

VIRTUAL DIALOGUES WITH LATIN AMERICA

Socio-Environmental Conflicts in Latin America

Lessons from the Yasuní-ITT in Ecuador



Socio-Environmental Conflict in Latin America

The **Center for Latin American Studies at the University of Arizona**, in collaboration with **Asuntos del Sur** and **Facultad Latinoamericana de Ciencias Sociales (FLACSO-Ecuador)**, with the generous support of the **Confluence Center for Creative Thinking** presents the first in a series of Virtual Dialogues: the Yasuní-ITT Initiative and its regional impact.

This event took place on October 17th, 2013 at the School of Government and Public Policy.

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Why is the Yasuni Important?

By Matias Bianchi

The failure of the Yasuni-ITT crosses transversally with critical debates over North/South relations, conflict over economic development versus preservation of the environment, the value of traditional customs and places within our countries, and the role the region will play on the international scene. These debates are not limited to Ecuador, wherein the conflict for oil extraction



in the Yasuni National Park is symptomatic and representative of the tens of environ-socio-economic conflicts occurring in this very moment throughout Latin America concerning the extraction of our natural resources.

Yasuni-ITT

For those that have not been made aware of what has been going on in the Yasuni, here is a brief summary. The Yasuni National Park is a reserve of immense natural resources located in Ecuador's Amazonian watershed. There are an estimated 150 species of amphibians, 121 reptiles, 600 birds, 200 mammals, and more than 3000 vegetable varieties. It is also home to the Huaorani, Tageri, and Taromenane peoples.

Approximately a decade ago a reserve valued at an estimated 850 million barrels of oil was discovered in the western section of the park in the ITT (Ishpingo, Tambococha, and Tiputini) Block. In 2007, the Ecuadorian government proposed an innovative project, the Yasuni-ITT Initiative, as a means to protect the aforementioned biodiversity while simultaneously working to reduce gas emissions and the greenhouse effect. Rafael Correa's government sought to protect the subterranean oil reserves and thus prevent emissions of 400 million tons of CO₂, as well as respect the biodiversity of the region wherein

on one hectare of land there live more species than all of North America combined. A special fund was set up where the international community would deposit \$3.6 billion, an estimated half of the projected earnings of the oil if it were extracted, over the course of 13 years.

Despite declarations, promises, and commitments from governments and institutions, five years later, in 2012, only \$13.3 million, or 0.37% of the requested amount, had been invested. On August 15th of 2012 President Correa announced famously, "The world has failed us," and consequently abrogated the initiative and requested congressional permission to extract the oil. After a series of intense protests and reactions following the declaration, the matter has been left to a public referendum.

North-South, South-South

One of the most frequent debates occurring on the international level, particularly in relation to the North-South power structure, is that of developed economies and emerging economies. The Yasuni-ITT Initiative is part of a recent trend in countries,



demonstrated through Climate Summits and multilateral organizations, to argue for environmental protections and the territorial as well as human rights of indigenous peoples. Organizations like the United Nations, the World Trade Organization, and the International Labor Organization promote legislation that protects the environment and ethnic minorities. Schemes such as the EITI (Extractive Industries Transparency Initiative), proposed by Tony Blair, or carbon taxation programs such as REDD (Reduced Emissions from Deforestation and Forest Degradation) that seek to place greater emphasis on climate protection rather than resource extraction are now in vogue. It is in this context that the Yasuní-ITT Initiative should be examined.

At the risk of over-simplifying, the project was one in which Ecuador offered to protect the environment, and, in return, developed countries, the greatest polluters in the world, would pay for Ecuador's development as well as for absorbing the carbon emissions of the developed world. It is important to remember that the United States and the European Union produce 30% of the world's carbon dioxide – a percentage that has not dropped since China's economic growth and development (Global Carbon Project).

As a result, Rafael Correa's words are not baseless when he claims, "the fundamental factor in the (the Yasuní-ITT Initiative) failure is that the developed world is a great hypocrite." Ecuador's right to extract its own resources to develop economically as the developed nations have is beyond a doubt. The problem is that this mode of production is inherently unsustainable. Thus the question becomes: how can we construct an international system in which the greatest economic players agree to these types of arrangements?

Conversely, can the region be allowed to simply assign blame to the developed world and free itself of an unsustainable mode of production?

Additionally, it must be taken into consideration that South-South ties are growing wherein industry and investment are increasingly originating in Southeast Asia. Between 2000 and 2012, developing nations went from accounting for 22% to 36% of global production. This raises another legitimate question: will this trend

establish another neocolonial pact of extraction in which Latin America will become a key provider of commodities? The challenge is not changing partners, but rather the business.

Neo-Extraction

Another relevant debate is over the neo-extraction model that has been consolidated in the last decade. During this past decade commodity prices have recuperated after almost a century of instability and depression. Turkish, Indian, and Chinese citizens now buy cars, eat considerably more meat, fund construction projects, and spend. The increase in demand of energy, water, food, and metals wrought upon by the rise of one billion people into the middle class in the past few decades has sustained commodity prices at historical records.

This situation has favored Latin America and allowed it to double its economic participation from 4% in 2003 to 8% in 2013. The Economist has labeled the past decade, "The Decade of Latin America."

Regardless, a recent book by Håvard Haarstad claims that this type of development is not different, in some sense, from the marine based expansion accompanying the industrial revolution in the

North Atlantic. This model continues to be based on extraction of natural resources, low economic diversification, and a dependence on international markets (2012).

The refocusing of regional economies in the past decade has been substantial in that the proportion of primary products as a percentage of exports has risen from a 27.2% to a 42.3%. ECLAC (Economic Commission for Latin America and the Caribbean) recently published a report claiming that high commodity prices explain rates of economic growth of 47% in Chile and 37% in Ecuador in the past decade (ECLAC, 2013). Taking this into consideration it would seem that there are no ideological divisions; Bennington and Bebbington point to a "perverse confluence" within the governments of Correa, Morales, Kirchner, Humala with Piñera, Alan García and Santos (2012). The wave of progressive governments has changed many of the politics, but not the pattern of natural resource extraction. In fact,

“The challenge is not is not changing partners, but rather the business”

the only major changes seen in regards to this pattern has been the larger share of profits reaped by some governments.

Use of the prefix 'neo' in neo-extractivism indicates that the differences between the expansion of economies in the late 19th century and the beginning of the 20th century are subtle, but they exist. Firstly, we are more conscious of the impact human activity has had on the environment, and secondly, it is more difficult to expand exploitation. The conjunction of permissive regulatory frameworks — inherited from neoliberalism — the expansion of demand and rise in prices, have moved fronts of resource exploitation to protected natural spaces and where indigenous populations live. This creates new challenges for these countries.

National Development Versus Social Justice

These challenges are demonstrated in social tensions that have risen in the Yasuní-ITT; in TIPNIS or Itika Guasu in Bolivia; in the Pascua Lama mines or the hydroelectric dam in Balco in Mapuche communities in Chile; the Bagua or Congas Mines in Perú; as well as in dozens of similar conflicts.

What we have found is that, on one hand the grand majority of countries in the region have implemented policies that strengthen identity and the rights of indigenous populations. Bolivia in 2009 and Ecuador in 2008 included ambitious environmental and indigenous constitutional reforms. Bolivia even changed its name to include the adjective "plurinational." In essence, excluded peoples have been brought to light and institutional support has been granted so they may exercise their guaranteed rights.

At the same time, however, profits garnered from extractive activities have permitted Ecuador and other countries to implement social policies that seek to eradicate poverty and combat inequality. According to a report by the United Nations Development Program (UNDP), the gains are indisputable: in Ecuador poverty was reduced from 52% to 37% between 2003 and 2012. The middle class grew from 14% to 35% during this same period. Additionally, Ecuador was the country to advance the most in improving its GINI coefficient. Similar gains have been witnessed in Bolivia wherein Evo Morales created a program titled, "income dignity", which funds retirement for those without savings; this

program has been funded exclusively by exports of natural gas. As Morales has stated, "without export resources, there are no social politics."

Regardless, this model of utilizing extractive processes to in the name of "national development" clashes with the rights and desires of indigenous peoples. Faced with protests, the governments of Alan García or Juan Manuel Santos have no differed from Morales and Correa in criticizing said protests. This includes attempting to delegitimize them and even using force in the name of "national interests" over the rights of isolated communities. In 2011 amidst an indigenous protest, Correa accused indigenous members of terrorism and almost 200 of them had to respond formerly in court. Morales acted against protests regarding TIPNIS in a manner reminiscent of Alan García, who regarded Peruvian protestors as "dogs in the manger" that neither eat nor let others eat (El Comercio, March 2nd, 2008). From this perspective the rights of these communities are planted against the interests of the nation.

This is a necessary debate that does have an easy solution. Social politics are fundamental and indigenous populations have a voice that cannot be muted. The implementation of popular consultations could have a more transparent role to prevent legitimizing massive consumerism as an alternative.

The failure of the Yasuní-ITT Initiative is an invitation to respond to questions over what relations we want and can have with the world, what model of development we want and how we can use our natural resources in a way that protects lives and the resources for our children. We cannot deny that development comes intrinsically bound to the intervention of man in nature, as witnessed in climate change and the degradation of our green spaces. Furthermore, we must maintain that the rights of indigenous peoples are inalienable. These tensions are perhaps irreconcilable. Only a debate that transcends superficialities such as "the noble savage" and "imperialism", a debate that is inclusive, democratic and informed, could perhaps provide the space to search for the best solution given the resources and conditions.

The Yasuni-ITT Initiative or the Complex Construction of Utopia

By Alberto Acosta

Breaking myths will always be a complex task. So-called realism thwarts change. Whoever enjoys privileges that could be affected by such changes puts up resistance. That is why the idea to leave the oil in the Amazon region in the ground was criticized from the beginning. We knew that it would be difficult to cut a swath through the national and international oil interests and that people would do everything they could to weaken the innovative potential of this revolutionary approach.

Indeed, doubts have been raised ever since the Yasuní-ITT initiative was put on the agenda. (ITT is the abbreviation of the oil fields Ishpingo, Tambococha and Tiputini.) People were baffled by the proposal not to drill for the 850 million barrels of heavy oil in the Yasuní National Park provided there would be an internationally financed compensation payment. Leaving 20 percent of a country's oil reserves untouched seemed completely crazy in an economy addicted to oil. But as crazy as the idea seemed, it attracted support and grew stronger. The Yasuní ITT initiative has four key goals: 1) To preserve biodiversity unique to the planet – the Yasuní National Park is home to the greatest biodiversity per square kilometer registered by scientists to date, with as many species of trees and shrubs as in all of North America; 2) To protect the land and the lives of the indigenous peoples who live in voluntary isolation (the Tagaeri, the Taromenane and presumably also the Oñamenane); 3) To protect the climate in the interest of all of humanity; and 4) To take a first step toward a post-fossil-fuel era in Ecuador. And the fifth goal, one might assume, could be the possibility that we – as humanity – may find concrete and institutional



solutions to the global problems that are resulting from climate change.

The feasibility studies that assessed the potential of this proposal – in comparison to producing the oil – came to encouraging conclusions. Even if one were to set aside the enormous ecological and social consequences of oil production, the option of leaving the oil in the ground would be more attractive than extracting it. In addition, this option would open up a scenario that would benefit everyone – Ecuador as well as the international community.

A PROPOSAL BORN OF RESISTANCE

The initiative to abandon oil production was not inspired by any particular individual. It has no “owner,” but was developed step by step in civil society. People who had suffered from the devastations caused by oil production in the Amazon region developed the proposal even before Rafael Correa became a candidate for President of Ecuador in 2006. Yet the fact that Correa accepted the initiative and the government then supported it was decisive. Correa took on the responsibility for turning the idea not to develop the ITT oil fields into actual policy.

At the turn of the millennium, resistance increased in the communities of the Amazon region and turned into a legal dispute of international significance. The so-called “trial of the century” litigated by the indigenous communities and those communities affected by Chevron-Texaco's oil production became widely known.¹ The resistance of the Sarayaku Kichwa community in Pastaza province succeeded in preventing drilling by the Compañía General de Combustibles (CGC) in Block 23, even though the company was backed by the state and its armed forces. This community, which could rely on active

international solidarity, obtained a pioneering decision by the Inter-American Commission on Human Rights in July 2004. The Commission argued for numerous measures benefiting the Sarayaku. In 2007, the Ecuadorian government finally accepted the resolution of the Inter-American Commission on Human Rights.

Supported by the categorical opposition of the people affected, a moratorium on extracting oil in the south-central Ecuadorian Amazon region gradually developed. Already formulated in various forums, the demand was taken up in the book *El Ecuador Post-Petrolero* (Post- Petroleum Ecuador) in 2000 (Acosta 2000). The following year, a group concerned with foreign debt discussed whether this proposal might bring with it the opportunity of a historic agreement with international creditors. Ecuador could suspend payments on foreign loans and preserve the Amazon in exchange. All the demands were compiled, and this formed the basis for developing the proposal not to exploit the Yasuní oil as part of a broader oil moratorium. The idea was finally laid out in a position paper by Oil Watch² in June 2005, and was forcefully brought into the national political debate. The Yasuní ITT initiative was included in the government program 2007-2011 of the *Movimiento País* (today: *Alianza País*)³ that was prepared during Rafael Correa's 2006 presidential campaign.

THE CHARACTER OF A REVOLUTIONARY INITIATIVE

Yasuní ITT would prevent 410 million tons of CO₂ emissions. In return, Ecuador expects a financial contribution from the international community. Individual countries, especially the more prosperous societies, can take on their part of the responsibility, depending on their share of the environmental destruction for which they are responsible on this planet.

The initiative proposes that all peoples of the world change their relationship to nature profoundly by contributing to the establishment of a new global legal institution according to the principles of global environmental justice and joint responsibility for the global commons. This institution would not represent the interests of particular nations or private interests; instead, it would be a custodian for what is owned jointly by all of humanity: the atmosphere and biological diversity. This goes far beyond the logic of international cooperation, considered to be

“development aid.”

AUDACITY: A DIFFICULT COURSE

This proposal has taken a convoluted path since becoming a topic of official political discussions. There were steps forward and back, successes and contradictions, approval and controversies. What is interesting, and actually surprising, is that this idea has taken root even though some people considered it extremely far-fetched. Briefly after its official launch, the encouraging voices soon multiplied, more so abroad than in Ecuador. The opportunity that something previously unthinkable would emerge came to the fore in the societal debate, in parliaments and in some governments.

Germany's early support must be mentioned here. Representatives of all parliamentary groups expressed their support for the ITT initiative in June 2008, and asked the German government for support. That is why the rejection of the proposal made by Dirk Niebel, the German Minister for Economic Cooperation and

Development, in September 2010,⁴ was a slap in the face. Niebel's rebuff German reduced the chances for more support, as many potential contributors had taken Germany's solid commitment for granted. The decision apparently reflected a small-minded mentality, not

“The initiative to abandon oil production was not inspired by any particular individual. It has no “owner,” but was developed step by step in civil society.”

one of a statesman with a broad vision.

Things were difficult in Ecuador as well. The proposal formulated by the then-Minister for Energy and Mining⁵ at the beginning of Correa's presidency collided with the desire of Petroecuador's CEO to produce the oil as quickly as possible. The CEO even signed agreements with foreign companies behind the minister's back – and the minister was a member of Petroecuador's board. The confrontation was settled after President Correa intervened; on March 31, 2007, in an unusual procedure, he heard the various arguments presented by Petroecuador's board. On that day, the option to leave the oil in the ground was mentioned in very concrete terms as the first option, provided that the international community would contribute at least half the monies that would be generated in the event of exploitation. Option B – exploiting the oil – was sketched out in case that initiative were to fail. Since then, the conflict between the two options has been simmering with different degrees of intensity.

Later, the initiative's prospects veered back and forth

between great hope and growing doubts. President Correa was applauded at the United Nations, OPEC, the World Social Forum and numerous international summits when he presented this way of protecting the Amazon and preventing major negative impacts on the global environment. But it was the same president who made it all too clear that it was a yes-or-no situation – in other words, that the oil would be exploited if there were no international financing. A scent of blackmail was in the air, and it fueled doubts.

In 2010, the Ecuadorian government defined how the revenues raised by the model would be spent. The funds would be controlled by the UN and be spent on the transformation of the Ecuadorian energy supply model by developing the potential of alternative energy sources; reforestation and care of protected areas; sustainable social development, especially in the Amazon regions; and finally, investments in technological research.

A profound discussion in civil society quickly ensued, both domestically and internationally. Thanks to this debate, the original proposal, which used terms such as “compensation” and “international donations,” was superseded by a different framing – joint contributions as the fundamental principle of global environmental justice. It became clear that one cannot be compensated for an obligation that one must perform in any case, namely global environmental protection. Debate about the Yasuní ITT initiative also made clear that there could be many financing options, and that emissions trading cannot solve all problems, as even the Ecuadorian delegation had assumed at times. As the project made distinct progress, it also stimulated hostile responses. Even President Correa dealt it a serious blow. As the only head of government in the world who had an avant-garde proposal to combat global warming, he needlessly risked a confrontation at the United Nations climate summit in Copenhagen in December 2009. After signing the documents establishing the International Trust Fund, he changed his mind at the last minute. His declaration, which was also directed against potential contributors to the fund, shattered the Yasuní ITT negotiating delegation, and the foreign minister handed in his resignation. Again, there were suspicions that oil interests had played a very important role. Paradoxically, many people in Ecuador found out about the initiative only through these declarations made by the president, and through the ensuing situation.

We need clear signals for the Yasuní ITT initiative to become a reality. We need coherent and consistent government action. It is up to President Correa to overcome the problems that he himself helped cause and to prove his renewed and strengthened support for the initiative. He should commit himself to the position that ITT will not be touched, at least as long as he is in office.⁷ The activities linked to oil exploration and exploitation at the edges of ITT should not be permitted, either. And the government could put a stop to other threats to the Yasuní (deforestation, illegal logging, settling, illegal tourism) and prohibit the road from Manta to Manabí as a part of IIRSA.⁸ It would also be important to explore whether Peru would be able to implement a similar procedure in neighboring oil fields. The areas are in direct proximity to ITT and hold only about one third as much oil as the reserves under Ecuadorian territory. Such an expansion of the initiative could ensure that a much larger area with similar mega-biodiversity would be protected. This area is also home to peoples who have had no contact to the outside world as yet.

Even though it is not yet a reality, Yasuní ITT has produced many satisfactory results. The topic with its many facets has been positioned in the national and international debates. And there are people in Ecuador who are using hard-hitting arguments to advocate for the position that it is appropriate to leave oil in the ground even without international financial involvement. This Option C could be implemented via strict adherence to the constitution. After all, oil production in this area could take place only upon application by the president of the republic, and only on the basis of a “declaration of national interest” by the national assembly, which can call a referendum if it considers it appropriate. Then, the Ecuadorian people would have the last word.

The true guarantor for the success of the Yasuní ITT initiative is dedication on the part of civil society in Ecuador and around the world. Only civil society can take up this project of life. Not extracting an amount of oil that humanity would use up in just nine days would provide a new way of viewing humankind’s encounter with nature. It would break open the narrow horizon of selfish, short-term perspectives and encourage similar initiatives around the world. We need two, three, many Yasunís!

Human Rights and Petro Extraction in the Yasuni

By Daniela Salazar

Following the failure of the Yasuní ITT Initiative, the Ecuadorian government decided to proceed with petroleum extraction in Blocks 31 and 43 of the Yasuní National Park, which aside from containing some of the most important biodiversity in the world, is also inhabited by indigenous peoples who have chosen to remain in voluntary isolation. The implications of such actions on their human rights imposes additional responsibilities on the Ecuadorian state in their execution of this controversial decision.

Furthermore, how the Ecuadorian authorities went about making this decision is illustrative of a crisis within Ecuadoran Democracy. Decisions are made within the Presidency and immediately the Ministries, Assembly and Constitutional Court rush to develop justifications for said decisions based on dubious and questionable interpretations of the same constitution this government authored. Passivity among Ecuadorian society worsens the absence of limits and controls over the government.

The Ecuadorian constitution has been designed to allow for the application of international norms, treaties, and ratifications and in fact in, in the case of when international laws are more favorable to human rights than provisions already in the Constitution, then the Constitution states clearly that all Ecuadorian governmental organs are to apply the international regulations (article 426). The language is very clear in stating that the application of ruling law is to favor whichever laws favor human rights the most.

Aside from this, the Ecuadorian constitution contains two seemingly contradictory articles that have created a quagmire regarding the Yasuní ITT initiative. Article 407 states that extraction of nonrenewable resources, such as petroleum, may only be done after both a petition by the president stating that it is in the national interest and subsequent approval by the National Assembly. After these two conditions

have been met, the matter must still be put to a referendum. However, article 57 states that territories and communities engaging in voluntary isolation are to be protected from any type of extractive process that would inherently impose on their constitutional right to remain in isolation. These two provisions dealing with extractive resources would therefore seem at odds since one explicitly seeks to prohibit extractive practices, while the other provides a method of legal circumvention.

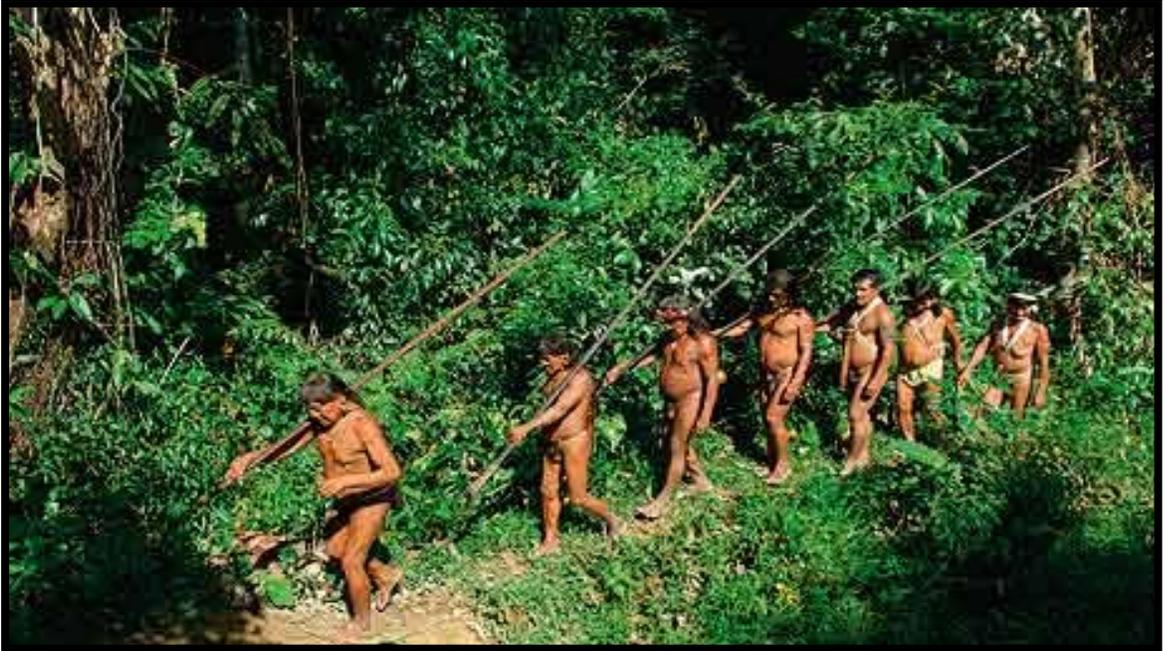
“A physical or cultural extermination of peoples in voluntary isolation cannot be allowed as a means of obtaining needed resources for the development and beneficence of the Ecuadorian people.”

In their decision to move for extraction of the petroleum the National Assembly has perversely interpreted that because President Correa argued for the

national interest, article 407 must supersede article 57 even though this contradicts article 426, which can be applied to treaties regarding human rights and territorial protections. To do so, they have applied article 427, which states that a literal interpretation of the constitution can be questioned when the integrity of original intent is subjective.

In doing so the National Assembly has contradicted the norms providing for application of international laws and regulations in cases where they strengthen human rights. Rather, in a perverse misconstruction of the law's intent, they have sought to selectively misappropriate cases of international legal precedent. A prime example being from the InterAmerican Court's ruling on *Saramaka v. Suriname*, from which in paragraph 127 of the ruling, the court stated that the relevant ruling (in *Saramaka v. Suriname*) should not be applied in such a manner that would impede the development of the State. The National Assembly's citation of one line in a complex legal ruling inherently ignores the context of the *Saramaka* case as well as the key difference in that the Yasuní ITT lands are inhabited by peoples in voluntary isolation, thus requiring a wholly different separate set of legal interpretations. This type of legal chicanery has embodied the dubiously legal procedures taken by the Ecuadorian government to push for extraction in the

Yasuní-ITT. Because oil extraction in the Yasuní-ITT legitimately threatens the livelihood and lifestyles of the Tagaeri and Taromenane people, who remain in the voluntary isolation, as well as that of the Huaroani people, the decision for extraction contradicts protections afforded to indigenous groups in the constitution.



The TAGAERI-TAROMENANE peoples. Image Source: United Nations Development Programme

In perhaps one of the most frustrating elements of this case, the Ecuadorian government has argued that because the Huaroani tribe, which does not live in voluntary isolation, also inhabits parts of the Yasuní National Park, that the protections afforded to the Tagaeri and Taronmenane peoples are not relevant. However, this argument is flawed for numerous reasons lays a dangerous precedent for cases regarding Ecuadorian indigenous populations and their territorial rights.

This interpretation conveniently neglects a history of forced assimilation and structural violence that has already afflicted the indigenous peoples of Ecuador as well as massacres and targeted acts of violence that are occurring today.

In another development that again characterizes the unsavory nature in which the Ecuadorian government has comported itself, it has pushed aside a constitutional provision requiring *a priori* consultation of any indigenous peoples likely to be affected by development of extractive industries. Rather, it has now attempted to seek this consent *a posteriori*.

Certainly, no one expects the guarantees of sovereignty and protections laid out in the



constitution to be absolute or definitive; however, even a modicum of consideration for the larger impacts this would wreak upon the indigenous populations of the Yasuní ITT would have brought into light questions of how the sudden influx of people and equipment petroleum extract would affect the population's autonomous decisions of remaining in isolation. It must be taken into account that this is not merely a resource contingent consideration, but also the historical and cultural identity of the indigenous populations. These lands represent entire, irreplaceable histories that under international norms and regulations as well as provisions within the Ecuadorian Constitution should be preserved.

The National Assembly's response to the Presidential decision to consider extraction in the Yasuní-ITT has not taken these issues into account and instead strictly considers environmental and production impacts, thus deeming that extraction is in the national interest. Such an analysis serves as a flagrant disregard for human

rights that the same administration ostensibly sought to prevent with the forging of this latest constitution.

International Indigenous Rights Standards:

Problems of Implementation in the Context of Extractive Industries in Latin America

By Leonardo Alvarado

The United Nations' Special Rapporteur on the Rights of Indigenous Peoples' ("IP") mandate is provided by the United Nations Human Rights Council to monitor and report on the situation of indigenous peoples worldwide. It communicates with governments on allegations received regarding human rights violations, conducts country visits, and prepares thematic reports on issues of common concern to indigenous peoples worldwide.

A major issue brought to our attention within individual complaints and country visits is the issue of extractive industries on or around

Indigenous Peoples' territories. It is a major source of social conflict not only in Latin America, but in other regions including Asia, Africa, and North America.

Conflict is often rooted in the high global demand and high level of importance placed on extractive industries by governments, which are often responding to corporate interests that covet these precious resources. In recent decades this has become more visible as affected local communities, particularly those of Indigenous Peoples, have become more vocal, outspoken and more effective in articulating and demanding the recognition of their rights within national and international fora.

In the past two or so decades in Latin America, one can see that with the growing intensification of



extractive industry concessions and operations in Indigenous Peoples' territories that there have also been strides on another front: the growing recognition of Indigenous Peoples' rights – within constitutional reforms in Colombia, Peru, Guatemala, but most importantly Bolivia and Ecuador – being the most advanced worldwide.

There have also been important advances internationally: the ratification of International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples ("ILO 169") ratified by the vast majority of Latin American Countries, which is the only international treaty on the subject matter, and is legally binding to ratifying countries. In many countries, international treaties hold a status equal to national constitutional protections or have a status higher than legislation, but lower than constitutions. Indigenous Peoples' have clearly and vocally demanded direct application of the ILO 169.

In addition, one can see that Latin American countries, along with the vast majority of countries of the world voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the U.N. General Assembly in 2007. While it is not a binding treaty, it is definitely an authoritative source for legal interpretation (both of national and international human rights norms) of the human rights of indigenous peoples. Bolivia adopted this entire Declaration as part of its internal legal system. It has served as a basis of interpretation by national and international courts. (Belize, Colombia, etc)

Of particular importance in the Latin American region is also the development of very advanced

jurisprudence within the Inter-American Commission and Inter-American Court of Human Rights.

While in Latin America, Governments have been willing to ratify ILO 169, vote in favor of the Declaration on Indigenous Peoples, and enact important constitutional reforms, there are serious problems in the implementation of IP rights: Mainly due to lack of political will to enact the necessary administrative, institutional changes necessary as well as entrenched discrimination against IPs within the legal and political cultures in many countries.

In the Rapporteurship, we have seen that despite wide acceptance of, for example, a duty to consult with indigenous peoples regarding legal/administrative measures or regarding development activities, that there is serious disagreement between governments and IPs as to the content and extent of the related principle of “free, prior and informed consent”. And whether this right provides the right of one segment of the populations – the IPs – to veto the development

agenda of a nation, by implication then, affecting the right of a whole nation’s development.

This has been a point that has consistently come up in cases presented before the SR, and which the SR has tried to insist on a framing of the discussion beyond that of whether a power of veto exists. That was not the intent of the ILO 169 and the UN Declaration. They were meant to revert previous patterns of government action that severely impacted IPs human rights without their participation and inclusion into the decision-making processes that impact their lives. It was meant to prevent unilateral actions by governments and third parties that could seriously affect their lands, resources, cultures and identities as a people.

In his recent thematic reports, the SR has proposed governments, companies, IPs and others to address the issue of extractive industries and IPs by focusing again on the substantive rights of the IPs (i.e. their lands, cultures, religions and spirituality, etc) at play and in which consultation and consent are one of several safeguards to those rights.

About

Virtual Dialogues with Latin America is a series of events organized by the Center for Latin American Studies at the University of Arizona with support from the Confluence Center for Creative Thinking and Asuntos del Sur think tank. The goal is to provide an expository medium by which leading experts in Latin America can interact with students and faculty, not just at the University of Arizona, but world-wide as the events are streamed and make use of social media platforms. The dialogues address pertinent issues that affect Latin America today. Just as we rely on institutional support from the aforementioned organizations and institutions, we also work with and rely on partners throughout Latin America. Thank you to the Confluence Center for Creative Inquiry at the University of Arizona for being a major supporter as well as to Dr. Linda Green for her considerable time and resources in putting this together.

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He has worked for the UNDP, the Organization of American States, the Development Center at the OECD, the Woodrow Wilson Center, the National Government of Argentina and most recently as a Director of the Federal Institute of Government. He has authored a book on the governance challenges that oil exporting countries face. His doctoral research deals with the political economy of underdevelopment in different regions of Argentina. He is the director and founder of the think tank Asuntos del Sur and lectures on the political economy of Latin America at the University of Arizona.

Alberto Acosta

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