

Number 215

**ETHNIC CONFLICT AND GOVERNANCE  
IN COMPARATIVE PERSPECTIVE**

Latin American Program  
The Woodrow Wilson Center

Copyright September, 1995

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## ACKNOWLEDGMENTS

The following papers were presented at the conference "Ethnic Conflict and Governance in Comparative Perspective," held at the Woodrow Wilson Center on November 15, 1994. The conference and this Working Paper were made possible by a generous grant from Pew Charitable Trusts. This grant enabled the Center to mount a series of six workshops on the general topic "Ethnic Conflict in the Post-Cold War Era." These workshops took a comparative approach to issues of ethnic conflict in countries around the globe: in Europe, Asia, Africa, and Latin America; in advanced industrial economies; in countries undergoing the transition to market economies; in secular societies where religion is resurgent. Two were held abroad, in the Czech Republic and in Sri Lanka, to assure that scholars, journalists, and policymakers from other parts of the world might contribute their views to the discussion.

This collection of papers was prepared for publication by Ralph Espach, Research Assistant of the Latin America Program of the Woodrow Wilson Center. The conference was organized by Bernice Romero, former Program Associate of the Latin America Program, with invaluable assistance from the staff of the Latin America Program, including Program Assistant Michelle McCallum, Program Associate Allison Garland, and Intern Meraiah Foley.

The Latin America Program would like to express its special gratitude to Dr. Richard N. Adams for his kind and thoughtful assistance in the preparation of the documents and his insightful introduction. We wish to thank all of the conference participants, whose openness and seriousness of purpose made for a frank and enriching exchange.

This collection of conference papers was preceded in August of 1995 by the publication of the conference report, Working Paper Number 214.



Many options are opened by the constitutional reform. One is the possibility of enriching ourselves spiritually, humanizing ourselves more by humanizing the other, something that has been a chimera since the Conquest. The way in which indigenous people appropriated the constitutional language demonstrates that it is possible that diversity will make us better people, since we will learn to look with different eyes and with an improved vision that draws us closer to the nature of things--like the meaning of the word Law, which the Iku people define as "that which encompasses goodness."

## INTRODUCTION<sup>1</sup>

Richard N. Adams  
University of Texas at Austin

While ethnic and indigenous issues in Latin America have received a great deal of attention in recent years, the subject is inherently characterized by rapid change and confusion. On November 15, 1994 the Woodrow Wilson Center Latin American Program invited scholars and observers familiar with ethnic issues to address problems of ethnic conflict and governance, with special attention to Latin America. While a number of papers on Latin America -- those included in this collection -- were specifically commissioned by the organizers, other participants were invited to speak on Southeast Asia, India, South Africa, Eastern Europe, and Croatia. In addition, two more general papers dealt with the part being played by ethnicity in the changing world system and constitutional processes in ethnic accommodation. The entire set of presentations and the ensuing discussion was recorded and an executive summary was prepared.

The distinctive materials from Europe, Asia, and Latin America made clear that the category of "ethnic issues" presents almost insurmountable problems for comparative analysis. The centuries of European colonialism, generated by the basic expansion of western mercantilism and capitalism, left superficially similar imprints over much of the world, but the course of local evolution has everywhere yielded very distinctive products. One can be grateful for Eric Wolf's brilliant analysis of this process but still be aware that for all the common dynamics, the societies that have emerged in Croatia and Colombia, Southeast Asia and South Africa, or the Caribbean and mainland Latin America are startlingly different in their current conditions and future promise. The range of the use of the term "ethnic" itself has been so loose as to include everything on the cultural scene that is not directly derived from the state on the one hand (e.g. religion, language, clothing) to a strict focusing on those derived from identity with the ancestral--my own preference.

Although conflict occurs between and among ethnic groups, with or without the presence of the state, the problem of governance places the state in the

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<sup>1</sup> The papers in this collection were originally prepared for a conference on "Ethnic Conflict and Governance in Comparative Perspective," held at the Woodrow Wilson Center on November 15, 1994. The concept of the conference was broad both in subject matter and in geographic coverage. It included papers on ethnopolitical conflict in general, constitutional means of ethnic accommodation, indigenous demands, national development programs, and environmental programs, and on Southeast Asia, India, South Africa, Eastern Europe, and Croatia. Latin America and the Caribbean received major attention, however, through seven papers, six of which appear here. An "Executive Summary" of the complete conference has been issued as a separate working paper by the Center. Francisco Campbell's oral presentation on "Nicaragua," was not submitted in writing.

foreground of the discussion. In spite of the fact that a wealth of information, new to many of the participants, made the discussion lively and intriguing, the state seemed to emerge in a Weberian purity, enhanced perhaps by a Gramscian sense of strategy. This state, however, after centuries of colonial gamesmanship, stood revealed as an incompetent, disheveled, and wrong headed institution, incapable of effectively providing the security and well-being of the people over whom it ruled. Its deficiencies have become so broadly obvious that individuals from all sectors have concluded that they could do better. More for the worse than the better, the term "ethnic" has been used to categorize this wide range of people who propose that they can do better than the state.

The papers in the present volume address these broader questions through material from Latin America. Here the question of "ethnic accommodation" of indigenous peoples has been irrevocably entangled with "ethnic extinction" and "genocide," whereas that of other ethnic populations has been entered as part of the competition for (at least some) control of the state. In his paper, Rodolfo Stavenhagen speaks of these two levels of analysis: first, understanding the changes that are really happening; and second, keeping track of changes in our thinking about them. Because the present set of papers speaks to both these questions, they offer something both to specialists and to others who are looking for an introduction to the area. Collectively there is no pretense of comprehensive coverage and in each case the author has brought his or her own particular focus on the issues.

The papers are ordered into two sets. The papers by Stavenhagen and Mintz, respectively, masterfully contrast two very different phases of the New World ethnic experience. The first outlines the indigenous<sup>2</sup> affairs in contemporary Latin America while the second points up the salient features of ethnicity in the Caribbean. As will be discussed shortly, the differences are important, not only for understanding what is happening, but because they demand a very different frame of reference for our thinking.

The second set of papers shifts the focus entirely to problems of conflict and governance on the mainland of Latin America. Collier's essay takes us to the heart of a major conflict in state ethnic relations, the Zapatista Rebellion. The Adams paper bridges the two sets as it addresses the globalization of ethnic processes in Latin America; but it then focuses in on specific events in Guatemala, a situation inherently similar to that in Chiapas. The final three papers are concerned with events in the interior lowlands of the Andes. Kimerling's description of the Huaorani of Ecuador points up the differences and commonalties of the ethnic problems characteristic of this region with those of Mexico. The paper by Cepeda

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<sup>2</sup> There are problems attendant on the use of terms for the peoples discussed here. Although traditionally popular for natives of the New World, the term Indian will be reserved for those people who claim antecedents in the subcontinent of India. Peoples who claim origins in the New World will be referred to as indigenes. The latter usage does not conform to either preferred (e.g., Native American) or popular modes, but would avoid confusion.

Central America today treats them as indigenes, irrespective of their African antecedents.

There are important differences entailed by the focus on the "ethnic" in the Caribbean and that on the "indigenous" in Latin America. While both are "ethnic" by definition, the indigenous peoples have an historic relationship with the environment that grants them a physical significance that is not so telling for ethnic groups whose history is as short as are those of the Caribbean. Indigenous peoples who trace their origins in certain locales, mountains or regions can claim a special relationship that antedates the presence of Westerners and Africans, and thereby merit special privileges. Caribbean peoples who seek out their origins must refer back to distant lands that most of them have ever seen, nor with which many feel any real ancestral identity. They are, therefore, perhaps more open to the attractions of other kinds of identities, such as religion, social class or political ideology. Stavenhagen asserts, and my own experience would confirm that the indigenous leaders on the mainland have tended to put class identity aside in favor of ethnic identity. Collier cites efforts in Mexico to identify indigenous interests with those of class in the 1970s, and much the same thing happened in Guatemala in the same period. However, in the latter case, the class quality tended to be put aside when revolutionary efforts proved disastrous. While Mintz does not go into the question, some of the political competition between Caribbean ethnic groups clearly has a classist quality. In the early days of Guyana's independence socialist ideologies were brought into play as a part of what was also clearly an ethnic competition. Political parties can have an openly ethnic quality in the Caribbean, whereas Latin American indigenous peoples have tended to avoid association with political parties. Indigenous ethnicity in Latin America is strongly exclusive. For indigenous people to seek out alliances with non-indigenous people is not easy. It suggests that they deny their basic definition--i.e., that they are, by rights of origin, the exclusive inheritors of the continent. While they may do so in private, indigenous leaders find it difficult publicly to acknowledge that they may be divided by class and national differences.

## **II. Indigenous Ethnicity, Conflict, and Governance in Latin America**

The remaining papers in this collection deal entirely with indigenous peoples of Latin America. As Stavenhagen pointed out, a major difference among these peoples is that an important segment of them has long been agrarian laborers and peasants in Mesoamerica and the Andes. They have been incorporated in and their labor controlled by state structures since early in the colonial era. The penetration of capitalism and the rise of nationalism has merely exacerbated these relationships. The indigenous peoples of Chiapas and Guatemala are of this kind. They share a common, if distant, past in that all are speakers of Mayan languages and constitute a more or less contiguous population that occupy a belt some two hundred miles wide, reaching over five hundred miles from Yucatan in the north, southwest to the Pacific shores of Chiapas and Guatemala. While the Chiapas Maya comprises a small percent of the total Mexican population, it is a major portion of the Chiapas

population. The Guatemalan Maya, in turn, constitute somewhere around 50 percent of the national population. Thus together, the Mexican and Guatemalan Maya comprise a significant block of indigenous peoples, possibly six million strong.

In contrast, the peoples of concern in the final three papers, the indigenes of Colombia and specifically the Huaorani of eastern Ecuador, are very different. Most have been horticultural and gathering peoples, long abandoned by the state to the destructive vagaries of economic and political penetrations. They are small in number, form very small portions of the respective national populations, and until the present century their survival was of almost no national interest. They classically live in scattered small communities and many have been--at least until they were confined by western expansion--nomadic within broad native territories. In culture, social-political organization, and ecology these peoples have been markedly different from the peasant peoples who have occupied Mesoamerica and the higher regions of the Andes. While all indigenous groups in the hemisphere suffered high losses under contact with the advancing West, the peoples of the Andes and Mesoamerica began to expand in the 17th and 18th centuries and today are probably equal in size if not larger than the aboriginal populations. By far the greater number of the other aboriginal societies, however, were destroyed and those who survived did so by occupying areas of little or no interest to the invaders.

While the historic, aboriginal differences among these peoples is fundamental to understanding their differential survival today, apart from this, the types of factors they confront today are common to all, albeit often differing greatly in weight and detail. The accompanying table outlines a comparison of the four groups discussed in these papers. The populations have been ordered, from left to right, on the basis of what appears to be the amount of violence that currently characterizes them. In these terms, the most violent cases are the Huaorani, a refugee population of 1300 gathering peoples of which some thirty seven are in actual militant resistance (Kimerling, *Infra*); and the Maya of Chiapas, potentially a population of three-quarters of a million<sup>6</sup>. In Chiapas, as is detailed by Collier, the sector in rebellion includes others besides Indians but at the same time does not include all the indigenes. So the actual number in rebellion is not clear. From both accounts, the Huaorani and the Chiapas Maya are equally dedicated to their interests and willingness to pursue violent resistance. In Guatemala the situation is far from clear in terms of a commitment to violence since the scorched earth policies of the Guatemalan

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<sup>6</sup> Mexican Census gives 705,572 Mayan language speakers for 1980.



## Nature of current relations

Cases:	Huaorani	Chiapas, Mexico	Guatemala	Colombia
<b>Nature of current relations</b>	Destruction of indigenous society under tacit approval of state; no active constitutional protection	Open conflict between the state and indigenes in constitutional state interests hold	Violent and strained relations under constitutional forms with no indigenous participation	Constitutional rights with indigenous participation, and preferential judicial practice. Indians acting clearly in conjunction with civil political process
<b>Constitutional and military situation of indigenes</b>	Indigenes acting alone in self defense, mainly by refuge and/or subordination	Indigenes acting in conjunction with peasants and others in military violence	Indians acting both in pro and con to military violence	Indians acting clearly and in conjunction with the civil political process
<b>Major sources against indigenous interests</b>	International private enterprise with state compliance is major dynamo for displacing indigenes	Local private and state enterprise are major dynamos of indigenous displacement	Private enterprise with state compliance has already displaced indigenes, but much latent potential exists for more	Private & state economic interests conflict with indigenous interests but state judicial process provides some balance
<b>Major kinds of indigenous action</b>	Refugee flight of a few surviving groups; most have been displaced	Zapatista rebellion, combining indigenes with peasant and other with peasant and other interests	Various levels of indigenous organizing with some focus on the "peace process" to set new guidelines	Indigenous groups using 1991 constitution in an experimental process to see whether it works
<b>Globalization processes</b>	Oil exploration and extraction is the principal source of problems	World energy prices push local development; state modulating action due to NAFTA interests	International NGOs favoring indigenes; fear in non-indigene population about possible indigene revolt	NGOs active; economic interests both national and international; narcoproduction and traffic present

Table. Outline Comparison of the Four Populations

government in the 1980s seriously repressed any open hostility on the part of the Mayan population for the time being. The leaders of this population are focusing now almost entirely on questions of cultural and local autonomy. The two papers on Colombia, mainly dealing as they do with constitutional matters, provide little information on the degree of indigenous violence that may exist there. In terms of adherence to constitutional matters, it is clear from Cepeda's paper that Colombia is the only country of the four that has both developed a constitution with the participation of indigenous interests, and in which judicial procedures are attempting to adhere to constitutional commitments in promoting better treatment of the indigenes.

In all four cases, the actors that have most threatened and damaged the indigenous societies have been a combination of private interests backed by state controlled legal procedures. The Huaorani are the direct target of oil exploration and extraction interests, while the Chiapas Indians are the targets of numerous local non-Indian cattle and farm interests and of the effects of state sponsored energy development enterprises. The Guatemalan indigenes over the past century and a half were the target of export-oriented development policies that both displaced many indigenes from their lands and more significantly drew them into wage labor. The land situation is in many respects similar to that of Chiapas. Cepeda spells out some cases that suggest that the Colombian indigenes confront problems similar to the other three, but that there is some difference now in the way at least some of the cases are being handled under the constitution.

The current posture of the indigenous peoples confronting these challenges is in all cases some degree of resistance, from the Zapatista confrontation to the Huaorani withdrawal. The degree to which they can do this under the protection of a friendly constitution and friendly legal and judicial processes now varies markedly. I find little sense, however, in attempting to draw comparative conclusions from many of these differences. The 1991 Colombian Constitution is relatively new, we have only episodic reports on how it is operating on indigenous matters, and obviously only time will clarify how much leeway is going to be allowed to growing indigenous interests. One might allow that 1.5 percent of the Colombian population could retain control of 25 percent of the national territory (cf. Cepeda, Annex II) if they were the wealthy elite; but as indigenes, the picture seems much more doubtful. While at the moment the Zapatistas of Chiapas are militant and the indigenes of Guatemala are not, fifteen years ago a reportedly significant segment (some guess half a million) Guatemalan indigenes would have entered the ongoing rebellion had arms been available. And if Kimerling's report is accurate, only thirty seven of some 1300 Huaorani now alive are in active resistance against the encroaching state and oil interests. Numbers (at least of this kind) do not tell us a great deal about how people think.

If most indigenous peoples today seem to be facing similar problems, it is partly because the changes underway are pretty much the same the world over. With few exceptions, the nation states that evolved during the past two hundred

years have all been dominated by one or a few related ethnic groups. In the new world, the dominant ethnicities are all identified as being of European or African origin. Everywhere the indigenous peoples were either annihilated or decimated and politically subordinated. Their resurgence today is hardly the return of a prodigal son; it is impossible for the societies that existed at the time of the European invasions to reemerge in some semblance of their earlier forms. Rather, the world today is composed of nation-states, and the resurgent indigenous people must accomplish their renaissance under the rules laid down by the dominant powers that reign. The process underway in Colombia on the heels of the 1991 Constitution illustrate this. Padilla's observation applies to all such efforts: "The incorporation of the rights of the indigenous people into the Constitution is two-sided. On one side, the pressures exerted by the indigenous movement attains successes that are without precedent and the State obtains recognition for its efforts to democratize the society. But, on the other hand the way is made clear for the acceleration of the process of integration of the indigenous people. Additionally, their forms of struggle and ways of representation are modernized and the development process of the individual who can better serve the interests of the marketplace and the efficiency of the system is increased."

Keeping track of what is happening in the evolving world of the emergent indigenous peoples will be a continuing empirical task of research and reporting. Thinking about the changes underway, however, requires a willingness to separate oneself from the necessarily normative claims and demands of the various parties. States may claim that their constitutions are fair and equitable, that they are profound and competent to solve the problems that exist between indigenous peoples and the state. Indigenous leaders may claim that there are thousands (or hundreds of thousands) indigenes whose claims are going unanswered. Fundamentally, however, problems must grow from the conflict between states claiming to be individualistic and democratic (irrespective of how they actually behave), and indigenous sectors that, because of their claim to historical priority, seek special privileges that are usually communalistic and rarely democratic (irrespective of how exaggerated or modest these may be). At worse, it is the claims of revindication by the descendants of "original" peoples against the domination of their conquerors. At best, however, one can only hope for a negotiated process that finds some balance between a peoples' claims for a separate identity against the homogenizing demands of nation-states.

One may agree with Collier's concluding comment that, "Contemporary nation-states are in many instances struggling to reassert their primary claims on citizenship and identity, but in the post-Cold War and increasing transnational order, they are no longer the only game in town." But in a world where population growth has spun out of control and energy usage imposes extraordinary requirements on daily survival, it is far from clear that the emerging ethnicities, especially the indigenous, are designing an effective substitute. Padilla may be correct when he asserts that "the indigenous populations emerge as the best guardians of...biodiversity." But this is a statement about the past, when there were



no predators on this diversity. The indigenous mode of environmental production was premised on few people in very large extensions of land with no state present. Today this can only be sustained by when the state decides to block the growing competition for these resources. The indigenous solution of simplifying an increasing complex world can only work when other sectors of humanity, mostly organized in states, accept that the solution lies in that direction.

## INDIGENOUS PEOPLES: EMERGING ACTORS IN LATIN AMERICA

Rodolfo Stavenhagen  
Colegio de México

Indigenous people have emerged as a new social and political actor in Latin America in recent years, or as some would have it, a new historical subject or actor (in Spanish: *sujeto histórico*). This refers to Indians becoming active subjects rather than being the passive objects of historical change. The truth of this statement will have to be tested through careful empirical scrutiny, but let us take it as a starting hypothesis. Something has changed in the circumstances surrounding the existence of Indian populations. Something is changing in the relationship between the state and indigenous peoples--old grievances and new demands have come together to forge new identities; new ideologies are competing with older and long-established paradigms; theories of social change, modernization, and nation building are being reassessed in the light of the long-neglected and ignored "ethnic question"; and, last but not least, the way politics was played for so long is now undergoing a change.

The starting point of this change was the formal beginning of a continent-wide Indianist policy (better known as *indigenismo*) at the Inter-American Indianist Congress held in Pátzcuaro, Mexico, in 1940. It was there that the assembled government delegates decided to pursue and put into practice policies designed to improve the lives and livelihoods of the continent's indigenous populations, mainly through measures intended to assimilate or integrate them into the so-called national mainstream. However, this national mainstream, the dominant society of urban mestizo middle class intellectuals and their political offshoots, rejected indigenous components of the national culture outright and saw no future for them, except as an idealized past relegated to museum exhibits and, more recently, as objects of tourism and airport art.

Indigenista policies, while undoubtedly well intentioned, actually turned out to be ineffectual even by the standards of their own declared objectives. At the periodically held Inter-American Indianist Congresses (the eleventh such Congress took place in Nicaragua in December 1993), delegates decried the sorry state of the continent's indigenous peoples. While governments offered self-congratulatory reports on their programs and development plans, indigenous peoples were given only a token presence at these congresses, even while their socioeconomic situation deteriorated noticeably. A recent World Bank study concludes that poverty among Latin America's indigenous populations is pervasive and severe. Moreover, it considers that the living conditions of the indigenous populations are generally abysmal, especially when compared to those of the nonindigenous population (in October 1994, while official Mexico was celebrating its incorporation into the "First World," Tarahumara children were dying of famine in the mountains of northern Mexico, and armed Indian peasants in the jungles of the southeast were demanding

a fairer deal). The Indians themselves, and other "marginalized" groups, such as anthropologists, have long been saying precisely this.

Latin American countries have a long and complicated history of "indigenist" legislation that usually placed indigenous populations at a disadvantage in relation to the rest of society, even though many laws were of a protective and tutelary nature. While formal citizenship was granted to all nationals in most countries shortly after independence, in some, Indians have been treated as minors and as legally incompetent until only very recently. It was not until the last decade or so that Latin America's basic laws were modified in a spate of constitutional reforms to include norms regarding not only indigenous languages and cultures, but in some cases also the indigenous communities and their territories as a specific form of social organization. Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, and Peru have all undertaken such constitutional reform in recent years. Some observers place this restructuring within the framework of the "wave of democratization" that occurred in Latin America during the seventies and eighties; others recognize the active role that indigenous organizations themselves played in stimulating these changes.

Indeed, the rise of indigenous organizations during the last two or three decades may be considered both as a cause and an effect of the transformations occurring in the public sphere regarding indigenous peoples. In the sixties there may have been only a handful of formal organizations created and run by indigenous persons pursuing objectives of interest to indigenous peoples as such. By the mid-nineties there were many hundreds of such associations, of all types and kinds: local-level organizations, intercommunal and regional associations, formally structured interest groups, national-level federations, leagues and unions, as well as cross-national alliances and coalitions with well-developed international contacts and activities. What follows is an outline of some of the major processes that seem relevant to a better understanding of indigenous organizations--their leadership, objectives, activities, and emerging ideologies--which constitute a new kind of social and political movement in contemporary Latin America.

### **The Growth of Organizations from Local to International**

One of the earlier organizations, frequently considered the prototype of others, is the Shuar Federation, established in the early sixties to protect the interests of the various dispersed Shuar communities in the Amazon lowlands of eastern Ecuador. The Shuar formed the federation to defend their land from encroachment by outside settlers and commercial interests, and in the process discovered that the struggle over land rights could not be separated from their survival as an ethnically distinct people with their own traditions and cultural identity. They also discovered, as many oppressed peoples have throughout history, that only by joining forces and uniting efforts could they achieve their purpose. Though motivated by economic and social considerations (preservation of ancestral lands, access to productive resources), the struggle of the Shuar cannot be described strictly

as a "class struggle," in distinction to the conflicts over land between peasants and landowners that took place more or less at the same time in the Andean highlands. To the extent that the Shuar, and other lowland indigenous peoples, were not inserted clearly into an agrarian class structure, their organization took on more of a communal and ethnic character than the more class-oriented movements of indigenous peasants elsewhere in Latin America.

Similar organizations emerged during the seventies in several other countries, and consolidated their activities during the eighties. They soon managed to break out of the cocoon of the "community-centered" activities to which state-sponsored development projects so frequently tried to limit them. While community development programs, some of them financed by multilateral donor agencies and nongovernmental organizations, did generate increasing involvement by local people, it became obvious to the emerging indigenous elites that local-level activity by itself was essentially limited, politically speaking. Like the Shuar, they were able to build a transcommunal indigenous identity, involving an increasing number of local communities and emphasizing ethnic identity as a unifying bond and mobilizing agent. Thus, a number of ethnic organizations began to appear on the political scene, whose leaders would speak in the name of the ethnic group as such rather than for a particular rural community. This level of organization was soon followed by region-wide associations that involved several ethnic groups. Thus arose the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENAIE), the Indigenous Association of the Peruvian Jungle (AIDSEP), the Regional Indigenous Council of the Cauca Valley (CRIC) in Colombia, the Indigenous Confederation of Eastern Bolivia (CIDOB), and many others. They held congresses; published manifestos and platforms; addressed petitions to state and national governments, as well as the international community; organized militant actions, such as protest marches, demonstrations, sit-ins, land occupations, and active resistance; initiated legal proceedings; and lobbied legislatures and public officials to further their objectives.

A more recent level of organization is the country-wide indigenous confederation. The Ecuadorian Confederation of Indigenous Nationalities (CONAIE) has been in the forefront of political activity, organizing two major peaceful indigenous "uprisings" in Ecuador in 1990 and 1993 that practically paralyzed the country and forced the national government to negotiate with the indigenous peoples on agrarian and other issues. The Brazilian National Union of Indians (UNI), comprised of numerous Amazonian tribes, was active in the political discussions leading up to the drafting of the constitutional article devoted to indigenous peoples in the new Brazilian constitution of 1988.

Indigenous organizations have also reached out beyond their country's borders to become involved in international activities. In Central America and in South America, indigenous activists attempted to set up cross-national regional organizations, with mixed success, and since the late eighties a number of international, regional, and continental meetings have taken place in an attempt to



coordinate indigenous activities involving the commemoration of the quincentenary of "The Encounter of Two Worlds" (or Five-Hundred Years of Indigenous Resistance), the United Nations Year of Indigenous Peoples (1993), and the UN Decade for Indigenous Peoples, starting in 1995. Indigenous representatives from Latin America have been active (but not as active as their colleagues from North America) in the discussions of the UN Working Group on Indigenous Populations that has been drafting a Declaration on Indigenous Rights (to be considered by the General Assembly some time in 1995 or 1996); they also took part briefly in the debates leading up to the adoption of Convention 169 on Indigenous and Tribal Peoples by the International Labor Organization. Indigenous representatives sit on the governing bodies of the recently established Fund for the Development of Indigenous Peoples of Latin America and the Caribbean. Also, indigenous representatives are consulting with the Inter-American Commission on Human Rights concerning a future inter-American legal instrument on indigenous peoples' rights. International activity of this kind has brought indigenous representatives from Latin America into contact with representatives from other parts of the world, while also helping them to become familiar with international law and the mechanisms and proceedings of human rights protection in the international system. This relationship, in turn, promotes their cause and helps bolster their political bargaining power at home (this has been labelled "thinking locally and acting globally").

## **Two Leadership Bases**

Indigenous organizations not only hold meetings and disseminate their programs and ideas, they also negotiate with public authorities, send representatives to international conferences, and often receive financial aid from donor agencies for specific activities. Who represents these organizations and, in general, how representative are they of the indigenous population? Governments frequently raise these questions when they wish to challenge the "authenticity" of indigenous representation at the national and international levels. It also becomes an issue between rival factions and groups competing for official recognition or access to resources. It is true that many existing indigenous organizations were structured from the top down, without a real "popular" base. More and more, however, indigenous organizations are being built from the bottom up, through a painful process of mobilization and organization, in which new leaders emerge who have a grass-roots base and who express the true concerns of their affiliated members.

Traditional community-based leadership generally is in the hands of an older generation of local authorities who, while immersed in the ethnic culture of their group, are not always well prepared to deal with the challenges of "modern" organizations and political negotiations. These traditional authorities are being replaced increasingly by a younger generation of indigenous activists, many of whom are professionals who have lived and honed their skills in non-Indian environments. While there may be tensions between these two generations, their roles are often complementary. The older traditional authorities concern

themselves with local community matters, while the younger leaders are involved in building organizations and alliances, and dealing with the outside world.

As more and more indigenous youngsters make their way through the formal educational system and achieve professional status as agronomists, teachers, doctors, lawyers, and so on, an intellectual indigenous elite has emerged in several Latin American countries and is becoming the life-blood of new organizations. They are not only involved in formulating the political agendas of their movements, they also rediscover their historical roots, are concerned with language, culture, and cosmology, and become actively engaged in developing the "new indigenous discourse" that gives these organizations their distinctive identities. To the extent that they participate in national and international networks and are able to get their message across to other sectors of the population, and to the extent that they are able to mobilize resources and obtain certain "collective goods" (material and political resources, recognition, etc.), indigenous intellectuals have become indispensable links in the process of organization and mobilization. On the other hand, the indigenous leadership also draws support from the "grass roots," from local activists engaged in struggles against human rights abuses, or for land rights, or over environmental concerns, issues in which indigenous women are often especially active. Sometimes there appears to be a tension between the grass-roots activists and the intellectuals, because the former are concerned with more immediate issues and push for concrete solutions, whereas the latter are more involved in institution building over the long term. Moreover, whereas indigenous intellectuals contribute to the development of an "Indianist" ideology and *Weltanschauung*, and at times also find themselves engaged by various other ideological tendencies in Latin America (nationalism, Marxism, liberation theology, Christian democracy, evangelical Protestantism), grass-roots activists have little patience with intellectual debates and are more interested in negotiating specific issues with "the powers that be" rather than aspiring to ideological coherence or purity. These various approaches, as well as other factors, have led to not a few disputes over organizational strategy and tactics that sometimes give the impression of a fragmented and factionalized indigenous movement.

### **The Question of Identity**

Inasmuch as most indigenous communities in Latin America are rural peasant societies, Indian demands have much in common with the concerns of all peasants about land and water rights, agrarian reform, agricultural credit, technical assistance, access to markets, farm prices, subsidies, and so forth. These have been particularly burning issues in the Andean highlands, as well as elsewhere, since the sixties, when numerous militant peasant movements emerged in Latin America. Furthermore, while Indian organizations are apprehensive about their identity and their independence, they also know that their scope and impact will be limited if they isolate themselves from other social movements. Thus, indigenous organizations have had to grapple with the role of indigenous movements within

the wider framework of conflict and interest articulation in the national society, and the crucial issue of building strategic alliances with other organizations.

Over the last few decades debate has centered on two alternative conceptualizations: on the one hand is the idea that indigenous cultures were not integrated into the national mainstream culture, and that modern "nation-building" required the rapid incorporation of the Indians, therefore their disappearance as such. For indigenous organizations this presented the options of accepting the state's policies of assimilation but negotiating their terms, of rejecting them altogether, or of putting forward alternative possibilities. Each of these three positions has at some point been taken up by one or another indigenous organization.

On the other hand, ever since the thirties a long-running debate has posed the question of whether indigenous peoples should be considered as an exploited subordinate social class (subsistence peasantry, agricultural workers), or as culturally distinct oppressed peoples (nationalities) who may in fact also be internally socioeconomically differentiated. This ethnic/class debate has implications for the objectives and strategies of indigenous as well as other social movements. If Indian populations are considered to be but a segment of the exploited peasantry, then the solution to their problems is to be found in class organizations and struggle (peasant unions and land reform). Moreover, emphasis on ethnic identity would dilute class consciousness and attendant political attitudes. If, however, Indian identity is pivotal, then class-related issues would be of secondary importance. It would appear that most indigenous organizations in recent years have opted for the second position; while not denying or neglecting class-related issues, they have emphasized ethnic identity and the "ethnic-national" aspects of their struggles, which has also brought them prominence at home and abroad. One of the reasons for adopting this position can be found in the rather biased approaches to the "Indian question" taken by traditional leftist parties in Latin America, who fostered for many years a pure "classist" approach to social conflicts, thus alienating many potential Indian supporters who did not see their own concerns reflected in the Marxist discourse of many of these political parties. Instances of this can be found in the conflict between the Sandinistas and the Miskitos in Nicaragua during the eighties, and in the evolution of revolutionary ideology and warfare in Guatemala over the last four decades.

The "class" vs. "ethnic" debate has had wider implications for political strategies and tactics as well, because it relates to the possibility of indigenous movements striking alliances with other social and political organizations. Early on in the process of organization and mobilization, indigenous activists realized that in order to achieve their wider objectives, and to prevent encapsulation, they would have to seek allies among other sectors of society, particularly labor unions, peasant organizations, students, urban intellectuals, as well as established institutions such as the Catholic Church (or at least some of its current parts, such as liberation theologians), and, under certain circumstances, some political parties as well. Some



indigenous organizations got their start as offshoots of a political party: in Mexico, the ruling PRI attempted to establish and control a number of indigenous organizations in the seventies; in Bolivia, the various political parties had, and some still have, indigenous organizational affiliates, and a clearly indigenous party, MITK, has openly and successfully vied for political power (MITK's former presidential candidate, an Aymara Indian, became vice-president of the republic in a coalition government in 1993). In general, however, indigenous organizations have shied away from political party affiliation as such (though not necessarily their individual members), and their leaders usually reject the overtures from political parties to incorporate or co-opt them into established party structures.

However, the need for tactical alliances with other social organizations has become more obvious to the indigenous leadership, particularly when the objectives of social struggle are shared, as for example the defense of human rights under repressive governments such as Guatemala's successive military regimes. At some international congresses the issue of alliances has come out in the open. Participating organizations underline the fact that widespread popular mobilization will have greater political impact than isolated actions by smaller, fragmented groups. On the other hand, indigenous leaders argue that their particular agendas (ethnic identity, recognition of historical rights of indigenous peoples) get easily sidetracked and subordinated to the more general concerns of the larger popular organizations. In general, they fear (with some justification) that indigenous organizations will become minor players in a game dominated by the established *mestizo* organizations, and that they will risk being manipulated by more experienced *mestizo* politicians.

### **Indigenous Organizations and Development Policies**

A number of factors may account for the rise of indigenous awareness and the emergence of these new social movements on the public scene. First is the overall disenchantment with, and the failure of, traditional development policies that were assiduously pursued by national governments and multilateral organizations after the end of the second world war. "Economic development," the magic slogan wielded by generations of government planners and academics, was to bring improved living standards and burgeoning incomes to the poor, the marginalized, the backward populations of Latin America. This did not happen, as the "lost decade" of the eighties so clearly showed. Indigenous populations were indeed drawn into the "modern" sector of the economy through market mechanisms, labor migrations, expanding infrastructure in means of communication and transport, but they saw the benefits of growth, as always, going to the elites. Except for a few "showcase" projects, the situation of indigenous peoples, if anything, deteriorated during the period, as they increasingly lost their autonomy and means of subsistence and became more dependent on market capitalism. In the process of unequal development, indigenous populations everywhere were "victims" rather than "beneficiaries," as these vulnerable and fragile populations were caught up in the maelstrom of rapid, unstable social and economic changes. This fact was not lost



on the emerging Indian intelligentsia, who soon became skeptical of upbeat economic projections, government promises, and predictions about their imminent accession to progress and civilization. Disillusionment with mainstream development strategies was shared widely beginning in the seventies, and the search for "development alternatives" often focused on the local, grass-roots level ("Small is Beautiful," for example), which would naturally include indigenous communities.

A second, closely related factor was the increasing awareness by the emerging Indian intellectuals that the modern nation-state, which the mestizo elites had been building so assiduously ever since the nineteenth century, was fundamentally flawed. Instead of being all-inclusive, it was in fact exclusionary: Indian cultures were denied; Indians were victims of subtle or open racism and discrimination; indigenous peoples (even when they constituted demographic majorities, as in Bolivia and Guatemala, and in numerous subnational regions elsewhere), were excluded from economic well-being, from social equality, from political decision-making processes, from access to justice in the legal system. Indians could not recognize themselves in the prevailing model of the "national" state, as fashioned by the mestizo and white upper-class elites (while the mestizos came to power in countries like Mexico, the traditional racial-cultural hierarchies, with the descendants of the Spanish colonizers or other European settlers at the top, prevailed well into the twentieth century in other countries). The indigenous roots of Latin America had long been considered a burden by the European elites, and government policies of assimilation (known as *indigenismo*) made it clear that indigenous cultures had no future in the modern nation-state. Despite formal citizenship rights granted to Indians in most Latin American countries, indigenous peoples have in fact been treated more frequently as second-class citizens, when they have not been denied such rights altogether (in some countries they were treated as minors, wards of the state, legally incapacitated). Representative democracy, institutional political participation, equality before the law, due process, respect for their languages, culture, religion, and traditions, as well as dignity accorded by the rest of national society, was not for Indians. Many indigenous persons in fact internalized the stereotypes and stigmas imposed on them by the dominant sectors, and resorted to self-denial and self-denigration in order to be accepted by non-Indians. Others developed a "culture of resistance," turning inward, avoiding contact as much as possible with the outside world (a reaction that in recent years has become increasingly difficult to uphold). Still others, realizing that the existing model of the nation-state denies them their identity and their very survival as viable cultures, have begun to challenge the dominant notion of the nation, by proposing alternative conceptions of a multicultural, polyethnic state.

### **The Critique of Modernization and Marxism**

Closely related to the ideas of economic development and nation building is the concept of "modernization," which was at one time widely hailed as an all-encompassing, universalizing social process that would eventually subsume the

traditional, backward, or premodern forms of society. Indigenous communities and cultures were, therefore, doomed to disappear. Modernization policies, touted as remedies to underdevelopment and poverty, were designed to help accelerate this process, considered by many as inevitable and desirable. The modernization paradigm, still wielded by policy-makers as synonymous with progress and therefore morally legitimate, is today considered by many Indian activists and advocates as little less than ethnocidal. The emergent Indianist ideology finds little support in the paradigm and does not, in turn, support it. Indeed, in many instances, "modernization" is rejected as a viable objective for indigenous peoples. This tension is expressed clearly in the conflicts surrounding environmental changes, particularly in tropical rainforest areas, where modernization is often identified with vast ecological transformations that destroy forest biotic resources and the habitat of numerous indigenous groups.

Modernization theory (one of the intellectual fads associated with the sociology of development) also posited the need for far-reaching changes in cultural values among the "backward" and "traditional" populations. Schools of "applied social scientists" told indigenous populations around the world that their ways of life were morally wrong (the missionary approach) or dysfunctional in the modern world (the technocratic approach). Indigenous peoples who fell for these arguments soon found themselves morally bereft, culturally impoverished, and materially destitute. Current indigenous (or Indianist) ideology therefore challenges the modernization paradigm as irrelevant at best, and as potentially destructive of indigenous values.

For decades the modernization approach to social and cultural changes among indigenous peoples competed with the world view of Marxism, not only as a cognitive map of the "real world" in which indigenous peoples were caught up, but also as a revolutionary guide for action and historical transformation. Marxist political groups (with their various focuses: communist, Trotskyite, Maoist, Fidelista, etc.) had their "indigenist" platforms (when they thought about indigenous peoples at all, which was not often). Usually this meant exhorting Indians to shed their indigenous identities and to join the class struggle as poor, exploited peasants. Sometimes, it meant simply rejecting indigenous peoples outright as too backward to understand the class struggle, and concentrating on revolution among the "advanced" classes of Latin America, above all, the urban proletariat. It was held that once the struggle had been won, an enlightened revolutionary government would bring progress to the backward Indians.

Indian intellectuals recognized that orthodox Marxist views of the "Indian problem" were not so different from the "modernization" approach. Their skepticism increased, as a number of Indian groups found themselves literally in the crossfire between leftist guerrillas and repressive military establishments in a number of Latin American countries during the seventies and eighties (i.e., Bolivia, Colombia, Guatemala, and Peru; in Nicaragua, they were pressed between a leftist revolutionary government and the US-organized *contras*). Some of them, inspired

by the anticolonial liberation struggles of the postwar years, rejected both the Marxist and modernization views as being "products of the colonizing West." Indigenous intellectuals, identifying with national liberation movements, often consider that their own struggles are anticolonial, because their peoples were the victims of an earlier colonialism, which turned into internal colonialism during the independence period. This was often stated and repeated in indigenous manifestos and proclamations at many national and international forums during the commemorations of the five-hundredth anniversary of "The Encounter of Two Worlds," an event that further stimulated the constitution of indigenous organizations on the continent.

Thus, the Indianist or indigenous worldview emerged as an alternative to the ideological vacuum (with regard to the role of indigenous peoples) of established mainstream political philosophies of both the liberal and Marxist varieties. While not yet a structured and coherent political ideology, it contains elements that clearly distinguish it from other ideologies that have permeated social thought for many decades. Because previous hegemonic ideologies did not address the problematique of indigenous people and the national state, or did so inadequately, their theoretical guideposts were rejected by the burgeoning indigenous intellectuals, who then went on to construct their own ideological texts. There are a number of issues and strands that persist and reappear in the various currents of "Indianism," as expressed in the documents of indigenous organizations, groups, seminars, conferences, caucuses, journals, and periodicals. These issues are frequently coupled with specific demands addressed mainly to governments, but sometimes also to society at large. These can be grouped under five major headings.

1. *Definition and legal status.* While bureaucrats, legal scholars, and anthropologists (as well as the occasional missionary) have wrangled over who is and who is not an Indian (or what is "indigenous")--which is why the definition and quantification of indigenous peoples in Latin America is an ambiguous task, the right of self-definition has become one of the recurring demands of indigenous organizations. It has now become a question of cultural identity, and quite often a matter of honor (regardless of such "objective" criteria as use of language, dress, or active participation in communal life). Even more than an individual choice, it is collective identity and group recognition that many organizations crave. As long as being Indian was stigmatized, self-identification did not offer particular incentives; but as times have changed, Indian self-identification has become a political tool in a contested social space.

To the extent that social and cultural labels often imply specific legal status, and the attribution of legal status has typically been a prerogative of governments, indigenous organizations that demand the right of self-definition (now considered to be a fundamental human right) also question the government's authority to impose such status unilaterally (which is what in fact has occurred from the beginning). The Indian movement strongly demands new legal status for

indigenous peoples in a democratic polity, a demand that in the last few years has been heard increasingly by politicians and lawmakers, and which finds expression in the legislative and constitutional changes referred to at the beginning of this essay.

2. *Land rights.* Although no longer receiving much attention in the era of economic globalization, land rights and agrarian issues are central to the survival of indigenous peoples in Latin America and constitute one of their principal demands. Loss of land (essential to their livelihoods) having been one of the constants in the indigenous history of Latin America, the struggle for the preservation or the restitution of agrarian rights lies at the base of many of the recent efforts at indigenous organization. Land and its various resources (forests, water, game, and even minerals) are viewed mainly as a collective, communal good, even though the notion of individual property rights has made headway after decades of capitalist expansion. Agrarian struggles have occurred among the Mapuche in Chile, the Andean highlands in Peru and Ecuador, among the Maya of Guatemala, and are at the bottom of social conflicts in Mexico, including the 1994 Indian uprising in Chiapas. The land issue has not been solved for the Indian peasantry in Latin America, and its neglect by governments--after the heyday of land reforms in the sixties--imposes severe economic and social burdens on indigenous peoples.

Whereas land rights in the strict sense refer to productive resources, indigenous peoples also insistently demand territorial rights, that is, the recognition and legal delimitation of ancestral homelands--territories that have been occupied continuously by an indigenous group over a period of time, and that usually represent the geographical space necessary for the cultural and social reproduction of the group. Indian territories have suffered severe losses through outside colonization or government-induced expropriation, and there is consensus that without their own territory the social and cultural survival of indigenous peoples is seriously threatened.

3. *Cultural identity.* Spontaneous cultural change and acculturation as well as state policies of assimilation have been widely considered as detrimental to the survival of Indian cultures, in other words, as *ethnocidal*. Through a passive culture of resistance, numerous indigenous peoples have been able to preserve elements of their cultures and maintain their ethnic identity, which in recent years is being strengthened by a conscious cultural revival undertaken by indigenous elites and cultural militants. Thus, Maya culture is actively being fostered in Guatemala by numerous indigenous organizations; Aymara and Quechua languages and traditions are being revived in the Andean countries; in Mexico an organization of indigenous writers and intellectuals is promoting indigenous literature. Sometimes these activities receive governmental support, but they usually have to rely on their own resources, perhaps with some help from sympathetic NGOs.

Ever since the nineteenth century, Spanish (in Brazil, Portuguese) was declared to be the official and national language of Latin American states, and



indigenous tongues were labeled as "dialects" at best, unworthy of preservation. Thus, official and private (usually missionary) education traditionally imposed the state language upon indigenous groups, often prohibiting the use of the vernacular in any public instance (legal proceedings, municipal administration, etc.) Being thus disadvantaged in the use of their own tongues, indigenous peoples' rights were easily and systematically trampled. In recent years, as a result of indigenous demands and the reassessment of *indigenista* policies by teachers and social scientists, some governments have implemented bilingual educational programs in indigenous areas. Indigenous organizations now demand educational services in their own tongues, teacher-training programs for their own people, and curriculum content geared around indigenous cultures. In some states (Peru, for example) indigenous languages now have been given status as national languages; in others, legal and administrative proceedings involving indigenous peoples must allow for the use of indigenous languages.

4. *Social organization and customary law.* Indigenous community life, and therefore the viability of indigenous culture, depends upon the vitality of the group's social organization and, in many instances, the active implementation of local customary law. This has recently become an important demand of indigenous organizations, insofar as the non-recognition of local social organization and customary law by the state legal system and public administration also contributes to the weakening and eventual disappearance of indigenous cultures.

No Latin American state formally recognizes legal pluralism, but a certain degree of tolerance for local "uses and customs" has always existed (in colonial times a distinct Indian legal domain was in fact established by the Spanish Crown). The formal recognition of customary law and of traditional forms of local authority, dispute resolution, inheritance practices, land use patterns, and so forth, are nowadays a stated objective of many indigenous organizations. This is clearly a political demand, that is often expressed in the indigenous objective of achieving a higher degree of civil participation.

5. *Political participation.* Indigenous organizations now ask not only for increased political representation in existing bodies of government (municipal councils, state legislatures, national parliaments, etc.) but also aim at obtaining the right to self-determination (as guaranteed in international law), which is expressed through local and regional autonomy and self-government. Many states are still wary of these demands, because they believe them to be stepping-stones toward secession and the territorial fragmentation of the nation-state. Indigenous organizations are usually quite firm in that they ask only for *internal* self-determination and for greater participation in national politics, not as some excluded minority, but as the descendants of the original inhabitants of the country, therefore as the "true" representatives of the "nation." Autonomy statutes for indigenous regions have now been adopted or are being implemented in Nicaragua, Panama, and Brazil, and are being considered elsewhere. This is probably the area in which more controversy will take place in the coming years.

International developments in the field of indigenous rights in recent years have had a deep influence on the posture and evolution of indigenous organizations in Latin America, and may have influenced the evolving positions of governments as well. The United Nations Working Group on Indigenous Populations has been drafting a Declaration of Indigenous Rights since 1982. Latin American governments long ignored its work, but are now taking an active interest in it. At the beginning, indigenous representation from Latin America was scant, but in recent years more and more indigenous organizations from the region have taken part in the Working Group's yearly debates in Geneva. This has become a *Bildungsreise* for many an indigenous leader, an obligatory stop on the road to effective leadership and influence in a regional or national-level organization. Whatever the eventual outcome of the draft declaration (it may be approved by the General Assembly in modified form), indigenous organizations already refer to its various provisional articles as a necessary point of reference in their own political discourse; thus, for example, the statement that indigenous peoples, like all peoples, have the right to self-determination.

On the other hand, indigenous representation was not particularly large in the debates leading up to the adoption of Convention 169 of the International Labor Organization in 1989. Indigenous points of view were expressed mainly by labor delegates who were, albeit, not always as well informed as they might have been. As Convention 169 has now been ratified by a number of Latin American states, indigenous organizations rightly refer to it as one of the obligatory existing legal instruments by which governments must abide, and they are actively promoting its ratification in those countries which have not yet done so. To the extent that there is an emerging international law of indigenous rights, indigenous organizations in Latin America will make use of it both legally and politically.

The indigenous discourse occurs at the crossroads of issues regarding human rights, democracy, development, and the environment. It has become increasingly clear that indigenous demands are of concern not only to indigenous peoples but involve national society in its entirety. Indigenous peoples demand not only more and better democracy, or the improved implementation of human rights protection, or greater participation in the presumed benefits of development programs; they are actually challenging the very premises upon which the nation-state in Latin America has been built over more than a century.

## CULTURAL DIFFERENCE AND SOCIAL ASSORTMENT IN THE CARIBBEAN REGION<sup>1</sup>

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### Historical background

Surely the first historical observation to be made concerning Caribbean ethnicity should be demographic: the swift extirpation of native populations which typified the European conquest during the first century after Columbus. Though it is well known, it is perhaps too little thought about; in the world outside Europe, and particularly in the New World, only certain geographical regions withstood massive European contact with substantial populations still in place. In the Andes and on the Central Plateau of Mexico, despite terrible losses, large aboriginal societies both survived and reproduced themselves. In some lowland portions of the mainland, such as the Guianas (which can defensibly be included within a broad definition of the Caribbean region), the destruction of whole peoples was not quite so swift. But in the Caribbean islands, particularly the Greater Antilles, by as early as the mid-seventeenth century, the elimination of indigenous cultures and their carriers had been nearly total. Though the aboriginal inhabitants of the Lesser Antilles fared perhaps a little better--some were deported, others intermarried; their conquest was in any event delayed--in the end their fate was not materially different. Except for a somewhat unexpected Island-Carib reservation on the island of Dominica, there have been no "aborigines" on Caribbean islands for at least 250 years.

Why this should be the first point to stress is clear. Ethnicity is born in contrast, as Joan Vincent (1974) pointed out long ago; you cannot become one kind of "ethnic" unless you are in the social presence of an "ethnic" of a different kind.<sup>2</sup> By the near-total destruction or genetic absorption of indigenous island peoples, the first Europeans in the Caribbean region--in this instance, the Spaniards--transformed themselves into "natives," so to speak. While in some cases Spanish pioneers and their children were busily becoming "American" or "Creole," in contradistinction to the Spaniards of Spain, ethnic difference resurfaced only when they introduced yet others into these newly colonial societies--others who were in some recognizable manner culturally different from themselves.

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<sup>1</sup> The writer thanks Rebecca Scott for her thoughtful criticisms. He alone is responsible for persisting errors.

<sup>2</sup> Vincent 1974; cf. also Galaty 1982. Italians can hardly be ethnic in Italy, though of course Sicilians and Tuscans can. Yet Sicilians can hardly be ethnic in Sicily, or Tuscans in Tuscany, except in the presence of "outsiders." In the U.S., Sicilians and Tuscans are ethnic--but as Italians, not usually according to their provinces of origin--unless they are talking to each other in a manner, or concerning a subject, that makes the difference between them decisive.

That event was not long in coming. By 1505 (and perhaps even a bit earlier), the forcible transportation of enslaved Africans into Europe's Caribbean colonies had begun, and it would not cease until the final third of the nineteenth century.<sup>3</sup> Of course the newly introduced African populations were not ethnically homogeneous. The playing out of intra-African ethnic differences in New World slave societies--though it certainly did occur in specific instances--was itself powerfully constrained by slavery.<sup>4</sup> Just as there had been no "Indians" in the New World until the coming of the Europeans, so too there had been no "Negroes" until the Atlantic slave trade. In the New World situations born of enslavement, transportation, and the plantation, genuine cultural differences tended to be swallowed up by what could be called ideological homogenization; it was in the New World that the slaves became "Africans." The general cultural effects of the slave plantation were to make its victims culturally uniform. At the same time, though manifests and plantation lists often record what were claimed to be tribal origins, we now know that these attributions were often inaccurate--place names and tribal names were confused, names of languages often served as ethnic labels, and so on. We can reconstruct some ethnic differentiations at the intra-African level, and some of those differences certainly mattered; but our ability to deal with such materials confidently is limited.

Of course the Europeans were not ethnically homogeneous, either. While the Spaniards themselves came from parts of Spain as different as Catalonia and Vascongados (not to mention Andalusia and Castile), Spain's European rivals eventually included Danish, Dutch, English, and French colonists, to name only the most important; and no such "national" group could have seemed ethnically homogeneous, except in the eyes of outsiders.

The Caribbean region was circumnavigated, conquered, and settled at an extremely early point in European imperial history, with Spain in the leading role. By the time the first enslaved Africans were landed at Jamestown on the North American mainland, other enslaved Africans had been making sugar in Santo Domingo for more than a century. The Caribbean colonies were, then, old colonies.<sup>5</sup> As late as the end of the nineteenth century, large portions of West

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<sup>3</sup> Curtin (1969) estimates that the Caribbean islands received around 2.8 million slaves from Africa, nearly one-third of the total number, before slavery ended in the New World.

<sup>4</sup> A particularly arresting example is the 1835 slave rebellion in Bahia, recently given its most thorough interpretation by João José Reis, in his *Slave Rebellion in Brazil* (1993). The rebellion was led by *malês*, or Muslim slaves, who included among them people of Hausa, Mandingo (Nagô), Yoruba, and other ethnic backgrounds.

<sup>5</sup> How old these Caribbean colonies were serves to illuminate recent so-called "subaltern" literature, which deals with European colonialism in the Old World, most of all the Indian subcontinent. Clive's defeat of the Nawab of Bengal at the Battle of Plassey in 1757 is usually viewed as having initiated British rule in India. But by then, African slaves had been producing sugar in Santo Domingo for 241 years. These were different colonialisms--their times were different, their circumstances were different, they were historically particular at numerous levels.



Africa were being conquered by France and Great Britain; yet their Caribbean colonies dated back to the early seventeenth. For Spain, the beginning dates are of course earlier yet, by more than a century; the four Greater Antilles had been conquered, and Spanish settlement begun, by the opening decades of the sixteenth century. The early conquest, the rapid destruction of native populations, their replacement with Europeans and Africans, and the initiation of large-scale agricultural enterprises producing tropical staples for expanding European markets were all signature distinctions of Caribbean regional history. The Antilles were Europe's first real overseas colonies and the nature of their ethnicity reflects this.

## Slavery

It is not a gross exaggeration to say that from the early settlement of the Greater Antilles by Spain until the Haitian Revolution at the end of the eighteenth century, what we might call inter-ethnic relations or "ethnicity" were governed mainly by the differences in social status between slave and free, and by the complexional differences between white and black. In the absence of any large aboriginal populations, and in the presence of prevailingly coercive social systems, Caribbean life was lived largely in terms of these social categories, which dictated one's life-chances, education, occupation, and fate, largely without any regard to individual endowments or will. Slavery lasted for nearly four centuries and deeply affected social life throughout the Hemisphere. Those effects were acute in the Caribbean region, where plantation production of tropical commodities by slaves was the central feature of colonial life for so long.

The end of slavery came first by revolution in French St. Domingue, with the birth of the Republic of Haiti, in 1804; then by law in the British, French, Danish, and Dutch West Indies; and subsequently in Puerto Rico and Cuba. In Cuba, the year 1886 marks the end of slavery in the Western Hemisphere, except for Brazil (1888). In the islands, the death knell of slavery was interpreted by some planters as the end of everything worth living for; yet it was decidedly not the end of profit-making. Faced with the need to find more labor for their plantation enterprises, the planters fell back upon what this writer has called elsewhere the two jaws of labor control: cutting off access to land resources, on the one hand; stimulating new immigration from elsewhere, on the other. In most cases they got ready assistance with their labor problems from their respective foreign offices.

Migration schemes based on contracts drained laborers from subtropical Old World areas in particular, to ease the labor situation in the plantation colonies of the New World: Indians from the United Provinces (Uttar Pradesh and Bihar) to British Guiana, Trinidad, Jamaica, Guadeloupe, and Martinique (Look Lai 1994); Chinese from Guangdong province to Cuba and Trinidad (Cuba Commission 1994, Look Lai 1994); Javanese to Dutch Guiana (Van Lier 1971); and so on. A full accounting for the Caribbean region is not practical here; but generally speaking, wherever there had been plantations and slavery, now new migrants were imported. Few such migrants ended up in the smaller, dryer, or non-plantation

islands, or in Haiti, Puerto Rico, or Santo Domingo. The main centers of importation were those British, Dutch, and French colonies where sugar production persisted but slavery had ended, and Cuba, where the plantation system had enjoyed a sweeping renewal in the eighteenth century. Though many Portuguese went to British Guiana, and numerous Canary Islanders and peninsular Spaniards to Cuba (and though a few young Scotsmen and Britons went out to the British West Indian colonies as bookkeepers and managers), the bulk of the migrants to the British, French, and Dutch Caribbean came from dependent tropical regions.<sup>6</sup> It is not surprising that, over all, the European powers should have preferred to draw their labor from their own Old World colonies, or from countries, such as China, too weak to protect their citizens overseas. The forging of ethnicity in the Antillean region was merely incidental to rearrangements by imperial Europe (and, later, by the United States) of the world division of labor. The "ethnicity" resulting from it, however, has persisted, long after the labor needs themselves have evaporated.

### Political Variation

Any attempt to look regionally at ethnicity in the Caribbean region requires us to take note of how the societies within it are governed today. Comparable, perhaps, to parts of Asia, the Antilles include societies that vary in status from sovereign to entirely colonial. In addition to the islands, four political units on the mainland, all related to European colonial undertakings of a certain kind, deserve to be included. These are the three Guianas on South America's Atlantic coast (today, independent Surinam and Guyana, and the French Overseas Department of Guyane), and in Central America, Belize, formerly British Honduras. Independent states in the region include mainland Belize, Surinam, and Guyana, just mentioned; and insular Cuba, Haiti, the Dominican Republic, Jamaica, Trinidad and Tobago, Barbados, Grenada, St. Lucia, St. Kitts-Nevis, St. Vincent, Antigua, and Dominica. (The Bahamas are more or less justifiably excluded from the Caribbean region; they are also independent.) Only two islands in the Antilles are shared: Española, by Haiti and the Dominican Republic; and tiny St. Martin, by France and the Netherlands. French Guiana, Martinique, and Guadeloupe are French overseas departments, viewed by the French (if not by all of their inhabitants) as politically integral parts of France. Several small islands continue to be held by European powers by what are in varying degree colonial arrangements: the Dutch possessions, which include the so-called "ABC" islands (Aruba, Bonaire, and Curaçao) and Saba; such French islands as St. Barts; and British possessions including the British Virgin Islands and Montserrat. American possessions of the same sort include the U.S. Virgin Islands and--though by no means a small island--Puerto Rico, though Puerto Rico is not as divested of political power as are the others. The particular manner in which ethnicity plays a role in everyday life turns heavily upon the existing political

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<sup>6</sup> The stress in this passage is upon the subtropical Old World as a source of migrants for the plantations of the New. But nearly all the new migrants to Cuba--the largest and most rapidly expanding Caribbean economy at the time--were Spaniards, who were neither under contract nor from the subtropics.

arrangements in each case. Not surprisingly, ethnicity in the Caribbean region has a somewhat distinctive cast, springing largely from the particular history of labor there.

### Cultural and Physical Diacritica

Before turning to specific case materials from the Caribbean it is necessary to say more on a general issue relevant to discussions of Caribbean ethnicity: the issue of "color," or "race." There is now a respectably large literature concerned with whether "race" should be distinguished from other features of a clearly ethnic--that is, cultural--kind (such as dress, language, and cuisine).<sup>7</sup> That matter cannot be adequately pursued here. But for the most part the writer finds himself in agreement with David Mason (in remarks he wrote defending an article by the late M.G. Smith):

...it is important not to confuse principles of stratification which have a negotiability from those which do not. Put another way, there are myriad opportunities for boundary crossing and "passing" where the criteria of group difference are capable of being concealed or rendered invisible, and where individuals may in some sense "choose" whether or not to display or maintain a particular cultural characteristic. By contrast, gross phenotypical differences, such as color, are difficult if not impossible to conceal and can serve as markers of status whether or not other "cultural" differences are present. Because they have a genetic foundation, they are both permanent and hereditarily transmitted and thus inferior or superior statuses are transmitted across generations. [If one acknowledges the power of such markers, one wishes to contest the assertion] that such differences are merely socially constructed; that they are readily malleable (*sic*) and deconstructed (Mason 1986: 6).<sup>8</sup>

As Mason says, "even where a group is culturally indistinguishable from others, phenotypical markers might well serve to differentiate it in terms of rights" (*ibid*).

It seems to this writer important to draw a distinction between ethnic and physical denotata at the outset, when looking at Caribbean cases. Here, there are instances where substantial cultural material may be shared in common by people of varying phenotype. In such cases the essentializing of ethnic categories can be successfully achieved by employing phenotypic criteria: in effect, what people are culturally is inferred from the way they look to others. It is easy to understand how

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<sup>7</sup> The bibliography is vast. Probably a good starting place is Mason 1986.

<sup>8</sup> I do not wish to address here the assertion that the phenotypical features employed in the construction of socially defined "race" are also constructed (e.g., Wade 1993). I think that claim really comes down pretty much to the recognition that racial categories are historically constructed. The only reason for making such a claim so emphatically, I think, is that many social scientists have been poorly educated about the place of history in social science. When they discover how important history is, their sense of liberation from "science" makes them emphatic.

the idea that "race" is socially constructed can be enchanting to persons who once believed in its status as a biological construct; and of course there is no doubt that "race" is socially constructed. But the now-fashionable argument for social construction can easily be over-intellectualized. "Race" is socially constructed on the basis of visible physical differences, when such differences can be employed in targeting victims. That the valence of a particular physical trait is "contingent"--that is, that you may be able to catch a cab in spite of it--is not much consolation if you cannot catch a cab because of it.<sup>9</sup> The varying negotiability of the traits employed either to validate membership in a group, or to be assigned by others to one, ought not to be neglected. In the present essay, at any rate, ethnic and physical denotata will not be treated indiscriminately.

### Caribbean Ethnicity

Thomas Eriksen (1992), who carried out fieldwork in Trinidad, has defined ethnicity as the systematic and enduring social production of basic classificatory differences between categories of people who perceive each other as being culturally discrete. Eriksen has suggested that ethnicity surfaces conspicuously in many different modern contexts, and enumerates four as examples: (1) urban minorities (such as Turkish immigrants in Western Europe); (2) indigenous populations (such as the Lapps of Northern Europe); (3) proto-nation-states (such as the Kurds, Sikhs, or Palestinians; and (4) plural societies, such as Trinidad in the Caribbean region.

Examples of these four sorts of ethnicity do surface in distinctive forms; in a global context, Eriksen's list is useful. But in fact these cases or "models" are oddly inappropriate for the Caribbean region--all the more striking, perhaps, since Eriksen's work is half-built around a Caribbean case. The inapplicability of Eriksen's examples can be clarified by looking at the categories themselves.

In no Caribbean city can we speak of a significant urban minority, Eriksen's first case. North Americans in San Juan are rather more like Russians in Riga, perhaps, than like Turks in Geneva. The politically significant presence of an ethnically distinctive population is absent from any Caribbean example. The Jews of Kingston, Jamaica, and the Lebanese of Port-au-Prince, Haiti, are sociologically noticeable, but more because of their class positions than their ethnicity. In neither case is the group politically significant.

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<sup>9</sup> The literature concerned with this issue is substantial. I find particularly challenging Wade 1993. People who are phenotypically ambiguous but socially black in this country are believed to "pass" at the rate of some thousands each year. Other persons of like appearance choose to "remain black." It is clear here what is negotiable; the "race" of those people who cannot "pass" is no less socially constructed than that of those who can, but their negotiability as individuals differs. It may be worth remembering that while Adolph Hitler sought to turn Jews into a "race," he needed yellow stars to make sure there were no mistakes. I agree that even phenotype is socially constructed--which traits are selected, and in what combination--in order to construct a "race" that is genetically ludicrous. But it serves no useful scientific or practical purpose, I think, to treat what are clearly cultural diacritica, as opposed to physical diacritica, as if their phenomenological status were the same.



There are cases of what can legitimately be called indigenous populations, such as the Mayance-speakers in Belize, the Arawakan- and Cariban-speakers in Guyana, and of course, the Island-Carib of Dominica. However, there has been no substantial politics of indigenism among any of these peoples that could be compared seriously with, say, the case of the Sami (Lapps). Small though the total populations of these societies are, the indigenous groups are nonetheless politically almost inconsequential.

Of proto-nation-states, Eriksen's third category, it seems to me that there are no examples, not even feeble ones, from the Caribbean region. Indeed the distinctive feature of Caribbean ethnicity is precisely the extirpation of native populations and their replacement with populations from elsewhere.

We are left, then, with his last label, "plural society," and here, indeed, there is something to be said. But because "plural society" has been burdened with so many meanings in the social science literature of the Caribbean during the past thirty years, the term, if not what it is supposed to represent, will be discarded here.<sup>10</sup>

Trinidad, Guyana, Surinam, and the Dominican Republic are all cases in which cultural differences have been given political weight, largely by hypostatizing or reifying them, and usually with a racist twist. The manner in which this has happened is similar to situations in ethnic politics elsewhere, both through imputation and through self-reference--as in the United States, for example. In each such case, however, the nature and strength of the operative political system is a highly relevant variable. In many European countries, ethnicity is an understandable dimension of social allocation, but possesses mostly just negative political significance, as in France, say, or Germany. Yet in the United States ethnicity can have both positive and negative weight. Each such case requires examination on its own terms.

## Trinidad

The first example to which I wish to turn is Trinidad, a society with which Eriksen deals. Trinidad has received considerable attention in recent years, particularly--though not only--from British social scientists.<sup>11</sup> Ethnic aspects of its character as a polity are striking. Demographically balanced almost 50-50 between

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<sup>10</sup> It may be worth stressing that Eriksen, despite this enumeration, concludes his book on ethnicity in Trinidad and Mauritius by discarding the "plural society" concept because it tends to essentialize ethnic identity (Eriksen 1992: 165 *et seq.*).

<sup>11</sup> Among recent relevant books and papers on Trinidad (not all of them dealing with ethnicity, however), I would call attention particularly to Khan 1994, Munasinghe 1993, Eriksen 1992, Littlewood 1993, Segal 1989, and Miller 1994. The spate of new materials on Trinidad contrasts strikingly with what we have on Jamaica, formerly a British social science favorite. What happened?

Afro-Trinidadians and Indo-Trinidadians, Trinidad struggles to accommodate peacefully cultural differences that are attached to groups largely conceived of--and largely perceived--as being culturally different.<sup>12</sup> The ideological presumption among many Creole or black Trinidadians--that one can be "Afro" and Trinidadian, but not "Indo" and Trinidadian--is being tested by the emergence of a more assertive Indian political stance. Indian political leaders now seem to be taking the view that being Trinidadian need not mean accepting an Afro-Trinidadian definition of Trinidad's past and present (Munasinghe 1993).

Recent ethnography on Indo-Afro interaction in Trinidad gives substance to Eriksen's view that ethnicity involves "the systematic communication of cultural differences" (Eriksen 1992: 16). Thus, for example, Khan has shown how the original Indian concept of *juthaa*, which is linked to ideas of food pollution based on hierarchical caste ranking in India, and once served as a marker of stratification among Indo-Trinidadians, sometimes serves currently as a boundary marker between Indo- and Afro-Trinidadians. Even if people accept the prevailing egalitarian ideology of social equals, individual Indo-Trinidadians may nonetheless draw the line at accepting *juthaa*, if it would mean food sharing of certain kinds with members of the Creole group (Khan 1994). In this and many other ways, ethnic difference may be used to inform relationships between individuals, which enact and embody relationships between groups.

But what is perhaps most striking about this case is that, in spite of an often quite inflammatory rhetoric, Trinidadian political history since independence has been marked by a lack of serious or prolonged strife. Premdas (1993) has pointed to the 1990 "insurrection" of the Jamaat-al-Muslimeen, which highlighted the failure of the National Alliance for Reconstruction (NAR) after its 1986 victory at the polls. But this disturbance, which called attention to the disillusionment and bitterness of many Trinidadians, has not created any irrevocable fissures. Clark (1993) shows that "racial endogamy"--black-black marriages and Hindu-Hindu marriages (I am employing his terminology here)--has increased since independence. But that fact has not brought any irreversible alienation in its wake. Despite the quite separate tracks on which the Afro-Trinidadian and Indo-Trinidadian groups appear to be traveling, they are managing to maintain political dialogue within their society.

Is there anything that we can learn from this? I think the first lesson might be that these are people who lack a mystical attachment to the land in which they live--or, perhaps better said, who lack any impulse to create a mystical attachment to

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<sup>12</sup> I have called attention several times to V.S. Naipaul's wonderful "A baker's story" in this connection (Naipul 1967). In it, a Trinidadian black man who has learned to be a baker from his Chinese employers goes into business himself, only to discover that no one will buy his bread. The reason turns out to be that he is not Chinese. By changing his name to one that sounds Chinese and by hiring a young Chinese to stand in front of his shop, he is able to become a highly successful baker. But he never goes near the shop -- he leaves that to the woman he marries, who is Chinese. The story nicely illuminates the racialization of occupations in some multicultural societies.

the land in which they live. Unlike Europe, and like the United States, the ethnic case is made here using the idea of a level playing field- but no one is claiming that the field is in any manner the property of the other team. "Race," if it does enter in- and Khan (1993) warns us that the subject is a "touchy" one--does so in the context of imputed ethnic differences between Indians and Africans (Hindus and Creoles), real or imagined.

### **The Dominican Republic**

Here is a wholly different case. The Dominican Republic, the eastern two-thirds of the island of Española, was Spanish from the Discovery until the Haitian Revolution. Thereafter it was intermittently occupied (by Haiti, between 1822 and 1844), until achieving a dubious independence. The people of today's Dominican Republic are descended from aboriginal Indian peoples, Spaniards, other Europeans, Africans, and yet other migrants. Culturally, they are for the most part hispanophone and Hispanic; and it is not misleading to say that many Dominicans are ambivalent both about African culture and about persons of African descent. Anglophone migrants from the British West Indies, who came to cut sugar cane in this century, were early defined as outsiders--the faintly derisive term *cocolo* refers specifically to such a person--and they and their descendants continue to be seen as not quite altogether Dominican. Such judgments about the unassimilability of these people are made without regard to their actual--that is, practiced and lived--cultural identity. Even more important in the Dominican case, of course, is the position of Haitian migrants. The use of phenotypic features as a basis for persecuting Haitians also turns out, not surprisingly, to be a way of persecuting people of a certain appearance as well, whether or not they are Dominicans. This is a quite clear instance in which cultural attributes and phenotypical features are better understood in terms of how they work by not being subsumed under the same scale. All such attributes are socially constructed--but not in the same ways or to the same degree.

### **The Aluku**

A mainland case are the so-called "Bush Negro" (Ndjuka, Paramaka, Saramaka, Matawai, Kwinti, Aluku) peoples who are to be found in Surinam and French Guiana. These populations are descended from slaves who ran away from the Dutch coastal plantations in the late seventeenth and eighteenth centuries, and took refuge in the interior. If they might be classified in any way to fit them to Eriksen's cases, they would qualify as an indigenous population. But at the moment, these differing "tribes" or ethnic groups--for that is what they are--must deal with the tendency of outsiders to treat them as one: "Bush Negroes." In an excellent dissertation, Kenneth Bilby has provided the reader with an Aluku perspective of ethnicity, wherein the Aluku, who have always been French Guianese in their wider identity, are now clearly defining themselves in contrast or contradistinction to other Bush Negroes, with whom people confuse them. Bilby discusses the idea that some kind of "supertribal" identity might take shape as

people from different groups find common ground in their problems and the way they are treated. But he argues nonetheless that Aluku people, at least, are more and more busily defining themselves outside the broad category of "Bush Negro" (*businenge*), as time passes. Though they share many cultural features with Ndjuka and intermarry with them more than with any other non-Aluku, the Aluku stress the differences, not the similarities, partly because of wider political and economic factors (Bilby 1990).

The ethnic awareness of all Bush Negro peoples has been shaped over time by the recognition of clear differences between themselves and the townspeople or Creoles of Surinam and French Guiana. Habituated to migration to the coasts for trade and work, the Bush Negro people have always seen themselves as different from (and, I think it fair to say, in their view better than) the coastal Creoles. The Creoles, in turn, have always looked upon Bush Negro peoples as half-wild, boorish, and countrified. But the Creole view that all Bush Negroes are the same is emphatically rejected by the people themselves, who do not forget to reassert their tribal identity as necessary. As the only group with long-standing affiliations to the French state, the Aluku have better reason to "stay" Aluku than to "become" Bush Negro. Thus, in this instance, we can see an older ethnicity being perpetuated in the face of the homogenate perceptions of outsiders, who are not interested in how Bush Negro peoples differ from each other. That ethnic identity can vary in intensity with changing social and political conditions has been demonstrated to us tragically in recent years. The Aluku case is a peaceful example of how such conditions can work.

## Guyana

Of all Caribbean cases in which ethnic difference can be implicated in political violence, Guyana is doubtless the clearest. Yet it must be added immediately that from the outset, ethnic differences were subjected to distinctive pressures in the Guyanese case. Like Trinidad, Guyana received large numbers of ethnically Indian migrant laborers in the nineteenth century, and up through the second decade of the twentieth. As with nearly all other such movements of contract laborers to the Caribbean region, it is worth noting that the terms were set by foreign ministries in consultation with the colonial planter classes, and without the slightest concern for the well-being or the future welfare of the populations already resident in the colonies--composed in most cases of newly emancipated slaves (Mintz 1979, 1988). Thus the basis for the ethnic relations between residents and newcomers in the Guyanese case, as in nearly all, was contrived by the power holders. In the case of then-British Guiana (which became independent Guyana in 1966), the population of Indian ancestry settled into plantation labor for the most part,<sup>13</sup> and also developed some peasant farming, to complement their plantation labor (Rodney 1981). Over

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<sup>13</sup> Conditions of life were extremely hard; mortality was often very high; many Indians returned to India; many others died within a short time after their arrival. Look Lai (1993) has provided an excellent overview of Indian (and Chinese) migration to the anglophone Caribbean.



time, the Indians stayed more rural than urban, and more active in agriculture than in any other occupation. By 1970, they made up more than half the total population of the country, while people of African origin numbered only slightly more than thirty percent at the time.

Though the first political movements on the eve of independence successfully transcended cultural differences, British meddling with the elected government led over time to a thorough ethnicization of politics. Many other factors besides intervention played a part. A political system of a zero-sum sort militated against any power sharing across ethnic lines. Economic difficulties increased job competition and heightened hostility. In view of a history in which culturally different people who also looked different and spoke different languages were introduced in large numbers for the express purpose of lowering the local cost of labor, the wonder of Guyana may not be that there was ethnic strife, but that there was, on balance, so little of it. When one thinks of contemporary former Yugoslavia or the Soviet Union, the Guyanese case appears almost tranquil by comparison.

### By Way of a Conclusion

This paper has no conclusions. Ethnicity, as a way of organizing social reality in the Caribbean region, is important in several of the component societies -- usually it resonates with what are called "racial" stereotypes. However, in only a very few cases--even when ethnicity is marked by what Eriksen calls ample "semantic density" (Eriksen 1992)--has it created strains serious enough to threaten political stability. The distinctions that divide Haitians, for example, are fundamentally economic, not ethnic. Puerto Rican ethnicity appears principally in a pro-independence guise--the Puerto Rican people claiming their homeland against the North American occupier--or as between *Puertorriqueños* and *Neoricans* (the descendants of migrants to the mainland), usually on the soil of the homeland. Trinidadian ethnicity, embodied particularly in the essentialized distinctions between Afro-Trinidadians and Indo-Trinidadians, is real enough and has political significance; but it has not brought serious violence in its wake. Though far more serious, the Guyanese case nonetheless shares many features with Trinidad. In the Guyanese case, of course, political violence did surface; and ethnicity unquestionably played some part in it. Even so, when it is remembered that the Caribbean region is among the world's most heterogeneous ethnically for its size, it is noteworthy how relatively mild have been the political consequences. The Guyanese case suggests strongly that the terms of ethnic struggle are in some cases quite open to manipulation. That has of course been suggested for other modern cases. Love of country and strong affective links to the land are certainly as robust in the Caribbean region as elsewhere. Yet deeply rooted passions about whose land it is, and the readiness of people to kill for it, so woefully common in modern Europe, appear to be for the greater part quite absent.

It is reassuring to think that is likely to stay the same. This writer suspects that it will. The *Blut und Boden* basis for national claims, so common elsewhere,

seems oddly old fashioned (or simply spurious) in the Caribbean. Political mysticism there is; but it does not take on a collective cast. Caribbean politics is commonly practiced with a kind of detachment that would appear uninterested in Europe. Of course that is not always true. The horrific slaughter of Haitian people in the Dominican Republic in 1937, under Generalissimo Trujillo's deliberate instigation, is proof enough. Yet such instances are sufficiently rare to make one dare to be optimistic about Caribbean ethnicity. Perhaps this little region--so poor and so recently colonial, so accustomed to strangers and so given to lay more stress upon whom, rather than upon where--has much to teach the world outside.

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## STRUCTURAL ADJUSTMENT AND NEW REGIONAL MOVEMENTS: THE ZAPATISTA REBELLION IN CHIAPAS<sup>1</sup>

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In the post-Cold War era marked by outbreak of regional conflict around the world, it is tempting to characterize Mexico's Zapatista rebellion<sup>2</sup> as another one of many movements building upon primordial ethnic loyalties to challenge national states from below. The rebellion's principal spokesperson, Subcomandante Marcos, is not indigenous, but the Zapatista rank and file, as well as its higher command, are speakers of Tzeltal, Tzotzil, Tojolabal, and Chol for which the state of Chiapas is renowned as one of Mexico's most ethnic landscapes. Moreover, the rebellion's leadership identifies itself as the Clandestine Committee of Indigenous Revolution, and many of the Zapatistas' communiques have made reference to the long history of Indians' exploitation.

Yet it is also tempting to argue that the Zapatista rebellion is not an indigenous movement. The rebellion's heartland, eastern Chiapas (Fig. 1), is not an ethnic homeland, but rather a rugged tropical-forest frontierland that settlers have colonized only within the past forty years. The settlers are in turn a heterogeneous lot, including non-indigenous peasants from central and northern Mexico as well as indigenous settlers from the central highlands of Chiapas. The rebellion, furthermore, draws together people of considerable religious diversity, among whom some 40 percent are affiliated with a broad range of Protestant and evangelical faiths. The Zapatistas have coalesced this heterogeneous population around demands that are surprisingly nationalist, hailing Mexican civil society to join in demanding basic political rights for all Mexican citizens as well as economic rights and social rights for Mexico's poor.

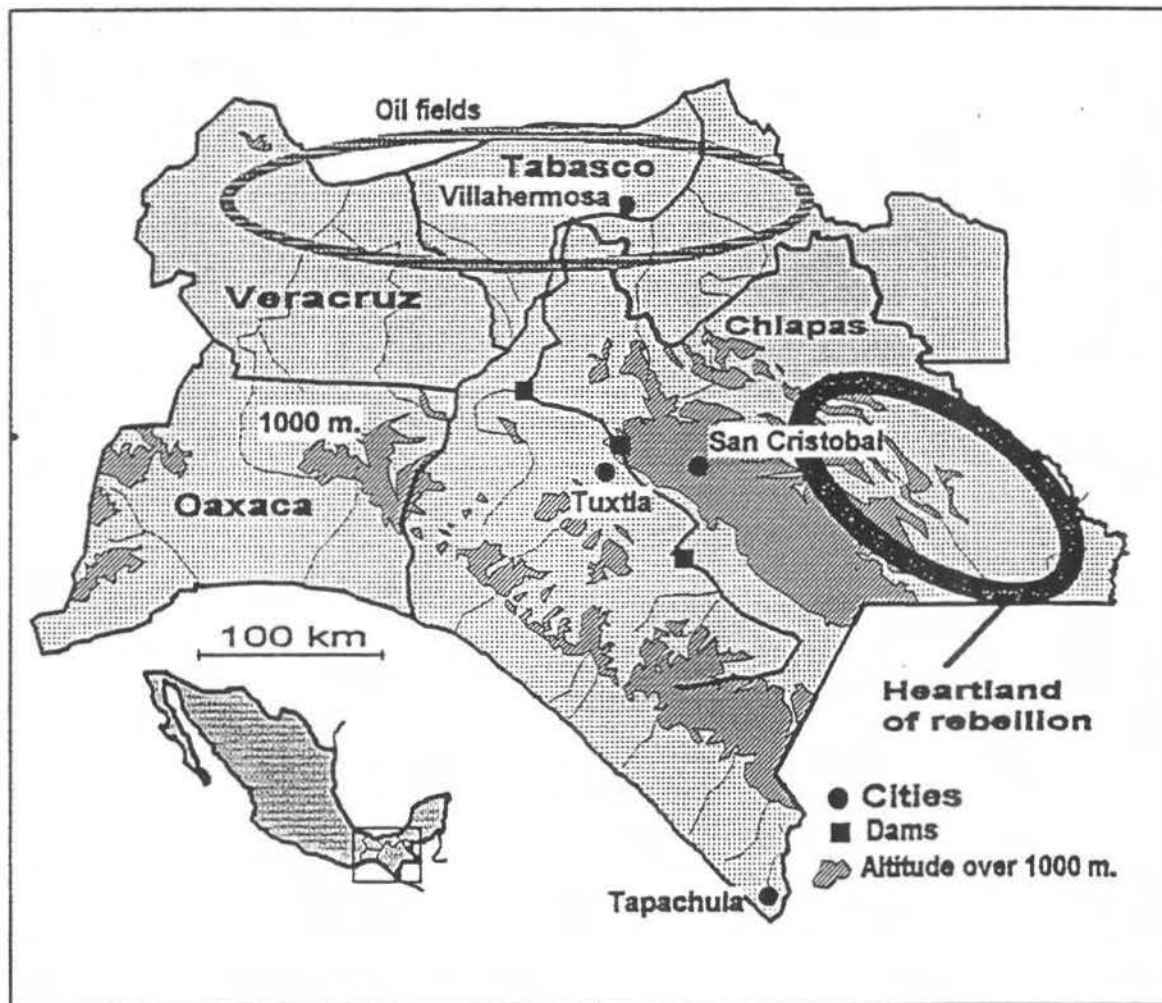
Instead of trying to fit the Zapatista rebellion into older typologies that contrast movements based on primordial ethnic loyalties to movements based on shared class interests, I want to suggest that the Zapatista rebellion is indigenous, but in a novel way. The Zapatistas are tapping the expressive potential of indigenous identity to span differences of cultural, territorial, economic, or political background

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<sup>1</sup> This paper draws on research support from the National Science Foundation for the study of "Agrarian Change in Southeastern Mexico" (BNS-8804607) and for "Methodological Training for a GIS Application in Cultural Anthropology (DBS-9221376); and from the Consortium of International Earth Sciences Information Network (CIESIN) for study of "Deforestation, Land Use & Development in the Greater Mayan Region." Maps are from my book, *BASTA! Land and the Zapatista Rebellion in Chiapas*, with permission from the publisher, The Institute for Food and Development Policy.

<sup>2</sup> For analysis of the Zapatista rebellion and its background, see Cancian and Brown (1994); Collier (1994a, 1994b, 1994c, 1994d, 1994e); Earle (1994); Harvey (1994); Hernández Castillo (1994); Hernández Navarro (1994); Leyva (1994); Nash and Sullivan (1992); Nations (1994); Nigh (1994).

Figure 1



1. Southeastern Mexico. The heartland of the Zapatista rebellion is in the eastern lowlands of Chiapas. The principal oil fields are along the Gulf coast of Tabasco and Veracruz. Two of the three hydroelectric dams on the Grijalva River in central Chiapas were built during the oil-led boom. (Adapted from Collier, 1994a, Figure 1.)

--rather than to underscore them. In the ethnic heartland of Chiapas, ethnic identities ordinarily divide people. Language, dress, and religion have served as much to separate Indians belonging to one community from those belonging to another as to distinguish Indians from Spanish-speaking Mestizos. When leaders of the Zapatista movement speak out from the position of Indians' historic subordination, they hail not just other Indians, but others as well who feel oppressed and betrayed by changes in Mexican political and economic policy.

This paper summarizes the conclusions of my book (Collier 1994e) that the Zapatista movement articulates discontent that has grown among the region's heterogeneous rural poor in response to change that has transformed Mexico's agrarian economy over the past twenty-five years. The agrarian change has derived from Mexico's insertion into the global economy of petroleum, and from the structural adjustments forced upon the country after its 1982 debt crisis and finally embraced as national policy. While these changes affect the Mexican economy as a whole, they have had prominent bearing on the agrarian landscapes near zones of petroleum development in Tabasco, Campeche, and adjacent areas of Chiapas, as well as near hydroelectric development on the Grijalva river draining central Chiapas. The changes have raised production of energy to a plane equal to that of agriculture in the economy of southeastern Mexico and Chiapas, but they have also transformed agrarian production in ways that disadvantageously affect the region's agrarian poor, whose discontent the Zapatistas have galvanized in their rebellion.

### **Oil development and the crisis in Mexican agriculture**

From the Great Depression to the 1970s, Indians and peasants held a special relationship to Mexico's economy and to the ruling party, the Partido Revolucionario Institucional (PRI).<sup>3</sup> Mexico did not initially honor the agrarian reform for which Zapatista *campesinos* of central Mexico struggled in the Revolution. It was Lázaro Cárdenas who redistributed millions of hectares of land to peasants and indigenous communities during his 1934-40 presidency to revive the Mexican economy by tapping the potential of peasants both as producers of basic foods and as consumers. Cárdenas also embraced Indians and peasants within corporatist institutions of the ruling party as clients of the state on a par with labor, as sectors among which the ruling party pacted for political support in managed elections. As Mexico developed under import-substitution industrialization in the decades that followed, peasants and Indians contributed inexpensive basic foods and were part of the work force active in sharecropping and commercial agriculture and migrating into urban-industrial employment. The government sustained peasants and Indians as clients by acceding periodically to their constant pressures for further agrarian reform in the countryside.

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<sup>3</sup> For the relations between peasants and the Mexican state, see Collier (1987); Hewitt (1984); de Janvry (1981); Stavenhagen (1975); Warman (1980).

Mexico abandoned import-substitution industrialization and began to base development on foreign credits and investments as it opened up oil exports shortly after the Organization of Petroleum Exporting Countries (OPEC) raised the price of petroleum in 1972. After oil exploration confirmed vast petroleum reserves along the Tabasco Gulf coast, the government easily secured loans from world banks to expand oil production and to underwrite grandiose projects of development.

Like many petroleum exporting countries, Mexico discovered that the export boom jeopardized agriculture by shifting the country's productive resources to other sectors. The contribution of agriculture to Mexican GDP declined about half, from 14 percent in 1965 to just 7 percent in 1982, while industry expanded from 27 percent to 38 percent of GDP. Mexico was experiencing the phenomenon of the "oil syndrome," or "Dutch disease," in which an export boom overvalues an exporting country's currency, damaging other sectors' access to foreign markets, and causing labor and other resources to shift into the booming sector or into production of "non-tradeables" (i.e. non-exportables), such as construction and infrastructure.<sup>4</sup>

As production shifted from Mexican agriculture into other sectors, peasants lost access to sharecropping and rural wage work. The resulting shortfall in their livelihoods forced some peasants and Indians to redouble demands for new agrarian reform. Others left the countryside to take up work in sectors where energy development drove up wages, migrating to Mexican cities or to the United States for jobs. The ruling party began to buy flagging peasant political support through public works managed by rural henchmen. As peasants' contribution to basic food production declined along with commercial agriculture, Mexico began to devote more and more foreign exchange to purchasing maize from the United States. By the late 1970s, Mexico was importing 25 percent of its corn, and Mexican politicians, chastened by American talk of using grain exports as a tool in foreign policy, began to fear that corn imports could jeopardize Mexico's sovereignty. The 1976-82 López Portillo administration responded by establishing the Mexican Food System (SAM) to reinvigorate peasant production through federal subsidies for fertilizer and for other inputs, credits, and price supports, but these stop-gap measures fell victim to Mexico's 1982 debt crisis.<sup>5</sup>

Mexico's development came to an abrupt halt in 1982 when world oil prices declined sharply and Mexico found itself unable to service the external debt it had taken on during the boom. Cuts forced on the government by world bankers curtailed public spending. Seeking to revive a more capital-intensive and market-

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<sup>4</sup> The "oil syndrome" first came to economists' attention in analyses of the negative impact of North Sea gas development on Dutch manufacturing. See Corden (1984) for a review and overview of development economists' concept of "Dutch disease." Scherr (1985) discusses the mixed impact of the "oil syndrome" on the agriculture of Tabasco. Karl (n.d.) discusses oil development in a comparative perspective.

<sup>5</sup> On the setbacks in Mexican agriculture and the food crisis, see Barkin (1987); Barkin and Suárez (1985); Esteva (1983); Hewitt (1992); Sanderson (1986); Spalding (1984).



oriented agriculture, the government curtailed subsidies for indigenous and peasant production, spurring debates over policy towards peasants. Finances for public works to buy peasant political support dried up, and the government resorted to subtle coercion and some outright repression to discipline rural dissenters. After 1988, Salinas de Gortari pushed ahead with restructuring the economy through policies inscribed in NAFTA, which will phase out subsidies and protection for Mexican agriculture. Salinas also decided to dismantle the agrarian reform, rewriting Article 27 of the Constitution and the Agrarian Code and thus abrogating the national state's historic relationship to indigenous and non-indigenous peasantry—one of the actions precipitating the Zapatista rebellion in Chiapas.

The sectoral shifts and policy changes accompanying oil-based development thus had undermined the historic relationship of the peasantry as an asset to Mexico's development, converting peasants into a political and economic burden for the national state and its ruling party.

### **The redeployment of ethnic populations**

In Chiapas, Indians of the distinctive ethnic townships of the central highlands developed roles in the regional economy and relations to the national state similar to those of peasants elsewhere in mid-century Mexico. Agrarian reform and Indianist development begun in the Cárdenas era co-opted Indians to the state through their ethnic townships. Cárdenas helped townships recover communal lands dating from the colonial era but lost to encroachment in the nineteenth century. The National Indianist Institute also administered rural development through ethnic leaders in townships, reinforcing townships' "closed-corporate" identities as distinctive ethnic communities. With support from the national state brokered through ethnic leadership, the indigenous townships provided reliable support for the PRI in the central highlands.<sup>6</sup>

Although moored to distinctive ethnic communities in the highlands, Indians nonetheless contributed to the commercial agrarian economy of central and western Chiapas, where they sharecropped, did agrarian wage work, and migrated seasonally to harvest coffee to supplement the bare subsistence afforded by highland holdings. At mid-century, the regional economy of lowland central and western Chiapas, which relied on the labor of indigenous populations concentrated in the marginal central highlands, exported cattle, maize, coffee, sugar, cotton, bananas, and other commercial crops to Mexican national markets and (in the case of coffee) abroad.

Oil development of the 1970s transformed this landscape. Oil fields opened in Tabasco, Campeche, and nearby areas of Chiapas, requiring roads, housing, and

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<sup>6</sup> For background on the indigenous communities of central Chiapas, and their relations to the regional economy, see Benjamin (1989); Brown (1993); Cancian (1965, 1972, 1992); Collier (1975); Parra (1989, 1993); Pohlenz (1985); Rus (1976, 1983, 1989, 1994); Vogt (1969); and Wasserstrom (1983).

services in nearby cities and towns. The government also used oil-backed credits to build dams at Angostura and Chicoasen on the Grijalva River in central Chiapas, elevating petroleum and hydroelectric production to an importance equal to that of agriculture. The heavy labor demands of energy development undercut agriculture by raising wages, forcing commercial farmers of the region to curtail production or shift farmland into grazing land for cattle. As the region began to supply Mexico with half its hydroelectric power and most of its oil, commercial agriculture declined, while construction, transport, and commerce expanded in zones near the Gulf coast oil fields of Tabasco and the dam projects of central Chiapas (see Figs 2, 3).<sup>7</sup>

This oil-led development transformed Indians' lives, undercutting their sharecropping and agrarian wage work and shifting them into unskilled construction work in the zones of energy development. Indians also began to enter regional markets as small-scale wholesale/retail fruit and vegetable traders, while wealthier Indians purchased vehicles to haul produce and passengers in regional transport. The boom of the 1970s thus stretched indigenous livelihoods beyond the limits of those ordinarily associated with subsistence farming, engaging Indians in the regional economy together with other peasants and rural workers and blurring the distinctions among them.

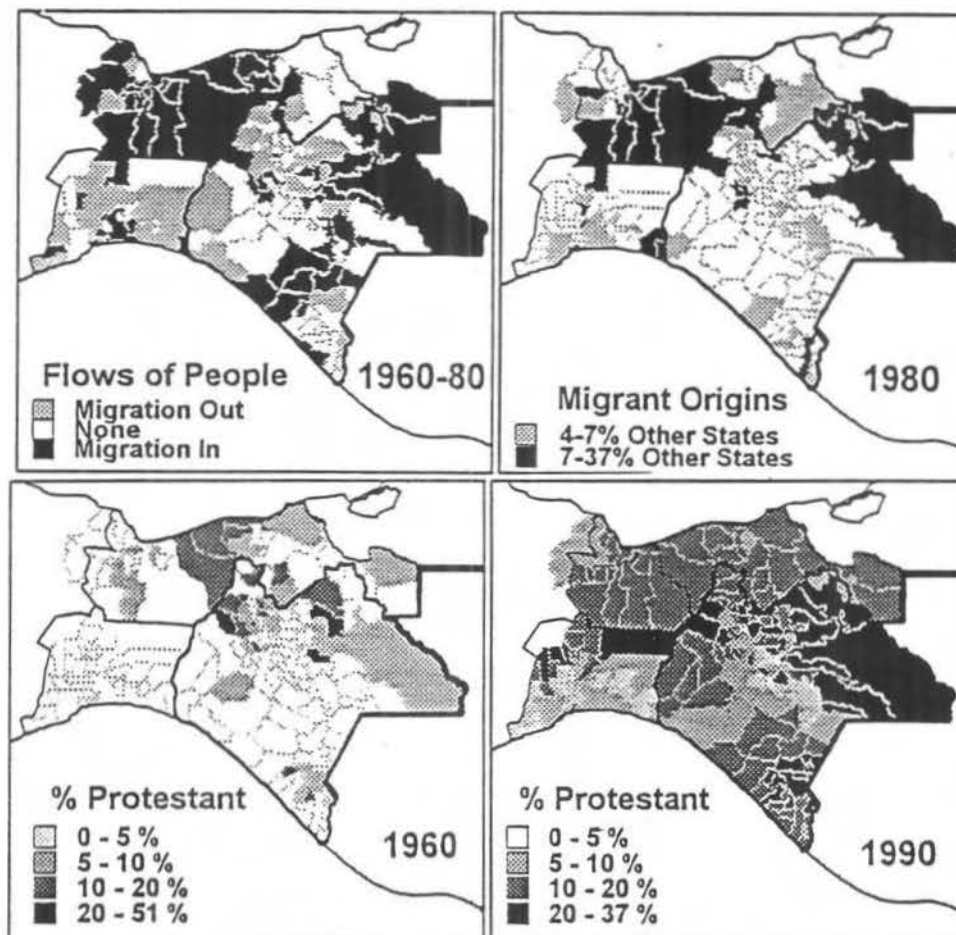
Drawing indigenous populations out of their ethnic homelands in the Chiapas highlands, energy development thrust many of them into the eastern lowlands of Chiapas as frontier colonists. The Selva Lacandona--the rugged, undeveloped tropical-forest frontierland of eastern Chiapas--began to be settled in the 1950s as highland Indian populations outstripped their land and began to migrate eastward in quest of new farmland. When agrarian employment collapsed in Chiapas's developed agrarian economy during the energy boom, the flow of Indians eastward as colonizing settlers swelled. The government, responding to the agrarian crisis unfolding in north and central Mexico, added to the colonization by opening up the frontier of eastern Chiapas to peasants from other states.

Eastern Chiapas emerged as a landscape of indigenous and non-indigenous settlers of widely varying backgrounds and heterogenous identity whose new lives were no longer beholden to the corporatist policies of the national state or to the ethnic loyalties that the ruling party had co-opted during the era of import-substitution industrialization. Tzeltal, Tzotzil, and other Maya Indians from central Chiapas mingled with peasants from central and northern Mexico in rapidly shifting frontier settlements in which colonists shucked prior township-based ethnic identities in favor of new modalities for galvanizing community, affiliating to diverse Protestant and evangelical religions as well as to Liberation Theology, and taking up new forms of peasant organizing at the frontier. Indigenous language, mutually intelligible in varying degrees among speakers of Tzeltal, Tzotzil,

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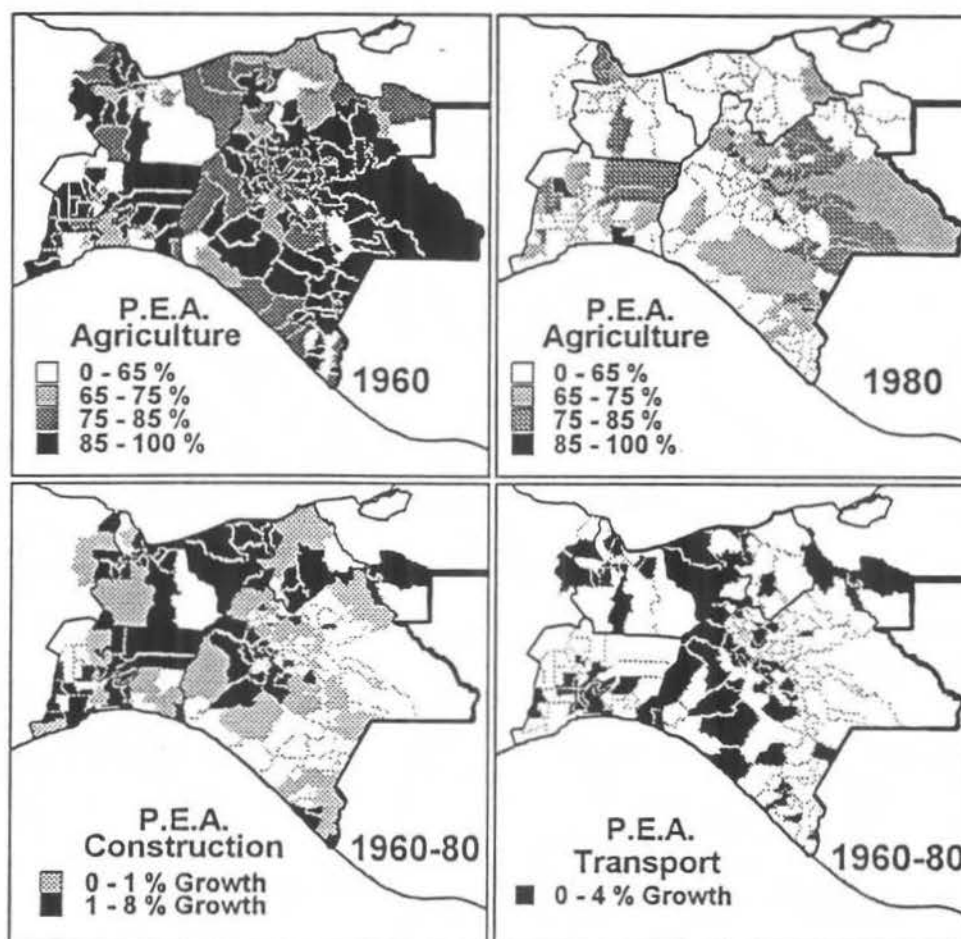
<sup>7</sup> This discussion draws upon Collier, Mountjoy and Nigh (1994).

Figure 2



2. The Colonization of Eastern Chiapas. The energy development of the 1970s attracted migration from central Chiapas and from other states into the zones of oil development and into the Chiapas eastern lowland frontier. Protestant and evangelical faiths became especially important in eastern Chiapas. (Adapted from Collier, 1994e, Figures 2.2 and 3.1.)

Figure 3



3. Sectoral Changes in Southeastern Mexico. Agriculture dominated Chiapas in 1960, claiming over 85 percent of the economically active population in most rural townships. By 1980, that figure had declined to less than 75 percent in most areas, reflecting the crisis in agriculture induced by energy development. Meanwhile, over the same period, the economically active population engaged in construction and in transport increased in areas near oil and hydroelectric development. (Adapted from Collier, 1994e, Figures 4.3 and 4.4.)



Tojolabal, and Chol, spanned much of this diversity, with Tzeltal emerging as a *lingua franca* in the zone, even among non-indigenous settlers.

### **The differentiation of indigenous livelihoods**

Oil development sharpened differentials of wealth and power within the indigenous peasantry of Chiapas, bringing unprecedented hardship to rural poor as the debt crisis of 1982 plunged the country into austerity and undermined the government's ability and willingness to finance relief.<sup>8</sup>

Agriculture, during the oil boom, shifted to forms of production requiring less labor and more capital as rising wages rendered older styles of farming unprofitable and eliminated employment for the agrarian poor. Landowners in the Grijalva River valley shifted production into livestock, converting marginal lands which they had previously allowed Indians to sharecrop on grazing lands. To the extent that Indians kept up milpa cultivation while taking up wage work in the energy economy, they began to employ fertilizers and herbicides on highland plots close to their family homes that they could farm intensely with a minimum of labor.

Energy development, at the same time, created opportunities for enrichment of a minority within the highland indigenous population who took up small businesses as new kinds of ethnic enterprises. While most Indians who undertook construction jobs in the 1970s lacked the language and skills needed for other than unskilled construction work, some acquired enough skills, tools, and capital to become masons or carpenters in their own right as private contractors, hiring other indigenous people to work for them. Others used construction earnings to finance small-scale wholesale-retail produce businesses in regional markets near the zones of development, sometimes monopolizing the trade of specific goods, such as flowers, as ethnic enterprise. Others invested in trucks and established themselves in transport. A newly wealthy entrepreneurial class emerged within the indigenous peasantry, capable of drawing capital from off-farm enterprises to invest in the chemical inputs needed for agriculture.<sup>9</sup>

Government public works also contributed to the enrichment of power holders in Chiapas's indigenous communities. During the decade of energy development, the government channeled funds for roads, schools, and other infrastructure in Chiapas in the form of block grants to townships for authorities to spend on public projects. Town hall incumbents, almost invariably affiliated with the PRI, enriched themselves by contracting public works to their own construction

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<sup>8</sup> My research on Zinacantán, a community in central highland Chiapas, focusses on the impact of energy development on society and culture within indigenous communities. See Alvarez and Collier (1994); Collier (1989, 1990, 1992, 1994b, 1994c); Collier and Mountjoy (1988); Collier, Mountjoy, and Nigh (1994). See also Cancian (1992).

<sup>9</sup> On the trucker elites in Chiapas, see Cancian (1992); Alvarez and Collier (1994); Loyola (1988).

and transport enterprises. The government program responsible for Indianist development in the highlands also helped ruling party henchmen to obtain credits for purchasing trucks and vans. The indigenous trucking enterprises that resulted have been a two-edged sword, on the one hand allowing their owners to retain shipping profits that once flowed into non-indigenous truckers' pockets, and on the other hand enabling indigenous truckers to profit at the expense of their rural compatriots, often with the backing of the ruling party. Throughout the region, the accumulation of transport capital has emerged as a major axis of power and conflict in rural communities in Chiapas. Many of the rank and file and sympathizers of the Zapatista army are refugees from villages where local strongmen had denied them the right to make a living.

When the debt crisis of 1982 curtailed the employment in the energy sector, Indians returned to an agrarian landscape in which old sharecropping and agrarian wage work were no longer available, leaving Indians only their own lands to farm in the highlands, which required fertilizers and herbicides to sustain intensive or continuous cultivation. Those Indians with land but without capital or credits to purchase the needed chemical inputs were reduced to renting out their lands and to working for others when employment was available. For many who had little or no claim on highland farmlands, the slackening of off-farm employment and the shift of regional agriculture away from agrarian wage work spelled desperation. The poorest of these Indians, especially in the densely populated indigenous communities of highland Chiapas, began to fall out of the bottom strata of their communities into squatter settlements around cities, attempting to eke out a livelihood from street vending or sale of artisanal goods.

Oil development thus effected a transformation of the agrarian economy in Chiapas akin to the restructuring that the Salinas government now seeks to inscribe in agrarian policy, capitalizing agrarian enterprise and allowing those with capital to concentrate the agrarian resources of others in the countryside in intensive production--even within the ejidos established by agrarian reform--while displacing those who cannot afford to capitalize their production out of the agrarian sector.<sup>10</sup>

This restructuring, while bringing about particularly sharp differentials in the highlands of Chiapas between well-to-do and poor Indians, has also affected the frontier colonies of eastern Chiapas. As colonization burgeoned there during the energy boom, many settled down, farming milpa and coffee, and pasturing livestock. Earliest-arriving settlers fared best because they were the first to secure land. Those arriving later usually had to work for established settlers until they could gain land and enough security to farm independently. Guatemalan refugees who flowed across the border in some regions during the early 1980s took up work at the bottom tier of the wage scale. Gaps between land-rich and land-poor grew when credits became available after 1980 in conjunction with federal support for

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<sup>10</sup> On Salinas's reforms of the agrarian code, see Collier (1994c); Cornelius (1992); *Gaceta de Solidaridad* (1992); Gordillo (1992). See Reyes (1992) for a discussion of agrarian reform in Chiapas.

peasant agriculture through the SAM, and as more settlers invested in coffee production.

Austerity hit eastern Chiapas hard after 1982. The region's mixed economy of timber, corn, coffee, and cattle suffered under the eventual removal of fertilizer subsidies. Salinas, after taking office in 1988, dismantled INMECAFE, the Mexican Coffee Institute, which had guaranteed markets for the region's coffee. World markets drove the price of coffee down by 50 percent in 1989, leaving coffee producers in the lurch as their incomes plummeted and their debts spiraled out of control.<sup>11</sup> Throughout Chiapas--not just in the east--the hard-won gains of peasants who had taken out loans to finance coffee production evaporated as banks foreclosed on loans and took over land, cattle, or other collateral.

Energy development--its boom in the 1970s and bust after 1982--thus whiplashed the agrarian economy of Chiapas, leaving both profit and devastation in its wake as well as differentials of wealth and power that contribute to the appeal of Zapatista demands for basic health services, education, housing, employment, fair wages, and adequate nutrition, as well as for land and for political reform.

### **Independent organizing and peasant movements in Chiapas**

Energy development broke down the solidarities of township-based highland ethnic identities as it drew Indians into the energy economy and as it differentiated such ethnicities between a minority who profited from the restructured economy and the majority who suffered. But it was independent organizing that merged Indians with other peasants and agrarian poor into movements that actively confronted the national state in the late 1970s and throughout the 1980s as Mexico's agrarian crisis deepened.

Many commentators attribute the coalescing of *indigenous* activism in Chiapas to the 1974 Indigenous Congress organized at the request of the Chiapas state government by Liberation Theologian and Catholic Bishop Samuel Ruiz Garcia. For more than a decade before, the Catholic Church had been missionizing actively in native languages in eastern Chiapas to offset the incursion of bible-translating Protestant and evangelical religions into the region. Samuel Ruiz organized grass-roots indigenous representation to the 1974 Indigenous Congress through lay catechists in each of the language districts in which the Catholic Church had missionized, bringing representatives together by language group to identify social and economic problems in the countryside and to request government solutions. The congress was the first event organized from the grass roots for Indians and conducted in indigenous language by Indians. It helped indigenous representatives from ostensibly different ethnic backgrounds learn that they shared the characteristic problems of Mexico's rural poor. The 1974 Indigenous Congress

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<sup>11</sup> Harvey (1994:9-11) has a particularly useful summary of the deterioration in pricing of various crops critical to peasant market-oriented production.

concluded with the drafting of a set of demands for employment, wages, housing, health, and land very similar to the demands presented by the Zapatistas in the recent rebellion, not only in the specific demands but in the fact that indigenous people had formulated them.<sup>12</sup>

The 1974 Congress came at a time shortly after the 1968 repression and massacre of left-wing students in Mexico City's Tlatelolco Square, when activists decided not to confront the state directly but to assist workers' organizations revindicate their rights through legal channels while maintaining their independence from the political organizations of the ruling party. There had been a debate within the Mexican Left over whether to regard peasants, and especially Indians, as having the potential to share working-class interests and political consciousness. By 1974, some Left activists had organized indigenous cooperative movements among the Yaqui and Mayo in northwest Mexico as successfully as counterparts had organized urban poor in major cities. The 1974 Indigenous Congress demonstrated to these and other independent organizers that Indians in one of Mexico's most backward hinterlands could, indeed, attain consciousness of their shared class position and organize in ways that not only surmounted apparent differences of ethnicity or background but spoke to many of the same issues that Leftists once felt only the urban-industrial proletariat could articulate effectively. Such developments began to blur the distinctions among Indians, peasants, and workers.

Shortly thereafter, three currents of independent organizing took up activism in Chiapas, explicitly drawing Indians, as well as non-indigenous peasants, into alliance with counterparts in other parts of the country.<sup>13</sup>

One current drew Chiapas Indians into alliance with rural teachers and peasants in other parts of the country in a movement that emphasized agrarian reform and its historic roots in the Zapatista contribution to the Mexican Revolution. At the national level, this movement established the Coordinadora Nacional Plan de Ayala (CNPA)<sup>14</sup> in the 1970s. CNPA allied with the independent teachers movement, organized marches on the national capital, and held annual congresses, each time in a different state, to build alliances across agrarian movements. In 1982, after holding its fifth national congress in Venustiano Carranza, a Tzotzil-speaking town in central Chiapas where Indians had fought ranchers for years over land claims, CNPA helped Chiapas activists organize OCEZ, the Organización Campesina Emiliana Zapata. At the time of the Mexican

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<sup>12</sup> On Protestant and evangelical churches in Chiapas see Giménez (1988); Hernández Castillo (1989, 1993). On the 1974 Indigenous Congress and the role of the Catholic Church, see Morales (1992).

<sup>13</sup> On independent organizing in Chiapas, see Harvey (1988); Marion (1984, 1989, 1994); Morales (1992); Pérez (1989); Sánchez and Ovalle (1986); Taller de Analisis (1988); Toledo Tello (n.d.); and Unión "Tierra Tzotzil" (1992).

<sup>14</sup> Named after the 1911 *Plan de Ayala* in which Emiliano Zapata set forth his proposals to expropriate the lands that had been usurped from peasants by landlords and politicians.



Revolution, Emiliano Zapata's movement had not been strong in Chiapas except near the border with Veracruz. Now, in the 1980s, OCEZ organized Indian and peasant demands for agrarian reform, first in central Chiapas, later in eastern Chiapas as well, as Zapatista demands.

A second current emphasized the rights of landless rural proletarians, using federal labor legislation as a basis for revindicating the rights of resident workers on rural ranches who had never attained fair wages or land rights. In Chiapas, such resident workers were mostly Indians held in debt-indentured labor on remote ranches long after the Revolution had supposedly abolished such exploitation. Activism on behalf of these Indians was brought to the region around Simojovel in northwest Mexico in 1977 by the Central Independiente de Obreros Agrícolas y Campesinos (CIOAC), which at first competed and later cooperated with OCEZ in central Chiapas and eventually in eastern Chiapas as well.

A third influential movement grew out of a current of Maoist activism known as Popular Politics (PP) that emphasized base organizing of indigenous and peasant unions to obtain credits and marketing as protection from the exploitation of merchant middlemen and usurers. This movement arrived in eastern Chiapas shortly after the 1974 Indigenous Congress and built upon the grass-roots networks that the Catholic Church had used in organizing the Congress. Although the Catholic Church continued to be active in base organizing in eastern Chiapas, the independent organizers of Popular Politics broadened their base in the region to include Protestant and evangelical groups in eastern Chiapas, thus spanning the heterogeneity of the region's newly forming frontier society with greater effect than the Liberation Church. Like both Protestant and Catholic evangelizers, Popular Politics recognized the power of organizing by and for indigenous peasants in indigenous language, setting up production and marketing cooperatives in eastern Chiapas under Tzeltal (or Tojolobal or Chol) names emphasizing the collective force of indigenous unity.<sup>15</sup>

Throughout the late 1970s and 1980s, these independent movements organized in Chiapas, sometimes in competition and sometimes in collaboration with one another. They drew Chiapas's heterogeneous indigenous and peasant populations closer together in making demands on the national state. These demands grew increasingly confrontational as energy development and the debt crisis led the government to abandon its historic relationship to peasants and Indians as allies and clients of the corporatist state.

The Zapatista movement grew at the margins and interstices of these independent movements, committed from its foundation in 1983 to confrontation with the state--revolution--more radical than that of the independent movements. As a clandestine revolutionary movement, the Zapatistas inherently critiqued the

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<sup>15</sup> For example, the Union de Uniones "Kiptik ta Lekubtesel," or [in Tzeltal] the "United for Our Betterment" Union of Unions.

attempt of the independent movements to undertake activism within legal channels rather than to confront the state directly.

In the climate of austerity after 1982, the government began to use a combination of repression to discipline dissenters and graft or payoffs to buy loyalty. Such tactics exposed independent organizations that won concessions from the state to charges that their leaders had sold out to the government in the manner of ruling party henchmen in rural town halls through whom the government controlled rural elections. When the Left united in support of opposition presidential candidate Cuauhtémoc Cárdenas in 1988, the ruling party claimed overwhelming support for Salinas de Gortari even in such areas as eastern Chiapas where the support for Cárdenas was strong. In some townships, the ruling party claimed more votes than there were voters on the official voting lists. The blatant electoral fraud strengthened the Zapatista claim that it was pointless to work within the framework of legal channels controlled by the state, and the movement began to draw strength from those who had become disillusioned with the independent movements.

Initially it was austerity that forced the government to withdraw subsidies and credits for production inputs such as the chemical fertilizers that peasants needed to farm. But by the time Salinas de Gortari became president in 1988, the ruling party had embraced economic structural adjustment as policy and had decided that the peasantry was more of an economic and political liability than an asset. The government then began to disband agrarian credits, to remove guaranteed prices for crops, and to withdraw government involvement in marketing. Finally, Salinas decided to put an end agrarian reform. The Zapatista rebellion, when it arose, galvanized broad-based indigenous and peasant discontent with what was seen as the government's betrayal of historic trust at a time of increasing need.

### **Regional movements in a transnational world**

New regional movements are the outgrowth, in some instances, of what some scholars are describing as "borderlands" of the contemporary world.<sup>16</sup> Borderlands are not just the physical spaces at the conjunction of national frontiers but rather sites that can potentially be found anywhere when distinct cultures come together in interaction without thereby losing their differences. Global development draws people into transnational diaspora even as production moves offshore. People, goods, money, and information circulate in networks and archipelagos, in new kinds of translocational spaces. Drawn together in new ways, peoples confront ambiguities of identity and polyvalent senses and possibilities of being. The ambiguities allow for experimentation with guises and roles, as well as the forging, reformulating, and even mobilizing of ethnic identity to advantage, as the Zapatistas have used their faceless indigenous visages to hail sympathizers who can project their own identities into those imagined behind the Zapatista masks.

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<sup>16</sup> See Alvarez and Collier (1994); Anzaldúa (1987); Rosaldo (1989).

The Zapatista rebellion exemplifies how alliances can be forged across lines of difference among peoples whose heterogeneous backgrounds and identities are juxtaposed in borderlands. Energy development transformed the landscape of southeastern Mexico into a "borderland" by drawing the ethnically distinctive Indians of Chiapas's agrarian economy, together with non-indigenous peasants, workers, independent organizers, and even evangelizers, into work, politics, and religion not previously open to Indians. Then, as new alignments of wealth and power surfaced and sharpened, the basis for a new regional indigenous identity emerged as the reversals of Mexico's energy development thrust the region into crisis. The Zapatistas tapped the discontent and consolidated a movement that elevates indigenous identity out of its old landscape of parochial loyalties, linked to patronage and protection of the corporate state, into something new, the shared identity of those who have been spurned by politicians who have embraced structural adjustment.

The example of the Zapatista rebellion suggests that regional movements gain impetus from the dynamics of encompassing political and economic systems rather than arising from primordial loyalties and identities associated with given regional landscapes.<sup>17</sup> Another contemporary Mexican example is that of new Mixtec "regional" identity, which has little to do with the primary identities of township or loyalties of community that Mixtec speakers once held in Oaxaca. The pan-Mixtec identity emerged, instead, from the shared experience of border camps in Tijuana and labor organizing in the tomato fields of California and other parts of the United States, where seasonally migrant workers from Oaxaca have been brought together by transnational agribusiness and have given voice--a new Mixtec voice--to their common interests in ways that reverberate back and forth between the landscapes of Oaxaca and of work.<sup>18</sup> Yet another example is that of regionally based peasant commercial or cooperative associations that respond to niche markets in the global economy--as in the case of ISMAM (Indígenas de la Sierra Madre de Motozintla), which organized on the basis of producing organic coffee for markets in Europe and the United States.<sup>19</sup>

It is also important to bear in mind that regional identities and subnational movements have gained transnational currency as popular movements that can gain support for one another--much as the Zapatistas have gained support not just from within Mexican civil society, but from Native Americans throughout the

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<sup>17</sup> One must remember that Chiapas's mid-century ethnicities were themselves shaped, reinforced, and reinscribed in Mexican agrarian reform and Indianist policy.

<sup>18</sup> On Mixtec identity as an emergent identity, see Kearney (1988) and Nagengast and Kearney (1990). See also Varese (1992) on indigenous and peasant base organizing in Oaxaca.

<sup>19</sup> See Nigh (1992) for a discussion of the phenomenon of new peasant "corporate associations" responding to contemporary markets. See also ISMAM (1990).

continent, from the Chicano movement, and from sympathizers in Catalunya.<sup>20</sup> Contemporary nation-states are in many instances struggling to reassert their primary claims on citizenship and identity, but in the post-Cold War and increasingly transnational order, they are no longer the only game in town.

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<sup>20</sup> See Díaz Polanco (1991) for a comparative analysis of regional movements for autonomy.



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# **ETHNIC CONFLICT, GOVERNANCE, AND GLOBALIZATION IN LATIN AMERICA, WITH SPECIAL ATTENTION TO GUATEMALA**

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## **Introduction**

The role of conflict in governance has been specially intimate in Latin America since the arrival of Europeans in the 16th century. In Mesoamerica and the Andes, where waves of invasions and conquests had helped state societies to emerge in the pre-Colombian era, conflict was intrinsic to the governing process. Such observations could be taken as banal were it not that these historical relationships have played an important part in the continuing evolution of these social and political relations. This is particularly true where indigenous populations have sustained divergent ways of life into the contemporary era; and in no country is it more true than in Guatemala.

Because other papers in this volume take up various aspects of the Latin American scene, the present essay will attempt in some measure to complement others by focusing on three general areas. It is useful to spell out what may be specific and common to the ethnic relations of indigenous peoples in Latin America. Second, important aspects of governance of Latin American indigenous populations are taken up in Stavenhagen's discussion and specific papers are dedicated to Colombia, to Chiapas, Mexico, and to the autonomous regions of Nicaragua. The focus here will be more on the contest between nation-state processes and global processes which is affecting the context of survival for indigenous peoples.

Finally, since ethnic conflict receives attention in the papers to which I just alluded, I will here make special reference to Guatemala, where ethnic questions have particular salience because, in contrast to Colombia, Mexico, and Nicaragua, the Indians of Guatemalan constitute approximately one-half the national population.

## **Historical Factors in Latin American Ethnicity**

Almost all the major ethnic groups in Latin America derive from the countless invasions of peoples from one area to another. While major differences among indigenous populations can be traced to different pre-Colombian movements, the more commonly discussed contemporary variations stem from those of the past five hundred years by Europeans, Africans, and Asians into the Western Hemisphere, throwing peoples of vastly different origins into direct and often violent contact.



Ethnic differentiation in 16th century Europe was classically handled through segregation which, under crowded conditions, took the form on the one hand of separate communities, ghettos, and barrios, and on the other of further flight, migrations, or of forced expulsions or extinction. Slaves, serfs, Jews, barbarians, and savages were all, one way or another, kept separate in so far as possible.

The industrial expansion of 18th and 19th century Europe saw a difference in the treatment of peoples in the industrial core from those in the colonial hinterlands. Social differences in the core were often tolerated so long they caused no problems. In the Western Hemisphere, however, strategies of deculturation and assimilation became increasingly characteristic of emerging nation-state ethnic policies. Coupled with this, class relationships derived from emerging industrial capitalism accentuated the earlier forms of stratification, as well as perpetuating many of the segregational features of the previous era. The inherently contradictory practices of deculturation and assimilation on the one hand, and continuing segregation on the other, were especially the case where Indians were economically important for the expanding nation-states, as in Mesoamerica and the Andes. Assimilation was promoted as "educating" and "civilizing" the Indian, and was part of the thrust of the original "indigenismo." Economic and political marginalization, however, tended to reinforce ethnic distinctions except when combined with forced labor, in which case it directly promoted assimilation.

The two World Wars sounded the death knell for the great industrial world empires. While most caved in following World War II, the break up of the newer Soviet and Eastern European bloc all but completed the process forty years later. The most visible remnant of industrial imperial colonialism today is China. Implicit in this imperial fragmentation was the pragmatic admission that while the industrial nation-states may have created a world order, they were incapable of governing and caring for peoples under their control. Emerging technology continued to reduce communication and travel time around the globe and populations exploded under increasing public sanitation.

The imperial collapse was welcomed by those who were to take command of their own nation-states. It also demanded redefining identities and adopting culture practices for the future. In Latin America, however, this colonial fragmentation and ethnic-national emergence did not take place. The Indian peoples in much of the region had been not only conquered, but invaded, occupied, and internally colonized. Rulers in post-colonial Latin American did not simply go away as they did a century later in much of

Africa and Asia.<sup>1</sup> The inheritors of the Spanish and Portuguese colonies were not aborigines but europeanized Creoles and Mestizo peoples. This led to certain qualities in indigenous-ethnic relations that were common over much of Latin America.

The universality of post-conquest ethnic suppression and the assumed superiority of non-Indians made effective insurgency by the indigenous people all but impossible. Even where Indian numbers were sufficient, established segregational and assimilative practices weakened and co-opted efforts at indigenous political action. Little or nothing could be done at the local level to address problems of land rights, customary law, bilingualism, or multilingualism, etc. Even identity and cultural markers had to conform to demands of the state. Very few Indian groups, mainly some in lowland South America, could even remotely be said to enjoy a culture very similar to that existing at the time of the appearance of the Europeans. Indians, long under pressure to "become civilized," survived by adapting to practices and resources that were not native to the New World but were common in non-Indian societies; it was an earlier stage of globalization that set in motion long term problems: if Indian religions are to be defined as central to identity, where do culturally-Indian Protestant and Catholics believers stand? If language is central, what about those who are bilingual or have no Indian language? If land holding and agricultural practices are crucial, what about the large majority who have no land? If mountains, rivers, or other natural features were sacred, what about national and transnational economic and exploitative interests?

The counterpoint of assimilation and segregation meant that historic patterns of ethnic discrimination were not erased easily. If Indians dressed in ethnic clothing cannot get jobs, how can they participate in broader economic life while retaining this right? What kind of evidence is there that can change the inculcated prejudice against and deeply harbored fear of Indians or Indian rebellion? Given the impact of suppression, what basis do Indians have for new social directions? Even where other interests are active against the state, i.e., insurgency, Indians are under conflicting pressures to align themselves with both parties. Where the state fears an Indian threat to sovereignty, how can it then accede to some demands for sovereignty?

Finally, paternalism and patronizing relations almost universally characterized the interchange between the state's dominant sectors and Indians. While I have not searched the literature on this, I suspect that today this kind of attitude is applied most commonly to indigenous peoples. There is something of this in the way that the People's Republic of China attends to

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<sup>1</sup> The difference from the Asian and African cases was accentuated by the recent exceptional history of South Africa, where, as in the New World, the colonial nation-state leaders did not disappear.

national minorities within its borders, and in India's old classification of certain peoples as "Scheduled Tribes," i.e., indigenous peoples who are "entitled to affirmative action programs for tribals,"<sup>2</sup> privileges not available to other ethnic groups. Certainly New World states rarely extend paternal treatment to other ethnic groups. I wonder if the United States ever seriously considered a Bureau of Negro Affairs? Does any Latin American country house an Instituto Asiatico Nacional to see to the welfare of people of Chinese and Japanese extraction?

This paternalism is extremely relevant to the potential effect of global processes on indigenous peoples. The salience may be seen by comparing Mexico with Guatemala. The Mexican government has, since the founding of the Instituto Indigenista Interamericano and the Instituto Nacional Indigenista in the 1940s, actively controlled limits and opportunities for the development of Indian society, activities, and politics. It is rare that international agencies are extensively active in Mexican-Indian affairs without the direct mediation of the Mexican government. The government has long promoted a policy of dependence through administering special rights, services, and protection. Because of this, when the Mexican government acted against Indian interests, such as the alleged invasions of Tepehuan, Chihuahua, and Chiapas communities by the military in 1993,<sup>3</sup> it was difficult for Indians to seek alliance and support from more distant global resources. While global agencies do contribute funds for projects in Mexico, the majority are coordinated by the Instituto Nacional Indigenista, and there are very few direct contacts and cooperation between Indian communities and bilateral, international, or multinational agencies that can avoid oversight from Mexican state agencies.<sup>4</sup> The frustrations that triggered the Zapatista rebellion in Chiapas in January of 1994 originated in part because of the differential manipulation of the expanding Indian population by the state and governing party, the PRI, and the local non-Indian population.<sup>5</sup> The government's very success in co-opting some indigenous peoples while simultaneously marginalizing others was not a new device of ethnic

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<sup>2</sup> Sanjib Baruah, "Indigenous Peoples, Cultural Survival and Minority Policy in Northeast India," *Cultural Survival Quarterly*, 13:2:54. 1989.

<sup>3</sup> Eric Rosenthal, *Civilians at Risk: Military and Police Abuses in the Mexican Countryside*. Minnesota Advocates for Human Rights, August, 1993. Cited in Julio C. Tresierra, "Pueblos Indígenas y Estado-Nación: México," in *Indigenous Peoples and Democracy in Latin America*, edited by Donna Lee Van Cott. In Association with The Inter-American Dialogue, (New York: St Martin's Press, 1994), 187-212.

<sup>4</sup> I am indebted to Julio Tresierra for this observation.

<sup>5</sup> See the papers by Ronald Nigh, George A. Collier, Gary H. Gossen, Duncan Earle, and others in *Cultural Survival Quarterly*, Vol. 18., No. 1, 9-34, Spring 1994.

governance in Latin America, but was especially appropriate for the Mexican style of governance.

Government's role in Guatemala has been quite different. Indians have consistently been officially regarded as meriting no more nor less rights than any other citizen. The Instituto Indigenista Nacional was never granted any serious authority or financing to carry on projects that would have any very significant impact on the Indian population, and was in effect abolished in the 1980s. This continuing governmental neglect and disinterest in the Indian population has also meant, however, that no government agency inhibits relations between Indians and extra-national, global agencies and activities. The agencies may, if they so wish, work through government bureaus or local NGOs, but as often as not they work directly with the people. The Guatemalan highlands seems littered with projects sponsored by bilateral, multilateral, and NGO organizations and individuals. This ready access by foreigners is periodically decried in the Guatemalan press as foreign interference in local affairs, but there is no strong effort to put aside the long-standing policy of holding Guatemalan Indians to be individual citizens with rights to individual action.

The Mexican and the Guatemalan models engender different problems; in some cases a weakness in one appears as a strength in the other. Both have succeeded in inhibiting independent ethnic action. Mexico's paternalism acts as a buffer, an insulation against intimate contacts between the Mexican-Indian population and the many global agencies and resources that might otherwise be available, whereas Guatemala leaves the global access wide open, but provides little government assistance and tends to ignore the Indians' needs and problems stemming from their historical association.

## **Global Impact**

### *Competition in Development of Indigenous People*

Whatever else may have been the case in Spanish and Portuguese colonial America, there was no question that the Imperial powers were responsible for most major decisions that affected the indigenous peoples. Some other European powers tried to manipulate indigenous peoples to their own interests and against those of the Iberian rulers -- such as the British transshipment of the "Black Carib" who were causing serious problems of insurgency from the Lesser Antilles to the north Coast of Honduras, or their managing of the "Mosquito Kingdom" on the Atlantic coast of Nicaragua. The fundamental imperial policies of tribute, *repartimiento* and the strict desegregation of Indian communities were, however, never seriously challenged by any foreign power.



The end of Latin American colonial regimes in the early 19th century did not change this situation. The new republics faced no serious challenges to the governance of "their" indigenous peoples. This continuity was, however, due to the fact that the rest of the European powers were still busy with their own colonial projects, and the notion of imperial right to rule was not challenged. The changes in the world order in the second half of the present century, however, brought all former colonial areas under the attentive observation of not only other nation states, but also of the burgeoning universe of non-governmental organizations and the various branches of the United Nations. People who in earlier era would have known little or nothing about Indian-Mestizo relations in Latin America now have this information thrust upon them. Globalization has meant that information and events occurring in one part of the world are rapidly communicated to many other points, leaping national boundaries and environmental barriers.<sup>6</sup>

By the same token, the indigenous peoples the world over sensed their release from colonial domination, and have taken steps in their own development. Although in comparison with events Rwanda, the Middle East, or Eastern Europe, New World Indian politicization and revitalization has been relatively retarded, the overweening interest of outsiders is similar the world over. Whereas colonial empires from the 16th to the 19th centuries were founded on state strategies to extend control over peoples of the world, the end of the 20th century finds descendants of these same peoples contending for control over the nation-state. Much of what appear to be local processes of ethnic revitalization are, in fact, part of major global dynamics whereby nation-states are in crisis trying to redefine themselves while many ethnic peoples are pressing to play roles in defining a new world order. The rise of indigenous action in the absence of any fragmentation of nation-states in the New World makes it clear that we are dealing with a global process of evolutionary significance. And for peoples of the New

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<sup>6</sup> Nestor García Canclini has effectively summed it up: "Por primera vez en la historia, en esta segunda mitad del siglo XX, la mayor parte de los bienes y mensajes que se reciben en cada nación no se han producido en su propio territorio, no surgen de relaciones peculiares de producción, ni llevan en ellos, por lo tanto, signos exclusivos que los vinculen a la comunidad nacional, sino otras marcas que más bien indican su pertenencia a un sistema desterritorializado." ("For the first time in history, in this second half of the twentieth century, the greater part of the goods and messages that are received within each nation have not been produced within their own territory, have not emerged from particular relations of production, and, therefore, do not bear signs derived exclusively from the national community, but rather bear features that indicate that they belong to a deterritorialized system.") Nestor García Canclini, "Museos, aeropuertos y ventas de garage; la cultura antes el Tratado de Libre Comercio," *La Jornada Semanal* No. 157, 14 junio de 1992, Mexico, 32-33.

World global resources have been particularly important. The manifest failure of nation-states in the past half century has given Indians the first significant opportunity since the Conquest to seek retribution. To do this, however, they have had to reach beyond the nation-state for resources. Let me take up two such cases: first, the uses of the environment; and second, the globally-defined rights, especially human rights.

### *Global Relations as Part of the Environment*

Many Indian groups claim that they have a special relationship with the environment, that their cultures, specifically their religion and style of life is particularly apt for a benign ecology. This holds some truth among some lowland and forest Indian groups whose cultural practices are important components to the healthy reproduction of the habitat on which they depend. Historically, however, Indian societies dependent on intensive agriculture have had an profound impact on the environment. Today, for example, the religion and cosmovision of the Guatemalan Maya specifically sees the environment as something alive that requires respect and careful attention. Historically, however, it is likely that ecologically unsound agricultural practices contributed to the so-called collapse of the pre-historic lowland Maya. Today the Mayan insistence on the centrality of milpa (i.e., corn) production, contributes to the continuation of corn irrespective of any other ecological or economic considerations.

There is little question today that the environment has become a major issue in the search for global resources and alliances by Indian interests.<sup>7</sup> In a recent study Alison Brysk argues that while the World Bank, the Inter-American Development Bank, and the U.S. Congressional Human Rights Caucus today treat "Indigenous issues simply... as environmental issues,"<sup>8</sup> it took the World Bank seventeen hearings between 1983-1986 before it changed its policies to recognize the salience of this intimate interrelationship.<sup>9</sup> "The Inter-American Development Bank improved its treatment of indigenous issues after the National Wildlife Federation sponsored the attendance of the leader of Bolivia's national Indian federation (CIDOB)."<sup>10</sup> In 1991 the U.S. Congressional Research Service stated the relation between U. S. national

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<sup>7</sup> Much of this argument concerning the environment is particularly indebted to Alison Brysk, "Acting Globally: Indian Rights and International Politics in Latin America," in Donna Lee Van Cott, 1994, 29-54.

<sup>8</sup> Ibid, 13.

<sup>9</sup> Ibid, 21-2; see also David Mayberry-Lewis, "Multilateral Development Banks and Indigenous Peoples," *Cultural Survival Quarterly*, 10:1;1-3, 1986.

<sup>10</sup> Brysk 1994: 23.

interests and Latin American Indians to be "rooted in wider policies of environmental conservation and democratization."<sup>11</sup> Many NGOs have also explicitly recognized that the environment is a major concern to which support for Indian interests can be related.<sup>12</sup> The alliance between environmentalists and indigenous pueblos, according to Brysk, "was cemented at a 1989 conference in Altamira, Brazil, organized by local Indian organizations. In true transnational fashion, the Altamira conference not only brought together ecologists and Indians but also Washington-based activists from disparate organizations who had approached Indian rights independently as journalists, researchers, policy makers, and human rights advocates."<sup>13</sup>

One must ask to what degree this linking of environmental conservation with indigenous rights is, in fact, sound. It is not clear that all Indian groups are equally concerned with the welfare of the environment. While there is no doubt historically that the major destruction and pollution of forest and wildlife derive principally from the insatiable demands of the industrialized world for energy-expensive products, Indian peoples have inevitably and increasingly been drawn into this ecologically dangerous process. Certainly Indian pueblos have as much right as anyone else to assert that "It is my environment and I have the right to exploit it as I see fit." The situation is exacerbated by the fact that many Indian populations have long been pushed into marginal refugee areas where the environment is far from suitable for many kinds of agriculture. Indian milpas in the Guatemalan highlands have continued to spread up incredibly steep and erosion-prone mountainside. It is widely known that the extensive opening up of forests and savannas by both Indians and non-Indians in the Petén in northern Guatemala has exposed terrain that is vulnerable to rapid depletion, promising a future wasteland. Lowland Indian groups, confronted with similar demands, are also tempted by commercial interests. Logging rights, for example, have been granted by some Amazonian Indian groups<sup>14</sup> and the Maya of Quintana Roo are logging their own mahogany forests. Even though indigenous knowledge promises forest regeneration in some of these efforts,<sup>15</sup> others are proceeding with no clear sustainable strategy.<sup>16</sup> A sober Indian position was perhaps expressed by a Kuna leader: "I don't think you

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<sup>11</sup> Brysk 1994: 12.

<sup>12</sup> Brysk 1994: 13.

<sup>13</sup> Brysk 1994: 13.

<sup>14</sup> Brysk 1994: 15.

<sup>15</sup> Manual Lázaro et al., "A natural harvest," *Cultural Survival Quarterly*, 17:1:48-51. 1993

<sup>16</sup> David Bray et al., "On the road to sustainable forestry," *Cultural Survival Quarterly*, 17:1: 38-41. 1993.

can say that indigenous pueblos are conservationists as defined by ecologists. We aren't nature lovers. At no time have indigenous groups included the concepts of conservation and ecology in their traditional vocabulary. We speak, rather, of Mother Nature... It is time to discuss this issue with the international organizations. For me, the problem is finding alternative strategies for managing natural resources..."<sup>17</sup> And a more discouraging outsider's critique sees much of the glow attached to indigenous ecological practices to be rank European romanticism.<sup>18</sup>

With the demographic expansion of Indian populations, especially in Mexico, Guatemala, and the Andes, Indian demands on the environment will inevitably increase in the future. While Indian and non-Indian interests have areas of common concern, the future probably promises more conflict than cooperation. With an ever greater demand for resources, it is hard to imagine that any society, Indian or non-Indian, can by their own efforts stop, or even seriously slow, the extensive and rapid degradation of the world's environment. However, if the Indian claims to a benign and beneficial relationship with the environment are valid, then not only should environmental issues be made central to the claims to special rights, but their environmental practices should be spread elsewhere.

### *The Rights of Indians in the Global Context*

While environmental issues provide salient arguments and reasons for Indian claims to certain territorial rights, the question of rights is itself enmeshed in the global process. Global efforts have been most visible and perhaps useful in the area of human rights. The problem is that human rights are usually defined in individual terms;<sup>19</sup> it is the individual that is granted or denied human rights by virtue of the action of some collectivity (often a nation-state) or individual. Claims for Indian rights and generally most ethnic rights, however, are claims for a collective right. A great many of the human rights abuses inflicted on Indians are, in fact, inflicted collectively,

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<sup>17</sup> Nicanor González, "We are not conservationists," *Cultural Survival Quarterly*, 16:3:43-45. 1992.

<sup>18</sup> Kent Redford, "The ecologically noble savage," *Cultural Survival Quarterly*, 15:1:46-48. 1991.

<sup>19</sup> This is not the place to explore this issue, but it must be noted in passing that the individualistic focus of human rights is not a product of state paranoia, not a matter of choice. Rather, rights as such can only exist when defined within some social context, and usually a context that presumes to sanction their violation. If civil rights can only be defined in terms of a particular society, human rights can only be defined in terms of the universe of humanity; to claim human rights for some specific social collectivity (e.g., indigenous peoples) necessarily prejudices some other human beings. It follows, then, that human rights can only apply to individuals. It may be added that lacking a social structure, humanity has no mechanism for sanctioning human rights.



if not always exclusively. The slaughter of Maya Indians in Guatemala in the decade of the 1980s, for example, did not exclude non-Indians, just as Pol Pot's Cambodian holocaust from 1975 extinguished indigenous minorities as a part of a larger general eradication of non-Khmer pueblos such as the Vietnamese and Chinese.

Human rights comprise an area where Indian peoples might anticipate help from the global environment. As Brysk, however, points out, "Indian rights claims are often hampered in the international human rights system by the claim to controversial collective rights rather than individual violations, the requirement of most international fora that domestic remedies be exhausted, and Indian nations' lack of standing in nation-state-sponsored arenas such as the World Court."<sup>20</sup> Among the many problems with handling collective rights for Indians is that the "international" world is made up of nation-states, such that substantial part of the global environment is composed of the network of nation-state interests.

In the 1993 World Conference on Human Rights held in Vienna, a draft declaration was prepared by the UN Working Group on Indigenous Populations, together with more than a hundred indigenous activist groups. It argued that "indigenous pueblos be recognized with inherent, distinctive collective rights, including rights of self-determination, self government and autonomy." A central concern of the proposal was that the "peoples," i.e., specific ethnic populations, be recognized to have such rights collectively. However, the Vienna Declaration, the official document issued by the conference, carefully avoided this wording, and simply spoke of affirming an international commitment to the welfare of indigenous people, and of considering renewing the UN Working Group mandate. If there was a forum where indigenous rights needed to be sustained at the global level, it should have been the Vienna Conference. In the final analysis, the nation-states' delegates refused to recognize indigenous peoples collective rights to self-determination because it would open the Pandora's box of creating independent ethnic nation-states.

These international interventions into matters of individual and collective rights of indigenous peoples has not been made easier by a problem that is central to many national systems, and is particularly central to ethnic relations in Guatemala. There has never been a legal definition of "Indian." The Guatemalan Constitution of 1985 provided for the first time a series of explicit special considerations for Indians and Indian communities and for a number of Indian rights. In Article 66, entitled "Protection of Ethnic Groups" it is stated that: "Guatemala is formed of diverse ethnic groups among which figure the indigenous groups of Mayan descent. The State recognizes,

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<sup>20</sup> Brysk 1993: 11.

respects, and promotes their forms of life, customs, traditions, forms of social organization, and use of indigenous dress for men and women, languages and dialects."<sup>21</sup> But I have been unable to find a definition in the constitution of what constitutes either a "grupo indigena" or an individual "indigena" or a "Maya."<sup>22</sup> Or, consider Article 68 which provides for, "Land for Indian Communities. Through special programs and adequate legislation, the State will provide state lands for those indigenous communities that need them for their development."<sup>23</sup> But how are we to know what constitutes a "comunidad indigena?" That too goes undefined.

Although there are apparently few, if any, legal definitions available for what constitutes the Indian or Indian ethnicity, it obviously does not follow that having such definitions would necessarily be an advantage for the people involved. The Guatemalan constitution does define Guatemalan nationality<sup>24</sup> and citizenship,<sup>25</sup> and it further recognizes cultural identity: Article 58 states that, "The right of people of communities to their cultural identity shall be recognized in accord with their values, their language, and their customs."<sup>26</sup> But there is no way to know who can legally claim such an "identidad cultural," because it is nowhere defined which people may legally come under this article, and it certainly does not define "identity."

## Ethnic Conflict

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<sup>21</sup> "Article 66: "Protección a grupos étnicos. Guatemala está formada por diversos grupos étnicos entre los que figuran los grupos indígenas de ascendencia maya. El Estado reconoce, respeta y promueve sus formas de vida, costumbres, tradiciones, formas de organización social, y uso del traje indígena en hombres y mujeres; idiomas y dialectos."

<sup>22</sup> There is no definition anywhere in Jorge Skinner Klee's *Legislación indigenista de Guatemala*, (Ediciones especiales del Instituto Indigenista Interamericano, México, D.F., 1954). 2a Edición, Guatemala: /Serviprenso Centroamericana de Guatemala, C.A., 1995, and he confirms that there has never been any to his knowledge.

<sup>23</sup> Article 68: "Tierras para comunidades indígenas. Mediante programas especiales y legislación adecuada, el Estado proveerá de tierras estatales a las comunidades indígenas que las necesiten para su desarrollo." But how are we to know what constitutes a "comunidad indigena?"

<sup>24</sup> "Art. 144. Nacionalidad de origen. Son guatemaltecos de origen, los nacidos en el territorio de la República de Guatemala...y los hijos de padre o madre guatemalteco, nacidos en el extranjero..."

<sup>25</sup> "Art. 147. Ciudadanía. Son ciudadanos los guatemaltecos mayores de dieciocho años de edad. Los ciudadanos no tendrán más limitaciones, que las que establecen esta Constitución y la ley."

<sup>26</sup> Article 58: "Identidad cultural. Se reconoce el derecho de las personas de las comunidades a su identidad cultural de acuerdo a sus valores, su lengua y sus costumbres."

## *The Nature of Ethnic Conflict*

There are great many expressions of discontent and opposition to the actions and policies of contemporary states. These attempts to reject the political past have mobilized around different interests and goals. Revolutions in Cuba and Nicaragua and in various southeast Asian states were promoted to a greater or lesser degree on the basis of class conflict. Religious issues have been critical both in Ireland and in the Middle East, and nationalist separatists appeared in both Asia and Africa. Other, less formally political, movements have hinged on issues of environment, gender, abortion, etc. Very few have been explicitly racial in definition, as was the case in South Africa. While ethnic differences have often been highly visible in these contests, it is also true that most of them have been much more complex and the role of ethnicity has been problematic. Because the term "ethnic" is so loosely used in these contexts, we need to digress for a moment to examine it further

Ethnicity has to do with presumed ancestry. While the dictionary usage is clearly associated with ancestry,<sup>27</sup> and some contemporary discussions of ethnicity often mention "common origins"<sup>28</sup> or "biological component,"<sup>29</sup> many contemporary scholars tend to focus on cultural and social traits. Illustrative historian Anthony D. Smith's assertion that the "core" of ethnicity is comprised of "myths, memories, values and symbol,"<sup>30</sup> and a recent statement by two biologists that, "Ethnicity is a sociocultural construct that is often, if not always, coextensive with discernible features [that]... include, but need not be limited to, language, style of dress and adornment, religion, patterns of social interaction and food habits."<sup>31</sup> Nor is

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<sup>27</sup> See, for example classic dictionary definitions. Webster's Third International Dictionary, 1966, second definition: "Relating to a community of physical and mental traits possessed by the members of a group as a product of their common heredity and cultural tradition." Oxford English Dictionary, 1971, Second definition; "Pertaining to race; peculiar to a race of nation; ethnological."

<sup>28</sup> Donald L. Horowitz, *Ethnic Groups in Conflict*, (Berkeley: University of California Press, 1985), 41.

<sup>29</sup> Manning Nash, *The Cauldron of Ethnicity in the Modern World*, (Chicago: University of Chicago Press, 1989), 5.

<sup>30</sup> "The 'core' of ethnicity, as it has been transmitted in the historical record and as it shaped individual experience, resides in this quartet of "myths, memories, values and symbols." Anthony D. Smith, *The Ethnic Origin of Nations*, (Oxford: Basil Blackwell).

<sup>31</sup> D. E. Crews and J.R. Bindon, "Ethnicity as a taxonomic tool in biomedical research." *Ethnicity & Disease*. 1. 42-49, 1991; quoted by Barry Bogin, "Biocultural studies of ethnic groups," in G.W. Lasker

it scholars alone who have made this cultural emphasis. Many indigenous people define themselves in terms of their inherited customs. However, irrespective of the cultural traits that may be chosen, ethnicity ultimately is defined in terms of ancestry, defined in myriad way: lineages, kindred, predecessors, kinship, presumed shared or common ancestry of almost any kind; it will often specify biological notions such as skin color, "race," or "blood, genes, bone, flesh or other common 'substance' shared among group members."<sup>32</sup>

Most Guatemalan Indians speak one or more of the Mayan languages and define themselves as descendants of the pre-Colombian Maya, although they recognize that many today have non-Mayan ancestry. In Yucatan, in contrast, there is a similar population that speak a Mayan language and use distinctive clothing, but allow for the fact of mixed ancestry and label themselves as "Mestizos." Thus selective labeling and criteria for ethnic identity is inherently highly variable and arbitrary. Culture is central to ethnic definitions because specifying ancestry requires agreement and cultural markers (e.g., language, dress, diet, etc.) are needed to distinguish one from another;<sup>33</sup> like all culture, however, it is arbitrary and changeable.

If ethnic identity revolves around some model of ancestry, then what is it about ancestry that might generate conflict? One thing rarely at stake is the definition of the ancestry, or the issue of ancestry itself. On closer examination, almost all so-called "ethnic conflicts" are over something else.

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and C.G.N. Mascie-Taylor, eds., *Research Strategies in Human Biology*, (Cambridge University Press, 1993), 33.

<sup>32</sup> Nash, *Ibid.*

<sup>33</sup> Ethnicity offers a set of interrelated advantages for creating solidarity that make it more useful than merely religious, class, territorial, political, linguistic or cultural definitions. (1) People can readily accept new culture traits that may have real adaptive advantage, as well as discarding some old ones without giving up their common ancestry-based identity. (2) Ethnic groups may fragment or dissolve, socially, but ancestry always has a common basis for remobilizing if it appears to be useful. (3) The ancestry definition imposes exclusiveness and inclusiveness. That is, it limits who can be a member, and it also defines the "other," those who are outside, and those who may be seen as threats and enemies. (4) Ancestry can be defined in almost an infinite number of ways. If a particular definition is proves cumbersome or disadvantageous, it can be changed to a more useful one. (5) Since ancestry is not necessarily associated with territory, ethnically related peoples in distant parts of the world may provide support, varying from the moral to political and material. Jews, Arabs, Serbians, Croatians, Irish and many others have provided assistance to the ethnic struggles of their homeland relatives.



Indeed, there is little to suggest that ethnic differences in themselves have been the central issues leading to violent conflict and mayhem. Certainly, many societies fasten on to such differences as a rationale for seeking their own interests; but whether violence and terror become instruments in the game tends to be a consequence of the seriousness of political, economic, and survival problems. Most cases of "ethnic conflict" actually arise over issues of land, resources, territory, access to economic opportunities, ideological or religious dogma, or any one of a multitude of other issues.

### *Ethnic Conflict in Guatemala*

Guatemala provides us with a most instructive illustration of these processes. The greatest open conflict between the ethnic groups in Guatemalan history has been to use violence to control against the Mayan peoples. It had its most obvious beginnings with the conquest, but the republican liberal governments of the 19th century continued violent means of political control and the slaughter of groups of Indians in retribution for perceived political offenses against the Ladino population was still an acceptable practice a few years ago.<sup>34</sup>

Among the many ironies of ethnic relations in Middle America is that while human rights abuses can apparently not be claimed by collectivities, only by individuals, violence thought to be of indigenous origin has classically been punished collectively. In the 1930s when Mestizo tourists in Guatemala were meddling in Indian religious sites and were killed, the response was to arbitrarily take a group of Indians and shoot them as a warning to the entire population. In the first part of the 1980s when the Guatemala army decided that there was increasing evidence of Indians supporting the insurgency, the response was to initiate a scorched earth policy that, by the army's own count eradicated over four hundred villages. Thus when dealing with Indians, the state deals with collectivities; when Indians deal with the state, they must do so as individuals. Somewhat isolated massacres of Patzicía in 1944, in Panzós in 1978, and elsewhere have been overshadowed by the holocaust of 1978-83 during which between fifty thousand and one hundred thousand people were killed, including the elimination of over four hundred villages and the flight of hundreds of thousands of Indians into Mexico and the United States.

It should come as no surprise that it is the Ladinos, whose army and state were responsible for this, that now have the most vivid vision of a future *guerra étnica*. It is disquieting when leading military officials argue

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<sup>34</sup> See Severo Martinez Palaez, *Motines de Indigenas*, Segunda Edición, Ediciones en Marcha, 1991; Carlos Figueroa Ibarra, *El recurso al miedo*, San José, Costa Rica: EDUCA, 1991; R. N. Adams, "Las masacres de Patzicía de 1944: una reinterpretación," *WINIK*, vol.7, No. 1-4, pp. 3-40, Guatemala;



that it is the Maya, and not the state, that are to be most feared and that it is external intervention that lies behind it. In 1992 the leading spokesman for the Guatemalan military, the Minister of Defense<sup>35</sup> stated:

The manipulation of this theme [Mayan ethnic issues] by interested parties is of concern because they do not appreciate the magnitude of the social polarization that this can engender. We must maintain, with serenity, the national unity even by not recognizing the identity of some ethnic groups which exist in Guatemala. I might add that I am familiar with them, that I have lived for long periods immersed in these social groups of Guatemala. I speak two of the languages. I love them, I admire them and it would hurt me very much, personally and institutionally, to see the self interested manipulation of this theme that is presently occurring lead to a confrontation bigger than Guatemala has experienced during the last thirty years.<sup>36</sup>

Indeed, this deep seated fear of ethnic violence is, itself, now projected to be the product of global processes. One particularly voluble Guatemalan journalist charges that the future *guerra étnica* is the work of, "paternalistic foreigners and international cooperation agencies with bizarre fundamentalist interests:"<sup>37</sup>

Why are cooperating international agencies (of the North) financing Indian movements in Guatemala? Why does so much money flow to

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<sup>35</sup> General Mario René Enriquez, then *Jefe del Estado Mayor* under the Serrano Elias government. These paragraphs are reworked from my paper, "A Report on the Political Status of the Guatemalan Maya," in Donna Lee Van Cott, 1994, 155-186.

<sup>36</sup> "La manipulación que este tema se puede hacer por sectores interesados porque no comprenden la magnitud de la polarización social que se podría lograr a través de...debemos de mantener con serenidad la unidad nacional aún no reconociendo la identidad de algunas etnias que existen en Guatemala que por cierto, dicho sea de paso, las conozco, he vivido muchísimo tiempo viviendo inmerso en estas sociedades digamos de Guatemala, como las llamamos algunos. Hablo inclusive de dos lenguas vernaculas. Los quiero, los admiro y me dolería mucho en lo personal y también institucionalmente que ese manejo interesado que están haciendo de este tema desembocara en una confrontación mayor de la que le ha tocado vivir a Guatemala durante más de 30 años." From a transcript of General Mario René Enriquez's remarks at a conference sponsored by the *Asociación de Gerentes*, Guatemala City, October 30, 1991. [Translation by RNA.]

<sup>37</sup> "Extranjeros paternalistas y de agencias de cooperación internacional de extrañísimos intereses fundamenalistas..." Mario Roberto Morales, "Hegemonía ladina y guerra étnica." Editorial in *Prensa Libre*, 22 de Agosto 1993, p.10.

promote these movements, when it is well known the Indian movements are divided, that they have no common goal and that the globalization (by the North) strengthens and consolidates the Ladino hegemony?

Is it that they are trying to divert resources, helping leaders, and therefore, immobilizing in order to promote projects that are not viable, impossible to realize, lost causes, and thus historically to distract the masses that it is convenient to keep troubled? Is it that it is convenient to certain parties to develop ethnic wars? Is it that interested parties want the "Yugoslavization" of Guatemala?<sup>38</sup>

Surely the most serious problem lies in the fact that the ingrained prejudice toward the Indian felt by many Ladinos, and the equally deep-seated suspicion of Ladinos by the Indians, is changing only very slowly. It will not be easy to institute greater respect for, and greater official use of, Mayan languages, nor to get middle class Ladinos to recognize that the Maya are not *nuestros indios*. The fear of Indians exists at all levels. The fact that the Indians constitute a politically disorganized body is not regarded as relevant to their potential for violence. The assimilationist policies of the past century and a half were dedicated to promoting that lack of unity.

### *The Globalization of Ethnicity*

Globalization of problems of state organization is both facilitating and inhibiting the exercise of violence. On the one hand it introduces more ideas, more lethal weapons, more reasons to initiate action against the classic nation states that have so convincingly demonstrated that they are incapable of providing security for their own peoples. On the other hand, it places the practice of violence ever more on the world stage to receive international judgment.

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<sup>38</sup> "¿Por qué hay agencias de cooperación internacional (del Norte) que están financiando movimientos indianistas en Guatemala? ¿Porqué corre tantísima plata para formentar esos movimientos, cuando es cosa sabida que los movimientos indios están divididos, que carecen de proyecto unitario de nación y que la globalización (del Norte) fortalece y consolida le hegemonía ladina?

"Será que se trata de distraer recursos, acomodar dirigentes y, por tanto, inmovilizarlos para alentar proyectos inviables, imposibles de realizar, causas perdidas, y así distraer históricamente a masas a las que "conviene" mantener distraeido, incluyendo los fundamentalismos indianistas? ¿Es que conviene a ciertos intereses el desarrollo de guerras étnicas? ¿Es que conviene a ciertos intereses una "yugoslavización" de Guatemala? " Ibid.

The most important impact of globalization in ethnic affairs is not that it promotes violence, but rather that for people who have found state organizations unsatisfactory and incapable of seeing to their interests, it provides a new series of resources for achieving goals defined on a non national basis that allows for the unification of religion, language, and other culture features that may be used in conjunction with ethnic interests. Global resources do not generally challenge the cultural definitions and, naturally, are not threatened by the ancestral definitions that define the solidarity. One aspect of this is that global resources--even though they may have specific state origins--often carry with them the illusion of representing, in some sense, all of humanity. They give the illusion of the availability of a real social context that may--equally illusory--bring sanctions to bear on one's behalf. Ethnic groups are especially vulnerable to this illusion since ethnic identity is a highly individual matter, and the universe of one's ancestors can often be confused with or blended with an illusion of the only meaningful humanity.

Moreover, ethnicity itself is becoming globalized. Here again, the definition of identity in terms of some model of ancestry or inheritance points up some of the complexities of our conceptualizing the future. In order to project a strong rationale for defense of their ancestral definitions, ethnic groups are finding it useful, even perhaps necessary, to gain a place on the global stage. Very slowly over past century the Lacandón of Mexico have become internationally known through the work of various anthropologists and journalists who promoted their welfare principally through writing. This year, the Sierra de Lacandón became internationally known overnight with the effectively publicized insurgency of the Zapatistas. The Mexican state was never severely worried about the Lacandón; the Zapatistas, however, are presenting them with one of their most difficult ethnic problems since the initiation of the Mexican Revolution.

We earlier discussed international sources of support from private organizations as well as United Nations agencies. The UN has acted in a number of other capacities as well as through the efforts of the International Labor Organization in the aid of indigenous peoples. In recent years, a Nobel Peace prize has gone to Bishop Tutu of South Africa and Rigoberta Menchu of Guatemala, two major figures engaged in ethnic struggles. In both cases the recognition gave the individuals and their ethnic supporters a strong international legitimacy, as well a significant recognition in their political role at home. There is no question but that the globalization of ethnicity is affecting the state's relations with its clients.

The concept of the "Guatemalan Maya" is a recent invention -- at most thirty years old as a viable political tool -- that provides the diverse Mayan language peoples of Guatemala with a much larger solidarity base, and one that potentially extends not only to Maya in Mexico and Honduras, but also to

those in Florida, Houston, and Los Angeles. Certainly the term "African" no longer refers merely to inhabitants of the continent, but to anyone who may want to claim such ancestry.

It is received knowledge that political systems are becoming increasingly complex; one component of this complexity, however, is that our bases for defining society, i.e., the definitions and rules that inform us as individuals where one belongs in this social chaos, are changing. Whereas in the early period of human society, definitions were made in terms of kinship and ancestral relations, these have been universally giving way to definitions based on territory, state political organizations, and on universalistic notions such as "humanity," on the one hand; and on narrow common interest groups based on competition for resources, ideological dogma, etc., on the other. The traditional interest in ancestry and kin relations have not disappeared, but the central definitions of social identity were broadly thought to have shifted away from these "primal" relations.

The argument here, however, is that the recourse to "primal" definitions, is as important today as any other potential identity basis. Rather than disappearing in the face of more "efficient," "rational," and dominant political forms of a Weberian state, of the nation, and of international relations, these basic social definitions are themselves being used to force a redefinition of the state. That they are in no way happily coherent with contemporary national and state organization is patently apparent in daily news accounts. The individualism that was a founding ideology of European industrial states and nations is thus being challenged by a collectivism defined in terms that are inherently alien to most nation states. While there are some cases where ancestry has been incorporated into the nation-state definition, such as in Japan, most nation-states, both new and old, are composed of mutually indigestible ethnic components.

Global ethnicity is a condition where political organizations based on some ancestral and kinship definitions must exist either as intrinsic components of larger, state-like, organizations or find a way to live side by side with them. Except in those few cases where the membership in the state is itself defined in terms of some common ancestry, all states must come to terms with diverse ancestries. However, while the problem of global ethnicity has been generated by globalization of human society, and while globally oriented organizations and efforts will unquestionably play some role in the process, the ultimate solutions will only be achieved in terms of local or regions realities.

Globalization has activated and amplified ethnic issues over much of the world; it has, however, thus far contributed much less to the design and discovery of solutions. The reason is not far to find. Like nations and ethnic

groups, the global notion of humanity is another "imaginary community."<sup>39</sup> The Guatemalan Maya and the Chiapas Maya may find some help in the formulation of their problems through resources found in the international and global environment. At present reading, however, the problems of the Guatemalan Maya are with Guatemala, and those of the Mexican Maya are with Mexico. The reality of the Swedish Nobel Prize committee will have limited effect in Guatemala, and the support of the international news media offers little real material help for the Zapatistas. Real solutions can only be forged in terms of separate realities, each necessarily coping with the consequences of its own past histories. I see little to suggest that anyone is coming up with global solutions to these issues. Global society is not centralized, has no single authority, no single center of power.<sup>40</sup> International resources and global events may help local ethnic efforts to counterbalance the power of the nation-state, but without a local solutions, such influences may merely perpetuate a failure to find more effective and long-lasting local solutions.

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<sup>39</sup> Benedict Anderson, *Imagined Communities, Reflections on the Origin and Spread of Nationalism*, Revised Edition, (New York and London: Verso, 1991).

<sup>40</sup> This argument stems from the basic model outlined in my *Energy and Structure* (Austin, Texas, 1975).



# DISLOCATION, EVANGELIZATION, AND CONTAMINATION: AMAZON CRUDE AND THE HUAORANI PEOPLE<sup>1</sup>

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## Preface

In October, 1994, just after returning from a working trip to Ecuador, I received a telephone call from a staff attorney at the Inter-American Commission on Human Rights of the Organization of American States. The Commission was sending a team to Ecuador to investigate human rights conditions there, including the situation of the Huaorani people, and wanted information about the impact of oil development on the Huaorani. As a result of that inquiry, I decided to dedicate this paper to questions raised by the Commission, seeking to contribute both to a scholarly understanding of the conflict between national development and environmental and cultural preservation in the Ecuadorian Amazon, and to the mitigation of its impacts on the Huaorani people.

Because of space limitations, I have focused on the legacy of the initial decades of the Amazon oil boom, which began in the late 1960s, led by the U.S.-based oil company Texaco, working with the Ecuadorian government.<sup>2</sup> The impacts, of course, continue to this day. Although many are irreversible, a number of practical measures could be undertaken to ameliorate major impacts and address continuing--indeed, growing--problems that have been thrust on the Huaorani by the presence of commercially valuable oil reserves in their lands. In this spirit, I conclude this paper with some proposals for action. These recommendations are by no means exhaustive, for new problems are emerging as the oil boom continues to spread through Huaorani territory. The Ecuadorian government has come to depend on oil revenues, and a post-Texaco generation of transnational and national oil companies is using (and expanding) Texaco's infrastructure to penetrate even deeper into the forest.

Notwithstanding these limits, I believe these proposals are significant and achievable in the short term, and would be an important first step to right wrongs, minimize future conflict, and protect the environmental and human rights of the Huaorani people. In presenting these proposals, I am simply giving a written voice to the concerns and aspirations of Huaorani and other people with whom I work in

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<sup>1</sup> Research for this article was made possible by the generous support of the John D. and Catherine T. MacArthur Foundation, Program on Peace and International Cooperation. This is a revised version of a paper presented at the conference, "Ethnic Conflict and Governance in Comparative Perspective," Woodrow Wilson International Center for Scholars, Washington, D.C. (Nov. 15, 1994).

<sup>2</sup> Indigenous Cofan, Quichua, Secoya and Siona have also been seriously affected by the Texaco-led oil boom.

the region. The issue is appropriately raised on an international level not only because the Amazon rainforest is of vital importance to the world environment that we all share and because basic human rights are protected by international law, but also because our lifestyle, outside of the Amazon, is a primary engine driving the conquest of Huaorani lands. Our energy consumption makes it profitable, and many would argue, necessary. I hope that this paper contributes both to a better understanding of our links to the Huaorani, and more importantly, to the implementation of practical steps to redress the injuries facing them.

## Introduction

From before written history, the Huaorani have lived in the forests of the Ecuadorian Amazon, between the Napo and Curaray Rivers. These forests, which are known and esteemed around the world for their extraordinary biodiversity and endemism, lie at the headwaters of major tributaries of the Amazon River. Today, the Huaorani number roughly 1300.<sup>3</sup> They are better known in Ecuador as *Aucas*, a Quechua term that means "savages", which is considered deeply insulting by the Huaorani. Their name for themselves, Huaorani, means "the people." They refer to outsiders as *cowode*, which means "non-human cannibal," or, in the words of one very old warrior, "those that cut all to pieces."<sup>4</sup>

The Huaorani have a rich repertoire of songs about themselves and their environment:

We are like colorful birds.  
Every day looking for fruiting trees, always hungry,  
always thirsty.  
When the birds find fruit they sing, so the other birds  
will come.  
All the birds are rejoicing amid the bounty.  
Without knowing where to find food we came.  
Now we sing in celebration.

We are singing in celebration, like the birds in a tree.  
You can sing this song, teach it to others, and we will  
sing it together.  
We live in a group, like the peccaries, we all go  
running.  
We are the Huaorani, this is the festival of the forest.

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<sup>3</sup> Randy Smith, *Crisis Under the Canopy* (Abya-Yala 1993).

<sup>4</sup> "Huaorani Amotamini -- Huaorani Chants", translated by Moi Enomenga and Nantohue Huamoni, Organization of the Huaorani Nation of the Ecuadorian Amazon (ONHAE) and Jonathon Sparrow Miller, Rainforest Information Center-Ecuador (RIC-CIBT), recorded at the first interclan Huaorani festival at Quehueiriono (1991; hereinafter "Huaorani Chants")

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Before daybreak, we all sing, first we greet the day with song  
We know how to hunt, dead in its track the animal falls.  
We know how to hunt, so the tips of our darts won't hit a  
bone and break.  
Some have not yet learned to hunt.  
A bone their spear hits, and the point breaks.  
Some have not yet learned to hunt, and the boar escapes.

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The *unkaboyemo*<sup>5</sup> is an enemy and a friend.  
When toucans, *yahue*, come attack the *huema* nest to eat  
its young, the *unkaboyemo* bird chases *yahue* away.  
The *unkaboyemo* is friend.  
But the *unkaboyemo*, when it wants to have its young,  
It chases the *huema* off and uses its nest.  
The *unkaboyemo* is an enemy and a friend.

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We don't want our people to die.  
If a child dies from witchcraft, the evil sorcerer, the  
father must kill.  
We don't want anyone to die, together we want to live.  
We want to be happy, to always be happy and sing.  
We want to live in peace, peace is what we want.  
When someone dies we are all worried.  
When someone dies, revenge must be taken.  
And we worry, we don't want anyone to die.  
We want to live in peace, we want to celebrate life.

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This is my father's song.  
Protecting our territory with spears.  
With many, many, painted red spears.

My grandfather Nihua, any *cowode* that dared enter our  
land he killed. On the *Doroboro*, Napo, river near Coca,  
just before the arrival of the Summer Language Institute,  
he was killed by the *cowode*.

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<sup>5</sup> The *unkaboyemo* is a small black bird.

It was bad luck he was killed.  
If he did not die, civilization would have never come.  
The most feared warrior, he was.  
If he had not died, all the *cowode* he would have killed.<sup>6</sup>

### Traditional Huaorani

Traditionally, the Huaorani were nomadic hunters and gatherers, moving through the rainforest on hunting, fishing, and gathering trips, and tending small manioc and banana gardens dispersed around longhouses--built on hilltops --that served as base camps. Every year, Huaorani clans visited their traditional family groves of chonta dura trees (peach palm, or *Bactris gasipaes*), which mark the settlements of previous generations. There, they gathered the abundant ripened fruit that was generously provided by their ancestors. For the Huaorani, a symbiotic relationship unites people, the chonta trees, and the animals that fatten themselves with the fruit of the trees (and then reproduce). That relationship ensures the renewal and growth of important food supplies and, together with the continuity of the family groves, links past and future generations. According to anthropologist Laura Rival, this link makes the forest a "giving environment," that the Huaorani believe will feed present and future generations.<sup>7</sup>

The Huaorani are a forest people, traditionally preferring the interior of the forest to its major rivers. They spend long hours slowly "cruising" the forest--exploring, collecting food and other items that they need for the day, and monitoring other resources for future use. They can cover a radius of five to twenty kilometers in a day, and often spend more time in the trees than on the forest floor. Upon returning to the longhouse, they have long discussions about the ripening of fruit trees or number of bird nests or pregnant monkeys. According to Rival, Huaorani interest in plant growth and maturation is more than pragmatic resource management. They delight in observing plant life, especially the growth of new leaves. In songs, they eloquently describe the beauty, colors, textures, and other characteristics of new leaves. For example, one song says that "trees with beautiful leaves grow well," and "it feels good to live where such trees are found, for their leaves, sweet enough to be eaten, never touch the forest floor." The Huaorani associate babies with new leaves, and relate human physical growth to the growth and maturation of plants.<sup>8</sup>

The Huaorani are renowned for their ferocity and isolation. Until recently, they avoided all continuous and peaceful contact with outsiders, eschewing even

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<sup>6</sup> Huaorani Chants.

<sup>7</sup> Laura Rival, "The Growth of Family Trees: Understanding Huaorani Perceptions of the Forest," *Man* 28:635-52 (1993) at 641-2.

<sup>8</sup> *Ibid.*, at 637 and 639.

the kinds of trading relationships that were common among other Amazonian peoples. A traditional Huaorani longhouse was usually led by an older polygamous couple, who lived with their married daughters and unmarried children--some 10 to 35 individuals. Although these households were autonomous and dispersed over a large area, they shared hunting grounds and strong alliances with two or three other longhouses, while generally maintaining hostile--and frequently bloody--relations with the others.<sup>9</sup> The intratribal hostility and warfare, however, was punctuated by periods of peace, feasting, and intermarriage, because the households were not socially self-sufficient and periodically exchanged children in marriage.

Huaorani society is characterized by a high degree of independence and egalitarianism. Within the traditional Huaorani longhouse, all of the individuals over seven years of age are independent and self-sufficient. Parents are not authoritarian, hierarchal, or overly protective, and the division of labor between different ages and sexes is minimal. Both men and women hunt, gather, fish, cook, and feed their small children. Children hunt, gather, fish, and cook together in small groups, with the oldest teaching and supervising the youngest. These children feed themselves, but save some food to offer to the adults. To the Huaorani, independence is measured by the ability to bring food back to the longhouse, to share with the others. The ability of children to give food away helps put them on an equal basis with other family members.<sup>10</sup>

Because of their confidence in the "giving" rainforest, Huaorani gardening activities are limited. In comparison with other Amazonian peoples, Huaorani horticultural techniques are very basic and require a minimum input of human labor. The Huaorani know how to cultivate manioc, plantains, bananas, peanuts, corn, and sweet potato, but have traditionally depended primarily on hunting, fishing, and gathering for their daily subsistence. Meat is the staple food. Notwithstanding this, Huaorani gardens--especially manioc gardens--are highly valued by the people. They are associated with growing children and multiplying households, and with periods of peace, stability, and abundance. During these intervals, there is no death, feuding, vengeance spearing, or fleeing, and distant relatives and "enemy" households get together for feasts, marriages, and manioc drinking ceremonies. The term for happiness is "another serving of manioc drink we laugh happily."<sup>11</sup>

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<sup>9</sup> Ibid., at 637.

<sup>10</sup> "Huaorani y Petróleo," in G. Tassi (coordinator), *Naufragos del Mar Verde* (Abya-Yala and CONFENIAE 1992; hereinafter Rival 1992a) at 125-79.

<sup>11</sup> Rival 1992a at 131-2; Rival 1993 at 644-47.

<sup>12</sup> For an account of the Palm Beach initiative, written by the widow of one of the slain missionaries, see Elisabeth Elliot, *Through the Gates of Splendor*. (New York: Harper, 1957)



## Contact, Evangelization, and Dislocation

The first peaceful contacts between Huaorani and *cowode* --fundamentalist missionaries from the U.S.-based Summer Institute of Linguistics/Wycliffe Bible Translator, Inc. (SIL) and Christian Missions in Many Lands--were in 1958. Rachel Saint, whose brother, along with four other missionaries, was speared to death by the Huaorani in 1956 while trying to contact them at "Palm Beach" on the Curaray River<sup>12</sup>, pioneered the evangelization of the Huaorani. In 1955, Saint and another linguist/missionary went to meet Dayuma, a Huaorani woman they had heard about who was living as a slave on a plantation near Huaorani territory. Eight years before, Dayuma had fled to the "outside" after her father and other family members were speared to death by a rival Huaorani clan. At nights, after weeding fields and hauling heavy loads on the plantation from sunrise until sunset, Dayuma worked with the linguists to recall and teach her native language. Although the missionary/linguists' language probes stirred in Dayuma distressing memories of intratribal murder, she was outgoing and helpful with them. She was also curious, and had an excellent memory and patience with repetition. She was impressed with the interest Saint showed in her language and her people.<sup>13</sup>

As Saint learned Huaorani, she told Dayuma stories from the Bible. When she was a child, Dayuma's grandfather, Karae, had told her that a god created the animals, the rivers, and the Huaorani. Saint appeared to know even more about God than Karae, and had answers to all of Dayuma's questions about God, death and the afterlife. According to SIL, when Saint learned that her brother and the other missionaries at Palm Beach had been speared to death by relatives of Dayuma, she impressed Dayuma by teaching her about Christian love, forgiveness and salvation. The Huaorani way would have been to carry out vengeance killings of both the attackers and their relatives.<sup>14</sup> According to Huaorani oral tradition, however, Dayuma's brother was also killed at Palm Beach by Saint's brother, although Dayuma does not appear to have known this until after she accepted Saint as her sister.

Over time, the owner of the plantation, Carlos Sevilla, gradually ceded more of Dayuma's time to the missionaries. In 1958, he "released" her and her young son, Samuel Caento Padilla, to Saint for full-time missionary work. Dayuma was concerned about how she would feed herself and her child without working on the plantation, but Saint assured her that the Lord would provide them with food.<sup>15</sup>

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<sup>13</sup> Dayuma had tried to escape three times before adopting the language and ways of indigenous Quichua peons on the plantation. For Christian accounts of the missionaries' work with Dayuma, see Rosemary Kingsland, *A Saint among Savages* (William Collins Sons & Co. Ltd. 1980); and Ethel Emily Wallis, *The Dayuma Story* (Spire Books, 1960). The Wallis account is a publication of SIL. Years later, Saint described Dayuma as "intelligent and a natural-born leader." Interview with Rachel Saint, Quito (Sept. 24, 1994).

<sup>14</sup> Wallis at 47, 69, 106-9, 113 and 127-9.

<sup>15</sup> *Ibid.*, at 120.

With Dayuma's assistance, Saint and SIL undertook a campaign to evangelize the Huaorani and relocate them into a permanent settlement. The settlement was built on the western edge of Huaorani territory on the Tihueno River, near where Dayuma had lived as a child. Saint and another missionary/linguist, Elisabeth Elliot, and her young child, went to live with Dayuma, her mother, and other family members at Tihueno. Elliot is the widow of one of the missionaries who was speared to death by Dayuma's relatives at Palm Beach.<sup>16</sup>

Initially, Dayuma was reluctant to return to live with her people after more than a decade with the *cowode*. The missionaries finally persuaded her. Huaorani cultural norms recognized Dayuma's right to return to her mother's home with her sister Rachel (Saint). Moreover, Dayuma's native group urgently needed peace and new alliances in order to survive. Twenty years of internal warfare had killed most of the men; the survivors were chiefly women and children. It was legitimate to make peace and settle with Saint and Elliot, because the Huaorani had exterminated the missionaries' kin. After a period of wandering, they could give refuge to the fugitive women who had no where else to go.<sup>17</sup> Dayuma and Saint quickly gained power and influence at Tihueno because of their access to trade goods like metal pots and cutting tools, which they "shared" with the others. Those goods also attracted Huaorani to Tihueno. Years of gift drops had opened the door to pacification of the group. For ten years, a new era of "primitive Christianity" reigned at Tihueno. As described by Quimo, one of the first arrivals, "living in Tihueno, we learnt (sic) the rules: no more killing, one wife only, foreigner's food eating."<sup>18</sup>

In 1967, the U.S.-based company Texaco made the first discovery of commercial quantities of petroleum in the Ecuadorian Amazon, to the north of Huaorani territory.<sup>19</sup> As Texaco expanded its activities to the south and advanced

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<sup>16</sup> Wallis; Kingsland. Elliot left Tihueno after two years. Subsequently, she expressed some doubts about the evangelization of the Huaorani, writing in 1981: "I think of the Indians themselves -- what bewilderment, what inconvenience, what disorientation, what uprooting, what actual diseases (polio, for example) they suffered because we got to them at last!" Reprinted in F. Kartunen, "Between Worlds," draft book manuscript, 1992.

<sup>17</sup> Laura Rival, "Social Transformations and the Impact of Formal Schooling on the Huaorani of Amazonian Ecuador" (doctoral thesis, London School of Economics) (1992) (hereinafter 1992b) at 16. SIL does not appear to have known about these cultural norms, and sent missionary women to live with the Huaorani on the assumption that they would be less threatening than men. Dayuma and two of her aunts, who had lived with Elliot since leaving the forest in 1957, were sent in before the missionaries, to test the mood of the group. At the time, SIL did not know whether Dayuma would be welcomed or killed when she returned to her people.

<sup>18</sup> Rival 1992b at 17.

<sup>19</sup> The find was in indigenous Cofan territory. The Cofan were afraid of the oil workers and colonists who flooded their lands as a result of Texaco's oil strike, and were dispossessed of huge tracts of their traditional territory. They now live in five small, non-contiguous pockets of land, entirely surrounded by outsiders and seriously harmed by pollution and other environmental and social impacts of the oil boom. The Cofan currently number less than 700, and are struggling to protect their remaining lands and restore degraded areas so that they can survive as a people.

into Huaorani territory, its camps were systematically robbed, and several oil workers and Huaorani were killed. Nearly two decades before, Shell Oil had abandoned oil exploration activities further south in Huaorani territory because of "Auca savagery."<sup>20</sup> But this time, the certainty that the region's reserves were commercially valuable sparked an oil boom. Texaco and the government were determined to develop the oil reserves.<sup>21</sup> Rosemary Kingsland, a Christian journalist who wrote a history of Saint's work with Dayuma with Saint's cooperation, described the mood of the time:

The northern strike was enormous....Nothing would stop them from going in now and there was talk of using guns, bombs, flame-throwers. Most of the talk was wild, but the result would be the same: a war between the oil men and the Aucas; a handful of naked savages standing squarely in the middle of fields of black gold, blocking the progress of the machine age. If it was to be a question of no oil or no Aucas, there was only one answer.<sup>22</sup>

According to Kingsland, Texaco turned to the Ecuadorian government to solve the Huaorani problem, which turned to Rachel Saint. The SIL relocation campaign was speeded up and extended to "enemy" bands.<sup>23</sup> In 1969, relocation

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The last indigenous Tetetes were also driven away from the area. That displacement is widely believed to have hastened their extinction as a people. Interview with Luis Carrera, President of the Environmental Advisory Commission to the President of the Republic, Quito (Jan. 26, 1994).

At the time of the oil strike, Texaco operated a 5-million-acre concession, which it held jointly with the Gulf Oil Company. Beginning in 1969, the government reclaimed two-thirds of the concession. In 1971, Ecuador's military government passed the Law of Hydrocarbons, establishing a national oil company, CEPE (now Petroecuador). The government eventually forced Gulf out of the consortium and CEPE acquired a majority financial share. For a discussion of the events that led to Gulf's withdrawal, see *Norsul Oil & Mining Co., Ltd. v. Texaco, Inc.*, 703 F. Supp. 1520 (S.D. Fla. 1988). Texaco remained in the consortium. As its operator, Texaco designed, built, and managed all of the consortium's exploration, extraction and transportation facilities until mid-1990. Under agreement with the government, Texaco trained Ecuadorian technicians and transferred petroleum technology to Petroecuador. As discussed below, that technology did not include environmental protection.

<sup>20</sup> Kingsland at 39.

<sup>21</sup> Texaco's development of these fields turned Ecuador into an oil exporter. Today, Ecuador depends on oil revenues for forty to fifty percent of its national budget and export earnings, depending on the international price of oil.

<sup>22</sup> Kingsland at 126. Years later, the Ecuadorian government reported that, according to former Texaco workers, the company dropped dynamite and bombs from helicopters to frighten its indigenous neighbors in unspecified locations. Carrera Interview.

<sup>23</sup> Kingsland credits Saint's "civilizing influence" on the Huaorani for the "breakthrough" that allowed Texaco to enter Huaorani territory after Shell had been "chased out of a region rich in oil by a handful of Indians." Kingsland at 70 and 126. According to David Stoll, in 1964 Dayuma asked the military junta governing Ecuador for a reservation in exchange for her help in bringing all of the Huaorani into the Tihueno area, "thus opening the remainder of the jungle for commerce." The generals were visiting the SIL base at Limoncocha on the Day of the Oriente, honoring colonization of the region. Huaorani from Tihueno sang and blow-gunned for them. Three weeks later, the government leased millions of acres to Texaco-Gulf, and oil exploration resumed in earnest, ending a lull that had

efforts were temporarily slowed by a polio epidemic in Tihueno that left 16 dead and 16 crippled.<sup>24</sup> But soon after the epidemic, "pressure was brought to bear on the SIL" to contact and relocate Huaorani who lived in the path of Texaco's exploration crews. The company was within just a few miles of a Huaorani longhouse, and an oil worker had been speared to death.<sup>25</sup> Relocation efforts intensified in that area, this time using aircraft supplied by Texaco.<sup>26</sup> It was during this period, in the early 1970s, that most Huaorani were finally contacted by the *cowode*.

Small planes and helicopters roared unrelentingly over the forest, as oil exploration crews advanced deeper into Huaorani territory, and missionaries cruised the skies looking for Huaorani longhouses, calling out to the people through loudspeakers or radio transmitters hidden in baskets lowered from the air.<sup>27</sup> They dropped "gifts" of mirrors, beads, metal pots, machetes, axes, rice, sugar and salt. In addition to trade goods, SIL used family relations, the availability of spouses, harassment, and fear to convince Huaorani to join their Christian relatives in Tihueno. It was a traumatic time for the targeted Huaorani. Noisy air traffic and oil crews scared off the game that served as their principal food supply. In addition to violent conflict with the oil crews, it was a period of bloody warfare--of killing and hiding--within the tribe. According to Rival, "everything was upset; there was a great deal of hustling and Saint put tremendous pressure on the Huaorani to move to Tihueno." Tensions rose, and most finally went "because they were scared." They left in haste, with no time to think it over, because when the missionaries landed the Huaorani had only a few minutes to get in the plane or be left behind. It was "a terrible time," and some twenty years later people cried as they recounted this history to Rival.<sup>28</sup>

Rival estimates that approximately 200 Huaorani were relocated to Tihueno from the area where Texaco was working. A minority fled deeper into the forest.<sup>29</sup> One small group, the Tagaeri, continued to resist the SIL and attack the oil invaders

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followed Shell's withdrawal. The government also gave SIL "exclusive rights" to evangelize and educate the Huaorani. David Stoll, *Fishers of Men or Founders of Empire?* (1982) at 292.

<sup>24</sup> At least one other man was speared to death, and many houses were burned, because the Huaorani believed that enemy clans caused the mysterious deaths. For the Huaorani, no death is accidental. The spearing was the first one in the area in twelve years. Saint told Kingsland that "it was impossible to bring in a doctor to diagnose what was wrong. He would have been speared instantly." According to Kingsland, "doctors and nurses could come in force only when all the potential killers were too ill to move." Kingsland at 127-30.

<sup>25</sup> Kingsland at 130-31.

<sup>26</sup> Stoll at 292.

<sup>27</sup> The transmitters were hidden in false bottoms because the Huaorani smashed the first transmitters.

<sup>28</sup> Telephone interview with Laura Rival, Canterbury (Dec. 7, 1994) (hereinafter Rival 1994a).

<sup>29</sup> Approximately 50 Huaorani fled to the Yasuni River area. Rival 1992a at 141. Families were broken because the Huaorani who were air-lifted to Tihueno left in great haste, and some of their family members were not with them at the time. For example, Wepe and his daughter were relocated to Tihueno; his wife and sons, who were away on a gathering trip, subsequently fled to Yasuni. Rival 1994a. The Yasuni Huaorani were subsequently contacted, but not relocated, by Catholic missionaries.



throughout this period. They fled only after Texaco built a road and oil production facilities in their homelands at the headwaters of the Tiputini River.<sup>30</sup> The Tagaeri gradually migrated southward, and now live in isolation in an area that lies between the Shiripuno and Curaray Rivers, with most activity around the Tiguino and Cuchiyacu Rivers. They continue to resist all peaceful contact.

According to Dayuma's son, Caento, Saint worked with "an open checkbook" from Texaco to relocate the Huaorani.<sup>31</sup> Foreign oil companies, including but not limited to Texaco, have a long history in Ecuador of collaboration with evangelical missionaries to "pacify" both the Huaorani and other Amazonian peoples. There is a clear concurrence of interests not only between the oil companies and the missionaries, but also with the Ecuadorian government, which has permitted and sometimes assisted the pacification activities, consistent with its general view that the Amazon is a frontier to be conquered and indigenous peoples should be assimilated into the dominant national culture. A 1988 study by the Ecuadorian national oil company described the transnational oil company/SIL collaboration as a "hybrid process of religious interests mixed with oil company ambitions, that assured an effective cultural-religious subjugation in order to dominate indigenous peoples and use their labor and explore the riches of their lands." This "policy of ethnocide" sought to force indigenous peoples to abandon their lands and subsistence economy and "immerse them in a situation of misery in which [the SIL] could easily create the new ropes of dependency" (trans. by the author).<sup>32</sup>

By 1973, the population at Tihueno had risen to some 525 individuals.<sup>33</sup> This in itself was a severe culture shock for the Huaorani, who traditionally knew no more than 80 individuals in their lifetime.<sup>34</sup> Tihueno turned into a type of refugee camp, with outbreaks of epidemics and severe food shortages.<sup>35</sup> The era of "primitive Christianity" ended.

To Saint, Huaorani culture was sinful and uncivilized. She told the new arrivals about Christian love, forgiveness, and redemption, but she described them to Kingsland as "scum."<sup>36</sup> As for the Huaorani who had killed her brother, she said she loved them--"how can you possibly feel any bitterness towards men who have

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<sup>30</sup> Texaco named the road and oil fields after the Huaorani: the Via Auca, and Auca and South Auca oil fields.

<sup>31</sup> Interview with Samuel Caento Padilla, Quito (Sept. 23, 1994).

<sup>32</sup> CEPE, "Pueblos Indígenas y Petróleo en la Amazonía Ecuatoriana," by J. F. Sandoval Moreano (1988).

<sup>33</sup> Of these, 350 arrived after 1967. An estimated 100 Huaorani still lived outside of Tihueno. Rival 1992b at 18.

<sup>34</sup> Rival 1992a at 137-38.

<sup>35</sup> Rival 1992b at 18.

<sup>36</sup> The men's morals, Saint said, "were rotten, minus." There was "a head-on collision between a Christian community and a totally heathen community." Kingsland at 127.



the minds of children?"<sup>37</sup> For Saint, the most difficult challenge at Tihueno was ending polygamy and sexual license. She explained to Kingsland:

They were morally in the mud....and it was a hard uphill struggle to make them see it. You can persuade men to stop spearing one another, it's not too much of a sacrifice on their part, and in the end, they can see the sense. But this was something else again. They had always been used to plundering women, and they couldn't see any sense in stopping. "How can it hurt?" they asked me, and I found it difficult to explain. But I saw that the entire hope for their future rested on Christian marriage. It is, in fact, their only hope, because it brings in emotion like true love, something they have never really known. It makes men responsible for their families, and once that happens, all the other good things follow.<sup>38</sup>

Kingsland wrote:

Rachel [Saint] found it hard to sleep at night, knowing what was going on around her as the hot sky faded to black velvet and the stars fled before the moon. On such nights, even in the most civilized parts of the world, meek men are apt to bay at the moon. Somewhere in the village, a young blood would start to sing the Auca love chant, a message as old as time itself. He wanted a woman, and just about any woman would do. A girl would slide from her hammock to obey that call; they were conditioned to do so and Rachel would weep real tears of anguish.<sup>39</sup>

For the new arrivals, life in Tihueno was tense and stressful. They not only found themselves in an area that is ecologically different from their native territory, but they could not hunt, gather, or cultivate food in the land of their enemies without violating fundamental cultural norms. In addition, the air-lifted groups had not been allowed to bring their spears or blowguns. The blowguns, used for hunting, are made from ancestral wood and could not be replaced at Tihueno. The Huaorani who had territorial rights to the area disliked the newcomers and would not secure food for them. To keep the peace, the missionaries flew in food. As "the owner of the feast" at Tihueno, this was Saint's responsibility. Because she had invited the newcomers to live with her in peace, she had to provide for them. Ironically, the cultural resistance of the Huaorani led to dependence on Saint. By accepting food from the missionaries, both new arrivals and previously evangelized Huaorani effectively accepted them as their leaders.<sup>40</sup>

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<sup>37</sup> Kingsland at 157.

<sup>38</sup> Saint in Kingsland at 116.

<sup>39</sup> Kingsland at 116-17.

<sup>40</sup> Rival 1994a; Rival 1992a at 138.

To allay mistrust and mutual hostility, Saint and Dayuma facilitated intermarriages between enemy clans. After a couple of years, most Huaorani were able to hunt again. By that time, however, they had come to relish rice and sugar, foods that are not available from their "giving" forest environment. Moreover, SIL was unprepared for what would happen when hundreds of Huaorani lived together in an area with few crops and insufficient game and other forest resources. Together with the new foods, SIL gifts of consumer items that the Huaorani could not themselves produce created relationships of dependency, inequality, and new needs for cash income and trading relationships with *cowode*. The Huaorani apparently valued the peace and patronage at Tihueno. Notwithstanding this, unequal access to external goods provoked tensions and divisions.<sup>41</sup> In 1971, a group led by Zoila Winaemi quarrelled with Dayuma and Dawa, the principal intermediaries between Saint and the Huaorani, and "escaped" from Tihueno.<sup>42</sup>

Saint also quarrelled--with her colleagues at SIL. Reportedly, SIL grew concerned about the dependency and hunger for trade goods it had encouraged among the Huaorani, who insisted on receiving mission aid. Saint believed that no one knew the Huaorani like she did, and that she had saved the tribe from spearing itself to extinction. Over Saint's objections, SIL sent anthropologist/evangelist James Yost to Tihueno. After noticing that 30 new arrivals were losing weight after being relocated from Texaco's work area, Yost persuaded SIL in 1975 to postpone further relocation efforts. To encourage dispersal of the Tihueno Huaorani, SIL cut

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<sup>41</sup> SIL knew that "men had killed each other for ownership of a machete" when Shell Oil had dropped Christmas gifts to the Huaorani from the air. Notwithstanding this, the missionaries dropped gifts in the same way during their efforts to contact Huaorani clans. Kingsland at 77-78. After contact, they continued to give gifts to favored individuals.

<sup>42</sup> Zoila was one of Sevilla's former peons. She spoke Quichua and some Spanish, making her one of the few Huaorani who could function as an intermediary with *cowode*. Before long, the group encountered an oil crew working for Texaco. After taking the group to meet President Rodriguez Lara, the crew boss and contractor, Captain Nelson Villaba, passed them on to David Miller of the Christian and Missionary Alliance (CMA). Miller helped the group settle at Dayuno, where they became the first Huaorani community to attract large numbers of tourists. C&MA's Pedro Chimbo, a Quichua pastor who began teaching school in Dayuno in 1973, also served as an interpreter. He and Zoila told visitors stories about "Saint's regime". Chimbo described Tihueno to a group of early visitors as a "'mission prison' where SIL prevented the Huaorani from learning anything about the outside world and recalcitrants were bound hand and foot." Stoll at 300-01. Chimbo subsequently tried unsuccessfully to ban tourism in Dayuno. When Stoll visited, he expressed concerns:

He [Chimbo] thought that the Huaorani begged too much and received too many presents for their own good, but the worst was that our tour guide gave most of his bounty to Zoila, who did not distribute it to the others, who became angry and sometimes muttered about spearing the tourists. During dinner, a young man arrived in anger and was quickly hired to paddle us upstream the next day. Stoll at 302. For a detailed report on tourism in Huaorani territory, see Smith. Dayuno, the offspring of Tihueno, is no longer considered a Huaorani community, even though it is located within Huaorani titled lands. With one exception, all of the Huaorani have moved out. The remaining Huaorani lives in Dayuno with his Quichua wife and family, and other Quichua.

off trade goods for a brief period. When they resumed, supplies were reduced and Dayuma was bypassed as an intermediary.<sup>43</sup>

Yost helped the Huaorani establish new communities along major rivers on the western edge of their territory, easing hostilities in Tihueno while remaining out of the way of Texaco's work crews. The 1975-76 SIL weaning program encouraged dispersal from Tihueno; however, the Huaorani continued to relocate to maximize contacts with *cowode*.<sup>44</sup> To free themselves from dependence on SIL and Dayuma, they developed new relationships with *cowode*, including some intermarriages with Quichua and visits by tourists. By 1976, the first Huaorani men were working in oil crews, as the result of an arrangement made by SIL.<sup>45</sup> Criticism of SIL grew, but the mission branch defended itself with conviction:

Rachel Saint can't stay with these people forever....They must be self-sufficient. We, as missionaries, are not here to take them over, but to help preserve a written record of their language and customs, and to help them find God through our work. Then we must move on to other fields. We have two thousand tongues to go. In fact, the anthropologists should be grateful for what we are doing. The Amazon jungles are changing now that oil has been discovered. Change is inevitable. There is no doubt at all in my mind that in a few years from now, the Aucas as an isolated people will probably be a thing of the past. We, the linguists, didn't bring the change, although we have been blamed. Oil did. Progress did. What we are doing is seeking to preserve what might soon be a dead language, a dead culture. The anthropologists might one day be thanking us.<sup>46</sup>

Despite the "anti-dependency campaign," SIL continued its efforts to impose new moral values and codes of behavior, such as sexual modesty, monogamous marriage, and praying. Missionaries continued to tell the Huaorani that they are backward savages--that their culture is primitive and sinful, and that they must change, modernize, abandon traditions, and embrace the ways of the "civilized" culture. They continued to discourage drinking ceremonies, chanting, dancing, and

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<sup>43</sup> Stoll at 304. Subsequently, SIL removed Saint from Tihueno. Yost worked with the Huaorani for seven years, until 1982. Saint later returned on her own and lived with the Huaorani at Toñampari until her death in 1994.

<sup>44</sup> Stoll at 304.

<sup>45</sup> Kingsland reports that Huaorani from Tihueno were hired to work in an area where six oil workers had recently been speared to death:

It was thought that if the marauding band of killers saw their own people working on the road, they might be influenced not to make another attack. This, of course, judging from past history was most unlikely. But the men needed money, so it was agreed.

Kingsland at 166.

By 1980, some 40-60% of adult Huaorani men had worked clearing trails and heliports for oil exploration crews. In 1990, that percentage had reached 90. Rival 1992a at 141.

<sup>46</sup> Donald Johnson, SIL director in Quito, in Kingsland at 162.

other Huaorani rituals, and to pressure the people to turn away from their traditional medicine and "devilish" shamans. Shamanic practice was driven underground, and, today, only one Huaorani shaman, possessed by the spirit of the jaguar, actively practices his ancient art. The others have died or likely abandoned their practice.<sup>47</sup>

The missionaries controlled air transportation, radio communications, and, increasingly, health care. They made these services costly and conditional, using them to manipulate the Huaorani and deepen their dependency.<sup>48</sup> Even Dayuma, whose evangelical tour of the U.S. had helped raise large amounts of money for SIL, was denied medicines when she was unable to pay for them in advance.<sup>49</sup> Moreover, the pacification itself had made SIL medicines necessary. Contact with outsiders triggered waves of epidemics of new diseases among the Huaorani, beginning with severe colds brought on by Dayuma's first contact with her family group on behalf of the missionaries.<sup>50</sup> The Huaorani had no resistance to *cowode* diseases, and their traditional medicine was ineffective against them. Many Huaorani died. Others survived, thanks to the missionaries' medicines.

In the settlements, new gender and age differences emerged. For example, women now hunt less frequently and cultivate more crops. Nonetheless, the

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<sup>47</sup> Telephone interview with Laura Rival, Canterbury (Nov. 11, 1994) (hereinafter Rival 1994b). Notwithstanding this, Rival believes that shamanism could come back to the Huaorani if the trend of cultural deterioration that is currently underway is reversed.

<sup>48</sup> For example, the evangelical mission Alas de Socorro refused to fly a Huaorani woman with a dying baby to a hospital because her community had participated in a recent Congress of CONFENIAE, where the mission had been criticized. Laura Rival, "Learning How to Live in the Manmade World: The Huaorani of Ecuador," draft manuscript, Quito (1990). From the earliest days at Tihueno, SIL encouraged the intensive use of radio communications and plane transportation.

<sup>49</sup> Kingsland at 165 and 171-72. According to Caento, most medicines were supplied free to the mission under donation and aid schemes. Kingsland at 165. In one documented incident, SIL refused to send antibiotics to Dayuma during a cold epidemic, even after she reported that two women had died and several children were sick. Dayuma also complained about having to pay SIL for used clothes. Kingsland at 171-72. In addition to donations, SIL profited from Wallis's book about Dayuma, The Dayuma Story. The book was published in 1960, soon after the spearings at Palm Beach brought international fame to the Huaorani. It sold 60,000 copies in hardback alone. For accounts of Dayuma's trip to the U.S., which included appearances on the television show "This is Your Life" (featuring Saint's life) and at the Billy Graham Evangelical Crusade in Madison Square Garden, see Wallis and Kingsland. Dayuma was also publicly baptized during the trip.

According to Kingsland: "No one has ever quite explained why a Wagrani woman from Ecuador was lifted from the jungle east of the Andes and transported to America for nearly a year, where she became very ill, homesick, and missed her child....[Saint] 'nearly went mad with frustration and anxiety'. It seems to be a case of those members of a congregation who are willing to support and finance a missionary wanting a little of the floor show, to make sure they are getting value for money. It is also a case of the back-room publicity boys of a missionary society having no real idea of the feelings of the missionaries they are publicizing. When Rachel [Saint] was called 'a missionary superstar', many who support Wycliffe work were highly delighted. Rachel said she felt 'sick with disgust and shame' when she read those words." Kingsland at 102.

<sup>50</sup> Wallis at 165.



Huaorani are a people of gatherers who prefer to obtain their food without producing it, and continue to resist extensive agricultural activities. Instead, they increasingly demand food and money from missionaries, oil workers, and tourists. Children in the settlements go to school instead of traveling in the forest with their families, and are now completely dependent on their parents.<sup>51</sup> Their school teachers are *cowode*, who do not speak Huaorani.<sup>52</sup> Most Huaorani students have done poorly in school, repeating the same grades several times; often, they remain in primary school until the age of 16 or 17.<sup>53</sup>

The pacification of the Huaorani also affected their immediate environment. As the Huaorani adapted to living in sedentary communities along major rivers and abandoned their "demonic" system of food taboos, their hunting and fishing activities changed. Large fish and a wide variety of previously taboo animals became increasingly important in their diet. SIL introduced firearms for hunting.<sup>54</sup> The settlements were overpopulated by Huaorani standards, and before long most wild fruit trees and other important forest resources near the settlements were exhausted. Hunters had to travel greater distances--two to three days away--to find food. Increasingly, the Huaorani traded their game for external goods, or sold it to oil workers and the Ecuadorian military, substituting carbohydrates for proteins in their diet.<sup>55</sup> According to Caento, poor nutrition is a serious problem today in these communities.<sup>56</sup> The Huaorani have also begun to sell live animals to oil workers and soldiers, including threatened and endangered species.

### Huaorani Lands Today

Today, most Huaorani live at the western edge of their traditional lands, in ten communities in an area of 66,570 hectares that was legalized by the government in 1983 as a Huaorani Protectorate. Ten bands live outside of the protectorate. Some of these groups remained in the forest throughout the relocation activities, but others left the protectorate to return to the land of their ancestors. At least one group, the Tagaeri-Taromenga, continues to resist peaceful contact with outsiders.

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<sup>51</sup> Rival 1992a 135-7. 60% of Huaorani children go to school. Rival 1992b at 22.

<sup>52</sup> Bilingual education was only recently introduced in Huaorani schools, because the missionaries considered it "communist". Rival 1990. None of the teachers live year-long in the Huaorani communities. A few have some knowledge of the Huaorani language, but none speak it fluently. Smith at 339.

<sup>53</sup> Rival 1992 at 136-7.

<sup>54</sup> Rival 1994a. Traditional Huaorani game was restricted to monkeys, birds and wild peccaries.

<sup>55</sup> This is also a growing problem among Huaorani who live in other communities, such as Bataboro (Tiguino). It is widely recognized by the international medical community that as indigenous people abandon their traditional subsistence activities and become integrated into a predominantly cash economy, they typically change their diet in this way, which can result in malnutrition and lowered resistance to disease.

<sup>56</sup> Caento Interview. Alcohol consumption is also a serious problem in that area.



Huaorani ancestral territory spans roughly two million hectares. For years, the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), a regional indigenous organization, worked to secure government recognition of Huaorani land rights outside of the small protectorate. In 1990, the Ecuadorian government granted the Huaorani legal title to an additional 612,560 hectares of their traditional lands. That same year, contacted Huaorani began to organize themselves, coming together to form the Organization of the Huaorani Nationality of the Ecuadorian Amazon (ONHAE). Today, Huaorani titled lands span some 170 miles from east to west, and 100 miles from north to south. Some Huaorani, however, live outside of the titled lands, including five groups who live in the adjacent Yasuni National Park.<sup>57</sup>

Under Ecuadorian law, however, no land titles are truly secure because all subsurface minerals are claimed as the property of the national government. Within Huaorani territory, the government continues to grant exploration and production rights to oil companies. The 1990 Huaorani land title provides that the Huaorani may not "impede or obstruct" oil or mining activities in their lands. Oil development is also underway in Yasuni National Park.

### **The Texaco Road: A Corridor of Contamination in the Heartland of Huaorani Territory**

The dislocation of the Huaorani opened up their territory to the oil boom, and Texaco quickly expanded its exploration and production activities into previously forbidden lands. Over the next decade, dozens of wells were drilled and production facilities and pipelines were built. Texaco pushed a sixty-mile-long road, which it named the Via Auca,<sup>58</sup> due south through the heartland of Huaorani territory. The government of Ecuador encouraged colonization along the new road, offering fifty hectares of free land to settlers who cleared the forest to plant crops and pastures. The tiny settlement at the northern end of the Via Auca/Tiguino, Puerto Francisco de Orellana, better known as Coca, boomed into a frontier town filled with colonists, oil workers, alcohol, prostitution, and pollution, but lacking in basic services such as potable water and sewage treatment.

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<sup>57</sup> The park is in traditional Huaorani territory. It has been designated as both a Biosphere Reserve under UNESCO's Man and the Biosphere Program, and a world center for plant diversity and endemism under the joint IUCN-WWF Plants Conservation Programme and the IUCN Threatened Plants Unit. To date, however, protection of Yasuni is on paper only, and the area is increasingly threatened by petroleum activities. Government officials state that in managing Yasuni, they will not interfere with traditional Huaorani use of park resources.

See Smith 1993 at 263-73 for maps and tables of contacted Huaorani communities. Since that publication, groups of Huaorani have founded new communities at Pindo (Tobataro), Guiyaro and Peneno.

<sup>58</sup> Many Huaorani who use the road today consider the name offensive, and refer to the road as the "Via Tiguino." In this paper, I use the term "Via Auca/Tiguino."

Today, Huaorani traditional lands along the Via Auca/Tiguino are so degraded by pollution, colonization, and deforestation that the Huaorani can no longer live there. What was pristine tropical rain forest some twenty-five years ago, is now a deforested and severely polluted industrial-agricultural corridor. The 1990 Huaorani land title excluded these lands, which were ceded by the Ecuadorian government to colonists. The 8.4-mile-wide corridor is clearly visible on the map of Huaorani titled lands, as a swath penetrating an otherwise contiguous land mass. In an effort to prevent further colonization, the Huaorani physically demarcated their land boundary in this area in the early 1990s. In expeditions organized by ONHAE, with assistance from the Rainforest Information Center Ecuador (RIC-CIBT) and the Ecuadorian government, Huaorani came together from throughout their territory to clear a trail and plant palms.<sup>59</sup>

Notwithstanding this, there is no buffer zone between the colonists who live along the Via Auca/Tiguino and the Huaorani. Relations between the groups are tense, periodically leading to violence. The most recent outbreak of violence was in April 1994, when three colonists—an indigenous Shuar from the Southern Ecuadorian Amazon, his Quichua wife and their daughter were speared to death in their home by their Huaorani neighbors. The couple's son was wounded in the attack. A Huaorani girl had died and the Huaorani believed that the colonists had put a spell on the child, causing her death. The five Huaorani who carried out the raid are young. This was likely the first time they killed in the traditional Huaorani way.

In a controversial decision, the top military commander in Coca decided not to charge the Huaorani raiders with murder under Ecuadorian law. Instead, he brokered a "peace agreement" which was signed by representatives of the Huaorani and the Shuar-colonists. With the agreement, the crisis passed, but the seeds of future conflict between the groups remain.<sup>60</sup>

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<sup>59</sup> Throughout their territory, the Huaorani cut and planted over eighty kilometers of demarcation line and measured over forty kilometers of river. RIC-CIBT, "Report on the Huaorani Project" by Douglas Ferguson (1993). Work was suspended in 1993 when the leadership of ONHAE decided to work exclusively with Maxus Energy Corporation on demarcation and community development projects. At the time, Maxus was beginning construction of a new road and oil production facilities in Huaorani territory, and had aggressively pursued a "friendship agreement" with ONHAE. For a description of some of the events leading to the signing of the agreement in August 1993, see Joe Kane, "With Spears from all Sides," *The New Yorker*, Sept. 27, 1993.

<sup>60</sup> Convenio de Paz y Amistad entre las Comunidades Shuar y Huaorani en el Comando de la Brigada de Selva No. 19 "Napo," September 10, 1994. The document is called a "peace and friendship agreement," but Huaorani who participated in the raid describe it as a "peace agreement." It provides for an end to "threats and offences," mutual respect for land rights, including hunting and fishing rights, and free passage on the Shiripuno River. (The Huaorani and Shuar communities that were involved in the incident are located on that river.) The workability of some provisions is questionable, considering the individualistic and clannish nature of Huaorani society. For example, the agreement states that problems between members of the two communities "should be transferred for resolution by dialogue between (the groups') elected officials," and "individual problems that arise between members of the two ethnic groups will not be considered to be problems between the two communities." The friendship

Pollution problems along the Via Auca/Tiguino are severe, and they are not limited to the colonized area. The road crosses important Huaorani rivers, and both the road and the oil production facilities it serves are continuing sources of pollution. Huaorani who live downstream are increasingly complained about contamination and related health problems.<sup>61</sup>

The pollution is caused by routine discharges of oil and other chemicals, sloppy housekeeping, and accidental spills. In addition, waste oil is regularly applied to the road for maintenance purposes, and washes into the environment with the rains that regularly fall. Ecuadorian law and Texaco's contract with the government required Texaco to prevent pollution and protect natural resources; however, the government has not enforced those laws in the oil fields. Texaco has been allowed to police itself in environmental matters, resulting in an environmental disaster. The company's operations along the Via Auca/Tiguino and throughout its Amazon concession were characterized by the continued use of outdated technology, the absence of environmental controls, and a lack of concern for local populations.<sup>62</sup>

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provisions of the agreement are potentially inconsistent, by providing for cultural exchanges, sports events, and other initiatives to improve relations between the groups, but strictly prohibiting inter-marriage between them.

<sup>61</sup> Major Huaorani rivers that are affected by Texaco's operations include the Shiripuno/Cononaco, Tiputini, and Tivacuno. In addition, the Tiguino River is polluted by facilities that Petroecuador built in the late 1980s, by extending the Via Auca/Tiguino and using the oil extraction practices it had learned from Texaco. Indigenous Quichua who live along the Napo, Rumiya, Manduro, Indillama, and Tiputini rivers -- as well as a number of brooks and streams that feed into those rivers -- are also affected by contamination from facilities that Texaco built along the Via Auca/Tiguino.

<sup>62</sup> Throughout its concession, in an area that now spans over a million acres (442,965 hectares) and includes indigenous Cofan and Quichua territories in addition to traditional Huaorani lands, Texaco drilled 339 oil wells. Roughly 235 of those wells are currently active, generating more than 3.2 million gallons of toxic waste every day. Virtually all of these wastes are discharged into the environment without treatment or monitoring, contaminating countless rivers and streams that supply water and fish to surrounding communities. In addition, Texaco dumped toxic drilling wastes, and well and other maintenance wastes, into the environment without treatment or monitoring. Spills from pipelines, wellheads, tanks, and other facilities have occurred with regularity. Accidental spills from the main pipeline alone sent an estimated 16.8 million gallons of crude oil into the headwaters of the Amazon River, to the north of Huaorani territory. (By comparison, the Exxon Valdez spilled 10.8 million gallons of oil into the Prince William Sound.) The spills have not been cleaned up. For example, Texaco's response to pipeline spills was limited to shutting off the flow of oil into the damaged portion of the line, allowing the oil already in the line to spill out, and then making the necessary repairs. For a detailed discussion of Texaco's operations and applicable environmental law, see Judith Kimerling, "The Environmental Audit of Texaco's Amazon Oil Fields: Environmental Justice or Business as Usual?" *Harvard Human Rights Journal*, 7:199-224 (1994) (hereinafter Kimerling 1994a). For a comprehensive discussion of petroleum practices in the region and their environmental and social impacts, see Judith Kimerling, *Amazon Crude* (NRDC 1991) and Judith Kimerling, "Disregarding Environmental Law: Petroleum Development in Protected Natural Areas and Indigenous Homelands in the Ecuadorian Amazon" *Hastings International and Comparative Law Review*, 14:840-903 (1991).



In 1992, Texaco's 20-year production contract with the government expired and the company relinquished all interests in its antiquated and poorly maintained facilities. Ecuador's national oil company, Petroecuador, continues to operate the facilities. Texaco apparently had hoped to relinquish all responsibility for those operations, but growing national and international pressure on both the company and the government has made that difficult. Beginning in 1992, a Canadian consulting firm, HBT-Agra, undertook a confidential environmental audit of Texaco's oil fields. Texaco and Petroecuador closely supervised the audit, and affected residents and environmental and indigenous organizations were not allowed to participate. In 1994, the government reportedly rejected the audit as inadequate, under pressure from the Ecuadorian Congress and the public spotlight.<sup>63</sup>

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<sup>63</sup> The rejection was widely reported in the press, based on statements by public officials. However, no formal document has been made public. For a thorough discussion of audit procedures and criteria, see Kimerling 1994a. For a discussion of the results of the audit, see Letter of Judith Kimerling to Francisco Acosta, Minister of Energy and Mines, August 2, 1994 (hereinafter Kimerling 1994b). As in prior environmental matters with Texaco, the government declined to assume an authoritative regulatory posture, and the audit process was one of negotiation with the company. Instead of comprehensively assessing the environmental and public health impacts of Texaco's operations and identifying remedial measures, the auditors compared the operations with contemporaneous oil industry practices in tropical rainforests in Trinidad, Colombia, and Indonesia. Chemical sampling was limited, and the parameters and "acceptable" levels were not legally or technically justified by the auditors. Some choices raise special concerns, such as the absence of analyses for radioactive contaminants and the use of a single organic parameter -- oil and grease -- for all soil and water criteria. Moreover, that parameter is less demanding and protective than standards generally used in the U.S., because some hydrocarbons such as benzene and polycyclic aromatic hydrocarbons (PAHs) can threaten human health and the environment at levels that are much lower than the levels used in the audit. For example, U.S. Environmental Protection Agency (USEPA) regulations recommend a level of zero in water for both benzene and PAHs because they are carcinogens. For PAHs in surface waters, USEPA standards for the protection of human health range from 0.00028 parts per billion (ppb) to 0.028 ppb. The audit does not measure PAHs separately from other hydrocarbons, and proposes an acceptable level of total hydrocarbons in surface waters -- 1,000 ppb -- that is more than 35,700 to 3,570,000 times greater than USEPA standards for PAHs in the U.S. See Kimerling 1994b.

Notwithstanding these limitations, the auditors found (unspecified) contaminants in every sample of subsurface soil and groundwater that was chemically analyzed for the presence of hydrocarbons. In addition, they observed spills of oil or other chemicals -- at levels so high that they were visible to the human eye -- at 158 of the 163 well sites they visited. They observed multiple spills at every production station, and spills at one out of every six sections of flow line they surveyed.

<sup>64</sup> Specifically, ONHAE contacted the author, asking her to work with them in the litigation. The Cofan and the Quichua of the lower Napo River reacted in a similar manner to news of the lawsuit, seeking to participate in the litigation with an attorney of their choice. They authorized the author to represent their communities and organizations, the Indigenous Organization of the Cofan Nationality of Ecuador (OINCE) and the Federation of Communities Union of Natives of the Ecuadorian Amazon (FCUNAE), respectively, in the suit. They seek the cleanup and restoration of natural resources that have been damaged by oil-related contamination, and remedial measures to protect their health, livelihood and cultures, including access to safe and adequate food supplies and needed health care services. Thirteen of the named plaintiffs in the litigation are affiliated with FCUNAE. The proposed class has not yet been certified by the court.



In November 1993, a class action lawsuit was filed against Texaco in federal court in New York, on behalf of all indigenous and settler residents of the Ecuadorian Amazon who have been adversely affected by Texaco's shoddy environmental practices. Representatives of ONHAE read about the suit in the newspapers. Their response was one of great interest, and hope that the authorities in Texaco's homeland would help them protect Huaorani territory from contamination, restore important natural resources, and secure needed health care services.<sup>64</sup>

The response of the Ecuadorian government to the lawsuit was a diplomatic protest presented to the U.S. Department of State, requesting that the U.S. Government advise the court that international law "requires" the case to be heard in Ecuadorian rather than U.S. courts. The protest stated that "acceptance of jurisdiction in this case would do violence to the international procedural system," would be a "serious disincentive" to U.S. companies to invest in Ecuador, and "could do severe harm to the Republic of Ecuador." It also requested that the State Department address a second point:

The plaintiffs have suggested to the US courts that they cannot expect a fair hearing in Ecuadorian courts. Such a claim is false and defamatory. Acceptance of the argument by a US court would be highly offensive. The Embassy [of Ecuador] therefore requests that the presentation [by the State Department] to the Justice Department and US courts note the international recognition given to the Republic of Ecuador for its rigorous protection of the environment, examples of which are the regulations protecting the Galapagos Islands, nature reserves and parks; that it recount that Ecuador has a tradition of respect for human rights generally and has taken particular care to protect the rights of minorities and indigenous people; and that Ecuador has taken decisive action to eliminate all cultivation of coca and has aggressively prosecuted anyone involved in narcotics trafficking (Unofficial Translation, presented by Texaco in support of its motions to dismiss the lawsuit).<sup>65</sup>

The diplomatic protest sparked considerable controversy in Ecuador, as many Ecuadorians felt that the government had inappropriately sided with a foreign company against its own citizens. Many people were also disturbed by the document's reference to the plaintiffs in the suit as "individuals who say they are citizens of Ecuador." The U.S. Government remained silent, and the Government of Ecuador subsequently retained a major New York law firm to present a friend-of-the-court brief in support of Texaco's efforts to dismiss the lawsuit. The brief requested that the Court "abstain" from accepting the case because "adjudication of

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<sup>65</sup> Embassy of Ecuador, Diplomatic Protest signed by Edgar Teran, Ambassador of Ecuador to the U.S., to the U.S. Department of State, No. 4-2-138/93, Washington, D.C. (Dec. 3, 1993) in Appendix to Texaco Inc.'s Motions to Dismiss, *Aguinda v. Texaco*, No. 93 CIV. 7427 (VLB) (S.D.N.Y.) (Dec. 28, 1993).

the plaintiffs' lawsuit may result in a substantial and unwarranted interference with Ecuador's sovereign right to develop and regulate its own natural resources and may strain the friendly relations between the United States and Ecuador." The brief stressed the importance of foreign investment to Ecuador's economy and assured the Court that the Government of Ecuador "regulates its natural resources because it is sensitive to the threat to human and natural life presented by the development of its natural resources." The brief asserted that various Ecuadorian governmental and nongovernmental organizations "monitor pollution and other environmentally harmful activity."<sup>66</sup>

In an April 1994 decision, the Court ordered the parties in the suit to develop factual information related to the question of whether the U.S. Court should accept the case. Among other issues, the Court expressed an interest in facts relating to the plaintiffs' allegations that Texaco had micro-managed its Ecuadorian operations from the U.S.<sup>67</sup> In response to the Government of Ecuador's concerns, the Court stated:

Exercise of judicial jurisdiction over events initiated in the United States and carried out abroad (whether in Ecuador or elsewhere) is, however, country-neutral in nature and cannot encourage or discourage investment in any particular country....Any disincentive caused by the exercise of jurisdiction here would not be to investment in Ecuador...but to conduct likely to violate applicable legal norms regardless of the site of the property affected....(If) litigation at the home

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<sup>66</sup> Brief Amicus Curiae of the Republic of Ecuador, *Aguinda v. Texaco*, No. 93 CIV. 7527 (VLB) (S.D.N.Y.) (Jan. 26, 1994) at 2-3 and 12. Counsel on the brief is Cleary, Gottlieb, Steen & Hamilton.

<sup>67</sup> In a friend-of-the-court brief presented to the Court by FCUNAE and OINCE in support of the plaintiffs, a former employee of Texaco in Ecuador reported that (1) important contracts for field operations were approved and signed in the U.S.; (2) expenditures in Ecuador were closely supervised from the U.S.; (3) all department heads in the company's Quito office had a direct telephone line to their supervisors in the U.S.; and (4) the Quito office had a full-time employee to microfilm all reports and other written materials, to send to the U.S. She also reported that Texaco did not instruct its Ecuadorian field staff about environmental precautions or monitoring, and stated: "Since we were unaware of environmental damage, when oil spills (which were not rare) occurred, the company's employees covered up the facts, concerned about the economic consequences of production losses for the company and the Ecuadorian state." Declaration of Bertha Margarita Yopez Silva, Brief Amicus Curiae for the Federation of Comunas Union of Natives of the Ecuadorian Amazon (FCUNAE) and Affiliated Communities and the Indigenous Organization of the Cofan Nationality of Ecuador (OINCE) and Affiliated Communities, *Aguinda v. Texaco*, No. 93 CIV. 7527 (VLB) (S.D.N.Y.) March 9, 1994 (trans. by the author). The author and the law firm Cohen, Milstein, Hausfeld & Toll served as counsel on the brief.

Plaintiffs and amicus curiae in support of plaintiffs also argued that they could not get a fair hearing for their claims in Ecuadorian courts. Texaco argued that they could; however, the failure generally of the Ecuadorian judiciary to enforce and promote the rule of law through the impartial administration of justice is widely recognized. See, e.g., Laura Chinchilla & David Schodt, *The Administration of Justice in Ecuador* (1993) (prepared for the U.S. Agency for International Development); U.S. Department of State, *Country Reports on Human Rights Practices for 1992* (1993) at 389-92; Kimerling 1994a.

site of an investor is based upon conduct initiated at that home site irrespective of where carried out, no such negative effect can be expected. Indeed, the country seeking and benefiting from investment may be relieved by such litigation of the need to offend investors by imposing some environmental or other controls which, however desirable, might be resisted by the investors.<sup>68</sup>

Texaco's response to the Court's ruling has been to try to delay further legal proceedings while it negotiates environmental issues raised by the suit with the Government of Ecuador. Publicly, the government and Texaco say that Texaco will clean up damaged areas, but they do not say how and the negotiations have remained highly secretive. In the field, however, cleanup activities undertaken to date appear to be geared more towards covering up the contamination than investigating and controlling it.

"Cleanup" activities began along the Via Auca/Tiguino and throughout the Texaco concession in 1992, roughly the same time that the environmental audit was publicly announced. They have primarily consisted of three types of activities. At dozens of well sites, contractors covered waste pits with dirt, without testing, treating, or removing the wastes, or otherwise isolating them from the environment. These unlined pits typically contain toxic liquid and solid wastes from drilling and well-maintenance activities, capped by a layer of crude. A second type of cleanup has been documented at at least one well site along the Via Auca/Tiguino. A channel was dug from a waste pit to the Shiripuno River. Liquid wastes were evacuated directly into the river without treatment or monitoring, causing the Shiripuno to run black with petroleum. Solid wastes were left in place. The third type of cleanup has been carried out at well and oil spill sites. Crude oil and contaminated soils and vegetation have been buried in small, shallow unlined holes in the ground, again without treatment or monitoring.<sup>69</sup>

### **The Tagaeri-Taromenga**

As discussed above, the Tagaeri Huaorani have resisted all efforts by outsiders to contact them. Named for their leader, Taga, who was killed by an oil worker in 1984, the Tagaeri were the last Huaorani clan to use spears to defend their lands against Texaco. Finally, unable to repel the invasion of their territory, they began a southerly migration and currently live some 250 kilometers away from the land of their grandfathers. The contacted Huaorani consider the Tagaeri to be "uncivilized," and call them "los bravos," meaning the fierce, or wild ones.

Not surprisingly, oil exploration activities caught up with the Tagaeri, after the government awarded development rights in an area designated as Block 17 to a

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<sup>68</sup> *Aguinda v. Texaco*, No. 93 CIV. 7527 (VLB) (S.D.N.Y.) Slip Opinion (April 11, 1994).

<sup>69</sup> These kinds of activities would not be permitted in the U.S. Visual observations have confirmed that buried crude oil has already migrated to the surface at a number of sites.

consortium of foreign oil companies operated by Petrobras, the national oil company of Brazil.<sup>70</sup> In 1987, the group attracted world attention when they speared two Capuchin missionaries to death. The missionaries had entered Tagaeri territory on behalf of the Ecuadorian national oil company, in an attempt to establish peaceful contact. The slain missionaries, Monsignor Alejandro Labaca,<sup>71</sup> the Roman Catholic bishop of Coca, and Sister Ines Arango, had hoped that their efforts would prevent a total genocide of the Tagaeri, given that oil development in their lands seemed imminent. At the same time that the Capuchins were dropping gifts of machetes, axes, and boots to the Tagaeri from helicopters, Dr. Julio Enrique Vela, an anthropologist working for the national oil company, was searching for the clan with a group of armed mercenaries.

The Tagaeri understandably saw the arrival of the missionaries as an act of aggression, as they were living in a period of warfare. Almost certainly, they were (and continue to be) fearful of being found and slain by their many enemies. Labaca apparently understood that the group would feel threatened by his visit. He left a letter behind pleading that there should be no violent reprisals if he was killed.<sup>72</sup>

After the killings, Petrobras suspended oil exploration activities for six months. When work resumed, it was initially restricted to areas outside of the vicinity of the killings, an area of some 50,000 hectares, designated as "the Red Zone" pursuant to an agreement that the Capuchins negotiated with the government. Operations were reportedly conducted using three to four times the standard number of workers, and most of them were black, in the belief that the Huaorani are afraid of blacks. Work sites were fortified with arms, floodlights and guard dogs.

In October 1989, in violation of the agreement with the Capuchins, Vela returned to the Red Zone with roughly twenty-five armed civilians. The group was reportedly financed by the Petrobras consortium and was allowed to pass freely by the Ecuadorian military. Ostensibly, the mercenaries were brought in to protect oil workers carrying out exploratory seismic studies, but a number of people suspect that their real purpose was to provoke a bloody confrontation with the Tagaeri. Subsequently, after it had drilled two exploratory wells outside of the Red Zone, the Petrobras consortium canceled its oil exploration contract for Block 17 by invoking the force majeure clause.<sup>73</sup>

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<sup>70</sup> Petrobras's financial partners in Block 17 are Elf Aquitaine and Britoil.

<sup>71</sup> Labaca led the above-mentioned work by Catholic missionaries to contact the Yasuni Huaorani in the mid-1970s.

<sup>72</sup> Survival International, "Ecuador Indians Kill Bishop as Oil Companies Invade," Urgent Action Bulletin, London, August 2, 1987.

<sup>73</sup> Reportedly, the results of the exploratory drilling were disappointing. Many people in Ecuador believe that Petrobras's withdrawal could be temporary because the economics of extracting the oil are marginal at this time, but could change significantly as the infrastructure that other companies build penetrates nearer to Block 17 oil fields, lowering extraction costs.



In 1992, seismic workers in Yasuni National Park had a confrontation with another group of uncontacted Huaorani, the Taromenane. This group was previously unknown to non-Huaorani.<sup>74</sup> ONHAE immediately issued a statement calling for the suspension of oil activities in the area, so that "our brother people are not bothered or cornered, that their human rights are respected, that they are left in freedom until they decide to contact us."<sup>75</sup>

The world-famous Tagaeri are threatened not only by oil development activities but also by adventure travelers, authors, photographers, tour guides and even environmentalists guides who seek thrills and/or profit. Since the missionaries were slain, a number of efforts have been made to fly over or enter the forest to contact, film, or photograph the Tagaeri.<sup>76</sup> Periodically, rumors of sightings or even bloodshed--some more credible than others--spread through the Amazon. In addition, the Protestant mission is reportedly continuing its effort to contact the group using Huaorani missionaries.

In April 1993, a group of Huaorani tried to contact the Tagaeri. One of them, Babe, entered the clearing where the Tagaeri were living wearing military clothes and firing into the air with a rifle. The Tagaeri fled, and the Huaorani stole shigras (woven string bags), a hammock, pet animals, aluminum cooking pots, axes, machetes, spears and other belongings, most of which they subsequently sold to *cowode* for a handsome price.<sup>77</sup>

In September of the same year, Babe returned to the Tagaeri with a group of Huaorani. Again, they were frightened away. This time, Babe kidnapped a young woman, Omatoke, and brought her back to his village, Bataboro. Many Huaorani went to visit. Women from the community of Noñaeno reported that the captive wept, pleading with Babe not to kill her. They described how white her skin was--"like the gringas!"--and said she had the most beautiful long black hair they had ever seen. After Omatoke realized that Babe is not *cowode* and did not plan to kill her, she explained that most of the Tagaeri had been killed, and the survivors now live together with the Taromenga<sup>78</sup>, in a group of 37 individuals. They are angry with the *cowode* who have been "eating the forest."

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<sup>74</sup> According to contacted Huaorani, two additional uncontacted clans, the Oñamenane and the Huiñatare, live deeper in the forest.

<sup>75</sup> ONHAE, Open Letter (May 23, 1992) (trans. by the author).

<sup>76</sup> See, e.g., Foundation Sinchi Sacha "field notes" (romanticizing an excursion to locate and photograph the Tagaeri by air), in Noemi Paymal and Catalina Sosa (eds.), Amazon Worlds: Peoples and Cultures of Ecuador's Amazon Region (Quito 1993) at 81, a book published and promoted by that foundation and Oxfam America to raise funds for conservation and development activities in the Amazon. See also, Smith at 88-127.

<sup>77</sup> According to Randy Smith, the incident was provoked by a German author and photographer, Erwin Patzelt.

<sup>78</sup> It is likely, but not certain that this is the same group referred to above as the "Taromenane."

After four days, relatives of Babe<sup>79</sup> took Omatoke back to her home, saying that they would soon return with all of the Tagaeri-Taromenga in order to "give them clothes and civilize them." Medical personnel from the Protestant mission were on call, to come to Bataboro to vaccinate the group, who could easily be wiped out by an epidemic of new diseases. When the Huaorani arrived at the Tagaeri-Taromenga longhouse, it was empty. They stole some belongings and left Omatoke there. On the way back to Bataboro, they were ambushed by the Tagaeri-Taromenga, who threw spears at them from trees in the forest. One man from Bataboro, Ineve (Carlos) was killed. Babe has sworn to avenge the death in the traditional Huaorani way--by killing (any number of) members of the enemy clan.<sup>80</sup>

Currently, the situation can best be described as a tense calm. The Tagaeri-Taromenga clearly live on the edge of physical and cultural survival. They have been driven far away from their ancestors' chonta groves. They have been at war with oil companies, missionaries, adventurers, and other Huaorani for decades, primarily because they want to live in the forest as their grandparents did before them. Although they are undoubtedly brave and valiant, they live under siege, almost certainly under great stress, and in constant fear of discovery.<sup>81</sup>

## Conclusion and Recommendations

A number of measures could be undertaken at this time to ameliorate problems that have been thrust on the Huaorani by the oil boom in their lands. As stated above, the following proposals are not exhaustive. Nonetheless, they are significant and necessary.

### A. Tagaeri Territory Should be Off-Limits <sup>82</sup>

The OAS and the international community should take concrete steps to work with ONHAE and the Ecuadorian government to protect the Tagaeri-Taromenga, by formally recognizing their right to the territory they possess and their right to live as they wish within that territory. The Red Zone should be legally

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<sup>79</sup> Babe stayed in Bataboro because he had dreamed that the Tagaeri would kill him.

<sup>80</sup> Immediately after the killing, the situation at Bataboro was diffused, as the result of efforts by ONHAE, Randy Smith, and the Ecuadorian military. Notwithstanding this, Babe continues to vow revenge -- a threat that must be taken seriously and could provoke a great deal of bloodshed. Smith has worked tirelessly over the last few years to dissuade both Huaorani and tourists from trying to contact the Tagaeri. He also helped thwart a prior attempt by Erwin Patzelt, with a French film crew. According to Smith, Maxus employees and some Huaorani have searched for the Tagaeri-Taromenga by air on at least two occasions.

<sup>81</sup> Traditional Huaorani have been known to feel obliged to kill their own babies if they cry too loudly when the group is hiding from attackers.

<sup>82</sup> This proposal has been developed with special assistance from Samuel Caento Padilla, who urged me to present the case of the Tagaeri at the international level.

designated and protected as a world ethnic reserve.<sup>83</sup> No one should be permitted to enter the area. Oil companies, missionaries, contacted Huaorani, adventurers, soldiers, and everyone else should stay out of the reserve until the Tagaeri-Taromenga decide that they want contact with the outside world. Air traffic over the reserve should be minimized to the greatest extent possible. Control should be coordinated by ONHAE and the Ecuadorian government, with Huaorani working as paid guards.

The Tagaeri-Taromenga are one of the last forest peoples to live in harmony with their environment in the way of their ancestors. They, and their way of life, are the last sanctuary of traditional Huaorani culture, with all of its richness and beauty, known to the *cowode*.<sup>84</sup> The 50,000 hectares that the clan apparently needs in order to live is a relatively small area. It is one-ninth of the current size of the Texaco concession, and one-quarter of the size of one of the newer oil development "blocks". The Tagaeri-Taromenga, and their Huaorani cousins, have already lost nearly that amount of land (an estimated 35,000 hectares) to oil installations and colonists on and around the Via Auca/Tiguino.<sup>85</sup>

Traditional human rights law recognizes the fundamental rights of the Tagaeri-Taromenga to life, liberty and personal security, health and well-being, preservation of their culture, religious freedom, property, protection of the family, residence and freedom of movement, inviolability of the home, and privacy. Forced contact would violate those rights.<sup>86</sup> The group has made it very clear that they do not want contact with the outside world. They do not want to change and live like us. They do not want our cars, videos, and televisions. They do not even want our rice, sugar, salt, beads, mirrors, and outboard motors; nor do they want us to save their souls. There is no doubt that any effort to contact them will make further bloodshed likely, irrespective of the motives or intentions of those seeking the contact. To the Tagaeri-Taromenga, we are all the same--we are all *cowode*, a violent and fearful enemy. The clan's numbers have already been seriously diminished, and are alarmingly low at this time. Further bloodshed could extinguish them as a people. Knowing this, to continue to provoke and harass them would be no less than murder, even genocide. The only hope for survival of the Tagaeri-Taromenga as a people and as individuals, is for them to be left alone.

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<sup>83</sup> Additional lands should also be considered, based on contemporaneous information about the location of the group.

<sup>84</sup> Although contacted Huaorani maintain a rich cultural life, they have undergone many changes. With the ongoing conquest of their lands, changes continue at a rapid pace, and the future of contacted Huaorani as individuals and as a people is uncertain.

<sup>85</sup> T. Muñoz 1992, reported in Smith at 8.

<sup>86</sup> Both the OAS Inter-American Commission on Human Rights and the United Nations Human Rights Committee have recognized that environmental degradation and the massive flux of outsiders into indigenous lands can result in violations of human rights. See the Yanomami case, Case 7615, Inter-Am. C.H.R. 24, OEA/ser.L./V./11.66, doc. 10 rev. 1 (1985); and the Lubicon Lake Band case, Comm. No. 167/1984, Report of the Human Rights Comm., U.N. GAOR, Hum. Rts. Comm., 45th Sess., Supp. No. 40, U.N. Doc. A/45/40 (1990).

International protection for the group is not only necessary but also appropriate. Human rights law is conceived and designed precisely to offer special protection for the fundamental rights of individuals and peoples who are effectively shut out of the political system that governs them. Restricting access to the clan's territory would also serve international and national<sup>87</sup> interests in protecting biodiversity in the Amazon Rainforest.

#### B. The Via Auca/Tiguino Should be Cleaned Up

The Via Auca/Tiguino and the oil facilities it serves are a continuing source of contamination of Huaorani waters.<sup>88</sup> Water is the lifeblood of the Amazon Rainforest<sup>89</sup> and is essential to the life of both the Huaorani and their food supply. The migration of toxic pollutants, including hydrocarbons, heavy metals, and toxic levels of salts, can be expected to continue for generations unless remedial action is taken. The OAS should encourage the government to work with the Huaorani and other affected residents to compel Texaco and Petroecuador to (1) clean up and restore contaminated areas; (2) modernize production facilities to prevent re-contamination of the area; and (3) work with residents to design and implement programs to remedy related damages to their economic well-being, health, culture, and way of life.

On paper, Ecuadorian environmental law requires permits and monitoring of discharges of pollutants into surface or ground waters. It prohibits discharges that degrade water quality, threatening human health or aquatic life. International law recognizes the close relationship between indigenous peoples and their natural resources, and the special importance to indigenous populations of environmental quality. Indigenous peoples' rights are violated when the natural resources upon which they depend for economic, social, and cultural survival, and well-being, are depleted, degraded or destroyed. They have a right to equal protection of the law, the right to redress these injuries, and the right to participate, as an equal party, in any agreements to clean or restore their environment.<sup>90</sup> The government should stop trying to undermine the efforts of the Huaorani and other residents to obtain legal redress for these problems in the court of their choice. Instead, it should work with all interested parties to remedy the wrongs.

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<sup>87</sup> Ecuador was among the first countries to ratify the Convention on Biological Diversity, opened for signature June 5, 1992, 31 I.L.M. 818 (entered into force December 27, 1993).

<sup>88</sup> Some soils and air are also affected.

<sup>89</sup> The Amazon basin contains one sixth of all the fresh water in the world, making water quality of international as well as local significance.

<sup>90</sup> Ecuadorian law also prohibits the contamination of air and soils. Both Ecuadorian law and basic principles of international law recognize the fundamental right to a clean and healthy environment, a duty to clean and restore the environment, and the "polluter pays" principle. See Kimerling 1994a.



The secretive negotiations between the government and Texaco should be opened up to include representatives of affected residents. A comprehensive, independent audit should be undertaken to design clean-up, modernization, and remedial measures. The audit and the implementation of these measures should be characterized by transparency and meaningful participation by the Huaorani and other affected residents. Participation should also be open to environmental and human rights nongovernmental organizations. The audit should include a complete medical evaluation of affected residents, including a survey of food and water supplies.<sup>91</sup>

#### C. The Demarcation of Huaorani Territory Should be Completed

The government should work with ONHAE to complete the demarcation of Huaorani territory. A special panel should be formed, with representatives of the government, the Huaorani, the Shuar, and the umbrella indigenous organizations CONFENIAE and Confederation of Indigenous Nationalities of Ecuador (CONAIE), to study and seek a long-term solution to the conflict and violence between the Huaorani and the Shuar and other colonists on and near the Via Auca/Tiguino. In addition, the government should legalize the demarcation line that was altered in the field in order to include the community of Cacataro (on the upper Shiripuno River) in Huaorani territory.

#### D. Further Oil Development Activities in Huaorani Territory Should be Suspended Until Existing Oil-Related Problems Have Been Adequately Addressed

The widespread environmental and social problems related to Texaco's activities in Huaorani territory could be just the tip of the iceberg. In addition to Petrobras, discussed above, the Ecuadorian government has granted oil development rights within Huaorani titled lands to a number of foreign oil companies. Two of these companies, Maxus Energy Corp. (Block 16) and Elf

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<sup>91</sup> For a proposed basic framework for the audit, see "A Preliminary Proposal to Redress Injuries to the Natural Resources and Indigenous Peoples of the Oriente", presented to Texaco by counsel for FCUNAE, OINCE and ONHAE for claims raised in *Aguinda v. Texaco* (Sept. 29, 1994). Some measures could go forward relatively quickly, while others would require greater study, including chemical sampling in the field. Some examples of concrete measures that should be undertaken include (1) reinjection of produced water wastes into the same geological zone from which they are removed; (2) implementation of oil and chemical spill contingency plans; (3) modernization of workover and other maintenance activities so that wastes are properly managed rather than dumped into the environment; (4) proper assessment and clean up of waste pits and spill/discharge areas, including contaminated surface and ground waters, soils and sediments; (5) inspection and upkeep of aging tanks, pipelines and other infrastructure; (6) control of air emissions; (7) paving of roadways; (8) implementation of independent environmental oversight and monitoring, including but not limited to chemical sampling of all discharges, emissions, and receiving waters; and (9) development of proper closure plans for facilities after they are no longer productive. Because the Huaorani share these injuries with other residents of the Amazon, the audit should include the entire Texaco-Petroecuador concession. Cleanup of the area would set an important precedent for other companies working in Huaorani territory and throughout the Amazon.

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As a result of the Amazon oil boom, the cultural and physical survival of the Huaorani and other Amazonian peoples is uncertain at this time. If implemented, the above recommendations could reverse the current trend towards environmental destruction of Huaorani homelands and the systematic trampling of fundamental human rights. They could also help provide ONHAE and the Huaorani people with the information, time, experience, and opportunities for political participation that they need in order to protect their environment, health, and culture from the *cowode*.

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Pastaza (OPIP) represents Quichua in Block 10, and should be invited to participate in the assessment of ARCO's activities, including the company's production plans. Petroecuador's activities outside of Huaorani territory affect the Cofan, Quichua, Secoya and Siona peoples, all of whom should be invited to participate in the evaluation of Petroecuador's operations. Representatives of the national and local governments and nongovernmental organizations should also participate in the commission. Assessments should include environmental, social, legal and economic (national and local) studies.

# ETHNIC MINORITIES AND CONSTITUTIONAL REFORM IN COLOMBIA

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## 1. Introduction

Since July 1991, Colombians have been living under a new Constitution, adopted by a popularly convened and elected Constituent Assembly. The 1886 Constitution, one of the oldest in Latin America, was thus derogated after a process of intense public deliberation that was the most open, pluralistic, and democratic in Colombia's history—even active guerrilla groups were invited to participate as an incentive to their demobilization.

The recognition of ethnic minorities' rights was reflected by the presence of two popularly elected indigenous representatives. How had they gotten elected to the most important law-making Colombian body, when they had been traditionally excluded from much less important decision-making processes? How had the interests of ethnic minorities, usually irrelevant to Colombian leaders, gotten on the national reform agenda of a country concerned with other priorities, relating to the survival of democracy itself? Did the interests of ethnic minorities really get incorporated as constitutional rights and, if so how wide, clear, and strong are they? Is the Constitution, as well as the resulting political trend, generally favorable to the interests of ethnic minorities?

This paper tries to address these questions. The second section describes the constituent process as well as the presence and the role of ethnic minorities at its different stages. The third highlights the main features of the 1991 Colombian Constitution and points out those reforms that responded to ethnic minorities' demands. Since Latin American constitutional changes often remain as simply moving and beautiful declarations, the fourth section discusses how effective, in practice, has been the implementation of minorities' rights.

The fifth section offers an evaluation of the significance of what has happened. Special attention is given to whether, why, and how the Constitution-making process was able to accommodate ethnic minorities' interests, to mitigate actual or potential conflict, and to do that while leaving all parties concerned satisfied enough with the results.<sup>1</sup>

## 2. The Constituent Process and Ethnic Minorities

### Background

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<sup>1</sup> Appendix II provides some basic facts about Colombian indigenous peoples and black communities.



President Virgilio Barco was elected at a critical moment, 1986. He promoted political reform, peace, and the strengthening of civil authority and democracy. He was convinced that a democracy's problems could be overcome through more democracy.<sup>2</sup> But the efforts to push through political reform and reconciliation were put at great risk by narcoterrorism, as the loss of credibility in institutions was deepened and Colombians were plunged into pessimism and despair.

The predicament facing Colombia was either to sacrifice political reform and reconciliation by initiating a national campaign of repressive policies, or to appeal to democratic procedures in order to face the legitimacy crisis that weakened the institutions threatened by narcoterrorism. The judicial system, already in serious trouble because of an excessive backlog, obsolescence, and people's distrust, was now the main target of the selective terrorist tactics of drug traffickers. Apart from that, there had been for decades a strong desire for a new power relationship between the capital, or the center of the country, and the outlying regions. Finally, political alienation in the form of apathy, cynicism, and the proliferation of illegal behavior--ranging from tax evasion to private justice squads and paramilitary groups--was further eroding the political system and the respect for human rights.

At this crossroads, the idea was launched of promoting a major constitutional reform through a process of massive popular participation. In February 1988, President Barco announced his intention to use the local elections, to be held in March, to call a plebiscite on amending the Constitution. There was immediate and overwhelming support for the idea. Indeed, previous administrations had promoted constitutional reform in Congress, but their efforts had been fruitless. Presidents López Michelsen (1974-78) and Turbay (1978-82) had both addressed the issue of institutional decentralization and the strengthening of the judicial system. On the basis of a technicality, the Supreme Court declared unconstitutional their enormous efforts to introduce substantial reforms to the Constitution; constitutional reform had also failed during the Belisario Betancur administration (1982-86).

As a result of these frustrating experiences, and faced by the pressing need to adopt constitutional amendments expediently, calling a plebiscite was seen as the light at the end of the tunnel. To avoid partisan confrontation, a pact was signed with the second largest political force, the Social Conservative Party, to agree on the draft of the text of the constitutional reform that would then be submitted to the people in a national referendum to be held in October of 1988. Although several Supreme Court decisions concerning popular sovereignty were invoked to support

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<sup>2</sup> This policy can be seen in many decisions of the Barco Government: (1) the Government-Opposition scheme, which ended more than thirty years (1953-86) of coalition Governments and promoted competition in the political system; (2) political parties and political campaigning underwent important transformations, mainly to combat patronage and promote open debate among contenders; (3) in the most difficult area of public order, President Barco made endless efforts both to promote peace with the guerrillas, and to combat terrorism linked to drug trafficking. The peace process was ruled by clear guidelines; the agreement with the M-19 is a good example of the impact of this policy.

the referendum, the agreement was declared invalid by the Council of State, on the grounds that Congress alone had the power to amend the Constitution and, therefore, to call a referendum would be unconstitutional.

By the beginning of 1990, a constitutional reform bill had failed in Congress and narcoterrorism had reached its peak, with the assassinations of Luis Carlos Galán, the Liberal presidential candidate (replaced by César Gaviria), Carlos Pizarro, the M-19 presidential candidate, and Bernardo Jaramillo, the Unión Patriótica presidential candidate. The idea of constitutional reform with the massive participation of the people reemerged. The campaign was dominated by voices that called for structural change and national salvation. Thirty thousand students signed a petition supporting the idea of the plebiscite, this time to call a Constituent Assembly.

### **César Gaviria and the creation of the Constituent Assembly**

César Gaviria made this idea his main program, both in his presidential campaign and after he was elected. He personally devoted great time and energy to negotiations with different political movements in order to build a consensus on the procedure for the reform and the content of the new Constitution. He presided over and directed the development of the draft constitution that was submitted to the Constituent Assembly by the Government. This draft was based on a broad process of public meetings and open local forums across the country in which hundreds of thousands of Colombians participated. It was participatory democracy at work, but there were still formidable obstacles to be overcome.

The major impediment was the clause in the Constitution itself that gave Congress the power to amend. To resolve this, the Barco and Gaviria administrations endorsed the theory that since sovereignty rests with the people, an initiative coming from the people would be legitimate. The administration then allowed sufficient political space for student demonstrators to demand a Constituent Assembly, so that the call would come from the people rather than from the Government.<sup>3</sup> As journalists, workers, intellectuals, and young politicians joined the initiative, the Government's juridical role was to authorize the formal counting of votes in the subsequent presidential elections of May 1991, and to draft the text of the ballot in which the main characteristics of the Assembly were defined. To provide a stronger legal basis for this position, the president declared a state of siege.<sup>4</sup> This was a matter of public order, it was argued, because several guerrillas

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<sup>3</sup>This initiative was named the seventh ballot, since it was informally introduced in the general elections of March 1990, in which there were six other ballots.

<sup>4</sup>A crucial factor that, ironically, was the key to finding a judicial and political solution to this constitutional puzzle, was the unconventional use of the state-of-siege powers. Traditionally criticized as an antidemocratic instrument, it became the constitutional tool that opened the door for the democratic transformation of Colombia. Both Presidents Barco and Gaviria used this power, but with differing philosophies, to protect leftist groups, promote and guarantee dissenting opinion, further political participation, and strengthen the judiciary. Paradoxically, the state of siege became the

had publicly stated that if a Constituent Assembly was convened, they would lay down their arms and join the reform process. The Supreme Court upheld both arguments.

The second obstacle was apathy. In order to convince the people that changing the Constitution would change their lives as well, Gaviria's Government initiated a television campaign to publicize the importance of the Assembly and to get the voters into the streets; promoted "working groups" in municipalities across the country, in which people were invited to voice their problems and propose solutions; and negotiated with political parties to win their support for the process, so that they, in turn, would encourage their own members to become involved.

A third obstacle was the fear of putting Colombia's Constitution into the hands of a Constituent Assembly of seventy members. Eminent personalities, including former presidents, spoke out against taking such a risk. President Gaviria addressed the issue by striking an agreement with the four main political parties. The agreement's purpose was to limit the agenda, that is, the items to be addressed by the Assembly, and to call for the election of the delegates on December 9, 1990. The Supreme Court, which had become less fearful, overturned these limitations, freeing the Assembly to consider any topic.

A fourth obstacle was the resistance of old-line politicians in the legislature, who did not want to surrender their power. Gaviria's Government made three proposals to counter this forceful resistance: (1) that the Assembly could neither dissolve Congress nor reconvene after a fixed date on which its mandate was to end; (2) that members of the Constituent Assembly could not run for Congress for the following eight years, thus easing incumbents' fears of a new political elite rising to challenge them; and (3) that the Assembly would be popularly elected, thus reassuring traditional politicians that this race would be run in an arena in which they were highly experienced. These three rules were included in the political agreement signed in August 1990 by the four main parties.

Nevertheless, the process of constitutional change was fraught with risks from the president's point of view. In spite of the Government's attempt to promote broad change, those who had exercised control in the past might still find a way to continue to do so in the Assembly. However, by including in the agreement that the election of Assembly delegates would be carried out in one common national district, rather than in several regional ones, the Government succeeded in opening up the political process and breaking the territorial grip of the old parties on most areas.

The election of delegates to the Constituent Assembly was held in December of 1990. The Liberals won 30 percent of the total votes (24 seats). To everyone's

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means that enabled the Colombian Government to modernize the political process and to remove legal obstacles that restricted the transformation of the M-19 guerrilla group into a political party.

surprise, the M-19, which had only recently demobilized, won 27 percent (19 seats), and the Conservative Party split into two factions: The National Salvation Movement, which won 11 seats, and the Social Conservatives, which won 9 seats. The few remaining seats were scattered among indigenous groups (2 seats), evangelists (2 seats), the student movement (1 seat), and the Patriotic Union of the extreme left (2 seats). In order to reflect the pluralistic composition of the Assembly, the delegates elected a plural presidency shared by Horacio Serpa, a liberal; Alvaro Gómez, the leader of the National Salvation Movement; and Antonio Navarro Wolf, the head of the M-19 Democratic Alliance.

### **The presence and role of ethnic minorities**

The demands and needs of ethnic minorities were neither the determining factor in calling for a Constituent Assembly, nor key issues on President Gaviria's reform agenda. The constituent process was in response to other priorities, such as making peace with the guerrillas, strengthening institutions to confront narcotics trafficking and terrorism, opening the democratic process, protecting human rights effectively, and solving a legitimacy crisis in a context of hopelessness and despair. Some of those priorities gave ethnic minorities an opportunity. They not only seized it, but achieved results that constitute a historic turning point in the protection of their rights and their role and power in Colombia.

The interests of ethnic minorities first appeared on the reform agenda in the August 1990 political agreements initiated by President Gaviria. Among the items were a national district for "minority groups and political movements"<sup>5</sup> and rights, like racial equality,<sup>6</sup> which were framed in general terms. Nevertheless, following consultation with political and social groups that were not signatories to the agreements because they lacked sufficient electoral support, additional subjects were added to the agenda in response to indigenous people's demands.<sup>7</sup> The indigenous leaders had demanded either to be appointed to the Constituent Assembly or to be allowed to run in a special district. After careful consideration it was decided that every member of the Constituent Assembly should be elected directly by the people, in one national district (except for representatives of guerrilla groups that were still involved in the peace process). However, ethnic minority candidates benefited from an exemption from general eligibility requirements that permitted any indigenous leader to run.<sup>8</sup> Although indigenous leaders were not certain that they would get enough votes, they ran on two separate, independent tickets--the ONIC and the AISO. The ONIC electoral strongholds were the regions inhabited by

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<sup>5</sup> Subject 1.2 of the August 23 Political Agreement; see the document in Manuel José Cepeda, *Introducción a la Constitución de 1991* (Bogotá, Colombia: Presidencia de la República, 1992), p.238

<sup>6</sup> Ibid., Subject 4.2, p. 242.

<sup>7</sup> Subject 4.14 of the August 23 Political Agreement referred to the recognition of the multiethnic character of the nation, respect for indigenous authorities and culture, and indigenous communities' property rights to *resguardo* lands."

<sup>8</sup> This exemption, promoted by the Government, also covered grass-roots organizations, students, and former guerrillas. See point 9c, *ibid.*, p. 236.



indigenous peoples; the AISO area benefited from the so-called opinion vote of the antipolitical class--non-Indian urban voters residing in Colombia's three main cities.<sup>9</sup> Together, they received 54,266 votes, that is, 1.46 percent of turnout. To their own surprise, in spite of this division, both won, while some well-known politicians lost. The division proved a benefit; had they both run on the same ticket, only one of them could have been elected.

Once in the Constituent Assembly, their status grew. They became symbols. They represented more than their constituency: they represented tolerance and pluralism, a rediscovered national identity, historic reconciliation, justice, and the feeling that past grievances should be redressed. They gained respect and support for their demands from most of the other delegates.

Both indigenous delegates were elected to the governing boards of the permanent commissions to which they belonged--Rojas Birry as vice-president of the human rights and political participation commission, and Lorenzo Muelas as vice-president of the territorial autonomy commission. In general debates they proved to be eloquent, clear, and blunt. Rojas Birry introduced himself as "one of the 600,000 surviving Indians still inhabiting Colombia and leaving behind him centuries of dominance, discrimination, and dead."<sup>10</sup> Lorenzo Muelas spoke in his native language, provoking shock and news headlines. They continued to be active in their commission work, although in plenary sessions they preferred lobbying in the halls to delivering long speeches. They both presented constitutional reform projects that concentrated on ethnic minorities' rights.<sup>11</sup> Although neither suggested the adoption of a new Constitution, the articles of the 1991 Constitution concerning ethnic minorities were inspired by the particular proposals they presented.<sup>12</sup>

As for their voting patterns, both delegates allied consistently with the M-19 political movement (a former guerrilla party), were frequently aligned with the winning alliance (M-19 + liberals + minorities), and consistently voted in favor of

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<sup>9</sup> AISO candidate Lorenzo Muelas, the most skeptical about getting enough electoral support, was a master of modern media "strategies." When I met with him to discuss their electoral demands, he appeared with community members but also with TV cameras. He always wore typical dress and so he made for a beautiful TV shot. The following day, a very critical note against the Government was published in a conservative newspaper denouncing the refusal to agree to their demands.

<sup>10</sup> *Gaceta Constitucional*, No. 18, p. 6, quoting Padre Alvaro.

<sup>11</sup> Lorenzo Muelas, *Propuesta Indígena de Reforma Constitucional* (Reform Bill 83), *Gaceta Constitucional*, No. 24, p. 11. Rojas Birry, *Propuesta de Articulado sobre Grupos Etnicos, Indígenas y Raizales del Archipiélago de San Andrés*. *Gaceta Constitucional*, No. 18, p. 8.

<sup>12</sup> They presented, or signed, 10 proposals during the two plenary debates, which were not adopted textually, but 70 percent of which were incorporated, with different language, in the Constitution. The two most important ones were recognition of the territorial rights of pacific-black communities (proposition 205) and the recognition of indigenous communities' right to know of any natural resource exploitation projects (proposition 048). These proposals are in M.J. Cepeda, *La Constitución que no Fue y el Significado de los Silencios Constitucionales*, (Bogotá: Uniandes/Ancora Editores, 1994), pp. 66, 83, 110, 111, 120, 143, 145, 152, 157.

progressive reforms not related to ethnic minorities' rights. When the M-19 voted against one such reform (the internal democratization of political parties), they did not join their ally. They even opted to join the more conservative wing of the conservative party in fixing the date for the next congressional elections, since they wanted more time to prepare for the race.<sup>13</sup> This independent stance, combined with consistent strategic alliances, manifested itself even in different voting patterns between the two delegates. Surprisingly, Lorenzo Muelas did not vote for the creation of a special national district for the election of ethnic minority senators; Rojas Birry supported it. This may have been only a casual difference, or it may have been a cautious stance; in his original plan, Lorenzo Muelas proposed four senators instead of the two finally accepted by the Constituent Assembly.<sup>14</sup>

Although they received general support for their reform demands, the bargaining process with the Government and with delegates from the two traditional parties was prolonged and tense. It mainly concerned the special indigenous jurisdiction, the status of native languages, the scope of the special national electoral district, and ethnic minorities' territories. The main issue was the criteria for defining indigenous territories. In the end, a transitory article provided for the creation of a commission to be in charge of this politically sensitive task for all territorial entities.<sup>15</sup>

The Government was also authorized to regulate the financial issue, linked to the territorial one, since fiscal and budgetary benefits depend on the delimitation of indigenous territories.<sup>16</sup> It is not surprising then that the two indigenous peoples' proposals, perceived as more "dangerous" by the other delegates, did not receive wide support: the demand for indigenous peoples' territorial autonomy and special jurisdiction received only one or two votes over the minimum required majority.<sup>17</sup> This mood of uncertainty about the consequences of satisfying indigenous peoples' demands had a spillover effect on the vote on the status of native languages<sup>18</sup> and the special national district for the election of ethnic minorities.<sup>19</sup> In the end, however, the entire Constitution, including all ethnic minority clauses, benefited from the euphoria of having built a new social contract founded on a broad consensus and enriched by pluralism. If anyone felt that it had lost, it was neither the ethnic minorities nor the Government, which had participated in reaching an agreement favorable to the indigenous peoples' demands.

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<sup>13</sup> M.J. Cepeda, *La Constituyente por Dentro, Mitos y Realidades* (Bogotá, Colombia: Presidencia de la República, 1993), pp. 40, 43.

<sup>14</sup> They voted together to support the special district for ethnic minorities in the House of Representatives. *Ibid.*, p. 251.

<sup>15</sup> Transitory Article 38. See also Article 329(21).

<sup>16</sup> Transitory Article 56.

<sup>17</sup> Cepeda, *La Constituyente por Dentro*, p. 35. Articles 329, 330 (Territorial Autonomy), and 246 (Special Jurisdiction).

<sup>18</sup> *Ibid.*, p. 35. Article 10 almost failed in the final vote of the second debate.

<sup>19</sup> *Ibid.*, p. 239. Roll call vote was called but it received wide support.

The August 23 Political Agreement mentioned the need for a special code of laws in San Andrés and Providencia, but nothing was said about autochthonous communities of the Pacific.<sup>20</sup> Black communities were not represented in the Constituent Assembly, although the indigenous delegates supported their demands. Three things account for the different treatment blacks received. They did not symbolize past injustices for the majority of Colombians; on the contrary, children learn early in school that Colombia was one of the first countries to abolish slavery. Albeit wrongly, Colombians believe that there is no discrimination against blacks. Moreover, black communities are more assimilated than are those of indigenous peoples; it was, in fact, difficult to extend indigenous rights to the blacks automatically. Finally, the belligerence of the San Andrés natives scared some Assembly delegates, who opted instead to transfer the problem to the Government by authorizing it to adopt a special set of laws for San Andrés and Providencia.<sup>21</sup> A similar transfer of decision making was done with respect to black communities of the Pacific region, although that was delegated to Congress, and collective property rights, as well as cultural rights, were recognized in that case.<sup>22</sup>

### **3. New Constitution, Participatory Democracy, and Ethnic Minorities' Rights**

The idea of participatory democracy was promoted by arguing that traditional representative democracy was insufficient to sustain the legitimacy of Colombian institutions. Citizens wanted to be more involved in decision-making processes but lacked the channels necessary to present their views effectively. For the middle class, the support for participatory democracy reflected their distrust of congressmen and political bosses, and their rejection of privilege and corruption. The process that led to the creation of the Constituent Assembly was seen as an example both of the virtues of participatory democracy and of its practical viability.

#### **The main reforms**

Every conceivable institution of direct democracy was introduced at local, regional, and even national levels. A referendum can be used to veto legislation already adopted or to approve bills that have been neglected by the representatives. It can also be applied to constitutional amendments. The president, with the advice and consent of the Senate, may call national advisory referendums on any subject of public interest. Citizens' initiatives are allowed for almost any issue. Recall of popularly elected mayors and governors is defined as a political right of citizens. Any citizen can demand the removal of any congressman by the Council of State, a national judicial body, on specific legal grounds given in the Constitution.

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<sup>20</sup>Subjet 6.16. Cepeda, *Introducción a la Constitución*, p. 244.

<sup>21</sup> Articles 309, 310, and Transitory Article 42

<sup>22</sup> Article 63 and Transitory Article 35.

Several constitutional clauses provide for the democratization of political parties, labor unions, professional colleges, universities, public administrations, and other power holders that previously did not have to respond to democratic principles of participation and accountability.

A generous Bill of Rights was adopted that includes civil, political, social, economic, cultural, and collective rights. Special emphasis was given to ecological issues and the right to a clean environment. Institutions, like the Ombudsman (*Defensor del Pueblo*) and the Constitutional Court, were created to assure the effectiveness of these rights. Special procedures were created to protect rights --such as *acción de tutela*. The state of siege was abolished. Although temporary emergency powers may be used, Congress regulates the powers of the executive and is accountable to both houses. All emergency decrees must be automatically reviewed by the Constitutional Court through a fast-track procedure.

In a broad move towards federalization, the autonomy of the political territorial divisions of the state was guaranteed, local democracy was promoted, and national functions and resources were decentralized. To promote pluralism, assure electoral fairness, and provide equal political resources to the power contenders, several electoral as well as other reforms were introduced, such as:

- The use of the so-called *tarjetón* in all elections, which assures the total independence and privacy of the voter, and works in favor of candidates without the backing of a national organization.
- Direct popular election of governors.
- A national district for the election of all Senators, 100 in the general district and 2 indigenous in the special district.
- Reduction in the membership of the Senate (102).
- Reduction in the membership of the House (167), complemented by a special national district for ethnic minorities and Colombians living abroad.
- Elimination of the system of bipartisan presidential alternation and of the mandatory coalition governments of shared responsibility.
- Free television and radio time for political candidates and parties, including those not represented in the Congress.
- State subsidies for political parties.
- Regulation of private financing of campaigns, which includes ceilings on the contributions to candidates and on expenditures by candidates.



- An absolute majority system for the election of the President, following the French two-round model.
- Popular election of the vice-president.
- Administration of the elections by an independent and autonomous organization with specific powers to preserve integrity and fairness in the campaign.

There was a complete revision of the system of separation of powers. The two fundamental concerns were, first, to re-establish an equilibrium among the three branches in a regime traditionally dominated by the presidential figure, and, second, to further a more responsible government, with the hope that accountability would promote both efficient and clean public administration.

The judicial system was significantly strengthened. Colombia moved towards an "accusatory" system, which gives the state a greater capacity to investigate and prosecute criminals, especially organized crime bosses. A national judicial body was created to handle the administrative, financial, and disciplinary aspects of the judicial system. The final power of judicial review, which had been in the hands of the Supreme Court for almost one hundred years, was entrusted to a Constitutional Court with the mission of giving life to the new constitutional philosophy. The new procedures to protect constitutional rights, foremost among them the writ of protection (*acción de tutela*), enhanced the power of every judge in the country. Ethnic minorities have used it widely, as we shall see below.

The legislative branch also received more power to control excesses in delegated legislation, make appointments, take initiative in economic measures, and decide the budget. With the strengthening of Congress, there also came a change in the electoral rules to increase its representation, as well as strict rules regarding conflict of interest and accountability for congressmen.

More important, Congress now has the power to call for a no-confidence motion on individual ministers, without censuring the whole Government. To be effective, the motion must be approved by both houses in joint session, by an absolute majority of the members, three days after its introduction, by at least ten percent of the members of one House. These safeguards are aimed at preventing abuses. This instrument, as well as others adapted from the Westminster parliamentary system, altered the model of separation of powers. The purpose is to make executive-legislative relations more fluid, to free them from certain rigidities resulting from the separation of powers, and to make them more open to the dynamic realities of political life.

## **The rights of ethnic minorities**

Minorities received special protection and were guaranteed the tools necessary to foster their development. The articles regarding indigenous populations are the best example. Indigenous people sharing frontier zones are granted nationality rights. All have special rights over archeological heritage territories. Bilingual education is made mandatory in their territories, where native languages and dialects are also official. Education must be directed to preserve and develop their cultural identity, which must also be protected. Their collective property rights are recognized and their territories are elevated to the category of other entities with political and administrative autonomy.

Their institutions of self-government are respected. A special jurisdiction to decide cases according to traditional customs is created within their territories. They have the right to elect at least two senators in a special national district and a number of representatives fixed by law, also in a special national district shared with Colombian nationals living abroad. Special participation rights are clearly stated in key decisions concerning the exploitation of natural resources within their territories and the development of the national plan by the National Planning Council. Indigenous peoples will benefit from transfers from the national budget and from the oil and mineral resource royalties. (See Appendix 1 for details.)

For black communities, three special articles authorize legislation to insure respect for their rights. The beneficiaries are the natives of the English-speaking Caribbean islands and the communities inhabiting the Pacific coast in the Chocó, the poorest department of Colombia. The islanders saw their territory become an Archipelagic Department, with equal status as the others, but with a special system of laws to protect native cultural identities, assure their "institutional expression," and safeguard the environment, without obstructing the islands' economic development. The Pacific coast communities were granted collective property rights in their traditionally exploited areas as well as protection of their cultural identity. (See Appendix 1 for details.)

Equally relevant for the protection of minority rights is the general philosophy of participation, equality, and respect for human dignity that inspires the whole Constitution, the new electoral rules, and the Bill of Rights. For example, affirmative action to advance marginalized or discriminated minorities is not only allowed but guaranteed. All religions are not only free but declared equal under the law. The dignity of all cultures is equally respected and all of them form the basis of national identity.

## **4. Implementing Minority Rights Through Judicial Procedures**

### ***Acción de tutela: A New Tool for Ethnic Minorities***

The most vivid example of how general clauses of the Constitution benefit ethnic minorities is the *acción de tutela*, the writ of protection for human rights. It is a judicial procedure to assure the practical respect of individual fundamental constitutional rights. It combines participatory philosophy (anyone can use it before any judge or tribunal without legal jargon or prerequisites) with the strict respect for human dignity (a decision must be rendered in ten days and the burden of proof is on the suspected violator of the constitutional right). In three years, *tutela* has been a key tool for the protection of ethnic minority rights. Some examples are discussed briefly below.

### *Cristianía*

In this case,<sup>23</sup> the indigenous community of Cristianía, Department of Antioquia, found that their crops and land were being destroyed by landslides caused by the construction of a badly planned State highway. Although preliminary studies had shown a geological fault crossing the route of the highway (the main cause of landslides), the Ministry of Transportation did not take the studies into account. Moreover, the required environmental impact study had not been made; the Ministry had been fined for this fault. The highway was almost finished; the damage already caused. All that remained was to pave the portion that ran through the community.

An Indian, Amado de Jesús Carupia Yagari, filed the writ of protection. The lower-court judge did not order the public works department to stop. He argued that private property was an individual interest overridden by the general interest in the highway of all the inhabitants of the region. The Constitutional Court disagreed. The conflict, in the Court's view, was between two collective interests, and those of the indigenous carried more weight since they were specially protected by the Constitution. The highway work must be stopped, the Court concluded, until the environmental impact was evaluated and measures were adopted to prevent additional damage. The damages already caused had to be fully compensated by the Ministry of Transportation.

With this ruling, the Constitutional Court allowed the *tutela* to be invoked, even though no individual's fundamental rights were being violated. In this way, a judicial instrument conceived of to protect individuals, according to the liberal tradition, was transformed into a tool to protect communitarian rights, according to the tradition of the ethnic minorities themselves. Furthermore, the right to communal integrity was seen predominantly from an economic perspective. Cultural traditions cannot be preserved if the economic foundations of a community—which, of course, have a cultural dimension—are destroyed. The Court ruling is even more surprising because the Cristianía Community did not base its claim on communitarian rights but on individual rights to life and private property.

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<sup>23</sup> T-428. June 24, 1992. Judgment by Ciro Angarita Barón. *Gaceta Judicial*, No. 2 (1992) p. 479.

## *Wayuu and Cerrejón*

The Guajira peninsula on the Caribbean coast has been the home of the Wayuu since time immemorial. It is also the site of one of the biggest coal deposits in the world, at which production began in the 1980s. After seven years of activity, ill-effects were felt by the families in the community as a result of noise, vibration, and atmospheric pollution. The Ministry of Health declared the mine zone unfit for any form of life. Both the Rioacha Tribunal and the Supreme Court ruled against the community.

The Constitutional Court was more sensitive to the needs of the Wayuu and held that their rights should be protected. Although a 30-day delay was ordered, the Court order was phrased as a general statement directed at all agencies to undertake all measures necessary and adequate to protect the rights to life, physical integrity, and a clean environment.<sup>24</sup> The administrative agencies did not want to get involved in the delicate matter concerning huge national economic interests; the 30-day delay was not respected. However, a bargaining process was begun to try to solve the indigenous peoples' problem, and their demands are being heard at the national level.

## *Conflict among Indian communities*

The San Antonio community threatened to take possession of territory in Paso Ancho community, which was not a *resguardo*. The Paso Ancho *cabildo* president asked the Colombian Institute of Agrarian Reform (INCORA) to divide the disputed Chicumbe territory (Tolima) into two. INCORA declined, saying that the *cabildo's* president had to solve the problem since the Paso Ancho community had made previous territorial distribution arrangements with the San Antonio community to press for the transfer of the land to the indigenous peoples. Paso Ancho representatives traveled to Bogotá to meet with national authorities; an inter-institutional committee was organized but no agreement could be reached. Threats began; a Paso Ancho sympathizer was killed. The lower court did not accept the Paso Ancho demands. The Constitutional Court, however, granted the protection requested and ordered INCORA to create one or more *resguardos* to solve the distribution of land conflict.<sup>25</sup>

The reasoning of the Constitutional Court incorporated judicial innovations of great importance to ethnic minorities. First, the Court said that indigenous property rights, although collective, not individual, were fundamental and, therefore, enforceable through the *tutela*,<sup>26</sup> reversing the main argument of the lower court. Moreover, the Court held that the right to create *resguardos* was

<sup>24</sup> T-528. September 18, 1992. Judgment by Fabio Marón Díaz, *Gaceta Judicial*, No. 5 (1992) p. 363.

<sup>25</sup> T-188. May 12, 1993. Judgment by Eduardo Cifuentes Muñoz, p.11 (mimeo).

<sup>26</sup> Ibid., pp. 6-7.



constitutionally protected by the principle of ethnic and cultural diversity.<sup>27</sup> Second, the Court struck down state policies on indigenous people as "racist," as supporting "ethnic liquidation," and, more benevolently--speaking of land reform legislation--as aimed at their "incorporation into economic capitalism."<sup>28</sup> The Court had praise only for the policies to protect collective property adopted under the Government of President Virgilio Barco. Third, the Court did not allow INCORA to shield itself behind the principle of communitarian autonomy to avoid taking the decision to divide the territory into two different parts, one for each community; thus, the right to petition for the redress of grievances had also been violated by INCORA.

### *Lumbering on resguardo land*

The Emberá-Catio community of Chajerado, Chocó, filed a *tutela* writ against CODECHOCO, a public agency in charge of forest preservation and development, and Madarien, a lumber company. The company, without a CODECHOCO permit, exploited the forest within the *resguardo*, which was also a reserve, with heavy industrial machinery. The indigenous authorities apparently had given their consent to this, in exchange for materials and money. CODECHOCO ordered the company to stop its activities within the *resguardo*, to implement a one-year reforestation program, to perform an environmental impact assessment of the canals it built, and to clean up the three rivers and La Cienaga. Too late; more than 3,500 hectares had been devastated. CODECHOCO had not acted sooner, even though regional representatives of the indigenous peoples had twice asked them to intervene. Now the tropical forest ecosystem was at risk as well as the cultural identity, integrity, and lives of the members of the indigenous community; so held the lower-court judge. He ordered both CODECHOCO and Madarien to pay costs of the environmental impact study, the reforestation, and the repairs. The regional tribunal reversed the decision, arguing that the damage had already been done. The Constitutional Court granted the *tutela*.<sup>29</sup>

The Constitutional Court took another step toward strengthening indigenous rights by holding that the indigenous community as such had rights independent of its individual members. In the Cristianía case, the Court had accepted the fundamental status of some indigenous collective interests; in this case, the Court clearly stated that these rights did not belong to the members of the community but to the community as a whole. The two bases for this distinction were the cultural and ethnic diversity principle, protected in Article 7 of the Constitution, and the several articles that included the concept of indigenous community. Other communities could not benefit from the same expansion of fundamental rights,

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<sup>27</sup>Ibid., p. 10. The Constitutional Court reaffirmed this doctrine in a subsequent *tutela* case in which the right to the creation of *resguardo* was recognized and protected. Nevertheless, the Court attributed private civil law rights and duties to this collective property; see T-257/93. Judgment by Alejandro Martínez (mimeo).

<sup>28</sup>Ibid., pp 5, 7, 8.

<sup>29</sup>T-380. September 13, 1993. Judgment by Eduardo Cifuentes Muñoz (mimeo).

since their framework was individualistic;<sup>30</sup> only for indigenous peoples did the right to life include the right to collective subsistence and protection against ethnic genocide.<sup>31</sup> And only indigenous peoples had a fundamental right to ethnic, cultural, and social integrity. According to the Court, individual rights become communitarian rights from the perspective of indigenous peoples. Moreover, the community had a collective property right not only over its territory but also over the natural resources within the *resguardo*. Indigenous authorities could not freely dispose of natural resources within the *resguardo*; thus the authorization they gave to the Madarién Company was *ultra vires* and not binding.<sup>32</sup>

As for the damages already caused, the Constitutional Court ordered the Madarién Company to pay full compensation in the amount calculated by a civilian judge.<sup>33</sup> The plan to restore the damaged natural resources and prevent further degradation of the forest and the rivers was the responsibility of the public agency, CODECHOCO.<sup>34</sup> The Court ordered the Secretary of National Planning to oversee the design and implementation of the plan and authorized the lower-court judge to punish any delay by imposing contempt-of-court arrests and fines.<sup>35</sup>

#### *Amazon radar*

In September 1992, Colombian and North American Air Force personnel began the installation of DEA radar in the Araracuara airport, situated along the Monochoa *resguardo*, under the command of Colombian military forces. Their activities caused deterioration to the existing road and the airport; the indigenous (Huitotos and Muinanes) representatives demanded that repairs be made. They also complained that the radar had been installed without prior consultation with the communities, which were only informed by the Ministry of Defense. They also feared that the Ministry's plan to build two air bases near the *resguardo* would pose a nuisance to their quiet life. The civilian judge granted the *tutela* only in part. He did not order the suspension of the radar installation, nor suspension of the radar functioning; he ordered the immediate repairs to the road and the airport.

A Constitutional Court magistrate was sent to the region to hear all sides of the issue. The indigenous representatives said that naval bases were polluting the water sources, and that the place where the radar had been installed was sacred. Although no material damage had been caused, their cultural integrity was thus

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<sup>30</sup>Ibid., p. 14-15.

<sup>31</sup>Ibid., p. 23.

<sup>32</sup>Ibid., p. 18.

<sup>33</sup>Ibid., p. 21.

<sup>34</sup>Ibid., p. 22. The Court admitted that CODECHOCO could file a separate civil action against Madarién to recover damages.

<sup>35</sup>Ibid., p. 24. The doctrine by which the indigenous community as such has fundamental constitutional rights was reiterated by the Constitutional Court in January 1994, in a case concerning land distribution among the Coyaima and Guayabos communities of Chenche-Socorro-Tolima. See T-001. January 13, 1994. Judgment by José Gregorio Hernández (mimeo).

abridged. The Constitutional Court granted the *tutela*, but did not accept the cultural integrity protection argument.<sup>36</sup> The Court found that the community had agreed to the placement of the radar and that its members were paid workers on the radar installation. The fight against narcotics trafficking, a serious menace to Colombian democracy and a threat to the ecosystem and the indigenous communities, was enough to justify the continuation of radar operations. Nevertheless, the contamination of the river by the naval base, situated six kilometers from the border of the *resguardo*, had to stop, as it constituted a threat to the life and health of the indigenous community. Additionally, a plan for the preservation of the ecosystem had to be adopted by a committee representing all interests involved. The Ministry of Defense and the U.S. aviation mission were ordered to give all support to the development and implementation of the plan. On the project to build two military bases in the area, the Court remained silent.

Considering the importance of the fight against narcotics trafficking in Colombia, the Court's decision is surprising since the *tutela* was granted, and the Ministry of Defense lost. Nevertheless, the installation of the radar was permitted by the Court, which ground it held on general constitutional rights, not on specific ethnic minorities' rights. A balance--a very difficult one--was achieved.

#### *Black communities of the Pacific: Preserving their future*

A black Madarien worker filed a *tutela* writ asking for the protection of his right to work, and similar rights for other Madarien workers. He argued that their right to work was infringed upon when the Ministry of Labor authorized Madarien to dismiss 50 percent of its labor force because the company had not obtained the necessary permit to work portions of the forest in the Pacific region. The public entity responsible for issuing the permit, CODECHOCO, refused to concede to the company's demands on the grounds that it would imperil the new constitutional environmental rights and the protection of black communities' collective property over the areas traditionally occupied by those communities. CODECHOCO suspended the process for issuing the permit for exclusive exploitation, usually given to the Madarien Company. The lower-court tribunal granted the *tutela*. The Supreme Court reversed this decision.

The Constitutional Court emphasized the importance given to environmental rights in the 1991 Constitution. As to the right-to-work claims, presented by a dismissed black worker, but with clear backing from the former employer, the Court said that the company, not the worker, was trying to challenge the suspension of the permit process. In this way, the Court rejected the tactic of the Madarien company "using" a black worker to plead its case. The Court said that the protection of the black communities' right to collective property over areas of ecological importance in which they had traditionally lived was paramount. The suspension of the permit process was not negligence, as the Madarien Company

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<sup>36</sup>T-405. September 23, 1993. Judgment by Hernando Herrera Vergara, p.37 (mimeo).

pretended, but a means to assure the future effectiveness of the black communities' rights by preventing the destruction of the forest.<sup>37</sup>

One aspect of this case is striking, at least from a Colombian perspective. The Constitutional Court protected the black communities' right before it was actually threatened--first, to allow time for the governmental agency to make the necessary environmental impact studies and, second, to advance the process of delimitation of the areas in which the black communities--which did not intervene in the *tutela* procedure--would enjoy their collective property rights as well as the protection of their cultural identity. Therefore, red tape, bargaining delays, and other usual vices of public administration were reinterpreted as "good" means to freeze the processes until all the players could participate equally.

### *Special jurisdiction*

Ananias Narvaez, a 50-year-old former Indian leader, was expelled from his community by its members; his family was forced to leave with him. The land he worked was taken away from him and not given to his 16-year-old son. He was also punished for repeated theft, mainly of food, over the years. Ananias filed a *tutela* writ against the *cabildo* of the Tambo community (Coyaima, Tolima). He concentrated his arguments on the violation of due process (no evidence was gathered to prove the robberies), on the prohibition against confiscation (his land was taken away from him and his family), and the prohibition against banishment (he was expelled from his community for life). The lower-court tribunal rejected the *tutela* writ, which the Supreme Court upheld. The Constitutional Court reversed the decision.<sup>38</sup>

The Ananias case is of critical importance since it concerned the relationship of two legal systems--that of the ethnic minorities and that of the Constitution--and the functioning of the special criminal jurisdiction. Both issues had to be addressed in the context of the principle of autonomy recognized by the 1991 Constitution. The Constitutional Court began by tackling the problem of whether the *tutela* writ was applicable within the ethnic community. The lower-court tribunal ruled that it was not, because the community had exercised its right of association and, through democratic process, had expelled one of its members. The Supreme Court held that although the *cabildo* was a public authority, under the laws which govern the matter, the expulsion had not been arbitrary. The Constitutional Court, however, accepted the writ. It held that even though the decision was taken by the community, which is not a public entity as is the *cabildo*, the *tutela* could be used if the absence of other effective judicial means placed an individual in a defenseless situation against a private organization, such as the indigenous community. But the Court also rejected the tribunal's analogy of freedom of association, since

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<sup>37</sup>T-469. October 22, 1993, p. 14 (mimeo).

<sup>38</sup>T-254. May 30, 1994. Judgment by Eduardo Cinfuentes Muñoz, p. 24 (mimeo).



belonging to an indigenous community was a result of birth and identity, not of mere will (*animus societatis*).<sup>39</sup>

On the key issue the Court held that the autonomy of indigenous territories within a unitary republic was greater than the autonomy of ordinary territorial entities since it included two powers denied to the others: the power to judge according to autochthonous legal norms and the power to self-government according to their own traditions. The Court reiterated that two articles of the Constitution explicitly state that autochthonous customs be applied unless they are in opposition to the Constitution or the law (Articles 246 and 330). This general hierarchical principle, being abstract, moved the Court to establish minimum criteria to solve the conflicts between the two juridical systems.

The Court established that, to the extent that traditional customs are preserved, greater autonomy is given to indigenous authorities to decide in accord with their autochthonous legal system. A distinction is therefore made between communities "contaminated by civilization" and other communities. Second, fundamental human rights must also be respected by the indigenous authorities. The Court noted that the indigenous representatives at the Constituent Assembly participated in the adoption of these rights into the Constitution. It also quoted OIT Covenant 169 (Articles 8 and 9), which provides for the respect of international human rights by indigenous people. Third, autochthonous rules prevail over civil codes, including, for instance, laws governing contracts (*normas dispositivas*). Last, autochthonous rules prevail over legislation that does not directly protect a constitutional right superior to the principle of ethnic and cultural diversity, that is, basic fundamental constitutional rights. The Court concluded by saying that "there is a space protected by pluralism and ethnic and cultural diversity which is intangible and, therefore, unreachable by legislation."<sup>40</sup>

The Court emphasized that the Tambo community was a borderline case: it was not a *resguardo*, although it was in the process of being declared one. The peoples there did not speak their ancestral language nor did they live by traditional customs. Nevertheless, they administered land collectively, elected a *cabildo*, and shared a common identity with their past and interest in maintaining their traditional values. The Court held that a law creating a special indigenous criminal jurisdiction was not needed, which almost all jurists and Government officials believed. The Court indicated that this special jurisdiction was created by the Constitution itself, and the role of legislation was to coordinate it with the national jurisdiction. The banishment decision was not a political act but a punishment of Ananias for his violation of traditional rules; thus, it was a judicial decision to which the above criteria applied.

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<sup>39</sup>Ibid., pp. 11, 12.

<sup>40</sup>Ibid., p. 15.

The punishment of banishment was not prohibited by Article 38 of the Constitution, since its juridical meaning was different from that implied by the concepts of banishment or exile that are linked to the nation-state—an entity that did not exist until many centuries after expulsion was first practiced.<sup>41</sup> The confiscation of Ananias's land raised a more difficult problem in a system of collective administration. Although juridically the concept of confiscation did not apply, the consequences of the appropriation of Ananias's land were similar to those rejected by the prohibition and, therefore, unconstitutional. These effects could be avoided by compensating Ananias for the improvements he made to the land. Since there were no traditional customs concerning the amount of compensation, and the community was itself divided on this issue, the civil judge could solve the dispute on this particular point. As to the due process charge, the Court held that the Tambo community could not punish the family for something for which Ananias was solely responsible.<sup>42</sup> The Court ordered the *cabildo* to receive Ananias's children back into the community "until a new decision was reached concerning the charges against Ananias."<sup>43</sup> The Court indicated that while the judgment should respect traditional communitarian norms and procedures, it could not violate the Constitution.<sup>44</sup>

Although the overall philosophy implicit in the Constitutional Court's decision and the four criteria concerning the relation of autochthonous rules and the majority's legal system are favorable to the interests of indigenous peoples, there are two aspects of the decision that could threaten ethnic minorities' self-government. First, the acceptance of the application of the *tutela* writ to solve conflicts within communities is striking, because this judicial tool was developed to operate in nonindigenous territories. Nevertheless, since it may only be invoked by a member of the community, this seems to be compatible, in my view, with Section 3 of Article 8 of OIT Covenant 169.<sup>45</sup> Second, by giving the community several guidelines to follow in the process of judging Ananias, the Court became a kind of high tribunal asserting its jurisdiction over all Colombian territories and inhabitants. Nevertheless, the Court was cautious enough not to declare itself an expert in indigenous peoples' laws; instead it created criteria to allow for the autochthonous development and application of the guidelines and showed deference to the community authorities.

#### *Indigenous political participation rights: The Vichada and Guainia cases*

<sup>41</sup>Ibid., p. 19.

<sup>42</sup>The Court quoted Article 5(2) of the Inter American Convention on Human Rights (San José Pact) as well as the Colombian Constitution. The other due process charges, such as lack of evidence, were also rejected by the Court.

<sup>43</sup>T-254. May 30, 1994. Judgment by Eduardo Cinfuentes Muñoz, p. 24 (mimeo).

<sup>44</sup>Article 8, Section 3 (OIT Covenant 169): "The application of Sections 1 and 2 of this Article does not forbid members of those people (indigenous) to exert the rights recognized."

<sup>45</sup>Ibid., p. 23.

On October 17, 1993, a group of indigenous inhabitants in Vichada asked for *cédulas*, the Colombian identity cards used for registration and voting. After three months, the Registrar's Office (the public entity charged with issuing *cédulas*), replied that a new plan would be applied in Vichada, as had already been done in other regions--commissions were being sent to Indian settlements to facilitate the registration process of those wanting a *cédula*. In the meantime, the Vichada group would have to go to a nearby office. The lower-court judge ordered the Registrar's Office to send such a commission immediately. The Supreme Court judge reversed this ruling and only granted the *tutela* to protect the right of petition, since the Registrar's Office had not answered within the legal time limit. The Constitutional Court upheld the decision, even though the Registrar's Office had already replied, to avoid similar delays in future cases.<sup>46</sup> But the Court also held that political participation rights would be protected under the *tutela* and that indigenous people could claim the same rights as any other citizen. The Court did refuse to order the Registrar's Office to incur in the additional expense involved in sending a special commission, since the Registrar had already implemented plans for this purpose and Vichada would have its turn when financial resources were available.<sup>47</sup> Moreover, since there was a nearby office, it was not, in the Court's view, unreasonable to place the burden of going there on the inhabitants.

The decision is interesting in the Colombian context. The Court not only recognized indigenous peoples' participation rights or the legitimacy of special and costly plans to facilitate their registration, but also was cautious of instituting a procedure that might be understood as granting registration privileges to a specific group. Although not mentioned in the argument, it was common practice in Colombia for a politician to promote last-minute registration of citizens who would then vote for him in exchange for favors. In fact, many *tutela* writs had been submitted across the country for all kinds of electoral rights, from demands for registration to demands to cancel registrations, depending on local political convenience. On the other hand, it is regrettable that as pedagogical campaigns in indigenous territories<sup>48</sup> and the presence of ethnic minorities' leaders in the political arena have raised indigenous peoples' interest in political participation, they were not able to vote in the 1994 elections.

Nevertheless, the Constitutional Court was sensitive to this new political situation. In a subsequent case, it protected indigenous peoples' participation rights, mainly, the right to campaign in their own language. An official of the Guainia governorship had issued a directive prohibiting political speeches in any language other than Spanish. The Court ordered all Guainia authorities to abstain from

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<sup>46</sup>T-305. July 5, 1994. Judgment by Antonio Barrera Carbonelle, p. 11 (mimeo).

<sup>47</sup>In some parts of Vichada this plan has now been implemented.

<sup>48</sup>A special pedagogical commission on the new Constitution had been sent to the locality by a national indigenous organization (ONIC) and the regional planning corporation of the Orinoquia Region. Ibid., p. 3.

enforcing it,<sup>49</sup> to protect equality and linguistic rights (see below). In another case the Court justified the limitation on political participation rights by non-native Colombians in districts inhabited by a majority of autochthonous communities. The limitation, applicable in the San Andrés Department, in which black natives live, was a ten-year residence requirement to be a candidate for Governor. The Court upheld the law on the basis of territorial autonomy; only one justice dissented.<sup>50</sup>

*Cultural diversity as a fundamental enforceable right: The Nukak-Maku case*

The Nukak-Maku are a tribe of nomadic hunter-gatherers who move in small groups ranging from 6 to 30 people; they are, therefore, difficult to evangelize. The Asociación Nuevas Tribus de Colombia mission settled in the region and began encouraging sedentary practices among the Nukak-Maku by giving them seeds and tools for agriculture. They provided health care not in accordance with Nukak-Maku traditions, and they built an airplane landing strip and permanent houses in an area prone to colonial initiatives. The Nukak-Maku representatives demanded the departure of the missionaries and the suspension of their activities in the critical area of Laguna Pabón, near the traditional routes of the nomadic groups. The lower-court tribunal rejected the claim, but the Constitutional Court granted the *tutela*.<sup>51</sup>

The Court underlined the importance of cultural diversity as a *sine qua non* condition for indigenous peoples' enjoyment of fundamental rights, such as the right to live, the right to autonomous development, the right to health, freedom, and equality. From the indigenous peoples' point of view, cultural diversity was not only a general principle, as defined in the Constitution, but a fundamental right enforceable through the *tutela* writ.<sup>52</sup> The Court did not, however, consider that the health services provided by the missionaries were a violation of the Nukak-Maku's rights, as long as they were offered without intimidation or deception and could be freely rejected by the indigenous communities. The fact that they had an evangelical purpose, by itself, did not imperil cultural diversity, since the state had not authorized them to preach but only to learn the native language. The Court did hold that the missionaries threatened cultural diversity and cultural rights on the basis of reports (provided by the Ministry of Government) that suggested that (1) the Nukak-Maku feared to contradict the missionaries "advice" and "teachings," and (2) the area was hostile to activists working on behalf of the indigenous communities, who did not speak the native language, as did the missionaries. The Court did not have actual evidence of evangelization or acculturation, but the missionaries' refusal to answer specific questions concerning their activities in the

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<sup>49</sup>T-384. August 31, 1994. Judgment by Carlos Gaviria Diaz (mimeo). The Constitutional Court does not have the power to invalidate administrative acts since this is the prerogative of a Council of State and administrative judicial tribunal. Nevertheless, it can hold them temporarily unenforceable.

<sup>50</sup>C-089/94. Judgment by Jorge Arango Mejía (mimeo). Justice Eduardo Cifuentes thought that the requirement was excessive (p. 2).

<sup>51</sup>T-342. 27 July 1994. Judgment by Antonio Barrera Carbonelle (mimeo).

<sup>52</sup>Ibid., p. 10.



area was additional grounds for finding a concrete threat to indigenous religious, autonomous, and cultural rights.<sup>53</sup>

The Court ordered the Ministry of Government, the Guaviare's Governorship, and the Ministry of Health to supervise and control the missionaries' activities with the Nukak-Maku. If the Nuevas Tribus violated the Constitution, the Ministry should withdraw its authorization and the missionaries would have to leave.<sup>54</sup>

This case is a practical application of the Constitutional Court decision that invalidated the Concordat clauses concerning so-called "mission territories" in order to protect the cultural rights of ethnic minorities.<sup>55</sup> But the Court went even further by converting cultural rights into fundamental rights only for ethnic minorities. This is a critical theoretical change, very responsive to indigenous people's perspectives; it is also a practical advance favorable to ethnic minorities, who can now use the *tutela* writ to protect any aspect of their way of life not protected by individual rights or enumerated minority rights—for example, hunting-gathering practices, which are out of reach of civil law, can now be protected.

#### *Linguistic rights*

As mentioned above, during the electoral campaigns, a Guainia Governorship official had prohibited the use of official communications systems for political speeches not made in Spanish.<sup>56</sup> A lower-court had denied a *tutela* writ. The Constitutional Court reversed the decision and allowed a candidate speaking the predominant native language, Curripaco, to use the official system. The Court argued that there were several native languages in Guainia and, therefore, none of them could be considered official in the same way as Spanish.<sup>57</sup> The importance of this case lies in the absence of any law stating that other languages besides Spanish were official in Guainia, as was the case in the Caribbean islands (by national decree) or Guajira (by departmental ordinance). The Constitutional Court held that legislation concerning linguistic rights was not necessary, since 90 percent of Guainia's territory was inhabited by the indigenous population belonging to the Curripaco ethnic group; therefore Curripaco was also an official language in Guainia and all public servants were obliged to communicate in Curripaco. Otherwise, the right to equality would be violated.<sup>58</sup>

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<sup>53</sup>Ibid., p. 21, 23.

<sup>54</sup>Ibid., p. 22.

<sup>55</sup>See section C-2 below.

<sup>56</sup>T-384.

<sup>57</sup>The right to free access to the communication system operated by the departmental authorities was not considered violated because the system was not a radio, but more like a personal transmitter (ibid., p. 6). The Court suggested that if it had been a mass communication system, it would have granted free access to it (ibid., p. 5).

<sup>58</sup>Ibid., pp. 9, 12.

In another case, a law required public servants in San Andrés Department to speak both Spanish and English. A Spanish speaker challenged the law, arguing that it discriminated against him on the basis of language. The Constitutional Court upheld the law. In its view, the requirement was a development of linguistic rights protected by Article 10 of the Constitution. To require only one language would be unconstitutional, since English was already official in those Caribbean islands. The Court also noted that the law allowed for a delay, so that Spanish-speaking public servants had time to learn English.<sup>59</sup>

#### *Minorities' economic activities linked to culture*

Ethnic minorities are usually engaged in some form of subsistence activity that places them on the periphery of society and leaves them largely defenseless, as can be appreciated when their interests come into conflict with those of powerful private companies. The 1991 Constitution has changed this, and the case of the artisan fishermen is a good illustration. A group of fishermen in the district of Santa Marta, Department of Magdalena, were having difficulty as a result of the decision by a hotel construction company to block their only safe access to the beach. Even though the artisan fishermen were not indigenous, the Court stated that:

Groups whose cultural specificity does not include them as part of the economic, political, and social order of the majority have the right to have their difference recognized on the basis of human dignity, pluralism (Constitution Article 1), and the protection of minorities (Constitution Articles 13, 176, and 265). The fishermen of Poza de Mendiguaca on the Caribbean coast can be classified as a human group with long traditions, originally of the Tayrona people.

Businessmen who acquired large tracts of land on the shore for a legitimate venture in hotel-keeping cannot obstruct the way to the sea on the grounds that there are other places from which access is possible; there is no basis in the Constitution or the law for the burden placed on the local inhabitants by such a demand. In particular, vehicular access to the sea over swampy ground is essential to the integrated development of fishing, the preservation of a diverse form of culture, and the free use of "goods for public use" by all....<sup>60</sup>

The relevance of the artisan fishermen case is twofold. First, it extended constitutional protection to minorities that were not considered indigenous people or black communities living according to ancestral customs. The mere fact of practicing artisan activities linked to former indigenous communities and doing it as a group for subsistence purposes was enough to trigger this protection. Second, economic activities associated with a traditional culture received special treatment in order to preserve diversity.

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<sup>59</sup>C-089/94. Judgment by Justice Jorge Arango Mejía (mimeo).

<sup>60</sup>T-605. December 14, 1992. Judgment by Eduardo Cifuentes Muñoz (mimeo).

An overall evaluation of the *tutela* writ is very positive from the indigenous peoples' point of view. It has ensured the effective and concrete protection of their rights and has been adapted to basic aspects of their vision. The *tutela*, an instrument for the protection of individual rights, has been extended to insure the respect of communitarian rights; individual rights have been redefined from a collective perspective (the right to life includes the right to collective subsistence). Cultural rights, usually not directly enforceable, are also protected by the *tutela*. Anyone can submit a *tutela* on behalf of indigenous people without their express authorization, so that their lack of access to the courts can be compensated for by NGOs or individual activists. It is not surprising that ethnic minorities win in the judicial forum; they are more powerful there than in the political marketplace.

The *tutela* writ has had a second consequence. Since it has involved almost every aspect of ethnic minorities' rights, it has contributed to the general development of this aspect of the Constitution. Thus, creating legislation, often delayed in the political arena where ethnic minorities are weak or inexperienced, is no longer a necessary condition for certain constitutional innovations to be applied—the two main ones being the principle of territorial autonomy and the creation of a special jurisdiction functioning according to autochthonous rules and procedures.

In the process of interpreting indigenous peoples' rights the Court has developed what may be called an ethnic minority Constitution, that is, a Constitution that as a whole is interpreted from the perspective of the minorities' interests, even if a special redefinition of some concepts and legal instruments is necessary. The Constitution acquired a plural meaning in its respect for the principle of cultural diversity, a feature of the "*nuevo derecho*," or "new constitutionalism." It is a surprising example of how the role of ethnic minorities' interests in the constituent process had an impact well beyond ethnic minorities, since it influenced the general evolution of the concept of law and of the role of the judicial branch. This overall impact can be better appreciated in other Constitutional Court decisions involving judicial review of legislation applicable to the entire Colombian population.

### ***Acción Pública*<sup>61</sup> and the National Impact of Minorities' Rights**

#### *The Concordat and Sacred Heart Cases*

The Constitutional Court invalidated almost half the clauses of the Concordat between Colombia and the Vatican, which had been in force since 1974, on the grounds that they violated the right to equality and freedom of conscience, and

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<sup>61</sup>*La Acción Pública de inconstitucionalidad* can be filed directly with the Constitutional Court by any citizen to challenge laws in force. No proof of interest is required.

ethnic minorities' rights. The invalidated clauses were those authorizing and regulating Catholic missions in regions inhabited by indigenous people. Although the decision does not go into the details of ethnic minorities' rights, its whole philosophy is the respect for pluralism and the promotion of equality, not only of individuals but of religious beliefs and communities.<sup>62</sup>

In another religion case, the Court explicitly quoted ethnic minorities' rights to invalidate the 1950s law that provided for an annual ceremony in the National Cathedral in which the President of the Republic participated officially in the consecration of Colombia to the Sacred Heart. The ceremony had been regularly practiced and broadcast on TV; the day was designated a national holiday. Its strong symbolic meaning was equal to its religious one.

The Constitutional Court, quoting extensively from the speeches of indigenous delegates to the Constituent Assembly, rejected the project of building a nation by homogenization and by the suppression of differences among Colombians, since it was incompatible with the 1991 Constitution. Once the multicultural nature of Colombia was prized as an enrichment of national identity, the Court also took seriously the role of the president as a symbol of this new concept of national unity. The court forbade the president to participate officially in the Catholic religious ceremony, since not all Colombians were Catholic, particularly some ethnic minorities who were, of course, part of the nation whose unity the president symbolized.<sup>63</sup> To respect any president's right to religious belief, the Court allowed him to participate in masses in his unofficial status as an ordinary citizen.<sup>64</sup>

The fact that these cases involved the presence and role of the Catholic Church has a historic meaning, considering the evangelization process that has gone on since colonial times. The Constitution has been retroactively<sup>65</sup> applied, even to treaties, in order to redress the balance, as much as the passing centuries permits. In other cases of judicial review, only ethnic minorities benefited from the application of the Constitution, which gave strong ground to post-1991 laws favorable to their interest but challenged by ordinary citizens.

#### *Exemption from military service*

A 1993 law exempted from military service "Indians residing in their territories and maintaining their cultural, social and economic integrity."<sup>66</sup>

<sup>62</sup>C-027/93. Judgment by Simón Rodríguez Rodríguez (mimeo).

<sup>63</sup>Article 188 of the Constitution states that the president "symbolizes national unity."

<sup>64</sup>C-350/94. Judgment by Alejandro Martínez Caballero (mimeo).

<sup>65</sup>The retroactivity concept is not juridically used in Colombia for the application of new constitutional norms to previous legal rules. The "*inconstitucionalidad sobreviniente*" (supervising unconstitutionality) is used.

<sup>66</sup>Law 48 of 1993, Article 27b.



Alfonso Palma Capera, an Indian not residing in his territory, challenged the constitutionality of the exemption. In his view, it discriminated against Indians who resided outside of their territories but maintained their cultural identity. He argued that those Indians should also be exempt from military service. "Civilized" Indians (his words) should also benefit from the exemption, otherwise they would be punished by the state for having been incorporated into the majority way of life.

The Constitutional Court rejected the charge, finding that the classifications were reasonable for protecting cultural diversity and minority rights; the exemption had not been created to benefit individuals but rather indigenous communities as a whole. Distinctions based on residence responded to the strong linkage of the communities to their territories, and, therefore, were reasonable. The cultural integrity criterion was also relevant and reasonable, in the Court's view, since the exemption was designed to preserve the multiethnic and pluricultural nature of the nation and to respect indigenous peoples' traditions.<sup>67</sup>

The Court took an additional step. In what is called an "interpretative judgment," which is binding in law, the Court held that the residence requirement was not relevant for nomadic tribes and that members of these communities could be exempt as long as they lived with a group within the area in which they traditionally moved. As for communities that resided in a territory but moved collectively to hunt, fish, or look for fruit, their entire area of subsistence activities would be considered their territory for the purpose of applying the military service exemption.<sup>68</sup> One judge dissented because he wanted the Court to go one step further. He argued that individuals who maintained their cultural identity but lived in the cities, or otherwise outside their territories, were in the same situation as those living within the territories and should also be exempt. The residence requirement was, therefore, unconstitutional because it excluded members of ethnic minorities, thus violating the equality principle.<sup>69</sup>

The importance of the case is better appreciated in light of Colombia's previous debates about exemptions from military service. The internal guerrilla conflict has made it a very sensitive issue. Conscientious objection was not mentioned expressly in the Constitution, although several alternative proposals were presented to the Constituent Assembly. In a previous case concerning two members of religious minorities, the Constitutional Court refused to grant the *tutela*. The Court proved to be more sensitive to ethnic minorities' rights.

#### *Protection of black autochthonous communities of the San Andrés Islands*

In order to enact Article 310 of the Constitution, the Government adopted Legislative Decree 2762 of 1992, using transitory powers attributed to it by the

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<sup>67</sup>C-058/94. Judgment by Alejandro Martínez Caballero, p. 22-25 (mimeo).

<sup>68</sup>Ibid., p. 26.

<sup>69</sup>Ibid., p. 4-8. Dissenting opinion by Eduardo Cifuentes Muñoz.

Constituent Assembly.<sup>70</sup> The Constitution provided for a special code of laws to protect cultural diversity and national resources in the newly created Department of San Andrés, Providencia, and Santa Catalina, the Caribbean Islands on which live black natives who speak English and are predominantly non-Catholic. The special regimen could apply extraordinary limitations on non-native's rights to travel, secure residency, study, work, and acquire and sell property, as well as population density controls, land use restrictions, and other economic regulations. A non-native challenged the legislation arguing that it violated the right to equality, freedom of movement, the right to work, and the right to political participation.<sup>71</sup> *Amicus curiae* briefs to defend the constitutionality of the limitations and the other regulations were filed by native community organizations specially invited by the Constitutional Court to present their views. A public hearing was held. The Court upheld the decree in an extensive opinion in which it interpreted several constitutional rights and analyzed the sociological, mainly demographic and anthropological, studies it had requested in order to have a clear picture of the situation on the overpopulated tourist islands. One of the grounds for upholding the legislation was the principal of cultural and ethnic diversity, which the Court believed was gravely threatened by immigration to the islands, since native communities had become a minority and the pressure on national resources and public services was so great that life on the islands would be impossible in the forthcoming decade.<sup>72</sup>

This case has further importance.<sup>73</sup> By inviting native island communities to participate in the judicial review process, the ethnic minority that had more vigorously expressed its discontent for not being represented in the Constituent Assembly had the opportunity to present its view in a constitution-making forum--albeit a judicial one, but very powerful indeed. Legitimacy gaps were thus filled through a participatory judicial process.

## 5. A Preliminary Balance

The concrete benefits that have resulted from the application of *acción de tutela* and *acción pública* are abundant evidence of the strength of ethnic minorities' constitutional gains. This paper emphasized the judicial enforcement and direct application of ethnic rights, since both are the ultimate test of the real implications and practical consequences of constitutional changes. If ethnic minorities' rights had continued to be mere interests, among others, fighting each other in the political marketplace, the Constitution would have been almost irrelevant as to its main purpose: constituting a new balance of power.

<sup>70</sup>Transitory Article 42 of the Constitution.

<sup>71</sup>Article 5 of the decree only authorized the island's permanent residents (natives or 3-year residents) to participate in municipal and departmental elections.

<sup>72</sup>C-530/93. Judgment by Alejandro Martínez Caballero, p. 68 (mimeo).

<sup>73</sup>Ibid., p. 73. The Court, in an interpretative judgment, conditioned the constitutionality of wide administrative discretionary powers with respect to several criteria established in the decision.

This crucial objective was accomplished in Colombia. Ethnic minorities have access to a new playing field that is more sensitive and responsive to their demands. The judicial branch has become a forum for minority interests. More importantly, ethnic minorities win almost all their cases. This is not because they have powerful arguments; in the past they usually lost in the judicial arena. It is rather the result of a new situation: they now have constitutional rights in a constitutional system in which fundamental rights are conceived as powers to protect legitimate interests. More significantly, the losers have been powerful national entities representing heavy economic and security interests. The Constitutional Court, created by the 1991 Constitution, has been a key ally in this struggle, since it has usually reversed lower-court decisions contrary to ethnic minorities' interests. The Court has gone so far as to interpret a Constitution inspired in modern occidental political philosophy from a communitarian perspective, tuned to indigenous peoples' point of view, even though, interestingly enough, representatives of ethnic minorities have frequently based their arguments on individual rights.

The constitutionalization of the conflict and the judicialization of the solution, in a context of easy access to the court system and of activist and responsive justices, have helped to maintain the original consensus favorable to ethnic minorities' interests. Additionally it has had a peace-keeping effect, since a new and effective way to solve conflicts institutionally has been opened, and rising tensions find a way to express themselves and receive due attention and consideration. These judicial problem-solving procedures also nationalized otherwise local conflicts, usually addressed in local arenas in which ethnic minorities did not get a quick--or any--positive answer to their demands. Indeed, the nationalization of ethnic minority issues was a key achievement of indigenous peoples' organizations and activities. The system for the election of the Constituent Assembly was a major contribution to the projection of ethnic minorities' interests onto the national level, to be represented by indigenous delegates, not by politicians who claimed to sympathize with them.

In this process, ethnic minorities made equally important political gains. They acquired national legitimacy, put themselves in a better bargaining position, and were able to place and keep their issues on the main political agenda. Now the terms of conflict have changed, since ethnic minorities are co-authors of the Constitution. As founding fathers, they do not have to push for structural changes but for the application of the transformations they helped put in place. In the new framework of compromise, their strategies and arguments have more weight, particularly since indigenous peoples have learned in the last century how to use legal instruments to defend their claims and demand respect for what they call "*derecho mayor*," their basic customary laws, which evolved over centuries and reflect their cultural identity.

Voices are already heard about the dangers implied in the new postconstitutional situation. They speak of the risks of indigenous peoples' incorporation into "civilization" or of the banishment of the will to fight. Other

voices, fortunately, fewer and more isolated, speak of the dangers of implementing ethnic minorities' constitutional rights. Both represent the old frame of mind. In the new framework, everybody is "co-opted." That was the essentially political aim of inviting all Colombians to create a new Constitution. That is the basic function of every constitutional contract: to bring old enemies together on a new playing field, which excludes old vices, especially violence, oppression, and discrimination. The battle continues, but between adversaries who tolerate and respect each other. The indigenous people have benefited from what Colombians call a "lasting treaty of peace." And as their perspective and vision have been respected to the point of changing the meaning of constitutional concepts themselves to fit their expectations without imposing individualistic and otherwise occidental ideas, the fear of assimilation, integration, or colonization is unfounded.

Those who desire to stop the implementation of constitutional ethnic minorities' rights are losing, not only in the judicial forum, but also in the political arena. The key commissions for drafting legislation included participation of ethnic minorities' representatives. Bills have been prepared; some have been adopted by the Government or approved by Congress. Nevertheless, two crucial reforms remain: the Constitutional Court has reduced the need for enacting legislation to create a special indigenous jurisdiction (which can work, in the hands of the communities' authorities themselves) and to create indigenous territorial entities (the Constitutional Court has adopted principles to protect the autonomy of existing ethnic minorities' territories). President Samper, who campaigned on a social transformation platform, has increased the budget for those territories and has made human rights a priority of his administration.

Although there are winners and losers in a reform process, the prevailing idea--or the rising myth--is that there were no winners or losers here. There is still a mood of consensus and general contentment with the Constitution, even if expectations about immediate and great transformations have decreased. Behind this myth--which is favorable to ethnic minorities' interests--lies the fact that they won. The Constitution-making process was an effective response to their needs and demands. Ethnic minorities did get even more than they had hoped for. Their electoral success and their *tutela* conquests sum up these accomplishments.

Although better than expected, their success was not a gift but the result of hard bargaining, the fruit of several decades of political activity, and aleatory factors. But it is possible to distinguish five main reasons for ethnic minority success. They benefited from a general spirit of justice, historic rectification, tolerance, and validation of differences. They became, actually, a symbol of this mood. The Government was in favor of ethnic minorities, as part of its general project of *revolcón* and historic reorientation of the country. Indigenous representatives behaved as members of the winning coalition, and their votes were meaningful in a context in which no political forces had the required majority. More than this strategic insight, indigenous peoples were visionary enough to see that a clear and truly exceptional space for reform had suddenly opened and should not be wasted.



Grass-roots movements did not seize the opportunity, nor did other more articulate and better organized ones, such as trade unions or, more clearly, private business interests. Finally, indigenous peoples were firm but not violent, demanding but not contesting. They were, thus, "good guys" to the remaining 68 delegates and the public at large. The black native community leaders were in marked contrast by their belligerence, and were not as successful, even though their situation was better known by Colombians since the Caribbean islands have been a tourist center.

In the end, indigenous peoples received a premium for not having appealed to violence. I do not want to suggest that resignation pays, but that peaceful means are more effective than violent ones. FARC and ELN guerrillas have not learned this lesson yet. Therefore, the legitimacy of their actions is low, and they have already missed the boat of revolutionary changes. The indigenous peoples' way of fighting was, in the Colombian experience, more powerful and less costly.

## **6. Appendix I: Selected Articles from the 1991 Constitution**

### **General Principles and Rights which Favor Ethnic Minorities**

**Preamble.** El pueblo de Colombia, en ejercicio de su poder soberano, representado por sus delegatarios a la Asamblea Nacional Constituyente, invocando la protección de Dios, y con el fin de fortalecer la unidad de la Nación y asegurar a sus integrantes la vida, la convivencia, el trabajo, la justicia, la igualdad, el conocimiento, la libertad y la paz, dentro de un marco jurídico, democrático y participativo que garantice un orden político, económico y social justo, y comprometido a impulsar la integración de la comunidad latinoamericana decreta, sanciona y promulga...

**Artículo 9.** Las relaciones exteriores del Estado se fundamentan en la soberanía nacional, en el respeto a la autodeterminación de los pueblos y en el reconocimiento de los principios del derecho internacional aceptados por Colombia.

De igual manera, la política exterior de Colombia se orientará hacia la integración latinoamericana y del Caribe.

**Artículo 11.** El derecho a la vida es inviolable. No habrá pena de muerte.

**Artículo 12.** Nadie será sometido a desaparición forzada, a torturas ni tratos o penas crueles, inhumanos o degradantes.

**Artículo 13.** Todas las personas nacen libres e iguales ante la ley, recibirán la misma protección y trato de las autoridades y gozarán de los mismos derechos, libertades y oportunidades sin ninguna discriminación por razones de sexo, raza, origen nacional o familiar, lengua, religión, opinión política o filosófica.

El Estado promoverá las condiciones para que la igualdad sea real y efectiva y adoptará medidas en favor de grupos discriminados o marginados.

El Estado protegerá especialmente a aquellas personas que por su condición económica, física o mental, se encuentren en circunstancias de debilidad manifiesta y sancionará los abusos o maltratos que contra ellas se cometan.

**Artículo 17.** Se prohíben la esclavitud, la servidumbre y la trata de seres humanos en todas sus formas.

**Artículo 18.** Se garantiza la libertad de conciencia. Nadie será molestado por razón de sus convicciones o creencias ni compelido a revelarlas ni obligado a actuar contra su conciencia.

**Artículo 19.** Se garantiza la libertad de cultos. Toda persona tiene derecho a profesar libremente su religión y a difundirla en forma individual o colectiva.

Todas las confesiones religiosas e iglesias son igualmente libres ante la ley.

**Artículo 70.** El Estado tiene el deber de promover y fomentar el acceso a la cultura de todos los colombianos en igualdad de oportunidades, por medio de la educación permanente y la enseñanza científica, técnica, artística y profesional en todas las etapas del proceso de creación de la identidad nacional.

La cultura en sus diversas manifestaciones es fundamento de la nacionalidad. El Estado reconoce la igualdad y dignidad de todas las que convienen en el país. El Estado promoverá la investigación, la ciencia, el desarrollo y la difusión de los valores culturales de la Nación.

**Artículo 79.** Todas las personas tienen derecho a gozar de un ambiente sano. La ley garantizará la participación de la comunidad en las decisiones que puedan afectarlo.

Es deber del Estado la diversidad e integridad del ambiente, conservar las áreas de especial importancia ecológica y fomentar la educación para el logro de estos fines.

**Artículo 93.** Los tratados y convenios internacionales ratificados por el Congreso, que reconocen los derechos humanos y que prohíben su limitación en los estados de excepción, prevalecen en el orden interno. Los derechos y deberes consagrados en esta Carta, se interpretarán de conformidad con los tratados internacionales sobre derechos humanos ratificados por Colombia.

**Artículo 94.** La enunciación de los derechos y garantías contenidos en la Constitución y en los convenios internacionales vigentes, no debe entenderse como negación de otros que, siendo inherentes a la persona humana, no figuren expresamente en ellos.

**Artículo transitorio 35.** El Consejo Nacional Electoral reconocerá automáticamente personería jurídica a los partidos y movimientos políticos representados en la Asamblea Nacional Constituyente que se lo soliciten.

#### **A. Black Communities<sup>74</sup>**

**Artículo 310.** El Departamento Archipiélago de San Andrés, Providencia y Santa Catalina se regirá, además de las normas previstas en la Constitución y las leyes para los otros departamentos, por las normas especiales que en materia administrativa, de inmigración, fiscal, de comercio exterior, de cambios, financiera y de fomento económico establezca el legislador.

Mediante ley aprobado por la mayoría de los miembros de cada cámara se podrá limitar el ejercicio de los derechos de circulación y residencia, establecer controles a

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<sup>74</sup>See also Articles 10 and 63.

la densidad de la población, regular el uso del suelo y someter a condiciones especiales la enagenación de bienes inmuebles con el fin de proteger la identidad cultural de las comunidades nativas y preservar el ambiente y los recursos naturales del Archipiélago. Mediante la creación de los municipios a que hubiere lugar, la Asamblea Departamental garantizará la expresión institucional de las comunidades raizales de San Andrés. El municipio de Providencia tendrá en las rentas departamentales una participación no inferior del 20 percent del valor total de dichas rentas.

**Artículo transitorio 42.** Mientras el Congreso expide las leyes de que trata el artículo 310 de la Constitución, el Gobierno adoptará por decreto, las reglamentaciones necesarias para controlar la densidad de población del Departamento Archipiélago de San Andrés, Providencia y Santa Catalina, en procura de los fines expresados en el mismo artículo.

## **B. Indigenous Peoples**

**Artículo 7.** El Estado reconoce y protege la diversidad étnica y cultural de la Nación colombiana.

**Artículo 10.** El castellano es el idioma oficial de Colombia. Las lenguas y dialectos de los grupos étnicos son también oficiales en sus territorios. La enseñanza que se imparta en las comunidades con tradiciones lingüísticas propias será bilingüe.

**Artículo 63.** Los bienes de uso público, los parques naturales, las tierras comunales de grupos étnicos, las tierras de *resguardo*, el patrimonio arqueológico de la Nación y los demás bienes que determine la ley, son inalienables, imprescriptibles e inembargable.

**Artículo 68.** Los particulares podrán fundar establecimientos educativos. La Ley establecerá las condiciones para su creación y gestión.

La comunidad educativa participará en la dirección de las instituciones de educación.

La enseñanza estará a cargo de personas de reconocida idoneidad ética y pedagógica. La ley garantiza la profesionalización y dignificación de la actividad docente.

Los padres de familia tendrán derecho de escoger el tipo de educación para sus hijos menores. En los establecimientos del Estado ninguna persona podrá ser obligada a recibir educación religiosa.

Las integrantes de los grupos étnicos tendrán derecho a una formación que respete y desarrolle su identidad cultural.



La erradicación del analfabetismo y la educación de personas con limitaciones físicas o mentales, o con capacidades excepcionales, son obligaciones especiales del estado.

**Artículo 72.** El patrimonio cultural de la Nación está bajo la protección del Estado. El patrimonio arqueológico y otros bienes culturales que conforman la identidad nacional, pertenecen a la Nación y son inalienables, inembargables e imprescriptibles. La ley establecerá los mecanismos para readquirirlos cuando se encuentren en manos de particulares y reglamentará los derechos especiales que pudieran tener los grupos étnicos asentados en territorios de riqueza arqueológica.

**Artículo 96.** Son nacionales colombianos:

1. Por nacimiento:

a) Los naturales de Colombia, con una de dos condiciones que el padre o la madre hayan sido naturales o nacionales colombianos o que, siendo hijos de extranjeros, algunos de sus padres estuviere domiciliado en la República en el momento del nacimiento.

b) Los hijos de padre o madre colombianos que hubieren nacido en tierra extranjera y luego se domiciliaren en la república.

2. Por adopción:

a) Los extranjeros que soliciten y obtengan carta de naturalización, de acuerdo con la ley, la cual establecerá los casos en los cuales se pierde la nacionalidad colombiana por adopción.

b) Los latinoamericanos y del Caribe por nacimiento domiciliados en Colombia, que con autorización del Gobierno y de acuerdo con la ley y el principio de reciprocidad, pidan ser inscritos como colombianos ante la municipalidad donde se establecieron.

c) Los miembros de pueblos indígenas que comparten territorios fronterizos, con aplicación del principio de reciprocidad según tratados públicos.

Ningún colombiano por nacimiento podrá ser privado de su nacionalidad.

La calidad de nacional colombiano no se pierde por el hecho de adquirir otra nacionalidad. Los nacionales por adopción no estarán obligados a renunciar a su nacionalidad de origen o adopción.

Quienes hayan renunciado a la nacionalidad colombiana podrán recobrarla con arreglo a ley.

**Artículo 107.** Se garantiza a todos los nacionales el derecho a fundar , organizar y desarrollar partidos y movimientos políticos, y la libertad de afiliarse a ellos o de retirarse.

También se garantiza a las organizaciones sociales el derecho a manifestarse y a participar en eventos políticos.

**Artículo 108.** Inciso 4: los movimientos sociales y grupos significativos de ciudadanos también podrán inscribir candidatos.

**Artículo 246.** Las autoridades de los pueblos indígenas podrán ejercer funciones jurisdiccionales dentro de su ámbito territorial, de conformidad con sus propias normas y procedimientos, siempre que no sean contrarios a la Constitución y las leyes de la República. La ley establecerá las formas de coordinación de esta jurisdicción especial con el sistema judicial nacional.

**Artículo 286.** Son entidades territoriales los departamentos, los distritos, los municipios y los territorios indígenas.

La ley podrá darles el carácter de entidades territoriales a las regiones y provincias que se constituyan en los términos de la Constitución y de la ley.

**Artículo 287.** Las entidades territoriales gozan de autonomía para la gestión de sus intereses, y dentro de los límites de la Constitución y la ley. En tal virtud tendrán los siguientes derechos:

1. Gobernarse por autoridades propias.
2. Ejercer las competencias que les correspondan.
3. Administrar los recursos y establecer los tributos necesarios para el cumplimiento de sus funciones.
4. Participar en las rentas nacionales.

**Artículo 321.** Las provincias se constituyen con municipios o territorios indígenas circunvecinos, pertenecientes a un mismo departamento.

La ley dictará el estatuto básico y fijará el régimen administrativo de las provincias que podrán organizarse para el cumplimiento de las funciones que les deleguen entidades nacionales o departamentales y que les asignen la ley los municipios que los integran.

Las provincias serán creadas por ordenanza, a iniciativa del gobernador, de los alcaldes de los respectivos municipios o del número de ciudadanos que determine la ley.

Para el ingreso a una provincia ya constituida deberá realizarse una consulta popular en los municipios interesados.

El departamento y los municipios aportarán a las provincias el porcentaje de sus ingresos corrientes que determinen la asamblea y los consejos respectivos.

**Artículo 329.** La conformación de las entidades territoriales indígenas se hará con sujeción a lo dispuesto en la Ley Orgánica de Ordenamiento Territorial, y su delimitación se hará por el Gobierno Nacional, con participación de los representantes de las comunidades indígenas, previo concepto de la Comisión de Ordenamiento Territorial.

Los *resguardos* son de propiedad colectiva y no enagenable.

La ley definirá las relaciones y la coordinación de estas entidades con aquéllas de las cuales formen parte.

**Parágrafo.** En el caso de un territorio indígena que comprenda el territorio de dos o más departamentos, su administración se hará por los consejos indígenas en coordinación con los gobernadores de los respectivos departamentos. En caso de que este territorio decida constituirse como entidad territorial, se hará con el cumplimiento de los requisitos establecidos en el inciso primero de este artículo.

**Artículo 330.** De conformidad con la Constitución y las leyes, los territorios indígenas estarán gobernados por consejos conformados y reglamentados según los usos y costumbres de sus comunidades y ejercerán las siguientes funciones:

1. Velar por la aplicación de las normas legales sobre usos del suelo y poblamiento de sus territorios.
2. Diseñar las políticas y los planes y programas de desarrollo económico y social dentro de su territorio, en armonía con el Plan Nacional de Desarrollo.
3. Promover las inversiones públicas en su territorios y velar por su debida ejecución.
4. Percibir y distribuir sus recursos.
5. Velar por la preservación de los recursos naturales.
6. Coordinar los programas y proyectos promovidos por las diferentes comunidades en su territorio.
7. Colaborar con el mantenimiento del orden público dentro de su territorio de acuerdo con las instrucciones y disposiciones del Gobierno Nacional.
8. Representar a los territorios ante el Gobierno Nacional y las demás entidades a las cuales se integren, y

9. Las que les señalen la Constitución y la ley.

**Parágrafo.** La explotación de los recursos naturales en los territorios indígenas se hará sin desmedro de la integridad cultural, social y económica de las comunidades indígenas. En las decisiones que se adopten respecto de dicha explotación, el Gobierno propiciará la participación de los representantes de las respectivas comunidades.

**Artículo transitorio 38.** El Gobierno organizará e integrará, en el término de seis meses, una Comisión de Ordenamiento Territorial, encargada de realizar los estudios y formular ante las autoridades competentes las recomendaciones que considere del caso para acomodar la división territorial del país a las disposiciones de la Constitución. La Comisión cumplirá sus funciones durante un período de tres años, pero la ley podrá darle carácter permanente. En este caso, la misma ley fijará la periodicidad con la cual presentará sus propuestas.

**Artículo 340.** Habrá un Consejo Nacional de Planeación integrado por representantes de las entidades territoriales y de los sectores económicos, sociales, ecológicos, comunitarios y culturales. El Consejo tendrá carácter consultivo y servirá de foro para la discusión del Plan Nacional de Desarrollo.

Los miembros del Consejo Nacional serán asignados por el Presidente de la República de listas que le presenten las autoridades y las organizaciones de las entidades y sectores a que se refiere el inciso anterior, quienes deberán estar o haber estado vinculados a dichas actividades. Su período será de ocho años y cada cuatro se renovará parcialmente en la forma que establezca la ley.

En las entidades territoriales habrá también consejos de planeación, según lo determina la ley.

El Consejo Nacional y los consejos territoriales de planeación constituyen el Sistema Nacional de Planeación.

**Artículo 341.** El Gobierno elaborará el Plan Nacional de Desarrollo con participación activa de las autoridades de planeación de las entidades territoriales y el Consejo Superior de la Judicatura y someterá el proyecto correspondiente al Consejo Nacional de Planeación: oída la opinión del Consejo procederá a efectuar las enmiendas que considere pertinentes y presentará el proyecto a consideración del Congreso, dentro de los seis meses siguientes a la iniciación del período presidencial respectivo.

Con fundamento en el informe que elaboren las comisiones conjuntas de asuntos económicos, cada corporación discutirá y evaluará el plan en sesión plenaria. Los desacuerdos con el contenido de la parte general, si los hubiere, no serán obstáculo para que el gobierno ejecute las políticas propuestas en lo que sea de su competencia.



No obstante, cuando el gobierno decida modificar la parte general del plan deberá seguir el procedimiento indicado en el artículo siguiente

El Plan Nacional de inversiones se expedirá mediante una ley que tendrá prelación sobre las demás leyes: en consecuencia, sus mandatos constituirán mecanismos idóneos para su ejecución y suplirá los existentes sin necesidad de la expedición de leyes posteriores, con todo, en las leyes anuales de presupuesto se podrán aumentar o disminuir las partidas y recursos aprobados en la ley del plan. Si el Congreso no aprueba el Plan Nacional de Inversiones Públicas en un término de tres meses después de presentado, el gobierno podrá ponerlo en vigencia mediante decreto con fuerza de ley.

El Congreso podrá modificar el Plan de Inversiones Públicas siempre y cuando se mantenga el equilibrio financiero. Cualquier incremento en las autorizaciones de endeudamiento solicitadas en el proyecto gubernamental o inclusión de proyectos de inversión no contemplados en él, requerirá el visto bueno del Gobierno Nacional.

**Artículo 357.** Los municipios participarán en los ingresos corrientes de la Nación. La ley, a iniciativa del Gobierno, determinará el porcentaje mínimo de esa participación y definirá las áreas prioritarias de inversión social que se financiarán con dichos recursos. Para los efectos de esta participación, la ley determinará los *resguardos* indígenas que serán considerados como municipios.

Los recursos provenientes de esta participación serán distribuidos por la ley de conformidad con los siguientes criterios: sesenta por ciento en proporción directa al número de habitantes con necesidades básicas insatisfechas y al nivel relativo de pobreza de la población del respectivo municipio; el resto en función de la población total, la eficiencia fiscal y administrativa y el progreso demostrado en calidad de vida, asignando en forma exclusiva un porcentaje de esta parte a los municipios menores de 50.000 habitantes. La ley precisará el alcance, los criterios de distribución aquí previstos y dispondrá que un porcentaje de estos ingresos se invierta en las zonas rurales. Cada cinco años, la ley a iniciativa del Congreso, podrá revisar estos porcentajes de distribución.

**Parágrafo.** La participación de los municipios en los ingresos corrientes de la Nación se incrementará, año por año, del catorce por ciento de 1.993 hasta alcanzar el veintidós por ciento como mínimo en el 2.002. La ley fijará el aumento gradual de estas transferencias y definirá las nuevas responsabilidades que en materia de inversión social asumirán los municipios y las condiciones para su cumplimiento. Sus autoridades deberán demostrar a los organismos de evaluación y control de resultados la eficiente y correcta aplicación de estos recursos y, en caso de mal manejo, se harán acreedores a las sanciones que establezca la ley.

Estarán excluidos de la participación anterior, los impuestos nuevos cuando el Congreso así lo determine y, por el primer año de vigencia, los ajustes a tributos existentes y los que se arbitren por medidas de emergencia económica.

## **7. Appendix II**

### **Colombian indigenous peoples: Basic facts**

1. Known ethnic groups: 82
2. Autochthonous languages and diverse cultures: 62 (although some are nomadic, like the Nukak-Maku in the Amazon, almost all are sedentary).
3. Indigenous population: Half a million (1.5 percent of total population).
4. Localization: Rural areas of 190 municipalities (19 percent of total municipalities).
5. Main States: Cauca, Guajira, Nariño, Amazonas, Guainia, Vichada, Putumayo, and Vaupes.
6. Territorial control: Indigenous peoples' authorities are in charge of the administration of 25 percent of Colombian territory in the form of *resguardos*. Eighty percent have legalized their collective property rights. There are 265 *resguardos* that cover 25 million hectares. The largest are in Guainia, Vaupes, and Amazonas.
7. National Organizations: ONIC (Organización Nacional Indígena de Colombia) and AISO (Autoridades Indígenas del Sur Occidente).
8. Special Budget: National Budget: 13,084 million pesos in 1994; 16,215 Million pesos in 1995. Special transfers: 12,046 million pesos in 1994; 15,663 million pesos in 1995 (US\$=800 pesos)

### **Colombian black communities: Basic facts**

1. Population: There are no official data.
2. Localization: Atlantic and Pacific coasts and the San Andrés Archipelago. An estimated 90 percent of the Pacific coast population is black.
3. Autochthonous communities: Although most of them are integrated, some maintain autochthonous traditions, mainly those living in Chocó and San Andrés.
4. Special budget: National Budget: 528 Million pesos in 1994; 2,356 Million pesos in 1995; (US\$ = 800 pesos)

## THAT WHICH ENCOMPASSES GOODNESS: LAW AND THE INDIGENOUS PEOPLE OF COLOMBIA

Guillermo Padilla  
Bogotá, Colombia

### Introduction

Since the white man first appeared, he has wanted to take possession of our land and deprive us of our own traditional and truthful laws in order to impose his own.<sup>1</sup>

They say that one of the most uncomfortable passengers with Columbus on his famous voyage in 1492 was the Truth--the Truth not only about religion (the exercise of which had already reaped important dividends in the conquest of territory), but also about different ways of life, visions of the world, and value systems. The travelers who accompanied the Truth had no curiosity about the societies they encountered on that or subsequent voyages. The conquerors reduced the symbolic value of the ornaments worn by the indigenous people to their weight in gold, and their social and political structures were only of interest because an understanding of the enmity and conflicts would permit the white man to form alliances through which they would later be able to dominate.

The memories of their relationship with the dominant society did not inspire much confidence when the indigenous peoples were invited to participate in the reform of Colombia's constitution. The invitation was extended by the Guambiano Indian Lorenzo Muelas, one of the two indigenous representatives who had been elected to the National Constituent Assembly by popular vote. He wanted to encourage the traditional peoples to present their legal proposals for inclusion in the Constitution. The Iku mamus (spiritual leaders) took the opportunity to give their position on the issue of territorial reorganization--one of the most important issues raised by the indigenous people during the national assembly:

I wish to respond to your question regarding whether or not we, the Iku people, are in favor of the idea of territorial reorganization. We also wish to express what we, the mamus, think--based on our way of life, our tradition, and our Law--about the process that provides Colombia with a Constitution. For us it is strange that Law changes, as is the case with the Law of the Bonachis [civilized people]. It is strange to us, but we respect this. It must be so for them because they also change their dress, change the form and materials used to build their homes, change authorities and governments, and also change the way

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<sup>1</sup> Declaration made by Mamu Kuncha before the United Nations, 1993. Here and below, translations are by the author.

they feel and see the world. Changes and more changes, as if they had nothing good to preserve. It is as if their Law is the Law of change. Yes, it is strange to us, not because we do not understand it, but because for us Law means permanence, permanence as indigenous people according to our Law, according to our origin and tradition. Our Law tells us that UMUNUKUNU [the Sierra Nevada of Santa Marta] is the sacred place given to the Iku, Kaggaba [also known as Kogi], Sanka, and Kankuama tribes, and that the command given by the first fathers was that from the Sierra we were to be the safe-keepers of the world. In order for there to be permanence of the forms of life described in our Law of Origin, there must be a balance between man and nature, because man is also part of nature. To comply with and fulfill our Law, the Sierra gave us everything necessary--earth to sow and reap our food, clay and straw to make houses, medicinal plants to cure sicknesses, sacred places with sacred materials to give us knowledge and wisdom in order to take care of the world, for us to remain and live in peace....In ancient times we lived for centuries and centuries without needing anything from civilized man; we progressed by ourselves and fulfilled our Law, taking care of the world. If we now need something it is as a consequence of the things that have been imposed on us during the last five hundred years, and if we need something it is that what is rightfully ours be returned to us, so that by maintaining territorial autonomy and autonomy of the way of life of our indigenous communities we may comply with our Law of Origin. We do not need millions of pesos, or roads, or new and more modern houses and clothing, or new educational systems, or judicial and electoral systems that fail to recognize our traditional authorities. We know full well which is our language and which are our customs, traditions, and Law. Ours is the Sierra, a place designated by the BLACK LINE<sup>2</sup>....[T]his black line passes through our sacred places where we must make our offerings to nature and for this reason they are essential for us to fulfill our Law and our mandate to take care of the world....We think that if the process of territorial reorganization demands that the Sierra be returned to us in order for us to live there according to our tradition and our Law of Origin, then we would be in agreement with such a reorganization. There is no one better than ourselves to live in and take care of the Sierra and with it the world. This is what the Law and the living experience of our tradition dictates....We know that it is most important that our Law, our way of

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<sup>2</sup> An imaginary line that encompasses the traditional territory of the four tribes that presently inhabit the Sierra Nevada and which is formed by tracing or uniting sacred points. Within this delineation many thousands of nonindigenous people also live, in cities, towns, and farms. National law recognizes that this delineation is of traditional importance to the indigenous people, but the State also supports the rights of the people who have settled there. Within the black line the State has established two reservations--territories that are communal properties of the indigenous people and noncommercial--that comprise approximately 560,000 hectares of land.



seeing things, and our way of thinking and living in this world be recognized. If the new Constitution makes these recognitions in word and deed, then we would also be in agreement with this Constitution. We can incorporate some of the civilized people's things, but only if these things do not prevent us from fulfilling the mandate that was given to us at the origin of the world; in other words, these things must not separate us from or lead us to mistreat our sacred UMUNUKUNU, or cause us to fail or break our Law by forgetting our language and tradition. Our tradition is the history of the origin from the moment of origin. It embodies and maintains our Law. It is the living part of the Law, and it keeps alive for us the moment of Origin and secures us in it. This means that this tradition can only be kept alive in territories that have been traditionally occupied and lived in in accordance with our Law, in correspondence with the time and space designated to our way of life from the very beginning. In the totality of Nature and in the equilibrium of that totality lies the balance of the Law and with it the balance of life. We hope that your work will help man to understand that a necessary condition for his healthy and enriching balance is the respectful coexistence of different forms of life. We bid you a brotherly farewell.

The signatures of several Iku mamus appear under that of Mamu Kuncha.

I include almost all of this letter here because the development of the points mentioned in it helps us to understand the problems that arise with the incorporation into the Constitution of the rights of indigenous peoples. In the analysis that follows I will view the problems principally from the perspective of the traditional peoples of the Sierra Nevada and the Amazon region, that is to say from the perspective of peoples with a great sense of identity and a great vitality of culture. This article is based on the following hypotheses:

1. Incorporating the rights of indigenous peoples into the Constitution represented a step forward in the recognition of their fundamental rights by the State and civil society. This has improved the chances of constructing a diverse and pluralist society by granting to and recognizing in each person what is proper or natural according to his/her history and culture.
2. This recognition, however, permits the expansion of the basic ideology of the State into spaces that the indigenous people had managed to reserve to themselves as a result of their resistance effort, which had tended to disassociate them from the State. This change also increases the possibilities for intervention in the internal affairs of these indigenous people and furthers the process of normalization, which tries to create an individual who embodies the State.
3. Even when the exercise of the rights given in the Constitution does not require the participation of lawyers or counselors, its practice among indigenous

communities has increased the dependence of indigenous peoples on these advisors and on forms of organization and leadership that are not traditional. This implies a diminishment of indigenous peoples' internal control in the design and execution of their resistance and their struggle for the revindication of their basic rights and the development of their own future.

### **A Brief View of the Ethnic Problem in Colombia**

Colombia has a population of approximately one-half million indigenous people, which represents less than 1.5 percent of the total population of 34 million. Although not very significant numerically, the 83 indigenous groups contribute to the nation's cultural patrimony of more than 60 languages other than Spanish, and a variety of value systems and beliefs that result from their ancient coexistence with ecosystems ranging from the Sierra Nevada--the highest coastal mountain system in the world--to the plains region, the Amazon jungle, the desert region of the Guajira, and the Darien, with the highest rainfall in the world.

This cultural and linguistic variety, which reflects a physical environment that gives Colombia one of the highest indices of biodiversity on the planet, began to be recognized legally only with the formulation of the new Constitution. Under preceding constitutions, Colombia was a country with one language--Spanish, one religion--Catholicism, and one culture--Colombian.

The indigenous peoples and their history were not seen as making a contribution to the process of constructing the identity of the Colombian nation, but rather as an obstacle to its formation. The model used did not include room for anything "Native America." The dominant ideology carried with it the shame of more than three hundred years of colonialism; it was made clear from the first that this was not to be a nation of Indians. They preferred to speak of a new cosmic race; of course, the prism through which this syncretism was viewed, was European. As Alfonso Reyes put it, America "before being felt by its presence, was felt by its absence."<sup>3</sup> Republican policies of equality allowed only two alternatives for indigenous communities: become civilized or be eliminated.

This standpoint was a step backwards for the indigenous cause. The Crown had allowed the formation of *resguardos*, which recognized Indian ownership of their ancestral lands.<sup>4</sup> This setback was made only too evident by the later attempts to legitimize the expropriation of these lands. The State, through a combination of evangelism and colonialism, sought to "reduce" the savages to civilization. To achieve this, the executive branch counted on "the concession of lands, contracts

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<sup>3</sup> Alfonso Reyes, "Ultima Tule," in *Obras Completas*, vol. XI (México: FEC, 1960), p. 61.

<sup>4</sup> "Right to property of the lands within the *resguardos* belonged to the Indians and these lands were established...according to the Laws of the Crown and were later agreed to by the national legislation." (Sentence passed by the Supreme Court of Civil Cases on 24 September 1962) Taken from Roque Roldan, *Fuero Indígena Colombiano* (Bogotá, Colombia: Presidencia de la República, 1990), p. 689.

made with colonizing enterprises and missionary communities as well as on the mobilization of military garrisons...."<sup>5</sup>

In 1890, Law 89 introduced a new protectionist element concerning the land rights of indigenous peoples. It provided a set of regulations by which the *cabildos*, or Indian authorities of the *resguardos*, could make claims to recover or avoid the loss of land. However, this law, reflecting the social hierarchies of the period, created categories of Indians--savage, semi-savage, and civilized--and established that the law would apply only to the first two categories and only in instances to be determined by the State in association with ecclesiastical authorities.<sup>6</sup> The delegation of tasks by the State to the Catholic Church, which included the administration of educational, health, and development programs as well as a limited judicial role within the indigenous communities, was the result of the *Concordato* of 1886. This agreement, made between the Colombian Government and the Vatican, granted the Catholic Church almost total administration of the so-called missionary territories. But it was Law 89 of 1890--with a few minor changes and with the exception of that which relates to *resguardos*, which remains to this day--that was most influential with respect to the relationship between indigenous people and the State prior to the constitutional reform of 1991.

In practice, the politics that drove the State, as well as those advanced by the missionaries, reflected of a conception of society in which what was native was considered of no value. The only redemption for indigenous communities lay in their integration into society, which meant renouncing their identity, languages, cultural materials, religions, and value systems. Only in this way could indigenous people become civilized or "rational" (as they are still called today in the Eastern Plains of Colombia).

The paradigms applied by the State and the dominant society were greatly influenced by the European Age of Illumination. Legislators, both liberal and conservative, struggled to construct a nation in which everything--laws, man, and nature--would approximate the European model as much as possible. The dichotomy between the cannibals of Montaigne and the good savage of Rousseau appeared to be resolved in what was seen as the crusade for humanism: the civilization of the savages. This not only revindicated the Conquest, but was also made into an obligation of the civilized world. More than preaching the gospel, what was needed was to inculcate Reason. "Due to the new equality set forth by Descartes in the 17th century, the possibility of constructing a world through the mere act of thinking was made possible to all."<sup>7</sup>

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<sup>5</sup> Law 45 of June 1870, "Sobre Reducción de Indios Salvajes" (On the Reduction of Indian Savages).

<sup>6</sup> Roque Roldan and John Gomez, *Fuero Indígena Colombiano*, 3rd ed. (Bogotá, Colombia: Mingobienno, 1994), p. 63.

<sup>7</sup> Sofia Reding Blase, *El Buen Salvaje y el Canibal* (The Good Savage and the Cannibal)(México: Universidad Autónoma de México, 1992), p. 132.

The dominant vision held by Europeans of this *continente encubierto*<sup>8</sup> (shrouded continent) was that the flora, fauna, and Native Americans were the expression of a natural inferiority--from Hegel, who described the tapir as a dwarf elephant and the puma as the American version of the majestic Bengal tiger, to Kant, who wrote that "Americans do not feel love and that is why they are not fecund. They hardly speak, they do not caress each other, do not worry about anything and are lazy."<sup>9</sup> According to Reding Blase, Georges-Louis Leclerc (the Count of Buffon from 1707 to 1788) wrote--with impeccable style--his thirty-six volume *Histoire Naturelle* while sitting in his office in the Paris Botanical Gardens (where he held the position of superintendent). On the relationship between climate and institutions, geography and political laws, Leclerc says, "given that the American continent had been submerged for a longer period of time under the waters of the sea and that its lands had not yet dried, the air was thus not favorable to civilized people or superior animals."<sup>10</sup> But all was not lost; according to him, "in a few centuries, civilized men will be able to see that the cold and impotent America will be fertile, healthy, and the richest of all lands. This will happen when the animal species, including men, resemble or approximate the European model."<sup>11</sup>

### The Constitution of 1991

It is against this Eurocentric and revealing view of America that the indigenous people arrive on the scene to become part of Colombian institutions and, in a display of audacity, the Constitution of 1991 recognizes the ethnic and cultural diversity of the nation.<sup>12</sup> One of the outstanding characteristics of this Constitution is its background. Differing from its predecessors, the Constitution of 1991 was the result of pressures exerted by the Colombian people. It was written by a National Constituent Assembly (NCA) that was elected by direct and popular vote and which, for the first time, had representatives from all sectors of society. In contrast with the hegemonic monopoly of the Congress, which had always been controlled by two traditional parties, the NCA included amnestied guerrilla members, Christian militants, and two indigenous representatives who been elected to the NCA on their own merits and without godfather support from parties or institutions foreign to their reality as indigenous people.

An important matter regarding the indigenous world that was incorporated in the Constitution is the elevation of the *resguardos* and other Indian territories to the status of *Entidades Territoriales* (Territorial Entities). Once these lands achieve the status of territorial entities, after the *Ley Orgánica de Ordenamiento Territorial* (Organic Law of Territorial Ordering) is issued by Congress, they have political and

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<sup>8</sup> Ibid., p.45.

<sup>9</sup> Ibid., p. 146.

<sup>10</sup> Ibid., p.147.

<sup>11</sup> Ibid.

<sup>12</sup> Article 7 of the Constitution.



administrative autonomy. Indigenous authorities will administer budgets for education, health, and justice systems as well as for services and public works, development plans, and so forth. Indigenous languages, as well as Spanish, are official in these territories, which means that education must be bilingual and must respect the cultural differences of each community.

In the short life of the new Constitution, several criticisms have been made regarding inconsistencies in its articles. Also, legislative implementation of the Constitution has faced many difficulties, due not only to the slowness (or, at times, the celerity) of the process of creating the laws that will give life to its abstract and general principles, but also to the fact that, once the initial euphoria concerning the Constitution had faded, there was a resurgence of interests that wanted to renege on some of its more controversial reforms. In the absence of legal regulations, the judiciary itself has been driven to read or interpret the extent of some constitutional principles through the *acción de tutela*, the writ of protection for human rights. This guardianship system, introduced by the new Constitution, gives all Colombians the right to claim protection of their fundamental rights if these are in danger or are being violated.

Jurisprudential debate in the last three years, resulting from *tutela* claims made by indigenous people, has demanded an examination by the judiciary--but also by the State, civil society, and even the indigenous people themselves--of what the Constitution desires to protect, recognize, maintain, or alter in spirit. Many indigenous communities have gained important external recognition with respect to their rights of territorial, ethnic, cultural, economic, and social integrity. However, the scrutiny of these matters by the State may also pose a risk for the indigenous communities. There has never been open discussion of what constitutes indigenous tradition, what should be understood as customs, or what is, in cultural terms, proper or not. The theoretical and conceptual frameworks within which these interpretations are taking place might suffer from ethnocentric biases and from universalist viewpoints that tend to deny the existence of differences.

The historic repression to which native populations has been subjected can result in an inability to recognize or even a fear of recognizing diversity. When the ways and customs of indigenous people are examined from a rational, characteristically modern value system, using Western concepts of democracy, justice, or human rights, many Indian communities "fail." I do not wish to enter into debate here about the conceptual disassociation between typical practices of modern societies and indigenous people; but I do want to point out that difficulties arise when the prism of Western doctrines, such as human rights, is used to examine traditional practices, such as the exchange of women, common to and of great importance for the interethnic relationship among the people of the Amazon; or arranged marriages among the people of the Sierra Nevada; or the sale of women, an ancestral tradition of the Wayuu people of the Guajira region; or certain forms of traditional justice common among the Iku and Kogi people of the Sierra Nevada, in which the transgressor is obliged to confess his/her fault or crime by submitting

himself/herself to special fasts, to loss of sleep, or to enduring certain physical pressures on his/her body. Even on the political plane, the principle of one man one vote that is the foundation of the modern concept of democracy cannot be applied to traditional indigenous people for whom, in many instances, the shaman or mamu will make decisions by divination.

Regardless of the spirit or attitude with which the State allowed (or in a certain sense promoted) the reform that led to the incorporation of the rights of these populations into the Constitution, the State ideology was expanded into realms that had remained in the private sphere of these communities. Here the point raised by the Iku mamus, in the letter quoted in the beginning of this article, acquires importance. The mamus not only discuss the validity of the reform, but also question the Constitution itself as the superior Law for all Colombian people. Their demand is not that their rights be recognized under the Constitution, but that they be allowed to live under a system in which the State has no reason to exist. Their Law, they say, tells them "that UMUNUKUNU is the sacred place given to the Iku, Kaggaba, Sanka, and Kankuama tribes," and that from there they are to take care of the world. This concept not only disregards the State but serves as a screen against any attempt at penetration by outside forces. What can be more legitimate than a mandate given by one's forefathers, and what can be more important than the task of caring for or safeguarding the world? If the Truth was not aboard those fifteenth-century caravels, but is, rather, that which is embraced through experience, then these peoples live a truth that strengthens them while they live their Law.<sup>13</sup> Their autonomy to feel and live what their Law summons them to, to remain as indigenous people according to their Law and their tradition, shows that although they were conquered they have never been dominated—not because they successfully defended their autonomy militarily (their vulnerability in this area was proved during the Conquest),<sup>14</sup> but because of the generations of consensus surrounding the vision of their identity, which had produced the counter-hegemonic discourse that the mamus maintain and disseminate. It is this aspect of their culture that prevents outside forces from gaining strength.

Seen in this light, constitutional reform is not as important for the indigenous communities themselves as it is for the neighboring peasant communities, towns, and State functionaries who, along with constitutional recognition of the rights of indigenous peoples, have been given knowledge about and an understanding of the boundaries of the areas in which they may or may not act.

### Three Years Later, Some Effects of the Reform

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<sup>13</sup> Gianni Vattino, ed., *Hermeneutica y Racionalidad* (Bogotá, Colombia: Editorial Norma, 1994).

<sup>14</sup> Willemsen, Diaz, Augusto. "Ambito y Ejercicio Eficaz de la Autonomia Interna y el Autogobierno Para Los Pueblos Indígenas." Undated.

The number of protests and marches that characterized the indigenous movement in the past decade has declined since the implementation of the Constitution in 1991. Now the State has imposed its own agenda, and indigenous people are occupied instead with electoral campaigns and selecting candidates to represent them in public organizations. As a result of the visibility they acquired through the NCA and the Constitution and the considerable support they received from an electoral body grown weary of traditional politics, indigenous candidates have won seats in Congress, in departmental assemblies and municipal councils, and as mayors. Their performance may leave something to be desired, which is not surprising, given what it means for an indigenous person to be a minority member of a group dominated by professional politicians. These indigenous leaders have been busy as representatives on the executive boards of governmental institutions or new corporations created to deal with environmental or development work and on which, by law, indigenous peoples have a right to representation. They are also involved various legal projects, especially that of implementing the participation of the populations on the *resguardos* in the national revenue or *transferencias* (transfers of money).<sup>15</sup> This has been accompanied by seminars, workshops, courses, and meetings organized by the State, indigenous organizations, and NGOs to prepare indigenous people for this new institutionalization process and the ways in which they can have access to benefits. The extent of this activity made one indigenous leader remark that, nowadays, one needs a lot of time to be an Indian.

Beyond this frenetic activity and its consequences is the movement from what we might call ethnic identity to political strategy. Prior to the reform of 1991--when indigenous communities were excluded, denied because of their difference, and submitted to political solutions imposed from outside, without regard to their thoughts and desires--the wisemen in these communities had reached consensus within their societies, which strengthened the frontiers of what was considered proper or natural in terms of cultural and ethnic identity; this is apparent in the extract from the *mamus'* letter, quoted above. The very presence of Catholic missionaries in the Iku territories, who remained there for sixty-six years against the will of the Indians, solidified autonomous religion and dignified the role of the *mamus*, who became the vessels for this traditional knowledge in the hope of controlling their own future development.<sup>16</sup>

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<sup>15</sup> Consultation regarding the indigenous project the *Ley Orgánica de Ordenamiento Territorial* took place in almost all indigenous communities throughout the country during part of 1992 and 1993; they were held by indigenous organizations and some NGOs, with the support of the European Economic Community. This project has not yet been debated in Congress. Transfers were a result of an expansion of Article 357 of the Constitution.

<sup>16</sup> The Capuchin missionaries were expelled on 7 August 1982 by the Iku community, who seized the buildings that were erected by the mission on Iku territory. The Iku charged that the missionaries, with their evangelical practices and educational programs, were destroying Iku culture and creating a pernicious dependency. The indigenous people demanded the right to administer their own education, design their own curriculum, and appoint bilingual teachers, all of which they have since achieved.

Now that the State has begun to delegate administrative affairs that in the past were under its control, indigenous peoples find themselves faced with the difficult task of assuming roles of which they were once critical and against which they had once resisted. Under the new Constitution, indigenous people will have to act as the State in their own territories; they will have to show, under the watchful eyes of other institutions, their administrative abilities, not just their abilities to resist domination or to live within their own traditions. They were not quite prepared for this. It is often difficult for them to find their "own ideas" with respect to the administration of budgets, plans, and programs covering such diverse themes as education, health, justice, and development. They have no choice in this phase but to resort to the models of the white people and to work with advice from lawyers, organizations, and even the State itself. Traditional knowledge and authority figures are then often set aside, and the leadership of the young and cultured, who are better equipped for these situations, begins to be felt more strongly.

With the incorporation of the rights of indigenous people into the Constitution, "it would seem that the State had found a way to satisfy the demands of the indigenous people and resolve the problem of international pressures as well as strengthen its own project and facilitate its means of expansion, all in one."<sup>17</sup> The State managed to impose its own agenda on the indigenous people over the last three years. This is not bad in and of itself, since the entire nation is in the process of accommodation as a result of the changes introduced by the Constitution; but it does have certain drawbacks. The most obvious concerns the change in the language and the script. What is now required of the indigenous people is no longer the affirmation of an identity cornered by transgressions and Eurocentrism, but their participation--presenting proposals, and appointing delegates to make decisions and interlocutors through whom the State can expedite agreements and make arrangements in matters of common interest. It is in the end what is expected of a civil society in which all sectors of the national community aspire to have access to the affairs of State and thus guarantee their rights.

But when it concerns traditional Indian peoples, participatory proposals presented by the State should be viewed in a different light. We can see some of the conflicts I wish to highlight in the letter written by the *mamus*. The *mamus* are collective beings who derive strength from subordinates within their territorial structure, from the people who depend on the *mamus*. They only "think well" during certain hours and in certain places, usually on hilltops. Collective reflections are made, usually at night, in the *Kankuruas* (ceremonial houses), and they often resort to divination to reach a decision. With few exceptions, they do not speak Spanish and their knowledge of the outside world is very limited. The State's model of participation seeks a more "modern" form, preferably an organization that represents the entire community and whose leaders are indigenous people who

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<sup>17</sup> Guillermo Padilla, "Derecho Mayor Indígena y Derecho Constitucional." Presentation at the XIII International Congress of Anthropological and Ethnological Sciences, 1993, p.24.



have a good knowledge of Spanish and with whom they can debate various themes within a time frame set by the State. This is what has been happening, and one can see the displacement of traditional leaders by the young alumni of religious missions, who have more knowledge of the outside world than of their own internal reality. It is likely that these communities will accommodate themselves in much the same way as they adapted to the attacks they suffered in the past attempts made to "civilize" them. But the question remains whether the State is really recognizing and protecting the ethnic and cultural diversity of the nation, as decreed by the Constitution.

### **New Social Pact or New Economy of Power?**

There is no doubt that the Constitution has provided a new dynamic to society--the principles of full participation of citizens, protection of the environment, recognition of diversity, and the democratic inclusion of people of all sectors, statuses, and cultures who seek to occupy spaces within the framework of the new legal system. In the wake of the labyrinth of interpretations and special statutes there should be an increase in the civility of the citizenship. As a result of the new visibility of the marginal, indigent, and indigenous people, the *desechables*<sup>18</sup> (disposable people) or savages no longer exist, only citizens. But it is precisely here that we see the new problem that arises from the construction of the *democratic polis* that respects the very diversity we seek. Indigenous people, who are the bearers of an ancestral system of knowledge that is not Western and that leads to a different rationality, must not be considered premodern; this would result in the error of seeing man's future as leading in only one direction towards goals (or errors) that we must all inevitably reach sooner or later. For these people, to be converted into citizens is more of an affront or threat than a recognition, and it may lead to a new type of ethnocide resulting from the construction of the prototype of the modern individual.

It is worth asking why these changes are occurring now. How do certain ideas, such as those that conceive of indigenous peoples as barbarian and savage,<sup>19</sup> as minors,<sup>20</sup> and as psychologically immature,<sup>21</sup> start to be problematized? Why is the "vocation of service" towards indigenous people increasing? Why is the conservation of indigenous cultures so important? Many more questions could be asked, but such an analysis lies outside the confines of this essay. Let me suggest the following reflections:

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<sup>18</sup> A derogatory term used to denote indigent people and beggars who wander the streets of the major cities of Colombia.

<sup>19</sup> Law 153 of 1887, Article 318.

<sup>20</sup> Law 89 of 1890, Article 40.

<sup>21</sup> Colombian Penal Code, Article 96. This is how indigenous people who conserved their culture to a great degree were characterized in order to declare them incompetent in case they committed a crime.

Legal changes have occurred during the last five years throughout Latin America; in over eight countries, constitutional reforms have taken place that resulted in the incorporation of the rights of indigenous people on terms similar to those in Colombia. This is not the first time that changes on a practical and discursive level have occurred simultaneously in countries across Latin America. In fact, the role Latin America has played in the development of industrialization and the original accumulation of capital in the world, the dependence on international markets, the effects of the application of economic models designed by international organizations, revolutionary movements, military dictatorships, external debt, economic crises and inflation, the crises of development models, and the crises of institutionalized truth that validates the knowledge and wisdom of subaltern ways of thinking have occurred throughout Latin America at analogous times and under similar circumstances.<sup>22</sup> The new position taken by the State regarding the rights of indigenous people and ethnic minorities--the very peoples who, due to the influence of capital, have been expelled from the poles of development to jungle areas (where capital has not yet arrived)--appears to be linked to new international positions regarding environmental problems and new models of development, particularly sustainable development. The report presented by the Brundtland Commission, entitled "Our Common Future: From the World Commission on the Environment and Development, 1987," would design a strategy based on "the necessity to increase economic growth without destroying the environment; the orientation of development towards basic necessities; the stabilization of the population; and the design of environmental measures that permit the rational use of resources."<sup>23</sup>

To a certain degree, the orthodox vision of development, which was based on economic growth charted by indices and statistics, has been reevaluated with the emergence of the concept of sustainable development. Now other variables have begun to be taken into account. One of them criticizes the separation of Man and Nature and the view of Nature as merchandise--which is characteristic of modern society--and validates cultures such as those of the Indians, who hold Nature sacred, and Man as part of Nature, and develop practices that can be considered ecological and appropriate, given the objectives of the discourse of sustainable development. I fear that this process of validation seeks to integrate these populations and their territories into the world economy. The theory of sustainable development does not question the assumptions of development: "the Euro-urban-industrial model is never placed on trial; it is believed that the changes are sufficient yet relatively small with respect to management forms (introducing the environmental variable) and market functioning (with the objective of protecting resources from ferocious attacks by capital interests) to inaugurate once and for all a harmonious and happy period of growth."<sup>24</sup> It is here that the legitimate problem of exclusionary and

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<sup>22</sup> Padilla, op. cit., p.13.

<sup>23</sup> Arturo Escobar, "El Desarrollo Sostenible, Realidad y Mitos" in *Esteros*, No. 3 & 4 (Bogotá, Colombia: 1993).

<sup>24</sup> Ibid., p. 18.

discriminatory categories is taken advantage of to increase the transformation of the indigenous person into a modern individual. "The history of modernity and development has been the history of the progressive capitalization of Nature, populations, bodies and life."<sup>25</sup>

There are two sides to the coin of incorporation of the rights of indigenous people into the Constitution. On the one, the pressures exerted by the indigenous movement achieve unprecedented successes, and the State gets recognition for its efforts to democratize society. But, on the other, the way is cleared for the acceleration of the integration of indigenous people. Their forms of struggle and ways of representation are modernized, and the process of developing the individual who can better serve the interests of the marketplace and the efficiency of the system is furthered.

Behind the world's growing awareness of the mounting environmental crisis is a fundamental economic factor. Campaigns promoting the conservation of biodiversity, led by the World Bank and other development and ecological agencies, are proof of the advances of biogenetic engineering and biotechnology. These have demonstrated that it is economically wiser to leave portions of forest regions intact than to raze them for pasture. The indigenous populations emerge as the best guardians of this biodiversity, and in Colombia--where, it should not be forgotten, the indigenous population is only 1.5 percent of the total national population--indigenous people hold approximately 25 percent of the land in the form of *resguardos*, most of which are tropical forest regions, including parts of the Amazon, Orinoco, Darien, Pacific Strait, and the Sierra Nevada of Santa Marta.

Biotechnology has uncovered the economic value of biodiversity, and more and more funds have been generated to guarantee its protection. The step that has yet to be taken is that which links biodiversity to the existence of traditional Indian cultures, which are the most evident social products and the most effective guarantors of its protection. "Diverse ecosystems give rise to diverse life forms, and to diverse cultures. The co-evolution of cultures, life forms, and habitats has conserved the biological diversity on this planet. Cultural diversity and biological diversity go hand in hand."<sup>26</sup> This recognition by international organizations suffers from an economic bias that in no way favors the removal of the threat of extinction that hangs over these cultures. Biotechnology firms vie to be first to get the information, patent it, and secure the profit that the commercialization of this knowledge may produce. This knowledge is placed in a privileged position above the culture that generated it. It is as if there were an urgency to extract the information before the source vanishes, which is seen as an inevitable fact, a secondary effect of modernization. The habit of separating effects from causes prevents an understanding of the totality. It is believed that the richness lies within the forest, and there is no desire to recognize that the true importance lies in the

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<sup>25</sup> Ibid., p. 19.

<sup>26</sup> Vandana Shiva, *Monocultures of the Mind* (Penang, Malaysia: Third World Network, 1993) p. 65.

ecological cycles which it produces and which make it infinitely more "rentable," to use the fashionable term. Native cultures have adapted themselves to these ecological cycles without demanding either more or less than the environment offers to guarantee the continuity of life and allow the miracle to continue.

If there is anything valuable in the theory of sustainable development it is that it shows that while modern society treats nature in a way that is not sustainable, indigenous cultures act in a way that is sustainable. The sustainable behavior of native cultures is regulated by their Law of Origin, to use the *mamus'* term, and are the best proof of the local origin of all knowledge and a refutation of the pretension to universality of Western systems of knowledge. Vandana Shiva says, "the dominant system is also a local system, with its social basis in a particular culture, class, and gender. It is not universal in an epistemological sense. It is merely the globalized version of a very local and parochial tradition. Emerging from a dominating and colonizing culture, modern knowledge systems are themselves colonizing."<sup>27</sup>

The "modernization" of the traditional power structures of the Indian people, the normalization of individuals, and the introduction of values associated with a consumer society are as dangerous to biodiversity as the introduction of plantations or cattle farming are to the rainforest. I suggest that a greater emphasis be placed on the recognition and protection of diversity (Article 7 of the Constitution) than on the efforts to transform indigenous people into citizens. As an ethical imperative of the recognition of traditional cultures, it is necessary to fight against the process of individualization that is associated with the State and inherent in its practices.<sup>28</sup>

In the recent translation of the national Constitution into seven different indigenous languages,<sup>29</sup> the Iku people translated these words as follows:

Democracy - "Taking into account, getting strength from all, that all feel equally content or in agreement."

Right - "What corresponds to one by legitimacy."

Justice - "Reestablishing goodness to the perpetrator and the harmed."

Judge - "One who indicates what is good to those who damage it."

State - "Force conceived for all."

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<sup>27</sup> Ibid., p. 9.

<sup>28</sup> Michel Foucault, *El Sujeto y El Poder* (Bogotá, Colombia: Carpe Diem, 1991).

<sup>29</sup> The translation was coordinated by the C.C.E.L.A. - UNIANDES with the sponsorship of the Presidencia de la República (Presidency of the Republic), the PNR, and the Embassy of Spain, Bogotá, 1994.



Many options are opened by the constitutional reform. One is the possibility of enriching ourselves spiritually, humanizing ourselves more by humanizing the other, something that has been a chimera since the Conquest. The way in which indigenous people appropriated the constitutional language demonstrates that it is possible that diversity will make us better people, since we will learn to look with different eyes and with an improved vision that draws us closer to the nature of things--like the meaning of the word Law, which the Iku people define as "that which encompasses goodness."