

Towards improved governance of indigenous land in Chile: Challenges and opportunities regarding indigenous land rights from a systemic perspective

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Key words: land governance, land tenure, land conflicts, indigenous peoples, Chile

SUMMARY

Chile faces currently a number of wide-ranging challenges with regard to governance of the land sector, particularly in what respects to indigenous rights, land conflict resolution and the protection of cultural heritage.

Chile has currently approx. 16.5 million inhabitants, out of which 4.6% belongs to one of the eight ethnic groups recognized by the indigenous law (Instituto Nacional de Estadísticas 2002). Of the total number of indigenous people, 87.3% belong to the *Mapuche* ethnic group (ibid.). A large number of these indigenous people live under poor or inadequate livelihood conditions which may be connected to a process which, from a historical point of perspective, resulted in the weakening of the foundations of the customary land rights and, thus, of the traditional basis of the *Mapuche* culture, that is, their land.

This work starts thus from the hypothesis that the processes involved in the privatization of indigenous land in Chile, since the colonial period, has had a substantial impact on the livelihoods of the *Mapuche* and has been a negative force that has undermined their cultural identity. Baring this in mind, the specific objectives of this study are, first, to identify and analyse the effects of land privatization on this ethnic group since the beginning of the colonization process; and second, to identify key aspects of the processes involved in land restitution, particularly with regard to land rights issues, in order to determine potential approaches to solve these disputes in an effective manner.

The paper claims that this land conflict is one of the most important challenges the country has been dealing with in the last decades. So far, the government's approach in this matter has addressed specific problems, but created new ones as well. A considerable amount of private and public land has been transferred to indigenous communities, expecting that they would be able to develop their lands and enjoy a good quality of life through their use. Nevertheless, very often these measures have had negative consequences such as increased poverty.

Furthermore, the paper argues that the main problem lies in an inadequate policy framework which doesn't promote the improvement of the quality of life of the indigenous population in Chile and, in addition, has negative consequences which deteriorate their cultural heritage.

Based on these discussions the paper addresses the need for a reform of the land-related policy framework in Chile and points out the key areas for intervention.

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1 INTRODUCTION

In Chile, land is too often treated as any other sort of economic asset without consideration of the special significance it has. In fact, nowadays, the sustainability of the land sector, as in many countries, is undermined by misuse of resources and power structures. This has dreadful consequences such as poverty intensification or, at least, perpetuation, environmental degradation and economic distortions. In this regard, Augustinus (2007, p. 5) states that “in most countries, most land policies, laws and procedures are biased against the poor. The poor remain trapped in poverty in part because they cannot access and use land they need to grow crops, build houses and establish businesses”.

Development and implementation of effective and equitable land policies is therefore one of the most important measures for strengthening the legal and structural basis of the land sector and for sustainable development. Land policies should be developed following a legitimate vision and should promote the existence of healthy dynamics within the land sector. Nevertheless, a vision without the means for its achievement is destined to become a utopia. In order for a land policy to be implemented, there must be tools or instruments, usually of legal character, allowing its implementation. These instruments are usually of legal character, but may also include interventions aiming at long-term cultural changes and socioeconomic re-structuring. For these processes to be started and properly steered, tools for the assessment of the strengths and weaknesses of the different components of the land sector are crucial.

Chile faces currently a number of wide-ranging challenges with regard to governance of the land sector, particularly in what respects to indigenous rights, land conflict resolution and the protection of cultural heritage.

The country has currently approx. 16.5 million inhabitants, out of which 4.6% belongs to one of the eight ethnic groups recognized by the indigenous law (Instituto Nacional de Estadísticas, 2002). Of the total number of indigenous people, 87.3% belong to the *Mapuche* ethnic group (ibid.). A large number of these indigenous people live under poor or inadequate livelihood conditions which may be connected to a process which, from a historical point of view, resulted in the weakening of the foundations of the customary land rights and, thus, of the traditional basis of the *Mapuche* culture, that is, their land.

This work starts thus from the hypothesis that the processes involved in the privatization and restitution of indigenous land in Chile, since the colonial period, has in general not contributed to the sustainability of the livelihoods of the *Mapuche*; on the contrary, it has been a negative force that has often only increased their poverty. On the basis of data collected through semi-structured interviews with key informants and experts as well as from the media and available literature, the paper attempts to identify and analyse the effects of privatization on this ethnic group since the beginning of the colonization process; and to identify key aspects of the processes involved in land restitution, particularly with regard to land rights issues, in order to determine potential approaches to solve these disputes in an effective manner.

2 CONCEPTUAL FRAME

2.1 Governance of Land

Over the last 10 years, the expressions “land governance” or “governance of the land sector” and, consequently, “good land governance” have been raised by the international community of land-experts as concepts emerging from a series of principles, conditions or success factors necessary for the establishment of sound land sectors.

A number of institutions – governmental and non-governmental – even argue that good land governance is a crucial pre-requisite for sustainable development and that the old fashioned concept of government in the context of land issues should no longer be the focal point of international discussions, but rather the processes behind and how these perform and contribute to the achievement of broader objectives.

According to Mauro, Bending and Taylor (2009), “land governance refers to formal and informal processes of allocating and securing rights to land, both within the state and outside of it”. The conceptual discussions often lead however to much more complex definitions including a broader perspective of the land sector and not only to the processes associated with allocation and securing land rights.

It is understood that the land sector of a particular country should contribute to the achievement of the UN Millennium Development Goals and, hence, to the attainment of sustainable development. As wide-ranging and thus unspecific as this might appear at first sight, the central message in this line of argument is that a functional land sector can support quite strongly the attainment of the political goals set by a particular country, then again, only on the basis of a coherent governance framework.

Palmer, Wehrmann and Fricska (2009) argue that definitions of governance are variable, but there is at least consensus on four very important aspects; firstly, governance is conceptually broader than government as the stakeholders often reflect a broad spectrum of actors, all which have to be considered when addressing governance. Second, governance emphasizes processes and institutions and implies thus a dynamic system. Third, by emphasizing on authority, governance addresses the importance of politics and power relationships. And fourth, governance is conceptually neutral, as the quality of land governance can be good or weak, improving or declining. In order to determine whether governance is effective or weak, one must look at processes as well as outcomes.

It must be said though that good governance in the land sector is but a component of a wide ranging multi-sectorial approach which should come along with good practices, and therefore good governance, in all other sub-systems composing a particular society. A single sided approach would certainly be insufficient given the complexities and interrelationships leading to the success or failure in the achievement of political, social, environmental and economic goals.

Enemark (2009, p. 4) mentions that “Land Governance is about the policies, processes and institutions by which land, property and natural resources are managed. This includes decisions on access to land; land rights; land use; and land development. Land Governance is about determining and implementing sustainable land policies”.

Thus, land governance has been seen in practical terms as a crosscutting concept referring to the political/governmental dimension of land management and land administration, and presents a close relationship with the implementation and monitoring of all policies regarding land which point at conducting the development of a country by means of properly managing its land.

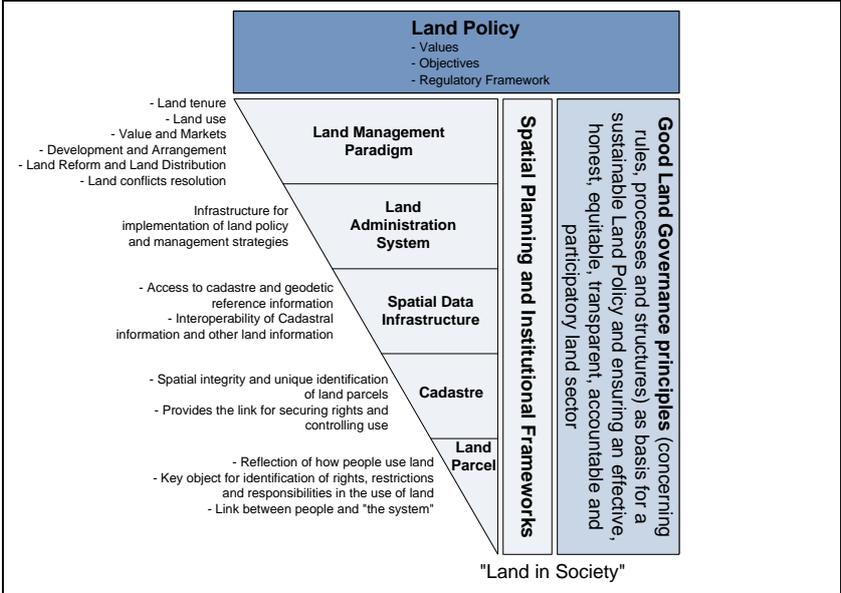
The land sector in a particular country is evidently a complex system composed by quite an extensive list of technical and legal aspects which have direct impact on economic

development and environmental as well as social dimensions. Land policy, as the overall guideline for the formulation of regulatory frameworks and tools with respect to land and stating the values and objectives to be followed by the land sector, sets the basis for the construction of a spatially enabled society and, of course, for the establishment of a balanced rural and urban development.

As shown in Figure 1, under these frame conditions, there are a number of hierarchical levels. In this regard, Enemark (2009) argues that this hierarchy shows the complexity of organizing policies, institutions, processes, and information for dealing with land in society. This conceptual understanding provides the overall guidance for building a land administration system in a given society, independent of the level of development. The hierarchy should also provide guidance for adjusting or reengineering an existing land administration system.

The backbone of this hierarchical structure should be composed by spatial planning and institutional frameworks originating from good land governance principles for the organization, implementation and proper operation of the land sector. A failure in this arrangement leads to a malfunctioning system with consequences which can be quite dramatic, for instance, land disputes, unbalanced development of rural and urban areas and subsequent increasing poverty and rural-urban migration (Magel, et al., 2010).

Figure 1. A comprehensive representation of the land sector



Source: Magel, Klaus and Espinoza 2009, based on Enemark 2006

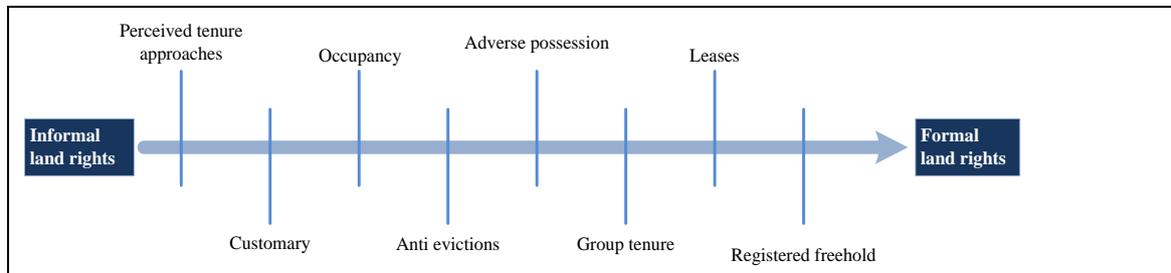
Naturally, this should have major impacts in the need for policy formulation and/or re-formulation as vicious circles of lack of capacity and lack of appropriate instruments for policy implementation is likely to occur if an incomplete or narrow-sighted account of these aspects is considered when formulating or revising legal and institutional frameworks (Magel, et al., 2010).

Although this conceptual frame depicts an “ideal” construction, it allows for a conceptualization of the targets to be addressed in order to achieve specific political objectives such as poverty reduction, economic growth and environmental protection in both rural and urban areas, particularly with respect to the rules, processes and structures concerning land.

As proposed by the Global Land Tool Network GLTN (2008, p. 8) the range of possible forms of tenure can be actually considered as a continuum instead of a set of independent types with special focus on private property (see Figure 2). In fact, in a particular society,

several types of tenure systems may operate and plots may change in status if, for example, informal settlers are granted titles or leases. In order for a country to increase tenure security, it is indispensable that all components of this continuum enjoy legitimacy. Needless to say, land policies should take all forms of legitimacy into consideration and provide the guidelines for the development and implementation of the appropriate statutory and/or customary instruments.

Figure 2. Continuum/range of land rights



(GLTN, 2008, p. 8)

This has a major impact on projects aiming at the development of land administration and management systems since overlooking the continuum will only result in regulations being inappropriate and not accepted by the stakeholders. This situation is unfortunately found in many countries where land rights range from informal and insecure rights to formally registered private ownership of land. The consequences are very often disastrous and could easily lead to civil unrest.

Loehr (2012) is particularly critical about formalization process aiming at capitalization of the potential benefits that can be obtained from land, and argues that capitalized use rights are neither an efficient arrangement nor provide tenure security, especially in developing countries, which leads to the questions as to how to provide tenure systems with legitimacy rather than only a means for individualization.

Land conflicts are in fact a crucial component of the daily work of land-professionals. The type of conflict may range from physical issues, such as boundary and land use overlapping, to social problems related to segregation and social inequality, particularly with relation to vulnerable groups like the poor and the indigenous population.

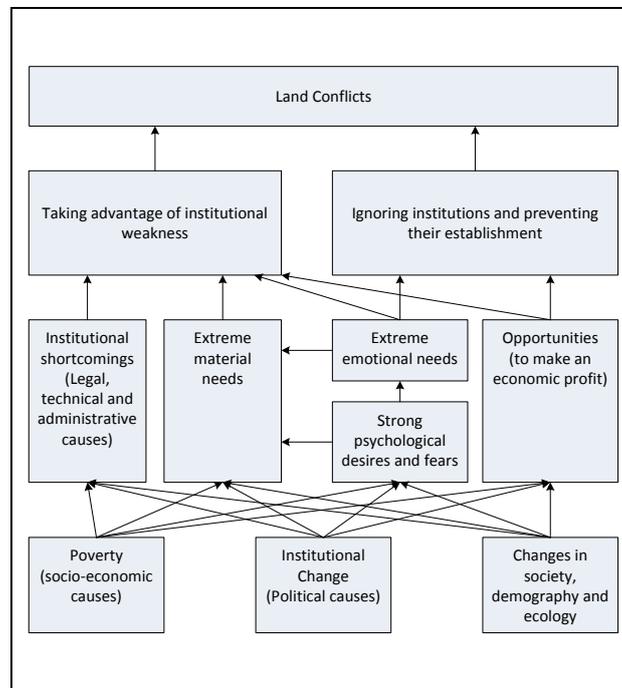
As argued by Wehrmann (2008, p. 1), land conflicts may occur in many forms and may arise between single and multiple parties and the level of complexity of the conflicts themselves and their resolution varies accordingly. A very common example of land disputes involving multiple parties is the type of conflict concerning corruption and fair recognition of land rights.

For instance, “in many countries indigenous people have been dispossessed or live at risk of being dispossessed due to either failure to recognize their rights to land or invalidation of those rights by the state, or through expropriation or privatization” (UN Habitat/OHCHR, 2005, quoted by Wehrmann, 2008, p. 3). Furthermore, in countries where the indigenous people have historically been disadvantaged with regard to their land rights, serious conflicts can arise even decades or generations after the occurrence of detrimental events (e.g. enactment of specific laws, etc.) (ibid).

A changing context often gives birth to land disputes. This applies not only to global trends such as climate change and the conflicts related to natural catastrophes, or global economic crises and the related disputes arising as a result of an increase scarcity of land-related resources, but also to local conditions such as legal reforms and economic re-structuring or, simply, development (Wehrmann, 2006, p. 5). As shown in Figure 3, changing frame conditions provoke conflictive situations which can, at the end of the day, result in land conflicts as a consequence of alterations in the needs of the population and the means for

them to satisfy their requirements. This aspects lie at the centre of the discussions with regard to the governance of the land sector and how can land professionals contribute to strengthening governance in general.

Figure 3. Interdependency of land conflict causes



(Wehrmann, 2006, p. 5)

2.2 Brief account on general system theory

With regard to the application of general system theory to human society, it is appropriate to quote Boulding (1968) and his discussion on a general model of organization and states and what he calls “Iron Laws” that are valid for any organization. These iron laws are, for instance, the Malthusian law which says that the increase of a population is, in general, superior to that of its resources. In addition, there is the law of optimum size of organizations of all kinds, which states that the larger an organization grows, the longer is the way of communication and this, depending on the nature of the organization, acts as a limiting factor and does not allow an organization to grow beyond a certain critical size.

In other words, the optimum size may be small, like in the case of the family, or large, like the Catholic Church or the national state. Attempts to push one type of relationship or one type of organization beyond its proper size, may result in breakdown (ibid., p. 78). According to the law of instability, many organizations are not in a stable equilibrium but show cyclic fluctuations which result from the interaction of subsystems. And finally, the important law of oligopoly states that, if there are competing organizations, the instability of their relations and hence the danger of friction and conflicts increases with the decrease of the number of those organizations. Thus, as long as they are small and numerous, they survive in some way of coexistence. But if only a few or a competing pair are left, as is the case with the massive political blocks which currently exist, conflicts may become devastating to the point of mutual destruction (ibid.).

A case which would be curious in physical systems, but which is common in the biological, psychological and sociological fields, is when the interactions between the elements decrease with time, in other words, the system passes from a state of wholeness to a state of independence of the components. The initial state is that of a unitary system which splits up

gradually into independent causal chains. We may call this “progressive segregation” (von Bertalanffy, 1968, p. 68)

As a rule, the organization of physical wholes, such as atoms, molecules, or crystals, results from the union of pre-existing elements. In contrast, the organization of, for example, sociological or biological wholes, is built up by differentiation of an initial whole which segregates progressively into parts (von Bertalanffy, 1968, p. 68). The same is true in the development and evolution of a society and its behaviour starting with the most primitive groups to the most advanced societal organizations which currently exist around the world.

In the state of wholeness, the occurrence of a disturbance which affects a particular system leads to the achievement of a new state of equilibrium. If, however, the system is divided into individual causal chains, these continue their development in an independent way. “Increasing mechanization means increasing determination of elements to functions only dependent on themselves, and consequent loss of regulation capacity which rests in the system as a whole, owing to the interrelations present” (von Bertalanffy, 1968, p. 69). The smaller or weaker the interactions become, the more “machine-like” is the system, like a sum of independent parts.

This process, which may be called “progressive mechanization”, plays an important role in biology, sociology, and other sciences. In a primitive community, for example, every member can perform almost anything expected in his connection with the whole. In a highly differentiated community, on the other hand, each member is determined for a certain performance, or complex of performances; for instance, in the case of a farming community where each member has clearly different tasks to fulfil in order to achieve certain communal productive goals.

In this contrast between wholeness and summation of components resides one of the main problems in any biological, psychological and sociological evolution since progress is possible only by passing from a state of undifferentiated wholeness to a state in which there are differentiated but interlaced components. This implies, however, that the parts become fixed with respect to a certain action. Therefore progressive segregation also means progressive mechanization.

Progressive mechanization alone, however, implies loss of regulation capacity. Due to interactions within the system and as long as a system is a unitary structure, a disturbance or shock will be followed by the attainment of a new stationary state. The system is therefore self-regulating. If, however, the system is split up into independent units, regulation capacity fades away. The partial processes will go on irrespective of each other (von Bertalanffy, 1968, p. 70).

“Progress is possible only by subdivision of an initially unitary action into actions of specialized parts” (ibid.). This, nevertheless, results at the same time in impoverishment of the system’s stability. The higher the specialization of the components, the more they become irreplaceable, and the higher the risk of total system breakdown due to loss of one or more of the components. Furthermore, progressive segregation is often linked to progressive centralization, that is, the process through which a progressive subordination of components under the guidance of more dominant or leading ones occurs.

Systems are frequently structured in a way so that their individual components again are systems of the next lower level. Such superposition of systems is called “hierarchical order”. For its individual levels, again the aspects of wholeness, progressive mechanization, centralization, finality, etc., apply. Such hierarchical structure and combination into systems of ever higher order, is characteristic of reality as a whole.

In case a system moves towards a stationary state, changes taking place may be expressed not only in terms of the actual conditions, but also in terms of the distance from the stability state; the system seems to “aim” at an equilibrium state to be attained in the future. Or else, the happenings may be expressed as depending on a future final state or “finality”. In case of

disturbance, the system develops forces which counteract the perturbation and restore a state of equilibrium (von Bertalanffy, 1968, p. 75). Happenings can, in fact, be considered and described as being determined not by actual conditions, but also by the final state to be reached.

In conclusion, the general systems theory, developed quite a long time ago, has the characteristic of being applicable to systems in general. The challenge faced in the present work is, therefore, to find out how does it fit in the particular reality under study. In the case of this investigation, the wide conceptual frame which is provided by general systems theory provides the foundation for building up the arguments in combination with land governance aspects with regard to the proposed hypothesis.

3 RESULTS AND DISCUSSION

3.1 Background information about the country

Chile is a unitary republic with a presidential regime and a democratic multi-party political system. The State is composed by three independent branches, namely Executive, headed by the President, the Judicial, with the Supreme Court as topmost authority, and the Legislative branch with its parliament members and the senate. The presidential period is four years without possibility of re-election.

There are three main levels of sub-national territorial units, namely, 15 regions, 52 provinces and 345 municipalities (*comunas*). “Yet, under the tight administrative, fiscal and regulatory framework of the central state, the main sub-national actors remain largely controlled by national guidelines” (OECD, 2009).

According to the Organization of Economic Cooperation and Development (2009), of which Chile has been a member since May 2010, the quality of institutions and the stability of Chile’s regulatory framework are comparable to those of other OECD countries. As a result, Chile has been among the most successful countries in reducing poverty levels worldwide; in 1990 38.6% of the Chilean population lived in poverty, in 2008 the poverty rate was 13.7%. Furthermore, in 1990, 13% of the population lived under conditions of extreme poverty; yet 18 years later this proportion had decreased to 3.2% (Government of Chile, 2008). According to the National Institute of Statistics (Instituto Nacional de Estadísticas, 2008), the population is largely urban, with 86.8% of the total living in urban areas across the country.

The land sector in Chile presents serious problems which hinder severely the achievement of a number of political goals aiming at poverty reduction, economic growth and environmental sustainability. These problems are often of structural character, thus making their solution very complex. The country is characterized by high socioeconomic inequality and by a rather “discriminatory” approach to development, especially with respect to its land. The government, at all administrative levels, devotes its bigger efforts to promoting the development of urban areas, particularly, by use of quite limited planning instruments.

So far, the absence of a concrete land policy and a nearly absolute focus on urban development has provided reasonably good economic outcomes for the stakeholders who normally benefit from economic activities which are, in one way or another, linked to these areas. Nevertheless, the disorders generated in the rural areas as a consequence of these urban development processes, are dreadful.

A number of issues are observable with respect to land tenure and property regimes as well, above all in the context of the indigenous population and the related policies. Over the last decades, the state has been trying to deal with the claims made by indigenous groups for restitution of ancestral land rights on land which is currently under a completely different

situation; although considerable progress has been made, there are still major challenges to be addressed in this respect.

3.2 Chile's land tenure system: a brief historical revision with special reference to indigenous people

Prior to the arrival of the Spanish colonizers, the *Mapuche* occupied a vast territory located between, to the north, what today is Central Chile and, to the south, till Chiloe's Big Island (10th Region) (Aylwin, 2002 (b), p. 3). At that moment, their population was around one million (Förster, 2001, p. 1).

In the northern part of this territory, towards the end of the 15th century, when the *Inca* invaded the Chilean territory, and not long before the Spanish arrival, the *Mapuche-Picunche* had to pay tribute to the *Inca* who came to settle in this area (Aylwin, 2002 (b), p. 3). But their influence over the local natives was not limited to the tax collection only; it was actually quite significant and generated a fast cultural change of the people affected by it (Bengoa, 2000, p. 20), and, in addition, the *Inca* agricultural and irrigation schemes were adopted by them as well (ibid., p. 24). According to Villalobos (1983 quoted by Aylwin 2002 (b), p. 3), it is probable that, in this area, the natives adopted the *Inca* patterns of land distribution, including the tradition of assigning one part to the community, one part to the State, which was devoted to the satisfaction of the governmental productive requirements, and another to clergy. Every man had a *Tupu* of land, in other words, a land parcel big enough for providing food for one couple, which was augmented with the birth of every child (Pappalardo, 1990, p. 323, quoted by Aylwin, 2002 (a), p. 23)

In the southern part of their territory the *Mapuche* were on a proto-agrarian development state and had not yet developed real agricultural methods (Bengoa, 2000, p. 23). Therefore, their main economic activities were related to primitive agricultural practices and hunting as well as gathering of the multiple and abundant natural resources that surrounded them (ibid.). For that reason, their relation with the land was not linked to individual property but to the common rights of profit over the resources available (Aylwin, 2002 (b), p. 4)

The rules affecting the common resources were determined by the membership to a *Lof*, a patrilineal institution guided by the *Lonko* (chief). The rights and obligations of the members of the *Lof*, including their rights over the land and its resources, were established by the *Admapu*. According to this system of rights (*Admapu*), every family had the right of carrying out harvesting and agricultural activities in a delimited territory which was supposed to be inherited by the following generations. This delimited territory represented also the area of jurisdiction of every *Lonko* (Ñanculef, 1990, p. 14-15, quoted by Aylwin 2002 (a), p. 24).

The supervision and control of the possible land uses and the preservation of the natural resources were also carried out in accordance to the *Admapu* (ibid.). The territorial association of several *Lof* generated group called *Rewe*, and the combination of nine *Rewe* created an *Ailla Rewe*. Each one of these *Rewe* was autonomous politically and territorially (ibid.).

The colonial period (1600-1810) is then characterized by the development of a mixed race population (Spanish-indigenous) and the consolidation of a mainly agricultural society. In addition, a big intensification of the land conflicts in the south of the country with the *Mapuche* people occurred. As a result, a professional and permanent army was created, with the objective of combating the original ethnic groups (Eyzaguirre 1982, pp.153-160).

North from the river Bio-Bio (VIII Region), the situation was different, cities were founded and consolidated, the different agricultural activities began to increase in importance, and the first exports were carried out. At the beginning two ethnic groups existed, the Spaniards and the indigenous, but now the society turned to be much more complex (Eyzaguirre 1982, pp.170-174) in terms of identifiable races or mixed race descendants.

According to Aylwin (2002 (b), p. 4), “the conquest had diverse effects over the different ethnic groups, depending mainly on the attitudes they adopted towards the Spaniards”. Even though their initial resistance, the northernmost and central groups from Chile, including the *Aymara*, *Atacameños* and *Mapuche-Picunche*, among others, who had been submitted to the control of the *Inca*, ended up accepting the Spanish presence as well as the legitimacy of their institutions.

As it happened to the majority of the ethnic groups that inhabited the American continent, the systems called *hacienda* and *encomienda* were imposed to them. In the case of Chile, this last system included the provision of services in the lands of the *encomendero* (landlord) or in mines, and the relocation of their original lands in what was called “indigenous villages”, although the royal laws stated that only the unoccupied lands could be object of assignation. Even more, as a consequence of the establishment of cities in these areas, and again contradicting what was said by the royal regulations, the best agricultural and animal farming lands which belonged to the natives were assigned to Spaniards. According to Góngora (1951, quoted by Aylwin 2002 (b), p. 4), the isolation which characterized the colony was the main reason for this kind of irregularities.

Gallardo (1998, p. 136) comments that the *encomienda* came to an end as an institution in some regions of the continent during first decades of the 1600s, and in others like Chile, probably at the end of 18th century. Some of the main reasons for this were the demographic decrease of the indigenous population due to introduced diseases and improper living conditions, and the emergence of other labour systems.

About this topic, Salazar (1985, p. 35) points out that, by the time the *encomienda* was finally abolished towards the end of the colonial period, the indigenous occupiers of these lands were recognized as owners. After centuries of submission, nevertheless, only a few natives would recover their freedom. The bigger part of them, by that time ethnically and culturally mixed, saw themselves forced to work in the *haciendas*, maintaining, with the *hacendado* (landlord), the relationship they once had with the *encomendero*. The XVIII century became the “century of wheat” due to the increasing exportations to Peru. The socio-political power vested in the *hacendado* was substantial and lasted for decades.

In the southern part of the colony, the *Mapuche* barred the Spanish occupation. Although the Spaniards had initially penetrated this territory, established fortresses and distributed the population in *encomiendas*, towards the end of the 16th century the *Mapuche* had managed to expel the Spaniards and build up their political and territorial autonomy (Aylwin 2002 (b), p. 5). Such autonomy was recognized through the numerous parliaments which were held, till the end of the colony, with the colonial authorities, and which ratified the agreement of the existence of a border, the river Bío-Bío, which separated the territories and jurisdictions of the two nations (ibid.).

According to de Avila (1973, quoted by Aylwin 2002 (b), p. 5), the legal status of the mentioned parliaments was comparable to an international treaty between independent nations. In general, the contact with the Spaniards generated significant alterations in the *Mapuche* society and in their ways of managing their lands. In addition to causing, during the first fifty years of contact, the death of two thirds of the indigenous population of the *Araucanía* (Currently the 9th Region), the contact generated considerable changes in their subsistence patterns (Aylwin 2002 (b), p. 6). In this regard, Bengoa (2000, pp. 47) writes that more than two centuries of contact, of different kind, transformed deeply the indigenous society. A society which was composed basically of hunters and gatherers with a simple family structure, gave birth to a farming/animal-farming society, with increasing mercantile relations, with increasingly complex work structures, augmenting necessities and, as a result, with a transitional social organization, where relations of subordination started to arise.

Although the private property over land had not yet been fully introduced; the *Caciques* (chiefs) had, to a certain extent, dominion over a particular territory, but they didn't own it. As a result, anyone could settle in a *Cacique's* territory as long as he expressed his support and goodwill (ibid., p.63). Consequently, the richness generated by their productive activities, even though they did not derive in the establishment of private property over land among the *Mapuche*, allowed the establishment of certain kinds of dominion of the *Lonkos* or *Caciques* over their territories, being the tradition of common use of land, in this way, partly substituted (ibid.).

From a legal point of view Ormeño and Osses (1972, quoted by Muñoz, 1999, p. 11) explain that, since the beginning of the 19th century, there were diverse periods in the development of the legislation regarding indigenous people. The first of them was called the "localization", since its main purpose was to locate and settle all ethnic groups, particularly the *Mapuche*.

In 1819 the Supreme Director Bernardo O'Higgins enacted a decree which declared that every indigenous person was legally equal to all non-indigenous Chilean citizens (Aylwin 2002 (b), p. 6). This decree put end to the assemblies held before between indigenous and Chilean authorities (Förster 2001, p. 4) and authorized the indigenous people to make and sign all kinds of lawful contracts (Jara 1956, quoted by Aylwin 2002 (b), p. 6). Consequently, in 1823 (10th of June) the government passed a law which ordered the full identification of the indigenous villages which existed in every province and the measurement and valuation of state's lands; and which said that the goods that belonged to the indigenous population were to be recognized as their lawful property (ibid.).

However, according to Aylwin (Aylwin, 2004, p. 4), this contractual autonomy turned out to be significantly harmful to the *Mapuche* as their lands started being subject of pressures on the part of non-indigenous citizens. Even more, there is evidence showing that during the mid-18 hundreds numerous contracts (sale-purchase, rent, lease, etc.) were made between Chileans and *Mapuche*, through which the first would, at remarkably low prices or through fraud, acquire vast indigenous territories (ibid.).

Therefore, in 1853 a decree was ratified to end the indigenous contractual freedom while ordering that their lands could be sold only after a governmental verification and authorization. But, as Leiva (Leiva, 1984, p. 31) puts it, in practice this kind of irregular contracts over indigenous lands in the south of the country would continue to be carried out.

Förster (2001, p. 3) comments as well that, with the establishment of the Republic, the *Mapuche* were not seen as a nation anymore, on the contrary, they started being treated as Chilean citizens, although several formal and informal restrictions to their citizenship existed as well. The *Mapuche* society was unable to come together as a whole to face these new challenges which came with the Republic; some of them wanted peace, some others engaged in violent conflicts with the Chilean army, and some others moved to the *Pampas* and to the Andean mountains. Consequently, the *Mapuche* people ended up divided and living under the power of two republics, Chile and Argentina.

Once the entire Chilean territory was occupied and the border with Argentina was settled, the Chilean state instituted its reductional policy through the Law of the year 1866. This law declared, in an indirect fashion, all indigenous lands as fiscal, and granted between 1884 and 1929 a total of 2.918 *Títulos de Merced* (property titles) over 510.386ha which involved 82.629 *Mapuche*; that is 6,18ha per person (Förster 2001, p. 3, Aylwin 2002 (b), p. 7). According to this law, the remaining lands were to be sold by the state in public auctions in 500ha lots and destined to the establishment of colonies of Chileans or foreigners; a strategy which certainly encouraged the institution of *latifundios* (extremely big land properties) (Förster 2001, p. 3).

According to Aylwin (2002 (b), p. 7), the indigenous localization through the granting of *Titulos de Merced* would only start in 1883, once the Chilean military finally achieved to

occupy the *Mapuche* territory. The localization process settled the *Mapuche* and forced them to change their customary regimes through the introduction of a new economic model, through the establishment of schools and through evangelization.

Once the localization process had concluded, the government started encouraging the subdivision of the *Mapuche* lands in individual parcels and the transfer of plots to non-indigenous citizens who had productive plans for them. For these purposes, special laws were passed in 1927, 1930, 1931 and 1961 (Aylwin 2002 (b), p. 7).

The law of 1927 N°4.16 allowed for subdividing a particular community even if only one member of that community had requested the subdivision. But this situation changed with the law of the year 1930 (N°4.802) which specified that the sub-division could only be done with due authorization of a judge. This law created as well the Indigenous Courts and specified that the communal parcels could only be adjudicated to members of the community. Then, in the year 1931, the law N°4.111, raised to one third the proportion of community members which were needed in order to carry out the subdivision of their lands (Muñoz, 1999, p. 13). Between 1931 and 1971, 832 reservations or *Mapuche* communities, out of 2.918, were subdivided. Although indigenous lands could not be sold according to the law, approximately 100 thousand hectares (20% of the total) were transferred to non-indigenous people during this period (González, 1986, Ormeño y Osses 1972, quoted by Aylwin 2002 (b), p. 7 and Muñoz 1999, p. 14).

The first Chilean Agrarian Reform (AR) law, the N° 15.020 of 1962 that created the Corporation of Agrarian Reform (CORA), was enacted during the government of President Jorge Alessandri Rodríguez. The CORA was supposed to take care of the entire process of AR, including planning and implementation. This process was top-down, it did not give origin to substantial changes in land distribution, as very few lands were expropriated to be transferred to the farmers (Armijo & Caviedez, 1997).

During President Alessandri's agrarian reform, the national context was characterized by a conservative government, in opposition to a very strong presence of a well-organized socialist movement. On the other hand, the international context was characterized by the Cold War (Armijo & Caviedez, 1997).

The second agrarian reform was carried out during the government of President Eduardo Frei Montalva. The objective was the expropriation of land and its re-distribution to the farmers. Therefore, a new law of agrarian reform was passed in the year 1967 (N° 16.640), the same that would be used during the government of Salvador Allende (1970 – 1973). The main criteria for the expropriation of land were the size of the property and abandonment or misuse. In terms of size, the law was applied to all properties bigger than 80 BIH (Basic Irrigated Hectares¹). The law specified that the expropriated lands would give origin to transitory settlements, called *asentamientos*, which were supposed to last between two to five years. Beneficiaries could only be farmers residing in the expropriated farm, who were head of family and who were older than 18 years of age (Armijo & Caviedez, 1997).

During the *asentamiento* period, the land was to be managed jointly by local CORA administrators and comities elected by the peasants themselves. Although normally this period was to last only three years, it could be extended by two years with authorization by the president. When the period ended, the peasants themselves would have the option of requesting collective, individual or mixed properties. Whichever they chose, CORA was to retain considerable jurisdiction over the rights to transfer, withdrawal from cooperatives and

¹ Basic Irrigated Hectare (BIH): Is the area equivalent to the area needed for a potential production of an irrigated hectare, Class I of Capacity of Use, located in the Valley of the Maipo River. The law provides a conversion table (República de Chile, Law N°18.910. Ley Orgánica del Instituto de Desarrollo Agropecuario (Organic Law of the Agricultural Development Institute), INDAP 1990). The objective of the BIH is to provide a legal system to compare areas of land in terms of potential production.

collectives, and the credit and marketing procedures to be employed” (Kaufmann, 1972, and Garrido, et al., 1988).

By the end of 1969, about 15% of the irrigated land had been expropriated (1094 *Latifundia*, 246 thousand ha of irrigated lands and 2.406.400 ha of non-irrigated lands) (Armijo & Caviedez, 1997). Although expropriated owners were entitled to compensation, this process generated considerable conflicts, particularly with regard to the compensation payment procedures (Garrido, et al., 1988). 28.000 families benefited from the process of agrarian reform during this period although the objective was to benefit 100 thousand families and only a 13% of the total agricultural area was affected. One of the main problems was that the strategy did not include economic reforms or support measures that could assist the development process at the local level (Armijo & Caviedez, 1997, pp. 8-9).

In 1970 Salvador Allende Gossens was elected president. The government of the Popular Unity, as it was called (*Unidad Popular, (UP)*) had the objective of leading the country towards socialism, even though the cold war was present in the international context. Consequently, the agrarian reform was not an isolated process; on the contrary, it came along in a context of global change (Armijo & Caviedez, 1997). The UP believed that an organization of farmers should take control of the agrarian process, reason why great conflicts were originated between the *terratenientes* (big landlords) who were against the reform process, and the farmers who wanted this process to be accelerated. Due to these conflicts a number of illegal land occupations were carried out by *Mapuche* farmers, temporary workers and small proprietors (ibid.).

As Armijo (1997) points out, the process was then accelerated and the farmers started making pressure for the expropriation of properties smaller than 80 BIH. From the beginning of 1971 to July 1972, 3.282 farms were expropriated (371.299 ha of irrigated land and 4.045.974 ha of non-irrigated lands), which meant 21% of the country’s productive lands. But the agricultural production did not improve as it was expected too, as a result an increase in the importations was necessary and due to the lack of agreement between the political parties the establishment of a clear structure for the reformed sector was impossible. All this, added to the international context already mentioned, created instability in Chile’s economy and set the context for deep political changes.

In 1973 Augusto Pinochet Ugarte, took over as head of the military government, and gave end to the process of reform carried out by the preceding governments. In 1975 a new process of neo-liberal restructuring begun, which gave birth to a process called “reversed agrarian reform”. The neo-liberal model generated productive specialization and a further differentiation of rich and poor regions across the country. The rich ones were those specialized in the production of fruit, forest, livestock, fisheries, and mining. The poor ones were those which lacked capital and modern technology; there was an extensive use of land with family based labour and the production was mainly for self-consumption or for the internal market only (Armijo & Caviedez, 1997).

It is evident that the level of equality or balance in the matter of land tenure was, to say the less, inadequate. But this situation, that is, a concentration of land in the hands of the rich people and companies and a highly fragmented territory, is no fresh news. This kind of distribution was a characteristic of a big part of the Chilean history and it remains to be, to a large extent, until today.

With regard to the indigenous people, till the 1970s their majority lived in indigenous communities (reserves). Now, during the 1980s, the military government decreed the division of the communal lands in individually owned parcels. According to Gonzalez (1986, quoted by Muñoz 1999, p. 16), till 1986, between Arauco and Osorno (8th to 10th Regions), the number of divided reserves was 1739, covering 259.227,21 ha divided in 48.436 parcels, that is, an average of 5,3ha/parcel. And for the same area, till the year 1990, Alywin and Castillo

(1990, p. 14, quoted by Muñoz 1999, p. 16) comment that the number of granted titles was 72.068, which corresponded to 71.196 parcels and a total of 463.409,81 ha.

The year 1988 marked the beginning of the process of returning to democracy. One of the most evident consequences of the military government, regarding land tenure, is the strong concept of private property that exists in Chile until today. In this matter, the law allows the private owner to use the land for the purpose that he or she determines, as long as the rights of other persons are not compromised. Of course there are restrictions for the use of land, for example in the forestry and agriculture sectors regarding, specially, environmental protection, but in practice, these restrictions are not sufficient and, in several occasions, not respected due to a serious lack of enforcement.

Regarding indigenous people, the law allows now for collective ownership of land, but with restrictions that are specific to these lands. The Indigenous Law of 1993 (N°19.253), which created the Indigenous Land and Water Fund, the public registry of indigenous lands and the National Corporation for Indigenous Development (CONADI), gives a formal definition of indigenous land and stipulates, for example, that these will not be affected by normal property taxes (Government of Chile, 1993)

CONADI, through the use of the Lands and Water Fund, can facilitate the restitution of lands to indigenous communities. This fund supports as well the solution of land conflicts, especially with regard to law enforcement, provides resources for regularization or purchase of water rights or for infrastructure to provide this service. These lands can't be sold, except between people or communities of a same ethnic group and can neither be rented, used nor administrated by non-indigenous people (only a period of 5 years is allowed in this last issue). The individual lands will be inherited as the non-indigenous ones, and the community lands, as the traditions of each ethnic group specifies (ibid.)

The operation of CONADI has facilitated the purchase and re-distribution of a considerable amount of land to the indigenous communities and has solved several conflicts in this matter, but the truth is that the current process is far from achieving the primary objective of solving this important conflict and needs several improvements that will probably take another decade to be achieved or maybe longer.

In our days there is a big concern about the concept of tenure security and property regularization. For this reason there is a national campaign regarding this issue and encouraging the people to regularize their situation. Informal settlements exist mainly in marginal areas of cities across the country. This issue is one of the most important priorities in the government's agenda and therefore many efforts are being done in order to improve the situation of the people living under this condition. However, nowadays the process of rural-urban migration is still operating and there is a lack of employment possibilities in the formal market, thus motivating proliferation of informal housing.

The 2007 census of informal settlements by the Centre for Social Research of the Chilean NGO *Un Techo para Chile* ("A Roof for Chile") showed that there are 28.578 families living in a total of 533 informal settlements across the country. According to the same source, only 10,3% of these settlements have more than 100 families, 73,3% of them are located in urban areas and 27,5% have no formal access to basic services such as drinking water, electricity and sewage (Centre for Social Research, *Un Techo para Chile*, 2007).

The resulting land tenure system in our days can be summarized as shown in Table 1.

Table 1. Tenure typology

Tenure Type	Legal recognition and Characteristics	Overlaps and potential issues
Urban sector		
Titled individual property	Legal recognition: Civil code Registration/recording: registered Transferability: Transferable	If cadastral information is deficient overlaps could occur
Titled collective property	Legal recognition: Civil code and Law N° 19537 Registration/recording: registered Transferability: Transferable	Areas for common use could originate conflicts
Untitled property in urban and peri-urban squatters on public and private land	Legal recognition: regulations related to the land tenure regularization programme of the Ministry of Public Lands Registration/recording: eligible for registration once the suitability assessment is complete Transferability: Possession rights often transferred informally by the settlers	Overlaps with public and private land may occur
Public property	Legal recognition: Civil code and D.L. 1939 Registration/recording: registered Transferability: transferable with restrictions	If cadastral information is deficient overlaps could occur
Rural sector		
Titled individual property	Legal recognition: Civil code Registration/recording: registered Transferability: transferable	Often overlaps with other individual property rights due to lack of appropriate cadastral information
Titled collective property	Legal recognition: Civil code and Law N° 19537 Registration/recording: registered Transferability: Transferable	Areas for common use could originate conflicts
Public property	Legal recognition: Civil code and D.L. 1939 Registration/recording: registered Transferability: transferable with restrictions	If cadastral information is deficient overlaps could occur
Untitled individual property on private land	Legal recognition: regulations related to the land tenure regularization programme of the Ministry of Public Lands Registration/recording: eligible for registration once the suitability assessment is complete Transferability: Possession rights often transferred informally by the settlers	Often overlap with other individual property rights
Untitled individual property on public land	Legal recognition: regulations related to the land tenure regularization programme of the Ministry of Public Lands Registration/recording: eligible for registration once the suitability assessment is complete Transferability: Possession rights often transferred informally by the settlers	Overlaps with State rights.

Indigenous lands	Legal recognition: Indigenous Law N°19.253 Registration/recording: registered Transferability: Transferable with strong restrictions	Rights often overlap with other rights-holders
Sharecropping (<i>Mediería</i>)	Legal recognition: D.L. 993 Registration/recording: registered (voluntary) Transferability: Transfer is not allowed, however, informal transfers occur	Often overlap with other individual properties

Source: the author

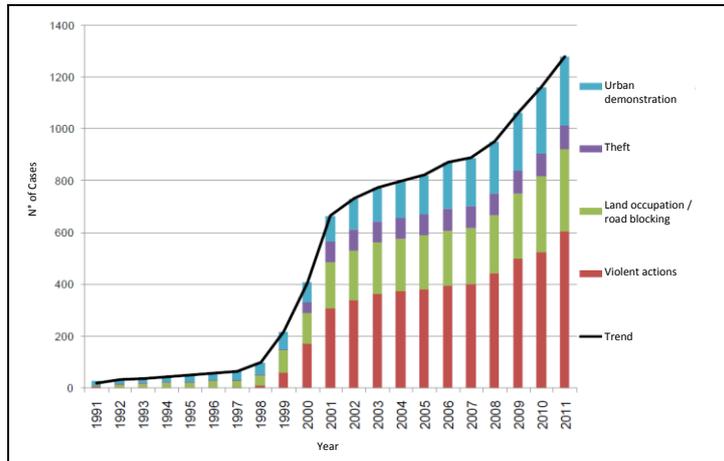
3.3 Land conflict description and analysis

For visualization purposes a technique which has been developed in the field of conflict management has been selected to represent and analyse the present situation; the conflict map. As mentioned by Fischer (Fischer, 2000, p. 22), “Mapping is a technique used to present a conflict graphically, placing the parties in relation both to the problem and to each other”. In other words this tool will allow for visualizing the scope of actors involved in the conflict and how they relate with each other and with the issues of relevance.

From the conflict map presented in Figure 4, it can be seen that the relationships, are often not simple lines meaning only one kind of link, but double lines of different kind, implying dissimilar relationships among the same elements. The reason for this representation is that within a same group of people, different positions can arise, adding even more complexity to the problem. This condition of uncertainty of how a particular actor would react to a certain situation has added difficulties to the negotiations between the parties. Taking these differences in account is then one of the key issues leading to the resolution of this conflict as it can provide information of what is needed to be improved or amended in order to equalize the positions within homogenous sectors or groups of actors.

As it may be seen, conflictive relationships have been established between the *Mapuche* and almost each and every other system’s element or actor. This, however, does not intend to signify that the purpose of the *Mapuche* is to fight every other societal group; it just intends to illustrate the issues at hand with regard to the discontent that these people feel towards these other groups of actors and vice versa. In the case of the general civil society, the conflictive relationship is not continuous, but sporadic or intermittent since the relationships between these two groups commonly depend on the particular present situations and how the Chilean society reacts to them. For example during the last decade of the 20th century, several quite violent actions were undertaken by some specific *Mapuche* groups (illegal occupation of land, damage of private property, etc) which, to the perception of a big proportion of the society and the government, were acts of terrorism and were to be treated as the law specified for these kinds of situations. Nevertheless, there are a number of cultural diffusion initiatives, initiated by the state and the *Mapuche* themselves, which have contributed to the improvement of the image they once had during these periods of violence. This situation and many other of the like are illustrated by the dotted straight line between these two components.

Figure 5. Number of cases of violence accumulated since 1991



Source: Instituto Libertad y Desarrollo, 2012, p. 3; based on data from newspapers “El Mercurio” and “Diario Austral de Temuco”.

With the private sector the relationship has as well two forms, conflictive and constructive. The conflictive form is principally related to companies in the fields of forestry and agriculture. Altogether, these companies possess a vast originally-indigenous territory and, as a result, several conflicts arise for the same reasons as with the local non-indigenous land-owners. On the other hand, some constructive links have been established between various indigenous communities and private companies mainly in the fields of commercialization of local produces, technical cooperation, and commerce in general. This may be one of the most promising channels to foster for land conflict resolution, particularly in the context of the so-called “indigenous development areas” as mentioned by the indigenous law N°19.253.

In relation to the government, the *Mapuche* have established conflictive relationships for reasons already explained and due to the demands they constantly express. These demands are very often formulated in peaceful and constructive settings; nevertheless, some less peaceful methods have been employed by some more radical *Mapuche* groups as well.

Finally, there are two issues that are also included in the conflict map, the legal framework and the international conventions and agreements. With the first one the relationship established has again two forms, conflictive and positive. It is conflictive since several aspects of the Chilean law are seen by the *Mapuche* as inappropriate, for example the fact that the indigenous groups are still not recognized in the Chilean constitution. In effect, the Indigenous and Tribal Peoples Convention N° 169 of the International Labour Organization (ILO) was only signed in 2009 after an extremely long period of discussion.

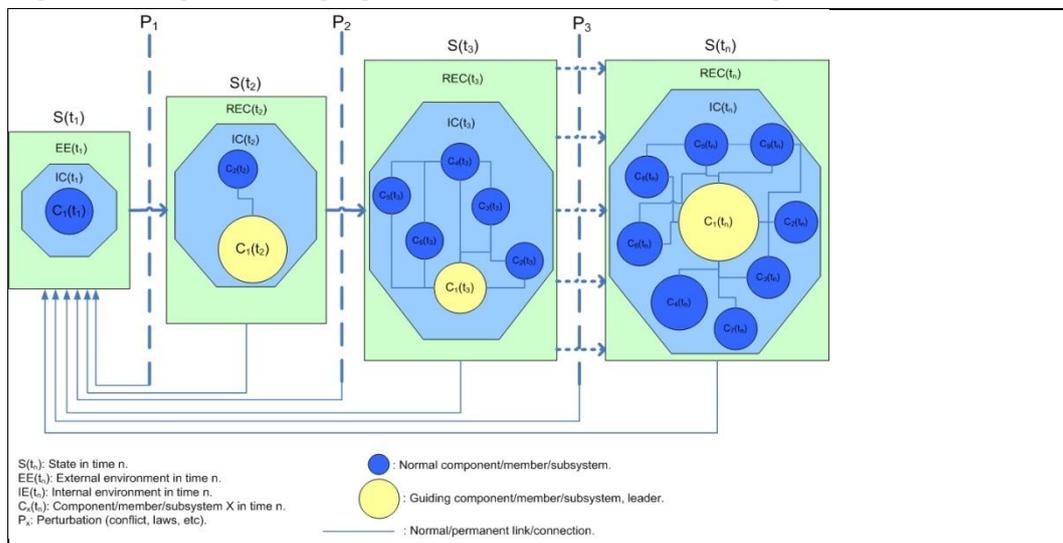
Only a few months ago, a group of congressmen presented a project for reforming the constitution with the aim of formally recognizing the indigenous population as such and also specifying the extent and modes of participation in public policy processes. In the eyes of some experts (e.g. Instituto Libertad y Desarrollo), this will not solve the central problem of providing the indigenous population with equal opportunities, on the contrary, it may only exacerbate the separatist ideas of some of the most radical groups (Instituto Libertad y Desarrollo, 2012).

The same experts mention that according to statistical data provided by a survey of the Centre of Public Studies (*Centro de Estudios Públicos*) of the year 2006, the *Mapuche* don't see the constitutional recognition and the political representation as the main problems. On the contrary, they are ranked in the eight (with 19%) and thirteenth place (with 10%) respectively;

thus considerably under land restitution (with 35%), fighting poverty (with 34%) and increasing employment opportunities (with 27%) (Instituto Libertad y Desarrollo, 2012). This information should have a major impact in policy formulation in this regard.

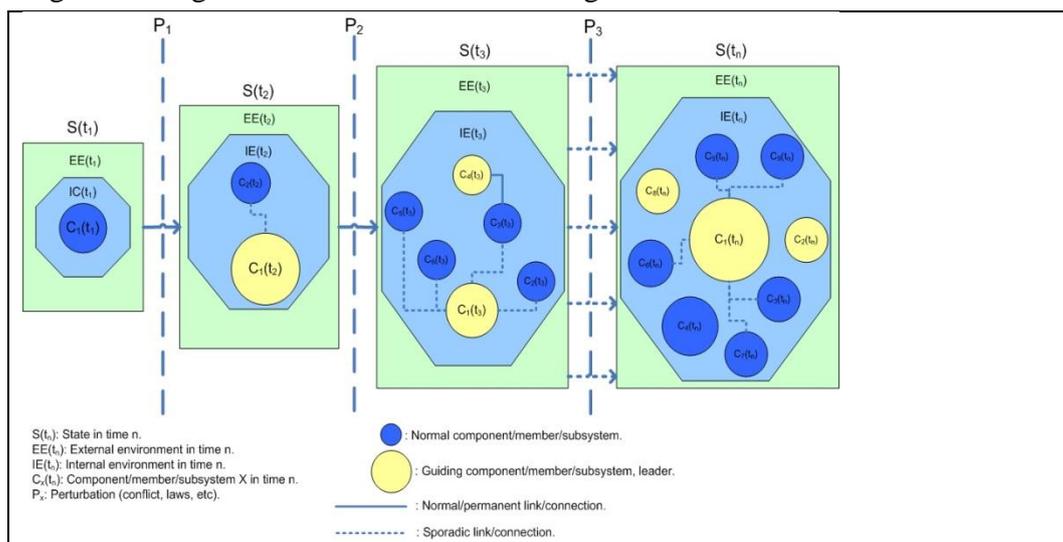
If we now adopt a systemic perspective to describe the historical evolution with regard to the *Mapuche* with relation to the changes regarding land, it is possible to produce the diagrams shown in Figure 6, Figure 7 and Figure 8, which illustrate that in every system there is, in case the evolution is not interrupted by highly disruptive perturbations, a development in direction of the system's finality. In other words, there is movement towards a state of equilibrium were further perturbations can be bared without causing the system's collapse. If that condition is achieved, the system is meant to attain its finality, that is to say in this case, to become a sustainable society, unless further remarkably severe perturbations or malfunctions cause the contrary (von Bertalanffy 1968).

Figure 6. Progressive segregation and centralization of indigenous communities



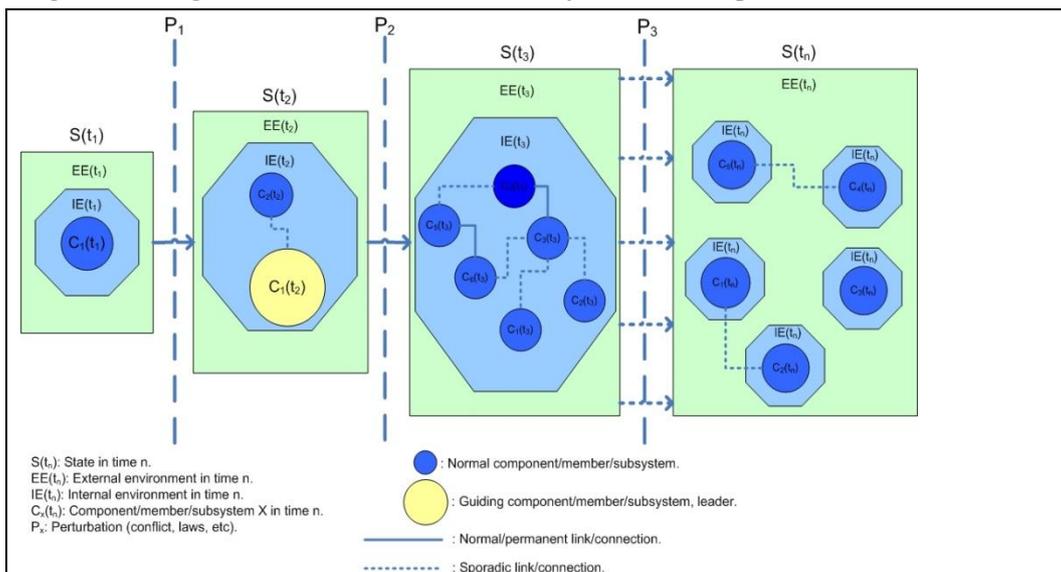
Source: Own illustration, based on von Bertalanffy 1968

Figure 7. Progressive mechanization in indigenous communities



Source: Own illustration, based on von Bertalanffy 1968

Figure 8. Progressive mechanization and system's collapse



Source: Own illustration, based on von Bertalanffy 1968

In accordance to this, the first diagram shows a progressive segregation of the parts which are increasingly guided by a central unit or leader; a situation which might commonly be encountered among the *Mapuche* in Chile. The communities that have been able to continue their evolution towards their finality despite the numerous perturbations they have encountered during centuries of, for example, legal restructuring such as land privatization, allocation of rights, redistribution, etc; are currently still in a primitive state, however, a slow movement towards more developed states is quite visible. The issues or facts that allow for this inferences to be formulated will be explained in due time; for the moment let us continue with the current subject of concern.

In case perturbations occur, the system can either resist and continue its development towards a particular finality which may or may not be the initial one, or go back in the chain of evolution (von Bertalanffy 1968, pp. 75). Such falling back situations are depicted in Figure 6 through the arrows indicating the backward movements.

However, the consequences of such perturbations may be variable. The systems might as well continue their development, but in a different direction or in another manner. For example, instead of going through progressive segregation in combination with progressive mechanization of the components or members, it may go only through progressive mechanization. If this happens, the parts will start moving apart from each other, perhaps not physically, but culturally or socially, and the system's behaviour will be more and more machinelike (ibid.) (see Figure 7 and Figure 8).

One very important issue to consider in the process of progressive segregation is, therefore, its difference with that of progressive mechanization. When the differentiation of the parts tends more to the separation of the components in specific and independent causal chains instead of different but coordinated functions, the system as a whole loses its self-regulation capacity and, as a result, the loss of one of the components cannot be overcome by the system as a whole (von Bertalanffy 1968, pp. 70). In other words, if one or more members of the community emigrate, the community will, most likely, not be able to recover from the lost and the contribution or function of these members will always be missing. In this regard, for example, it is important to highlight the demographic processes of which the *Mapuche* have certainly been part of with regard in particular to the rural-urban migration which started during the first half of the 19th century.

Furthermore, if the emigrating component is the central member, or the leader, the consequence might be a complete falloff or collapse of the community (see Figure 8). Now, as said before, this emigration of one or more components in a progressively mechanized system does not necessarily have to do with the physical emigration of the member; for example: the cultural disappearance of the spiritual leadership image or concept embedded in the community's chief (*Lonko*), will cause as well the disarticulation of the entire organization or social cohesion. In order to recover from this loss; a highly mechanized system will have to invest great amounts of energy (in the forms of every kind of capital) to achieve a new arrangement which conforms to the community's finality. The problem is of course that very often the communities do not have the means for investing in this rearrangement and, therefore, the original system will be damaged and new different causal chains, with new finalities, will arise. This has a direct impact on how public policies should be developed and shows the importance of complementary measures in addition to land restitution to provide the communities with financial instruments for facilitating their development.

Let us now go deeper in the role of the coordinating component or leader. In order for synergies to exist and be strengthened, the presence of a leading component/member is fundamental. The role played by the leader is mainly related to the simultaneous and coherent stimulation of the segregation and cohesion of the components. In order to strengthen the relationships of interdependence of the components or subsystems, it is fundamental to reinforce leadership, participation, integrity, and coordination. To neglect these issues, or to address them through inadequate or out-of-place approaches, may result in the development of an authoritarian relationship which will only hamper the system's capacity of self-creation and self-development or, in the words of Maturana and Varela (1980), it will prevent the system of going through the process of *autopoiesis*.

Both conditions mentioned above, that is, when perturbations cause fall-backs (Figure 6) and when they cause mechanization alone instead of in combination with segregation and centralization (Figure 7 and Figure 8) are observable in the *Mapuche* communities. On the one hand, as a consequence of the individualizing or mechanizing effects of privatization, there are people who are part of quite primitive systems, who live and work to satisfy the needs of daily life with no opportunity for preparing themselves for the future or for further perturbations. And on the other, there are those who have continued evolving but whose resulting system is characterized by highly individualized members or families who are not interested in cooperating with anybody unless short term tangible benefits for them are involved. These effects are not actually restricted to a specific moment but to a continuum since the beginning of the colonization.

If the system's internal conditions are adequate, the combined processes of progressive segregation, centralization and mechanization will allow for the system's expression, that is, they will allow for the system to move towards its finality. In these processes, the nature of the relationships established between the components and their territory, as a part of their immediate environment, is quite important. To ignore these dynamics in the context of design and execution of developmental policies might cause serious problems like, as commonly occurs, the disarticulation of the systems or over-dependence upon the role of the central component (e.g. overdependence on subsidies) or the actions of other systems (in the case of an excessive mechanization), all which certainly prevents true and sustainable development from happening.

Land, in the context of this research, makes reference to the scenery, in terms of time and space, where the studied systems are, and have always been, located and operating. Baring this in mind, in order for a system to develop, a necessary condition is to have an enabling environment which, in this case, certainly involves the concept of "land" and the related aspects like how it is distributed and managed, and who has or has not access to it. Therefore,

the moment land changes its patterns in terms of management, distribution, legal status, rights over it, etc, the system as a whole, that is in this case, the *Mapuche* society, will have to respond in a way in which its stability can be maintained. But if the land is divided and the physical location of the systems and subsystems with respect to each other is changed, then the systems run the risk of being substantially altered and, in extreme cases as the one in Chile, chased away from their finality.

In this context, it is understandable why a system, in a condition of territorial fragmentation has little chance of developing itself, therefore staying in a state of poverty, and of incapacity of expressing its capabilities and of achieving its final stationary state or finality. Being the *Mapuche* a society bonded as strongly as they are to their territory, the effects of every change with respect to land and its social, political, economic, cultural and environmental conditions will originate or be translated into highly significant perturbations; a situation which is quite easy to find in every different period of their history.

The process of restitution of indigenous lands carried out by CONADI since its creation in 1993 can be understood as a response to a historical request on the part of the *Mapuche* with regard to the territory that belonged to them in the past and is an element of a large chain of events related to policies oriented to the resolution of the so-called “historical debt”. In relation to this, particularly during the 20th century, the policies were centred in the paradigm of integration of the numerous ethnic groups to the nation as a whole, a process which was normally understood as the absorption and eradication of the particular traditions with the objective of constituting a single and indivisible society. A quite good example to remember in this case is the decree enacted in 1819 by the Supreme Director Bernardo O’Higgins which declared that every indigenous person was legally equal to all non-indigenous Chilean citizens (Aylwin 2002 (b), p. 6).

During almost two centuries, the teleological orientation of the modernization processes towards a higher political, economic and cognitive rationality resulted, in general, in the partial destruction of the traditional structures of the *Mapuche* society and in the imposition of a generalizing and “Occidentalising” model in which the central idea was to eradicate the traditional behaviour in order to move forward into more “modern” times. In this sense, the concept of development with relation to modernization did not allow for the existence of intercultural contexts and of respect towards ethnic diversity.

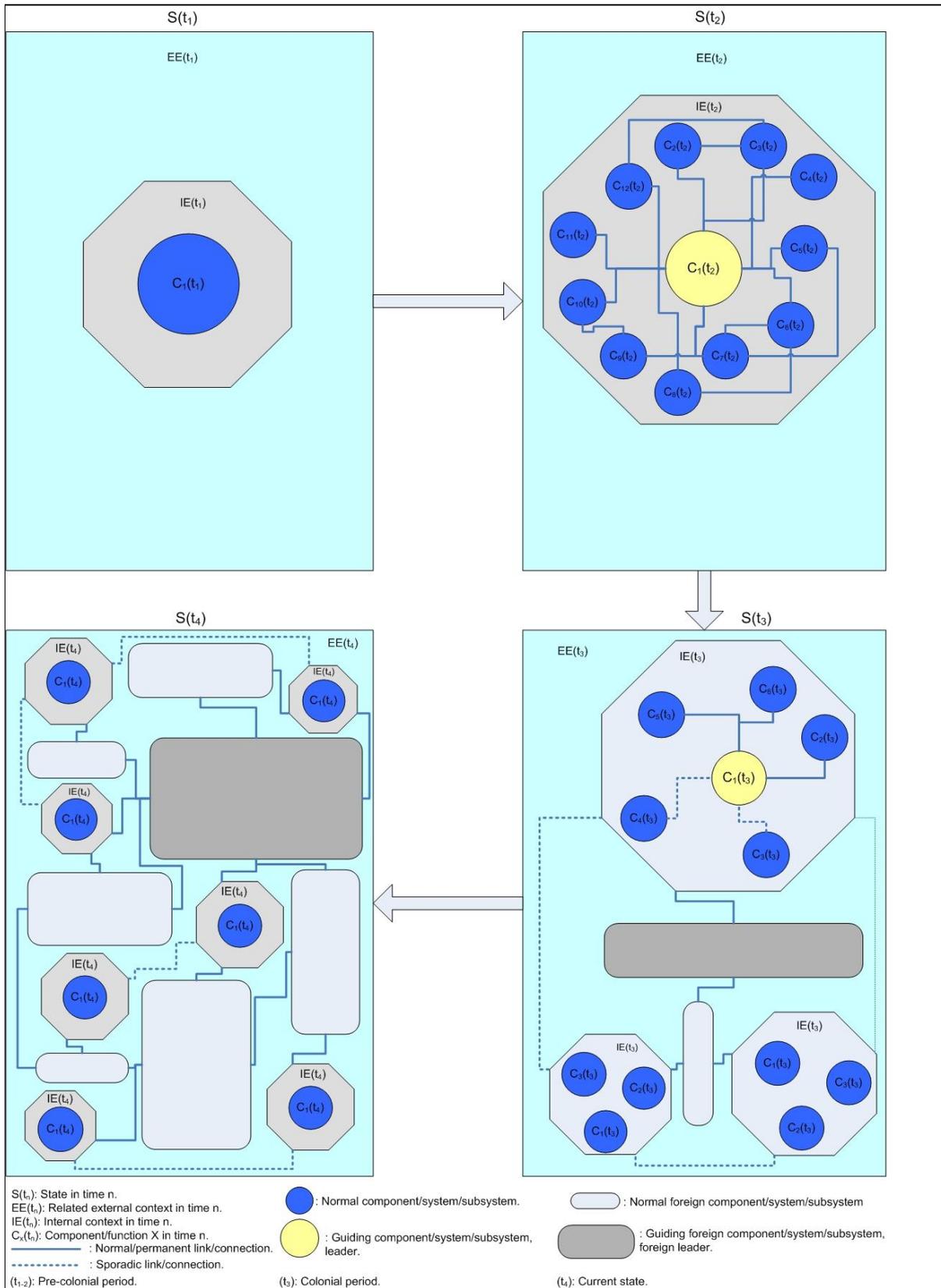
Nevertheless, these policies were only partially successful as the *Mapuche* society was able, in some extent, to reorganize itself and resist the military defeat as well as the occupation of its territory during the last part of the 19th century, and to find the ways of adapting itself to the context of socio-economic marginality and political subordination.

During the 20th century and till now, the behaviour of the *Mapuche* has been that of a system which seeks for the ways of maintaining its integrity in terms of culture and territory, in other words, a system trying to maintain its internal characteristics within certain limits through quite evident adaptive behaviours. Therefore, its actions are characterized by the continuous trial and error in the form of their efforts to reorganize their internal structures and to develop strategies for putting pressure upon the state in order to try to influence and modify their external environment.

Thus, if we centre our attention in the historical evolution of the involved systems, looking at Figure 9 it is possible to see what happened during history with regard to the development of the *Mapuche* society. At the beginning, long before the arrival of the Spaniards, the existing systems (indigenous groups) could be represented as in the upper left part of the diagram, were there was a single primitive unit which started developing itself, for example in terms of progressive segregation and centralization, till it constituted a system in equilibrium with its surroundings, a society which, given the conditions at that moment, was sustainable within the internal and related external environment in which it was located (upper right part of the

diagram). However, after the arrival of the Spaniards, other (foreign) systems started appearing and mixing up with the local or original systems and acted as quite disruptive and continuous perturbations which, as showed in the lower parts of the diagram, ended up causing, first, a backward movement towards simpler, fragmented, and less stable states; and second, a substantial and, in a number of cases, definitive loss of the traditional structures which have till that moment defined their society as a whole. It is significant to say that this appearance of foreign components does not necessarily have to do with the introduction of Spanish landlords; the process includes as well other aspects like, for instance, the colonization programs carried out by the Chilean government since the first half of the 19th century and the sometimes-lawful/sometimes-dishonest transfers of land to non-indigenous Chilean citizens through the numerous procedures that were, at that particular time, feasible.

Figure 9. Historical evolution of the communal systems.



Source: Own illustration

4 CONCLUSION

However true that it is not possible to find a direct correlation between the current state of the traditional structures and the effects of isolated factors like the process of land privatization – and this research does not intend to – it is possible to say that the cultural, legal, social, and economic variation of the concept of land has direct influences in how the social systems behave, particularly in those where the bond land-person is so strong. In the case of the differences encountered in this research, a long list of factors may be the base for the current conditions; nevertheless, through the systemic prism which is hereby being used, it is possible to think that there might indeed be a relationship between the disrupting effects of passing from a customary tenure system to a mostly individualizing one, and the alterations occurred on parallel in the structures which formerly allowed for particular social systems to achieve their finalities. Therefore, consideration of a continuum of land rights instead of a focus on private property may be a promising path to explore in order for the land conflicts to be solved.

The structures or configurations defining a specific social system, like the ones defining the *Mapuche* communities or the *Mapuche* society as a whole, arise as a response to the specific characteristics of the components and the environment where they exist and interact. There is, naturally, a highly complex and dynamic interaction between all of them. In other words, it is hardly possible to say if the structure is a result of the characteristics of the components or the other way around. What really matters is the fact that the characteristics defining each one of them are a result of their own actions in combination with the actions of the others.

Therefore, the characteristics of the particular components or members of a system, in this case the *Mapuche*, exist simultaneously due to their own existence and the existence of the traditional structures that have defined and have been defined by their society since their very beginning. The fact that, through adaptive behaviour, a system is capable of maintaining certain internal characteristics when being affected by certain perturbations is then quite significant. If the magnitude of these perturbations overwhelms the system's adaptive capabilities, the system will be damaged. The perturbation that in the case of this study is called "privatization" has certainly overwhelmed the adaptive capabilities of the *Mapuche* society, and has, in combination with other factors, confined them to poverty and social exclusion.

Across history, the system as a whole has gone through a continuous process of trial and error with the objective of adapting itself to the continuously changing conditions. In this context, their territory plays a fundamental role since the relationship established between the actors and their land is remarkably strong. The problem has been that the effects of this changing environment with respect to land have disrupted the fundamental social, cultural, economic, and political structures that defined the *Mapuche* as a society. This disruption has not been overcome by the adaptive behaviour undertaken by the system; on the contrary, the system has been divided in numerous different causal chains and the system's self-regulation and self-control has, as a result, been lost. The visual effects of these situations are their condition of poverty, their participation in the migration processes and the socio-political exclusion that affects them.

In conclusion, the information collected during the fieldwork, both in terms of primary data and secondary data, in combination with the research's theoretical framework, shows that the processes of land privatization that the country has gone through since the beginning of the colonization period has had a substantial impact on the livelihoods of the indigenous people, particularly on those of the *Mapuche*.

This paper claims thus that this land conflict is one of the most important challenges the country has been dealing with in the last decades. So far, the government's approach in this matter has addressed specific problems, but created new ones as well. Furthermore, the paper

argued that the main problem lies in an inadequate policy framework which doesn't promote the improvement of the quality of life of the indigenous population in Chile and, in addition, has negative consequences which deteriorate their cultural heritage.

The current international trend towards development of explicit land policies has not yet been realized in Chile's national policy making environment. In other words, although the country has a legal framework regulating a wide range of aspects relevant to the land sector, Chile doesn't have an overarching land policy providing visions and framing the complex processes of development of courses of action or formulation of legal instruments for the implementation of these by the government in representation of the society.

For these and other reasons discussed previously, there is an urgent need to revise and improve the legal and institutional frameworks with the objective of making it more accessible and coherent for all stakeholders. The current situation is a reflection of a series of historic events that are still in the memory of the system. In this sense, it is urgent to speed up institutional changes to increase efficiency and effectiveness of the measures and strengthen political representation of the indigenous population, naturally, with due consideration of their claims.

REFERENCES

- Armijo, G. & Caviedez, H., 1997. Vicisitudes y cambios en el mundo rural Chileno. La última modernización agraria. La gran solución de fin de siglo?. *Anales Universidad de Chile, Sexta Serie, N°5*, October.
- Augustinus, C., 2007. *How to Develop a Pro-Poor Land Policy. Process, Guide and Lessons*. Nairobi, Kenya.: UN Habitat.
- Aylwin, J., 2002 (a). *El acceso de los indígenas a la tierra en los ordenamientos jurídicos de América Latina: Un estudio de casos..* Santiago, Chile: Red de desarrollo agropecuario. Unidad de desarrollo agrícola. División de desarrollo productivo y empresarial. CEPAL (ECLAC)..
- Aylwin, J., 2002 (b). *Políticas públicas y pueblos indígenas: El caso de la política de tierras del Estado Chileno y el pueblo Mapuche..* Temuco, Chile., Instituto de estudios indígenas, Universidad de la Frontera.
- Aylwin, J., 2004. *Los Mapuche o esa parte de la realidad que no queremos ver. Jornadas sobre multiculturalidad y derechos indígenas en América..* Andalucía, España: Universidad Internacional de Andalucía.
- Bengoa, J., 2000. *Historia del pueblo Mapuche. Siglo XIX y XX*. Santiago, Chile: Lom.
- Borde, J. & Gongora, M., 1956. *Evolución de la propiedad rural en el valle del Puangue*. Santiago de Chile: Universidad de Chile, Instituto de Sociología.
- Boulding, K., 1968. *The organizational revolution. A study in the ethics of economic organization*. Chicago: s.n.
- Centre for Social Research, Un Techo para Chile, 2007. *Catastro Nacional de Campamentos 2007*, Santiago de Chile: Un Techo Para Chile.
- Enemark, S., 2009. Facing the Global Agenda - Focus on Land Governance. *Article of Month, International Federation of Surveyors (FIG)*, July.
- Eyzaguirre, J., 1982. *Historia de Chile, Tomos I y II..* Santiago de Chile: Zig Zag.
- Fischer, S., 2000. *Working with conflict. Skills and strategies for action*. London: Zed Books.
- Förster, R., 2001. Sociedad Mapuche y sociedad Chilena: la deuda histórica. *Polis, Revista Académica Universidad Bolivariana*, 1(2).

- Gallardo, G., 2002. *Communal Land Ownership in Chile. The agricultural communities in the commune of Canela, Norte Chico (1600–1998)*. London: Ashgate.
- Garrido, J., Guerrero, C. & Valdes, M. S., 1988. *Historia de la Reforma Agraria en Chile*. Santiago de Chile: Editorial Universitaria.
- GLTN, 2008. *Secure land rights for all*, Nairobi: UN Habitat - GLTN.
- Government of Chile, 1993. *Ley Indígena N°19.876*. s.l.:s.n.
- Government of Chile, 2008. *Los objetivos de desarrollo del milenio. Segundo informe del gobierno de Chile.*, Santiago de Chile: Government of Chile.
- Instituto Libertad y Desarrollo, 2012. *Reconocimiento constitucional de pueblos indígenas ¿Soluciona el problema de fondo?*. [Online] Available at: <http://www.lyd.com/centro-de-prensa/noticias/> [Accessed 20 10 2012].
- Instituto Libertad y Desarrollo, 2012. *Un Semestre para Olvidar en Materia Indígena.*, Santiago, Chile: Instituto Libertad y Desarrollo.
- Instituto Nacional de Estadísticas, 2002. *Población y Sociedad , Aspectos Demográficos*, Santiago de Chile: Instituto Nacional de Estadísticas, Gobierno de Chile.
- Instituto Nacional de Estadísticas, 2008. *Población y Sociedad, Aspectos Demográficos. 1950-2004*, Santiago de Chile: National Institute of Statistics .
- Kaufmann, R., 1972. *The politics of land reform in Chile, 1950-1970*. Massachusetts: s.n.
- Leiva, A., 1984. *El primer avance a la Araucanía, Angol 1862*. Temuco, Chile: Universidad de la Frontera.
- Loehr, D., 2012. Capitalization by formalization? - Challenging the current paradigm of land reforms. *Land Use Policy*, 01 01, p. <http://dx.doi.org/10.1016/j.landusepol.2012.01.001>.
- Magel, H., Espinoza, J., Masum, F. & Klaus, M., 2009. *Capacity Building in land management: The need for establishing a global academic partnership*. Hanoi, Vietnam, s.n.
- Magel, H., Espinoza, J., Masum, M. & Klaus, M., 2010. *Capacity building for land management: A key component of effective strategies for improving rural-urban interrelationship*. Hanover, s.n.
- Maturana, H. & Varela, F., 1980. *Autopoiesis and Cognition*. Dordrecht, Holland: s.n.
- Mauro, A., Bending, T. & Taylor, M., 2009. *Advancing the Monitoring of Land Governance for Ensuring Impact on Poverty Reduction (Draft)*. Rome: International Land Coalition.
- Muñoz, B., 1999. *Derechos de Propiedad y Pueblos Indígenas en Chile.*, Santiago de Chile: Red de Desarrollo Productivo y Empresarial. CEPAL (UN ECLAC).
- OECD, 2009. *OECD Territorial Reviews: Chile*, s.l.: OECD.
- Palmer, D., Wehrmann, B. & Fricška, S., 2009. *Towards Improved Land Governance*, Rome: FAO.
- Salazar, G., 1985. *Labradores, peones y proletarios*. Santiago, Chile: s.n.
- Thiesenhusen, W., 1996. *Trends in Land Tenure Issues in Latin America: Experiences and Recommendations for Development Cooperation*. s.l.:GTZ.
- von Bertalanffy, L., 1968. *General Systems Theory*. Middlesex, England: s.n.
- Wehrmann, B., 2006. *Cadastral in itself won't solve the problem: The role of institutional change and psychological motivations in land conflicts - Cases from Africa*. s.l., s.n.
- Wehrmann, B., 2008. *Land conflicts: A practical guide to dealing with land disputes*, Eschborn: GIZ.

BIOGRAPHICAL NOTES

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