

Restitution in Land Markets and Social Exclusion of Indigenous Peoples

Mia FLORES-BÓRQUEZ and Richard GROVER, United Kingdom

Key words: restitution, human rights law, Chile, Canada, indigenous peoples, Mapuche, Mi'kmaq

SUMMARY

It has been estimated that there are 250 million indigenous peoples living in more than 70 countries. Indigenous peoples have a particular relationship with the land and their natural environment, which can be viewed as part of their cultural patrimony as well as their means of economic support. The land provided them with both physical and spiritual sustenance. The relationship that indigenous peoples have with the land has been under threat since the development of the European Empires from the 16th Century. The latter brought the colonisation of the indigenous peoples' lands and the commercial exploitation of the natural resources these contain. These processes have continued in the successor States that have replaced the European Empires. The consequences for the indigenous peoples have often been their marginalisation in society and their social exclusion.

In recent decades there have been movements by indigenous peoples in a number of countries to recover their lost lands and patrimony. The paper makes use of case studies from Chile and Canada, and includes findings gathered from fieldwork conducted in the latter part of 2004 in these countries. The case studies represent different situations in which restitution has been implemented as an appropriate policy response to past land expropriation. In Chile the land reforms of the 1960s and 1970s, brought about by democratically-elected governments, were reversed by the Pinochet government after its seizure of power and the beneficiaries of these reforms were brutally treated by the military regime. The latter also expropriated the property of those it considered to be enemies of the State. Post-Pinochet, Chile has faced claims for restitution by indigenous groups seeking to recover land lost during and since colonisation took place. The latter has challenged the Chilean Government. This further raises the question as to whether such claims can be accommodated within the legal and political processes or whether they should be regarded as challenged to the very existence of the State.

The situation in Chile can be compared, in part, with how aboriginal groups have sought to recover property and their landed patrimony in Canada. High profile legal cases, often starting on apparently unrelated issues, have challenged whether the Canadian Government has the power to exclude indigenous peoples from the exploitation of natural resources and whether it has adhered to the treaties made with indigenous peoples in the past. An analysis of both cases enables comparison to be made between the experiences of aboriginal groups under British and Spanish colonialism and how they have fared under the different types of legal system the successor states have adopted.