.<sup>31</sup> In a document published in 1912, Eulogio Robles, a state official who held the role of Protector of Indigenous People stated that:

The law was applied in reverse: the tax office took what it wanted and the rest went to the Indians. This was the cause of all sorts of conflict and trouble. The small size of the territory given to the Indians is what motivated the periodic pilgrimage of Araucanians to the capital to make complaints about the appropriation of their lands... inequality in the allocation of land saw private businesses acquire thousands of hectares, and the natives of some zones, principally Quepe, Metrenco and Maquehua, received barely two or three hectares per person.<sup>32</sup>

Although Eulogio Robles' testimony was made at the beginning of the 20<sup>th</sup> Century, it articulates graphically and clearly the conditions leading to present-day Mapuche territorial claims. They are a product of the appropriation of territory and the miserable nature of life in the reductions. The total settled area was 510,387 hectares, approximately six per cent of the territory which until the mid-19<sup>th</sup> Century had been controlled by the Mapuche (**see Map 5**). The

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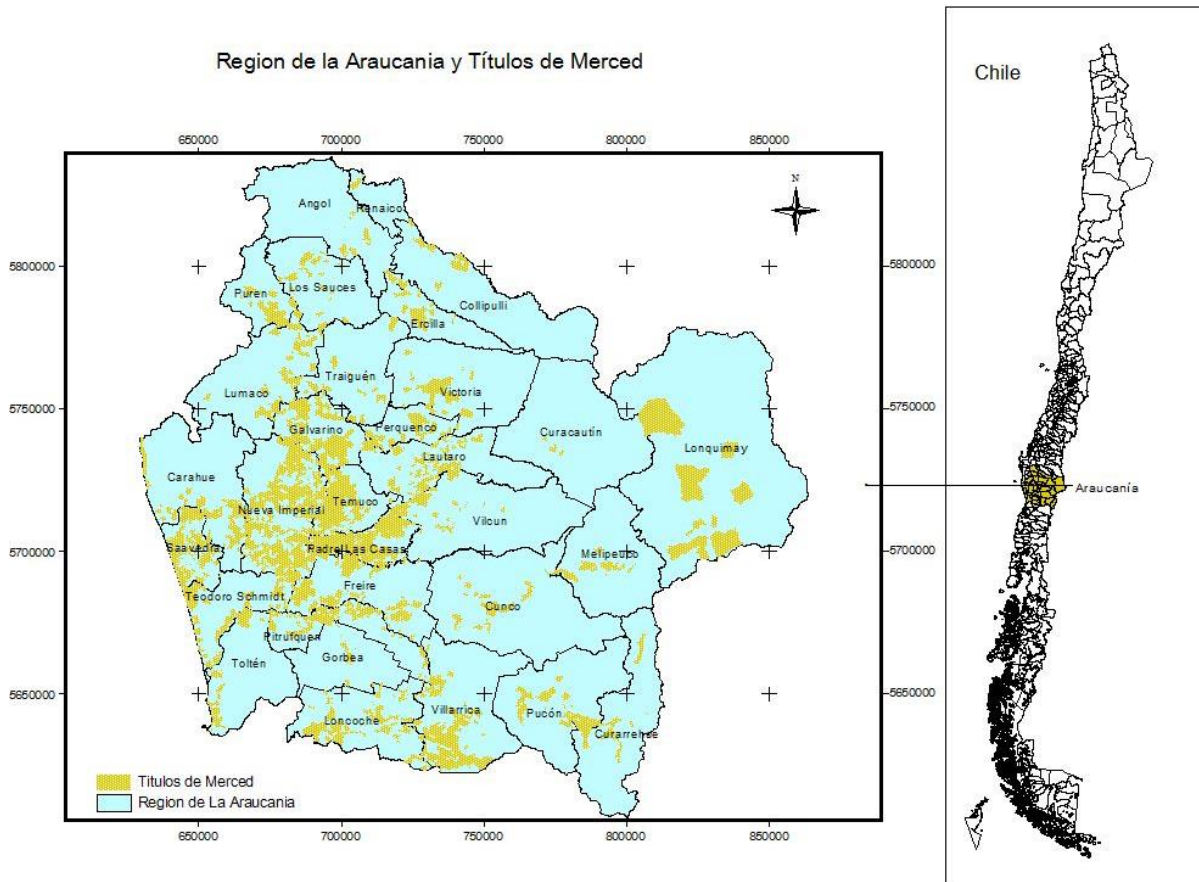
<sup>30</sup> Almonacid, Fabian. "El problema de la propiedad de la tierra en el sur de Chile (1850-1930). In: *Historia*, vol. 1, n° 42, Santiago, 2009, pp. 5-56.

<sup>31</sup> Mallon, Florencia. "El siglo XX Mapuche: esferas públicas, sueños de autodeterminación y articulaciones internacionales". In: Christian Martínez and Marco Estrada (Ed.), *Las disputas por la etnicidad en América Latina: movilizaciones indígenas en Chiapas y Araucanía*, USACH / Catalonia, Santiago, 2009, pp. 155-190.

<sup>32</sup> Eulogio Robles, "Anexo V. Informe del Protector de Indígenas de Cautín." In: Biblioteca Nacional, Sección periódicos y microformatos. Comisión Parlamentaria de Colonización, *Informes, proyectos de ley y otros antecedentes*, Imprenta y Litografía Universo, Santiago de Chile, 1912, pp. 144-145.

remaining area, around 94 per cent, had become government-owned land and property of foreign and Chilean colonisers. Among the latter were merchants, landowners and soldiers who actively participated in military campaigns during the so called "Pacification of La Araucanía" (1862-1883).

**Map 5: *Títulos de Merced* in La Araucanía**



The reduction paid no respect to the relationships of the Mapuche with water (both salt and fresh), the soil, and specific spaces significant to religious life or valued for the presence of *ngeñ*. The latter are protecting spirits: non-human lives which inhabit given spaces and with whom the Mapuche maintain a relationship of spiritual interdependence. At the time of the *Títulos de Merced*, these *ngeñ* became confined within the emerging land estates. Throughout the process of appropriation of Mapuche territory, no respect was paid to pre-existing patterns of occupation, ancient geographical delimitations, or to the sociopolitical territorial structure based on links of kinship and political alliances. Families belonging to different *lof che* were

grouped into the same reductions, and in some cases *lof mapu* were granted two or more *Títulos de Merced*, causing conflicts between the Mapuche families.

From an existence of richness, abundance and prosperity, Mapuche society began to sink into a life of misery. It was in this context that one of the most important phenomena of contemporary Mapuche history emerged: forced displacement and migratory currents which gave rise to the Mapuche diaspora and the appearance of the *warriache* or urban Mapuche. Initially these migrants established themselves on the periphery of cities like Santiago, Concepción and Temuco, offering service as domestic manual labour in dangerous and badly paid jobs.

Alongside the appropriation of lands and other resources, there was extensive burning and exploitation of sections of native forest within Mapuche territory. This was initially due to the demand for firewood and timber for the construction of houses, warehouses, fences, and public buildings in the towns that were emerging around the military forts built during the campaigns of military occupation. Exploitation of the forest gradually developed into a lucrative business, to the extent that timber and forestry activities rapidly became one of the pillars of the economy, controlled by merchants and landowners who, during the last decades of the 19<sup>th</sup> Century and the beginning of the 20<sup>th</sup> had arrived in Mapuche territory to take advantage of the appropriated resources.<sup>33</sup>

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<sup>33</sup> Pinto, Jorge and Mathías Ordenes. *Chile, una economía regional en el siglo XX: la Araucanía 1900-1960*, Ediciones Universidad de La Frontera, Temuco, 2015.

### Exploitation of native forest in Curacautín (La Araucanía), 1960



Source: Museo Histórico Nacional

This disastrous loss of native forest eventually became a matter of concern for the Chilean authorities, who put in place conservation measures motivated by two principal factors. Firstly, the environmental issue, relating to the indiscriminate logging and burning which was causing the loss or extinction of some species. Secondly, and perhaps more importantly, the continued position of the timber industry as a key economic component in the southern provinces of Chile, bearing in mind the significant demand generated in national and foreign markets. These factors led to the issuing in 1907 of Supreme Degree N° 1,540, creating a series of forest reserves

covering a total of 600,000 hectares spread between Concepción and Puerto Montt.<sup>34</sup> These debates and concerns over conservation were mixed with economic speculation, resulting in the 1931 Forest Law which provoked a surge in large-scale forestation using non-native species.

From the 1930s onwards, a system of forestation called "*parcelas bosques*" was established, using the radiata or insignis pine. Forestation using this species increased dramatically through a network of plantations stretching from the coastal mountain range to the central plain, in estates owned by State organs such as pension providers, and other decentralised businesses.<sup>35</sup>

In the 1940s and 1950s, various governments commissioned studies to evaluate the economic potential of the forestry sector in Chile. In 1943, the Chilean Economic Development Agency (CORFO) organised a visit by a commission of experts from the US Department of Agriculture's Forest Service, known as the Haig Commission. The commission declared that with the continued excessive exploitation of forests, they "would be completely consumed within 107 years", but also concluded that:

Chile's natural forests, artificial forests and cultivable areas represent enormous and permanent productive capacity. Carefully tapped, they could provide Chile with an abundance of forestry products in annual volumes many times higher than current figures.<sup>36</sup>

Besides the studies carried out by the Haig Commission, one of the most important investigations of the period took place in 1956 by the United Nations – following a request by CORFO – entitled "*Chile, future exporter of paper and pulp*". Among the main recommendations of the study was the adoption of policies to stimulate the establishment of paper and wood pulp industries, taking advantage of the existing plantations of radiata pine and using this species to reforest large areas of eroded land. This niche production was strategic both in terms of the amount of demand generated by external markets, and with regard to the possibilities for internal industrialisation and job creation.

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<sup>34</sup> Camus, Pablo. *Ambiente, Bosques y Gestión Forestal en Chile, 1541-2005*. DIBAM, Santiago, 2006, p. 151.

<sup>35</sup> Cruz, María. *La realidad forestal chilena*. Grupo de Investigaciones Agrarias, Santiago, 1983, p. 8.

<sup>36</sup> Haig Commission. Cited in Camus, Pablo. *Ambiente, Bosques y Gestión Forestal en Chile, 1541-2005*. DIBAM, Santiago, 2006, p. 201.

The recommendations of this study were taken very seriously, particularly by the governments of Frei and Allende (1964-1973). At the time, the pine plantations which had been started since the enactment of the 1931 Forest Law were ready to be processed, and in fact private companies such as Cholguan and Mininco did not have the capacity to make use of the entire volume of timber available. In 1967 as part of the state-controlled inward development strategy, a contract was signed to build a pulp mill in the province of Arauco through the creation of the Sociedad Anónima Industrias de Celulosa Arauco S.A., and in 1969 building work commenced on another mill in Constitución (CELCO).<sup>37</sup> The importance that the forestry sector began to attain during this period can be seen in an official document of 1968 entitled "*La Reforma Agraria en el sector forestal*" (Land Reform in the forestry sector), which stated:

No process of land reform can be considered complete without the inclusion of the forestry sector. The close relationship which exists between this and the agricultural sector makes it impossible to keep the two separate. This is particularly true in the case of Chile, where 60 per cent of useful land is perfect for forestry. The exclusion of this area would represent an impediment to the land reform, would unacceptably deny the benefits of the process to a large sector of the rural population, and would have a disastrous effect on the success of the land reform in the agricultural sector.<sup>38</sup>

With the launch of a reforestation programme, and with the help of the key position that the forestry sector was beginning to gain at the time, reforestation with non-native species was also gradually expanding to rural families. Among these families were Mapuche who had started to mobilise their efforts towards reclamation of land in the context of the Chilean Land Reform.

### The Mapuche and the Chilean Land Reform

Land reform programmes took place across much of Latin America, and Chile was no exception. However, unlike other countries where these reforms were in response to peasant rebellions or rural crises, in Chile it formed part of the State's national developmental model, aimed at modifying the land ownership system of haciendas and latifundia, which it saw as an obstacle to capitalist modernisation of the agrarian sector. The first Chilean Land Reform Law (N°

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<sup>37</sup> It is worth mentioning that as part of the promotion of radiata pine plantations between 1966 and 1970, the National Reforestation Plan was created, operating the production and distribution of radiata pine and other species to land owners either for free or at low prices.

<sup>38</sup> CORA. *La Reforma Agraria en el sector forestal*. CORA, Santiago, 1968.



15,020) was approved during the government of Jorge Alessandri, as the result of pressure from the US State Department through the Alliance for Progress.<sup>39</sup> The priority of the US government and of the Latin American countries which in 1961 formed the Alliance for Progress was to impede the propagation of revolutionary movements spurred on by the unequal distribution of agricultural property, as had been the case in Cuba in 1959.

In Chile, the nature of the land reform in territories lying to the south of the Bío Bío River was different from that which took place in the lands to the north. While to the north of the Bío Bío the land reform attempted to change the system of large rural estates which had originated during Spanish colonisation, in the Mapuche territory which had remained independent until the middle of the 19<sup>th</sup> Century, the process came up against the system of agrarian property which had been imposed as part of *internal colonialism* and which had been in place for no more than half a century. Here the land reform was characterised by territorial conflicts between the Mapuche communities and private individuals, whether over Mapuche claims to "ancestral lands" which were not recognised in the *Título de Merced* and were now in the hands of colonists, or over claims to land which when the *Títulos de Merced* were granted were already occupied or had been usurped by private individuals (through a process known as "*corridas de cerco*" or the moving of fences). In this sense, the Mapuche took advantage of the land reform as an opportunity to avoid the ineffectual Indigenous Courts and attempt to recover their lands by means of direct occupation of the estates. Claims made via institutional and legal routes had shown limited effectiveness, as can be seen in the thousands of case records kept in the Indigenous Courts Archive located in the current Regional Archive of La Araucanía.<sup>40</sup>

Up until 1960 the likelihood of recovering stolen lands through the Indigenous Courts was slim at best. Meanwhile the injustice and misery suffered by the population was becoming unbearable. Rudecindo Quinchavil paints a vivid picture:

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<sup>39</sup> Toledo, Víctor. *Pueblo Mapuche, derechos colectivos y territorio*. Lom Ediciones, Santiago, 2006, p. 30.

<sup>40</sup> The Regional Archive of La Araucanía holds the Indigenous Courts Archive (Temuco, Victoria, Nueva Imperial, Pitrufquén, Valdivia and La Unión), which contains 655 conservation units, with case records covering the period between 1930 and 1960. It also holds the Indigenous Civil Court Archive which contains 438 conservation units, with case records from between 1961 and 1970. While the Indigenous Courts Archive covers a wide range of subjects such as the division of reductions, a significant number of the case records refer to appropriation of Mapuche land and other forms of abuse.

There was injustice in the countryside. The level of scarcity is clearly apparent. You look to one side and a kilometre away there is an estate, and you can see the different looking house, tractors ploughing the earth, people working, lots of wheat. Then you look at your little plot which isn't producing anything... Direct action in the countryside meant land occupation or "recovery", which is what we called it, because it was a case of getting back what was yours. In the communities it was effectively a small estate which formed through the usurpation of Mapuche lands. But this didn't resolve the problem of the whole community. In the middle of the communities there were large estates, and all of these people had land problems. It was a historical thing. And one of the problems was that everyone complained and couldn't see a solution, but the idea of direct action did present a solution, even more so when that action had good results. So it took off.<sup>41</sup>

This account reveals that the recovery of lands by the Mapuche during the land reform was not some kind of Marxist revolution, but instead an attempt at a "historic counter-offensive":<sup>42</sup> to recover that which the State and the colonisers had stripped from them, or as Quinchavil put it: to "get back what was yours".

Thus direct action to recover Mapuche lands began in the early 1960s when the National Indigenous Association, later the Federation of Rural and Indigenous People, began operating in the provinces of Arauco and Malleco during the introduction of the land reform. Under Law 15,020 which was passed in November 1962, 17 pieces of land with a total area of 9,124.4 hectares were regained by Mapuche families across the region of La Araucanía, specifically in the districts of Carahue, Cunco, Freire and Nueva Imperial, representing 26 per cent of the land taken back during the period that this Law was in force. Meanwhile, with the passing of Law 16,640 in 1967, seven more pieces of land were claimed for the Mapuche in the Angol, Lumaco, Lautaro and Purén districts of La Araucanía, comprising an additional area of 10,682.3 hectares. Later, during the government of Salvador Allende (1970-1973), through occupation driven by the Rural Revolutionary Movement (MCR) and the Indigenous Peoples Act (Law 17,729), 574 estates were reclaimed in the provinces of Malleco and Cautín, with a total area of 636,288.3 hectares. Of these, 138 pieces of land were obtained by Mapuche families or with their participation, amounting to a total of 132,115.7 hectares. A significant number of these plots –

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<sup>41</sup> Quinchavil, Rudecindo. In: Huentelaf, Felix et. al. *A desalambrar. Historias de Mapuches y chilenos en la lucha por la tierra*. Editorial Ayun, Santiago, 2006, p. 29.

<sup>42</sup> Ordenes, Mathias. "Conflicto campesino-Mapuche en la Araucanía: una análisis a partir de la Estructura de Oportunidades Políticas (EOP). 1967-1973". In: *Revista Izquierdas*, Nº 26, p. 144. No publication date.

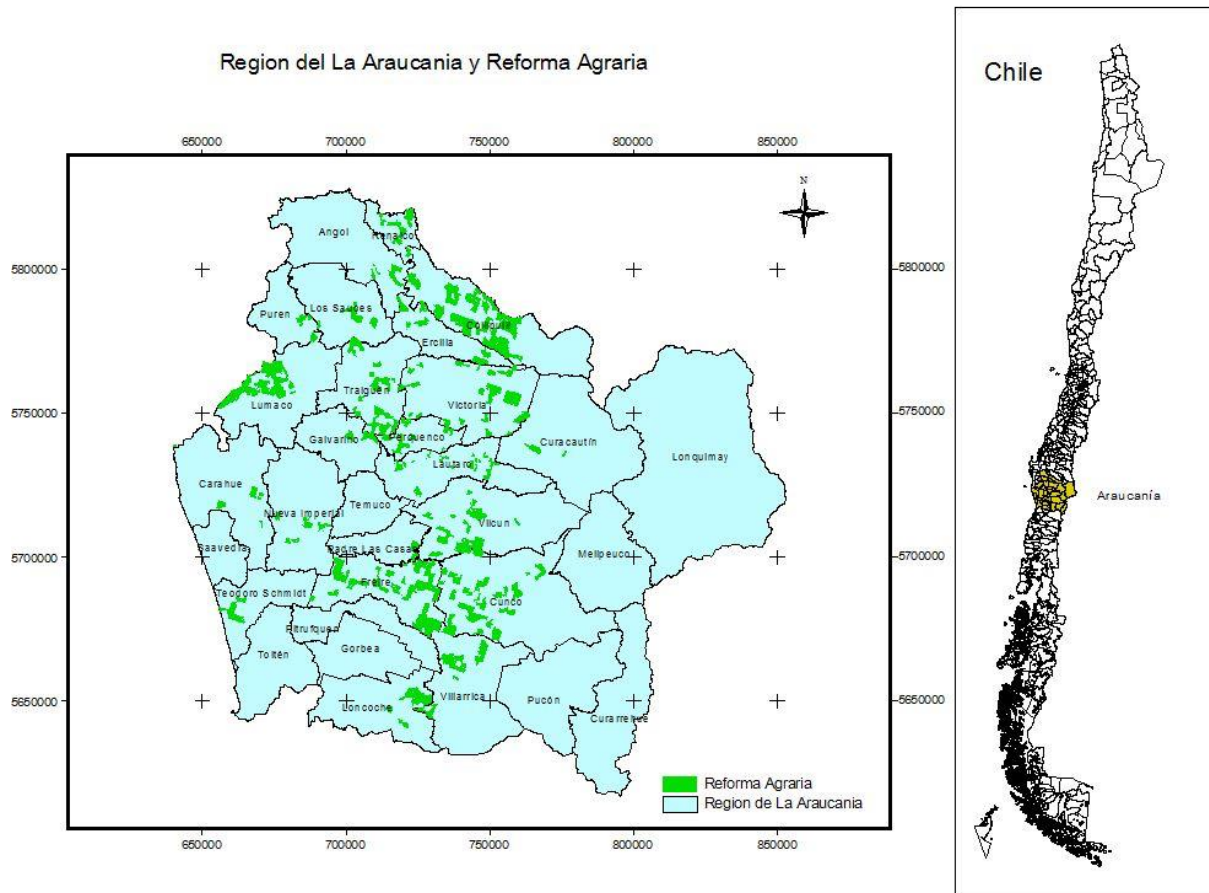
39 (7,208.3 hectares) – corresponded to restitution of *Títulos de Merced* or estates claimed by Mapuche communities (see the Table of Territories Expropriated during the land reform and land reform in Annex B).<sup>43</sup>

Restitution of land for Mapuche families which took place principally during the Allende government was only possible through the direct action of communities, obliging the government to reconfigure their indigenous policies – as happened with Law 17,729 – and establishing, among other things, that the division of the reservations should be carried out with the approval of all involved. Through direct protest the Mapuche attempted to reverse the impoverishment, land shortages, exclusion and inequality resulting from the history of oppression that weighed heavily on their shoulders. In response to these protests the Allende government saw the need to recognise that the restitution of Mapuche lands went far beyond the remit of the land reform: "the land for he who works it". Mapuche activists' political objective was to reverse the appropriation linked to the establishment and legitimisation of the Chilean State in Mapuche territory (**see map 6**).

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<sup>43</sup> COTAM. "Territorio y tierras Mapuche". In: *Informe de la Comisión Verdad Histórica y Nuevo Trato con los Pueblos Indígenas*, Santiago, 2003, pp. 902-904.

Map 6: Lands Transferred as Part of the Land Reform



This political mobilisation of the Mapuche was fuelled not only by memories of their territory prior to reduction and State military occupation, or by the collective organisational or labour structure of the Mapuche, but also by more recent historical events. These generations suffered exclusion, racism and exploitation, and saw the misery and inequality being suffered in other sectors of the Chilean population. However they also gained knowledge through participation in unions and popular organisations, and these combined experiences fed their political aspirations regarding the territorial problem, shaping the mobilisation strategies that upon their return to their original communities they began to exercise for the reclamation of usurped lands. All of this was conducive to the formation of historically unprecedented alliances between Mapuche and rural and leftist organisations.

As part of land recovery efforts, Mapuche families formed settlements and cooperatives, working successfully on the reformed estates and combining livestock rearing, agricultural production and forestry. The latter was strongly promoted by the governments of Frei and Allende, through radiata pine reforestation aimed at stimulating the productivity of the land and integrating it into a capitalist modernisation strategy for the agricultural sector. However, both the land reclamation strategies of the Mapuche during the land reform, and the economic modernisation plan being driven by the State in which the forestry sector played an important role, would suffer a serious setback with the military coup of 1973.

### Dictatorship in Mapuche Territory

[Forestry sector expansion] has to do with the overall paradigm shift and new economic model imposed on Chile by the military dictatorship. It is also linked to the land counter-reform, because following the reform, which had been steadily returning land to rural people and to some Mapuche, came the land counter-reform. Throughout the dictatorship, the State put land into the hands of the emerging timber companies, and the 701 (Decree Law) was more or less intended to encourage expansion, but during the 80s the decision was taken to hand over lands not only belonging to CONAF (National Forestry Corporation) and CORA (Land Reform Corporation) but all of those government-owned lands in the Nahuelbuta Range.

– Adolfo Millabur, Mayor of Tirúa and leader of the Lafkenche Territorial Identity

Resistance to the process of land restitution for rural and Mapuche families had started before the military coup. During the land reform, the agricultural unions found themselves caught between the State's modernising reforms and the rural and indigenous peoples' movement over land ownership.<sup>44</sup> Faced with this dilemma, upon the formation of the government of Frei Montalva these property owners began to use all of the means in their power to put a stop to what they considered "illegal occupation". In 1972 these sectors united, forming organisations such as the National Society for Agriculture (SNA), the Southern Agricultural Consortium (CAS), the Provincial Federation of Agricultural Employer Trade Unions of Malleco and Cautín – the so called "Recovery Committees" – which joined forces with right-wing groups, coup supporters and paramilitaries such as the National Homeland and Freedom Movement, in

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<sup>44</sup> Ordenes, Mathías and José Díaz. "Discurso y movimiento gremial terrateniente durante la reforma agraria de Eduardo Frei Montalva en el centro y sur de Chile, 1964-1970". In: Revista de Historia Regional, Vol. 20, Nº 1, 2015.

order to protect their properties from restitution to the rural population and the Mapuche. As part of their suppression of the territorial land recovery movement, these organisations operated as paramilitary groups and were formed, for the most part and as is still the case today, by descendants of colonists who had settled in Mapuche territory since the end of the 19<sup>th</sup> Century. They also had links to right-wing and pro-coup political elements, and were represented in parliament by the centre and right-wing parties such as the Partido Nacionalista.

These sectors supported the military coup, seeking revenge for the expropriation supported by the Unidad Popular government. Paramilitary organisations comprising groups of landowners, together with the Pinochet government, rolled out a programme of repression, murder, disappearances and detentions, focused on the rural sectors involved in the process of land reform, and specifically targeting the Mapuche population. The violence meted out by soldiers and paramilitaries against the Mapuche during the dictatorship targeted not only those who had participated actively in the recovery of lands during the land reform – including the leaders – but also their families and the Mapuche social fabric as a whole.<sup>45</sup> As Morales states, "the Mapuche who were targeted were selected both for their real or supposed affiliation with the Unidad Popular or the 'socialist revolution', and because they represented the 'indio alza'o' (insolent Indian)".<sup>46</sup>

Following the military coup in 1973, around 65 per cent of restored lands were given back to their previous owners (see Annex B). The neoliberal model put in place by the dictatorship was centred on the premise of reducing state control of the economy, entrusting its operation to market forces. According to the Chicago Boys (economic advisers to Pinochet from the University of Chicago), state intervention over previous decades had hindered economic growth. While the forestry model seen in Chile today has its origins in the early part of the 20<sup>th</sup> Century as part of a capitalist modernisation strategy in which the State played a key role, the dictatorship laid the foundations for the expansion of the current model, including the private enterprises that currently control the sector.

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<sup>45</sup> Perez-Salez, Pau et. al.(1998) *Muerte y desaparición forzada en la Araucanía: una perspectiva étnica*. LOM, Santiago.

<sup>46</sup> Morales Urra, R. (1999). *Cultura Mapuche y Represión en Dictadura*. Revista Austral de Ciencias Sociales (3), Instituto de Ciencias Sociales, Facultad de Filosofía y Humanidades, Universidad Austral de Chile, p. 105.

The analyses carried out by Mapuche leaders like Llaitul and Millabur are particularly important to the understanding of the territorial conflicts which since the 1990s have been provoked by the forestry companies installed in territories that belonged to the Mapuche. It was under the military dictatorship that these companies acquired the large tracts of land destined to become single-crop forestry plantations,<sup>47</sup> starting with CONAF's cut-price auctioning off of extensive areas. In La Araucanía, lands regained by Mapuche families between 1962 and 1973 amounted to a total area of 152,416.88 hectares, and for the most part, these lands were returned to their previous owners, auctioned off, or divided into plots for distribution to settlers.<sup>48</sup> In addition to the loss of their recently regained lands, there was a confiscation of machinery, animals, harvests and other goods held by the Mapuche.

The de facto regime also drove the division of the reductions granted by the *Títulos de Merced*, with the aim of doing away with shared property, establishing private property, and integrating the Mapuche and their limited lands into the neoliberal national regime's commercial networks once and for all. An important tool in achieving this was Decree Law 2,568 of 1979 which established the division of indigenous communities, along with the ruling that this could take place at the request of any of its members. The framework also established that "with the division they would cease to be seen as indigenous lands, and their owners would cease to be seen as indigenous people".<sup>49</sup> The aim of this policy was to destroy all forms of collective existence and integrate the modest lands of the Mapuche into the market.

As part of the neoliberal system put in place by the dictatorship, public organisations were privatised, internal markets were deregulated and significant economic incentives were offered to the private sector. In 1974, Decree Law (DL) 701 was passed, promoting forestry plantations of exotic species by the granting of incentives (including grants covering 75 per cent of the cost

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<sup>47</sup>Correa, Martín, Raúl Molina, & Nancy Yáñez. (2005). *La Reforma Agraria y las tierras mapuches. Chile 1962-1975* (1o). Santiago de Chile, Chile: LOM Ediciones.

<sup>48</sup> "Of the 163 pieces of land repossessed by the Mapuche, a total of 97 estates were returned to their previous owners between 1973 and 1974. The revocation of these acquisitions meant a reduction in the area of the Mapuche territory by 98,817.2 hectares, representing 64 per cent of the total land obtained for the Mapuche." Correa, Martín et. al. *La Reforma Agraria y las tierras Mapuches. Chile 1962-1975*, LOM Ediciones, Santiago de Chile, 2005, p. 248.

<sup>49</sup> Decree Law 2,568 of 1979 modifies the Indigenous Peoples Act 17,729 of 1972, which had been passed during the government of Salvador Allende. According to this law, the division of shared lands was restricted to situations in which the majority of members of the reduction requested it, or to cases where the technical justifications made it desirable.

of the plantation and exemption from land tax) in order to recover supposedly degraded soils.<sup>50</sup> Between 1974 and 1994 a total of 1,700,000 hectares were planted, primarily with radiata pine and eucalyptus, of which 807,203 were entitled to receive incentives through DL 701.<sup>51</sup>

## Post-Dictatorship Legislative Framework and State Policy on Forestry Plantations

Following the dictatorship, laws coming into effect after DL701 (Law Nº 19,561 of 1998 and Law 20,326 of 29<sup>th</sup> January 2009), extended the system of incentives to plantations established by small and medium-sized proprietors for the benefit of the forestry industry. The percentage of smallholder-owned hectares receiving incentives rose from 5 per cent between 1974 and 1997 to 39 per cent between 1998 and 2010.<sup>52</sup> However throughout the effective life of this legislation, state subsidies primarily benefited the large companies. Up to 2003, the state subsidised the forestation of 1.2 million hectares through DL 701, distributing a total of USD 875 million among large, medium-sized and small owners. Of this amount, USD 600 million went to Forestal Arauco and Mininco.<sup>53</sup>

As a consequence of this public policy, forestry plantations now cover an area of around 2,872 million hectares, equivalent to 17.2 per cent of Chile's total forests, according to the Chilean Register of Native Vegetation Resources, 1997-2011 (CONAF, July 2011). Approximately 68 per cent of this area is covered by radiata pine, 23 per cent by eucalyptus species and the rest by other species such as atriplex, tamarugo and oregon pine.<sup>54</sup>

The Bío Bío, La Araucanía, Los Ríos and Los Lagos regions make up the ancestral territory of the Mapuche and comprise significant areas of native forest. It is these regions that have the

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<sup>50</sup>Supposedly "degraded" soils, given that one of the effects of this DL was the destruction of native forest on undegraded soils, to be replaced by forestry plantations. See: [http://www.bosquenativo.cl/descargas/documentos\\_monitoreo/2011\\_informe\\_WWF\\_sustitucion\\_bosquenativo\\_1993\\_2009\\_forestal\\_mininco.pdf](http://www.bosquenativo.cl/descargas/documentos_monitoreo/2011_informe_WWF_sustitucion_bosquenativo_1993_2009_forestal_mininco.pdf)

<sup>51</sup>Villa, Patricio, Proyecto de ley que extiende el Decreto 701 amenaza con más "bosques que matan," 15th July 2013, available at: <http://resumen.cl/2013/07/proyecto-de-ley-que-extiende-el-decreto-701-amenaza-con-mas-bosques-que-matan/>

<sup>52</sup><http://www.latercera.com/noticia/dl-701-en-40-anos-70-de-aportes-fueron-a-grandes-forestales/>

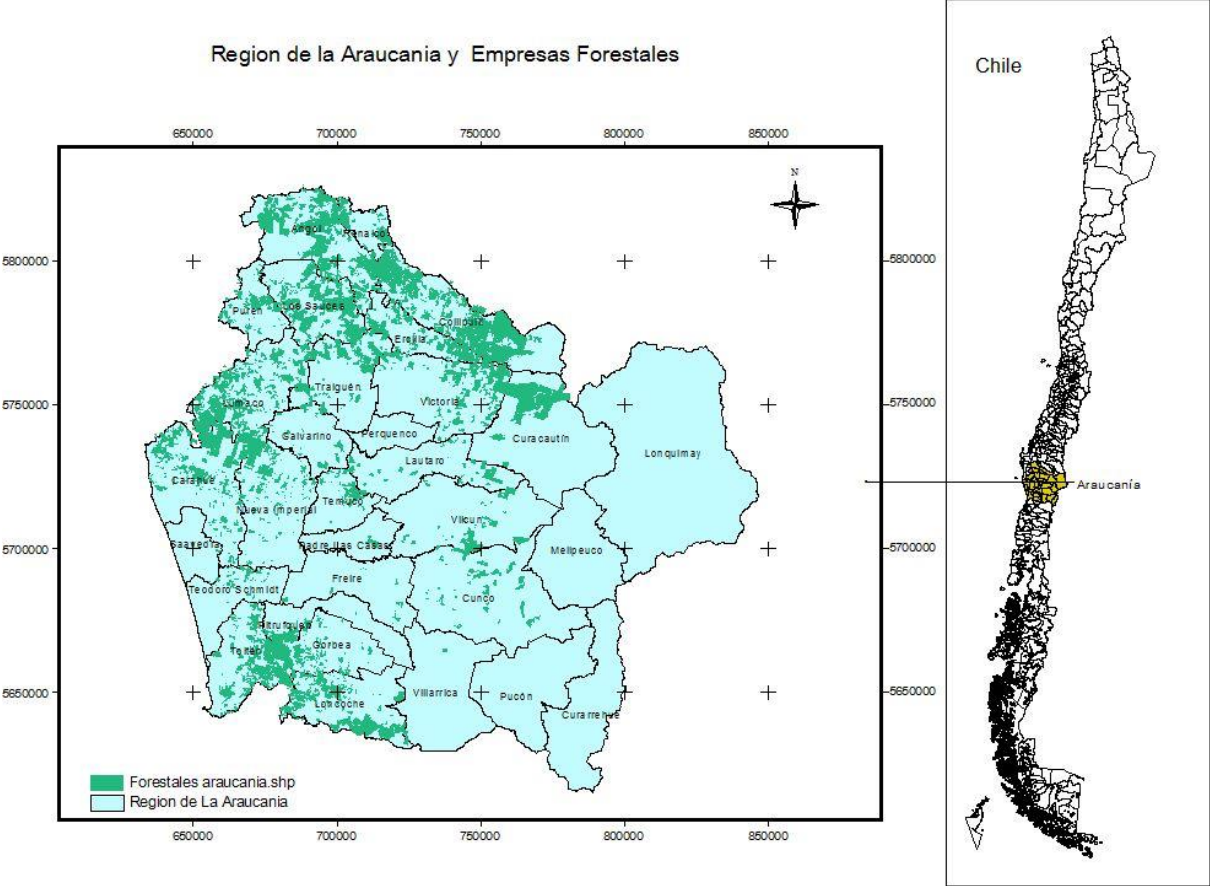
<sup>53</sup>Carvajal, Víctor. "Colusión del papel liquida subsidio que benefició por décadas al Grupo Matte." En, 10/11/ 2015/ available at: <http://ciperchile.cl/2015/11/10/colusion-del-papel-liquida-subsidio-que-beneficio-por-decadas-al-grupo-matte/>

<sup>54</sup>CONAF (Corporación Nacional Forestal), 2011, at <http://www.conaf.cl/nuestros-bosques/plantaciones-forestales/>



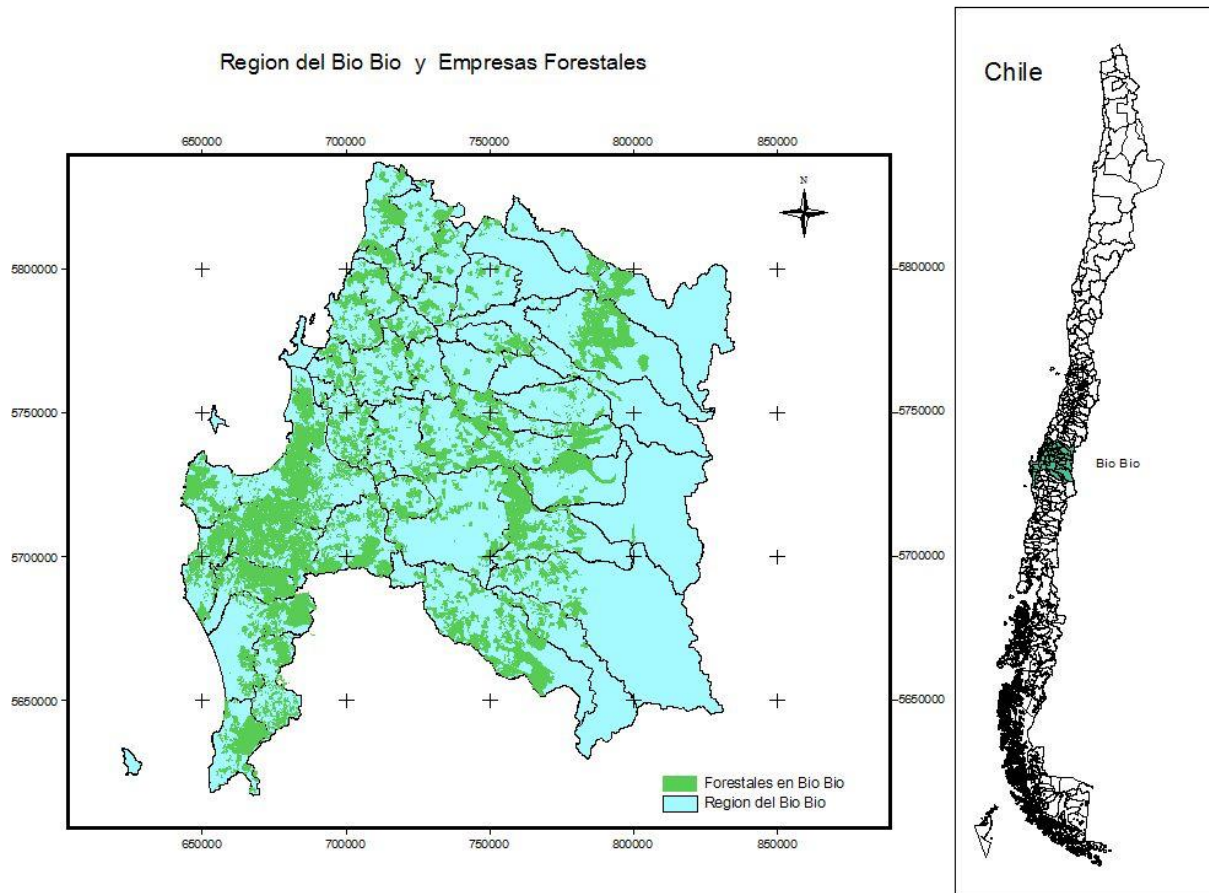
greatest concentration of forestry plantations, with a total of 1,559,185 hectares. After Bío Bío with 878,970 hectares of exotic plantations, La Araucanía has the second highest coverage, with 589 thousand hectares (21.8 per cent of total cultivated land).<sup>55</sup>

**Map 7: La Araucanía and Forestry Companies**



<sup>55</sup> Forestry Institute (INFOR), *El sector forestal, 2011*, in Yáñez, Nancy y Rubén Sánchez, “La industria forestal en Chile y su impacto en el territorio Mapuche”, in Aylwin, José et el, *Pueblo Mapuche y recursos forestales en Chile: Devastación y conservación en un contexto de globalización económica*, Santiago: Observatorio Ciudadano- IWGIA, 2013, pp.7-33.

## Map 8: Bío Bío and Forestry Companies



Another consequence of DL 701 has been the concentration of property. Of the fifteen main forestry companies,<sup>56</sup> Forestal Arauco and Forestal Mininco – primarily of Chilean ownership but with connections to international companies and markets – make up the majority of land ownership and forestry plantations. The former owns 1,116,788 hectares, of which 766,762 are planted with fast-growing species,<sup>57</sup> and the latter owns around 733,923 hectares, of which 499,545 are planted with these species.<sup>58</sup> These two companies, along with MASISA,

<sup>56</sup>Empresas Arauco: [www.arauco.cl](http://www.arauco.cl); Forestal Diguillin: [www.diguillin.com](http://www.diguillin.com); Forestal Mininco: [www.Mininco.cl](http://www.Mininco.cl); Bosques Cautín: [www.bosquescautin.cl](http://www.bosquescautin.cl); Masisa: [www.masisa.com](http://www.masisa.com); Forestal del Sur: [www.forestaldelsur.cl](http://www.forestaldelsur.cl); Grupo Voipir: [www.voipir.cl](http://www.voipir.cl); Forestal Los Robles: [www.forestallosrobles.cl](http://www.forestallosrobles.cl); Grupo CERCOM (Forestal COMACO): [www.mcondor.cl](http://www.mcondor.cl); Forestal Diguillin: [www.diguillin.cl](http://www.diguillin.cl); PROCER: [www.procer.cl](http://www.procer.cl); Madeex: [www.madeex.cl](http://www.madeex.cl); Forestal Tornagaleones: [www.forestaltornagaleones.cl](http://www.forestaltornagaleones.cl); Ignisterra: [www.ignisterra.cl](http://www.ignisterra.cl); Forestal Quilpolemu: [www.rioitata.cl](http://www.rioitata.cl).

<sup>57</sup> Woodmark Soil Association- FSC, Resumen público de la evaluación del manejo forestal según estándar FSC (STDPL-201205/311209) Forestal Arauco S.A., Marzo de 2013, at [http://www.arauco.cl/\\_file/file\\_7704\\_15272-ppt-resultados-auditoria-informe-publico-woodmark.pdf](http://www.arauco.cl/_file/file_7704_15272-ppt-resultados-auditoria-informe-publico-woodmark.pdf)

<sup>58</sup> MININCO, see <http://www.forestalmininco.cl/>

made up 76.9 per cent of the Chilean forestry sector's export revenue in 2010, following a pattern that has remained steady from the start.<sup>59</sup>

The expansion of the forestry industry in the southern-central part of the country has created a situation of permanent conflict between the forestry companies and the Mapuche people, in turn generating dispute over land ownership, control of natural resources and sustainability of the communities' habitat. The area today occupied by the forestry companies in this territory greatly exceeds that owned by the Mapuche. This takes into account those lands recognised as *reductional* shared Mapuche property following the military occupation of their territory in the 19<sup>th</sup> Century, as well as those which have been recovered by them in recent years through the Indigenous Land and Water Fund, established by Law 19,253 in 1993 for the Protection, Promotion and Development of Indigenous Peoples. By 2010, the lands registered in the Indigenous Property Register as belonging to Mapuche individuals or communities totalled 863,619 hectares.<sup>60</sup> These overlap with the traditionally occupied and culturally significant lands which formed part of the *lof mapu*, a territorial and organisational unit of the Mapuche people.

Similarly, as we will see in Chapter 4, forestation with exotic species has had a serious impact on the environment. The plantations have come to encircle Mapuche lands, affecting not only their landscape but also flora and fauna and the quality of the soil, as well as altering water courses, many of which have dried up. The disappearance of water sources as a result of the single-crop cultivation of radiata pine and eucalyptus – species which require large quantities of water for growth and which damage the soil – are confirmed in a World Bank report on the subject of water resources in Chile. On the subject of the forestry sector, the World Bank states:

There are numerous industrial processes associated with this sector of the economy which could affect the quality of water. These include the loss of natural water quality improvement mechanisms following the replacement of native vegetation with exotic plantations on the banks of rivers, soil drainage to increase forest cover (Developmental Law 18,450), an increase in sediment transport during harvest, soil acidification and the

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<sup>59</sup> INFOR 2011, *op cit*.

<sup>60</sup> Gobierno de Chile. Informes Periódicos 19°,20° y 20° de la Aplicación de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, De conformidad al artículo 9 de la Convención, Chile, September 2012.p.53

consequent loss of nutrients and metals, and the application of plant-protection compounds to combat forest fires."<sup>61</sup>

According to Law 19,300 of 1994 regarding General Environmental Foundations and its later modifications,<sup>62</sup> only forestry projects categorised as being on an industrial scale – which in La Araucanía and neighbouring regions means covering an area in excess of 500 hectares – are subject to the Environmental Impact Assessment System (EIA). The majority of large-scale forestry holdings do not fall into this category, because they are structured in a series of individual plots that are under the 500 hectare limit. As such, they are not subject to monitoring through the EIA.

Besides this, even according to official statistics, the plantations have had significant negative social impact as well. Essentially, regions with a greater area of forestry plantations also have higher levels of poverty, according to the 2013 CASEN Study.<sup>63</sup> The study reveals that La Araucanía is the region with the highest income-based poverty index, at 27.9 per cent. Los Ríos is the next region, with a figure of 23.1 per cent, then Bío Bío with 22.3 per cent, and finally Los Lagos with a figure of 17.6 per cent. A similar situation applies to the percentage of people in extreme poverty according to income level. La Araucanía is again at the top of the national list with 10.6 per cent, followed by Bío Bío and Los Ríos with 8 per cent each, and finally Los Lagos with 5.7 per cent. They all come in above the national average of 4.5 per cent.<sup>64</sup> Using measures of social well-being that include health, employment, social security, education and housing, the poverty indices in these regions are even higher. La Araucanía continues to be the region with the highest proportion of the population living in poverty, with a figure of 28.5 per cent. The other regions follow the same pattern, with Bío Bío at 22.4 per cent, Los Ríos at 22.9 per cent, and Los Lagos at 26.1 per cent. All are above the national average of 20.4 per cent.<sup>65</sup>

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<sup>61</sup>World Bank, *Chile. Diagnóstico de la gestión de los recursos hídricos*, 2011. P. 15, available at <http://documents.worldbank.org/curated/en/452181468216298391/pdf/633920ESWOSPAN0le0GRH0finalODR0REV-0doc.pdf>

<sup>62</sup>Law 19,300 of 1994 regarding General Environmental Foundations (LBMA), modified by Law 20,417 of 2010 and regulated by the Environmental Impact Assessment System (Environment Ministry DS 40, 2012) constitutes the regulatory framework for the environmental evaluation of investment projects in Chile.

<sup>63</sup>Ministerio de Desarrollo Social, *Resultados Encuesta CASEN 2013*, available at <http://www.ministeriodesarrollosocial.gob.cl/resultados-encuesta-casen-2013/>

<sup>64</sup>*Ibid.*

<sup>65</sup>*Ibid.*

In La Araucanía and Bío Bío, the districts whose principal industry is forestry have a poverty index of 26 per cent (162,137 people), almost double the national average. In 2009, the average monthly per capita household income of these districts was CLP 108,739.<sup>66</sup> In 2011, the districts with the highest rates of poverty were Ercilla (48.8 per cent of the population), Los Álamos (41.3 per cent), Puerto Saavedra (37.3 per cent), Los Sauces (31.5 per cent), Collipulli (31.5 per cent), Lumaco (31.0 per cent), and Chol Chol (30.3 per cent). It is in these same districts that the largest areas of forestry plantation in La Araucanía are found.<sup>67</sup>

According to the Ministry of Social Development's 2015 CASEN Study, this situation has not changed with time. According to the study, the district with the highest national levels of income-based poverty, with 38.1 per cent of the population in poverty, is Cañete in the Bío Bío region. It is followed by the districts of Carahue with 36.3 per cent, Cunco with 33.7 per cent, Collipulli with 32.7 per cent and Nueva Imperial with 31.8 per cent. All of these are in La Araucanía, and like the district of Cañete are home to high concentrations of forestry plantations. La Araucanía contains plantations in excess of half a million hectares, and is also the poorest region in terms of income, with 23.6 per cent of the population living in poverty.<sup>68</sup>

The link between the forestry plantations and poverty has also been a subject of concern for the National Forestry Corporation (CONAF), the entity responsible for the administration of DL 701. In a recent study it provides evidence of the relationship between the development model based on forestry plantations with the prevalence and concentration of poverty in Chile. Thus with regard to the Bío Bío region which has the largest area of forestry plantations in the country and the greatest focus of DL 701, it indicates that:

In the Bío Bío region, two in every ten inhabitants are categorised as poor, which is a disappointing result following almost forty years of DL 701 and 24 years of democracy. The fact that the overall population of the region has decreased but that the rural population has grown in recent years despite the lack of enthusiasm for the quality of

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<sup>66</sup>RIMISP 2010. Frene, Cristián and Mariela Núñez, "Hacia un nuevo Modelo Forestal en Chile," in *Bosque Nativo* 47: 25 - 35, 2010, see: [http://www.bosquenativo.cl/descargas/Revista\\_Bosque\\_Nativo/RBN\\_47\\_art\\_op2web.pdf](http://www.bosquenativo.cl/descargas/Revista_Bosque_Nativo/RBN_47_art_op2web.pdf)

<sup>67</sup>Ministerio de Desarrollo Social, "Incidencia de la Pobreza a nivel Comunal, según Metodología de Estimación para Áreas Pequeñas. Chile 2009 and 2011," 2013, available at <http://www.ministeriodesarrollosocial.gob.cl/btca/txtcompleto/midesocial/pobreza-comunal-2009y2011.pdf>

<sup>68</sup> See [http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/casen\\_2015.php](http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/casen_2015.php)

rural life exhibited by people living in the countryside, is evidence that there is a more generalised problem with the type of development adopted for the region.<sup>69</sup>

Similarly, La Araucanía – which after Bío Bío and Maule is the region with the largest planted area of forest – demonstrates a clear relationship between forestry development policies and persisting poverty, as well as the shrinking of the rural population. In their study, CONAF concludes:

(...) it is noteworthy that data collected between 1994 and 2011 show great uniformity, and in particular the number of poor people has stayed more or less the same, with only small variations between the years in which the register was taken. Of all the regions studied, it is this one that has the highest levels of poverty. It is also interesting that the total population fell so significantly between 2002 and 2012, to the point that the population in 2012 is at the same level as in 1992. The rural population has been steadily decreasing since 1992, reaching a point where the number is currently slightly more than half of what was registered by that census.<sup>70</sup>

### Regulatory Framework and Public Policy Regarding the Mapuche since 1989

In 1989 following the end of the dictatorship, numerous organisations of Mapuche and other populations signed the Nueva Imperial Agreement, promulgated by the newly-formed Concertación de Partidos por la Democracia (Union of Parties for Democracy), which governed Chile in the 1990s. The Nueva Imperial Agreement was a political pact which established the support of the indigenous population for the candidacy of Patricio Aylwin and the channelling of claims through institutional processes, in exchange for the recognition of indigenous territorial and cultural rights upon the Concertación's rise to government. There were those who did not sign this pact, such as the group of leaders headed by Aucan Huilcamán who would go on to form the Aukiñ Wallmapu Ngulam (Council of All Lands) organisation which sought the recovery of collective rights, particularly that of self-determination, and which developed a discourse and ideology centred on the idea of nationality.

Following the Nueva Imperial Agreement, Concertación leaders presented three programmes to the National Congress: for recognition of indigenous rights, created with the

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<sup>69</sup> CONAF Gerencia forestal. Plantaciones y pobreza en comunas forestales. Forestación y estilo de desarrollo. 2014. Available at:

[http://www.conaf.cl/wp-content/files\\_mf/1395859632PlantacionesyPobrezaenComunasForestales.pdf](http://www.conaf.cl/wp-content/files_mf/1395859632PlantacionesyPobrezaenComunasForestales.pdf)

<sup>70</sup> Ibid, p. 27

involvement of many indigenous – including Mapuche – organisations, for constitutional reform to recognise the indigenous populations, and for the ratification of ILO Convention 169. The first initiative was severely amended by the National Congress, which at that time was made up of carefully selected senators, resulting in 1993 in Law 19,253 on the Protection, Promotion and Development of Indigenous Peoples. The other two were not approved at the time, but the third went forward in 2008. These delays and denials caused great frustration among the Mapuche and other indigenous peoples.

Law 19,253 – known as the Indigenous Peoples Act – created the National Indigenous Development Corporation (CONADI) as an organ for the coordination of indigenous policy, and recognised indigenous rights to territory and culture. It did not, however, recognise the indigenous peoples as nations in their own right, but instead identified them as "ethnicities". It also failed to give recognition to their traditional institutions and organisations. The law did establish the responsibility of the state to protect indigenous lands, ensure their responsible exploitation and ecological balance, and see to their expansion (article 1). It identified indigenous lands as being those possessed or owned by indigenous persons or communities as a result of deeds granted by the State, as well as those which in the future would be recognised by the courts of law or received free of charge from the State. The law also identified historically occupied lands (or "ancestral lands") owned by indigenous individuals or communities, requiring that these be entered in CONADI's Land Register (article 12). It is important to note that as a result of the divisions imposed by the State through the *Títulos de Merced* over the past century, today the majority of Mapuche lands are owned on an individual basis as opposed to a community basis.

The law also saw the creation of a Land and Water Fund. This fund was responsible for granting subsidies for the acquisition of land by indigenous individuals and communities whose existing lands were insufficient (article 20 a), for financing the resolution of disputes over indigenous land (article 20 b)<sup>71</sup>, and for financing the establishment, regulation or purchase of rights to water

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<sup>71</sup>A mechanism to enable the acquisition of disputed pieces of land which had previously been recognised by the State as belonging to indigenous people.

(article 20 c). The law also established that the fund would cover lands owned by the State, which could be transferred to CONADI for their surrender to indigenous people (article 21).

Law 19,253 did not recognise territorial rights for indigenous people, with the exception of the creation of indigenous development areas (articles 26 and 27). These were areas of historical or ecological State interest, in which indigenous people and their communities have a right to participate in the management of protected wilderness areas located within them. The State organs in charge of administration of these areas could determine the means and extent of indigenous participation, as well as the usage rights they would have (article 35). Another aspect that the law did not address was the process enabling the recovery or control by indigenous populations of natural resources which existed within their lands and territories. The only exception to this was water.<sup>72</sup>

Since the passing of the Indigenous Peoples Act, the focus of the State's sectoral policy with regard to indigenous populations, particularly the Mapuche, has been on rights to territory. Through the Indigenous Land and Water Fund, CONADI has acquired lands for indigenous individuals and communities who previously either did not have any, or had lost them through disputes over deeds previously recognised by the Chilean State according to law.

By 2014 the Mapuche had acquired a total of 21,325 hectares through CONADI, which for the most part went to communities who previously did not have any land (article 20 a).<sup>73</sup> In terms of land purchased by CONADI as a result of disputes (article 20 b), 146,585 hectares had been acquired and transferred to Mapuche communities.<sup>74</sup> Among the most serious problems with this policy was the lack of funds and the speculative prices paid by the State for lands;<sup>75</sup> as a result there were severe limitations on the Law's ability to properly respond to Mapuche claims for legal ownership or traditional occupation of lands taken away from them since the 19<sup>th</sup> Century.<sup>76</sup>

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<sup>72</sup>The regulations to do with water, however, applied particularly to the Andean peoples in the North of the country, who have received greater benefit from them than the Mapuche.

<sup>73</sup>Instituto Nacional de Derechos Humanos, *Situación de los Derechos Humanos en Chile. Informe Anual 2014*, INDH; Santiago, 2014.

<sup>74</sup>Ibid.

<sup>75</sup>The amount paid for lands acquired by the State on behalf of indigenous people rose substantially between 1994 and 2009, with the increase in Mapuche conflict zones being estimated at up to 826 per cent. LIBERTAD Y DESARROLLO, *Temas Públicos* N° 977, 6th August 2010, available at [www.lyd.org](http://www.lyd.org)

<sup>76</sup>There is no consensus on the total amount of land claimed by the Mapuche. One study undertaken by the State through the Universidad de Concepción's Centre for Environmental Sciences EULA, revealed that in three of the four



Although according to article 20 b of law 19,253, land purchases made by CONADI were limited to property under dispute of deeds (*Títulos de Merced* or *Títulos de Comisario*) previously recognised by the State as belonging to the Mapuche, there are records which indicate that these purchases had been extended to traditionally occupied lands for which previously there had been no deeds recognised by the State. For example, a study carried out by the Multigremial de la Araucanía reveals that from creation through 2014, CONADI acquired a total of approximately 76,000 hectares of disputed land, which did not have deeds previously recognised by the State.<sup>77</sup>

This is consistent with the concept of indigenous property established by ILO Convention 169 which was approved in Chile in 2008 and went into effect in 2009. This Convention established the need for governments to respect the special importance of the relationship between indigenous peoples and their lands and territories (article 13.1), recognise their rights to ownership and possession of lands traditionally occupied by them (article 14.1), and recognise their right to be consulted before initiation of any programme of prospecting or exploitation of mineral or sub-surface resources or other resources owned by the State that may exist in their lands, to participate in the benefits of such activities, and to receive fair compensation for any damages which they may sustain as a result of such activities (article 15.2).

Much evidence indicates, however, that the implementation of ILO Convention 169 has been highly inadequate. This is particularly noticeable in the continuation and expansion of investment projects in traditionally occupied indigenous land, especially those lacking an appropriate consultation process, community share in the benefits, and compensation for damage caused. Despite scrutiny of forestry activity, exotic plantations increased to 750,002 hectares between 1997 and 2011, with an annual growth of 37,000 hectares.<sup>78</sup> The State

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regions ancestrally inhabited by the Mapuche, the claims based on articulations of Law 19,253 (article 20 a and b) amount to an area as high as 165 thousand hectares. See Universidad de Concepción- Centro Eula-Chile (2010), *Proyecto Actualización Catastro Demanda y Oferta de tierras, aguas y Riego para indígenas Etapa I (Resumen Ejecutivo)*, unpublished. However, this estimate only takes into account the lands recognised by the State as belonging to the Mapuche, which as mentioned previously amounted to half a million hectares. It does not include claims to traditionally occupied land and sites of cultural significance, which are covered by ILO Convention 169 which was approved by Chile in 2008 and came into effect in 2009.

<sup>77</sup>Alvaréz, Fabian, "Estudio revela que Conadi compró 76 mil hectáreas no incluidas en catastro de tierras en litigio." *El Mercurio*, 17th August 2014.

<sup>78</sup>CONAF. 2011. Catastro de los recursos vegetacionales nativos de Chile. Monitoreo de cambios y actualizaciones. Periodo 1997 - 2011. Santiago, Chile.

maintained heavy subsidisation of the forestry plantations until 2015. Over the last decade, this amounted to an annual average of USD 22.4 million which continued to benefit the large forestry companies, albeit to a lesser extent than before.<sup>79</sup>

Aside from the forestry industry, the State has approved a multitude of hydroelectric projects in the Andean sector of the Mapuche territory, affecting Mapuche communities and their way of life. The first of these, the Ralco plant in Alto Bío Bío, led to the displacement of 500 pehuenche Mapuches following its construction in 2004, and there are currently twenty hydroelectric projects proposed for water courses surrounding lands legally owned or traditionally occupied by the Mapuche to the south of the Bío Bío River. Added to these are the salmon farming projects in Andean valleys south of the Bío Bío, most of which are in rivers which form part of the ancestral and current territory of Mapuche communities, and which contaminate water courses, affecting their material and cultural survival. In La Araucanía alone it is estimated that there are more than 100 fish farms, 7 of which are on an industrial scale.<sup>80</sup> As of today, projects like these have not been reviewed for compliance with the stipulations of Convention 169, nor have they led to benefits for the communities or provided compensation for damage they have caused.

One of the least effective – and therefore most scrutinised – applications of ILO Convention 169 has been the passing of a law concerning the consultation of indigenous peoples, particularly with regard to the administrative processes involved in the approval of investment projects likely to affect them directly. Supreme Decree N° 66 of the Ministry of Social Development came into effect in 2014 and “regulates the process of indigenous consultation.” These regulations lowered the standards of ILO Convention 169, limiting the requirement for consultation to administration measures and legislative programmes which have a “direct” and “significant” impact on indigenous peoples, as well as those projects requiring environmental impact studies. This was in contrast to the wording of Convention 169 which established that this

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<sup>79</sup>Peña, Nicole, “Gobierno prepara nuevo subsidio forestal que excluirá a grandes empresa forestales,” *La tercera*, 10th July 2016, <http://www.latercera.com/noticia/negocios/2016/07/655-688243-9-Gobierno-prepara-nuevo-subsidio-forestal-que-excluire-a-grandes-empresas.shtml>. Law 20,488 was passed in 2011 extending the incentives of DL 701 for an additional two years, and offering a 90 per cent subsidy to small forestry companies, 75 per cent to medium-sized companies, and 50 per cent to large companies.

<sup>80</sup> Agencia de Desarrollo Araucanía, Informe Sectorial 2013, Caracterización del sector acuícola de la Araucanía, 2013.

right would exist in the case of "likely direct impact". The regulations also specified that the consultation would be considered complete even in the event that no agreement or consent was obtained, or in the absence of a culturally appropriate plan of action.

In parallel with Supreme Decree N° 66, the System for Environmental Impact Evaluation – Supreme Decree N° 40 – establishes standards for the consultation of indigenous populations regarding investment projects with environmental impact. It limits the standards put in place by ILO Convention 169 relating to indigenous consultation, making the latter applicable only to high impact projects as evaluated by the Environmental Impact Study (EIA). It determines that there is likelihood of impact when projects require the resettlement of human communities (article 7), generate significant alteration of way of life and customs of human groups (article 7), are located in or close to indigenous or environmentally valuable territories (article 8), or represent an alteration of cultural heritage (article 10). Finally it includes a regulation (article 3 modification 1) restricting the need for environmental impact evaluation – and thus indigenous consultation – to forestry plantations with a single area of continuous final harvest or clearcutting regeneration in excess of 500 hectares annually (500 ha/year). This situation never occurs.

All of the above has given rise to a legal situation in which investment project processes either do not involve consultation, or are moved forward against the wishes of the affected communities, undermining Convention 169.

### Unrest, Social Protest and State Response

Mapuche protest has been growing in response to the loss of resources – including water and native forests – being suffered by many communities as a consequence of the forestry plantations, hydroelectric projects and salmon farms operating without the consent of the communities directly affected. The limited ability of CONADI's land policy to respond to this growing protest, along with the political exclusion and economic marginalisation which has been taking place, has sparked increasing Mapuche social unrest.

Since the mid-1990s this protest has occurred on multiple fronts, among them the outbreak of conflict caused by CELCO in the Bay of Mehuín, the burning of three lorries owned by Forestal Arauco in 1997 in Lumaco, and the occupation of Forestal Mininco's Fundo el Rincón estate at the end of the 1990s. These protests have grown steadily in scale, with the forestry

companies being one of the most significant targets, given the installation of forestry operations in Mapuche territory, with extensive environmental and sociocultural effects on the lives of the communities. On this subject, Adolfo Millabur recalls that in his youth in the 80s, when the forestry industry began to establish itself in Lleu Lleu, Arauco Province:

Each summer, every time we saw clouds of smoke around the Lleu-Lleu Lake, in the basin of the Lleu-Lleu Lake, my dad said to me "they're burning the trees, the forestry company. They're here now." This is what I heard. I always saw them burning the native forest and they caused lots of fires which were accidental in inverted commas, but in truth they were started deliberately in order to replace what was there with the single-crop cultivation of pine and eucalyptus that we see today. In those days, in the 80s, I felt that the landscape was being changed. First of all by Pinochet, because CONAF transferred a huge amount of land – which had been going through the process of land reform – to private companies, and then these forestry companies started setting up their operations and destroying what was left of the native forest, replacing it with pine and eucalyptus.<sup>81</sup>

Another Mapuche leader, José Huenchunao, talking about the impact of forestry expansion over the last two decades says:

The forestry companies cause environmental imbalance that directly affects aspects of our culture; for example, the presence of so much pine and eucalyptus mean that the herbs and plants that we need to make Mapuche medicines are not available.<sup>82</sup>

Consequently recovery of Mapuche lands and the effectiveness of the protests of recent decades would result in the improved well-being of the population:

With the withdrawal of the forestry companies, many areas are seeing a rebuilding of the social fabric: a rebuilding of the territory. In fact the communities are being reborn. There is more food available, because the people are able to keep more animals, drink milk and eat meat. Having the land abandoned by the forestry companies, people can acquire more products, cereals, wheat. Here we live off agriculture so the presence of forestry is a hindrance, but when we are able to start from scratch, as it were, or get these territories back for the Mapuche communities, one sees an enormous improvement.<sup>83</sup>

Regardless of this, and faced with mobilisation towards recovery of usurped lands and the improvement of living conditions for the Mapuche population through addressing the effects of single-crop cultivation, the forestry companies have maintained a similar response to that of

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<sup>81</sup>Adolfo Millabur, interview led by Rosamel Millamán.

<sup>82</sup> José Huenchunao, interview led by Rosamel Millamán.

<sup>83</sup>José Huenchunao, interview led by Rosamel Millamán.

consecutive democratic governments. On one hand they have played a lead role in developing a strategy of criminalisation and repression of Mapuche political protest, and on the other they have undertaken a series of measures to reset their relationship with the communities, dampen the effects caused by their plantations on people's lives, and contain the protests of their "neighbours".

In terms of criminalisation and repression, companies have looked to the State to take action against activities seen as attacks on "their property", portraying themselves as "victims". To facilitate prosecution, the State has invoked common crimes from the Criminal Code to incriminate the Mapuche (arson, conspiracy, threats and livestock rustling) and emergency laws such as the Anti-terrorism Law or the Domestic Security Act. One of the most emblematic cases of criminalisation of indigenous protest is that of Forestal Mininco's conflicted Poluco and Pidenco estates, in which anti-terrorism law was applied against five Mapuche leaders, sentencing them to a prison term of 10 years and one day. Another high-profile case involving the same forestry company is that of the *longkos* Aniceto Norin, Pascual Pichun and Patricia Troncoso Roble, concerning a fire occurring in the Nanchahue y San Gregorio plantation. As their participation in the events could not be proved, they were charged with conspiracy to commit terrorism-related arson. This conviction saw them sentenced to five years and one day in prison. The shocking case must also be mentioned of a young boy called Juan Luis Llanca, who was convicted of terrorist arson on the El Ulmo estate – also property of Forestal Mininco – on 15<sup>th</sup> January 2003. He was just seventeen years old, and therefore not even of legal age. Perhaps the most appalling is the case of Alex Lemun, again a boy of seventeen, who was shot and killed on Forestal Mininco's Santa Alicia estate as he participated with his community in a symbolic occupation of land.<sup>84</sup>

The key role of the forestry companies in the criminalisation and repression of Mapuche communities who make claims to usurped land has also been evidenced in recent years by the significant increase in police presence around estates and other interests belonging to forestry companies. This can be seen in the following table that summarises police force expenditures in Arauco, Malleco and Cautín:

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<sup>84</sup>Aylwin, Yáñez and Sánchez (2013: 18-19).

**Table 1: Police expenditure per force (CLP)**

<b>Year</b>	<b>Arauco</b>	<b>Malleco</b>	<b>Cautín</b>
2006	283,834,159	333,014,293	717,552,046
2007	314,342,177	372,806,925	659,801,376
2008	313,629,649	444,087,677	867,080,709
2009	279,136,084	443,829,430	846,472,793
2010	327,599,594	487,695,876	695,262,128
2011	335,800,563	463,048,064	768,305,522
2012	426,728,283	552,875,115	940,174,850
2013	726,314,168	605,351,867	881,386,061
2014	1,462,487,754	810,915,850	1,127,407,389
2015	2,253,790,202	732,479,304	1,036,497,540

Source: Carabineros de Chile

From 1998 onwards, the forestry companies began to take measures to address conflicts with the communities, dampen the effects of their plantations on people's lives and contain the protests. Presented as Corporate Social Responsibility or "good neighbour policies", forestry companies unveiled a number of "support" programmes for the communities bordering their estates. These included provision of educational materials for schools, grants for students, sports equipment for football clubs and reforestation using native species, as well as in some cases the promotion of aspects of Mapuche culture and identification, branding them as "marketable goods" on which families could base initiatives of "identity entrepreneurship".

The implementation of these "good neighbour" initiatives started to take off as a result of the certification processes that these companies were required to undertake in order for their produce to reach international markets. However companies' ability to obtain this certification was also greatly affected by environmental, social and indigenous organisations. In 2002, numerous groups signed a letter proposing an embargo on Chilean exports to the United States, and in 2011 Mapuche communities and organisations sent a letter to FSC International reporting on the damage that companies like Mininco and Arauco were having on Mapuche life. Added to these are political conditions affecting companies and their relationships with communities, such as the approval of ILO Convention 169 in 2008, as well as the judicial ruling against Celulosa Arauco y Constitución (Arauco) in 2013 which, following nine years of investigation, charged the

company with responsibility for the environmental disaster that had occurred in the Cruces River, caused by the Valdivia Pulp Mill.

An assessment of the forestry companies' attempts at repression and being "good neighbours" shows that none of them have managed to deal with the roots of the conflict that shape these relationships. This is not only because they are far from addressing the conditions of inequality, impoverishment and misery in which the communities live as a result of single-crop cultivation, but also because they do not address the oppressive structures that form the foundations of their operations and which give the political action of the Mapuche in exercising their territorial rights such a central position. Juan Pichun, *longko* of the Temulemu community, is the son of Pascual Pichun, the previous *longko* in whose favour the Inter-American Court of Human Rights recently ruled in a claim against the Chilean State, for the violation of his human rights during repeated trials based on laws surrounding terrorist activity. He states:

There is not one forestry company which has not usurped lands which legally belonged to the Mapuche. Historically, all this territory belonged to the Mapuche, and so there is no historical evidence that the forestry companies arrived with a sack full of earth, or a lorry load of earth, and created the land, or that the *latifundistas* did either. All of the forestry companies are part of this great territorial conflict.<sup>85 86</sup>

The strategy of criminalising acts of social protest, many of which have been against the forestry companies, is visible in State criminal prosecution figures. Between 2009 and 2013, 80 Mapuche individuals accused of participating in social protests constituting crimes have been imprisoned in State facilities. Since then there have been eight criminal cases, through which a hundred people from the Mapuche population have been charged with crimes of a terrorist nature. Of these eight cases, around four have been through the Courts of Justice: three resulted in the acquittal of those charged, and in the other, four of the nineteen people were charged with common offences.<sup>87</sup>

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<sup>85</sup>Juan Pichun, interview led by Rosamel Millamán.

<sup>86</sup> When Mapuche people talk of lands legally belonging to them, they refer not only to Chilean laws and the *Títulos de Merced*, but also, to their own customary laws. The lands of a given *Lof Mapu* generally fall into this latter category.

<sup>87</sup>Observatorio Ciudadano y otros, *Informe de organizaciones de sociedad civil y de pueblos indígenas en relación al Sexto Informe Periódico de Chile al Comité de Derechos Humanos de Naciones Unidas*, June 2014.

It is a reality which has incited considerable concern over human rights.<sup>88</sup> A recent report following the visit to Chile of United Nations Special Rapporteur on Promotion and Protection of Human Rights while Countering Terrorism, Ben Emmerson, states that the Mapuche protests represent the majority of cases dealt with by the anti-terrorism law, a law which Mr Emmerson maintains does not guarantee the right to due process. Another issue is the practice of frequent raids on Mapuche communities and detention of suspects, together with the almost complete lack of responsibility accepted for the excessively violent crimes against the Mapuche during these raids.<sup>89</sup> More recently in 2014, the Inter-American Court of Human Rights (IACHR) also voiced concern regarding the application of this emergency legislation – the anti-terrorism law – against Mapuche people, including their traditional leaders, in the context of social protest primarily against forestry companies. In its sentencing of the *Norín Catrimán y otros vs. Chile* case in 2014, the IACHR convicted the State of Chile of violation of legality and presumption of innocence, legal safeguards and personal freedom in the case of eight Mapuche convicted by this legislation.

Internally, the National Institute of Human Rights (INDH) recognises the critical situation in La Araucanía and expresses its concern over the climate of confrontation and violence, and in its 2015 Annual Report states:

La Araucanía is without doubt the region with the highest rates of violence occurring in the context of intercultural conflict, both against the Mapuche population and against other non-indigenous populations in the region.<sup>90</sup>

The INDH has also drawn attention to the use of force in criminal prosecution and police intervention against members of the Mapuche population, stating its concern over the fact that this has been allowed to happen with impunity.<sup>91</sup> More recently, it has called for the State and

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<sup>88</sup>The Human Rights Committee, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture, all of which are managed by the United Nations.

<sup>89</sup>Naciones Unidas, *Informe del Relator Especial sobre la promoción y protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo*, Ben Emmerson. *Misión a Chile*. A/HRC/25/59/Add.2, 14th April 2014.

<sup>90</sup> Instituto Nacional de Derechos Humanos, *Informe Anual Situación de los Derechos Humanos 2015*, INDH, p. 202, available at: <http://www.indh.cl/informe-anual-situacion-de-los-derechos-humanos-en-chile-2015>

<sup>91</sup> *Ibid.*



society as a whole to face up to the historical debt owed to the Mapuche people as the only way of confronting the conflict.

It is vital that as a country we accept responsibility for the historical debt that we owe to the Mapuche people, and that the State respects and guarantees their individual and collective rights. The absence of an efficient policy on land restitution or other compensation mechanisms, the absence of meaningful autonomous space for the communities to decide their development priorities, the lack of political representation, effective participation mechanisms in general, and constitutional recognition of the multi-ethnic nature of our society, and the poverty which disproportionately affects those that make up the Mapuche nation are, among others, unresolved issues whose resolution should be considered a priority.<sup>92</sup>

Many governments have tried and failed to promote dialogue with the Mapuche with a view to confronting and resolving this growing conflict. From the Nueva Imperial Agreement of 1989, through the dialogue promoted by President Frei at the end of the 90s, the Historical Truth and New Deal Commission created by President Lagos and at the start of the 2000s its link to the Commission for Mapuche Autonomy (COTAM), to the dialogues opened by President Bachelet during her first administration and those endorsed by President Piñera during the bicentenary: all have failed in their attempt to reach lasting agreements, with legislative and public policy changes that generate a new deal as demanded by the Mapuche.

It is clear that these initiatives have failed not only due to the State's lack of political will to address the structural problems which provoke Mapuche protest – in particular those relating to land ownership and the imposition of investment projects without adequate consultation or their prior free and informed consent – but also its failure to effect the legal and political changes necessary for compliance with international commitments. One of the factors that has clearly hindered political agreement between the Mapuche world and the State is the large number of organisations representing the Mapuche and their numerous differing positions and demands. These make it difficult to reach any kind of agreement.

In her government agenda, President Bachelet granted involvement of the indigenous population in the drafting of a new Political Constitution, pledged to promote the recognition of

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<sup>92</sup> Instituto Nacional de Derechos Humanos, Public declaration made by the INDH regarding intercultural conflict in La Araucanía. 1st June 2016, available at [www.indh.cl](http://www.indh.cl)

the collective rights of these peoples and a multicultural State, offered to establish statutes of autonomy on a territorial and local level, and promised to respond to outstanding indigenous land restitution claims, protecting their rights over their land and ancestral resources.<sup>93</sup>

In January 2016, President Bachelet presented plans for the creation of a Ministry of Indigenous Affairs and a National Council of Indigenous Peoples to the National Congress. Even if they could be focused on creating a system which overcomes the failings – according to multiple studies – of CONADI and provide for greater participation for indigenous peoples, these entities alone will not resolve the conflict with the Mapuche. They must be accompanied by a broader strategy of legal and political transformation.

In the regional context of La Araucanía, Mapuche lawyer Francisco Huenchumilla, who had previously expressed concern over the concentration of property in the hands of forestry companies, was named as Intendant (or representative). On taking up his position, he asked for the forgiveness of the Mapuche for the appropriation of their lands at the hands of the colonists who aggressively established themselves in the region, and on the part of the State.<sup>94</sup> Intendant Huechumilla, however, was replaced in 2015 by Andrés Jouannet, under whose authority the government has focused police attention on the conflict in Mapuche territory, increasing the presence of *carabineros* and armoured vehicles in La Araucanía. In fact, an Interior Ministry report of March 2016 documented that the number of police agents in La Araucanía had increased from 612 in 2014 to 1785 in 2016. The number of police vehicles in the region had increased from 96 to 146 over the same period, and the number of arrests over participation in violence relating to the Mapuche cause had increased from 194 in 2014 to 221 in 2015, and to 49 in the first two months of 2016.<sup>95</sup>

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<sup>93</sup>On this subject, the *Programa de Gobierno de Michelle Bachelet 2014-2018* (Michelle Bachelet Government Agenda 2014-2018) indicated that: "We will look for mechanisms other than the purchase of land in order to satisfy outstanding claims. The process of indigenous land restitution will be fulfilled and resources will be provided to protect the rights of the Peoples over their lands and ancestral resources. All land purchase commitments will be honoured, with technical and productive support being provided to the communities." See <http://michellebachelet.cl/programa/> p. 170 and onward.

<sup>94</sup>"El intendente Huenchumilla pidió perdón a Mapuches y colonos de La Araucanía". See: <http://www.soychile.cl/Temuco/Politica/2014/03/12/235984/En-su-primer-dia-como-intendente-Huenchumilla-pidio-perdion-a-Mapuches-y-colonos-de-La-Araucania.aspx>

<sup>95</sup><http://www.latercera.com/noticia/nacional/2016/03/680-672467-9-carabineros-casi-triplico-su-dotacion-en-zonas-de-ataques-en-el-sur-desde-2014.shtml>

Another thing to be borne in mind is the motion approved as the Ley de Presupuesto (Budget Act) of 2016 which incorporated a clause applying to the budget of CONADI stating that land purchases on behalf of communities that have employed non-institutional routes for their restitution will be restricted.<sup>96</sup> This is intended to deter occupation of estates – many of which are the legal property of forestry companies – as a means of exerting pressure for the purchase of reclaimed land by CONADI. The effectiveness of the measure is doubtful, however, judging from information on continued occupation of forestry company estates in the districts of Ercilla and Tirúa, among others, following the passing of this amendment to the budget law.

A roundtable in La Araucanía – established in 2016 by the government and overseen by the Bishop of La Araucanía – called the Presidential Advisory Committee for La Araucanía, has not generated great expectations for a global approach to the conflict situation in the region. Contrary to the rights of indigenous peoples of self-representation, participants in the Committee were appointed by the government. This in part explains why many of the Mapuche invitees have refused to participate in this round table. Other Mapuche organisations, such as those in conflict with forestry companies, were not invited to participate. All of this suggests that there will be no change in the conflict situation of recent years unless all relevant parties are involved. Given that forestry is the most important economic sector in La Araucanía, it is in the interest of the forestry companies to work with other sectors, taking the actions necessary to help eliminate the roots of the conflict.

## Conclusions

The historical overview presented in this Chapter provides the context to understand the local histories in the following Chapter. The account shows that the military conquest of La Araucanía took place so recently, that an elderly Mapuche of 80, born in 1935, could as a child have heard stories told by his grandfather (born in 1860) about sovereign Wallmapu. Memory of colonial appropriation and reduction is fresh in the minds of the Mapuche. The resulting suffering has been ongoing, and collective efforts to recover the territory have emerged and re-emerged,

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<sup>96</sup>[http://www.senado.cl/presupuesto-2015-piden-priorizar-restitucion-de-tierras-a-comunidades-que-han-confiado-en-el-camino-institucional/prontus\\_senado/2014-10-24/161336.html](http://www.senado.cl/presupuesto-2015-piden-priorizar-restitucion-de-tierras-a-comunidades-que-han-confiado-en-el-camino-institucional/prontus_senado/2014-10-24/161336.html)

while the structural conditions of inequality, oppression and contempt prevail and indeed worsen to this day due to the ecological effects of the expansion of single-crop forestry.

The Chilean State has been the principal architect of these conditions, from the military conquest and the granting of lands taken from the Mapuche to Chilean and foreign colonists, to the vigorous encouragement of the forestry industry from the 1970s to the present day. In this sense, although the State has promoted exotic species reforestation since the beginning of the 20<sup>th</sup> Century, and even bearing in mind the brief respite afforded by the land reform, the vast majority of its policies have categorically denied the historical debt owed to the Mapuche, as well as the ongoing colonial situation. The modern forestry industry has turned a blind eye to these historical circumstances and relationships, installing itself in appropriated Mapuche lands, taking maximum advantage of all the help offered by Decree Law 701 and protecting its plantations by means of police force wherever convenient, thus perpetuating the history of colonial violence against the Mapuche.

Ongoing conflict between the forestry companies and Mapuche communities and organisations is the logical result of this history. Chile's transition to democracy provided an opportunity for organisation and protest, and kindled hope among the Mapuche that they might receive a solution to their claims, but the provisions made by the State have been weak and inadequate, creating optimal conditions for the development of an economic model based only on the accumulation of wealth and the perpetuation of poverty and historical inequality. The forestry industry is the clearest example of this accumulation of wealth, in stark contrast to the poverty and inequality of the Mapuche communities. It seems highly unlikely that these companies, and the single-crop forestry model that they follow, would have grown so successful without the territorial appropriation, state support (under both dictatorial and democratic regimes), the absence of strict regulation of the ecological effects, and the absence of prosecution of human rights violations against the Mapuche, which this chapter has documented.

In this new century the basic premises that the State has established through CONADI for the "restitution" of Mapuche territory – the *Títulos de Merced* and the lands granted during the land reform – are not sufficient even to begin to address this historical challenge. Into this

scenario enters FSC certification, which proposes to mediate and improve relations between the Mapuche community and the forestry industry, but in reality falls short in terms of addressing the scale and reach of the conflict. Even if companies achieve FSC certification by improving their relations with some communities, these improvements appear to be neither widespread nor sustainable.

This is not only due to the fact that Mapuche land rights activists view the FSC seal as generally ineffective, but also because widespread protest for territorial rights has had an important ideological effect on Mapuche youth. The process of territorial restitution has entailed the recuperation of collective memories of ancestral lands, and of the State passing appropriated Mapuche land on to colonists, who in turn sold them off to forestry companies. This process of recovering historical memory also involves sharp critique of reduction policies implemented at the beginning of the 20<sup>th</sup> Century, and demand for recuperation of the Mapuche territory as it existed before the Chilean State entered to seize control. Local histories of the *lof mapu*, presented in the next Chapter, form a crucial part of this broader panorama.

## Chapter 3 – The history of the *Lof Mapu* in Four Localities

The greatest conceptual challenge for understanding and defining indigenous recognition – not only in Chile but throughout America as a whole – is how to thoroughly take into account the profound effects of violence, appropriation of land, dispersion, relocation, demoralisation, resistance, subjugation, pragmatic adaptation and all of the other forms of disruption caused by colonialism. This requires thorough documentation of how things were before and after, what the colonisers did, and with what intentions and results, not with the aim of returning to some "bygone age" but with a view to laying the foundations for a just future. In order to do this, it is crucial to make an account of history from a Mapuche perspective – experiences, memories, meanings – and appreciate the subtle relationship that exists between what happened in the past, and future aspirations. As we begin this exercise in the specific localities, the first characteristic that becomes apparent is the story's profound heterogeneity. The Mapuche society of "before" was hugely diverse, military domination and colonialism took a variety of forms, and the resistance (combined with pragmatic adaptation and sometimes resignation) all took place, especially after the military conquest, in a different way in each place. It is not a case of seeing – to use the example of the key element of this report – "one" *lof mapu* which survived complete and intact, as a point of reference for territorial claims over the decades. On the contrary, the *lof mapu* is an amalgamation of principles and practices, with historical roots and myriad expressions, applications and interpretations in the present day, which is desperately struggling to embody demands for the restitution of a dignified life on a local level. The challenge of profiling the *lof mapu* from the Mapuche perspective is complex enough, but the mandate of this study and the political reality of the claim, make it greater still: how to describe it in such a way that it can be understood by *Wingka* society, the Chilean State and the FSC?

Our strategy for explanation is to use each of the four chosen localities to make an in-depth exploration of the historical processes which have contributed to the emergence of the *lof mapu* as an emblematic object of the present day claim. In part, this strategy is linked to a practical consideration: each territory comprises a whole world of details and complexities which would be impossible to communicate within the space of a few pages. To fit the information into

a single chapter, it was necessary to summarise.<sup>97</sup> There is, however, an analytical reason too: this strategy permits us to reach a much greater depth of understanding of each of the four phases of appropriation. By describing the process of early colonisation in the Lleu Lleu territory, for example, we can appreciate in detail the dishonest appropriation mechanisms and the racial premises which were used to justify the subjugation of the Mapuche. From this reading it will also become clear that the *Títulos de Merced* – far from being a bountiful compensation policy – involved grants of the least desirable lands that were left over once the colonisers had taken what they wanted.

The following section on Lumaco, in turn, allows us to comprehend the significance of the period of land reform and land counter-reform for the Mapuche, including their reaction to the first news of the new policy, and the opportunity they perceived to recover their ancestral lands, how they organised themselves to make the recovered estates productive, and the brutal reversal of 1973 which saw them lose almost everything.

In Temulemu the story focuses on a third phase, which is even more dramatic. With the return to democracy, the Mapuche of Temulemu moved to recover ancestral lands, pitting themselves against a government which, contrary to their pledges, continued applying policies and laws that dated back to the dictatorship in order to quash these claims. We argue that the ruling in favour of Temulemu by the Inter-American Court of Human Rights, although primarily focused on the illegitimate application of the Anti-Terrorism Law, also provides backing for the underlying principle of ancestral lands and the recovery of the *lof mapu* precisely because the State grants lands to the community which have to do with neither the *Títulos de Merced* nor the land counter-reform.

Finally, by presenting the case of Mañiuko we explain in intricate detail the *lof mapu*: how the people understand the concept, how it came to the attention of our investigation, how it represents the most local expression of the Mapuche territorial claim, and how it serves as a key element for rethinking the failed process of FSC certification in Mapuche areas.

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<sup>97</sup>This allows for the possibility of a future, more complete version of the local history to be produced, based on the research. In fact, the team has agreements with the four *lof mapu* for a "reimbursement" of this nature.

Use of this explanatory strategy requires us to place less emphasis on the specific nature of present-day demands in Lleu Lleu, Liukura-Reñico and Temulemu, although of course this does not mean that there is a lack of vigour in the demands of these places. To give one example, the district of Tirúa is one of the most active areas in terms of the Mapuche movement for land restitution and open conflict with forestry companies. In numerous other localities within the 8th and 9th Regions of Chile, we find expressions of the *lof mapu* as a basis for current processes of conceptualisation and action aimed at restitution of territory. We include preliminary cartographic representations of the *lof mapu* that correspond to these three localities. However, the Mañiuko *lof mapu* best serves to explain current demands, and by extension, offers an example of how the FSC could incorporate this understanding into the definition of their standard, in particular Principle 3 (concerning indigenous rights) and Principle 2 criterion 2.3 ("disputes over tenure claims and use rights"). As we argue throughout this report, in the absence of a concept like the *lof mapu* which brings the FSC "back down to earth" to confront the cultural, political and legal realities of Mapuche territorial demands, the FSC standard will continue to lack legitimacy in terms of indigenous rights in Chile, with greater repercussions in the global arena. Beyond the FSC we note that the Mañiuko *lof mapu* has a good standing for adjudication in national and international courts as an example of "traditionally occupied and used" lands which have been denied.

## Colonial Appropriation and the *Títulos de Merced* in Lleu Lleu: Origins of Dissent

### *Ancestral Lands on the Arauco Coast*

During the colonial period, in the section of Mapuche territory located along the coast to the south of the Bío Bío River, there was a system of political territorial division in place corresponding to the main Mapuche chiefdoms,<sup>98</sup> with the main chieftain – or Ñizol Longko – ruling everything from the Lebu River to Tirúa, and from Huentelolen to Porma. The Lleu Lleu

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<sup>98</sup>Namunkura was the Longko or main leader in Tukapel, Antuwen was Longko of Elikura, Antullen was Longko of Tromen, Trarupil was Longko of Peleko, Kallfulao was Longko of Nangalwe, Alkamañ was Longko of Llonkao, Payllaw was Longko of Tirúa, Waykiñir was Longko of Yani and Millan was Longko of Alberrada. See: Marimán, Pablo & José Aylwin, in Leyva, Xochitl et al. coord. (2008) *Las identidades territoriales mapuche y el Estado chileno: conflicto interétnico en un contexto de globalización*. Gobernar en la diversidad: Experiencias indígenas desde América Latina. Hacia la investigación de co.labor. Ciesas, Mexico, pp.111-150.



Lake and its surrounding lands all the way to the sea formed part of the ancestral territories of the Mapuche families. It was a densely populated area during the Pre-Hispanic period. This is evidenced by the fact that Pedro de Villagrán, Captain and *Maestre de Campo* of Pedro de Valdivia, received for his services “(...) an Indian *encomienda* called Tirúa, given by governor Valdivia with twenty thousand Indian subjects”<sup>99</sup>. This number of workers can only be explained by a high Mapuche concentration in the area.

Another record which references the Mapuche population in the area can be found in the Parliament of Yumbel from 16<sup>th</sup> December 1692, in which there is mention of the following chieftains: Pillantur, Amali, Paillante and Caiancura of Lleu Lleu, Penipillan and Categuaguelen of Quidico, and Amoibueno, Gueracan, Marilebu, Cincomalco, Guentelican and Lleubalican of Tirúa, among others.<sup>100</sup> This shows the political importance of the Mapuche in the area, as well as the fact that they represented a large number of families. These authorities were still acknowledged by Chilean military authorities even two centuries later. In 1869, Lieutenant Colonel Cornelio Saavedra described how:

The coastal tribes in the area lying to the west of the Nahuelbuta range and between Imperial to the south and the Lebu River to the north, comprise a force of a thousand spears who obey the chieftains Mariñan, Porma, Paillao, Hueraman, Cheuquean, Lincognir, Calvulao, and others of lesser importance.<sup>101</sup>

These authorities’ descendants make up the current Mapuche families in the district of Tirúa, among them the families and communities living near to the Lleu Lleu Lake. According to the account by the *longko* of the Choque community, Juan Carilao, they made up a *lof* that:

(...) spanned from Lleu-Lleu – the Lleu-Lleu Lake – to the Tirúa River, and all the way from the sea to the mountains. It was huge! It went further than the eye could see. 'My territory reaches all the way to here, my *lof* reaches all the way to here', is what the ancient ones used to say.<sup>102</sup>

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<sup>99</sup>Mariño de Lovera, Pedro, Mariño de Lovera, Pedro (1528-1594). *Crónica del Reyno de Chile*, Colección de Historiadores de Chile, Tomo VI. Santiago, 1865 [1595], page 297.

<sup>100</sup>Record of the Parliament celebrated with the Indians in Plaza San Carlos de Austria, commonly known as Yumbel, outside the walls, in the countryside, on 16th December 1692. Leonardo León, “*El pacto colonial hispano araucano y el parlamento de 1692*”, Nutram N°30, Ediciones Rehue, Santiago, 1992/4

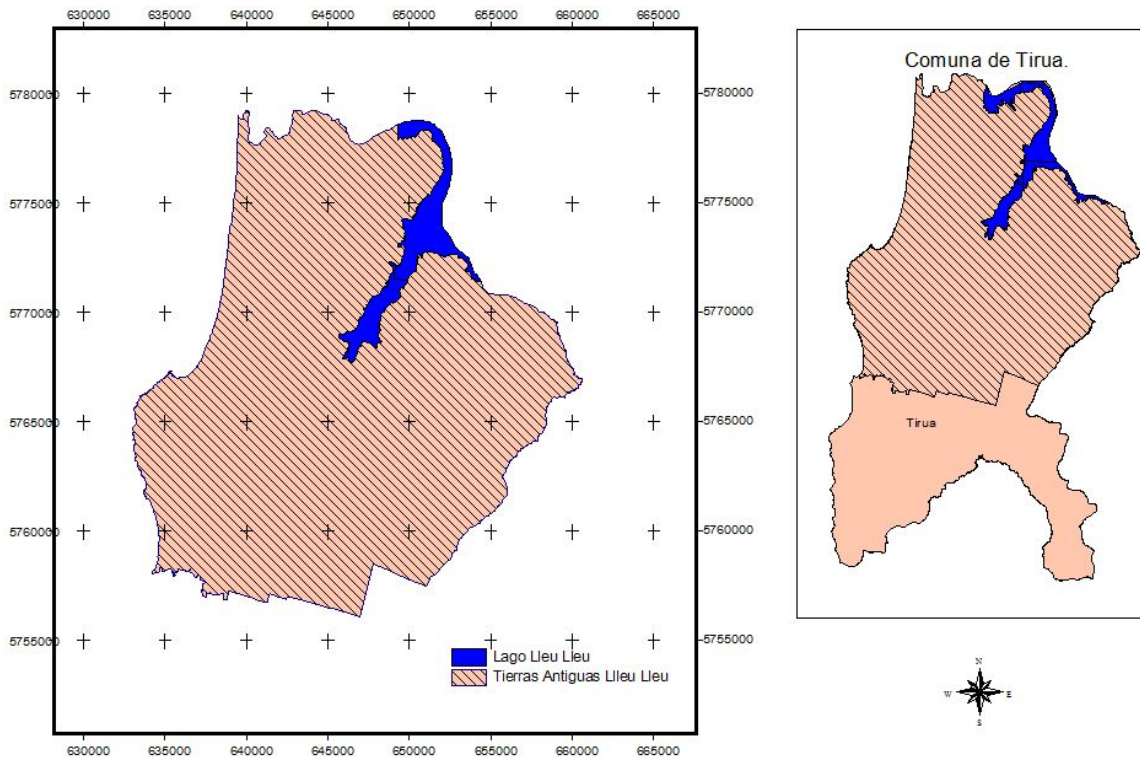
<sup>101</sup>“*Documentos relativos a la ocupación de Arauco*,” Cornelio Saavedra, Imprenta de la Libertad, Santiago, 1870.

<sup>102</sup>Longko Juan Carilao, in “*Las Tierras Mapuche del Lleu Lleu y las comunidades de Choque: Informe pericial histórico territorial*,” Martín Correa, 2010.

The Mapuche population was scattered so widely that in 1849, Interior Minister Antonio Varas stated:

(...) the subdivision of Arauco, lying between the coastal mountain range and the sea, and between Laraquete and Cautín, is populated by natives in all directions. There are natives on the shores of the sea and in the central area. Only the village (Arauco) and its environs are completely occupied by Spaniards, but the natives are there as soon as you step out any further.

Map 9: Lleu Lleu Lof Mapu



### *Privately Owned Property in Lleu Lleu and the Mapuche Territorial Reduction*

In territorial terms and prior to the military occupation of La Araucanía in the mid-1850s, there was a process of what has come to be known as *spontaneous colonisation* taking place along the coast of Arauco. It saw the arrival of a large number of Chileans from across the Bío Bío River – the Mapuche frontier – and their appropriation of indigenous lands. Around three thousand people entered this way into the territorial space lying between the Bío Bío River to

the North, the Malleco River to the South, the Andes mountain range to the East and the Nahuelbuta range to the West<sup>103</sup>, furtively taking possession of broad territorial areas as documented in an account by Intendant Bascañán Guerrero, who sent a letter to the Interior Minister reporting that:

(...) the natives, as vendors, were demanding that there be no sale, but instead a simple renting of land. In other cases they claimed that the land sold had not really belonged to the seller, or argued over how large or small the piece of transferred land was. Most recently they are making a lot of noise about the price of the property being transferred.<sup>104</sup>

Alongside this account, Colonel Cornelio Saavedra expressed his disapproval of the process:

(...) because generally it is disreputable people who request pieces of land, and by their conduct they damage the honourable inhabitants and principally the natives. These colonisers strip the Indians of all of their property, and as they frequently enter into relations with criminals who have escaped justice, they frighten away the hard-working and honourable population. It would therefore be preferable to bring a better class of people into the indigenous territory, who would have a superior work ethic and more interest in the progress of industry. This class of colonist should primarily be from abroad.<sup>105</sup>

Alongside this "informal" occupation of La Araucanía by Chileans came the first state occupation, by means of legislation through which the State "nominally" incorporated the territory of the Mapuche as a province of the Chilean territory, putting it under its jurisdiction and regulating property acquisition activities within the Mapuche territory.

This "administrative" action saw the creation of a series of new laws, the first of which was the Law of 2<sup>nd</sup> July 1852 which created the province of Arauco, comprising:

(...) the territories belonging to natives situated to the south of the Bío Bío River and to the north of the province of Valdivia(...), [who will] come under the jurisdiction of the authorities and regime determined by the President of the Republic once their specific circumstances have been taken into consideration (...) for the best governance of the

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<sup>103</sup> Leiva, Arturo, 1984. "El primer avance a la Araucanía, Angol 1862"; Ediciones Universidad de la Frontera, Temuco, page 30

<sup>104</sup> Leiva, Arturo (1984:37).

<sup>105</sup> Saavedra, Cornelio (1870:164)

frontier, for the most effective protection of the natives, to promote their expeditious civilisation, and to regulate contracts and commercial relationships with them.<sup>106</sup>

This law comprised several elements: the recognition of the existence of a '*native territory*' of defined size and borders, the fact that this indigenous territory is annexed '*on paper*' to the Chilean State, and the fact that the President of the Republic acquires specific responsibility for the protection of the inhabitants, the '*promotion of their expeditious civilisation*' and, above all, to '*regulate contracts and commercial relationships with them*'. The latter was the most important from the point of view of central government, requiring a series of formalities in the contracts made within the territory.

One year later, in 1853, a new decree was passed laying out requirements for the validity of contracts given for indigenous lands, such that:

(...) a superior authority protects vendors against any abuse which could be committed against them in order to secure the acquisition of their lands, and provides guarantees to the purchasers against protest or objections over lack of payment or lack of knowledge which the natives sometimes make as a result of quarrels and demands emanating from the irregular and insubstantial nature of the properties within those territories.<sup>107</sup>

It then indicates that sales, rental and/or pawn contracts of longer than five years concerning indigenous lands or property located within indigenous territory must be verified before the Intendant of Arauco and/or the respective Governor of the indigenous community to which the territory belongs – specially commissioned by the Intendant – with any contracts that do not comply with this being nullified.

Although each and every one of these decree laws acknowledged the abuses being committed against the indigenous population, it is clear that the central objective was the protection of State interests, given that they were in regard to state-owned lands and declared the stipulations of the State itself, rather than the territorial rights of Mapuche families.

Alongside the spontaneous occupation of the colonists and this nominal occupation through legal means, a third route appeared during the 1860s: military occupation, known as the "Pacification of La Araucanía". From 1862 onwards, the Chilean State began the military

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<sup>106</sup>Ley de 2 de Julio de 1852, article 1 and onward.

<sup>107</sup>Decreto de 14 de Marzo de 1853.

occupation of La Araucanía, and on the "Lower Border" or *Lafquenmapu* founded the fort of Lebu and the military outposts of Quidico and Tirúa, followed by the fort of Cañete in 1866. By 1869 all of the Lafkenche territory had been isolated from the rest of La Araucanía through the construction of a chain of forts and strongpoints in the passes of Contulmo, Cayucupil and Elicura of the Nahuelbuta Range, built in order to:

(...) separate the coastal tribes from those of the central valley and protect Cañete's communications with the posts of Angol and Purén (...) With the native population now unable to communicate with the central valley, they have submitted to our authority.<sup>108</sup>

As occupation of the Lafkenche territory (the Arauco coast) advanced, numerous decrees were passed paving the way legally for this vast territory to enter into the hands of private individuals.

Meanwhile, whereas early legislation oversaw the intervention of the State in *native territory*, in 1866 there was a fundamental change made to the terminology. The term *native territory* was replaced by *colonisation territory*, making it clear that the occupied lands would start to be distributed among Chilean and foreign colonisers. Later a string of legislation emerged, the most noteworthy of which being the Law of 4<sup>th</sup> August 1874 which allowed that, between Arauco and the Paicaví River, private individuals could rapidly establish ownership, leaving only small portions as indigenous land, thus meeting the objectives of the Governor of Lebu and later the Intendant of Arauco, Hermógenes Pérez de Arce, who in 1874 declared:

The Indians must be left without any property: compared with the superiority of the European race, this is a condition of the inferiority of their race. This must be done despite the charitable laws which are designed to benefit them (...) The legal provision that puts greatest restriction on the rapid progress of Lebu is the law which prohibits the free sale of territorial property.<sup>109</sup>

This request from the Intendant of Arauco rapidly found support, and a year later a new State decree moved the border from the Paicaví River to the Tirúa River. This exposed Mapuche lands between the two rivers, allowing the entry of a new contingent of private individuals who moved rapidly to claim Mapuche land. The process was achieved within the space of only a few

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<sup>108</sup>Saavedra, Cornelio (1870). *Documentos Relativos a la Ocupación de Arauco*. Imprenta de la Libertad, Santiago.

<sup>109</sup>Report to Minister for Colonisation. Ministry of Foreign Affairs, Culture and Colonisation Report, 1874.

years. The indigenous lands entered with glory and majesty into the property market, and nobody cared or asked questions about their ancestral inhabitants.

New laws were being applied to the territorial space which had, since time immemorial, been occupied and handed down from generation to generation of Mapuche families living near the Lleu Lleu Lake. In this context colonisers founded the Hacienda Tranaquepe, whose original ownership deeds can be traced back to deputy for Lebu and coal industry businessman, Francisco Javier Ovalle. He worked methodically to gain possession of properties owned by Mapuche families, exploring every legal twist and turn in registering rights as he gradually acquired them, creating an extensive plantation out of the lands located between the Lleu Lleu Lake and the Pacific Ocean. This was precisely the same territory which had formed the ancestral Mapuche *lof* in the area. The first registration of the future Hacienda Tranaquepe was made on 25<sup>th</sup> April 1876.

Francisco Javier Ovalle Olivares is the owner of the deeds and rights which previously belonged to the natives Miguel Yevilao, José Chueca, Lorenzo Antilao, Jacinta Carilao, José María Quetra, José María Huechulao and Marcela Caucao on the estate called Pelahuenco, located in the subdivision of Quidico. He obtained this property by purchase from the above-named natives for the amount of two thousand six hundred and thirty-one pesos, which are confirmed as having been received by the vendors, according to the public registration issued by the Intendancy of this province, with date twenty-fifth of April eighteen hundred and seventy-six (...)<sup>110</sup>

The second registration took place the following day on 26<sup>th</sup> April 1876, through which Francisco Javier Ovalle Olivares took possession of an enormous indigenous territory, “(...) *by purchase from the above-named natives for the amount of two thousand six hundred and thirty-one pesos which have been received to their complete satisfaction.*”<sup>111</sup> The sequence of registrations to Francisco Javier Ovalle continued on 22<sup>nd</sup> July 1878, when a public deed was issued before a notary in Lebu.<sup>112</sup> This deed is of particular interest, as it reveals a strategy

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<sup>110</sup>Registration Nº 65 of the 1883 Property Register of the Cañete Land Registry.

<sup>111</sup>On pp. 73 to 78, under Nº 66 of the 1883 Property Register of the Cañete Land Registry.

<sup>112</sup>The text of the deed states that Ovalle "...is the owner of the deeds and rights corresponding to the natives Ignacio Reuca, Mariñan Reuca, Cheuquel Panchilla, Francisco Metrin, Alejo Maniqueo, Benjamín Diaz, José Lepuman, Francisco Huilipan, Agurtina Conchi, Juan Tranamil, Juan Millanao, Francisco Ancalao, Manuel Leviqueo, Pablo Nahuelqueo, Panchita Duinturray, Juanito Quintupí, Antonia Chepata and Lorenza Caucao on the Tranaquepe estate located in the subdivision of Quidico of this department, whose general boundaries are as follows: to the South with the lands of Huinca Quintriqueo and others, separated by the Tranaquepe lake, the stream of the same name until it enters the sea, and the gorge called Mollancollan, being on the northern side of the late Felipe Reuca's workshop; a line which begins at the gorge and meets lands of the native Pichuman; to the East with lands of Pichuman

employed across the whole Mapuche territory: the granting of unpayable loans to a given group of Mapuche, guaranteed by their deeds and rights to the collective territory. Once the charge had been made, the private individuals became the owners of the whole property: not only that portion belonging to their supposed debtor, but in addition, suppressing the rights of other collective owners who had not requested any loan and with whom there was neither contract nor link.

It is interesting that the affidavit references people whose surnames did not exist in the area, a widely adopted strategy to obtain rights over Mapuche territories, especially considering that at the time, Mapuche people able to read and write were almost non-existent. This casts doubt over whether there was free and informed will to form the contract, which at least "on paper" had been stipulated by the relevant legislation. Regarding this, in a Ministerial Report sent to the government, Colonel Cornelio Saavedra describes the way in which private individuals came to own Mapuche lands:

Without fear of error I can confirm... that as a rule, these contracts are invented: the land that is acquired through them either does not belong to the supposed debtors or is unoccupied and therefore belongs to the State. In these contracts it is usual to see an Indian receiving 4, 6 or even 10,000 pesos over two or three months or even fifteen days as mortgages on vast expanses of land. The speculation was not bad. It just looked for any person wearing a *chamal* and speaking the Indian language, gave them one or two pesos for them to state before a notary that they were the owners of large expanses of land and say that they had received some thousand pesos. [...] Bad faith always finds a way. Among others, the most common are: executions for supposed debt aimed at supposed owners of the property which they are trying to acquire, giving of property in lieu of payment, wills, recognition of inheritance rights of foreign individuals, etc., etc..<sup>113</sup>

In other words, these same mechanisms had been used for the creation of Hacienda Tranaquepe. Once the Mapuche rights over the whole area had been assigned to a single person, the next step was to transfer not the '*deeds and rights*' but the property itself – the ownership – without prior adjudication and without respect for those who had not participated in the action

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separated by a gorge; to the North with the property of Mr Francisco Javier Ovalle Olivares and the Rucaquilhue gorge, the scrub land of Mulucuicui and from there a straight line to the sea passing approximately two fields to the south of the house of Aravena; and to the West the sea." Cañete Land Registry, 1876-8 Property Register, on Pages 131 under N° 256.

<sup>113</sup> "*Documentos relativos a la ocupación de Arauco*", 1870, Cornelio Saavedra.

(if indeed anyone had participated, rather than falling victim to a fraudulent manipulation of their free will through malicious action).

Consequently, on 31<sup>st</sup> October 1883, Francisco Javier Ovalle transferred Hacienda Tranaquepe to the Ebensperger family, who made a registration with the Cañete notary of the “Pelohuenco, Chapo, Carralhue, Llahuenas and Tranaquepe” plots, adding to the registration that “(...) the selling party is responsible for the eviction, sanitisation and expulsion of the natives who are in possession of the estate.”<sup>114</sup> A fundamental element of the registration is evident here, in that it is explicitly stated that the vendors are responsible for the “expulsion of the natives who are in possession of the estate,” which confirms that until the moment of registration, the lands had been occupied by Mapuche families.

Conflict began when the Ebensperger family came to physically occupy the property, and in doing so, displace its ancestral inhabitants. On this subject, the literature confirms that:

(...) due to the system of colonisation that was in place, it was possible for colonists and private individuals to establish large latifundia in the La Araucanía colonisation zone. On the coast, where government authority was non-existent, the process of establishing the large properties [like Hacienda Tranaquepe] was far more brutal and dramatic.<sup>115</sup>

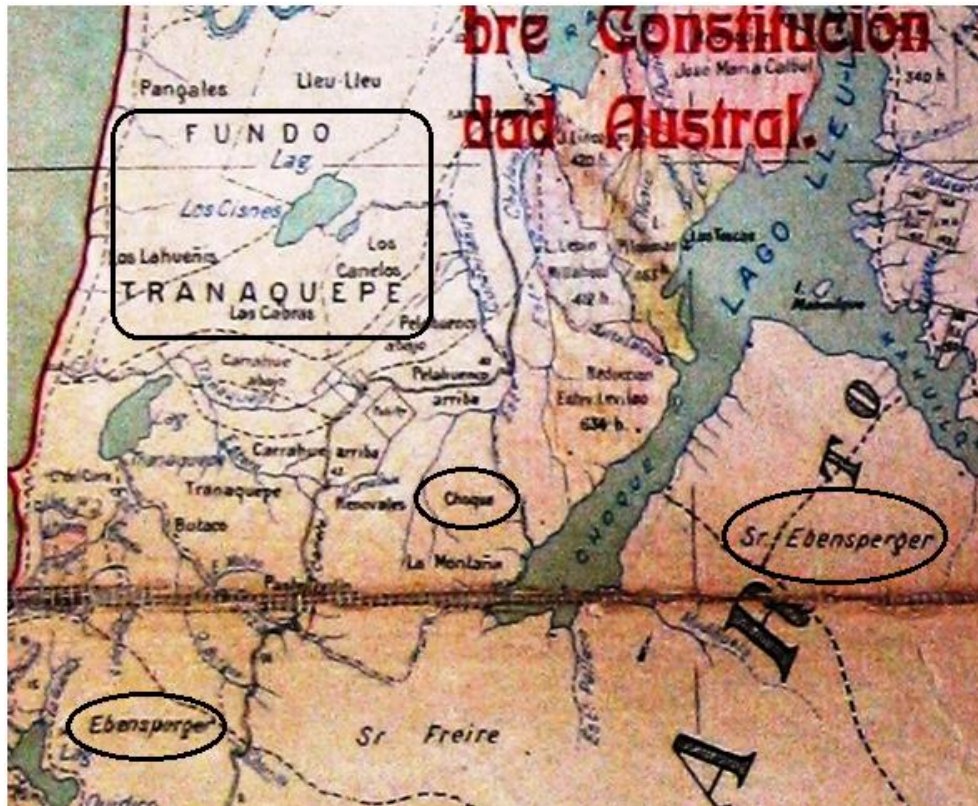
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<sup>114</sup> 1882-3 Property Register of the Cañete Land Registry, on pages 104-105, under N° 73.

<sup>115</sup> Bengoa, José, “Haciendas y campesinos. Historia social de la agricultura chilena”, 1990.



Map 10: Colonisation of the Tirúa Area 1921-1923



Source: Section of Colonisation Map, Arauco Province. Drawn between 1921 and 1923, completed in 1927. Ministry of Land and Colonisation

As shown in **Map 10**, the lands allocated to the Ebensperger family extended from the mountains to the sea, while the Mapuche families ended up forced into a corner between the mountains and the Lleu Lleu Lake.

Hacienda Tranaquepe – a property covering 4,628 hectares – was transferred to Jorge Ebensperger in 1923,<sup>116</sup> and then in 1944 to Mrs Guillermina Richter, widow of Ebensperger.<sup>117</sup> In contrast with the vast expanse of Hacienda Tranaquepe:

Around the Lleu Lleu Lake, the Mapuche settled in the hills having been displaced by the Ebensperger family, owners of Hacienda Tranaquepe and the Cura and Hospital estates. These areas had been under the authority of the various *Longko* of Lleu Lleu until 1878. The four displaced communities settled on the estate called "Choque Afuera", owned by an absentee proprietor, following the usurping of their lands in 1878.<sup>118</sup>

<sup>116</sup>On pp 14 under N°15 of 1923

<sup>117</sup>Page 48, N° 115, Year 1944

<sup>118</sup>COTAM, 2003, page 875.

Once the Ebensperger family had consolidated their ownership of Hacienda Tranaquepe, the Mapuche communities that lived near the Lleu Lleu Lake and had been forced out were left trapped between the mountains and the lake, occupying the smallest and worst pieces of land.<sup>119</sup>

In territorial terms, according to *Longko* Juan Carilao:

(...) there is going to be a *Título de Merced* once they have taken control of the estates. Once they saw that there was nothing more, they said "we'll give those lands to the Mapuche so that they can do whatever they want". Little by little the private individuals discreetly got more involved, and in this way we lost more and more lands.

The Mapuche families were resettled between the mountains and the lake or very close to the sea, and their flat lands, their ancestral lands, were appropriated. An area of more than 4,000 hectares ended up in the hands of the Ebensperger family, now their neighbours.

#### *The Land Reform in Arauco: Hacienda Tranaquepe*

Although Hacienda Tranaquepe was affected by the land reform and a significant part of it was expropriated, when the so called "Tranaquepe Project" took place, priority was given to the tenants of the estate, blocking Mapuche families with longstanding claims to the land, but who had been pushed aside through resettlement and reduction, remaining direct neighbours but excluded from the process. Collective memory still notes the day when Mapuche communities of Lleu Lleu attempted to recover their lands, and a group of Mapuche families from all of the neighbouring areas around Tranaquepe occupied the property.

Lorenzo Carilao Tranamil, President of the committee of the five reductions reported that "the lack of land to be worked and to raise our livestock, and the bureaucracy of which we have become victims during the resolution of the problem, was what forced the 60 families from the Choque, El Malo, Ranquilco Grande, Ranquilco Chico and Maquihue reductions to occupy the Tranaquepe estate on Thursday 12th at six o'clock in the morning. There are 500 of us there from the 60 families. We set up shelters and we will not move for any reason. That estate has more than 20,000 hectares; it stretches from the sea to the Nahuelbuta range... It has barely 29 tenants and 2 administrators."<sup>120</sup>

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<sup>119</sup> The Mapuche families of the Lleu Lleu basin are resettled by the following *Títulos de Merced*: N° 936, in the name of Esteban Yevilao, in Choque, with 400 hectares for 68 people; N°935, Lorenzo Pilquiman, with 250 hectares for 48 people; N° 957, Lorenzo Lepin Millahual, with 257 hectares, in Ranquilhe, for 46 people; N°914, Juan Lincopan, in Ranquihue Grande, with 420 hectares for 104 people; and N°922, in the name of José Maria Calvul, El Malo, with 310 hectares for 48 people.

<sup>120</sup> El Siglo newspaper, Santiago, 12th January 1967.

The occupation was a success, and two years later the ancestral lands of the Mapuche communities of Lleu Lleu entered into the process of the land reform, through which a significant part of Hacienda Tranaquepe was expropriated. However, with the coup d'état of September 1973, the territorial situation of the Mapuche families of Lleu Lleu suffered a new setback with the establishment of a new non-Mapuche property, that of the CORA smallholders, leading to a long and painful process of persecution. According to Mapuche oral history and in the words of *Longko* Juan Carilao of Lleu Lleu:

(...) during the government of Salvador Allende, [the lands of the Hacienda Tranaquepe] were on the point of being returned to the community, but then the coup happened and destroyed everything. With this, the community never got anything, but the people of the settlement benefited. The estate is appropriated, or rather, it is bought and paid for by the gringos, but it never passes to the community. This was directly manipulated by the boss that they had, who at the time started to get political and make good with his tenants. "I prefer," he said, "that this one, this one and this one stay on the land, because they are my workers". It was the peasants – the tenants of the estate – who benefited, not the Mapuche People, although it was the Mapuche who had really fought for it. This was the nature of the new great injustice that began at that time.

#### *The Lands of the Lleu Lleu Lof and the Current Situation*

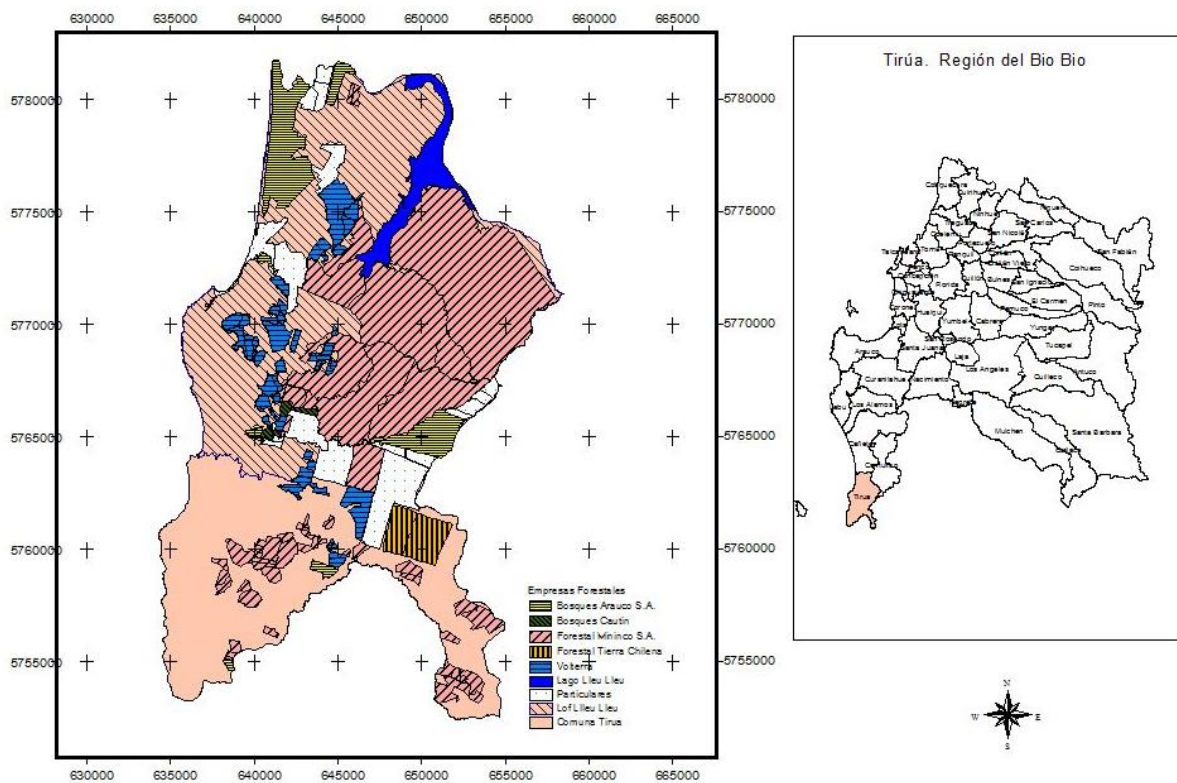
Over the years following the land reform, in the province of Arauco, and specifically in the lands of the old Hacienda Tranaquepe, Mapuche families have continued to witness the invasion of their ancestral lands and those lands lost to the forestry companies through the *Títulos de Merced*. On the subject, the *longko* Juan Carilao reports that:

When *pinochetismo* arrived, we spoke again, and we said that we would continue fighting for the reservations which remained. Because these rich Ebenspergers were left with reservations – the Tranaquepe estate – which are now the property of Volterra and Mininco.

Today, although the old Hacienda Tranaquepe of 1876 has been divided up into smaller plots, the demands aimed at various sections of it persist: the estates of “*El Canelo*”, “*Puntilla de Tranaquepe*” and “*La Huella*” which now find themselves in the hands of Forestal Volterra and Forestal Mininco. The demand lays claim to ancestral lands, the original *lof* that they never relinquished, the same lands where the Hacienda was founded. There are efforts being made towards the recovery of the El Canelo property, belonging to Forestal Volterra and covering an

area of around 800 hectares, and the Fundo Puntilla de Tranaquepe which belongs to Forestal Mininco and covers approximately 600 hectares, both of which used to be part of the old Hacienda Tranaquepe and have been occupied in a "productive" manner. However, the Mapuche territorial claim has not been satisfied, and the effects of the presence of forestry companies are visible on a daily basis in the Lleu Lleu *lof mapu*. Protests in pursuit of recovering the ancestral territory have continued, in the midst of intensified police repression.<sup>121</sup>

**Map 11: Forestry and Private Property in Tirúa**



### Hope Renewed and Destroyed: The Land Reform in Luikura-Reñico:

#### *The Ancestral Lands*

According to Ricardo Latcham's 16<sup>th</sup> Century description,

“(...) crossing the Nahuelbuta range we come across the Lelbunmapu (land of plains), Butalmapu (great lands) which encompassed the plains of the central valley”, where the

<sup>121</sup><http://www.indh.cl/indh-presenta-querella-contra-carabineros-por-eventuales-torturas-a-10-comuneros-Mapuche>

Ayllarewe de Puren can be seen, located between Angol, Traiguén, the Nahuelbuta range and the Rehue River, and within it the lebos of Guadaba, Puren, Coyamcahuin, Lumaco, Tomelemu, Coipolevu, Picoiquen, Engolmo, Leburüpu, and Voquilemu.<sup>122</sup>

Thus there were a series of local authorities which exercised rule within their respective *lof*, territorial spaces which were far more extensive than was recognised by the process of resettlement and reduction by means of the *Títulos de Merced*. Neighbouring the community of Quetrahue and sharing in their history, is the community of Reñico Grande, the lands of Huenchun Huenchuñir, where the Liukura-Reñico *lof* is located. All of the families currently living in the communities remember that at that time they bordered each other:

To the South we bordered Pantano (Juan Marín), of which there are still traces, and from there ran the boundaries, to the West Liucura and Dibulco, to the North Quetrahue (Coña Raiman), Collinque (Juan Maica) and Reñico Chico (Martín Painequeo). The Alto Reñico estate is missing, because Reñico Chico (Martín Painequeo) and Reñico Grande (Huenchun Huenchuñir) shared it half and half, marked by Alto Reñico. That's how they made the border.<sup>123</sup>

In territorial terms, although these communities enjoyed autonomy and their own governance, they were part of a greater territory, with boundaries and spaces recognised by some of them or by others, but as part of an extensive area of land in which there existed an intimate relationship between the valleys, waterways, peaks and gorges. However this relationship was interrupted by the arrival of private properties and fences.

### *Resettlement and Reduction on the Plains of Lumaco*

The forming of private property on the plains of Lumaco originated from the bargain sale of lands declared as State-owned despite their acknowledged ancestral occupation and use by Mapuche families. They were auctioned off at low prices to private entities, establishing private property in the lands of the "old chieftain", which had previously been the lands of the Mapuche.

As has been documented extensively in the case of the Lleu Lleu *lof*, the process worked as follows: the territory was occupied by the army, and then it was declared as being owned by the State and split into plots. Mapuche property was limited to the *rukas* and surrounding areas

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<sup>122</sup>Las Divisiones Geográficas de la Araucanía en el Siglo XVI, Ricardo Latcham, 1922, pp. 846-849.

<sup>123</sup>"Catastro de conflictos y demandas de tierras Mapuches, Malleco," Lumaco, 25th September 1993.

– that which was fenced off – and the plots of land were sold off to people in the city of Santiago. Finally, once the space had been sold, a *Título de Merced* of reduced territorial space was given to the Mapuche families.

### *Land Reform and Counter-Reform on the Lumaco Plains*

In the district of Lumaco, the Mapuche played a key role in the land reform. This participation was so significant that 100 per cent of the expropriated lands went to Mapuche communities – something which did not occur in any other district in La Araucanía. As a result of mobilisation by the Mapuche, CORA was able to obtain 19 estates with an overall area of 15,502.10 hectares, representing slightly more than 10 per cent of the total area appropriated for the Mapuche (152,416 hectares).<sup>124</sup>

Land restitutions by Mapuche communities gained huge momentum with the passing of the Land Reform Act, (Law 16,640) on 28<sup>th</sup> July 1967, and it was immediately seen by the Mapuche communities as a means of achieving their ancestral territorial demands. A prominent element in this response was the *Cooperativa Lautaro de Lumaco*, whose strong organisation and successful operation broke the mould and reset the image of the Mapuche world, working with the communities of Chiguaihue in Ercilla and El Pangal in Arauco and making them the first to obtain expropriated lands through protest. Pedro Raín of the Chanco community, organiser and leader of the land restitution movement and later President of the *Cooperativa Lautaro de Lumaco* remembers:

People got involved from Chanco, Pellahuen – which is right in the middle of nowhere – Lolenco, Didaico, Temulemu, Pantano, Reñico Grande, Reñico Chico, Quetrahue, to Collinque, then we went down to Ranquilco, from there to Rincón, from Rincón we went to Loncoyan, to Lingue (...). There were 20 tenant farmers on the estate owned by the Moena family, compared to the hundreds of people in the reductions who were without work. These farmers had an enormous estate all of which they did not cultivate; it was poorly exploited. We drew up plans, assessing the whole of the Moena family's estate from end to end, and we said to the minister 'such and such a plot is not being used properly', such as the Reñico Grande plot which had 1,000 hectares that were poorly used, with only three tenant farmers working there. Then we went and occupied the

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<sup>124</sup>“La Reforma Agraria y las Tierras Mapuche”, Martín Correa, Raúl Molina y Nancy Yáñez, LOM Ediciones, 2004.

Ñancuqueo plot. There were five fights, but they couldn't get us to leave (...), until we started to talk.<sup>125</sup>

The organised communities began work in the early days of the land reform, demanding the reconstitution of ancestral territory through the recovery of land taken away from them during the process of resettlement and reduction.

A year after the first attempt at recovering lands in Lumaco, on 27<sup>th</sup> February 1969, 250 Mapuche families from several communities re-entered the Ñancuqueo estate and demanded the expropriation of the Moena family's property which was being rented by the Gundermann Ruckert firm. The occupation of the Reñico and Pililmapu estates took place on a large scale, involving at least 500 people who began to build houses, work the land and rear their animals. Collective memories of these moments are an important factor in present-day demands, as can be seen in an account by Juan Nahuelpi, a descendant of the Reñico Chico community which was eventually handed over to the Mapuche on 17<sup>th</sup> February 2016, 45 years after the events. He recounts that:

Arturo Curin led the recovery of the land which comprised what were the Reñico, Pililmapu, Anadela El Peral, Hueico, San Gerardo and Ñancuqueo estates, in total 5,500 hectares. Here people came from the communities of Pantano (Juan Marín), Quetrahue, from Reñico Grande (Huenchun Huenchuñir), people from Loncoyan once it had been recovered, from Chanco and also from Bajo Pellahuen, from the furthest corner of Lumaco. These are the people who were involved back then. Curin was the *longko*; he was from El Maitén which bordered Ñancuqueo. This land was recovered because of poverty, but also because it was theirs ancestrally. They asked themselves why they should have to live in a single hectare of land when their grandparents had left them vast spaces. And if their grandparents had lost them, they never knew why.<sup>126</sup>

The government, through the Land Reform Corporation (CORA), made its first application of the Land Reform Act (Law 16,640) in order to resolve a conflict over Mapuche lands, and on 16<sup>th</sup> October 1969, it expropriated the San Gerardo, Hueico, Resto de Fundo El Peral, Reñico and Pililmapu estates, which covered a total area of 5,074.2 hectares, using Article 3 of the Land Reform Act regarding areas of basic irrigation in excess of 80 hectares.

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<sup>125</sup>Pedro Raín, Lumaco, 31st October 2001, in "La Reforma Agraria y las Tierras Mapuches", page 108.

<sup>126</sup>Interview with Juan Nahuelpi, Liucura Reduction, 17th February 2016.

Later, the *Cooperativa Lautaro de Lumaco* was formed with the recovered lands, as Pedro Raín recalls:

Following the transfer of the lands, the *Cooperativa Lautaro de Lumaco* was formed on 5<sup>th</sup> October 1969, and on 31<sup>st</sup> October it was legally founded. We began to work as a community. We had no tools, but everyone made an effort and brought what they had. Later a radiata pine forestation project arrived. During the first year we planted 70 hectares in Hueico guided by INDAP, with saplings provided by CORFO. Then a project came up for planting winter and spring wheat, so we bought a John Deere combine harvester in Los Ángeles using a loan from CORFO. It was in good condition, and with that machine we harvested 1,500 quintals of wheat. The following year we expanded the area sown to 600 hectares and reaped 14,000 quintals of wheat. With that money we bought the warehouse in Lumaco, which had capacity for 25,000 quintals of wheat.<sup>127</sup>

The Quetrahue community was located near to the *Cooperativa Lautaro de Lumaco*, but up until then they had not taken part in the global territorial claim to the '*ancestral lands of the chieftain Coña Raimán*'. This claim also took place during the land reform, at a moment when the Estados Unidos property became a target of direct action from the community, specifically through occupation, and by means of which the estate was later expropriated. Domingo Antileo recounts:

It was part of the community's old land, and so we said 'well, that property belongs to us', and thus we had all the more reason to occupy it. They agreed, and started talking about the fact that it was ours, that they were lands belonging to our ancestors, and that the community were the true and authentic owners.<sup>128</sup>

In the end, and following a long process, the Estados Unidos property was expropriated by the Land Reform Corporation.<sup>129</sup> Article 10 of Law 16,640 states that "(...) old properties required for a programme of land reform are subject to expropriation if they have been offered by their owner to the Corporation," which was the case of the Estados Unidos estate. In the territorial space of the Estados Unidos estate the Mapuche founded the *Montituin Mapu* settlement, another

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<sup>127</sup>Pedro Raín, Lumaco, 31st October 2001, in "La Reforma Agraria y las Tierras Mapuches", page 225

<sup>128</sup> Interview with Domingo Antileo, undated.

<sup>129</sup>Through Council Agreement N°1519, adopted in regular session 29 of 1st July 1971, based on article 10 of Law 16,640, the property known as 'a part of the Estados Unidos estate, comprising the Yuque, Huitralcura and Tromen plots', located in the Province of Malleco, Department of Traiguén, district of Lumaco, Registry N°205-1 (part) of the district of Lumaco, was expropriated.



emblematic organisation during the land reform in La Araucanía, given its broad Mapuche participation and its success in productive and organisational terms. Alejandro Raimán recalls that alongside the Quetrahue families, the settlement was comprised "(...) also of Huentemil from Tromén and of Santos Huentemil, as well as some other tenants who were on the estate, all of whom remained part of it," and were families of Mapuche communities who until the resettlement and reduction process had all lived close to one another.

Land reform in the district of Lumaco resulted in the reconstruction of ancestral lands, combining the *Títulos de Merced* with possession and use of territorial spaces which had been excluded from the resettlement and reduction process, and which had broken up the territories that previously comprised the different *lof*. As well as territorial expansion into these older domains, the cooperatives and settlements made up primarily of Mapuche people achieved high levels of productivity and infrastructure. Alejandro Raimán provides a detailed picture of the Montituin Mapu settlement:

On 4<sup>th</sup> June 1970 all of the partners were integrated, and from then on we carried on working in agriculture, firewood, charcoal, small-scale farming and fixing fences. In 1971 we made another purchase: 10 teams of oxen and a Caterpillar tractor with a plough and harrow (...). In the first harvest – the year we arrived – we harvested a total of 700 sacks with 500 quintals of wheat, 80 sacks of potatoes, 35 sacks of beans and 28 sacks of peas. In 1972 the wheat harvest amounted to 1,200 80 kilo sacks, or a total of 960 quintals, along with 120 sacks of potatoes and 60 sacks of beans. In 1973 we produced a bit less, harvesting 380 sacks of wheat, together with the oat, potato, bean and pea harvests, which we used to feed ourselves.<sup>130</sup>

As with many of the projects undertaken in La Araucanía – cooperatives, settlements, production centres – the *Cooperativa Lautaro de Lumaco* was brought to an end by the coup d'état in 1973, as Pedro Raín recounts:

When the coup happened there was no hesitation, and we five managers from the administrative council of the ex *Cooperativa Lautaro de Lumaco* were taken prisoner on 11<sup>th</sup> September 1973. When we were arrested, the soldiers started to put new managers

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<sup>130</sup>“Comunidad mapuche de Quetrahue/Coña Raiman, Estudio de caso”, Martín Correa, in “Entre la Restitución y el reconocimiento: el Movimiento mapuche y conflictos territoriales en Malleco y Arauco”, FONDECYT Regular N°1040275, 2004.

in place who knew nothing about administration, and they demolished everything that we had achieved through sacrifice and working together.<sup>131</sup>

The *Cooperativa Lautaro de Lumaco* was seized, and its goods disappeared as administration was taken over by new men under the authority of the soldiers. The Mapuche families were forced to return to the reductions, and many of the managers suffered persecution, imprisonment and death during the days following the coup. At the same time, the families neighbouring the Montituin Mapu settlement were obliged to vacate the Estados Unidos property whose expropriation was revoked at the request of its owner, Anacleto Marín G.<sup>132</sup> On 3<sup>rd</sup> January 1975, only fifteen days following the request, the Council of CORA “by unanimous agreement of its members, ruled: To reconsider and revoke Council Agreement N°1519 (...) through which the property known as 'a part of the Estados Unidos estate, comprising the Yuque, Huitralcura and Tromen plots was expropriated”.

Many of the settlements in La Araucanía – including the *Cooperativa Lautaro de Lumaco* – lost their land, along with the improvements that had been made, the fences, the warehouses and all of the combined work that had gone into it. On top of this, they were subject to acts of repression, and were forced to move back to the "small land": that is, the *Título de Merced*. Galvarino Raiman, who in 1973 was six years old, remembers that:

(...) in '73 I was aware of a very serious change: we moved from the settlement back to the original community, and I remember my parents were forced to relinquish their cows, sell them, knock down the houses, everything, and carry everything in three carts from the settlement back to the original community.<sup>133</sup>

With the Montituin Mapu settlement chapter closed, the Estados Unidos estate – the territorial space considered by the Coña Raimán as the ancestral lands – returned to the hands

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<sup>131</sup>Pedro Raín, Lumaco, 31st October 2001, in “La Reforma Agraria y las Tierras Mapuches”, page 309

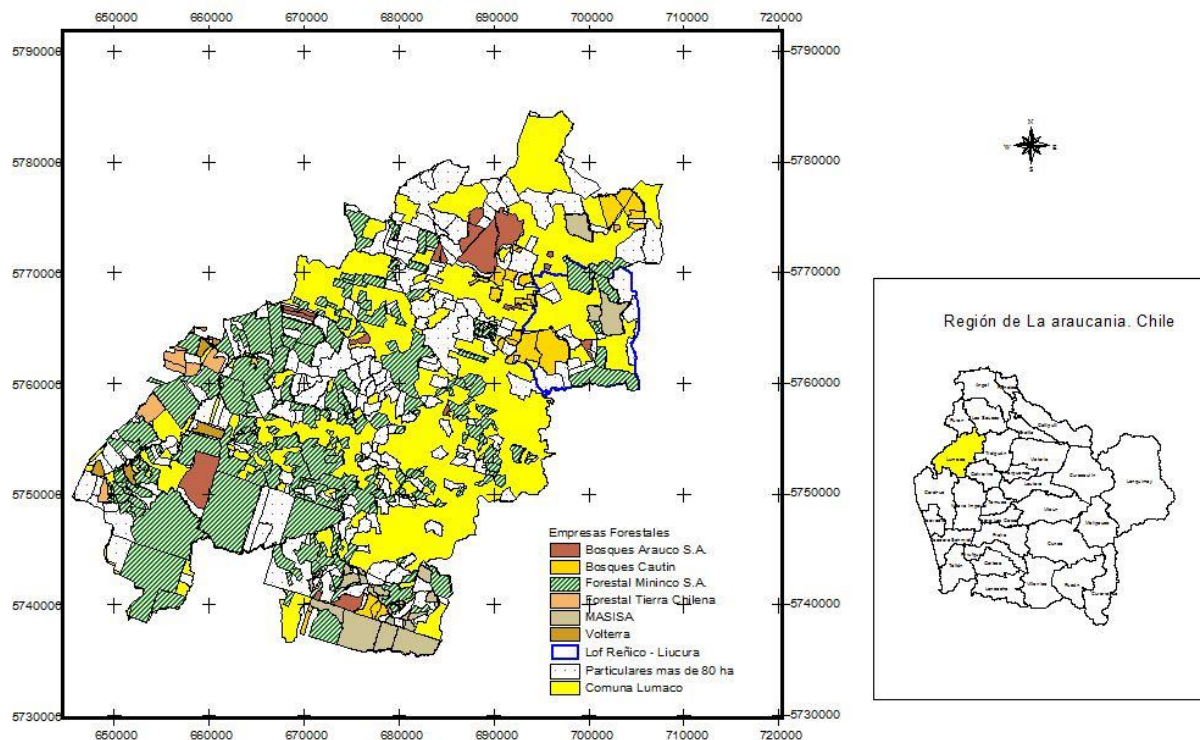
<sup>132</sup>A report by Héctor Jensen V., Regional Director of CORA, dated 20th December 1974 in Temuco, states that: “(...) Mr Anacleto Marín Godoy, owner of the property mentioned, has requested the revocation of the agreement made by this office, and has expressed that he accepts the restitution of the expropriated property through this agreement... The property is currently under the control of the Corporation.”

<sup>133</sup>“Comunidad mapuche de Quetrahue / Coña Raiman, Estudio de caso”, Martín Correa, in “Entre la Restitución y el reconocimiento: el Movimiento mapuche y conflictos territoriales en Malleco y Arauco”, FONDECYT Regular N°1040275, 2004.

of Anacleto Marín Godoy. This marked the beginning of a long road to reclaiming this land: a road which has run all the way to the present day.

However, as is the case for almost all Mapuche territory, these struggles now have a new dimension. In the words of Pedro Raimán: "(...) after we left, Marín sold it to the plantations"<sup>134</sup>. This meant a transformation of the territory and the arrival of the forestry estates. In this particular case it was Forestal Mininco, who on 7<sup>th</sup> March 1986 registered the Estados Unidos estate in its name,<sup>135</sup> together with part of the Santa Clara estate – all being neighbouring properties – thus creating a huge area of forestry plantation. Mapuche land demands would be directed towards this area, especially from 1990 onward.

**Map 12: Likura-Reñico Lof Mapu, Forestry Companies and Private Owners**



<sup>134</sup> *Ibíd.*

<sup>135</sup> "Compraventa Forestal Mininco Sociedad Anónima – A. Marín Anacleto," Traiguén Land Registry, 1986 Property Register, on pp. 48 under N° 48.

### *The Lumaco Plains and the Current Situation*

According to the testimony of the Mapuche families of the Lumaco plains, from the mid-1980s onward, their basic survival was significantly affected by the proximity of the forestry estates. Clemente Antileo, who was forced to return to the "reduction" – the family plot within the Coña Raiman *Título de Merced* – refers to the ancestral claim to the Estados Unidos estate, saying:

(...) that territory has been completely destroyed by now. It has been planted with eucalyptus, and how can the land be recovered from eucalyptus? It sucks up all of the water and everything (...). Before, when those lands were owned by farmers – large-scale farmers – there was water to drink, more than 100 animals at least, and afterwards when they forested it there was no water left even for the flies. The ditches dried up, the native trees were burned, razed to the ground, and the critters that lived in the water fled, died in the fire, and the water dried up (...). This was all done by the forestry companies. There in that valley, back in those days there was plenty of water, but now, when is there ever water? The plantation dried it all up. Also the *menoco*, the places where water is born, were burned. The places where the water used to bubble up became dry. Now the animals of the forest drink murky water, foraging, water with mud in it. So what is there left for the animals? Nothing.<sup>136</sup>

Families in the Liukura-Reñico *lof* – which used to form part of the *Cooperativa Lautaro de Lumaco* – started planting exotic species on their small plots within the *Títulos de Merced*. One of their neighbours, Aurelio Nahuelpan, reports that the results are visible today:

In their poverty, many people made clearings to plant. They got rid of the native trees. There were lots of hualle, quila, bush, lingue, laurel, canelo... there were lots of canelo, and now there is none. There were *menoco*; before there had been water which gushed from the earth, and now those *menoco* dried up. There used to be *nalcas* there which could be used for medicine, but now there are none. Now there is no *lahuen* – there is some, but very little. You have to go up into the mountains, to Nahuelbuta, to find it. All because of this drought, it just isn't there. There is no moisture.<sup>137</sup>

All of the processes described above have significantly affected the family-based subsistence economy, as confirmed by the account of Juan Nahuelpi:

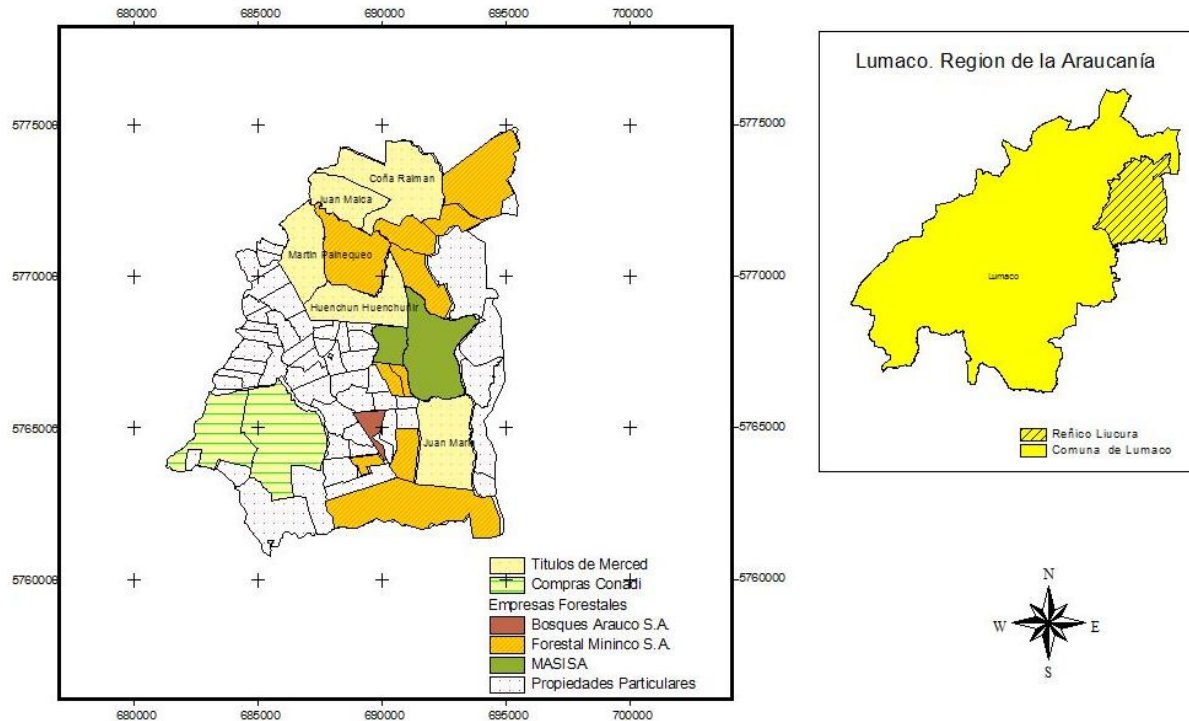
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<sup>136</sup>“Comunidad mapuche de Quetrahue / Coña Raiman, Estudio de caso”, Martín Correa, in “Entre la Restitución y el reconocimiento: el Movimiento mapuche y conflictos territoriales en Malleco y Arauco”, FONDECYT Regular N°1040275, 2004.

<sup>137</sup> Cooperativa Lautaro de Lumaco, Liucura Reduction, 17th February 2016.

The thing about vegetable plots is that in many places there are no vegetable plots, because there is no water. And how can we have a vegetable plot if there is nothing to water it with? And in any case we don't know how good a plant we are producing, or which disease it might have, because these days the water is contaminated.

**Map 13: Liukura-Reñiko Lof Mapu with Forestry Companies**



## Adjudication of Territorial Claims: The Paradigmatic Case of Temulemu

### *The Temulemu Lof and the Ancestral Lands*

Temulemu is one of the communities that form part of the territorial expanse of the Lumaco plains, and has at its centre the Cerro La Mula (La Mula hill). According to the community's oral history, the the old chieftain's authority extended over an area, which the late *Longko* Pascual Pichún describes as:

El Parrón, Río Colpi, Cai Cai hill and from there it runs to Alto Curraco, from the top of the hill (...). It covers Santa Rosa de Colpi, and from there reaches the Lumaquina stream, and from there the line to Cerro La Mula continues past Collinco to the Nanchahue estate, then it goes down past the old Temulemu Chico plot, and there we border with Pedro Huaiquil.

From Cerro La Mula it runs along a track to Panqueco, to the Las Hortensias estate, and from there it follows the Colpi stream. These were the lands of the old chieftain.<sup>138</sup>

Prior to the resettlement and reduction process, the Mapuche families of Temulemu, Didaico, Pichipangueco and Lolenco all bordered each other, with Cerro La Mula being the highest and most important point in the area, to where, according to Pichún:

(...) Didaico stretched, and over here was Temulemu, and Pichipangueco was down that way and bordered with Temulemu further up – it bordered in Nalcahue. Cerro La Mula was a marker, that from here to there was Didaico and over here was Temulemu. But it was more than a hill: it was a string of hills. Cerro La Mula was split into two parts: one part was Didaico and the other was Temulemu. Didaico also bordered Pichipangueco at Cerro La Mula, or rather a little bit further this way from Cerro La Mula, a bit closer to the track. (...) and lower down, to the South, it bordered with Colpi, the Colpi River, in a place called El Avellanal. All of the communities bordered each other.<sup>139</sup>

Cerro La Mula is a marker, a sign: not just territorial, but in the words of Juan Pichun, the current *Longko* of the Temulemu community:

They say that Cerro La Mula was, in this whole sector, the location of the cemetery where all of the great *longkos* were brought, and where they made the great *trawun* to bury the *longkos*. Now it is in privately-owned land, in Nanchahue, and that is why we are making the demands.<sup>140</sup>

### *Resettlement, Reduction and the Formation of Private Property in Temulemu*

With regard to territorial resettlement and reduction, the Temulemu community suffered the same fate as their neighbours, ending up separated from the various families who formed the single and continuous territory in which the Santa Rosa de Colpi and Nanchahue properties were enclosed. The roots of the territorial claim can be seen here, in the long struggle of the Mapuche families of Temulemu over use and ownership of lands considered theirs by the fact that they had come under the rule of the old chieftain, and which they never let go of despite having lost legal ownership of them. The Resettlement Commission issued the *Título de Merced*

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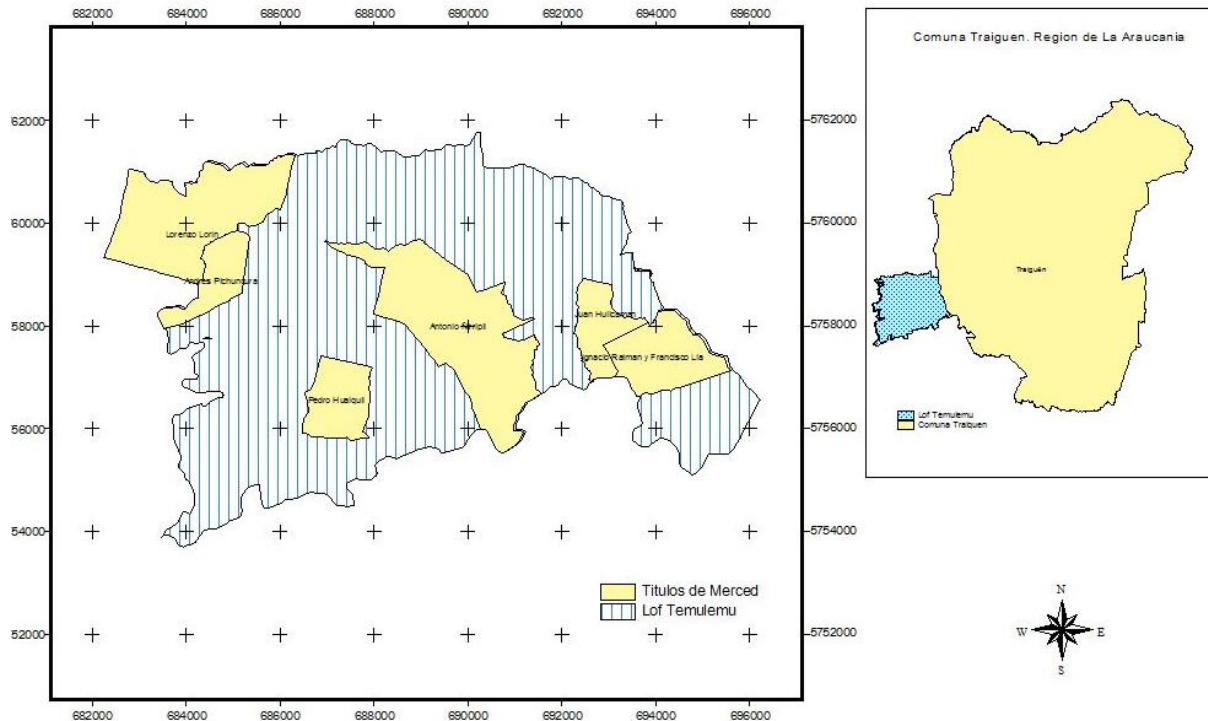
<sup>138</sup>“*Las razones del illkun/enojo. Memoria, criminalización y despojo en el territorio mapuche de Malleco*”, Correa, Martín y Mella, Eduardo, 2010., LOM Ediciones, Santiago, page 78

<sup>139</sup>Ibíd.

<sup>140</sup>Ibíd.

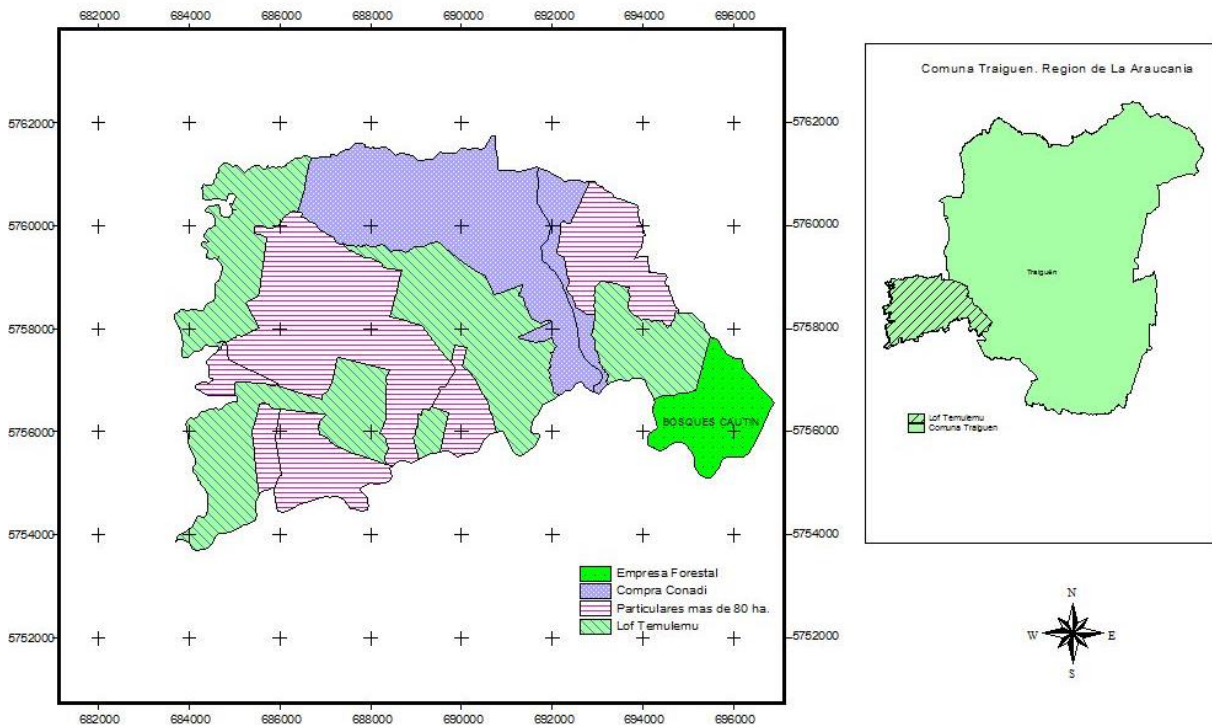
to Antonio Ñiripil and his family (131 people) on 20<sup>th</sup> March 1884,<sup>141</sup> while the other Mapuche families that neighboured the Temulemu families were resettled in Didaico through the *Título de Merced* awarded to Lorenzo Norin and his 80 people, for an area of 650 hectares. In Pichipangueco, 43 people were resettled in 301 hectares in the name of Andrés Pichicura.

**Map 14: *Títulos de Merced* Granted to Temulemu**



<sup>141</sup>Deed N°15 had "an area of 920 hectares of land lying within the following boundaries: to the North with plots N°1027 and 1028; East, part of plot N°1027 and the ridge which divides plot N°1034 in half, and the Llullun stream which separates it from plot N°1026, and the Colpi River which separates it from plot N°1049; South, the Colpi River until it meets the boundary of plot N°1050; and West plots N°1050 an 1051 less 73 hectares of its eastern part and also plot N°1032. This plot is understood as being located between plots N° 1027, 1032, 1033, 1034, 1035 y 1051 of the general plan."

**Map 15: Temulemu Lof Mapu, Forestry Companies, Private Owners and *Títulos de Merced***



By contrast, private individuals were awarded large portions of land through auction, in plots bordering each other. These lands are the focus of Mapuche historical claims. The Santa Rosa de Colpi estate, with an area of 1,728 hectares, came from the auction to Florentino Figueroa by the Treasury on 17<sup>th</sup> December 1885 in the City of Santiago. It then proceeded to be transferred numerous times, eventually becoming part of the property of Cardenio Lavín, of Forestal CRECEX and Forestal Mininco. The Nanchahue estate, with an area of 2,226 hectares, was formed through a purchase made by Fidel Neira from the Treasury in 1886, and was also subsequently transferred many times, ending up in the hands of the Figueroa Yávar family.

In summary, a total of 1,871 hectares over five plots of land are recognised as belonging to three Mapuche communities, originally comprising 254 people. By contrast, a total of 3,954 hectares over nine plots were awarded by the Treasury to only two private individuals. The difference is plain to see, and explains the current Mapuche territorial claim, which State authorities never acknowledged as owned by Mapuche families, and which instead were auctioned off and awarded to private entities.



### *Conflict and the Territorial Claim in Temulemu*

The principal background on which the claims over the Temulemu community's land are based has to do with lands missing from the *Título de Merced*. The claim goes back to 1926, when the families of Temulemu initiated a restitution claim at the Indigenous Court of Victoria, with the purpose of recovering lands belonging to the reduction which were at the time in the hands of Cardenio Lavín, owner of the neighbouring Santa Rosa de Colpi estate. According to the claim, Lavín had started to occupy land that was not part of the property itself, sparking a long-running conflict that came to an end on 31<sup>st</sup> May 1931 when the Ministry of Southern Property surveyor Guillermo Muñoz Mena proceeded...

(...) to comply with the ruling on p. 50, effecting the restitution of lands unlawfully held by Mr Cardenio Lavín to the reduction of Antonio Ñiripil. The land was marked out by stakes and ditches on its northern and southern borders, the Llullun stream to the East, and the old ditch and wire fence to the West. The parties were notified by the *carabineros* of Traiguén, and the ruling was attended by Hugo Lavín, son of Mr Cardenio Lavín, two *carabineros* from the First Precinct of Traiguén, and the indigenous people of the reduction.<sup>142</sup>

Despite the existence of this document testifying to the transfer of lands missing from the *Título de Merced* – surreptitiously integrated into the Santa Rosa de Colpi estate – to the Mapuche families, State organs proceeded to ignore it on various occasions throughout the course of the land reform and through the end of the 1990s. They did, however, propose the transfer of these 52 hectares as a "solution" to the overall claim, thus avoiding having to deal with demands over the ancestral lands which had been stripped from the Mapuche and not recognised during the resettlement process. The Temulemu territorial claim over the ancestral lands spanned a long period, flaring up at various points, with the Santa Rosa de Colpi and Nanchahue estates being the principal targets.

In sum, the main source of the problems relating to the Temulemu community's land stems from the fact that those recognised in the *Título de Merced* comprised an area significantly smaller than that occupied in the past, while the rest of the land was declared unoccupied, surplus and the property of the State, and as such was auctioned off to private individuals. The

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<sup>142</sup>Record N°315, Indigenous Court of Victoria, "Restitución, Antonio Ñiripil / Cardenio Lavín," on page 83

main argument for the recuperation of these lands is that they had come under the authority of the chieftains, and that they were never sold. Thus they are illegally owned, despite claims by their current owners as to the "legality" of their ownership deeds. The great opportunity to recover these territorial spaces came with the land reform, a point at which a large number of Mapuche communities gained the use, if not the ownership, of lands which in the past had come under the rule of the chieftains.

### *Temulemu and the Land Reform*

As was the case in many Mapuche communities, the families of the Temulemu community saw the land reform as an opportunity to recover the lands which had formed part of the ancestral domain of the chieftains. This was the case for the Nanchahue estate, which to the present day has been the property of the Figueroa Yávar family. In CORA's reports, the land restitution claims of neighbouring communities regarding this estate were taken into consideration, and as a result the land was expropriated.<sup>143</sup> The report in question, dated 7<sup>th</sup> March 1972 and signed by the CORA Regional Manager for Traiguén, Hernán Pino, indicates that:

The four indigenous reductions that bordered the piece of land (Didaico, Panqueco, Temulemu and Chanco) based their claim on usurped lands, and the Department of Indigenous Affairs is currently engaged in investigation to determine the veracity of such claims and execute the corresponding restitutions.<sup>144</sup>

Later that year, on 29<sup>th</sup> May, the surveyor Luis Burgos of the Traiguén Department of Indigenous Affairs (DASIN) stated that:

The CORA-DASIN agreement incorporates the restitution of land to the indigenous communities that neighbour those properties that CORA has taken possession of. The communities included in the present report are those of Lorenzo Lorin, Antonio Ñirripil, Pedro Huaiquil, Bartolo Millapán and Andrés Pichicura, who share borders with the Nanchahue estate, the expropriation of which was published in the Diario Oficial (Official Journal of the Republic of Chile: Chile's government gazette) on 15<sup>th</sup> December 1971.<sup>145</sup>

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<sup>143</sup>Council Agreement Nº1454, dated 1st July 1971.

<sup>144</sup>"*Las Tierras de la Ira. Los conflictos entre mapuches, empresas forestales y Estado. El caso de la comunidad de Temulemu (Traiguén)*", Jorge Vergara y Martín Correa Editores, Ediciones y Publicaciones El Buen Aire S.A. y Libros El Yacaré, Santiago de Chile, Chile.

<sup>145</sup>Ibíd.

However, with regard to the community of Temulemu – under Antonio Ñirripil – the survey report proposed maintaining the borders according to the *Título de Merced*, with the exception of the "(...) Santa Rosa de Colpi estate, with an area of 52.5 hectares of land, which according to this study belongs to the reduction of Antonio Ñirripil."<sup>146</sup>

This shows how the response of State agencies did not alter over time with regard to the territorial demand of the Temulemu families, and the survey referenced indicates that this response was limited to land missing from the original *Título de Merced*. Everything was found to be in order, apart from on the northern border – the Santa Rosa de Colpi estate – and only the plot misappropriated from the *Título de Merced* by this estate – amounting to 52.5 hectares – was addressed, despite the fact that this plot had already been returned once to the community on 31<sup>st</sup> May 1931. The reductionist argument was repeated once more, and the fundamental problem of the claim to ancestral lands was not addressed by CORA. Eventually the Santa Rosa de Colpi estate was expropriated from Cardenio Lavín on 13<sup>th</sup> August 1973, and in the corresponding report it is stated that the plot in question had an area of 1,728 hectares.

However, the Mapuche hope of advancing their claim for ancestral lands was once again thwarted, as not only did the expropriation take place too late – only one month before the coup d'état and the consequent land counter-reform – but for bureaucratic reasons. A statement in the expropriation file of the CORA Regional Manager for Traiguén affirms that although the plot had been acquired by CORA, in reality the Santa Rosa de Colpi estate was never really subject to the land reform, no settlement was established and it was never transferred to the ownership of those requesting it. Through a CORA Council Agreement on 2<sup>nd</sup> May 1974, the decision was taken to reconsider and revoke the expropriation of Santa Rosa de Colpi, returning ownership of the plot into the hands of the Lavín family. It would later be transferred to Forestal CRECEX, against whom claims would be directed.

### *The Community of Temulemu and the Current Situation*

The ancestral lands, both part of the Nanchahue estate and the Santa Rosa de Colpi estate, would continue to be the subject of claims from the Temulemu community. Following the coup

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<sup>146</sup>Ibíd.

d'état, the Santa Rosa de Colpi plot was acquired by Forestal CRECEX, who later transferred it to Forestal Mininco, a company with which there has been long-running conflict. On 28<sup>th</sup> October 1991 and in the presence of officials from the Institute of Agricultural Development's Department of Indigenous Affairs (INDAP DASIN), the Mapuche families of Temulemu demonstrated their opposition to the regularisation of the property in light of Decree Law 2,568, and demanded the return of "the lands which the community claims as theirs, which according to them are currently under illegal occupation by the Santa Rosa de Colpi estate, property of Forestal CreceX."<sup>147</sup>

Years passed, and in 1998 the Temulemu families, together with those of Didaico, decided to enter the Santa Rosa de Colpi estate and occupy it, an action which continued until 2012. New background began to be added for the territorial claim. The effects of the presence of the forestry companies were denounced, including by external agents such as the "Informe Colegiado de Difusión Pública: Temulemu", in which it was reported that:

Forestation with radiata pine and eucalyptus, and 25 years of intensive and extensive cultivation, has permanently replaced the natural forestation of the area, having a negative effect on groundwater and springs in the summer periods. The most notable environmental problem is the disappearance of water resources: "the pines suck up all the water". A 'machi', along with the organised women, said that they are unable to find the medicinal herbs used by the 'machi'. The 'machi' we interviewed has to "order her herbs in". The number of sick patients is diminishing as "there is nothing to cure them with". Her student (from the Pantano community) cannot learn to find the herbs, because there are no longer any in the forest. The 'machi' says that the seeds which give the *kultrun* its sound, which used to be found in the native forest, are no longer accessible today.<sup>148</sup>

Finally, in December 2012 and after a long struggle involving, among other things, the incarceration of *Longko* Pascual Pichun and much of his family,<sup>149</sup> the Chilean State acting through CONADI acquired the property in question along with the neighbouring Chorrillos property, and transferred them to the communities of Temulemu, Pantano and Didaico. The day the Santa Rosa de Colpi estate was turned over to the Mapuche by then Minister for Social Development, Joaquín Lavín, he declared to those present:

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<sup>147</sup>Memorandum received by INDAP-DASIN; Temuco, 8th November 1991.

<sup>148</sup>Colegio de Antropólogos de Chile A.G., August 1999.

<sup>149</sup>"Las tierras de la Ira. Los conflictos entre Mapuches, empresas forestales y Estado. El caso de la comunidad de Teulemu", Jorge Vergara y Martín Correa (Editores), Libros del Yacaré, 2014.

This is a very important day, because it marks the end of a story which began more than 15 years ago, in Santa Rosa de Colpi (...). These communities – who are very vulnerable – are fighting to move forward with a productive development plan which will be supported by the government in socio-economic, cultural and healthcare terms.

Lavín made no reference to the ancestral lands of the community, in contrast to the Temulemu authorities, who maintain that the acquisition of the Santa Rosa de Colpi property is the fruit of the community's permanent mobilisation – at great cost to the Mapuche families – for rights to ancestral territory:

The legalisation of the Santa Rosa de Colpi plot was achieved thanks to the efforts and fortitude of the *peñi* and *lamgen* who faced repression over more than 15 years in the form of raids, persecution, exile, and the incarceration of our *longko* Pascual Pichun Paillalao and other members of our community convicted under the Anti-Terrorism Law. **For this reason we declare emphatically that the return of our territory is not the result of the consciousness and labour of any politician of any party colour.** Our Community has had possession of the territory since 1999 when we expelled Forestal Mininco, since which date we have used the space for autonomous production (emphasis added).<sup>150</sup>

In October 2015, the Temulemu community once again mobilised to recover ancestral lands which today are in the hands of Forestal Cautín and constitute 400 hectares in the Los Avellanos sector. The community describes its action thus:

Today, on the morning of 10<sup>th</sup> October, we have occupied the premises of "Forestal Cautín", approximately 400 hectares of the "Avellanos" sector, with the aim of reclaiming it and establishing territorial control over these lands. We call on the forestry companies to abandon the territory usurped from our ancestors, and today with legitimacy and clear conviction we peacefully take territorial control of it with no fear of the consequences. These forestry companies are damaging and destroying our Mapu, eroding it, drying up its waters, and causing its inevitable death.<sup>151</sup>

On 17<sup>th</sup> October, a week following their entry onto the property, the community of Temulemu made a new declaration, part of which states:

A week ago we restarted the recovery of our territory as instructed by our great Longko Pascual Pichun Paillalao, who during his life fought for the rebuilding of the Mapuche nation. We are continuing along that road towards cleansing our Mapu of the forestry plantations which are doing such serious damage to us, and which are responsible for the

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<sup>150</sup>Public Declaration, community of Antonio Ñirripil, Lof Temulemu, 25th January 2012, at <http://paismapuiche.org/?p=4028>

<sup>151</sup>Public Communication Lof Temulemu of Traiguén, 10th October 2015, at <http://www.mapuexpress.org/?p=5264>

loss of water and *lawen* (medicinal plants), depriving us of the most important part of our Mapuche *mongen* (life)... We are currently cutting down Forestal Cautín's eucalyptus plantation which covers 400 hectares, and is where the springs of water are found that give us life. This is why it is so important that we clear away these trees, as over recent years our families have suffered from the drying up of wells, and during the summer months have depended exclusively on water distributed in tankers by the municipality of Traiguén.<sup>152</sup>

### Mañiuko *Lof Mapu*: Historical Background, Legal-Political Implications, Future Plans

At the beginning of this research project, our team visited the Galvarino district, to meet with some of its leaders. Together we determined the objectives of the research, and confirmed the community members' interest in our carrying out fieldwork in one of the district's territories. Following several initial meetings, we agreed that the focus would be on Mañiuko, as it represented a significant part of the historical processes experienced by Mapuche society over the last two centuries. Following this agreement between the research team and the leaders of Mañiuko, numerous memory workshops, participatory mapping sessions, interviews and field visits were carried out in order to reconstruct the territorial history of Mañiuko. This history was assembled through a combination of oral history work and bibliographical and archival review.

#### *"Before the Chileans arrived (...) these territories belonged to our grandparents"*

Mañiuko is located in the south-east of the current district of Galvarino (Province of Cautín, La Araucanía Region). Galvarino was founded as a municipal centre on 15<sup>th</sup> February 1900, but dated back to the construction of the Galvarino fort in 1882. The military origins of the village and district of Galvarino, where the Mañiuko *lof mapu* is located, is symbolic of the way these territories were forcibly brought under the authority of the Chilean State. This history of violence remains alive in the oral history of current generations:

The State took a lot of land away from us. The land was ours and the State gave it away. How could the State have this land? This is why we are protesting everywhere. They did what they wanted with us... So the State has stolen everything from us. After they killed our great-grandparents, they stole their animals and their land. And another, more serious thing that my late father told us, was that they burned the house of señora

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<sup>152</sup>PUBLIC COMMUNICATION LOF TEMULEMU A WEEK AFTER THE INITIATION OF TERRITORIAL CONTROL, at <http://www.mapuexpress.org/?p=5590>

Francisca, the wife of Kolüwigka. How many children must they have burned? They burned elderly people!<sup>153</sup>

Another account confirms the presence of the Mapuche prior to the creation of the Chilean State and the processes of colonisation and reduction:

First of all it should be made clear that our grandparents were living here before the arrival of the *wingka*, the Chileans and the Chilean State. Before the Chileans came to Kolüwigka, Cheuquelaf, Pascuala Likan and the others with their *Títulos de Merced*, those territories were lived in by our grandparents. Going back a bit further, or a lot further, history belonged to us, the history of how we Mapuche came to live in our territory. But this zone had people living in it already.<sup>154</sup>

In the case of Mañiuko, the presence of the Mapuche prior to the arrival of the State, in regard to "how we Mapuche came to live in our territory," is closely linked to the relationship with water and to the presence of spaces of sociocultural or geographical significance. These indicate the historical Mapuche occupation of the territory, both in terms of where current inhabitants of Mañiuko live, and the areas taken from them that are now property of forestry companies and other private entities. It is important to highlight that at Huimpil, within the Mañiuko *lof mapu*, can be found one of the most important *agro-alfarero* (agro-ceramic period) cemeteries of the southern-central zone of Chile.<sup>155</sup>

The history of the formation of the Mañiuko *lof mapu* is associated with two types of Mapuche occupation and settlement. The first is the dispersal of the population based on its political and territorial autonomy, and the second is the forced dispersal of groups of Mapuche as a result of Chilean military conquest. With regard to the first type, the formation of the Mañiuko *lof mapu* was related to the settlement of Mapuche families in those zones which would come to form adjacent *lof mapu* such as Llukentue, Kurileo, Wimpil, Pajal and Wirkaleo. This settlement had started during the early decades of the 19<sup>th</sup> Century, with the movement of Mapuche families from the Rügako (Renaco) valley near to the modern-day locality of Chol Chol, a district that neighbours Galvarino.

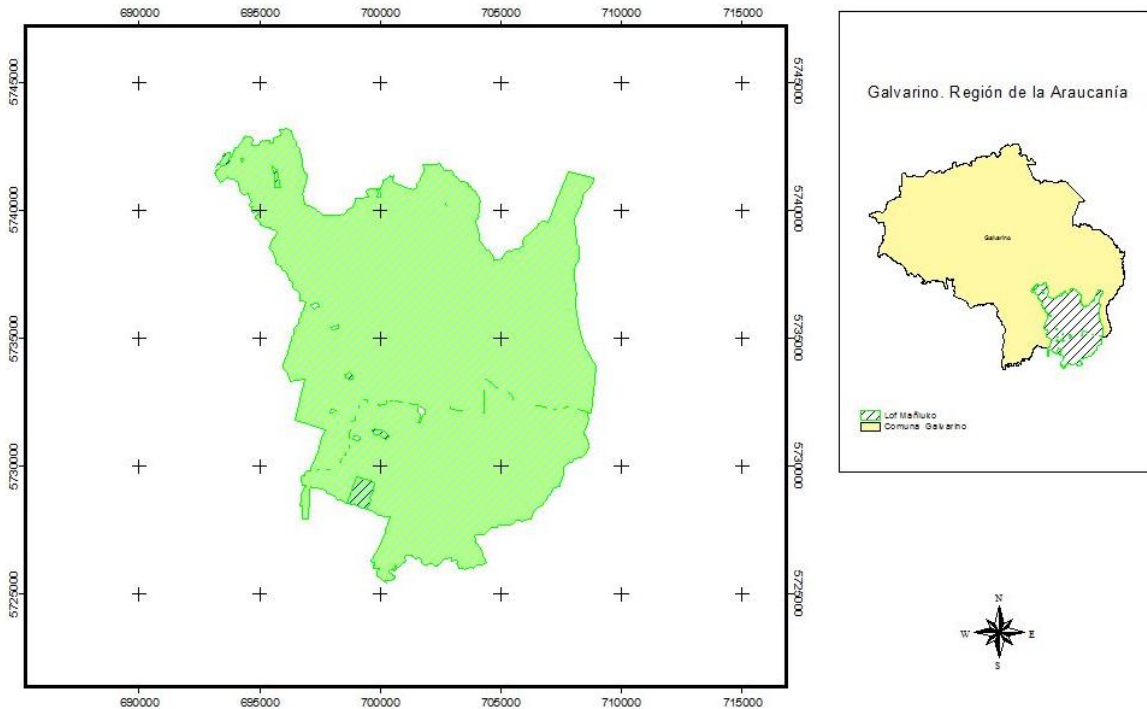
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<sup>153</sup>Ernesto Millalén, Workshop, 30<sup>th</sup> August 2015.

<sup>154</sup>José Millalén, Workshop, 30<sup>th</sup> August 2015.

<sup>155</sup>The cemetery was studied during the 1980s by archaeologist Américo Gordon, who attributed it to the Pitren culture which had existed between the Bío Bío River and the Llanquihue Lake. Gordon, Américo. "Huimpil: un cementerio agroalfarero temprano." In: CUHSO, N° 2, 1984.

Map 16: *Lof Mapu Mañiuko: The Current Claim*



One of the first to leave Rügako was the *longko* Domingo García Paillal, who settled in the Llukfentue territory which bordered Mañiuko to the West.<sup>156</sup> These movements not only resulted in a steady increase in the number of Mapuche in the area, but also opened up opportunities for occupying territories that had not yet been populated, providing families with more space for rearing the animals which the Mapuche had in large numbers in those days.

Once García Paillal had established himself in Llukfentue, he was followed by *longko* Kolüwigka along with other families. However, given the vast availability of lands around Llukfentue, Köluwigka decided to explore and observe the territory to find a new place in which to settle with his people.

The next day they went out again, over in this direction. They reached Rapa, but he didn't like it. They went back and followed this route, which back then was just a footpath, and reached the bridge in that part of the Trayenko. It is said that they got off their horses to

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<sup>156</sup> Millalén, José. *Lof Mapu Mañiuko (Comuna de Galvarino, Región de la Araucanía): Un intento por escribir su historia a través de relatos orales*. Thesis written as part of degree course "Teacher of History, Geography and Civic Education", Universidad de la Frontera, Temuco, 2005, p. 53.



rest there. Kolwigka dismounted and began to walk, to rest. Then they say that, in the stream between two big stones, there was a mañio tree. Kolwigka liked it, and he said to his companion: "*Peñi, tvfaci mapu ayvfiñ, kvpajepé may, tvfa mvley kiñe mañiv, Mañiuko pigeay tvaci mapu*" ("Brother, I like this land. Look, there is a mañio here. This land will be called Mañiuko. This is where my property will begin, and it will continue upwards following that stream").<sup>157</sup>

According to this account, the name Mañiuko was given to the space by *longko* Kolwigka because of the presence of a Mañio tree in a *Trayenko* (stream), where even to this day the families come for their Nguillatun ceremonies. Similarly, Ernesto Millalén tells of the settlement of the *longko* Kolwigka:

My knowledge comes from what my parents told me. The *longko* Kolwigka was in the Llufkentue area first, because in those days the Mapuche ruled all of the territory here. So the first arrival of the *longko* and his *kona* (young Mapuche workers) was in Llufkentue. Then winter arrived and the whole area flooded, so he left and arrived at Santa Rosa, the estate, and he didn't like it there either, and then he reached Mañiuko.<sup>158</sup>

The occupation of areas through population movements was not a process exclusive to the Mapuche of Mañiuko. In fact, before the Chilean military occupation – the appropriation of lands and territorial reduction promoted by the State's colonisation policy – Mapuche occupation of the territory was rotational. In other words, it took place through a certain degree of migration within defined political and territorial boundaries, which not only benefited the regeneration of the region's biodiversity by avoiding exhaustion of resources and soil erosion, but also contributed to the formation of political, economic and ritual alliances.<sup>159</sup>

As mentioned above, the establishment of Mañiuko as a *lof mapu* was also the result of a second form of settlement by the Mapuche population: the forced displacement of families by the war of the Chilean military conquest. According to Mapuche oral history, Mañiuko was a place of refuge, security and protection for families affected by military incursions. It offered security

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<sup>157</sup>Pablo Levipan Cariñe, *longko* of the Mañiuko Alto *Lof Mapu*. In: Millalén, José. *Lof Mapu Mañiuko (Comuna de Galvarino, Región de la Araucanía): Un intento por escribir su historia a través de relatos orales*. Thesis written as part of degree course "Teacher of History, Geography and Civic Education", Universidad de la Frontera, Temuco, 2005, p. 54.

<sup>158</sup>Ernesto Millalén, Workshop, 30<sup>th</sup> August 2015.

<sup>159</sup>Vidal, Aldo. "Conocimiento antropológico sobre los Mapuche de Chile. Efectos socioculturales y económicos de su integración forzada a la nación chilena". In: Teresa Durán et. al. *Acercamientos metodológicos hacia pueblos indígenas. Una experiencia reflexionada desde la Araucanía (Chile)*, Centro de Estudios Socioculturales de la Universidad Católica de Temuco, Temuco, 2000.

both in terms of geographical conditions such as the deep forests, but also, hospitality offered by the *longko* Kolüwigka. The following accounts refer to the displacement from North to South of *nagche* (lowlanders) and *wenteche* (highlanders) received by Kolüwigka:

There were lots of families who came from the North. So the various *longko* spoke among themselves using the *werken* (messengers). Kolüpi had lots of people, and he had also made peace with the Spanish, but there was a lack of people here, a lack of *kona*. Most of them came from there, like Millalén, Ñancupil and Millahual, among others. So they went to fetch them by horse, they got the horses together and brought their things, because the Spanish were fighting with the Mapuche. And my great-grandfather was fighting. My grandfather and my father came here. That is a little of the story of Mañiuko.<sup>160</sup>

Agreeing with Ernesto Millalén's account above, Domingo Ñancupil recounts that his father told similar stories:

All these elders used to be relatives. Kolüwigka was related to Neculpan, he was related to all the elders that arrived afterwards, because Wimpil and Peñartu were related to Kolüwigka. But as Kolüwigka was already here, he told them to come because the others were fighting and there weren't many people left. My father says that his father told him that they left Victoria, Quino and Púa around August and September. Here there was more freedom because of the hills, so that they couldn't kill them so easily, because they were fed up with being killed... My grandfather was young, and he says that they were playing after the snow had fallen, looking for apples, and my grandfather says that they saw a trunk that was kind of soft, and they saw that it had hair, so it was a *culebrón* (mythological serpentine creature) that was lying in the snow. This is what my father said that his father told him. So when the Pacification of La Araucanía arrived – or rather the slaughter, according to the Mapuche – this is what it was like. So Minas Huimpil and Peñartu were comprised mainly of young people, because the oldest had been killed.<sup>161</sup>

### *"They gave us what was left over": War, Colonisation and Reduction*

The territories of Galvarino, especially their mountains and forests, offered refuge to those Mapuche families who were displaced by the Chilean campaign of military occupation between 1862 and 1883, although things changed following the general Mapuche uprising of 1881. It was therefore no accident, as described by the accounts above, that some of the families that settled in Mañiuko and were received by the *longko* Kolüwigka during the second half of the

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<sup>160</sup>Ernesto Millalén, Workshop, 30<sup>th</sup> August 2015.

<sup>161</sup>Domingo Ñancupil, Workshop, 30<sup>th</sup> August 2015.

19<sup>th</sup> Century, had come from the *wenteche* area (currently Victoria, Quino and Púa) as well as from the *Nagche* territory (currently Purén).

In parallel with the displacement and resettlement of Mapuche families, Chilean troops established forts to ensure control of the territory, providing "security" to the colonisation process, dividing the land into plots and exploiting the resources available in the area. In this context, foreign and Chilean colonists began to arrive in Galvarino, to appropriate lands in Mañiuko. The colonisation process and the assigning of lands to families from outside led to the granting of *Títulos de Merced* to the Mapuche families which had inhabited the territory prior to colonisation. In these, the Mapuche families not only saw a reduction in the extent of their lands, but they were also forced to settle in the worst areas:

What happened was that first the Mapuche were there, but there was no paperwork. Then the colonists arrived, and once they were there they handed out *Títulos de Merced*. They gave land to the colonists, who extended them, closed them off, and extended them (...). Colonisation took place before the *Títulos de Merced*. Essentially, they gave us what was left over.<sup>162</sup>

Accounts of how land ownership was established during the early part of the 20<sup>th</sup> Century identify specific colonists who played key roles in the appropriation, exploitation of native forest and deforestation with a view to commercialising timber in the urban centres which were starting to appear around the military forts, as well as for agriculture. These lands were usurped from the Mapuche families of Mañiuko, deforested and eroded by intensive agriculture, and during the 20<sup>th</sup> Century passed through the hands of various owners until finally being absorbed into the patrimony of the forestry companies that border the communities of today. The account of Domingo Ñancupil explains how the appropriation of land was closely linked to deforestation. Given its significance, we quote it in full:

When the lands that now make up Santa Cruz, Reñico, and other estates like Llaima and Santa Rosa were colonised, the State gave them significant quantities of land. In Reñico, Jacinto Muñoz arrived and obtained land from the *longko*, spoke to them and asked them for the area that we all know. They say that he summoned the *longko* together, killed a horse and opened a barrel of wine, then pressed them with meat and wine and made them sign a document. Because he never gave back the land that he obtained. The property passed to him afterwards. Analysing things properly, what happened to the *peñi*

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<sup>162</sup> Ernesto Millalén, Workshop, 30<sup>th</sup> August 2015.

in those days was tantamount to theft. It is the community of Peñartu that suffered this theft and continue to suffer the consequences of it today (...). Later they say that he (Jacinto Muñoz) said "My land stretched from here to the Manzanañilawe stream, up from there is all my land, and once I have cleared it, I will give it to you." They say he cut down everything on that hill, that hill that was covered in native forest! Then the *Título de Merced* happened and they left the worst pieces of land for our grandparents, and what remained in the hands of Jacinto Muñoz was never recovered. So the land we have really is very little, because when only crumbs were left over, then they came to give us the *Títulos de Merced*. The same happened in lots of places where the Mapuche are – they made alliances over meat and then the colonists usurped the lands. And that is in the hands of the forestry companies now. They cut it all down, turned it into timber and sold it, exploiting the native forest (...). So the first to get rid of the native forests were the estates, the colonists. But they were always backed up by the State of Chile.<sup>163</sup>

Once the colonists had settled in Mañiuko and its surroundings, the State proceeded to award fifteen *Títulos de Merced* to the Mapuche families, in the form of left-over land. According to documents found in the General Archive of Indigenous Affairs, these deeds were issued between 1886 and 1897, and vary greatly in terms of the size of the areas that they cover. For example, while in one case (Colihuinca) the *Título de Merced* covers 643 hectares, others only covered 12 hectares, as can be seen in the following table and map. The latter also shows how the State ignored the territorial control that the Mapuche families exercised over the whole of the *lof mapu*, by giving them the *Títulos de Merced* and recognising Mapuche property as being considerably less than the ancestral and traditional lands (see **Map 17**; and for a copy of an original *Título* [Colhinca], see **Map 18**).

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<sup>163</sup>Domingo Ñancupil, Workshop, 30<sup>th</sup> August 2015.

**Table 2: *Títulos de Merced* granted in Mañiuko**

<i>Título de Merced</i> N°	Name of Reduction	Year of Resettlement	N° of Hectares
86	Colihuinca	1886	643
85	Domingo Cheuquelaf	1886	314
96	Peñartu	1886	385
435	Dulvar Painequeo	1896	120
100	Antonio Morales	1886	103
447	Eduvijej Muñoz	1897	20
385	Catalina Huiliñir	1895	20
391	Juan Cayuqueo	1895	48
288	Abelardo Soto	1895	32
289	Lorenza Collan	1894	23
413	Pedro Morales por Dominga Calvul	1895	15
410	Pascuala Lican	1895	40
290	Jose Simón Chaves	1894	12
436	Manuel Huechuqueo	1896	60
368	Pudu Lepin	1894	165

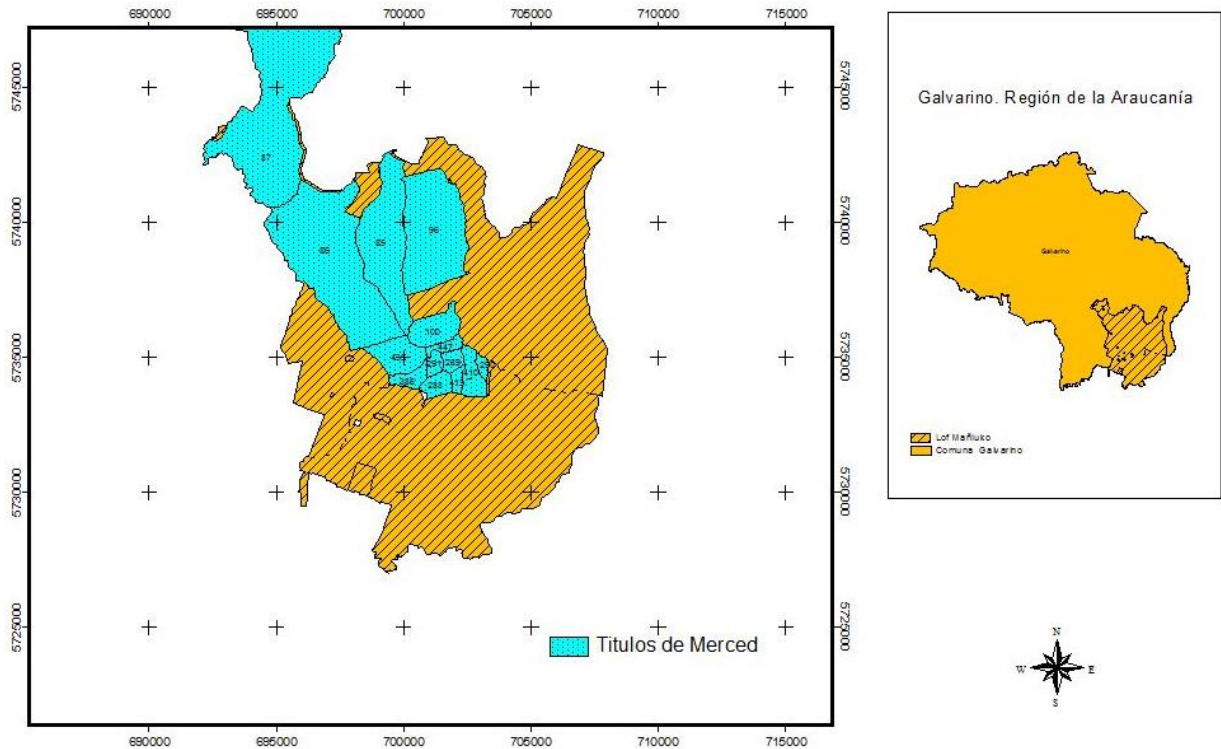
Source: General Archive of Indigenous Affairs

Today there is agreement regarding the areas recognised as belonging to the families in the *Títulos de Merced*, that not only were they the lands left over from the colonisation and the least suitable in terms of agricultural and livestock use, but also that the borders of the *Títulos* did not respect the boundaries and ancestral mode of occupation of the Mapuche families as shown in the previous map. Regarding this point and with reference to the way in which the *Título de Merced* was granted to the *longko* Kolüwigka, Ernesto Millalén states that:

When the pacification began, the *wingka* did what they wanted with us. Considering that we were the owners of the land, just imagine that we were all squashed together up in Alto Huimpil with almost no land. They gave what they wanted to the various *longko* that received land. When they gave the *Título de Merced* to Kolüwigka, he got angry. The insolent man told him "the engineer said that we are only giving you the land up to here", and I think Kolüwigka got angry and said "look at all of the people I have here, the interests, the animals, the horses." That is why they gave Kolüwigka 643 hectares, and if that man hadn't changed his tune, we would have ended up even more squashed together than we are.<sup>164</sup>

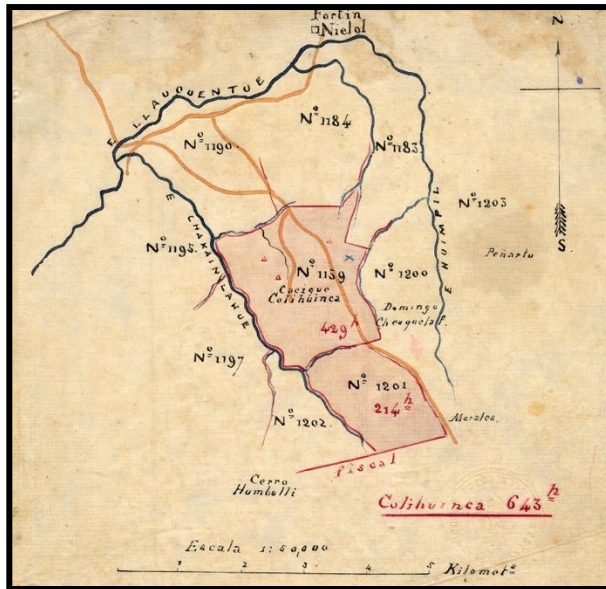
<sup>164</sup>Ernesto Millalén, Workshop, 30th August 2015.

Map 17: Mañiuko Lof Mapu and the *Títulos de Merced*



This account by Ernesto Millalén highlights a crucial aspect of the oral and territorial history of the current families of Mañiuko: their disagreement as to the lands recognised in the *Título de Merced* and their awareness of the injustice being done by the State and the colonists. **Thus if we consider that if the first claims and complaints against the appropriation of lands were made to the Indigenous Resettlement Commission at the same time that the *Títulos de Merced* were issued, we can assert that the territorial claims in the case of Mañiuko have been in place for approximately 130 years.** This historical awareness of the claim, maintained to this day, meant that after being granted *Títulos de Merced*, the families of Mañiuko immediately went to the Indigenous Courts to complain about the paucity of these grants. This is the case for the Peñartu reduction which, according to some accounts, went to the Indigenous Court of Victoria.

Map 18: *Título de Merced N° 86 Colihuinca*



Source: General Archive of Indigenous Affairs.

The awareness of the injustice committed by the State and the colonists, associated with the lack of lands made available to the families during the course of the 20<sup>th</sup> Century and the arrival of new generations, has led to two types of response and population movement. Firstly, migration to estates in search of employment as labourers, or to cities to find work in domestic service, construction and baking. Secondly, efforts towards territorial recovery, initially using the Indigenous Resettlement Commission and the Indigenous Courts as the main space for making demands, and then when these proved incapable of solving the problem, direct land recovery action. The latter can be seen in the participation of some of the Mañiuko families during the land reform, and in the founding of *Asentamiento Chile Fértil* (Fertile Chile Settlement).

*Transfer of Mapuche lands "from weñefe to weñefe"<sup>165</sup> during dictatorship and democracy*

During the land reform, the families of Mañiuko engaged in the land recovery process through their participation in the "Chile Fértil" Settlement which was founded following the expropriation (in line with Article 4 of Law 16,640) of the Santa Cruz, Reñico 1 and Reñico 2 estates, which together totalled approximately 1,200 hectares. In accordance with the CORA

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<sup>165</sup> "from thief to thief"

Council Acts of 1972, the official motives for the expropriation of the rural property known as Santa Cruz were that it had been "found to be under-used"<sup>166</sup>. In the case of the rural property Parte del Fundo Reñico it was that "it had been abandoned"<sup>167</sup>, and in the case of the rural property known as Una parte del Fundo Reñico, it was also due to the fact that "it had been abandoned".<sup>168</sup>

**Table A: Expropriated properties that made up the Fertile Chile Settlement**

Property	Owners	Expropriation	Name of Settlement	Current Owner	Ha.	CORA Record	CORA Agreement
Santa Cruz	María Teresa Herion Navarrete; Family of Gustavo Topp Werniche; Family of Marta Guilermina Nagel Shulters	9-6-1972	Chile Fértil	Forestal Catango or Catando Ltda.	811.1	4118	2885
Pte. Fundo Reñico	Elena Hernández Hernández	9-6-1972	Chile Fértil	Forestal Masisa	334.4	4120	2887
Una Parte Fundo Reñico	Amada Sepúlveda Narváez	9-6-1972	Chile Fértil	Bruno Frindt	450	4131	2898

Source: División Jurídica, Gobierno de Chile. (August 2014). Información acerca del Asentamiento «Chile Fértil».

Carmelo Tapia of the current Pascuala Lican community took part in the founding of the Chile Fértil Settlement. Regarding the details of the expropriation process for the Santa Cruz estate, Carmelo remembers that the property had been seized by the bank, but that one of its owners, Hans Topp, had seen an opportunity to keep hold of part of it by incorporating it into the settlement. To this effect, an agreement was made with the rest of the settlers, but in the end it did not materialise, even when CORA cancelled the debt that Topp owed. During the land counter-reform implemented by the military dictatorship, the expropriation was revoked and Topp recovered the Santa Cruz estate having turned a good profit. Carmelo Tapia explains:

When the land reform happened, the Reñico estate which belonged to Amada Narvaez was property of Jacinto Muñoz, and Santa Cruz belonged to Hans Topp. He inherited it from his wife. The bank seized the estate from Topp because of unpaid debts, and when the land reform came along, he got together with a lot of his neighbours to occupy the estate, because he saw that it was going to be taken away from him. So he said "I don't

<sup>166</sup>CORA. CORA Council Agreement N°2885. Santiago 9<sup>th</sup> June 1972.

<sup>167</sup>CORA. CORA Council Agreement N°2887. Santiago 9<sup>th</sup> June 1972.

<sup>168</sup>CORA. CORA Council Agreement N°2898. Santiago 9<sup>th</sup> June 1972.



want people from elsewhere coming, I want to be left with a piece of land so that I can live quietly." This is how they reached this agreement, from what I heard. CORA repaid the debt on the estate that Topp owed to the bank, and he handed over the estate to the Chile Fértil Settlement. Ernesto Millalén worked there, and others came from Ñielol: Julio Cayupe and Anselmo Millahual. But the same thing happened as always happens: the big fish eats the little fish, and in 1973 Hans Topp made a petition to the government and he got that estate back. So according to what we have seen here, these lands belong to these communities, because the State paid for them and gave them to the communities. But Topp popped up again and ended up selling the estate, which today is in the hands of the forestry companies who are making themselves rich. And today we still have the same needs as always. That is what happened.<sup>169</sup>

This account is backed up by that of Domingo Ñancupil, who adds further details about the expropriation and its subsequent revocation, as well as how at the end of a string of owners, the Santa Cruz estate came to be part of the patrimony of a forestry company:

These estates that were called Reñico and Santa Cruz were subject to the land reform in the seventies. They were returned to the communities by the policies of the time, but today they have come into the hands of the forestry companies. Hans Topp was in debt at the time, and they say that he told them "if they take the land, I'll make a deal with you and then you give me a piece." The State bought this man's land when the settlement was founded, but when the military coup happened they gave him the estate back. Later he sold it to an individual called "El Bandido" (the Bandit) whose name was Manrique. And he sold it to someone called Wilmer from Traiguén, and he was another *weñefe*. Wilmer killed Mapuche like a devil in order to get established. That's what they told my father. They say that when the Mapuche went to Angol to complain, he had trained dogs, and these dogs killed the *peñi* on their way there. He stayed here for quite a few years making the most of Decree Law 701, and then the land was transferred to García who was another *weñefe* from Los Laureles, by Cunco, and that García sold it to other land *weñefe* from the forestry company Bosques Cautín.<sup>170</sup>

The counter-reform came as a serious blow to the Mapuche. Not only did they lose all of their agricultural and livestock produce, along with their farming implements, returning empty handed to their reductions, but this was accompanied by death, torture and repression of the settlers and their families. As Ernesto Millalén, Livestock Manager of the Chile Fértil Settlement recounts:

When the soldiers arrived they beat everyone up. Nobody could avoid it. They beat the people, tortured them and accused them of being Communists. The company that came

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<sup>169</sup>Carmelo Tapia, Workshop, 30<sup>th</sup> August 2015.

<sup>170</sup>Domingo Ñancupil, Workshop, 30<sup>th</sup> August 2015.

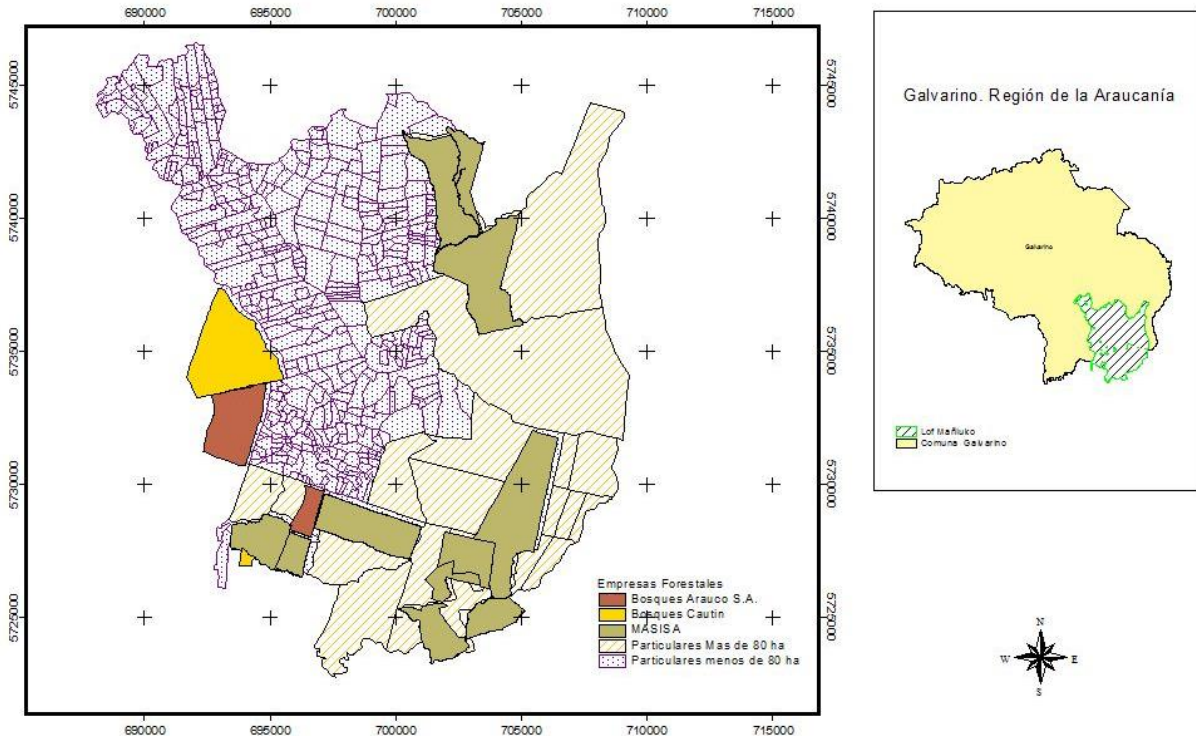
killed people here, here in Mañiuco, Huilcaleo, and one from Pellao Llanquien's community from Curaco. I was arrested when they came to kill Llanquien. A sergeant came up to me and asked me "do you know Llanquien?" "Yes," I said (...) "Well you're never going to see him again, you piece of shit, because last night we killed him." They killed him right there, they brought him out at night. A neighbour told me that at 5 in the morning they came round to kill the old man there, Collío, with an iron bar; they beat him with an iron bar, the one for barring the door closed. Heriberto Collío, that old man, minded his own business. I was told that his son didn't even have documents. They killed him just because they were drunk with power. They killed him with an iron bar, in cold blood (...). There were other guys from Huilcaleo too, and they killed them as well. And they killed them all just for the sake of killing them. They weren't political at all. That guy they killed in Mañiuco, the late Julio Ñirripil, he didn't even have the right to vote. They accused them of being Communists, thieves, whatever. I'm sure there were people that talked and told them things. Here it was Pedro Juan Lizama, a teacher. He didn't come along, but he gave them information: 'that one and that one'. The one who had Llanquien killed was Ferreira. He said that Llanquien had stolen his horse and that he had never lost a horse before.<sup>171</sup>

The outcome of all the efforts made during the land reform to recover Mapuche lands, whose history of usurpation dates back to the colonisation process which followed in the wake of the Chilean army's campaigns of conquest during the second half of the 20<sup>th</sup> Century, was dramatic for the Mapuche of Mañiuco. These lands are now under the control of forestry companies, or of agricultural owners who supported the military dictatorship and collaborated with the work of security and counterinsurgency organisations, and today they are right next to families who between 1983 and 1985 had their already reduced lands divided up into small plots, making conditions far harder for the survival of the families (**see map 19**).

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<sup>171</sup>Ernesto Millalén. In: Correa, Martín et. al. *La Reforma Agraria y las tierras Mapuches. Chile 1962-1975*, LOM Ediciones, Santiago de Chile, 2005, pp. 283-284.

**Map 19: Mañiuko Lof Mapu, Forestry Companies and Private Individuals**



With the return to democracy and in particular since the year 2000, these families once again began to mobilise towards the recovery of stolen lands, through direct action and also through institutional channels such as CONADI and article 20b of the current Indigenous Peoples Act (Law 19,253). For example, in 2014 they began to protest against the company HANCOCK (HCP) – previously MASISA – which as a result of transportation of their forestry produce was damaging public byways, hindering people’s movement within the zone.

**Public communication Lof che Mañiuko-Wimpil, Wallmapu**

Pu Lof Mapuche of the Mañiuko, Alto Huimpil, Minas de Huimpil and Peñartu Territory in the district of Galvarino, in the context of the process of Restitution and Recovery of their Ancestral Territory, which today concerns the recovery of the Santa Cruz property, owned by Leonardo García, the Reñico I property, owned by Forestal MASISA, and the Reñico II property, owned by Bruno Frindt, and considering the lack of will of government authorities to receive and respond to our demands and proposals put forward through the Organisation of Mapuche Communities for Territorial Restitution of Galvarino, we have resolved to restart the occupation of the aforementioned properties, entering them today, Wednesday 28<sup>th</sup> October 2009, at 7 o'clock in the morning.

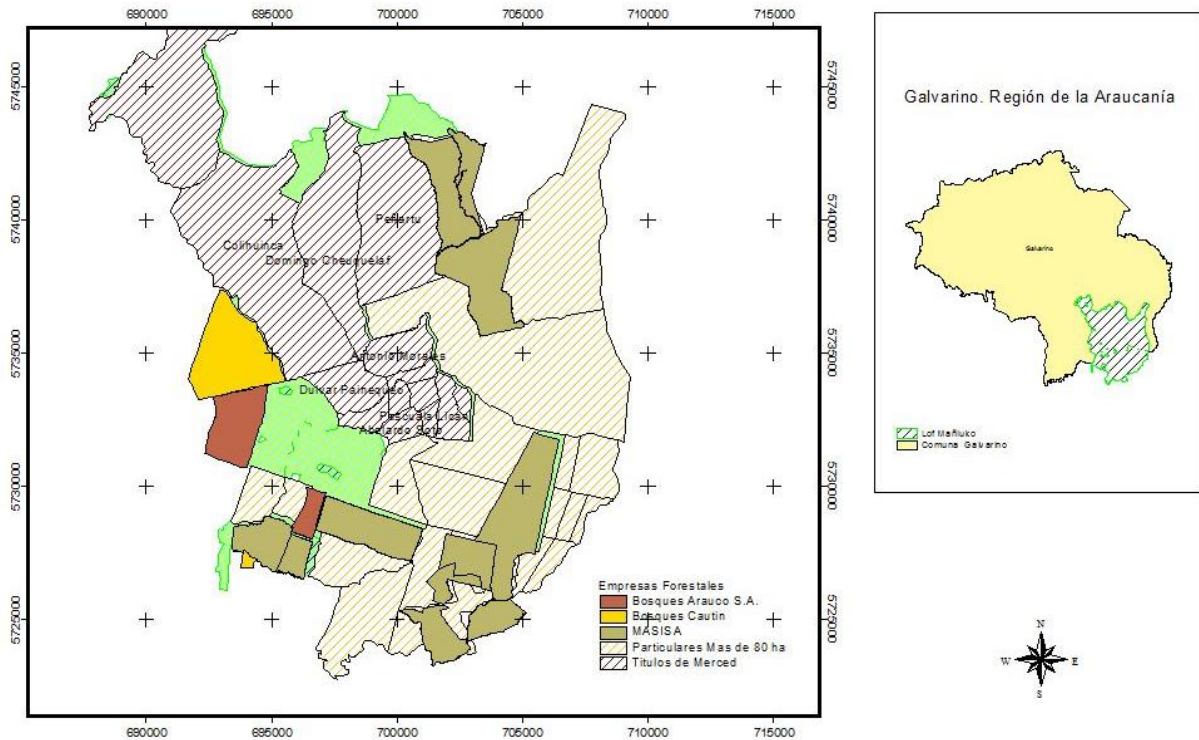
By means of this action, we once more reaffirm our will and decision to reconstruct our territory, to recover the land in its entirety, wresting it from the hands of those who for decades have not only usurped and taken advantage of it, but who have also inflicted significant damage through the mindless destruction of native forest, and the accelerated loss of water sources and courses caused by pine and eucalyptus plantations. We want to save them from these threats which have violated and disrespected sacred spaces like the ancient ELTUN or Huimpil Cemetery, located within the Santa Cruz property, along with the Menoko, Witrunko, Trayenko, Mawizantu and other spaces of Mapuche sociocultural significance that exist within these properties (...).<sup>172</sup>

Although the protests expressed general opposition to the presence of forestry companies in the Mañiuko territory, the communities also pressured the company to discuss possible terms of participation in company operations, to help alleviate the economic difficulties caused by large-scale forestry production. After an agreement was achieved with HANCOCK (HCP), in 2015 the communities attempted a similar negotiation with Bosques Cautín, but the company was unwilling to comply; instead, in response to the recovery of produce from the Santa Cruz estate, Bosques Cautín began legal action against the inhabitants of Mañiuko for "theft of timber".

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<sup>172</sup>Public Declaration, Lofche Mañiuko-Wilpil, 28<sup>th</sup> October 2009.

**Map 20: Mañiuko *Lof Mapu*, Forestry Companies and Private Properties**



Simultaneously and in terms of action taken through State channels with regard to recovering historical territory, in 2009 the communities of Mañiuko began the filing of administrative cases with CONADI using article 20b of the Indigenous Peoples Act (Law 19,253). As part of these actions, CONADI affirmed the legitimacy of requests of the Minas Huimpil community in 2015, and of the Colihuinca Mañiuko Bajo community in 2016. Alongside this, the communities have also rolled out a strategy of occupation and political participation in the State machinery. In 2012 they promoted the application of the current Mayor of the District of Galvarino – Fernando Huaiquil – who is from Mañiuko, and of the councillor and local leader, José Millalén who was also elected. Both candidates have clear mandates from the communities to provide political support for the restitution of territory in Mañiuko and the district of Galvarino.

In 2016, this strategy of political participation in State processes has been continued as a means to development and territorial recovery by the candidature and subsequent election of José Millalén as national councillor for CONADI, and also through the selection of local leader

Samuel Morales Jara as a candidate for the post of councillor in the upcoming municipal elections in Galvarino.

## Conclusions

These four histories articulate a series of compelling facts regarding Mapuche claims for ancestral lands, known in international law as "traditionally occupied" lands and in Mapudungun as *lof mapu*. These histories are of course not completely applicable to all scenarios, and there are significant differences among the four; however they do represent a small part of the diversity of experiences across the length and breadth of the Mapuche territory, and we have begun to gain an understanding of this diversity through detailed research in each place. We can take away from the information presented here a series of patterns and basic perceptions that serve as a foundation for understanding the central problem of the study: the ongoing conflict, with its roots in claims over stolen lands, in the context of FSC certification which maintains that indigenous rights have been respected.

As seen in the story of Lleu Lleu and echoed in the cases of the other three, the *Títulos de Merced*, supposedly a State measure for bringing about justice following the military invasion, are seen only as a "legalisation" of the appropriation. The fact that the *Títulos* were granted **after** the treasury had awarded extensive tracts of land to colonists, meaning that they consisted of "leftover" land, added to the insult. It is interesting that a century later, both the State and the auditors for the FSC continue to use the *Títulos de Merced* as point of reference, despite the fact that it has never been legitimate and is by now completely dysfunctional.

As we learn from the historical narrative of Lumaco, the land reform created great hope among the Mapuche communities, not in terms of trust in governments, but for the historical opportunity that it presented. In this context, the Mapuche mobilised and achieved – especially in Lumaco – a meaningful recovery of the lands which had been lost during the resettlement process. Although the rationale and justification for expropriation did not make any explicit reference to the ancestral lands, there is no other possible interpretation of the extraordinary collective political energy demonstrated by the Mapuche communities, as described in numerous oral historical accounts: it does not matter that it was called "land reform"; for them it was part of the historic struggle for the recovery of ancestral lands.

The case of Temulemu categorically demonstrates this historical continuity: from the resettlement, through the land reform and counter-reform, and to the present day, they have fought for the recovery of those lands that were lost during the early years of the 20<sup>th</sup> Century. For Temulemu, the particularly significant achievement is thanks to a legal claim which reached the Inter-American Court of Human Rights. Having lost the case, the government ceded part of the claimed territory, but failed to acknowledge the concept of ancestral lands – or *lof mapu* – which, according to the statements of the claimants, was the central issue of the case. Given that only one non-Mapuche property remains within the Temulemu *lof mapu*, the conflict continues, and makes it clear that the claim covers a far greater territory than what is represented by the *Títulos de Merced*.

Finally, the story of Mañiuko shows how this *lof mapu* was formed through settlement during the period prior to the creation of the State and the subsequent military occupation during the second half of the 19<sup>th</sup> Century. However, when the State began to dictate land ownership after the military occupation, the control that the Mapuche families exercised over the various spaces which make up the *lof mapu* was not recognised, thus violating territorial organisation by the appropriation of lands, the granting of these to foreign and Chilean colonists, and the reduction of Mapuche families into lower quality spaces by means of the *Títulos de Merced*.

This gave rise to a process of protest and territorial claims whose history spans 130 years. These claims were initially made before the Indigenous Resettlement Commission, and then later and in vain before the Indigenous Courts, but they eventually found more success with the advent of the land reform through participation in the Chile Fértil Settlement and its recovery of part of the Santa Cruz estate and the Reñico 1 and Reñico 2 properties. The history of appropriation and territorial reduction remains alive in the memory of today's generations in Mañiuko, alongside the story of more than a century of fighting for territorial restitution. As has been the case throughout the 20<sup>th</sup> Century, Mañiuko inhabitants continue developing strategies both within and outside institutional channels to recover what was taken from them and to reconstruct a collective and autonomous way of living. This history suggests that the struggle will continue until ancestral lands are recuperated and a vibrant local Mapuche society is rebuilt.

## Chapter 4 – Environmental Impacts of Exotic Forestry Plantations

The environmental impacts of fast-growing species plantations are widely documented in the scientific literature on the subject. For this Chapter, a review of this literature was made, entitled "*Research into Forestry Plantations and their effects on the quantity and quality of water in southern-central Chile*", specifically focusing on the systematisation of the scientific information and research available concerning the effects of southern-central Chile's plantations on the quantity and quality of water (complete study available in Annex C).

### Effects on Water Quantity and Quality

Some of the research into the relationship between fast-growing species plantations and their effects on water (both in terms of quality and quantity) shows that, when plantations approach their rotation age (approximately 15 years for eucalyptus and 25 for pine), their evapotranspiration is equivalent to more than 70 per cent of total precipitation in the case of *Eucalyptus globulus*, and around 65 per cent in the case of *Pinus radiata* (Huber et al., 2010), affecting water yield in small catchment areas.

An evaluation has also been made of the water consumption and soil humidity of a stand of 15 year old *Pinus radiata*, before and after a clearcutting, compared to values for a natural prairie. The water consumption of the plantation prior to clearcutting surpassed that of the prairie by more than 80 per cent. This changed following harvesting, giving the prairie a water consumption figure 13 per cent higher than that of the bare ground left after harvesting. Annual percolation in the planted stand was five times higher following harvest than prior to it (Huber & López, 1993).

Working in small catchment areas over a period of two years, Otero et al. (1994) also indicated that the conversion of secondary *Nothofagus obliqua* forests and remnants of adult native forest to exotic plantations of *Pinus radiata* leads to a reduction in water yield, particularly in summer. Water yield in catchment areas covered with native vegetation was up to 28 per cent higher than in those covered with pine.

Moreover, exotic species plantations reduce soil productivity due to the erosion associated with clearcutting systems and the nutrient demand of fast-growing species, and as a result the soil is not able to recover its productivity due to the short rotations of the plantations



(Donoso & Otero, 2005; Gerding et al., 2009). It is also known that silviculture management (harvest, forestation, construction of tracks, fumigations) changes both the quantity and the quality of surface water (Huber & López, 1993; Oyarzun & Peña, 1995; Huber & Trecaman, 2000; Iroumé et al., 2005; Frêne, 2010; Huber et al., 2010 in Frêne, 2013).

By contrast, Huber et al. (2008, 2010) reported that in mature plantations (15-17 years) of *Eucalyptus globulus* and *Pinus radiata* in central Chile (36°S), almost all of the incoming precipitation is evapotranspired, and annual percolation of water is minimal (5 per cent of the incoming precipitation) (in Oyarzún et al., 2012).

Huber and Trecaman (2004) estimated the quantity of water required to produce one cubic metre (m<sup>3</sup>) of trunk volume in *Pinus radiata* plantations of between 11 and 15 years in different silviculture management conditions around the cities of Talca, Yumbel, Collipulli and Valdivia. To establish the transpiration rate of *Pinus radiata* plantations, the quantity of water involved in net evapotranspiration was calculated, along with the trunk volume increment. The quantity of water required to generate 1 m<sup>3</sup> of trunk volume ranged from 241 to 717 m<sup>3</sup> (1 m<sup>3</sup> of water is equivalent to 1,000 litres of water). These values were influenced by the density of the plantations, summer temperatures, soil characteristics and accompanying vegetation, explaining the more than 83 per cent variation in the transpiration rates between plantations. Forestry plantations require large quantities of water, and their impact on the availability of this resource is particularly significant in areas of Chile with lower rainfall (Huber & Trecaman, 2004).

In another study carried out in the coastal mountains of southern-central Chile (40° S), indicators were established of water supply as an environmental service of native forests. These indicators are expressed as the increment in annual runoff (5.8 per cent) and of total summer flow (14.1 per cent) for an increase of 10 per cent in native forest cover for a given amount of precipitation. The same increase in forestry plantation cover, however, would reduce total summer flow by 20.4 per cent (Lara et al., 2009).

In recent decades, the coastal mountains of southern-central Chile have suffered an accelerated process of land use change which is seriously affecting the flow of nutrients in their catchment areas. The replacement of native vegetation with exotic plantations severely affects nitrogen (N) retention mechanisms. In particular, changes in land use significantly alter the

composition of microbial communities, meaning a change in the N cycle (Huygens & Boeckx, 2009). The direct effects of land use – the physical alteration of the rhizosphere, the region of soil containing roots and microorganisms – can last for a long time (> 50 years). Soil compaction resulting from harvesting practices such as clearcutting can cause an increase in bulk density and reduce the porosity of the soil. These changes can affect the number of aerobic and anaerobic microorganisms present and alter the nutrient cycle, including that of nitrogen (Huygens y Boeck, 2009).

In a study carried out in small catchment areas in the South of Chile (Oyarzún et al., 2011) it was found that the annual suspended sediment export rate was between 305 and 368 kg/ha/year in micro-catchments with evergreen native forest and *Eucalyptus globulus*, respectively. The annual base sediment rate was 2.7 and 7.7 kg/year for micro-catchments with native forest and *Eucalyptus globulus* plantations, respectively.

By contrast, Rutherford (2004), working in small catchment areas in the coastal mountains of the South of Chile, found that as the proportion of native forest is increased, so there is an exponential decrease in suspended sediment concentrations. Similarly, larger proportions of *Eucalyptus* sp. increase suspended sediment concentration due to greater exposure of the soil to erosive processes during the winter, and to forestry activity during the summer.

### Summary of Western Scientific Knowledge

The analysis of scientific and technical information carried out in the creation of this report coincides with the experiences and perceptions of neighbouring Mapuche communities who live and coexist with the fast-growing exotic species forestry plantations of southern-central Chile. The increasing lack of water caused by historical decline in precipitation is worsened by the impacts of the plantations, both in terms of direct effects such as:

- a) negative effects on the soil water balance and on surface and underground bodies of water;
- b) soil loss through erosion following harvests using the clearcutting method;
- c) elimination of undergrowth and the resulting loss of habitats and biodiversity; and in terms of indirect effects such as:

- contamination of bodies of water through sediment and nutrient displacement;
- loss of nutrients in soils;
- track degradation;
- increased risk of fires;
- loss of access to medicinal plants;
- loss of water and food sovereignty;
- contamination by chemicals.

The principal conclusions of this summary are as follows:

- Research carried out in southern-central Chile using historical flow data in large catchment areas over long periods of time (e.g. Little et al., 2009; Iroumé & Palacios, 2013) and in small catchment areas (e.g. Lara et al., 2009; Iroumé et al., 2005) offer evidence of a reduction in water yield in catchment areas covered with fast-growing exotic plantations such as *Pinus radiata* and *Eucalyptus* sp., particularly during the summer period.
- Common harvesting practices such as clearcutting cause accelerated soil erosion, particularly in the first year following harvest. This results in higher suspended sediment in the channels that drain the catchment areas. These effects are particularly common in relation to the phenomenon of hydrophobia, widely documented in *Eucalyptus* plantations in Mediterranean climates, resulting in an increase in surface runoff and leading to soil erosion.
- Native forests have very efficient mechanisms for retention of nutrients such as nitrogen and phosphorus, elements which cause eutrophication of semi-enclosed bodies of water such as lakes and inlets. These mechanisms are not present in exotic plantations, and there is a potential risk of loss of water quality in waterways that drain catchment areas with these coverings. Studies carried out in catchment areas in southern-central Chile (e.g. Oyarzun et al., 2007) show higher nitrogen and phosphorous export in catchment areas covered with exotic plantations compared to those covered with native forest.

### Systemic Approach and Problems of Scale

There follows a series of territorial backgrounds which should be considered when analysing the situation in each territory. The impacts of plantations and forestry production are defined in terms of regional drought conditions (Centro de Ciencia del Clima y la Resiliencia CR2,

2015), water shortage (Andrade, 2016), climate change (González & Muñoz, 2013) and territorial restitution by neighbouring communities (Cepal, 2012; Araya, 2003). The combination of these situations generates a fragile natural environment, growing concern over water conservation and a high level of uncertainty among the communities.

The districts of the La Araucanía region are affected by a shortage of water, particularly during the summer months. According to Andrade (2016) there are currently 189 tanker trucks and one boat dedicated to supplying water to the population, distributing a total of 63,934,343 litres of water monthly across the whole of La Araucanía. According to work done by the “*Agua que has de beber*” initiative (2014), water scarcity in the region has increased significantly over the course of the last 15 years, attributed to prolonged periods of summer drought and to the changes in land use which impede ground water storage, principally due to forestry activity and to the use of water in large-scale agricultural irrigation. According to data from the study (Agua que has de beber, 2014), distribution of water in rural areas by means of tanker trucks has been introduced in 31 of the region's 32 districts, affecting 16,674 families. Public expenditure to operate these tankers between January and June 2013 ran to CLP 1,377,000,000, not including the sums spent by each local council on distribution of the water to different localities. In 2015 in the region of La Araucanía alone, CLP 2,600,000,000 were spent on rainwater collection tanks and on repairs to irrigation projects for 2,873 families, fixing damage resulting from heavy snowfall and water shortages. During the same period, the State spent CLP 596,000,000 on the installation of irrigation over 306 hectares, and CLP 2,700,000,000 on the rehabilitation of degraded soils.<sup>173</sup>

It is also important to note that climate change is a large-scale phenomenon that has intensified over the last 200 years, resulting in a reduction in precipitation in southern-central Chile. Long-standing records in this zone (1853-2015) provide evidence of a significant decrease in annual precipitation, especially during autumn and winter, suggesting an extension of summer conditions and a greater concentration of winter rainfall (González & Muñoz, 2013). Arguments pointing to climate change as the only cause of these drought problems affecting numerous

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<sup>173</sup> Presidency of Michelle Bachelet. (2015). *Presidential Message*. Chile: Gobierno de Chile.

districts of the country neglect to take into account excessive consumption in catchment areas as a contributing factor.

In terms of change in land use, the principal factor in the loss of native forest in southern-central Chile over recent decades has been the expansion of the forestry industry (Miranda et al., 2016; Aguayo et al., 2009). Between 1979 and 2000, the principal transformations in the landscape of the Bío Bío and La Araucanía regions were as a result of forestry development. Native forest was replaced at a rate of 1.6 per cent, equating to a loss of 28.2 per cent of initial coverage, principally due to the expansion of forestry plantations towards the Andean and coastal mountain ranges (71.7 percent) (Aguayo et al., 2009).

Historically, Chile's temperate forests have been considered above all as a source of timber and firewood, and as lands for expansion of agriculture and grazing by means of felling and burning. Over the last three decades, they have also been replaced by commercial fast-growing exotic plantations, principally *Pinus radiata* and *Eucalyptus* sp., being reduced at a rate of between 1.1 and 2.7 per cent per year between 1975 and 2000 in some areas of the coastal mountain range (Echeverría, 2003). This has had significant negative environmental impacts, including increase in soil erosion and reduction in water quality and availability, as well as the social impact on forest inhabitants and communities who have been obliged to move away (Lara & Veblen, 1993 in Nuñez et al., 2006).

Large-scale forestry operations such as those in Chile have systemic effects which cannot be evaluated individually. When they apply to large tracts of land, phenomena such as soil loss, surface erosion, increase in surface runoff following clearcutting, reduction in infiltration (whether due to interception or evapotranspiration), and use of chemical products (herbicides, fertilisers, pesticides) are cumulative effects which have repercussions across an entire ecosystem and catchment area, as confirmed by the studies compiled in Annex C: *"Research into Forestry Plantations and their effects on the quantity and quality of water in southern-central Chile."* The accumulation of these effects over time leads to changes such as the lowering of the water table, soil loss, build-up of sediment in bodies of water, contamination and eutrophication of bodies of water, and fragmentation of native forest. The latter hinders connectivity between patches of native forest, threatening genetic variation between endemic species.

The FSC Principles demand a consideration of these cumulative effects – with regard to large-scale forestry operations, in the case of Chile – and a study of the adaptation of the FSC principles to this type of operation is made, along with proposals, in the *"FSC Motion 20 Study on the Impacts of Large-Scale Forestry Operations in Global North and South"* (FSC Policy Standards Unit, 2014). This report makes a detailed study of the gaps, problems and challenges with regard to certification of large-scale forestry operations, as well as a series of proposals, the implementation of which we agree could help significantly in remedying some of the systemic effects of these plantations on a regional and catchment area level.

## Conclusions

The following table presents a comparison between the FSC Principles and Criteria concerning environmental issues, and the relevant problems (current and future) in Chile. The recommendations emerging from these conclusions can be found in the final Chapter of this study.

We consider that there are a number of FSC principles which should be studied in greater detail by auditors, on account of reasonable and documented doubt as to possible nonconformity that has been overlooked, given the history of environmental decline present in the case of Chile (Miranda et al., 2016; Aguayo et al., 2009), as well as the large scale on which forestation with fast-growing exotic species has taken place, currently exceeding an area of 2,426,722 hectares (*"El sector Forestal Chileno,"* INFOR 2015, p. 5), and that the industry is continuing to expand.

A guarantee of conformity with FSC principles would be an important step forward in the socio-environmental responsibility of the forestry industry in Chile, and as we recommend in Chapter 7, the recommendations made by the *"FSC Motion 20 Study on the Impacts of Large-Scale Forestry Operations in Global North and South"* (FSC Policy Standards Unit, 2014) should be implemented. These propose a series of improvements to the certification process, taking into account the fact that the forestry model in Chile is based on large-scale forestry operations whose characteristics in terms of impact, risks and scales, among others, make them very different from small- and medium-scale operations. These implementations are necessary, and would provide an incentive for improving the environmental welfare of the territories in which they are carried out.

Table B: FSC Environmental Principles and Possible Conflicts with the Large-Scale Forestry Operation Model in Chile

FSC Principles and Criteria (v5) <sup>174</sup>	Possible conflicts with the forestry model in Chile
<p><b>Principle 6: Environmental Values and Impacts: The Organization* shall maintain, conserve and/or restore ecosystem services* and environmental values* of the Management Unit*, and shall avoid, repair or mitigate negative environmental impacts.</b></p>	
<p><b>6.1</b> The Organization* shall assess environmental values* in the Management Unit* and those values outside the Management Unit potentially affected by management activities. This assessment shall be undertaken with a level of detail, scale and frequency that is proportionate to the scale, intensity and risk* of management activities, and is sufficient for the purpose of deciding the necessary conservation measures, and for detecting and monitoring possible negative impacts of those activities.</p>	<p>The impacts of harvesting using the clearcutting method are not compatible with "measures for the conservation of biodiversity".</p>
<p><b>6.2</b> Prior to the start of site-disturbing activities, The Organization* shall identify and assess the scale, intensity and risk* of potential impacts of management activities on the identified environmental values*.</p>	<p>Contamination of water courses is to be expected as a result of clearcutting and the use of chemicals; however these continue to be common practice.</p>
<p><b>6.3</b> The Organization* shall identify and implement effective actions to prevent negative impacts of management activities on the environmental values*, and to mitigate and repair those that occur, proportionate to the scale, intensity and risk* of these impacts.</p>	
<p><b>6.4</b> The Organization* shall protect rare species* and threatened species* and their habitats* in the Management Unit* through conservation zones*, protection areas*, connectivity* and/or (where necessary) other direct measures for their survival and viability. These measures shall be proportionate to the scale, intensity and risk* of management activities and to the conservation status and ecological requirements of the rare and threatened species. The Organization shall take into account the geographic range and ecological requirements of rare and threatened species beyond the boundary of the Management Unit, when determining the measures to be taken inside the Management Unit.</p>	<p>Large-scale single-crop forestry plantations guarantee neither adequate connectivity nor protection of the habitats of threatened species.</p>
<p><b>6.5</b> The Organization* shall identify and protect representative sample areas of native ecosystems and/or restore them to more natural conditions. Where representative sample areas do not exist or are insufficient, The Organization shall restore a proportion of the Management Unit* to more natural conditions The size of the areas and the measures taken for their protection or restoration, including within plantations, shall be proportionate to the conservation status and value of the ecosystems at the landscape level, and the scale, intensity and risk* of management activities.</p>	
<p><b>6.6</b> The Organization* shall effectively maintain the continued existence of naturally occurring native species and genotypes, and prevent losses of biological diversity*, especially through habitat management in the Management Unit*. The Organization shall demonstrate that effective measures are in place to manage and control hunting, fishing, trapping and collecting.</p>	

<sup>174</sup> For FSC Principles and Criteria (V4) see Appendix D.

<p><b>6.7</b> The Organization* shall protect or restore natural water courses, water bodies, riparian zones and their connectivity. The Organization shall avoid negative impacts on water quality and quantity and mitigate and remedy those that occur.</p>	<p>Contamination of water courses is to be expected as a result of clearcutting and the use of chemicals; however these continue to be common practice.</p>
<p><b>6.8</b> The Organization* shall manage the landscape* in the Management Unit* to maintain and/or restore a varying mosaic of species, sizes, ages, spatial scales and regeneration cycles appropriate for the landscape values* in that region, and for enhancing environmental and economic resilience*.</p>	<p>Single-crop forestry plantations are homogeneous in terms of age, species and landscape.</p>
<p><b>6.9</b> The Organization* shall not convert natural forest* to plantations*, nor natural forests or plantations on sites directly converted from natural forest to non-forest land use, except when the conversion: a) affects a very limited portion of the area of the Management Unit*, and b) will produce clear, substantial, additional, secure long-term conservation benefits in the Management Unit, and c) does not damage or threaten High Conservation Values*, nor any sites or resources necessary to maintain or enhance those High Conservation Values.</p>	<p>Chile's native forests have been replaced throughout history, and this is continuing (Aguayo et al., 2009; Echeverría, 2003; OECD, 2016; Miranda et al., 2016).</p>
<p><b>6.10</b> Management Units* containing plantations* that were established on areas converted from natural forest* after November 1994 shall not qualify for certification, except where: a) clear and sufficient evidence is provided that The Organization* was not directly or indirectly responsible for the conversion, or b) the conversion affected a very limited portion of the area of the Management Unit and is producing clear, substantial, additional, secure long term conservation benefits in the Management Unit.</p>	

<p><b><i>Principle 10: Implementation of Management Activities Management activities conducted by or for The Organization* for the Management Unit* shall be selected and implemented consistent with The Organization's economic, environmental and social policies and objectives* and in compliance with the Principles* and Criteria* collectively.</i></b></p>	
<p><b>10.1</b> After harvest or in accordance with the management plan*, The Organization* shall, by natural or artificial regeneration methods, regenerate vegetation cover in a timely fashion to pre-harvesting or more natural conditions.</p>	<p>The impacts of harvesting using the clearcutting method are not compatible with "measures for the regeneration of vegetation cover".</p>
<p><b>10.5</b> The Organization* shall use silvicultural* practices that are ecologically appropriate for the vegetation, species, sites and management objectives*.</p>	<p>The impacts of harvesting using the clearcutting method are not compatible with "measures for the conservation of biodiversity". Single-crop forestry plantations guarantee neither adequate connectivity nor protection of the habitats of threatened species.</p>



<p><b>10.6</b> The Organization* shall minimize or avoid the use of fertilizers. When fertilizers are used, The Organization shall prevent, mitigate, and/or repair damage to environmental values*.</p>	
<p><b>10.7</b> The Organization* shall use integrated pest management and silviculture* systems which avoid, or aim at eliminating, the use of chemical pesticides*. The Organization shall not use any chemical pesticides prohibited by FSC policy. When pesticides are used, The Organization shall prevent, mitigate, and/or repair damage to environmental values* and human health.</p>	<p>The use of chemicals on extensive areas of land is common practice in large-scale single-crop forestry plantations.</p>
<p><b>10.10</b> The Organization* shall manage infrastructural development, transport activities and silviculture* so that water resources and soils are protected, and disturbance of and damage to rare* and threatened species*, habitats*, ecosystems* and landscape values* are prevented, mitigated and/or repaired.</p>	<p>Contamination of water courses is to be expected as a result of clearcutting and the use of chemicals; however these continue to be common practice. Large-scale single-crop forestry plantations guarantee neither adequate connectivity nor protection of the habitats of threatened species.</p>

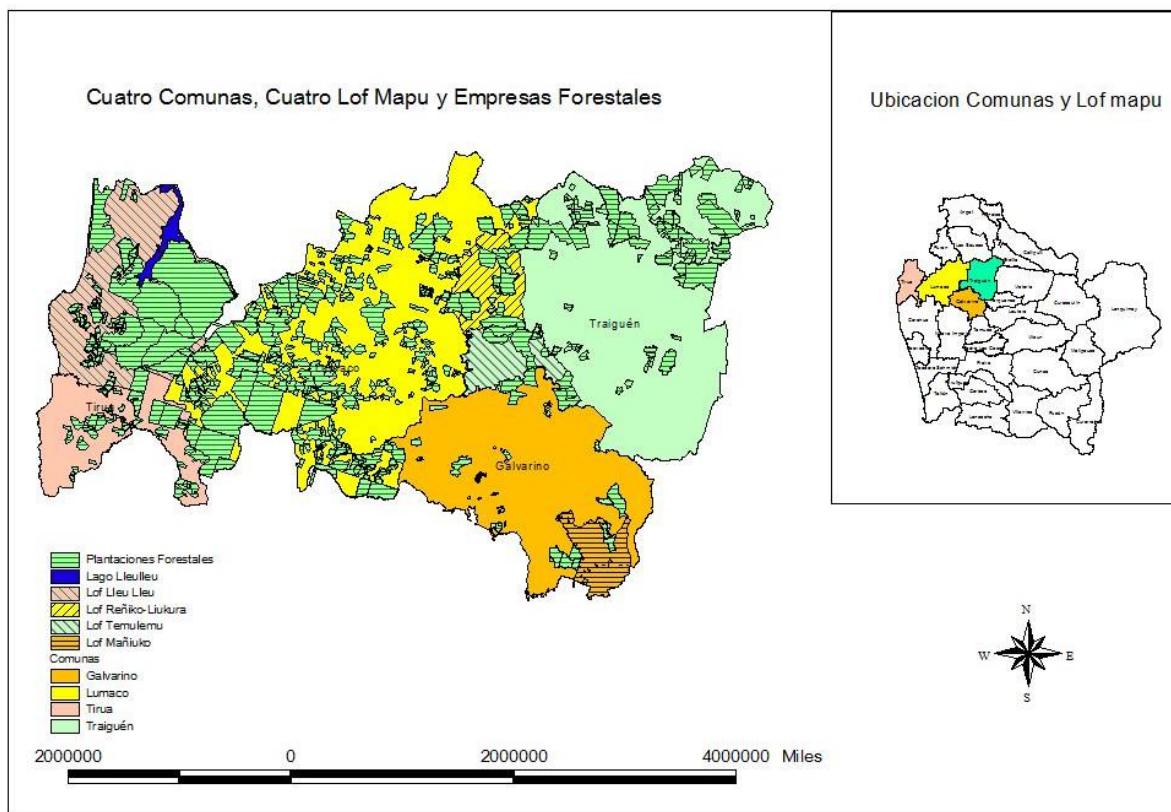
## Chapter 5 – The Forestry Companies and Certification

### Introduction

As has been indicated previously, the Mapuche claim against the State and the dominant Chilean society goes much further than their relationship with the forestry companies. However these companies do play a key role in the history of the claim, particularly in its more recent chapters. While "private owners" – both forestry and agricultural – represent relatively small and scattered properties, the forestry companies are of greater significance for two connected reasons: the high concentration of the forestry industry, and the significant impact of forestry production on the everyday lives of Mapuche communities.

In the 8th and 9th Regions, the two largest companies own approximately 80 per cent of the certified forestry plantations, while the six largest companies own 96 per cent, representing 80 per cent of the total certified forestry plantations in the four Regions being analysed. Their "proximity" with the Mapuche communities is harder to calculate given the numerous and differing definitions of the term, but for the purposes of this study we have opted for the broadest definition, understanding "proximity" as the "area of influence", coinciding with the Mapuche point of view in the territories studied [**see Chapter 1**]. In line with this definition, the degree of proximity can be calculated in terms of the concentration of forestry companies in each district. In the four districts selected for this study, for example, the forestry companies cover 8 per cent of the area of Galvarino, 19 per cent of Traiguén, 40 per cent of Lumaco and 44 per cent of Tirúa [**see Map 21**]. These two factors – concentration and proximity – are made more relevant by the arrogance of the forestry companies in their behaviour towards Mapuche demands for their rights and for their livelihoods. The often-heard chant – "que se vayan (go away)" – sums up the pent-up frustration of the situation.

Map 21: Four districts, the *Lof Mapu* and the Forestry Companies



Although use of the word "arrogance" might imply siding with the radical Mapuche position, what is curious about the recent history of the forestry companies is that many of their own representatives – widely interviewed for this study – confirmed this conclusion, and even used similar expressions. These interviewees appreciate that it is a legitimate criticism of the companies given their behaviour prior to obtaining FSC certification. For example, spokespeople from Arauco and Mininco confirm that before 2010 the forestry companies were "autistic", having no interest in the well-being of their "neighbours", responding with legal or political battles, and requesting State force against Mapuche protests, instead of resorting to dialogue and consensus. The interviewees describe – almost without exception – periods "before" and "after" the FSC, focusing on numerous company practices, but above all on the relationship of the company with its surroundings; in other words, with the Mapuche communities that insist they "go away."

It was from this observation that the two aims of this Chapter were defined: to analyse the changes in business culture and practices as a result of FSC certification, and to provide an explanation of the lack of efficacy of these changes in light of the ongoing – and in some cases deepening – conflicts between Mapuche communities and these companies. Our argument is that FSC certification, despite its importance as an instrument of corporate social responsibility, is designed neither to address the institutional racism that characterises Mapuche relations, nor to offer a response to the fundamental demands made as a means of reparation. These two essential factors, compounded by the shortcomings of the certification process itself, produce a general perception of the FSC as reinforcing rather than remedying the colonial-style treatment that the Mapuche suffer.

### Brief History of the FSC in Chile (1993-2015)

The FSC was founded in 1993 during a period of social and political buoyancy heralded by the return of democracy to Chile, and a key focus of the energy of the time was the environment, including the alarming loss of native forest over previous decades.<sup>175</sup> There was no doubt as to the cause of the problem: environmental organisations – both national and international – concentrated their attention on the forestry companies which had expanded their patrimony exponentially during the dictatorship, taking advantage of the perfect conditions for growth and consolidation of the industry.<sup>176</sup> The FSC figured prominently among the means available for addressing the problem, given the strong environmental roots of its founders and impressive success record based on a strategy combining pressure through market demand with dialogue and agreement between all interested parties ("multi-stakeholder initiatives"). During the

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<sup>175</sup> According to ForestEthics, 4.5 million hectares of native forest were lost between 1985 and 1995, a decade of intense plantation establishment. Miranda, et al. (2006) calculate a loss of almost 20 per cent of native forest between 1973 and 2011. According to a study by the WWF (2015), non-native tree species are replacing native forest at a rate of 120,000 hectares per year. According to a recent OECD report (2004: 233): "There is an annual loss of between 3.5% and 4.5% of native forest cover." Although these figures are not in complete agreement, they do coincide in the general conclusion that the problem of loss of native forest is both serious and ongoing.

<sup>176</sup> The Land Counter-Reform (Law 701) and the general atmosphere of political repression were both contributing factors, as detailed in Chapter 2.

nineties, a group of Chilean environmentalists got together to provide education on the potential of the FSC and, eventually, to form an FSC national board. This they achieved in 1999.<sup>177</sup>

The initial reaction of the industry's most powerful actors was of vigorous opposition, especially given the fact that the standards and strategies were coming from an international organisation. In an interview in 1998, Fernando Léniz, president of CORMA, insisted that Chile required a brisk rhythm of growth in order to overcome poverty, which would require "alterations" but "not damage" to the natural environment. Upon realising that FSC certification would not permit such "alterations", he argued that "(...) we must find ways to strenuously oppose"<sup>178</sup> their entry into Chile, as it would be "tremendously detrimental". Five years later, Hernán Cortés – ex-president of the Chilean College of Forestry Engineers, professor of forestry engineering at the Universidad de Chile, influential intellectual in the forestry sector and COMACO official – published an article containing more sophisticated but equally sceptical arguments regarding FSC certification. He maintained that the principal driver of deforestation is not the forestry companies, but poverty, leading people to cut down trees where they shouldn't. He argued that certification is a strategy employed by economic sectors from the northern hemisphere to exclude companies of the south from the global market.<sup>179</sup> By this time, the corporate sector and its associates had founded CERTFOR, a "Chilean seal" which later obtained international affiliation with PEFC, in the hope that this more "comfortable" certification of the industry would alleviate pressure to accept FSC certification.

This pressure grew rapidly during the first decade of the 2000s. In 2003 an international campaign by ForestEthics achieved the unprecedented agreement of the Arauco and Mininco companies to cease replacement of native forest. The following year saw the start of the "black-necked swans crisis", which focused national and international political attention on Arauco for their environmental negligence. In 2004, the FSC Chile group received the formal recognition of FSC International, securing them funding for the National Office and a higher profile as a national

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<sup>177</sup>We would like to thank Ana Rosa Young for providing such precise information and for masterminding the creation of this early history.

<sup>178</sup> Interview with Fernando Léniz, President of CORMA, September 1997. Transcription in the possession of the authors.

<sup>179</sup>Cortés, Hernán. "Certificación forestal: sus motivaciones". *Revista Ambiente y Desarrollo de CIPMA* XIX, 1: 12-16, 2003.

actor. Towards the end of the decade, the forest industry found itself deeply divided as to the decision of whether to accept FSC certification as an internal standard. By 2008, 17 companies had been convinced to become certificate holders, thereby subscribing to the FSC certification system, most of them small but with a number of medium-sized companies (<50,000 hectares) as well, including Monte Águila (2001), Bío Bío (2002), Cautín (2003), and COMACO (2007). In stark contrast to this, the two biggest companies – Arauco and Mininco – remained outside, maintaining public opposition while they carefully analysed the pros and cons of the system.

This division was most likely to do with the principles and world view of the early subscribers to the FSC in Chile, and the motivations of the small and medium-sized companies for entering into the system were numerous. There is strong evidence in the case of COMACO, for example, that the overwhelming motivator was pressure exerted by the international market: purchasers who had bought in to the principles of the FSC and had made certification a requirement for suppliers.<sup>180</sup> In other cases, such as that of Monte Águila and MASISA, internal actors who believed in the principles of "corporate responsibility", particularly in regard to the environment, played a key role. In the case of Bosques Cautín, much of whose patrimony was located within the growing Mapuche conflict zone, the company may have considered that certification would provide them with greater room for manoeuvre in interactions with their "neighbours." But from the point of view of FSC Chile's paradigm and its foundation in civil society – principally environmentalists and members of the Social Chamber – this division was a logical one. While it was possible to imagine a "responsible" development model in line with the FSC principles and with which the small and medium-sized companies complied, it was difficult – if not impossible – for the two large companies to enter, controlling over 1.5 million hectares and bringing with them a deplorable reputation and track record regarding these same principles.

The paradigm was seriously challenged at the beginning of 2009 by the news that Arauco and Mininco had decided to initiate the FSC certification process; however the decision was not viewed in the same way by all parties. On the one hand there were key actors within the FSC who actively promoted the entry of "the big two", arguing that the standard is demanding and

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<sup>180</sup>This explanation is particularly convincing as it comes from Hernán Cortés himself, who had been publicly opposed to certification only a few years before (Interview, 16<sup>th</sup> June 2015).

rigorously applied, that entering means positive incremental change, and that it brings powerful actors to the table who previously had no serious relationship with civil society.<sup>181</sup> On the other hand, another group of actors – among them important people from the Environmental and Social Chambers of FSC Chile – opposed this initiative from the outset, and continue to do so to the present day. Arguments against the certification of the big two were numerous, but can be summarised in three points: 1) their eminently negative track record would be concealed or wiped clean by certification; 2) these problems are so severe that any certification would be premature; 3) upon gaining certification, these companies could exert improper influence to avoid full compliance.<sup>182</sup> Despite these arguments, certification of the big two was approved at the end of 2012, an event which unleashed another series of criticisms, this time with evidence from audits as a reference.<sup>183</sup> In response to the wave of protest and criticism against certification of the big two, there were numerous visits from FSC International to Chile. During one such event in 2012, the now famous meeting between the Mapuche leaders and Director General Andrés de Freitas took place, giving rise to the present study.<sup>184</sup>

The role of the Mapuche in the process described above, and particularly of the Mapuche conflict with certified forestry companies, can be described as a strong "absent presence". On the one hand, as has been detailed in the previous Chapters, the Mapuche claim to ancestral lands in general, and specifically against the forestry companies, has been a constant since the time of the "resettlement", gaining even greater momentum from the beginning of the 90s. On the other hand, direct Mapuche participation in certification processes, and above all in the FSC's internal negotiations, has been minimal; this is a particularly thorny subject given the enormous dimension of the "Mapuche conflict" in the effectiveness of the system. Only one Mapuche person has served on the board of FSC Chile, and among the entire Chilean membership there

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<sup>181</sup>Among those that took this position were key actors from within FSC Chile and FSC International, who afterwards presented the decision of the big two as a great victory for the principles which the FSC defends.

<sup>182</sup>The AIFBN (Association of Forestry Engineers for Native Forest) issued its first letter criticising the certification process of the big two in April 2009; their previous complaints had been plentiful.

<sup>183</sup>See, for example, the analysis by Venegas and Astorga of the Rainforest Alliance audit of MININCO: "Análisis De Los Informes De Auditoria A Forestal Mininco S.A" (22/05/2013).

<sup>184</sup>According to the documentation, the leaders requested "(...) *an independent study, with Mapuche participation, into the situation of the Mapuche people with regard to the presence of these forestry companies and to their certification processes, and that this serve as a reference and guide for certifying bodies and possible certification processes in Chile.*" De Freitas publicly consented.

have only been a few Mapuche individuals and one organisation. Throughout the many consultations that the certification process requires, if there has been any Mapuche participation, there is little evidence of direct dialogue with the proponents of land recovery. Criticisms and complaints from civil society, above all following the certification of the big two, have almost without exception included references to the Mapuche conflict. However the leaders themselves, again almost without exception, have seen the FSC as a distant entity, allied to the companies, and insensitive to their perspective. It is for this very reason that the requirement for this study to have a significant level of "Mapuche participation" is so important: it is probably the first time that a study has approached the subject primarily from a Mapuche perspective.

### The Impact of Certification on Company Culture and Practices

There was a major change, a before and after [the certification]. Nowadays we are very "pro-Mapuche": we recognise the claim and the historical debt. There are expectations, and we try to meet with those of everyone.

– MININCO Official, 20<sup>th</sup> October 2015

The certification process brought about meaningful changes in the culture, organisational structure and practices of the forestry companies, and in some cases these changes even surpassed those established by the ten Principles. Great care must of course be taken with generalisations like this: each company has its own idiosyncrasies, different sizes of property and different officials with their respective characteristics. From the point of view of many Mapuche communities, there is no concept of "before" and "after" certification, because for them the most significant and conflict-provoking factors are ongoing. Thus we find ourselves in a situation in which the representatives of the companies fervently believe that they have entered a new era, and that they have the opportunity to repair their relationships with the Mapuche communities. The communities however, despite appreciating certain changes, do not pay them much attention and do not drop the age-old desire that they "go away".

The key change seen as a result of membership of the FSC has been in the companies' internal organizational changes, with explicit policies of attentiveness to social relationships with those who are "neighbours" to the plantation stands. Although the environmental requirements



were central to the initial decision and demanded greater modifications to established practices, it is hard to credit the FSC solely for these changes.<sup>185</sup> On the one hand, reasonably sustainable management is in the company's own interest; on the other hand there were a great many simultaneous pressures for improved environmental practices from CERTFOR, the State, other NGOs and society in general.<sup>186</sup>

In social terms on the other hand, the FSC standard clearly stands out. Firstly it requires that "neighbours" are identified, that an ethic of communication and dialogue with them is established, that evidence is provided for progress in resolution of conflicts, and that certain compromises are made with what is going on in their surroundings.<sup>187</sup> To assure these commitments it is necessary to create a unit responsible for the management of relations with the certification bodies (CB) and, more specifically, create the position of "social liaison officer", responsible for relations with the surrounding area. In situations where interactions are with neighbouring Mapuche communities, there is a growing tendency for these officers to be Mapuche. Despite the fact that alongside the companies' Mapuche neighbours there are also many non-Mapuche Chileans, relations with the former present a far greater challenge. The people we interviewed all agreed that the few problems arising concerning non-Mapuche rural people in the surrounding area are easily resolved. In many instances it is enough simply to provide support for the local school, minor infrastructure projects, etc.

There are two main differences with Mapuche "neighbours". The first is that the FSC standard (Principle 3) contains stipulations directly relevant to Mapuche communities, especially with regard to sites of special cultural significance (SCS – cemeteries, sacred places, etc.) that require attention, but they comply with this stipulation in such a way that the effects on their

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<sup>185</sup> While there is broad agreement that FSC has been responsible for focusing greater attention on the socio-economic dimensions of forestry production, and on the central issue of substitution of native forest, whether or not FSC has played a central role in strengthening environmental standards (in relation to other forces of change is a contested question. For a range of views on this matter, see F. Dubé, et al (2004); Cabbage and Diana Diaz (2009); Robert Heilmayr and Eric F. Lambin (2015) [<http://www.pnas.org/content/113/11/2910.full#ref>]; and Nussbaum and Markku (2013).

<sup>186</sup> The director of CERTFOR, vigorously questioned whether improved environmental practices could be attributed to FSC alone. That would be like "the cockerel taking credit for the sunrise," he concluded. Interview, 6/17/2015.

<sup>187</sup> See (particularly) criterion 2.3 of Principle 2 "Tenure and use rights and responsibilities" which says: "Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights." Also, Principle 4: "Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities."

operations are kept to a minimum. The second difference comes as a consequence of the new organisational culture of dialogue, a certain "discovery" of Mapuche concepts, and hopefully a recognition that a new agreement could contribute significantly to pacifying the political conflict which threatens their operations. In other words, although all of the company representatives indicated that the sites of SCS are now being respected thanks to certification, it is the outreach and support initiatives that are the source of greatest enthusiasm and pride.

For example, in a survey of Bosques Cautín, the social liaison officers showed great enthusiasm during the first visit by a *machi* from Galvarino, who has had a close relationship with Cautín for many years and who participates in the forestry industry as a small producer. The resulting benefits of this relationship have generated a deep loyalty with the company. In the case of Arauco, we visited the Cooperativa "Deshidratados Culinpalihue" ("Culinpalihue Dried Goods" Cooperative), a group of Mapuche women who collect herbs and who, through the support and permission given by Arauco for their activities, have a very positive opinion of the company. Accompanied by Mininco, we visited three Mapuche farmers in the district of Collipulli who receive technical assistance paid for by the company, helping them to start a business growing raspberries, blueberries and other high-value products. Finally, and once again with Arauco, we visited two Mapuche sub-contractors, one of whom employs around 70 workers from his community. Both men used to have a reputation for causing trouble for the forestry companies, and the feelings they expressed are similar:

I studied the FSC, and it made me want to be part of it. I studied all of their principles. I wanted to know whether they had any real effect. If the companies had responded like this from the outset, we wouldn't have so many problems. The company has changed; it has learned how to interact. Before it just destroyed (...) <sup>188</sup>

In Arauco's "Casa del Amigo", located in the district of Arauco, we held a private interview with one of the residents of Yani Mapu Lafquen who said the same thing, confirming the culture of dialogue that the company has adopted towards them:

It is important to negotiate; [when we talk about] things, there is a way out. The State does not do what it should. They did not [install] potable water, for example. The

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<sup>188</sup>Interview 10/21/2015 [in the presence of Arauco personnel].

company [ARAUCO] did all that. The water is clean now, and has a pump. The company does more than the State.<sup>189</sup>

Both Cautín and Arauco have launched experimental forestry production programmes on Mapuche land, including contracts for distribution of profit. During a private interview, the operations manager of Arauco demonstrated an openness to exploring more arrangements of this type.

The obvious question following this ethnographic information is: how deep, broad and lasting are the changes? We are not in possession of sufficient information to be able to answer this key question.<sup>190</sup> All the evidence suggests that the companies' internal cultural and organisational changes will last, at least as long as their commitment to the FSC does. There is a need for specialised personnel to deal with the CBs, and a commitment to dialogue is something that the companies must demonstrate. The economic "good neighbour", "we're partners", etc. programmes are more difficult to assess, as the communities that benefit from them represent only a small section of those existing in the area of influence, and those people we interviewed from the companies confirm that the budget allocated to these programmes is still modest. That said, it would be difficult to specify an expansion limit, and there is no aspect of the standard that could offer guidelines other than a general reference to "local communities". Several company officials expressed their concern that these pilot schemes could end up providing support

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<sup>189</sup>Casa del Amigo, Arauco 10/21/2015

<sup>190</sup>Although the companies did provide a lot of information, their receptiveness to requests for information provided in uniform formats designed by the consultation team was – with one exception – not sufficient. The most illustrative example is the data which would enable us to measure the conflict with Mapuche communities across a given set of corporate assets. The methodology requested a categorisation of all of the properties of a given company within the 8th and 9th Regions, using a scale of one to five: 1. Neutral: everything normal, nothing special. 2. Positive: special relationships of outreach, collaboration, projects, etc. 3. Conflict under negotiation: some kind of conflict, but in the process of resolution through dialogue, etc. 4. Open Conflict: "red zone", no fluid dialogue and no paths to resolution. 5. No relationship: sufficient distance from communities that there is no relationship. MASISA was the only company to respond positively to this request, reporting 21 per cent of its 81 properties in the 9th Region as being in "Open Conflict". Assuming that MASISA – compared with other companies – has paid equal or greater attention to its relationships with Mapuche communities, in the absence of precise data we have taken 20 per cent as a conservative estimate of the proportion of properties currently in "open conflict". For example, if we take eight districts with a strong forestry company presence (Carahue, Ercilla, Collipulli, Angol, Los Sauces, Puren, Cañete and Contulmo), we find that, according to the 2014 data, they have an estimated 275,000 hectares of forestry cover, of which a significant part would be owned by large certified companies. Using the above estimate, we could propose a hypothesis that of these, some 55,000 hectares (20 per cent) are in a state of "open conflict". Among the recommendations presented at the end of the study, we urge the FSC and the CBs to improve the quality of available data concerning properties in conflict, so that estimates like this can be confirmed.

functions which in reality are the responsibility of the State (access to potable water, technical assistance, local development strategies, etc.), and that expectations would grow. With all things having been considered however, there is also acknowledgement of the fact that these local development programmes do not guarantee a solution to the conflict. In many of the interviews, we saw a clear struggle between pride in what has been achieved, and recognition that, probably, it is a case of "too little, too late."

Even those Mapuche who get along with the companies – a proportion impossible to quantify with any accuracy – maintain a certain level of mistrust. For example, having praised the new behaviour of companies, the sub-contractor for Arauco concluded by saying: "(...) when all's said and done, the companies are a cancer."<sup>191</sup> Similarly, one company representative admitted, in reference to a Mapuche man who facilitates a dialogue between the company and the communities:

(...) he helps us a lot with community outreach, as an "inter-cultural facilitator." [But] there is no way of predicting his behaviour: "one day we work together, the next he isn't talking to us." He isn't a "friend", but we respect him.<sup>192</sup>

Such respect, in a context of growing conflict, does not provide many guarantees.

### Interculturality and Institutional Racism

The abyss between the "advances" of the companies towards a "new deal" with Mapuche communities and the lack of progress made towards harmonious relations in the region stems from historical conditions that go far deeper than FSC certification. The military conquest of the 19<sup>th</sup> Century, the appropriation of large areas of territory and the reduction of the population into tiny plots, and colonial subjugation throughout the 20<sup>th</sup> Century – all covered in Chapter 2 of this report – have led to a situation of subordination to the dominant Chilean society which FSC Principle 3 does not account for. In this sense, the people we interviewed from the companies are right in saying that the Mapuche conflict is not just about their relationship with the forestry companies themselves, but refers also to the "historical debt" of the Chilean State – it refers to a "problem of the country." This statement, in the context of the present study, carries a two-part

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<sup>191</sup>Interview 10/21/2015

<sup>192</sup>Interview 10/21/2015

message: it points to the State as having prime responsibility for paving the way to a resolution of the conflict, and it limits the expectations on FSC certification in relation to the "Mapuche conflict" until a point where the necessary measures have been agreed and put in place. In other words, without dealing with institutional racism against the Mapuche, the only thing that certification can offer is the implementation of minor changes to a fundamentally failed political relationship.

This approach, although valid to a certain point, comes up against two empirical problems. First, it ignores the active role – both historical and current – played by the forestry companies in the structures of institutional racism that affect the Mapuche people. Second, it ignores the role that certification could play in dismantling these structures. The first topic will be dealt with in this section, and the second in the next.

Over the past decade, the Chilean State has created and implemented its own version of a new phase of government present across the whole of Latin America, that consists of supporting the principles of interculturality as an answer to indigenous claims, and of a partial recognition of a history of racism and exclusion that it hopes to repair. To this end, States pass laws and sign treaties that declare the cultural diversity of society, reinforce the identities that have been subjugated, and acknowledge their rights. However, in the majority of cases, these changes in discourse and public policy have gone hand in hand with a preservation of the economic and political structures that perpetuate racism: the uneven distribution of economic resources, political power and ethnic-racial privileges between the dominant society and the subordinate population. As a result, in this phase of government, actors from the dominant society – whether individuals or institutions – pledge loyalty to the recently conceived principles of interculturality, without actually making any substantive changes to the structural basis of the racism that these principles were supposed to address.

The forestry companies – particularly since their entry into the FSC certification regime – embody and reproduce this paradox to an even greater extent than the State. Their concession to interculturality comes from the "social liaison officers" who show great enthusiasm for Mapuche culture and identity (in some cases they are Mapuche themselves), and strive to combat the vestiges of discursive anti-Mapuche racism which still exist within their companies.

For example, one operations manager made statements which could be associated with the attitude of "before":

The Mapuche are a lazy people. They don't want to work. They want to profit without working. There was one case of a nice plot which was handed over by CONADI. It had wheat sown and lots of native forest. The Mapuche took receipt of it, harvested the wheat, cut down the forest, and now the plot is a dump. There's no production apart from a few cows. It's a cultural thing that the government needs to sort out.<sup>193</sup>

However, the trend is for a different attitude to predominate. At a business event in La Araucanía – hosted by Corparaucanía – the Mapuche intellectual Pedro Cayuqueo was the keynote speaker. After his talk, two managers from one of the big companies praised his message which we summarised in our field notes as:

(...) the Mapuche culture is a huge asset for regional development. [N]o other culture has a greater entrepreneurial [spirit] than the Mapuche. We are not a hierarchy, but family-oriented, autonomous and decentralised. This is valuable. We are a society of entrepreneurs.<sup>194</sup>

The event's sponsors emphasised their "Plan Araucanía" (Plan for La Araucanía) to achieve peace in the region. The first point of the plan reads: "To recognise the existence of the Mapuche culture alongside western culture, both being valid and different."<sup>195</sup> Similarly, during many presentations from companies' social liaison officers we noted a deep sense – and even an emotional sense – of their having discovered the Mapuche culture, and of pride for having entered the world of the *machi*, the *nguillatun*, and the *wetripantu*. Following 20 interviews and five surveys we conclude that, amid the array of opinions and much internal debate, the intercultural discourse tends to take precedence. After workshops, round tables, programmes like the "good neighbour" project and public sanctions such as the well-known case of Pedro Jaramillo, ex-general manager of Bosques Cautín,<sup>196</sup> one thing is clear: the intercultural discourse will continue.

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<sup>193</sup>Interview with forestry official, 11<sup>th</sup> March 2016

<sup>194</sup>Interview with forestry official, 23<sup>rd</sup> June 2015

<sup>195</sup>José Miguel García, written version of his talk.

<sup>196</sup>Jaramillo was sanctioned by the FSC following racist statements found on his personal Facebook page. He was excluded from the board of the FSC, and Bosques Cautín were required to pay reparations by reforesting a specified area of land. A few months later, Jaramillo left the company.

The fact that this intercultural discourse is growing more prominent does not mean that the problem of institutional racism has been confronted. We found very little desire among interviewees to reflect critically on the political and economic conditions which facilitated the massive accumulation of private forestry assets over the years since 1973, which led to the strong consolidation of the industry. When we asked an official from Arauco about the crucial role of the State in this accumulation (in terms of the subsidies of Law 701), the response was that the amount of tax paid by the company exceeded the subsidy figure.<sup>197</sup> Similarly, the influence which the big companies exert on the State – revealed by numerous in-depth journalistic investigations<sup>198</sup> – is a topic which the interviewees preferred to avoid. Despite all the talk of interculturality, private property is fiercely defended and safeguarded by the law, ignoring the fact that this same property was acquired through a process of dispossession.

The perceived gap between the intercultural approach and the racism of "before" evaporates when the subject of discussion turns to the Mapuche and the conflict itself. Almost all of the interviewees acknowledge the existence of a "historical debt" which State policies do not even begin to address, but at the same time employ severe language, sometimes even bordering on making a case for extermination, when referring to Mapuche people who have taken collective action towards reparations. Although a section of this action involves violence – for the most part against property, not human life – the general branding of the Mapuche as "*violentistas*" or "people of violence" or "criminals" transmits a strong message about the nature of the conflict. In response to the question of what to do about the conflict, a senior official from one company responded in a revealing manner: "I don't know what is needed to reach a solution. There is nothing left to do. There are too many violent people."<sup>199</sup> Another interviewee answered in a similar way:

(...) we civilised La Araucanía together (...). But if this continues the way it is, we're going to have to pack our bags and get out of here (...). [W]e all have the same rights; I don't even like talking about Mapuche and non-Mapuche. Or about the "Mapuche conflict." The conflict is not with "the Mapuche"; it's with a small section, the violent ones. *We have*

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<sup>197</sup>It is not worth investigating the validity of this assertion as it is completely devoid of common sense: it suggested that the payment of taxes by a company that makes huge profits constituted an optional donation.

<sup>198</sup>See, for example: Sebastián Caviedes & Andrés Bustamante, "El Papel De La Tradición: La Influencia Empresarial Del Grupo Matte." CUADERNOS DE COYUNTURA. No8·AÑO 3RD JUNE 2015, pp. 40-55.

<sup>199</sup>Interview with forestry official, 28<sup>th</sup> July 2015

*to line them up*, separate them from the rest, because they have a different kind of mentality [emphasis added]<sup>200</sup>

In this light, the intercultural debate acquires new meaning: intercultural benevolence for those who manage to put the historical debt behind them, and for those who continue insisting, the firing squad.

The subject of violence – due to its central and emotive position in debates, common ground, the policies adopted and the many proposals for solutions – requires additional reflection, particularly in relation to the criticism in the previous paragraph on the theme of "people of violence." It must be stressed, above all, that violence has grave consequences, especially when it directly affects people physically. At the same time, we consider it vital that violent conflict be seen in its historical and structural context. This has three aspects: Firstly, it obliges a conscious analysis of the links between the current "Mapuche conflict" and the utter violence of the military conquest and the subsequent reduction (1880-1920), detailed in Chapter 2. With no mention of this link, any reference to current violence tends to sound superficial, partial and biased. Second, focusing on the present, it is necessary to consider the comparative scales of violence, above all between groups with such different levels of power. In a conflict of this nature, it is common to hide or underappreciate the violence committed by the State, with the assumption that this is legitimate, only registering that which is done by those who oppose the State. On the contrary, the characteristics of this conflict require a balanced analysis that also makes a criticism of the State, in order to evaluate whether its policies are excessive or unjustified. These subjects are addressed in Chapter 2. Third and finally, without reference to any act of violence in particular, it seems crucial to us to insist on a categorical distinction between the Mapuche men and women who claim their historical rights through "illegal" means (such as occupations, recoveries, protests, etc.) and those who have been branded by some as "people of violence." Grouping the former in with the latter leads to a situation in which the possibility of legitimate claims which have not yet been recognised by the State are denied, and ends up bolstering the old saying that any Mapuche who does not submit to colonial power is "uncivilised".

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<sup>200</sup>Interview with forestry official, 9<sup>th</sup> December 2015



## The Companies and the Certification Process

The key question of this last sub-section is: what can FSC certification currently contribute to improving relations between the Mapuche and the forestry companies? As commented by Eduardo Melo of Arauco, logically, analysis should begin with a discussion of the subject based on the initial question: "would these relations have been even worse without the FSC?"<sup>201</sup> Our answer is yes, but with a couple of important caveats. There can be no doubt that the companies have taken the ten Principles of the FSC seriously, which has resulted in meaningful changes (both in terms of internal organisation and of relations with Mapuche communities) detailed in the second section of this Chapter. The site visits and the accounts from Mapuche people benefiting from the companies' support confirm that they are happy with the new deal, and that it has involved actions, not just words. Although the complexity of relations removes the possibility of straightforward and generalised conclusions, it is probable that these beneficiaries do not support the attitudes and tactics of the activists involved in the restitution of territory by extralegal means.

The two caveats are related to the problems created by a certification system which supports incremental improvements in companies' "social responsibility", improvements which have not even the slightest possibility of achieving the depth or extent required to offer lasting solutions. They could even turn out to be a shield which the companies and the State itself use in order to avoid accepting greater responsibility. "We have complied with the standard: what more can be expected of us?" In this sense, a system which yields smaller and incremental changes turns out to be an obstacle to long-term solutions. This becomes an important element of the answer to the guiding question of this study: why is there still so much conflict in a context of "successful" certification? The second caveat follows, creating a greater obstacle to the resolution of the conflict: the existence of a collection of Mapuche "good neighbours" who demonstrate the kind of local relations stipulated by the FSC standard, only serves to justify a more severe and uncomprehending attitude toward neighbours who are voicing more profound claims. These two caveats bring with them a second question which it is important to pose alongside that of Melo: What does FSC certification contribute to the fundamental theme of the

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<sup>201</sup>19<sup>th</sup> March 2015, forum in the archbishopric; he characterised this initial question as the "null hypothesis."

conflict, which is the Mapuche claim over territorial rights? Our answer is, in essence, "almost nothing."

The explanation behind this conclusion is not straightforward, and becomes less so if we take into consideration the new version of the standard (which will be covered in the next Chapter). Principle 3 seems to be fairly broad in terms of these rights, stating that "Indigenous peoples shall control forest management on their lands and territories (...)", and 3.1.4 specifies that "forestry operations in indigenous areas (...) shall only be carried out if there is evidence of the free, prior and informed consent of the indigenous communities." Once the auditors have certified that these conditions have been reasonably met, it could be concluded that there are no ongoing Mapuche complaints affecting plots in the hands of forestry companies, and that there is consent as to the exploitation of these plots from all of the neighbouring communities. Continuing along this logical progression, any conflict involving these certified plots would fall outside the realm of legitimate right, and would thus qualify as an illegal act. The profound failure of this logical progression – resulting in a total disconnect between FSC certification and Mapuche claims over territory – has three levels:

The first level is to do with failures in the certification process itself. This point is extensively analysed in a recent study assigned to Andrés Venegas by ASI (Accreditation Services International), and we will limit ourselves to the most important points:

- CBs do not identify all of the Non-Compliances during the evaluation process;
- CARs (Corrective Action Requests) are closed before the corrective action is carried out, thus the cause of the Non-Compliance persists;
- Certification entities do not ensure that FSC standards are implemented across the full geographical area of the evaluation and across the full range of management operations.<sup>202</sup>

Our research confirms these problems, and adds others. The most serious is the absence of conditions for a truly frank and open "consultation" regarding the complaints and nonconformities, above all concerning the climate of conflict and retaliation that prevails in the region. One member of the certifying team for one of the big companies told us, "(...) during early site visits, we went to the plaintiff's house in five cars, several of which belonged to the company.

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<sup>202</sup>Venegas, Andres. Final Report to ASI. 1<sup>st</sup> June 2015.

I said [to the team leader] 'couldn't we just go in one vehicle?'" The background here – an already widely discussed subject within FSC International – is the close and obviously compromised relationship between the CB and the company employing it. The problem is manifest in two ways: in the behaviour of the auditor, and in public opinion. One person who participates in many audit processes summarises the first point concisely: "The audit process rewards mediocrity; if one is too demanding, the company will not pay."<sup>203</sup> As for public perception, it is clear that the same conditions that perpetuate the conflict limit the frequency and intensity of public expression of complaints or nonconformities. Open opposition to the companies could lead to incarceration or other forms of retaliation. Why take the risk? Venegas' conclusion is blunt:

[Doubt as to the credibility of the FSC system in Chile] (...) was a result of weak certification processes, which eroded stakeholder trust in CBs (2015:11-13).

The only question that this leaves is: why is there so little response from the FSC to failures identified by a study commissioned by ASI itself?

The second level, while mentioned in Venegas' report (e.g. 2015: 13), requires greater emphasis as it moves the focus from technical problems in the certification process to a more systemic problem: the lack of preparation and training for the auditors on the subject of "indigenous rights". Although the audit teams have academic training in a variety of fields, the majority of these disciplines are more technical, such as forestry engineering or environmental sciences; the closest to indigenous law would be a small number of anthropologists. In the absence of this training, the team leader's interpretation of Principle 3 is very narrow and literal: if the company undergoing certification can provide legal documents confirming ownership of a given plot of land, they conclude that there can be no legitimate claim over the plot by an indigenous community. Furthermore, from conversations with representatives from various companies we found out that the CBs explicitly request to avoid site visits to properties in the "red zone", because the conflict does not come within their remit. The logic here seems to follow the same path as before: if the company has a legal deed to the property that the Mapuche are occupying, the latter are by definition committing a crime about which the auditor must not and cannot comment. This logic is reinforced by the FSC's policy of excision, according to which the

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<sup>203</sup>Interview with forestry official, 2015-10-20

company can remove the conflictive property from the scrutiny of the auditors.<sup>204</sup> When a plot being evaluated shows evidence of conflict, the only thing that the CB requires is proof of dialogue between the parties, and the corresponding registration of the conflict with CONADI. They have no mandate or capacity to enter further, even though the standard explicitly requires evidence of "consent" to operations in territories under claim. It should not come as a surprise, therefore, that in regions where conflicts with the companies are abundant and constant, not even a "major nonconformity" with Principle 3 has impeded certification.<sup>205</sup>

If the second level of ineffectiveness focuses on the lack of adequate training of auditors, the third questions the standard itself. This analysis is made more complex by the fact that version 4 of the standard is being replaced by version 5, which has more demanding content in regard to indigenous rights. In Chapter 6 we will discuss the impact of version 5 on our subject of analysis. Here, however, we are limiting ourselves strictly to the content of version 4 which has been in place since 2005, a period of serious conflict between the Mapuche and the forestry companies. The standard has two fundamental gaps with regard to the historical and structural roots of the conflict. First, although it is absolutely necessary for the standard to include the assertions of Principle 1, which obliges auditors to respect the national legal framework of the country in which they are operating, it does not offer any solution in a situation where the State is not complying with its own legal commitments – indigenous rights in Chile, for example.<sup>206</sup>

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<sup>204</sup>FSC-POL-20-003 (2004). It is known that Mininco has 5,000 hectares in this category.

<sup>205</sup>Principle 2 specifically requires that "(...) all properties presenting some level of conflict (low, medium or high), will be added to a conflict management and resolution plan, taking into consideration all of the actors involved, interested or affected. A system of monitoring will also be put in place, facilitating implementation and documenting of advances (...)" (Criterion 2.3). When Mininco began the certification process, it received a Major NC (Major Nonconformity) in relation to this criterion, for having 47 properties (9,573 hectares) in a state of conflict and with no resolution plan. For 2013, the Rainforest Alliance "lowered" this NC, reporting that the number of properties in conflict had come down, detailing a long list of action – consultations, procedures, redefinitions, community participation mechanisms, etc. – which supposedly constituted long-term remedies. But the conflicts continue, and in some places, like the district of Tirúa, they are on the increase. It should not come as a surprise, therefore, that Mininco has so many plots of land that are "divided"; on the other hand it will be difficult for them to avoid a second Major NC. It is interesting that in 2013, Astorga and Venegas had already made note of this problem (and many more) associated with certification of Mininco. They conclude that it was rushed, based on an audit that lacked rigour and which was marred by political pressure to complete the process. Astorga & Venegas (2013), "Análisis De Los Informes De Auditoria A Forestal Mininco S.A (Rainforest Alliance).

<sup>206</sup>The Temulemu community's case against the Chilean State was emblematic, winning a ruling in favour. In essence, the Court found that the State employed excessively repressive measures against community leaders who were claiming their rights to ancestral lands. The Court implicitly supported the argument that the State had denied the community their customary rights as established by Convention 169, of which the State is a signatory.

Second, the content of Principle 3 is extremely vague when it comes to the conflict between the Mapuche and forestry companies, specifically in relation to territorial rights. On the American continent (if not across the whole world), modern westernised economies have, without exception, established themselves on appropriated indigenous territory and, in almost all cases, the process of achieving recognition of indigenous rights has implied adjudications that go deeper than the simple criterion of "who has the legal deed", which of course ends up giving the right to the most powerful. As is clearly indicated in the introduction to Principle 3 – "legal *and customary* rights (...)" – international indigenous law has been developed in an "inter-legal" space, that is, through dialogue between positive law and the codification of practices and principles of the law itself, verified by cultural testimony and oral history.

Specifically in terms of territory, this obliges us to discuss both the documents of legal possession and the collective memory of "traditional occupation and use" in order to reach an initial conclusion regarding the "respect and recognition" – or lack thereof – of rights. The idea here is not that a CB should have the capacity to adjudicate any emerging conflict, but that the standard should require the auditor to identify possible territorial claims affecting plots in the hands of forestry companies by means of interviews with neighbouring community leaders, and to carry out an independent analysis of the position of the State in regard to it, in line with the good practices of international indigenous law. In the absence of such a process, it is difficult for the Mapuche not to conclude that the FSC has by statute taken the side of the companies and the State in opposition against them. Adolfo Millabur, Mapuche mayor of Tirúa summed it up in a blunt statement during an interview at his home. The auditors arrive, they call for a consultation, but nobody goes: "I do not believe in the FSC."

### The FSC as an Organisation: the Chambers, the Chilean Board and FSC International

Over the course of ten years, FSC Chile has gone from being an "environmentalist" organisation that was cast aside by more powerful actors from the commercial sector, to being an organisation exhibiting a serious imbalance in terms of participation in the Economic Chamber, and a weakness and lack of presence in the other two.<sup>207</sup> This imbalance is apparently

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<sup>207</sup>One revealing indicator of the imbalance: at the public presentation of preliminary results, of the 48 attendees, 32 were from the Economic Chamber.

not only true of its activities in Chile; it has spread throughout the whole system to the point of being labelled a "crisis" in a recent article based on serious and extensive research.<sup>208</sup> In Chile the imbalance is manifest across a range of issues, from budget to public image. Several interviewees, people with a long history with the FSC, expressed despondency at the weakness of the Social and Environmental Chambers, to the point of questioning the real value of continuing as a member.

On the other hand, considering this imbalance, it is interesting that the FSC Chile Secretariat has little penetration into the commercial sector and, as a result, little influence among the system's most powerful actors. Personnel from the FSC Chile Office, although very keen to help with this study, have little access to the vital information that they need in order to gain a sound understanding of a complex subject like the relationship between the Mapuche and the forestry industry. There is no budget for visiting the conflict zone, and they lack specialised training for appropriate action. On top of this, their dialogue with representatives from the economic sector is cordial but superficial, tending to be at more of an operational level and with very little involvement in questions of organisational policy. In part, this reality goes back to the origins of the organisation, deeply connected to the world of environmental NGOs, but it also has to do with the professional training and early experience of its operatives. Although it was gratifying to know that FSC Chile eagerly awaited the results of our study, it was worrying that they have so little experience on the subject.

This observation brings up another issue concerning the make-up of the organisation, particularly the Social Chamber: the almost complete absence of Mapuche participation, either as members or on the Board. In the absence of contact with the Mapuche world, it is to be expected that the organisation is suffering an enormous gap in its understanding and consequent action regarding the conflict. There are a few exceptions – such as Pablo Huaiquilao – that, due to their scarcity, only serve to prove the rule: the Mapuche know very little about the FSC, and what they do know they do not trust. This fact – combined with the high level of conflict over certified properties – is sufficient evidence that the system itself is broken and requires urgent

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<sup>208</sup>Moog, Sandra; Spicer, André; Bohm, Steffen. The Politics Of Multi-Stakeholder Initiatives: The Crisis Of The Forest Stewardship Council. *J. Bus. Ethics.* 128:469-493. 2015

attention. It is symptomatic of this that the team carrying out a study financed by an organisation which, according to its statutes, looks out for indigenous rights, should have to distance itself so vigorously from this organisation in order to gain the trust of community leaders. This was our experience: to identify the study as being "on behalf of" the FSC would have been a recipe for mistrust during field work in Mapuche communities.

This brings us to another problem: the relationship between FSC International and FSC Chile. Given that the majority of the budget of the Secretariat in Chile (65 per cent) comes from FSC International, and given that the organisation's guidelines require certain uniformity at a global level, it is logical for there to be a certain hierarchy between the two. However it is clear that in general, the flow of information and decision making power is at times so one-directional as to breed an attitude in Chile of "they are in charge, so it is their responsibility to resolve problems like the Mapuche conflict." In fact, in the event of a significant complaint concerning the functioning of the system, it goes directly to FSC International (to their conflict resolution office in Lima, Peru) without even passing through the national office. The founding of the PIPC (Permanent Indigenous Peoples' Committee), an extremely welcome initiative given its capacity to direct attention towards the fundamental themes raised by this study, could also add weight to the theory: that FSC Chile should not (or cannot?) deal with the indigenous issue because, due to its scale, it comes within the remit of FSC International.

We will revisit these four problems – internal imbalance, lack of capacity, absence of Mapuche participation, and national-international hierarchy – in the final Chapter of this report, where we offer conclusions and recommendations. The recommended solutions would be relatively straightforward to implement. However, we would like to emphasise that none of these four are sufficiently serious to offer an appropriate response to the study's central question. In other words, in our judgement the fundamental explanation is related to failures in the content and application of the standard to the Mapuche territorial claim.

## Conclusions

If we put the Mapuche problem at the core of everything, nothing would ever be certified.  
– Academic, Universidad de Chile, who worked as a consultant for ASI

FSC certification has been a powerful tool for bringing about change in Chile's six largest forestry companies, both in terms of organisational culture and structure, as well as their day-to-day relations with a significant number of Mapuche individuals and communities. It is also possible that these improvements have positively affected key relations between company and community, but at the cost of reinforcing the premise that all those who raise their voices in support of claiming back the "historical debt" are illegitimate rebels. This is in spite of the fact that the majority of people we interviewed energetically confirmed the need to confront this debt. Instead of aiming beyond it, taking constructive steps to address the conflict, FSC certification gets caught up in the problem. The reasons for this are threefold, presented in order of significance: technical and operational process failures, serious gaps in the training of auditors in terms of indigenous rights, and finally, the standard's lack of sophistication and its resulting predisposition for the companies and the State, instead of adopting a more objective stance on the conflict.

As for claims over the historical debt, our aim is not to condone the use of violence in this protest, but the opposite: to emphasise that in historical terms, the conflict is the product of the unrestrained use of violence on the part of the State (frequently supported by the companies), and to register objections against the assertion that any claim made over the historical debt is, by definition, violent. In this sense, the rise of intercultural discourse and practice runs in close parallel with certification itself: it yields meaningful but limited improvements, making it harder to address the conflict at its structural and historical roots.



## Chapter 6 – The FSC Standard and (Non-)Compliance in Chile

In this Chapter we will analyse the FSC standards currently in place in Chile for the certification of forestry plantations, and in particular those which refer to the rights of indigenous peoples. We will also explore the interpretation of those rights according to international human rights standards. Furthermore, we will identify the gaps in compliance which, to our understanding, are exhibited by the companies whose forestry plantations have been certified by FSC Chile, particularly in terms of their relations with the Mapuche People. Finally we will outline the challenges facing these companies and their relationships with the Mapuche in light of the new standards approved in 2012 by FSC International and which are currently being adapted by FSC Chile.

### The Current FSC Standard in Chile and the Rights of Indigenous Peoples

The FSC first published their Principles and Criteria (P&C) for Forest Stewardship in 1994, as a global performance-based, results-oriented standard. These Principles and Criteria were modified in 1996, 1999, 2001 and 2012.<sup>209</sup> According to the FSC, the Principles are essential rules or elements for environmentally appropriate, socially beneficial and economically viable forest management, while the Criteria provide a means of judging whether or not a Principle has been fulfilled. The countries integrated into the FSC must adapt their national standards to these Principles and Criteria, which FSC Chile did in 2005.<sup>210</sup>

In the P&C applicable to the certification of forestry plantations, there is both direct and indirect reference made to the obligations set down in terms of indigenous populations and their rights. P.1 C.1 Indicator 1 establishes that forestry management should comply with indigenous legislation, and other laws. P.1 C.2 Indicator 3 indicates that international conventions must be respected, referring specifically to the Conventions of the ILO, including ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (referred to from now on as

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<sup>209</sup><https://ic.fsc.org/en/certification/principles-and-criteria>

<sup>210</sup>FSC- Chile, Estándar para la certificación FSC de plantaciones forestales (gran y pequeña escala) FSC Chile STDLP 201205/311209 (2005\* en base a Principios y Criterios de 1994 según HV), available at <http://ic.fsc.org/download.fsc-std-chl-01-2005-chile-plantation-and-slimf.916.htm>

ILO Convention 169), and also to the Convention on Biological Diversity which protects indigenous peoples and their traditional knowledge.

Principle 3 is central to this theme, specifically concerning the rights of indigenous peoples and stating that **"(t)he legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected"**.<sup>211</sup> The following can be identified as fundamental criteria to be considered in the analysis of compliance with this Principle:

- C.3.1. "Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies."
- C.3.2. "Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples."
- C.3.3. "Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognised and protected by forest managers."
- C.3.4. "Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence."

Other P&C referring to forest management which we consider relevant, concerning relationships between certified companies and indigenous peoples include:

- P.5 referring to benefits from the forest and asserting that "(f)orest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits;"<sup>212</sup>
- P.6 concerning environmental impact and stating that "(f)orest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes and, by so doing, maintain the ecological functions and the integrity of the forest."<sup>213</sup>

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<sup>211</sup>Bold applied by the authors.

<sup>212</sup>The Criteria relevant to analysis of compliance with this Principle are C.5.1 which states that "(f)orest management should strive toward economic viability, while taking into account the full environmental, social, and operational costs of production, and ensuring the investments necessary to maintain the ecological productivity of the forest;" and C.5.4 which states that "(f)orest management should strive to strengthen and diversify the local economy, avoiding dependence on a single forest product."

<sup>213</sup>Criteria relevant to analysis of compliance with this Principle are C.6.1 which states that "(a)ssessment of environmental impacts shall be completed appropriate to the scale and intensity of forest management (...) Assessments shall include landscape level considerations as well as the impacts of on-site processing facilities;" and C.6.3 which states that "(e)cological functions and values shall be maintained intact, enhanced, or restored, including: a) Forest regeneration and succession. b) Genetic, species, and ecosystem diversity. c) Natural cycles that affect the productivity of the forest ecosystem;" C.6.9 which states that "(t)he use of exotic species shall be carefully

In order to determine compliance by certified forestry companies of the current FSC standards concerning forest management in Chile and their link to the rights of indigenous peoples such as the Mapuche, a study of the content and scope of these rights is required. Standards of compliance are determined not only by national laws, but also by ILO Convention 169, which makes it necessary to review the content of both sets of regulations in relation to "(...) the legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources (...)".

As explored in Chapter 2, Law 19,253 of 1993 (the Indigenous Peoples Act) identifies indigenous lands as being those possessed or owned by indigenous persons or communities as a result of deeds granted by the State, as well as those which in the future would be recognised by the courts of law or received free of charge from the State. The law also identified these lands as being those historically (or ancestrally) occupied or owned by indigenous individuals or communities, requiring that these be registered in CONADI's Land Register (article 12). Although this law is limited in its acknowledgement of rights to restitution of lands to which the indigenous communities did not have State-recognised deeds, the Land Fund which was established by article 20 of the same law shows that CONADI did recognise this right. Indeed, CONADI bought significant amounts of traditionally occupied land on behalf of Mapuche communities, lands to which they did not have deeds previously recognised by the State, but only customary rights based on their own traditions.

The Indigenous Peoples Act does not recognise the rights of indigenous peoples to natural resources existing within their lands and territories, except in the case of water.

As covered in Chapter 2, ILO Convention 169 establishes that:

(...) governments shall respect the special importance to the cultures and spiritual values of the peoples concerned, of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. (article 13.1)

The Convention defines that concept of territory as "(...) the total environment of the areas which the peoples concerned occupy or otherwise use" (article 13.2). It also recognises the rights of

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controlled and actively monitored to avoid adverse ecological impacts;" and C.6.10 which states that "(f)orest conversion to plantations or non-forest land uses shall not occur"... except in special circumstances.

ownership and possession over the lands which they traditionally occupy (article 14.1), establishing the obligation of the State to take necessary steps to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession (article 14.2). In terms of natural resources, the Convention recognises the right of these peoples to participate in the use, management and conservation of natural resources pertaining to their lands (article 15.1), and to be consulted before initiation of any programme of prospecting or exploitation of mineral or sub-surface resources or other resources owned by the State that may exist in their lands, to participate in the benefits of such activities, and to receive fair compensation for any damages which they may sustain as a result of such activities (article 15.2).

The interpretation of the meaning of this regulation, in accordance with the principles of international law, is determined by the organ issuing the regulation.<sup>214</sup> In the case of Convention 169, the scope of its provisions is determined by how the ILO's control mechanisms interpret it. Given the principle of the interconnectivity of human rights, enshrined in Convention 169 itself (article 35), it is important to consider the case law of other international tribunals which Chile has recognised as competent, such as the Inter-American Court of Human Rights (IACHR), which in the absence of an American framework of indigenous rights has employed the regulations of Convention 169 to interpret the scope of the regulations of the American Convention on Human Rights.

In the case law of the ILO there is significant consensus that the legal recognition and protection of indigenous peoples' right to ownership and possession of their lands and territories recognised in Convention 169 is founded on traditional occupation and not on deeds recognised by the State. On this subject, the ILO has indicated that the principle of indigenous peoples' rights

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<sup>214</sup>The Vienna Convention on the Law of Treaties, signed by Chile. On this subject, article 31.2 states that: The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; c) Any relevant rules of international law applicable in the relations between the parties."

to land is based on traditional occupation and use, and not on eventual recognition or official legal registration of ownership of the land by the State.<sup>215</sup>

Confirming this principle, the IACHR has repeatedly indicated in its jurisprudence since the case of the community of *Awas Tingni vs. Nicaragua* (2001) that indigenous territorial ownership is based not on state recognition but on the traditional use. This case established the validity of possession of land based on indigenous custom – even in the absence of deeds – and the need for recognition and understanding of the close relationship that indigenous people have with their lands as the fundamental basis of their culture, their spiritual life, their integrity and their economic survival.<sup>216</sup> Later the IACHR reaffirmed this interpretation by recognising the communal rights of indigenous peoples to their ancestral lands in the case of the communities of *Yakye Axa* and *Sawhoyamaka* in Paraguay.<sup>217</sup> Furthermore, in the cases of the community of *Sawhoyamaka Vs. Paraguay*, and the community of *Saramaka vs. Surinam*, the IACHR extended their recognition of rights to ownership to the natural resources found in their traditional territories.<sup>218</sup> A central theme in the analysis of international case law on the subject has to do with the determination of the geographical space over which indigenous ownership rights should be recognised. There is agreement that this right is not limited to factors of traditional use, occupation or ownership, but includes the concept of development needs and the guarantee of ways of life and culture.

Thus the ILO indicated that the Convention “(...) does not cover only areas occupied by indigenous populations, but also 'the development process insofar as this affects their lives (...) and the lands which they occupy or use in some way.’”<sup>219</sup> In line with this, the IACHR indicated in

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<sup>215</sup>The ILO has indicated that traditional occupation confers “(...) the right to land by virtue of the Convention, (...) independent of the right recognised or not [by the State].” Comisión de Expertos en Aplicación de Convenios y Recomendaciones, 73ª sesión, Observación Perú, publicación 2003 (paragraph 7). In Organización Internacional del Trabajo (Pro 169, Departamento de Normas Internacionales del Trabajo). *Los derechos de los pueblos indígenas y tribales en la práctica*. Ginebra: ILO, 2009, p. 94. Emphasis applied by the authors.

<sup>216</sup>IACHR, Judgement *Caso Awas Tingni vs. Nicaragua*, 2001, para. 151.

<sup>217</sup>IACHR, Judgement *Yakye Axa vs. Paraguay*, 2005; Corte IDH, Sentencia *Sawhoyamaka vs. Paraguay*, 2006.

<sup>218</sup>It upheld that “(m)embers of indigenous and tribal populations have the right to own the natural resources that they have traditionally used within their territory, for the same reason that gives them the right to own the land which they have traditionally used and occupied for centuries. Without these, the economic, social and cultural survival of these populations is at risk.” IACHR. *Caso Comunidad Indígena Sawhoyamaka Vs. Paraguay*. Judgement of 29th March 2006. Serie C No. 146 Para. 121. IACHR, *Caso Saramaka vs. Surinam*, para. 97.

<sup>219</sup>International Labour Organization. Consejo de Administración, 282.ª reunión, noviembre de 2001, *Reclamación presentada en virtud del artículo 24 de la Constitución de la OIT*, Colombia, GB.282/14/3

the *Sawhoyamaxa Vs. Paraguay* case that indigenous peoples' right to ownership which should be recognised by States, "(...) may include traditional use or presence, such as maintenance of sacred or ceremonial sites; settlements or sporadic cultivation; seasonal or nomadic gathering, hunting and fishing; the use of natural resources associated with their customs or other elements characterising their culture."<sup>220</sup> The CIDH added that States are obliged "(...) to freely grant lands of a sufficient extent and quality for the conservation and practice of their way of life."<sup>221</sup> It also clarified that these lands are to be understood as being able to "(...) guarantee the continuous exercise of the activities from which they derive their livelihood, and on which the preservation of their culture depends."<sup>222</sup> Furthermore, it maintained that indigenous property rights over territory extend in principle over all of those lands and resources that indigenous peoples currently use, and over those lands and resources that they possessed and of which they were deprived, with which they preserve their internationally protected special relationship, a cultural bond of collective memory, and awareness of their rights of access or ownership, in accordance with their own cultural and spiritual rules.<sup>223</sup>

Thus we conclude that as recognised by ILO Convention 169, to which the current FSC standard adheres and which the companies certified by this seal in Chile must respect in their relations with the Mapuche people, and in accordance with the dominant interpretation of international law, the right of indigenous peoples to ownership of land does not concern only physical occupation of ancestral lands of which they have been dispossessed, but also those lands of cultural significance that are indispensable for the preservation of their way of life and culture.

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<sup>220</sup>IACHR. *Caso Comunidad Indígena Sawhoyamaxa Vs. Paraguay*. Fondo, Reparaciones y Costas. Judgement of 29th March 2006. Serie C No. 146, para. 131.

<sup>221</sup>CIDH, *Tercer Informe sobre la Situación de los Derechos Humanos en Paraguay*. Doc. OEA/Ser./L/VII.110, Doc. 52, 9th March 2001, Capítulo IX, para. 50, Recomendación 1.

<sup>222</sup>CIDH, Informe No. 73/04, *Caso de la Comunidad Indígena Sawhoyamaxa (Paraguay)*, 19th October 2004, Recomendación 1. Referenced in: IACHR. *Caso Comunidad Indígena Sawhoyamaxa Vs. Paraguay*. Fondo, Reparaciones y Costas. Judgement of 29th March 2006. Serie C No. 146, para. 8.

<sup>223</sup>CIDH. *Derechos de los pueblos indígenas y tribales sobre sus tierras ancestrales y recursos naturales*. CIDH, 2010.

## (Non-)Compliance to FSC Standards Regarding Rights of Indigenous Peoples

In Chapter 2 we covered the process by which the forestry plantations, with the firm support of the State, were established in the centre-south of the country, in areas coinciding with the ancestral territory of the Mapuche people.

According to FSC Chile, in December 2015 the area of the country with FSC certification totalled 2,277,504.2 hectares. Of these, 1,559,750.09 belonged to forestry plantations,<sup>224</sup> a significant portion of which are located between the Bío Bío and Los Lagos regions, in Mapuche ancestral territory. For example, in Bío Bío and La Araucanía, 80 per cent of the total FSC certified forestry plantations are owned by two companies, covering an area almost double that of the lands recognised to date by the State as Mapuche indigenous lands, which total 863,000 hectares.<sup>225</sup>

Although not necessarily in regard to the *lof mapu* covered in this study, there is evidence that FSC certified plantations in this part of the country overlap the lands granted to the Mapuche by the State through *Títulos de Merced*, *Títulos de Comisario*, the land reform and other means, and which were subsequently taken away from them. While this overlap has not been quantified, the background which should be taken into consideration – as covered in Chapter 2 – is the study which establishes that in three of the four regions historically inhabited by the Mapuche (Bío Bío, La Araucanía and Los Ríos), their claims over lands previously recognised by the State (Article 20 b, Law 19,253) cover 165,000 hectares.<sup>226</sup> Given the scale of forestry plantations in this part of the country, we can deduce that a significant portion of lands originally included in *Títulos de Merced* are currently in the hands of forestry companies certified by the FSC.

FSC certified forestry plantations also significantly exceed the traditionally occupied and culturally significant Mapuche lands of the *lof mapu*, defined in this report as the fundamental Mapuche unit. These are lands recognised as indigenous property by ILO Convention 169 (ratified

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<sup>224</sup>FSC Chile, FSC-Chile certified area. Available at: <https://cl.fsc.org/es-cl/certificacin/superficie-y-empresas-certificadas-en-chile>

<sup>225</sup>Gobierno de Chile. Informes Periódicos 19°, 20° y 20° de la Aplicación de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, De conformidad al artículo 9 de la Convención, Chile, September 2012.p.53

<sup>226</sup>Universidad de Concepción- Centro Eula-Chile (2010), *Proyecto Actualización Catastro Demanda y Oferta de tierras, aguas y Riego para indígenas Etapa I (Resumen Ejecutivo)*, unpublished.

by Chile in 2008), by international case law, and therefore by the FSC standard concerning indigenous peoples. Although the claim to traditionally occupied land has not been quantified, based on the close knowledge that the research team has of conflict over ownership and Mapuche claims, we can confidently affirm that these are far greater than those claims based on the legal deeds recognised by the State. The situation described here reveals that FSC forest management certification in Chile has failed to comply with one of the fundamental Principles in the current standard: Principle 3, which obliges certified organisations (companies) to recognise and respect both the "legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources."

Although it does not fall within the remit of this study to determine whether or not the companies certified by the FSC were aware of this situation at the point of acquiring these lands, it is clear that in foresting them with fast-growing exotic species or in acquiring FSC certification, their set-up process did not involve the "due diligence" which is required of companies by the *United Nations Guiding Principles on Business and Human Rights*, the most widely accepted guidelines on the subject. This due diligence should have led them to take necessary action towards identifying, preventing, mitigating and responding to the adverse human rights impacts of their activities.<sup>227</sup> As indicated by the United Nations Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous Peoples in reference to the application of due diligence in the activities of companies and their behaviour towards the rights of indigenous peoples to their lands, territories and resources,<sup>228</sup> companies cannot consider the absence of official recognition of indigenous ownership as an excuse for a lack of awareness; instead, the mere existence of these groups in geographical areas where they plan to carry out their activities should inform the assumption that these people have some form of rights to these areas.<sup>229</sup>

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<sup>227</sup>According to the Guiding Principles, this due diligence should include "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." UN Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, *Guiding Principles on Business and Human Rights*, United Nations, Office of the High Commissioner, New York, Geneva, 2011 Principle 17.

<sup>228</sup>*Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, United Nations, General Assembly, A/HRC/15/37 19th July 2010.

<sup>229</sup>*Ibid.*, para. 53 to 59.



For this reason, the FSC certified forestry companies' compliance with the requirement of due diligence in their relations with the Mapuche people should have prevented them from acquiring and subsequently foresting their traditionally occupied and culturally significant lands and territories. Correct application of P.3 should have prompted FSC Chile to withhold certification for forestry plantations which overlap traditionally occupied and culturally significant lands.

This non-compliance with P.3 and the lack of due diligence on the part of the certified forestry companies in their relations with the Mapuche led to a complaint against FSC International in 2012 by a group of Mapuche organisations, in which they indicated:

The forestry companies have acquired their assets in a fraudulent manner, through illegitimate purchases, usurpation and deception of the Mapuche population across many territories. The instances of purchase aided by deceit are many, after which the companies formalised or "legalised" these acquisitions with the Land Registries. Similarly, there are cases where only a part of the rights and shares of families (a group who share ownership) is purchased, but the entire property goes to the purchaser. This is without doubt the most significant cause of conflict between these companies and the Mapuche communities, particularly due to the significance of these lands to Mapuche culture. From the point of view of the Mapuche, the land (and its surroundings) is part of the Mapuche way of life such that, in the event of its usurpation, a part of this culture is also lost. The State of Chile is also responsible for this conflict due to its role in "legalising" the deeds of the properties in question, but this problem will persist indefinitely.<sup>230</sup>

On top of this complaint, many Mapuche communities affected by certified companies made use of the FSC mechanism for protesting non-compliance with the P&C which should be observed during certification processes, and in the subsequent operation of certified companies. Between 2013 and 2016, 19 formal complaints were lodged with the FSC, a large proportion of which being made by indigenous populations over violation of P.3.<sup>231</sup>

Non-compliance with P.3 with regard to the legal and customary rights of the Mapuche people over lands, territories and natural resources on the part of forestry companies whose plantations have been certified by the FSC, has been confirmed by this study in the case of the four *lof mapu* whose history and current situation are presented in Chapter 3. In the four in-depth

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<sup>230</sup>Nagche identity et al., Mapuche presentation to FSC global board regarding conflicts between Chilean forestry companies and the Mapuche People, Temuco, 29th February 2012

<sup>231</sup>Conflicts in Chile January 2016, communication with FSC International.

cases researched and presented in this report, it is clear that the property of these certified forestry companies significantly overlaps with traditionally occupied lands and/or culturally significant lands that make up the *lof mapu*. Furthermore, in some cases it can be seen that the properties of FSC certified companies overlap lands which were recognised in *Títulos de Merced* by the State, but of which they were later dispossessed.

For example, in the case of the Mañiuko *lof mapu*, located in the south-west of the present-day district of Galvarino (province of Cautín, La Araucanía region), whose area totals 5,571 hectares, three FSC certified forestry companies hold properties located within this Mapuche traditionally occupied space. These are Bosques Arauco with 144.79 hectares, Bosques Cautín with 203.12 hectares and MASISA with 987.45 hectares, together totalling 1,335.36 hectares. As a result, today the Mapuche communities only have ownership of 1,793 hectares of the total.

As for the Temulemu *lof mapu*, located in the district of Traiguén (province of Malleco, La Araucanía region) and whose area totals 8,254 hectares, the FSC certified Forestal Mininco SA had a vast property totalling 1,618.56 hectares as of 2012. Of these, 58 hectares formed part of a *Título de Merced*, while the rest comprised Mapuche traditionally occupied land. As documented in Chapter 2, this plot was acquired by CONADI in 2012 and returned to the Mapuche communities. In this same Mapuche territorial space, Bosques Cautín has FSC certified forestry plantations on the 479 hectare Los Avellanos plot which comprises Mapuche traditionally occupied land. This means that today the communities of the *lof mapu* only have ownership of 3,653 hectares of their total traditionally occupied land.

In the case of the Reñico/Liucura *lof mapu*, located in the district of Lumaco (also in the province of Malleco, La Araucanía region), of the Mapuche traditionally occupied lands totalling 9,043 hectares, three FSC certified forestry companies own properties which cover a total area of 3,112.41 hectares. These are Bosques Arauco with 74.15 hectares, Forestal Mininco SA with 2,363.81 hectares and MASISA with 674.45 hectares. This contrasts with the 2,304 hectares that today belong to the Mapuche communities, 1,189 hectares of which came from *Títulos de Merced* and 1,115 hectares which were acquired by CONADI and transferred to them.

Finally in the case of the Lleu Lleu *lof mapu* (province of Arauco, Bío Bío region), in the Mapuche traditionally occupied territorial space around Lleu Lleu Lake whose area totals 67,865 hectares, four forestry companies own properties totalling 22,905.69 hectares. These are Bosques Arauco with 2,978.48 hectares, Bosques Cautín with 185.76 hectares, Forestal Mininco SA with 17,340.79 hectares, and Volterra with 2,400.66 hectares. This compares to the Mapuche communities of the *lof mapu* who own a total area of 2,140 hectares.

In each of these cases, analysed in depth in Chapter 3 of this report, we can confirm non-compliance with the FSC's current P.3 standard applying to forestry plantations and referring to the legal and customary rights of the Mapuche people over their lands, territories and natural resources. In this context it is impossible to understand how the FSC can have certified the forestry plantations of companies who established their patrimony over these lands, and who to the present day maintain conflicts with the communities that claim them.

### Challenges Faced by Companies Certified by FSC Chile in Light of the New Standard

In 2012, FSC International approved new P&C for forest management.<sup>232</sup> Although FSC Chile is now in the process of adapting the current P&C to the new guidelines, the new P&C must be addressed in this report, since they will in the near future be guiding forest management by FSC certified companies in Chile, and because they form the basis of the guidelines in place today at a global level. They are in line with other directives set in recent years by various organs of the United Nations System, applicable to the activities of companies and the governance of natural resources. This refers not only to the *United Nations Guiding Principles on Business and Human Rights*<sup>233</sup> and to the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Food and Agriculture Organization of the United Nations*<sup>234</sup> to which we referred in the introduction, but also to the guidelines of

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<sup>232</sup>FSC, *FSC Principles and Criteria for Forest Stewardship* FSC-STD-01-001 V5-2 EN (2012), available at <https://ic.fsc.org/preview.fsc-principles-and-criteria-for-forest-stewardship-fsc-std-01-001-v5-2-en-print-version.a-4843.pdf>

<sup>233</sup>Guiding Principles on Business and Human Rights, United Nations, Human Rights Council. Resolution 17/4 of 16th June 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>234</sup>*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security*, Food and Agriculture Organisation of the United Nations, 2012, available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

multilateral entities such as the International Finance Corporation,<sup>235</sup> and those from corporate entities like the International Council on Mining and Metals,<sup>236</sup> in which it is considered that, prior to initiating an investment project, the free, prior and informed consent of indigenous peoples should be obtained.

### *Main Content*

An important difference in the new P&C concerning the rights of Indigenous Peoples compared to those currently valid in Chile, is that they explicitly incorporate – along with the rights established in ILO Convention 169 – the rights established by the 2007 *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.<sup>237</sup>

The new P.3 concerning the rights of indigenous peoples states that:

(t)he Organization shall identify and uphold Indigenous Peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities.

In order to do so, it must identify the indigenous peoples that exist within the Management Unit or are affected by management activities, their rights of tenure, their rights of access to and use of forest resources and ecosystem services, their customary rights and legal rights and obligations, as well as the areas where these rights are contested (C.3.1). It must also recognise and uphold the legal and customary rights of indigenous peoples to maintain control over management activities within or related to the Management Unit to the extent necessary to protect their rights, resources and lands and territories. (C.3.2) Furthermore it must involve the indigenous peoples in identifying, recognising and protecting sites which are of special cultural, ecological, economic, religious or spiritual significance and for which these indigenous peoples hold legal or customary rights (C.3.5).

The new P&C also consider the right of indigenous peoples to Free, Prior and Informed Consent (FPIC), in particular with regard to delegation of control over management activities

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<sup>235</sup> International Finance Corporation, Performance Standards on Environmental and Social Sustainability, January 2012.

<sup>236</sup> ICMM. (2013). *Indigenous Peoples and Mining Position Statement*. Available at: <http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-andmining/>

<sup>237</sup>"The Organization shall recognize and uphold the rights, customs and culture of Indigenous Peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ILO Convention 169 (1989)." (C.3.4)

within the Management Unit to third parties (C.3.2 and C.3.3), and to the utilisation of traditional indigenous knowledge and their intellectual property (C.3.6). FPIC is also incorporated into P.4 concerning relations with the communities, particularly in C.4.2 and C.4.8. This principle is therefore considered applicable not only to indigenous peoples, but to communities in general.

According to the FSC's interpretation, the right to FPIC...

(...) applies not only in the case of legally recognized rights, but explicitly includes customary rights. This also covers situations where indigenous peoples have residual rights of resource access but no longer have formal tenure of the land and territories, such as situations where the State owns the land and has granted licenses/concessions for forest management directly to the Organisation.<sup>238</sup>

It adds:

Claims to these rights must be fair and legitimate, and based on long established use, whether affirmed or not. Since the definition of indigenous peoples already includes elements such as historical continuity and strong links to territories, these requirements might be already addressed in identifying indigenous peoples. In situations where indigenous peoples have been forcibly relocated they may not fulfil the requirement of long established use of the area they were moved to, but their claim may still be fair and legitimate as they had no other options.<sup>239</sup>

And concludes:

The Organisation is encouraged to use a precautionary approach for engaging indigenous peoples whose rights are in dispute by engaging them in FPIC processes; if their rights are not determined to be fair and legitimate (i.e., not based on long and established use) then FPIC is no longer required. However, there are still requirements for engagement. A FPIC process aims to result in a binding agreement and should result in an ongoing relationship of mutual trust.<sup>240</sup>

Another central theme of the new P&C is customary rights. For the FSC, these are:

(...) [r]ights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.<sup>241</sup>

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<sup>238</sup>FSC, *Guidelines for the implementation of the right to free, prior and informed consent (FPIC)* Version 1 / 30<sup>th</sup> October 2012, p.21

<sup>239</sup>Ibid.

<sup>240</sup>Ibid.

<sup>241</sup>Ibid.

As for rights to tenancy, it defines them as:

(...) [s]ocially defined agreements held by individuals or groups, recognised by legal statutes or customary practice, regarding the 'bundle of rights and duties' of ownership, holding, access and/or usage of a particular land unit or the associated resources there within (such as individual trees, plant species, water, minerals, etc.).<sup>242</sup>

Thus, the relationship established by the FSC between the two concepts is vital, as indigenous peoples' FPIC required by the P&C applies not only to lands legally owned by indigenous people, but also to ownership based on custom or simply on tenancy.

The inclusion of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in the P&C requires an analysis of the content of this instrument with regard to the following:

#### i. The Right to FPIC.

The UNDRIP establishes the general principle that States shall consult and obtain the FPIC of indigenous peoples before adopting legislative or administrative measures that may affect them (article 19). The State must obtain the same FPIC prior to the approval of any project affecting their lands, territories and natural resources (article 32.2).

It also establishes the right of indigenous peoples for FPIC not simply to be an objective to be met, but a binding requirement in certain circumstances, including relocation of their lands and territories (article 10), military activities (article 30.1), and storage or disposal of toxic waste in these lands and territories (article 29.2).

#### ii. Rights of Indigenous Peoples to Lands, Territories and Resources

As well as establishing the right of these peoples to "(...) maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources (...)" (article 25), the UNDRIP recognises the right that they have "(...) to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired" (article 26.2). Thus the Declaration expressly recognises the indigenous right to ownership of their lands, territories and resources in the same way as the organs of the ILO and the IACHR, referred to previously.

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<sup>242</sup>Ibid.

Similarly, the Declaration establishes the obligation of States to give legal recognition and protection to these lands, territories and resources, and due respect to the customs and traditions of the indigenous peoples concerned (article 26.3). Equally important is the text's statement of the right of indigenous peoples to redress, including restitution or, when this is not possible, compensation for lands, territories and resources which have been "confiscated, taken, occupied, used or damaged without their free, prior and informed consent" (article 28).

### iii. Customary Rights

The UNDRIP refers to these rights in two contexts: in terms of juridical institutions and customs,<sup>243</sup> and as a source of ownership for indigenous peoples of their lands, territories and natural resources (article 26.2). Through the latter provision, the Declaration expressly recognises that indigenous right to property is based on ancestral ownership of their lands, territories and resources, as well as other means of acquisition such as the granting of deeds by the State. In this sense, the Declaration establishes the obligation of States to give legal recognition and protection to these lands, territories and resources, and in doing so respect their customs and traditions (article 26.3). This is their customary right.

### *Implications and Challenges of the New Standards for Forestry Certification*

If we analyse the 2005 FSC P&C alongside the new 2012 P&C – that have not yet been adapted by FSC Chile – in terms of the rights of indigenous peoples, we can see that the most significant difference between the two is the requirement of FSC certified organisations to obtain FPIC in their operations. This covers various aspects for the protection of indigenous rights to lands and resources, as well as rights to their traditional knowledge and intellectual property.

In terms of the "customary rights" of indigenous peoples to own, use and manage their lands, territories and resources, or in the language of ILO Convention 169, the "rights of ownership and possession over the lands which they traditionally occupy," although they are more categorically and explicitly recognised in the new P&C, these were already implicitly or explicitly recognised by the 2005 P&C. All things considered, respect and protection of this right

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<sup>243</sup>"Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards." (article 34)

in the activities of companies certified by FSC Chile continues to be a work in progress given that these companies continue to operate on a large scale in lands traditionally occupied by the Mapuche, and/or in lands of cultural significance to them.

The right of Indigenous Peoples to FPIC, recognised by the UNDRIP incorporated into the new standard and required prior to initiation of forestry operations that could affect their rights, is applicable not only in the case of legally recognised indigenous rights, but also explicitly to lands of customary tenure, according to the FSC. This covers situations where indigenous peoples have residual rights of resource access but no longer have formal tenure of the land and territories. The precautionary approach supported by the FSC through involvement of indigenous peoples in FPIC processes is intended, according to the FSC, to achieve "binding agreements" in order to build a relationship of "mutual trust".

These agreements have until now not existed between FSC certified forestry companies in Chile and the Mapuche people, as can be seen in the analysis of the four *lof mapu*, and their absence has generated the conflict described in this report. As long as they are not achieved and the companies continue to impose forestry plantations on legally recognised, Mapuche traditionally occupied or culturally significant lands without the FPIC of the communities involved, it is likely that this conflict will grow.

It is at the very least naive to think that FSC certified forestry activity could be imposed with the support of the force of State police, against the will of a people whose communities have been directly affected, as has been attempted in recent years. The new P&C provide an opportunity for reviewing the current practices of forestry companies, and for establishing new relations based on the recognition of Mapuche rights, and this is the only way to guarantee the viability and sustainability of this activity. The FSC must urgently encourage these changes.

## Conclusions

In light of this analysis we can conclude firstly that it is clear that the current Chilean FSC standard for certification of forestry plantations establishes the protection of the legally recognised and customary rights of indigenous peoples to their lands, territories and resources. These rights are based not only on the guidelines established in national legislation, but also in ILO Convention 169, which is valid in Chile and whose protection of the rights of indigenous



peoples, particularly in regard to traditionally occupied land, is more definitive than the content of the domestic legislation. The FSC and its constituent entities should understand the scope of these rights as interpreted by the organs that dictated them (the ILO), and by the case law of international tribunals recognised by Chile (the IACHR) who have applied them. This enables us to state that indigenous peoples' right to ownership and possession of their lands, territories and resources applies not only to those occupied traditionally, but also to lands of spiritual and cultural significance necessary for the conservation and practice of their way of life.

Secondly, based on our interpretation of the scope of indigenous rights according to P.3 of the current FSC Chile standard, we conclude that there is a marked gap in compliance with the standard on the part of the companies whose forestry plantations have been certified by FSC Chile, particularly in terms of their relations with the Mapuche People. We have reached this conclusion following analysis of the position of FSC certified forestry plantations in the four *lof mapu* in which research was carried out, in lands both owned legally and, above all, traditionally occupied by the Mapuche communities that live there. From an analysis of the history of these territories and of the processes by which the property of these companies with certified plantations was formed, we deduce that these companies have not undertaken due diligence in the acquisition of these properties in order to avoid adverse impacts of acquisition and forestation on the rights of indigenous peoples established in P.3, or to compensate for the adverse impacts that they have created for the communities that inhabit these *lof mapu*.

Finally, in this Chapter we note that the new standards approved by FSC International in 2012 and currently being adapted by FSC Chile imply significant challenges for FSC certified companies in Chile in terms of their relations with the Mapuche People. Among these challenges is a greater obligation in the certification process to identify and protect the legal and customary rights of indigenous peoples to their lands, territories and resources, to recognise their right to retain control of management activities within these lands, and to protect sites which are of special cultural, ecological, economic, religious or spiritual significance and to which these indigenous peoples hold legal or customary rights. Furthermore, the new P&C reinforce the right of these peoples to Free, Prior and Informed Consent (FPIC), particularly in the delegation to third

parties of control over management activities within their lands, territories and resources (C.3.2 and C.3.3).

All of the above leads us to conclude that the effective application of FSC Chile's new P&C will require major changes in the relationships between entities with certified plantations and the Mapuche people. Far from being seen by FSC Chile as a threat to their activities in Chile, this should be understood as an opportunity to address the serious conflicts that the certified companies have had with the Mapuche people to date, and thus as an opportunity to ensure that their operations uphold the human rights of these people.

## Chapter 7 – Conclusions and Recommendations

In this study we have given priority to the experiences, knowledge and interpretations of the Mapuche concerning the subject at hand. This multifaceted Mapuche perspective formed the basis of our central findings: any attempt to establish a strong and constructive role for FSC certification in the conflict between the Mapuche and the forestry companies must begin with solid and consistent participation of the Mapuche within the FSC. Thus this study, created by a majority Mapuche team, can be taken as an initial step in the right direction, both in terms of its general conclusions and its recommendations.

### Conclusions

The central argument of the report is founded on the Mapuche *Rakizuam* (thought) and *Kimun* (knowledge), particularly in relation to their social and natural environment, detailed in Chapter 1. We focus on the concept of the *lof mapu* not as property in a western sense, but as a space of human interaction, a deep relationship with the natural world, and the special meanings ascribed to these. This concept provides a foundation on which to build in-depth descriptions of the processes of historical formation and the current condition of the four *lof mapu* which are central to the study. These histories make it clear that dissatisfaction with the "reductions" comprising the *Títulos de Merced* (granted between 1884 and 1929) is both long-standing and current, and efforts towards restitution based on rights through traditional occupation also show continuity over a period of more than a century.

Chapter 2 covers the broad subject of the conflict over time. First it recounts the mass suffering caused by the military conquest towards the end of the 19<sup>th</sup> Century and the policies of reduction and "pacification" which followed: radical dispossession and political and economic subordination, all justified through a racist institutional discourse on the need to "civilise the barbarian." It goes on to tell of the rise of State forestry policy, initially introduced with a view to countering the disastrous environmental effects of agricultural over-exploitation, later becoming a comprehensive development strategy and finally, during the dictatorship, a promotion of the private, large-scale forestry industry. It concludes that, in inheriting these policies, governments of the democratic or post-dictatorship period were faced with a highly complex dilemma: how to open channels of democratic participation for the Mapuche without acknowledging the claims

which will inevitably arise from this participation? The State eventually opted for contradictory policies in the form of the Indigenous Peoples Act of 1993 and the subsequent foundation of CONADI, and an iron fist used against those whose claims reach beyond the bounds of that law. We show that these "broader" claims are fundamentally a reiteration of the main principle of the *lof mapu* in relation to territorial rights. We close Chapter 2 with reference to the Mapuche movement which has been growing steadily since the 1990s, focusing on claims to territory and an end to repression.

Our motivation for mapping these claims – using the logic of positive law and depicting Cartesian borders – follows the pattern of this resistance: putting before the State a clearly-understood claim is a pragmatic requirement, although it does not capture the deep significance of the territory according to the claimants. As we explain in Chapter 3, this claim has many facets, demonstrating that there are neighbouring properties (both forestry and private plots over 80 hectares) within the areas of the four *lof mapu* themselves. For example, in Mañiuko – the *lof mapu* which we were able to map in its entirety – we found that of the total area of the territory (5,571 hectares), 24 per cent is in the hands of the forestry companies and 44 per cent in those of private owners, leaving 32 per cent in the hands of the Mapuche themselves. For the purposes of this study, the analysis focuses special attention on the 24 per cent, comprising plots belonging to certified companies, despite the fact that these plots are found within a traditionally occupied territory.

Chapter 4 – concerning the environmental impact of the large forestry companies – contributes a new element to the picture: alongside the claim to territory, there is a growing source of dissatisfaction focused on the essential right to life. The well-documented impact of large-scale single-crop forestry on the quantity and quality of water gives greater urgency to the claim over territory and the need for management according to principles of sustainability.

The last two Chapters expand on this argument, focusing more specifically on the perspectives and experiences of the companies in the face of the conflict, and the role – current and potential – of the FSC certification regime in the search for solutions. It can be confirmed that once the companies had entered the FSC system, they underwent significant

transformations both in terms of internal organisation and relations with their surroundings. In this narrow sense, it could be concluded that FSC certification had a positive effect.

More generally we conclude that certification as it operates today in Chile is a complete failure, which only serves to fuel the conflict: it does not address or deal with the fundamental issue and, worse still, it promotes the perception of those who do confront this issue as complicit in actions considered not only illegal, but often criminal. We detail process problems and inadequate training of auditors before finally arriving at the basic problem: the FSC standard focuses attention on customary rights to territory, but leaves plenty of room for auditors to neglect this requirement, generating systematic disregard for the problem.

Chapter 6 goes into depth on this criticism, showing how the FSC's shortcomings are reinforced and amplified by deficient and inappropriate policies from the Chilean State itself – detailed in Chapter 2 – whereby the State has made a series of basic commitments to the Mapuche people but which to date they have failed to honour. Chapter 6 finishes with an analysis of the transition to the new standard, whose language regarding indigenous rights is even more demanding and specific. We conclude that it will no longer be possible for auditors to – as they have until now – disregard Mapuche claims over territory without even more flagrantly contradicting the guidelines of Principle 3 of the new standard.

## Recommendations

The introduction to this report summarises the fundamental elements of the Mapuche outlook towards the future: they are not willing to surrender to a dominant State and society which refuses to listen to their collective voices. It defines two main flows of political action, one being more "institutional" (operating within State-defined parameters) and the other according to their own autonomous criteria. It is important to note that, despite major differences between the two – in terms of both analysis and strategy – there are also similarities, mutual reinforcement, and a good deal of evidence to suggest that the basic motives of both are related. In this sense, the recommendations for improvement through institutional channels do not rule out the useful contributions that could come of the autonomous route.

In this section we summarise in six categories the recommended courses of actions arising from analysis of the report. Given the central findings of the study there is one recommendation

which deserves special attention, and which we are calling the "key" recommendation. Without paying close attention to this recommendation, we doubt that measures taken according to the other recommendations would have much of an impact on change. The reverse is also true: paying close heed to this first recommendation will yield much greater impact from the others.

### *Key Recommendation*

**Include explicit instructions linking certification (particularly Principle 3) with the territorial claim over the *lof mapu* (or in terms of international law, "traditional or ancestral occupation"), in such a way that a company cannot be certified if it has plots located within a *lof mapu* under claim, until such a point where this claim is closed to the satisfaction of the claimants.**

It is not expected that the CBs should evaluate the validity of a given claim – this would be beyond the authority of the FSC. We do however insist that certification processes involve the current and future P.3 which acknowledges the rights of indigenous peoples to traditionally occupied lands based on customary rights. **In the event that these rights exist, as in the cases of the *lof mapu*, certification should not be granted to any plot located within the area subject to a claim until the claim has been resolved.** In the case of the Mapuche it is clear that the notion of property should be understood as an ancestral concept, which has evolved with historical dynamism; it is also clear that the claim goes further than the *Títulos de Merced* and the areas affected by the land reform. The term "ancestral" refers to the social and cultural relationship which the Mapuche people have had in the past and continue to have with their spaces – spaces which have relatively recently been the object of appropriation, occupation and usurpation by economic groups from the agricultural sector and by the Chilean State. The FSC must more fully integrate the system of independent or customary rights of indigenous communities or peoples into their policies, as these rights – as we saw in Chapter 6 – are an integral part of P.3. By complying with this recommendation, the FSC would not be participating in the conflict itself, but would be subscribing to the premise that compliance with indigenous rights – rights already supported by the Chilean State, although not respected in practice – is the cornerstone of any serious effort to resolve the conflict. Adopting this position would send a clear message regarding

the seriousness of the FSC on the matter. Without it, it would be very difficult to establish trust with Mapuche communities in order to sensibly address the subjects that follow.

### *The Internal Structure and Organisation of the FSC*

#### **1. Frank dialogue to review the relationship between FSC Chile and FSC International, in the interest of ascribing greater authority and decision-making power to FSC Chile.**

Considering all the limitations common to large and complex global organisations, we still consider that there should be room made for this review with a view to empowering FSC Chile and strengthening its capacity to intervene and resolve problems.

#### **2. Enhance and improve the effectiveness of the complaints mechanism in the event of non-compliance with certification Principles and Criteria.**

In the current system, the majority of complaints and grievances are sent directly to FSC International. Sometimes FSC Chile is involved in the consideration, monitoring and documenting process which follows, but on other occasions it is not. A more efficient and accessible system is required which would generate greater public confidence. The opening of an office in Lima is a positive step, but it still falls short of the mark. The process requires staff with specialised knowledge of the indigenous reality, in particular of the Mapuche situation. The issue requires improvement of administrative and executive aspects, as well as in terms of the appropriateness of staff.

#### **3. Better define the role of the PIPC, above all in terms of follow-up and monitoring.**

The founding of the PIPC is one of the most significant achievements of the FSC in recent years in terms of the theme of this study. A Council of Indigenous Dignitaries and Professionals directly linked to their situation would enable effective safeguarding and guarantee of the complete fulfilment of the standard – and above all of Principle 3 – on a global level. However, perhaps due to the fact that it has only recently been founded, its role is still unclear in terms of important issues such as that addressed in this study, and the resulting action that it is authorised to take. The PIPC needs to adopt a more effective, transverse, integral and decision-making role, beyond the consultation level.

#### **4. Bestow greater capacity upon FSC Chile to lead, and deal with the weakness of the Social and Environmental Chambers.**

The secretariat needs to be strengthened to enable it to play a more independent and influential role in controversial issues such as the conflict between companies and the Mapuche people. It needs trained, appropriate and specialised staff, and a budget to allow for travel, research and dialogue with actors. FSC Chile exhibits a critical imbalance between the Economic and Social Chambers, among others. We recommend greater coordination, coexistence and effective dialogue between the Chambers, and finding a balance between the Economic Chamber on one hand and the Social and Environmental Chambers on the other. Efforts to recruit suitable personnel and a dedicated budget would be priority steps.

#### **5. Create a fourth Chamber within FSC Chile to represent indigenous issues.**

Given the lack of recognition of the under-representation of indigenous people, the FSC should reformulate its organisational and executive structure, creating a body of indigenous members providing real and effective representation in its global activities, and promoting mechanisms for participation in the national Chambers. What is achieved in Chile could then be applied in other regions. If FSC Chile wishes to become a serious and respected voice on the subject of Mapuche/company conflict, it is absolutely vital to increase indigenous participation in the organisation, both by the Mapuche and other indigenous peoples of Chile. There is already information and experience from other places, such as Canada where they have created a fourth Chamber, exclusively for indigenous peoples.<sup>244</sup>

### *CB Training and Procedures*

#### **1. Reform the permanent relationship between CBs and companies.**

This initiative has been proposed many times, with a much more thorough justification than we can provide here given that it is not the central theme of this study. We support the idea of CB rotation in order to break the relationship of commercial dependence; this is a serious

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<sup>244</sup>Teitelbaum, Sara. (2009). *Impacts of FSC Certification in the Canadian Boreal Forest: Exploring Partnerships between Forest Companies and Aboriginal Peoples* (p. 38). Canada: Rainforest Alliance.



problem in terms of how third parties perceive the situation, and indeed in many cases, in practice.<sup>245</sup>

## **2. Clarify and review the policy of "excision".**

According to an interview with a senior official from a prominent CB, it is possible that companies and their CBs are practising the policy of excision to an extent beyond its original intention. The policy permits the exclusion from evaluation of any plot during the certification process, if it is "in conflict." By means of this practice, a company can avoid having to comply with FSC standards, especially P.3. FSC regulations should prioritise directing the attention of CBs at conflicts instead of encouraging them to avoid them, as is current practice.

## **3. Require training courses for auditors on the content of the current FSC standard pertaining to indigenous rights.**

As we have seen in the preceding Chapters, many of the members of CB teams lack necessary training to effect a full application of the standard, above all those aspects to do with P.3. Training is also recommended on the UN Principles on Business and Human Rights referenced in this report. We recommend a training course covering indigenous rights, created by a competent authority and led by professionals who specialise in the relationship between forestry certification and indigenous peoples. Without this training, it cannot be expected that auditors will be able to respond ethically or professionally.

## **4. FSC International must give priority to addressing process problems identified by ASI in regard to non-compliance with the standard.**

As reiterated by the report by Venegas (2015), there are clear cases of non-compliance with the standard on the part of large companies, as well as a series of inappropriate measures adopted by CBs to "soften" or avoid the full consequences of the audit. FSC International must demonstrate political will to rigorously apply its own principles and criteria to large companies, without fear of losing market share in terms of its certification services. A series of problems of this nature have already been identified by studies commissioned by ASI, as well as by

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<sup>245</sup> See: Venegas, Andrés. (2015). *Final Report to ASI* (No. English Version 2) and Astorga, Luis & Venegas, Andrés. (2013). *Análisis de los Informes de Auditoría a Forestal Mininco S.A.* Chile: Rainforest Alliance

independent academics (e.g. Moog et al. 2015): the recommendation, simply, is that FSC International should take consequential action in regard to these widely documented problems.

### *Fundamental Review of the Content of the Standard and its Interpretation*

#### **1. Eliminate the environmental audit loophole.**

FSC International and FSC Chile must make greater effort to prevent the adverse environmental impacts of forest management by certified organisations in Chile, particularly on Mapuche traditionally occupied lands, territories and resources, as well as neighbouring areas. This should be done according to the current standard (P.6) and the new standard (P.6 C.1). The FSC cannot support the loophole in Chilean legislation which eliminates the obligation of the forestry industry to carry out environmental impact studies unless they operate on an industrial scale (that is, projects covering more than 500 hectares). Although the large companies have tracts of land totalling far more than 500 hectares, they register each plot separately, thus avoiding the requirement to carry out a study. In order to remedy this serious shortcoming, the FSC must demand, prior to granting certification, that environmental impact studies be carried out allowing an evaluation of the adverse implications that the forestry plantations of certified companies could have. It must also promote environmental audits of plots that have already been certified, with the possibility of rescinding their certification in the event of non-compliance with the relevant P&C.

#### **2. Create clear instructions for dealing with the problem of contradiction or lack of compliance with established international conventions and declarations established in the FSC forest management standard.**

As indicated in Chapter 6, the current P&C state that organisations must respect national laws and international conventions, among them ILO Convention 169 concerning indigenous peoples. The P&C of the new standard concerning indigenous peoples (P.3) incorporates – along with the rights established in ILO Convention 169 – the rights established by the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). These instruments have the support and recognition of both the Chilean State and the indigenous peoples themselves; however, as detailed in Chapter 6, the State does not comply with these commitments. Both national FSC secretariats and FSC International must require that certified companies comply

with these standards, even if States do not do so. Where there is non-compliance, the FSC is obliged to initiate dialogue between the State, companies, representatives of the Mapuche population and other relevant actors in order to analyse and seek a way of dealing with this contradiction.

**3. Create a training programme on the new standard for CBs, the Mapuche, the companies, and other groups.**

The FSC urgently needs to redefine the eligibility of the CBs in terms of their professional quality and ethics, disciplinary training, appropriateness and skills in transcultural situations, and knowledge of national and international indigenous law. The language of the new standard, especially concerning free, prior and informed consent, rights to traditionally occupied lands and other aspects directly relevant to indigenous peoples will be transformative. In addition to the transition committee itself, there is a need for educational procedures so that all parties are aware of the implications.

**4. Make an exhaustive review of existing certification in relation to Mapuche territorial claims; freeze any certification of plots involved in territorial conflict until such conflict is resolved.**

As this study has demonstrated, there are claims over the *lof mapu* in the four districts, each of which have certified forestry company land within their perimeters. Similar cases exist the length of the La Araucanía and Bío Bío regions. Furthermore, as the ASI report by Venegas reiterates, there are problems concerning the rigour of audits that require urgent attention. These two facts come together in the recommendation of carrying out a general and rigorous review of certifications in relation to Mapuche claims over their respective *lof mapu* in order to determine whether any of the certified forestry plots exist within the traditionally occupied area. In the event that they do, this would constitute non-compliance with the standard (P.3) and certification should be suspended until the conflict is resolved.

**1. Design a system of continuous high-level dialogue between the FSC and the Chilean State concerning the implications of the new standard (v. 5), especially to do with conflict over Mapuche customary lands, evaluation of environmental impact, and FPIC.**

This recommendation is directed specifically at the State. The perception of the Mapuche is that the State involves itself only when the conflict acquires political connotations, and that it has been essentially repressive and in favour of the economic sector, with dire implications for Mapuche communities. In order to advance conflict resolution processes, the State must assume a more constructive and proactive position; FSC International and FSC Chile should promote meaningful dialogue concerning the compromises involved in certification – above all in the new standard – to push forward this necessary change to state policies and philosophy.

**2. Put in place a programme of education and global exchange regarding the problems and solutions of certification in relation to indigenous peoples.**

The case of the Mapuche should serve as an educational basis for other indigenous peoples with similar problems, and greater learning from other peoples (above all those in Canada) would be of enormous benefit to the Mapuche. Ideally, the PIPC itself should assume a certain degree of responsibility for initiating such a programme. In this sense, the Mapuche experience presents a spectrum of lessons regarding a situation in which indigenous peoples have rights supported by international instruments but signed by States who refuse to comply with these acquired commitments.

**3. Clarify and widely publicise the FSC position concerning indigenous rights, FPIC, etc.**

We understand that there is still much discussion on the subject of indigenous rights and related themes in the context of FSC certification, and we hope that this report can serve to generate further discussion and establish projections in other contexts. Once there is clarity on the basic themes, the FSC should launch a dynamic programme of dissemination to improve knowledge about its position, both in Chile and internationally.

## *Significant Future Research on the Subject*

### **1. Conflict monitoring.**

During the course of our investigation we developed a system for monitoring the level of conflict on forestry properties located in "areas of influence" in Mapuche territories, based on information provided by companies and which later will be made publicly available through the documentation of FSC certification. We found that the term "proximity" is not useful due to its lack of precision and the multiple possible interpretations. We replaced it with a method by which all of the plots in a given province can be evaluated on a scale of one to five: 1. *Neutral*: everything normal, nothing special. 2. *Positive*: special relationships of outreach, collaboration, projects, etc. 3. *Conflict under negotiation*: some kind of conflict, but in the process of resolution through dialogue, etc. 4. *Open Conflict*: "red zone", no fluid dialogue and no paths to resolution. 5. *No relationship*: sufficient distance from communities that there is no relationship. Unfortunately, only one of the large companies consented, supplying the data as requested (see Chapter 5). We consider that this system of data collection and monitoring would be an excellent tool for analysis of the conflict over time.

### **2. An exhaustive study of the impact of single-crop forestry.**

Our team of environmental experts carried out an investigation of the relevant subjects and questions, but the brief time-frame of our study, along with the limited budget, made it impossible to perform more in-depth research in the field. It would have involved collection of data over an extended period, with "control" areas to effectively verify the effects. They urgently recommend research into the adverse implications of the plantations, as well as exploration of the positive effects of environmentally responsible management of the landscape on the quantity and quality of water.

### **3. A continuation of the progress made by Motion 20.**

Motion 20 urges research into the applicability of the FSC system on large-scale single-crop plantations. Although the system produces positive incremental effects on social and environmental management, certification simultaneously brings negative consequences for the system in the medium and long term. The study of Motion 20 contributed to this debate, but

there is a need to go into more detail in terms of the system's credibility and the almost inevitable disproportionate increase in corporate influence compared to the other two Chambers.

#### **4. Explore communal forestry as an alternative for the Mapuche.**

Most of the political and intellectual energy directed towards Mapuche territorial rights have been focused on confronting the forestry companies that operate in ancestral Mapuche lands. However, following the potential transfer of lands to the communities, the question of the viability of the forestry sector will re-emerge in a new context. There is now a need for studies into the feasibility of community forestry as a source of income for the communities, based on exotic plantations, but additionally and more importantly regarding the management of native species that are more compatible with the context and perception of Mapuche *Kimun* (knowledge) and *Rakizuam* (thought). The FSC should require State institutions to design an indigenous self-managed work policy based on the application of the knowledge of the community and on their own decision-making processes, seeking to fully safeguard their rights.

#### **5. Document experiences of land "recovery" in terms of environmental and social benefits.**

There are numerous instances across the 8th and 9th regions of lands that have been recovered – some bought by CONADI and others autonomously – and are in the hands of Mapuche communities involved in their own production and self-sufficiency programmes. It would be of great value to study these experiences in order to document what can be achieved when a community enjoys its own resources, across a number of areas, from environmental management to economic well-being and, above all, the recovery and implementation of the *Mapuche Rakizuam and Kimun*.

## Glossary

**Ayllaregua or Ayllarewe:** *aylla* – nine rewe.

**Az Che:** identity of all the people in a *lof*.

**Az Mapu:** Mapuche law.

**Azkintuwe:** viewpoint or lookout point.

**Butalmapu:** the highest level social, political and military organisation of the Mapuche.

**Che:** people, person.

**Eltun:** cemetery.

**Eluwun:** burial ceremony or funeral.

**Epew:** stories.

**Epu Rewe:** *epu* – two rewe.

**Furen:** group of directly related families.

**Futal Mapu:** great territory.

**Guluche:** Mapuche from the West, Chile.

**Itrofilmogen or Ixofilmogen:** life in its entirety, or biodiversity.

**Kimche:** learned person or wise man.

**Kimün:** knowledge.

**Kiñelmapu:** a territory.

**Kiñeltuwunmapu:** the land that we all came from.

**Ko:** water.

**Kona:** young Mapuche of physical prowess.

**Kula Rewe:** *kula* – three rewe.

**Kume Mogen:** Mapuche well-being.

**Kupalme:** family lineage.

**Kuyfi:** before or previously.

**Lafkenches:** Mapuches who live close to the sea.

**Lamgen:** literally "sister", used by men and women to refer to women, and also by women to refer to men.

**Lawen:** medicinal plants.

**Lawentuchefe:** Mapuche doctor.

**Lebo:** concept coined by Spanish chroniclers, with various meanings such as river (a variant of the word Leufu) or relating to the concept of *lof*.

**Lof che:** concept referring to the relationships and social interdependence among the families which make up the lof.

**Lof mapu:** concept referring to the sovereignty of the territory and to the social relationship that families and their descendants have with this territory, from which they gain their identity and engage in social and cultural practices under the political authority of the Longko.

**Lof:** basic social, political and territorial unit, based on the extended family system, with personal and collective rules regarding inheritance and dispute resolution.

**Longko:** person of political authority.

**Machi:** someone responsible for healing people, commonly known as a shaman.

**Mafun:** wedding.

**Mallin:** wetlands or swamps.

**Mapu:** refers to global and local, tangible and intangible spaces in the world.

**Mapuche kimün:** sense of Mapuche culture.

**Mapuchegen:** identity of Mapuche people.

**Mawelfe:** space which permits rain.

**Mawiza Wingkul:** wooded hill.

**Mawizantu:** woodland or forests.

**Meli Lof Mapu Mew:** the existence of four territories.

**Meli Rewe:** *meli* – four rewe.

**Menoko:** particular area in which natural powers and forces converge.

**Miñche Mapu:** interior of the earth, comprising all of the space under the surface.

**Mogen or Kume Feleal:** to live well.

**Mongen:** life.

**Nagche:** lowlanders, those who live in lower areas.

**Newen:** forces.

**Ngeñ:** supernatural being or force that has ownership of the space.

**Ngillanmawün:** prayers.

**Ngillatuwe:** ceremonial place in which Nguillatun takes place.

**Nguillatun:** prayer ceremony, the most important ceremony of the Mapuche.

**Ngulam:** council.

**Ngulumapu:** lands which form part of the Wallmapu which are currently on the Chilean side.

**Ñizol Longko:** main Longko.



**Palikantun:** people who play the Palin.

**Palin:** Mapuche sport.

**Paliwe:** Palin playing field.

**Pehuenche or Pewenche:** people of Mapuche identity associated with the collecting of the Andean pine nut.

**Peñi:** literally "brother", used only by men to refer to other men.

**Pewma:** dreams, including their potential interpretations and premonitory capacity.

**Pikunmapu:** lands located in the northern part of the Wallmapu.

**Puelche:** Mapuche from the East, Argentina.

**Puelmapu:** eastern Mapuche land, Argentinian Pampas.

**Pulli:** spirit.

**Purrun:** dances.

**Rakizuam or rakizuamy:** thought or mindset.

**Rañing Wenu Mapu:** space between the land and the sky.

**Rapa:** variant of the word rupu which means path or way.

**Rewes or reguas:** sociopolitical units.

**Reyñima:** maternal or paternal family.

**Ruka:** home or house.

**Rukantufe:** house builder.

**Trafkin:** economic exchange or trade.

**Trawun:** meeting or assembly.

**Trayenko:** waterfalls.

**Treng treng:** sacred hills which allowed the Mapuche to survive the flood.

**Tuwun:** influence of the natural landscape upon the Mapuche self.

**Ulmen:** person of good reputation or prestige.

**Wallmapu:** Mapuche territory.

**Wallontu Mapu:** the whole of the Earth.

**Wampo:** canoe.

**Warriache:** Mapuche who lives in the city.

**Wenenk Xem:** the elderly.

**Wente Wenu Mapu:** space above the Wenu Mapu.

**Wenteche:** highlanders who live from the central plain to the foothills of the Andes.

**Wenu Mapu:** blue space.

**Wetripantu:** new year.

**Wingka:** Chilean or Spanish people.

**Winkul Mapu:** hill.

**Witrunko:** stream.

**Wüllimapu:** lands in the southern part of the Wallmapu, otherwise known as Huilliche.

**Xokinche:** all of the people in a territory or place.

**Xokinmapu:** the whole area of a territory.

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