

The Mapuche People of South America¹

Background

The Mapuche people live in the southern part of the continent of South America, in what is now Chile and Argentina. During the Spanish invasion of South America, the Mapuche were never conquered. They signed a treaty with the Spanish in 1641 (The Treaty of Quillin) which recognized Mapuche political and territorial independence, although this treaty did not stop the Spanish invasions into their territory nor end the Spanish-Mapuche wars. After the independence of Chile and Argentina and the end of Spanish colonial rule, all treaties with the Mapuche were ignored. Both Chile and Argentina pursued policies to take the Mapuche's lands. This case study will focus on the specific policies of Chile, although similar policies have been pursued in Argentina.

For most of the time since independence, Chile has pursued policies explicitly meant to take control of Mapuche territories. The political, cultural and social independence of the Mapuche was explicitly denied, and even now the Chilean Constitution does not recognize the distinct political and cultural identities of indigenous peoples within Chile. However, in 1993 a law was passed to recognize, protect and support indigenous peoples (Law 19.253 for the Protection, Promotion and Development of Indigenous People).² There are five main foci of the law: political participation, education, land rights, cultural rights, and development rights. These are meant to address the rights and freedoms of indigenous peoples as set by UN Convention No. 169: The Indigenous and Tribal Peoples Convention.³

While this law is a step in the right direction, there were changes made before it was passed that effectively removed protections of land and territories. Additionally, there is no governmental body or position that is accountable for enforcing indigenous rights. This means that although the Law 19.253 indicates that the positions of indigenous peoples will be considered in decisions affecting them, no one is held accountable when such consideration does not take place. What's more, since the law recognizes indigenous populations as "ethnicities" and not as "peoples", the Mapuche (and other indigenous peoples in Chile) do not have easy recourse to the UN or Organization of American States. Declarations of indigenous rights by these international bodies apply only to "peoples" that can be defined as distinct from other groups within a state. It is in this political situation that the Mapuche must struggle to defend their rights to territory, resources and development.

¹ Much of the information for this case study comes from a document published by the Program of Indigenous Rights, at the Institute of Indigenous Studies, Universidad de la Frontera, in Chile. The study is titled "Informe Sobre la Situacion de los Derechos del Pueblo Mapuche" ("Report on the Situation of the Rights of the Mapuche People"). This report is available, in Spanish, online at: <http://www.derechosindigenas.cl/Informes/informe%20final%20pdi%20mapuche.htm>

² There are many websites that publish the text of this law. This one publishes (in Spanish) according to the eight titles of the law. The index is at: <http://www.xs4all.nl/~rehue/ley/ley-1.html#indice>

³ The text of this convention may be found online at: <http://www.unhcr.ch/html/menu3/b/62.htm>

MAP OF CHILE



Source: WorldAtlas.com

<http://www.graphicmaps.com/webimage/countrys/samerica/maps/clmap.htm>

Current Struggles

Hydroelectric development:

Perhaps one of the most important struggles for the Mapuche is the movement against hydro-electric development in their territories, on the Bío Bío River. In the Bío Bío project, the energy company ENDESA, S.A. (owned by Spanish parent company Enersis Group) plans to build six dams along the Bío Bío River for hydro-electric power. The project began with the Pangué dam, and construction of the second dam (Ralco) is currently underway. The Mapuche were not included in the planning for this project. In fact, two Mapuche representatives in the Chilean government were dismissed because of their resistance to the project. After their dismissal, the president appointed a non-Mapuche to the position, and the project was approved.⁴ As a result of the construction of these dams, many Mapuche families have been forced off of their lands. Although indigenous lands cannot be sold, according to the 1993 Indigenous Peoples Law, 84 Pehuenche families have accepted payments for their lands and moved off of their ancestral territories. Seven families have refused payment and refused to move out of the area that will be flooded by the completion of the Ralco dam. During the exploratory phases and construction of the Bío Bío dams, historical Mapuche burial sites have been disturbed, belying the Chilean states supposed respect for the preserving the cultural heritage of the Mapuche. Resistance against this hydro-electric project continues.

Penal codes and political prisoners:

As of March 5, 2003 there were 37 Mapuche political prisoners in Chile, claimed as political prisoners by Mapuche movements because they are incarcerated as a result of their resistance to Chilean policies that have removed them from their land and approved major development projects without their approval. In general, it has been the Chilean military which has been involved in confrontations with Mapuche resisters. This is particularly problematic because the military are not subject to the same penal codes; therefore some military actions which could be described as human rights violations go unchallenged. What's more, the Chilean Ministry of the Interior uses laws which were drafted under the Pinochet dictatorship to charge Mapuche resisters (The Antiterrorism Law and the Law of Internal State Security). These laws have already been critiqued for their inconsistencies with the Human Rights Conventions ratified by Chile, yet they continue to be used against the Mapuche peoples.

Political participation and Mapuche lands:

According to Law 19.253, the government agency CONADI is responsible for the representation of the interests of indigenous peoples. Many Mapuche have distanced themselves from CONADI after it was made clear in the Bío Bío project decision that Mapuche resistance to such megaprojects would not be seriously considered. This agency continues to be the decision-making body for questions concerning the protection and augmentation of indigenous lands, however. In addition to the criticism surrounding Bío Bío and other megaprojects, CONADI has also been criticized for the quality of lands that it has set aside as additions to previously existing Mapuche lands.

⁴ Indeed, it is for this reason that many Mapuche do not trust in the system of political participation that is supposed to enforce their rights.

The forestry industry:

The case of the Mapuche community of Lumaco and its struggle against the forestry operations of Empresa Forestal Mininco, S.A. (a Chilean company) is similar to the story of many other Mapuche communities. The forestry companies' strategies are first to settle the nearby areas with non-Mapuche, then to persecute and finally to remove the Mapuche from their traditional territories. Companies are not required to conduct impact-assessments and their activities interfere with, if not destroy, the livelihoods of the Mapuche. Their activities negatively impact the water systems, the flora and fauna of the forests, and in so doing have detrimental effects for the continued vitality of Mapuche cultural practices. The companies generally do nothing to contribute to the communities that they displace, and they do not provide compensation nor even employment. In protest, in 1997, the Lumaco Mapuche blocked three of Forestal Mininco's roads and conducted other acts of non-violent resistance. They were brutally put down by Chilean police forces, and their leaders were detained. Through it all, Forestal Mininco has refused to enter into dialogue with the Mapuche, and have called upon the state to protect their property interests. The Mapuche, on the other hand, through an association called Ñancucho de Lumaco, have reached a compromise with the Ministry of Planning in Chile, though as of this date the Ministry has not seen the compromise through to completion.

Law and Legal Instruments

As stated above, Law 19.253 for the Protection, Promotion and Development of Indigenous People was based loosely on the points of UN Convention 169 on the rights of Indigenous and Tribal Peoples. However, although the Mapuche have challenged the government to comply with Convention 169, the Chilean courts have refused to hold the Chilean government accountable.

In the case of the Ralco dam, the Mapuche challenged the project in Chilean courts, on the grounds that according to the 1993 Indigenous Peoples Law, indigenous lands are not to be sold. ENDESA, S.A. countered using a 1984 National Energy Law permitting the sale of all lands for the purposes of energy development. The Chilean courts decided in favor of continued development. Citing the exhaustion of all legal avenues within the state of Chile, the attorney for the Pehuenche families that have refused to move from their ancestral territories has brought the case before the Inter-American Court of Human Rights. In February of 2003, the Court ordered Chile to stop development on the project pending a final judgment.⁵

⁵ More information is available on this topic from articles by journalist James Langman. Follow this link for a recent article on the Ralco dam: <http://www.washtimes.com/world/20030211-4571206.htm>

Links:

Indigenous peoples in Chile, particularly the Mapuche, have taken advantage of the educational system as much as possible; there are many Mapuche scholars and activists in Chile. One strategy of Mapuche resistance has been to occupy key decision-making positions and to work within the Chilean social, legal and governmental systems to have their rights as indigenous peoples recognized. There are many websites, both in English and Spanish, containing up-to-date information about the Mapuche struggles, critical analyses of government policies and other key documents. Below is a short selection of sites; many more can be found through internet search engines.

- Ñuke Mapu: Mapuche Documentation Center. This website provides up-to-date press releases and publications about the Mapuche peoples' struggles in South America and in international forums. Most of the website is in Spanish, though there are some links in English. <http://www.soc.uu.se/mapuche/>
- Mapu Express. A website with news, reports, analyses and messageboards: <http://www.mapuexpress.net>
- Mapuche International Link (MIL) is an organization which brings together Mapuches from Chile and Argentina living in Europe, and is a member of the Mapuche Inter-regional Council. <http://www.mapuche-nation.org/index.htm>
- Programa de Derechos Indigenas. Website of the Program in Indigenous Rights of the Universidad de la Frontera. Contains many scholarly articles about the struggles of the Mapuche. Published by the Program for Indigenous Rights , Institute of Indigenous Studies at the Universidad de la Frontera, Chile. In Spanish and English: <http://www.derechosindigenas.cl/>
This website also contains an excellent list of Chilean and international links at: <http://www.derechosindigenas.cl/Enlaces%20Relacionados/enlace.htm>
- Derechos Human Rights is an umbrella organization for human rights organizations in Latin America. In English and Spanish: <http://www.derechos.org/>
- The Inter-American Court of Human Rights. In English and Spanish: <http://www.corteidh.or.cr/index-ingles.html>