



In Latin America, recognising indigenous cultural, land and consultation rights is going a long way towards reducing conflict over extractive industry projects.

INDIGENOUS PEOPLE, CONFLICT AND EXTRACTIVE INDUSTRIES: LATIN AMERICAN APPROACHES

SUMMARY

Exploration and exploitation activities have already advanced into remote, resource-rich lands inhabited by indigenous people across the southern hemisphere. Developing extractive projects in indigenous territory is especially challenging and frequently triggers social unrest and conflict. Drawing on Latin American experiences, this Brief outlines three successively implemented policy packages that have strengthened indigenous peoples' cultural, territorial and consultation rights, recognising them as key stakeholders and partners in sustainable extractive development. In particular, this Brief discusses how the recognition of these rights has supported conflict management efforts, outlines the challenges that remain, and describes the broader social contexts that have framed these processes.

SPARKING CONFLICT: EXTRACTIVE INDUSTRY ACTIVITY ON INDIGENOUS LANDS

In recent decades, international extractive industry corporations have expanded their business in the southern hemisphere, with significant investments now being made in low and middle-income countries. Consequently, exploration and exploitation activities are advancing into remote and resource-rich lands, often inhabited by indigenous people. However, managing relationships with indigenous communities has been a new and challenging experience for both governments and extractive corporations.

Indigenous people possess a rich diversity of non-Western cultures and many have been involuntarily incorporated into nation state systems. Consequently, the relationship between indigenous people, national societies and development processes is highly complex. In many cases, post-colonial independence processes in Latin America, Africa and Asia have divided societies over ethnic lines, leaving indigenous communities in vulnerable social situations. Even today, many indigenous people are still excluded from the wider national society, such as in Argentina and Chile, where indigenous groups' territories are not yet fully recognized by the government.¹ Therefore, developing extractive projects on indigenous land is especially challenging in social terms, and frequently triggers social unrest, as the example from Chile (Text Box 1) shows.

Other examples of persistent conflicts over extractive industry projects include clashes in Nigeria between Shell Oil and the Ogoni people, in Ecuador between the Shuar people and Exxon/Mobil, and in Brazil between Vale do Rio Doce and the

¹ For the Argentina case, see: Gordillo, G., Hirsch, S. 2003. [Indigenous Struggles and Contested Identities in Argentina](#). *Journal of Latin American Anthropology* 8(3): 4-30.



Tucuma indigenous communities. A common challenge for governments is not only how to manage these conflicts, but more generally, how to integrate indigenous people into decision making processes as rightful stakeholders in historically conflictive situations. This Brief provides some examples of how government policy and private sector practices in Latin America have responded to this challenge with strategies to facilitate sustainable extractive projects on indigenous territory.

TEXT BOX 1 INDIGENOUS PEOPLE, EXTRACTIVE INDUSTRIES AND CONFLICT: THE CASE OF THE MAPUCHE PEOPLE OF CHILE

The relationship between the Mapuche people, the Chilean Government and national society is plagued by tension and misunderstanding. Although the Mapuche population is calculated at around one million people, the Chilean Government has hardly recognised their rights nor have efforts been made to integrate them into national society.

In the nineteenth century, the Chilean army developed a series of military ‘pacification’ campaigns against the Mapuche to control their territory, which led to killings and displacements, and seriously damaged the relationship between the Mapuche people and the wider Chilean society. During President Pinochet’s dictatorship (1973 to 1990), recognition of the Mapuche as an indigenous people was denied: Chile was officially deemed a nation with no indigenous people, though they made up almost 10% of the total population.

In more recent democratic regimes, there have been some attempts to integrate the Mapuche into national society. However, government-led initiatives to develop large hydroelectric, infrastructure and extractive projects on Mapuche land without prior consent have triggered a spiral of violence and repression. In response to Mapuche resistance, the government enacted the ‘Counter-Terrorist Law’, which criminalises some actions taken by the Mapuche as ‘terrorist’ acts, and some Mapuche leaders have already been persecuted under the new law. The Mapuche cause has attracted support from labour unions, political groups and international humanitarian organisations, and as a result, many large extractive projects have been brought to a halt.

Sources: Bengoa, J. 1999. *Historia del Pueblo Mapuche: Siglo XIX y XX (History of the Mapuche People: XIX and XX Centuries)*. Lom, Santiago de Chile.; Mella, E. 2007. *Los Mapuche Ante la Justicia: la Criminalización de la Protesta Indígena en Chile (The Mapuche Before the Law: The Criminalisation of Indigenous Protest in Chile)*. LOM, Observatorio Ciudadano and IWGIA, Santiago de Chile.; Yañez, N., R. Molina. 2011. *Las Aguas Indígenas en Chile (Indigenous Waters in Chile)*. LOM, Observatorio Ciudadano and IWGIA, Santiago de Chile.

LATIN AMERICA’S EXPERIENCE: INCREASING VISIBILITY AND RECOGNISING INDIGENOUS PEOPLES’ RIGHTS

In recent decades, indigenous people have begun to be recognised as full citizens in many Latin American countries. This gradual process has paved the way for more equitable relationships between the government, indigenous people and private companies interested in undertaking extraction activities in indigenous territories. It is a tense process, but one which is laying the foundation for the development of more socially inclusive and sustainable extractive projects on indigenous land.

In particular, there are three policy packages – granting cultural, territorial and consultation rights respectively - that have successively strengthened recognition of indigenous rights in Latin America, thereby reducing social conflict over extractive activities.

1. Granting Cultural Rights

During the 1990s, several liberal governments granted cultural rights to indigenous people living within their national territories. In some cases, it was the first time that the government had officially acknowledged the existence of different cultures living side-by-side within national borders. This marked a change in the ‘one nation, one culture’ model that had been dominant throughout Latin America since political independence from colonial rule. In many Latin American countries, indigenous populations are now able to practice their cultures, languages and traditions openly and without fear of repression. As a result, indigenous populations have become more visible within national societies, and possess full citizenship rights.

One key way Latin American governments have recognised cultural rights is through constitutional reform. The constitutions of Argentina, Brazil, Colombia, Guatemala, Panama and Venezuelan recognise and protect ethnic and cultural diversity within their nations. In Peru and Ecuador, the constitutions recognise the nation state as being multicultural, with a republican, democratic and representative government.² The Chilean Constitution recognises indigenous peoples as the descendants of

² Yrigoyen, R. 2006. Hitos del Reconocimiento del Pluralismo Jurídico y el Derecho Indígena en las Políticas Indigenistas y el Constitucionalismo Andino (Landmarks in the Recognition of Legal Pluralism and Indigenous Rights in Indigenous Policies and Andean Constitutionalism). In: Berraondo, M. (ed). *Pueblos Indígenas y Derechos Humanos (Indigenous Peoples and Human Rights)*. Instituto de Derechos Humanos, Universidad de Deusto, Bilbao.



social groups that have existed since the pre-Columbian era.³ The recent Bolivian constitution recognises indigenous peoples as nations in a pluri-national state.

Governments have also ratified [ILO Convention No. 169](#), an international law guaranteeing indigenous peoples' right to maintain their cultural and political integrity and to act according to their cultural practices. (It also establishes rights to land and resources, and asserts consultation rights in all decisions that could affect them, both of which are discussed below.)

Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Honduras, Guatemala, Mexico, Paraguay and Peru have all ratified the Convention. However, indigenous people are not necessarily equipped to use the convention as a valid tool in defence of their rights. Recognising this, the ILO implemented its [Project to Promote ILO Policy on Indigenous and Tribal Peoples](#) (PRO169), an initiative to promote awareness of the Convention and its effective application.

Finally, governments have promoted private extractive industry initiatives by facilitating a direct relationship between indigenous populations and corporations. In response, first multilateral agencies, and then large private corporations, began developing policies and specific protocols aimed at incorporating indigenous populations as rightful counterparts in global extractive business (see Text Box 2 for one example).

2. Granting Land and Territorial Rights⁴

Granting cultural rights is an important first step, but in most cases it has not been sufficient to ensure indigenous participation in decision making regarding extractive industry development, nor to prevent conflict. In general, indigenous people demand not only legal recognition, but also rights over what they consider to be their ancestral land. Accordingly, some Latin American governments have gradually begun to grant territorial rights to indigenous populations, acknowledging the existence of pre-nation

cultures that deserve to control their ancient territories.

Territorial rights are collective, unalienable and perpetual rights. However, conceding complete control to indigenous people over their territories could lead to a movement for territorial secession. To avoid this, governments have granted partial territorial rights to limit claims for political autonomy. Based on international standards, such as ILO Convention 169, governments have negotiated both the specific rights to be granted and territories to be recognised.

Recognized indigenous territories are given different names in different Latin American countries (see Text Box 3). In each case, governments negotiated the legal package of rights that accompanied territorial recognition directly with indigenous people and advocacy groups. In general, granting territorial rights also involves the government conceding some degree of autonomous administrative, political and economic rule over indigenous land. Once rights are granted, indigenous people acquire a powerful tool with which to negotiate access to their territory directly with corporations and governments.

TEXT BOX 2 WORLD BANK OPERATIONAL POLICY 4.10

The [World Bank's Operational Policy No. 4.10](#) recognises that the identities and cultures of indigenous people are intrinsically linked to their lands and the natural resources on which they depend. It also affirms the right to prior consultation, which is a requirement for World Bank-financed projects.

However, a study published in 2005⁵ concluded that the World Bank operational policies have not been applied satisfactorily because of the World Bank's inability to enforce them, and because its policies are not well-known amongst indigenous peoples. Thus, successful implementation of the policy still depends mainly on corporate will and self-regulation.

³ Taken from the [Indigenous Legislation DataBank](#) of the Inter-American Development Bank, an online searchable database of indigenous legislation in Latin America, categorized by country and theme.

⁴ To learn more about land issues in Latin American extractive industries, see the [ELLA Guide: Accessing Land for Extractive Industries: Socially and Environmentally Sustainable Approaches](#), which lists the full range of knowledge materials produced on this theme. In particular, the [ELLA Brief: From Expropriation to Social Licence: Accessing Land for Extractive Industries](#), includes a strong focus on land rights.

⁵ Griffiths, T. 2005. [Indigenous Peoples and the World Bank: Experiences with Participation](#). Forest People Programme, Oxfordshire.



TEXT BOX 3 INDIGENOUS TERRITORIES IN LATIN AMERICA: DIFFERENT NAMES, DIFFERENT RIGHTS

The *Resguardos Indígenas* (Colombia)⁶, *Comarcas* (Panama)⁷ and Indigenous Native Territories (Bolivia)⁸ are areas where indigenous communities live under local government set-ups and regulations, and share a common land title recognised by the state. The state also recognises the right to self-representation and self-determination in accordance with community traditions and practices.

In Bolivia, Colombia and Panama, indigenous people have gained a great degree of territorial autonomy and have also had their right to self-govern formally recognised by the central government. Moreover, the governments in all three countries have declared indigenous land inalienable and perpetual in order to prevent possible future expropriation or sale. In the case of Bolivia, indigenous territories are also indivisible, thereby ensuring collective land rights are maintained into the future. Through implementing these policies, states aim to protect indigenous peoples' rightful access to their land, while also bestowing them with greater decision making powers.

3. Indigenous Consultation Rights

Indigenous people across Latin America are making demands to national governments and civil society to exercise their right to be consulted about extractive industry projects that will affect them.

Pressure from local indigenous groups has been complemented by changes to legal frameworks regarding consultation. ILO Convention 169 makes recommendations for government implementation and regulation of consultation processes. The right to prior consultation is enshrined in the constitutions of Argentina, Brazil, Colombia, Ecuador, Mexico, Peru, Panama and Venezuela. Peru has even enacted a law which requires the prior consultation of indigenous people for any planned extractive industry activity on their land. A similar law is also being debated in Bolivia's Congress.

To learn more about how Latin American governments, private companies and civil society groups are pushing forward community consultation processes for extractive

industry activities, read the [ELLA Brief: Managing Conflict Through Consultation](#).

CONCLUSION: RECOGNISING INDIGENOUS RIGHTS GIVES SUSTAINABLE EXTRACTIVE INDUSTRY DEVELOPMENT A CHANCE, THOUGH CHALLENGES REMAIN

Acknowledging the right of indigenous communities to embrace and demonstrate their cultures and to administer their territories inside national boundaries certainly represents an important step forward in creating more inclusive consultation and negotiation processes with regards to extractive industry expansion. Increasingly, states and corporations are negotiating extractive projects on indigenous land, rather than simply imposing them. Although indigenous people in Latin America have not yet been able to influence government policies regarding extractive development itself, they are now recognised as rightful stakeholders. While this is a positive result, many outstanding challenges remain.

First, for governments, recognition of indigenous rights poses a challenge to their efforts to exploit natural resources. For example, in many cases in Latin America, the government or company representative has been unable to quickly convince indigenous people about the benefits of any given project, either because the project itself is considered unsuitable or there is a historic lack of trust with extractive industry corporations. In 2009, for instance, the indigenous Quechua people of Amayampampa, in southern Bolivia, pressured the Chief Executive of the Australian mining company Republic Gold to sign a document confirming the company would abandon its mining concessions on their lands. Although the process of exploitation had not yet started, the history of mining in this area influenced the Quechua decision to reject the project.⁹

Similarly, in December 2010, the Mapuche communities of LleuLleu and Tiruatook in Chile took possession of La Herradura, an estate owned by Leonardo Farkas, a business

⁶ Rights and Resources. 2011. [Tenure Data-Colombia Report](#). Rights and Resources Website.

⁷ See the website [Territorio Indígena y Gobernanza \(Indigenous Territory and Governance\)](#) for more information on the Panama case as well as about other Latin American countries.

⁸ Fundación Tierra. 2010. *Territorios Indígena Originario Campesinos en Bolivia: Entre la Loma Santa y la Pachamama (Indigenous Territories of Origin in Bolivia: Between Loma Santa and Pachamama)*. Fundación Tierra, La Paz.

⁹ MAC: Mines and Communities. 19 May 2009. [Bolivia's Government Will Carry Out a Referendum on Amayampampa Gold Mine](#). MAC website.



man who was promoting an iron mining project in the mountain ranges of Nabuelbuta. The project was expected to affect the LleuLleu Lake, an important site for Mapuche culture. In response to the proposed project, and before any mining exploratory action took place, the Mapuche communities mobilised to reject the project.¹⁰

In the past, companies and governments tended to ignore indigenous rights in order to proceed with mining and oil projects. For example, in 1964 the Government of Ecuador granted around 1,500,000 hectares of Amazonian land to the Texaco Company (now Chevron) for oil exploitation. Under the 'empty space' precept, the indigenous people that inhabited this territory [were never consulted](#). An illustrative and more recent example of this formerly common practice is the [eviction and forced displacement of the Tobacco community](#) to make way for mine expansion by the Cerrejon Coal Company (one-third owned by BHP Billiton, the world's largest mining company). As a consequence, indigenous communities have seen natural resources extracted from their territory despite their objections, and in some cases have even faced violent reprisals over their opposition. Cases such as this have generated serious mistrust from indigenous communities towards any extractive initiative, undermining many projects in recent decades.

However, the gradual recognition of cultural and territorial rights for indigenous people has led to the implementation of more comprehensive and democratic processes that can help to ensure the development of more socially sustainable extractive industry projects. Even when a project is rejected, the fact that indigenous people are able to participate in the decision making process and thereby consider the possibility of extractive activities in their territories is a significant advance.

Now, Latin American states face the challenge of building a relationship of trust with indigenous communities. To do so, political, institutional and technical capacities must be built to better integrate indigenous people into decision making processes. Currently, having cultural and territorial rights helps indigenous people to stop unwanted extractive projects. The same rights are also gradually helping them to get a seat at the negotiation table to determine more suitable projects.

For instance, in 2007 the Argentinean Government granted concessions for the areas of Laguna Blanca and Zapala to the oil companies Pluspetrol and Enarsa, affecting the territory of 14 Mapuche communities. In June 2011, a roundtable was opened to foster negotiations between Pluspetrol and the *Confederación Mapuche Neuquina* (*Mapuche Confederation of Neuquen*) in order to implement a form of consultation. Despite this progress, [indigenous leaders insist that consultation should be held before the concessions are granted](#), as the law indicates, and not afterwards, since by then indigenous communities have no choice but to negotiate with the companies.

Similarly, although granting cultural, territorial and consultation rights has helped to ensure that indigenous people are no longer 'hidden' by national governments in Latin America, these populations still face problems accessing national and international mechanisms to defend their rights. For example, in 2011 the expectations of the Guarani people from the Bolivian Chaco were not met when appealing to the national Government in defence of the Aguarague National Park and the TIPNIS (Isiboro Sécure Indigenous Territory and National Park). The Guarani expected that an indigenous president - Evo Morales - would sympathise with their demands; instead, they met state indifference and repression. In response, the Guarani started demonstrating against what they consider a violation of indigenous rights.

Although international mechanisms to protect indigenous rights do exist, indigenous people still face challenges in making them work. For example, the [World Bank's Operational Policy No. 4.10](#) is not being applied in a sufficiently transparent and accountable manner, meaning many indigenous populations are still ignored when it comes to decision making about extractive industry activities. This is due to the fact that governments and private companies view indigenous people more as clients and consumers, rather than as fully entitled citizens or independent people with different and specific rights to the land that they have inhabited since before the nation state was created. Therefore, while indigenous people are more 'visible' today than in the past, many still face difficulties exercising political power.

¹⁰ Paismapuche.org. 11 February 2011. [Mapuche de Tiroa Rechazan Proyecto Minero de Farkas](#) (*Mapuche de Tiroa Reject Farkas Mining Project*). Resumen Magazine online.

CONTEXTUAL FACTORS

ENABLING LATIN AMERICA'S SUCCESSFUL POLICY RESPONSE



There are three main contextual factors that have fostered the recognition of indigenous rights in Latin America, thereby creating the necessary conditions to establish more equitable and inclusive relationships between governments, indigenous peoples and private corporations, and ultimately reduce and better manage conflict.

First, recognition from the international community of indigenous rights created a basis upon which governments and corporations in Latin America began to respect the three types of rights discussed in this Brief. In particular, in 2006 the United Nation Human Rights Council in its Indigenous People Declaration stated that indigenous people have been unfairly marginalized, exploited and discriminated against, and that they deserve the right to strengthen their institutions and cultures and seek development frameworks in accordance with their aspirations and needs.

Second, a global indigenous movement has emerged in recent decades, with indigenous people - particularly in Latin America - now participating actively and directly in national politics. Nowadays, indigenous people not only organise demonstrations, they also run in national elections with encouraging results; the current Bolivian President, Evo Morales, an indigenous Aymara, was elected in 2005 with massive support from indigenous populations.

Finally, in coordination with indigenous populations, NGOs, activists, human rights groups and advocacy organisations have developed a powerful platform for supporting indigenous people and their rights. In particular, they have launched campaigns for indigenous rights, supported indigenous claims against governments and private corporations and trained indigenous political leaders. This increasing political influence triggered the significant constitutional changes recognising indigenous rights discussed earlier.

LESSONS LEARNED

1 Latin American governments and private extractive industries companies are beginning to learn that it is better to work with, rather than against, indigenous people in the quest to develop extractive activities. In many cases, they have seen that it is necessary to negotiate instead of imposing extractive projects in order to avoid conflicts that can make extractive industry development socially unfeasible.

2 In Latin America, granting cultural rights to indigenous populations has led to their official recognition by

national governments, marking a first step in incorporating, not assimilating, indigenous people into national societies. Granting territorial rights has given indigenous people some degree of autonomy and decision making power over their land. Building on cultural and territorial rights, consultation processes have become a powerful mechanism to manage conflict. Since governments and private companies have had to obtain permission from indigenous communities to undertake extractive initiatives on their land, projects are more socially sustainable than ever before.

3 The commitment of Latin American governments to international agreements regarding indigenous peoples' rights - such as the ILO 169 Convention or the UN Indigenous People Declaration - has provided legal tools that indigenous leaders have used to successfully demand cultural, territorial and political rights.

4 An active civil society movement can facilitate the adoption of more progressive legal frameworks regarding indigenous people's rights and help to ensure that these rights are respected, thereby both preventing and managing extractive industry conflicts.

CONTACT [GRADE](#)

To learn more about Latin America's policies on indigenous people and extractive industry development in Latin America, contact the author, Gerardo Damonte, PhD, Principal Researcher - GRADE, gdamonte@grade.org.pe.



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