FOCAL Point
CANADA'S SPOTLIGHT ON THE AMERICAS
Canadian Foundation for the Americas | Fondation canadienne pour les Amériques | Fundación Canadiense para las Américas
www.focal.ca

March 2011, Volume 10, No. 2, ISSN 1703-7964

Testing Salvadoran democracy

Carlos A. Rosales

Two years into his presidency, Mauricio Funes is being challenged by hardliners from his own party.

Photo: Presidency of the Republic of Ecuador

Salvadoran President Mauricio Funes.

News of U.S. President Barack Obama's upcoming visit to Latin America was largely welcomed in the region. However, questions were raised on why his itinerary includes a stop in El Salvador on March 22. Aside from obvious bilateral issues including public security and immigration, Obama's decision could be a tip of the hat to El Salvador's moderate leftist president.

A new political era began in El Salvador in 2009. After winning a heavily contested presidential election, Mauricio Funes of the Farabundo Martí National Liberation Front (*Frente Farabundo Martí para la Liberación Nacional*, FMLN) became the first leftist elected leader and the fourth civilian president since the 1992 Peace Accords that ended the country's 12-year civil war.

Funes' victory put an end to 20 years of rule by the rightist Republican Nationalist Alliance (ARENA) party. The historic achievement notwithstanding, Funes' rise to power came during the worst economic crisis ever to affect the nation.

The global slowdown caused by the world financial crisis severely affected the Salvadoran economy. Economic activity in 2009 declined by 3.3 per cent, as exports, imports and remittances fell sharply.

And yet, Funes' main problems have been playing out in the political arena. Funes is facing serious difficulties ruling this deeply polarized society. And the biggest challenge to his authority has come not from ARENA, but from his own party.

A boisterous campaign

FMLN leaders chose Funes as presidential candidate in October 2007, well in advance of the March 2009 elections. Shortly thereafter, the party announced former guerrilla commander Salvador Sánchez Cerén, a hardliner, as Funes' vice-presidential running mate.

The choice of Funes, a television journalist, was a significant departure from FMLN tradition of picking only

(Continued on page 3)

Features

FOCAL Views: Chipping away at democratic institutions

The concentration of power in executive branches is a growing trend that must be checked.

As world opinion came to support the popular revolutions toppling authoritarian Arab regimes, besieged Libyan leader Moammar Ghadafi did catch one break as a small group of sympathetic Latin America leaders turned a blind eye on his violent crackdown. Among the region's four recipients of the ignominious Moammar Ghadafi International Human Rights Prize —Fidel Castro, Hugo Chávez, Daniel Ortega and Evo Morales— only the latter has come out against the violence in Tripoli.

Venezuelan President Hugo Chávez was at first uncharacteristically quiet about his ally's plight before openly supporting the Libyan government and offering his services as a mediator in the political crisis. For his part, Nicaraguan President Daniel Ortega came out for the embattled Libyan leader over several phone conversations, while Cuba's Fidel Castro used the rhetorical prop of a North Atlantic Treaty Organization (NATO) invasion for oil control as an excuse to support Ghadafi .

Ghadafi's Latin American allies are also, coincidentally, those accused of concentrating power in executive branches —if not in the same repressive manner. Even though the level of political frustration in Latin America pales compared with that in the Middle East, leaders in the region are not impervious to popular discontent: a nervous Chávez recently made some better-safe-than-sorry concessions to opposition students on a hunger strike, while Cuba took the opposite approach, cracking down on dissidents with 50 arrests in the lead-up to the one-year anniversary of jailed hunger striker Orlando Zapata Tamayo's death on Feb. 23, 2010.

Despite the 2001 Inter-American Democratic Charter's declaration that "the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it," some of its 34 signatories have been chipping away at their democratic institutions. Leaders have encroached on the space of the judiciary, concentrated executive power and tinkered with the constitution to extend presidential term limits once elected.

In a 2009 referendum, Chávez cemented his grip on power when citizens voted to eliminate term limits for all public officials. More recently, his "enabling law" —rushed through the outgoing Venezuelan parliament after an opposition coalition won 52 per cent of the vote in the September 2010 legislative elections— has allowed him to rule by decree on a number of issues for 18 months, which the Organization of American States (OAS) has said contravenes the Charter.

In Nicaragua, a 2009 Supreme Court ruling overturned the previous ban on consecutive re-election. Ortega, who governed from 1985-1990, was re-elected in 2006 and without this decision, would not be eligible to run in the 2011 fall election. In a move that raised concern, several of the judges who ruled on this case as well as members of the national election council who accepted Ortega's 2011 candidacy had their terms extended.

Ecuador, meanwhile, is planning a referendum of its own that could consolidate President Rafael Correa's power at the expense of the legislature and judiciary. The May 7 vote's proposals deal with issues from casinos to cockfighting to constitutional reform. While supporters say it will reinforce anti-corruption efforts, opposition groups assert it will give the president more power to appoint judges. Polarization in this country is cause for concern in light of the state of emergency declared during the September 2010 police protests. Three consecutive Ecuadorian presidents were ousted in the decade before Correa took power.

This lack of respect for institutions is not uniform throughout the region. For instance, there was a victory for the rule of law in Colombia when a proposed referendum on constitutional change to allow outgoing President Álvaro Uribe a third consecutive term was rejected by the courts in February 2010 and the decision was adhered to without any protests.

In its Americas strategy, Canada has emphasized the reinforcement of democratic governance as a central pillar of its regional policy. Citing its longstanding participation in the OAS and support for multilateralism, the strategy calls for "fostering accountable public institutions and the rule of law, and promoting human rights." Canadian engagement on Colombia and Honduras contributed to this goal, but it appears more may be needed.

Testing Salvadoran democracy

(Continued from page 1)

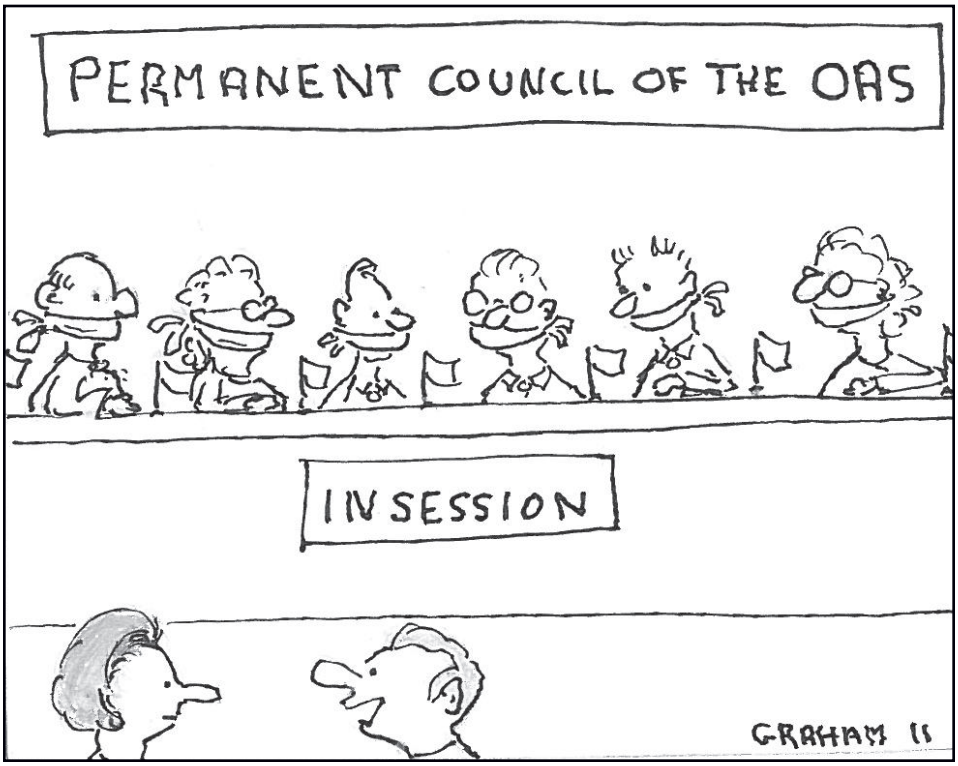
party stalwarts and former guerrilla commanders as candidates. But the devastating defeat in 2004 —when ARENA's Antonio Saca won over the FMLN's Schafik Handal with a landslide— forced the former guerrilla to nominate an outsider as a candidate. Funes was the natural choice, given his leftist views and popularity.

At the other end of the spectrum, despite high approval ratings, then-president Antonio Saca had failed to deliver on his main campaign promise as candidate to tame the country's high crime rates. Public perception of corruption was also widespread.

Despite criticism from ARENA leaders, Saca refused to give up the party leadership after taking office in 2004. Saca's control of the party would enable him to impose a candidate for the 2009 presidential race through a primary process.

Various figures contesting the nomination, including the country's incumbent vice-president, Ana Vilma de Escobar, publicly complained that the process had been rigged. Saca's end-game was the nomination of Rodrigo Avila as ARENA's presidential candidate.

But Avila, a former head of the national police and vice-minister of public security, was no match for the charismatic and media-savvy Funes of the FMLN. Moreover, Saca's moves to impose his pick put off long-time ARENA supporters. On March 15, 2009, Funes defeated Avila by roughly two per cent of the vote.



"This happens whenever someone suggests an item on Venezuela and democratic values."

Crisis on the Right, confrontation on the Left

Prominent ARENA members blamed Saca for the 2009 defeat. Since then, ARENA underwent a vicious internal feud that climaxed in the December 2009 expulsion of Saca from the party. Eighteen elected members of congress also left ARENA to establish the Grand National Alliance for Change (*Gran Alianza por la Unidad Nacional*, GANA) in March 2010.

The media often ties Saca to GANA and speculates he may be its largest donor. Many of his cronies have joined the new party. Observers expect Saca will lead GANA to the 2012 congressional and municipal elections and the 2014 presidential contest, perhaps even as candidate.

Meanwhile, Funes has been in constant confrontation with his party. Contradictions that initially arose during the electoral campaign —fueled by Funes' moderation and the FMLN's radicalism— have since multiplied. The FMLN has shown clear lack of support for Funes' pragmatism on many issues.

The party is no longer the amalgamation of the five original revolutionary groups that banded together in the late 70s. Since the Peace Accords, the FMLN underwent a series of internal feuds, inspired by ideology as well as thirst for power. The process engendered the current version of the FMLN, dominated by hardliners from the Popular Liberation Forces (FPL), and the Salvadoran Communist Party (PCS).

FMLN leaders publicly declare their loyalty and admiration for Venezuela's

Hugo Chávez and his "21st Century Socialism," and for Cuba's autocratic regime. Statements in that regard do not go over well with Funes, who has contradicted or disavowed numerous FMLN officials, including Vice-President Sánchez Cerén.

The disagreements between Funes and his party include the country's stance on the 2009 Honduras coup. While the FMLN echoes Chávez's fiery rhetoric, Funes opted for a pragmatic view, becoming one of the leading voices seeking international recognition for Honduras' current president.

Another source of tension involves the country's international allegiances. While Funes showed moderation courting Brazil's former president Luis Inácio Lula da Silva and Obama in the U.S., the FMLN publicly demands that the government join the Chávez-led Bolivarian Alliance for the Peoples of Our America (ALBA).

WikiLeaks and foreseeable threats to democracy

FMLN leaders resent Funes' rejection of ALBA. Party militants have held numerous street protests and demonstrations against him on this and on other issues. The FMLN even threatened to become an opposition party.

Attempts by the FMLN to control the voter registry early in 2010 suggest the former guerrilla has considered manipulating the electoral rules. The move mirrors those implemented by President Daniel Ortega in Nicaragua, and Chávez in Venezuela, that paved the way for multiple terms in office.

It is too soon to know what the next three years have in store for Salvadoran democracy. But the recent WikiLeaks reports have shed some light on the many concerns Funes has had regarding his relationship with the FMLN.

U.S. Embassy cables from San Salvador document Funes' anxiety and fear for his safety. They describe the president's concern for "his personal security, physical security" and his suspicions that the FMLN has intercepted his telephone calls.

Salvadoran popular culture often features a wicked sense of humor. A popular joke making the rounds of Salvadoran cyberspace asks: "What separates Sanchez Cerén from the presidency of El Salvador?" The answer: "Nine millimeters."

Carlos A. Rosales teaches in the School of Communications at Universidad Dr. José Matías Delgado, San Salvador. He was a cabinet member in two consecutive Salvadoran governments (1999-2009). He was previously Project Director at the Inter-American Dialogue, Washington, D.C.

Trade

Canada building trade ties with Honduras

Canada and Honduras are conducting bilateral talks for a free trade agreement, abandoning 10 years of discussion with the Central American Four (CA4) for a regional agreement that also included El Salvador, Guatemala and Nicaragua.

The two countries held talks in Tegucigalpa mid-February, building on meetings last December in Ottawa.

"Honduras offers promising opportunities for Canadian businesses and workers," Minister of International Trade Peter Van Loan said in a press release. A department official added that trade between the countries has more than doubled in the last decade.

Experts on the region say Canada has something to offer the Honduran government beyond its tariff-free goods: legitimacy. After the ousting of leftist President Manuel Zelaya in a 2009 coup and the election of Porfirio Lobo's centre-right government, Honduras has been shunned by many of its neighbours and is seeking allies. Canada's involvement in the talks signals its acceptance of the government, granting it a degree of legitimacy.

Negotiations between Canada and the CA4 began in 2001, with 10 rounds held before the talks stalled in 2004. After the U.S. signed its own agreement with Central American countries in 2005, more talks began in 2009 and 2010 before Canada and Honduras broke away from the CA4 for bilateral talks.

Canada is interested in Central American telecommunications, environmental equipment, automotive goods and construction equipment.

Atala v. Chile en el sistema interamericano de derechos humanos

Macarena Sáez

(English translation follows)

El caso abre una nueva etapa en la lucha por la igualdad de género.

En el año 2004, la Corte Suprema de Chile le quitó a la jueza Karen Atala la custodia de sus hijas menores de edad por considerar que la aceptación de su lesbianismo y la convivencia con una pareja de su mismo sexo la inhabilitaban para vivir con ellas. Este fallo, violatorio del derecho chileno y del derecho internacional de los derechos humanos, revocó la custodia de sus hijas ganada en el proceso judicial anterior frente a los tribunales de menores y la Corte de Apelaciones correspondiente. La jueza Atala presentó ese mismo año una denuncia ante la Comisión Interamericana de Derechos Humanos (CIDH) en contra de Chile. La Comisión emitió a mediados del año 2010 el Informe de Fondo en el caso Atala, donde estableció que la Convención Americana sobre Derechos Humanos prohibía la discriminación en razón de la orientación sexual de un individuo. Dado que Chile no cumplió con las recomendaciones para reparar el daño causado a la jueza Atala y a sus hijas, la CIDH presentó una demanda frente a la Corte Interamericana de Derechos Humanos (CorteIDH) en contra de Chile, proceso que se encuentra actualmente pendiente.

La justificación formal entregada por la Corte Suprema para revocar la custodia fue que Atala había puesto sus propios intereses por sobre los de sus hijas al decidir vivir con una pareja del mismo sexo, y que las menores debían "vivir y desarrollarse en el seno de una familia estructurada normalmente y apreciada en el medio social, según el modelo tradicional que le es propio…"

El fallo de la Corte Suprema puso a Chile en incumplimiento de las obligaciones internacionales establecidas en la Convención Americana sobre Derechos Humanos al discriminar a la jueza Atala en razón de su orientación sexual. De acuerdo al estándar establecido con este fallo, en igualdad de condiciones una persona puede ser madre y vivir con una pareja heterosexual, pero no puede ser madre y vivir con una pareja del mismo sexo. La maternidad y la orientación sexual serían, por lo tanto, incompatibles, obligando a las madres lesbianas a decidir vivir en una permanente mentira para seguir cerca de sus hijos, o vivir de acuerdo a su orientación sexual renunciando a ellos.

La CorteIDH debe ahora confirmar las conclusiones de la Comisión en cuanto que la orientación sexual es una categoría cubierta por el principio de no discriminación de la Convención Americana sobre Derechos Humanos. Esperamos que la corte concluya que en este caso, entre otras violaciones de derecho internacional, se discriminó a la jueza Atala en razón de su orientación sexual y se violó el derecho a la privacidad y el derecho a la familia tanto de ella como de sus hijas, y condene a Chile no sólo a reparar el daño causado directamente a las víctimas, sino a establecer medidas suficientes para que nunca más la Corte Suprema de Chile u otro órgano del estado puedan discriminar en base a la orientación sexual de una persona.

El argumento más utilizado para justificar la decisión de la Corte Suprema ha sido que se basó en el interés superior de las niñas. Este es un argumento que sigue logicamente esta misma sentencia de la Corte Suprema, y que se basa en el desconocimiento de este importante principio del derecho internacional. La imposición del interés superior de los niños como criterio central en las decisiones que involucran a menores ha sido un avance fundamental del derecho internacional, con gran influencia a nivel nacional. Este principio, sin embargo, no es una bolsa vacía que permite a los jueces tomar decisiones de acuerdo a sus propias concepciones del bien. El derecho internacional ha dado lineamientos claros sobre cómo aplicar dicho principio. El interés superior del niño exige el respeto a la diversidad familiar, a la privacidad del hogar, a que no se separen las familias y a que se escuche a los menores de acuerdo a su edad. Todo esto se hizo en el juicio de custodia que la jueza Atala ganó en las instancias correspondientes. Contrariamente, ninguno de estos elementos fue utilizado por la Corte Suprema de Chile.

El daño que el fallo de la Corte Suprema provocó a la jueza Atala y a su familia es irreparable. La CorteIDH, sin embargo, tiene la posibilidad de condenar a Chile por las actuaciones violatorias del derecho internacional por parte de la Corte Suprema chilena y ordenar que se compense a las

víctimas por este daño irreparable. La CorteIDH tiene, además, la oportunidad única de entregar lineamientos claros respecto del contenido del derecho a la igualdad en la región, declarando enfáticamente que la Convención Americana valora a todas las familias en igualdad de condiciones, y que la orientación sexual es tan irrelevante para determinar la custodia de los hijos, como lo es la raza, el sexo u otras condiciones sociales.

Macarena Sáez es abogada en Chile y Profesora de Derecho en la American University Washington College of Law, *EE.UU. También es miembro de Libertades Públicas A.G., una asociación gremial de abogados chilenos que defiende la libertad de expresión y los derechos de las minorías, interviniendo en procesos judiciales y en el debate público.*

Karen Atala v. Chile in the inter-American human rights system

Macarena Sáez

The case opens a new stage in the struggle for gender equality.

In 2004, the Chilean Supreme Court rescinded from judge Karen Atala custody of her minor children, decreeing that as a lesbian living with a same-sex partner, she was unfit to live with them. This ruling, a violation of Chilean law and international human rights law, revoked the custody of her daughters that she had won in previous trials in juvenile court and the corresponding appeals court. That same year, Atala filed a complaint with the Inter-American Commission on Human Rights against Chile. Midway through 2010, the Commission issued a Merits Report on the case in which it set forth that the American Convention on Human Rights prohibited discrimination based on an individual's sexual orientation. Given that Chile did not comply with the recommendations to repair the damage caused to Atala and her daughters, the Commission filed an application before the Inter-American Court of Human Rights against Chile, for which process is currently pending.

The formal justification put forth by the Supreme Court to revoke custody was that Atala had put her own interests before those of her daughters when she decided to live with a same-sex partner, and that the minor children should "live and develop in a normally structured family that is valued in the social milieu, in accordance with the appropriate, traditional model…"

The Supreme Court decision placed Chile in breach of the international obligations established in the American Convention on Human Rights by discriminating against Atala due to her sexual orientation. In accordance with the standard established by this ruling, under equal conditions, a person can be a mother and live with a heterosexual partner, but cannot be a mother and live with a same-sex partner. Motherhood and sexual orientation would be, therefore, incompatible, obliging lesbian mothers to live a permanent lie to keep their children, or live according to their sexual orientation and give up their children.

The Inter-American Court must now confirm the conclusions of the Commission with respect to whether sexual orientation is a category covered by the non-discrimination principle of the American Convention on Human Rights. We expect the Court will conclude that in this case, among other international human rights violations, Atala was discriminated against due to her sexual orientation and that her and her children's right to privacy and to a family were violated. We expect, furthermore, that Chile will be ordered not only to repair the direct damage caused to the victims, but also to implement sufficient measures so that neither the Supreme Court of Chile nor any other government body can ever again discriminate based on a person's sexual orientation.

The argument most commonly used to justify the Supreme Court ruling has been that the decision was based on the best interests of the children. This is an argument that does not logically follow that very same Supreme Court ruling, and which is based on the ignorance of this important principle of international law. The imposition of the best interests of the

children as a central criterion in decisions involving minors has been a fundamental advance in international law and has greatly influenced legal thinking on a national level. However, this principle does not exist in an ethical vacuum that allows judges to make decisions based on their own ideas of what is right. International law has provided clear guidelines on how to apply the principle. The best interest of the child requires respect for family diversity, the privacy of the home, the belief that families should not be separated and that one should listen to minors while taking into account their age. All this was done in the custody trial that Atala won in the pertinent jurisdictions. In contrast, none of these elements were used by the Chilean Supreme Court when it overruled the case.

The damage that the Supreme Court decision had on Atala and her family is irreparable. The Inter-American Court, however, has the opportunity to condemn Chile for the Supreme Court's violations of international law and order that the victims be compensated for this irreparable damage. The Inter-American Court also has the unique opportunity to deliver clear guidelines on the content of the right to equality in the region, by declaring emphatically that the American Convention values all types of families equally, and that sexual orientation is as irrelevant in determining child custody as are race, sex or any other social condition.

Macarena Sáez is a lawyer in Chile and Professor of Law at the American University Washington College of Law. She is also a member of Libertades Públicas A.G.*, a professional association of Chilean lawyers who defend freedom of expression and minority rights and participate in judicial proceedings and public debate.*

Guatemalan temporary workers in Canada

Federico Urruela

The new Guatemalan guest worker program is a win-win.

Foreword

Since 2003, Guatemala and Canada have productively implemented the mechanism of a temporary guest worker program, which has grown to 4,000 workers in 2010. With few exceptions, the program has been a success for the guest workers and employers alike, with only a handful of complaints filed with the Consulate. Recognizing its growing importance, the Guatemalan government opened a fully staffed Consulate General in Montreal in 2005, with its main raison d'être being the well-being, consular management and care of the Guatemalan workers. The country's institutions maintain close communication with their Canadian federal and provincial counterparts, and are pleased that new Canadian regulations on Immigration and Refugee Protection are coming into effect in April 2011 that will amend the current ones and seek to better protect foreign workers' rights. Although not perfect, this program continues to be fine-tuned and to grow in Canadian provinces with the full involvement of responsible authorities and stakeholders on all sides. Guatemalan workers enjoy the benefits of working temporarily in Canada and return home with financial savings and more work experience, while employers have grown to rely on dedicated workers.

Georges de La Roche, Guatemala's Ambassador to Canada.

The guest worker program that has brought temporary Guatemalan workers to Canada to work on farms is regulated by the International Organization for Migration (IOM); the initiative was not negotiated bilaterally between the two governments. The IOM is the principal and foremost recognized intergovernmental organization in the field of migration and is currently managing the program. The Guatemalan ministries of Foreign Affairs and Labour closely monitor and regulate both ends of the program, and in the past when Canadian companies sent representatives to recruit directly in Guatemala, they always did so under supervision and in accordance with the established practices of the program. The Guatemalan government has been working with the IOM to improve recruitment procedures to respond to some shortcomings. Guatemalan authorities have also worked closely with Canadian counterparts, notably leading to the August 2010 removal of a C$400 deposit paid by guest workers to the IOM in response to concerns raised by the Department of Human Resource and Skills Development Canada to the Guatemalan Ministry of Foreign Affairs.

It is important to note that temporary foreign workers, just as any local Canadian employees, are subject to the provincial labour codes, and as such, Guatemalan workers are paid the same wages that a local employee would receive for the same job. In agriculture, the provincial minimum wage is applied; however, in some sectors such as dairy and pork farms (one per cent of the Guatemalan temporary workforce in 2010), wages are higher. For example, hourly minimum wages in Quebec are $9.50 per hour, but a Guatemalan temporary worker on a dairy farm earns $11.78 per hour.

Due to the nature of the program, there are differences in the deductions made to Guatemalan workers vis-a-vis other

temporary foreign workers; Guatemalan workers pay for housing only, since their airfare, work visa, recruitment fees and most local transportation costs are completely covered by the employer. These costs may actually exceed the expenses of hiring locally. The hiring of temporary foreign workers, regardless of the country of origin, is thus not inexpensive. In fact, these added costs demonstrate the labour shortages Canadian growers cope with in order be competitive. However, their investment is worthwhile, and since 2003 the hiring of Guatemalan workers has been largely a win-win situation for workers and employers alike.

Guatemalan temporary foreign workers are entitled to the same labour rights as are Canadian workers, and have the right to an impartial assessment prior to a migrant worker's possible repatriation following dismissal by an employer. In fact, a worker being laid off does not equate to an automatic deportation, as only Citizenship and Immigration Canada has the authority to deport an individual from Canada. If a temporary foreign worker is fired, the worker has the right to remain in Canada if he or she so chooses, given his or her visa is still valid, because being dismissed does not constitute an offence. This is something that consular staff oversees closely; following lay off, Guatemalan workers would be advised that they may remain in Canada and that their dismissal in no way constitutes an automatic deportation. They may also be referred to the pertinent provincial labour ministry, in the event that they consider their dismissal unwarranted or unlawful. Particular labour situations are managed on a case-by-case basis with the involvement of all parties.

Last summer, the Quebec *Commission des normes du travail* completed a series of visits to Quebec farms that employ temporary guest workers. In all, it visited more than 80 farms and spoke with almost 1,700 temporary foreign workers, of which 718 were Guatemalan. Despite overwhelmingly positive working conditions, the commission noted that most workers were not well aware of their rights, an issue that had already been raised by United Food and Commercial Workers Canada (UFCW). The Government of Guatemala applauds these outreach initiatives and strongly believes that an active participation from the local labour authorities is imperative in guaranteeing safe and dignified working conditions for all temporary foreign workers.

The financial benefits of working in Canada for temporary workers are not to be underestimated. Two weeks' salary in Canada can be close to what a Guatemalan would earn doing similar work in half a year in his home country. Since most often contracts guarantee a minimum 40-hour work week, Guatemalan guest workers can make more than C$1,500 per month. By contributing to the federal Employment Insurance fund, Guatemalan temporary workers get access to parental benefits, although it has at times been challenging to find logistical solutions to cash the cheques back in Guatemala. This positive economic impact is augmented by the fact that the program typically employs married men and women with children who, via their remittances, support their immediate families back home and return to Guatemala with hands-on experience of the daily workings of a farm. The circular migratory aspect of the program is thus immensely beneficial and, unlike unregulated immigration elsewhere, Guatemalan workers return home by season's end with increased savings and experience to reunite with their families.

Federico Urruela is Consul General of Guatemala in Montreal.

Environment

LAC holds biggest loss for forest coverage

Latin America and the Caribbean recorded the highest net forest loss of any region in the world over the last decade, according to the United Nations Food and Agriculture Organization's report, *State of the World's Forests 2011*.

With nearly half its territory covered in forest that represents 22 per cent of the world's forested area, the region had the most to lose, with agriculture and urbanization as the leading causes of decline. While forest area decreased in Central and South America, the decline slowed, with Chile, Costa Rica, Uruguay and the Caribbean increasing their wooded areas.

The region holds 57 per cent of the world's primary forests, which account for 75 per cent of its total forested areas. Although planted forests have expanded over the last decade, their proportion is still significantly below the world average.

Woodlands cover 34 per cent of North America, representing 17 per cent of the world's forests. A net gain in U.S. forest area cancelled out a decline in Mexico and a stable Canada to place the region in the black over the last 20 years. Fifteen per cent of North American forests are designated for the conservation of biological diversity, compared to 14 per cent in Latin America and the Caribbean and 12 per cent worldwide.

While global employment in forestry declined between 1990 and 2005, Latin America and the Caribbean saw it rise by 3.4 per cent from 2000 to 2005. The region has more than 350,000 full-time jobs in the primary production of goods from forests, excluding employment in wood processing industries.

Le conflit Colombie-Venezuela : beaucoup de bruit pour rien?

Hugo Loiseau

(English translation follows)

À l'été 2009, Bogotá et Caracas ont frôlé le conflit armé, ce que des démocraties plus fortes auraient pu éviter.

La plus grande menace à la paix et à la stabilité en Amérique latine réside encore et toujours dans le manque de démocratie et le non-respect de ses principes et institutions, tel que démontré par le conflit qui a opposé la Colombie au Venezuela durant l'été 2009. Une guerre interétatique en Amérique du Sud aurait-elle pu éclater en l'absence des mécanismes démocratiques et diplomatiques? Cette presque guerre demeure à ce jour révélatrice des nombreuses tensions que vit la région des Andes.

Il est utile de rappeler que le principal problème de sécurité de cette région réside dans la nature transnationale de deux enjeux majeurs: la production et le trafic de drogues et la présence des Forces armées révolutionnaires de Colombie (FARC). Ces deux enjeux débordent chez les pays limitrophes soit à cause de l'absence d'autorité étatique dans les zones frontalières soit grâce à la bienveillance à peine cachée de certains pays notamment à propos de la présence des FARC sur leur territoire.

S'ajoute à ce contexte un malaise historiquement profond quant à la question de la délimitation des frontières ou de l'administration de territoires contestés. La Colombie et le Venezuela entretiennent en effet un contentieux sur l'administration des îles Los Monjes mais aussi, et surtout, à propos de la frontière terrestre entre les deux pays, une frontière qui fait plus de 2 000 km en territoire accidenté. Ces contentieux alimentent les revendications, les accusations et les mouvements de troupes des deux côtés. Une tension latente aux frontières et une méfiance quant aux intentions réelles de l'autre handicapent ainsi les efforts de rapprochements.

Par ailleurs, malgré la présence d'un cadre régional propice à leur mise en œuvre, les mesures de confiance, favorisant la coopération et le dialogue, sont peu appliquées ou sans effet sur certains pays de la région. En effet, l'Organisation des États américains a mis en place toute une série de normes et de traités afin d'améliorer la confiance, de nourrir le dialogue et d'encourager la transparence en matière de sécurité régionale. Parmi celles-ci, on retrouve les mesures concernant la publication de livres blancs de la défense contenant les doctrines militaires et l'état des forces, la coordination entre différentes forces armées, des rencontres régulières des ministres de la défense de la région, la transparence dans les achats d'armes et d'équipements militaires.

Le principal défaut de ces mesures, c'est qu'elles se déploient dans un cadre interaméricain où les États-Unis prennent beaucoup de place et agissent en fonction d'intérêts stratégiques. Le Sommet des Amériques d'avril 2009 en offre un exemple éloquent. D'un côté, les États-Unis affichaient une ouverture et un intérêt pour la région et promettaient d'établir les bases d'une nouvelle relation d'égal à égal, tant attendue à l'époque, avec l'Amérique latine. De l'autre côté, Washington négociait en même temps avec Bogotá, en toute discrétion, la location et l'utilisation de sept bases militaires sur le territoire colombien. Cette entente bilatérale tout à fait légale en regard du droit international, intitulée *Accord complémentaire pour la coopération et l'assistance technique en matière de défense et de sécurité*, a pour objectif d'améliorer la coopération entre les deux pays en matière de lutte contre le terrorisme et le narcotrafic dans la région. Toutefois, l'ex-président colombien Álvaro Uribe et son administration n'ont pas consulté le parlement sur cette question polémique ce qui aurait augmenté la légitimité de la décision et rassuré quant aux intentions de la Colombie. Ainsi, le dévoilement en juillet 2009 par Bogotá de la location de ces bases militaires colombiennes aux Forces armées des États-Unis a semé une forte inquiétude chez les pays latino-américains et a été perçu par Caracas comme un véritable *casus belli*.

C'est à ce moment que les exagérations verbales, les ardeurs belliqueuses et les dérives autoritaires du président vénézuelien Hugo Chávez ont failli déclencher un conflit armé. Lors de son émission dominicale *Aló Presidente* (que toutes les télévisions et radios du Venezuela sont obligées de diffuser en direct et en totalité), Chávez n'hésite pas à déclarer : « Si les États-Unis agressent militairement le Venezuela, la guerre de 100 ans commencera et elle s'étendra sur l'ensemble du continent

Photo: U.S. Department of State

La Secrétaire d'État américaine Hillary Rodham Clinton rencontre le Président colombien Álvaro Uribe à la Plaza de Armas de la Casa de Nariño, Bogotá, Colombie, 9 juin 2010.

[…] ». Les choses se précipitent durant le reste de l'été 2009 avec le rappel des ambassadeurs, le gel des relations commerciales bilatérales, la mobilisation des troupes aux frontières et les gestes symboliques de rupture de la part du Venezuela, tout cela grâce à la concentration des pouvoirs militaire, législatif et juridique autour du président Chávez. Heureusement, cette crise a révélé avec acuité le rôle stabilisateur du Brésil dans la région, mais aussi l'utilité de l'Union des nations sud-américaines (UNASUR), organisation relativement nouvelle en quête de crédibilité. La diplomatie sud-américaine, et dans une moindre mesure internationale et interaméricaine, a bien fonctionné dans ce cas-ci. La situation a été momentanément stabilisée sans être réglée pour autant.

L'élection de Juan Manuel Santos à la présidence de la Colombie en juin 2010 a été essentielle pour que le dialogue de haut niveau soit renoué entre les deux pays. Une réconciliation au sommet s'en est suivie au début août 2010. Mais le plus important, et le plus ironique dans cette crise, se retrouve dans l'intervention de la justice colombienne. En effet, la Cour constitutionnelle a invalidé l'entente de location des bases militaires à la fin août 2010, car la procédure de ratification des accords internationaux, nécessitant la participation du législatif, n'avait pas été respectée. L'entente est donc inconstitutionnelle quant à sa forme. Elle demeure donc en suspend, le temps que l'exécutif décide si elle sera soumise à l'approbation des parlementaires colombiens. Puis, la Cour constitutionnelle doit encore statuer sur le fond, car plusieurs articles de l'entente sont contestés par des groupes de défense des droits de l'homme en Colombie.

Durant l'été 2009, les ingrédients ont été réunis pour qu'une guerre éclate entre la Colombie et le Venezuela. Pourtant, malgré les menaces et les problèmes transnationaux, un conflit armé ne s'est pas matérialisé grâce à la diplomatie et aux mécanismes démocratiques et judiciaires. En effet, l'élection sans bavure de Juan Manuel Santos en Colombie près d'un an après le déclenchement du conflit et le respect de l'état de droit par son administration ont apaisé les tensions. Toutefois, rien ne dit que les litiges entre les deux pays ne connaîtront pas une recrudescence au cours des prochaines années. L'incertitude quant à la location des bases militaires, la poursuite de la militarisation de la guerre civile en Colombie et l'instrumentalisation politique des problèmes au Venezuela ne vont pas disparaître du jour au lendemain. D'ailleurs, les tensions aux frontières demeurent, les dérives autoritaires du président Chávez se multiplient, les FARC sont certes affaiblies, mais ne sont pas encore pacifiées. Enfin, la politique états-unienne dans la région semble incohérente, voire inconséquente, ce qui fragilise, à n'en pas douter, la sécurité régionale andine.

Hugo Loiseau est Professeur adjoint à l'École de politique appliquée de l'Université de Sherbrooke. Il détient un doctorat de l'Université Laval.

The Colombia-Venezuela conflict: Much ado about nothing?

Hugo Loiseau

Stronger democracies could have avoided the escalation of the dispute that erupted in the summer of 2009.

The greatest threat to peace and stability in Latin America still and always stems from a lack of democracy and the disregard for its principles and institutions, as evidenced by the conflict that pitted Colombia and Venezuela against each other in the summer of 2009. Could an inter-state war in South America have broken out in the absence of democratic and diplomatic mechanisms? To this day, this near-war situation highlights the many tensions present in the Andean region.

It is worth noting that the principal security problem of the region resides in the transnational nature of two major issues: drug production and trafficking and the presence of the Revolutionary Armed Forces of Colombia (FARC). Both issues spill over into adjacent countries either because of the absence of a state authority in border regions or thanks to the barely disguised benevolence of some countries regarding the presence of FARC members on their territory.

Added to this context is a deeply rooted historical malaise regarding the delimitation of borders or the administration of disputed territories. In fact, Colombia and Venezuela are in a dispute not only over the administration of the Los Monjes islands, but also most significantly over their shared land border consisting of more than 2,000 kilometres of rugged terrain. These disputes fuel the claims, accusations and the movement of troops on both sides. Latent tension along the border and a mistrust of the real intentions of "the other" are creating a serious roadblock to reconciliatory efforts.

Moreover, despite the presence of a regional framework favourable to encouraging their implementation, confidence measures that prioritize co-operation and dialogue are either seldom applied or of little effect on some countries in the region. In fact, the Organization of American States (OAS) has implemented a series of norms and treaties to build confidence, foster dialogue and encourage transparency in the area of regional security. These include measures regarding the publication of Defence White Papers that contain military doctrines and reports on the state of military forces, co-ordination between various armed forces, frequent meetings between the region's defence ministers and transparency in the purchase of arms and military equipment.

The principal setback of these measures is that they are deployed within an inter-American framework in which the United States plays a dominant role and acts according to strategic interests. The Summit of the Americas held in April 2009 provides a telling example of the situation. On the one hand, the U.S. displayed an openness and an interest in the region and promised to establish the bases for new relations on an equal footing —highly anticipated at the time— with Latin America. On the other hand, Washington had, in the meantime, entered into negotiations behind closed doors with Bogotá regarding the lease and use of seven military bases on Colombian soil. This bilateral agreement, which is entirely legal according to international law, entitled *Supplemental Agreement for Co-operation and Technical Assistance in Defense and Security*, is intended to improve co-operation between both countries with respect to the war on terrorism and narco-trafficking in the region. However, former Colombian President Álvaro Uribe and his administration failed to consult the Colombian parliament regarding this controversial issue. Doing so would have enhanced the legitimacy of the decision and would have conveyed a message of reassurance concerning Colombia's intentions. Consequently, the July 2009 announcement by Bogotá that it would lease the Colombian military bases to the United States Armed Forces was cause for concern in Latin American countries and was perceived by Caracas as a true *casus belli*.

It was at this point that the verbal exaggerations, warlike fervour and authoritarian rants of Venezuelan President Hugo Chávez nearly caused the outbreak of an armed conflict. During his regular Sunday talk show, *Aló Presidente* (which all Venezuelan television and radio stations are required to broadcast live and in its entirety), Chávez blatantly declared: "If the U.S. were to attack Venezuela militarily, it would be the start of a 100-year war that would extend across the entire continent […]." The situation worsened over the remainder of the summer of 2009, leading to the recall of ambassadors, the

freezing of bilateral trade relations, the mobilization of troops along the border and the symbolic acts of rupture of foreign relations on Venezuela's part. These events occurred thanks to the concentration of military, legislative and judicial powers in the hands of President Chávez. Fortunately, the crisis aptly demonstrated Brazil's stabilizing role in the region, as well as the effectiveness of the Union of South American Nations (UNASUR), a relatively new organization looking to gain credibility. South American diplomacy, and, to a lesser extent, international and inter-American diplomacy, proved successful in this situation. Nonetheless, although the situation was momentarily stabilized, it remained unresolved.

The election of Juan Manuel Santos to the Colombian presidency in June 2010 was key to the renewal of serious dialogue between the two countries. Subsequently, there was an act of reconciliation at the summit in early August 2010. Most importantly, however, the most ironic occurrence during the crisis was the decision of the Colombian courts. In fact, the Constitutional Court invalidated the agreement concerning the lease of military bases in late August 2010, since the procedure for the ratification of international agreements —requiring the participation of the legislative body— had not been respected. The agreement is, therefore, unconstitutional in its form. It remains in abeyance, while the executive branch decides whether the question should be put to members of the Colombian parliament for their approval. In addition, the Constitutional Court must still rule on the merits of the agreement, since many of its articles are being contested by human rights groups in the country.

In the summer of 2009, all ingredients were in place for a war to break out between Colombia and Venezuela. Nonetheless, in spite of the threats and transnational problems, an armed conflict did not materialize thanks to diplomacy and to democratic and legal mechanisms. Furthermore, the conflict-free election of Juan Manuel Santos in Colombia nearly a year after the crisis began and his administration's respect for the rule of law did much to appease tensions. However, nothing can guarantee that the disputes between the two countries will not see a resurgence over the next few years. The uncertainty over the location of the military bases, the continued militarization of the civil war in Colombia and the political instrumentalization of Venezuela's problems will not disappear overnight. Furthermore, border tensions remain high, the authoritarian rants of President Chávez are becoming more frequent, and the FARC organization has certainly been weakened, but is not yet open to peace. Finally, U.S. policy in the region seems inconsistent and even of little consequence, which is undoubtedly weakening Andean regional security efforts.

Hugo Loiseau is adjunct professor at the École de politique appliquée at the Université de Sherbrooke. He holds a doctorate from Université Laval.

Derechos indígenas en Argentina

Maria Delia Bueno

(English translation follows)

Las primeras naciones enfrentan la falta de implementación.

En noviembre de 2010, la policía argentina reprimió en La Primavera, provincia de Formosa, un movimiento de la comunidad indígena Toba Qom que pretendía hacer visible su reclamo de tierras comunitarias por medio de un corte de ruta que duró casi cuatro meses. Este hecho demostró la falta de reconocimiento efectivo de las autoridades de la comunidad y de sus derechos territoriales, la criminalización de sus lideres y los graves problemas de disfrute de derechos económicos, sociales y culturales —acontecimientos a los que los poderes públicos no fueron ajenos. Aunque el reconocimiento de los derechos de los pueblos indígenas se inició en la Argentina hace más de dos décadas, no ha dado una solución de fondo porque su ejercicio no está garantizado.

Los derechos de los pueblos indígenas se plasmaron en la Constitución Nacional Argentina de 1994, en constituciones provinciales y en otras leyes precedidas por la *Ley sobre Política Indígena y Apoyo a las Comunidades Aborígenes* de 1985. Pese al nuevo clima reinante, las primeras naciones enfrentan la falta de implementación y la tortuosa relación con el Estado. Los reclamos sobre tierras, territorios y recursos naturales de las comunidades indígenas —cuestión central a focalizar— continúan y se complejizan.

El sistema de propiedad del suelo programado por el Estado después de la conquista no contempló las formas indígenas. Al carecer de protección legal, las comunidades quedaron a merced de apropiadores, administradores y autoridades locales y, como consecuencia del atropello y la destrucción de su base productiva tradicional de autosuficiencia alimentaria, fueron empujadas a zonas remotas y aisladas o a las ciudades.

Hoy en día, las tierras aprovechadas para la caza, pesca, recolección de frutos, agricultura, crianza de pequeños animales o destinadas a cementerios y lugares sagrados, son codiciadas para desarrollar grandes emprendimientos: industria maderera y extractiva, explotación de recursos mineros e hidrocarburos y de recursos naturales, construcción de ductos y carreteras, expansión de la agricultura a gran escala, represas, y turismo. El detrimento de tierras y aguas provoca el desequilibrio y la destrucción del medio ambiente. Se producen desalojos, desplazamientos, usurpaciones, hostigamientos y malestar permanentes.

De hecho, en Argentina todavía coexisten dos sistemas jurídicos: el de las sociedades preexistentes y el implantado por los conquistadores, que es administrado por el Estado. Los sistemas indígenas son consuetudinarios, no formales, de tradición oral y basados en la cultura y en las prácticas grabadas en una memoria histórica que ninguna autoridad centralizada impuso ni regula. La propiedad de la tierra es colectiva o comunitaria y las parcelas, flexiblemente delimitadas, no habían sido mensuradas antes de la ocupación originaria. Es inalienable, se transmite históricamente a los descendientes y está destinada al desarrollo del grupo a través de una relación espiritual profunda.

En cambio, los sistemas europeos son legales o formales, de tradición escrita, impartidos y administrados por el gobernante, burocráticos y estandarizados. La propiedad de la tierra, relevada y demarcada, es individual o privada. Figura a nombre de su titular y es enajenable. Importa riqueza o cosa productiva destinada a la circulación y al lucro en el mercado inmobiliario mediante relaciones jurídicas.

Asimismo, el Derecho Consuetudinario difiere sustantivamente de las grandes familias jurídicas occidentales (Common Law y Derecho Civil). Posee tradición, fuentes, accesos, constelación de valores, conceptos, racionalidad y carece de órganos específicos de producción normativa, datos configurantes de un sistema jurídico. El punto central del asunto no es la existencia o el reconocimiento del Derecho Consuetudinario sino su recepción por el derecho nacional.

Pero el derecho estatal argentino es monocultural y ciego a la diversidad. Aunque en 1994 se reconoció que el país es multiétnico donde existe un Derecho Consuetudinario indígena, lo diverso no tiene cabida en un sistema occidental y único que desconoce el pluralismo jurídico y niega lo distinto.

Como los pueblos indígenas viven en una sociedad mayor dentro de un Estado legalmente organizado, se producen intersecciones entre sus costumbres y la ley. Por ser diferente el concepto de propiedad en ambos sistemas, en algunas provincias se llama "fiscaleros" a los ocupantes precarios de tierras fiscales (antiguos territorios indígenas cuyo titular pasó a ser el Estado). Sin embargo, por mandato constitucional ellos son legítimos propietarios de las tierras, que deberían ser registradas a su nombre.

En cuanto a los derechos territoriales para frenar los lanzamientos, en 2006 se dictó la *Ley de Emergencia en materia de Propiedad y Posesión de las Tierras* que tradicionalmente ocupan las comunidades indígenas originarias. Esta ley fue prorrogada hasta el año 2013 y en su cumplimiento, el Instituto Nacional de Asuntos Indígenas —organismo rector dependiente del Ministerio de Desarrollo Social— ejecuta el Programa Nacional de Relevamiento Territorial de Comunidades Indígenas. Dicho relevamiento comprende el reconocimiento del terreno, la agrimensura y el registro de la propiedad inmueble para la titularización de las tierras ancestrales. Esta operación, que reconoce el Derecho Consuetudinario y contempla la cartografía cultural, se funda en el Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes, ratificado por Argentina mediante la ley de 1992 y reconocido en la Constitución Nacional.

Lejos de traer soluciones integradoras y definitivas, su ejecución ha agitado los conflictos y los intereses en juego. Existen superposiciones, violaciones, obstáculos, demoras y cuestionamientos de las comunidades por deficiente participación indígena. Las instituciones han sido asimilacionistas y las respuestas, paternalistas. Las comunidades parecen foráneas en sus territorios natales. Los derechos territoriales e identitarios consagrados, en vez de aplicarse, se reemplazan por planes o programas voluntaristas y asistencialistas. El reconocimiento de los derechos indígenas exige nuevas estrategias, pero no hay formación

ni empoderamiento para su ejercicio y goce. Se nota excesiva litigiosidad y vulnerabilidad, con ausencia de sensibilización en los argentinos.

Argentina podría considerar las lecciones aprendidas en Canadá, donde se han institucionalizado los reclamos sobre la tierra y sus recursos naturales a través de reivindicaciones integrales y específicas. Dos vías abordan estas demandas: los tratados, que son fuente para resolver antiguos reclamos y disputas pendientes y la negociación, método alternativo y opcional de resolución de conflictos que evita la instancia judicial y que las cortes promueven en beneficio de todos los canadienses. Se notan potentes desarrollos y gran pericia en los operadores y servidores —líderes, funcionarios, profesionales, académicos—, con concientización de la sociedad canadiense.

Además, Canadá ha desarrollado los Estudios Aborígenes desde el enfoque interdisciplinario y el abordaje holístico con despliegue de herramientas y estrategias descolonizantes. Sería auspicioso que en Argentina se instalaran, desde esta perspectiva, estudios indígenas sistemáticos no compartimentalizados que capitalizaran las experiencias canadienses para efectivizar los derechos reconocidos en beneficio de todos los argentinos.

Maria Delia Bueno es abogada en Argentina y asesora jurídica de la Organización de Naciones y Pueblos Indígenas de Argentina (ONPIA). También es miembro del Equipo de Investigación de Educación para la Paz, Facultad de Psicología, Universidad del Salvador. La autora puede ser contactada en: maria_delia _bueno@hotmail.com.

Indigenous rights in Argentina

Maria Delia Bueno

The country's native population does not fully enjoy its rights yet.

In November 2010, the Argentinean police suppressed a movement by the Toba Qom indigenous community from La Primavera, in the province of Formosa. The community was trying to bring attention to communal land claims by means of a roadblock that had lasted almost four months. The incident exposed the authorities' lack of genuine recognition of the community and its territorial rights, the criminalization of its leaders and the serious problems it faces in fully enjoying economic, social and cultural rights —issues that the government was aware of. Although the process of recognition of the rights of Indigenous Peoples in Argentina began over two decades ago, a lasting solution has not yet been found and the enjoyment of such rights is not guaranteed.

The rights of Indigenous Peoples were incorporated into Argentina's National Constitution in 1994 as well as in provincial constitutions and other laws that followed the 1985 law on Indigenous Policy and Aboriginal Community Support. Despite the new prevailing climate, Indigenous Peoples face the lack of implementation of such laws and a tortuous relationship with the government. Indigenous community claims on land, territories and natural resources —the main points of contention— are ongoing and increasingly complicated.

The land ownership system that was established by the state after the Spanish conquest did not account for indigenous systems. Without legal protection, communities were at the mercy of local expropriators, administrators and authorities. As a result of the treatment and destruction of their traditional production base for food self-sufficiency, Indigenous Peoples were pushed out to remote and isolated areas or into cities.

Today, lands that are used for hunting, fishing, fruit gathering, agriculture and raising small animals, or areas destined for cemeteries and sacred places, are sought after for major development projects. These include the logging and extractive industries; the exploitation of mineral, hydrocarbon and natural resources; the construction of pipelines, roads and dams; large-scale agricultural expansion; and tourism. Damage to lands and water causes environmental imbalance and destruction. The result leads to evictions, displacements, expropriations, harassment and permanent discontent.

Indeed, two legal systems still coexist in Argentina: the first comes from pre-existing societies, whereas the second was introduced by the conquerors and is administered by the state. Indigenous systems are customary, informal oral traditions that are based on the culture and practices recorded in historic memory rather than those imposed or regulated by a central authority. Ownership of the land is collective or communal, and plots of land, having flexible boundaries, were not measured before the Conquest. This type of ownership is historically transmitted to descendants and is nontransferable, as the land is destined for the group's

development through a deep spiritual relationship.

By contrast, European systems are legal or formal written traditions enforced and administered by bureaucratic and standardized governments. Assessed and demarcated land ownership is individual or private, and the land held in the owner's name is transferable. Ownership implies wealth or productive property destined for distribution and profit in the real estate market through legal relationships.

Therefore, Customary Law differs considerably from the major Western legal families of Common Law and Civil Law. It offers tradition, sources and access as well as a constellation of values, concepts and rationality, but lacks the specific organizations for the production of norms that are found in formal legal systems. The crux of the matter is not the mere existence or recognition of Customary Law, but its full acceptance into national law.

However, Argentinean state law is mono-cultural and blind to diversity. Despite the fact that the country recognized its multi-ethnicity in 1994 and acknowledged the presence of indigenous Customary Law, there is no space for diversity into a Western system that does not know legal pluralism and negates difference.

Indigenous Peoples are part of an ancient society but live within a legally organized state, resulting in overlap between their customs and the law. Since the concept of property is different in both systems, in some provinces occupants of fiscal lands are called "fiscaleros" (rural squatter settlers) even though they are actually settled on ancient indigenous territories whose ownership was passed on to the government. Nevertheless, by constitutional mandate they are the legitimate owners of the land, which should be registered in their name.

An emergency law was enacted in 2006 in regard to property and the possession of lands traditionally occupied by the native indigenous communities in order to halt evictions related to territorial rights. This law has been extended until 2013. The National Institute of Indigenous Affairs, which is a governing organization dependent on the Ministry of Social Development, manages the National Program for Territorial Survey of Indigenous Communities. This survey includes land reconnaissance, land surveying and registration of real estate property for the title of ancestral lands. It is based on Convention No. 169 of the International Labour Organization regarding Indigenous and Tribal Peoples in Independent Countries, which was ratified by Argentina with the 1992 law and recognized in the National Constitution.

Instead of providing comprehensive and definitive solutions, the survey has agitated existing conflicts and interests. There are impositions, violations, obstacles, delays and challenges to the communities because of insufficient indigenous participation. Institutions have been assimilationist and their responses have been paternalistic. Indigenous communities are seen as foreigners on their own native lands. Instead of ensuring effective enjoyment of land and sacred identity rights, they are being replaced with voluntaristic and assistancialistic plans or programs. The recognition of indigenous rights demands new strategies, but there is no training or empowerment for the exercise and enjoyment of those rights. In addition to excessive litigation and vulnerability among indigenous communities, there is a lack of awareness of their situation among the greater Argentinean population.

Argentina could examine the lessons learned in Canada, where land and natural resource claims have been institutionalized through comprehensive and specific demands. These demands are approached in two ways: treaties, which are a source for resolving ancient claims and pending disputes; and negotiation, an alternative and optional method for resolving conflicts that avoids legal authority and is promoted by the courts for the benefit of all Canadians. There have been significant developments in this area and leaders, civil servants, professionals and academics have demonstrated their expertise, also making sure to raise awareness of the issues among Canadians.

Further, Canada has developed Native Studies programs with an interdisciplinary focus and holistic approach that offers tools and strategies for decolonization. From this perspective, it would be encouraging for Argentina to establish systematic indigenous studies that are not compartmentalized in order to benefit from Canadian experiences and make effective the rights that have been recognized for the benefit of all Argentineans.

Maria Delia Bueno, is an Argentinean lawyer and legal counsel for the Organization of Indigenous Nations and Peoples of Argentina (ONPIA). She is also a member of the Education for Peace Research Team, Faculty of Psychology, University of El Salvador. The author can be contacted at: maria_delia_bueno@hotmail.com.

ANNOUNCEMENTS

FOCAL launches Mapping Migration from the Americas

The Canadian Foundation for the Americas and the International Migration Research Centre have created a first-of-its-kind initiative to inform renewed dialogue and create policy options for development-sound migration programs. The interactive maps showcase data on temporary migration from Latin America and the Caribbean to Canada and help visualize flows, reveal trends, and identify related development issues. Please visit www.mappingmigration.com.

New health policy paper: Improving access to birth attention of marginalized populations in Peru

Janice N. Seinfeld

To reduce maternal mortality in Peru, economic, access and cultural barriers to institutional deliveries will have to be overcome. This policy paper analyzes these barriers and makes recommendations. The paper is available in English (http://bit.ly/dTFGkb) and Spanish (http://bit.ly/dWZnSc).

New education policy paper: Upper secondary education and the labour market in Colombia

María Margarita López

In Colombia, only a third of young people of upper secondary age —corresponding to Grades 10 and 11— are enrolled at this level. To resolve the situation, over the past decade government policy has aimed to facilitate a successful transition from Grade 11 toward both higher education and the labour market. This policy paper presents an outline of the measures adopted and uncovers some of their shortfalls. The paper is available in English (http://bit.ly/dRALzN) and Spanish (http://bit.ly/fraf3K).

École internationale d'été sur les Amériques

La 8e édition de l'École internationale d'été sur les Amériques, organisée par le Centre d'études interaméricaines de l'Université Laval, aura lieu du 8 au 14 mai 2011. Cette formation intensive présentera les grands enjeux de la coopération interaméricaine, avec une emphase particulière sur l'intégration, l'énergie, la criminalité, la sécurité et l'environnement. Inscrivez-vous avant le 1er avril 2011: http://www.cei.ulaval.ca/?id=807.

The Canadian Foundation for the Americas is an independent, non-partisan think-tank dedicated to strengthening Canadian relations with Latin America and the Caribbean through policy dialogue and analysis. FOCALPoint helps us accomplish our mission as a monthly publication combining news and analysis that reaches decision-makers, civil society, private sector, academics and students with an interest in the region. Our goal is to bring together diverse perspectives to make FOCALPoint a dynamic analytical forum.

FOCALPoint is undertaken with the financial support of the Government of Canada provided through the Canadian International Development Agency (CIDA).

Canadian Foundation for the Americas | Fondation canadienne pour les Amériques | Fundación Canadiense para las Américas

FOCAL

1, Nicholas Street, Suite 720
Ottawa, ON, K1N 7B7, Canada
Tel: 613.562.0005
Fax: 613.562.2525
Email: focal@focal.ca
www.focal.ca