

## Argentina and Indigenous Peoples Across 200 Years of Independence

### **Introduction: Argentina's Internal and External Frontiers**

The relation between indigenous peoples and the Argentinean state, whose independence was officially proclaimed on 9 July 1816 at the Tucumán Congress, cannot be understood without analyzing its colonial past and the division between the unconquered and free indigenous peoples (the *grupos libres*) and the subdued (the *indios sometidos*). For more than three centuries, through the Viceroyalty of the Río de la Plata and the following Argentinean Confederation, two types of frontiers coexisted: external and internal. The former defined the areas under the sovereignty of Spain and Portugal (then Brazil) and the other subdivisions of the Spanish colonies (e.g., Captaincy General de Chile). The latter, through the years, have been delimitating the territory that was effectively controlled by the colonial authorities first, and by the Argentinean provincial or national ones after, from the land that was de facto inhabited and controlled by the *grupos libres* in the farthest areas in the North and in the South.

These internal frontiers were imaginary boundaries in the upper (*chaqueña*) or southern (*pampas-Patagonia*) areas and were defined by oral agreements that the colonial authorities (for about three centuries) and then the Argentinean provincial and national ones (for approximately forty years) concluded with the *grupos libres*. Based on these agreements, diplomatic relations, offensive and defensive alliances, and freedom of transit and trade were established. The Indigenous peoples that had been subdued (the *indios sometidos*) by the Spanish Conquista lived on the other part of the internal frontier and were given in custody to colonizers through the instruments of *encomienda*, *mita* or *repartimiento*.

Notwithstanding the historical subdivision among free and subdued indigenous peoples, Argentinean Independence, albeit at different moments and with different dynamics, had the same impact, that is, the absorption of all indigenous peoples into its 'white' society and the loss of their lands. The dispossession, erasure and absorption of indigenous people into white society is reflected in the prevailing lack of recognition and implementation of indigenous peoples' rights, as it will be explained in this post.

### **Independence and the First Constitutions**

After the first independentist revolts in May 1810, the new national institutions decided to involve the *indios sometidos* into their revolutionary cause. Initially, specific measures of 1811-1813 declared their liberty and equality and granted them free citizenship and standing for

political representation in the Congress. Such measures were confirmed by the Tucumán Congress as well as by the Argentinean Constitutions of 1819 and of 1826. Article 128 of the 1819 Constitution, however, implicitly defined indigenous peoples as inferior by stating that other laws would be needed to “improve their [indigenous] condition and raise them at the same level of the other (social) classes”. Afterwards, Articles 5 and 6 of the 1826 Constitution suspended all the rights of illiterate citizens, and thus, also of the majority of indigenous peoples.

### **The Argentinean Confederation**

The Argentinean Confederation – founded by the Constitution of 1853 (reformed in 1860) – was composed of 13 out of the 23 provinces that form today’s Argentina. It effectively controlled only half of the territory that was designed on the then cartography. The *grupos libres* were still freely living in the farthest northern and southern areas. In the mid-18th century, they started to be seen as an obstacle to the effective control of the Argentinean territory. The Argentinean Confederation, guided by the political and intellectual Generation of 1880 (e.g., Julio A. Roca, Carlos Pellegrini and Miguel Juárez Célman) decided to conquer the *grupos libres* through military campaigns (e.g., the *Conquista del Desierto* in 1880 and *Guerra del Chaco* in 1884). Those lands were seen as fundamental pieces of land to realize the agro-exportation model and asserting the external frontiers of the newly formed Argentina.

In the Argentinean Confederation’s intellectual leadership’s minds, indigenous peoples were to be erased, forcibly removed, or subdued and used as labor force. Moreover, Argentina was to become a ‘white’ and homogenous nation that was free from the ‘backwardness’ of indigenous peoples. By stating that the Argentinean Congress shall provide for the security of the frontiers, Article 67, para. 15 of the Constitution of 1853 (reformed in 1860) legitimized the military campaigns and indigenous lands’ occupancy and grabbing. The *grupos libres* were either killed or forcibly assimilated and made ‘invisible’ while their lands – once declared of public dominion – were donated to those who had participated in the military campaigns or had financed them or were sold to national or foreign investors thereby promoting the establishment of latifundiums or plantations or expanding other private estates.

### **The ‘Indigenist’ Policy and the Reforms of 1980s and 1990s**

The different (conservative, radical, Peronist and civic-military) governments that ruled Argentina during the 19th century followed an ‘indigenist’ approach. Indigenous peoples had neither disappeared nor been fully assimilated but merged with the peasant and working classes.

During the 1980s and 1990s, indigenous peoples were protagonists of so-called “processes of uprising, urgency or emergency” (*emergencia indigena*) across Latin America, that is that they seemed to “re-emerge” as a distinct actor and distance themselves from the homogenization with other peasants and made their claims visible through various marches and protests. In Argentina, this uprising led to the adoption of Law No. 23,302 in 1985 on Indigenous and Aboriginal Communities Policy and Support and to the introduction of Article 75, para. 17 in the reformed Constitution in 1994 that lists several indigenous rights. This reform has undeniably been a milestone in a country that had always claimed to be ‘white and European’. It positioned Argentina as a participant in the Latin American debate on indigenous rights.

Unfortunately, in the last two decades, the implementation of indigenous rights, particularly those to land, have faced several difficulties. The Argentinean neoliberal extractivist model has focused on those lands that are rich of natural resources but that are often inhabited by indigenous peoples. Their land rights are interlinked with other fundamental rights that regard the use of their territories, e.g., the rights to consultation, free, prior and informed consent, benefit-sharing, and habitat’s protection. Moreover, the extractivist model has other adverse impact, including environmental pollution. Notwithstanding this, so far, protests have been repressed or criminalized by local and national institutions that prioritize business over fundamental rights.

### **The Law 26,160 on Indigenous Communitarian Lands**

The Law No. 26,160 of 2006 on Indigenous Communitarian Lands finally suspended the forced relocations and introduced a system of land register (*Relevamiento técnico-jurídico-catastral – RETECI*) to prevent and solve land disputes. This law is currently the only national legal instrument that protects indigenous land rights. Unfortunately, it has a limited scope and has been poorly applied. The RETECI, apart from dealing with land disputes, does not address other issues such as demarcation and land titling. Indigenous lands are continuously exposed to intromissions and intrusions from the part of state civil servants or third parties. Out of the 1,754 indigenous communities, RETECI has reached only 719, which are those that are in less conflicting territories. In high conflicting areas (e.g., Salta, Jujuy, Formosa, Chaco y Neuquén), indigenous communities are still waiting for the start of the land survey procedure. Among them, there are the community of Campo Maripe that, together with others, are fighting against hydrocarbons projects onto their lands in Vaca Muerta, and the community of Salinas Grandes-Laguna de Guayatayoc that are struggling to be duly consulted on lithium extraction projects on their lands in the provinces of Salta and Jujuy.

### **Conclusion and Outlook**

In the last century, indigenous peoples in Argentina finally received due constitutional recognition and some protection of their rights. This is still far from becoming an effective reality, and they continue to face daily obstacles to the exercise of their rights. As it has been briefly discussed in this post, the current issues indigenous people face in Argentina are intimately linked with their colonial past. Most recently, the debate has developed around their right to consultation and to free, prior and informed consent that however remain also partly unapplied. This further exacerbates current social tensions while indigenous peoples could become actors of social and environmental justice.

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