

*La tierra para quienes tienen la historia:*<sup>1</sup> Anthropological Strategies in  
Indigenous Land Reclamation Movements in Guatemala and Argentina



By: Rosa Anderson-Barrera

Advised by: Claire Priest

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<sup>1</sup> Land for those with the history

**Abstract:**

This study investigates the land restitution battles of four indigenous communities: Chuarrancho and Chinautla in Guatemala and Lofs Buenuleo and Nahuelpan in Argentina. All four communities fight to protect their lands against a multicultural state that purports to recognize their rights, but in practice is one of the main actors of dispossession of lands.

In 2014, the Chuarrancho community celebrated a landmark victory when the Guatemalan government returned 166 caballerías of disputed land, using a strategy based in Anthropological evidence. This case set a precedent for over 40 other indigenous communities, including the neighboring Chinautla, who face ongoing legal battles over territory usurped for hydroelectric development and sand mining operations. In Argentina's Patagonia region, the Mapuche communities of Lof Buenuleo and Lof Nahuelpan confront similar challenges, struggling against state-backed land encroachments deemed "usurpación de tierras" despite historical claims.

The research employs interviews with community members, leaders, academics, and lawyers to explore the dual strategy of anthropological surveying and autonomous political mobilization employed by these communities. This approach has enabled some to successfully articulate their rights within a legal framework, overcoming resistance of local courts to recognize the rights of indigenous peoples. By comparing successful and ongoing cases, the paper sheds light on the persistent dissonance between national and local applications of indigenous rights, despite legislative reforms. Ultimately, this paper argues that the blending of historical-anthropological documentation with strategic political action and the creation of autonomies empowers indigenous communities to affirm their land rights and revitalize their ancestral governance structures.

**Resumen:**

Este estudio investiga las batallas por la restitución de tierras de cuatro comunidades indígenas: Chuarrancho y Chinautla en Guatemala, y Lofs Buenuleo y Nahuelpan en Argentina. Las cuatro comunidades luchan para proteger sus tierras contra un estado multicultural que pretende reconocer sus derechos, pero que en la práctica es uno de los principales actores en la desposesión de tierras.

En 2014, la comunidad de Chuarrancho celebró una victoria histórica cuando el gobierno de Guatemala les restituyó 166 caballerías de tierras disputadas, utilizando una estrategia basada en evidencias antropológicas. Este caso estableció un precedente para más de 40 otras comunidades indígenas, incluida la vecina Chinautla, que enfrenta batallas legales en sobre territorios usurpados para operaciones de extracción. En la región de la Patagonia en Argentina, las comunidades mapuches de Lof Buenuleo y Lof Nahuelpan enfrentan desafíos similares, luchando contra invasiones de tierras respaldadas por el estado y consideradas como "usurpación de tierras" a pesar de sus reclamos históricos.

La investigación emplea entrevistas con miembros de las comunidades, líderes, académicos y abogados para explorar la estrategia dual de encuestas antropológicas y movilización política autónoma utilizada por estas comunidades. Este enfoque ha permitido a algunas comunidades articular con éxito sus derechos dentro de un marco legal, superando la resistencia de los tribunales locales a reconocer los derechos de los pueblos indígenas. Al comparar casos exitosos y en curso, el documento arroja luz sobre la disonancia persistente entre las aplicaciones nacionales y locales de los derechos indígenas, a pesar de las reformas legislativas. En última instancia, este documento argumenta que la combinación de documentación histórico-antropológica con acción política estratégica y la creación de autonomías empodera a las comunidades indígenas para afirmar sus derechos sobre sus tierras y revitalizar sus estructuras de gobernanza ancestral.

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I extend my overwhelming gratitude to the leadership of Lofs Buenuleo and Nahuelpan and the Ancestral Authorities of Chinautla and Chuarrancho for trusting me to hold a small portion of their stories within this project. I would also like to thank the lawyers, academics, and anthropologists who accompanied them for sharing the lessons of your continued labor on behalf of these communities with me. Thank you to all of my interviewees for sharing your experiences, memories, and time with me, and for your interest and dedication to responding to my questions. My special gratitude goes to Ayelen Fiori, for her guidance throughout my research in Argentina, as well as Mauro Millán, Lic Pelaez, and Santos Alvarado.

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Getting to be a part of telling the stories of these communities has been one of the greatest honors of my academic career. I dedicate this essay to their continued fights and those of native communities across the Americas.

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## Introduction:

In July of 2014, 300 members of the Chuarrancho community gathered in front of the Constitutional Court in Guatemala City, Guatemala to celebrate a historic victory: the Guatemalan government had restituted over 166 caballerias of disputed lands to the Comunidad Indígena Vecinos de la Aldea Chuarrancho. Immediately preceding their victory of this land, which the community claims to have inhabited since before Spanish arrival in 1524, the state had attempted to sell their territories to a hydroelectric company. This victory marked a turning point for many indigenous groups across Guatemala: since 2014, over 40 communities in Guatemala have used the precedent and strategies relied on by the indigenous community of Vecinos de la Aldea Chuarrancho to assert their rights to their ancestrally inhabited territories. One of these groups are Chuarrancho's direct neighbors, the Chinautla community, who have just launched their own legal campaign to assert their rights to disputed lands. The difference in effect of ownership between the two neighboring communities is stark. While Chuarrancho now has the authority to govern the land they live on, Chinautla's lands are currently controlled by the state which has been illegally leasing the banks of the river to sand mining companies, cutting through their town square. The mining has displaced many members of the community from their homes due to erosion.

In the Patagonia region of Argentina, where the majority of the country's indigenous population resides, Mapuche communities are facing a parallel struggle to defend and reclaim their rights to access the lands they have resided on for generations. I first encountered this battle for land rights in March of 2024 when I met with Mauro Millan, a Mapuche community leader and activist. He was facing trial for accompanying members of Lof<sup>2</sup> Buenuleo, a Mapuche

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<sup>2</sup> "Lof" refers to a Mapuche community considered mutually related/connected through ancestry and shared territory

community in Rio Negro, Patagonia, they protested to protect their lands which were being illegally occupied by a private citizen and extensive large landowner in the Rio Negro, Emilio Friedrich. Millán, although he lives 500 kilometers away, was accused of “*usurpación de tierras*” — the illegal occupation and attempted theft of the supposedly disputed territories. Alongside four members of Lof Buenuleo, Millán was convicted of land usurpation despite extensive documentation of Lof Buenuleo’s ownership of the land. One year earlier, four members of the Mapuche community Lof Nahuelpan faced trial for the same accusation: the alleged usurpation of their own ancestral territories in Chubut, Argentina. After 10 days of constructing their historical and anthropological rights to the disputed lands, the court reached a decision. On November 16, Judge Jorge Novariño issued a ruling finding the defendants guilty of *usurpación de tierras*. Following the accusation, the community was able to appeal the case using an historical argument, freeing two members of the community who had been imprisoned.

This paper follows these four cases occurring in the last ten years: the Chuarrancho and Chinautla cases in Guatemala and the Lof Buenleo and Lof Nahuelpan cases in Argentina. In each country, one community has successfully threaded the needle of articulating their claims, and their existence, at the level of political society successfully. The other community, in both countries, currently remains in the process of articulation, having presented their cases in court and receiving a negative verdict. It is essential to understand the Buenuleo and Chinautla cases not as failures, but through a long view of history. Members of the communities and their lawyers interviewed have continually emphasized their understanding of the legal battles as a process of negotiation between their own forms of autonomy and the state as they simultaneously articulate their rights to the state and create their own forms of governance. In 2025, these communities remain in ongoing battles that will continue to be negotiated.

The struggles of these four communities are part of a long history in both Guatemala and Argentina of displacement and appropriation of indigenous lands by the government in favor of private actors. Despite the claims of both modern governments to promote an era of multiculturalism that recognizes the rights of indigenous communities on the legislative and international level, reflected in constitutional reforms for both countries, the judicial sphere has preserved a practice of denying the application of these rights on the ground. In these cases, provincial and city governments and courts are able to supersede the nationally recognized rights of indigenous communities through exercising their power in local courts and municipalities, often appropriating lands for their own profit.

In Argentina, the accusation of land usurpation by local state actors is part of a long history of adverse narratives against the Mapuche community. These state-constructed narratives label political actions that do not follow the state-determined paradigm of the “*indio permitido*” as acts of “terrorism” and “national security threats.” These narratives have roots in the military campaigns of the XIX century, but were recently reinforced under the Macri administration, particularly following his policies in 2017. There is a strong association between the criminalization in the press and the local political powers that legitimize the dispossession of Mapuche lands. In the case of Lof Buenuleo, for example, Freidrich was a board member for *Consenso Patagonia*, a far right news outlet that frequently reports on criminal activities from Mapuche communities. In Argentina, these cases mark a new phase in the criminalization of Mapuche communities that builds upon the narratives of previous administrations.

In Guatemala, there has been a similar construction of indigenous populations as “insurgent” and “internal enemies.” The state’s discursive narratives reached their ugliest point during the 36-year-long Civil War and Mayan Genocide that ended in 1996. These narratives

legitimized much of the violence committed against indigenous communities during this time. Land reform and the return of lands was a key cause of the civil war, and the country continues to untangle the legacies of these violent years and the dispossession that accompanied it in the modern day. It is important to note that a much larger share of Guatemala's population identifies as indigenous than in Argentina, making the political voice of the indigenous populations generally larger. However, while the Argentine and Guatemalan governments have distinct histories and relationships with their indigenous populations, both share a similar language of multiculturalism at the national and international level. It is at this point of dissonance that my paper resides: between what the legal system of the state says, versus what it does. The experiences of various indigenous communities have shown that as both the Guatemalan and Argentine governments try to adjust their relationships to recognize a new language of human rights that has been applied at the international and regional level for indigenous populations, they continue to falter in applying and recognizing these rights at the local level.

Based on interviews with community members, leaders on ancestral counsels, academics who give testimony on behalf of communities, and the lawyers that accompanied them, I seek to understand what strategies communities use to assert their rights to land in the face of courts that refuse to recognize rights at the international and national level. Interviews reveal a number of strategies that communities have been forced to adopt to account for prejudiced courts. The testimonies of communities and those who accompany them have revealed an emergent strategy that has proved particularly useful in the case of all four communities: the use of anthropological surveying to convey their continual stewardship of disputed lands. Through these testimonies, land surveys, and court documents, I seek to understand why some legal cases succeed while others fail. I argue that the historical-anthropological work all four communities did was integral

to their success in articulating their rights to land to the state, marking a new political and legal strategy indigenous communities and their lawyers have begun to adopt in the face of courts that refuse to recognize their rights.

This anthropological work has produced a dual articulation of their land rights. Firstly, they have been able to justify their rights to land and their existence in a language legible to the state. Secondly, internal historical surveying has allowed communities to legitimize their rights to autonomous organization in the eyes of the state as well as their very existence as indigenous communities, empowering communities to revindicate ancestral forms of governance and organize politically. Ultimately, I argue that through this two-pronged approach of both translating indigenous concepts of ownership on a state legible register and articulating these rights through autonomous political action, communities have successfully been able to compel the state to recognize their claims to their land.

Interviews revealed the complex calculus of permitted action from indigenous communities by the state as they sought to articulate their rights in a language that resistant local courts might respect. Using accounts of all four communities, I track the progression of their cases through a number of phases presented in this paper. First are the strategies the state has historically and contemporarily used to dispossess indigenous communities of their lands using a rhetoric of criminalization. In the Argentine context, I first explore the role of the accusation of “land usurpation” as an emergent strategy of private agents and governmental entities in Argentine Patagonia to dispossess communities from their land. In Guatemala, I look at how municipalities and local governments slowly appropriated lands in the period following the Guatemalan Civil War. Next, I look at how anthropological surveying emerged as a strategy to articulate land claims. I analyze this strategy’s efficacy in comparison to

international-rights-based articulations. In Argentina, I look at the interaction between criminal procedure in land usurpation cases and the necessity to anthropologically explain their rights to land in order to defend community members' innocence; here, interviews reflect the entanglement of land ownership and criminalization. In Guatemala, I examine how Chuarrancho set this anthropological strategy as a precedent for other communities and how Chinautla has adopted this process for their own community. Interviews reveal how anthropological surveying allowed communities to articulate concepts of communal ownership and stewardship to courts.

Finally, I look at the effect of reviving ancestral governance and its effect on political mobilization in communities. Interviews with all four communities found that the practices communities revindicated through their anthropological work helped them re-establish ancestral councils, increased collaboration with neighboring communities, and reclaimed other cultural practices that had been lost during periods of forced assimilation. I will examine the effect of this increased ability to mobilize politically behind unified governance on the effectiveness of articulating their claims to land. Through tracking this process, I hope to more deeply understand the factors that have precipitated communities adopting this strategy and its varying impacts on the success of communities communicating their rights to their lands.

## **PART 1: The Theory of Land Reclamation and the Multicultural State**

Land dispossession can be seen as the central political-economic issue of colonialism and as central to the creation of modern states in Latin America. Historically in the region, it has rested on forcefully imposed constructions of property and discipline, instantiating and affirming Lockean notions of the linkage between private property, civilization, and constructions of racial and ethnic difference. The linkage between the appropriation of land, the protection of the notion of private property, and the political power of the Latin American state have been deeply

interlinked since Spanish conquest and have perpetuated into the modern day. If land serves as both a factor of production and a site of belonging and identity, bridging material and symbolic terms,<sup>3</sup> then the loss of land is also both symbolic and material.

By this extent, restitution and protection of lands promises the redress of this loss. It is part of the modern project of reparation that states who seek to integrate and recognize the rights of their indigenous populations must undertake. Land restitution brings the past into the present through its processes. Communities that seek to restitute and protect their lands draw on memories and histories of past loss, individual claimants and communal moments, and their history of use and relationship with lands. It is an arena for state formation and nation building, but also one where alternative forms of governance and counter-national identities may emerge. Land restitution additionally relies upon key aspects of social relations, particularly community belonging framed through state constructed ideas of confirming and reproducing ethnicity and indigeneity. Most essentially, this process creates novel relationships between states and their subjects: land claiming communities both make new demands of the state, but also submit themselves to its sight and control. These relationships create complex networks of citizenship and belonging for the communities that seek to claim lands. Land restitution and protection invokes two contradictory visions of nationhood and political order: one based upon a liberal conception of universal human rights and autonomous citizenship (seen in generalized land redistribution policies) and another based on rights rooted in ethnic sovereignty and historical cultural connection (in the case of indigenous restitution).<sup>4</sup>

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<sup>3</sup> Shipton, Parker. "Land and Culture in Tropical Africa: Soils, Symbols, and the Metaphysics of the Mundane." *Annual Review of Anthropology* 23 (1994): 347–77. <http://www.jstor.org/stable/2156018>.

<sup>4</sup> Comaroff, John L. 1998. "Reflections on the Colonial State, in South Africa and Elsewhere: Factions, Fragments, Facts and Fictions." *Social Identities* 4 (3): 321–61. doi:10.1080/13504639851663. P. 346; Mamdani, Mahmood. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton University Press, 1996. <https://doi.org/10.2307/j.ctvc77c7w>.

A key topic of interest among anthropologists and scholars of law and society is that of property. In settings of late industrial capitalism with transnational labor flows, land might be considered of less material importance. Recent attempts to take studies of property beyond their previously limitations seek to question its thingness or materiality,<sup>5</sup> arguing that property is not only land but many other things that can be “owned”—water, wild game, ideas, intellectual contributions, cultural products and processes. My analysis takes on a more traditional interpretation of land and property, recognizing that for indigenous groups, territory remains one of their most contested struggles and a central component of asserting both their identity and political power. Restoration of land simultaneously promises the freedom of autonomy and self governance but also forces communities to enter a relationship with the state that can be latent with paternalism and control. Land and property, by this extent, remain the site where the promise of citizenship in the modern state is held out.

The current role of anthropology and restitution in the lives of indigenous populations in Latin America is a result of a specific historical construction over the last 50 years. In Latin America, Indigenous communities were subject to an assimilationist paradigm from state court systems, originating in Mexico and translated throughout Latin America, embracing an anti-pluralist paradigm.<sup>6</sup> In response to state action which embraced extractivism and continually gave more power to private companies to appropriate Indigenous lands, Indigenous groups throughout Latin America began to embrace an activist rhetoric that communicated to the state, condemning exploitative and discriminatory practices.<sup>7</sup> In the early 20th century, Mexico led the

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<sup>5</sup> Fay, Derrick, and Deborah James. "The Anthropology of Land Restitution: An Introduction." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, edited by Derrick Fay and Deborah James, 1-24. London: Routledge, 2008.

<sup>6</sup> Rouland, Norbert, Pierre Caps, and Stéphane Poumarède. *Derecho de minorías y de pueblos autóctonos*. Mexico City: Siglo XXI, 1999.

<sup>7</sup> Bonfil Batalla, Guillermo, ed. *Utopía y revolución: El pensamiento político contemporáneo de los medios en América Latina*. Mexico City: Nueva Imagen, 1981.

region in setting in place restitution and redistribution policies, allocating land to communal groups, but by the 1990s, the state began to bring an “end to restitution” by allocating lands to individuals in attempts to integrate landholders into market based relationships.<sup>8</sup> In the Peruvian context, “indigeneity” was central to restitution policy during the early 20th century, but by the 1960s restitution came to be linked to the language of campesinos.<sup>9</sup>

As a pluralist ideology continued to form throughout the 70s, indigenous groups in Latin America began to form centered on cultural revindication, which they began to articulate on national and international registers. Over the following years, a wave of legislation across Latin America began to recognize the cultural rights of indigenous populations. While pluralism and the support of indigenous cultures began to form a larger part of Latin American social sciences during the final decades of the 20th century, modernization and development continued to create a system of dependency and exclusion of campesinos and indigenous groups as being considered a part of political society.<sup>10</sup>

By the 1980's, there was a movement across countries in Latin America to embrace a juridical anthropology that was concerned not only with abstractly recognizing the individual rights of indigenous communities but also with establishing indigenous rights within the judicial system both nationally and internationally. These policies were first introduced on the international scale through an Human Rights debate that criticized assimilation and pushed for the recognition of the rights of indigenous communities<sup>11</sup>. These debates came in response to a rise in the late 1960s and early 1970s of American Indian Movement in the USA and Canada,

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<sup>8</sup> Fay, Derrick, and Deborah James. "The Anthropology of Land Restitution: An Introduction." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, edited by Derrick Fay and Deborah James, 1-24. London: Routledge, 2008.

<sup>9</sup> *Ibid.*

<sup>10</sup> Heberle, Robert, and John Gusfield. "Movimientos Sociales." In *Enciclopedia Internacional de las Ciencias Sociales*, edited by David L. Sills, 1:123-145. Madrid: Aguilar, 1975.

<sup>11</sup> Barabas, Alicia. *Utopías Indias: Movimientos sociorreligiosos en México*. 1st ed. Mexico City: Plaza y Valdés, INAH, 2002. First published 1989.

highlighted by the seizure of Alcatraz in 1971 and the protest at Wounded Knee in 1973. In this context, by 1974 both the United States and Canadian governments had established land restitution policies for native peoples. These policies remained cautious, promising to set right previous injustices without reform to the social fabric as a whole.<sup>12</sup>

Over the last 30 years, Latin American countries have witnessed major advances in indigenous land reforms. However, over the last decades these reforms have lost their power, in large part due to pressure from the natural resource extraction industry on policy makers.<sup>13</sup> In particular, these pressures have greatly limited the ability of enforcement and execution of many of the national and international protections won over previous years. Even in countries such as Bolivia, characterized in the region for having particularly progressive reforms for indigenous rights, land policies at their application offer communities marginal control over their territories, which remain subject to ongoing extraction by governmental and private enterprises.<sup>14</sup> This evolution gradually implicated the role of anthropology and social sciences in aiding to advocate for and articulate the *cultural* rights of indigenous groups on an academic and legal register. The role of anthropology in articulating *legal* and *political* rights is a process that remains in formation. This paper examines how in the failure of application of the previous era of property protections and restitution, communities have sought to use their cultural rights and protections in order to argue within a legal and political paradigm in order to assert their right under a western matrix of property of the state.

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<sup>12</sup> Plaice, Blancke Fay, in Derrick, and Deborah James. "The Anthropology of Land Restitution: An Introduction." In *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'*, edited by Derrick Fay and Deborah James, 1-24. London: Routledge, 2008.

<sup>13</sup> Stocks, Anthony. "Too Much for Too Few: Problems of Indigenous Land Rights in Latin America." *Annual Review of Anthropology* 34 (2005): 85-104.

<sup>14</sup> Fabricant, Nicole, Gustafson, Bret. *Remapping Bolivia: Resources, Territory, and Indigeneity in a Plurinational State*. School for Advanced Research, September 2011.

### The “jail” of multiculturalism:

In her analysis of justice and legal pluralism in Guatemala, Peruvian Legal Scholar Raquel Yrigoyen Fajardo presents four eras of relationships between Latin American states and their indigenous populations: the colonial era of segregation, the assimilationist model of independence, and the republican integrationist model. The most recent model, which we inhabit in the contemporary era, is characterized by a process of embracing and appropriating a new concept of multiculturalism that constructs pluralism through creating legal systems within the state system. This strategy creates a tension between the supposed multiculturalism and pluralism that seeks solutions within the state system while simultaneously co-opting the autonomy of indigenous populations to govern their own affairs, as they were at times previously able to do outside of the state’s sight. Yrigoyen-Fajardo relates cultural efforts toward multiculturalism to how they are applied (and implemented) within a legal framework.<sup>15</sup>

Jose Antonio Lucero expands upon this tension between the privileges given by a multicultural state to indigenous groups and the necessity to maintain an activism that follows the expectations of the state for permissible action. He expands on these ideas by noting the explicit criminalization of Mapuche communities and their activists by the Chilean state. Thus, the risk is high for indigenous activists who participate in a process in which “reforms soften the harder edges of resistance, all to maintain a status quo where the most vital distributive issues of power and wealth remain largely untouched.”<sup>16</sup> This new era has been monumental for the advancement of the recognition of indigenous rights in Argentina and Guatemala, but the

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<sup>15</sup> Yrigoyen Fajardo, R. (1998). *Justicia y pluralismo legal en Guatemala [Justice and legal pluralism in Guatemala, Dissertation, Specialization in Indigenous Customary Law with an Emphasis on Criminal Law, UNAM & USAC]*. Guatemala City: UNAM & USAC. Cf. also Raquel Yrigoyen Fajardo, *Pautas de coordinación entre el derecho indígena y el derecho estatal* (Guatemala: Fundación Myrna Mack, 1999).

<sup>16</sup> Lucero, J. A. (2007). Barricades and articulations. Comparing Ecuadorian and Bolivian indigenous politics. In A. K. Clark & M. Becker (Eds.), *Highland Indians and the State in Modern Ecuador* (pp. 209-233). Pittsburgh: University of Pittsburgh Press. Pg. 233

implementation of these rights still falls short of a truly pluralistic model of society. Instead, it follows the superficial ideas of the prison of multiculturalism. These cases are situated exactly in this context, conflicting at the provincial levels with other priorities.

*El indio permitido*

The multicultural and modern state acts in its pluralism under certain conditions: that indigenous groups follow the role that corresponds to them in relation to the hegemonic nation state. In the cases analyzed, community members acted outside these designated boundaries through their activism, resulting in the state usurping the rights granted to them at the federal and international levels through the justification of criminalization resources. For this reason, the idea of the “permitted Indian” and the strict limits of political action accepted by the state are integral to understanding the proceedings of these situations. Bolivian sociologist Silvia Rivera Cusicanqui defines the concept of the “permitted Indian”<sup>17</sup> in relation to the state construction of how indigenous populations can relate to and advocate for the hegemonic powers of government. States expect indigenous populations to submissively accept the established neoliberal system without protest or resistance. Under his analysis of the Bolivian context, Rivera underlines the characteristics of this phenomenon:

On the internal end, the Bolivian elite have adopted an official multiculturalism rooted in the notion that indigenous groups are minorities... ornamental and symbolic multiculturalisms such as “ethno-tourism” and “eco-tourism”, which brought into play the ‘originary’ condition, of people anchored in the past and incapable of leading (...) By speaking of peoples located in the “origin” they are given a residual status, and in fact,

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<sup>17</sup> Silvia Rivera Cusicanqui, ‘Colonialism and Ethnic Resistance in Bolivia: A View from the Coca Markets’ in Fred Rosen (ed.), *Empire and Dissent: The United States and Latin America* (Duke University Press, 2008) 141, at 143.

they are converted into minorities, pigeonholed into indigenists of the “good savage,” guardian of nature....<sup>18</sup>

The “indio permitido” can only exert a political presence in a way that feeds a multicultural state. The multicultural state is considered “tolerant” and “inclusive” in this relationship, as it benefits from these expectations. Those who depart from these ideas, particularly in their relations to culture and political action, are considered outside the permitted framework of action for indigenous organization.

### **State Legibility:**

In order to analyze the complicated relationships communities forge with their articulations of rights towards the state and the state’s bureaucratic understanding of these articulations, I look to Zachary Levenson's *Delivery as Dispossession* and his interpretations of “state legibility,” an idea originated in James C. Scott’s *Seeing Like a State*. Through comparing two land occupations in Cape Town, South Africa, Levenson argues that the state is not just a “thing,” but a social relation.<sup>19</sup> Scott posits that it is possible for subjects to withdraw from the gaze of the state by resisting being measured, worked upon, or governed– thus becoming “illegible.”<sup>20</sup> However, for Scott, while subjects can shield themselves from the state’s gaze, they are not able to affect how they are governed, the very content of state intervention. In contrast, Levenson seeks to demonstrate that communities are not just a passive sub-proletariat, but also

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<sup>18</sup> Original quote in Spanish: En el frente interno, las elites bolivianas han adoptado un multiculturalismo oficial anclado en la noción de los indígenas como minorías. Multiculturalismo ornamental y simbólico como el “etno-turismo” y el “ecoturismo”, que ponían en juego la la condición “originaria”, anclada en el pasado e incapaz de conducir tino (...) Al hablar de pueblos situados en el “origen” se les otorga de un status residual, y de hecho, se las convierte en minorías, encasilladas en indigenistas del buen salvaje guardián de la naturaleza, from Silvia Rivera Cusicanqui, ‘Colonialism and Ethnic Resistance in Bolivia: A View from the Coca Markets’ in Fred Rosen (ed.), *Empire and Dissent: The United States and Latin America* (Duke University Press, 2008) p. 58-59

<sup>19</sup> Levenson, Zachary. *Delivery as Dispossession: Land Occupation and Eviction in the Post-Apartheid City*. Oxford: Oxford University Press, 2022.

<https://global.oup.com/academic/product/delivery-as-dispossession-9780197629246?cc=us&lang=en&>. P. 164

<sup>20</sup> Scott, James C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Yale University Press, 1998. <http://www.jstor.org/stable/j.ctt1nq3vk>. P. 78

actors in a relationship with the state. Levenson highlights that it is the power of the modern state (or for Levenson “a capitalist democracy”) to force its subjects to be legible to be able to maintain its authority, allowing it to “maintain order despite...residents organize into mass formations and militantly defy the rule of property by taking land rather than asking for it” because their actions are read as “in communication with government employees, judges, and elected officials.”<sup>21</sup>

By appropriating autonomous movements as attempted communication from civil society, Levenson highlights that “seeing like a state” grants states legitimacy, even in the face of movements for autonomy. Conversely, he shows that communities have more autonomy than Scott initially outlines in the way that their movements are interpreted and appropriated. Levenson argues that “there is no ‘purely’ autonomous action” and that because they were interacting with a modern capitalist state there was “no sanctified space of the “from below.”<sup>22</sup> For Levenson, this is part of the power and “hegemony” of the modern state, that forces even autonomous movements and those “from below” to have their process of formation and creation of civil society that ultimately serves to create coherence for the state. Levenson highlights that states create an effective hegemony by representing independent and autonomous collective action as “in necessary dialogue with political society.”<sup>23</sup>

Movements that can codify themselves within this system are ultimately those that succeed, becoming actors in the process of being seen. These frameworks can help us understand at an abstract level how the social movements the four communities created were forced to communicate towards the modern to obtain political success. By understanding that they must

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<sup>21</sup> Levenson, Zachary. *Delivery as Dispossession: Land Occupation and Eviction in the Post-Apartheid City*. Oxford: Oxford University Press, 2022.

<https://global.oup.com/academic/product/delivery-as-dispossession-9780197629246?cc=us&lang=en&P.29>

<sup>22</sup> Ibid. 19

<sup>23</sup> Ibid. 19

present themselves coherently and legitimately within the language of the state, communities have found that they can grant themselves agency, creating a mutual dialogue. This relationship can help us understand the tensions through efforts of communities to seek autonomy through communication with the state (legal cases).

### **Methods:**

This paper employs a qualitative analysis, based in interviews with members of four different communities and their organizing partners. Analysis is primarily based on primary sources in the form of structured interviews. I am not conducting a strictly comparative analysis, but rather hope to put these four cases in conversation in order to understand the broader picture of these processes of dispossession and recuperation that are occurring.

For each community I interviewed a vast array of actors who have contributed to each community's case: members of their political leadership, community elders, attorneys that accompanied the communities, and anthropologists who collected records and testified on behalf of the community. Each interview contained distinct questions adjusted to the specific role of interviewees in the cases, but all touched upon the following themes: the history of a community; instances of dispossession; community member's relationship with the state; instances of criminalization; legal strategies; political strategies; creating forms of autonomous governance; and the personal impact of these cases on interviewees.

Information from interviews are additionally supplemented with reporting from local news stations on community activities, reports generated by non-profit organizations, documents provided by lawyers and anthropologists, and histories collected by communities themselves. These documents range from children's books written by community members on their history to dense statistical reports on environmental land use in communities. My task has been to

reconstruct these narratives within the framework of processes of dispossession, defense, and creations of autonomy.

The original purpose of this research was not to follow the role of anthropological and historical research in these cases, but throughout my interviews this strategy continued to arise as a central part of the larger process of territorial and cultural recuperation communities underwent. In my analysis of these interviews, I am looking at discourse as social practice (Fairclough, 1992); therefore, I am paying more attention to its effects and political implications than to the original intentions of the enunciators. Thus, when I speak of “strategies,” “posturing,” and other intentional actions, I am assessing the impact of these actions rather than whether there was an intention of the state/individual to achieve this outcome.

It was particularly important to adhere to ethical standards of anonymity and informed consent due to the circumstances and subjects of these interviews. Many interviewees have received direct threats and criminalization from media, courts, and private entities, and revealing their identities could put them in more danger. Further, in the case of ongoing cases, sharing personal information of interviewees could jeopardize the proceedings of these cases.

I connected with interviewees through the help of academics in Guatemala and Argentina and through facilitating personal relationships with indigenous activists in each country. All interviews were recorded with the permission of participants, who consented to participate in interviews. All interviewees were given an explanation of the scope of the investigation and were assured of confidentiality of their testimonies. Most of the names of interviewees are anonymized, using either their position in the community or initials to be identified, with the exception of a few interviewees who explicitly asked that their names be included. These interviewees emphasized their connection to their cases and testimonies, and actively wanted

credit for their involvement in these events. All interviewees participated due to their personal interest and were not compensated financially or otherwise.

## **PART 2: State Strategies of Dispossession in Guatemala and Argentina**

While the dispossession of indigenous lands is often historically associated with the colonial project and seen as a phenomenon of the past, all four cases reveal that dispossession is a continual process. In all four cases, these moments of dispossession are extremely recent: for Chuarrancho and Chinautla communities, lands were appropriated by the municipal government in the late 90s, while for Nahuelpan and Buenuleo communities, their criminalization and dispossession are intertwined in a contemporary process. These circumstances complicate the idea of a “multicultural” or “tolerant” state as the state at the local level,--through its courts, municipalities, and government agencies,--serves as the main power through which communities are disposed of their lands.

As interviews reveal, the state and its agencies rely on narratives that negate indigenous rights in order to circumvent the protections these communities claim. This is done either through labeling communities as criminal, and therefore not deserving of rights and recognition, or denying their cultural heritage in connection to the land.

William Roseberry (1994) tracks the process of labeling communities as criminal through the concept of “languages of controversy” that subscribe to hegemonic procedures and authorized language to denounce forms of opposition and criticism of the State.<sup>24</sup> Muzzopappa and Ramos (2017) build upon this idea, discussing how the Argentine state created a new “paradigm of intentionality,” that painted Mapuche activism as a security threat that intentionally

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<sup>24</sup> Roseberry, William. "Hegemony and the Language of Contention." In *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico*, edited by Gilbert Joseph and Daniel Nugent, 351-366. Durham, NC: Duke University Press, 1994.

challenged the Argentine state. In the context of land usurpation (a primary method of dispossession discussed later in this paper) they argue, this language connects to an accused intentional effort from the Mapuche nation to promote conflicts based on ethnic separation.<sup>25</sup>

In the Argentinian case, this rhetoric was constructed in the 1990s as an issue of internal security in the face of social mobilization of indigenous people and other movements like the piqueteros, bringing in a new stage of criminalization of resistance.<sup>26</sup> Although the accusations against Lofs Buenuleo and Nahuelpan are part of an emergent state strategy of using usurpation as a criminal offense, the linkage of labeling groups as internal enemies and displacement from land has long been closely affiliated. Briones and Ramos (2018) touch upon this trend in their discussion of Pu Lof in Resistance, who faced accusations of being enemies of democracy by conservative politicians like Minister Bullrich in 2015.<sup>27</sup> These policies set the precedent for using criminalization as a strategy of displacement for indigenous communities in Argentina.

I use this analysis of this initial application of criminalization rhetoric in land usurpation cases and its broader policy implications to inform my own analysis of another case in which land debates are resolved through criminal rather than civil implications. Through examining the judicial process, the uneven applications of the law, and its effects, I hope to illuminate the emerging strategy of using accusations of land usurpation to undermine national and international indigenous rights in favor of private interests.

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<sup>25</sup> Muzzopappa, Eva, and Ana Margarita Ramos. 2017. "Una etnografía Itinerante Sobre El Terrorismo En Argentina: Paradas, Trayectorias Y Disputas". *Antipoda. Revista De Antropología Y Arqueología* 1 (29): 123-42. <https://doi.org/10.7440/antipoda29.2017.06>.

<sup>26</sup> Ibid

<sup>27</sup> Briones, C., and A. Ramos. "'Todo lo que es sólido (casi) se desvanece en el aire, todo lo sagrado (casi) se vuelve profano': Manifestaciones discursivas de una crisis de hegemonía cultural." *Heterotopías* 1, no. 1 (2018). <https://revistas.unc.edu.ar/index.php/heterotopias/article/view/20002>.

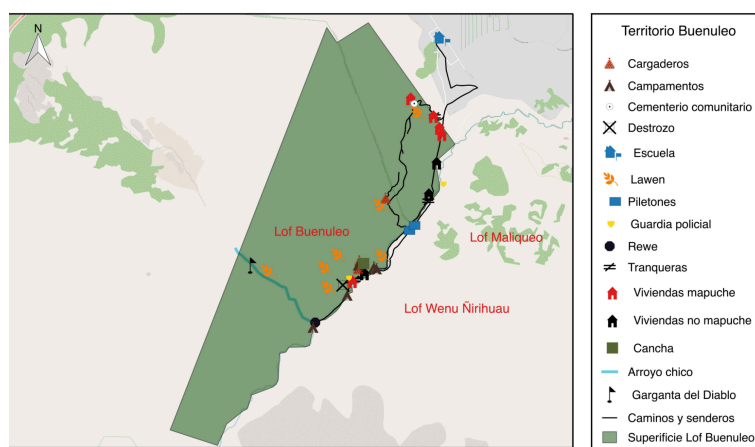
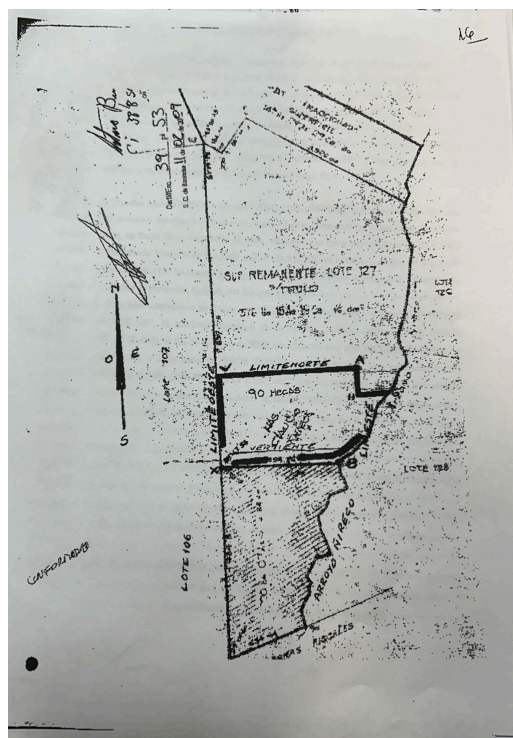
*The Case of Lof Buenuleo:*

On September 10, 2019, the Mapuche Buenuleo community revindicated a claim to 90 hectares located 15 km from Bariloche in Cerro Ventana. The lands had been appropriated by a private millionaire and local media owner, Emilio Friedrich, using what the community claimed to be falsified documents of purchase. The conflict over these lands has produced a political and legal struggle that has unfolded over the last 5 years, resulting in the indictment of several members of the community for the crime of alleged *usurpación de tierras*.

It would be impossible to try to understand the explanation of the conflict without understanding the general history of the community. During her testimony in the Buenuleo community's usurpation trial, Claudia Briones, an anthropologist commissioned to document the history of Lof Buenuleo on the disputed lands, highlighted three instances where the community faced historical eviction and tried to use the legal means it had to fight for its own ancestral lands. To understand how they arrived at this case it is important to highlight these moments of resistance, struggle and eviction in relation to the community.

Lof Buenuleo maintains to have inhabited the disputed lands since time immemorial, a right that has been recognized since the beginning of the last century to this pastoral plot that appears on maps as Pampa de Huenuleo. Antonio IV, referred to by many members of the community as “the grandfather,” attempted to construct a town on communal lands through the informal sale of lands. However, problems arose with the alleged sale of 90 hectares that was never officially confirmed and which the grandfather did not recognize as legitimate. When a handwriting expert was to verify the signature, Antonio IV passed away, leaving many doubts about the validity of the document.

**Emiliano Friedrich's alleged Sales Contract, delineating the 90 Hectares in dispute in Pampa de Huenuleo, provided by defense attorney for Lof Buenuleo (left) and map constructed by Lorena Cardin, anthropologist for Lof Buenuleo**



The community has continually maintained that the grandfather would never have sold such an amount of land, as he died poor and used to negotiate for much smaller areas. This sale was complicated when Emilio Friedrich started building on the territory on the same day of the grandfather's wake in 2014, claiming to have bought the transferred title. This act marked the beginning of a series of territorial conflicts that reaffirmed the community's struggle for their ancestral lands and evidenced the manipulation of documents and the influence of certain individuals in the judicial system, territory that Emilio Friedrich had illegally appropriated, based on the grandfather's alleged ticket of sale. Family members have repeatedly denounced these documents as fraudulent and that "the grandfather did not recognize it, he did not recognize the signature."<sup>28</sup> Although a criminal case was filed against the aggressors on May 1, 2021, Friedrich and his companions were never convicted, leaving community members without justice. On April 20, 29, Friedrich and his companions violently

<sup>28</sup> "el abuelo no la reconoció, no reconoció su firma" Claudia Briones, personal interview, 05/16/2024

attacked members of Lof Buenuleo, leaving Ramiro Buenuleo and other community members seriously injured. Although a criminal case was filed against the aggressors on May 1 of 2021, Friedrich and his companions were never charged.

In the fall of 2019, Friedrich alleged that a “group of people that had begun to call themselves the supposed Community Buenuleo”<sup>29</sup> had entered and usurped his privately owned lands. Since this accusation, the Buenuleo community have been fighting a series of judicial orders removing them from these lands. Despite the fact that the Municipal Charter of Bariloche recognizes Mapuche ancestral possession of land and promotes respect for the spirituality of native peoples, Friedrich has used the court and Bariloche police to continually disrupt Lof Buenuleo and prevent the community from inhabiting these territories. Accused of usurpation, the members of Lof Buenuelo have resisted eviction orders (which the Río Negro justice system ordered in only 24 hours) from their own land. This case has gone beyond provincial rulings, as Friedrich's legal team has repeatedly attempted to overturn the protections granted to Lof Buenuleo by the government. The National Institute of Indigenous Affairs (INAI) granted legal status to the Buenuleo community and recognized 481 hectares, including the 90 hectares in dispute with Friedrich, as community lands. Although the prosecution accepted this recognition, the private plaintiffs challenged it and took the case to the Supreme Court. The Court annulled INAI's decision for lack of consultation with the private parties. Following consultation, the INAI reaffirmed the recognition of the 481 hectares as community lands.

*The Case of Lof Nahuelpan:*

The Nahuelpan community is located in the Northeast of Chubut Province, Argentina, about 15km outside of the city of Esquel. The accusation of usurpation of part of the territory

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<sup>29</sup> “Un grupo de personas que tomaron el nombre de la supuesta comunidad Buenuleo” Taken from Emiliano Friedrich’s statement filmed by *Consenso Patagonia*, <https://www.youtube.com/watch?v=EDaUpWRrQI0>

that the community claims as ancestral has been framed by the Public Prosecutor's Office and the media as “a simple land conflict.” During a legal process of almost four years, five members of the Nahuelpan community, including the Lonko<sup>30</sup> and his children, faced a trial for the alleged usurpation of the plot referred to by the community as “La Tapera.” Throughout this long trial, the members of the Nahuelpan community faced several cases of judicial expertise, including having to request the recusal of the appointed judge due to a history of prejudice against indigenous communities. The community, through its organization and resistance, continues to fight for its rights and for the recovery of its ancestral territory, facing not only the judicial system, but also the constant threat of violence and exclusion imposed by the State.

These families have lived in the territories they were accused of usurping since the end of the XIX century until the present day. The area known as “La Tapera” draws its name from the relatives of current members of the community. Over the course of over a century, the Nahuelpan community have constructed a life on these lands, building houses, two sheds, corrals, and the establishment of a farm. These lands have become sacred to the community through cultural practice, including ceremonies and cattle branding together with other members of the Nahuelpan and related communities. This new instance of attempted displacement by the government, which claims the lands are national territories, is part of a long history of the Nahuelpan community’s alienation from their lands. The first instance of this in recent history occurred in 1937, when families in the Nahuelpan community were violently displaced from their lands by local elites in conjunction with private companies. Community members interviewed connected this modern revindication to the longer history of displacement members of the community have endured: the land “has a very long history since the community was

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<sup>30</sup> Lonko is a term referring to the head of a Mapuche community

displaced in 1937 and well where I am now we have started to restore this part of the territory that was unjustly sold.”<sup>31</sup>

### **The Emergence of *Usurpación de Tierras***

In both cases, community members are defending themselves against the criminal accusation of *Usurpación de Tierras*, an accusation used to translate political disputes over land into a criminal paradigm. Through this strategy, the state has been able to criminalize the actions of indigenous groups that seek to work outside of the state's vision of permissible action, using moments in which community members defend their land through protest or a refusal to be evacuated as an opportunity to accuse them of this charge. As Claudia Briones, an anthropologist who has documented the history of Lof Buenuleo and was called as an expert witness in defense of the community, suggests in her study of Lof Buenuleo, political actions of defense emerge in response to decades of displacement, state negligence, and the loss of territories. Through accusations against these actions, the state attempts to label communities that seek to revindicate their lands as “intruders” or “usurpers.”

These arguments at the local court level recreate national narratives that label the Mapuche community as “terrorists,” foreign invaders from Chile, and criminals. By condemning protest as criminal action, the state codifies these narratives within a legal register. As Nahuelpan’s attorney argues, “the court converts itself into a machinery of the state” through which it applies larger prejudices to produce actions that “denies [Mapuche communities] rights that they claim, criminalizing them in various ways”<sup>32</sup> This is a reciprocal process through which

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<sup>31</sup> "tiene una historia muy grande por haber sido desalojado en 1937 y bueno ahora desde que estoy yo es que empezamos a volver a restituir esa parte de la tierra que había sido vendida injustamente" J.N., from the Nahuelpan community, personal interview 05/21/2024

<sup>32</sup> "El Poder Judicial se convierte en la maquinaria del Estado... negarles [a las comunidades mapuches] derechos y lo que ellos reclaman, criminalizar de distintas maneras" Attorney for Lof Nahuelpan, personal interview, 05/15/2024

criminalization seeks to create an internal enemy. While these labels are used by politicians rather than judges, in practice judges codify these beliefs through their rulings.

Under Argentine law, the accusation of *usurpación de tierras* must fulfil the requirements of *ajenidad* or “otherness” to the lands as well as either be committed with violence or clandestinity. This accusation, when applied to indigenous communities on their own territories, both serves to negate their identity as indigenous and play into stereotypes that paint the Mapuche as non-Argentine, foreign invaders, or Chilean. In order to implicate an indigenous group in this crime, the prosecution, and the state by accepting these accusations, relies on a complicated web of lies and stereotyped assumptions. As Buenuleo’s attorney highlights, “[the community] cannot commit the crime of usurpation because the accusation requires foreignness and they could never be foreign to territories that they belong to;” the condemnation of land usurpation immediately creates the “normative problem” that labels the communities condemned as both other and criminal.<sup>33</sup> The aspect of *ajenidad* of these accusations directly undermines the land rights these communities have been granted by the federal government. A penal application to land revindication adds to a larger narrative of criminalization of communities, as the defense attorney for Lof Nahuelpan explains: “first they make it a crime, and secondly they generalize this crime to an ‘internal enemy’... [the state] takes the criminal route because it is the most punitive, they are seeking to sanction, to punish.”<sup>34</sup>

In order to fully argue land usurpation, the prosecution must also prove that the accused acted with violence or clandestinity, accusations that seek to argue that action from communities, including on their own lands, is an implicitly discursive action. Throughout both trials, the

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<sup>33</sup> “Ellos no podrían haber cometido el delito de usurpación porque el delito de usurpación requiere ajenidad y ellos nunca podrían ser ajenos a una tierra de la cual son parte” Attorney for Lof Buenuleo, personal interview, 05/16/2024

<sup>34</sup> Originally: “primero que es un delito, y segundo ya se ha generalizado que esto es un enemigo interno...van por lo penal porque es lo que es más punitivo, el castigo penal busca sancionar, busca disciplinar” Attorney for Lof Nahuelpan, personal interview, 05/14/2024

prosecution sought to paint both Lofs as violent communities. In the case of Lof Buenuleo, Friedrich constructed a series of lies in order to accuse them of violence, including repeatedly falsely accusing community members of illegally entering the disputed territories with machetes. On multiple instances throughout the trial, Friedrich repeatedly attempted to slow proceedings by calling in false reports that members of the Buenuleo community had planted bombs in the courthouse.

Courts directly apply and communicate the narratives they believe about communities to the way that they interpret the law towards them. This can be seen in the stark difference in applications of the accusation of land usurpation by the courts of Rio Negro to Lof Buenuleo and Emilio Friedrich: the judges used a far wider interpretation for Lof Buenuleo while for Friedrich the judge applied a restrictive interpretation of clandestinity.<sup>35</sup> These arguments from the state seek to weaponize a racialized narrative that “[Mapuche populations] are poor, dark-skinned, and against the white, christian, western man.”<sup>36</sup> Exploiting these narratives of indigenous groups facilitates dispossession through a stereotypical vision that tries to create a common opinion among the general public that members of Lofs are not Mapuche, and are claiming an indigenous identity in order to keep land.<sup>37</sup> In comparison, the courts quickly acquitted Emilio Friedrich when Lof Buenuleo accused him of the same crime of usurpation after he entered their lands in 2009. The Superior Court of Justice of the province, acting as a political body, reversed its previous position on cases of indigenous rights claims due to political pressure. These instances show how the courts, which should be impartial, become politicized in their application of the

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<sup>35</sup> "el juez hace una interpretación restrictiva de clandestinidad" Attorney for Lof Buenuleo, personal interview, 16/05/2024

<sup>36</sup> “tenían en un discurso muy de pobres, pobres, morochos, contra el hombre blanco, occidental y cristiano,” Attorney for Lof Buenuleo, personal interview, 16/05/2024

<sup>37</sup> “una visión muy estereotipada pero está claro que persiguen intereses y tratan de formar una opinión común en la comunidad de Bariloche de que estos son unos chantas, estos no son mapuche hacen esto para quedarse con tierra” Attorney for Lof Buenuleo, personal interview, 16/05/2024

law. In particular, attorneys for both Nahuelpan and Buenuleo have referenced the impact of far right groups like (Consenso Patagonia),<sup>38</sup> and the influence of the anti-Mapuche rhetoric they spread within local media.

This explicit support of Emilio Friedrich and condemnation of the Bunuelo community was also shared by a number of local politicians. During the trial, several legislators came forward to express their public support for Friedrich, symbolizing the implicit violence of the state in taking a clearly biased position.

This unequal application helped facilitate two levels of displacement. First, allowing for the informal occupation of Maouche lands by Friedrich, started in 2014 when he constructed a house on the property, although Friedrich had not proven to have true land titles. Through applying criteria of foreignness, violence, and clandestinity, the very accusation of land usurpation seeks to negate both Mapuche identity and rights through its condemnation. These strategies set the stage for the complete displacement of communities from their lands.

### **Criminalization as a Strategy of Displacement**

The integration of prejudice and racist discourse in provincial court systems in Argentina has deeply influenced the procession of justice for both Lofs Buenuleo and Nahuelpan. The broader impacts of these strategies from the provincial government form a strong correlation between the criminalization of Mapuche communities, alienation from their lands, and an attempt from the government to deny the community's identity and status as indigenous. Using the courts as an extension of narratives born in the political sphere, the state and the private actors it is allied with seek to weaponize these narratives in order to legitimize the displacement

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<sup>38</sup> *Consenso Patagonia* is an “association” of business owners, politicians, media owners, and private actors residing in Patagonian districts that seek to “question the right to property” in Patagonia. The group has been responsible for emitting anti Mapuche broadcasts and reports. <https://www.consensopatagonia.ar/quienes-somos/>

of Mapuche communities from their lands while simultaneously circumventing the rights they have been granted on the international and national level.

When interviewed, the defense lawyers for both communities articulated their fear of the larger precedent that these cases would produce: the continued codification of local legal systems that incorporate a paradigm of criminalization to usurp nationally recognized rights held by indigenous groups. The defense attorney for Lof Buenuleo repeatedly emphasized that a central part of his defense was to think of “the symbolic implications...of recuperating this place...I did not want to leave behind the battle of indian law... the High Court of the Province has said this is not the way, but it does not mean that we won’t keep invoking indigenous rights...our goal is to not only win the criminal case, but also reverse this doctrine.”<sup>39</sup> Nahuelpan’s defense attorney also clarified that “this is not a criminal defense of any town (...) because the importance of territory for these communities is distinct...we are playing with a historical right of presence.”<sup>40</sup> These applications of Western law on indigenous lands result in a complicated process where the State enters into conflict with itself, overriding one articulation of its power, that of the rights it has recognized, in order to strengthen another, which seeks to further appropriate Indigenous lands. In the case of Lof Buenuleo, these lands were recognized through the INAI at the national level, but in the provincial courts rejected this recognition.

The judicial system thus creates a series of logical fallacies where it negates its own constructed law in order to further a strategy of displacement. In the Nahuelpan case, Chubut Province determined to view the territorial disputes through a penal lens although they were not

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<sup>39</sup> “lo simbólico...es recuperar ese lugar...yo no quería dejar de lado la batalla del derecho indígena... el Superior Tribunal de la Provincia ya ha dicho que vía de dicho no, no significa que nosotros nos vamos a seguir invocando un derecho indígena...Nuestro objetivo es no solo...desvincularlos penalmente, sino revertir esa doctrina. Esos son los objetivos de máxima" Attorney for Lof Buenuleo, personal interview, 05/16/2024

<sup>40</sup> "no es la defensa penal de cualquier ciudad (...) porque la importancia del territorio para estas comunidades es distinto. Hay intereses sociales, derechos sociales, derechos culturales, la historia. Es decir, jugamos con un derecho histórico de presencia". Attorney for Lof Nahuelpan, personal interview, 15/05/2024).

criminal disputes. By resolving territorial issues through criminal rather than civil proceedings, the state is able to circumvent recognizing indigenous territorial possession and allow “the white landowner to say he has a right to land and start an entire case”<sup>41</sup> These dynamics occur in response to the economic and commercial priorities of individuals that are able to align themselves with the state, prioritizing these interests over the many citizens of a community.

This strategy explicitly implicates the territorial fights of these communities into criminal cases. In Lof Buenuleo’s case, the court is able to create implications of displacement by legally removing communities’ relationship with their territory; creating a process where territorial rights are completely determined by provincial judges rather than the INAI or other national institutions. By resolving territorial issues through a criminal pathway, the provincial government is able to appropriate the courts to resolve ideological disputes. In this paradigm, negating the identity and right of Lofs Buenuleo and Nahuelpan as indigenous directly aids in alienating them from their lands; “if [the prosecution] recognize the Buenuleo community as indigenous, they lose”<sup>42</sup> highlights Buenuleo’s attorney. In the Buenuleo case, the prosecution’s primary strategies centered around arguing that the INAI was acting in a prejudiced manner in its recognition of Lof Buenuleo’s lands, as the state denied the authority of its own department. This attempt to deny the credibility of INAI, and by extent its recognition of Buenuleo’s rights to land, that the prosecution requested that all of evidence and testimony of the INAI were nullified, a request which was recognized by local judges.

These strategies to negate indigenous rights by attacking and undermining the community’s identities and relationships with the land through a criminal framework have forced communities

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<sup>41</sup> “Aquí el terrateniente blanco tiene un papel que dice que tiene derecho a poseer y eso es suficiente para iniciar un juicio sanitario” Attorney for Lof Nahuelpan, personal interview, 15/05/2024

<sup>42</sup> “si las reconocemos a la comunidad buenuleo de derecho indígena ellos pierden” Attorney for Lof Buenuleo, personal interview, 05/16/2024

to find creative solutions to prove their innocence and protect their territorial rights. Communities that engage in resistance or protest, or simply exist, can be not only dispossessed of their rights and land, but their very identity, for working outside of permissible action as indigenous groups within a the “multicultural state.” In response to these attacks on identity, both Lofs Buenuleo and Nahuelpan have had to take on an *identity based* framework in order to defend themselves. This strategy will be discussed further in the following sections.

*The Chuarrancho Community:*

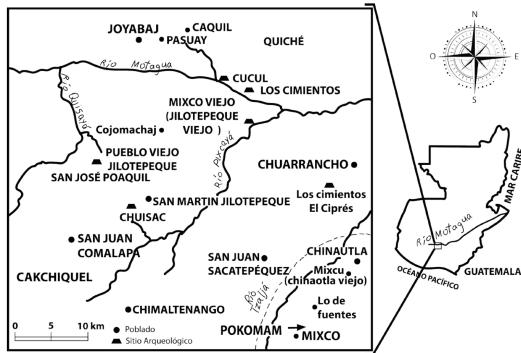
No olviden nuestro sufrimiento  
Nosotros sus abuelos nos vamos, ¡el tiempo ha llegado!  
¡Nuestra edad es avanzada!  
La vida sigue  
¡No permitan que les vuelvan a arrebatar su tierra!  
¡Gocen de la vida que nos da la madre tierra!  
....  
¡¡Bendita sea la tierra y el firmamento!!  
¡¡Bendita sea la vida en estas tierras!!  
¡¡Benditos nosotros y nosotras que tenemos que morir para  
renovarnos!!  
Pero más bendito aun cuando volveremos a nacer porque  
al fin habrá paz.<sup>43</sup>

Chuarrancho, a 12,000 person community located 36 Kilometers north of the capital city of Guatemala, has become the exemplar of the anthropological strategy of land reclamation,

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<sup>43</sup> Canto A La Tierra, Written by the Ancestral Authorities of the Indigenous Chajoma Community of Chuarrancho,

winning a landmark case that has inspired over 200 other cases throughout the country in subsequent years. While the community began to prepare for their most recent legal battle in 2010, the Chajoma people have been fighting since the colonial period using various methods to legally purchase and protect their lands from municipal usurpation.



Región cakchiquel, con ubicación de los principales centros:  
Inclusive Mixto o Jilotepeque Viejo (cakchiqueles) y Chinautla Viejo o Mixco (pokomames)

Members of the Chuarrancho community consider themselves descendants of the Chajoma Nation and assert that their ancestors have inhabited these lands for millenia. The municipal territory now known as Chuarrancho (a name invented by the Spanish originally known as Chuatutuy) has a long pre-colonial history as a Maya-Kaqchikel settlement. After more than

five-hundred years of conquest, invasion, and colonization, the identity of the Chajomas and their struggle for land and recognition of their ancestral authorities continues.

The community became motivated to investigate their ability to fight for ownership over their shared lands in response to a progression of human rights violations against the community: the licensing of lands to a hydroelectric company, the licensing of lands to a mining company, the destruction of land in favor of private companies, and a change in titling from the municipality. Most urgently, the municipality in collaboration with the Ministry of Energy and Mining had leased the Managua River, the primary water source for the community, to the building of a hydroelectric dam.

The elders of the community have always said that the lands belonged to the community, not the municipality, but at the time, the municipality had been publicly elected to manage the disputed lands, and the community wondered under what authority the government was able to

lease the lands to third party entities and companies. The displacement of the Chuarrancho communities from their land started in June 2001 when the General Register of Property unilaterally transferred the right to control the lands to the Municipality of Chuarrancho. On the same date, the municipality registered a mining company below the same right to use the land. Later the same year, the municipality submitted a promise of a sale agreement to the Guatemalan Communications company Guatel.

In May 2012, the community began the legal process to reclaim their lands, requesting a constitutional protection against the General Registry of Property's eviction. On the 17th of October, the Third Court of Appeals issued a protection and voided the contracts the municipality had created with both the companies. The sentence ordered that the Register transferred the name back to the community in electronic registers. The decision was appealed by the Register in favor of the municipality and mining and hydroelectric companies, escalating the case to the Guatemalan Constitutional court. On June 24 2014, the court confirmed the ruling, ordering the Registry and the Hydroelectric company to turn the lands over to the "neighbors of the town of Chuarrancho."

*The Chinautla Community:*

Chinautla, a community of 114,000 located seven kilometres from the Capital City of Guatemala and neighboring Chuarrancho, began their battle to reclaim their ancestral lands in 2017, when they launched an investigation into their land titles and formed the Ancestral Authorities of Iximulew, a indigenous council that has directed the community's legal battle. This investigation was in part spurred by their collaboration with lawyer Juan Carlos Peláez and the community of Chuarrancho who helped organize their strategy behind methods developed in their own case.

Indigenous members of the community identify with the Poqomam Maya people, which they trace back to time immemorial. The community is most commonly known for its pottery, which was declared Intangible Cultural Heritage of Guatemala by the state. The same resource that has been a central part of the community's heritage since before the arrival of the Spanish has become a site of extraction for private companies in the last three decades. In the 1990s, two sand and gravel extraction plants were installed in the village of Santa Cruz de Chuarrancho. Arenera la Primavera began operations in 1996, and Piedrinera San Luis in 1997. The area has been exploited as a sand mining area for decades, but large scale extraction began in 1995, multiplying the social and environmental impacts. Public records show that formal complaints against the companies date back to 2003, while the community has been organizing to protest

extraction since the late 1990s.

In 2022, the community re-started their efforts to protest against the mining companies extraction after the Piedrinera San Luis company's license expired in June of 2022, while the La Primavera license had expired five months earlier. **Image of the portion of the**

Con la ayuda de Google Earth vemos el área que opera La arenera y piedrinera San Luis



**territory currently occupied by Piedrinera San Luis, image provided by Ancestral Council of Chinautla.**

Both companies have continued to operate under a Mining Law which allows companies to operate while their license extensions are pending. When community members were interviewed in August of 2024, the licenses had still yet to be renewed. The effects of this mining have had stark impacts on the community, causing respiratory problems for its members. The

level of the main road has lowered almost six feet from the erosion caused by sand extraction, and community members have reported having their houses destroyed by extractive activities.

The community has also faced large-scale pollution of the Las Vacas River, originating from the landfill in Zone 3 of the capital, a problem that worsens during the rainy season. The defense of this essential resource has been led by many communities of the Poqomam people. For Chinautla, the need to govern their lands is imminent not only because of the cultural implications, but also in order to govern their lands in a safe way and end the extractivism occurring on their territory.

### **Guatemala: Bureaucratic Appropriation as Displacement:**

While courts in Argentina served as the primary forces of dispossession, through very explicit and public instances of criminalization, in both cases in Guatemala dispossession was facilitated in secret, through agencies of the state and municipalities. In Guatemala, the category of “communal indigenous lands and territories” is recognized at the constitutional level in the country’s legal system. Various legal instruments and public sector institutions make up a dispersed and complex legal and institutional framework for recognizing collective tenure rights. However, the country continues to lack a sufficient political, legal and institutional framework to address land issues, necessitating a reliance on international conventions, among which the Convention on the Rights of Indigenous Peoples is one of the most important. In 1996, after the Peace Accords, Guatemala attempted to define legal reform commitments that would seek to improve the agrarian situation and enforce the historical right to land of the Indigenous population.<sup>44</sup> Despite a robust framework of laws that should uphold and protect the rights of indigenous people, the Guatemalan state has been one of the largest usurpers of indigenous

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<sup>44</sup> Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO). *Estudio de buenas prácticas de gobernanza de la tenencia de la tierra en Guatemala*. Rome: FAO, 2017.

lands. For Chuarrancho, the state was able to fraudulently dispossess the neighbors of the communities by registering their lands as municipal property through the power of the Land Registry. This violated a number of international frameworks, most notably International Labor Organization (ILO) Convention 169, which the constitutional court elevated to constitutional status in 2010. In contrast to cases in which the state or private entities attempted to displace communities from their land in Argentina, the evictions of both the Chuarrancho and Chinautla processes were conducted through bureaucratic processes without the communities knowledge. It was not until there were large external threats to their practical use of lands, primarily environmental threats, that communities even became aware that they were usurped. In these cases, the passage of time and loss of memory further obscured events of usurpation. In a context where there was a longer history of direct negotiation with the state, municipal powers slowly appropriated not only the lands, but the governing powers of communities.

The bureaucratic creation of the village of Chuarrancho was deeply intertwined with increased state intervention in the governance of the community's lands. When the village of Chuarrancho was declared a municipality in 1909, the community was represented by the principles and their auxiliaries, members of the community who had been elected to represent it. Since the 17th century, the ancestral authorities had been considered this force, and were the powers in charge of territorial administration. However, during the early 1950s, the property began to be administered by the municipality, initially with the participation of the Council of Elders, but during the counter reform, around the 1960s, the ancestral authorities were excluded from the administration of communal property.

This process of dispossession came as the Municipality usurped the power the ancestral council held in the local political realm, placing itself as the democratically elected force ahead

of the council. “There is a logic...that the mayor’s office is popularly elected by the neighbors, but they represent the state, they do not represent the general community,”<sup>45</sup> argues the head of ancestral authorities of Chuarrancho. The municipality articulated itself as the representative of the “neighbors of the community of Chuarrancho,” naming itself the arbiter of the lands as the elected representative of this community. But as modern political parties entered municipal politics, the power of the community to democratically intervene shrank, being put behind the interests of companies that financed political campaigns. While the municipal code delineates that the municipality must respect the institutions indigenous people have created to protect their territory, during this time, the municipality presented itself as synonymous with the ancestral council in protection and power while simultaneously denying and undermining the existence of the council. Because of this attempt to appropriate the power of the ancestral council, the council defines themselves in contrast with the municipal powers: “the indigenous community is not an ‘association,’ but a community organized to defend its rights against the state”<sup>46</sup>

Chuarrancho’s dispossession occurred in such a way that as of the Protected Areas Law (Decree 4-89), protected areas were appropriated as state lands without accounting for the tenure of communities settled prior to the declaration. In 2001, the Municipal government leased a portion of the lands to a Canadian hydroelectric company. At the time, the physical records of ownership still placed the lands under the name of the “Neighbors of the Community of Chuarrancho,” but the title had been transferred to the municipality. This was in direct violation of article 1130 of the civic code of Guatemala which delineated that there cannot be a new lease

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<sup>45</sup> Originally: “hay una lógica, como nosotros hemos dicho, claro que el alcalde es elegido popularmente por los vecinos, pero él representa al Estado, no representa la al pueblo en general” Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

<sup>46</sup> Originally: “la comunidad indígena no es una asociación, sino que es una comunidad organizada para defender sus derechos ante el Estado” Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

of the land without consulting the current owners as well as a violation of ILO Convention 169 which calls for the previous consultation of indigenous communities for use of the lands.

The Chinautla community shares a common history with Chuarrancho and experienced a parallel dispossession. The ancestors of the current residents of Chinautla bought the lands from the Spanish crown in 1893, registering the lands for the first time under the Property Registry. It was likely that during this time Chuarrancho and Chinautla organized collectively, and shared the strategy of buying their lands back from the crown. Similarly, however, the national registry of property passed the lands over to the name of the municipality of Chinautla. In recent years, the Municipality has used this power to lease lands to a sand mining company whose mining has had grave environmental impacts on the lands and waterways of Chinautla's territories. This tension has been amplified by the municipal government being controlled by the same family since the titles have been turned over. The Medrano family has close ties with the mining company and has been parceling land to other private citizens undemocratically.<sup>47</sup>

Despite the continued expansion of municipal powers, community members, particularly elders in the community, attempted to assert the power of the community in a number of ways. In interviews, community members largely contrasted the power that the municipality attempted to assert over the community with the cultural power community members held.<sup>48</sup> Interviewees also referenced the power that their historical presence vested in the community. While politicians of the municipality are only elected for four years, the neighbors of the community hold power far beyond any term limit.<sup>49</sup> Interviewees emphasized that indigenous residents held the most power in the community, which was around 90% indigenous.

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<sup>47</sup> Speaker of Ancestral Authorities of Chinautla, personal interview, 08/23/2024

<sup>48</sup> Originally: "le dijo al señor Providencia, donde usted mencionó que la ciudadanía está radicada en la Municipalidad, pero no, está en el pueblo." Ancestral Authorities of Chuarrancho Elder 1, personal interview, 08/23/2024

<sup>49</sup> Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

### Part 3: The Emergence of Anthropology as a Strategy for Land Recuperation

In response to the various strategies their states have employed to dispossess them of their lands, indigenous communities have chosen to construct creative strategies to articulate their right to their ancestral territories. As the following pages will reveal, the process of land reclamation is not as simple as invoking the rights communities should have on the international level. Instead, a wide array of obstacles—including racial discrimination, corruption, the consolidation of power behind local officials attempting to usurp land, and a denial of the legitimacy of communities' identity as indigenous—stand in the way of these articulations. Out of these struggles, communities in Guatemala and Argentina have begun to use anthropological and historical evidence as the cornerstone of their claims to land. These strategies both establish communities' legal claims to land and their legitimacy as indigenous communities that are deserving of rights. This application has been used as both a defense of land, in the case of Mapuche communities, and a strategy for reclamation, for communities in Guatemala.

Liisa Malkki provides a useful paradigm for understanding how these politics of identity have evolved under a globalizing world. Ethnic and national identities are inherently and profoundly “territorializing” terms since colonization.<sup>50</sup> These identities are situated within a “Sedentary metaphysics” under which social actors are conceptualized as naturally rooted in their homelands and morally linked to their geographical identity. As “ethnic” societies have become globalized, more “flexible” theoretical models of identity and culture have appeared. As Diane Nelson argues of indigenous groups in Guatemala, people's identities and cultures have always been “highly mobile throughout the national territory and beyond.”<sup>51</sup> Since the Conquest,

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<sup>50</sup> Malkki, Liisa H. 1992. “National Geographic: The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees.” *Cultural Anthropology* 7 (1): 52–74.

<sup>51</sup> Das, Veena, and Deborah Poole. 2004. *Anthropology in the Margins of the State*. 1st ed. Santa Fe, N.M., Oxford [England]: School of American Research Press ; James Currey. Pg. 127

indigenous peoples in Guatemala have accumulated a historical experience that resembles what others would qualify as a “new post-modern flexible identity,”<sup>52</sup> through which communities renegotiate how they communicate their identity towards the state. It is important to note that rather than originating in communities’ self identification, this mobility is constructed by how groups communicate to the state. This identity has been continually socio-racially limited, given the long and ongoing history of political and socio economic domination based on racial prejudice.<sup>53</sup>

Just as identity becomes something socially malleable, communities also adapt how they communicate ideas of property rights towards the state. The conceptual and material ramifications of articulating ancestral land through the legal language of property create spatial constructs that both align and contrast with communities’ interpretations of their relationship with their lands. The power of records to support land claims lies largely in their openness to subversive interpretations that might address the power imbalances of indigenous communities that have been “othered” in their country’s colonial past.<sup>54</sup> Indigenous groups in Latin America have a long history of both using colonial documents and producing their own documents as strategies to subvert power relations.<sup>55</sup> In his interpretation of Mapuche land claims in Chile through the use of colonial maps, Di Giminiani argues that Mapuche claimants are able to demarcate loosely limited lands through employing property regimes creatively to communicate

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<sup>52</sup> Jameson, Fredric. *Postmodernism, or, the Cultural Logic of Late Capitalism*. Durham: Duke University Press, 1991.

<sup>53</sup> Vanthuyne, Karine. “Becoming Maya? The Politics and Pragmatics of ‘Being Indigenous’ in Postgenocide Guatemala.” *Political and Legal Anthropology Review* 32, no. 2 (2009): 195–217. <http://www.jstor.org/stable/24497462>.

<sup>54</sup> DI GIMINIANI, PIERGIORGIO. “The Becoming of Ancestral Land: Place and Property in Mapuche Land Claims.” *American Ethnologist* 42, no. 3 (2015): 490–503. <http://www.jstor.org/stable/43867984>.

<sup>55</sup> Abercrombie 1998:119; Piatt 1992; Rappaport and Cummins 2011; Salomon and Niño-Murcia 2011

a notion of *tuwün*.<sup>56 57</sup> Communicating property in this contradictory way is not universally accepting within the existing literature. Conservative critiques question the significance of place and territory in Mapuche culture by involving the precolonial mobility of Mapuche people.<sup>58</sup> On the other hand, progressive perspectives argue that community land restoration can serve as form of state co-optation of indigenous politics and a distraction from the broader struggle of regional autonomy and political representation for indigenous communities.<sup>59</sup>

My fieldwork has revealed that far beyond a mere rhetorical strategy, the ancestral territory legitimized through land claims and the recuperation of histories with the land is a process that emerged out of the necessity of unresponsive courts, and one that has allowed communities to take control of their history and their place within it. These titles and telling of history seek to attach a historical logic to abstract ideas of identity that did not previously need to be formally legitimized, but were often able to be negotiated in informal spaces. These strategies are pragmatic and do not always uphold the ideological view of group perfectly, but through co-opting and communicating within languages of the state, communities are able to articulate their claims. In Argentina, this is primarily done through integrating ancestral use into their defense, calling anthropologists as expert witnesses and invoking historical records. In Guatemala, these goals are achieved through unearthing historical records and titles. Through communicating rights through history and identity, rather than legal protections, communities directly respond to efforts from the state to negate their identity and territorial connection,

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<sup>56</sup> A term in Mapudungun roughly translatable as “place of origins”

<sup>57</sup> DI GIMINIANI, PIERGIORGIO. “The Becoming of Ancestral Land: Place and Property in Mapuche Land Claims.” *American Ethnologist* 42, no. 3 (2015): 490–503. <http://www.jstor.org/stable/43867984>.

<sup>58</sup> Tarquini, Claudia Salomon, Romina Casali, Axel Lazzari, Paula Milana, Macarena Ossola, Alexis Papazian, and Mariela Eva Rodriguez. “Dossier: Pueblos Indígenas y Antropología En Argentina. Balances y Perspectivas (1984-2014),” n.d.

<sup>59</sup> Dorondel, Stefan. “The Rights and Wrongs of Land Restitution: Restoring What Was Ours,” 2008.

simultaneously making themselves legible through asserting their existence as a group organized behind cultural connection.

### **Argentina: Implementing an identity based defense**

*El racismo se combate.*

*En este país, el odio racial es una accesoria de pena<sup>60</sup>*

Both the Nahuelpan and Buenuleo communities faced immense structures of racism within their judicial processes, fostered through various levels of the application of the law, including law enforcement, biased judges, and their cultural exclusion. These instances of implicit and explicit racism create a relationship through which the prosecution and the state seek to negate the identity of Mapuche communities in order to overrule their nationally recognized rights.

The negation of indigenous identity in the courts is deeply entrenched. Both cases were determined by judges who were reported to have a history of ignoring indigenous rights, and one was personally involved in the dispossession of an indigenous community in the area. These positions also point to biases within the broader judicial system, particularly from senior judges who in both provinces guide other judges to overlook indian law according to attorneys interviewed.

One of the most evident and explicit cases of racism and prejudice within the trials was the exclusion of cultural practices, especially the Mapuzungun language, during the Nahuelpan case. When members of the community attempted to introduce themselves, the judge repeatedly interrupted them and requested that they only speak in the national language: as one member of the community recalls, “[The judge] denied us a moment to speak in our language, to present

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<sup>60</sup> “Racism can be fought. In this country, racial hate is an accessory of the law.” Attorney for Lof Nahuelpan, personal interview, 05/15/2024

ourselves, our *zungun* (knowledge)...it was an uncomfortable moment because for us that is how we introduces ourselves, as our grandparents did.”<sup>61</sup> These interactions also indicate the ways in which the state repeatedly ignores its own laws on indigenous rights to further alienate Mapuche populations from their identity. Many of these proceedings exclude the Mapuche culture in order to further negate and deny these communities status and indigenous populations, and therefore the protections they are entitled to. Cultural plurality is supposedly integrated into state policy with laws such as Article 33 and Article 9.2 of ILO Convention 169, but in the application of pluricultural situations, in reality it only results in the “juridical monism” of the Argentine state.

Within this index of judicial influences and biases, it is quite important to also take into account implicit or subtle practices. Although they may not be as obvious or entrenched within the legal system through which the cases were conducted, both Lof Buenuelo and Lof Nahuelpan also faced implicit racism throughout the trials. These strategies, which were largely carried out by the prosecution and other prominent members of society, seek to invalidate the cultural identity of Mapuche groups, overruling attempts at identity based articulations to their rights. Further, there is an explicit attack on the anthropological and historical strategies communities employ as the prosecution and their allies seek to create ahistoric courts. These implicit forms of racism reaffirm the connection of the case to broader prejudicial systems in the region that seek to exclude and discriminate against the Mapuche People.

For the Buenleo Case, it was this point of total denial of indigenous rights and the organizations that recognized these protections, that the defense decided to incorporate an anthropological argument into their case. In 2019, in their construction of their case against Emilio Friedrich, the community commissioned Claudia Briones to prepare an expert report for

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<sup>61</sup> “negó para ir en un momento para hablar nuestra lengua, no presentarlo nosotros, nuestro *zungun* (conocimiento), de darlo, de saludarlo entre nosotros...es un momento medio incómodo para nosotros porque uno está acostumbrado a hablar y saludarse, como nuestros abuelos lo hacían” J.N., Nahuelpan community, personal interview 05/21/2024

the federal contentious-administrative lawsuit on the traditional occupation of Lof Buenuleo on lot 127. In addition to conducting oral histories with five members of the community, Briones also conducted tours of lot 127 to geo-reference places of use, memory and traditional significance for those who make up the lof. While the investigation was paused due to COVID, these preliminary investigations served as the background for the Bunuelos defense case.

Lof Buenleo commissioned Claudia Briones and Lorena Cardín, two well known anthropologists in the region who had recently conducted an anthropological history of the community, to testify as an expert witness in order to begin to articulate the history of land possession as a central component of the case. In their work, both anthropologists sought to map the traditional and current occupation of the lof in its territory, describing how the philosophy of law does not recognize other knowledge such as that of the Mapuche. Cardin concludes that "multiple mutually exclusive power relations cannot occur surrounding the same subject. One of the characteristics of possession [here meaning property] is defined by exclusivity, this means that two equal possessions or possessions of the same nature cannot coexist over the same thing."<sup>62</sup> Here, Cardin refers to how the state must deny a Mapuche understanding and occupation of territory in order to enable other forms of possession. In her testimony, Briones referenced evidence based on social memory, compared with documents, to put into context how the impositions of national law during the long historical period in which Indigenous rights were not recognized.

This larger historical context was particularly relevant as Friedrich and his lawyers repeatedly attempted to discredit the Buenuleo family's self-organization historically under the

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<sup>62</sup> "No pueden concurrir sobre una cosa varias relaciones de poder de la misma especie que se excluyan entre sí. Una de las características de la posesión es la exclusividad, esto significa que no pueden coexistir dos posesiones iguales o de la misma naturaleza sobre la misma cosa". Cardin, Lorena, 2024

La ocupación tradicional y actual del territorio mapuche en el banquillo de los acusados. El caso de la lof Buenuleo, *Instituto de Investigación y Acción para el Desarrollo Integral (IIAADI)*

structure of a Lof. Further, Friedrich repeatedly claimed to have never heard of the existence of a community on the lands. Briones in her testimony highlighted the long tradition linked to the Buenuleo community, with ceremonies and "an infinite number of practices," including "permissions" to take elements from nature and the effort to "be together for a long time" as proof of community identity.<sup>63</sup> This kind of testimony seeks to link cultural practice and history with a paradigm of possession, particularly in the face of a prosecution that repeatedly attempts to discredit the very existence of the community.

The Nahuelpan community conducted a similar process. Before they were accused of land usurpation, the community had already begun their own process of recuperating memory that had been lost in collaboration with anthropologists and community organizations such as Gemas Memoria. Through this process, the community unearthed documents dating back to before their eviction in 1937, the national government recognized 19,000 hectares for occupation by "the indigenous people of Nahuelpan" through a decree issued by President Figueroa Alcorta, establishing the Boquete Nahuelpan. As community members advocated against their most recent dispossession, they connected the contemporary events to previous expulsions from their lands, interweaving a history of state violence with their own occupation.

These arguments facilitate a defense against a criminal application from the state by implicating previous dispossessions the state had conducted. Nahuelpan's attorney criticized what she believes to be a clear attempt to discipline the region's communities, "This is not the first time that the Esquel Public Prosecutor's Office has accused indigenous people of being usurpers,"<sup>64</sup> the attorney also highlighted that the prosecutor's office routinely ignored the

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<sup>63</sup> Claudia Briones, personal interview, 05/16/2024

<sup>64</sup> No es la primera vez que el Ministerio Público Fiscal de Esquel, acusa de usurpadores a indígenas" Attorney for Nahuelpan community, personal interview 05/21/2024

identity of indigenous peoples. This paradigm allowed the attorney to invoke the Inter-American Court of Human Rights' May 2008 ruling in the *Kimel v. Argentina* case. "The Court has indicated that criminal law is the most restrictive and severe means of establishing liability for unlawful conduct;" in a democratic society, the attorney argued, "punitive power is exercised only to the extent strictly necessary to protect fundamental legal rights from the most serious attacks that damage or endanger them. Otherwise, it would lead to the abusive exercise of the State's punitive power."<sup>65</sup>

Briones also emphasized how invoking historical evidence can open avenues to invoke and support the rights of indigenous powers, "we tried to show, through different means, the history that caused this conflict, to make a history that we can show these moments [to the court]."<sup>66</sup> As Lof Nahuelpan chose to, Buenuleo also contextualizes the current conflict within a larger history of abuse from the state in order to implicate the state guilt in causing the conditions of the current case. Through using this strategy, Briones argues that the defendants are able to translate their history and rights: "with an anthropological strategy, you show their long demonstrated history. Through this, you can begin to translate rights" into the legal sphere.<sup>67</sup>

In addition to denying the invocation of international protections of indigenous rights, the prosecution repeatedly attempted to discredit anthropological and historical evidence, accusing witnesses of lying and constructing fake histories. These statements reflect a deep hostility and contempt for those who defend indigenous rights, reinforcing an atmosphere of intimidation and

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<sup>65</sup> La Corte ha señalado que el Derecho Penal es el medio más restrictivo y severo para establecer responsabilidades respecto de una conducta ilícita. En una sociedad democrática el poder punitivo sólo se ejerce en la medida estrictamente necesaria para proteger los bienes jurídicos fundamentales de los ataques más graves que los dañen o pongan en peligro. Lo contrario conduciría al ejercicio abusivo del poder punitivo del Estado". Attorney for Nahuelpan community, personal interview 05/21/2024

<sup>66</sup> "tratamos de hacer, fue las diferentes formas de demostrar, en este libro que tiene la forma de conflicto, hacer la historia de los diferentes momentos que vienen de arriba." (Briones, entrevista personal 05/16/2024).

<sup>67</sup> "Con la estrategia antropologo, con una gran historia larga está demostrada. Entonces, se forman la traducción de los derechos." Briones, personal interview, 05/16/2024

prejudice. The prosecution's predisposition to convict the Mapuche before trial also demonstrates an implicit bias. When Briones arrived to give her expert witness, she was contacted by the prosecution with a clear intention to discredit her, stating that “we are going to destroy them” and they tried to deny the legitimacy of her studies, repeating that “this is not scientific evidence.”<sup>68</sup> These discourses again produce a new form of implicit violence against the communities, reaffirming their position as “intruders” and signaling once again that the mechanisms of the State are not on their side. At the same time, the prosecution in these cases seeks to undermine the place and validity of historical evidence.

### **Guatemala: History Telling as a strategy for Recuperation**

Throughout time, the elders in the community had always insisted that the lands the municipality controlled belonged to the community. When the municipality signed to lease the lands to foreign companies, the communities decided to seek to find a way to legally legitimize this historical memory that had been carried by members of the community. Interviewees emphasized the faith and encouragement from their elders that the lands belonged to the community as a primary motivating factor for initiating their investigation.

Supported by funds from multiple international organizations, the community investigated records of history dating back to 100 years before the Spanish invasion, recuperating vital history about the origins of the town that had been forgotten by members of the community. The community had a long, legitimized history of attaining these lands through disputed means, and in 1617 “[their] ancestors bought more than 400 caballerias from the spanish crown”<sup>69</sup> This delineated parcel of land is that one that the community claims today. “You might ask how it is possible that we as people native to this land had to buy it from the Spanish crown, it doesn't

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<sup>68</sup> Briones, personal interview 05/16/2024

<sup>69</sup> “nuestros ancestros compraron a la corona española más de 400 caballería” Legal Representative of the Churrancho Community, personal interview, 08/10/2024

mean that they were the owners although they were invaders.” Despite the dissonance of buying back their own lands, elders in the community determined that legitimizing their ownership in the eyes of the state, and entered a gubernatorial agreement that stated the land “stays registered as communal land under the name of the community.”<sup>70</sup> The community connects their contemporary struggle to recuperate their lands to this first effort organized collectively by their ancestors, as the Principal Author of the Case attests, “we are their grandchildren...we have the right to be able to recuperate and demand that they return our lands...so in 2012 we started to organize ourselves as ancestral authorities”<sup>71</sup> What had started out as an attempt to verify the words of elders of the community would soon become a legal strategy that over 200 communities across Guatemala have used to dynamically defend their lands. “It was always about who we are. We are telling out history.”<sup>72</sup>

For both Chuarrancho and Chinatula, investigations into the history of their titles originated out of questioning the dissonance between the stories their elders told and the current conditions of ownership. The origins of the Chuarrancho case came into a response to an immediate threat to the material conditions of their land, but through anthropological research the community was eventually able to understand the issue through a larger human rights based framework. Following nine months of investigation, the Chuarrancho community found the original title to the land in their name. “We noticed that the best library was our own land”<sup>73</sup>

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<sup>70</sup> “Nos preguntábamos cómo es posible que somos nativos de este de esta tierra y compramos a la corona española, que ni siquiera es dueña de lo que fue de invasor.” “se queda registrado la tierra comunal a nombre de la comunidad.” Legal Representative of the Chuarrancho Community, personal interview, 08/10/2024

<sup>71</sup> “Nosotros somos sus nietos y nietas...nosotros tenemos ese derecho de poder recuperar y exigir que devuelvan nuestra tierra...Entonces en el 2012 empezamos a organizarnos nosotros a organizarnos como autoridades ancestrales.” c

<sup>72</sup> “siempre era quiénes somos? Narramos nuestra historia.” Lic Pelaez, Personal Interview, 04/21/2024 , Personal Interview, 04/21/2024

<sup>73</sup> “nosotros nos dimos cuenta que la mejor biblioteca está en nuestro territorio” Head of Ancestral Authorities of Chuarrancho, Personal Interview, 04/22/2024

Lic Pelaez, the attorney for Chuarrancho and Chinautla and one of the founders of *Mesa de Tierras Comunales*, articulated that while international laws were able to underpin some rights that the state had to complete for the community, they remained under a “liberal” conception of law. Incorporating a strategy based in history, on the other hand, used a logic far more based in the community in the lawyer’s eyes. Another key component of Chuarrancho’s strategy centered waiting to find a period of time that was politically advantageous. 2012 and the change of the Mayan Calendar presented a moment in which the state was embracing multiculturalism and appropriating Mayan tradition as part of the national culture, during which there was a “large indigenous sympathy” at the national level.<sup>74</sup>

Community members also constructed their claims in contrast to other reclamation movements in Guatemala, primarily the campesino movement,<sup>75</sup> in order to establish legitimacy ahead of less deserving movements. Interviewees repeatedly expressed the sentiment that “campesinos are against us” because the indigenous movement has “been able to recuperate more land than them.”<sup>76</sup> Likely in part because the construction of community’s right to land is so deeply intertwined with their cultural identity presented to the state, attempts to claim land outside of this paradigm threaten the legitimacy of indigenous movements in the eyes of some. Interviewees painted the campesino movement as opportunist, seeking to claim land it did not have an inalienable right to. “We are not peasants, we do not want land, we already have it.”<sup>77</sup> Through their distinction from In the discussion of “usurping” or robbing lands, Chuarrancho’s lawyers argued again that unlike campesinos, who occupy private property, the community was

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<sup>74</sup> Lic Pelaez, Personal Interview, 04/21/2024

<sup>75</sup> A land reclamation movement led by peasants and rural farmworkers in order to reclaim lands that have been appropriated by the government or private corporations. While the campesino movement shares similarities with indigenous recuperation movements, they cannot claim the protections of indigenous law.

<sup>76</sup> “Los campesinos están en contra de nosotros” “hemos logrado recuperar más tierra que ellos.” Lic Pelaez, Personal Interview, 04/21/2024

<sup>77</sup> “No somos campesinos, no queremos tierra, la tenemos.” Lic Pelaez, Personal Interview, 04/21/2024

not invading private property, but rather taking back their own private property that had been usurped by the state. This logic helps to raise the rights of the community to the same level of legitimacy as the state through its contrast with another movement. In many ways, the “opportunistic” campesino movement replicates many of the accusations of private and state entities that seek to delegitimize indigenous movements, that they are false, that they are robbing land. Communities additionally used this contrast to underscore their legitimacy of their history as agricultural producers on the land: “we are not laborers nor peasants, we are agriculturalists, we are not precarious,”<sup>78</sup> attested one of the elders of Chinautla. In this contrast, community members both delineate their own identity in contrast to other movements and the legitimacy of their claims in comparison to less deserving articulations. The “exclusivity” further emphasized the importance that indigenous communities have distinct rights based on their status.

This strategy begins the path towards building a reciprocal relationship with the state. If communities are able to articulate their authenticity to the state as indigenous actors within its paradigm, the state must also act as the multicultural state it has claimed to be. Interviewees articulated the idea of reclamation as a part of a necessary project through which the state “must repair its damages” to the community” because of the integral role that indigenous communities have played on the national scale to defend the democratic construction of the state.<sup>79</sup>

One of the most salient tensions the community had to overcome was how the case constructs and communicates ideas of private and communal property. While upholding the idea of private property may seem antithetical to the strategy of an indigenous indigenous movement, for Chuarrancho and the cases that followed, advocating for the right to territory through the community’s right to private property, as any other citizen, was the crux of Lic Pelaez’s legal

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<sup>78</sup> “no somos obreros ni somos campesinos, sino que somos agricultores, no somos pecuarios.” Ancestral Authorities of Chuarrancho Elder 1, personal interview, 08/23/2024

<sup>79</sup> Head of Ancestral Authorities of Chuarrancho, Personal Interview, 04/22/2024

arguments. “Yes we mention jurisprudence, but no judge or magistrate applies it. I’m saying they reject this whole process. So everything is being shifted to ancestral rights. And it’s not just ancestral law, my friends, its registrational rights; it’s private property.”<sup>80</sup> While the community was obtaining these lands to be governed communally, the idea of communal ownership took a backseat, and the legal team largely opted to not mention this use in their case; “Chuarrrancho’s land is a territory, it’s communal, but its legitimacy is as private property”<sup>81</sup>

For members of the community, the privacy of the property rights they are granted means autonomy from the state in governing their lands. With this new conception, Lic Pelaez was able to use civil jurisprudence, using the right to private property as the first tangible “real right” that legitimized the right of the community. This more expansive understanding of what rights entitled the community to the land allowed them to expand beyond just what lands that had been usurped by the government in 2000, but extended back to include those that had been taken in 1870 that the community had purchased from the Spanish crown.

### **Chuarrrancho’s Precedent:**

Because the new title was placed under the name of the “Indigenous Community of Chuarrancho,” identifying and organizing themselves as a community became a central part of asserting the new inalienable nature of their rights to land. Further, one of the most significant victories of this ruling was the expansive power it granted Chuarrancho to protect its lands as an indigenous group; one elder imagines articulating this to companies that seek to use their lands: “remember, engineer, this estate is private property of an indigenous community”<sup>82</sup>

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<sup>80</sup> “sí se menciona como jurisprudencia, pero ningún juez ni magistrado lo aplica. Decía rechacen todo este proceso. Entonces todo lo están tirando a derecho ancestral. Y les digo no es derecho ancestral, compañero, es derecho registral, es propiedad privada.” Lic Pelaez, Personal Interview, 04/21/2024

<sup>81</sup> “la tierra de Chuarrancho es una tierra, esté comunal, pero en su legitimidad en general es privada.” Head of Ancestral Authorities of Chuarrancho, Personal Interview, 04/22/2024

<sup>82</sup> “acuérdate, ingeniero, esta finca es propiedad privada de una comunidad indígena.” Ancestral authorities of Chuarrancho Elder, Personal Interview, 04/21/2024

Still, the structural challenges to continually applying this strategy have proven to be complicated by the political interest of local governments, that despite being presented with evidence that disputed territories belong to a community, continually refuse to turn over lands: “We have had ten reclamation cases, sentences where [the court] says that they have demonstrated that the land is communal. But it is preferable that the indigenous community suffers in diminishing its rights because communal property challenges private property.”<sup>83</sup>

*Mesa de Tierras Comunales*, an organization founded after Buenuleo’s victory to disseminate land recuperation strategies, estimates that there are over 220,000 false titles like the one that Chuarrancho discovered at the national level. Using the strategy he originated in the Chuarrancho case, Lic Pelaez has won 20 of such cases and has helped almost 100 more communities begin their investigations. Chinautla is one of such communities who has decided to investigate whether they have records of their claims to their land.

In Chinautla, the community similarly always had an understanding that the lands they resided on had once belonged to them. This was a message conveyed by the elders of the community with such clarity that most people in the township of Chuarrancho had an understanding of the property lines of their original title. Community leaders interviewed spoke of the tension between their knowledge that as the state of Guatemala should recognize and support their rights through the laws it has ratified, particularly convention 169, to administrate over their lands. Beyond just denying their right to land, community members see this negation as coercion against their right to identity: “if many people have been displaced to other places, they loose their identity...we forget that this is racism, it's discrimination.”<sup>84</sup> In Chinautla, the

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<sup>83</sup>“Hemos tenido diez reclamos. Sentencias donde dice si se ha demostrado que la tierra es comunal. Pero es preferible que la comunidad indígena sufra menoscabo en sus derechos porque la propiedad comunal atenta contra la propiedad privada.” Lic Pelaez, Personal Interview, 04/21/2024

<sup>84</sup> “Si varios se han tenido que desplazar a otros lugares, se pierde la identidad...Olvidamos que es racismo, es discriminación.” Ancestral authority member of Chuarracho, personal interview, 04/21/2024

ability to administer over their lands was increasingly becoming an issue of being able to access and administer over their identity as well. In response to continual destruction of their lands by mining companies, individuals in Chinautla began to investigate to find historical records that proved these claims.

On July 7, 2024, the Poqoman People of Santa Cruz Chinautla, presented the historical titles to the communal lands of Santa Cruz Chinautla, presented by the elders of the community and the ancestral authorities. Representatives from various neighboring indigenous communities, including the Kakchiquel people of Chuarrancho, and local and international human rights organizations attended the ceremony in solidarity. Chinautla mirrored Churrancho's reclamation strategy, making the process of land recovery synonymous with the recovering of legal documents that guaranteed their rights. As this process began in 2017, the community formed their Ancestral Authorities as well as the Community Development councils as strategies to influence and ensure that the municipality would guarantee their rights. Through the formation of their ancestral authorities and collaboration with Chuarrancho's attorneys, Chinautla came in contact with other communities, namely Chuarrancho, who had made progress in the recovery of their territories, and had borrowed strategies from their victories. In their articulation of these titles, the authorities of Chinautla referenced that Guatemala labels itself as an intercultural country, and that because of this label the current government must guarantee a space for dialogue about the recovery of territories. Beyond titles, members of Chinautla were also able to find archaeological evidence that the craftwork appeared here when they did excavations.<sup>85</sup> The community uses the same pottery techniques today as seen in the excavations.

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<sup>85</sup> "las artesanías que aparecen ahí cuando a las excavaciones." Ancestral authority member of Chinautla, personal interview, 08/22/2024

Although they have not won a case to have ownership of their lands returned to them, finding a title was still incredibly significant for the community: “today we can say here to our people, and especially to our children, that these territories are ours. And so, we think that this will help us a lot so that companies do not come here to do whatever they want,”<sup>86</sup> recalls one of the members of the ancestral authority.

Another part of their strategy Chinautla has adopted from Chuarrancho has been their decision to wait for a moment of political opportunity, during which a national interest in indigenous cultural production might align with the recognition of their rights. Chinautla launched their first request that a lower court stay construction in 2017, but the court resolved that the community had insufficient evidence, a decision members of the community believe is connected to corruption and the power of the Medrano family to manipulate politics in the area.

The community has decided to continue to construct their case after the mining company’s license expired. Still, they are awaiting a change in the courts to submit their second constitutional protection for a larger political shift. “Right now is not the moment” the head of the ancestral authorities attests, “because the current judges are corrupt, so we must wait for the right time.” In the meantime, the understanding that the historical titles are there and “cannot be hidden. While the state might try to silence their work, members of the ancestral authorities say that it will continue regardless. Chinautla understands their process and losses are part of a much longer fight that they are willing to undertake, up to the international community if necessary.”<sup>87</sup>

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<sup>86</sup> “hoy ya podemos decirle aquí a nuestra gente y especialmente a nuestros hijos, de que estas tierras son nuestras. Y entonces, eh, consideramos que eso puede ayudarnos mucho para que ya las empresas no vengan aquí a hacer lo que les dé la gana.” Ancestral authority member of Chinautla, personal interview, 08/22/2024

<sup>87</sup> Ancestral authority member of Chuarrancho, personal interview, 08/23/2024

#### **PART 4: Political Organizing and Building Autonomies**

Beyond helping to facilitate a case for legal recognition of territories, the work of anthropology and history-making has helped communities revive ancestral and autonomous forms of governance that had been unintentionally or forcefully forgotten during assimilationist regimes. This occurred as a result of two main factors. First, in order to respond to imminent threats to their lands, communities constructed official systems of governance through which they were able to organize; for both communities in Guatemala reviving ancestral councils was deeply entwined with finding and presenting their titles to land. In turn, these organizations strengthened the political power of communities to demand recognition of their rights behind a unified force. This organizing helps to legitimize the claims of communities behind identity, codifying them as official social movements unified behind a common identity in the eyes of the state. These systems have additionally facilitated coordination with other indigenous communities, helping to share strategies and grow collective power behind a unified identity.

Second, through the process of investigation into their past, communities have taken on an active process of history making and the revindication of cultural practices. Through reliance on elders in the community and the help of historians, lawyers, and anthropologists, community members become active history makers and revivers. All four communities emphasized the importance of younger generations taking on an active role in these processes and the significance of this preservation. These revindications renegotiate communities' relationships with the state, asserting not only territorial sovereignty, but also sovereignty of culture and governance.

In the post civil war period in Guatemala, the tasks of the government were exercised in an indirect manner, involving actors of "civil society." Such trends project a certain porosity

between “state,” “community,” or “society.” Since the 1990s, Mayan social movements throughout Guatemala have directly challenged state sovereignty in a newly politicized manner. From demanding community based forms of justice and authority, Mayan communities have increasingly articulated themselves as “state-like” autonomous sovereign powers.<sup>88</sup> Similarly in Argentina, Mapuche political organization has long existed in separation from the actions of the state, both due to exclusion from the state and a sentiment of autonomy among community members.

While communities attempt to construct these autonomies and strengthen political power, they still continue to face criminalization and racism from the state. Throughout these cases, communities must undergo a constant negotiation of what the state is or isn’t, what it should or should not be, and what is a legitimate and ethical exercise of authority. Communities both create autonomy discourses that emphasize ethnic difference and indigenous sovereignty and work to improve communication between community authorities and state justice officials. This is part of a wider struggle to secure recognition of the autonomous systems they build, guarantee indigenous peoples’ collective and individual rights, and limit further dispossession of their land.

### **Impacts on Mapuche Daily and Political Life:**

These processes “follow a colonial imposition of assimilation” that is predicated on the constructed idea of a “usurper.” Through its application of land usurpation, the state seeks to define “the realest of the most real, the purest of the pure, the good ones and the bad ones, and so they do everything but explicitly state the creation of the internal enemy,”<sup>89</sup> as the attorney for Lof Nahuelpan describes. The same judges and narratives form part of a strategy from the state

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<sup>88</sup> Granovsky-Larsen, Simon. 2020. “Tierra y reconfiguración del poder en la Guatemala posconflicto.” In *Concentración económica y poder político en América Latina*, edited by Liisa North, Blanca Rubio, Alberto Acosta, and Carlos Pástor, [page range if available]. Buenos Aires: CLACSO.

<sup>89</sup> “siguen una imposición colonial de asimilación” “los verdaderos de los más verdaderos, de los puros de los más puros, los buenos y los malos, entonces qué va todo alrededor del que se llama la construcción del enemigo interno” Attorney for Lof Nahuelpan, personal interview 15/05/2024

to not only displace communities from their lands, but also dissuade their activism. As a member of Lof Nahuelpan reflects, this forms part of a larger trend of a government that seeks to silence Mapuche activism: “these past times where we as Mapuche have tried to raise our voice and they label us as terrorists, that we are working against the sovereignty of the Argentine state,”<sup>90</sup> shares one community member. This interpretation is one that is uniquely applied to indigenous groups in Argentina, building upon assumptions constructed in the national media and political spaces that label Mapuche groups as violent. This can be seen in the stark contrast between the same court’s interpretation of charges of usurpation against members of Lof Buenuleo versus that of when Friedrich was accused of usurping the same lands in 2009.

It is out of this hostile relationship that communities seek to create their own paths towards justice. Interviewees affirmed that instead of silencing the political and personal action of members of Lof Buenuleo and Nahuelpan, these trials - and the lack of justice more generally that communities faced- ultimately strengthened their external political action. In the face of these trials, the interviews revealed that there is a new stage of political organization for these communities, which has been fostered through a new generation of members. Taking into account the generational effects of land dispossession, the attorney for Lof Buenuleo reflects on what motivates these young people: “these young people or the young people who make territorial recoveries, they are the grandchildren who saw their grandparents cry” they are the ones who put together new strategies, most of them reacting to generations of oppression by the government, “there is a third generation that is not willing to go through that again.”<sup>91</sup> Within the new advances of a “multicultural” government, new generations attempt to navigate the

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<sup>90</sup> “en estos últimos tiempos donde como Mapuche no más hemos intentado levantar la voz en algunos lugares y ya nos han tildado de terroristas, que estamos atentando contra la soberanía de la Argentina, del Estado Argentino” G.N. member of Nahuelpan Community, personal interview 05/21/2024

<sup>91</sup> “estos jóvenes o los jóvenes que hacen recuperaciones territoriales como los mapuche, ellos son los nietos que vieron a sus abuelos llorar” “hay una tercera generación que no está dispuesta a pasar por ese lugar” attorney for Lof Buenuleo, personal interview, 15/05/2024

complexities of a state that supposedly recognizes their rights as indigenous population. Through a deeper understanding of both their place in relation to the state its laws, it has primarily been younger members of the community who have been organizing reclamations.

Despite the daily challenges of imprisonment and criminalization of community members, the Nahuelpan community has continued to persevere in their legal battles to defend the innocence of members of the community and rights to their lands. After five years of legal battles they were able to acquit community members accused of land usurpation. Outside of the channels communicating externally to the state—protest and community organizing—Nahuelpan members also attempt to organize internally, an effort that does not change in the face of state attempts to silence them. Through this struggle, the community attempts to define and create their justice as the state denies it to them. Members expressed the importance of continuing to organize under this oppression, not only to advance politically, but also to maintain their connections within the community: “through this we are always there in the fight, with the lawyer, with the communities we are in contact with, mostly with Mauro (a Mapuche activist) who always helps us, and my compatriots who are always here”<sup>92</sup> attests one community member. Through these paths, attest the members of the community, they will achieve their own justice, outside of the trials that criminalize them.

### **Creating autonomous movements:**

These two cases form a small part of an ongoing struggle to recover territory, language, power and culture that the Argentine state has systematically stripped from the Mapuche people.

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<sup>92</sup> “Así que siempre estamos ahí en la lucha, con la abogada, con las comunidades que estamos en contacto, más con Mauro que siempre nos da una mano y más mis compañeros que siempre están.” G.N. member of Nahuelpan Community, personal interview 05/21/2024

The interviews conducted have revealed how the Argentine State continues to attempt to deny the rights it has previously granted to these populations in international and national agreements.

The history of state negligence towards the Nahuelpan community has fed their desire to protest and fight to articulate their rights, a motivation that has been directly connected that brought on their legal conflict. This history of hostility from the state and private entities has left the community feeling that the primary pathway for them to reclaim their territories is through their own forms of justice, one community member argues “the only way was through our own justice that we began to create... justice is slow and never comes out in our favor.”<sup>93</sup>

This political action resulted in a conflict with the Instituto Autárquico de Colonización (IAC)<sup>94</sup>, which considers the disputed territories to make up federal lands while the community insists “if [the territory] is within the community, its not federal because it belongs to the community.”<sup>95</sup> One community member explains: “we said no and they took [the territory] from the community. In reality, what we realized was they wanted to start work in Nahuelpan, which we returned to in 1900, where we established the complete territories that the Nahuelpan community had.”<sup>96</sup> As private interests, such as those consolidated within Consenso Patagonia and Friedrich's interests, as well as the government's own tools such as the IAC, continue to strengthen their interests in a new political climate even more favorable to their issues, it is crucial not to allow these actions to be hidden in judicial enforcement, whether through explicit or implicit criminalization.

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<sup>93</sup> “la única manera fue a través de esa justicia nuestra que vendría a ser de nosotros plantarnos... la justicia es lenta y nunca sale a favor de nosotras” J.N., from the Nahuelpan community, personal interview 05/21/2024

<sup>94</sup> The IAC, which still holds its original colonial name, is in charge of regulating public lands in Chubut

<sup>95</sup> “si está dentro de la comunidad no es fiscal porque es de la comunidad.” J.N., from the Nahuelpan community, personal interview 05/21/2024

<sup>96</sup> “le dijimos que no, que se retiren y lo sacamos de la comunidad. En realidad lo que nosotros le pusimos es si ellos querían empezar a trabajar en Nahuelpan, que volvámos a 1900, donde estaba todo el territorio completo que tenía la comunidad en Nahuelpan ” J.N., from the Nahuelpan community, personal interview 05/21/2024

While these moments of loss can be discouraging, interviews with community members revealed that their reactions were far from resigned. Instead, they look to the broader process of justice, where the Nahuelpan members fought over the course of 5 years to see their case concluded, an outcome that Buenuleo's attorney already anticipates and has begun preparing a case to appeal the convictions due to the blatantly unjust application of the law throughout the Buenuleo case. Faced with an unjust system, the only thing left for these communities to do is to continue in their struggles. The lawyer in the Nahuelpan case, reflecting on 40 years of practicing indigenous law, highlighted the importance of the work of Mapuche communities to revive ancestral means of social and political organization that exist outside of a Western legal system: "they organize together how they are able to. This, to me, is autonomy and self governance."<sup>97</sup> These forms of solidarity were highlighted by community members not only as ways to organize politically, but also to overcome these difficult times.

"What has helped us a lot has been to organize with other communities," attests a member of the Nahuelpan community.<sup>98</sup> Although these interviews revealed a state tendency towards prejudice against indigenous communities, community members also spoke of their perseverance despite these difficulties, recovering forms of organization and politics inherited from their ancestors. "It is difficult to reach justice, real justice;"<sup>99</sup> but it is through these efforts, these forms of autonomous organization, that these communities will achieve true justice.

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<sup>97</sup> "se organizan como socios y cómo pudieron. Entonces me parece que esas sí son autonomías y autogobiernos" Attorney for Nahuelpan, personal interview, 15/05/2024

<sup>98</sup> "lo que nos ha servido muchísimo también a la comunidad de Nahuelpan es juntarnos con otras comunidades" (J.N., de comunidad Nahuelpan, entrevista personal 05/21/2024).

<sup>99</sup> "Cuesta mucho llegar a la justicia, que es la justicia de la verdad" (J.N., of the Nahuelpan community, personal interview 05/21/2024

## **Criminalization and Protest in Guatemala:**

“Here in Guatemala, fighting for your right labels you as a problematic person, and they criminalize you just for defending collective rights.”<sup>100</sup> Interviewees attested that with success in recuperating lands, they have also faced increased criminalization from the government, during which public ministry has persecuted leaders within communities.

“I am not much for protest because I have seen it produce death and arrests, not changes” argues Lic Peleaz. For Chuarrancho and other communities, the stakes of protest and acting outside of the state’s desired action for them is clear. The Principal Author of Chuarrancho’s case, for example, spoke of the direct criminalization and persecution he faced from the municipality, after being singled out as one of the most outspoken members of the community in favor of their communal lands. “In 2017 I was criminalized by the Municipality...as the principal author of the legal argument they said that I violated the municipal autonomy;” the municipality jailed the principal author. Other members of the community were criminalized in the same way. The municipality uses these methods to silence and instill fear in community members who hope to protest. Interviewees noticed that this criminalization was further amplified in reaction legal actions: “in any moment, the municipality or the state, start to use criminalization against the subjects of law.”<sup>101</sup>

This constant awareness of and continual presentation has made Chuarrancho very strategic in the ways that they conform their protest and statements to the public. The Head of the Ancestral Authorities speaks about the careful preparations the community organized to ensure

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<sup>100</sup> “Aquí en Guatemala, luchar por tu derecho te dice que eres persona problemática y te criminalizan solo por defender el derecho colectivo.” Legal Representative of the Churrancho Community, personal interview, 08/10/2024

<sup>101</sup> “en cualquier momento, ya sea la municipalidad o el mismo estado, empieza a realizar la criminalización en contra de los de los sujetos de derecho. Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

that their political articulations were not seen as subversive. When the community organized over 3,000 people to accompany them when presenting the actions of their request for constitutional protection, they were sure to issue statements with specific messaging to be directed to press and the public, making sure that participants were careful to “not do anything that creates conflict or using strong language.”<sup>102</sup> The explicit oppositional relationship between ancestral councils and the state has deeply impacted the strategies that communities like Chuarrancho choose to protest and articulate their rights. “We had to be strategic,” recalls the Leader of the Ancestral Authorities of Chuarrancho, “so that no one knew what we were doing here...the municipality thought they could use their closeness with the judges...but they did not know we had a plan C.” This tertiary plan was to use protest and the promotion of cultural practices to further legitimize their requests as a community. Spirituality held a central role in this strategy “before sharing any information publicly” in order to organize the community internally “the authority always managed its spirituality internally in its most important sacred spaces, where our grandparents gathered.”<sup>103</sup>

For Chinautla their longer process of organizing a case has necessitated more direct protest and confrontation with local authorities. This has meant that actions from the community have been more heavily criminalized by the municipality of Chinautla. Chinautla’s head of ancestral authorities references being accused on three separate occasions of criminal activity on three separate occasions by the municipal government. Most of these accusations are false, community members say, in response to attempts from the ancestral authorities to organize

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<sup>102</sup> Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

<sup>103</sup> “antes de dar una información pública” “la autoridad siempre manejaba su su espiritualidad interna en un lugar sagrado muy importante, donde fue la esencia de las reuniones de los abuelos.”Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

protests, “they make things up because in the end we act peacefully, we know that we as people have rights.”<sup>104</sup>

The majority of Chinautla’s political organizing has surrounded resistance against Piedrinera San Luis, which has been operating in the community despite having an expired licence. This protest dates back to 1989, during which time the Chinautla community created one of their first autonomous political coalitions, the Chinautla Multisectorial Council. This organization, made up of the community authorities from the seven cantones in the municipality of Chinautla and other groups like youth associations and the Women Potters Association, began to organize peaceful protests to defend their right to sand and economic projects that severely impacted their ways of life and organization. Since then, the community has continued to organize itself, most recently in a series of protests starting in 2022. These protests were conducted against various levels of government, including the municipal government, which had leased the lands to the mining company, and the Ministry of Energy and Mines, which has continued to give permission to Piedrinera San Luis to operate with an expired license. These protests, which have included community members attempting to block trucks from entering mining sites, organized marches, and coordinated demonstrations with neighboring communities, have all been heavily policed. The municipal government has served as one of the primary powers upholding the sand company’s continued operation.

For members of the Chinautla community, many attempts of criminalization also come from the mining company in attempts to dissuade political and legal action. On multiple occasions, the mining company has accused members of the community of threatening the head of the business. In reality, Ernesto Montoya, the director of the Piedrinera San Luis had been

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<sup>104</sup> “Ellos inventan porque al final nosotros actuamos pacíficamente, sabemos que derecho como personas tenemos.” Speaker for the Ancestral Authorities of Chinautla, personal interview, 08/23/2024

threatening community members involved in organizing. “Someone told me he had been threatened,” recalls a member of the ancestral authorities, “they had used a pistol...because he had sons...he told me, look, I don’t want to know anything about it (organizing an ancestral council).”<sup>105</sup> Since members of the community started to organize protests in June of 2022, they received a series of threats from agents of the National Civil Police (PNC), Transit Police of the Municipality of Chinautla, and the public ministry.<sup>106</sup> This criminalization has not only had direct impacts on the community's feeling of safety, but also their ability to reside on the land as the mayor of Chinautla threatened to evict community members that protest against the Piedrinera San Luis mine. This encroachment not only on the living conditions, but also the territorial access of community members has been so stark that leadership in Piedrinera San Luis have threatened to prohibit community members from walking through the entrance of the community, which passes through the mining company’s land.<sup>107</sup>

In their ceremony to present their newly won titles, members of the Chinautla community emphasized that for defending their rights they are called usurpers, persecuted, and criminalized by military and police repression against members of the community, ancestral authorities, and other defenders of the land. Still, this does not dissuaded their political efforts, community members say: “despite the road being filled with legal challenges...the communities resist to protect our individual and collective rights...we advance in conserving our lands despite a system that has legalized land usurpation transcribing anomalies in favor of public officials, municipalities and transnational businesses.”<sup>108</sup>

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<sup>105</sup> Member of ancestral authorities of Chinautla, personal interview, 08/23/2024

<sup>106</sup> “Comunidades En Chinautla Continúan En Resistencia Contra Las Areneras.” *Prensa Comunitaria*, July 23, 2022. <https://prensacomunitaria.org/2022/07/comunidades-en-chinautla-continuan-en-resistencia-contra-las-areneras/>

<sup>107</sup> “Relator de Pueblos Indígenas visita a comunidad de Chinautla en resistencia.” *Prensa Comunitaria*, May 26, 2023

<https://prensacomunitaria.org/2023/05/relator-de-pueblos-indigenas-visita-a-comunidad-de-chinautla-en-resistencia/>

<sup>108</sup> “A pesar de que el camino esté lleno de espinas legales...las comunidades resistimos para proteger nuestros derechos individuales y colectivos...seguimos conservando nuestras tierras a pesar de que el sistema ha legalizado

Because of a distrust in the power of pushing reform through policies that are co opted at the local and judicial level, the importance of creating multiple articulations of their rights— legal, political, and informal—are essential to the projects of both communities revindicating their territorial and cultural autonomy. As Lic Peleaz shares, “policy in congress is co opted by corruption in the judiciary...if everyone is corrupt, we cannot do anything through that channel. It is better we put our energy in other places, preparing a self-defense and continuing to push forward and live as we can.”<sup>109</sup> Part of this separate action is out of the necessity to separate themselves from the state<sup>110</sup> which many communities feel largely does not serve them. They contrast the strong confines of permissible action from communities by the state with the delinquency of the state, which continually denies the community access to necessary services; “this is harm that they have committed, because I know families that because of their desperation has forced to crime, and this has resulted in death, but they never received support from the municipality, although it could’ve helped them,”<sup>111</sup> recalls the head of the Chinatula ancestral authorities.

### **Movements towards autonomy in Guatemala:**

“We value the the 116 years of community action from our grandparents...it indicates that the community has to maintain its own system of administration...it means that a communal

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las usurpaciones de las tierras haciendo inscripciones anómalas a favor de funcionarios públicos, municipalidades y de empresas transnacionales.” Autoridades indígenas buscan recuperar tierras ancestrales, Prensa Comunitaria, November 23, 2021

<https://prensacomunitaria.org/2021/11/autoridades-indigenas-buscan-recuperar-tierras-ancestrales/>

<sup>109</sup> Lic Pelaez, Personal Interview, 08/21/2024

<sup>110</sup> Lic Pelaez, Personal Interview, 08/21/2024

<sup>111</sup> “esos daños que ellos han hecho, porque aquí conocemos familias que por desesperación se se metieron a delinquir y que al final resultaron muertos porque nunca recibieron un apoyo de que que bien la municipalidad les pudo verdad?” Head of Ancestral Authorities of Chinautla, Personal Interview, 08/22/2024

land has been maintained since time immemorial, which should be maintained by its own owners,”<sup>112</sup> attests the Head of Ancestral Authorities of Chuarrancho.

Since time immemorial, the communities of Chuarrancho and Chinautla have created their own institutions to administrate and control communal resources and territories. Traditional forms of governance like ancestral authorities/councils have helped to organize communities, resolve conflict, and allow community members to have a voice and representation before local authorities. For both communities, the Municipalities appropriated not only their lands, but also their autonomous forms of governance as they sought to extend and impose state structures and resources into these communities.

After being separated culturally and temporally from ancestral forms of organization, the project of governing their lands has become synonymous with the project of re-defining and re-connecting with the community as an indigenous cultural and political institution. At the same time, being granted newfound rights to control their lands has meant that communities have had to more clearly delineate their terms of citizenship/sense of belonging of community members to the community in order to determine who is entitled to rights to access and govern communal lands.

Along with their territorial administration, Chuarrancho has become careful to also be primary administrators of their historical record. After their experiences with the municipal government appropriating lands through using small bureaucratic issues within their titles, the community has been careful to be the ones to administrate records before presenting them to the Mayor’s office. “We gained this title constitutionally, it has become our constitutional right...we

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<sup>112</sup> “lo que nosotros valoramos los 116 años de ejercicio comunitario de nuestros abuelos...indica que el que el pueblo tiene que mantener su propio sistema de administración...indica que una tierra comunal que se ha administrado desde tiempos inmemoriales, que debe ser administrada por los propios dueños. Head of Ancestral Authorities of Chuarrancho, Personal Interview, 08/22/2024

cannot give that over to the state...that is what should have been happening from the start”<sup>113</sup> argues one member of the community. Control over their history is not only an integral part of the cultural recuperation process, but also of ensuring that a fraudulent eviction does not occur again.

This has necessitated that the process of governing lands also become deeply intertwined with cultural practices. The outlined objectives of the territorial administration center the importance of land in projects preservation and reclamation of traditional practices including relationship with the *buenes communes*<sup>114</sup> on the land, spiritual sites, and traditional systems of justice to resolve inter communal conflicts.

For ancestral authorities, one of the most essential ways that they must govern the community’s territories is connected to ensuring that the rights of indigenous community members are expected, that the lands are protected, and that they are creating a way of governing lands that “conforms with the normative system of [the Chuarrancho] community.” Creating autonomous political systems has not meant complete separation from the Guatemalan state. Under a new Arevalo government, communities are trying to create a new agenda in the way that they relate to the state. The government retains important power in the resources it gives the community, including schools, health services, and other forms of social democratically allocated goods. Communities must find a delicate balance that allows the state to both respect their communal lands without also affecting their collective rights to state services. Community members are both citizens of their indigenous communities and citizens of the Guatemalan government.

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<sup>113</sup> Member of ancestral authorities of Chuarrancho, personal interview, 08/22/2024

<sup>114</sup> A term for natural resources used by indigenous communities and environmentalists across Latin America

This coordination and political power has not only strengthened indigenous communities' ability to organize among themselves, but also their larger political power. Interviewees repeatedly articulated that while their communities owed nothing to the state, the state continued to depend on their political power. One of the most salient examples of this relationship that interviewees referenced were the 106 days of protest in defense of democracy that indigenous populations in Guatemala organized.<sup>115</sup> As one of the Elders of Chuarrancho recalls, while “many say that indigenous groups have done nothing for Guatemala,” in reality, throughout history these populations have been some of the strongest defenders of democracy: “it was our ancestors who fought for independence in Central america, my grandfathers shed their blood.”<sup>116</sup> These narratives complicate the idea that autonomy only serves indigenous populations. In reality, even when they seek separation and despite continual exclusion from the state, members of the community mobilized, as they have for generations on behalf of the community of Guatemala at large. While the state seeks to restrict political action from indigenous populations, it is also one of the primary beneficiaries of this action.

Now, as communities continue to struggle for their basic rights, they reflect on what their organizing has done for the state. “It has used its lenses:<sup>117</sup> democracy”<sup>118</sup>. There is a consensus among members of both Chinautla and Chuarrancho communities that despite their efforts to protect a promise of a new relationship with the state under Arévalo, these reforms have yet to be completed. Community members felt an ownership over their ability to mobilize in favor of the

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<sup>115</sup> When corrupt political officials attempted to block Arévalo's ascension to the presidency, communities organized as part of 106 days of protests led by Mayan, Xinka, and Garifuna authorities in defense of Guatemala's democracy.

<sup>116</sup> “Le dije que muchos nos han dicho que los indígenas no han hecho nada por Guatemala. Es mentira. Los indígenas somos que luchamos, que eran los abuelos de nosotros que lucharon por la independencia de Centroamérica, encabezada por. El abuelo que derramó su sangre.” Elder in the Ancestral Authorities of Chuarrancho, personal interview, 08/23/2024

<sup>117</sup> a reference to an allegory used by indigenous populations to refer to the tricks conquistadors used against indigenous communities when they arrived in the America

<sup>118</sup> “han utilizado a sus anteojos, la democracia,” Elder in the Ancestral Authorities of Chuarrancho, personal interview, 08/23/2024

state, an articulation that draws them closer to belonging as Guatemalan Citizens, but also remember the promises that have still yet to be fulfilled: “We remember the promises from the President today. He promised that there is not democracy without social justice,”<sup>119</sup> reflects a member of the Ancestral Authorities of Chuarrancho. These events mark the complicated relationship that indigenous political mobilization holds with the Guatemalan state—one that is criminalized, dissuaded, and also vitally necessary to its maintenance.

Through Chuarrancho’s struggles, the community and its lawyers have been able to share their strategies with various other indigenous communities in Guatemala who have since been able to re-vindicate their territories using the case as precedent. Following their court victory, leaders of the community of Chuarrancho along with the lawyer founded Mesa De Tierras Comunales. A central part of this association has centered on sharing the lessons learned from Chuarranchos strategy and communicating these strategies with other communities that have had their lands falsely appropriated. So far, the organization has recuperated over 5,789 hectares over 48 communities collectively.<sup>120</sup> These efforts span far beyond just recuperating rights to land, but also creating collective political power; “we got back our land, but now we look towards getting back our power. So we start to have meetings with other communities,”<sup>121</sup> asserts Lic Peleaz, indicating the entanglement between the legal cases he is involved in and the mobilization of indigenous political action. Through this collective organizing, various communities have been able to unify behind a strong voice: as Lic says, “if we have to shout, let’s shout like a bonfire.”<sup>122</sup>

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<sup>119</sup> Ancestral Authorities of Chinautla, personal interview, 08/23/2024

<sup>120</sup> Mesa de Tierras Comunales <https://comundich.org/>

<sup>121</sup> Recuperamos la tierra, Pero en vista de recuperar el poder. Entonces empezamos a ver las reuniones de los pueblos”Lic Peleaz, Personal Interview, 08/21/2024

<sup>122</sup> “Y si hay que gritar, gritamos a la hoguera”Lic Peleaz, Personal Interview, 08/21/2024

## **Conclusion:**

Through putting together these four stories of displacement, strategy, and autonomous resistance, we can begin to untangle how the factors of each component of these processes become interwoven with the other. In this paper, I have argued that multicultural states like Guatemala and Argentina conflict against themselves as they recognize the rights of indigenous groups on the national level, but in the application of these rights, they overstep their own decisions and jurisdictions to serve as the main executors of displacement. Out of this denial of rights, the four indigenous communities included in this paper have creatively defended and invoked their own history with their lands, using a shared identity as a primary articulation of their rights. This process grounded in history has also facilitated communities communicating their heritage in a language legible to the state AND allowed them to construct their own movements.

In many ways, these stories can be read through a lens of interaction between civil society groups and the state. In all four cases, communities, which operated under degrees of autonomy or separation from the state in regards to the possession of land, are thrown into conflict with the state as it seeks to appropriate their lands for extraction and development. Through this process, communities are forced to interact with and represent themselves to the state in order to defend their territorial rights. The two domains of resistance that communities entered—the legal-institutional in which political society articulations appear, and the communal-popular in which community action is articulated—are thus inextricably intertwined. While movements towards autonomy act in the absence of protection from the state, they are also read by the state with reference to the legal-institutional context. Throughout their articulations, all four communities balanced the project of becoming legible to their multicultural state: they

articulated property and history through the language of the state, directed protest and resistance to shed light on state conducted injustice, and organized behind forms of governance that were autonomous, but also recognizable to state actors. As Levenson argues, this is how hegemony works: every civil society articulation necessarily has a political society articulation—whether or not residents want this to be the case.<sup>123</sup>

I argue that this process of organization and articulation, however, also strengthens the capacity of communities to organize politically—through rediscovering councils, building coalitions with other communities, and reclaiming ownership over their own history – and foment further forms of autonomy through the organizations they convene behind. While these forms of resistance and communication were constructed in defense of land and in reaction to state imposition, they continue beyond these contexts. All four communities, regardless of whether they won state recognition of their ownership over their territories, continued their political mobilization and organization far beyond the cases they organized around. As much as these processes seek to recuperate territory, communities also engage in the process of recuperating power. As argued by the communities in Guatemala, these two causes became inextricably interlinked when the state appropriated the community's power to govern their lands, and an integral portion of the land recuperation process also relies on the recuperation of governance separate from the state. These are the legacies of these stories, which extend far beyond the legitimacy the Guatemalan or Argentine states grant communities.

The contrast between communities that have won their cases and those who continue in their fight to defend their lands is not a story of success/failure, but one of patience. In the time

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<sup>123</sup> Levenson, Zachary. *Delivery as Dispossession: Land Occupation and Eviction in the Post-Apartheid City*. Oxford: Oxford University Press, 2022.  
<https://global.oup.com/academic/product/delivery-as-dispossession-9780197629246?cc=us&lang=en&>. P. 179

between when my interviews were conducted, in 2024, and this paper was written, in 2025, Lof Buenuleo and the Community Chinautla have continued the fight to protect their lands. In the absence of justice through the courts, both communities have continued their political battles through protest and coordination with neighboring communities. In Chinautla, communities continue to face the destruction of their lands by mining companies as they await favorable courts to present their titles to. In Lof Buenuleo, 5 community members served sentences for the crime of land usurpation and in February of 2025, the armed forces of Rio Negro entered the property to evict community members from areas designated for ceremonial use.<sup>124</sup> These continued struggles show the challenges of waiting for state recognition, as well as the necessity for communities to find articulations separate from the state in order to guarantee their own wellbeing.

Still, the stakes of these legal victories are apparent. Visiting the Buenuleo community, who have had state recognized governance over their lands for 10 years now, the institutions the community has been able to build with their autonomy—agricultural, spiritual, and craftsmanship—are remarkable. The community is governed by respect for their citizens, their land, and their culture. The ability to govern one's lands for these communities extends far beyond recognition by the state of their rights or power. As interviews showed, territorial rights have direct implications on a community's ability to govern themselves culturally, to connect with *bienes communes* central to their heritage, and in many cases live a safe and healthy life. The fight to protect territory is central to the future of all four communities.

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<sup>124</sup> Canal Abierto, “Más de 70 efectivos para desalojar a una comunidad mapuche que ya había liberado el predio,” *Canal Abierto*, March 6, 2025, <https://canalabierto.com.ar/2025/03/06/mas-de-70-efectivos-para-desalojar-a-una-comunidad-mapuche-que-ya-habia-liberado-el-predio/>.

While Guatemala and Argentina are not the most likely pair of Latin American countries to be compared on indigenous policy, the contrasts in conditions of these two countries additionally underscore the malleability of the strategies communities constructed to be applied outside of the original context in which they were born. While these processes have been constructed and shared informally by community members, the lessons learned in both cases can be applied more widely to indigenous communities facing multicultural states, both in Latin America and more broadly. Anthropological and historical evidence can be some of the most powerful tools in building cases for communities, and can be accessed not just in collaboration with academics, but can be constructed by communities themselves. This evidence extends beyond just titles, but can include previous anthropological reports, cultural artifacts connected to lands, oral histories, maps, colonial records, and a wide array of other historical accounts. Collecting these histories can be done separately or in conjunction with legal cases as part of a long struggle of preparation and articulation to formally recuperate lands. Further, the lessons communities projected of combining legal and political organizing to strengthen the power of their movements exemplifies another key strategy for communities to communicate towards the state. As the diversity of experiences represented by these four communities demonstrate, groups organizing behind varying degrees of formal recognition and in response to varying degrees of antagonism from the state can take on these processes. The very power of these strategies originates from the flexibility of their execution.

At this moment, in Argentina the emergence of policies like *usurpación de tierras* mark a worrisome trend towards the codification of dispossession within the legal system. Javier Milei's persecution of Mapuche activist groups like RAM as "terrorists" echo earlier policies of violence against the individual resistance of indigenous groups in Argentina. In Guatemala, the hope

Bernando Arévalo's campaign promised to end the corruption and racial discrimination that has enabled the dispossession of Mayan lands has fallen short in practice. These new eras will necessitate continued political mobilization and autonomy of indigenous groups. However, as this paper has shown, communities are equipped to continue the battle to protect their lands, regardless of the administration, policies, or discrimination from the states they exist within. The communities of Churrancho, Chinautla, Nahuelpán, and Buenuleo pre-date the current neoliberal regimes they interact with and will outlast them.

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Claudia Briones, personal interview 05/16/2024

Attorney for lof Buenuleo, personal interview, 05/16/2024

G.N. from comunidad Nahuelpán, personal interview, 05/21/2024

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