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Introduction

According to Nelson Mandela, “The decimation of the native peoples in the Americas is like a haunting question which floats in the wind: why did we allow this to happen?”¹ Indigenous communities face several obstacles to development around the world, but the struggle for indigenous rights is especially prominent in South and Latin America, which is home to numerous and diverse indigenous groups. The legacy of European colonialism is brutally evident in the region. Although mainstream society has dramatically changed over the past few hundred years, indigenous groups today struggle to achieve basic recognition of their right to self-determination, land ownership and control of natural resources, similar to their situation during the colonial era.

From a moral standpoint, granting indigenous peoples basic human rights and freedoms appears to be a simple and obvious decision as these groups are fundamentally no different than the rest of mankind. Unfortunately, the situation becomes far more complex in light of social, economic and political ramifications due to conflicting priorities between indigenous populations and the states that govern them. The basic priorities of indigenous peoples are to preserve their historic cultures and institutions in self-government, while allowing them to control their ancestral lands in order to practice their traditional subsistence livelihoods. The primary goals of states in South and Latin America lie in furthering their economic and political development on the regional and international stage. Many of these states rely on developing land and extracting natural resources and from oil to lumber within their borders to support their economies, using lands often in the territories of indigenous groups, inevitably leading to conflict among states and indigenous groups. Balancing a state’s right to develop with the basic human rights owed to indigenous peoples has plagued the region for centuries, has only grown more intense in recent years.

Indigenous peoples in Latin America ask not only the same fundamental human rights as bestowed upon all people of the world, but also rights particular to their unique

situation, such as the right to self-determination and self-government, collective ownership of land and natural resources, and the protection of cultural and intellectual property. While the international humanitarian community generally supports these additional rights, they present challenges to societies with significant indigenous populations. States in South and Latin America have diverse ethnic populations, and non-indigenous ethnic groups such as Afro-Latin Americans would be unfairly excluded from increased indigenous rights, although they too have been historically oppressed. Stronger indigenous rights would not only diminish potential opportunities for industrial interests such as mining, logging and agricultural corporations, but also state-sponsored infrastructure projects designed to facilitate overall national trade and development. Ultimately, although granting indigenous peoples in South and Latin America basic human rights that they deserve would improve their oppressive situation considerably, it also confers disadvantages upon other societal groups and thus remains a challenging obstacle in the region.

Background

Definition

Although the subject of indigenous peoples has been a part of the international dialogue on human rights for several decades, there exists no universally agreed upon definition of the term “indigenous.” Both representatives from indigenous organizations and governmental delegations to the UN Working Group on Indigenous Populations (WGIP) have decided that a formal definition of indigenous peoples on the global level is neither necessary nor desirable. Nonetheless, there have been various efforts to conceptualize and describe indigenous populations. Jose Martínez Cobo, the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, offered a preliminary working definition to the WGIP in his widely cited Study on the Problem of Discrimination Against Indigenous Peoples in 1972:

¹ Survival International. London. <<http://www.survival-international.org/index2.htm>>.

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.²

Essentially, the key elements in defining indigenous populations are, “preexistence, nondominance, cultural difference (i.e., being only party integrated into the dominant national state), and self-identification.”³ Experts agree that common stereotypes about being stateless or having primitive, non-industrial ways of life should be avoided in defining groups as indigenous because this would, “suggest that once a community is a player in ‘modernity’—for example, by setting up a casino—it somehow ceases being indigenous.”⁴

The International Labor Organization (ILO) approaches the concept of indigenous peoples in terms of coverage rather than definition. The Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) makes “self-identification as indigenous or tribal,” a fundamental condition in defining who is indigenous.⁵ It additionally specifies two broad characteristics to describe indigenous peoples:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries

² Secretariat of the Permanent Forum on Indigenous Issues, “The Concept of Indigenous Peoples,” *United Nations Department of Economic and Social Affairs*, 19 January 2004, <http://www.un.org/esa/socdev/unpfii/documents/PFII%202004%20WS.1%203%20Definition.doc> (accessed 15 December 2007)

³ Hinton, Alexander Laban. *Annihilating Difference: The Anthropology of Genocide*. University of California Press.

⁴ Secretariat of the Permanent Forum on Indigenous Issues.

⁵ *Ibid.*

and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁶

Through international bodies such as the United Nations and World Bank, as well as regional institutions and indigenous organizations, opinions differ in the specific understanding of indigenous populations, but they all share in the idea of self-identification as a necessary but insufficient characteristic in their classification. The diversity in both the characteristics and conditions of indigenous peoples around the world discourages the establishment of a formal definition as it could incidentally exclude relevant groups.

Existing Regulatory Framework

At the most basic level, the situation of indigenous peoples worldwide is ultimately an issue of human rights. The concept of human rights, commonly traced back to liberal European Enlightenment ideals of the 17th and 18th Centuries, but in reality much more universal and far older, was a central tenet to the founding of the United Nations.⁷ The UN Charter sets out the promotion and encouragement of, “respect for human rights and for fundamental freedoms for all,” as one of the organization’s three central pillars.⁸ The Universal Declaration of Human Rights (UDHR) was drafted by the UN Commission on Human Rights (UNCHR), the predecessor to the UN Human Rights Council (UNHRC), and was adopted by the General Assembly in 1948.⁹ It was, however, more a statement of principle than binding law. It affirmed the international community’s values about the rights of individuals and groups shortly after the horrors of the Second World War, but beyond this, it had no practical use in law. Eleanor Roosevelt, the first chairwoman of the UNCHR, said that, “the Declaration is in its basic character not a treaty; it is not an international agreement. It is not and does not purport

⁶ ILO Convention No. 169, <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>>. Part I, Article 1.

⁷ Josef L. Kunz, “The United Nations Declaration of Human Rights.” *The American Journal of International Law*, Vol 43, No 2. 1949.

⁸ Charter of the United Nations, Article 1-3.

⁹ *Ibid.*

to be a statement of law or of legal obligation.”¹⁰

Even before the adoption of the UDHR, states in South and Latin America established the first general international human rights instrument with the American Declaration of the Rights and Duties of Man in April 1948. Although not a legally binding treaty, the Declaration established the Inter-American Human Rights System for the promotion and protection of human rights. In 1969, the Organization of American States (OAS) adopted the American Convention on Human Rights, which established the two bodies that currently make up the Inter-American Human Rights System: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights. Both the Commission and the Court are autonomous institutions of the Organization of American States (OAS). The Commission carries out its mandate to promote the observance and defense of human rights by monitoring the general humanitarian situation in OAS Member States and investigating individual petitions alleging human rights violations of the American Convention by any OAS Member State. The Commission can also refer individual cases to the Court, whose primary purpose is to apply and interpret the American Convention through adjudication and advisory decisions. Only the Commission or a state party can bring a human rights case before the Court.¹¹ Both the Court and Commission have ruled on a number of cases relating to the rights of indigenous peoples throughout South and Latin America.

There have been many symbolic gestures by the UN in recognition of the international community's commitment to indigenous rights. The General Assembly proclaimed 1995 to 2004 to be the International Decade of the World's Indigenous People with resolution 48/163 on 21 December 1993. The theme of the Decade was “Indigenous people: partnership in action,” with the objective of “strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health.” With the

¹⁰ Statement by Eleanor Roosevelt on 9 December, 1948. Department of State Bulletin, Vol XIX, No 494. 19 December, 1948. 751-752.

continued importance of the issue, on 20 December 2004, the General Assembly adopted resolution 59/174 proclaiming the Second International Decade of the World's Indigenous People to begin on 1 January, 2005.¹²

Updating the Indigenous and Tribal Populations Convention and Recommendation of 1957, the International Labour Organization (ILO) took action on the topic with the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), which was adopted in Geneva on 27 June 1989 at the organization's annual General Conference. The Convention seeks to guarantee the rights, safety, and integrity of all indigenous populations by promoting cooperation between tribes and national governments. As of early 2008, the Latin, South American, and Caribbean countries that have ratified the convention are Mexico, Colombia, Bolivia, Costa Rica, Paraguay, Peru, Honduras, Guatemala, Ecuador, Argentina, Venezuela, Dominica, and Brazil. Indeed, only five of the nineteen nations to have ratified the Convention so far are from outside the Americas. The Convention's various sections address land, recruitment and conditions of employment, vocational training, handicrafts, and rural industries, social security and health, education and means of communication, contacts and cooperation across borders, and administration.¹³

The central principles of the Convention that pervade the entire document are the consultation and participation of indigenous peoples. Article 6 requires states to carry out consultations with indigenous peoples thoroughly and in good faith through representative institutions whenever a state-sponsored project or measure will directly affect the lives of indigenous populations living within its borders. This article does not bestow the right of veto upon indigenous populations, but mandates that states should not undertake any specific action against their wishes without properly bestowing the right of prior informed consent. Article 7 stresses the fundamental right for indigenous peoples to participate in relevant processes that affect their livelihoods, including involvement

¹¹ "What is the IACHR?" *Inter-American Commission on Human Rights*, <http://www.cidh.org/what.htm> (accessed 15 December 2007)

¹² *Ibid.*

during the design or planning phase of a project until implementation at all levels of decision-making through indigenous people's own traditional or representative bodies. Effective participation allows indigenous people to actively establish their own socio-economic self-sufficiency.¹⁴ While the challenges facing indigenous peoples around the world range from social and political to environmental and economic, their root causes often stem from states' lack of regard for indigenous peoples' right to consultation and participation in development processes. With the adoption of international policy standardizing actions in the field of indigenous land claims, supporters of the Convention believe that conflicts will be settled more efficiently and rights will be extended to indigenous groups more uniformly.

Impact of Colonization

The wave of European colonization of the Americas that began with the arrival of Christopher Columbus on the island of Hispaniola in 1492 had a devastating impact on existing indigenous populations in South and Latin America. While estimates of pre-colonial indigenous populations vary widely, complex societies and cultures existed throughout the Americas, most notably the Incan, Aztec and Mayan empires. The European approach of conquest and brutal subjugation to the discovery of the "New World" set the tone for more than three centuries of colonization in the region, but states carried out similarly oppressive practices towards indigenous peoples even after gaining independence from their colonial powers.

Spanish and Portuguese colonization decimated the existing indigenous populations in the Americas by as much as ninety to ninety-five *per cent*, although the primary culprit for the massive death toll was European disease. After centuries of close contact with domesticated animals such as cows, pigs and fowl, Europeans had built up immunity to diseases such as smallpox and measles. The native populations of the Americas lacked any such protection and epidemics wiped out millions in a matter of

¹³ ILO Convention No. 169.

years. Destabilized by disease, a relatively small number of Spanish conquistadors were able to conquer vast empires such as the Inca and Maya. Motivated primarily by the desire to seek gold and extract natural resources, European colonists had little regard for the human rights of the indigenous peoples. The colonists displaced the natives from their best lands, and subjected them to slavery or forced labor in mines and heavy taxation.¹⁵ The Spanish Crown established the *encomienda* trusteeship labor system in the Americas as a means to consolidate its power and create a stable society. Although the lands technically remained in the possession of the natives, the *encomienda* system became a blatant tool of oppression in the hands of the Spanish conquistadors, who had the power to tax and command the labor of the indigenous people at will. Overall, the legacy of the European age of colonization was to permanently marginalize the indigenous peoples of South and Latin America. Although their situation has improved in certain areas, they still face the challenges of land displacement and social oppression, and lack political and economic power in society today.

Major issues in indigenous relations

There are many facets to the analysis of the struggles between indigenous groups and governments in the Americas. While the legacy of colonialism in South and Latin America is abundantly clear, the current issues pertinent to indigenous groups stem from the views and actions of the modern Latin American state. Conflict arises when states in the region cannot effectively reconcile their desire for economic development with their responsibility to uphold and protect human rights of any population within their borders. Primary concerns for indigenous peoples in the region include land ownership, economic development, political marginalization and ethnic persecution.

A common problem for indigenous tribes is the loss of their land. Convention 169 states that indigenous people have rights to the land they traditionally occupy, and it is

¹⁴ "A Guide to ILO Convention No. 169," *The International Labour Organisation*

<http://www.ilo.org/public/english/standards/norm/egalite/itpp/convention/index.htm> (accessed 14 December 2007)

¹⁵ "A political awakening," *TheEconomist.com*, 19 February 2004

http://economist.com/world/la/displaystory.cfm?story_id=E1_NQQGRGT (accessed 12 December 2007)

the responsibility of states to officially demarcate and safeguard such lands as well as provide adequate procedures to resolve land disputes.¹⁶ Despite this, states may evict tribes from lands, usually to then sell the property rights to common citizens or to private corporations looking to profit on the land's natural resources. In other instances, citizens or companies will simply expand into indigenous territory, ignoring legal claims and privileges by indigenous groups. Governments have the option of interceding in these cases, but do little, leaving the tribe to fight for the rights to its own land.¹⁷ These instances are further complicated by a lack of official status for many tribal lands, which are often unofficially recognized. Many states in the region such as Brazil, Bolivia, Colombia and Ecuador are moving to identify the lands of indigenous peoples' within their borders, but the struggle for obtaining official landownership continues in these states and elsewhere.¹⁸

Both Guyana and Suriname have experienced conflicts over the ownership of territory. Suriname granted a concession of land near the Brazilian border to national company Margo Mining, upsetting the 1500 members of the Kwamalasemutu community who claimed ownership over gold and diamonds. The Kwamalasemutu live on the land and were not consulted about the concession. In Guyana, land titling has progressed slowly since its beginning with the 1977 Amerindian Act. The national government, with occasional help from the World Bank, continues to demarcate land to indigenous populations, but "a substantial number of communities remain without titles to their ancestral territories and many more complain that the titles that they do have are inadequate, [...] do not include all of their ancestral lands and do not correspond to their traditional territory."¹⁹

Additionally, the Brazilian Yanomami people of the Roraima region near Venezuela have experienced many different types of difficulties throughout their tumultuous and violent history with the Brazilian government and citizens. The

¹⁶ "A Guide to ILO Convention No. 169"

¹⁷ Abya Yala Net

¹⁸ "A Guide to ILO Convention No. 169"

Yanomami underwent thirteen years of discussion with the Brazilian government and intermediate groups before the state granted them license to use their land in 1991. However this license did not grant any additional protection or support. Consequently, illegal prospectors hoping to mine gold on the new Yanomami land frequently clashed with tribal members. The violence reached a breaking point in 1993, when sixteen natives were massacred in Haximu, Venezuela.²⁰ As a result of the incident, five Brazilian miners were convicted of genocide in December 1996.²¹

Concerns over the environment and natural resources also fuel disputes between indigenous communities and states. Native peoples are among the most committed environmental activists in the Americas, and often depend solely on environmental resources for their survival and livelihood.²² Many states in the region however view the extraction of natural resources as their only option for economic development, and consequently promote development projects and allow corporate interests to extract resources often at the expense of indigenous populations. The greatest contention arises when natural resources are located within the lands of an indigenous population. Convention 169 specifies that indigenous peoples have rights to the consultation, management and benefits of natural resources of their territories. Despite the requirements of the Convention, many states in the region blatantly disregard these rights and generally fail to consult and justly compensate indigenous populations to use their territorial natural resources.

A high profile and damaging state development project in the region is the set of plans to build channels throughout the Paraguay-Parana river system, which is the second largest system on the continent. The plan, promoted by international shipping companies, is sponsored by five countries and has the potentially to detrimentally affect the environment and the indigenous communities of Western Brazil.²³ Additionally

¹⁹ Abya Yala Net

²⁰ Survival International

²¹ *Ibid.*

²² International Rivers Network. Berkeley. <<http://www.irn.org>>.

²³ *Ibid.*

industrial interests such logging, farming and mining companies have directly and negatively affected tribal communities either through displacement of indigenous peoples or environmental degradation. In Ecuador, American and British companies Texaco and Maxus Oil are expanding their activities and presence, to the dismay of local native tribes. Drilling is also hurting the U'wa people in Colombia, while gold mining affects communities in Brazil and Suriname. Logging companies continue to harm indigenous populations throughout the Amazon region, particularly in Brazil, Ecuador, and Paraguay.²⁴

Persistent violations of the economic and social rights of indigenous peoples in South and Latin America contribute to their political marginalization both at the international and domestic levels. When these groups cannot effectively voice their concerns, states and other groups can effectively ignore their needs. During the 1995 border conflict between Ecuador and Peru, indigenous tribes were “the invisible victims of war.” While these two states battled over a boundary dispute, neither government consulted the Aguaruna and Shuar groups of the Jibara peoples who live on both sides of the Ecuador Peru border on how to settle the territorial war, even though they are the traditional owners of the disputed land. The undeclared war was mostly fought in the traditional territory of Peru’s Aguaruna community, who lost twenty-eight people to landmines during the conflict. The Aguaruna and other tribes in the area received no compensation or government support to deal with the effects of the conflict and had no say in the transfer of their nationalities.²⁵

On a domestic level, the Choco people on the Pacific coast of Colombia claim the national government has continually ignored their needs. They suffer from extreme poverty and a lack of public services that are usually provided by the government. Illiteracy, wealth, and infant mortality levels are all alarmingly poor and are well below the Colombian average. The Choco charge that Colombia has ignored the concerns of its

²⁴ Center for World Indigenous Studies. “North, South, and Central American Documents.” Olympia, WA. <<http://www.cwis.org/americas.html>>.

²⁵ Abyayala Net

people while exploiting their land as state and corporate interests mine 8.8 metric tons of gold and clear 159,000 hectares of forest annually.²⁶

The inability for indigenous groups to effectively exercise their economic and political rights has made them especially vulnerable to gross humanitarian violations, specifically ethnic persecution and genocide. The case of the Mayan people of Guatemala is perhaps the starkest reminder that indigenous groups are as powerless in the modern world as they were during the colonial period, and that the world has not seen the end of mass extermination of people based on racial, ethnic, and cultural lines. Guatemala was embroiled in a three decades-long Civil War of insurgency and counter-insurgency that started in 1960 and did not end until the Agreement on a Firm and Lasting Peace was signed on 29 December 1996.²⁷ Following the peace agreement, a truth and reconciliation commission was set up to investigate the conflict, known as the Comisión para el Esclarecimiento Histórico (CEH, Historical Clarification Commission). The final CEH report identified 42,275 named victims, of which 23,671 were arbitrarily executed, and 6,159 were victims of forced disappearances.²⁸ An overwhelming eighty-three percent of the identified victims were indigenous Maya, while only seventeen percent were Ladino.²⁹ The CEH concluded that, based on the evidence, the Guatemalan government had carried out acts of “genocide” against the indigenous Mayan population, in specifically targeting them under the guise of counterinsurgency efforts.³⁰

Peru’s internal conflict during the 1980s and 1990s highlights another case of ethnic persecution. The Peruvian Truth and Reconciliation Commission (TRC) specifically mentioned the, “potential for genocide,” in anti-indigenous statements made by the *Aum Shinrikyo* (“Shining Path”) Maoist guerrilla group and noted the overwhelming number of indigenous people killed in the wider conflict in its findings.

²⁶ *Ibid.*

²⁷ Patrick Costello, *Historical Background*, Conciliation Resources, <<http://www.c-r.org/our-work/accord/guatemala/historical-background.php>>, 1997.

²⁸ Historical Clarification Commission, *Guatemala: Memory of Silence*, <<http://shr.aaas.org/guatemala/ceh/report/english/toc.html>>, 1999. Conclusions, Section I.

²⁹ *Ibid.*

Seventy-five *per cent* of the victims of the internal strife spoke Quechua or other indigenous tongues, although only sixteen *per cent* of the Peruvian population in 1993 was indigenous. As in Guatemala, Peru's conflict reveals an unmistakable racial and ethnic aspect to ostensibly political civil wars.

Current Status

Declaration on the Rights of Indigenous Peoples

After more than 20 years of negotiations, the final version of the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the UNHRC on 29 June 2006 by a vote of 30-2-12.³¹ The Declaration was then adopted by the UN General Assembly during its 61st session on 13 September 2007 by a vote of 143-4-11.³² The four states to vote against the Declaration were Australia, Canada, New Zealand, and the United States, each of which has a significant indigenous population. Colombia, a South American country with a large indigenous community, was one of the eleven nations to abstain from voting.³³ Since the Declaration is a General Assembly resolution, it is not legally binding upon its signatories, unlike ILO Convention No. 169.

The Declaration espouses many of the same principles as the ILO Convention 169 and other international documents concerning the rights of indigenous peoples. It recognizes that indigenous peoples have the same fundamental human rights and freedoms as all other people of the world, including the right to unrestricted self-determination, self-government and the rights to develop, maintain and seek the protection of their unique societal institutions. In addition, they also have the right to demand access to the same public services as others, such as education, social security and equal employment. The Declaration also stresses the inalienable collective right of

³⁰ Historical Clarification Commission, *Guatemala: Memory of Silence*, <<http://shr.aaas.org/guatemala/ceh/report/english/toc.html>>, 1999. Conclusions, Section II.

³¹ United Nations Permanent Forum on Indigenous Issues (UNPFII). "Frequently Asked Questions on the Declaration of the Rights of Indigenous Peoples."

<<http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>>.

³² Office of the United Nations High Commissioner for Human Rights, <<http://www.ohchr.org/english/issues/indigenous/declaration.htm>>.

indigenous people to the ownership and management of their own territories and natural resources, and to be justly compensated if they are displaced from their land and resources. Ultimately, although the Declaration is not a legally binding document, it provides an important framework and guideline for how states should approach indigenous affairs.

Continuing Challenges

Although states have made important strides in establishing the appropriate legal framework to deal with the rights and affairs of indigenous peoples, many indigenous communities across South and Latin America have yet to experience any significant or sustainable improvement in their living conditions. States in the region continue to grapple with conflicting priorities, and more often than not the needs of indigenous peoples tend to become secondary concerns to the needs of the society as a whole. The current conditions facing indigenous tribes in Chile, Colombia and Brazil illustrate this complex dilemma.

The Mapuche people live in southern Chile and Argentina on both sides of the Andes Mountains and struggle with these states to gain rights to land ownership, environmental control, and the protection of natural resources on their lands from industrial interests.³⁴ Although land disputes have not been resolved, Chilean officials have allowed industrial interests access to contested Mapuche land. The forestry company Minico PLC has commenced logging operations, and plans to develop a Ralco Dam hydroelectric project continue despite protests of the danger these development projects pose to indigenous communities. In response to their government's continued indifference to land claims, the Mapuche have begun demonstrating and mobilizing against the planned projects. The government has reacted by jailing vocal tribal leaders. In one instance, a leader traveled to Geneva to deliver documents on governmental human rights abuses to the UNHRC and was arrested for occupying land upon his

³³ *Ibid.*

³⁴ Mapuche International Link. Bristol, UK. <<http://www.members.aol.com/mapulink2/english-2/main.html>>.

return.³⁵ In response, the Mapuche have threatened to escalate their campaign, as they see no other paths to have their voice heard. The case of the Mapuche illustrate that a state's failure to respect the fundamental rights of an indigenous people's right to their land can result in avoidable violent consequences.

In Colombia, the government's ambitious development and infrastructure plans also threaten the welfare of its sizable indigenous communities. *Plan Pacifico* calls for the completion of the Pan-American Highway and construction of another road linking the coastal regions, as well as a railway, oil pipeline and canal in the less immediate future. The state hopes to improve internal infrastructure in order to boost trade with neighboring states and increase profits from extracting natural resources in the area. These plans would directly impact four separate indigenous peoples that live along the Pacific Ocean and Panamanian border, including the Embera, Awa, Waunana and Kunu tribes. Thirty-six of the 119 indigenous communities do not possess title to the land they inhabit.³⁶ Although the tribes have adamantly opposed the development initiatives until they obtain national recognition of their territories, national and international officials seem poised to continue with the project without addressing their concerns. Colombia views the protests of the indigenous peoples as an obstacle to the development of the state, not as an issue demanding national attention and aid. When a state always prioritizes trade and national development initiatives over the needs of indigenous populations, these groups cannot establish the economic and political rights necessary to improve their conditions.

The Yanomami of Brazil successfully negotiated state recognition of their ancestral lands, however they continue to face a host of challenges. As an unfortunate result of contact between the tribe and modern society, young Yanomami women have recently begun contracting sexually transmitted diseases, allegedly due to the sexual abuse of Brazilian soldiers stationed in the native territory.³⁷ The Yanomami have also

³⁵ *Ibid.*

³⁶ Survival International

³⁷ *Ibid*

been hurt by an influx of common Brazilian citizens illegally mining gold on their land, causing further disputes with the government and damage to the environment. Furthermore, Brazil has launched a revision of the Yanomami land demarcation, threatening to repossess the territory allotted to the indigenous group only a few years ago, no doubt due in part to valuable natural resources on Yanomami lands.³⁸

At the same time, Brazil has also made efforts to address the complex situation facing the Yanomami, particularly in the area of land rights. On 22 September 2007, Brazil announced that it will spend USD \$270 million in the next three years to establish new reservations for the various indigenous tribes of the Amazon, resettle the approximately 9,000 Brazilian workers that currently occupy the lands, provide the tribes with water and electricity, and begin to document 20 indigenous languages that are threatened with extinction.³⁹ Although a necessary and admirable step, tribes such as the Yanomami require a much more comprehensive and long-term approach by the government in order to significantly alleviate their current plight.

Bloc Positions

Both on the South American continent and around the globe, national governments handle the matter of indigenous rights differently. Struggles for various rights are limited to certain areas of the globe, as are indigenous tribes themselves. As a result, governments throughout the world have developed different approaches to dealing with indigenous peoples, both within and outside of their borders.

Southern Cone

In the Southern Cone region of South America, Chile, Argentina, and Uruguay must contend with highly organized and well-respected indigenous tribes and organizations, which include the Mapuche people, one of the largest and most organized

³⁸ *Ibid.*

³⁹ BBC News, *Brazil vow to spend on indigenous*, <<http://news.bbc.co.uk/2/hi/americas/7007869.stm>>, 22 September, 2007.

native populations on the continent.⁴⁰ However, from the Southern Andes in Chile to the mouth of the Rio de la Plata between Uruguay and Northern Argentina, governments still continue to control and alter the borders of native lands without the consent of their indigenous occupants. A significant concern involves the fertile areas surrounding the Rio de la Plata, both upstream and at its mouth, where sediment from forest cutting throughout the center of the continent is affecting flooding, farming, and shipping in the region.⁴¹

Amazon Region

Across the rainforests and valleys encompassing the basin of the Amazon River, both governments and indigenous peoples continue to benefit from an extraordinary supply of natural resources. Throughout the nations of Brazil, Bolivia, Paraguay, Guyana, and Suriname and the territory of French Guiana, loggers, miners, and farmers profit from the rich supply of nutrients and minerals. States regulate their practices minimally, even when related industrial activity expands into the area of indigenous lands. However, since the amount of untouched land is so great in the Amazon region, many native peoples have yet to encounter the effects of modern culture. Increasing trends toward industrialism and tourism help to contact more and more indigenous populations.⁴²

Land rights are another important issue in the rainforests. Unlike in other Amazonian countries, Brazil only grants tribes rights to use their lands, not to own them. The state retains the power to occupy these lands with military, to sell mineral rights to private companies, and to cancel native rights to use their lands. Indigenous groups and private farmers often squabble over land claims in Paraguay as well.⁴³

Northwestern South America

The Northwestern member states of South America include Venezuela, Colombia,

⁴⁰ Mapuche International Link.

⁴¹ International Rivers Network.

⁴² *Ibid*

⁴³ Human Rights Watch. New York. <<http://www.hrw.org>>.

Peru, and Ecuador. In this region, governments that seek to benefit economically commonly support oil and natural gas drilling.⁴⁴ This industrial activity often adversely affects local indigenous populations by polluting their environments and occupying their lands. Colombian native groups also often get caught in the middle between the government and drug traders.⁴⁵

Mexico, Central America, and the Caribbean

Throughout Mexico, Central America, and the Caribbean, native populations face many of the same problems as their South American counterparts. Latin American states with particularly pressing concerns include Nicaragua, Guatemala, and Mexico. Expressing solidarity by recognizing the importance of indigenous peoples and the threats posed to them, four other Latin American countries joined the six South American countries and others in signing and ratifying the Convention Concerning Indigenous and Tribal Peoples in Independent Countries. In order of ratification, they are Mexico, Costa Rica, Honduras, and Guatemala.⁴⁶

Non-Latin American Countries

The four remaining signatories to Convention 169 are not Latin American countries, nor do any of them have any particular national stake in such groups' pursuance of success. However, Norway, Denmark, the Netherlands, and Fiji have all ratified the convention and expressed a commitment to giving native peoples in distress international assistance.⁴⁷ Other nations that have shown concern for indigenous rights around the world include much of Western Europe, led by the United Kingdom, Spain, and Italy, Canada, and the United States of America.⁴⁸ These nations often work indirectly to support indigenous populations by providing official and non-governmental organizations with the resources to observe and assist tribes in need.⁴⁹

⁴⁴ Survival International.

⁴⁵ Human Rights Watch.

⁴⁶ ILO Convention No. 169

⁴⁷ *Ibid*

⁴⁸ Survival International

⁴⁹ *Ibid.*

Many member states throughout the world can relate to the pressing situation in South America, as the topic of indigenous rights is a widespread concern. Native populations live in countries across the world. Governments throughout the continent of Africa experience strained relations among separate cultures inhabiting their lands. Notable examples of indigenous struggles can be seen in the Sudan, South Africa, Sierra Leone, Rwanda, Burundi, and the Democratic Republic of Congo. Outside of South America and Africa, nations such as Turkey, Iraq, Australia, New Zealand, Indonesia, the United States, Canada, Russia, and China also struggle with the issue of native rights.⁵⁰

Many problems with indigenous and government relations around the world mirror those seen in South America. China and Iraq openly repress their native minorities, while Turkey acts slightly more subtly to maintain power over its tribal groups.⁵¹ Official relations between the two entities are strained at best in South Africa and Australia. Throughout West Africa, especially in Sierra Leone, the Ivory Coast, Mali, and Liberia, tribes are struggling for rights to maintain control of their own land and ecological environment. Because Africa, like South America, is rich in many natural resources, indigenous peoples experience more difficulties in avoiding interference from private companies and national government often eager to further develop ranges of power. Large and environmentally degrading public works projects are currently being initiated throughout Africa, while drilling and mining companies profit from the ecology and minerals of African nations and their indigenous territories.⁵²

Australia, Canada, New Zealand, and the United States of America

The four nations that voted against the Declaration on the Rights of Indigenous Peoples all have significant indigenous populations within their borders and expressed concerns regarding national sovereignty. Australian Indigenous Affairs Minister Mal Brough, presumably referring to Aboriginal corporal and capital punishment, said,

⁵⁰ Human Rights Watch

⁵¹ *Ibid.*

⁵² International Rivers Network.

“There should only be one law for all Australians and we should not enshrine in law practices that are not acceptable in the modern world.”⁵³ These states raise concerns that the host of rights the Declaration grants to indigenous peoples could be easily abused and give them unfair legal advantages over mainstream society.⁵⁴

⁵³ BBC News, “Indigenous rights outlined by UN.” <http://news.bbc.co.uk/2/hi/in_depth/6993776.stm>.

⁵⁴ Senator Marise Payne, Statement during debate in the Australian Senate on 10 September, 2007. <<http://parlinfoweb.aph.gov.au/piweb/Repository/Chamber/Hansards/Linked/5648-4.PDF>>.

Discussion Questions

If your nation has a significant indigenous population, please reflect on your nation's past, present, and likely future relationships with these groups. Also, please extensively research and understand the Declaration on the Rights of Indigenous Peoples⁵⁵ and ILO Convention No. 169.⁵⁶

- How does your nation's history with indigenous groups, colonialism, and minority relations affect your delegation's stance on the Declaration?
- Should the Declaration be altered? Can it be improved or modified?
- Does a nonbinding resolution like the Declaration carry enough strength in international law to accomplish its goals? How can the UNHRC encourage more nations to sign ILO Convention No. 169?
- How should indigenous groups be "consulted" about issues of import to them? How does your nation feel about the argument that requiring governments to gain the consent of indigenous groups amounts to "veto power"?
- Should tribal territories be officially demarcated and titled to indigenous groups? If so, how would the boundaries and the extent of indigenous control be decided? How can competing land claims be settled?
- Should indigenous groups whose territories or environments are affected by industrial activities share some of the ensuing profits? If so, how should this occur?
- What can be done to protect indigenous peoples from diseases brought to their territories by outside visitors?
- Monitoring human rights violations is one of the newly-formed UNHRC's main purposes. How can indigenous rights violations be monitored and addressed?

⁵⁵ United Nations Declaration on the Rights of Indigenous Peoples, <<http://www.ohchr.org/english/issues/indigenous/docs/draftdeclaration.pdf>>. United Nations Permanent Forum on Indigenous Issues, FAQ on the Declaration on the Rights of Indigenous Peoples, <<http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>>.

⁵⁶ ILO Convention No. 169, <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>>. ILO, A guide to ILO Convention No. 169, <<http://www.ilo.org/public/english/standards/norm/egalite/itpp/convention/index.htm>>.

Summary

Many states in the region of South and Latin America are home to sizable populations of indigenous peoples, and these states must balance the needs and concerns of these groups with the priorities and objectives of their societies as a whole. There exists no universal definition of indigenous peoples, but key characteristics of these people include “preexistence, nondominance, cultural difference and self-identification.” Indigenous populations in South and Latin America face a host of developmental challenges today as they have suffered from a long history of human rights violations and oppression at the hands of ruling powers since the time of European colonization of the region.

Several international and regional bodies have either directly or indirectly addressed the rights of indigenous populations. The Universal Declaration of Human Rights and the Inter-American Human Rights System both recognize the fundamental human rights of all people, while the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and the recent UN Declaration on the Rights of Indigenous Peoples stress the rights of indigenous peoples specifically. Despite international attention to the situation of indigenous peoples, in South and Latin America they still struggle to exercise fundamental rights in the areas of land ownership, control of natural resources and development as well as self-determination. States seek to extract natural resources to further their economic development as a whole, and the rights and needs of disadvantaged indigenous populations within state borders become a distant second concern to national development objectives.

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