Public Policy Evolution in Chile: Indigenous Land Policy and Mapuche Demands

ABSTRACT
This paper explores one of the focal points of Chile’s indigenous public policies, an institutional path to resolving historic land disputes. While there was significant indigenous participation during policy development in early 1990s, I argue that insufficient regulation created the space for the indigenous ministry to control the land policy. When confronted with local and national pressure for transparency and effectiveness, the ministry used the space to confront the pressure through the creation of measurable application requirements, implementation procedures, and evaluative standards. Unfortunately, these regulations have pulled the policy from being a participatory means of addressing historic indigenous land demands into a socioeconomic development policy for rural indigenous peoples. Conclusions from this micro-level analysis will facilitate a more thorough understanding of the ineffectiveness of Chile’s indigenous land policy and offer opportunities for public participation.

On January 3rd, 2013, approximately 20 activists entered the property of a prominent, elderly couple’s land in the Araucania region of southern Chile. The couple holds one of the largest plots of land in the region often referred to as the ‘red-zone’ of Mapuche mobilization, due to the escalation of violence as various Mapuche indigenous communities pressure the state to respond to their historic claims to significant portions of land. January 3rd was a significant date in the history of the region; five years prior, a young Mapuche activist was shot and killed after being shot in the back from a police officer while illegally occupying a portion of land belonging to the couple. Five years later and 16 miles away, the masked activists set fire to the couple’s house. The husband defended the house while the wife called police, yet the house was destroyed and both bodies were found when police arrive 15 minutes later. The husband shot and injured one of the attackers, the only to be detained for several days; no individual or group

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claimed responsibility for the attack despite reports that literature from the most radical Mapuche organization was found at the scene.

By noon on January 4th, President Sebastian Piñera had arrived in the region, announcing a seven point plan to improve security in the region. Piñera assigned additional police forces, created a specialized police force, and established a zone of security in the region; the Interior Minister suggested the area could possibly be declared to be in a state of emergency. Piñera and other officials vowed to charge those responsible with terrorism under a controversial, Pinochet-era law that, since the return to democracy, has only been applied to acts of arson committed by Mapuche activists. The events continued to unfold; in the week that followed, there were nine additional arson attacks throughout the region, landowners spoke of creating armed self-defense groups, truckers blocked the Pan-American highway protesting the uncertain security situation, and NGOs criticized the application of the terrorism law. The unfolding events and discussions dominated national news for weeks to come.

The severity of the government’s response is indicative of the historic tensions between the Mapuche community, large landholders, and the government. Successive administrations have devoted significant attention and funding to address indigenous demands; Aylwin (1990-1994) signed the Nueva Imperial Agreement with Mapuche leadership in 1989 and passed the Indigenous Law in 1993, Frei (1994-2000) oversaw the creation of the National Corporation for Indigenous Development (CONADI), Lagos (2000-2006) established the Historical Truth and New Deal Commission, and Bachelet (2006-2010) signed the Re-conocer Social Pact with indigenous groups and oversaw the approval of ILO 169 in 2008. Despite these and other efforts by successive administrations, why have tensions remained high?
This paper seeks to understand why government actions have been unable to appease tensions with the Mapuche community. It focuses specifically on indigenous land policy, established in by the Indigenous Law passed in 1993 and managed by the Land and Water Fund within CONADI. While several bodies of literature note that government plans to improve social welfare rarely turn out as intended, most attribute unintended change to the structure of the institution, designed by policymakers to allow them to exert influence over the institution after creating it. Yet, Chilean governance is characterized to be highly centralized and technocratic.

I argue that these qualities of Chilean governance are notably absent in the regulation of indigenous land policy. Insufficiently-specified regulatory policy, combined with unrealistic expectations, caused the indigenous ministry to gradually transform land policy from a policy to address historic land demands to a socioeconomic development program. Policy evolution was the result of the indigenous ministry’s inability to match the promises emerging from the central government’s discourse. Searching for a transparent decision-making process and measurable proof of effectiveness, the ministry implemented application requirements and evaluation standards to avoid controversy. In doing so, however, the ministry has converted the policy into a socioeconomic program incapable of addressing indigenous demands.

To explore this argument, this project traces Article 20B of the Indigenous Law, an institutional path to resolving historic land conflicts, through specific instances of policy adaptation over 25 years. This paper first discusses the distinction between land and territory and explores the ways in which these two concepts clash in state policy. It then explores the origins of the Chilean indigenous land policy, as were developed with significant participation of indigenous groups and follows the evolution of this policy through five instances of policy specification.
Trends in Chilean Governance

It has become commonplace to note that government efforts to improve citizens’ well-being, both domestically and internationally, are rarely as effective as hoped. While bureaucracies provide a structured, technical, predictable way of facilitating governance, this depoliticization has the potential to develop into an autonomous and powerful new actor. Prominent studies in diverse bodies of literature explore the extent to which actors are able to exercise control over bureaucracies through particular bureaucratic structures. Policy evolution and organizational dysfunction, then, are most often the result of powerful actors exerting control outcomes.

This article expands upon this literature by taking advantage of two particularly interesting governance trends in recent Chilean history. First, the Chilean government is widely regarded as one of the most centralized in Latin America. Since the return to democracy in 1990 after the Pinochet dictatorship, the center-left governing coalition held the presidency for 20 years and started an extensive process institutional reform. Within this process, however, there was little discussion about the need to maintain a strong centralized government. Because of the institutional arrangements from the Pinochet dictatorship strengthened the power of the right, the left and center-left needed to maintain a strong central government to counter these legacies. Within this context, the theoretical expectation that institutions are political creations holds; as Eaton summarizes, “Few Chileans would dispute the argument that political actors try to create institutions to serve their interests and block institutions that might prove threatening.”

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2 Most notably, Weber, Moe, McCubbins, Noll, and Weingast.
4 Kent Eaton “Designing Subnational Institutions: Regional and Municipal Reforms in Postauthoritarian Chile.” *Comparative Political Studies* 37, no. 2 (March 2004), 219.
Second, centralization in Chile is supported by the continuing strength of technocrats. Silva’s work on Chilean technocrats proposes that technocratic rule has strengthened as politicians and/or society perceive a need for apolitical rule; because many attribute the breakdown of democracy in 1973 to over politicization, society fears that a return to this level of politicization would break the negotiated return to democracy. Technocratic rule in the 1990s offered an assurance of stability and space for dialogue during the uncertain political transition. As he summarizes, “the positioning of the technocracy vis-à-vis democracy … has been conditioned by the permanent middle-class fear of the masses and chaos, and its desire for order and, at the same time, by its wish for social justice and the value it assigns to personal effort.”

The convergence of these trends causes most authors to conclude that institutions have evolved in ways that are favorable to powerful politicians. Bureaucrats are often in favor of this control; as one author summarizes, “The preference for more centralized patterns of policy making is one that is shared by presidents, legislators, and most bureaucrats.”

This style of governance has held, despite growing societal discontent with these trends in Chilean governance. A number of highly visible education, environmental, labor, and indigenous protests that have been unable to find the political space to affect policy change. When education protests halted the country in 2006 and 2011, political change was limited by “the relative weakness of wider social actors and the Concertación’s emphasis on institutional representation, especially political parties in Congress. The result has been the sidelining of (mostly left-wing) social movements in favor of the right-wing opposition.” Observing this trend, Michelle Bachelet promised to promote a more participatory form of governance during

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6 Eaton, 219.
7 Eaton, 220.
8 Burton 35.
her 2006-2010 administration. Despite her broad popularity, one author concludes that, “… in this identification with the person of Bachelet … Chileans saw the limits of the Concertación’s political program. In reaching for the tools to build a better, more inclusive and just society, they came up against the barrier that the technocratic, right-of-center Concertación had set up.” As Silva summarizes, “social problems are translated into technical terms,” providing few opportunities for participation.

This paper explores institutional evolution in the context of these converging trends of Chilean governance. Considering politicians’ continued incentive to maintain centralization and a history of technocracy that limits bottom-up participation, theoretical expectations would suggest powerful actors direct the shape of institutional evolution. In a context of centralization, how does institutional evolution proceed? When and how to institutions take on a life of their own, apart from the influence of centralized governance?

**Indigenous Land vs Territory**

To explore these questions, I explore policy responses to land demands, historically one of the most salient demands of indigenous communities. As Van Cott describes, “Resolving pending territorial issues- land demarcation, enforcement of indigenous territorial rights, cessation of unwanted extractive activities on indigenous lands, and legal jurisdiction- would eliminate much of the conflict between the state and indigenous peoples in Latin America.”

Implementing a meaningful land policy is complicated by alternate understandings of land. Government land policy typically understands land to be an economic resource capable of

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9 The Concertación is comprised of four parties: Christian Democrat Party (PDC), Party for Democracy (PPD), Socialist Party (PS), Social Democratic Radical Party (PRSD). The PDC and PPD are considered to be more moderate than the PS and PRSD. Bachelet was elected from the Socialist Party. Fernandez, Vera, 18-19.

10 Silva, 22.

facilitating development. This perspective is evident in Latin American land policy dating back to the 1910 land reform in Mexico. Regardless of regime type (authoritarian, military, liberal reformists, revolutionary), these reforms have sought to shift the *productive* use of land in order to promote long-term development, reduce rural unrest, and encourage agricultural efficiency. For example, 19 Latin American countries passed land reform legislation and 12 countries enacted reforms between 1960 and 1964 to avoid a repeat of the 1959 Cuban Revolution. During import substitution industrialization, land reform was understood as a means of improving agricultural efficiency by transferring unproductive land to new owners; the sellers would acquire additional capital that could be reinvested in new technology. As Hirschman summarizes, “the patterns of land tenure and ownership are held responsible for the lag in agricultural output;” land reform could supply inexpensive, domestically-produced food to growing urban populations, reducing the country’s need for imports. During the region-wide shift to neoliberal economic policies in the 80s and 90s, governments worked to promote land markets; promoting free markets and private enterprise through land titling and registration programs would encourage profit-maximizing behavior, efficiency, and rural development.

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14 Peter Dorner, *Latin American Land Reforms in Theory and Practice* (The Univesrity of Wisconsin Press, Madison, WI, 1992), 33. List. The Inter-American Economic and Social Council (1961) called for signatory countries “To encourage, in accordance with the characteristics of each country, programs of comprehensive agrarian reform leading to effective transformation, where required, of unjuyst structures and systems of land tenure and use, with a view of replacing latifundia and dwarf holdings by an equitable system of land tenure so that, with the help of timely and adequate credit, technical assistance, and facilities for the marketing and distribution of products, the land will become for the man who works it the basis of his economic stability, the foundation of his increasing welfare, and the guarantee of his freedom and dignity.” Qtd in Dorner, 11.

15 Qtd in Dorner, 15.

Despite these broad swings in Latin America’s economic policy, land is consistently understood to be a productive resource used to promote development.

Indigenous communities, however, have an expanded definition of land. From this perspective, land is better defined as territory, including land, religious sites, cultural legacies, and resources on the land (water, underground minerals). This broader understanding of the utility of land also creates a deeper relationship between indigenous peoples and territory. As the President of the Central Organization of Indigenous Peoples and Communities of Eastern Bolivia (CIDOB) expressed at the 1985 meeting of the UN Working Group on Indigenous Populations:

Our defense of the land and natural resources is for the cultural and human survival of our children, and is the foundation of a moral security for peoples who have different languages and customs… We indigenous peoples think and plan in terms of the territory, not only the individual plot; in this way, we assure the access of the community to the diverse resources of the forest (wood, soil appropriate for agriculture and cattle, and wild fauna)… We indigenous peoples know that without land there can be no education, there can be no health and there can be no life.\(^\text{17}\)

Because of this fundamental relationship between historic territory and wellbeing, groups have worked to pressure the state for historically occupied land, land sufficient to fulfill economic/social/cultural functions, protection of claimed land from the state or private actor, and a right to exercise autonomy within the claimed land. Additional concerns arise over rights to adjacent or subsoil resources and the protection from conflict over land if the state does not enforce land rights.\(^\text{18}\)

This relationship has been increasingly acknowledged in international law. The 1989 International Labor Organization’s Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) is the most significant and only binding international law on indigenous rights. In terms of land, it recognizes that “governments shall respect the special

\(^{17}\) Qtd in Ortega, ix-x.  
\(^{18}\) Van Cott 1994, 17.
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” (emphasis added). 19 The use of the word territory, defined as “the total environment of the area,” is significant; the first international convention on indigenous rights (ILO 107, 1957) only called for indigenous communities to have a “land reserve adequate for the needs of shifting cultivation.” 20 As this perspective has also been gradually incorporated into international law, indigenous communities have called upon these guarantees to pressure their government to protect this relationship; domestic and international indigenous mobilization in the late 1980s and early 1990s caused many Latin American countries to recognize territorial rights, to varying degrees, in new constitutions (Guatemala (1985), Nicaragua (1987), Brazil (1989), Colombia (1991), Paraguay (1992), Argentina (1994), Bolivia (1995), Ecuador (1998), Venezuela (1999), and Mexico (2001)). 21

Conflict between these two perspectives of the utility of land is particularly strong in southern Chile. Chile shifted to a neoliberal economic model during the Pinochet dictatorship and is largely considered to have continued these economic policies since returning to democracy in 1990. In the Araucania region, this resulted in the expansion of forestry companies, who acquired large portions of land. The region is also the poorest in Chile, with 22.9% of the population living below the poverty line in 2011. 22 As the government works to promote development in the region, Mapuche individuals and communities are often colloquially blamed for holding land that is not being worked. While there are numerous environmental, historical, and spiritual reasons the land is left unworked in particular years, this popular public

19 ILO 169, Article 13.
20 Deere and León, 76.
22 CASEN 2011.
perception is indicative of the distance between these two perspectives of land.

**Research Design**

This paper seeks to understand how these two converging understandings of land’s utility apply to Chile’s indigenous land policy. While the traditional conception of land sees land as an economic resource for productive output, an indigenous understanding of land focuses on the economic, spiritual, cultural, historical and environmental uses of land. To evaluate the evolution of the policy, I compare the implementation and evaluation procedures to these two understandings of land.

As will be explored, Chile’s indigenous land policy emerged out of indigenous mobilization in the late 1980s and continues to be one of the primary policies of emphasis and controversy for the indigenous ministry. It establishes an institutional path through which the indigenous ministry can work to return historically claimed land to indigenous communities. Established in 1994, over time the specific processes of implementation of the policy have been clarified in a series of policy documents.

The documents that are addressed in this article are those that CONADI public officials define to be those which altered the processes of implementation over the policy’s nearly 20 year history. This information was generated from a series of interviews conducted between September and December 2012 with CONADI public officials associated with the implementation and oversight of Chile’s indigenous land policy. Other lawyers, academics, and policy experts were also consulted with regarding these key turning points in the implementation of land policy. Based on these interviews, I explore five instances of policy adaptation between 1993 and 2010.

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23 Approximately 90% of CONADI’s budget is directed towards resolving land issues. 70% of this budget is used for 20B. Interview 22 November 2012.
Land Demands and Policy Creation

Chile’s current indigenous land policy emerged out of the political opportunity provided by transition to democracy following the Pinochet dictatorship. After significant Mapuche mobilization throughout the 1980s, the opposition Concertación political alliance sought to incorporate indigenous demands into its 1988 “No Campaign” against the continuation of Pinochet’s term. This culminated in the Acuerdo de Nueva Imperial, an agreement signed between Mapuche leaders and Concertación leader, and future president, Patricio Aylwin in 1989. If elected, the Concertación agreed to address territorial land disputes, constitutionally recognize indigenous peoples, and adopt ILO 169.

Once elected in 1990, Aylwin created the Special Commission for Indigenous Peoples (Comisión Especial de los Pueblos Indígenas, CEPI) to implement the three goals. The commission was comprised of ten indigenous representatives, ten government representatives, and a three person directorate dominated by the government. Approximately 100,000 indigenous peoples indirectly participated in the legislation project lead by CEPI; 2,800 community assemblies were held to elect 3000 representatives to attend one of fifteen Provincial Congresses held throughout 1990. Each of the Provincial Congresses elected 10 delegates to attend the culminating National Congress of Indigenous Peoples in 1990. Drawing on this participation, CEPI submitted a plan in December 1990 to parliament that would address land demands and recognize indigenous peoples in the Chilean constitution.

Discussion of land and territory were one of the principal topics of debate. The mobilization and resulting CEPI project focused on ending land divisions initiated by Pinochet.

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25 Ibid.
and defending indigenous lands, as documented by títulos de merced. As a result, land acquisition would be based on well-documented, historic documents rather than historically occupied land; while defensive, the strategy was the minimum to be able to survive.\textsuperscript{27} A more ambitious project pursuing territorial rights as understood by the Mapuche community was not possible considering the political climate during the return to democracy; as one member of the CEPI project stated, “At the time, no one expected to recover lands. That would be absurd.”\textsuperscript{28}

Despite pursuing a reduced quantity of the historically occupied by the Mapuche community, the law project understood territory as defined by the Mapuche and international indigenous community. In addition to emerging out of an extensive process of indigenous participation, the law proposal also drew on international trends in the recognition of indigenous rights. It cited the significance of 1992 for indigenous groups in Latin America and called for Chile to adopt indigenous rights as established in ILO Convention 169, which would include an expanded understanding of territorial rights.\textsuperscript{29}

This initial expression of indigenous demands, however, was not expressed in the resulting legislation. The bill went through seven different versions before a significantly different law was passed in 1993. Specific to land policy, Congress also eliminated the classification of “indigenous land” (tierras indígenas), which would have given the community preferential rights to natural resources on the land necessary to ensure the physical and cultural well-being of the community.\textsuperscript{30}

\textsuperscript{27} Ibid.
\textsuperscript{28} Personal interview 12 October 2012.
\textsuperscript{29} “Historia de la Ley 19.253,” 8.
\textsuperscript{30} Aylwin.
While the changes weakened the law’s ability to respond to territorial demands, the lack of specificity left the implementation of the policy to be determined. Article 20B of law 19.253 establishes the policy, stating that:

An Indigenous Land and Water Fund, managed by the Corporation, shall be created. The Corporation, through this Fund, may accomplish the following objectives: b) financing mechanisms allowing to overcome land issues, specially, by reason of compliance with judicial or out of court resolutions or transactions concerning indigenous lands in which there are solutions on indigenous lands or these are assigned to indigenous people, coming from land grants, or acknowledged by commisioner’s titles, or other assignments or transfers made by the State in favor of indigenous people.31

While a significant step forward for indigenous rights in Chile, indigenous activists assert that the law does not meet the terms of the Nueva Imperial agreement. Despite the significant expression of indigenous demands evident in the legislative project, this window of participation was lost as the project was transferred to Congress. While the changes made in Congress suggest that the Aylwin government understood indigenous land issues as an agricultural or economic issue,32 the implementation and regulation over the Fund were left largely undefined in both the indigenous law regulatory policy. The only requirement, as suggested by the final wording of the law, was historical documentation of the indigenous community’s relationship with the plot of land.

Decree 395, passed in November 1993, was the first clarification of the implementation procedures and regulations surrounding the Indigenous Land and Water Fund. It defines the scope of the Fund to be one of financing mechanisms for the solution of land problems (Article 1). Article 6 of the Decree regulates this objective, further emphasizing the importance of

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31 Notably, there is a second path established in the indigenous law through which indigenous communities can request land. This path more directly respond to situations of poverty and land has always been clarified to be an economic resource used to promote development. 20A. 20B, however, has the expressed objective of responding to historic land disputes.

32 Interview 12 October 2012.
historic documentation of the community’s connection to the land; the policy only extends to land claims supported by títulos de merced and other state-issued recognitions of indigenous land. The National Director of CONADI is to resolve each request based on the number of people, severity of the social situation, and the antiquity of the land conflict.

While these regulations appear to be significantly underdeveloped in hindsight, they suggest that the high demand and resulting controversy over implementation were unforeseen. One CONADI public official understood that officials only expected 40 cases to be resolved through 20B; as a result, the policy did not necessitate significant administrative oversight or regulation.33 Despite the estimations, however, a large number of communities saw 20B as a way to access historical land documented in their título de merced. The requests of 89 communities were processed in the first five years, involving 2025 families and 22,747 hectares.

Policy Evolution

Allegations of fraud emerged during these initial years of implementation, prompting the first of several efforts to clarify the process. In 1999, CONADI released “Land Policy,” a policy document that acknowledged that 20B had “low efficiency in its implementation due to errors and omissions.”34 The study cites that the lack of valid initial studies that objectively quantified the number of expected claims, resulting in a high demand that was not budgeted for.

The conflict between land and territory appeared to motivate much of the controversy. The Policy cites confusion between the concept of “land (an economic concept)” and “territory (a political concept)”; the idea that the policy was to address claims to ancestral territory was wrongly disseminated. The study suggests that “the populism of the period” promoted the idea that the land eligible for restitution was defined by the collective memory of the community

33 Interview, 30 November 2012.
elders. Responding directly, the policy states that “The experience has shown that it is not possible to reconstitute ancestral territory through land purchases at market prices because there is not sufficient public funding to buy them and because often the current owner does not want to sell them.”\(^{35}\) It concludes asserting that “the irresponsible dispersion of these ideas motivated significant pressure towards CONADI and a great frustration from communities and individuals who cannot have their expectations met.”\(^{36}\)

The resulting land policy outlined in this 1999 document is CONADI’s direct response to this situation. First, the policy proposes clarifying the implementation procedures. As the policy justifies:

> In the opinion of many, it is very unlikely that current land problems in southern Chile can continue to be solved if it is not possible to work in an environment free of pressure and if there is not a program for land solutions within a span of a few years. This requires reaffirming the confidence between the State and indigenous communities. It also requires that CONADI continually improves its work organization (emphasis added).\(^{37}\)

In establishing these regulations, CONADI claims that, “the procedures of the solution system are being normalized and redesigned to prevent the price speculation and external interferences in the organization.”\(^{38}\) The policies developed in this document mark a significant shift in the goals 20B is working to serve. As one CONADI employee expressed, the document develops the “grounds for decisionmaking.”\(^{39}\)

This 1999 document also includes the first written expression of CONADI’s objective to use 20B as a means of promoting socioeconomic development. As the document justifies:

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\(^{35}\) Ibid.
\(^{36}\) Ibid.
\(^{37}\) Ibid.
\(^{38}\) Ibid.
\(^{39}\) Interview 14 November 2012.
While it is possible that land problems will continue to be important in the next decade for the rural indigenous population, the country’s economic and social change will undoubtedly demand that indigenous communities have an economic base broader than only agriculture. This has occurred with non-indigenous peoples in all countries. With this perspective, it is likely that education, development of indigenous human resources, and commodification of economic activities will be some of the strategic work for the next millennium.\(^{40}\)

In accordance with this perspective, CONADI asserts it will prioritize communities with higher incidences of poverty and that the quantity of land will be determined by the productive capability of the plot of land. While acknowledging that land is also important for cultural development, the addition of this socioeconomic perspective marks the beginning of a shift in the policy away from one of resolving historic land conflicts.

This shift towards a socioeconomic development perspective is accompanied by a deemphasis of indigenous elements. For example, the 1999 document confirms that the policy applies to land, not territory, asserting that CONADI interprets the scope of the law to be finite. It estimates that principal land conflicts will be resolved by 2010, as “the mechanism was designed from the perspective that there are solutions to land problems … that is, land problems are not eternal.”\(^{41}\) Indicative of criticisms, CONADI asserts it will not respond to illegitimate sources of pressure, such as land grabs, and that it will only pay up to 10% more than the estimated value of the land. Finally, and perhaps most importantly, CONADI also began to buy alternate land if the land the community lost was too expensive and/or if the landowner was not willing to negotiate with the government.\(^{42}\) Each of these transitions limited the ability of CONADI to respond to historic land claims.

\(^{40}\) “Política de Tierra.”
\(^{41}\) Ibid.
\(^{42}\) Interview 30 November 2012.
Resolution 878, “Manual for the Application of Procedures for Land Purchases through Article 20 Letter B of the Land and Water Fund of CONADI,” was introduced in 2003 to further clarify the regulatory procedures governing the implementation of 20B. Focusing on establishing technical procedures, the document is justified, “considering the necessity of regulating the procedures to realize land purchases through Article 20 letter B of Law 19.253.”

It represents a significant point of departure from previous implementation procedures in that it establishes four stages of the land purchase process: applicability, feasibility, viability, and completion. Moreso than any previous description of the decision-making process, 878 establishes specific procedures to be carried out by specific offices. For example, the process is initiated when a community’s leadership submitting a written request to their respective Subdirection of CONADI; the office will “create an numbered folder to contain all the presented records duly foliated and ordered consecutively in agreement with the logical development of the process. The first document of the folder should be the community’s request, foliated and stamped with the date received by the reception office.” This level of specificity continues for each step of the process outlined in the document and, notably, is the first instance in the history of the policy in which this level of specificity is outlined for the implementation of 20B. Importantly, however, there is no discussion of which cases are to be prioritized over others in terms of CONADI’s limited time and resources.

While not directly appearing in Resolution 878, interviews with current and former CONADI employees revealed that the clarification of these procedures also brought the size of the land transfer into question. While previous land transfers processed through 20B were determined by the quantity of land documented in the título de merced, 878 clarified the reports

43 878.
44 878, 2.
that CONADI officials needed to complete for each community during the application stage. CONADI officials would complete social, occupational, and judicial/administrative reports specific to each community; the social report would include levels of poverty in the community, the number of children and young adults that would soon be requesting land from their parents. With these studies, CONADI began to, ideally, allocate 10 productive hectares of land per family.45 While 20B was regulated by 395, the number of people and quantity of land did not affect the land transfer; only ancestral land that proven to be lost before 1993, based on the título de merced, was bought.46

One of the most significant documents affecting the implementation of 20B was a survey of indigenous lands carried out by the Centro EULA, the Center for Environmental Sciences at the University of Concepcion. The final evaluation was presented in 2004 and entitled “Model of Supply-Demand for Indigenous Waters, Land, and Irrigation.” The goal of the project was to estimate the current and future land needs of the indigenous population in Chile. The project spoke specifically to the implementation of 20B; the report asserted that “the information generated will be a valuable support to improve the management of the Land and Water Fund. … The proposed model and estimations utilize criteria focused on the population, with the end of improving efficiency and equality in the functioning of the Land and Water Fund.”47

The study concludes that there is an excess supply of land for indigenous communities. It cites that indigenous communities in Chile have historic claim to 1,239,289 hectares of land, 42.8% of which are registered to indigenous individuals or communities in CONADI’s Registry.

45 Interview 6 November 2012.
46 Interview 12 November 2012.
of Indigenous Lands. Specific to the Mapuche community in the Araucania region, the study estimates that historic lands account for 412,758 hectares; to overcome situations of poverty, the community would require 510,664 hectares of workable land. The study offers that if land was substituted for pensions to heads of households older than 60, the demand for land would fall to 193,844 hectares; if only rural households are considered, the demand is estimated to be 176,557 hectares. Based on current land titles, indigenous communities and individuals hold 423,920 hectares, creating a discrepancy of 229,412 hectares. If only considering the rural population and substituting pensions for land, the demand is 44,704 hectares. The study adds that the Mapuche community in Araucania demanded an additional 62,579 hectares of historically occupied land. The study estimates the supply of land to be 1,503,857 hectares, leading to the conclusion that there is an excess of supply in all of the areas under study.

While the introduction and conclusion of the study recognize the importance of the relationship between indigenous culture and territory, the focus is on estimating land demand for the purpose of promoting development among indigenous communities. This perspective is evident in the inclusion of ways to lower land demand through more cost-effective policies, such as providing pensions rather than land to elderly community members. The conclusion that the supply of land exceeds demand overlooks the relationship between indigenous communities and particular territories. This shift also brings the price of land into question; because the relationship between the community and a particular section of territory was not prioritized, the government was able to regularized the prices it would be willing to pay.

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48 Ibid., 121.  
49 Ibid., 131.  
50 Ibid., 132.  
51 Ibid., 135.  
52 Ibid., 172.
CONADI’s interpretation of these results had a significant impact on the management of 20B and the Land and Water Fund; one official described that the survey created evaluative goals for the policy. By quantifying land demand, the study created an end to the policy, considering the remaining land demand and price per hectare the government would pay. After the government resolved a certain number of requests corresponding to a certain investment and quantity of hectares, the land demand will be fulfilled and the program would no longer be needed. The prevalence of this perspective remains in 2012; CONADI has gradually established guidelines for the prices it will pay for particular sections of land, currently not to exceed $5m per hectare. Usually, the government spends approximately $3m per hectare; this makes it nearly impossible, regardless of a community’s historic claim to the land, to acquire land of higher quality or large landowners or companies that may demand a higher price. Yet, numerous public officials at CONADI concluded interviews with suggesting an end to 20B, due to the cost and limited remaining demand. One concluded that “titles cannot be eternal,” another suggested the land demand would be fulfilled between 2018 and 2022. Another explained that, because the government has an idea of the demand, in 10 years the state will have already compensated the community for the loss of land; if the problem still exists, it is a problem of the minifundo, not the loss of land. This perspective is supplemented by discussions of how CONADI can find more cost-effective ways of promoting development. By quantifying the indigenous land demand in Chile, CONADI has gradually transitioned away from processing land requests based on the history between the community and the territory. One official recognized this

53 Interview 22 November 2012.
54 Interview 19 November 2012, 22 November 2012.
56 Interview 22 November 2012.
progression, asserting that “Now, there are very few land problems- communities request 4 or 5 hectares. This is not a land problem. It is a territory problem.”

The incoming Bachelet administration took explicit steps to reach the policy goals established based on the land survey. Her full indigenous policy is outlined in the 2008 document “Re-Conocer: Social Pact for Multiculturalism,” which works towards “improving and optimizing the public response to land demands.” To accomplish this, 115 communities were prioritized by the Advisory council of CONADI; an additional 308 communities that had yet to prove applicability are to complete the process by 2010 and will then be processed starting in 2011. While this policy did not alter the process of implementation, it did

In 2010, the first external evaluation of the Land and Water Fund was conducted by the Universidad de la Frontera. The study is justified by the assertion that despite the policy being responsible for transferring more than 100,000 hectares of land over more than 10 years at a high cost to the government, there has not been a thorough study of the benefits of the program. As a result, the study asserts that, “a wide variety of opinions and impressions of the program have been formed, without being based in verified data and, in one form or another, are constructing public opinion and public policy, extrapolating concrete experiences restricted to one area to the whole of the Mapuche population in regards to the impact and utility of the state’s investment in land purchases.” Based on this public sentiment, CONADI requested and financed the study, “Social-Productive Evaluation Study of Lands Acquired by the Land and Water Fund of CONADI.” The study included nearly 70% of those that benefitted from the program between 1994 and 2009 and worked to explore the social, cultural, productive, and economic effects of the program. One of the strong emphases of the report was the percentage of acquired land that

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57 Interview 30 November 2012.
58 “Evaluacion Socio-Productiva de Tierras Adquiridas por el Fondo de Tierras y Aguas de CONADI.” Universidad de la Frontera, Instituto del Medio Ambiente. 2011, 4.
was occupied by the beneficiaries; the study found that only 40% of the acquired land was occupied, with families moving to the acquired land, on average, 21.7 months after the transfer. A CONADI official repeatedly emphasized this statistic as evidence that the program needs to be reconsidered if evidence does not reveal more substantial results. Throughout this conversation, ‘results’ were defined as increases in economic production and improvements in standards of living. As he explained, the government could develop targeted socioeconomic development programs that would be much more cost-effective than land transfers. Absent in this conversation, however, was discussion of the potential importance of these transfers for providing communities access to territory.

**Conclusion**

As evidenced by this overview of the evolution of Chile’s indigenous policy, CONADI has gradually transitioned the indigenous land policy from one working to address indigenous demands into one focused on promoting socioeconomic development. While the central government has maintained an economic perspective of land, the indigenous ministry emerged out of significant indigenous mobilization and participation in the legislative project. Furthermore, Chile’s indigenous land policy, as initially established, was sufficiently broad and avoided making assertive statements about the nature of land. In both the initial policy and accompanying regulatory policy (Indigenous Law 1993 and 395 1994), procedure only established that CONADI had the authority to respond to land conflicts. Beyond requiring documentation of the indigenous community’s history on the land, the policy was left fairly undefined. When this space combined with indigenous participation in the management of the indigenous ministry, it is feasible that CONADI would be capable of an indigenous land policy that would incorporate an indigenous perception of land.
As the policy became the subject of increasing controversy in the late 1990s, the utility of the policy shifted with the adoption of more technical implementation and evaluation procedures. While documentation of the history of the claim remained, socioeconomic indicators were incorporated into the application requirements, decision-making criteria, and evaluative standards. As socioeconomic indicators gained importance in the policy implementation, the historic connection with the land decreased in importance; communities were often required to move to a new plot of land when the current landowner was unwilling to sell the land to the government. Today, the indigenous perception of territory is barely visible in the implementation and evaluation of the land policy.

This evolution has largely occurred within CONADI itself. As one employee asserted, and many others expressed, “CONADI is more regulated every day, but remains without a leader.”

Another spoke of the need for CONADI to “resguardarnos,” to shield or protect ourselves, by making the process more ordered and technical. Another spoke of how government ministers would enter meetings commenting on the overall lack of interest in the politics of CONADI. Other ministries paid little attention and performed few evaluations of CONADI; evaluation and changes came from within.

The state’s response to the January 2013 attacks clearly reveals the evolution of the land policy. For example, after the attacks Joaquin Lavin, the minister of Social Development, announced that the attacks would not affect investment in the region and called for the government to accelerate the return of lands to indigenous communities. Importantly, he proposed that land acquisition by communities be accompanied by development plans with “the

59 Interview 14 November 2012.
60 Interview 19 November 2012.
61 Interview 30 November 2012.
62 Interview 30 November 2012.
hope that Mapuche communities make alliances with companies… there are 100 productive alliances, 12,000 hectares of Mapuche community property, working with companies.” Nancy Yanez, codirector of a prominent NGO, Observatorio Ciudadano, responded, asserting that, “There is a recurring way of saying that this a problem of poverty that will be resolved with an influx of public resources… yet this poverty is generated by the loss of territorial spaces and control of resources.” 63 A former director of CONADI responded more directly, stating that “…[the political Right] does not understand that in indigenous cosmovision, land is not an object of poverty or of commercial exchange. Land has a sacred value; according to el Ngenchén (supreme spiritual being in Mapuche religion, literal translation: owner of the Mapuche), it is a loan from nature.” 64

The evolution of this policy has significant implication for several bodies of literature. Despite the characterization of Chilean governance as technocratic and centralized, the lack of specification and oversight by the central government left public officials to implement and adapt land policy. This suggests the need for future research that explores how and when this style of governance is prominent. A second body of literature on indigenous mobilization in Latin America has explored how social movements transition into the political arena. This project suggests that the effect of this mobilization and the future of state-indigenous relations depend not only on how the movement transforms itself into parties and the formal political arena, but also on how indigenous movement, parties, and individuals participate in policy implementation.

64 Ibid.