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Navigating the Inter-American Human Rights System: An Analysis of Its Role in Mapuche Activism

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Abstract

This paper examines Mapuche utilization of the Inter-American Commission and Court on Human Rights as a strategy of advocacy in social movements. Key theories in play are ideas of claim making and land rights, the definition and role of social movements in society, and the historic role the Inter-American Commission and Court has had in shaping norms and legal claims about indigenous rights in the Americas. The paper employs a discourse analysis to overview three case studies submitted to the IACHR by Mapuche groups in relation to indigenous rights. This analysis focuses on the context that brought forth these petitions, the structure of these arguments, the rights invoked and the trends across all three cases. I argue that the Inter-American human rights system serves as an important tool of norm changing and a platform that facilitates dialogue between the Mapuche and the Chilean state. Mapuche activists engage with this system to address systemic issues within the Chilean state and assert their desire for autonomy. While partially effective in addressing indigenous rights issues, the system faces challenges such as funding constraints and non-compliance at the national level, limiting its immediate impact on human rights violations. Despite these limitations, the system plays a crucial role as a norm shaper in the broader context of human rights advocacy.

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Acknowledgements

The basis of this research project started in Curarrehue, in the Araucanía Region, Chile, where I had the privilege of spending a week with a Mapuche host family through the SIT: Human Rights program. While there I met with Mapuche activists and discussed the state and large corporation's disregard for their ancestral land, and the advocacy efforts in the community. I would like to give a special thanks to my host brother Lemu, Simón Loncopán of Lof Trankura, and my professor, José Aylwin, for their knowledge and the insightful discussions we had that inspired me to research further into the Mapuche cause and the advocacy tactics employed.

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Chapter I: Introduction

"Indigeneity is a project of hope. It was crafted by enterprising activists over years of strategizing, absorbing ideas from Red Power, Third Worldism, African and Asian anti-colonialism, and the environmental movement. With it, people sought a politics of the oppressed, aiming to protect land and sovereignty, to turn "backward" natives into respected stewards."
- Manvir Singh 2023

There are an estimated 370 million indigenous peoples worldwide. Worldwide, there is recognition of indigenous groups in over 70 countries. Indigenous communities practice unique traditions, retaining social, cultural, economic, and political characteristics that distinguish them from the dominant societies enveloping their lives. However, there has yet to be an official definition of "indigenous" adopted by any UN system body. Instead, there is a list of criteria used by UN system bodies to develop a better understanding of which groups makeup this term. At the individual level, self-identification as indigenous, coupled with acceptance by the community, forms a foundational criterion. Historical continuity with pre-colonial or pre-settler societies, a profound connection to territories and natural resources, distinct social, economic, or political systems, as well as unique language, culture, and beliefs, collectively shape the identity of indigenous peoples. These communities, by virtue of their non-dominant status, resolve to maintain and reproduce their ancestral environments and systems, safeguarding their distinctiveness as peoples and communities.

In recent times, indigenous communities across South America have strategically turned to regional human rights courts to amplify their voices in the pursuit of land claims. This approach is interwoven with broader environmental and human rights activism within the region. In Chile, the dominant group advocating for indigenous rights are the Mapuche, a widespread indigenous group covering present day Chile and Argentina, that have an extensive history of

resistance to settler states. The guiding questions of this thesis are: How do Mapuche activists engage regional Inter-American human rights system as a tactic of their advocacy? Is this an effective strategy?

In this project, I will carry out an analysis of cases brought forth by the Mapuche of Chile in the Inter-American human rights system. Indigenous peoples in South America have used the Inter-American regional human rights system to strengthen their land claims in combination with activism and advocacy. This is often related to environmental and human rights activism in the region more broadly. I want to look at the rhetoric they use in these social movements and in legal battles, and the way they are engaging with human rights language in the context of this regional system.

The Mapuche are an important group to look at as they have a long and robust legacy of resistance, first to colonial Spain and then to the independent Chile. Prior to colonization, the Mapuche were a scattered people, who were largely hunter-gatherers. The Mapuche are considered an Andean culture and, as other indigenous groups in the region, have a cosmovision that is broadly referred to as Buen Vivir across the Andes. The concept is called *kyme mogen* in Mapudungun (the native language of the Mapuche) and in brief, proposes living in harmony with others and the earth. There is no conception of linear time as there is in Western cosmovision's and nature is not viewed as something to be conquered or controlled. Nature is considered to have its own spirit, and mountains and rivers are what Marisol de la Caden (2021) calls earth beings.

The goal of this project is to look at Mapuche social movements in Chile, what drives activists to engage in international bodies of human rights, and to what degree this engagement in regional systems is reflected in local realities. This question is significant as it has broader

implications for understanding the dynamics of indigenous advocacy and legal strategies in the Chilean state. Particularly, this research engages with a broader literature on how indigenous groups work with human rights legal mechanisms they often view as part of a painful ongoing colonial legacy. There are rich debates in indigenous communities about rejecting these forms of redress for their land rights claims versus using them in parallel with other forms of advocacy and activism.

Roadmap

The focus of this thesis is Mapuche engagement with the Inter-American system, why they first chose to use this system, the rhetoric and framing of their arguments, and how this engagement reflects broader goals of Mapuche advocacy.

The next chapter, the Literature Review, will focus on a review of the theories and concepts that will inform my work. It first overviews theories of power and colonization, drawing from decolonial authors. The following covers main theories of claim making and land claiming, and the strategies and definition of social movements. The literature review wraps up by discussing the Inter-American Commission and Court and the role of these bodies in legal claiming and norm shaping. The third section, the Methodology will justify the method I plan on using and why I chose the case studies I did as the best approach to evaluate my question. I will briefly cover the court cases and petitions I have chosen from the Inter-America Commission on Human Rights and why I picked those.

Prior to diving into my case studies, I will provide a brief history of colonization and land rights systems in Chile to better understand the context and historical legacy which my case studies are grounded in. Following that I will delve into my three case studies, divided into my fifth, sixth, and seventh chapters. These chapters will cover pertinent background information to

the case, the national leadup, the proceedings before the Inter-American Commission, and in the case of my second two case studies, their proceedings within the Inter-American Court. I will then proceed to my analysis in the eighth chapter, the rights and language used by indigenous petitioners, how the regional proceedings impacted local circumstances, and what I see to be the motivation for activists engaging in human rights systems. I will then conclude with the findings of my thesis and suggestions for further research to be done.

Chapter II: Literature Review

Introduction

This literature review gives a brief overview of the theories I intend to interact with and some of the work that has been conducted in this field. I chose literature that focused on the actor's role in legal claiming and norm guidance. I start first with theories of coloniality, as one cannot fully consider indigenous social movements and advocacy without first acknowledging that the systems in place in the world we currently inhabit come from a history of colonialism and the centering of Western knowledge and practices. The effects of this Western centering are visible in the foundations of the human rights regime and reflected in indigenous groups' attempts to gain legal recognition of their land by engaging with legal practice and rights-based language. Indigenous groups use legal land claiming as a strategy in social movements to gain more autonomy and recognition from nation states and the international community. Regional human rights systems have provided a pathway to legal recognition that indigenous groups often struggle to achieve from their government. Human rights rulings can sway normative ideas around legal claiming and recognition.

Coloniality of Power

The coloniality of power is a concept developed by Aníbal Quijano to explain the long-lasting structural patterns of power in culture, labor, relations, and knowledge production that were implemented under colonialism (Quijano, 2000). The modern world system was first constructed in the 16th century with the emergence of the Atlantic commercial circuit that carried goods and people between the Old World and the New World. This is when the Americas first emerged as a geo-social entity, structured by the European colonists that inhabited the land

(Mignolo & Ennis, 1999). From this creation of a new world model, with the assimilation of all people of the globe (whether or not they were viewed as people at the time), came the concept of modernity. In this sense, the idea of modernity starts from colonial origins. Quijano understands the current Eurocentric global capitalistic system as operating on the axis of the coloniality of power and modernity. Modernity brought about a structural linkage of race and the division of labor that became mutually reinforcing despite their lack of inherent dependency. Coloniality is considered the dark side of modernity, the creation of Euro-centered domination in the global market.

Coloniality lends itself to the very basis of the modern world system. The relations of the "New World" interactions between Europe and the Americas have become the model under which the whole world operates. European colonization was justified at the time by an understanding of civilizations that created a hierarchy of human civilization, with Europe at the top. Mignolo points to the issue of coloniality in the formation and structure of nation-states. Despite decolonization practice taking place for many formerly colonized lands, the states that then formed were rooted in the power imbalances of the previous colonial government. The process of decolonization was driven by a normative agenda that wanted to reconfigure the identities of these new states and their former colonizers, as well as the relationship between them (Finnemore & Sikkink, 1998). While the current nation-state cares for its nationals, "non-nationals are lesser human beings; they are foreigners, immigrants, refugees, and for colonial settlers, indigenous from the land they settled in are second class nationals" (Mignolo, 2017).

This coloniality can be seen in Bruno Latour's notion of the Modern Constitution (1993). Bruno Latour's notion of the constitution has four "guarantees" that address the ontological realms of the subject, the object, language, and being. The modern constitution's guarantees, he

says, are "(a) that nature (i.e. things, objects) is "transcendent", or universal in time and space; there to be discovered; (b) that society (the subject, the state) is "immanent", i.e. it is continually constructed "artificially" by citizens or by subjects; (c) that "translation networks" between these first two realms are "banned", i.e. the "separation of powers" of these realms is "assured"; (d) that a "crossed out God" acts as "arbitrator" of this dualism" (Lash, 1999). He critiques this false idea of the dichotomy of subject and object and subsequent separation of society and nature. He argues for the rights of 'objects' and how society can come to recognize the rights and autonomy of the object. This argument is based on modernity being a mode of classification, a system not indicative of the actual state of the world (Lash, 199). This view of modernity is not dissimilar to Quijano's critiques of modernity. Both perspectives regard the term in a more negative light, as a false connotation of the current world.

Marisol de la Cadena puts this thought in conjecture with the coloniality of power, to highlight how this modern constitution and the separation of humanity and nature justified first under the rule of the Christian God, and later by reason, lead to the coloniality of modern politics (2015). This separation became the basis for modern politics that first and foremost recognize the rights of humans, and view nature as something to be dominated. The coloniality of modern politics demands both the diffusion of inequality and the challenging of this inequality, and these opposing aspects contribute to the ever-fluctuating concept of what politics is and what it entails (de la Cadena, 2015).

Coloniality in the Creation of Modern Human Rights

The current political ideology of universal human rights is rooted in this colonial foundation. Universal human rights were first established with the founding of the UN and the ratification of the Universal Declaration of Human Rights on December 10, 1948, in the

aftermath of World War II. It has since faced criticism by many decolonial scholars for establishing a false idea of universal rights through the globalization of local Western perspectives on nature and the human. In his essay, "On the Coloniality of Human Rights" (2021) Nelson Maldonado-Torres argues for a decolonial turn in the politico-legal ideology of universal human rights, to better reflect the voices and perspectives of the formerly colonized. He argues that the view of humanity proposed in the UDHR is an incomplete conception of humanity as it was in response to Nazism and antisemitism, but it did not address the larger problem of colonialism and racism in the world.

While the framework of universal human rights is rooted in the concept of human dignity and the rights of all humans, it is a European conception of the human. Unlike the "great chain of being," (Maldonado-Torres) which was widely held in Europe at the time, Mesoamerica had a view of the human as part of an ecosystem rather than a chain. These viewpoints support a non-anthropocentric view of the world. Maldonado-Torres (2021) argues that the broadening of thoughts of the body and humanity are essential steps when working towards decolonization in global hegemonic structures. The centering of a multitude of knowledge systems allows a broader understanding of existence and the place humans inhabit in the world. As peoples living within colonial structures, indigenous groups often adapt Western philosophies and reasonings when interacting with outside actors to better defend their autonomy and world views.

Claim Making & Land Claiming

Claim making can be defined as the multiple ways in which people seek to define and defend their shares through the agreement of others. Claim making can be evaluated as a form of sense-making within the context of a social situation. Situating the practice within a social context allows people to understand the agency of the people making the claims, adjusting their

case as conditions change, especially in situations of political instability, where claim making is made through inference and uncertain action. Groups making claims, specifically groups making land claims, engage in sense-making, determining how these actions shape ideas and narratives about preferable outcomes, and how to achieve those outcomes. In this way, claim making produces frames of reference around property and belonging. However, as a byproduct of adhering to the norms and practices in place for claim making and obtaining land rights, actors can internalize these power dynamics and legitimize the dispossession of the land they have suffered (van der Haar et al., 2019).

For claims that are made to be officially recognized, socially legitimate institutions must approve them, and in turn, these politico-legal institutions are legitimized when their interpretation of property rights and laws are respected and enforced. A central dynamic Sikor and Lund study in their focus on property is people's desire to have property recognized by a legal politico-institution to access the natural resources on that property. Land property claims are about both the scope and laws of authoritative bodies and access to natural resources on lands (Sikor and Lund, 2010).

Norms are perceived as a standard for appropriate conduct applicable to actors within a specific identity, although there are disagreements on more conceptual ideas within norms and actors. What constructivists in political science view as norms, sociologists typically categorize as institutions. March and Olsen define "institution" as "a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations." A difference Finnemore & Sikkink (1998) highlight is aggregation, with norms pertaining to a single standard of behavior, and institutions dealing with the interrelation and structures of rules.

This process of land claim seeking through legitimatized bodies structures land governance and is a source of land conflict, most prominently in formally colonized nation-states. In sub-Saharan Africa, an area with a long history of large-scale land acquisition and elite land grabbing, land disputes and competing claims are common. These land grabs are intertwined with political instability, violence, and mobility in the region. Land claims are made, unmade, and remade through politico-legal institutions that have the authority to legitimize the claim. Therefore, claims and their positioning can often be affected and re-positioned in relation to economic policies, de-centralization, and good governance interventions. Nyenyezi et al. argue for a "subjectivist approach to power" which examines how actors' actions and claim making strategies are influenced by power relations (van der Haar et al., 2019). Claims for land are an important strategy of indigenous groups in their fight for their ancestral territory.

Strategies of Social Movements

Alain Touraine defines social movements as "the action, both culturally oriented and socially conflictual, of a class defined by its position of domination or dependency in the mode of appropriation of historicity, of the cultural models of investment, knowledge, and morality towards which the social movement itself is oriented" (Touraine, 1988, 68). This definition emphasizes historicity as one of the social actors' main objectives in social movements, to change cultural norms, values, or narratives. Beyond structural or material considerations and goals of social actors, they aim to influence the historical development of societal models and practices. Touraine views social movements as the work society engages with. In his perspective, society is made up of actors with possibly conflicting interests but who share certain cultural orientations. Melucci has pointed to the lack of expansion on how these social actors are able to form collective identities in their work through interactions, negotiations, and relationships with

the environment. This acceptance of collective identities without examination of their processes leads to the omission of the network of relationships that determine collective identities and collective action. He argues that social movements cannot be understood separately from the social and cultural background from which they originate. As such, social movements are better understood as "movement networks" or "movement areas," that include both the actions of the movement and the "users" of the cultural products of movements (Escobar, 1992).

Michel de Certeau investigates these networks, focusing on the subordinate groups forming social movements, in line with Melucci's outlook, rather than models of political practice among parties and organizations. While domination often operates through economic, political, technological, and institutional mechanisms that shape social norms and narratives, de Certeau argues that the "marginal majority," those forced to exist within structures of domination, are not passive recipients of these conditions. As "users" of these conditions themselves, the "marginal majority" can interact and adapt to these conditions in a manner that aids their own interests. The reworking of dominating imposed knowledge and symbols is known as a tactic by social movement scholars within this focus. In contrast to "anti-discipline" tactics, strategies work to enforce discipline and control over both individuals and institutions. Strategies and tactics represent distinct ways of knowing and approaches to the practice of life and organizing of social spheres. Local tactics have assisted indigenous groups in maintaining control over their environment and worldview. Social movements in Latin America have a hybrid character, linked to both the transnational cultural system and embodied communal systems (Escobar, 1992).

Legal claiming has often been used as a strategy in social movements. The legal claiming of property rights serves as a useful strategy in indigenous advocacy. There has been an increase

in “strategic litigation” (Baldwin and Morel, 2011, 121) in the struggle for indigenous rights, using social practices and norms associated with claim-making to argue their claims to land (van der Haar et al., 2020). These processes of "strategic social construction," have actors strategize rationally to reconstruct social contexts (Finnemore & Sikkink, 1998).

The Inter-American Commission on Human Rights & Indigenous Legal Claiming

The Organization of American States is a regional political, juridical, and social governmental forum of the Americas. One of the institutes main organs, the Inter-American Commission on Human Rights (IACHR), created in 1959, serves as an enforcer of universal human rights within the region. Along with the organs secondary body, the Inter-American Court of Human Rights (“the Court”), created in 1979, the two (“the Inter-American human rights system”) rule on claims of individuals in the region against a state violating their human rights (Inter-American Commission on Human Rights, n.d.).

These bodies have been an important mechanism in the global recognition of indigenous rights and in clarifying legal systems of claiming. The Organization of American States (OAS) has been a leading body on indigenous rights, first addressing the matter in Article 39 of the Inter-American Charter of Social Guarantees, which was adopted by the Ninth International Conference of American States in 1948. The Charter of Social Guarantees provides those countries with indigenous communities “necessary measures shall be taken to provide the Indian protection and assistance, protecting his life, liberty, and property” (Barelli, 2010). Resolutions concerning specific indigenous peoples have been issued by the Inter-American Commission on Human Rights (IACHR) since the early 1970s and the IACHR has overviewed cases concerning the rights of indigenous communities. This mechanism has since become more utilized by indigenous groups in territorial disputes when they face pushback from national governments.

Internationally, there is not much in the way of documents protecting indigenous groups and their rights. The UN Working Group on Indigenous Populations was established in 1982, which created a focus on indigenous rights in the UN agenda that had not previously been highlighted (Barelli, 2010). The International Labor Organization's (ILO) Convention 169, known as the Indigenous and Tribal Peoples Convention, which was passed in 1989, remains the major, legally binding convention concerning indigenous peoples and tribal peoples. The document centers indigenous peoples and their lives and identities. Self-identification is considered an important aspect in determining who is indigenous and to who the convention should apply to (Swartz, 2019). While this convention names indigenous peoples as "peoples," the term does not encapsulate the rights usually affiliated with the term in international law (Medina, 2016). The convention takes the stance that the cultures and institutions of indigenous and tribal peoples must be respected. For states that ratify the convention, the document ensures a more open and accessible dialogue between the government and the indigenous residents. Currently, only twenty-three countries, predominantly in Latin America, have ratified the convention since it was passed thirty-four years ago (Swartz, 2019).

In 1990, the Inter-American Commission created the Office of the Special Rapporteur on the Rights of Indigenous Peoples, approved the Proposed American Declaration on the Rights of Indigenous Peoples in 1997, and in 2016 the body fully adopted the American Declaration on the Rights of Indigenous Peoples, which expanded on the UN's 2007 Declaration on the Rights of Indigenous Peoples. The 2007 document establishes a framework of minimum standards for the respect and well-being of indigenous peoples. Critics of this document have pointed out that while it supports some calls for collective rights, it does so through a Western perspective that avoids discussing indigenous self-determination and emphasizes civil and political rights (Engle,

2011). The American Declaration provides a more comprehensive document that addresses issues specific to regions in the Americas, such as the rights of groups in isolation or with limited contact with others, and indigenous groups affected by armed conflict (Errico, 2017).

An Overview of Indigenous Land Cases

Regional courts can play a significant role in shaping international norms. The Inter-American, African, and European regional systems have clarified and interpreted declarations, opinions, comments, and judicial decisions, furthering the global political process of recognition of indigenous rights. The parallel legal and quasi-legal processes these regional systems have taken part in, most specifically in the Inter-American human rights system, have strengthened global indigenous rights (Barelli, 2010). A former judge and president of the Inter-American human rights system said that "a Human Rights Tribunal such as the Inter-American Court is not only meant to settle disputes and cases but also to explain 'what the law is'" (Tanner, 2009, 988). These regulatory bodies and the documents they adopt explain what the law is in dispute settlement. The arguments and evidence presented by the groups in these legal battles shape the Courts' judgments on the meanings of the law. When indigenous groups engage with implementing bodies like the Inter-American human rights system, standards regarding the rights of indigenous peoples are further elaborated on (Medina, 2016).

In 1985, the IACHR ruled on a petition filed by the Yanomami indigenous community in Brazil relating to mining development in indigenous land. The court ruled in favor of the Yanomami that Brazil failed to provide adequate protection for the safety and health of indigenous communities. While the ruling did not go as far as to recognize specific rights attributable to indigenous peoples, it highlighted Brazil's failure to act to protect indigenous

peoples right to life, liberty, and personal security, an important beginning for future rulings to build on (Barelli, 2010).

In disputes regarding private property internship and claims for ancestral property, the IACHR has expressed that “disregarding the ancestral right of the members of the indigenous communities to their territories could affect other basic rights” and “restriction of the right of private individuals to private property might be necessary to attain the collective objective of preserving cultural identities”. However, regarding natural resources, the IACHR affirmed the American Convention that defends states' right to grant concessions for the extraction of natural resources on indigenous territories. As such, in certain conditions, states can expropriate indigenous land. For a state to do so though, they must seek prior consent and involvement of indigenous groups in any development or investment plan, that they receive a share of the benefits generated, that environmental and social impacts are assessed, and that the extraction of natural resources does not substantially affect the conditions of traditionally inhabited lands (Barelli, 2010).

In 2001, the IACHR ruled on the Awas Tingni v. Nicaragua, a case brought forth by the Mayagna community of Awas Tingni, against the state of Nicaragua for granting logging concessions on the community’s traditional land without obtaining prior consent and ignoring later complaints of the Awas Tingni. The court ruled that Nicaragua had violated the litigants’ right to property under the American Convention and affirmed that the human right to property encompasses “the communal property regimes of indigenous peoples as defined by their own customs and traditions” (Anaya, 2004, 146). This ruling also referenced Nicaraguan law that accorded communal land rights to indigenous peoples. This case was highlighted the influence the Court can have over states in protecting individuals’ rights.

In 2004, the Court ruled in favor of the protection of indigenous land rights on a landmark case brought forward by the Mopan and Q'eqchi' Maya of southern Belize against the state. From the 1970s to the 1990s, the Belizean government privatized Mayan reservation lands and granted mass concessions for logging and oil extraction on traditional Mayan lands. These logging and mining concessionaries negatively impacted the land and water resources of Mayan communities. Unlike Nicaraguan law, which recognized communal land rights for indigenous communities, Belizean law had no such provisions for communal land rights. Consequently, if indigenous land rights could stem from general property rights guaranteed by the Belizean constitution and Belize's obligations under international human rights law, they could be derived in any country (Medina, 2016).

The Mayan petition built on the logic of the IACHR ruling in Awas Tingi, connecting the American Declaration's protection for property rights to safeguards for indigenous customary tenure outlined in draft UN and OAS declarations on indigenous rights, as well as in ILO 169. The petition argued that indigenous land tenure systems generate property forms that states are duty-bound to acknowledge and safeguard, based on the principle of nondiscrimination. In 2004, the court did just that, ruling in favor of Mopan and Q'eqchi's rights to the lands they traditionally used and occupied. This then created a precedent for an indigenous right to land solely on the basis of customary patterns of land use and occupancy. The ruling contributed to the establishment of a robust regional jurisprudence on indigenous rights. Following the ruling, the Belizean Supreme Court used it as a reference to render its own judgment on Maya land rights. These rulings subsequently shaped international arguments concerning the content and status of international indigenous rights law.

What makes this case important is exactly Belize's lack of domestic legislation concerning indigenous rights. If Belize has a duty to uphold land rights accorded to indigenous peoples by ILO 169 and the UNDRIP through their constitutional right to property, then the same argument can be made in other cases with states that protect property rights and have ratified these documents. These cases engage in legal pluralism and the interaction of multiple systems of law internationally. Anthropologists studying this have noted the "vernacularization" of ideas about human rights, where international documents on human rights have impacted the language and rhetoric activists use in local fights. Similarly, there is a "verticalization" of conflicts, where local contexts are used to make broader arguments on human rights (Medina, 2016).

Correia views the indigenous fight for land recognition through the lens of post-disciplinary legal geography that moves beyond the idea of legal geography. He discusses law-space-power relations and the slippage between laws and between de jure and de facto rights. These shifts, between legality and illegality, as well as dispossession and possession are evident in indigenous movements for land rights. Indigenous actors navigate these geographies to address their lack of legal representation. The conjecture of racialized and colonial process in government and law structure give rise to liminal geographies and legal exclusion of indigenous peoples (Correia, 2018). Both the Nicaraguan and Belizean cases employed what Wainwright and Bryan (2009) call 'the cartographic-legal strategy'.

The cartographic-legal strategy has several implications in its usage. Hale describes the strategy as positioning indigenous struggle within the context of 'neoliberal multiculturalism.' Neoliberal multiculturalism focuses on a Western, colonially originated idea of interacting with multiple cultures in states with native communities that have differing

cultures and customs. In the Belize and Nicaraguan cases, the argument of the claim relies on property rights rather than territorial approaches that directly challenge the state. The focus on property rights and national identity rooted in a social contract among property owners deepens capital social relations and depends on the enforcement of the law and the state. This strategy simultaneously challenges the exclusionary colonial past and reinforces inequalities in the colonial present. The argument remains guided by the spatial configuration of modern politics, territory, and property rights. While this exemplifies the power of indigenous cartography, it at the same time limits the realm of possibility of the maps (Wainwright & Bryan, 2009).

Chapter III: Methodology

To evaluate my research question, I plan on conducting a content analysis. I base my plan on Weber's (1985) definition of a content analysis as a methodology that employs a set of procedures to analyze texts valid inferences from and make valid inferences from. Similarly, Stone references content analysis as any procedure used for assessing which specified references, attitudes, or themes are imbued within the documents or texts (Prasad, 2008). This quantitative analysis style is best suited to evaluate my research question as I will be able to evaluate my main sources of data and the rhetoric they employ. I will use a comparative analysis of cases from the IACHR and the Court on indigenous rights from Chile and then contextualize these cases in the broader framework and background from which they were brought forth.

In specific, I will be looking at and analyzing the discourse surrounding these cases. While discourse analysis is not often used in legal analysis, it provides an important insight into the sociological context that shapes court interpretations and rulings. Discourse, as defined by Ervo (2016), "is use of language seen as a form of social practice… the importance of language is perceived not only as a channel of communication but also as a reflection of social reality. Any communicative event carries with it a segment of the worldview of the language users". Discourse analysis then, as a methodology, involves examining the correlation between language and reality, akin to the principles of social constructionism (Niemi-Kiesiläinen et al., 2006 as cited in Ervo, 2016). Discourse analysis has an external perspective to the law and court cases that contextualizes the law within other social discourse, whereas most other legal theory has a more internal perspective of the validity of law and arguments. Evro describes the difference using the concepts *sein und sollen*, where *sein* pertains to legal reality ("what is") and *sollen* pertains to rules in their normative context ("what ought to be"). The two concepts are linked as

legal reality of a society affects future legislation and case law (Evro, 2016). I want to use this form of analysis as I believe it best contextualizes the law as an advocacy strategy, what drives the use of it in and if it is an effective method of change in society for the Mapuche peoples.

Discourse analysis is defined by Rosalind Gill (2000) as a "careful, close reading that moves between text and context to examine the content, organization and function of discourse" (188) followed by "an interpretation, warranted by detailed argument and attention to the material being studied" (188). There are a large variety of types of discourse analysis, although the type I plan to employ in my research is a discourse analysis influenced by speech-act theory, ethnomethodology, and conversational analysis. This type of analysis focuses on the functional arrangement of discourse, examining what, in this case court arguments and rulings, are designed to accomplish, looking in detail at the organization of the interaction and the words and phrases used. There are four main themes of discourse analysis that I will include in my analysis. The first is a concern with discourse itself, looking at the content and organization of the texts. The second, a view of language a both constructive and constructed, as orienting constructed word in ways to connotate certain meanings. The third, that discourse is a form of action, and that "all discourse is occasioned" (Gill, 2000, 175) and is oriented in that way in relation to the context of the discourse. The fourth is that discourse is *organized rhetorically* (Billig 1987; 199 in Gill, 2000) and has the purpose of establishing one version or argument as correct as opposed to competing versions or arguments. I believe this analysis method is best suited to answering my question as I will be able to look at the specifics of wording and arguments in court case documents and then frame those in the broader context of Chile and the operations of the Inter-American Court of Human Rights.

The Mapuche

The Mapuche are the indigenous inhabitants of south-central Chile and southwestern Argentina. The Mapuche macro-ethnic group includes the Picunche, the Mapuche of Araucanía, the Huilliche, and the Cunco. These groups reside in three main geographical zones: the coastal strip, the Central Valley, and the Andean uplands. The term *Mapuche* means "people of the land" (*Mapu* 'land' and *che* 'people') in Mapudungun, the language spoken by the Mapuche people. The ancestral land they inhabit is called Wallampu. Today, the Mapuche are considered the largest indigenous demographic in Chile, making up 80 percent of the nation's indigenous population, approximately 9 percent of the population of the country. As the largest indigenous group in Chile, they make a majority of the cases in the Inter-American human rights system from Chile in relation to indigenous rights. Their history of resistance, further explored in *A Brief Background*, makes them an interesting case study when looking at indigenous social movements and rights claiming in Latin America.

Court Cases

The Inter-American Court of Human Rights has jurisdiction over the 20 countries that have ratified the American Convention on Human Rights. Only State Parties and the Inter-American Commission on Human Rights can submit cases to the Court. Individuals or groups that have been a victim of human rights violations submit a petition to the IACHR. After submitting, a process starts in the IACHR where the reported incidents are examined, and if they are verified, the IACHR will issue recommendations to the State responsible. Some cases reach friendly settlement, and some are submitted to the Court.

The Inter-American Court of Human Rights has a vast jurisprudence and has set extensive precedence concerning indigenous peoples. To look at the rhetoric and framing of

issues, I have chosen three cases that have been submitted to the IACHR by Mapuche communities. I will examine the cases by employing a qualitative content analysis using discourse analysis, of the case law and documents entailed. This will include looking at the boarder context, the actions preceding the use of the IACHR, the wording of indigenous groups' petitions and arguments within the case and the response of the IACHR or the Court. I will be looking at the formation of their arguments in case documents and the language and reasoning they employ to argue for their land. Court case analysis is a helpful tool in looking at my overall question as court cases have historically been an important avenue for indigenous to claim rights.

Selection of Cases

Name	Date Submitted to Responding Body
Mapuche Huilliche "Pepiukelen" Indigenous Community	June 25, 2007
Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile	August 7, 2011
Huilcamán Paillama et al. v. Chile	January 27, 2022

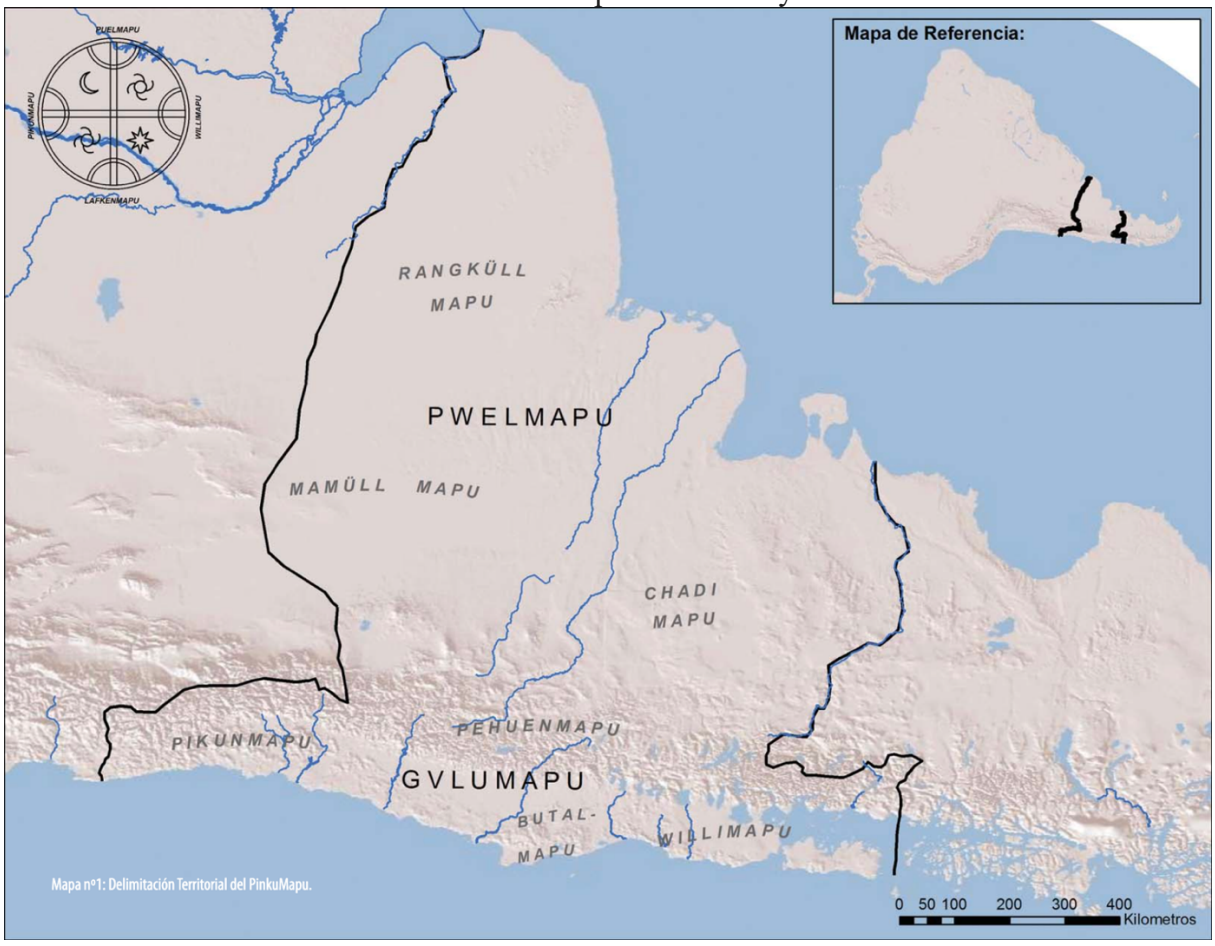
In order to select cases, I combed through petitions that have been submitted to the IACHR against Chile, looking for cases that dealt specifically with the Mapuche people. There have been a large number of petitions submitted to the IACHR since 2000 against the state of Chile, although a much smaller number in relation to indigenous rights and land. Of those petitions, 15 have gone to the Court. I picked three cases, from both the IACHR and the Court, that dealt specifically with the Mapuche and issues in relation to land claims, or state response to Mapuche protesting for land rights. I picked a petition in the IACHR, a court case responded to

in 2014, and a pending court case. The petition, filed by filed by the Mapuche Huilliche "Pepiukelen" Indigenous Community, is in regard to land polluted by a corporation. The decided court case, Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, concerns 8 Mapuche leaders charged with crimes following a protest about ancestral Mapuche lands. The pending case, Huilcamán Paillama et al. v. Chile, deals with court persecution of Mapuche people due to the actions of the Council of All Lands in 1992. These petitions and cases make direct references to Mapuche communities rights being violated. I plan to look at these three cases, the arguments presented in them, the responding ruling by the court, and whether that ruling had any impact for the Mapuche in Chile.

Chapter IV: A Brief Background

The Mapuche are an indigenous group in south-central Chile and southwestern Argentina. The group is known for having retained their own beliefs, customs, and identity, and their legacy of resistance against invading groups. The Mapuche have a non-anthropomorphic notion of being, focused on equally centering aspects of the world. Within the Mapuche *kyme mogen* (good life) cosmovision there is not a linear conception of time as people do not conceive a definitive beginning or end, viewing existence as an eternal process. The idea of *kyme mogen* encompasses the principles of complementarity and reciprocity, emphasizing the interconnectedness of all elements within the cosmos (Cadena, 2021). This way of being and philosophy of life necessitates a continued close connection to their ancestral lands.

Ancestral Mapuche Territory



(Melin, Mansilla, & Royo, 2017)

Note: The Decolonial Atlas is a growing collection of maps which challenge our orientation and relationships with the land, people, and state.

Colonization and Land Tenure

Prior to colonial contact, the Mapuche in the Araucanía region of present-day Chile had already fought off Incan attempts to invade and spread their empire spread further south into the cone of South America. Upon their arrival, the Spaniards were similarly unable to conquer the Araucanía. Mapuche communities were at war with Spain for almost 250 years, until the Chilean independence movement started in the 1810s. During this long-drawn-out conflict, the Mapuche signed the only indigenous peace treaty with the Spanish crown, establishing their own political boundaries from Spanish colonies. After Chile established independence from the Spanish crown, the new government signed the Tapihue parley in 1852 with the Mapuche, establishing the land between the Bio-Bio and Toltén rivers as Mapuche territory.

Despite this treaty, the Chilean government launched a violent campaign of occupation in the Araucanía in the 1860s and 70s, called the 'Pacification of the Araucanía' (Alberti et al., 2023). The state claimed the land as their own and conflict culminated in the signing of the 1882 peace treaty, where the majority of Mapuche land was incorporated into Chile and in 1884 a reservation system was set up for Mapuche territories. This reservation system created 3,000 *reducciones* (allotments), assigned lands where the state recognized communal land titles held by Mapuche chiefs and family members. The 3,000 new land titles accounted for only 6.39 percent of Wallampu, the ancestral lands of the Mapuche. The Mapuche were dispossessed and resettled on lands where the state recognized communal titles held by Mapuche chiefs and family members. Chiefdom was established using two base units: the lof (an extended family) and the regua (several interconnected lofs). The Mapuche of Araucanía operated under a heterarchical

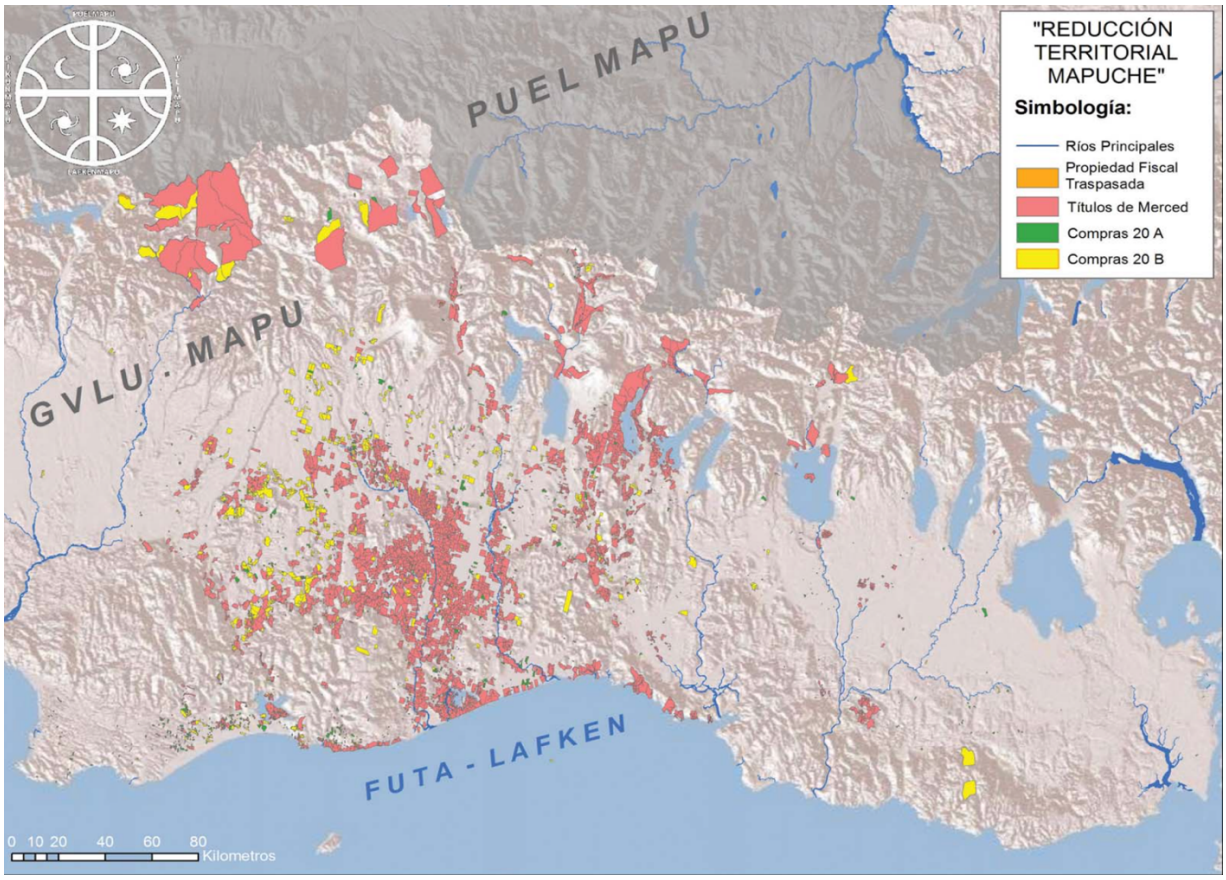
system and originally only had chiefs in times of conflict and strife (Alwyn, 1999). This switch to full time chiefdom represents one of the ways in which Chilean state systematically altered Mapuche customs and ways of life.

This resettlement and creation of communal reservations lasted until 1929. In the mid 1900s there were two agrarian reforms, first developed under the government of Jorge Alesandri and Eduardo Frei from 1962 to 1970 and the second under Salvador Allende from 1970 to 1973, and these reforms focused on dividing large estates and returning land to small farmers. During this period, most heavily under Allende, approximately 129,420 hectares of land were returned to the Mapuche peoples. However, any progress made under these administrations was promptly reversed during the military dictatorship of Augusto Pinochet. Under Pinochet there was a "counter agrarian reform" in which the state returned a third of the lands to the estates of previous owners, kept a third, and imposed unsustainable market expectations on the third of land left to peasant and Mapuche farmers, forcing small owners to sell their plots of land. Additionally, during this period, Law 2568 was promulgated, which dissolved the idea of communal land rights, forcing Mapuche communities to individualize their land as private owners, denying the existence of the Mapuche identity. Indigenous groups in Chile faced mass state violence and persecution under the dictatorship.

Recognizing Indigenous Rights

In 1989, Patricio Aylwin, the candidate of the *Concertación party,* an alliance of moderate and left-wing parties, was elected president and Augusto Pinochet's rule came to end. With this return to democracy there was an active attempt by the government of Chile to consider the needs and desires of indigenous groups. In 1993 a "Special Commission of Indigenous Peoples" was created that led to the promulgation of Law No. 19.253. This law, also

called the “Indigenous Law,” aimed at protecting indigenous peoples and encouraging development. It made it illegal to sell indigenous land to non-indigenous individuals and established National Indigenous Development Corporation (CONADI) which aims to promote, coordinate, and implement state action plans for the development of the indigenous peoples of Chile (Waldman, 2012). While the law addresses the protection of indigenous lands, mechanisms such as land exchange and state expropriation for public interest purposes were still allowed, contributing to the ongoing reduction of Mapuche lands, affecting most especially communities near cities. The law also outlines the process for the return of Mapuche lands, including the "20-A land purchases" for communities lacking land or with insufficient space, and "20-A land purchases-B" for lands in dispute between Chilean and Mapuche owners (Mansilla and Royo, 2017). As seen in the map below, state recognized communal lands are a small portion of the once vast Mapuche territories.



(Melin, Mansilla, & Royo, 2017)

Propiedad Fiscal Traspasada: Transferred Property Tax
Titulos de Merced: State recognized Mapuche communal land following colonization
Copras 20 A: 20-A land purchases
Compras 20 B: 20-B land purchases

While the "Indigenous Law" was an important recognition of indigenous ethnic identity and worked as a precursor to Chile's adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and the ILO Convention 169 in 2008, the bill leaves a controversial legacy. The bill acknowledges indigenous peoples as individuals, it does not provide a constitutional recognition of indigenous groups as a people. The law also fails to acknowledge original Mapuche territory, nor establish mechanisms ensuring Mapuche political involvement nor does it address conflicts arising from major hydroelectric projects in the nation. Furthermore, the institution CONADI has been criticized for prioritizing state interests over indigenous concerns (Waldman, 2012). The emphasis on development rather than recognition and protection

has been seen as aligning with the absence of formal recognition of indigenous peoples in the Chilean Constitution. Mapuche leaders have criticized the law for attempting to resolve historical demands for land, territory, and autonomy, through the establishment of a model of indigenous institutional bureaucracy. The International Work Group for Indigenous Affairs has reported that Law No. 19.253 does not meet international law standards concerning the rights of Indigenous Peoples to land, territory, natural resources, participation, and political autonomy (*Chile - IWGIA - International Work Group for Indigenous Affairs*, n.d.). To this day though it remains Chile's primary legislation on indigenous rights.

Chapter V: Case 1: Mapuche Huilliche "Pepiukelen" Indigenous Community

The first case I am examining is of the petition submitted by the Mapuche Huilliche "Pepiukelen" Indigenous Community in relation to a salmon company polluting on their lands and the state refusing to take action to aid the community. The petition went to the Inter-American Commission, but unlike the following two case studies, was never referred to the Inter-American Court. For that reason, a larger portion of this chapter is focused on domestic proceedings. This focus also highlights the domestic leadup to submitting a petition to the IACHR, and the disregard evidenced in this domestic proceeding is similar to that in the following two cases. As the IACHR and the Court have complementary jurisdiction to a nations' own judicial system, petitioners must first exhaust state remedies.

Background Context: The Mapuche Huilliche

The petition was submitted on June 25, 2007, shortly before Chile adopted the UNDRIP in September of that same year. Petition 837-07 was filed on behalf of the Mapuche Huilliche "Pepiukelen" Indigenous Community and petitioned by the community and the Inter-American Observatory on the Rights of Migrants, a body of the OAS. The Mapuche Huilliche community, a subgroup of the southern Mapuche, reside in southern Araucanía. The term *Huilliche* means 'southerners' in Mapudungun (*willi* 'south' and *che* 'people').

Spanish forces attempted to establish outposts and settlements in southern Araucanía, but the Mapuche and Huilliche rebelled and successfully drove Spanish forces back northward (*South American Indian - Pre-Columbian Cultures, Indigenous Tribes, Colonialism | Britannica*, n.d.). However, by the end of the 18th century the Spanish succeeded in defeating the Mapuche

Huilliche after the Figueroa incursion of 1792. The Las Canoas Parliament of 1973, a diplomatic meeting between the Mapuche Huilliche and Spanish, permitted the Spanish to reestablish the city of Osorno (which had previously been driven out of by the Mapuche) and began the opening of Huilliche territories to European settlement (Alcamán, 1997). The region officially joined the Republic of Chile in 1826, eight years after the state had won independence. The newly independent state then began colonization into Patagonia. During the implementation of the reservation system, which required Mapuche leaders to apply for large grants of reservations for them and their communities, much of the ancestral Huilliche territory was sold and large swaths of German settlers moved onto the land.

The Huilliche referenced in this petition are the Pepiukelen community who live near the village Pargua, Calbuco Comuna, in the Los Lagos region of Chile. Pargua is a village in the commune of Calbuco, and in 2022 it had a population of 787 people. Calbuco City was originally a Spanish Fort founded in 1603 and served as an important fish market in the region. Pargua itself is a ferry port and the entrance point to the Chiloé Archipelago and the island of Chiloé. Today Chiloé serves as an important area for salmon farming, and significant changes have occurred in the area since the 1990s as the salmon industry expanded. The industry has given rise to numerous satellite businesses, including processing plants, fish meal and oil factories, and salmon feed plants. Due to Pargua's proximity to Chiloé, many of these satellite businesses have opened near the Pepiukelen community (Witte, 2007).

The Facts & Domestic Proceedings

The petition presented was in relation to one of these satellite companies that set up shop neighboring the Pepiukelen community’s land, and the environmental degradation caused by the activities of the company. The land in question in this petition was originally acknowledged as

under the legal ownership of the Mapuche Huilliche Pepiukelen community in 1935. On August 25, 1961, though, this original piece of land was expropriated by the state and divided up. The state granted 4.6 hectares to an individual based on a gratuitous title of ownership (land acquired through marriage). In 1964 the state then recognized the community's ownership of 20 hectares of their ancestral land. The main issues cited in the petition started to occur in September of 2001, when the fishing company "Long Beach S.A." bought the 4.6 hectares of land, alongside the Mapuche Huilliche Pepiukelen community's land, with the goal of building a fish meal and fish oil factory. In addition to the land, the company also purchased an access easement from one of the co-proprietors of the communal land, allowing the company to cross through the community's lands.

On January 25, 2002, the petitioners (the Mapuche Huilliche "Pepiukelen" community) allege that the fishing company brought machinery onto the land and started to illegally build an industrial road through the community's lands. In response the community filed a remedy of protection against the company through the Puerto Montt Court of Appeals. Two months later, the Puerto Montt Court of Appeals rejected the remedy of protection, and no position was taken on the merits of the case. This rejection was affirmed by the Supreme Court the same year. During these proceedings the community officially registered it's 20 hectares of land as indigenous land with CONADI (Inter-American Commission on Human Rights, 2018). Under Article 39 of this law, CONADI is responsible for recognizing indigenous ethnicities and communities and their communal lands and adding them to their community and association registry (CONADI *Justicia Indigena*, n.d.). For communal land to be recognized, CONADI must first process and then accept the submitted application. In addition to registering the land, on November 29 of 2003, the members of the Millaquen-Maricahuin family (the main lof of the

Pepiukelen community) registered as an Indigenous Community (Pepiukelen Community) in accordance with the Indigenous Law.

At the same time the Pepiukelen community was submitting these forms and registrations, the fishing company began building a fishmeal and fish oil factory (Witte, 2007). In January of 2004 the Long Beach S.A. fishing company acquired an environmental qualification resolution from the Regional Environmental Commission (COREMA) in order to continue with its construction. COREMA is supposed to require an Environmental Impact Assessment (EIA) to pass this resolution, as the proposed project would cause one or more major impacts on the amount and quality of natural resources, with a notable effect on the landscape (Maxwell, 2009). However, COREMA only required the company submit an Environmental Impact Statement (EIS), which has less stringent technical requirements. The community filed a second remedy of protection against COREMA through the Puerto Montt Court of Appeals to stop the resolution, but the remedy was declared inadmissible based on issues of form, a decision upheld by the Supreme Court as well. Despite having the courts backing, by 2005 Long Beach S.A. gave up on the construction project due to pressure from the Pepiukelen community and market influences (Witte, 2007). In an attempt to gain more control over their lands, the Pepiukelen community filed an ancestral possession claim with CONADI in July of 2005, but the claim was never processed.

On September 28, 2005, the land was bought by “Los Fiordos Ltda.,” a Chilean fishing company. Los Fiordos picked up where Long Beach S.A. left off, planning to start construction of a factory on the lands. On February 28 of 2006, the Pepiukelen community filed a claim with the Los Lagos Regional Comptroller, asking the organization to review the legality of the environmental assessment conducted by Los Fiordos. While the Comptroller reviewed the claim,

COREMA approved the project without requesting an EIA from the company. The following month the Comptroller ruled that there needed to be an EIA for the project to be approved. In response to this ruling, the Pepiukelen community filed a third remedy of protection with the Puerto Montt Court of Appeals and in this case the court sided with the community, ordering a stay-of-action for Los Fiordos project until it was re-reviewed by the COREMA. The COREMA then reaffirmed the project without requiring the EIA form and the court lifted its stay-of-action order. On August 10 of 2006, the Pepiukelen community filed a fourth remedy of protections with the Puerto Montt Court of Appeals in response to the lift of the stay-of-action order, and the remedy was declared inadmissible by the court. The court ruled that the appeal could only challenge COREMA's original approval of the project, not the second, despite the continued lack of an EIA submission. It was after this fourth remedy of protection, that the Pepiukelen community decided to bring their case to the IACHR (Inter-American Commission on Human Rights, 2018).

The legal battle the Pepiukelen community engaged in since 2002 was headed by Francisco Vera Millaquén, the *werken* (spokesperson) for the group. Millaquén enlisted the help of Santiago-based lawyer Diego Carrasco to file an official complaint with the IACHR against Chile, for failing the protect the Pepiukelen community and its ancestral lands, constituting a violation of their human rights. In an interview conducted by Benjamin Witte for the Upside-Down World news outlet, Carrasco commented that, "Not only have they been discriminated against by the authorities, which haven't wanted to accept the information (the community) has filed, but they've also been discriminated against in the courts, which won't accept their cases. They don't have access to justice. There's no due process," in relation to the situation the

Pepiukelen community faced. In the complaint to the IACHR, Carrasco cited the Inter-American Convention on Human Rights and the UNDRIP (Witte, 2007).

On February 8th of 2010, Los Fiordos began building a tank to store polluted water just 3 meters from the Pepiukelen land and 50 meters from an important ethno-tourism site in the community. The contaminated liquids flowed into the Allipén river as well, polluting the water. That same February Vera and his legal representative filed a remedy of protections against the company in the Puerto Montt Court of Appeals, alleging the "infringement of the Community's rights to life and integrity, equality, health, property, and to live in an unpolluted environment". In this instance, the Puerto Montt Court of Appeals accepted the remedy of protection on July 27, 2010, a decision that was upheld by Supreme Court on September 15, 2010. In their ruling they highlighted the project's impact on the community and the illegality and arbitrariness of the wastewater tank, infrastructure that goes beyond the scope authorized by the environmental authority (Inter-American Commission on Human Rights, 2018).

Proceedings Before the Commission

Filing of the petition	June 25, 2007
Notification of the petition to the State	February 28, 2008
State's first response	January 17, 2012
Additional observations from the petition	April 8, 2012
Commission's Admissibility Report	May 4, 2018

The IACHR primarily issues admissibility decisions, and less than seven percent of its decisions in 2010 involved merit reports or friendly settlements. Analysis using publicly available reports revealed that, on average, it takes six and a half years from the initial submission of a petition to reach a final merits decision, with over four years spent on

admissibility alone. The IACHR's responses indicate even longer wait times, with matters at the admissibility stage awaiting decision for an average of 70 months, and those at the merits stage for 86 months (The Human Rights Clinic of the University of Texas School of Law, 2011). This slow processing time is even more exaggerated in this case, with the first admissibility report being released eleven years after the original filing of the petition. With this doubling of the estimated waiting period, a report on merits or a friendly settlement could possibly take another fourteen years, not wrapping up until 2032.

In his interview with Witte (2007), Vera expressed frustration and a feeling of hopelessness regarding the petition. "Although we still have some faith, bit by bit we're losing it, because we haven't yet seen any clear, concrete result. Up to this point the IACHR has just done things to prolong the process," he said of the situation in 2007. In February of 2008 the IACHR sent a letter to Chilean government notifying them of the petition and demanding an account of "measures taken by authorities to protect members of the Pepiukelen Community." The state responded contending that the disputed territory is not considered "indigenous" land under Chilean law and was legitimately bought by Los Fiordos Ltda. and questioned the legitimacy of the community's claim that the factory was environmentally and emotionally harmful (Witte, 2007).

No further action was taken by the state until the later petition regarding environmental degradation caused by the company's wastewater tank. Even with this development, the State requested that the IACHR deem the petition inadmissible, citing the absence of human rights violations and the incomplete exhaustion of domestic remedies. They argue that the community should have pursued their right to ancestral land ownership through a legal claim although they

did not acknowledge that the Pepiukelen community filed a claim with CONADI on June 12, 2005, that was never processed. Despite the lack of enforcement of the Supreme Court ruling in favor of the Pepiukelen community, the government of Chile maintained that the rule of law was in effect, ensuring equal rights and protections for all individuals and referenced the Indigenous Law to demonstrate their regard of indigenous people in Chile (Inter-American Commission on Human Rights, 2018).

Rights Referenced by Commission

Article 1	1(1): Obligation to Respect Rights
Article 2	Obligation to Give Domestic Legal Effect to Rights
Article 4	Right to Life
Article 5	Right to Humane Treatment
Article 8	Right to a Fair Trial
Article 21	Right to Property
Article 24	Right to Equal Protection
Article 25	Right to Judicial Protection
Article 26	Progressive Development

The petitioning parties invoked several rights under the American Convention on Human Rights, including Articles 4 (right to life), 5 (right to integrity), 8 (right to due legal guarantees), 16 (freedom of association), 24 (right to equal protection), and 25 (right to judicial protection), in relation to Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt domestic legislation) thereof. In the release of its Admissibility Report in 2018, the IACHR has made several decisions regarding the petition. Firstly, it declared the petition admissible concerning Articles 4, 5, 8, 21, 24, 25, and 26 of the American Convention, consistent with Articles 1(1) and

2. However, the IACHR deemed the petition inadmissible concerning Article 16 (freedom of association) of the Convention. It is notable that the original petitioning parties did not involve the right to property and the IACHR subsequently was the party to include this right. The parties involved were notified of these decisions, and the IACHR's plan to proceed with the analysis of the merits of the complaint. The IACHR then published this decision and included it in its Annual Report to the OAS General Assembly (Inter-American Commission on Human Rights, 2018).

Decision & Impact

This petition and the violations alleged in it are still being investigated by the IACHR and they have yet to release a friendly settlement or merits decision. On Wednesday, December 15th of 2021, the Mapuche Huilliche Pepiukelen community partook in the IACHR's 182nd period of sessions for public hearings. In a hearing entitled "Situation of indigenous peoples and the right to the environment in the context of salmon farming in Chile", *werken* Francisco Millaquén spoke on the situation in Pargua. The situation in the community has not improved since the 2007 filing of their petition with the IACHR. He conveyed in the hearing that anyone that spent more than three hours in Pargua would notice the tangible effects of the salmon industry, the noise and the degradation of their environment. The community is still waiting for the Chilean state's response to their petition in the IACHR, and in the meanwhile, the state continues to systemically lie to the community about the violations alleged against them. Millaquén implored Joel Hernandez, a member of the IACHR, to act about the situation in Chile (Inter-American Commission, 2021). The length of these proceedings is likely to do with the lack of cooperation by the Chilean state. While this case is still yet to have a final merits report or friendly settlement, given the current denial of the violations and refusal to respond to the IACHR, the

case has the potential of being referred to the Court by the IACHR. Engaging with the Inter-American human rights system, in this case, does not seem to have resulted in substantive changes to the circumstances in Pargua. The proceedings have brought more media attention to the situation though, as the only articles about the violations occurring in the area that are easily accessible on public domains pertain to the proceedings in the IACHR.

Chapter VI: Case 2: Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) vs. Chile

The second case I am examining went to the Inter-American Court and deals with eight individuals, members, traditional leaders, and activists of the Mapuche community, for their involvement in social demonstrations advocating for land and social rights. During the years 2001 and 2002, amidst a backdrop of social tension between Mapuche indigenous groups and the Chilean government, a series of arson attacks and vehicle burnings occurred. Subsequently, legal proceedings were initiated against these eight individuals. They were found guilty and received custodial sentences along with additional penalties for engaging in activities deemed of a terrorist nature. This section focuses most heavily on the proceedings and argument presentation within the Court, as it is the only case study to have completed the Court process.

Background Context

In the return to democracy of the early 1990s, there was a lot of optimism surrounding governmental reform and the chance of cooperation between Mapuche and state leaders. However, these diplomatic relations began to break down in 1997. The director of CONADI at the time, Mauricio Huenchulaf, refused to approve a proposed Ralco dam project as he argued it violated the Indigenous Law. He was then removed from his office and a new director was appointed, but within the year he voiced his opposition to the dam project and was replaced as well. In the end the dam was built as the government cited that the Electric law, which allows the government to expropriate lands for collective Chilean interests, took precedence over the Indigenous Law. Around the same time, on December 1, 1997, Mapuche activists burned three logging trucks in Lumaco. Despite the Indigenous Law and CONADI, forestry plantations

continued to be implemented on indigenous territory after the dictatorship. The continued exploitation of their land lead to "'Mapuche despair (that) exploded violently for the first time since the end of the dictatorship'" (Bidegain, 2017, 107). Several Mapuche activist groups were tired of government inaction and the disregard for their territory and began to take up arms to protect their land from exploitation.

Protests have continued to use this more politically violent approach form 1997 onward. In 2000, socialist party member Ricardo Lagos was elected as president. He advocated for the establishment of the Indigenous Peoples Working Group and established the Commission for Historical Truth and New Treatment to formulate state policies for indigenous communities. Lagos expedited the transfer of fiscal land to these communities. The cornerstone of his indigenous policy was the Origins program, aimed at addressing conflicts and alleviating indigenous poverty through development that respected cultural identity. This involved initiatives in education, socio-cultural empowerment, cross-cultural education, economic development, poverty reduction, and indigenous participation in community projects. However, his government failed to consult indigenous groups while implementing these reforms.

The programming was criticized by indigenous groups for lacking consideration of collective political, territorial, and cultural rights. Additionally, the government continued pursing neoliberal economic policies and supporting private investment in ancestral Mapuche lands. In response to persistent Mapuche protests, the government adopted repressive measures and laws used during the dictatorship, including the Internal State Security Law, which allows for the persecution of radical opponents of the government. In 2004, as protests grew, the government began to use the Law 18.314 (the Anti-Terrorist Law), which made it possible for the state to prosecute Mapuche members involved in protests and to increase the sentences of

those convicted of acts of ‘terrorism’. The law was established in the 1980 Constitution, written under the dictatorship of Pinochet, and allowed for penalties in addition to imprisonment in cases of “acts of terrorism”. Its purpose was to confront "the advance of communism" and later it was used against “anarchist groups” including student movement and the Mapuche community, with the additional penalties making it harder for people prosecuted under this law to speak out publicly and banning them from office (Waldman, 2012). This law has been ruled by various human rights organizations as a violation of human rights, due to its broadness and lack of clear definition of what constitutes terrorist crimes and its extended judicial control over detention (Amnesty International, 2024).

The Facts & Domestic Proceedings

In 2001 and 2002 there was a series of protests regarding the expropriation and exploitation of ancestral Mapuche lands. During these protests, many actions which were classified as “serious” by the government occurred, such as the occupation of land that was unrelated to any ongoing legal dispute; setting fires to forest plantations, crops, buildings, and residences of landowners; damaging equipment, machinery, and fences; obstructing communication routes; and engaging in clashes with law enforcement. It was during these protests that the victims named in the Inter-American Court case were criminally persecuted. There are eight victims named in the case were Norín Catrimán, Pascual Huentequeo Pichún Paillalao, Florencio Jaime Marileo Saravia, José Benicio Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Licán, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe. Of these eight people, seven are traditional authorities or members of the Mapuche community and one is an activist for the Mapuche people. Ancalaf Llaupe served as a *werken*, while Norín Catrimán and Pichún Paillalao held positions as *lonkos. Lonkos* and

werken are influential figures within Mapuche communities, elected to represent specific groups. *Lonkos* hold authority in administrative and spiritual matters, overseeing decision-making and religious ceremonies while being regarded as custodians of ancestral knowledge. *Werken,* on the other hand, serve as messengers who advocate for their communities, addressing both inner and outer communications among the community.

The convictions included five instances of fire setting and two instances of "threats" of fire. Lonkos Norín Catrimán and Pascual Pichún Paillalao were acquitted of a fire in the Nancahue forest plantation and in the house of the administrator of the plantation on December 12, 2001, as well as a fire that occurred on December 16, 2001, in the San Gregorio forestry plantation. However, Norín Catrimán was convicted of "threats" to set fire to the San Gregorio plantation that "occurred during 2001" and Pascual Pichún Paillalao was convicted of "threats" to set fire to the Nancahue forest farm that "occurred during 2001". Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, José-Benicio Huenchunao Mariñán, Juan Ciriaco Millacheo Licán, and Patricia Roxana Troncoso Robles were convicted of a fire that occurred on December 19, 2001, at the Poluco and Pidenco farms, owned by the forestry company, Mininco S.A. Werken Víctor Ancalaf Llaupe was acquitted of setting fire to three trucks and a backhoe owned by the Fe Grande company (that worked on the construction of the Ralco dam) on September 29, 2001, and March 3, 2002, in the Alto Bío Bío sector, but was convicted of setting fire to a truck owned by the construction company, Brotec S.A. (that also worked on the construction of the Ralco dam), on March 17, 2002, in the Alto Bío Bío sector.

Proceedings Before the Commission

August 15, 2003	Petition No. 619/03	Norín Catrimán and Pichún Paillalao file petitions with the IACHR

April 13, 2005	Petition No. 429/05	Huenchunao Mariñán, Millacheo Licán, Florencio Jaime Marileo Saravia, Juan Patricio Marileo Saravia, and Troncoso Robles file a petition with the IACHR
May 20, 2005	Petition No. 581/05	Ancalaf Llaupe files a petition with the IACHR
October 21, 2006	Petition No. 619/03	Commission approves Admissibility Report No. 89/06 regarding alleged violations of Articles 8 (Right to a Fair Trial) and 9 (Freedom from Ex Post Facto Laws)
April 23, 2007	Petition No. 581/05	Commission approves Admissibility Report No. 33/07 regarding alleged violations of Articles 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), and 24 (Right to Equal Protection)
April 23, 2007	Petition No. 429-05	Commission approves Admissibility Report No. 32/07 regarding alleged violations of Articles 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), and 24 (Right to Equal Protection)
November 5, 2010	Petition No. 619/03, Petition No. 581/05, Petition No. 429-05	Commission issues Report on the Merits No. 176/10 regarding all three petitions

The group of eight filed three separate petitions to the IACHR, starting in 2003. The IAHCR combined these three petitions into one larger petition as they all dealt with similar issues of court persecution. The IAHCR's findings indicate that the victims faced trial and

conviction for terrorist offenses under laws that were vague, imprecise, and contrary to the principle of legality. Their ethnicity as members, leaders, or activists of the Mapuche indigenous community was a determining factor in these convictions. Notably, Chile's courts justified these convictions by framing the "Mapuche conflict" as an illegitimate and violent confrontation initiated by the Mapuche against the State. As a result, the State is held responsible for breaching several rights of the individual petitioners.

The IACHR also found that in relation to the "socio-cultural integrity of the Mapuche people as a whole," the State had violated Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 13 (freedom of thought and expression), 23 (right to participate in government), and 24 (right to equal protection). The IAHCR made a series of recommendations to the State, suggesting that Chile take steps to nullify the consequences of the terrorism convictions suffered by the petitioners, facilitate the review of their convictions, provide reparations, amend the Counter-Terrorism Act to align with Article 9 of the American Convention (which pertains to freedom from ex post facto laws), adjust domestic criminal procedure laws to comply with Articles 8(2)(f) (regarding the right to obtain the appearance of witnesses) and 8(2)(h) (concerning the right to appeal) of the American Convention, and implement measures to eradicate ethnic-based discrimination in both public power and the administration of justice. In addition to these recommendations, the IACHR referred the case to the Court to address the discriminatory laws in question more fully in Chile.

Proceeding Before the Court

In Inter-American Court cases that deal with multiple victims, there is a designated common intervener, which present arguments on behalf of the plaintiffs. In this case, the plaintiffs could not agree on one common intervener and so the Court authorized for there to be

two common intervenors, the International Federation for Human Rights (FIDH) and the Center for Justice and International Law (CEJIL). FIDH is a global non-governmental federation for human rights organizations, dedicated to safeguarding human rights defenders and advocating for their recognition and protection on an international scale. CEJIL is a human rights organization that works to facilitate the usage of regional and international human rights mechanisms and has represented nearly 28,000 victims in over 200 cases presented before both the IACHR and the Court (Center for Justice and International Law, n.d.). In addition to the common interveners, there are representatives for specific plaintiffs. Jaime Madariaga De la Barra, Myriam Reyes, and Ylenia Hartog represented Norín Catrimán and Pichún Paillalao; the FIDH and Alberto Espinoza Pino represented Huenchunao Mariñán, Millacheo Licán, Florencio Jaime Marileo Saravia, Juan Patricio Marileo Saravia, and Troncoso Robles; and José Aylwin Oyarzún, Sergio Fuenzalida, and the CEJIL represented Ancalaf Llaupe (Norín Catrimán et al. v. Chile, n.d.).

In admitting evidence, the Court considers documents presented by the parties and the IACHR if they were not contested or opposed and their authenticity remained unchallenged, provided that they are relevant for establishing facts and legal consequences. The common interveners and the State presented final written arguments with documents supplementing their rationales and provided further evidence in response to requests for information and helpful evidence from the Court. CEJIL and FIDH raised objections to certain evidence provided by the State in response to requests for more information, concerning its relevance to the case and the accuracy of statistical data of their application of the Counter-Terrorism Act between 2000 and 2013. The Court accepted newspaper articles that referenced well-known public facts, declarations of State officials, or corroborated case-related aspects.

After this initial information gathering came the presentation of motions and briefs by the common interveners and the State. On November 19, 2012, CEJIL requested the inclusion of the book "Seminario internacional: terrorismo y estándares en derechos humanos" as accompanying evidence, citing its importance for the case despite publication after procedural deadlines. The State objected, but the Court ruled to incorporate it in the body of evidence. Subsequently, CEJIL and FIDH, in a brief and a communication sent on September 6, 2013, urged the Court to include the *Concluding observations on Chile's racial discrimination* report. The document was objected by the State, but ultimately ruled admissible by the court. Following this, on May 9, 2014, FIDH asked the court to "incorporate into the body of evidence the Report of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism [...] on his mission to Chile [in July 2013], published on April 14, 2014," which served as a supplementary piece to the aforementioned report, a request that was supported by CEJIL. This report, as well as the State's official response to the document (incorporated at the behest of the State) were both admitted into the body of evidence.

Rights Referenced

Violations Alleged by Commission, Violations unanimously agreed upon by the Court

Article 1	1(1): Obligation to Respect Rights	Yes
Article 2	Obligation to Give Domestic Legal Effect to Rights	Yes
Article 8	8(1): Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal 8(2): Right to Be Presumed Innocent • 8(2)(f): Right of Defense to Obtain the Appearance of	Yes

	Witnesses and Examine Them • 8(2)(h): Right to Appeal	
Article 9	Freedom from Ex Post Facto Laws (Principle of legality)	Yes
Article 13	Freedom of Thought and Expression	Yes
Article 23	Right to Participate in Government	Yes
Article 24	Right to Equal Protection	Yes

Violations Alleged by CEJIL (in addition to the violations of the Commission), **Violations unanimously agreed upon by the Court**

Article 5	Right to Humane Treatment	No
Article 8	8(2)(c): Right to Adequate Time and Means to Prepare Defense 8(5): Criminal Proceedings Must Be Public	No
Article 17	Rights of the Family	Yes

Violations Alleged by FIDH (in addition to the violations of the Commission), **Violations unanimously agreed upon by the Court**

Article 5	Right to Humane Treatment	No
Article 17	Rights of the Family	Yes

In relation to Article 9 (the principle of legality) the FIDH critiqued several aspects of the Counter-Terrorism Act, highlighting its vagueness and imprecision in articles 1, 2, 3, and 7 of the law, which they argued allowed for arbitrary discretion and blurred distinctions between terrorist and ordinary criminal acts. They contended that Article 1 "does not refer [to its] content," and that "what is involved are criminal offenses that are open to the use of judicial

discretion over and above [...] the proper exercise of interpretation." The convictions against the were based "on contextual presumptions about terrorist intent," and as such were incompatible with principles of individual criminal responsibility, as they unfairly targeted individuals based on their affiliation with the Mapuche people, rather than evidence of their direct involvement in criminal acts. CEJIL, in relation to Article 9, cautioned against using terrorism as a response to social demands or movements. It argued that terrorism and terrorist activity under the Anti-Terrorism law should be more in line with the wording used by the UN Special Rapporteur which "focuses on the protection of life and personal integrity." CEJIL asserted that the law's ambiguity could potentially criminalize any fire, regardless of intent or extent of harm caused.

In relation to Article 24 (the right to equal protection) and Article 8(1), 8(2)(F) and 8(2)(H), all involving aspect of the right to fair trial, the FIDH brought up issues of the Anti-Terrorism law having punishments applied to Mapuche individuals without reasonable justification. They argued that ""criminal justice statistics, the disproportion between the offense and the punishment, failure to respect the presumption of innocence, the biased assessments by the judges, the discourse of the Prosecution Service and the Ministry of the Interior, reveal a clear pattern of ethnic discrimination" and endorsed the IACHR's conclusion in its Merits Reports. CEJIL also endorsed the observations made by the IACHR in relation to these articles. The organization argued that "[t]he stereotype of the Mapuche was revealed not only during the investigation [in the case of Mr. Ancalaf], but was also reflected in the judgments delivered by the domestic courts as a decisive element for convicting the *Lonkos*, the *Werken* and, in general, the Mapuche leaders and activists."

In relation to freedom of thought and expression, political rights, and rights to personal integrity and the protection of the family, Articles 13, 23, 5(1), and 17, CEJIL asserted that the use of that article 9 of the Chilean Constitution establishes "grounds for general and absolute prior censure for all those who are convicted of a terrorist offense, because it prohibits a priori emitting or disseminating information or opinions" and that this law was unduly applied to Ancalaf Llaupe, who served as a spokesperson and disseminator of information within his community, violating the social aspects of his right to freedom of expression. The FIDH affirmed CEJIL's arguments. They added themselves that expression of claims for the recovery of ancestral lands is protected by Article 13(1) of the American Convention, and the discriminatory use of emergency criminal laws to restrict this expression violates Article 13(3), stating that by obstructing "the free discussion of ideas and opinions, it limits freedom of expression and the effective development of the democratic process" (Norín Catrimán et al. v. Chile, n.d.).

In addition to the articles of the American Convention invoked by the IACHR, the FIDH and CEJIL both named Article 5 (right to humane treatment) and 17 (rights of the family) concerning the judicial treatment of the eight convicted victims. In naming Article 5, the intervenors argued that the court proceeding amounted to inhumane treatment due to the unjustified and arbitrary pre-trial detention and in relation to Article 17, that this unwarranted separation of the family and the subsequent affect these convictions had on the family violated the rights guaranteed in the American Convention. The Court deemed Article 5 as inadmissible, but unanimously agreed to include Article 17 in the list of rights violated by the State.

Decision & Impact

Following the ruling in 2014, the Court released a list of recommendations for the State to comply with to address the rights violated. The State has complied with several Court recommendations, including completed reparation orders such as adopting measures to annul all convictions against Norín Catrimán, Pascual Huentequeo Pichún Paillalao, Víctor Manuel Ancalaf Llaupe, Florencio Jaime Marileo Saravia, Juan Patricio Marileo Saravia, José Huenchunao Mariñán, Juan Ciriaco Millacheo Licán and Patricia Troncoso Robles. They have paid compensation to each of the eight victims as outlined in the Judgment and reimbursed the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount spent during the case processing has been fulfilled. Furthermore, the State has partially complied by offering scholarships for the children of the victims to study in Chilean public institutions upon request, although tuition payments are still pending completion (Caso Norín Catrimán y otros vs. Chile: Reparaciones declaradas cumplidas, 2014).

However, as of March 21, 2023, there are still two recommendations pending compliance. The provision of free and immediate medical and psychological treatment to victims who request it is yet to be fulfilled. Similarly, there's a pending task to regulate, with clarity and security, the procedural measure of witness protection, particularly related to the reservation of identity. This regulation aims to ensure that such measures are exceptional, subject to judicial control, and align with principles of necessity and proportionality, although implementation is still awaited (Caso Norín Catrimán y otros vs. Chile: reparaciones pendientes de cumplimiento, 2014).

This case is the shortest of the three examples, with proceedings before the IACHR and the Court lasting eleven years. However, compliance is still pending for some of the Courts

ruling. In addition, while reparations were issued, the Chilean state by and large did not address the more fundamental issue of vague and discriminatory policies in their Anti-Terrorism law. Neither did the State take substantive action to eliminate ethnic-based discrimination in public power or the administration of justice in domestic court systems.

Chapter VII: Case 3: Huilcamán Paillama et al. vs. Chile

The third case I am examining is currently in the Inter-American Court, awaiting a final decision on the merits of the case to be released. The case deals with an "unjust persecution via the courts" of over 100 Mapuche individuals spanning from 1992 to 1996, in relation to a series of protests on occupied land that took place in 1992. The case is led by Aucán Huilcamán Paillama and nine other members of the Mapuche organization *Aukiñ Wallmapu Ngulam* (Council of All Lands) and their attorney Roberto Celedón Fernández. This section focuses on the proceedings in the IACHR and the initial steps of the Court process, as a ruling has yet to be handed down.

Background Context

In 1992, the US, Spain, many South American and European governments celebrated the quincentenary of the "Discovery of America," or the "Encounter of Two Worlds" on October 14, a holiday honoring Christopher Columbus. Indigenous people were outraged by this celebration of the conquest and colonization of the Americas, an event that led to widespread destruction and death of indigenous peoples of the Americas. In response to these planned celebrations, indigenous groups worldwide planned a counter "500 Years of Resistance" movement, that proclaimed 1992 as the "Year of the Indigenous Peoples" and different groups called for the UN to declare the right of self-determination of all indigenous peoples by 1992 (Ramirez, 1992). In Chile, the Mapuche staged a series of protests throughout the year in participation of this movement and in defiance of the Chilean state.

The Facts & Domestic Proceedings

The protests in the Araucanía region of Chile were led by the Council of All Lands, an organization that was founded in 1989 by Aucán Huilcamán Paillama and other Mapuche leaders. The organization denounces the seizure of ancestral Mapuche lands by settlers and demands for Mapuche sovereignty. Huilcamán Paillama served as a spokesperson, engaging with authorities on a national and international level in the interest of Mapuche communities (Aucán Huilcamán Paillama, *Defensores y Defensoras*, n.d.). Between June 16 and 20 of that year, 140 members of the Council of All Lands reportedly seized eleven properties neighboring their communities near the city of Temuco, protesting the appropriation and exploitation of their lands. The occupations included demonstrations for a short period and mounting signs with slogans that demanded the return of their land. The point of the demonstrations was to call public attention to the Mapuche cause and draw the attention of the Senate, where Chile's Indigenous Law bill was being drafted.

Following this, on June 23, 79 members of the Council of All Lands were arrested for land occupation. Due to the organization's usurpation of land, the Chilean state ruled that the Council of All Lands was a criminal association (Inter-American Commission on Human Rights, 2002). Huilcamán Paillama, as the spokesperson for the group, asserted that the government is responsible for the crime as the lands were unlawfully taken from the Mapuche (Aucán Huilcamán Paillama, *Defensores y Defensoras*, n.d.) and that the State had violated the ILO 169 Indigenous and Tribal Peoples Convention of 1989. This undue persecution of Mapuche leaders and activists continued through the 1990s. On June 23, 1992, Aucán Huilcamán Paillama was charged as the perpetrator of the unlawful organization, the Council of All Lands, usurpation of land, and the theft of two cattle by the Visiting Minister Antonio Castro Gutiérrez (Inter-

American Commission on Human Rights, 2002). By March 13 of 1993, 141 Mapuche community members were convicted of illicit association and occupation of land. Each Mapuche member convicted were sentenced to penalties ranging from three-year prison-terms to heavy fines (Inter-American Commission on Human Rights, 2023). These sentences were affirmed by the Temuco Court of Appeals on September 6, 1994. The appeal for reconsideration filed by the attorney for the alleged victims was also rejected on September 6, 1996 (Inter-American Commission on Human Rights, 2002). Out of domestic remedies or options, the group and their attorneys turned to the Inter-American Commission on Human Rights.

Proceedings Before the Commission

September 18, 1996	Petition sent to the Inter-American Commission on Human Rights
June 5, 1998	State submits it response to the Commission
March 1, 2001	At a hearing, an agreement to advance the friendly settlement procedure forward was signed
May 31, 2001	State submitted a proposal for a friendly settlement
October 26, 2001	Petitioners concluded that the State's proposal was insufficient and unacceptable. As a friendly settlement could not be reached, the case continued to be processed
February 27, 2002	Commission issued an Admissibility report
March 27, 2019	State of Chile notified of the Commissions Merit Report and given 2 months to comply
February 26, 2022	After receiving 14 extensions on their compliance, the State requested an additional extension
February 27, 2022	As it has not been possible for the victims to obtain justice through this system, the Commission referred the case to the Court

The petition first reached the IACHR on September 18, 1996. The petitioners alleged serious irregularities in the processing of their cases that constituted "serious violations of the

rules of due process". In one such instance, two Mapuche members (Juan Humberto Traipe Llancapan and Juan Carlos García Catrimán) were convicted on the crime of usurpation, even though neither was initially charged with the crime and that they appeared acquitted from their initial charge. Similarly, another member (Nelson R. Catripan Aucapan) was charged with the crime of usurpation but did not have his name listed in the convictions, leaving him in judicial limbo. In another instance, a Mapuche member (Ceferino O. Jhuenchiñur Nahuelpi) was charged with stealing two cattle, but his conviction makes no reference to that charge. The petitioner argues that this "procedural situation with respect to this crime is completely undefined, with serious consequences for his personal life, since his personal record includes a notation for the theft of animals or cattle rustling, without any judicial body having made a decision on his situation" (Inter-American Commission on Human Rights, 2002).

From this submission, the IACHR requested more information from the petitioners. The State first responded to the alleged violations two years after that, and the State and petitioners then engaged in a series of hearings in which an agreement to start the process for a friendly settlement was reached. However, after examining the States proposed friendly settlement, the petitioners ruled it as an insufficient addressing of the violations of their rights. After rejecting the friendly settlement method, the case was then ruled as admissible by the IACHR in February of 2002. The IACHR admitted the case under Articles 7 (right to personal liberty), 8 (right to a fair trial), 10 (right to compensation), 16 (right to freedom of association), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention. The IACHR then initiated a formal investigation that included hearings and information collections.

On March 27, 2019, 23 years after the first petition was submitted, the IACHR released a Merits Report (Inter-American Commission on Human Rights, 2002). Not much information can

be found publicly as to why the IACHR took so long to process the case, although it is likely in part related to a lack of cooperation from the Chilean state. In this Merits Report, the IACHR noted that the initial court rulings in Chile were made by a "visiting magistrate" and the use of this rule was not justified, despite this being a measure typically reserved for cases causing public alarm. The appointed magistrate was also an individual who had been previously criticized by Mapuche leaders for his stances. In relation to the convictions, the IACHR found that the crimes of usurpation and illegal association had unclear definitions that failed to comply with international standards. The States use of usurpation made no reference to the intention of those charged with the crime, which facilitated the criminalization of the exercise of freedom of expression and association. In the State proceedings, acts such as making derogatory comments, the creation of a Mapuche flag (first used in 1992), receiving international funding, publishing a newspaper, or being opposed to celebrations to mark the 500-year anniversary of the conquest were all described as crimes by the courts.

Rights Referenced

Article 1	1(1): Obligation to Respect Rights
Article 2	Obligation to Give Domestic Legal Effect to Rights
Article 8	8(1): the right to be tried by an impartial authority 8(2): the right to adequate justification of court decisions • 8(2)b: the principle of the presumption of innocence & the right to the right to have adequate time and means to prepare a defense • 8(2)c: the right to prior, detailed notification of the charges
Article 9	Freedom from Ex Post Facto Laws (Principle of legality)
Article 13	13(1): the right to freedom of expression

	13(2): the right to freedom of association
Article 24	Right to Equal Protection

The proceedings of Chile's courts criminalized a legitimate exercise of freedom of expression and association and through this violated a series of other articles of the American Convention. The violations found by the IACHR connect to several articles of the Convention, all listed in the chart above, in relation to Article 1(2) and 2 thereof (IACHR Press Release, 2023). The rights invoked focused primarily on the irregularity of the Chilean court processing, and the violation of judicial rights entitled to the Mapuche members arrested for protesting.

In recognition of these violated rights, the IACHR issued a list of reparations the state then had two months to comply with. First, it recommended the State revoke the criminal court decision against the 140 victims and expunge their records. Second, for the State comprehensive reparations to the victims, both material and immaterial forms of redress including financial compensation. Third, to adjust the definitions of the crimes of usurpation and illegal association, as they are defined in Chilean criminal code, to comply with the standards laid out in the Merits Report. Their fourth reparative step was to take direct action to combat discriminatory application of criminal law against the Mapuche, including measures to train criminal justice officials and ensure that Chile's criminal justice system no longer criminalizes rights protected under the American Convention (IACHR Press Release, 2023). However, the State did not comply with any of the recommendations, and after granting a string of extensions the IACHR decided that, as the victims had yet to receive redress, there was a need to forward the case to the Court (Inter-American Commission on Human Rights, 2002).

Proceedings Before the Court

The Court received the case from the IACHR on February 27, 2022. On August 29, 2023, the President of the Court (Ricardo C. Pérez Manrique) issued a resolution that considered the facts presented and determined that the case would be heard in a public hearing. The public hearing was set for October 10, 2023, at 9:00am during the 162nd Regular Period of Sessions in Bogotá, Republic of Colombia. The IACHR submitted an expert opinion and requested for its consideration in the public hearing. The plaintiffs presented the testimonies of two witnesses along with an expert opinion and the Chilean State presented the testimony of a witness and an expert opinion, for consideration of the Court to be heard in during a public hearing.

The two witnesses and the expert opinion submitted by the plaintiffs were deemed admissible by the court. The first witness submitted by the plaintiffs, Elisa del Carmen Loncon Antileo was established as testifying on the Mapuche's connection to their ancestral territory; the reported discrimination against indigenous communities, especially the Mapuche, by the State; the establishment of the Council of All Lands and its territorial demands; reported persecution of council members and resulting consequences; and the potential implications of not acknowledging the All Lands Council as an indigenous entity. The second witness, Manuel Alejandro Jacques Parraguez, was set to testify on the Mapuche's connection to their ancestral territory as well, along with the establishment of the Council of All Lands, its assertion of territorial claims, the reported persecution of members of the organization and with the resulting implications of these facts.

The expert opinion provided by the plaintiffs is Gonzalo Aguilar Cavallo, PhD in Law and PhD in Human Rights, who testified on the utilization of criminal law to persecute territorial claims of indigenous peoples and the activities of advocates for indigenous rights; the alignment

of the domestic legal system with the international commitments of the State concerning the rights of indigenous peoples, in particular their rights to land, territories and natural resources; and the domestic legal mechanisms and processes intended to address indigenous peoples' claims and requests regarding territorial rights and their traditional modes of organization and their conformity to international obligations.

Elisa Loncon, told EFE, an international Spanish news agency, that they "were unjustly accused of association, unlawful association and usurpation of land, and the cases in the process have a series of flaws that do not respond to and do not respect rights already recognized for indigenous peoples at the collective and individual level". She hopes that the public hearing and the Courts subsequent ruling will uphold the IACHR's recommendations and rule against the Chilean state. Loncon expects that the Court's decision will come before October of 2024 (EFE, 2023).

Decision & Impact

The hearing does not appear to have been made public on the IACHR website or archives. In the meantime, the Mapuche members involved must continue to await a Court ruling and suffer the effects of legal limbo and irregular convictions, for crimes that at this point occurred as long as 32 years before. The report, which will most likely be released in 2024, will likely agree on at least some of the rights invoked by the IACHR, and issue a set of their own recommendations. In the second case study, the additional weight of the Court ruling led Chile to complying with many of the recommendations, including wiping conviction histories of individuals, so it is possible the same will happen in this ruling. That remains to be seen though, and the prolonged length of the case highlights an issue with the efficiency within the IACHR.

Chapter VIII: Analysis

Alain Touraine (1988) emphasizes historicity in his definition of social movements, that a central aim of social action is to alter cultural norms, values, and narratives. In addition to substantive immediate demands of Mapuche indigenous groups in Chilean society, there is a goal of greater structural change to societal systems. Each of the three case studies examined address a large-scale issue of discrimination against the Mapuche people perpetuated by the state of Chile, and the cases in questions exemplify areas where these societal issues manifest in the everyday lives of Mapuche communities. The Chilean legal system is riddled with instances of undemocratic practices that perpetuate cycles of human rights violations and criminalizes collective action (Doran, 2017).

In the first case, of the Mapuche Huilliche Pepiukelen Community, the primary issues at stake are the exploitation of indigenous lands, the ineffectiveness of the Indigenous Law in dealing with these instances, and the negligent attitude of domestic courts in protecting indigenous lands. The historicity of the Chilean government in the context of the Mapuche, is one of violence and land grabbing. While the Indigenous Law was an important first step in addressing normative issues in Chile, the ineffectiveness of the bodies it created highlight a continued disregard of Mapuche demands. Engaging with the IACHR in this way, can challenge governmental norms in Chile from another angle, one that operates outside the authority of the State.

The second case, Norín Catrimán et al. involves the issue of discriminatory laws that allow the government to target Mapuche activism and silence future dissenters. Chile's Anti-Terrorism Law combined with heightened policing in Mapuche communities have been the primary factors contributing to the continued court persecution of Mapuche activists in Chile.

Since the states transition into a democracy, the law had undergone multiple revisions, in 1990, 1991, 1993, as penal codes changed in wake of the dictatorship. One of the more notable revisions of this law in the context of the Mapuche peoples, is the 2002 revision, which directly led to the proceedings of the second case study, Norín Catrimán et al. This revision added the crimes of arson and illicit association into the law, two crimes that are most frequently related to Mapuche activism. From 1990 to 1997, what is considered the cooperative period between the Mapuche people and the Chilean government, there were no instances of arson reported in connection with Mapuche advocacy. However, from 1997 to 2001, Mapuche activists were responsible for eighty-five instances of arson, with the highest surgency of them in 2001, right before the modification of the Anti-Terrorism Law on May 31, 2002. This modification of the law also coincided with the increased use of the Anti-Terrorism law to prosecute Mapuche leaders as opposed to the State Security Law that had been used in the past to respond to Mapuche activism.

The law was once more revised in 2005, in the midst of the IACHR proceedings regarding the multiple petitions of Mapuche activists against the state of Chile. This revision removed the requirement for the prosecutor to seek the judge's declaration of conduct as terrorist before initiating actions related to terrorism trials, which allows for the prosecution to detain individuals on the charge of terrorism without needing the judge's agreement (Buchanan, 2022). In order to address the biased addition of the law, Mapuche members turned to institutions outside of Chile, as institutions within the state proved unable to address the larger legal issues at play repressing Mapuche advocacy. The Court's ruling affirmed the discriminatory nature of the Anti-Terrorism Act and the failure of Chile to meet its international obligations. The third case, Huilcamán Paillama et al. encompasses longstanding issues of criminal persecution of Mapuche

activists, and the negligent prosecuting done by domestic courts in response to Mapuche protests, an issue that ties in heavily with the use of the Anti-Terrorism Law referenced in the second case as well.

The point of bringing any case the to the IACHR is to create national change when individuals' rights are being violated and domestic remedies fail to address these violations, or the state is in fact perpetuating these violations themselves. When thinking about Michel de Certeau's perspective on the agency of the "marginal majority" within structures of domination, the Mapuche people's engagement with the Inter-American human rights system demonstrates a tactical response to their marginalized position within Chilean society (Escobar, 1992). The use of this system aims to address the broader issue of the criminalization of indigenous advocacy in Chile. By bringing their cases to an international platform, they are publicly shaming Chile's discriminatory application of the law to silence Mapuche advocacy. In this sense, the IACHR and the Court serve as significant agents for addressing normative change and in tandem with protests and domestic social action, engagement with these bodies can aid rights recognition and creating a culture of enforcement of these rights. This *subjectivist approach to power* is shaped by the power relations in Chile, with the State having a dominating position of power over the Mapuche (van der Haar et al., 2019).

Rights Referenced

The theme of discourse analysis that "all discourse is occasioned" (Gill, 2000, 175) is evident in the arguments presented and rights invoked in their petitions. While Chile signed the American Convention in 1969, the year it was written, the state did not ratify the treaty until 1990. When they ratified the Convention, it was with the reservations that when the IACHR and Court rule on Article 21(2) of the Convention, they are prohibited from commenting on any

public utility or social interest considerations that may have influenced the decision to deprive an individual of their property (Organization of American States, n.d.).

In all three of these cases, Article 8 (right to a fair trial) and Article 24 (right to equal protection) American Convention, in relation to Articles 1(1) and 2 thereof are mentioned in the cases presented by the plaintiffs. The invocation of these two rights is reflective of the bias courts have against Mapuche people, as court cases are often decided based on stereotypes and without proper investigation. In the first petition the community clearly filed a land claim with CONADI that was ignored, and then a court ruled their claims inadmissible as the land they were on was not recognized. Chile's attempt to have the case dismissed from the IACHR argued that the group first needed to take the step to receive recognition, ignoring that the community had already submitted this exact request. In the second, the application of the Anti-Terrorism Law in instances of small fires or the threat of fires highlights the discriminatory nature of the law and its targeted use to criminalize Mapuche activism and silence future dissent by barring activists from holding office or public speaking on these issues. In the third case, the court system was unfairly biased and clearly disorganized, as evidenced by the confusing collection of charges and indictments of the 141 Mapuche members. This use of the Inter-American system, and their focus on Article 8 (right to a fair trial) and 24 (right to equal protection) is, I believe, influenced by Chile's reservation in relation to Article 21(2) (right to property) when ratifying the American Convention. Knowing that the IACHR and the Court cannot comment on governmental justification for land seizure and the denial of land return, the plaintiffs in these cases focused on the judicial issues at play in their case.

When considering discourse analysis, it's clear that the way arguments are formed and presented in the Inter-American human rights system is influenced by the context of the Chilean

state, particularly its ineffective handling of indigenous issues in the courts. These case studies, at their crux, are about Mapuche demands for land rights. The first case is the only one to explicitly cite land degradation as an issue within the IACHR, however, even this mention is tangential and not a right cited in the case. The polluting activities of Los Fiordos caused the Pepiukelen community's land to deteriorate, and the state refused to recognize this violation of their environment, nor did it acknowledge their land officially as ancestral territory. The basis of the second case stems from protests about ancestral Mapuche land that had been expropriated and exploited by the government and companies in the pursuit of neoliberal economic policies. The case in the IACHR and the Court only dealt with court persecution and misuse of the Anti-Terrorism law and did not directly deal with the land rights protests that the eight were originally arrested and convicted for. The third case also stems from protests and the occupation of ancestral Mapuche territories, but the case and arguments presented focus on the of the Chilean court system's mass prosecution of Mapuche activists.

The Chilean government does not have an international obligation to respect land rights to the same degree that other nations that have ratified the American Convention do. As such, it is more effective for activists to focus on other rights and issues, such as the right to a fair trial and the right to equal protection, as the state has a stronger international obligation to respect these rights.

Impact

The immediate impact of the cases within the Inter-American system is difficult to gauge given the length all three have taken. Of the three cases all filed before 2010, only one has been officially closed and had a compliance report indicating that the Chilean state implemented domestic changes in response to the Inter-American Court's rulings. Even in this instance the

recommendations implemented domestically primarily took the form of reparative measures, such as monetary compensation to the plaintiffs and expunging criminal charges from their records. Notably, there were no substantial amendments made to Chile's legal framework, despite the Court's findings that the Anti-Terrorism Law's vague definition of terrorism and its application violated fundamental principles of the American Convention, including the presumption of innocence and equal treatment.

While the Inter-American human rights system can recognize and publicly shame the systemic legal and political issues in place in Chile, the state itself it responsible for the implementation of the Inter-American systems' recommended action steps. One of the primary enforcement mechanisms of the Inter-American human rights system is its public release of cases, their rulings, and the subsequent compliance reports. Lawyers that operate within this regional system emphasize that leveraging public shame through powerful testimonies and narratives can effectively highlight broader human rights violations, thereby compelling compliance from states. In this context, mobilizing public outrage and attention becomes a critical tool for ensuring accountability and promoting adherence to the principles outlined in the system's rulings (Grossman, 2007).

The prolonged duration of cases within the Inter-American system can detrimentally impact the proceedings of cases and disillusion plaintiffs about the possibility of receiving justice. The first petition has taken 17 years so far and has yet to have a resolution. From the start of the process, the plaintiffs had voiced their concerns about the length of the proceedings, as every day longer it took was another day where their lands were being polluted and taken advantage of. In the length of time, it took for the Chilean state to even have their first response, Los Fiordos had already built the infrastructure the plaintiffs were concerned about, and their

waste tank had already caused damage to Pepiukelen lands. As of 2021, these issues were continued to persist and heavily affect life in the community.

The second case took 13 years to be resolved, and in this meantime before the Chilean state overturned convictions of those charged, the plaintiffs were still barred from speaking publicly and had criminal records hindering their mobility in society. The third case, by far the longest, is on its 28th year in the Inter-American system. This is almost three decades where the plaintiffs continued to have criminal charges or exist in legal limbo due to the irregularity of the prosecution of the Chilean courts. This duration can impose significant burdens on the plaintiff's seeking justice. Not only does this protracted process increase the financial burden due to the expenses associated with maintaining legal representation and attending hearings, but it also compromises the accuracy of testimonies and evidence as time elapses. Witnesses may struggle to recall details with clarity, potentially weakening the strength of their testimonies. Moreover, the extended proceedings risk diminishing public attention and media coverage, crucial for shedding light on human rights abuses and mobilizing support for the plaintiffs' cause.

The IACHR and the Court often rule in favor of petitioning parties, that the State has violated their rights and a such must adjust their policies and address reparations for victims. But the IACHR is funded by these countries, and the system is overworked and underfunded. The bodies face serious funding issues which, combined with the increasing number of petitions they receive, has lengthened waiting periods. The system must rely on voluntary contributions to supplement their small budget, and most of these donations come from states defending cases before the Inter-American system, which can potentially influence case rulings (Antkowiak, 2007). Every state that has signed the American Convention and accepted the jurisdiction of the Inter-American Court, should in theory be willing to protect the rights enshrined in international

documents that they willingly ratified, but this is not always the case. At the end of IACHR and Court proceedings, it is the duty of the state to comply and implement changes to better protect these rights, and when they refuse to do so, the system's authority as a legitimate institution is weakened.

Symbolic Impact

The state of Chile's treatment of indigenous rights, particularly concerning the Mapuche people, reflects a significant lack of respect and recognition for indigenous rights. These three case studies highlight how Mapuche rights and demands continued to be ignored by the Chilean state. Following the Ralco dam and the breakdown of trust between the State and Mapuche people, there has been a more prominent divide in Mapuche advocacy. In one group are those who advocate for dialogue with the state and institutional reforms and in the other, those who advocate for more assertive and violent political action to defend their territory and do not want to negotiate with the state, no matter who is in power (Aylwin & Policzer, 2020). Those in the second group advocate for Mapuche sovereignty and assert that the model of government must change as in its current form, operating under the 1980 Constitution, it will only ever adopt paternalistic policies regarding the Mapuche and will not enforce or expand the rights given to indigenous communities.

Aucán Huilcamán Paillama, a prominent advocate for Mapuche rights outside of his specific court case in the Inter-American system, highlights the disparity between Chilean policies and the evolving standard of international law. In the more recent Constitutional Process, following the 2019 *estallido social*, he criticized the system as a colonial process attempting to placate and silence the Mapuche. In a writing released to the public he has said that "the Chilean political parties have remained in the political and legal doctrine of the past, typical of the 1990s, when

international law had not taken such a leap forward as today, where today the bar is very high that, even the proposal constitutional rejected in September 2022, was insufficient, for the rights now acquired internationally" (Huilcamán Paillama, 2023). Huilcamán has pointed to examples in Ecuador and Bolivia were there their constitutions recognized a pluri-national state, yet indigenous people continued to have their lands exploited. The Arauco Malleco Coordinating Committee (CAM) maintained that the best way to achieve autonomy was through defending their territory and receiving autonomy from the state (Aylwin & Policzer, 2020).

Huilcamán sees engagement with international law as more legitimate than relying on the Chilean state, pointing out that the Mapuche people's petitions are often ignored domestically. His case in the Inter-American Court is a prime example of this frustration he feels. The case, relating to incidences in the early 1990s is still in the court system because the state of Chile refused to comply with the IACHR's proceedings and subsequent recommendations. In bringing the fight for Mapuche rights to the international level, Huilcamán seeks to establish a norm of Mapuche sovereignty. His preference for international institutions over the Chilean court system suggests a belief that indigenous rights hold greater weight internationally than within Chile's domestic framework.

Since the 1990s, indigenous advocacy within UN system has transformed norms and led to widespread agreement that indigenous groups meet the legal criteria to be considered 'peoples' entitled to the right of self-determination (Tullberg, 2000). Huilcamán's use of the Inter-American system then, can be interpreted as not just a last resort option but as a more legitimate court to hear Mapuche cases than the Chilean court system. This can serve as a powerful symbol of defiance against the Chilean state and reiteration of the idea that the Chilean state cannot be worked with directly, which lends itself to in establishing a norm of Mapuche sovereignty. While

one strand of Mapuche activism wants to work within the state structure, the need to use a regional system to address violations and the state's lack of cooperation, underscore Chile's disinterest in safeguarding indigenous liberties. If the state fails to take decisive action to ensure and actively safeguard these rights, there is likely to be a rise in activists aligning with the notion that the state is not a legitimate body of authority and advocating as well for Mapuche sovereignty.

The IACHR and the Court are recognized, socially legitimate institutions, and as such can officially recognize claims (Sikor and Lund 2010). The Chilean state's involvement as a party in the ongoing of the three cases is a legitimization of the institution's authority. The attempts Chile made to have the cases dismissed and effort put forth in arguments, demonstrates that the institution and its ruling do matter to the State. Engaging with international and regional human rights mechanisms can provide a powerful rhetorical symbol, help further legitimize the cause of indigenous peoples in Latin America, and put a spotlight on the violations of these rights by Chilean state that pressures the state to address these discriminatory policies. As one of the first states to ratify the 1948 Universal Declaration of Human Rights, and one that proposed a draft of the document that greatly influenced the ideas for social, economic, and cultural rights in the final document, Chile has a strong history of human rights. This respect for human rights was reinforced with the state's use of a truth commission in 1990 to address human rights abuses in the state, and the start of prosecuting Augusto Pinochet strengthened the human rights movement in Chile (Valdivia Ortiz de Zarate 2003). These efforts emphasize the facts that Chile wants to maintain a positive global reputation, and the potential public scrutiny resulting from Inter-American cases is something the state seeks to avoid.

Normatively, it is important to continue to engage with the Inter-American human rights system. Change is needed at a national level, and for that to happen there must be continued action taken to raise awareness and protest issues within the state. For the Mapuche people, this system provides a strategic tool, a way to bring their cause to a more regional and international level and have another force strengthening their claims and putting pressure on the state to take action. Much of Mapuche activism in Chile is oppressed using discriminatory applications of the law and court ordered silencing of members of the Mapuche community. By bringing these issues to the IACHR and the Court, Mapuche activists are able to shine a light on these issues and ease the ability of protests to be carried out in Chile.

Chapter IX: Conclusion

The Inter-American human rights system has complementary jurisdiction, and in a similar fashion, can serve as a complementary tool of advocacy for the Mapuche. Mapuche activists, from the summarization of these case studies, engage with the Inter-American human rights system as an actor of normative change. The normative change they see this body as encompassing depends on the end goal of Mapuche advocacy the plaintiffs have. In the first and second court case, this usage seems aimed at working within the Chilean state, and having systemic issues addressed to facilitate future protest and negotiation with the state. The third cases study, while aiming to achieve the aforementioned goals, also engages regional systems in defiance of the Chilean state and as an assertion of their desire to attain autonomy. This serves as a message to Chile that the activists of the Council of All Lands do not see the state as a legitimate body of authority over them.

In the immediate, the system seems partially effective, as the state has shown a willingness to engage in arguments about indigenous rights through these bodies that then have an impact at the national level, such as the overturning of unfair trials in the second case study. However, this effectiveness is hindered by systemic issues of funding and duration at the regional level, and an unwillingness to comply at a national level. The first and third case studies are indicative of these challenges and whether the state will comply with end rulings remains to be seen. In the broader scope, these bodies are important norm shapers, but as an immediate response mechanism to instances of human rights violations, its ability to effectively rule on decisions and have them enforced is notably limited.

The struggle for indigenous rights, particularly for the Mapuche people, is deeply rooted in a complex history of colonialism and exploitation that persists in contemporary legal

frameworks. Engaging with the Inter-American system of human rights and international human rights law provides a crucial avenue for advancing a broader and more comprehensive set of rights pertaining to indigeneity. Regional courts, embedded within specific social contexts and identities, serve as platforms for the reinforcement of shared human rights norms, gradually shifting state perceptions and behaviors. These mechanisms offer a platform to challenge discriminatory laws in Chile that disproportionately affect the Mapuche community. It's vital to contextualize these legal battles within the broader history of Mapuche advocacy against the Chilean state, highlighting the longstanding and ongoing resistance against systemic oppression.

A Note of Coloniality & Human Rights

The *Literature Review* began with an overview of coloniality, that world systems and ideas of being are entrenched in a history of colonialism and exploitation. This is the basis for indigenous groups needing to make legal and rights claims in the first place. Decolonial theory offers critical insights into international human rights law, particularly by exposing the coloniality inherent within its structures. However, a notable limitation highlighted by scholars such as Mignolo is the framing of the independent nation state as an anti-colonial figure, when in cases such as Chile and the Mapuche, the 'Pacification of the Araucanía' happened after independence. To the Mapuche of the Araucanía, the colonizers in question are not the long-gone Spain but the current Chilean state, that took their land and continues to dictate their usage of it through land tenure systems. In the context of Chile, engagement with external systems can serve as a potent decolonial act for Mapuche activists.

Despite human rights often being perceived in decolonial discourse and indigenous advocacy as a vestige of Western colonialism, they can paradoxically serve as potent tools for individuals striving to decolonize their lands and assert their linguistic claims. While some

initially dismissed human rights discourse as a Western imposition, it has provided crucial legitimacy to social movements like that of the Mapuche, movements that the Chilean state has historically sought to discredit and suppress through framing protests as criminal acts and utilizing anti-terrorism laws to silence dissent. The rights and ideas in regional and international human rights have been shaped and redefined by indigenous advocacy, and from this perspective can be seen as a decolonial project. Therefore, by engaging with regional and universal human rights rhetoric, these activists have gained greater legitimacy for their cause, countering state attempts to undermine their efforts.

Limitations

In reflecting on the limitations of my thesis, several key factors come to mind. Firstly, as Spanish is not my native language, there's a potential for misinterpretation of documents that were primarily in Spanish. While I used a translation tool when necessary, nuances of the language may have escaped my understanding, which could have affected the accuracy of my analysis. Secondly, while I aimed to provide a comprehensive overview, in each case study I focus primarily on one document released from the Inter-American system, supplemented by additional briefs, press releases and statements I could find in relation to the case. This selective approach, applied due to the limited time period I had in contextualizing these case studies and the lack of public accessibility of some of the documents related to these cases, could have led to the omission of certain aspects of the case, such as the wording of plaintiff's arguments in documents submitted to the court that are not available on public databases.

Lastly, it is crucial to acknowledge that I do not identify as indigenous myself, nor am I from Chile. Consequently, I do not presume to know the subjective experiences of Mapuche

indigeneity that inform actors within this context. It is important to recognize the inherent biases in my perspectives and interpretations as a western academic, writing from the United States.

Next steps

Moving forward there are several steps that can be taken to expand and improve upon this study. First, expanding the breadth of case studies beyond the ones examined in this thesis will provide a more comprehensive picture of the challenges and successes faced by Mapuche individuals in their pursuit of justice. By adding more cases in relation to Mapuche advocacy, more thoroughly overviewing a wider context of Mapuche social movements to better understand the societal dynamics shaping indigenous rights advocacy in Chile and the nuances of the tension among advocacy tactics used in Mapuche social movements.

An important future step will be the conclusion of the first and third case study. The timeline of the posting of a public merit or final ruling from the IACHR and remedies applied in the Pepiukelen community would allow better transparency in relation to the IACHR's proceedings and the states response. For Huilcamán Paillama et al. vs. Chile, the release of the Courts final the merits report and the series of recommendations made in this ruling. The analysis of this document, and whether Chile complies with the following recommendations will be important in thinking about the effectiveness of the Inter-American human rights system and the affect they have on national policy. These decision will provide valuable insights into the effectiveness of international legal mechanisms in addressing the specific challenges faced by the Mapuche community in Chile.

Furthermore, incorporating interviews and firsthand opinions of Mapuche leaders and activists is a crucial step in ensuring that the findings and analysis directly consider the intentions

and lived experiences of those directly impacted by the issues at hand. This allows for conclusions that are informed by the realities on the ground and avoid relying solely on external extrapolations. This participatory approach enhances the credibility of findings and fosters a more inclusive and collaborative research process.

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