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INDIGENOUS PARTICIPATION IN LATIN AMERICA

THE GULF BETWEEN DOCUMENTED RIGHTS AND EVERYDAY REALITY

Susanne Käss

When Evo Morales of the Aymara people was elected President of Bolivia in 2005, the expectations of Bolivia's indigenous population were running high. One of the reasons for Morales' electoral success was his promise to involve indigenous people in government and to address their needs through his policies. In Europe, Morales was viewed as a shining light, with his rise to power and his policies being characterised as having almost mystical qualities. But after six years in office, this kind of euphoria is now all but forgotten.

The Morales government's attitude towards Bolivia's indigenous population is now a source of growing tension and is typical of the political situation faced by indigenous peoples throughout Latin America. Too often, there is a clear gulf between their documented rights and the reality of their everyday lives. Currently, there is a great deal of discussion in the international press about the planned construction of a road through a National Park and Indigenous Territory, the Territorio Indígena y Parque Nacional Isiboro Sécuré (TIPNIS). This is one of the regions of Bolivia that enjoys the greatest biodiversity, and environmentalists are warning about potential destruction of the eco-system. The greatest advocates of the road are the coca growers, who are the most ardent supporters of President Evo Morales and his ruling Movimiento al Socialismo (MAS) party. Evo Morales was originally active in the coca growers' movement and is still the head of their trade union. As a result, he has often been accused of caving in to pressure from this particular interest group. On 12 March 2012, at the 55th session of

the United Nations Commission on Narcotic Drugs, the President defended the traditional use of the coca plant for making tea and for chewing. However, according to United Nations' estimates, a large proportion of Bolivian coca is used in the production of cocaine. The coca growers are mainly interested in expanding the production of coca into the fertile lands of the TIPNIS and in being able to transport their goods easily using the new road. The indigenous people there, who live from fishing, hunting and agriculture, fear that their local natural habitat will be destroyed. The road is meant to provide a new link between the Cochabamba and Beni Departments because existing transport routes are often unusable during the rainy season. Economists advocate the building of an alternative route that would protect the environment and respect the rights of the indigenous people. These rights include the right to be consulted, something which is enshrined in the 2009 constitution, but which the government chose to ignore prior to signing a contract with a Brazilian construction company.

The coca growers are mainly interested in expanding the production of coca into the fertile lands of the TIPNIS. The indigenous people there are afraid that their local natural habitat will be destroyed.

In an attempt to halt the project, between August and October 2011, the indigenous people of the Bolivian lowlands led a protest march to the seat of government in the city of La Paz under the banner of their umbrella organisation, Confederación de Pueblos Indígenas de Bolivia (CIDOB). In September 2011, a massive police operation was launched to attempt to break up the march and stop the protesters from making it as far as La Paz. There were immediate complaints from the public about the crackdown, forcing the government to deny any responsibility for the attacks. The result was that a large section of the Bolivian population felt a sense of solidarity with the indigenous people from the lowlands. There was a lot of criticism of how the government had ignored the constitution and pursued policies that were at odds with indigenous people and the environment. The attempt to quash the protest had failed.

Following the arrival of the indigenous protesters in La Paz, and under enormous pressure from civil society, the Bolivian parliament (Asamblea Legislativa Plurinacional) passed a law that stopped the building of the road. However, in February the government passed a new law that lifted

the moratorium on construction and provided for proper consultation. Indigenous organisations are concerned about potential manipulation because the pressure exerted by the coca growers, who are so important to the government, remains very high. Following the violent intervention of the state in the first protest march, the main indigenous organisations, Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) from the west of the country and CIDOB from the east, broke off relations with the government. Indigenous movements had helped to elect Evo Morales in 2005 and 2009, but now their stance over the TIPNIS conflict

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has become a significant factor in his declining popularity. This is a good example of the important role that indigenous people can play in Latin American politics. But it also goes to show how indigenous people continue to be exploited politically and how these self-proclaimed saviours are not always able to fulfil expectations.

INDIGENOUS PEOPLES IN LATIN AMERICA

During colonial rule, the indigenous peoples of Latin America were known collectively as "Indians". The idea behind this term was to basically homogenise all the original inhabitants of the sub-continent, while at the same time creating a categorisation that could be used for segregation, even though it did not fairly reflect the broad diversity of ethnic backgrounds on the sub-continent. This diversity can be seen in the statistics: in Latin America there are over 400 different ethnic groups and peoples, speaking 917 different languages. Indigenous people make up eight to twelve per cent of the overall Latin American population, which in absolute terms amounts to 40 to 50 million people. The percentage of indigenous people in certain countries is very high: Bolivia (62 per cent), Guatemala (between 39.9 per cent and 58 per cent), while the largest number of indigenous people live in Mexico (about ten million), followed by Peru (between four and 8.4 million), Bolivia (six million) and Guatemala (between 4.5 and 6.5 million).¹

The fact that the figures vary markedly, depending on the particular source used, is partly attributable to the fact

1 | UNICEF (ed.), *Atlas Sociolingüístico de Pueblos Indígenas en América Latina*, FUNPOEIB Andes, Cochabamba, 2009.

that there is no single accepted method of calculating the percentage of indigenous people. The questions used in population censuses tend to vary from country to country. Sometimes people are simply asked whether or not they consider themselves to be indigenous. The answer to such a question can be heavily influenced by whether being indigenous is an advantage in a particular country (for example, special rights for indigenous people are enshrined in the constitution) or a disadvantage (due to racism and discrimination). Added to this is the fact that, alongside objective criteria for determining membership of an indigenous group such as the adherence to traditional culture and language or living on traditional lands, there is also the subjective criterion of whether or not a person defines oneself as indigenous.

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The United Nations Economic Commission for Latin America (CEPAL) therefore recommends taking four aspects into account during a census. The first consideration is self-definition, a very important factor because it recognises the right of the individual to their own identity. It also has the advantage that external definitions can be avoided, as these can often be incorrect due to lack of sufficient knowledge or deliberate manipulation. The second consideration is referred to as common origin, something that is very difficult to determine, meaning it is often left out of census questions. The third aspect concerns culture. Here, specific questions can be asked, for example about the person's mother tongue. The fourth consideration measures territoriality, including whether the person lives on ancestral lands and their relationship with nature.² Although most countries in the region have tended to favour questions on self-definition in population censuses since the 1990s, these questions can often vary greatly. As a result, it is practically impossible for them to provide comparable results. If in future countries are to introduce policies to combat the economic and social marginalisation of indigenous peoples, then they will need to develop a common set of tools for taking reliable population censuses.

2 | Susana Schkolnik, "La inclusión del enfoque étnico en los censos de población de América Latina", *Notas de población*, 89, 2009, 67-68.

INDIGENOUS EMANCIPATION AND POLITICAL PARTICIPATION

Since the 1980s, indigenous organisations have generally become much more involved in politics. This is largely due to the fact that many Latin American countries have returned to democracy during this time. Indigenous movements in some countries have, in fact, been demanding recognition of their rights since the middle of the 20th century, but their members were often seen as being agricultural workers (*campesinos*), and so, in the rhetoric of the class war, they were considered to be part of a peasant movement.³ The indigenous people often accepted this designation in order to avoid discrimination and racism. It was not until the 1960s that a gradual change came about, in which indigenous people began to identify strongly with their ethnic origins and to express them with pride. In most cases, however, they preferred to identify themselves using their own ethnicity (e.g. Quechua, Zapoteco, etc.) rather than use the generic term Indian. One of the reasons why the influence of the indigenous movements grew significantly was that they linked their demands for territory and autonomy to other social issues, such as political participation, decentralisation, equal opportunities and the fight against poverty, and in this way they were able to form alliances with other sectors of society. As a result, since the 1990s, governments have felt compelled to open negotiations with indigenous movements, and other players such as the Church, non-governmental organisations, political parties and international cooperation organisations have played an increasingly important role.

Examples of the growing importance of indigenous movements in national politics include the March for Territory and Dignity to La Paz (Marcha por el Territorio y la Dignidad) led by the lowland indigenous people of Bolivia in 1990, the Indian People of the Ecuadoran Amazon March to Quito in 1992 to demand the legalization of their territories and a plurinational state, and the actions of the Zapatista movement in Mexico after 1994. The indigenous movements expressed themselves in a variety of ways that

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3 | Xavier Albó, *Movimientos y poder indígena en Bolivia, Ecuador y Perú*, CIPCA, La Paz, 2009, 238.

ranged from peaceful marches, to street blockades, to acts of sabotage such as those of the Mapuche in Chile and the armed resistance of the Zapatistas in Mexico. Within the traditional political sphere, the indigenous movements benefited from decentralisation measures introduced in many countries that gave local authorities greater powers and control over their own budgets. Above all, this allowed them to use local structures to take their first steps in the area of public administration.

Some countries developed their own particular models. In Mexico, for example, 418 of the 570 municipalities in the Mexican state of Oaxaca are administered according to lo-

In Guatemala, alongside the normal communities, there are also municipalities with a majority of indigenous population who elect their own mayor.

cal customs with their own voting methods and traditional laws. In Guatemala, alongside the normal communities, there are also municipalities with a majority of indigenous population who elect their own mayor, in some cases using their own electoral procedures. Across all the countries of the region, indigenous participation in public office is particularly strong at the local level, but for many this is the limit of their political participation. There are many reasons for this, including the effects of widespread poverty, discrimination and a lack of access to educational opportunities.

It is only in Bolivia and Ecuador that indigenous movements have managed to carve out a meaningful role for themselves in national politics. In Ecuador during the 1990s, the indigenous party Movimiento Unidad Plurinacional Pachakutik was formed out of the powerful indigenous umbrella organisation, the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE). The party participated in congressional elections for the first time in 1996, winning eight seats and going on to play an important role in the integration of indigenous rights into the Ecuadorian constitution.⁴ In January 2000, the CONAIE supported the coup against President Jamil Mahuad, which led to Colonel Lucio Gutiérrez's selection as one of three members of a "National Salvation Junta". For the elections in 2002, the party formed an alliance with Lucio Gutiérrez and his Partido Sociedad Patriótica. After its election victory, Pachakutik

4 | Heidi Feldt, "Indigene Völker und Staat", in: GTZ (ed.), *Indigene Völker in Lateinamerika und Entwicklungszusammenarbeit*, Eschborn, 2004, 55.

took control of four Ministries: Foreign Affairs, Agriculture and Livestock, Education and Culture and Tourism. But the coalition partners could not see eye to eye and the alliance was formally disbanded in August 2003. Many indigenous people in Ecuador were disappointed by Pachakutik's short period in government and particularly criticised its alliance with the traditional politician, Gutiérrez. The indigenous supporters also accused the party of ending up being as bad as the traditional parties that they had previously criticised so heavily.

In Bolivia, the indigenous movements were particularly successful in gaining power at the national level. In 1979, two indigenous representatives were elected to Parliament for the first time. In the 2009 elections, 32 indigenous representatives succeeded in winning seats in Parliament, and six were elected to the Senate. The first indigenous woman

In 1993, the Aymara Cárdenas was elected Vice-President of Bolivia. In his term of office, important laws were passed to help increase the participation of indigenous peoples.

took her seat in Parliament in 1989.⁵ Initially, the large Aymara and Quechua ethnic groups were particularly strongly represented, but in more recent years there has been increasing participation by indigenous people from the lowlands. In 1993, the Aymara Víctor Hugo Cárdenas was elected Vice-President of the Republic of Bolivia. During his term of office, many important laws were passed to help increase the participation of indigenous peoples and rural populations in the political process. The decentralisation law on popular participation (*Participación Popula*) passed in 1994 handed over greater powers and funding to local authorities and gave social movements across the country the opportunity to take their first steps in the area of public administration. The law on agrarian reform (*Servicio Nacional de Reforma Agraria*) recognised the right of indigenous people to their ancestral lands (*Tierra Comunitaria de Origen*). The 2009 constitution also tackled this issue and stipulated that ancestral lands be turned into indigenous territories (*Territorios Indígenas*) with specific rights, such as giving the indigenous people living within the territory the exclusive right to exploit renewable resources in that territory.

5 | Víctor Húgo Cárdenas, "Participación Política Indígena y Políticas Públicas para Pueblos Indígenas en Bolivia", in: Konrad-Adenauer-Stiftung (ed.), *Participación Política Indígena y Políticas Públicas para Pueblos Indígenas en América Latina*, La Paz, 2011, 28-51.

Evo Morales Ayma was elected President in 2005 with a record 53.7 per cent of the vote. However, his MAS party is not an indigenous party like Pachakutik; instead it grew out of the conflicts over coca cultivation and the fight against cocaine as the political arm of the coca farmers' movement. At the end of the 1990s, the MAS became the main party of protest against traditional politics, and the indigenous issue became a part of their electoral campaigning. But Evo Morales' first cabinet only included three indigenous members out of a total of twenty ministers, and after his re-election in 2009 their numbers increased to just four. Voters generally took a dim view of this in light of the fact that indigenous people make up around 60 per cent of the Bolivian population and in the wake of the electoral promises made by MAS that it would bring more indigenous people into politics.

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The debate over indigenous rights has been intensified further by the creation of special interest groups at the international level. Although the political participation of indigenous people has taken various forms and has clearly increased over the last few decades, they still continue to be hugely underrepresented in the classical political system.

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS RIGHTS

In 1957 the "Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries" was adopted by the International Labour Organisation (ILO). Its approach was to integrate indigenous people into their respective national societies and thus promote assimilation. This approach was based on good intentions but later became the target of sharp criticism. The Convention was thoroughly revised and the "Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries" was

adopted.⁶ This is the only international legislation on the

rights of indigenous peoples that is binding under international law. The Convention stipulates the following rights for indigenous peoples:

- The right to non-discrimination (Art. 3, 4, 20 and 24),
- the right to ownership and possession over the lands which they traditionally occupy (Art. 14 and 18),
- the right to protection and recognition of their integrity, culture and institutions (Art. 2, 5 and 7),
- the right to decide their own priorities for the process of development (Art. 7),
- the right to retain their own customs and institutions (Art. 8 and 9),
- the right to be consulted whenever consideration is being given to any legal or administrative measures which may affect them directly (Art. 6, 15, 17, 22 and 28).

To date, the Convention has been ratified in Latin America and the Caribbean by Mexico (1990), Bolivia (1991), Columbia (1991), Paraguay (1993), Costa Rica (1993), Peru (1994), Honduras (1995), Guatemala (1996), Ecuador (1996), Argentina (2000), Dominica (2002), Venezuela (2002), Brazil (2002), Chile (2008) and Nicaragua (2010). By ratifying, these countries have committed to comply with the Convention and to adapt their national laws accordingly.

As part of the 500-year anniversary of the conquest of Latin America, the United Nations declared 1993 the International Year of the World's Indigenous People and the decade from 1994 to 2004 the International Decade of the World's Indigenous People. The aim was to increase international cooperation in finding a solution to the problems of indig-

ous and Tribal Peoples in Independent Countries defines these peoples as "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 and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply [...]." Cf. International Labour Organisation, "Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries", <http://www.ilo169.de/index.php?option=content&task=view&id=20&Itemid=31> (accessed 2 April 2012).

enous peoples with respect to human rights, environmental issues, education and health.

In 2001, the United Nations Commission on Human Rights (now the Human Rights Council) for the first time appointed a Special Rapporteur on the situation of human rights and fundamental freedoms for indigenous peoples. The main remit of the Special Rapporteur is to gather information on human rights violations relating to indigenous people and formulate proposals on how to counter them. They publish reports on particular issues and on the human rights situation for indigenous peoples in the countries they are invited to visit, and present an annual report to the Human Rights Council.

In 2002, the Permanent Forum on Indigenous Issues was set up by the UN as an advisory body to the Economic and Social Council (ECOSOC). It comprises 16 independent members, half of whom are representatives of national governments, the other half are representatives of indigenous organisations. The Forum's main task is to advise the various bodies of the United Nations on indigenous issues, and its foundation can be viewed as at least one success achieved during the Decade of Indigenous People. However, the Decade's main aim of adopting a UN Declaration on the rights of indigenous peoples was not met, and indeed the lives of indigenous peoples saw little improvement during this period. So the UN declared 2005 to 2015 as the Second Decade of the World's Indigenous People, with the goal of achieving measurable improvements in the lives of indigenous peoples and guaranteeing their human rights.

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September 2007 finally brought success, when the long-awaited UN Declaration on the Rights of Indigenous Peoples was adopted with 143 votes, after 20 years of discussions within the General Assembly. Eleven countries abstained and four (Australia, Canada, New Zealand and the USA) voted against, due to concerns over loss of sovereignty. They later reversed their position and officially endorsed the Declaration at the General Assembly. Columbia, who had originally abstained, also reversed its decision. The UN Declaration on the Rights of Indigenous Peoples guarantees:

- The freedom and equality of all people and the right of indigenous peoples to the full enjoyment of all human rights and fundamental freedoms,
- political, economic, social and cultural self-determination,
- the right to maintain and strengthen their own institutions while retaining their right to participate fully in the political, economic and social life of the state,
- the right to land, territories and resources.

Although the Declaration is not legally binding, the states of the United Nations are obliged to act in good faith (*de buena fe*) to implement its provisions and to change any practices that breach these provisions. The Declaration also serves to strengthen the negotiating position of indigenous people at the national level.

The Inter-American Human Rights System continues to play an important role on the American continent. As it does

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not set its own standards for the protection of indigenous peoples, the Inter-American Court of Human Rights mainly invokes ILO Convention No. 169. On this basis, the number of suits brought by indigenous tribes,

organisations and individuals against states is on the increase. In the 1990s, there were only two cases relating to indigenous rights, while between 2000 and 2005 the number grew to six and from 2005 to 2010 to nine.⁷ The decision of the Inter-American Court of Human Rights is binding for all countries that participate in the System. The Inter-American Commission for Human Rights can make recommendations that are not legally binding but that should be implemented in good faith. These decisions demonstrate that great advances have been made since the end of the 1980s in guaranteeing human rights for indigenous peoples, particularly at the international level, and these advances have in turn trickled down to the national level.

7 | Elizabeth Salmón, "Introducción a los derechos políticos y civiles de los pueblos indígenas en América Latina", in: Universidad Católica de Temuco/Konrad-Adenauer-Stiftung (eds.), *Desafíos de la Participación Política Indígena y de las Políticas Públicas para los pueblos indígenas en Latinoamérica*, Universidad Católica de Temuco, 2011, 11.

THE ROLE OF THE STATE

During the early stages of their development, the independent countries of Latin America pursued repressive policies against indigenous people, but since the middle of the 20th century they have been at pains to integrate their indigenous populations into the nation state. At first, the main focus was on people's similarities rather than on their differences. This policy of *indigenismo* served to make society more homogeneous and to assimilate indigenous people. Public *institutos indigenistas* were set up in many countries in the region to implement governmental policy. Development became synonymous with integration and assimilation, and many indigenous people stopped speaking their native language.

Policy only began to slowly change during the 1960s with the emergence of the *etnodesarrollo* movement in Mexico, which called for recognition of indigenous cultures and inter-cultural policies.⁸ Over time, many countries began to introduce bilingual education in schools. School education and political participation are directly linked: until the second half of the 20th century, most countries in the region refused illiterate people the right to vote, a ruling which affected the majority of indigenous people. Ecuador did not grant illiterates the right to vote until 1979.⁹

Indigenous movements started to become more powerful during the 1980s. Government policies relating to indigenous people began to undergo a transformation, spurred on by increased international monitoring of indigenous issues. Constitutional reforms relating to indigenous rights were reflected in national constitutions. The first phase of multi-cultural constitutionalism¹⁰ occurred between 1982

Between 1982 and 1988, indigenous rights were for the first time enshrined, one example of which is the right to cultural diversity.

8 | Juliana Ströbele-Gregor, "Indigene Völker und Gesellschaft in Lateinamerika: Herausforderungen an die Demokratie", in: GTZ, n. 4, 5.

9 | Josefina Aguilar Guamán, "Participación de los pueblos indígenas del Ecuador en la democracia", in: Instituto Interamericano de Derechos Humanos (ed.), *Estudios sobre participación política indígena*, Mundo Gráfico, San José, 2007, 78.

10 | Eddie Córdor Chuquiruna, Einleitung zu *Los derechos individuales y colectivos en la construcción del pluralismo jurídico en América Latina*, Konrad-Adenauer-Stiftung, La Paz, 2011, 10-11.

and 1988, when indigenous rights were for the first time enshrined in Latin American constitutions, one example of which is the right to cultural diversity. During the second phase of pluricultural constitutionalism¹¹, inspired by ILO Convention No. 169, Columbia (1991), Mexico (1992), Peru (1993), Bolivia (1994), Ecuador (1998) and Venezuela (1999) declared themselves to be pluricultural, multi-lingual and/or multi-ethnic states.¹² In the third phase, indigenous peoples were recognised as nations within the state and were given certain rights of autonomy, such as the right to govern their own lands. To date, Ecuador (2008) and Bolivia (2009) have enshrined this plurinationality in their constitutions.¹³ However, many countries have not yielded to the indigenous peoples' demands for self-determination because they fear the emergence of independence movements and separatist groups. Columbia, Nicaragua and Panama have granted their indigenous population administrative autonomy over their territories.

Some countries are trying to improve the political participation of indigenous people by means of electoral law. For example, in Peru there is a quota system for local and regional elections which guarantees indigenous people a minimum number of seats.¹⁴ There are special indigenous electoral districts for the Chamber of Representatives in Colombia and for the Senate in Bolivia and Venezuela. Since 2005, there have been 28

In Bolivia it is not just political parties that are allowed to stand for election, but also indigenous peoples and citizens' groups. Thus indigenous candidates are not forced to join a political party.

official electoral districts in Mexico that have an indigenous majority. In Bolivia it is not just political parties that are allowed to stand for election, but also indigenous peoples and citizens' groups. This means that indigenous candidates are not forced to join a political party in order to stand for election. Supporters of this rule welcome the fact that indigenous people can still retain their traditional ways of organising themselves politically while continuing to take part in national politics. The possibility of standing for election as

11 | Ibid.

12 | Almut Schilling-Vacaflor, "Die indigenen Völker Lateinamerikas: Zwischen zunehmender Selbstbestimmung und anhaltender Marginalisierung", *GIGA Focus*, 8, 2010, 2.

13 | Chuquiruna, n. 10, 10-11.

14 | Elizabeth Salmón, "Entre las promesas de consulta previa y la continuidad de la protesta social: las ambigüedades de la política indígena en el Perú", in: *KAS*, n. 5, 285.

an indigenous nation has been rarely used, but the chance to stand as a citizens' group has proved popular. Critics point out the danger that the party system will be eroded and political parties will become discredited as forums for political decision-making. This is a particular risk since citizens' groups are often formed to fight elections and then quickly disbanded, making it difficult for them to be held to account. In addition, the legal requirements for transparency and accounting are applied more stringently to political parties than to indigenous peoples and citizens' groups, so it is not exactly a level playing field.

The ratification of ILO Convention No. 169 means that many Latin American countries now find themselves faced with a host of new obligations: the need to recognise, guarantee and protect the rights of indigenous people; to adapt governmental actions to reflect cultural diversity; to carry out systematic consultations with indigenous communities regarding measures which directly affect them; to establish intercultural political dialogue and intercultural education for all; to open up the state justice system to include intercultural values and norms, and to set up governmental regulation and monitoring of companies involved in raw materials extraction.¹⁵ The various countries are all at different stages in implementing these wide-ranging measures. They have to balance policies that grant indigenous people full participation in political, economic and social processes with policies that allow them to retain their own cultural identities and that promote their independent development. It is absolutely essential that they find a way to achieve this difficult balancing act if the weak state of Latin American democracy is to be strengthened.

Policies must grant indigenous people full participation in political, economic and social processes and allow them to retain their own cultural identities.

EVERYDAY LIVES

Since the 1980s, indigenous movements have enjoyed great political progress, including the enshrinement of the rights of indigenous peoples in conventions and laws. But this progress has not been mirrored by improvements in the everyday lives of the indigenous population. The indigenous

15 | Angela Meentzen, *Staatliche Indigena-Politik in Lateinamerika im Vergleich. Mexiko, Guatemala, Ekuador, Peru und Bolivien*, Konrad-Adenauer-Stiftung, Lima, 2007, 184-185.

peoples of Latin America continue to be the most disadvantaged section of the population. Indigenous women, children and the rural population are particularly affected by poverty. A lack of reliable statistics on indigenous peoples in Latin America also makes it difficult to derive any meaningful economic data.¹⁶

In Bolivia and Guatemala, over 50 per cent of the population live below the poverty line, but the figure for indigenous people is 75 per cent.

Indigenous people in Latin America suffer more poverty, sickness and discrimination than other sections of the population. In Bolivia and Guatemala, over 50 per cent of the population live below the poverty line, but the figure for indigenous people is 75 per cent. In Ecuador, 87 per cent of indigenous people are living in poverty. In Mexico, according to data from 2002, communities with a majority indigenous population suffered more extreme poverty than communities with a non-indigenous majority. In countries that reduced their poverty levels between 1994 and 2004, improvements were slower among the indigenous population than among the rest of the population. The lack of equal opportunities in the education system is a particular factor in cementing this situation. Indigenous children attend school for a shorter time than non-indigenous children (2.3 years in Peru and 3.7 years in Ecuador). The number of children dropping out of school is much higher among indigenous people than in the non-indigenous population, as is the probability of failing and having to repeat a class. Indigenous children are more often involved in child labour than non-indigenous children. This can either lead to them failing to attend school at all, or that they have to combine work and school. Indigenous people, particularly women and children, have less access to healthcare; malnutrition and sickness also contribute to lack of scholastic success.

The indigenous population could have hoped that the increased participation of indigenous people in the political process would lead to a clear improvement in their social and economic situation, but this has not been the case. This

16 | The following uses data from a study by the World Bank on indigenous poverty and development. Cf. Gillette Hall and Harry Anthony Patrinos, *Pueblos indígenas, pobreza y desarrollo humano en América Latina 1994-2004*, Banco Mundial/Mayol Ediciones, Bogota, 2005.

is partly due to the fact that indigenous politicians do not necessarily pursue policies in favour of indigenous people, and also because of the gulf between the documented rights of indigenous people and their effective implementation. The United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 both set forth rights that have only been very incompletely put into practice. For example, countries have introduced very few special programs to fight poverty that take into account cultural issues. Instead of promoting the autonomy of the indigenous people, until now, actions to counter poverty have simply served to make them more dependent and cemented indigenous poverty still further.¹⁷

Poverty and lack of access to educational opportunities and healthcare have led to more and more indigenous people migrating to the cities. Nowadays, the picture of rural indigenous peoples living in traditional villages is only a partial reflection of reality.

THE ENVIRONMENT, INDIGENOUS LANDS AND NATURAL RESOURCES

One of the most important demands of the indigenous peoples was and remains obtaining legal ownership of the lands they occupy and the recognition of their indigenous lands. The term "lands" covers the "total environment of the areas which the peoples concerned occupy or otherwise use", and many indigenous people have a particularly close connection with their environment.¹⁸ Animist beliefs in nature as a syncretism between Christianity and Pre-Colombian traditions play an important role. The lands themselves also incorporate their identity and culture and are a place where the indigenous peoples can live in accordance with their own culture. ILO Convention No. 169 calls on governments to recognise this particular relationship with their lands (Art. 13).

The indigenous lands are a place where the indigenous peoples can live in accordance with their own culture.

17 | Instituto Interamericano de Derechos Humanos (ed.), *Campaña Educativa sobre Derechos Humanos y Derechos Indígenas. Módulo Medio ambiente y derechos indígenas desde la dimensión de la pobreza*, IIDH, San José, 2009, 25.

18 | International Labour Organization, n. 6.

Most Latin American countries have a system of collective land ownership, but despite this, many of the disputes that arise between the state, indigenous peoples and private business are linked to land issues and natural resources. There are large reserves of oil and gas and minerals under the lands occupied by indigenous people. The extraction of these oil, gas and mineral reserves often leads to serious environmental damage, particularly water pollution. Many indigenous peoples still survive through hunting and subsistence farming, so these developments threaten their very existence.

ILO Convention No. 169 stipulates that indigenous people should be consulted whenever any measures are considered that affect them directly, but it does not state exactly how these consultations should take place. It is also not stated whether the outcome of these consultations should be binding. Economic development is often reliant on the export of

There is also the issue of companies manipulating the interests of indigenous people – a ploy that is often successful in rural areas because of poor levels of education.

raw materials, so countries are often reluctant to jeopardise development that benefits the whole of the population for the sake of protecting special rights. However, the problem is not only one of a divergence of interests between the state and its indigenous peoples. There is also the issue of companies manipulating the interests of indigenous people – a ploy that is often successful in rural areas because of poor levels of education – or bribing indigenous leaders. In this way, concessions are often given away for a knock-down price that does not reflect the environmental damage that will be caused and the income that will be earned by the company involved. If these problems are to be tackled, then governments must set up a framework for free and well-informed consultation processes, monitor the extraction activities of private companies and set rules on fair payments for damages, compensation and profit-sharing. Countries are facing huge environmental challenges, so it is imperative to set up incentives for companies to protect nature, along with imposing sanctions in the event of violations.

Climate change also presents a major challenge for indigenous peoples in Latin America. It has a more serious impact on poor and indigenous sections of the population, for example through restricted access to drinking water

and the proliferation of certain diseases as a result of global warming. But indigenous peoples also contribute to environmental degradation. They often over-use natural resources such as wood because they have few alternative sources of income.

LEGAL PLURALISM

The task of combining a national justice system with traditional customs presents the countries of Latin America with a major challenge. Since the constitutional reforms of the 1990s, many countries in the region have to varying degrees allowed the traditional dispensation of justice. Since the colonial era, many countries have de facto operated two parallel legal systems. Most of the urban white or mestizo population have access to the state system, while in indigenous communities justice is dispensed in accordance with traditional customs and practices. The preference of these communities for their own justice systems is not only due to cultural differences, but also because, for hundreds of years, there was no government influence in rural areas. The government tolerated the practice of indigenous justice because the lack of state institutions in rural areas meant the two systems did not come into direct conflict. It was only in the 20th century, when many countries experienced large-scale migration from rural areas to the cities, that the different legal traditions and attitudes began to clash.

In the indigenous justice system, the focus is on maintaining a harmonious society. So theft and other crimes are nowadays often punished by ordering the perpetrators to carry out community service, but many communities still have the right to inflict corporal punishment.

For this reason, supporters of the state justice system often accuse the indigenous system of human rights abuses. In turn, the indigenous communities criticise the national

Supporters of the state justice system often accuse the indigenous system of human rights abuses.

judiciary for being extremely corrupt and very slow to resolve conflicts. These accusations and criticisms from both sides lay bare the main problems of the current legal system. Indigenous justice has to comply with international standards on human rights, and many countries need to overhaul their national justice systems in order to halt corruption and operate more efficiently.

At present, countries in the region are working to harmonise and delineate both systems. To succeed, it is essential that both sides are willing to enter into dialogue. The exercise of common law is a reality, but human rights must be upheld and guaranteed for all citizens from all sections of the population and all ethnic groups. A positive development over the last few years is the fact that many indigenous communities have abolished corporal punishment and expanded the rights of women and children. Cultures are not static, and constructive dialogue can help both sides to progress and develop.

FINAL NOTE

The marginalisation of major sectors of society presents a threat to democracy. It is therefore a democratic duty to give all citizens the same opportunities to participate in political, social and economic processes. Over the last few decades, Latin America has taken giant steps in improving the rights of indigenous peoples and increasing their political participation, but these improvements have not yet been reflected in their everyday lives. There is still some distance to go before the rights they have on paper actually become reality.

The examples of Ecuador and Bolivia show how indigenous people can also have a significant voice in national politics. In the case of Bolivia in particular, it is obvious that the government required the votes of the indigenous population to gain power but have fallen short of meeting the original demands of paying more attention to the needs of indigenous peoples. In this and other respects, indigenous movements in the region have complained that political parties have been simply using them to win elections.

States must guarantee the right of indigenous peoples to retain their culture while at the same time enabling them to participate fully in the political, economic and social life of their country.

States need to perform a delicate balancing act if they are to prevent these problems in the future. This is explicitly set out in the UN Declaration on the Rights of Indigenous Peoples, which states that they must guarantee the right of indigenous peoples to retain their culture while at the same time enabling them to participate fully in the political, economic and social life of their country using the mechanisms of representative democracy. If this is to be

achieved, it is imperative to improve the region's education system in order to provide equal opportunities and prepare people to play an independent role in the political process. For their part, the indigenous peoples must begin viewing themselves as truly being a part of their country and using their political involvement to contribute to the common good. There is also a need for forums where citizens can come together, learn from one another, overcome their prejudices and start to understand each other. If people are to live together harmoniously in multi-cultural societies it is essential that the focus is not only on what divides them, but also on what unifies them.