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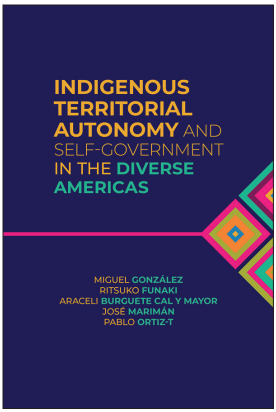

INDIGENOUS TERRITORIAL AUTONOMY AND SELF-GOVERNMENT IN THE DIVERSE AMERICAS

Edited by Miguel González, Ritsuko Funaki, Araceli Burguete Cal y Mayor, José Marimán, and Pablo Ortiz-T

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The Implementation Gap for Indigenous Peoples' Rights to Lands and Territories in Latin America (1991–2019)

Ritsuko Funaki

Introduction

The last two decades of the 20th century saw a rise in Indigenous social movements in several Latin American countries. New constitutional claims led to a recognition of the demands for the rights embodied in political and territorial autonomy (Van Cott, 2001, pp. 30–31).

Academic researchers and international organizations such as the Inter-American Development Bank have noted considerable variation in the extent of the claims included in the new constitutions in the region that, in response to demands, now recognize the rights of Indigenous peoples, as well as in the degree of progress in related legislation (Barié, 2003; Iturralde, 2011). At the same time, as the then United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples Rodolfo Stavenhagen (2006) warned in his report, there is a large "implementation gap" between the content of the constitutional texts and their application in practice.

While sufficient and consistent legislation is an essential precondition for applying the rights established in the constitution, the "main problem" in this implementation gap, according to the Special Rapporteur, is "administrative,

legal and political practice" that violates the formally recognized rights of Indigenous peoples (Stavenhagen, 2006, par. 83).

Experts monitoring this reality have thoroughly analyzed this gap, focusing on the noteworthy cases of Bolivia, Colombia, Ecuador, Panama and Nicaragua, among others (Aylwin, 2012; Muñoz, 2016; Ortiz, 2010, 2015; Tockman & Cameron, 2014). If we know, then, that no country in Latin America is fully complying with what it has promised, what is the relevance of the struggles for constitutional reform to address the claims of Indigenous peoples? It would not seem to make any sense to seek a legal guarantee of Indigenous peoples' right to self-determination in a modern state in which constitutionality, ironically, has no real impact on improving these communities' situations.

Nonetheless, if we look at the issue from a constructivist perspective, it is only natural that no country has automatically become what is set forth in its reformed constitution; such a transformation always requires a process of large-scale social learning. The challenge is to find a way to implement these new rules of the game to improve the conditions of coexistence among different Indigenous and non-Indigenous peoples and nations.

To advance this objective, this chapter first asks how big the implementation gaps are in the Latin American countries that have made progress in legalizing Indigenous peoples' rights. Answering this question is indeed a challenge according to Inguanzo, a Spanish political scientist who carried out a comparative analysis of the legal recognition of Indigenous peoples' rights in countries in Southeast Asia. In her book, Inguanzo (2016) indicates that "these gaps are tied to particular local (and even personal) experiences, such that carrying out a rigorous comparative analysis of such great magnitude becomes immense and unfeasible" (p. 16). In line with Inguanzo's methodological perspective, then, this article proposes a way to carry out a comparative analysis of the gaps in the Latin American cases that have already begun the implementation phase.

The methodological foundation for this study is the logic of fuzzy sets — more specifically, Fuzzy Set-Qualitative Comparative Analysis (fsQCA). However, I do not carry out an fsQCA here in this paper. Instead, due to the lack of available data on the dependent variable — or in QCA terms, the lack of results that show the degrees of the phenomenon under study, the implementation gap — I will carry out the fsQCA in the next phase of my research.

The fsQCA methodology permits an analysis of the causal complexity of social phenomena that include *conjunctural causation* and *equifinality*. The first attribute suggests that influencing a certain group of factors yields a specific result; however, this same result would not be achieved without the presence and interaction of this group of factors. In other words, it allows variables to not be *independent*, as statistical methodology otherwise assumes.

The second attribute, *equifinality*, is a presupposition that there are different pathways and combinations of factors that can lead to the same result. The methodology, then, while allowing for the complexity of social realities, enables us to identify general rules through systematic comparison based on mathematical theories such as Boolean algebra and set theory (Ragin, 1987; Schneider & Wagenman, 2012).

The first phase of this research seeks to identify the conditions that hinder the effective functioning of institutions for Indigenous self-determination. Thus, it is of great importance to first *measure* the gaps with full awareness of how complicated this phenomenon is.

Creating an index that can compare the different cases across the region has both advantages and disadvantages. The greatest advantage is the ability to ask, for the first time, the following question: Why does the implementation gap persist to a great extent in some countries while less so in others? We may thus discover which conditions affect the implementation of Indigenous peoples' rights from a comparative perspective. At the same time, one of the greatest disadvantages is the considerable loss of information about each of the cases subject to comparison. As explained in the following paragraph, facilitating this comparative analysis requires operationalizing and, inevitably, simplifying the concepts that comprise the gap, yet without losing sight of their essence.

As mentioned above, positioning the countries and their different levels of implementation requires operationalizing the qualities that reflect diverse aspects of non-compliance according to objective references. In this regard, Bennagen's instructions, delivered at a meeting of experts organized by the United Nations in 1991, shall serve as a guideline. The purpose of the UN meeting was to review the experiences of countries around the world with internal Indigenous autonomous governments. The Filipino anthropologist suggested that there are certain general values that have crystallized throughout the development of Indigenous peoples' movements for self-determination

and that these can serve as a standard for evaluating concrete situations of Indigenous autonomy. Bennagen (1992, p. 72) identified five operational features to consider:

- Control of territory and its natural resources;
- The inclusion of corresponding Indigenous institutions in legislative, executive and judicial bodies;
- Proper actual representation of the Indigenous cultural communities in the various organs of power, not only in the autonomous territorial unit but also in the national government;
- Fiscal autonomy (including the power to raise revenues), a just share of national revenues and a capable fiscal administration; and
- Respect, protection and development of Indigenous cultures.

The original plan for this study was to analyze these five areas qualitatively to then develop a comprehensive implementation index. However, upon review of the information available in the preliminary research phase, I concluded that a huge amount of qualitative data would be needed to examine each of Bennagen's suggested features, which would not be feasible to investigate within the time and space available for this chapter.

Therefore, to prevent an inevitably superficial assessment, this study focuses on a single feature. Given its most essential and controversial significance, I analyze the first element of Indigenous autonomy; that is, the control of territories and natural resources.

Methodology

The procedure for selecting which cases to analyze was as follows: First, I collected legal information (established up to the end of 2018) for the seventeen Latin American countries in the region. Second, I reviewed their constitutions and laws related to Indigenous peoples' rights.[1] In this initial phase, I looked not only at rights to lands and territories but also at rights to autonomy and self-determination; that is, the second and third areas proposed by Bennagen. I have thus ensured that the countries analyzed have the legal foundation for an autonomous regime as well as access to land. Nonetheless,

Table 2.1. Rights to collective ownership and self-determination recognized in constitutions and legislation

Country	Constitution (Updated)	Territorial law Community ownership	Entity to exercise autonomy	Selected	ILO C169 (C107) Ratification
Argentina	1994	Guarantees the respect for community possession and ownership of lands (art.75, section 17)	not indicated		2000 (1960)
Bolivia	2009	articles 30, II, 4th, 6th; 56; 388; 393; 394, III; 395; 403	Peasant Native Indigenous Autonomy, articles 269; 270; 271; 272; 273; 275; 276; 289; 290; 291; 292; 293; 394; 295; 296; 304	x	1991 (1965)
Brazil	1988 (2002)	articles 20, XI; XXV; 231, 1st, 4th, 5th, 6th, 7th; 174, 3rd	not indicated, except indirectly in art. 231		2002 (1965)
Chile	1981 (1989)	not indicated	not indicated		2008 (not ratified)
Colombia	1991 (2016)	articles 58; 63; 72; 79; 80; 95, 8th; 329	Reserves, Indigenous Territorial Entities, articles 286; 287; 329; 330; 357	x	1991 (1969)
Costa Rica	1949 (2015)	not indicated in const. *Guarantees as indigenous reserves (Law No. 6172, 1977)	Not indicated. *Indigenous reserves are not state entities (art. 2, Law No. 6172)		1993 (1959)
Ecuador	2008	articles 57, 4th, 5th, 11th; 60	Indigenous and Pluricultural Territorial Circumscriptions (articles 57, 9th, 10th; 242; 257)	x	1998 (1969)
El Salvador	1983 (2014)	communal lands in general (art. 105)	not indicated		Not ratified (1958)
Guatemala	1986 (2002)	articles 66; 67; 68	Only respects their ways of life (art. 66) *Indigenous Alcaldías, Assistant Alcaldías (Decree No. 12-2002)	x	1996 (not ratified)
Honduras	1982	art. 346	not indicated		1995 (not ratified)

Table 2.1. (*continued*)

Country	Constitution (Updated)	Territorial law Community ownership	Entity to exercise autonomy	Selected	ILO C169 (C107) Ratification
Mexico	1917 (2018)	articles 2, A-V, VI; 27; 27, VII	Municipalities and municipal subdivision art. 2; 2 A; 2 A VIII	x	1990 (1959)
Nicaragua	1987 (2014)	articles 5, 6th, 7th; 89; 180	Autonomous Regions, (articles 2; 5; 89; 175; 177; 180; 181)	x	2010 (not ratified)
Panama	1972 (2004)	art. 127	In the const., with respect to the political participation of indigenous communities (articles 124; 147; 314) **Indigenous Comarcas	x	Not ratified (1971)
Paraguay	1992	articles 63; 64; 66; 115, 11th	articles 63; 65 *Municipal subdivision, indigenous communities (Law No. 904, 1981)	x	1993 (1969)
Peru	1993 (2005)	articles 60; 88; 89	Municipal subdivision, Peasant and Native Communities (articles 89; 149)	x	1994 (1960)
Uruguay	1966 (2004)"	not indicated	not indicated		Not ratified (not ratified)
Venezuela	1999 (2009)"	art. 119	only within the autonomy of the municipality (articles 119; 125; 169)	x	2002 (not ratified)

** The self-management rights of Indigenous peoples are enshrined in the laws that establish the Indigenous comarcas. (Guna Yala: Law No. 16 of 1953; Emberá Wounaan of Darién: Law No.22 of 1983; Guna de Madungandi: Law No.24 of 1996; Ngäbe-Buglé: Law No.10 of 1997; Guna de Wargandi: Law No.34 of 2000). **Source**: Prepared by the author based on the constitutions and laws.

in the next phase I focused specifically on the implementation gap with respect to land rights.

Based on the legal research mentioned above (see Table 2.1), I selected ten countries: Bolivia, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela. These countries have political-administrative or community-based entities with the legal status to exercise Indigenous autonomy, as well as the legal guarantee of collective ownership for Indigenous peoples.

Sources

The database for this study consists of the documents published by different international organizations that monitor and promote the implementation of Indigenous peoples' rights.

The first of such document collects the comments of the International Labour Organization's (ILO) Commission of Experts on the Application of Conventions and Recommendations (CEACR)[2] (see Annex 1, Table 2.6 for CEACR citations hereinafter). This commission publishes comments in two forms: *Observations* and *Direct Requests*. The *Observations* are generally used for the most serious cases of non-compliance of a country's obligations. The *Direct Requests*, in contrast, mainly address technical questions and help qualify certain points that government reports do not explain with sufficient details and examples. I have also reviewed reports by the tripartite committee established to examine *Complaints*. These reports are published when there are allegations that provisions of an agreement have been violated.

Taking advantage of the characteristics of these documents, which make it possible to identify cases of non-compliance through a filter of international norms, I analyzed the comments and reports related to the implementation of the Indigenous and Tribal Peoples Convention (C169). This agreement was adopted in 1989 and entered into effect in 1991.

Twenty-three states ratified the agreement, including all the countries analyzed in this study except for Panama. For the case of Panama, I consulted the documents on Convention 107, which precedes C169 and is equally useful for obtaining similar information.

Although these documents have the great advantage of being recognized as a reliable official source for studying different situations, we must be careful about their possible disadvantages. When there is a serious problem with

Indigenous peoples' rights in a country, the government of that country tends to not present the required information or simply to overlook its obligation to report to the ILO, which makes it difficult to identify clearly what is happening in the country.

Therefore, to complement this aspect of the study, I have used another source of information. This second source consists of reports prepared by the special rapporteurs on Indigenous peoples' rights. This position was created in 2001 by the UN Commission on Human Rights and is charged with presenting annual reports on Indigenous peoples' rights as well as visiting the countries involved, communicating information about the human rights situation, presenting recommendations, and carrying out monitoring activities. At the time of writing, there have been three rapporteurs: Rodolfo Stavenhagen (2001–2008), James Anaya (2008–2014), and Victoria Tauli-Corpuz (2014–2020). This position allows us to understand the critical human rights situations of Indigenous peoples in greater detail. On many occasions, the rapporteurs themselves chose to visit precisely those countries identified in the first source as having governments that no longer respond to the ILO Commission.

Finally, the third source consulted here consists of the documents published by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (I/A Court H.R.). Both institutions belong to the Organization of American States (OAS). While the first two sources provide relevant information in summary form, allowing diverse problems to be addressed, this third source makes it possible to examine concrete cases of non-compliance in greater detail. The IACHR documents I have used include admissibility reports and merit reports, as well as both the precautionary measures that describe the specific complaints examined by the commission itself and thematic and country reports. Of the documents produced by the I/A Court H.R., I have consulted the sentences in cases of alleged violations of Indigenous peoples' rights, especially those related to lands in the countries under study. I have reviewed the closed cases up to 2018 and their corresponding case summaries.

The sources mentioned above make it possible to remain up to date on relevant cases of Indigenous rights violations based on the international standard. Though governments often declare that they are making every effort to fulfill their international obligations, pointing to legislation, specific programs, dialogues and workshops organized with Indigenous peoples, the

words of these governments do not ensure the effect they suggest. In this regard, the sources mentioned above allow us to verify those situations that show *non-compliance* by such governments. The index developed in this study can therefore measure the gaps that exist between legalities and their practices in qualitative terms.

Text analysis

The next four stages of this study include the procedure for analyzing the documents.[3] In the first stage, I examined all the documents for each country.[4] The objective of this stage was to explore the key points to distinguish situations of severe non-compliance from other relatively mild situations. It was also useful for getting a sense of what types of land-related issues have been identified as problematic for the countries under study. Therefore, I have taken notes on each document and marked all the relevant texts. At the same time, I consulted other sources such as audio and video recordings of the IACHR hearings on the issue of Indigenous peoples' rights and reviewed the news items and blogs published by non-governmental organizations (NGOs) that report on relevant cases. While these sources of additional information were not used as direct sources for examination, they help to understand the cases described in the documents from multiple angles.

In the second stage, I created a text analysis guide based on the knowledge obtained in the first stage as well as on the fundamental concepts expressed in the second part of Convention 169, which deals with land (arts. 13–19). I have thus established four points of comparison to re-examine the documents:

1. Collective property titles for Indigenous peoples (arts. 13, 14-1, 14-2).[5]

2. Territorial security against invaders (arts. 14-2, 14-3, 18).[6]

3. Territorial security against evictions and displacement (arts. 14-2, 16).[7]

4. Consultation about natural resources in the lands occupied by Indigenous peoples (art. 15).[8]

I then prepared a provisional rating scale for each point to serve as a guideline, which was then adjusted based on the review of the texts in the next stage.

In the third stage, I carried out lexical searches for points 2 to 4 and identified all the texts that included the most-used words or codes for each point.[9] I then used the results of the searches to check the original documents to confirm their relevance for the points of comparison under study. Where confirmed, I applied codes to the segments to then analyze them thoroughly.

I organized the coded segments by country and time period in an Excel document and analyzed them again to create summaries for both categories (segments and countries). For point of comparison 1, due to the complexity of the information related to progress in land titling, I evaluated the situations quantitatively, which I describe in detail in the following section.

In the fourth and final stage, as mentioned above, I adjusted the provisional rating scale based on the results of my re-examination of the texts. This new scale serves as the criterion for measuring the implementation gap in qualitative terms.

Analysis

Territory with collective property title

The first criterion is related to the implementation of the "rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy" (ILO Convention 169, art. 14-1). Point 2 of the same article refers to the governments' obligation to "identify the lands which the peoples concerned traditionally occupy." In my review of the documents, I did not find a shared criterion for evaluating the state of implementation of these aspects, as there are different presentations of the number of titles granted, the size of the area titled, and the number of beneficiaries — counting beneficiaries as individuals in some countries and as communities in others.

Governments tend to show the numbers that offer the most successful impressions. However, special care is needed to interpret such numbers when comparing countries with large degrees of geographic and demographic diversity. The following is an imaginary example: it is not easy to determine which of two countries is in a more favourable situation for its Indigenous peoples if we compare country X, with an area of 120 million hectares, 50% of which is titled for Indigenous peoples, who represent 30% of the national population of 40 million inhabitants, with country Y, which has an area of 40

million hectares, of which 2.5% is titled for Indigenous peoples, who represent 2% of the total population of six million inhabitants.

As a result, I decided to calculate the area per person of collectively and/or individually titled lands for Indigenous peoples and peasants, including peoples of African descent in some cases.[10] Although it is uncommon to consider the amount of land that corresponds to each individual in a collective that holds a single property title, it works well for comparing different countries. The calculation helps us to understand relative magnitude in the implementation of the right to property and land ownership. In the case of the example above, the amount of titled land that corresponds to an Indigenous person in country X is 5 hectares, while in country Y it is 8.3 hectares.

Importantly, this study does not aim to propose a standard amount of land per person that would be sufficient for Indigenous peoples; rather, it aims to identify a point of reference tied to the current reality in Latin America using the most recent available data.

Furthermore, I am conscious of the cultural and historical diversity between different Indigenous groups. Intuitively, ethnic groups whose livelihoods depend on hunting and gathering, who live in voluntary isolation and move from place to place depending on nature's offerings, should have a larger territory than other ethnic groups who always live in a certain place and depend on traditional family agriculture. Nonetheless, it is not as simple as applying different criteria based on characteristics apparently linked to land use. We must also consider the different meanings of these characteristics for each group, including spiritual and sacred uses. Similarly, there are groups that were originally hunters yet have been forced to become precarious workers, no longer occupying the land they previously used due to having modified their habits.

Calculating the area per person of lands titled as collective property for Indigenous peoples and peasants shows the distribution for the ten countries in the database. These countries are, in fact, the countries in Latin America that constitute a legally advanced group in terms of the pursuit of Indigenous self-determination. The average area corresponding to an Indigenous person in this set of countries is 6 hectares, with a deviation of 4.1 hectares. This number has been used to calculate the Z scores that indicate where a country is situated in the distribution of all countries.

As there is no overall ideal amount of land for an Indigenous person, I have established an anchor in the data extracted from the countries under

study. Based on these previously defined scores, I established Z ± 0.5 as the anchor and chose two concrete area measures to differentiate the levels of implementation of the right to land titling. To distinguish the most advanced group from the middle group, I used the area measure for Paraguay, which is 8.2 hectares per person, with a Z score of 0.53. As this is the Z score closest to the anchor, the applicable number is 8.0 hectares per person. Similarly, to choose a number that separates the intermediate level from a low level, I looked for the Z score closest to −0.5, which is the case of Venezuela, with a Z score of −0.48 and an estimated area of 4.1 hectares per person. Thus, the applicable number in this case is 4.0 hectares per person. Finally, based on this process, I created the criteria and assigned them gap scores as described below.

Territory with collective property title: Gap scores

a. Indigenous land area with property title per person greater than 8.0 hectares. ---------- 0

b. Indigenous land area with property title per person between 4.0 and 8.0 hectares. ---------- 0.5

c. Indigenous land area with property title per person less than 4.0 hectares. ---------- 1

Table 2.2 shows the data used and the final scores. I have thus differentiated three groups with different levels of progress in implementing the right to lands and territories in terms of our first point of comparison: collective property titles for Indigenous peoples. The first group, whose implementation gap is the lowest with a score of 0, includes Colombia (14.9 ha), Bolivia (10.8 ha) and Paraguay (8.2 ha). Despite the outlying figure for Colombia, it is important to consider, as a safeguard, that a sizable portion of the titled lands are probably occupied in reality by non-indigenous agents.

Another important point to take into account to better understand these figures is related to Paraguay. According to official country reports, an estimated 34.5 percent of its titled lands correspond to deforested areas (Dirección General de Estadística, Encuestas y Censos [DGEEC], 2016, p. 32). This means that 333,023 hectares of forest — the original habitat of the

Table 2.2. Lands with Indigenous and peasant (and of African descent) collective property title

Country	National Territory (ha)	Land titled for Indigenous peoples and peasants (%)	Land titled for Indigenous peoples and peasants (ha)	Indigenous Population (and of African Descent) (%)	Indigenous Population (and of African Descent)	Estimated titled land/person (ha)	Z-Score	Gap Score
Bolivia[1]	109,858,100	41.4	45,500,000	41.7	4,199,977	10.8	1.16	0
Colombia[2]	112,991,858	27.9	31,569,990	4.4	2,123,374	14.9	2.14	0
Ecuador[3]	25,523,697	23.0	5,879,256	8.6	1,249,893	4.7	-0.32	0.5
Guatemala[4]	10,888,800	16.3	1,777,124	43.7	6,491,199	0.3	-1.40	1
Mexico[5]	194,451,758	25.0	48,620,634	21.8	26,156,467	1.9	-1.01	1
Nicaragua[6]	12,033,954	31.0	3,725,291	8.9	518,104	7.2	0.28	0.5
Panama[7]	7,449,100	22.9	1,705,464	12.3	417,559	4.1	-0.47	0.5
Paraguay[8]	39,721,538	2.4	963,953	1.8	117,150	8.2	0.53	0
Peru[9]	128,521,560	30.4	39,056,849	29.3	9,176,591	4.3	-0.43	0.5
Venezuela[10]	91,644,530	3.2	2,951,853	2.7	724,592	4.1	-0.48	0.5

Source: 1. Bolivia. Titled land refers to the sum of peasant and intercultural communities (Small Property and Community Property) of 21,700,000 ha along with Peasant Native Indigenous Territories (TIOC, Territorios Indígenas Originarios Campesinos, first called Native Community Lands (*Tierras Comunitarias de Origen*, TCO)) of 23,800,000 ha cited in Table 2 (Bautista D., 2018, p. 79). The indigenous population includes 23,330 Afro-Bolivians (INE-Bolivia, 2015, p. 103).
2. Colombia. Titled land represents the total area registered for 773 indigenous reserves (DANE, 2016, p. 23). The indigenous population was calculated based on the estimated total of 48,258,494 registered and omitted people (DANE, n/d). As there are 1,905,617 registered indigenous people, equivalent to 4.4% of the national population (DANE, 2019, pp. 8-9), the total estimated population was simply multiplied by this percentage representing the registered indigenous population. This figure does not include 2,982,224 people in the Black, Afro-Colombian, Raizal, or Palenque population, as a different land system is applied to this population: the Collective Territories of Black Communities (TCCN, Territorios Colectivos de Comunidades Negras), through which 181 territories were legalized with a total area of 5,322,982 ha (DANE, 2016, p.23).
3. Ecuador. The total area of legalized lands covers 848,634.79 ha in the Costa region, which consists of 121,000 ha for the Awá nation and 515,965.38 for the Manta-Huancavilca-Puná people (Ormaza and Bajaña, 2008, pp. 5–6, Table 1), 91,817.38 ha for the Chachi nations, 347.01 ha for Eperaara Sepidaara, and 129,504.65 ha for the Afro-Esmeraldan People, based on the land registry of the Eloy Alfara and San Lorenzo cantons and field work carried out in 2012 by Pablo Minda (FEPP-Acnur, 2012, p. 42, cited in Antón (2015, p. 79)). The Amazon region has 4,141,470.5 ha of legalized lands as follows: A´I Cofán nation with 63,571 ha; Kichwa, 1,569,000 ha; Shuar, 718,220 ha; Siona, 7,888 ha; Secoya, 39,414.50 ha; Waorani, 716,000 ha; Shiwiar, 89,377 ha; Achuar, 884,000 ha; Zapara, 54,000 ha (Ormaza and Bajaña, 2008, p. 7, Table 2). The area of legalized lands in the Sierra region has been calculated as the total of

Table 2.2. (*continued*)

the following three numbers: first, 194,394 ha from 331 communal and ancestral lands in 9 provinces, except Tungurahua, according to the property survey carried out between 2012 and 2016 (SIGTIERRAS, 2017, p. 41); second, 11,074.88 ha with community land tenure in the province of Tunguraha, estimated from the database of the Annual Agricultural Area and Production Survey (INEC-Ecuador, 2019); and third, 673,681.74 ha of individually owned land under 5 ha in five provinces (Chimborazo, with 170,214.27 ha; Imbabura, with 91,120.04 ha; Cotopaxi, with 176,662.89 ha; Tungurahua, with 75,554.88 ha; and Pichincha, with 160,129.66 ha (INEC-Ecuador, 2019)). These are the five most representative provinces of the Sierra region with a large indigenous population (INEC-Ecuador, n/d, p. 53). The indigenous population in Ecuador for this study is 1,018,176 indigenous inhabitants (INEC-Ecuador, n/d., p. 14), with 231,717 Afro-Ecuadorian inhabitants residing in parishes with more than 20% of the population being Afro-Ecuadorian, according to the 2010 Census, prepared by Antón (2015, pp. 119–121).

4. Guatemala. Titled land is the sum of 1,577,124 ha (Elías et al., 2009, p. 42) of communal lands and 200,000 ha added according to the Updated Diagnosis of Communal Lands in Guatemala (preliminary report, Rural and Land Studies Program, Faculty of Agriculture, University of San Carlos, Guatemala, unpublished, cited in Rights and Resources Initiative (2015, pp. 7, 31)). The indigenous population includes the Maya peoples, who represent 41.7% of the total national population, along with the Xinka (1.8%) and Garifuna (0.1%), according to the 2018 Census (INE-Guatemala, 2019, p. 10).

5. Mexico. Titled land is estimated as the sum of 17,437,951 ha of Registered Communal Land (SCR, Superficie Comunal Registrada) at the national level (RAN, 2019a) and 31,182,683 ha of Registered Ejido Land (SER, Superficie Ejidal Registrada) (RAN, 2019b) in the sixteen states with an indigenous population of more than 20% in each state (Campeche, Coahuila, Colima, Chiapas, Guerrero, Hidalgo, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Tabasco, Tlaxcala, Veracruz, and Yucatán) and the state of Mexico, which has the largest indigenous population, thus covering 78.8% of the national indigenous population (INPI, 2017, p. 54). The indigenous population is the sum of the indigenous population of 25,694,928 people (INPI, 2017, p. 54) and the population of people of African descent including 461,539 people. This figure has been calculated as the total population of African descent, 1,381,853 (1.2% of the national population), minus both those of African descent who self-ascribe as indigenous, 896,823 (64.9% of the population of African descent), and those of African descent that were born abroad, 23,492 (INEGI, 2017, pp. 3, 24, 56).

6. Nicaragua. Titled land corresponds to twenty-three titled territories of indigenous peoples and people of African descent as of 2016 (MARENA, 2017, p. 66). The indigenous population includes the population of African descent, based on the 2010 estimate produced by ECLAC (2014, p. 98).

7. Panama. The total area of five comarcas (Gunayala, Emberá/Wounaan, Kuna de Madungandi, Ngäbe-Buglé, Kuna de Wargandi) with 1,689,022 ha and five titled territories (Caña Blanca, Puerto Lara, Arimae, Ipeti, Piriati) with 16,442 ha (data presented in the talk "Status of the Adjudication of Indigenous Lands in Panama" delivered by indigenous representatives from Panama at an event organized by ANATI (Autoridad Nacional de Administración de Tierras [National Land Administration Authority]), the FAO, the World Bank, and the Inter-American Network of Cadastre and Property Registration, an initiative supported by the OAS, 28–30 May 2018). The indigenous population consists of the sum of the eight indigenous peoples along with the categories of "other" and "not declared". This figure includes 10,691 people who self-identified as both indigenous and of African descent, and does not include 3,092,524 people of African descent (INEC-Panama, 2010, Table 20; Rodríguez, Aquino, and Diéguez,, 2014, p. 24).

8. Paraguay. Titled land refers to the area of the 343 indigenous communities with their own land and title (DGEEC, 2016, p.32). The indigenous population is the sum of the 19 indigenous populations based on data from the 3rd National Census of Population and Housing for Indigenous Peoples, 2012, and the 2012 National Population and Housing Census (DGEEC, 2016, p. 18).

9. Peru. Titled land consists of the following: 5,141 titled peasant communities with 24,084,763 ha; 1,365 titled native communities with 12,159,400 ha (Instituto del Bien Común, 2016, p. 25); and five indigenous reserves with a total area of 2,812,686 ha for indigenous peoples in voluntary isolation (Ministry of Culture, 2016, pp. 65–66). The indigenous population refers to the population with self-identified ethnicity from the following groups: Quechua, Aymara, native or indigenous to the Amazon, part of another indigenous or first people, and of African descent. The number of people has been estimated based on the proportion of the registered population aged 12 and over who self-identify with these same ethnic groups, which is 29.32%, multiplied by 31,237,385, the total estimated population in the 2017 Census (INEI, s/d).

10. Venezuela. Titled land corresponds to the sum of lands titled for 545 indigenous communities between 2005 and 2014 (De Zayas, 2018, p. 14). The indigenous population refers to the 52 indigenous peoples registered in the 2011 Census (INE-Venezuela, 2015, pp. 29–31). The Afro-Venezuelan population, representing 3.6% of the total population, is not included (based on self-identification as Black or of African descent) (INE-Venezuela, 2014, p. 29).

country's Indigenous peoples — have been lost. The net figure of titled and, in practice, habitable lands is thus 5.7 hectares, which would put the country in the intermediate group. However, the aspect under evaluation here is strictly the size of lands already officially recognized with property titles — not their use in practice. I explore this situation in greater detail in the next section.

The second group, with a score of 0.5, includes Nicaragua (7.2 ha), Ecuador (4.7 ha), Peru (4.3 ha), Panama (4.1 ha) and Venezuela (4.1 ha). For the case of Nicaragua, its relatively large area reflects the progress it has made in the titling process in twenty-three territories in the North Caribbean Coast Autonomous Region, the South Caribbean Coast Autonomous Region, and the special area of Alto Wangki-Bocay (Ministerio del Ambiente y de los Recursos Naturales [MARENA], 2017, p. 66). If it had also met the territorial demands of the Indigenous peoples in the Pacific, Central, and Northern regions (Procuraduría General de la República, Proyecto de Ordenamiento de la Propiedad [PRODEP], 2013, p. 126), Nicaragua would likely have been included in the first group.

The final group, with a score of 1, has the largest implementation gap and includes Guatemala (0.3 ha) and Mexico (1.9 ha). Guatemala's starkly low number is worthy of note. Even though the country's constitution sets forth the right to collective ownership by Indigenous peoples (arts. 67–68), no appropriate mechanisms have been developed to date to resolve the land issue.

Territorial security against invaders

The second and third points of comparison address *territorial security*. The second half of point 2 in article 14 (C169) indicates the obligation of governments to "guarantee effective protection of their rights of ownership and possession." To reflect this primordial aspect of the right to land, I use here the term *territorial security* instead of *effective protection*; the two terms mean the same thing, but with different perspectives. As the vast majority of documented situations lack government-provided territorial protection, it makes more sense to focus our attention on the Indigenous subject to describe this dimension.

I have thus created two categories related to possible threats to territorial security. The first is for *invasion*, and the second is for *evictions* and/or *forced displacements*. Based on my review of documents in the first stage of this

analysis, I have identified these as the main territorial problems that occur frequently in all the countries used to develop the criteria.

In cases of *invasion*, the agents are mainly non-Indigenous settlers or peasants who may also be loggers, ranchers, miners, or soybean farmers, as well as other Indigenous groups. For instances of *eviction* or *forced displacement*, the agents are landowners, companies, government authorities and/or armed criminal groups.

I distinguish between these two types of risk because their impact on territorial security is different. While an *invasion* makes the traditional lives of Indigenous peoples difficult over the long term, *evictions* and *forced displacements* expropriate the right to these lands either immediately or over the relatively short term. It is therefore more appropriate to consider incidents of *forced displacement* as embodying a larger gap between the right to land and the implementation of this right, and as such, these incidents should be assigned a higher score than other criteria.

To determine the scores for territorial security in cases of invasion, I reviewed the measures taken by the relevant governments. The existence of invaders has been recorded in all cases except for Guatemala. This is because Indigenous peoples in Guatemala lack legal certainty with respect to their right to land, which, in turn, affects this fundamental aspect. During the internal armed conflict in Guatemala between 1960 and 1996, most Indigenous peoples were forcibly displaced. After the peace accords, some returned to their lands of origin and others went to new places to pursue a life free of violence. However, when the areas where they lived were declared a natural protected area, the Indigenous inhabitants were accused of being *invaders* (CIDH, 2017a, par. 217). Given this context, though *invaders* have not been noted in the lands belonging to Indigenous peoples in Guatemala, I consider the country deserving of the highest score for a gap in this criterion.

To compare the rest of the countries that do note the existence of invaders, I have identified differences in how the various governments reacted to situations in which Indigenous families or communities suffered an *invasion* of their lands. As no government *effectively protects* the right to land in advance of an *invasion*, it seems convincing to assess their performance after the event. The criteria and their scores are shown below.

Similarly, to evaluate the effectiveness of the measures taken by different governments — that is, to determine if a measure was apparently *insufficient* (criterion b, score of 0.5) or *insignificant* (criterion c, score of 1), I checked

both the characteristics of the measures themselves as well as the situations that developed after steps were taken.

Territorial security against invaders: Gap scores

a. When situations of territorial invasion are found, the government takes effective measures to resolve the problem. ------- 0

b. When situations of territorial invasion are found, the government takes apparently insufficient measures to resolve the problem. ---------- 0.5

c. When situations of territorial invasion are found, the government does not take any measures or takes apparently insignificant measures. ---------- 1

Table 2.3 shows a summary of the situations related to territorial security against invaders and the measures and/or responses by governments. Only Bolivia and Panama obtained a score of 0.5 in this criterion.

In the Bolivian case, the database includes six segments extracted from two documents: the ILO Direct Request (CEACR) adopted at the 1994 International Labour Conference (par. 21) and the report of the Special Rapporteur on the Mission to Bolivia (Stavenhagen, 2009, pars. 33, 40, 46, 48, 49, 53). The first source provides information about the existence of invaders and the measure taken by the government with supreme decree number 23107 of 9 April 1992, which created the Indigenous Forest Guard, constituted by Indigenous peoples themselves. This Guard oversaw the monitoring and protection of their territories, with sufficient power to impose sanctions on those who broke the law (CEACR, 1994, par. 21).

However, the second source shows that threats to Indigenous lands persisted. The Rapporteur, who visited Bolivia from 25 November to 7 December 2007, reported that in the lowlands there was pressure on and an *invasion* of Peasant Native Indigenous Territories (TIOC, Territorios Indígenas Originarios Campesinos, first called Native Community Lands (*Tierras Comunitarias de Origen*, TCO)) by Indigenous settlers and peasants from other regions in the country, creating situations with high levels of conflict (CEACR, 1994, par. 33).

Table 2.3. Gap in territorial security against invaders

Country	Summary of the Situation	Government Measures/Responses	Score
Bolivia	The most vulnerable groups, such as the Yuqui and Ayoreo that inhabit the Amazon and Chaco regions, are subject to constant territorial pressure by settlers, other indigenous communities, and loggers (Stavenhagen, 2009, par. 46).	Despite several measures, such as the creation of the Indigenous Forest Guard (CEACR, 1994r), designating TCO lands, declaring "intangible zones", etc. (Stavenhagen, 2009, par. 46, 49), a reduction in territorial pressure cannot be confirmed.	0.5
Colombia	There are acute territorial conflicts between Indigenous peoples and settlers or other non-Indigenous peoples, and even after legalizing the land as a reserve, invasions cannot be stopped (Stavenhagen, 2004a, par. 59, 60, 64; 2007a, par. 121; 2007b, par.192, CEACR, 2009o; 2010; CIDH, 2013)	The government's position with regard to this situation is that once the reserve is titled, it is the responsibility of the communities to prevent the territory from being invaded (CEACR, 2009o).	1
Ecuador	The Tagaeri-Taromenani group in voluntary isolation face Huaorani invaders and loggers, which has caused three massacres (CIDH, 6 Nov 2014). Indigenous people on the northern border face invasions due to the internal conflict in Colombia (Tauli-Corpuz, 2019, par. 70).	The government did not take effective measures for the Tagaeri-Taromenani group and ultimately rejected its responsibility to fulfill the Precautionary Measure requested by the IACHR (CIDH, 6 Nov 2014, par. 11).	1
Guatemala	Indigenous people are considered "invaders" in the department of Petén if the area they occupy becomes declared a natural protected area (CIDH, 2017a, par. 217).	Given the extreme territorial legal uncertainty, Indigenous peoples face considerable difficulty filing complaints against an invasion (CIDH, 2017a, par. 217).	1
Mexico	Especially in Guerrero, Chiapas, and Chihuahua, several Indigenous communities complained of invasions that affected their lands (Stavenhagen, 2003b, par. 18). This trend continues (Tauli-Corpuz, 2018a, pp. 26, 27, 32, 33).	Although the government has reported certain progress in attending to territorial conflicts (CEACR, 2014r), its impact appears to be minimal, as the IACHR issued 9 Precautionary Measures between 2014 and 2018 (MC60-14;77-55;106-15;388-12;277-13;60-14;452-13; 685-16;361-17).	1
Nicaragua	Following the land titling process for Indigenous peoples in the Autonomous Regions, territorial conflicts arose between indigenous people and settlers (CIDH, 14 Oct 2015).	The government received the precautionary measure request (MC505-15) from IACHR in 2015, 2016 and 2017 (Res.37/15; 2/2016; 44/2016; 16/2017) and from the I/A. Court H.R. (1 September 2016). The situation remains tense, and the IACHR requested an extension of the preventative measure in 2019 (CIDH, 6 September).	1

Table 2.3. (*continued*)

Country	Summary of the Situation	Government Measures/Responses	Score
Panama	The Kuna de Madungandí comarca and the Emberá de Bayano people face invasions by settlers. The lack of delimitation and titling of new lands for them has allowed the settlers to invade systematically and exploit the forest (CIDH, 13 Nov 2012; I/A Court H.R., 14 Oct 2014).	Legislation created the Kuna de Madungandi comarca (L.24, 1996) to title lands to benefit peoples outside their comarcas (L.72, 2008) and appoint a corregimiento authority in the Kuna de Madungandi comarca (L.247, 2008) (CIDH, 13 Nov 2012; I/A Court D.H., 14 Oct 2014).	0.5
Paraguay	Since 1991, the invasions of indigenous lands by landless peasants has increased (CEACR, 1997r). In the Chaco region, the Ayoreo people are threatened by ongoing invasions and the deforestation of these lands caused by authorized ranching activities (Anaya, 2010a, par. 316–339).	After more than 15 years, there are no legal provisions to address the problem of the "landless" nor any investigations of the situation (CEACR, 2007r). The government recognizes its inability to carry out the needed expropriations to benefit indigenous peoples (Anaya, 2010a, par. 338).	1
Peru	The Mschco Piro, Yora, and Amahuaca—indigenous peoples in voluntary isolation—were threatened by the illegal extraction of wood in their territory (CIDH, 22 March 2007). The native community Nueva Austria del Sira faces invasion (CIDH, 6 Nov 2019).	In both cases, given the lack of government measures to guarantee the life of the indigenous peoples in their territory, the IACHR granted a Precautionary Measure in favour of the Indigenous peoples (CIDH, 22 March 2007; 6 November 2019).	1
Venezuela	The Yanomami tribe, who live in the area next to Brazil, faces invasion by the garimpeiros (small-scale gold miners). The Pemón people in the state of Bolívar face conflict with illegal miners and 5 members were murdered (CEACR,2019o).	The government reached a friendly solution with the Yanomani tribe (CIDH, 20 March 2012). The Pemón people created a territorial guard, demonstrating the government's failure to provide territorial protection (CEACR, 2019o).	1

Source: Prepared by the author based on the source of data (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019). For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

Hydrocarbon extraction activities contributed to the *invasion* and appropriation of Indigenous lands in Bolivia's Amazon and Chaco regions (CEACR, 1994, par. 40). With respect to the most vulnerable peoples, the Rapporteur described the situation of the Yuqui people with special attention. The Yuqui were first contacted in 1959, and in the 1980s they were moved to the Bia Recuaté community where they were given a Yuqui TIOC. Nonetheless, this population of 200–230 people were subject to constant pressure on their land from settlers, other Indigenous communities, and loggers (CEACR, 1994, par. 46). As a result, the government's measure to protect the life of the Yuqui people, granting them a TIOC, was not sufficient to halt the threat of an *invasion* of their territory.

In this context, in April 2007, the country's Ministry of Rural Development, Agriculture, and the Environment implemented a policy to defend vulnerable peoples, constituting an Interministerial Commission on highly vulnerable Indigenous peoples. This commission developed an emergency plan to serve the Yuqui people, and the Vice-Ministry of Lands prioritized work with the Yuqui, Araona, Ayoreo and Uru Chipaya peoples (CEACR, 1994, par. 48).

In 2006, with the same intention of protecting the most vulnerable peoples, the Bolivian government approved the declaration of an "intangible and integral protection zone of absolute reserve" inside the Madidi national park, which coincided with the traditional territory of the Toromona people, who live in isolation (CEACR, 1994, par. 49). With the same aim, in December 2007 the government granted the Guaraní people of Chuquisaca (Huacareta, Ingle, Machareti and Muyupampa communities) 180,000 hectares of land under the land reform's Law of Community Renewal (CEACR, 1994, par. 53). Nonetheless, and because it has not been possible to confirm a reduction in territorial pressure, the case of Bolivia was given a score of 0.5.

The other case with a score of 0.5 is Panama. Fourteen segments in seven documents were consulted for this case: six ILO Direct Requests (CEACR, 1989, pars. 12, 13; 1992, par. 12; 1996, par. 8; 2003, par. 11; 2005, pars. 20–21; 2010, arts. 11–14; 2016, art. 13) and one report by the Special Rapporteur (Anaya, 2014, pars. 8, 9, 30, 34–36), as well as two complete documents from the IACHR (13 November 2012) and the I/A Court H.R. (14 October 2014).

To summarize the case, Indigenous peoples in the Kuna region of Madungandí and the Emberá people of Bayano were *invaded* by other settlers in the region. The source of the problem was a dam construction project in the area. After moving the inhabitants, the government did not fulfill its

promise to delineate and title their new lands, thereby allowing the settlers to invade and exploit the forest in a systematic fashion. More than three decades later, thanks to diverse complaints by the population, the case made it to the I/A Court H.R. in 2014. Although the government did legislate decrees during this period to create the Kuna de Madungandí *comarca* (Indigenous territory) (Law no. 24, 1996), to title land in favor of peoples outside their *comarca* (Law no. 72, 2008), and to appoint township authorities in the Kuna de Madungandí *comarca* (Law no. 247, 2008), the Special Rapporteur's report noted that there were persistent concerns among the Indigenous communities both within and outside the *comarcas* due to the presence of third parties (Anaya, 2014, par. 30).

Based on this situation and on a CEACR Direct Request indicating, following a government report, in 2012, the *comarca* district carried out an *eviction* of thirty peasants who were occupying land in the area of the Botes river and the Piragua river (CEACR, 2016, art. 13), the Panamanian case has been granted a score of 0.5, as the government did adopt concrete measures, though they proved to be insufficient.

For the cases given a score of 1, I cannot explore the results for each country in depth, but it is worth reiterating the importance of the efficacy of the measures governments take to address complaints. Colombia offers an example of a symbolic type of government response. According to the CEACR (2009), which cites a text from the Workers' Trade Union Confederation for the Oil Industry (USO) received by the ILO in 2008, the Chidima reserve was created in 2001 with three discontinuous lots, which facilitated the invasion of the third lot by settlers. The settlers arrived with plowing machinery and burned the grass, threatening to kill the Indigenous inhabitants. As a result, the Katío people have asked for the three lots to be joined in a single reserve. The government has promised that this would be done, yet it ultimately was not, and in the end the government responded with a letter that clearly demonstrates its position, exactly as the USO text denounces:

> The USO attaches a letter from the Colombian Institute of Rural Development (INCODER), stating that 'there is no budget for regularization for 2006'. The USO reports that when the indigenous people sought protection against such invasion, INCODER replied that once a title has been issued for the reservation, it

> would be up to the indigenous communities to prevent the territory from being invaded. (CEACR, 2009)

For other cases with a score of 1, as with Ecuador, Mexico, Nicaragua, Paraguay, Peru and Venezuela, I have examined the qualitative characteristics of events. What these cases have in common is a lack of effective measures for resolving conflicts and threats created by the presence of invaders in indigenous territory.

Territorial security against evictions and forced displacements

The practices of *eviction* and *forced displacement* have been treated with the same criteria. *Forced eviction*, according to the UN's definition, is the "removal against their will of individuals, families and/or communities from the homes and/or land which they occupy" (Committee on Economic, Social and Cultural Rights, 1997, general comment No. 7). The agents of this action have the clear objective of *removing people* from these lands. For *forced displacements*, the actions can be more complex: intimidation, theft, kidnapping, murder, massacre or mass fumigation. Nonetheless, both methods have almost identical effects upon people, forcing individuals, families and/or communities to abandon their land.

The ownership status of a territory is not in question here, but rather the fact that there are *evictions* and/or *forced displacements* documented in the sources. Therefore, there may be cases in which Indigenous communities do not have territorial rights to the lands they have inhabited de facto for years, and where, for this very reason, they have been evicted for the *crime of usurpation*, as was the case in both Guatemala and Ecuador. In Ecuador, while preserving their full right to continue inhabiting the land, Indigenous communities were *evicted* from areas where concessions were granted inside their territory. Both Guatemala and Ecuador are included in this same category.

To develop the criteria and scoring for evaluating situations of territorial security against *evictions* and *displacements*, I have used the frequency of incidents documented in the database. Though the numbers documented are often only partial, which does not allow us to fully understand the overall situation, there is a clear divergence in the number of incidents.

Therefore, even taking into account the high level of diversity between the populations under study and the different degrees of margin of error in the information, I consider it to be a useful basis for the purposes of comparison. I have defined the criteria as described below, and the concrete numbers mentioned in the criteria have been extracted from the database.

Territorial security against evictions and displacements: Gap scores

a. No cases of forced eviction/displacement. ---------- 0

b. Less than ten cases of forced eviction/displacement in the period between 1991 and 2019. ---------- 0.5

c. Between ten and forty cases of eviction/displacement in the period between 1991 and 2019. ---------- 1

d. Forty-one or more cases of eviction/displacement in the period between 1991 and 2019. ---------- 2

Before examining the summaries, I wish to note that some of the cases of *invasion* described in the previous section increased the extent of violence in the region, as was the case in Mexico, Nicaragua and Peru. Though not all *invasions* were carried out in the same way, when exacerbated violence — which contributes to *forced displacement* — is noted to be present, *invasions* are also considered *forced displacement*. This allows a distinction to be made between an *invasion* that does not lead to *forced displacement* and an *invasion* that does meet this more violent criterion, and the latter cases are thus considered in both categories.

The exception applied to the case of Venezuela also requires further explanation. The country has been facing a serious economic, social, and political crisis since the mid-2010s, presenting a clear situation of *forced migration*. As a result, and despite the documents and texts not providing any evidence of *evictions* and/or *displacements* of Indigenous peoples in the country, the criterion for Venezuela is as follows: d) there are *mass evictions* and/or *displacements*. The summaries and their corresponding scores are presented in Table 2.4.

Table 2.4. Gap in territorial security against evictions and displacement

Country	Summary of the Situation	Documented Frequency	Score
Bolivia	Forced evictons are carried out by landowners as well as through INRA resolutions in the land title regularization process (CIDH, 2007, par. 238). An increase in evictions to benefit mining and logging concessions in the Chaco region has been reported, although the information available is limited (CIDH, 2009a, par. 164).	The data available do not indicate the frequency of events.	0.5
Colombia	The magnitude of forced displacement is incomparably harsh. The information received during the 2012 visit is of utmost concern, as it shows an alarming increase of indigenous forced displacement caused primarily by constant armed conflicts in indigenous territories (CIDH, 2013, par. 798)	There were 41 events in 2012 alone. The most affected peoples were the Embera (4,860), Nasa (4,674), Awá (1,725), Wounaan (237) and Jiw (100) (CIDH, 2013, par. 798).	2
Ecuador	Three mining megaprojects were approved in the Cordillera del Cóndor, territory of the Shuar people. Inhabitants of the Kupiamai, Cascomi, Tundayme, and Nankints communities were evicted, and the last confrontation created displacements in San Pedro de Punyus, Kutukus, and Tsuntsuimi (Tauli-Corpuz, 2019, pars. 27–29). On the northern border, the Awá de Guadalito were forced to abandon their territories when 180 members of the military moved into their community for two months in 2018 (Tauli-Corpuz, 2019, par. 70).	There were at least 4 forced evictoins (2 in 2015, 2 in 2016) and 3 displacements in 2016 in Shuar communities and 1 displacement in the Awá community in 2018 (Tauli-Corpuz, 2019, pars. 27–29).	0.5
Guatemala	There is a trend of evictions through court orders (CEACR, 2019o). In many cases, evictions are ordered by the Public Ministry for the crime of aggravated usurpation, a legal concept adopted in 1996 that does not afford the communities an opportunity to prove their rights to the occupied lands (Tauli-Corpuz, 2018b, par. 46).	In 2018, 45 evictions were recorded, despite the government's commitment to apply international standards (Tauli-Corpuz, 2018b, par. 49).	2
Mexico	The main eviction and displacement agents are landowners, companies, indigenous communities fighting for their territory, and organized crime groups. Cases are observed in the States of Chiapas, Chihuahua, Guerrero, Campeche, Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen,2003a, par.26; CT, 2004,par.113; Anaya, 2009a, pars.247-248; Anaya, 2010, pars. 277-281, Tauli-Corpuz, 2018b,pp.21, 23,24,26,29,30)	At least 10 specific documented cases of evictions and forced displacement are observed.	1

Table 2.4. (*continued*)

Country	Summary of the Situation	Documented Frequency	Score
Nicaragua	There were multiple acts of violence, including the displacement of members of at least 12 communities, in the territorial conflict between Indigenous communities and settlers in the North Caribbean Coast region. Of a population of 10,800 people in indigenous territories, at least 4,159 have been forced to leave their homes (CIDH, 8 Aug 2016, par. 8-B-iv).	Acts of violence have been observed that caused the forced displacement of at least 4,159 people inhabiting the 12 communities in the area (CIDH, 8 Aug 2016, par. 8-B-iv).	1
Panama	The Naso residents of the communities of San San and San San Druy were forcibly evicted on 30 March, 1 and 4 April, and 20 November 2009. The government supports the position of the third ranching company in the area, ignoring the demand from the communities to create a comarca (Anaya, 2009a, pars. 342–346; 2010,pars. 304, 305).	There were at least 4 evictions in the same communities of the Naso people in 2009 (Anaya, 2009a, pars. 342–346; 2010, pars. 304, 305).	0.5
Paraguay	The Indigenous communities whose lands are in the process of seeking official recognition, such as the case of Avá Guaraní de Y'apo, are the most threatened by the current landowners. The community suffered an attempted eviction in May 2014, followed by an attack by about 50 armed civilians who invaded the community and injured, robbed, and fired at its inhabitants (Tauli-Corpuz, 2015, par. 27).	The fact that the INDI brought more than 10 legal actions related to precautionary measures in the face of evictions and displacements by landowners, ranchers, and soybean farmers confirms the magnitude of the threats (CEACR, 2010s).	1
Peru	The native community Nueva Austria del Sira faces invasion. The "invaders" carry out ongoing acts of harrassment against the community, which has led to the forced displacement of almost half of the families in the community. Of the community's 23 families, currently only 14 remain (CIDH, 6 Nov 2019, pars. 9, 30).	No forced evictions have been observed. There was one displacement in the same case of invaders in the Nueva Austra del Sira community (CIDH, 6 Nov 2019, MC, pars. 9, 30).	0.5
Venezuela	The UN Refugee Agency has recorded a 8,828% increase in requests for asylum from Venezuelans. An investigation by Brazil's National Immigration Council found that indigenous people of the Warao ethnicity migrated due to hunger and a lack of public services (CIDH, 2017b, par. 466)	Due to the socioeconomic and political crisis over recent years there has been forced migration, which indicates a serious situation of internal mass displacement.	2

Source: Prepared by the author based on the data source (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019. For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

Table 2.4 shows the summary of results with respect to the gap in territorial security against *invasions* and *displacement*. Bolivia, Ecuador, Panama and Peru are in the group with the smallest gap (score of 0.5). There have been *evictions* and/or *forced displacements* in all these countries, though fewer than those found in the other two groups.

Bolivia, for example, has had cases of *eviction* by both landowners and government authorities, the latter of which took place in the context of the land title regularization process, though the frequency of such evictions cannot be determined (CIDH, 2007, par. 238). Similarly, though there is scarce information, there was an increase in *evictions* to benefit mining and logging concessions in the Bolivian Chaco (CIDH, 2009, pars. 164–165). As the documents do not reveal the number of incidents, I have granted this case a score of 0.5, which implies less than ten such events. Of course, there may have been more than ten, but what is essential for this analysis is the fact that specific cases have been noted and recorded in the documents, thus when the frequency cannot be specifically determined, I have chosen to apply the lower score.

Let us now turn to the other cases in this group. In Ecuador, there were four *evictions* and three *displacements* caused by mining megaprojects (Tauli-Corpuz, 2019, pars. 27–29) and one *displacement* due to the military settlement on the northern border (Tauli-Corpuz, 2019, par. 70). In Panama, four *evictions* affected the Naso inhabitants in the San San and San San Druy communities in 2009. In this case, the government supported the position of the third party, a local ranching company, ignoring the communities' demands to create a *comarca* (Anaya, 2009a, pars. 342–346; Anaya, 2010, pars. 304–305).

Among this group, Peru is the only country where there are no records of *evictions* in the sense of *removing* Indigenous peoples from the homes or lands they occupy.[11] Furthermore, there was only one case of *forced displacement* in the context of an exacerbated invasion by non-Indigenous settlers and their ongoing acts of harassment against the native community of Nueva Austria del Sira. Of the twenty-three families in the community, only fourteen families remained in the area by the time the IACHR received the request for precautionary measures in 2019 (IACHR, 6 November 2019, par. 9).

In the intermediate group (score of 1), we have Mexico, Nicaragua and Paraguay. In Mexico, the primary agents of *eviction* and *displacement* are landowners, companies, other Indigenous communities fighting for the same territory and organized criminal groups. *Evictions* and *displacements* have been recorded in the states of Chiapas, Chihuahua, Guerrero, Campeche,

Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen, 2003a, par. 26; Tripartite Committee-ILO [ILO-CT], 2004, par. 113; Anaya, 2009a, pars. 247–248; Anaya, 2010, pars. 277–281; Tauli-Corpuz, 2018a, pp. 21, 23, 24, 26, 29, 30).

In the case of Nicaragua, *forced displacements* have occurred as a result of the land dispute between Indigenous communities and settlers in the North Caribbean Coast. As a result, there have been multiple acts of violence, including the *displacement* of members of at least twelve local communities.[12] In a population of 10,800 people in the Indigenous territories, at least 4,159 people have been forced to leave their homes (IACHR, 8 August 2016, 8-B-iv).[13]

With respect to Paraguay, the CEACR Request notes that according to a report sent by the government,

> cases of *eviction* or *forced relocation* of indigenous communities by landowners, soya farmers and other farmers often remain pending before the judicial authorities for several years and that in 2008 and 2009 INDI [Paraguayan Institute of Indigenous Affairs (Instituto Paraguayo del Indígena)] took legal action on more than ten occasions to secure protective measures. (CEACR, 2010, arts. 16, 17, 18)

Though we do not know the details of each *eviction* and *displacement*, we can confirm that they surpass the established criterion in number.

In the final group, with the highest score (2), we have Colombia, Guatemala and Venezuela, with the latter constituting an exception due to the phenomenon of *forced migration*. In Colombia, the *forced displacements* are incomparably harsh and are mainly caused by constant armed clashes in Indigenous territories. According to the IACHR report, there were forty-one events in 2012 alone, and the most affected peoples were the Emberá (4,860), the Nasa (4,674), the Awá (1,725), the Wounaan (237) and the Jiw (100) (IACHR, 2013, par. 798).

In Guatemala, the CEACR notes "a trend of *evictions* by court order" (CEACR, 2019, art. 14, par. 4). The UN Special Rapporteur visited Guatemala and reported that, on many occasions, the *evictions* are ordered by the Public Ministry due to the crime of aggravated usurpation, a legal concept adopted in 1996 that does not allow the communities to prove their rights to the occupied lands (Tauli-Corpuz, 2018b, par. 46). 45 *evictions* were recorded in 2018,

despite the government's commitment to apply international norms (Tauli-Corpuz, 2018b, par. 49).

The right to be consulted about natural resources in traditionally occupied land

With respect to the right to be consulted about the natural resources that exist in the lands occupied by Indigenous peoples, article 15 of Convention 169 sets forth the government obligation to establish appropriate procedures for consulting Indigenous peoples "before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands" (art. 15-2). This is one of the most controversial points related to territorial autonomy.

I have chosen to focus on aspects of actual implementation and their consequences instead of on processes of legislation and regulation. While there is certainly variation in terms of legislative progress in the region, there are cases where even when there are significant laws in place, they are not put into practice and, hence, do not have significant effects.

Therefore, following my first review of the texts, I identified the criteria described below. While all the countries under study present problematic features with regard to the right to consultation, it was essential to determine where to draw the line separating severely deficient countries from those less deficient. I have thus defined criterion b) as shown below.

The right to be consulted about natural resources: Gap score

a. Consultations are carried out and no complaints have been recorded about inadequate practices. ---------- 0

b. There has been at least one consultation that resulted in an agreement. ---------- 0.5

c. There have only been cases of omission and/or inadequate consultation processes. ---------- 1

The ideal and correct terms for point b), however, should be that *there has been at least one consultation carried out using an appropriate procedure*. This entails a consultation that satisfies the qualities outlined by the I/A Court

H.R. in the 2012 Sarayaku vs. Ecuador case; namely, that the consultation be "prior," in "good faith," "culturally appropriate and accessible," include an "environmental impact assessment," have "the purpose of reaching an agreement" and inform about the possible risks of the proposed project (27 June 2012, pp. 55–66). Yet it is impossible to verify if a consultation has been carried out in compliance with all these requirements using only the documents examined in this study. As a result, I sought an alternative and examined which of these aspects could be confirmed in the available texts, finding that two of them — *prior* consultation and *reaching an agreement* — met this condition.

The first aspect was immediately ruled out, as the only project where *prior* consultation was carried out according to the government (and for which no complaints were found in the database) was found in an external source to not have in fact been *prior*. As the document (a Direct Request) includes the concrete name of the case — the hydroelectric project Las Cruces in the state of Nayarit in Mexico (CEACR, 2014) — additional information was easy to collect, and online searches yielded several complaints. One such complaint is a letter written by the lawyer for the Inter-American Association for Environmental Defense addressed to the social communication manager of the Federal Electricity Commission (Moguel, 2015, pp. 2–3). The letter clearly alleges that the process was not *prior*. *Reaching an agreement*, then, became the only viable criterion.

Table 2.5 shows the summaries. Colombia and Peru are the only two countries with a score of 0.5, as they have documented cases of consultations that managed to *reach agreements*. All the other countries have only complaints about the *lack of consultation* or *inadequate consultations* that lacked one or all the qualities described above.

Though Colombia and Peru have received numerous similar complaints, there are also references that document *progress in consultation processes* in these two countries. This is particularly relevant in the case of Colombia, as the texts include a positive comment made in this regard by an external expert and not only by the government itself. Of the eighteen documents about consultations in Colombia studied here, there is one comment by the Special Rapporteur, Stavenhagen (2004), who visited the country, that notes:

> The communities maintain that the mechanism does not operate in the same way in all parts of the country. In the indigenous

Table 2.5. Implementation gap for consultations about natural resources

Country	Relevant Cases	Existence of a Consultation with Agreement	Score
Bolivia	There is a contradiction in the construction of the highway in TIPNIS. Although the Bolivian Workers' Central (COB, Central Obrera Boliviana) denounced the lack of prior consultation and the criminalization of protest (CEACR, 2013o), the government indicated that it did carry out prior consultation (CEACR, 2014o).	Before the TIPNIS case, there had been observations of only the lack of consultations, 27 logging concessions that affect 6 Indigenous territories (TC, 1999), the activities of an oil company in the territory of Guaraní communities of Tantayapi (CEACR, 2005o), etc.	1
Colombia	A lack of consultations has been noted in Antioquía. In contrast, progress has been reported in consultation processes in Sierra Nevada, La Guajira, and Nariño (Stavenhagen, 2005, par. 55). In the Mandé Norte project, there was a consultation in 2013, and as a result, they changed the path of the road to be constructed (CEACR, 2016r).	The government indicates that during the period between 2003 and 2015, a total of 4,891 consultation processes have been carried out with ethnic communities, of which 4,198 ended with agreements (CEACR, 2016o, art. 15).	0.5
Ecuador	A proper consultation process was not carried out with the Independent Federation of the Shuar People of Ecuador (FISPE, Federación Independiente del Pueblo Shuar de Ecuador) for a hydrocarbon exploitation project in Block 24, where 70% of the FISPE's territory is located (TC, 2001).	Despite the sentences at the I/A Court H.R. for the case of Kichwa de Sarayaku Indigenous People vs. Ecuador, the government continues to overlook its obligation to carry out prior consultations and issues tenders that affect the same territory (Tauli-Corpuz, 2019, par. 32).	1
Guatemala	Despite the Commission's comments in 2005, 2006, and 2007 with respect to the Montana Company's mining exploitation, the government has not complied and has continued to grant mining licenses without consultation (CEACR, 2009o).	The communities were not able to access information about the implementation of a project in their land until construction began (CIDH, 2015b, par. 500).	1
Mexico	Consultations are occasionally carried out, but a posteriori. In the municipality of Muna, Yucatan, the ejido and environmental authorities authorized a solar park that would entail the construction of more than one million solar panels in indigenous territories, without prior consultation with the affected Mayan communities (Tauli-Corpuz, 2018a, par. 40)	Most megaprojects have led to the assault of the defenders of land and environmental rights. More than two thirds of the assaults recorded have been perpetrated in the states of Mexico, Sonora, Oaxaca, Puebla, Colima, and Campeche (Forst, Kaye, and Lanza, 2018, par. 64)	1

Table 2.5. (*continued*)

Country	Relevant Cases	Existence of a Consultation with Agreement	Score
Nicaragua	At the IACHR hearing (154th period), claimants denounced the complete lack of consultation with indigenous peoples and peoples of African descent affected by the construction of a transoceanic canal (CIDH, 2015a, pp. 42–43).	One case of a megaproject concessioned without any type of consultation with the affected peoples has been observed (CIDH, 2015a, pp. 42–43).	1
Panama	The government did not carry out the proper consultations with the Charco la Pava community for the Chan 75 project (Anaya, 2009b, par. 28). Proper consultation was also not carried out for the Barro Blanco project, whose reservoir would flood the lands of an area next to the Ngäbe Buglé comarca (Anaya, 2014, par. 42).	Only inadequate consultation processes and cases of their absence have been observed. The government declared that it would not ratify Convention No. 169 for "constitutional, economic, political, administrative and social, legal, and environmental" reasons (Anaya, 2014, par. 26).	1
Paraguay	There is "a widespread breach of the state's duty to consult before adopting legislative, political, or administrative measures that directly affect indigenous peoples and their lands, territories, and natural resources" (Tauli-Corpuz, 2015, par. 39).	For most of the institutional programs and projects for Indigenous peoples about which the Special Rapporteur received information, they had not ben consulted (Tauli-Corpuz, 2015, par. 40).	1
Peru	The government described 22 processes carried out since law no. 29,785 (2011) went into effect, related to contracts for exploration and exploitation, among others, of which 20 processes led to agreements (CEACR, 2018o, art.6).	Although law 29,785 has limitations that contribute to the lack of prior consultations with peasant communities, at least 20 consultation processes with agreements have been observed, though not all were related to land or natural resources (CEACR, 2018o, art. 6).	0.5
Venezuela	Although the government indicates it has carried out consultations with Indigenous communities prior to establishing the Orinoco Oil Belt through multiple assembles (CEACR, 2019o, art. 15), they are considered to be inadequate due to complaints about the authority's political discrimination (CIDH, 2017b, par. 429).	As part of the Orinoco Mining Arc project in the state of Bolívar in 2017, operations were carried out thorugh the mining company without prior consultation with the affected indigenous communities (CEACR, 2019o, art.15).	1

Source: Prepared by the author based on thedata source (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019. For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

> territories of Antioquia, the Special Rapporteur was told that mining and other projects were launched without prior consultation or the consent of the indigenous communities. On the other hand, the indigenous peoples of the Sierra Nevada, the Wayuu people in Guajira and the Awa in Nariño report that they have made some *headway with consultation processes*. (par. 55) [emphasis added]

In addition to this reference, there are two segments that reflect circumstances of relevance for this country. First, the CEACR Direct Request reports that for the mining project Mandé Norte, a national megaproject in the departments of Antioquia and Chocó, the Colombian government indicated that the inhabitants of the Chidima reserve were consulted in 2013, and as a result, the route of the road to be constructed as part of the project was changed (CEACR, 2016, art. 15).

This report does not indicate if all affected inhabitants agreed with this change; surely some of them rejected the construction of the highway or the project itself entirely. However, the information in the report does show that for these consultations to take place in 2013, the Constitutional Court's sentence T-769 of 2009 was crucial, confirming the lack of *prior* consultation and the existence of attempts by the mining company to impose the project. This sentence ordered that the project's exploration and exploitation activities be suspended and requested that *prior* consultation be repeated with free, prior, and informed consent in all communities that might be affected by the project. This constituted a major legal precedent in the country.

A CEACR Observation also shows that the government reported a total of 4,891 *consultation processes* with ethnic communities between 2003 and 2015, 4,198 of which ended with *agreements* (CEACR, 2016, art. 15). In comparison, the information about consultations agreed to in Peru shows twenty-two such processes carried out between 2011 and 2017 (CEACR, 2018, art. 6, par. 2), highlighting the number of agreements and possible degree of commitment by authorities in Colombia.

Results

Applying the four criteria discussed above shows the implementation gaps in rights to land and territory in the ten countries analyzed here (see Figure 2.1).

First, Guatemala stands out with the largest gaps in all areas, obtaining a final score of 5.0. It is followed by Venezuela, with a score of 4.5. In these countries, Indigenous peoples are severely unprotected in terms of their rights to their land, which also affects other, more fundamental, rights, such as the right to life.

The case of Mexico comes next (4.0), followed by Colombia and Nicaragua, which share a score of 3.5. Together, these three countries all share the problems of *eviction* and *forced displacement*. In Mexico and Colombia, the violence caused by armed criminal groups surpasses the governments' capacity to maintain citizen safety, and in Nicaragua, the government ignores its responsibility to stop the aggressive acts carried out by settlers in Indigenous territories.

Paraguay and Ecuador follow these countries, with a score of 3.0. The difference between the two lies in how much progress they have made in titling and in the number of *evictions* and *forced displacements*. While Paraguay has seen greater progress in terms of land titling for Indigenous peoples, it turns out to have the same gap as Ecuador due to its inability to guarantee security from invaders, *evictions* and *forced displacement*.

With a score of 2.5, Peru and Panama are the next two countries. They differ from one another in terms of security against invaders and how they handle consultations. While Panama made several attempts, though with setbacks, to stop *invasions* by settlers in Indigenous territories, Peru did not help its native inhabitants who needed territorial protection. They received the same score, though, because the government of Peru attempted to make advances with *consultation processes*, while the government of Panama has a more reticent policy in this regard.

Finally, Bolivia comes through with the lowest gap (2.0). It has made progress in land titling and has distributed relatively more land to Indigenous peoples than the other countries analyzed here. Nonetheless, the lack of citizen consultations persists, as is the case in the vast majority of the countries examined.

Conclusion

All the countries studied here present implementation gaps; no country is perfect. However, there is variety in the magnitude of these gaps, as this study

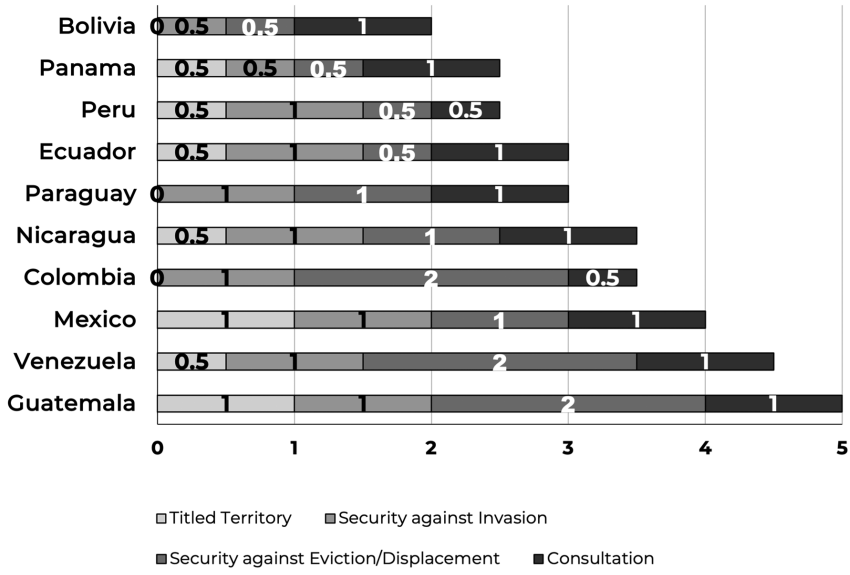

Figure 2.1. Results: Implementation gap in rights to land

shows. The larger the gap, the lower the possibility of safeguarding other legally recognized rights, such as the right to life and the right to self-determination.

Now that the gaps in terms of the implementation of land rights is clearer, the next steps are 1) to explore the necessary and sufficient conditions that have influenced the results obtained in this study; and 2) to investigate the four other operational features that Bennagen proposed for evaluating concrete situations of Indigenous autonomy (Bennagen, 1992, p. 72).

For the first step, it is essential to distinguish between two types of factors to carry out the fsQCA in two phases: *remote factors* and *proximate factors* (Schneider and Wagemann, 2006). *Remote factors* are relatively stable over time; their distance from current results is large in terms of both time and space. As a result, they are beyond the conscious influence of the actors involved, thus we can consider historical and/or structural contexts to be *remote factors*.

For the cases analyzed in this study, *remote factors* may be 1) the existence of territorial institutions for Indigenous peoples prior to the 1990s (for example, *reserves* in Colombia, *comarcas* in Panama, as well as *autonomous regions* in Nicaragua); and 2) the lack of internal armed conflict (unlike in Colombia, Guatemala and Nicaragua). While the existence of a territorial institution historically recognized by Indigenous peoples would strengthen the process of implementing the right to lands and territories, the repercussions or perpetuation of internal conflict may impede this process.

Proximate factors, in contrast, change over time and are vulnerable to changes made by actors, thus they are closer to the results in terms of time and space. In the Latin American context, these factors include 1) a high degree of democracy; 2) a lack of organized criminal groups; 3) a high level of political representation in the national congress (Stavenhagen, 2006, par. 84); and 4) the existence of political will represented by financial resources allocated to the regularization of Indigenous lands and territories (Aylwin, 2002, p. 74).

Not included here, for example, is the neo-extractivist development policy that has clearly affected the implementation of land policy for Indigenous populations (Tockman and Cameron, 2014), as all the cases studied share this tendency and it would be difficult to find variation within the group in this regard. Each of these factors requires extensive, in-depth analysis and will thus be examined in greater detail in the next phase of this research.

I hope that this attempt to take stock of the situation can serve as a point of departure in the ongoing pursuit of effective strategies that can reduce the region's implementation gaps.

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NOTES

1 The professional collaboration of my colleague, lawyer Rubén Rodríguez, was vital for this phase of the research. I am deeply grateful for his help.

2 This Commission examines the reports submitted by governments that have ratified one of the Organization's conventions. Governments have the obligation to provide reports on the application of the ratified convention within one to five years, depending on their urgency. The Commission is made up of twenty independent experts from all over the world and meets once a year to examine the reports submitted by the governments as well as the communications sent by the organizations of employers and workers. These communications, however, are not received periodically as are the government reports; instead, they are only issued when emergencies are detected, and they aim to either support the government's position or, in contrast, to expose the State's non-compliance with the provisions of a convention. Based on the information received sufficiently in advance of the annual meeting, the Commission analyzes the status of the application of a convention and adopts a unanimous conclusion among its members, though it is also possible to make decisions by majority rule (ILO, 2019, pp. 17–21).

3 I would like to thank Xavier Basurto and Johanna Speers for sharing their inspiring methodology for calibrating qualitative data (Basurto and Speers, 2012). Their work has been an essential contribution to the development of this study.

4 Specialized software (MAXQDA 2018) has been used for qualitative data analysis in this study.

5 "1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect" (C169, art. 14-1). "2) Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy . . ." (C169, art. 14-2, first half).

6 "… and to guarantee effective protection of their rights of ownership and possession" (C169, art. 14-2, second half). "3) Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned" (C169, art. 14-3). "Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences" (art. 18).

7 "1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2) Where the relocation of these peoples

is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3) Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4) When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5) Persons thus relocated shall be fully compensated for any resulting loss or injury" (C169, art. 16).

8 "1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. 2) In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities" (C169, art. 15).

9 The codes used for the lexical searches for point of comparison 2 are *invasion, invader, settler* and *invade*; for point of comparison 3 they are *eviction, displacement, dispossession,* and their derivatives; and for point of comparison 4, *prior consultation* and *no consultation* [in Spanish: 2) *invasión, invasor, colono*, *invadir*; 3) *desalojo*, *desplazamiento*, *despojo*; 4) *consulta previa* and *sin consulta*].

10 Peoples of African descent have been included for the cases of Bolivia, Nicaragua, and Peru in their entirety, and partially for Ecuador, Guatemala, Mexico and Panama. They have not been included for the other countries — Colombia, because it has separate institutions for Afro-Colombians; and Paraguay and Venezuela, because they lack institutions for titling land for peoples of African descent, who, furthermore, cannot be included among their country's ethnic groups.

11 I found five documents that use the words *displacement, eviction, abandonment*, and/or *dispossession* [in Spanish, *desplazamiento*, *desalojo*, *abandon*, and/or *despojo*], including their lexical derivatives or applicable term in a specific context. The first four documents refer to the risk of displacement and not an actual act of displacement: 1) a report by the committee charged with examining a complaint indicates the concern of the General Confederation of Workers of Peru (CGTP, Confederación General de Trabajadores del Perú) in the face of the Land Titling Law for Coastal Communities (Tripartite Committee-ILO [ILO-CT], 1998). 2) A CEACR Observation notes the CGTP's comments that question "the existence of a bill which allows the displacement

of people in large-scale projects" (CEACR, 2011, par. 1), and the Committee asks the government "to ensure that section 12 of Legislative Decree No. 994 of 2008, which provides for the possibility of eviction from unclaimed lands in case of invasion or usurpation, does not apply to indigenous peoples who traditionally occupy lands even if they do not have any formal title of ownership" (CEACR, 2011, art. 14). 3) A complaint about a concession granted without proper consultation with the Ashaninka communities alleges that the construction of a hydroelectric plant will directly affect the communities, thus involving "the possible displacement of the peoples" (ILO-CT, 2012, par. 29). 4) Finally, in the CEACR Direct Request about the "protection of peoples living in isolation," the Committee refers to the "risk of epidemics, displacement and disputes over living space" (CEACR, 2014).

12 This refers to the communities that were beneficiaries of the CIDH Precautionary Measure no. 505-515: Esperanza, Santa Clara, Wisconsin, Francia Sirpi, Santa Fe, Esperanza Río Coco, San Jerónimo, Polo Paiwas, Klisnak, Wiwinak, Naranjal and Cocal (Resolution 37/2015; Resolution 2/2016; Resolution 44/2016).

13 IACHR Resolution 29/2016, Precautionary Measure No. 271-05, Extension of beneficiaries, Community La Oroya, Peru. Available at: http://www.oas.org/es/cidh/decisiones/pdf/2016/MC271-5-Es.pdf

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Annex 1

Table 2.6. Reports on the Convention No. 169 (No. 107 for Panama) of the ILO

Reports on C169 (C107 for Panama)					
			Year of Publication		
Country	**Ratification**	**No. Documents**	**Observation (CEACR)**	**Direct Request (CEACR)**	**Complaint (tripartite committee)**
Bolivia	1991	16	1995, 1999, 2003, 2004, 2005, 2006, 2010, 2012, 2013, 2014	1994, 1995, 2006, 2010, 2014	1999
Colombia	1991	28	1994, 1996, 1999, 2001, 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016	1994, 1996, 1999, 2001, 2004, 2009, 2010, 2014, 2016	2001, 2001
Ecuador	1998	13	2003, 2004, 2007, 2010, 2014, 2015	2003, 2004, 2007, 2010, 2014, 2015	2001
Guatemala	1996	24	1999, 2002, 2004, 2006, 2007, 2008, 2009, 2010, 2012, 2013, 2014, 2015, 2019	1999, 2002, 2004, 2006, 2007, 2010, 2012, 2015, 2016, 2019	2007
Mexico	1990	32	1995, 1996, 1997, 1999, 2000, 2002, 2005, 2006, 2007, 2008, 2009, 2010, 2012, 2014	1993, 1995, 1996, 1997, 1999, 2000, 2002, 2006, 2010, 2012, 2014	1998, 1999, 2004, 2004, 2004, 2004, 2006
Nicaragua	2010	6	2019	2014, 2016, 2017, 2018, 2019	
Panama	1957 (C107)	20	(1989), 1991, 1992, 1995, 1996, 2003, 2005, 2009, 2010,	(1989), 1991, 1992, 1995, 1996, 2003, 2005, 2009, 2010, 2014, 2016	
Paraguay	1993	29	2000, 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2012, 2013, 2015, 2018	1997, 1998, 1999, 2000, 2001, 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2012, 2015, 2018	
Peru	1994	25	1998, 1999, 2001, 2003, 2004, 2006, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2018	1999, 2003, 2006, 2009, 2010, 2011, 2014, 2018	1998, 2012, 2014
Venezuela	2002	11	2005, 2010, 2013, 2014, 2015, 2019	2005, 2008, 2010, 2015, 2019	

Source: Prepared by the author. The comments by the Commission of Experts (CEACR) are available in "NORMLEX" on the ILO website del sitio web de la OIT, (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20010:0::NO::). The tripartite committee's reports submitted in the context of the complaints are available at https://www.ilo.org/dyn/normlex/en/f?p=1000:50010:::NO:50010:P50010_ARTICLE_NO:24.

Annex 2
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