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## **Water Law and Indigenous Rights in the Andes**

By Rutgerd Boelens and Hugo de Vos

***In Andean countries, widespread protests over violations of traditional rights have resulted in creative reform proposals to secure indigenous water rights and water system management.***

*“Our irrigation system, we have to defend it because it is our work and it costs us much effort. So many mingas, so many meetings, so many commissions, so many problems we have faced in the Guarguallá irrigation project! They cannot impose on us, not the landowners, not the State; they cannot leave us without this project that has been achieved with the organization’s effort, with the effort of people who have stopped sleeping, of women who have left their duties at home... We have to defend it to death because of how much it hurts, and we can’t let nobody take from us what has cost us so much sacrifice!”<sup>1</sup>*

*— Rosa Guamán, Licto, Ecuador*

For Rosa Guamán, indigenous leader in the Licto district in Ecuador, as for most campesinos and indígenas in the Andean countries and in Latin America, water rights express more than just the access to a crucial resource. The rights to use water and decide about local water management, according to their own norms and enforced by their own authorities, are of key importance to indigenous

communities. Local water management and rights systems reflect the complex Andean highland ecosystems and are vital for producing and defending local livelihoods and cultural traditions. At the same time, peasant and indigenous highland communities (*comunidades campesinas e indígenas*) are main providers of food for national populations. These systems are therefore crucial for both local production systems and national food security.

Water is becoming scarce because of growing populations and new demands coming from agricultural plantations, hydro-electric-, mining- and drinking-water companies. State policies and legislation often do not respect historical and local rights systems. Moreover, the decision-making power of the state water bureaucracy is often based on undemocratic principles and under-representation of local communities. Especially powerful economic actors therefore tend to benefit from current privatization and deregulation policies.

### **Encroachment of Local Water Rights**

In the past two decades, most officially promoted water reform processes in the Andes have been based on the Chilean privatization example. Lauded and stimulated by international lending organizations, many governments have attempted to copy the Chilean water law. The neo-liberal tendency of the Chilean example, however, has had many negative consequences, and its proposed adoption elsewhere still leads to many protests, particularly by the indigenous peasantry.

To create a water rights market and so "increase efficiency" and "improve water use rationality," the Pinochet government enacted the 1981 Water Code. This stipulated that the right to use water is a commodity, or "tradable good," to be registered by the state. Unregistered rights were auctioned off to the highest bidder. Until 2005, water rights owners were not obliged to actually use the water resources, nor were they charged a fee for these concessions. Together, this has led to hoarding and speculation of water rights, especially by large landowners and power-generating and mining companies. Most indigenous communities were unaware of the requirement to register their centuries-old customary claims to water.

According to a Mapuche leader: "The big landowners here in the area have registered the water rights in their names, and the Mapuches, for not knowing about the laws of the Chilean State,

were left without possibilities to claim their rights."

Mapuche communities were furious about this:

" The water sources that originate in the communities here have 98 percent of their trajectory on Mapuche territory, but the owner of the water is a landlord who lives in the city. He bought the water from the State, and nobody can use it. We cannot use it for irrigation, not even for drinking water, because the water has been bought. But the water was born in and flows through Mapuche communities... No one of us was consulted..."<sup>3</sup>

In 1993 an indigenous law, adopted by the Chilean State, gave the indigenous populations a tool to fight for their territorial and water rights. Since its creation, however, this special legislation has been often overruled by the powerful Water or Mining Codes.

In Bolivia, governmental adoption of neo-liberal water regulations and policies from 2000-2004 stimulated export of large amounts of water to Chilean mining companies and cities.

The indigenous communities from whose territories the water originated protested vehemently. "Behind the back of our communities, the Bolivian government wanted to enforce a new law to legalize water export to Chile. The communities were never consulted or knew about this law, which was handled in secret... Rainfall in this region is extremely limited... I think that to defend our water is a matter of life and death."<sup>4</sup>

Exclusion of indigenous peoples in policy making and water management practice has led to widespread protests throughout the Andes. Massive uprisings against privatization proposals of water rights and resources put indigenous demands on the agenda. The traditional struggle for more equal land distribution has been accompanied or replaced by collective claims for more equal water distribution, and for more autonomy and respect for

local cultural practices.

In Bolivia, for example, the process that succeeded the so-called “water wars” received international attention. In 2000, the streets of Cochabamba filled with farmers, indigenous groups, and poor city dwellers protesting against privatization of the drinking water company. The urban population was furious because of a huge rise in drinking water prices.

Alongside the poor urban population sectors, peasant and indigenous rural organizations joined the protest. The new policies gave water exploitation rights of large rural aquifers to the new foreign drinking water company, threatening local water management systems. After a number of fierce confrontations, also in subsequent years, the protesting organizations successfully demanded withdrawal of the privatization policies. In 2004 this led to new Irrigation Legislation that recognized local and customary law.

### **Proposals for Indigenous Recognition**

Indigenous and peasant groups have not stopped at mere protests. They have adopted another strategy: *protesta con propuesta*, whereby positive alternatives are suggested. The Confederation of Indigenous Nationalities of Ecuador (CONAIE), for example, has formulated its own water reform proposal. Without denying their economic importance, the proposals emphasize the community-based, social, and ecological aspects of water. Also in Peru and Bolivia, platforms of popular alliances and peasant and indigenous organizations have formulated constructive counter-proposals that complement their claims and protests.

Although they receive less international notice, at the local level indigenous peasants link their day-to-day water struggles to creative counter-proposals. For example, in Chimborazo Province, Ecuador, local water-user organizations decided to organize themselves into a federation, *Interjuntas*. This federation defends local user groups against the state bureaucracy, landlords, and powerful companies. It also mediates conflicts among the users themselves. Interjuntas founded a local Water Rights Defense Center (see box), supported by the provincial Permanent Commission for Human Rights and the international action-research program Water Law and Indigenous Rights (WALIR), based in Riobamba.

### **Official Recognition Is Not Enough**

Official recognition of local rights, however, is not by itself enough.

Instead of meeting the lofty goals in laws and regulations, local water rights and management practice often reflect existing power imbalances. Beside official legislation, indigenous movements must fight age-old discrimination by government bodies and courts of law while they claim their share in governing bodies.

In Bolivia, for example, during the consultation process over the new irrigation law, the indigenous movement demanded representation of indigenous peoples in a new institutional body, the Council for Water Policy Reform. The Council's task: to negotiate conflicts over water and elaborate a more equitable and democratic water policy.

### **Promoting Multi-scale Action Networks**

In 2002 to stimulate local actions and support indigenous rights claims on a national and international level and to contribute to more equitable and democratic policies and legislation, Water Law and Indigenous Rights Program (WALIR) began analyzing local water management systems and water rights in Andean countries in relation to official legislation. WALIR consists of academic partners in Bolivia, Chile, Ecuador, Peru, Mexico, France, the Netherlands, and the United States; NGOs; water users' federations; and grassroots movements. The program is coordinated by Wageningen University (Netherlands) and the United Nations Economic Commission for Latin America and the Caribbean. WALIR organizes training for Andean water professionals in indigenous rights issues and legal pluralism, and assists peasant and indigenous water user collectives with their local activities.

Currently, WALIR is documenting various water rights conflicts and defense cases in Chimborazo, Ecuador, to evaluate the potential of implementing Water Rights Defense Centers in other places in the Andes. WALIR is collaborating with a

popular indigenous radio station, and has completed a large number of broadcasts about the Chimborazo protest and peasant struggle. Apart from radio reports, books, and articles, WALIR produces audiovisuals to document local rights struggles and support training efforts in the Andean countries.

1. In Rutgerd Boelens and Paul Hoogendam 2002. *Water Rights and Empowerment*. Assen, The Netherlands: Van Gorcum.
2. In "The Blood of Mother Earth," a documentary by Pablo Solón, Fundación Solón, Cochabamba (2003).
3. *Ibid*

#### 4. *Ibid*

*Rutgerd Boelens is coordinator of the Water Law and Indigenous Rights program (WALIR) and a researcher at Wageningen University, the Netherlands. He has worked on water rights and legal pluralism since 1988, particularly in the Andean countries. His latest book is Liquid Relations, Contested Water Rights and Legal Complexity (with D. Roth and M. Zwarteveen, Rutgers University Press, 2005).*

*Hugo de Vos (PhD) is a freelance researcher working on participatory development in Latin America. He supported participatory GIS in Central America and Turkish Kurdistan with farmers' organizations and human rights groups. His current research interests focus on applications of information technology for local watershed management in the Andes.*

*For further reading:*

*<http://www.eclac.cl/drni/proyectos/walir/whatis.asp>*

**Sitio Web (URL):** <http://209.200.101.189/publications/csq/csq-article.cfm?id=1867>

**Autor(es):** Rutgerd Boelens and Hugo de Vos