

LA ARAUCANÍA: EXACERBATION OF VIOLENCE AND THE RULE OF LAW IN CHECK

- It is a fact that acts of indigenous violence have increased in the Araucanía since 2014 to date.
- What is still more concerning is that land occupations and extreme violence expressions, involving violation of material, physical property and/or moral damage to people through harassment, have also increased in frequency.
- The climate of violence and insecurity has a direct impact on our Rule of Law, by eroding it.

The exacerbation of the acts of violence in the region of the Araucanía has not ceased. Data from the indigenous violence survey, conducted by Libertad & Desarrollo, allow confirming that acts of indigenous violence have increased since 2014 to date. The issue is further aggravated by the fact that occupations and extreme violence expressions, involving violation of material, physical property and/or moral damage to people through harassment, have also increased in frequency, which goes along with a higher perception of vulnerability and fear in the region.

However, this reality is not reflected on the authority taking a different approach to solve the problem. Faced with a scenario where the Rule of Law itself is threatened by groups that openly challenge private properties and violate constitutional rights of citizens such as parcel and truck owners, among other affected groups, the Executive insists on overlooking the situation, without giving any specific signal for handling the crisis.

In this regard, the President has still not visited the zone since she took the presidential chair, and in the May 21st public account, she did not make any reference to the situation in the Araucanía. On the other hand, the government insists on keeping a public policy approach in the land delivery issue, which has not been able to meet two of the main objectives that every policy on indigenous matter should fulfill: to generate conditions for progress and social development in the region within a context of social peace.

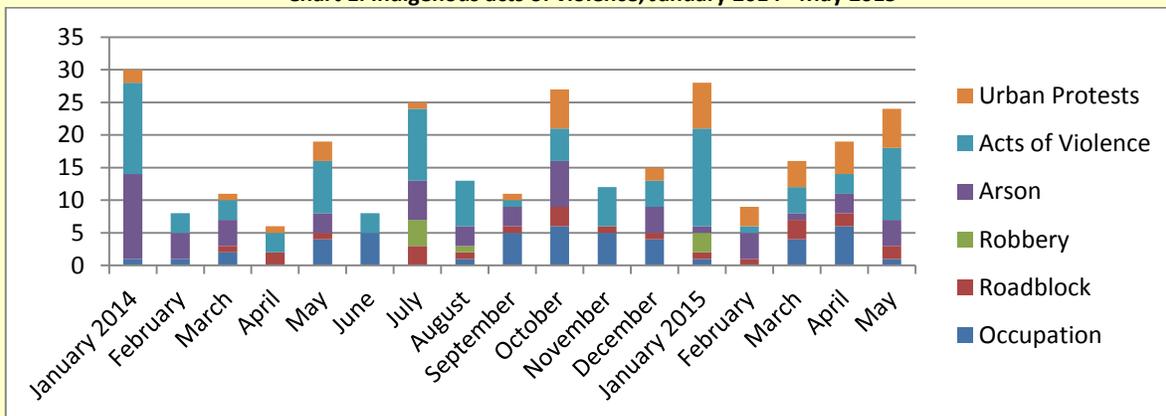
INDIGENOUS VIOLENCE SURVEY 2014 - 2015

By using the documentation on acts of violence covered by the written press¹, the Indigenous Violence Survey of Libertad & Desarrollo is an instrument that allows visualizing, in terms of trend since 1990, all violence episodes that have taken place in the Araucanía. As we observe in Chart 1,

compared with the months of 2014, acts of violence have significantly increased. The survey shows that occupations, roadblocks and acts of extreme violence have grown in number. Probably, the legislative paralysis concerning the fulfillment of the measures contained in the government program on this matter,ⁱⁱ and the perverse incentives provoked by the land delivery policy –which has been paradoxically one of the few instruments that has never stopped its budget allocation during this period, but on the contrary, it has practically duplicated the budget with the entry of the present government-, have created a scenario where the promise of “land for peace” or “land for development” remains a pending task.

ACTS OF VIOLENCE HAVE SIGNIFICANTLY INCREASED

Chart 1. Indigenous acts of violence, January 2014 - May 2015



Source: Prepared by L&D based on the 2015 L&D Indigenous Violence Survey.

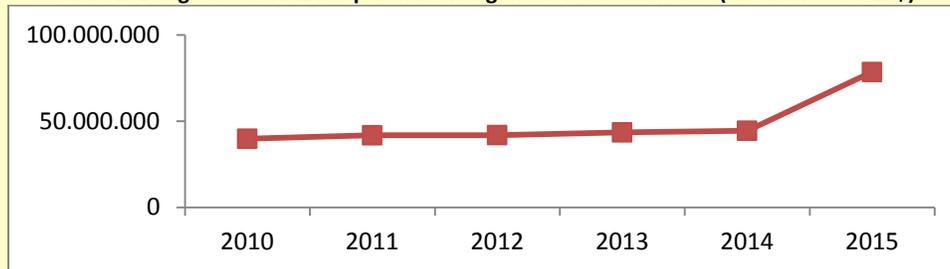
* Data from May 2015, collected until May 26th.

According to the last Socioeconomic Characterization Survey (CASEN, in Spanish), the improvement of the indigenous social indicators during 2009-2013, such as poverty reduction (from 39.2% in 2009 to 23.4% in 2013) and extreme poverty reduction (from 18.6% in 2009 to 8.2% in 2013), among others, was originated in a context where the land delivery budget did not experience significant expansions (see Chart 2).

Thus, this reduction, rather than explaining itself by the land delivery effect, could be related to a decrease of unemployment, as shown in Chart 3, since the average income of the indigenous household went from CLP\$379,499 to CLP\$482,998 between 2009 and 2013 (Chilean pesos of 2013), which implies a real annualized increase of 6.2%.

LAND DELIVERY BUDGET BETWEEN 2009 AND 2013 WAS NOT EXPANSIVE

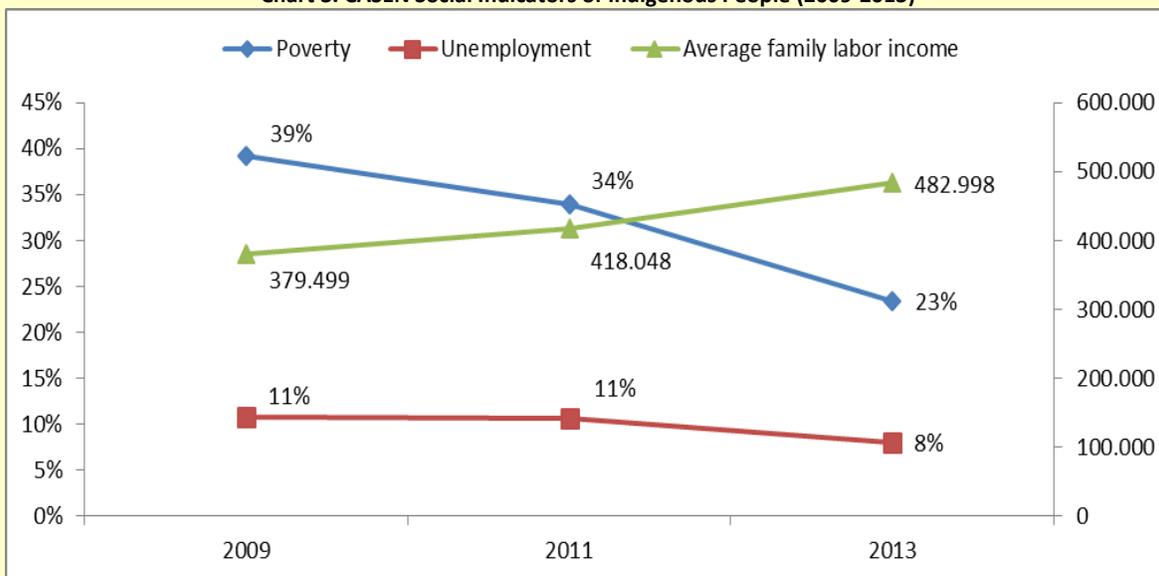
Chart 2. Budget of CONADI to purchase indigenous land and water (thousands of CLP\$)



Source: Prepared by L&D based on data from www.dipres.cl.

BETWEEN 2009 AND 2013 THE AVERAGE INCOME OF INDIGENOUS HOUSEHOLD INCREASED

Chart 3. CASEN Social Indicators of Indigenous People (2009-2013)



Source: Prepared by L&D based on data from CASEN 2013.

Consequently, the challenge is to deal with the indigenous development from the perspective of capabilities and not of mere transfers like land delivery, an instrument which only serves to reproduce violence, as we have confirmed to date.

ACTS OF VIOLENCE WITH STRONG PUBLIC CONNOTATION

Illegal land occupations is one of the key factors that trigger and explain violence in the region of the Araucanía. Data of the Indigenous Violence Survey show that more than **45 land occupations** have taken place since January 2014 to date, regardless of the fact that they are often accompanied by robberies and arson attacks –**60** have been recorded **in the last 15 months**- that also turn into acts of extreme violence, which add up to 98 episodes since January 2014, of which 38 have occurred during the first half of 2015.

In multiple occasions, occupations or direct confrontations are produced while lands are inhabited by parcel owners, as it occurred on the night of May 19th in the Rucahue farm in the Region of Los Ríos, where the Villasante family was victim of an arson attack, which could have easily ended up in fatal human consequences, as in the case of the murder of the Luchsinger-Mackay couple on January 2013 in the Vilcún commune. In the same keynote, although with no fatal consequences, during the month of May in 2015, a hooded group (*encapuchados*) burnt a bus transporting 13 forestry workers of the Ercilla commune, while some weeks after, the residence of a CONADIⁱⁱⁱ official was burnt, and both his wife and small children were victims of violence and threats by these masked people who left messages referring to the “Mapuche cause” on the site. The described episodes are just a proof of the radical violence expressions suffered in the Araucanía on a daily basis.

WEAKENING OF THE RULE OF LAW

The reflections expressed herein have a direct impact on our prevailing Rule of Law: they are eroding it. Simple but profound ideas about no territory of the Republic of Chile being outside the law, which applies to all kinds of individuals or groups with no exception whatsoever (including the authority itself), and where judicial decisions have legal authority (they are enforceable with the help of law enforcement officers) and the police and criminal investigation forces make sure that public order prevails and its violation is pursued, by protecting the citizen’s security (an essential condition for enjoying individual freedom and rights), are all aspects that have gradually but accumulatively deteriorated in the Araucanía and surroundings for several years, as we have been maintaining for a long time.^{iv}

In this sense, all types of initiatives concerning institutional improvement, public policies or attempts to elaborate formulas leading to broad agreements for social peace in the region, have to be governed by an unconditional respect of the Rule of Law and the prohibition of all kinds of violence. And this analysis can in no way evade the fact that the violence problem in the Araucanía is a complex, multicausal issue that should be addressed with a State vision. However, respecting the Rule of Law is essential.^v

We should not forget that the current government, at the beginning of its term of office, declared a general policy of not invoking the Antiterrorist Law in relation to criminal processes involving the violence issue in the Araucanía.^{vi} Luckily, there was a change of opinion towards the more sensible formula of resorting to this resource based on the legal significance of the facts.

Nevertheless, nothing has really changed. The government signals in criminal pursuit matters are still weak and, as we have seen, the proceedings of prosecutors and the police are questioned by the victims. Furthermore, we are facing a scenario where prosecutors (and eventually the judges) have justified fears of suffering attacks against their physical integrity and that of their families. As an example, this feeling made a prosecutor of the zone to resign.

The worst is not only that there is a territory in our country where the Rule of Law and the authorities that should enforce it have been diminished –and therefore the State is no longer fulfilling its essential role of guaranteeing the security of the citizens-, but that, going back to the “state of nature” generates a false feeling of legitimacy of self-protection from the victims or potential victims. In other words, the weakening of the Rule of Law and the loss of trust and efficacy in the proceedings of the State bodies that should safeguard the security may lead individual groups to take initiatives to defend their physical integrity, freedom of movement, properties, etc., independently of the actions from the authority, which could in turn lead to anarchy.

CONCLUSIONS

Data of the Indigenous Survey elaborated by Libertad y Desarrollo show that the number of acts of violence during the present year have increased in relation to the past year, specifically, the cases of extreme violence. This is consistent with the feeling of vulnerability and fear among people living in the region, who day after day see how this situation, together with the lack of crisis management by the Executive, undermines the validity of the Rule of Law in the region of the Araucanía.

ⁱ The press review includes the newspapers *Austral* of Temuco and *El Mercurio* of Santiago.

ⁱⁱ Both in the evaluation of Libertad & Desarrollo and organisms like *Ciudadano Inteligente*, the indigenous subject has the lowest fulfilment level regarding the presidential speech of May 21st.

ⁱⁱⁱ *Corporación Nacional de Desarrollo Indígena* (National Corporation for Indigenous Development) (TN).

^{iv} See, for example, the book edited by Eugenio Guzmán (2003): *La cuestión mapuche, Aportes para el debate* (Libertad & Desarrollo), especially the article by Ena Von Baer.

^v See our document “The Complex Indigenous Issue: Land Policies Need to be Revised Urgently”, Public Issues No. 1,164, Libertad & Desarrollo.

Available in: http://www.lyd.com/wp-content/files_mf/tp1.164pueblosind%C3%8Dgenasml.pdf

^{vi} Considering the argument put forward by the Special Rapporteur on the promotion of human rights in the UN fight against terrorism, who maintained that this law was being implemented in a disproportionate and discriminatory way against the accused Mapuche. Usually, this type of report is not based on evidence, since the existing information is very precarious. For example, last year the Ministry of the Interior and Public Security indicated that out of 111 persons prosecuted by the Antiterrorist Law in the past years, only 10 were sentenced. See news in: <http://www.latercera.com/noticia/nacional/2014/07/680-587853-9-penailillo-la-ley-antiterrorista-se-debe-usar-especificamente-en-algunos-casos.shtml>