

The RIAS Essay Writing Competition

Title: An approach towards truly Sustainable Sustainability for Indigenous communities

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Introduction

In 2019, Mexico opened the Eolica del Sur wind park. With 132 wind turbines, this is the largest wind park in Latin America (Morais, 2019). The park is able to supply electricity to 400,000 homes throughout Mexico, however, it is largely at the expense of indigenous communities. As explained by Alasdair Baverstock, the park takes up a large amount of (what was previously) indigenous communal land. As a result, the project has been met with opposition from both indigenous community leaders and human rights activists representing indigenous communities (Baverstock, 2019). Not only have these communities lost most of their land but, they also barely benefit from the newly created energy by the wind turbines. It is problematic to consider that strides taken in the direction of a greener environment could at the same time result in different sorts of environmental deficiencies and human rights violations for smaller groups of the community. That is the intended focus of this essay: how indigenous communities are specifically affected by environmental degradation and the solutions created for environmental degradation. This essay will argue that indigenous communities need more and stronger legal protection because their human rights are gravely at risk with the current trajectory of environmental degradation. In the above example, it is clear that the rights of indigenous peoples have been a secondary consideration, which usually is the case where the environment is concerned. Therefore, this essay aims to draw attention to the needs of indigenous communities, in terms of their rights and their communal environmental protection. This focus comes from the realization that sustainability has to consider all members of society. The rights of smaller groups cannot be jeopardized for the goal of larger sustainability. Hence the need to look towards methods of sustainability which are truly sustainable.

The United Nations (UN) has recently stated that governments need to draw attention to “comprehensive dialogue and consultations with indigenous peoples” (UN.org). Such statements have emerged from the realization that the human rights of indigenous peoples have been consistently disregarded. While it is no secret that indigenous communities around the world face grave human rights violations, the increased awareness of this fact has led to human rights bodies dedicating more resources towards safeguarding the rights of indigenous communities. This awareness brought about the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) and an increased number of Indigenous Human Rights defenders (United Nations, 2015, 2). Looking at the human rights violations these groups face, it is clear that the environment is a large concern. The protection of the environment of indigenous communities relate to, inter alia, articles 8; 10; 11; 12; 18; 19; 20; 21; 24; 25; 26; 27; 28 and 29 of the UNDRIP (UNDRIP, 2007). Although the formation of the UNDRIP signifies strides in the protection of indigenous human rights, like many other declarations, it is not legally binding. This nuanced fact creates problems around enforcement of the articles stipulated. Regardless of this fact, this essay will nonetheless prove the urgency to fulfil the provisions in the declaration.

Environmental degradation is doubly detrimental to indigenous communities because not only do indigenous communities live off their land but the environment around them also tends to have cosmological, ancestral, and spiritual significance (UN Environment Programme, 2020). Yet, the areas these communities inhabit undergo massive land and water pollution, deforestation, and many other violations, all in the name of development. Therefore, this essay, through the aid of a contextual example aims to highlight the importance of environmental protection in indigenous communities and how the lack of such protection violates the human rights of these peoples. The main research question which has

been developed is: *“Do indigenous communities in Mexico need distinctive environmental protection?”* This essay will argue in favor of the research question by showing that indigenous communities, do indeed face more dire human rights violations as a result of environmental degradation. Moreover, the essay will also touch upon the fact that current sustainability measures do not consider the rights of freedoms of indigenous communities. Therefore, it will be argued that future sustainability measures need to be more considerate of these groups if truly sustainable measure are ever to be developed.

The motivation for this question comes from observing the inequality which currently exists in the world and how people are and will continue to suffer as a result of this inequality. As highlighted by United Nations Special Rapporteur on extreme poverty and human rights, Philip Alston, “We risk a ‘climate apartheid’ scenario where the wealthy pay to escape overheating, hunger and conflict while the rest of the world is left to suffer.” A large proportion of ‘the rest’ are indigenous communities which will be forced to either relocate or starve (UN Environment Programme, 2020). However, due to the value they place around their environment, relocation is not a desired outcome either. Hence the need to continue to draw more attention to these exceptionally vulnerable groups and see how their rights and freedoms can be protected as we look towards the future.

To aid the argumentation provided in the main research question, two sub-questions have been developed. The first if these is, “what is the nature of the relationship indigenous peoples have with their environment?” The second is, “how have the human rights of indigenous people been effected thus far through environmental degradation?” Both of these questions will provide insights that will show why indigenous communities demand more attention when looking towards the future of climate change and environmental degradation.

The Indigenous Zapotec communities of Mexico

There are thousands of indigenous communities around the world. However, in order to create a stronger and more specific argument, this essay will use one country as a case study. The choice of Mexican indigenous communities is a personal one. After conducting indigenous field research in the summer of 2019, I became acquainted with the plights of indigenous communities for the protection of their environment and their rights in relation to the environment. Mexico is home to 78 different and distinct indigenous groups (Global Americans, 2017). While each group has faced human rights violations as a result of environmental degradation and/or 'economic development,' due to scope, this essay will only focus on the Zapotec indigenous group in Oaxaca. Oaxaca is a Southern Mexican state which is home to the Zapotec indigenous community. Mexico is ranked third on the list of most biodiverse countries in the world. Within the country, Oaxaca is one of the most culturally and biologically diverse regions (Alcántara-Salinas et al., 2015, 735). Not only this, but 70% of land in Oaxaca is communal land and most of it is considered sacred by the indigenous communities that inhabit it. Unfortunately, Oaxaca's biodiversity and land security is threatened by global trends, such as development projects. Due to such trends, loss of land, land usage changes, poverty and loss of livelihoods amongst indigenous communities have drastically increased. As mentioned by Alcántara-Salinas et al., not only has there been resource diminution, but the destruction of the environment has also led to social and cultural impoverishment (Alcántara-Salinas et al., 2015, 736). An example of such impoverishment occurs through the forced migration and displacement of indigenous people. When indigenous communities are forced to migrate, they lose invaluable ancestral links to their environment which heavily effects their identity. While other regions in Mexico likewise feel the effects of environmental degradation (like the capital, Mexico City for example), the

people in these regions are rarely forced to migrate because of environmental changes. The people in more urban areas tend to have governmental support while indigenous communities are not afforded the same support. Therefore, considering the undesired effect of migration which deeply interferes with the rights and freedoms of indigenous communities, it is clear that they need extra protection so avoid instances of involuntary migration.

The progression of Environmental law, Human Rights and Indigenous peoples' needs

It is important to note that the development of environmental law in relation to human rights is still an evolving process. Both environmental and human rights law have developed independently from each other over the years, however, as environmental impacts increasingly affect the lives of people, the relation between the two has been drawing closer. While this might be the case and some human rights charters, such as the African (Banjul) Charter on Human and People's Rights (ACHPR) recognize the right to a clean environment, on a UN level, there is no developed relationship between the environment and human rights (ACHPR, Article 24). A clean environment is still not considered a human right at a UN level. This indicates that whether it is indigenous communities or not under consideration, the relationship between the environment and human rights needs to be developed more than it currently is.

It has only been with recent cases such as *Leghari v. Federation of Pakistan* and *Urgenda v. The State of the Netherlands* that human rights have been related to environmental concerns (Boven, 2021, 3). Most of the authority regarding the environment and human rights stems from existing case law (Boven, 2021, 4). Therefore, due to the fact that the relationship is still developing worldwide, it may still be premature to state that

indigenous communities need extra protection from environmental distress. Nevertheless, there clearly is present day harm and human rights violations occurring towards these communities and it would not be justifiable to argue that they should wait for international law to catch up in order for them to receive human rights protections. Additionally, it can still be argued that indigenous communities (that live off the land) have the most to lose in the current trajectory of environmental degradation.

The realization of the need for extra human rights protections for indigenous communities materialized through the UNDRIP. However, the UNDRIP was only developed in 2007 after exceedingly long negotiations. This is due to the fact that the extra protection of indigenous communities has been a complicated matter to agree upon because it is based on many unjust historical bases. As legal scholar Jérémie Gilbert suggests, international legal theory has had a difficult time dealing with historical injustices (Gilbert, 2007, 84). While this may be a prominent flaw in international legal institutions, it should not be a deterring measure to further developing the extra protection for indigenous peoples. Moreover, the rights of indigenous peoples (without emphasis on the environment), were first taken in an individual sense in the 1989 International Labor Organization Convention on the Rights of Indigenous and Tribal Peoples (Gilbert, 2007, 583). Since this initial establishment, there has also been the organization of various UN councils garnering around the extra protection of the human rights of indigenous peoples. The relationship with the human rights and environmental protection for indigenous groups on the other hand, took much longer to establish. As further explained by Gilbert, this relationship has been focused on land rights for indigenous peoples (Gilbert, 2007, 584). This brings us directly to the next section on the importance of land for the human rights of indigenous peoples.

The distinctive importance of land for indigenous communities

Land is an extremely important consideration with regards to indigenous communities and their relation to the environment. Article 8. 2(b) of the UNDRIP states that governments have to protect the land and resources of indigenous peoples or provide redress if said resources are jeopardized (United Nations, 2007, 10). While the UNDRIP is only a branch of soft law, Mexico adopted the UNDRIP and should abide by the stipulations given in the declaration. Therefore, there should be considerations given to the stipulations made in Article 8 and how the human rights of indigenous peoples are being affected. Moreover, there have also been binding instruments which have been developed which have been violated with regards to the environmental human rights of indigenous peoples. For example, the 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries (C169), Article 7 stipulates that indigenous people have the right to their own land (C169, 1989, Article 7.) Looking at this article, it is clear to see that any degradation on land in indigenous communities constitutes as a violation of their rights. Many of the problems surrounding environmental degradation in rural Mexico are ones like soil erosion and deforestation etc., rather than ozone layer depletion (Landa et al., 1997, 316). This is due to the fact that in rural Mexico, subsistence farming feeds almost entire communities. They rely on this land for food, livestock feeding and water. Therefore, if land is jeopardized, indigenous people will either have to relocate or consume less food. This kind of burdensome position puts the rights and freedoms of indigenous people at risk. In 2017 alone, the Mexican Commission on Defense and Promotion of Human Rights reported 25 incidents of forcible displacement of communities which affected over 20,000 people (Minority Rights Group International). In communities where farming was their main source of survival, fundamental freedoms were

stripped away from members of these communities. The use of land is clearly a matter of necessity for the survival of these communities.

In addition to all of these practical considerations, the issue of land for indigenous Mexican's is a complex relationship around need, history, and respect for the land which they inhabit. As I witnessed through my own field research in Oaxaca, Mexico in the summer of 2019, indigenous peoples depend on the environment for cultural rituals, spiritual healing, and ancestral connection. They view the environment as part of them rather than as tertiary being. Land is seen as the locus of both community and individual identity. Therefore, when any aspects of the environment around them is destroyed or altered, it is seen as a violent attack on their lived cosmologies and identities. Destruction of any aspects of the environment are viewed in the same way as the killing of a community member would be viewed. For example, forests, in many different indigenous groups are viewed as sacred and spiritually significant locations. However, Mexico has lost more than half of its natural forests and recent numbers suggest that an average of close to one million hectares of forest are lost per year (Eguiluz-Piedra, 2003). This deforestation also contributes to soil erosion and desertification. This pattern of increased deforestation threatens indigenous community's rights to "the conservation and protection of the environment and the productive capacity of their lands or territories and resources," as stipulated in Article 29 of the UNDRIP (United Nations 2007, 21). Moreover, if this rate of deforestation continues or gets even higher, indigenous peoples risk their livelihoods, food availability and cultural relationship with their environment. Therefore, taking these practical and epistemological understandings into consideration, environmental degradation goes as far as threatening the right to life for indigenous communities.

The problem is that over time, indigenous groups have been repeatedly deprived of their land (Gilbert, 2007, 584). This deprivation also relates to article 11 of the UNDRIP which states that indigenous communities have the right and freedom to protect their ancestry and historical sites (United Nations, 2007, 11). As well as Article 25 which states that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters...” (United Nations, 2007, 19). Understandably, people have had to migrate (involuntarily) as a result of environmental degradation. Firstly, this might be required due to the destruction of arable farmland and secondly through the destruction of ancestral and spiritual sites. The degradation of these areas strips indigenous communities of their cultural essence and leave them with little reasons to remain in a given area. It has been further explained by the UN Special Rapporteur on ‘the Situation of Human Rights and Fundamental Freedoms of Indigenous People,’ Rodolfo Stavenhagen, in 2015, that defense of indigenous peoples farming, and territorial rights should be a chief human rights issue (Stavenhagen, 2005, 104). Looking back in 2021, it is clear that more still needs to be done for the protection of these groups.

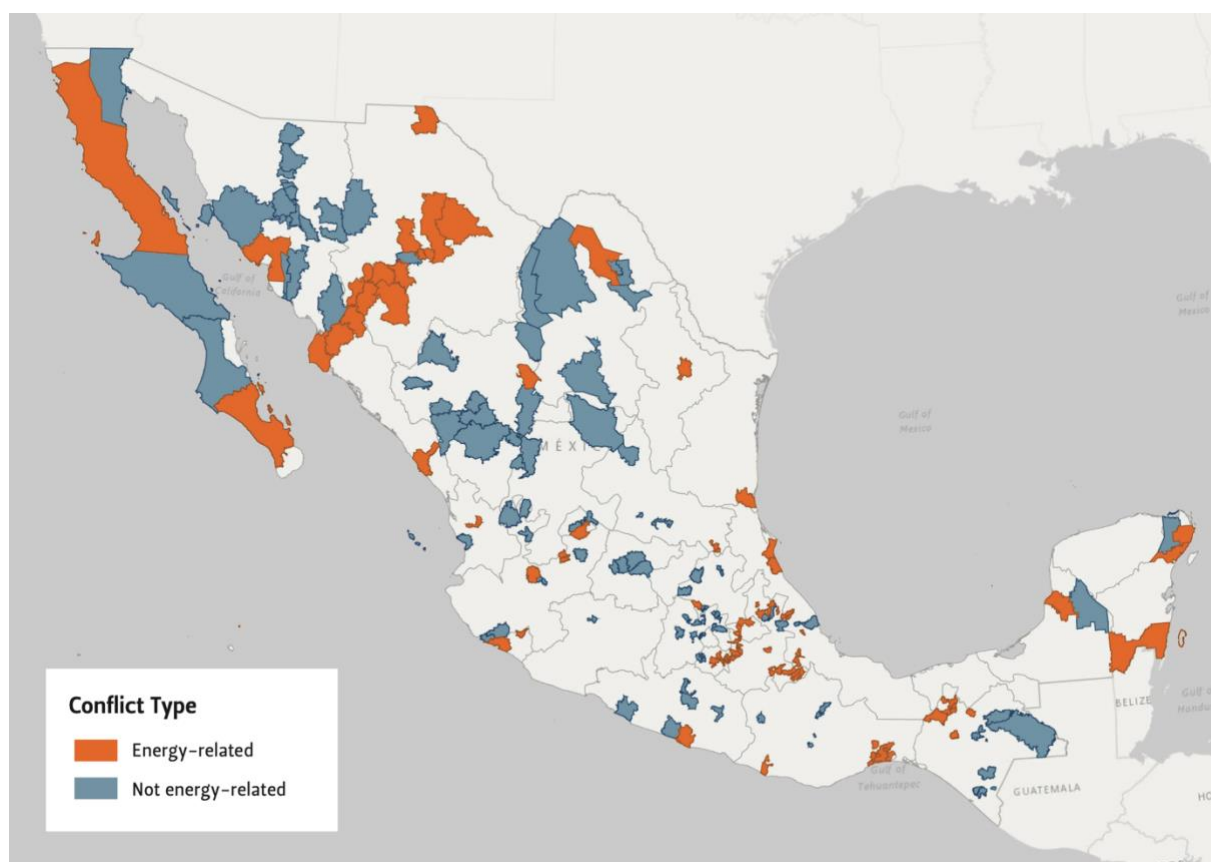
Promoting the principles of sustainability and collective welfare:

This essay began with a brief explanation of the effects the windmill park implementation has had on the indigenous people in Oaxaca. A very large problem is that even suitability projects have become megaprojects which rely on the land and space characteristically taken up by indigenous communities. Between the years of 2013-2014, Mexico underwent energy reform in which mass hydrocarbon and electricity value chains were opened up to private corporations (Cruz et al., 2019, 1). As a result, many ‘solutions’ to the climate change problem

have actually disproportionately harmed indigenous groups. Another example given by the UN Environment Programme is the transition to biofuels. Although biofuels may lead to less greenhouse gas emission, they demand a large amount of land and sometimes crops which could otherwise be used to feed indigenous communities. Biofuel production also affects the ecosystems and water supply which indigenous peoples depend on for survival (UN Environment Programme, 2020). The irony of such projects is that they are in the name of sustainability, however, they lead to the destruction and displacement of indigenous communities. Such projects are an example of what occurs when collective welfare is not the main consideration. The disregard indigenous communities face even in the name of sustainability proves the need for extra protection with regards to their rights as a community.

As scholars such as Gloria Amparo Miranda Zambrano and José Eduardo Vidaurri Aréchiga explore, indigenous communities have a devoted relationship to the environment in a way which naturally promotes sustainability (Zambrano and Aréchiga, 2014). The value indigenous communities place on land and their environmental surroundings provides a model by which collective sustainability could be achieved without putting the considerations of some members of society above another's. It has been argued the anthropocentric view Western states take towards the environment is the primary reason that humans have found that their rights and freedoms are in danger from detrimental environmental effects. Whereas indigenous communities' epistemological views on the significance on the environment has led them to practice living *with* the environment rather than off the environment. In this regard, the rest of the country (and world) could learn from studying the approaches adopted by these communities. The approaches of sustainable living that they have developed can be applied at a national level in ways that will not cause more

environmental damage or harm the rights of others. For example, indigenous communities possess a long historical understanding of the lands they inhabit and how best to sustain the environment and ecosystem around them (Johnson et al., 2015, 1). If such knowledge and respect for the environment was implemented through the country, sustainability could be truly sustainable. Learning from these examples would create an environment of small-scale communal sustainability rather than sustainability based off large commercial companies which in most cases still use a great deal of energy.



(Cruz et al., 2019, 2).

As can be viewed from the map above, many of the protests indigenous groups got involved in recent years were in protest of new energy related programs. While moving towards a greener society is a collective goal, indigenous communities have noticed that they are the ones paying the price for attempted transitions.

In addition to this consideration, it is important to note that the original goal of a Universal Declaration of Human Rights was that the rights stipulated would be universally applicable. However, in such instances, the universality of human rights is put into question. Due to the fact that indigenous communities depend on the environment for survival and have little governmental support outside of this, climate change and other environmental concerns pose a greater risk to their survival. For example, the indigenous group in Chiapas, Mexico, faces a large risk because they are a coastal region more susceptible to the effects of climate change (Minority Rights Group International, 2017, 25). These increased climate change effects could include floods which will destroy the land that they inhabit. This destruction of land will likely result in more severe malnutrition and starvation for this community. The farmers in this region already barely make enough to feed their families therefore, even the smallest changes in soil fertility or climate will heavily impact the community. An additional reason that these communities face such an unprecedented risk is because of the lack of collective welfare. In urban areas, poverty is often more mitigated by governmental aid. Governmental and social protection of indigenous communities is close to non-existent. Therefore, if there are negative effects to the environment which would result in lower yields, indigenous communities would be unlikely to receive adequate government aid. Such protective measures need to be developed by the government if the human rights of these people are to be safeguarded. As further explained by Stavenhagen, indigenous people are often the most underprivileged and poorest within a country (Stavenhagen, 2005, 106). This position in society which includes a low literacy rate, high death rate and inadequate public systems amongst other things, means that indigenous communities have very little bargaining power when it comes to issues of their land/environment. There seems

to be an intersectionality between indigenous peoples' position in society and their dependence on the environment that proves the need for extra protection for these communities in the future.

Conclusion

It has been a long journey for the relationship between the environment and human rights. The relationship is ever developing and the fact that the UNDRIP is non-binding makes the situation much more complicated. Thus, while many human rights defenders are arguing that issues of the environment implicate human rights, legal instruments still have to catch up to this conclusion. Regardless of this considerable issue, this essay has shown why environmental degradation is a human rights issue for indigenous communities and why they need extra protection from the current violations taking place. Due to the scope of this essay, only a few key issues could be touched upon, however, that is not to say that these are the only environmental human rights issues faced by indigenous communities in Mexico. There are still other issues such as water contamination which threatens the right and freedom to life for indigenous peoples who depend on clean, natural water sources for survival.

Moreover, indigenous communities have very little legal protection for their rights. The development of better functioning legal instruments is necessary. Not only have indigenous groups themselves been targeted but a number of the environmental human rights activists representing them in Mexico have even been killed. Amongst these have been activists Isidro Baldenegro López and Juan Ontiveros Ramos. Other activists such as Zamora Baldomero have been arrested under false charges in order to silence their protesting against the environmental human rights violations that indigenous communities are subjected to (Minority Rights Group International). The imprisonment and killings of these

members have been made possible because of the lack of legal instruments afforded to indigenous causes in the country. The connection between the environment, economic development and the human rights of indigenous people is a complex one. However, it is clear that the current methods Mexico is exploring towards sustainability is not in service of the entirety of the population. For this reason, if the human rights of indigenous groups are to be preserved then extra protection within society is needed for them. Along with possible changes towards suitability projects being undertaken. The present and future risks these communities will face need to be taken with the utmost seriousness because their rights and freedoms are invaluable.

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