

The Mapuche Conflict

Origins and Status Quo



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1. Introduction

The Mapuche-conflict in southern Chile claimed new victims again on Friday, January 4, 2013. The elderly couple Werner Luchsinger and Vivianne McKay was killed in an arson attack on their residence on Lumahue farm in Vilcún. As there was no claim of responsibility, it has not yet been clarified who is to blame for the attack. The Luchsinger family had immigrated to Chile from Switzerland at the beginning of the 20th century – and had founded the basis of their extensive land holdings on traditional Mapuche territory in 1906. Now, the Mapuche are claiming this land back. The conflict between the Luchsinger family and the Mapuche land-rights movement shows how far the roots of the conflict reach back into the country's history. The Mapuche are especially embittered because of the fact that a land reform by Salvador Allende (1970- 1973) was taken back during the dictatorship of General Augusto Pinochet (1973-1990) – thus, taking away the basis of their livelihood. Until today, they are suffering from the expropriation and the loss of their traditional land. There were no compensations.

2. The Mapuche Conflict: Land-Grabs, Criminalization, Land Occupations

According to the census of 2002, there were 692,192 people (4.6% of the population of Chile) who identified themselves as native inhabitants – 604,349 from the tribe of the Mapuche. They live in the regions of Bío-Bío and la Araucanía in the south of the country, forming Chile's largest ethnic minority group. However, many Mapuche were afraid to admit their ethnicity at the time, due to the serious repressions. Also, some misapprehensions were caused by the way the data collection forms were worded. Mapuche organizations also argued that only Mapuche who lived in rural areas were counted, missing out those who had migrated to the cities. It is therefore to be assumed that the actual number of members of the Mapuche communities is higher: between 900,000 and 1,400,000 – depending on the source of information.

2.1 History of the Land Grabs

For years, the Mapuche have been demanding to be given back the territories that were taken away from them after Chile became independent and especially during the dictatorship of Augusto Pinochet. The claim goes back to a historical incident in the period from 1862 - 1881 known (from a critical point of view) as the "military occupation of the Araucanía region". However, official historical records also refer to the incident with the euphemism "Pacification of Araucanía".¹ Until 1881, the Mapuche managed to ward off any attempts of the Spanish Crown Council – or later the Chilean government – to establish settlements in their traditional territories. As a result of the "pacification", the Mapuche territories were reduced from 10 million hectares to 500,000 hectares and

¹ José Bengoa 2000: Historia Del Pueblo Mapuche: Siglos XIX y XX, Ed. Lom Ediciones.

first land titles were transferred to non-indigenous settlers.² When the first laws regarding land ownership in Chile were enacted from 1866 onwards³, the Chilean government intended to "civilize" the region to the south of the mighty Bío-Bío River – which marked the border to the Mapuche territories at that time⁴ – by establishing new settlement areas. The "Agencia de General inmigración Colonización y de Chile" (General Settlement and Immigration Agency), which was founded in Chile at the beginning of the 20th Century, was responsible for sharing out extensive patches of land to Chileans and to foreign settlers.⁵

The Chilean state provided military support in order to secure the land allocation and to enforce the fragmentation of the jointly administered tracts of land and the expropriation of the hills and mountainous regions within the traditional territories of the Mapuche. The Mapuche were forced to adapt to the concept of small farms because of the fragmentation of agricultural land, giving up their freedom and self-determination, along with many of their economic, social and cultural traditions. The Chilean anthropologist José Bengoa characterizes the historical occurrence as a dark chapter in Chile's history. He is sure that the current Mapuche conflict goes back to this event – and asserts that the Chilean state continues these wrongful acts until today.

The Mapuche also suffered from attacks during the dictatorship of General Augusto Pinochet (1973 - 1990). President Eduardo Frei (1964 - 1970) and Salvador Allende (1970 - 1973) both tried to meet the Mapuche's needs by an agrarian reform and by improvements regarding the education and healthcare situation, but in vain.⁶ In 1971, laws for the protection of the indigenous people came into force, but they were modified later, by Decree No. 2568 of 1979 for instance. Article 1 of the decree stated that – after the dissolution – the land would no longer be considered to belong to the native peoples.

"The law allowed the jointly administered tracts of land to be divided and sold as private property. To bring the new law into effect, it was sufficient to obtain the consent of a single Mapuche – regardless of the other members of the indigenous community."⁷

² Pedro Cayuqueo 2012: Solo por ser indios, Ed. Catalonia; José Bengoa 2007: Historia de un conflicto. Los Mapuches y el Estado nacional durante el siglo XX, Planeta.

³ José Bengoa 2007: Historia de un conflicto. Los Mapuches y el Estado nacional durante el siglo XX, Planeta.

⁴ Bengoa: 2000.

⁵ CEPAL / CELADE 2009: Conocer para legislar y hacer política: Los desafíos de Chile ante un nuevo escenario migratorio, in: <http://www.eclac.org/publicaciones/xml/8/37498/lcl3086-P.pdf>.

⁶ Georg Fiedeler 1987: Mapuche in Chile: Geschichte, Kultur und soziale Realität eines bedrohten Volkes, Institut für Soziologie Universität Hannover.

⁷ Society for Threatened Peoples / Gesellschaft für bedrohte Völker 2007: Staatlich institutionalisierte Gewalt in Chile. Mapuche fordern Wahrheit und Gerechtigkeit:

In retrospect, the various laws regarding questions of land possession and the occupation policy for the south of the country can be seen as constant attempts to split up the Mapuches' territories and to enforce their assimilation.⁸ The Chilean Government continues to violate the indigenous community's basic rights of self-determination, regardless of the fact that the Chilean Congress ratified ILO Convention No. 169 in 2008.

2.2 Reactions by the Mapuche: Land Occupations

As from 1990, the Mapuche mostly reacted to the unjust measures of the Chilean state with peaceful land occupations. Any violent actions are aimed against objects, not against people. Currently, the Mapuche are addressing their demands mainly to the Chilean government, because it is to be held accountable for the colonization and for sharing out the land to the Colonists.⁹ But the Mapuche are also ill-disposed against landowners, energy companies and cellulose factories that operate on their traditional territory but are careless about the environment and water resources. No matter what political coalition is in charge, the Chilean state unconditionally continues to follow the perception of economic growth – at the expense of the poor and the native inhabitants. Chile has become the most highly industrialized country in South America, with an extremely unequal distribution of wealth. The Mapuche conflict is a political issue.

<http://www.gfbv.de/inhaltsDok.php?id=969>.

⁸ Elizabeth Parmelee 1990: Decreto de Ley 2568 sus efectos e implicancias: <http://www.mapuche.info/mapuint/parm1.htm>; Peña Jumpa, Cabedo Mallol, López Bárcenas 2002: Constituciones, derecho y justicia en los pueblos indígenas de América Latina: análisis constitucional, Justicia y derecho oaxaqueño (México), Justicia y derecho aymara (Perú); José Aylwin 1994: Pueblos indígenas de Chile: Antecedentes históricos y situación actual, in: http://www.archivochile.com/Pueblos_originarios/hist_doc_gen/POdocgen0004.pdf.

⁹ Pedro Cayuqueo:2012.

3. The Use of Exceptional Laws as a Method against the Mapuches' Attempts to Reclaim Land

The escalation of the Mapuche conflict is based on the fact that the Chilean governments continued to systematically violate the rights of the ethnic minorities after the democratization process in 1990. So far, every new government in Chile has succeed in turning down the legitimate demands of the Mapuche by means of exceptional laws – despite some efforts to establish supportive mechanisms, such as the establishment of the "Corporación Nacional de Desarrollo Indígena" CONADI (the National Corporation for Indigenous Development), the new indigenous-peoples' law "ley indígena" in 1993 or the ratification of ILO-Convention No. 169 in 2008.

During the presidency of Patricio Aylwin (1990-1994), 144 members of the Mapuche organization "Consejo de todas las Tierras" were arrested, based on a State Security Law in connection with the land occupations. The law was issued in 1958 in order to prosecute offenses against public order and to secure national sovereignty. In 1997, this law was applied again when Mapuche representatives set fire to three trucks that belonged to forestry companies in the southern region of Lumaco. After the incident, the government under President Eduardo Frei (1994-2000) sent out a large group of police officers to the region. The conflict intensified significantly during the Presidency of the socialist representative Ricardo Lagos (2000-2006). Pre-election promises – such as the plan to give back 150,000 hectares of land to the Mapuche and to revise the laws regarding indigenous peoples – were not kept.¹⁰ Lagos even reinstated an anti-terrorism act that dates back to the military dictatorship of Augusto Pinochet, allowing testimonies of anonymous witnesses that cannot be verified by the defense advocates. Also, the act allows an unusually long pre-trial detention of up to two years and provides that the defendant's lawyers are not allowed to examine the investigation files during the first six months of the proceedings. The trials against the Mapuche are also exceptional because of the fact that they can be prosecuted by the military justice system if a security official was injured in a conflict. Therefore, many of the arrested or imprisoned Mapuche must answer to both a civil court and a military court.

The Mapuche communities are complaining about police oppression and about impunity for crimes committed against them: In 2002, the policeman Marcos Treuer shot the 17-year-old Mapuche Alex Lemun. Lemun had participated in a peaceful land occupation by which the Mapuche had tried to emphasize their possessory rights regarding the farmland of Santa Elisa in Ercilla. Today, this farm belongs to MININCO, the second largest

¹⁰ Eduardo Mella 2012: El estado chileno contra la protesta social 2000-2010: <http://www.sudhistoria.cl/wp-content/uploads/2012/09/Eduardo-Mella.pdf>.

forestry company in Chile. In first instance, Treuer was convicted for bodily harm with fatal consequences – in the second instance, however, he was acquitted by a military court.

Violence against the Mapuche also took place during the Presidency of Socialist representative Michelle Bachelet (2006 - 2010): The 22-year-old student Matías Valentín Catrielo Quezada – a Mapuche – died on January 3, 2008, after he was shot in the back several times by police officer Walter Ramirez. He had participated in a peaceful occupation of the Santa Margarita land which belonged to Jorge Luchsinger. Ramirez was sentenced to three years on probation, which he was allowed to serve in office. However, Ramírez was dismissed from the police service on January 18, 2013. At the beginning of 2013, protests to commemorate the death of Matías Valentín Catrielo Quezada resulted in a new escalation that finally led to the violent deaths of the couple Luchsinger / McKay. Walter Luchsinger was a cousin of Jorge Luchsinger.

At the age of 24, Jaime Mendoza Collio was shot dead by police officer Miguel Patricio Jara Muñoz in 2009. He had taken part in an occupation of the farm of San Sebastián, together with family members of the "Requén Pillán" community. The farm now belongs to the forestry companies MININCO and Bosques Arauco. Officer Patricio Jara was sentenced to five years in prison, but the military court annuled the sentence in August of 2012. These are only the cases in which members of the Mapuche got killed during land rights disputes. Altogether, at least eight Mapuche fell victim to exaggerated police brutality since 2002: Jorge Antonio Suárez (2002), Edmundo Alex Lemun Saavedra (2002), Julio Alberto Huentecura LLancaleo (2004), Xenon Necul Alfonso Díaz (2005), Juan Valentín Collihuin Catril (2006), Matías Valentín Catrielo Quezada (2008), Jhonny Yanez Cariqueo (2008) and Jaime Facundo Mendoza Collio (2009).

The Bachelet administration tried to reform the anti-terror laws, but two attempts failed – one in 2006 and one in 2009. Also, a working group was established in order to decide on a reform of the military justice system in 2007.¹¹ The idea was to keep civilians away from the military jurisdiction system. Neither of the reform efforts was successful.

The Mapuche have been campaigning against the anti-terrorism act and the dual jurisdiction for quite a while. This also applies for the three imprisoned Mapuche who started a hunger strike on November 14 and December 24, 2012, respectively. On January 23, 2013 – the day this report was issued – the hunger strike was still going on.

¹¹ Please refer to El Mostrador, September 16, 2012: "No voy a entrar en polémica con dos ex ministros" sobre el tema mapuche: <http://www.elmostrador.cl/noticias/pais/2010/09/16/bachelet-%E2%80%9Cno-voy-a-entrar-en-polemica-con-dos-ex-ministros%E2%80%9D-sobre-el-tema-mapuche/>.

President Piñera's administration shows no sign of giving in. The Comisión Ética contra la Tortura (Chile's Ethical Committee against Torture), describes the situation of the prisoners (before July 2012) as follows: One Mapuche committed suicide in prison, ten more Mapuche are imprisoned, six were convicted but are on bail – and 24 others are under arrest, waiting for their trial.¹²

4. Conclusion

The Society for Threatened Peoples is in deep concern about the recent escalation of violence in the Mapuche settlement areas and would like to warn against prejudging the Mapuche and against any further measures of marginalization. There has been no claim of responsibility regarding the Luchsinger arson attack. There have been many statements – also one by the CAM¹³ – claiming that the Mapuche are not responsible for the attack.

Nevertheless, the government and the state prosecutors both see a connection between the arson attack and the Mapuche conflict in the Araucanía region. A 26-year-old man was arrested as a suspect after he was taken up in close proximity of the Luchsinger-family's farm, injured by bullets. The government considers imposing a state of emergency and announced to make use of the anti-terrorism act to investigate the arson attack. The STP accuses the Chilean government of stirring up the Mapuche conflict in doing so. The Mapuche's demands regarding their land are justified. To avoid more casualties, there must be immediate talks between all parties involved.

First and foremost, the Mapuche are demanding a restitution of land. Also, they are trying to fight against their socioeconomic deprivation, which is mainly caused by the forestry companies who operate in the Mapuche regions. They want their culture to be recognized and are demanding fair trials and an abolition of the anti-terror laws. The military jurisdiction should not be authorized to proceed against the Mapuche. Members of the Mapuche who are being kept as political prisoners must be released and rehabilitated. The indigenous settlement areas must be demilitarized.

The Chilean government addressed a letter to the Society for Threatened Peoples – dated December 28, 2012 – asserting that Chile's society is truly multicultural. The Piñera administration is willing to treat the indigenous people of the country with respect and without discrimination – but the prevailing criminalization of the Mapuche who are

¹² Comisión Ética contra la Tortura 2012: „La tortura es el miedo a las ideas de los otros“. Report 2012: <http://www.indh.cl/wp-content/uploads/2012/07/CECT-Informe-2012.pdf>.

¹³ CAM is short for „Coordinadora Arauco Malleco“ – a Mapuche-organization that campaigns for a land-restitution since 1998.

demanding their land rights seems to contradict this statement.¹⁴ The Chilean Interior Minister, Andrés Chadwick, has repeatedly characterized the Mapuche as powerful and well-organized enemies.¹⁵ Thus, the political core of the Mapuche conflict is being denied and the Mapuches' land restitution claims are being ignored. Instead of entering negotiations to try and solve the conflict issues, the government once again chose a repressive short-term solution.

¹⁴ There are many quotes that support the criminalization-thesis – see Felipe Acuna Rus 2010: Criminalización de la protesta & judicialización de las demandas sociales: <http://www.derechoyhumanidades.uchile.cl/index.php/RDH/article/viewFile/16019/16535>; Eduardo Mella Segel 2007: Los Mapuches ante la justicia: La criminalización de la protesta indígena en Chile, Lom Ediciones; Myrna Villegas 2009: El Mapuche como enemigo en el Derecho (Penal): http://www.cienciaspenales.net/descargas/idp_docs/doctrinas/mapuche%20actor%20social%20enemigo.pdf.

¹⁵ Please refer to Radio Universidad de Chile, January 5, 2013: "Araucanía: Ministro del Interior recalca en enemigo poderoso y organizado y evalúa Estado de Excepción" : <http://radio.uchile.cl/noticias/186124/>.