Land Governance in an Interconnected World
Annual World Bank Conference on Land and Poverty
Washington DC, March 19-23, 2018

Indigenous Property Titles: The Mapuche Community in Chile and the Protection of Property Records

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Paper prepared for presentation at the

"2018 WORLD BANK CONFERENCE ON LAND AND POVERTY"

The World Bank - Washington DC, March 19-23, 2018

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Abstract

With the return to democracy in Chile, Law 19.253 was enacted in 1993 focusing on the protection, promotion and development of indigenous peoples. That legislation also created the National Foundation for Indigenous Development. Later, in 2009, ILO Convention 169 entered into force.

In this context, two important registration protection measures are worthy of note: the creation of a Public Registry of Indigenous Lands and the Fund for Indigenous Lands and Waters. The former seeks to preserve original properties *per se* and, toward that end, establishes a land registry that also serves to prove the property's indigenous status.

Thanks to these initiatives, the process of claiming and preserving property in the hands of the indigenous peoples in Chile has begun. This should lead to greater economic development through farming, animal husbandry, fishing, and even tourism, all of which should help stem the tide of rural-urban migration and serve to reactivate downtrodden rural areas.

Key Words:
Indigenous lands, development, Mapuche community.

Introduction

The written history of indigenous property in Chile it is relatively recent, insofar as it dates back just over 500 years. However, the use and ownership of ancestral lands dates back much further to an era in which such records were kept orally; a type of record which has seen its efficacy wane over the course of time.

This dichotomy raises substantive issues, particularly if land ownership is construed from the contemporary perspective and the logic that inspires generally-applicable Western systems of acquisition, transfer and transmission of real property.

Traditionally, one of the key issues has been the usurpation of lands, either using force or by deceiving occupants into relinquishing their property. More recently, however, the range and frequency of issues have intensified as a result of a public policy that seeks to address the claims of indigenous peoples regarding their territory and natural resources. An emblematic case is that of the Mapuche people who survived the Spanish colonization and who today continue to demand the recognition of their rights and self-determination.

This paper seeks to review the historical journey that has led the Mapuche to formulate their current demands, propose means of protecting their property, pending issues in the courts of law and the role played in this context by the Land Registries (*Conservadores de Bienes Raíces*). The presentation will further seek to underscore the tensions that arise in the effort to protect aboriginal rights to ownership through existing mechanisms in Chilean civil law (passed in the 19th century and infused with a neo-liberal logic in the 20th and 21st centuries).

Mapuche Lands: Historic Claims

During the pre-Columbian era, the Mapuche territory in Chile stretched south from the nation's center to the large island of Chiloé. There, the Mapuche people engaged primarily in hunting, fishing, gathering and agriculture. Their relationship with the land was not one of domination (Calbucura, 2009, p. 110), but of community use that allowed the Mapuche to develop as a society (Aylwin, 2002). Mapuche law -*admapu*- granted each family ample land to farm, on the condition that it be protected and preserved and thus passed on to future generations (González, Meza-Lopehandía, Sánchez, 2007, p. 9).

This aspect is particularly salient, as it demonstrates that, originally, the purpose of owning and working the land was to ensure the survival of the community and of the Mapuche people themselves. This understanding and appreciation of the land –not as a source of wealth to trade or exchange, but to their very survival (Aguilar, 2005; Martínez, 2012, pp. 28-30)– is very different from that held in mainstream Chilean society today (González, Meza-Lopehandía, Sánchez, 2007, p. 4).

Yet, this relationship with the land that is so intrinsic to Mapuche life and tradition, began to change with the colonization process (Aguilar, 2005). Ignoring their ancestral relationship with the land, during the colonial era the Spaniards actively relocated and displaced the Mapuche, seeking to appropriate for themselves the lands best-suited for agriculture and relegating the Mapuche to the role of cattle ranchers and traders (Aylwin, 2002; Martínez, 2012, p. 4).

This practice marked the first watershed for the Mapuche, as the loss of their lands led necessarily to changes their daily-to-day activities, their economy, religion and, culture. As a result, they were obligated to engage in activities that did not form part of their tradition and from which they did not obtain benefits for the development of their communities (Aylwin, 2002; Toledo, 2006, p. 63; Cantero, Williamson, 2009, p. 31; Calbucura, 2009, p. 117).

Although by the end of the 16th century the Spanish conquerors were expelled, and the Mapuche people regained their autonomy, the incoming Republican era largely perpetuated the status quo. The beginning of this process dates back to the period between 1813 and 1825, in which several legislative instruments were used to "assimilate" the indigenous peoples into Chilean society. Those efforts failed, however, to recognize their identity as aboriginal peoples. As a result, the native people were deemed "equal" to the rest of the population and, in 1819, they were granted Chilean citizenship (Aylwin, 2002). This forced assimilation proved problematic at the time and has continued to pose issues ever since.

Despite efforts to rectify the treatment of the indigenous people by the Spaniards, including, in 1823, a resolution that land occupied by the natives would be recognized as their property, this apparent contractual equality and protection was used to defraud the Mapuche and acquire large plots of land at ridiculously low prices. And even though subsequent sales were conditioned to government authorization, the phenomenon continued to spread, until in 1866 the State itself declared the lands of the Araucanía region public property, ordering them to be demarcated and free title to them granted to the indigenous peoples (Aguilar, 2005)[1]. And yet, in sum, the re-settlement of the Mapuche people would force them to live on limited lands, reducing the total occupation from 10 million hectares to 500,000, with the consequent changes in their economy and culture[2] (Aylwin, 2002; Aylwin, 2009, pp. 6, 7, Le Bonniec, 2009, pp. 46-49; Almonacid, 2009, pp. 7, 8).

In an effort to regulate the irregular land titles, legislation was passed that, in practice, consolidated the usurpations that had already been recorded (Almonacid, 2009). The result was that many Mapuche were forced off their land and onto "reservations" or "reductions" (González, Meza-Lopehandía, Sánchez, 2007, pp. 4, 10; Gazmuri, 2013). And although a Land Registry for Indigenous Property was created, and sanctions were established for notaries who authorized sales of indigenous lands in breach of certain requirements, these protections failed to produce decisive effects.

An even more problematic period for the indigenous peoples of the center-south of Chile commenced in 1927 with the policy of dividing lands and *titulos de merced* into individual plots (Aylwin, 2002). This measure had a tremendous impact on the Mapuche, as they were forced to cease living in community and were obligated to assume a logic quite foreign to them: individualism. The process had a secondary impact on ancestral indigenous property: these newly-divided individual lands were also

[1] These are the so-called "títulos de merced" (literally translated, "mercy titles"), or deeds granted by the State free of charge to communities of indigenous peoples who were in in possession of their land –or had been removed from them– in an effort to regularize ownership of properties no larger than 500 hectares (originally, the "merced" titles were plots of no more than 300 hectares given to the Spanish hierarchy).

[2] The military occupation between 1860 and 1883 allowed this phenomenon and it was sadly called the "pacification of the Araucanía".

recorded in the mainstream Land Registry (Martínez, 2012, p. 32)– rather than the record of indigenous lands– and as such passed into the regular legal system and became subject to broader land ownership regulations.

While during the agrarian reform (1962-1973) the historical demands of the Mapuche led the State to return land to them, during the military government (1973-1990), communities were divided again (Toledo, 2006, pp. 38, 41; González, Meza-Lopehandía, Sánchez, 2007, p. 11)[3] into individual plots or *hijuelas* (Martínez, 2012, p. 10) which were often sold off to Chileans, again bringing their titles into the mainstream system. In other cases, the properties were auctioned off and granted to large forestry companies for absurdly low prices (Toledo, 2006, pp. 56, 57; Carrasco, 2012)[4] . Moreover, the firms set up operations without employing many locals, as not much manual labor is required (Toledo, 2006, pp. 29, 63-65). This reduction in lands, the indiscriminate use of the natural resources, and consequent unemployment has seriously impoverished the Mapuche people (Carrasco, 2012) causing, among other phenomena, their migration from their original rural habitat to urban areas (Cantero, Williamson, 2009, pp. 29, 30).

In sum, the division and usurpation of Mapuche land clearly reflect the Western approach of the 19th and subsequent centuries (Toledo, 2006, pp. 26, 27). That is, instead of holding value because of their sacred nature or their role in preserving a way of life, the lands of the Araucania now hold a monetary value for the purposes of trade. That monetary value caused the land to be considered –and treated– like any other good. The lands became an asset in and of themselves, particularly as they provide a fundamental raw material for the creation of new wealth through the exploitation of nature (Toledo, 2006, pp. 17, 18).

The net result of such changes is that the Mapuche were uprooted from their habitat original and stripped of their natural resources, all the while being forced to perform unfamiliar tasks on small plots of land on an individual basis. The traditional lifestyle of living in community was transformed, giving way to a multiplicity of nuclear families (Toledo, 2006, p. 71-75) that often end up migrating toward the large urban centers in search of work[5], leading to problems of poverty and discrimination (Aylwin, 2009, p. 7; Le Bonniec, 2009, p. 50; Toledo, 2006, p. 27; Cantero, Williamson, 2009, p. 34).

[3] There were not many cases of total land recovery, not even in cases where "titulos de merced" were present. On the contrary, most of the restitutions were not finalized since the processes were interrupted by the arrival of the military government.
[4] The forestry exploitation began in 1974 with the 701 Supreme Decree or "forestry promotion law". This decree didn't have the intention to preserve the natural resources, but to exploit them. This had led to intense clashes between forestry firms and Mapuche communities to this day.
[5] Already in 1992, the statistics indicate that 80% of the Mapuches lived in urban areas, while only 20% did it in rural places.

From Emigration from the Fields to the Recognition of Territoriality

The migration to the city would have no disadvantages if it were a natural or spontaneous phenomenon, based on a legitimate interest in learning about alternative forms of social engagement. However, it is problematic when such mobility is the product of the need to survive such phenomena as separation and segregation, as is the case here. As Cantero and Williamson (2009, pp. 35-38) verified, the upward social mobility[6] in Mapuche groups is lower than the Chilean people inside the Araucanía. The decisions made by the various governments of Chile minimized Mapuche culture, scorned it and ignored their needs and unique worldview. The division of lands and communities not only thwarted the normal development of rural life, but also encouraged the abandonment of the countryside and almost destroyed the people themselves (Toledo, 2006, pp. 17, 18), insofar as the Mapuche cannot conceive themselves in the absence of the territory in which their ancestors lived from immemorial time.

These events and conditions, including the impossibility for the Mapuche to work the land in the traditional way, the fact that they had been stripped of their natural resources and the consequent extreme poverty afflicting the Mapuche people, among other factors, led the State to engage in a review of its policies toward the nation's indigenous population. (Rubilar, Roldán, 2014, p. 255).

Thus, following the end of the military government and with the return to democracy, on October 5, 1993 Law 19.253 was enacted, focusing on the protection, promotion and development of indigenous peoples[7]. That legislation also created the National Foundation for Indigenous Development (CONADI) (Gazmuri, 2013)[8]. Years later, on September 15, 2009, ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries entered into force.

Law 19.253 is applicable not only to the Mapuche people, but also to all indigenous groups living in Chile. As such, it provides for a broad recognition of these peoples and is grounded on the premise of indigenous people's close ties to the land[9]. The law defines what is to be construed by "indigenous land," noting that such lands may be held by title or mere possession so long as they emanate from land grants made by the State in the form of *títulos de comisario, merced, concesiones gratuitas de dominio* and the

[6] This concept is used to describe the change to higher social classes. In the Mapuche case, social mobility is mostly horizontal or descending.
[7] Thanks to the *Acta de Imperial*, signed in 1989 between the former candidate for president Patricio Aylwin and several agents of native peoples.
[8] Before CONADI, it was created the Special Commission for Indigenous People (CEPI).
[9] "Article 1. - The State recognizes that the indigenous people of Chile are the descendants of human groups that have existed in the national territory since pre-Columbian times, which preserve their own ethnic and cultural manifestations, the land being for them the main foundation of their existence and culture."

like. Similarly, it establishes as a form of protection the requirement that the owners be indigenous individuals or communities and exempts them from paying land taxes (Article 12) (Aguilar, 2005).

Toward this end, articles 13, 16 and 17 of the law contain a series of measures that limit the free circulation of these properties, hinder contracts involving them and prevent their division to ensure the cultural and economic development of indigenous families and communities. Thus, for example, they may not be sold, seized, encumbered or acquired by means of the expiration of the statute of limitations, except by indigenous communities or peoples from the same ethnic group. Inheritance divisions [10] and the conclusion of contracts on them are restricted[11]. Acts in violation of these regulations are deemed absolutely null and void.

In this context, two important registration protection measures are worthy of note: the creation of a Public Registry of Indigenous Lands[12] -kept by CONADI- and the Fund for Indigenous Lands and Waters[13]. The former seeks to preserve original properties per se and, toward that end, establishes a land registry that also serves to prove the property's indigenous status. Thus, the office of the local Land Registry (*Conservador de Bienes Raíces*) is responsible for recording acts and contracts involving such property is required to forward a copy of the transaction entries recorded to CONADI within 30 days (Article 15). The latter seeks to foster the economic development of indigenous lands, providing subsidies and financing for the acquisition of new lands, resolving disputes and allowing for the creation, normalization or acquisition of water rights (article 20). Any title to land or water rights acquired through the fund may not be sold or transferred for a period of 25 years. A record of such a ban must be kept by the corresponding Land Registry (Article 22).

Despite this recognition of the demands of indigenous peoples in the law, the reality is, for a variety of reasons, rather different. First, evidence suggests that the Land and Water Fund lacks sufficient budget to cover the needs of communities and individual families[14] (Aylwin, 2009, p. 20, Calbucura, 2009, pp. 114, 115). In addition, many of the lands that originally belonged to indigenous people can no longer be recovered as third parties currently own them (Aylwin, 2009, p. 25). Worse yet, the inhabitants of these

[10] Those stemming from *merced* deeds may only be subdivided by the corresponding judicial authority, at the request of the absolute majority of the holders of hereditary rights. In the case of lands already divided, they will become indivisible even in the case of hereditary succession. (articles 16 and 17).
[11] Lands owned by Indigenous Communities may not be leased, granted in bailment, nor ceded to third parties for their use or administration. Should the title holder be an individual, they may be, but for a maximum of 5 years.
[12] And implementing legislation: Supreme Decree 150 issued by the Ministry of Planning and Cooperation, published in the Official Gazette on May 17, 1994 covers four regions: North, for Andean indigenous lands; Insular, for Rapa Nui (Easter Island) lands; Center-South, for Mapuche lands; South, for Kawésqar and Yámana or Yagán lands.
[13] And implementing legislation: Supreme Decree 395 issued by the Ministry of Planning and Cooperation, published in the Official Gazette on May 17, 1994.
[14] In addition, the progressive increase in the price of lands at the Araucanía makes more difficult the acquisition and delivery of properties.

lands have lost all access to the natural resources available on them. Lastly, and particularly worthy of note, CONADI's position as government agency means that it lacks legitimacy and effective decision-making powers from the indigenous peoples' perspective (González, Meza-Lopehandía, Sánchez, 2007, p. 12; Aylwin, 2009, p. 10; Gazmuri, 2013)[15].

In other words, although the law sought to address urgent needs when it was passed and was assuredly crafted with the best of intentions, the fact is that it was approved by Chile's Congress and reflects not only the established constitutional and economic order[16] (Gazmuri, 2013), but also a problem-solving approach grounded in a Western mindset of land ownership management (González, Meza-Lopehandía, Sánchez, 2007, pp. 22, 23; Gaete, 2012, pp. 78-84; Rubilar, Roldán, 2014, pp. 263, 264)[17]. The question is not just one of bringing indigenous land titles "into the fold" of the mainstream legal system nor providing funding for the acquisition of ancestral lands under the same framework. On the contrary. The missing link is that of "territoriality," construed as not only a right to land, but also to an identity, to respect and recognition and self-determination in terms of a people's collective life (Rubilar, Roldán, 2014, p. 257).

This concept was understood by the Mapuche people since the pre-Spanish era (González, Meza-Lopehandía, Sánchez, 2007, p. 8) and extends to the protection of access to natural resources a given region[18], which, in Chile, may be subject to broad private appropriation[19] (Toledo, 2006, pp. 48, 70, 133; Gazmuri, 2013; Rommens, 2017, p. 73); as well as the application of traditional social, legal or customary norms (Toledo, 2006, p. 120)[20].

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[15] Although some of its members are indigenous leaders.

[16] Chile is part of its international recognition, at least, in the following instruments and declarations: International Covenant on Economic, Social and cultural Rights; American Convention on Human Rights; International Covenant on Civil and Political Rights; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries; United Nations Declaration on the Rights of Indigenous Peoples. However, an urgent claim by the communities is the recognition of the indigenous peoples in the Constitution.

[17] Proof of this is that, unlike ILO Convention 169, the law speaks of "indigenous" or "indigenous ethnic groups" and not of "indigenous peoples". In fact, the Convention not only recognizes these peoples, but also seeks to provide an understanding that they are societies capable of self-determination and that respond to their own norms and customs. Article 1, paragraph 2 of the law is clear in this sense: "The State recognizes as the main indigenous ethnic groups of Chile: the Mapuche, Aymara, Rapa Nui or Easter Islanders, the Atacamenian, Quechua, Collas and Diaguita communities of the north, the Kawashkar or Alacalufe and Yámana or Yagán communities of the southern channels. The State values their existence as an essential part of the roots of the Chilean Nation, as well as their integrity and development, according to their customs and values." Not only was a mention of "indigenous peoples" discarded during the discussion of the bill, but such explicit recognition in the Constitution was rejected.

[18] As in Article 13 of ILO Convention 169: "1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term ***lands*** in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use".

[19] For example, important disputes are currently taking place due to the privatization of hydroelectric resources.

[20] Examples of material elements include territory and natural resources; and, as immaterial elements, self-determination, sovereignty, the right to exercise jurisdiction and to make their own political decisions. All those elements are already recommended in the 2015 report of the Civil Society and Indigenous Peoples to the United Nations Committee of Economic, Social and Cultural Rights.

For example, one activity that today serves to honor this concept is the tourism. The "ethnotourism" or "indigenous tourism", is "an ethnopreneurial strategy of resistance for reterritorialization and cultural reapropiation" (Rommens, 2017, p. 53) which includes the preservation of their cultural and religious practices. This could be also an alternative to improve the conditions of poverty of the Mapuche people, a measure for protect the environment and even a stop for deterritorialization process (Rommens, 2017, pp. 57, 61, 63).

The core problem in applying this concept in the context of the indigenous peoples of Chile is that it necessarily collides with existing civil and archival law in matters of land protection. Thus, given that the mainstream system of acquisition and transfer of property has already been applied to ancestral lands, it is this very same system which must now provide the safeguards and protections to which the original peoples are entitled (Carrasco, 2012).

Problematic Issued on the Road toward "Territoriality"

Despite the initiatives that have sought to improve the situation of the Mapuche people in Chile, some long-standing issues remain while others have been created in the wake of new regulations.

For example, Article 12 begs the question of whether the requirements set forth there to consider a land indigenous should be analyzed only at the time the law took force or whether subsequent transfers can cause that status to change[21]. Or, for example, whether such status can be incorporated by the parties to a contract, by voluntarily subjecting themselves to the restrictions and limitations set forth by law[22].

Further questions remain unanswered with regards to the moment at which a property is to be deemed indigenous. For example, could land that met those conditions prior to October 15, 1993 –or prior to their incorporation into the Indigenous Lands Registry– be construed as indigenous? This situation will need to be resolved in keeping with existing regulations on the retroactivity of laws. This same principle of non-retroactivity would apply to cases of contracts involving these lands that were entered into validly before the law took force but whose effects were slated for a date subsequent thereto, such as, agreements to enter into future contracts (Martínez, 2012, pp. 49-54, 64-68).

A variety of issues further emerge in the context of Chile's regulations on Land Registries, an institution grounded in statutes dating back to the 19th century.

[21] Supreme Court ruling of June 19, 2007, in which the Court found that the transfer of an indigenous property does not modify its status as such if the legal requirements for such designation remain intact.
[22] Situation accepted by the Supreme Court (judgment of January 15, 2008).

The Civil Code of 1855 called for the creation of regulations on a system of property records and, on June 24, 1857 with the enactment of the Regulations on the Land Registry, that mandate was brought to fruition (Topasio, 2017, pp. 11-19; Sepúlveda, 2014, pp. 166-170) [23]. And yet, both the Code and the Regulations were representative of an era far different from modern times. An opportunity for an upgrade arose in 1943 in the context of new regulations on Notaries and Land Registries enacted along with the Organic Court Code that year[24]. Chile's system is a matter of public order: the legislature has entrusted external officers of the court (Peñailillo, 2006, p. 253; Sepúlveda, 2014, pp. 184-186; Rojas, 2014, pp. 4, 5) with bringing coherence and unity to the system of acquisition, transfer and encumbrance of property, thus avoiding lengthy and costly litigation for users and inefficiencies in the system of *in rem* rights for creditors (Peñailillo, 2006, pp. 243, 244).

It is important to note that the role of the registrars responsible for land ownership and transfer record-keeping is eminently passive (Peñailillo, 2006, p. 268; Sepúlveda, 2014, pp. 209-216). Specifically, the regulations instruct the registrar what titles must be recorded (article 52) (Topasio, 2017, p. 14, 15), what titles may be recorded (article 53) and the grounds for rejecting a registration (article 13). The generic wording of the latter makes them exceptionally difficult to identify and to use (Sepúlveda, 2014, pp. 218-220). For example, a record-seeker may file a petition with a judge even if the record keeper does not perform the registration improperly (article 18)[25] (Villalobos, 2014, p. 128). As a result, as a general rule, requests for registration are refused solely on the basis of obvious errors in law or formalities on the document (Peñailillo, 2006, pp. 269, 270; Rojas, 2014, pp. 7, 8). The registrar, therefore, cannot analyze the substantive issues involved (Villalobos, 2014, p. 127).

In the case of indigenous lands, one of the thorniest aspects of the registration is the obligation to inform the Public Registry of Indigenous Lands of the acts and contracts involving them within 30 days (article 15). It should be noted that article 15 of the law only states that this registry "recognizes" the status of lands as indigenous. As such, there may be other, unrecorded, properties that nevertheless meet the requirements of article 12.

[23] In Chile, the system of acquisition of property needs a title and a form to delivery (*modo*) for make the transfer. In land property the title could be, for example, a sale or a donation; but the delivery can only be the *tradición*, trough the record in the Registry Land (article 686 of the Civil Code).

[24] However, the existing shortcomings were not corrected at the time. Despite the benefits of the existing system, Chile's approach to land registry does require an update that goes beyond the reinterpretations that have made it possible to adapt the country´s centuries-old regulations to current reality. The unofficial, unstructured incorporation of technologies has been called into questioned despite the fact that it has effectively sped up procedures, reduced the need for extensive travel and reduced costs overall.

[25] It is important to mention that registrar's rejection can be modified by the courts of justice. Also, the registrars are subject to the disciplinary control of the courts of appeals.

The problem lies essentially with these unrecorded cases, given that, even if the land registrar has reason to believe that the property may fall under the provisions applicable to indigenous lands (such signs may include, *inter alia*, the landholder's surname), he must record it in his registry since he is not authorized to analyze the material validity of the title[26].The result is that, since the land registrar is not authorized to classify the land as indigenous, he does not forward the information to CONADI for annotation in their registry and, in the end, despite the law, lands that meet the prerequisites for protection remain unprotected and subject to the provisions of the mainstream regulations.

As a result of situations such as these in which oversight by land registrars is limited and in those cases in which the indigenous status of the contracting party or buyer cannot be proven, CONADI has opted to instruct land registrars to request a certificate attesting to the indigenous nature of the land[27].

Although that attestation is one, but not the only, form of proof that can be proffered, in practice it provides protection to the Land Registrar in cases of complaints filed pursuant to article 18 of the implementing legislation given that, unless the report is presented, the refusal can only be based on an ostensible defect of the act, which clearly appears therein (Martínez, 2012, p.101). The subject is particularly sensitive, given that to facilitate the transfer of the property, an indigenous seller may endeavor to conceal his or her identity or act through a representative (Martínez, 2012, pp. 23, 24)[28]. And also, because, in these areas, the co-contractor may well be an individual or a business or forestry conglomerate.

As a result, the protection of Mapuche property in Chile, lies largely in the hands of the courts. The passive role of the Land Registry prevents it from acting at a stage prior to the registration of the acts and contracts and means that very often judicial proceedings are initiated to deal with the complaints filed against the Registrar if he/she refuses to record a transaction in the Land Registry.

In this sense, one effective means of expanding the scope of protections for these lands would be to empower Land Registrars to suspend the inscriptions –without subsequent negative consequences for their offices– until the status of the land is resolved by the appropriate authorities. Most likely, such a measure would face criticism as being excessively bureaucratic and the source of delays in the signing and execution of contracts. However, it is important to remember that these properties are unique as they do not fall into the usual categories: they are non-fungible, nor easily exchanged within an accelerate marketplace. Rather, it is about inheritance, tradition and the survival of an entire people.

[26] Supreme Court, January 3, 2001 and also in the judgment of December 19, 2016.
[27] CONADI Memoranda 2466, of June 5, 1996 and 1811, of April 24, 1997.
[28] In these cases that contracting party will also be considered as indigenous person.

This appears to be the only way to ensure that these lands will not inadvertently be transferred into the mainstream civil law system, with all the consequences involved in the logic of that legal system and without the necessary protection. It would also allow Land Registries to play a greater role in the exercise of preventive justice and, in the particular case of the Mapuche, would help move towards a real and effective "territoriality".

Conclusions

Although there are many indigenous peoples living in Chile, interest about this topic is relatively recent. The lack of a solid institutional framework to support the full development and progress of these peoples is also a major shortcoming.

While the passage of Law 19.253 and the ratification of ILO Convention 169 have been substantive first steps in fostering respect for indigenous cultures, there is still much to be done. Constitutional recognition should go hand in hand with the strengthening of institutions that can facilitate the protection of ancestral lands, understood as the physical space in which a culture evolves, develops traditions and in which a people survives.

These initiatives and understandings should lead to greater economic development through farming, animal husbandry, fishing, and even tourism, all of which should help stem the tide of rural-urban migration and serve to reactivate downtrodden rural areas.

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