

Violence in La Araucanía: Time to Rethink the Indigenous Policy

The fact which offers the clearest evidence of the need to change the current indigenous policy, focused on land delivery, is its incapacity to solve the violent acts, which have even worsened despite the accelerated increase of the budget invested in the purchase of land in the last years. It is important to restore confidence and dialog to focus on the access to a better quality of lives for the communities.

In the last days, the country has watched with concern the serious rise of violence in the south of Chile. Once again, organized violent groups who claim the representation of the Mapuche cause, endanger the lives, liberties and properties of the people who live in La Araucanía; violence that has been focused mainly on small and medium producers. Moreover, thefts, road barricades and fire attack, usually concentrated in Malleco, have now moved to the communes of Vilcún and Padre las Casas.

In this context, we should ask ourselves if the indigenous policy, strongly centered on the delivery of lands, is not actually provoking perverse incentives that exacerbate the conflict.

The present government has kept this public policy almost completely since its enactment during the governments of the *Concertación* over 20 years ago. Furthermore, this is given in an atmosphere of rising demands, mobilizations, emergence of new leaders and increasing acts of violence.

Additionally, and in the middle of the political-judicial discussion about the convenience of applying the Antiterrorist Law, and the visit of the Ministry of the Interior and Public Security to the zone of the attacks (a strong political signal which should be welcomed), the most relevant question arises: Does the criminal pursuit's institutional framework have the capacity to face highly complex cases like this? This requires an additional effort of the Public Ministry and the police that, right now, is missing. Of course, we are facing an issue of great complexity which goes far beyond the limits of the penal response; nevertheless, not making the necessary efforts in this matter would be bad news from the perspective of public security and the

feeling of impunity suffered by the victims of violence. Because at the end of the day, the government's communicational efforts are useless if the Public Ministry does not get, in judicial headquarters, exemplary sentences that dissuade from committing new crimes, and still more important, which give peace to a frightened population who feels that their region is not governed by the rule of law but by the law of the strongest.

How the Indigenous issue has been dealt with

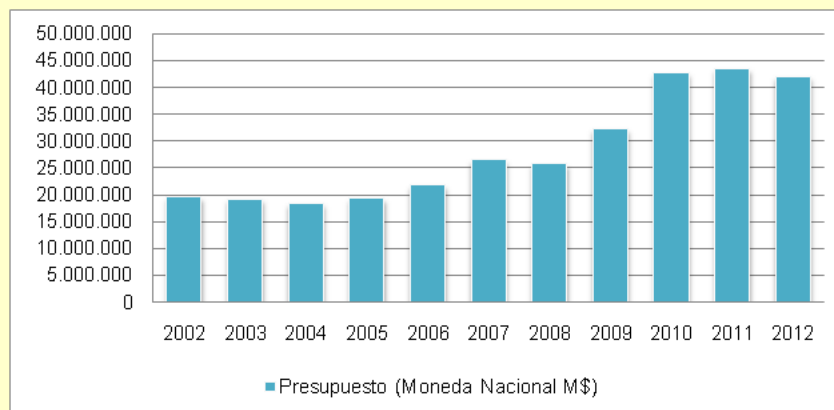
The Indigenous Law Nr 19,256, enacted on October 5th, 1993 by the former president Patricio Aylwin, is the most important juridical instrument concerning the indigenous issue; it replaced the Decree Law 2,568 which remained in force until then. Since its enforcement, the State of Chile had never before allocated so much public financial resources to this matter.

It is enough to read article 1 of this law in order to understand the main role played by land delivery. In fact, land is the principal foundation of the indigenous existence and culture, therefore it is necessary to protect it and aim at extending it. Unfortunately, this central element of the indigenous public policy has remained practically unaltered during the last 20 years governed by the *Concertación*, and the current administration has just strengthened it. The consequence: a highly ruralizing policy, despite the fact that today most indigenous people (70%) live in the cities. Thus, this is one of the first mistakes in indigenous policy matters.

In the second place, the National Corporation of Indigenous Development (CONADI, in Spanish) is a key element of the indigenous institutional framework; one of its strategic objectives envisages to "reducing the deficit of productive assets (land and water) in the rural indigenous world, refining the land and water policy by incorporating support instruments for the development of human capital and productive entrepreneurship".ⁱ In order to execute the latter, it allocated 50% of its budget to buy land through the Land and Water Fund, giving subsidies to purchase land, financing mechanisms that allow solving land problems (judicial or extrajudicial), and the regularization or purchase of water rights. As a matter of fact, as shown in Chart 1, the budget for these matters has more than doubled in the last 10 years.

Chart 1

BUDGET OF THE INDIGENOUS LAND AND WATER FUND (IN CLP\$ 2012)



Source: Each year's Budget Law.

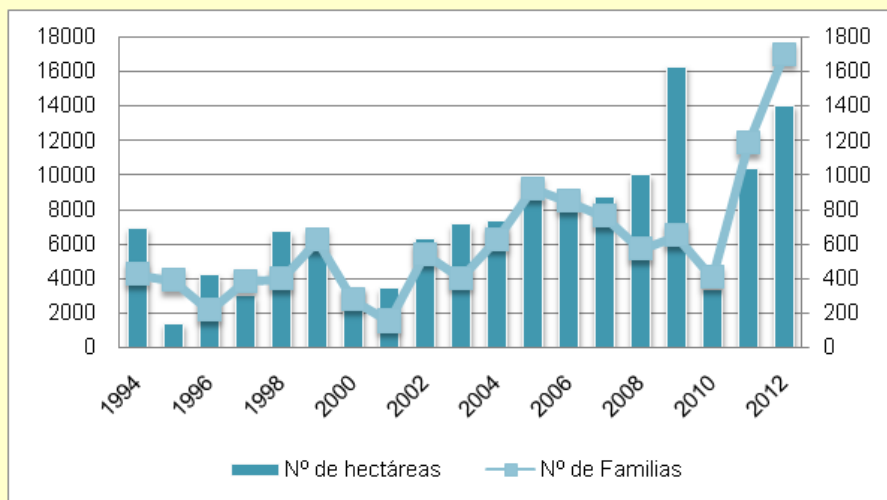
It should be highlighted that priority has been given to two modes of land delivery, which have not been free from questionings. They are, according to the technical language, the subsidy (20a) and the direct purchase of lands (20b) by the CONADI from private persons, based on the land claims made by the communities; the latter has been associated to corruption casesⁱⁱ, a situation that has been overcome as a result of the existence of priority communities.ⁱⁱⁱ

As shown in Chart 2, there is a clear growth in the number of families favored with the number of hectares, which means an improvement if compared to 2009. However, there have been some accusations of irregularities which have seemingly arisen because certain officials of the Corporation manage relevant information regarding the potential purchases, which promotes speculation. Therefore, this administration has given great importance to the fact of imposing a maximum amount per hectare, thereby achieving this change.

Finally, there are other irregularities associated to the land delivery to indigenous communities. An example thereof is the renting of the lands by leaders who do not live in the communities, as denounced by the National Director of the CONADI, Andrés Matta Cuminao, assuring that two out of ten lands bought by the Corporation, are rented.^{iv} In this perspective, the Law Nr 19,253 is very clear on this matter: it forbids the renting of lands, and establishes that these agreements have no legal validity.

Chart 2

LAND PURCHASE AND BENEFITED FAMILIES (20b)



Source: DTAI, CONADI Database

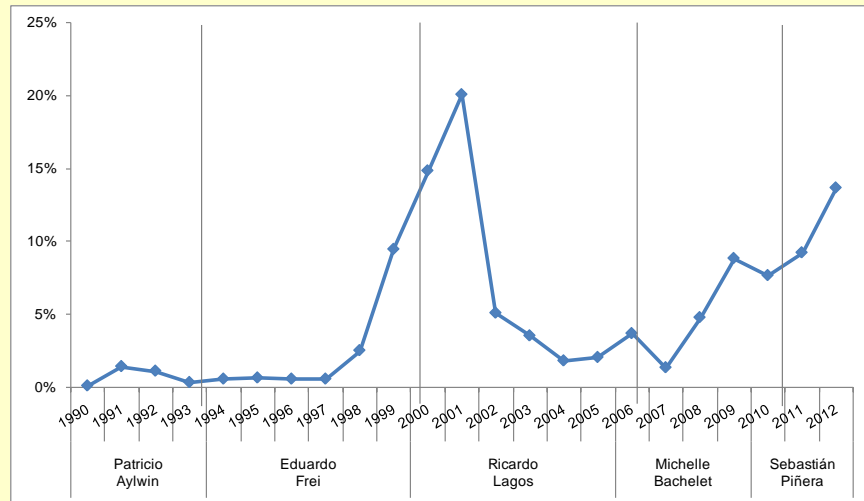
*2012 data from note in the newspaper *La Tercera* of December 17th, 2012.

The government reactivated the land delivery mechanisms under transparent and objective conditions, together with an agreement of productive support and technical assistance. Nevertheless, this has not been enough. Moreover, despite the increasing budget used in indigenous matters, we are still facing a situation of rising demands and violence, where a turning point is yet not visible.

In this context, as shown in Chart 3, since the comeback of democracy we have seen three peaks in the acts of violence: in 2000-2001, then as of 2008-2009, a trend which continued on 2011 and became more tense in 2012. During this year, this upward trend was maintained until reaching 176 cases, according to a report prepared by *Carabineros* (the police). This means a 76% rise of violent acts from 2009 to date. The increases have been mainly due to violent acts – attacks both to people and *Carabineros* and physical damage to private property, such as destruction of crops, fences and bridges – and fires.

Chart 3

TOTAL CASES OF INDIGENOUS VIOLENCE 1990-2012* (% OF THE TOTAL)



Source: Prepared by L&D based on press clippings from the newspapers *El Mercurio* and *Diario Austral de Temuco*.

*Preliminary data of 2012.

All these facts let us conclude that the time has come to assess the incentives created by the legislation in force. This means to rethink the mechanisms and incentives concerning land delivery matters, and also to evaluate if it is pertinent to set more restrictive criteria regarding the limits to the land purchase. Likewise, it seems advisable to introduce changes that allow relaxing the sale or mortgage of the lands, so that the benefited communities can have access to loans.

Sophisticating the Criminal Pursuit

The acts of violence in La Araucanía also imply a challenge for the criminal pursuit, that is, to improve the efficacy in the prosecutors' and the police's performance.

In this perspective, some of the aspects that are subject to improvement are, in the first place, to rely on an explicit criminal policy of the Public Ministry. Ideally, through general or particular directions from the regional prosecutors of the affected zones, clear criteria and acting standards should be specified on issues concerning, for example, the use of the discretionary terms (which should be restrictive) or the proceeding's conditional suspension negotiations.

In the second place, and in the frame of the discussion led by the Public Ministry concerning refinements to the Criminal Proceeding System, it

seems relevant to consider the situation of La Araucanía in relation to the joint coordination and training between prosecutors and the police. As a matter of fact, relying on a manual of early steps and acting protocols which are specific to these crimes, could significantly help to present solid cases before the court, which allow the obtainment of significant sentences. Likewise, to count on joint stakeholders' training is a key factor to improve coordination, and to have enough logistic and technological resources available.

In the third place, and within the bill for strengthening the public ministry, which would add funds over US\$30 million, the national prosecutor has defended the need to count on a Highly Complex Crime Unit.^v This Unit would rely on multidisciplinary experts – who would try to incorporate capabilities in accounting and use of new technologies in addition to the prosecutors' juridical activity-, in order to disperse bands dedicated to drug trafficking, money laundering and terrorism. If this bill were to be put in practice, it seems evident that the acts of violence of La Araucanía deserve a different treatment than common crimes, and become part of the investigative focus of this unit.

Conclusion

The fact which offers the clearest evidence of the need to change the current indigenous policy, focused on land delivery, is its incapacity to solve the violent acts, which have even worsened despite the accelerated increase of the budget invested in the purchase of land in the last years.

It is important to restore confidence and dialog with the communities, thus generating a change of policy –that is not reactive- and a change of priorities, in order to focus on the access to a better quality of lives of the communities, which has been lost through its ruralizing vision. In turn, this must go along with the strict adherence to the law, since restoring the security in the area is imperative. The feeling of insecurity, impunity and violence being dealt with in the south is not compatible with a constitutional state.

In brief...

THE INDIGENOUS POLICY:

- The indigenous public policy, strongly focused on land delivery, has remained practically unaltered during the last 20 years, and the current administration has just strengthened it.
- The budget allocated to the purchase of land through the Land and Water Fund has doubled in the last 10 years. However, the acts of violence have not decreased, but quite the opposite.
- There is a clear increase in the number of families benefited by the number of hectares, which is an improvement if compared to 2009.
- Our criminal pursuit institutional framework relies on the capacity to face highly complex cases like this, which requires an additional effort by the Public Ministry and the police that is still missing.

ⁱ See <http://www.conadi.gob.cl/index.php/nuestra-institucion/mision-institucional>

ⁱⁱ “The Lost Decade in Indigenous Policy”. Libertad & Desarrollo. Public Issues Nr 574, April 19th, 2002.

ⁱⁱⁱ In fact, from the 115 communities that qualified for land returns in 2010, 20 are still pending for 2013. However, the government already announced that it will continue with another group of 169 communities as of 2014.

^{iv} “The Lost Decade in Indigenous Policy”. Libertad & Desarrollo. Public Issues Nr 574, April 19th, 2002.

^v “*Proyecto de ley de fortalecimiento del Ministerio Público*” (Bill for Strengthening the Public Ministry). Libertad & Desarrollo. Public Issues Nr 1,060, May 4th, 2012.