



# Violence in La Araucanía: Substantial Changes

**The use of violence as a mechanism to obtain lands is due the fact that their delivery policy allows it. In the Indigenous Law there is no legal impediment for the communities that have taken a farm or participated in a violent action to have access to benefits.**

The brutal crime that ended with the lives of the Luchsinger-Mackay couple, ranch owners in Vilcún, is a consequence of the spiral of violence in which the region has been submerged by the action of subversive groups, and that is responsible for eight incendiary attacks so far this year.

These serious events, following a call from organizations to mobilize from January 1<sup>st</sup> to 10<sup>th</sup>, stating that “every demonstration is valid” to vindicate the Mapuche cause and remind the death of the Mapuche leader Matías Catrileo, evidence the need to reestablish public order,

but also to make changes in the indigenous policy that take their substantial problems into account.

The political-juridical discussion concerning the convenience of enforcing the Antiterrorist Law is on the table, but it should go along with a long-term strategy for a consensual government policy, which enables the understanding of the problems and demands of the indigenous communities that are reasonable to incorporate.

Today’s violent situation only helps generating a feeling of rejection and criminalization of the indigenous cause, and uncertainty and fear among all those living in the region.

### **Reestablishing Order**

Although the violent atmosphere is not new in the region, its intensity has changed. As a result of this insecurity situation, investments are discouraged, no loans are granted to the most affected zones, and the insurance premiums are extremely high or goods in that part of the territory are simply not insured. In addition, confidence in the Judiciary and the

Constitutional State are undermined, which entails the risk of many people deciding to take justice in their own hands.

Therefore, it is urgent to protect the lives of the people living in the region and to restore public security, since they feel that violent acts in the area receive no punishment whatsoever.

Due to the events occurred in the region of La Araucanía, the government required the enforcement of the Antiterrorist Law, as a consequence of the attack which ended with the lives of the Luchsinger-Mackay couple on last January 4<sup>th</sup>.

Since 1984, there is a law in Chile, which sanctions terrorist conducts as well as the collaboration with this type of activities. Commonly known as the Antiterrorist Law (Law Nr 18,314), although it has kept its substantial aspects, it has been modified and improved several times; one of these changes was made in 2010 with the purpose of ending the hunger strike of the Mapuche leaders in the south of Chile.

The configuration of a terrorist crime has two components: on the one hand, it has to contain an ordinary offense, but a very serious one (such as homicide, injuries, use of explosives, fire, etc.); additionally, its aim must be to produce justified fear among the population of being victims of the same species, either through the means used to commit it, because there is evidence that it stems from a premeditated plan to endanger a specific group of people, or to uproot or inhibit resolutions from the authority or to impose conditions on the authority.<sup>i</sup>

The 2010 amendment also eliminated the purpose presumption or so-called "terrorist intent", related to offenses committed through explosive or incendiary artifacts, arms of great destructive power, toxic, corrosive or infectious means or others causing great damage, or through letters, packages or similar objects with explosive or toxic effects.

A third modification offered the possibility of questioning the witnesses harbored by part of the defense of the suspects formalized<sup>ii</sup> for terrorist crimes, with the purpose of certifying the truth of their identity and their statements, and to elucidate the investigated facts, provided that this procedure does not put the witness' protection at risk.

The amendments to the law aim at guaranteeing a due process and protect the rights of the accused, so its enforcement should not be feared. In view of these modifications, the Public Ministry shall have to demonstrate that we are in front of terrorist crimes and the judge shall decide if this law has to be enforced or not, thus reaching a balance between the rights of the accused and safeguarding order.

Therefore, the acts of violence in La Araucanía imply a challenge in criminal prosecution, that is, to improve the efficacy of the prosecutors' and

policemen's proceedings. The feeling of insecurity, impunity and violence suffered in the south is not compatible with the Constitutional State.

### **The Indigenous Policy Needs a Change**

The current situation of the Mapuche issue lies not only in a single circumstance, but in different elements that, together, led to the scenario we are seeing today.

In the domestic sphere, there are historical facts regarding economic lags and loss of their culture that have generated a strong resentment in certain indigenous communities. Additionally, non-Mapuche Chileans are greatly unfamiliar with the culture of this ethnic group, which many times causes discrimination.

In turn, there are external influences that have nourished the conflict. An important change in the international indigenist movement has entailed a more ideological repossession discourse, and the adoption of concepts like territory, self-management, self-determination and political involvement as their own; however, the majority of the Mapuche population does not endorse these issues.

In this perspective, a change in the Chilean indigenous policy was introduced at the beginning of the nineties, which gathered the guiding principles of the international scenario and the Law 19,253, whose practical enforcement has had consequences that have worsened the situation.

The core of this law is the importance given to the lands by the communities, and the conflict regarding its property has produced perverse incentives that have increased violence in the region.

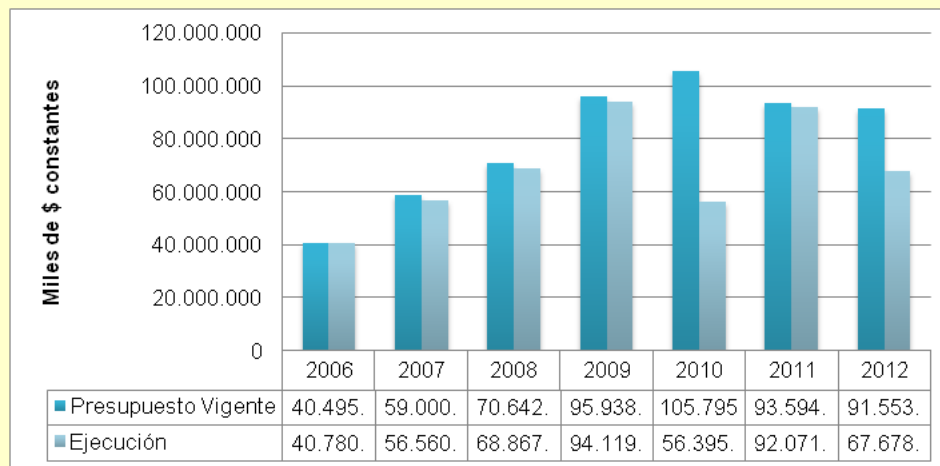
In addition to the rising budget allocated to indigenous matters (see Chart 1), where in 2010 50% was aimed at purchasing lands, we are still facing a situation of increasing demands and violence, and a turning point is not yet visible.

Although the land delivery process was controversial for many years, the present government has tried to improve the land delivery mechanisms under more objective conditions, and to include a productive support agreement and technical assistance. But it has not been sufficient.

Some indigenous communities claim ancestral rights, the existence of an "historical debt" and the return of the lands that "should belong to them". However, as it was already stated in the document "*La política de tierras de la CONADI*" in 1999 (The Land Policy of the National Corporation of Indigenous Policy - CONADI), "there is no socially valid initial quantification of the type of repossession problems of the indigenous lands"<sup>iii</sup>. Thus, it shows the lack of causal studies, titles or others that could seriously objectivize the number of lands at stake.

Chart 1

## BUDGET OF THE NATIONAL CORPORATION OF INDIGENOUS DEVELOPMENT (CONADI) (REAL VARIATION)



Source: Budget Law

Even though the mistake was recognized as far back as in 1999, unfortunately the emphasis on the land delivery indigenous policy has been kept practically unchanged during the governments of the *Concertación* and the current one too.

The lack of clarity regarding the magnitude of the indigenous land issues gives birth to land claims that are impossible to demonstrate from the legal point of view and impossible to deal with in financial terms.

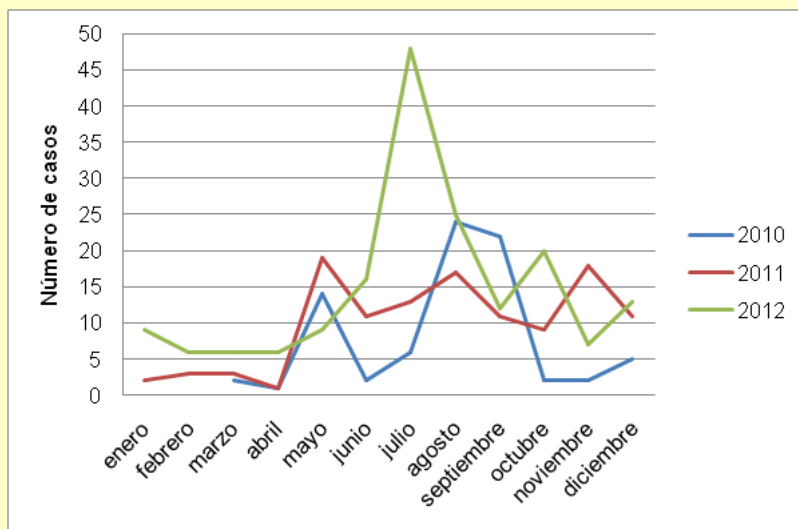
This situation, and the lack of an adequate legal framework enabling a rational process of land delivery, have been reflected in rising demands, mobilizations, emergence of new leaders and increase of violent acts.

In fact, according to a study carried out by L&D, from 1990 to 2012 the press covered 1,456 violent events of indigenous connotation, mainly concentrated in the La Araucanía region.

Although the greatest boom occurred in the years 2000-2001, we can appreciate an upward trend in 2012, as shown in Chart 2.

Chart 2

CASES OF INDIGENOUS VIOLENCE IN THE CURRENT GOVERNMENT



Source: LyD based on press clippings from the newspapers *El Mercurio* and *Diario Austral de Temuco*.

The use of violence as a mechanism to obtain lands is due to the fact that their delivery policy allows it. In the Indigenous Law there is no legal impediment for the communities that have taken a farm or participated in a violent action to have access to benefits.

Failed measures such as the policy of “lands in exchange for social peace”, which implied a perverse incentive in early 2000, were tried to be replaced by the delivery of lands to peaceful communities which also fulfilled purchase applicability criteria. Nevertheless, in 2011 this government made the mistake of handing over 2,554 hectares of lands to the communities of Pantano and Didaico (Ercilla), led by the *lonkos*<sup>iv</sup> Pascual Pichún and Aniceto Norin, who were the first Mapuches to be sentenced by the Antiterrorist Law, thus setting a concerning precedent.

As can be seen in Table 1, the indigenous policy is still very discretionary: most government acquisitions have been made through direct purchase (art. 20 letter b). In 2010, 100% of the funds for land purchase were allocated through article 20 b; in 2011, 26% of the funds were allocated to land subsidy (art. 20 a) and 74% (CLP\$27,400 millions) to buy lands through “judicial conflict”; this trend was kept in 2012, when 28% was allocated to subsidies and 72% to direct purchase.

Table 1

### SUMMARY OF THE AREA PURCHASED BY CONADI, 2010-2012 (HA)

Area purchased during 2010-2012			
Year	20 a)	20 b)	Total
2010	-	3,305	3,305
2011	3,683	10,334	14,017
2012	973	2,503	3,476
<b>Total</b>	<b>4,656</b>	<b>16,142</b>	<b>20,798</b>

Source: CONADI.

\*Article 20 a) corresponds to subsidy. Article 20 b) corresponds to CONADI's direct purchase from private owners.

In this perspective, the policy should aim at not surrendering before the communities that exert improper pressures, and setting more restrictive criteria regarding the limits to the purchase of lands, which only in 2012 accounted for CLP\$42 billions. Over US\$80 millions per year to buy lands are a considerable amount, and it seems that a government purchasing program of violence has implicitly been created. Likewise, it is necessary to introduce changes that allow streamlining the purchase or mortgage of the lands delivered by the CONADI, since these restrictions limit their freedom to decide and force them to continue with the ruralizing notion adopted by the indigenous policy until now.

### Conclusion

The violent atmosphere in La Araucanía has reached dramatic levels; therefore, it is urgent for the authorities (Police, Public Ministry and Courts of Justice) to make everything possible to reestablish public order in the region. However, this does not mean to militarize the zone as some people have said; it means to get things straight by giving tranquility to the region, in the sense that its residents will not need to defend themselves on their own, since they can rely on the authority's protection.

On the other hand, it is imperative to discard merely handout policies and to promote participation, entrepreneurship and respect of traditions.<sup>v</sup> The central character of land purchases in the indigenous policy should be shelved and the instrument for preventing perverse incentives should be modified.

Due to the problem's complexity, dialogue among different political sectors should be promoted, with a nation viewpoint, in order to find a way out of this standstill. Evidently, it is not only a poverty issue, but it is clearly not a problem that can be solved with lands either.

Finally, it would be convenient to introduce institutional changes, such as turning the CONADI into an Indigenous Development Agency (*Agencia de*

*Desarrollo Indígena*), which is a necessary step to create a modern and efficiently managed public service; and the creation of the National Council of Indigenous People (*Consejo Nacional de Pueblos Indígenas*), which would be the national representation organism of native peoples. Today, both roles are mixed in the CONADI, with the result that none of them is well performed.

### In brief...

#### VIOLENCE IN LA ARAUCANÍA:

- Between 1990 and 2012, 1,456 violent events of indigenous connotation have been recorded.
- The lack of clarity regarding the magnitude of the indigenous lands issue gives birth to land claims that are impossible to demonstrate from the legal point of view and impossible to deal with in financial terms.
- The indigenous policy is still very discretionary: most government acquisitions have been made through direct purchase (art. 20 letter b) and not through subsidies.
- Dialogue among different political sectors should be promoted, with a nation viewpoint, in order to find a way out of this standstill.

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<sup>i</sup> Translated from an extract of article 2 of the Law Nr 18,314.

<sup>ii</sup> The prosecutor informs the person that he or she is being investigated for one or more offenses (T. N.)

<sup>iii</sup> CONADI: *La política de tierras*, August 1999.

<sup>iv</sup> Chief of a Mapuche community in Mapudungun language (T.N.)

<sup>v</sup> Currently, only 12% of the indigenous population speaks and understands its language.