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# The indigenous challenge

**In business circles, indigenous peoples in Latin America are perceived as an obstacle to oil and gas development. However, there is more than that to the story. By Carlos Perafan and Dianna Moyer, sustainable development department, Inter-American Development Bank**

Recent years have seen a strong reaction from indigenous peoples' movements to the way hydrocarbons businesses have been managed in South America. In Bolivia, President Gonzalo Sanchez de Lozada's negotiations to sell gas to Chile – to which Bolivia lost its access to the Pacific Ocean in the late-19th Century – brought indigenous people onto the streets of La Paz to overthrow the president and eventually elect the indigenous government of Evo Morales, which is moving forwards with plans to renationalise the hydrocarbons industry.

In Ecuador, a decade-long litigation between Amazonian indigenous peoples and Texaco over the ongoing effects of an oil spill 35 years ago continues and, in another case, the Kechwa community of Sarayacu has obtained decisions from the Inter-American Human Rights Court (IAHRC) to suspend oil exploration in its territory on the basis of the government's non-compliance with legally binding prior consultation.

In Colombia, U'wa religious-based opposition to exploitation of the Samore block has seen threats of collective suicide. This conflict also soured relations among stock-holders of Occidental, prompting the US firm to quit the project; has generated profuse litigation; and polarised civil society, well beyond the influence on the Colombian public consciousness of the long-lasting opposition of the ELN movement to oil exploitation.

In Peru, a coalition of non-governmental organisations (NGOs) and indigenous organisations bitterly opposed the Camisea gas project and the national ombudsman is investigating health effects on indigenous peoples related to the project. Although Ollanta Humalla's bid for Peru's presidency in early 2006 failed, indigenous support was the cornerstone of his constituency. With oil and gas prices soaring in international markets, incentives are growing for governments in the region to change contracting standards and, for the first time, indigenous peoples are playing a role in these arrangements.

## Dispossessed and marginalised

Compared with the wealth of their civilisations and natural resources in pre-Colombian times, indigenous peoples have been dispossessed of their ancestral lands, marginalised and live in poverty. The 400 indigenous-peoples groups that survived conquest and colonisation are highly diverse and encompass around 52 million people. They constitute about 11% of the population of the region and 20-25% of the population living below the poverty line (see Table 1).

Despite large-scale migration to urban areas and abroad, an estimated 60-70% of indigenous people live in rural areas and account for 45-50% of the rural poor. In terms of territory, they occupy 20-22% of the region. Although most live in the highlands, close to major cities where they are seldom affected by hydrocarbons exploitation, indigenous peoples' larger habitat areas, or refugee regions, are beyond the agricultural frontier, in lowland regions such as the Amazon and Orinoco basins, the Chaco ecosystem, the desert coastlines of the north, the Caribbean coast in Central America and the Usumacinta basin, where most of the regional hydrocarbon's activities take place.

For example, the largest part of Bolivia's gas prospects lies under guarani territory in Tarija's Chaco region. The advance of the extractive industries (not only hydrocarbons, but also logging

and mining) into these areas has created great vulnerabilities for the physical, spiritual and cultural survival of indigenous peoples. Effects come in different guises: extinction, land dispossession, resettlement, contamination, environmental liabilities, and impacts on economic subsistence and socio-cultural integrity.

There have been several cases of extinction of indigenous groups driven by hydrocarbons exploitation, as in the case of some hunter-gatherer groups during the Chaco war in Paraguay, or of the carare-opón in the middle Magdalena river in Colombia. Other groups were taken to the brink of extinction, but survived as various Arawak and Carib-speaking groups in the Orinoco basin, and Tukano speaking peoples of the Caqueta-Putumayo basin. These processes have not always been caused directly by oil exploitation, but are an indirect consequence of the intervention and are most often related to effects on territorial integrity.

In the case of the siona and cofán peoples of southwestern Colombia, oil was found in the early 1960s in their scarcely populated forested ancestral lands. Oilfields were established between the Caquetá and Putumayo rivers. The workforce was imported from Andean Colombia and oil towns thrived. Once construction was finished, workers associated themselves in a peasant organisation and invaded indigenous ancestral lands. Although they were protected as reserves, the political pressure of worker-peasants increased and government gave legal title to the invaders, granting only a small part of the former reserves to the cofán and siona, whose population by this time had steeply decreased. The area is now one of the more resilient coca-planted and guerrilla-ridden parts of Colombia.

Today, the focus of extinction effects primarily relates to so-called non-contacted or voluntary isolated indigenous peoples – either direct descendants of paleo-hunters, or Amazon riverside horticulturalists contacted during the slave-driven, Amazonian rubber-extraction industry of the late 19th and early 20th centuries, which escaped caucherías and sheltered in inaccessible areas of the Amazon. Most of these areas are within Brazil, Peru and Bolivia. Other isolated groups live in parts of Colombia, Ecuador, Venezuela, Guyana and in the Paraguayan Chaco.

As logging, mining and the oil and gas industry advance ahead of the agricultural frontier, extractive-industry workers are invading territories occupied by isolated indigenous peoples. Contact is catastrophic. The populations' lack of bio-defences to struggle against what we perceive as common

**Table 1: Indigenous peoples in Latin America, 2005**

| ( <sup>'000 estimated</sup> ) % of national population |       |                     |
|--|-------|---------------------|
| Country  |       |                     |
| Bolivia  | 71.00 | Suriname            |
| Guatemala  | 66.00 | Nicaragua           |
| Peru   | 47.00 | Paraguay            |
| Ecuador  | 43.00 | Colombia            |
| Belize   | 18.80 | Venezuela           |
| Honduras   | 15.01 | Costa Rica          |
| Mexico   | 14.00 | Argentina           |
| Chile  | 8.00  | Trinidad and Tobago |
| El Salvador  | 7.01  | Brazil              |
| Guyana   | 8.03  | Uruguay             |
| Panama   | 5.98  | <b>Total</b>        |
|  |       | <b>11.00</b>        |

Source: IADB

diseases can be deadly. They also lack proper land-tenure rights and protection from governments to shield their territories from the incursions of illegal loggers and miners. Brazil is the only country with a strong system in place to deter intruders into isolated indigenous peoples' reservations.

Long-term environmental effects and contamination of the natural-resource base on which many indigenous communities depend have been the focus of recent debates. In 1993 and 1994, two class-action lawsuits were filed against Texaco for the pollution of the rainforest and rivers of the Amazon in Ecuador and Peru during its intervention in both countries spanning from 1964 to 1992. Although a US Federal Court dismissed the case on jurisdictional grounds, it is being heard in Ecuador against Chevron (Texaco is now part of Chevron). The allegation states that Texaco used obsolete techniques to dump waste water from oilfields into rivers over 20 years, causing widespread contamination and health disorders.

At Camisea, despite the use of new production techniques, controversy over potential environmental effects continues – in 18 months of operation, there have been five leaks from the pipeline connecting the Amazonian gasfields with Peru's coast.

Perceptions of environmental impacts vary greatly between indigenous peoples and industry, mirroring cultural gaps and creating misunderstandings. In a case in Colombia, while the energy ministry tried to explain to Tukano speaking peoples that an oilfield would require only a small patch of rainforest deforestation, Tukano leaders believed this small patch would cause disease that would further open the gap in the forest. Considering the history of non-planned, poverty-ridden shantytowns and colonisation activities that had risen around oilfields in the region, the Tukano's was a logical assessment.

Socio-cultural effects are also important. Lowland, indigenous, traditional economies were previously non-monetary and based on reciprocity labour and goods-exchange systems. Now these economies have been monetarised and are dependent on activities related to extractive industries. This dependency has failed to generate development for indigenous peoples, as they mostly lack the skills, capital and opportunities to engage in entrepreneurial activities to provide services and/or goods to the industry. Articulation to the monetary economy occurs through a segmented labour market, where indigenous women often engage in prostitution and indigenous men in illegal logging, as can be seen in a place such as Pucallpa, Peru, on the Ucayali river.

Even socially responsible actions can be harmful to indigenous peoples. For example, in 2000, a group of huaorani women occupied PetroEcuador's headquarters in Quito to demonstrate against their husbands' being contracted by the national oil company. They complained that their companions were not hunting any more to the detriment of household food supply and were spending their money in liquor.

Sikuani communities around Cusiana oilfields in Colombia's Orinoco basin saw their population decrease because of extractive industries' effect on their kinship marriage system. When catering contractors hired sikuani women to work in the kitchens, who in turn married oil workers or made connections to find work in the cities, thinning the already small pool stock and leading to the long-term decline of the sikuani population.

Although effects from the contamination of the natural-resources base are easily pre-identified in modern environmental impact studies and, theoretically, possible to mitigate against, other indirect and socio-cultural effects are not so easy to forecast and are left aside in governments' and industries' due diligence. This is not only the result of the lack of specialised knowledge, but also an unforeseen effect of the overwhelming advances in environmental studies that overshadow the socio-cultural aspects of these studies.

Furthermore, a grey area exists between the responsibility of governments and that of the private sector to indigenous

peoples' impact management, where governments at the time of releasing oil or gas concessions do not disclose either the presence of indigenous peoples, their vulnerability, or the particulars of their culture (after 13 years of unresolved conflict with the U'wa in Colombia, the government still lacks awareness of the religious aspect of their struggle). This leaves the burden of accountability on the oil industry to carry out a role that is often beyond its obligation, interest, or capacity.

### Dealing with impact management

When problems arise, the focus is often on making deals with indigenous families or local communities instead of carrying out proactive impact management. This approach tends to develop into long-term and cumulative environmental liabilities.

Some initiatives to advance the dialogue between indigenous peoples and the hydrocarbons sector have been conducted. In 1998, Harvard University's Ponsacs programme began furthering a series of oil dialogues between indigenous representatives and the oil industry. Surprisingly, the meetings went smoothly, as indigenous peoples and the industry felt they could agree on issue identification and strategies to move forward.

With Inter-American Development Bank funding, upstream mitigation was assessed, where the necessity to pre-qualify oil and gas blocks before submitting them to public bidding was recognised. Above all, the need to set apart cultural or environmentally sensitive areas from the blocks was identified.

The World Bank, through its Esmap programme, promoted indigenous peoples' hydrocarbons training programmes, fostered national consultation regulatory frameworks, assessed environmental and social regulations and the distribution of oil revenues in Andean countries, and promoted tripartite meetings with indigenous representatives, industry and governments. In 2004, these meetings broke down because of a lack of interest among the governments and differences between the Amazonian indigenous organisation and the national oil industry associations – the result of misunderstandings driven not by the multinationals, but by their national partners and sub-contractors.

In terms of rights, contrary to what happens in Canada and the US, where indigenous peoples have clear rights to the subsoil (although managed by state trust funds), in Latin America, subsoil-mineral ownership is reserved by the state and hydrocarbons exploration/exploitation is carried out either by national oil companies or is awarded/subcontracted to the private sector, although some contention exists over indigenous peoples rights over mineral resources and hydrocarbons. Originally, colonial laws recognised the integrity of soil/subsoil tenure rights and considered possession of ancestral territories to equal domain title, a legal pre-eminent domain (land-tenure rights originated before the existence of positive law) that has been reaffirmed by the IAHRC and its Commission in recent cases.

Adding to that, the International Labour Organisation (ILO) 169 Covenant, ratified by most Latin American countries, links the scope of indigenous land-tenure rights to their own customary law. Furthermore, although short of upholding indigenous peoples rights to the subsoil when its natural resources belong to a state, Article 15 of ILO 169 awards indigenous peoples the right "to participate in the use, management and conservation" of these resources and to participate in their revenues, "when possible". Although 95% of indigenous peoples in Latin America live in countries that have ratified ILO 169, Article 15 is not yet enforced.

In this context, where indigenous peoples' subsoil rights and their enforcement are in a state of limbo, the only set of rules with some level of liability is the prescription of prior and informed consultation of ILO 169. Far from the right to prior and informed consent that indigenous organisations have been demanding, consultation is now an accepted standard in

the region. However, in many cases, consultations either do not take place, or are not properly developed.

In 1993, Colombia awarded Occidental a licence to operate in U'wa territory after a meeting with a few community leaders. This has been used by indigenous organisations to sue the state for lack of proper consultation and they have utilised this right as an instrument to oppose oil exploitation. One problem is that it is very difficult to undertake proper consultations, as space always exists to rebuff representativity, or cultural adequacy. This creates a degree of uncertainty that hangs over these processes and affects the juridical security of oil and gas contracting. Paradoxically, the prior and informed consent governments are reluctant to award to indigenous peoples is much easier to provide evidence for than adequate consultation.

A 2002 World Bank study on the distribution of oil revenues in the Andean basin shows that Article 15 of ILO 169 is not being applied in the region and that there are no direct mechanisms to transfer revenues to indigenous communities (Colombia tried to establish a 5% level, but that law was declared unconstitutional on other grounds and the intent has not been repeated). Indigenous peoples are able to obtain part of the revenues only through municipal allocation, or in other cases, as in Colombia and Ecuador, through special oil-revenue-financed funds.

In Peru, the Camisea Fund, designed to finance development projects for the indigenous peoples along the project's pipeline, was changed by Congress into a municipal investment fund. At the same time, municipalities that receive oil revenues complain about indigenous peoples' lack of expertise in putting together plans to apply for available resources.

### Perceptions of environmental impacts vary greatly between indigenous peoples and the industry, mirroring cultural gaps and creating broad misunderstandings

This issue raises another challenge – the foreignness for indigenous peoples of the development concepts on which these funds are based. For example, no indigenous language contains any word close to the meaning of development. This has encouraged the advance of concepts such as auto-development, ethno-development or, more recently, development with identity.

Furthermore, among Colombian lowland indigenous peoples affected by oil production, a concept named future-living plans has emerged – a community-based, far-reaching, generational-timed reflection that tries to answer questions such as “where do we want to be three or five generations from now?”, or “would we be keeping our ways of life, or how might we allow these changes to come by?”. Only when these teleological questions are answered and agreed on, will these people be willing to define a development plan and/or particular programmes or activities. This methodology is spreading among indigenous peoples in the region and Colombia has included it in its indigenous peoples' development-planning cycle.

Given the importance of oil and gas revenues to sustain and bolster public expenses, the governments of the region have not demonstrated a willingness to sacrifice these revenues to protect indigenous rights competing interests are at stake. Ecuador, for example funds more than 60% of its administrative budget (which includes teachers and the military) with oil revenues.

This means any advance towards transferring oil revenues to indigenous peoples creates governance tensions with the rest of society, especially the military. This is important, because indigenous-military alliances that have developed in recent times (Venezuela, Ecuador, Bolivia and Peru) are unable to solve this issue and will have to fall-back on a save-face petro-nationalisation, instead of awarding any substantial rights or opportunities to indigenous peoples for oil and gas drilling in their territories.

But even in the scope of petro-nationalisation, it is uncertain indigenous peoples will see a better recognition of their rights, or find improved development opportunities. With nationalisation, revenues are almost always syphoned off by the central government to support politically visible investments, instead of being reinvested in cleaner and more efficient production technologies – leading to greater environmental damage and contamination.

In the case of Campo Sacha, the biggest oilfield in Ecuador, contamination from PetroEcuador's processing operation is significant. Campo Sacha discharges oil wastewater into the Napo River and extracts water from the river to inject into the wells to pressurise reserves. PetroEcuador uses this technique because it does not have galvanised pumps that could resist corrosion from the oil-contaminated wastewater.

Ducts that conduct oil from the rigs to the separation plant leak. And while the project has to import diesel fuel at high costs to produce energy, it flares gas, adding to the environmental contamination. PetroEcuador is unable to invest in upgrading its equipment because it is required to send all of its income to the central government. After that, by budgetary law the state allocates resources for PetroEcuador's management, but seldom provides for investment.

Under these circumstances, it cannot be guaranteed that newly strengthened petro-nationalist industries will do better in terms of impact management and indigenous peoples may still find it difficult to secure a significant part of oil income.

### New momentum

In 2000, in Ecuador, first the national indigenous peoples organisation, Conaie, and then the Amazonian indigenous organisation, Confenaie, tried an alternative. Given the paradox that Ecuador imports most of its gas to meet demand, while flaring gas at Amazonian oilfields, they proposed to build a \$60m gas-processing plant in Sacha. They set up Amazonia Gas, with Canadian first-nation firm Keyano Pimee, of Alberta. The third party and proposed operator was Canada's EnCana. Negotiations broke down because of opposition from PetroEcuador's labour union and because EnCana sold its assets the country under a tax-returns related conflict with the government. Internal-governance issues then ended the company.

Although this attempt to create an indigenous oil company failed, it created momentum. It aroused suspicions on labour, traditional indigenous leadership, environmental NGOs and the left, and Confenaie was accused of being naive, as its business proposal could open the door to rampant capitalism and further intervention. However, other indigenous organisations – Conapa in Peru and the Guarani Peoples Assembly in Bolivia – are exploring the model. The conviction of indigenous leaders behind Amazonia Gas was the perception that if indigenous peoples were to properly influence governments and the oil industry to manage their effects in a culturally adequate manner and generate benefits for indigenous communities from oil revenues, indigenous peoples must harness opportunities arising from oil activities instead of maintaining the traditional hand-out approach.

Nonetheless, the forces of petro-nationalisation that are taking the limelight over any serious attempt for indigenous economic articulation related to the industry seem to be capturing the attention of indigenous peoples. The hope is that this approach does not result in a new disappointment. ●

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