

# Latin America: Indigenous Peoples

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Any survey of rights needs and opportunities culled from a map of Latin American indigenous peoples' demographics, political openings, organizations and external pressures appears, at first glance, to be a landscape as heterogeneous as the peoples themselves. However, by focusing on patterns and processes, the apparent patchwork reveals similar norms and actions – some new, some old – that now run down the densely populated Pacific rim and onto the sparsely populated but resource-coveted lowland plains of the Caribbean coast and the Amazon basin. Indigenous peoples throughout the entire region, now marked by hundreds of local, regional, national and international indigenous organizations that have emerged and coalesced over the past 25 years, have become more vocal and visible, whether reacting to violations or demanding a voice in policy development. This brief review focuses on the patterns and processes, drawing from illustrations rather than attempting continental coverage.

## Overview

When, in December 2004, the UN's first International Decade of the World's Indigenous People closed, the situation of Latin America's approximately 40 million indigenous peoples was one of contrasts. Cultural Survival's interviews with participants at the UN Permanent Forum on Indigenous Issues indicated that 'the accomplishments were far outweighed by what has been left for the future'. Their marginal and impoverished situation remains little changed. A May 2004 World Bank study on indigenous peoples and poverty emphasized, 'indigenous peoples in Latin America have made little economic and social progress in the last decade, and continue to suffer from higher poverty, lower education, and a greater incidence of disease and discrimination than other groups'.

But in terms of international visibility, national and international organization, strategic mobilization, use of the electronic media, and placement within politics and political life, indigenous people have moved themselves into a new world. They are supported strongly by national and international laws, and have received unprecedented attention from international and national courts, legislators, lending agencies and NGOs. Perhaps more than in any other part of the

world, Latin American indigenous peoples can now benefit from international conventions, agreements and policies that provide avenues for realizing their individual human rights as well as the group-differentiated rights accorded to national minorities living in states created and dominated by other groups.

Foremost among the supportive international conventions is the International Labor Organization's Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169). Of the 17 states that have ratified ILO Convention No. 169, 13 are in Latin America – Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela. (The others are Denmark, Fiji Islands, the Netherlands and Norway.) No non-Latin American country, other than Fiji Islands, in the developing world has ratified the Convention.

Equally if not more important, indigenous peoples directly participated in the drafting of ILO Convention No. 169. Participation – voice and presence – now permeates key articles in the Convention as well as the new Constitutions of Brazil, Colombia, Ecuador and Peru. Similar participatory roles and rights appear throughout the ongoing formulations of the Organization of American States (OAS) Draft Declaration on Indigenous Rights and the Inter-American Development Banks' 'Operational Policies Regarding Indigenous Populations' in several joint sessions (May 2004 and April, June and October 2005). Though rewriting of the UN Draft Declaration on the Rights of Indigenous Peoples is stalemated and the new World Bank guidelines for development work with indigenous peoples have been critically debated and challenged, the idea that protection can be created for, without the direct participation of, indigenous peoples is now unacceptable.

Several recent decisions of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights, most noticeably the *Awasi Tingni* case reviewed below, have significantly advanced indigenous rights claims. Likewise, the newly established (2001) UN special rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, has already been invited to and reported on Chile, Colombia and Guatemala.

One of the special rapporteur's main observations has been that there is an 'implementation gap' between public practice and national/international law. In October 2005, he convened an 'Expert Seminar on Implementation of National Legislation and Jurisprudence Concerning Indigenous Peoples' Rights: Experiences from the Americas' to review cases and seek remedial procedures. The observations were confirmed, and there is now an ongoing search for remedial approaches.

Meanwhile Latin American indigenous organizations in nearly every country have worked to meld facts on the ground to norms on the books by convening regular national and international forums that range from meetings of indigenous leaders and legislators (October 2005) to an Indigenous Global Forum that will parallel the heads of states meeting in Argentina in November 2005. As such, indigenous peoples of the Americas are placing themselves and their agendas into debates and discourse on national and international rights, particularly as they relate to land and resources. They have also undertaken self-determination projects – illustrated here from Colombia, Ecuador and Nicaragua – to demonstrate how rights should be practised. Rather than simply responding to persistent violations – loss of land, unauthorized development of natural resources, or inadequate health care and education – indigenous peoples are positioning themselves for greater participation, consultation, informed consent and, through them, greater self-determination. Latin America's indigenous peoples are thus creating

opportunities to advance their own capabilities while also locating themselves as bellwethers on a Latin American political landscape frustrated by corruption and the lack of participation, as detailed in the striking 2004 United Nations Development Programme (UNDP) report *Democracy in Latin America*. The boundaries between universal human/civil rights and 'special' group-differentiated rights thus become quite porous. Many indigenous communities and organizations now serve as beacons, refracting and multiplying previously unique indigenous political, social, economic and governance concerns onto receptive national populations, thus projecting images for a more discursive multicultural world.

### Rights issues

Current rights issues fall into two categories, the persistent and the new. While some might suggest a third category for war-torn Colombia, where indigenous communities have been disproportionately affected, that country's indigenous peoples share many of the region's problems and their organizations' actions illustrate many of the indigenous experiments in self-determination, albeit in noticeably higher relief.

### Persistent issues: new terms

Beginning in the mid-1980s, as electoral democracies replaced military dictatorships in the region, a 'rights cascade', unique to Latin America, occurred. Particularly in those countries with the worst human rights records – Argentina, Chile,



Guatemala and Mexico – outrage and shame led to rapid ratification of international conventions and national legislation to meet international standards. Systematic violations of political and civil rights, rationalized by state actors as a means to stop the advance of communism, are no longer acceptable.

Violations against indigenous leaders, and thus the need to secure protective rights to the groups they represent, nonetheless persist. Also, as will be discussed later, there are now demands for mechanisms that respond to prescriptive needs – expanded citizenship rights emphasized by many indigenous organizations and educational and health deficiencies emphasized by the 2004 World Bank study. While there are few accusations of systematic state-supported violations of indigenous peoples' basic civil and political rights, some states have failed to provide adequate protection and, on occasion, state actors still participate in rights violations, particularly in Brazil, Chile and Colombia. While specific contexts vary, persistent claims surround access and rights to land and natural resources, and the national and local development of each.

## Land and natural resources

### Brazil

Brazil's populist president Luiz Inácio 'Lula' da Silva has alienated indigenous peoples in two ways. His embrace of neoliberal economics and agri-business has stalled many of the land titling actions, leaving his government with, arguably, Brazil's worst indigenous rights record since the military regimes left power in 1985. The April 2005 'Indigenous April', inspired by the 2004 Landless Workers Movement (MST), drew attention to land needs and put pressure the government to demarcate and title new reservations, as it is now obliged to do by the Constitution.

In July 2005, after much delay, Brazil awarded land title to the Macuzi in a violently disputed case in Roraima State. However, violence and killings continue to mark relations between indigenous peoples and landowners. In addition, and clearly linked to the demands for land and resources, indigenous leaders and other land rights protesters have been killed by suspected agents of large landowners and agri-business (largely soy bean) seeking access to indigenous lands. Amnesty International argued that the government has 'laid the foundation for the current violence' and cited

'the continuous failure of the Brazilian governments to act effectively to protect indigenous communities'. Violence against Brazil's 700,000 indigenous peoples, most of whom live in the resource-coveted Amazon region, is a clear mark against a government that started out promising democracy and an end to corruption.

### Bolivia

In Bolivia, most of the country and the world's press have focused on the riots and indigenous-led Andean movements and subsequent presidential changes, which cannot be adequately detailed in this brief review. Meanwhile, other actions have gone largely unnoticed. Among these are killings and other violence against indigenous leaders in the lowland region around Santa Cruz. Thugs and others said to be in the employ of large landowners have begun systematic attacks on local indigenous groups, principally the Guarani peoples of the region, whose land rights will become even more precarious as the separatist movement led by landowners and industrialists seeks greater regional autonomy.

### 'Terrorism'

The term 'terrorist' has, in many places, replaced 'communist' as means to justify suspension of basic rights to freedom from persecution, assembly and participation, as well as to avoid dialogue and deliberation over issues such as land and resources. Challenges to the state have been met with responses that adopt a lexicon that links political opposition to international terrorism. Invoking such terms, as in many others parts of the world, takes advantage of the US government's 'War on Terrorism'. In Latin America, international terrorism links are occasionally suggested for indigenous organizations in Bolivia, Ecuador and Guatemala, but the most open charges have appeared in Chile and Colombia.

### Chile

Land and resource disputes have long pitted indigenous Mapuche communities against private landowners and, more recently, lumber companies in southern Chile, one of the few Latin American countries that has not provided constitutional recognition of indigenous people or ratified ILO Convention No. 169.

Government efforts to break up indigenous community lands have been under way since the

early 1980s military dictatorship, but over the past two years indigenous efforts to secure communal land titles have produced startling government responses. A 2004 joint report by Human Rights Watch and the Chile's Indigenous Peoples' Rights Watch noted that some indigenous protest had shifted to the 'use of force, such as the blocking of roads, occupation of disputed land, felling of trees, setting fire to manor homes, woods and crops, and sabotage of machinery and equipment'. The Chilean government consequently charged over 200 members of the one group that advocated violence, the Coordinadora de Comunidades en Conflicto Arauco Malleco (the Arauco Malleco Coordinating Group of Communities in Conflict, CAM), with crimes of illicit terrorism ('conspiracy to commit acts of terrorism'). In November 2004 six of those charged were tried and acquitted. In April 2005 the Chilean Supreme Court annulled that decision. A retrial for the six accused was held in July 2005 and the court once again rejected charges of 'illicit terrorist association' for activities that threatened property not human life. Rising tensions and violent responses prompted a 2003 visit by the UN special rapporteur. Mr Stavenhagen defended the Mapuche's right to protest and added that charges of terrorism and criminal association were unacceptable in such circumstances and should be dropped.

### Colombia

Colombia, one of two Latin American countries to support actively the US war in Iraq, was rewarded with 'terrorist' status for its armed insurgents – the

left-wing Colombian Revolutionary Armed Forces (FARC) and the National Liberation Army (ELN) guerrillas as well the right-wing Colombian United Self-Defense Association (AUC) – and received US economic support. Subsequently, President Alvaro Uribe drew national and international criticism and condemnation when he stated publicly that international human rights groups were either sympathetic to the guerrillas or naïve with regard to their interests. Similar suspicions were raised about indigenous organizations, highly visible and active in a country where indigenous peoples make up less than 3 per cent of the population.

Perhaps the most notable example took place in September 2004 when Colombia's most numerous indigenous group, the Nasa, organized a large march – 'Minga [communal action] for life, justice, happiness, freedom, and autonomy' – from the Andean city of Popayan to Cali on Colombia's Pacific coast. President Uribe initially sought to discredit this highly publicized 50,000-strong non-violent protest march by arguing that it was an opportunity for terrorist infiltration and attacks, but later shifted his argument and stated that the event was 'politically motivated' by opposition politics. The national and international press sharply critiqued the unsubstantiated claims. Nevertheless, the events illustrate the president's exclusive focus on ending, militarily, the armed conflicts without contemplating input from or discourse with civil society. Meanwhile, as described below, the Nasa have established independent 'civic guards' in response to armed violence and demonstration of self-determination.

**Right:** Elderly Mayan Indian woman, Guatemala. Jeremy Horner/Panos Pictures



## Free trade

The violence in Brazil and challenges in Chile illustrate what many fear from the impact of neoliberal free trade on indigenous peoples, who are seen as bearing the brunt of reduced public services and minimally controlled economic competition. Free trade has been the subject of much critique by indigenous organizations, with occasional public demonstrations but largely regular anti-free trade statements in the Andean countries. Over the past two years negotiations have shifted from hemispheric Free Trade in the Americas Accords (FTAA), to sub-regional and bilateral negotiations. While the Central America Free Trade Agreement (CAFTA) has been approved, the parallel Andean Free Trade Agreement has been modified, perhaps scrapped, and replaced by bilateral negotiations between the US and Colombia, Ecuador and Peru (Venezuela dropped out in protest and in Bolivia violent indigenous-led protests have halted talks).

While the expressed concerns lie in the inability of indigenous smallholders and subsistence farmers to compete economically, the debates are not limited to comparisons with Chile and Mexico under NAFTA. They also illustrate new and widely held concerns about indigenous self-determination and participation in negotiations. Indigenous organizations seek – thus far with little success – an informed and active voice as negotiations progress in Colombia, Ecuador and Peru.

## Oil and natural gas

Oil and gas exploration and development – largely in the Amazon Basin of Colombia, Ecuador and Peru, as well as the Bolivian Chaco and Argentina's lakes region – is the arena in which land and resource rights are most publicly and frequently contested. Natural resource development – mining in Peru and water rights in Peru and Bolivia – has sparked similar local protest and international alliances.

The disputes are, on the one hand, part of the long-term debate concerning the trade-offs between national development and indigenous land rights. However, what has changed recently is the nature of the indigenous defence. While the always-questionable national development argument persists for some, indigenous protests now emphasize rights to information and consent regarding the use of resources in indigenous lands, property rights and contamination of lands and rivers.

Some proponents of national development suggest that indigenous organizations will simply hope to invoke a 'veto' and thus threaten essential foreign investment. However, international treaties such as ILO Convention No. 169 more precisely frame the debate. The Convention obligates states to provide information, undertake consultation and, wherever possible, obtain consensus before undertaking development projects. In addition, extractors must do no harm – economically or culturally – to indigenous communities and must provide direct economic benefits from any subsoil development project.

Oil development is no longer a simple pro/con development debate. It has now become a participatory and rights-based argument as to whether or not large-scale development programmes can take place on indigenous lands and, if so, the obligations on the state and other actors to obtain agreement regarding the manner in which development is undertaken.

Oil and natural gas debates, following the highly contested cases of Texaco in Ecuador and Occidental in Colombia, have been the source of recent and highly publicized protests including those over gas extraction in the Bolivian Chaco and on Machiguenga lands of Camisea, Peru (by Repsol-YPF); and oil extraction in Achuar lands of Ecuador's Pastaza River (by Burlington) and Loreto Province of Peru (by Occidental) and Kichwa lands on Ecuador's Bobonaza River in Ecuador (by CGC of Argentina). Each of these cases is made more complex by the absence of clear or widely accepted rights-based rules and regulations – particularly with regard to informed prior consent – which are the obligation of the state.

## New rights recourses and concerns

The cases cited above illustrate that many of the current rights violations and debates are 'classic' cases of land and natural resource disputes. What is new is the rights-based approach to these and other issues. The obligations articulated in the landmark ILO Convention No.169 have been incorporated in the subsequent national constitutionalizations and the aggressive support of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

## International regimes

Among the many claims received and acted upon by Organization of American States human rights

bodies, perhaps the most significant opinion was that handed down in September 2001 by the Inter-American Court of Human Rights in its historic decision in favour of the Nicaraguan Indian community of Awas Tingni ('The Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni against the Republic of Nicaragua'). Presented with evidence of state permission to undertake logging on indigenous land without informing or seeking consent of the communities, the courts, drawing on the American Convention on Human Rights (Nicaragua has not yet ratified ILO Convention No. 169), recognized as indigenous community 'property' Awas Tingni's lands of traditional use and occupancy.

The precedent-setting capacity of the Awas Tingni case is currently illustrated by the highly publicized charges brought by the Ecuadorian Lowland Kichwa community of Sarayacu against oil development on community land. Their complaint was accepted by the Inter-American Court of Human Rights in 2004 and, following months of intransigence by the regime of recently ousted President Lucio Gutierrez, his successor, President Alfredo Palacio, initially agreed (mid-2005) to accept the recommendations and seek a friendly settlement with the community. However, violent August 2005 protests in Ecuador's oil-rich northern jungle region (Oriente) have disrupted the initially cordial relations of the new government with indigenous peoples, and challenged its will regarding good faith agreements.

Such legal decisions and political responses, even though the cases of both Awas Tingni and Sarayacu are far from final resolution, are impressive advances. Each, as with the local resistance efforts in Colombia and local discursive democracy in Ecuador reviewed below, illustrate new means to define and exercise concerns in terms of rights.

### Colombia's Civil Guards

Indigenous organizations, most noticeably in Bolivia and Ecuador during the past decade, have led to movements and protests that have toppled and replaced presidents and governments, though with little resulting political change. However, in other areas indigenous efforts have focused on local self-determination. This has been most noticeable in Colombia and Ecuador.

In southern Colombia, the Nasa's 'civil guards' illustrate an impressive and daring response to

armed violence. Colombia, alongside Guatemala and Peru in the late 1980s, stands out as the Latin American country where indigenous communities are caught in the crossfire between armed actors. Now their lands serve as the setting for much of the country's illicit drug traffic. But unlike Guatemala and Peru, the indigenous peoples of Cauca have said 'no' to violence and have created an independent mechanism to meet demands for peace in their communities. The Nasa, whose indigenous civil guards patrolled the Minga mentioned earlier, do the same for daily life in communities throughout Cauca. Armed only with wooden staffs of authority – *baras* – the guards protect the villages and have successfully confronted guerrilla groups who have recruited or kidnapped indigenous youth and leadership.

For their work the guards have won the National Peace Prize, the UNDP's Equator Prize for outstanding community leadership' and the UN Educational, Scientific and Cultural Organization (UNESCO) recognized two Nasa leaders as 'Masters of Wisdom'. The multiple award-winning response to violence by the country's largest indigenous group has also drawn needed attention to the disproportionate impact of Colombia's violence on indigenous peoples, in which populations are displaced and indigenous leaders are murdered at a rate far higher than in any other sector of society.

### Participatory governance in Ecuador

As with Bolivia, national and international attention on Ecuador has focused on indigenous-led efforts to topple unpopular governments and place indigenous peoples in high government offices. Though dramatic, little substantive change has occurred as a result. By contrast in Cotacachi, a small Ecuadorian city north of Quito, the indigenous mayor, Auki Tituaña, has initiated 'participatory budgeting' by shifting budget priorities and public discourse away from of the main non-indigenous city and spreading funds across the predominantly Indian rural areas. He combined this shift with a crackdown on corruption and government mis-spending. A 2004 article in *The Economist* notes:

*'Each year, he reports back to a three-day communal assembly. It all seems to work: Mr. Tituaña was re-elected in 2000 with 80 per cent of the vote (including*



*that of many mestizos). Such experiences show that the Indian movements can bring about a welcome deepening of democracy.'*

This grassroots effort at governance suggests that, if and when ideas and practices of participatory governance move up the political ladder, this ladder will be reinforced by experienced and well-informed citizens.

### Citizenship and self-determination

Ecuador's Sarayacu case and Colombia's civil guards have moved rights issues toward larger issues of citizenship, self-determination and dignity. Proactive stances are linked to wide demands for inclusion as equals, realized through consultation, dialogue and other face-to-face acts that provide an equitable mode of interaction in governance for indigenous organizations. These now-widespread actions began in the 1980s for Sarayacu's parent organization – the Organization of Indigenous Peoples of Pastaza (OPIP) – and with the 1991 Colombian Constitution for the Nasa's parent organizations – the Regional Indigenous Caucus of Cauca (CRIC) and the Colombian National Indian Organization (ONIC).

These indigenous organizations, like hundreds of others throughout Latin America, now demand increased participation in and consultation on policy development in economic planning and other aspects of governance that affect indigenous peoples. These prescriptive rights permeate the overall tone and specific language of international treaties, particularly ILO Convention No. 169 and the national constitutions that have incorporated the concepts.

Participation and consultation are considered to be the main policy thrust of the Convention. The concepts are included, explicitly or implicitly, in many articles. Indigenous people now have the right to speak for themselves in all matters that affect them. They must be consulted and must be allowed the right to participate actively in the consultations, not simply be informed after the fact.

The Convention specifies that the 'consultations shall be carried out in good faith and in a manner appropriate to the circumstances, with a view to reaching an agreement or achieving consensus on the proposed measures'. It further states that 'interested peoples shall determine their own

development priorities and shall participate in the formulation, implementation and assessment of national and regional development plans and programs which may affect them directly'. Governments are now required to consult with indigenous peoples from the start over decisions that may affect them directly. Furthermore, the consultation process must be one in which the indigenous people can participate in an informed manner and have a say in all decisions on projects involving their lands, including the early stages when the project is being drafted.

Though most widely ratified in Latin America, these rights have been particularly difficult to implement where the state retains rights to all sub-surface resources. Attempts to establish rules, regulations and procedures for consultation – particularly prior consultation and participation – now required by national and international law have been unsuccessful in Colombia and Ecuador, have advanced somewhat in Bolivia and Peru, but remain un-institutionalized in every Latin American country. The dilemma explains, in part, the new emphasis on citizenship rights that seek to define indigenous peoples as equals, as well as those who deserve group differentiated rights.

Indigenous organizations' new 'citizenship' thrust is not simply an adoption or example of the new 'identity-based social movements' that have appeared throughout the world. Indigenous organizations continue to link their politics clearly to economic justice and equity. Consequently, they now occupy much of the political space previously claimed by exclusively class-oriented social movements. By adding ethnicity and cultural expression they move themselves beyond any ascribed 'working-class/peasant' status. This status has been clearly and successfully used in recent protests in Bolivia, Colombia and Ecuador, where specific claims are always associated with general demands for increased dialogue and thus political space. These concerns links indigenous peoples to many others in Latin America and lead many to accept indigenous rights as legitimate means to enhances broadly recognized rights.

Citizenship rights also parallel many of the 'classic' land and natural resource disputes and thus provide opportunities to understand and respond properly to indigenous interests in and approaches to a particular development project or government

policy. Inclusion in decision-making, for many indigenous organizations, has now become as important as responses to specific cases of rights violations. Many indigenous leaders suggest that persistent rights violations can best be treated, or prevented, through active participation in policy making and subsequent implementation within the national political arena.

These new indigenous roles fall, by and large, onto indigenous organizations. However, there are risks that the progressive ‘professionalization’ of leaders – the main actors in a complex, often international, and highly symbolic debate – is producing a gap between their goals and those of the local communities that they represent. The organizations, like any other legitimate representative group, will continue to have their legitimacy monitored by their indigenous constituency as well as their non-indigenous opponents or detractors. Political leaders must therefore accept a double burden. They must listen to and respond to local, often parochial, community needs, while also seeking to elevate citizenship issues in national and international arenas and institutions.

Horizontal dialogues with local communities will become as essential as vertical argumentation with state agents if the organizations are to realize the genuine discursive communities they aspire to. This double tension – the need to be heard and the obligation to listen – will, as much as any specific local rights violation, test the ability of Latin America’s indigenous peoples to respond to the new rights opportunities, and political opportunities and openings that characterize the present Latin American political horizon. ■