

Interdisciplinary Collaboration on Land Restitution and Indigenous Rights
Supported by a UW Madison Global Studies Scholar Access Grant, Summer 2005

Mark Everingham
University of Wisconsin-Green Bay
everingm@uwgb.edu

This report describes an interdisciplinary project on the struggles of indigenous peoples for land restitution, territorial autonomy, and environmental protection. The research serves two purposes: to strengthen a network of scholars, practitioners, and leaders who are engaged in field work, policy debates, and indigenous organizations; and, to disseminate indigenous knowledge about land restitution as a path to self-governance and territorial autonomy as well as community development and control over natural resources. Indigenous strategies and initiatives in post-bellum Guatemala, post-revolutionary Nicaragua and post-Pinochet Chile raise questions about the responses of new and fragile democratic regimes. This focus contrasts with the federal recognition of Oneida tribal sovereignty in Wisconsin and New York after two centuries of land dispossession.

The project provides an opportunity for genuine interdisciplinary collaboration and considers the importance of land restitution in renovated and rejuvenated indigenous movements and communities. Comparative and historical themes cut across intellectual currents in political science, law, history, anthropology, and environmental studies. Historical views of land dispossession encounter a variety of colonial legacies, state interventions, and migration and settlement patterns that caused the expulsion or the dislocation of indigenous peoples. The international community identified the right to property as a fundamental human right in Article 17 of the Universal Declaration of Human Rights. Of course, the post-World War II period is replete with illegal dispossession and arbitrary expropriation of land and natural resources from indigenous peoples. Comparisons must now address the role of indigenous struggles in the definition of property rights and the design of democratic institutions within a neoliberal ethos.

Central questions guide the inquiry: How did the loss of land affect the cultural integrity and community solidarity of indigenous peoples? How does land restitution fit into a human rights-based approach to social justice? Does land restitution under democracy enable indigenous communities to receive redress for past abuses and to regain control over natural resources? What are the implications of international declarations and legal instruments on the rights of indigenous peoples for the integrity of the state? What are the alternatives for indigenous communities beyond national judicial processes and legislative initiatives? These questions are better answered with the active involvement of tribal officials, organizations either based in or linked to indigenous communities, and highly-trained practitioners and field workers who aim to integrate indigenous knowledge into policy solutions.

In November 2005, the University of Wisconsin-Green Bay and St. Norbert College, in collaboration with the Oneida Nation of Wisconsin, will sponsor 3rd International Social Justice Symposium entitled *Whose Land Is It? The Many Faces of Indigenous Rights and Land Claims*. Participants from Wisconsin and Latin America will address how indigenous communities initiate legal claims to restitution, link the preservation of culture to the preservation of nature, and manage land use and community development projects. Panels will feature Latin American

and North American indigenous perspectives on how land maintains the vital link between cultural systems, or ways of life, and biological systems, or ways of nature. Informational sessions will be geared toward accessible public education and participation.

The Institute of Indigenous Studies (IEI) at the University of the Frontier will lead a session on *Indigenous Struggles: Continuity and Change in Chile*. IEI conducts interdisciplinary research, teaching and outreach across indigenous and non-indigenous communities. The program on indigenous rights integrates diverse groups of professionals to raise awareness about indigenous justice and interethnic relations. The program also provides information to international agencies about violations of human and indigenous rights and contributes to representative organizations of indigenous peoples. Mapuche struggles reveal an evolving discourse from national integration to cultural autonomy in the late 20th century. The legislature passed a law in 1993 to protect the ownership of land, water, and other natural resources in indigenous regions. The Lagos administration appointed a special commission in 2000 to negotiate a proactive policy agenda. But, conflicts arose quickly over issues of territorial demarcation and the protection of forests, minerals, and coastal areas. European settlement since the late 19th century, timber, mineral and marine life extraction, and major infrastructure projects for roads, dams and tourism motivate indigenous claims on the frontier of Mapuche territory and the Chilean state. State authorities justify frequent and lengthy detentions of Mapuche organizers and protesters, including women and children, on the basis of state security and anti-terrorism.

Researchers and practitioners from the Population, Environment and Rural Development Studies of the Latin American Faculty of Social Sciences (FLACSO- Guatemala) will offer a session on *Maya resurgence in Guatemala: land conflicts and communal management after the civil war*. FLACSO is preparing to launch a special course on communal forestry in 2006 to train professionals and community leaders from Central America and Mexico in the field of communal forest development with the involvement of indigenous and non-indigenous rural social actors. The content will analyze the interaction of social and ecological systems and alternative techniques for the sustainable management of natural resources. Maya representatives of communal forestry projects in the Petén region and Juchanep in the department of Totonicapán will participate in the session. The 1996 peace agreement intended to restore land rights and resolve disputes in Maya communities fragmented by violence and mass internal and external migration. Recent commentary points out that the United Nations Mission for the Verification of Peace in Guatemala did not address the root causes of violence and criminality in which land conflicts remain a major contributing factor. The FLACSO program is an alternative approach to land management that may contribute to durable peace.

The University of the Autonomous Regions of the Caribbean Coast of Nicaragua (URACCAN) will lead a session on *Indigenous diversity on the Caribbean Coast of Nicaragua*. Representatives of the Institute of Natural Resources, Environment and Sustainable Development and the Institute for Intercultural Communication and regional officials will discuss the complexities of land demarcation and natural resource protection among Miskitu, Rama, Mayangna, Garífuna and Kriol groups. The 4th Symposium on the Autonomy of the Autonomous Regions of the Caribbean Coast of Nicaragua in September 2004 reflected policy action priorities on the reform of the Autonomy Law and the Law of Demarcation of Indigenous Communal Lands, as well as advocated negotiation with the state for the implementation of

provisions under the 1995 Constitution. Regional authorities, local civic organizations, and national human rights groups link indigenous practices in the use of natural resources to advances in health care, education and social welfare for the diverse communities of the Caribbean Coast. Despite the passage of laws on property rights and territorial boundaries in 2000 and in 2001, the expansion of the agricultural frontier eastward, immigration from the Pacific zones, and investment of multinational companies in mining, logging, and fishing continue to complicate the exercise of autonomy and land rights.

A notable case is the *Awas Tingni Indigenous Community versus the Republic of Nicaragua* that went before the Inter-American Commission of Human Rights in 1995. The Nicaraguan government granted a timber concession to a South Korean company on land occupied by the Mayangna community. The Inter-American Court of Human Rights decided in favor of the community in 2001 marking a critical juncture in the international recognition of indigenous rights to land and natural resources in ancestral locations. State action violated Article 5 of the 1995 Constitution on freedom, justice, property and self-determination of indigenous peoples, the International Labor Organization Conventions 107 and 169 concerning tribal and indigenous peoples, and Article 21 on the right to private property and Article 25 on the right to judicial protection of the American Convention on Human Rights.

In 2000, the General Assembly of the Organization of American States proposed the American Declaration on the Rights of Indigenous Peoples in support of claims to land acquisitions and mining concessions. The draft Declaration sparked debates and negotiations among member states and between states and indigenous representatives. Although few indigenous groups insist on full sovereignty, the legal complexity and political sensitivity of land restitution seem intractable. While the OAS General Assembly subscribes to the Universal Declaration of Human Rights, constitutional reforms and legislative actions on behalf of indigenous communities present an inherent dilemma for the integrity of the state sovereignty. The Draft calls for the legal recognition of the right of indigenous peoples to own and possess property in various forms which shall oblige governments to establish special property regimes and effective demarcation or titling. The exclusive access of indigenous peoples to land, waters, coastal seas, flora, fauna, and other habitat would compel states to grant indigenous autonomy and recognize the injustice of dispossession. These recent developments and considerations in the Latin American context stand in marked contrast with the federal recognition of Native American tribal sovereignty in the United States.

Over the last four decades, the Oneida Nation of Wisconsin and New York responded to dispossession by federal and state agencies and private interests by claiming millions of acres in New York and land promised by treaty in Wisconsin in the 1830s. The director of Oneida Cultural Heritage, the tribal historian, and a tribal legal representative will present on *The Oneida Land Claims Journey*. Another panel session will examine communal management of natural resources and resistance to large-scale mineral exploration, dam projects, and logging operations that violate environmental and spiritual practices among indigenous peoples in Wisconsin.

Oneida dispossession from New York State is intertwined with the American Revolution and the collapse of British colonial rule in North America. The passage of laws by the New York state legislature in 1784-85 accelerated white settlement by advertising the sale of Oneida land

even before the state had purchased the title. The New York State-Oneida Treaty of 1795 set the stage for systematic removal over the next fifty years. Land speculation and population growth in New York, the policies of the United States government on federal sovereignty and Indian affairs, and the influence of Christian missionaries shaped the pattern of Oneida migration to an area west of Green Bay, which began in earnest in 1820. In 1965, Oneida descendants filed lawsuits against state and federal governments to retrieve land acquired through transactions after 1795 Treaty. Legal victories in the United States District Court of Madison County, New York in 1977, and in the United Supreme Court in 1985, substantiated the land claim as a violation of the federal Constitution. A proposed settlement between the State of New York and the Oneida Nation in December 2004 sparked debates about Oneida access to land and natural resources in their ancestral home and a federal appeal from the state government.

Whose Land Is It? The Many Faces of Indigenous Rights and Land Claims anticipates subsequent dialogue among scholars and practitioners about practical alternatives to national judicial processes and legislative initiatives as well as community networking between Latin American and North American participants. This interdisciplinary approach to the rights of indigenous peoples may not only facilitate the crossing of disciplinary boundaries within Latin American studies, but may also lead to a convergence of some intellectual currents in Latin American studies, American Indian studies, environmental studies, and peace and justice studies.

Selected readings

Acosta, María Luisa, *El Derecho de los Pueblos Indígenas al Aprovechamiento Sostenible de sus Bosques: El Caso de la Comunidad Mayangna (sumo) de Awás Tingni* (Managua: URACCAN y EDITARTE, 2004).

Ba Tiul, Kajkoj, Fallidos acuerdos de paz en Guatemala: La muerte no se ha ido de Ixmulew, *Ojarasca* (suplemento cultural de *La Jornada México*), 99 (Junio 2005).

Cambranes, J.C., *Ruch'ojinem Qalewal, 500 Años de Lucha por la Tierra* (Guatemala: Cholsamaj, 2004).

González, Gustavo, En la mira de 'la guerra al terrorismo', *Ojarasca*, 99 (Junio 2005).

Hauptman, Laurence and Gordon McLester (eds.), *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860* (Madison: University of Wisconsin Press 1999).

Instituto de Estudios Indígenas, *Los derechos de los pueblos indígenas en Chile* (Santiago: LOM ediciones y la Universidad de la Frontera, 2003).

Morales, Patricia (coord.), *Pueblos Indígenas, Derechos Humanos e Interdependencia Global* (México: Siglo Veintiuno Editores, 2001).