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Forced Displacement of Indigenous Peoples in the Amazon Caused by Environmental Hardship: a Case for Human Security

Daqui Lema[*], *Augusta Vasquez*[**]

Abstract
American states have proceeded to adopt legally binding instruments that open important bridges between international human rights law, domestic law of states and the indigenous communities. While these advances have been relevant from a legal point of view, indigenous peoples face threats from invasive extractive activities in their ancestral territories. The absence of the state in these territories raises the issue of the protection of fundamental rights in contexts where the cultural practices of indigenous peoples depend on the territory and its resources, and which are currently facing the dangers generated by the expansion of the activities of post-industrial societies. This paper discuses factual findings in the context of the applicable international criminal and international human rights law with regard to the possible commission of the crime of deportation and/or forcible transfer of large sections of the Indigenous communities of the Amazon, addressing in detail how factual circumstances leads to the possibility that the actions of transnational companies with the action, or inaction, of states had deliberately caused a situation of forcible displacement. The jurisprudential cases of the Inter-American Court of Human Rights show how a specific focus on indigenous peoples has been consolidated in recent years, building a common perspective for the states of the region and challenges for building societies respectful of indigenous territories and cultures.

***Keywords*:** *Indigenous Peoples, Forced Transfer, Socio-environmental issues, Transitional Justice*

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Introduction

The following is an analysis of the elements that indicates, prima facie, whether crimes against humanity of deportation and forcible displacement are being committed against the Indigenous people of the Amazon, examining the factual findings in light of the supporting international human rights protection mechanisms and instruments. To this end, the normative context from international law related to forced displacement and deportation was collected in order to understand its relation with human security, indigenous peoples and state responsibilities. From specific treaties on indigenous peoples, such as ILO Convention 169 on indigenous and tribal peoples, the issue of forced displacement was addressed in order to understand its implications for the reality of indigenous peoples in the Amazon region. A documentary analysis has been implemented, that involves cases presented to the Interamerican Human Rights System on the rights of indigenous peoples against different states of the region in order to understand regional approach related to forced displacement of indigenous peoples, considering its contributions in the field of intercultural interpretation, as well as, its impact on the process of adopting norms in the internal sphere of states. The aim is to answer the question: Is it possible to identify forced displacement against indigenous communities on the basis of severe environmental damage as a human security issue? The overall objective is to contribute to the academic debate on instruments for the protection of environmental rights and collective rights of indigenous peoples. The specific objective is thus to contribute in the implementation of instruments for intercultural dialogue among different conceptions of justice and law, especially in legal systems where the debate of legal pluralism, is still going, considering the challenge of building societies based in the respect of cultural diversities, guaranteeing access to justice, including in contexts where the state has historically been absent, such as the unexplored areas of the Amazon region, inhabited historically by indigenous peoples.

1. Displacement and Deportation Without Grounds Under International Law

Treating forced displacement or deportation as a crime is the consequence of a long process in which the jurisprudence of international tribunals has played a vital role. The Statute of the International Criminal Tribunal for the former Yugoslavia's (ICTY) did include deportation in its article 5, incorporating the distinction between transfer of civilians as war crimes,

and deportation as a crime against humanity, giving a new dimension to "deportation" as a practice of ethnic cleansing. The International Criminal Tribunal for Rwanda (ICTR) also addressed deportation in its Article 3 and displacement through the crime against humanity of "inhuman acts" (Bassiouni 2012, 392). Moreover, the jurisprudence of the ICTY, the ICTR, and the International Criminal Court, the work of the UN International Law Commission on the Draft Code of Crimes against the Peace and Security of Mankind, and the International Committee of the Red Cross (ICRC) Commentaries on the Fourth Convention and its Protocols, constitute applicable legal sources for the interpretation and understanding of the scope of the crime of forced displacement. With the drafting of Article 7(1)(d) of the Rome Statute, forcible transfer of population was expressly recognized as a crime against humanity.

The inclusion of forcible transfer of populations in Article 7(1)(d) is the representation of the common distinction which has been made by the ICTY between deportation and forcible transfer that differentiates both depending on whether the victims are forced across a state border, which is considered as deportation, whereas forcible transfer typically refers to displacements within a state. Several judgements from the ICTY Tribunal have concluded that, *"Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State" (ICTY 2021, para. 521).*

Only the Rome Statute provides much in the way of identification between the meaning of "deportation" and "population transfer". Article 7 states: *"Crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: … (d) Deportation or forcible transfer of population" (ICC 1998,1).* Article 7 then provides further language defining "deportation or forcible transfer of population". It states, "Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law…" Article 7 includes the wording "without grounds permitted under international law" drawing a clear distinction between lawful and unlawful deportations and population transfer. Similarly, the inclusion of the language "lawfully present" meaning that in order for deportation or forced displacement to be considered a crime at all, it has to be arbitrary; the deportation of one who is not afforded the right to remain in that state under its domestic laws is provided for.

The contributions provided by the relevant sections of the Elements of Crimes document which is annexed to the Statute, clarifies the meaning to be given to the term "forced" or "forcibly". The document asserts: "The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or another person, or by taking advantage of a coercive environment (ICC, 2010). As the Chambers and the Trial Chamber have concluded, not only physical injury but also economic loss and emotional suffering constitute harm within the meaning of Rule 85 of the Rules of procedure and Evidence (ICC 2008, 92).

Although there is a basic distinction between deportation and forcible transfer, the elements of both offences are for all intents and purposes the same. As the Trial Chamber of the Yugoslav Tribunal specified in the *Simić* case: "the legal values protected by deportation and forcible transfer are the right of the victim to stay in his or her community and the right not to be deprived of his or her property by being forcibly displaced to another location" (ICTY 2003, 130). This was also supported by the trial judgment in the *Krstić* case where it was recognized that, "any forced displacement is by definition a traumatic experience which involves abandoning one's home, losing property and being displaced under duress to another location" (ICTY 2001, 523). Consequently, in the present context the mass displacement of Indigenous communities across the borders of the countries that share the Amazon rainforest would potentially fall under the offence of deportation, while the internal displacement, precipitated by the non-recognition of their ancestral lands and coercive acts of transnational companies with the support of states points to the possible commission of forcible transfer, and could even be considered as a form of ethnic cleansing.

In terms of basic common underlying elements, the common material element of the offenses under Article 7(1) (d) (*actus reus*) is: (1) the displacement of persons by expulsion or other coercive acts, (2) from an area in which they are lawfully present, (3) without grounds permitted under international law. The general mental element (*mens rea*) for the offense is the intent to displace, permanently or otherwise, the victims within the relevant national border (forcible transfer) or across the relevant national border (deportation). (Boas 2008, 69).

This definition was adopted and further developed by the Trial Chamber in the *Simić* case, which added that "the essential element is that the displacement be involuntary in nature', and that "the relevant persons had no real choice". Indicating that a civilian is involuntarily displaced if he is "not faced with a genuine choice as to whether to leave or to remain in the

area…an apparent consent induced by force or threat of force should not be considered to be real consent" (ICTY 2003, 125).

The reference in Article 7(2)(d) of the Rome Statute to "grounds permitted under international law", comes from the fact that international law does allow limited scope for the deportation of aliens from the territory of a State. The ICTY has recognized two general grounds for lawful displacement of populations: (1) for the security of a civilian population or (2) for imperative military reasons, both focused on Article 49 of Geneva Convention IV Relative to the Protection of Civilians (UNTS 1950, 2) and Article 17(1) of Additional Protocol II to the Geneva Conventions of 1949 (UNTS 1978). In either circumstance, a legitimate forcible displacement or permissible evacuation requires that the evacuated persons must be "transferred back to their homes as soon as the hostilities in the area in question have ceased" (ICTY 2004, 556). Accordingly, it is unlawful to utilize evacuation measures as a pretext to forcible dislocate a population. The absence of an international armed conflict in the Amazon region therefore negates the possibility of the displacement of the indigenous population falling within the permissible exceptions to such conduct established under the international law of armed conflict. The law of armed conflict simply does not apply in this context.

Turning instead to the relevant provisions of international human rights law, deportation is lawful when carried out pursuant to laws and on a valid legal basis that does not violate certain legally protected rights under domestic or international law. A number of conventions contain provisions against arbitrary deportation, particularly the 1967 Protocol amending the 1951 Convention relating to the Status of Refugees, which has been ratified by 141 countries. The ICCPR, European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human Peoples' Rights, making a particular emphasis on the cases where the deported person would likely be subject to persecution on the bases of race, religion, ethnicity, national origin or political opinion. The result of such population displacement, benignly called refugees, is usually illness, injury and death.

Not unsurprisingly, the tenor of this prohibition applies in large measure to the forcible transfer of populations and is inherent in the right to freedom of movement and the selection of a place of residence. Minimum obligations in respect of freedom of movement within the territory of a state arise from the *Guiding Principles on Internal Displacement,* prepared by the now defunct UN Commission on Human Rights which provides the applicable legal standards in Principle 6, setting out the basic parameters of protection in paragraph one: "1. every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual

residence" (UN 1998). The right is therefore not dependent on nationality, or lawful presence, but simply on "habitual residence".

The document also provides principles related to the protection of displaced persons, taking into consideration indigenous peoples in principle 6: "States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.". In this consideration, it is important to identify how international law has been identifying instruments that consider indigenous peoples in possible contexts of forced displacement, caused by activities that have a negative impact on the environment and, consequently, on human rights protection.

2. Displacement of Indigenous Peoples by Expulsion or Other Coercive Acts in Latin America

Internal displacement and deportation of indigenous peoples cause *de facto* violations to the rights to self-determination and choice of habitat. In connection to this principle, we may also add other violations of fundamental rights such as the infringement of cultural human rights, protected under the UDHR and the ICESCR based on the destruction of their subsistence lifestyle; the violation of the right to self-determination protected by the ICCPR which gives people the right to "freely dispose of their natural wealth and resources"; and the violation of the right to an adequate standard of living/quality of life on the basis that environmental destruction affects quality of life.

The UDHR and the ICESCR include the right to housing among the requisites of the right to an adequate standard of living. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment. Moreover, General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights includes the provision that "housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants." This principle reflects the environmental dimension of the right to adequate housing, which includes security as well as housing in an environment free of health hazards. (White 2010, 43)

The existence of stress elements mainly related to the behavior of the stakeholders involved in hydrocarbon projects may contribute to fomenting displacement. The U.N. On 1993 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, special Rapporteur noted that it is the right of indigenous peoples to receive compensation for damage caused

to their lands by state and non-state actors and cited the Rio Declaration as an illustration of the right to remedies for environmental damage, "which may affect a range of human rights, notably the right to life and the right to a standard of living adequate for health and well-being"(Sub-Commission on Prevention of Discrimination and Protection of Minorities 1993).

As early as May 1998, the U.N. Committee on Economic, Social and Cultural Rights Report remarked with alarm "…the extent of the devastation that oil exploration has done to the environment and quality of life… where oil has been discovered and extracted without due regard to the health and well-being of the people and their environment…" (Shinsato 2005, 16).

Forced displacement is a well-recognized phenomenon in the countries that share the Amazon region, with a steady stream of indigenous people, constantly being forced to move by both the decreasing quality of life in their current location, and the irreversible damage and degradation to the environment. Generally, this forced displacement/deportation has been caused by the creation of intolerable and coercive conditions provoked and created by multinational companies, culminating in indigenous communities moving across borders or being displaced from their homes while remaining within the region.

The well-founded fear of the indigenous communities in the Amazon is based on the significant physical and mental harm that environmental upheaval may threaten. Thereby affecting the community's capacity to subsist, with a constant threat to the rights to life and health. The unsustainable environmental practices, geographic isolation and the absence of protective state institutions make this area a fertile ground for coercive conditions[1].

Environmental destruction can be considered coercive especially for indigenous peoples who live off the land. A change in the ecosystem can mean starvation - forcing them to leave the degraded environment for a more habitable place without any protection from the governments or international law; alternatively, they are forced to remain in a degraded environment and risk increased morbidity and mortality through exposure to pollution and depleted, degraded, or contaminated food and water sources. The coercive and persecutory acts against the indigenous communities in the Amazon Region are the result of the combined effects of the conduct of transnational companies represented by private individual actors, and state agents. The failure of the State to provide protection, thereby tolerating the

[1] Is the case of "El indígena del hoyo", who, after the extermination of his community by loggers, lived for 30 years in voluntary isolation in the Brazilian Amazon, Available at: https://www.bbc.com/mundo/noticias-america-latina-62712270

infliction of serious harm, renders the State liable for such harm (UNEP 2000, 8-17).

2.1. Chevron Texaco Case as Forced Displacement of Indigenous Peoples Caused by Coercive Environmental Acts in Ecuador

The Chevron Ecuador case has been a source of important considerations on how the activities carried out by oil companies that generate serious impacts on the environment can condition the ways of life of indigenous communities, leading them to the point of leaving their territories, breaking their community ties and consequently inducing a process of cultural elimination, which for some authors such as Suman Anna Berti (Berti 2017, 259) could be grounds for genocide or, according to the Ecuadorian Criminal Code, the basis for identifying the commission of ethnocide.

This context led some indigenous communities and organizations, together with other affected people, to file a lawsuit against Chevron Corporation and its subsidiary Texaco, for allegedly having caused environmental damage in the Ecuadorian Amazon as a result of the activities carried out in those territories between 1964 and 1992. Chevron argued that all environmental regulations had been respected and that the pollution generated in the territory was due to activities carried out by other oil companies. Although the case is still the subject of litigation in national and international courts, it is an important example of the impact that environmental contamination can have in creating conditions that favor the forced displacement of indigenous communities.

Beristain C. (Beristein et al 2009), in a detailed study about the adverse effects of the intervention of Texaco Oil Company in the Ecuadorian Amazon, reveals some of the coercive actions by the oil company against the indigenous communities in Ecuador. The study finds that the military presence during the exploration and exploitation of the Amazon, as part of the logistics and protection of the oil operations, increased the likelihood of danger for the indigenous communities. Many of them reported situations of violence such as: breaking and entering - which made up 70.43% of cases (162 cases); threats to the population - 65.65% (151 cases); armed aggression - 17.39% (40 cases), and 29.13% of respondees reported murders (67 cases). Moreover, in a context in which people used traditional means for hunting and fishing, workers of Texaco introduced firearms and the use of dynamite in the region, and as a result numerous testimonies of indigenous peoples in the region spoke of the fear of the “cucama” or white men (Beristain et al. 2009, 110). In this same case, Texaco refused to accept the 30.000 victims as part of the legal proceeding and only agreed to litigate 70 cases for individual

damages, this left 99% of the claimants out of the proceedings, without the protection of the state and deprived of the possibility of redress (National Court of Justice 2013, 4).

It is possible to understand that the conditions generated by a polluted environment and the negative aspects surrounding oil extraction activities prevented the development and exercise of fundamental human rights for local indigenous communities. Indeed, the Council for the Development of Indigenous Nationalities and Peoples of Ecuador identified in 2007 that the number of indigenous inhabitants of these territories has been reduced consistently (CODEMPE, 2007).

Beristein (2009) and Bertoli (2015), in relation to this case, show that there were two main causes of the demographic decline induced by Texaco's activities in these territories. The first would be related to the increase in the mortality rate generated by the effects on the health of the local population due to exposure to oil and its by-products. Many inhabitants mentioned in this study that, not knowing about the negative effects caused by these substances, they continued to use and consume water from contaminated springs and rivers. The second cause of this reduction in the number of inhabitants could be found in the displacement generated by the activities carried out by the companies, which would have caused the population to be forced to transfer to the nearby Dureno and Cubayeno rivers (Beristein 2009, 60-62; Bertoli 2015, 48).

2.2. Yanomami Community Case: Illegal Mining and Forced Displacement in the Amazonian Region of Brazil

The loss of their homes, their safety, and their lands can mean for indigenous communities' impoverishment, deprivation of their methods of subsistence, and the loss of their language and traditions - and even extinction. A case illustrating exploitation of natural resources and the systematic degradation of the environment as a cause of displacement is the case of the Yanomami Indians of Brazil (ICHR 1985, 264) who left their land as a consequence of the mass incursion of oil companies who carried out their operations without prior or adequate protection for the safety and health of the Yanomami Indians, forcing them to cross borders to Bolivia, where the government refused their refugee applications.

The effect of the construction of a new road, which in turn was accompanied by the granting of mining permits in indigenous territories, generated a significant influx of garimpeiros, i.e. illegal gold prospectors, which had a negative impact on the well-being of the community, with an increase in prostitution, disease, forced displacement and even the death of Yanomami

indigenous people, including children. The Commission established that the State of Brazil, by failing to implement measures to ensure the security of the indigenous communities, was responsible for the events that occurred by omission in relation to the violation of the right to life, security, health and well-being, among others. The IACHR then recommended, based on this finding, the need to implement protection measures that reflect the advances in public international law on indigenous peoples, and to adopt measures for their inclusion in national legislation, especially for the protection of linguistic rights, the right to religion and specific cultural rights, based on the advice of specialists in this field. In 1992, the State of Brazil finally proceeded to demarcate the Yanomami territory, naming it "Yanomami Park", but after a visit by the IACHR in 1995, although progress was made in relation to access to health and the presence of state agents to guarantee security, the individual and collective integrity of the Yanomami is still under threat from the continuous actions of the garimpeiros.

In the context of the health emergency that the spread of COVID 19 has generated in some countries, it is important to identify that the incursion of garimpeiros into Yanomami territory has generated important alarms for the IACHR, as their continuous flow has facilitated the spread of this disease among the indigenous people of these communities. The weakness of the state in guaranteeing the right to health in these places has therefore been identified as a possible cause that endangers the right to life and personal integrity of the Yanomami indigenous people. Thus, on 16 June 2020, the Inter-American Commission on Human Rights received a request for precautionary measures from some indigenous organizations on behalf of members of the Yanomami and Ye'kwana peoples. Given the relevance of the case, however, on 1 July 2022, the case was considered by the Inter-American Court of Human Rights, where the Commission identified also "Displacement of indigenous groups in isolation, due to alleged forced contact with garimpeiros" (IACHR 2020). In this case the Inter-American Court on Human Rights found that environmental destruction infringes on the right to life and that Brazil had failed to protect this fundamental human right.

2.3. Moiwana Vs Suriname Case: Indigenous Peoples, Intercultural Interpretation in Forced Displacement Contexts

The work of the Inter-American human rights system in relation to the protection of the rights of indigenous peoples in recent years has been arduous, especially in the contexts of territories where state presence is still absent. The Amazon region represents a clear example of this and a challenge

for governance and human security, since, having difficulties in exercising governance within these territories, states leave open, important disputes over territorial control by external actors and private companies, both legal and illegal. Thanks to the IACHR's impact on national systems and its extensive interpretation in relation to collective rights, it has generated interesting responses to analyze, especially considering the scope and limits of what is known as intercultural justice interpretation (Avila 2009), a key approach to understanding the context of indigenous peoples in legal interpretation under cultural perspective. The consideration of cultural elements by the Inter-American Court of Human Rights indeed has established a precedent that also explains the adoption of internal regulations by states for the effective protection of the rights of indigenous peoples. The intercultural interpretation in the 2005 Moiwana v. Suriname case, for instance, provides some interesting parameters that, in the context of cultural diversity, try to guarantee equal access to justice through their implementation (In the context of forced displacement), as the case of anthropological experts, translators, experts in indigenous law for example.

Moiwana village was founded by N'djuka clans from Africa in the late 17th century in the present-day state of Suriname. Over the centuries, the community has become a collective reality with its own identity, maintaining its language, customs and traditions. During 1988, an internal conflict between Jungle Command guerrillas and state military forces under the command of Dési Bouterse resulted in hundreds of indigenous people being killed in crossfire and the displacement of their inhabitants. On 29 November 1986, following a military operation in Moiwana, at least 39 members of this community, including children, women and elderly people, were killed and several people were wounded. This military operation also destroyed and burned all the community's property, forcing the survivors to flee. This case remained uninvestigated by the national authorities, forcing the community to file a complaint before the Inter-American Court of Human Rights. However, since the American Convention had not been ratified by the State of Suriname, the Court could not judge the facts of the massacre. Therefore, the consequences of the provoked displacement and its implications for the existence of the N'djuka were addressed as the subject of the lawsuit. Among those elements identified by the court, we can find that its interpretation implements components that take into consideration elements of the culture of the N'djuka community in the context of forced displacement. The validity is, in fact, attributed, first, in the well-founded fears of Moiwana community about what them considers as an unresolved case by justice and that do not guarantee a return to their territory, especially due to the fact that no investigations were made to identify and punish those responsible for the

massacre. The second consideration made by the court for the validity of the case is linked to cultural practices of this community. Indeed, N'djuka people in their cultural practices, perform to honor their deceased. In the context of the massacre, after having escaped suddenly and violently, it was not possible for the members of the community to carry out these practices to honor the victims of such armed attack, which, in their worldview, compromised the anger of their ancestors, who could retaliate against the community, making it impossible for N'jukas to return peacefully to their territory. Some of the testimonies and relatives of the victims of the massacre show that by not observing traditional funeral rituals, "it will be a burden for all the children, it will haunt them as well". Obligations arise that if they are not respected, "it is as if we do not exist on earth".

According to Kenneth M. Bilby, an Anthropological expert in Moiwana Case:

> It is extremely important to have possession of the physical remains of the deceased, since the way the corpse is treated in death ceremonies reflects how much the person was respected during his or her life. Moreover, it is necessary that human remains be placed in the burial grounds of the appropriate descent group. On the other hand, in all Maroon societies, the idea of cremation is repugnant; thus, the possibility that the corpses of many Moiwana residents were burned would have been considered very offensive. If the various rituals are not performed according to the traditional rules, it is considered a moral offense, which will not only anger the spirit of the individual who died, but also may offend other ancestors of the community. This leads to a number of "spiritually-caused illnesses" that become manifest as actual physical maladies; however, they cannot be healed by conventional or Western means. These illnesses can potentially affect the entire natural lineage, that is, the descent group to which the deceased belonged. These problems and illnesses do not go away on their own, but must eventually be resolved through social and ceremonial means; if not, they will persist through generations. (IACHR 2005, 44)

In this line, the court makes an intercultural interpretation in relation to the implications that arise at the moment of identifying the obligations of the state, in a context where, from a metaphysical and cultural analysis, there is an important relationship between ancestral practices and the full enjoyment of fundamental rights, considering how fundamental it is for the culture of the N'djuka people to recover the bodies of their relatives, for the performance of funeral rites, according to their tradition and spirituality. Only once this has been done will it be possible for the N'djuka to return to their territories. Intercultural interpretation has different scopes and results,

which, based on the observation of the existence of contexts of cultural diversity, can lead to a necessary analysis of the challenges of the protection of human rights and human security.

These cases illustrate the persecution suffered by indigenous communities in the Amazon, perpetuated by States and caused by the actions of non-state actors that has forced them to leave their lands. Therefore, states have an obligation to protect the rainforest ecosystem and make sure that oil development does not disrupt the life of their inhabitants, allowing them to maintain their lifestyle, cultural practices and share in the economic benefits coming from the extraction of oil, and also ensuring that the ecosystem is preserved for future generations. On the other hand, transnational oil corporations constantly deny responsibility for the damaging effects of their operations. Considering the economic power that corporations have acquired with globalization, and with profit as their object, human rights, and environmental protections can be safely ignored as they are not legally bound by any international instruments. Even though most of the countries have legal provisions regarding the protection of the environment, their ability to relocate makes the extraterritorial application of such provisions impractical.

3. Ownership of Indigenous Territories to Prevent Forcible Displacement: a First Step for Human Security

As asserted by Report of the UN Global Environmental Forum, people displaced by large projects are often poor, powerless and do not participate in any way in decision-making for the projects, "governments or powerful agencies make these decisions without consulting the people of the designated area and reap the benefits without distributing them to the people who lost their lands and livelihood" (UNGMEF 2006). Moreover, they are often not compensated fairly for their losses. This is the case of oil exploitation in the Amazon rainforest where indigenous communities have become the unwilling hosts of aggressive oil development, causing thousands of tribal groups to cross borders. Indigenous communities were never consulted before the commencement of oil extraction on their territories. Furthermore, it took several years and increased action by indigenous activist movements in the region for their rights to be gradually recognized both domestically and internationally as demonstrated by the case presented to the IACHR known as Sarayaku vs. Ecuador case[2].

[2] Available at: https://corteidh.or.cr/docs/casos/articulos/seriec_245_esp.pdf

Along this path, the international community, considering the historical exclusion of indigenous peoples, has outlined progressive processes in the recognition and formulation of collective rights, as a form of reparation by states due to colonial precedents. One of the most relevant advances in this area is ILO Convention 169 on Indigenous and Tribal Peoples of the International Labor Organization. This legally binding instrument establishes the prohibition of displacement of indigenous peoples from their territories in Article 16, and defines standards that relate to the entire system of international human rights law[3]. The convention, having been elaborated by indigenous peoples themselves, replacing the assimilationist approach of the previous convention 107, has also developed an anthropological perspective very relevant to the sensitivity and understanding of the meaning of the term "territory" for these actors as evidenced in article 13.1, which calls on states to "respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship".

This provision is further strengthened by the right to free, prior and informed consultation, which is established in article 6 of the convention and which establishes mechanisms for dialogue in good faith with the state, in order to decide whether or not to carry out projects that could have negative impacts on indigenous communities and their existence in those territories. The issue of indigenous territories is a cross-cutting theme of the convention, which also recognizes the symbolic, spiritual and collective value that this element has for indigenous peoples and its impact on the full enjoyment of their fundamental rights.

Important criticisms have been made of ILO Convention 169 by some indigenous organizations, especially in the provisions relating to the limitations of the term "peoples" under international law, as well as in mentioning the objective of prior consultation, which, in the case of the 2007 UN Declaration on Indigenous Peoples, provides the criterion of consent. In more detail, this soft law instrument, in relation to forced displacement, establishes in article 10 that these groups shall not be forcibly removed from

[3] More specifically, the convention states that:
"1. Subject to the provisions of the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where, exceptionally, the relocation or removal of these peoples is considered necessary, it shall be carried out only with their free and informed consent. Where their consent cannot be obtained, relocation shall take place only after appropriate procedures established by national laws and regulations, including public enquiries where appropriate, in which the peoples concerned have the opportunity to be effectively represented."

their lands and territories, and that relocation is prohibited if these groups have not given their free, prior and informed consent[4]. While this document is not legally binding on states, it represents a historic milestone that has been marking a common path for indigenous peoples' organizations and states in the protection of human rights.

On this path and incisively, the Inter-American Court of Human Rights has played a fundamental role in the implementation and application of these instruments of international law, providing jurisprudence that emphasizes an interpretation of this documents considering uses and customs of indigenous peoples also in relation to land ownership, as evidenced in the 2001 case of the Mayagna (Sumo) Awas Tigni vs. Nicaragua[5]. In this case, as an important precedent, the Court establishes the obligation of the Nicaraguan state to implement legislative, administrative and other measures that allow the recognition of the title to the lands of the Mayagna Awas Tigni community, in accordance with their own law, uses and customs (IACHR 2001)[6]. Subsequently, the court has also established that the right to the recovery of indigenous lands and territories can find an indefinite recognition in time, in relation to spiritual elements, use and benefit of those lands, aspirations and claims that maintain in force an identity and deep link between indigenous peoples and ancestral territories, as evidenced also in the Sawhoyamaxa vs. Paraguay case of 2006[7].

An important relationship has also been identified between environmental protection and recognition of indigenous peoples' territories, as protecting the rights of these peoples, there is an impact on the preservation of the environment, determined by the fact that the practice of their ways of life that depend on natural resources and consequently a care of these, as effectively established by the Kaliña and Lokono Vs. Suriname case of 2015[8].

However, land ownership is one of the most controversial issues surrounding oil and exploitation cases presented on this study. In the beginning of hydrocarbon exploitation of such cases, a colonial and imperialist approach was taken by transnational companies and illegal mining actors with regard to the Amazon. They consider the indigenous territories as un-owned and under-utilized and, therefore, open to exploitation. Furthermore, information

[4] "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned, or without prior agreement on just and fair compensation and, where possible, the option of return." ILO Convention Article 10.

[5] Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf

[6] Available at: https://www.corteidh.or.cr/docs/casos/articulos/Seriec_79_esp.pdf

[7] Available at: https://www.corteidh.or.cr/tablas/fichas/indigena_sawhoyamaxa.pdf

[8] Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf

regarding the intervention of transnational companies was never given to the indigenous communities and therefore their consent was not considered, although, Article 14 of ILO Convention 169 on land ownership states that.

The acknowledgment of traditional possession gives rise to the recognition of rights of ownership and possession of the land where indigenous peoples live and exercise control and it's a state responsibility. The wording entails the obligation of states to grant their indigenous peoples all rights that are credited to an owner in a legal and factual sense such as a formal title, right to disposal and factual opportunity to exercise owners' powers. But the conflict with other international regulations imposes limitations on the right of ownership to these territories. The principle of sovereignty gives states ownership of subsoil allowing exploitation of the subsoil resources when the area is labeled as being of "national interest", this creates a paradoxical situation that has allowed oil projects to be implemented even in natural reserves.

The Amazon region housed 63 contracts, 46 of which overlapped with officially recognized indigenous lands. A total of 17 development projects coincided with proposed or already designated territorial areas for indigenous peoples living in voluntary isolation, who hold no formal land title. Also, 29 of the concessions overlapped with natural reserves that are protected or internationally recognized for their wealth in biodiversity. For example, in Brazil the protection of lands is based on "legal agreements" that expire every five years, this permits the government to intervene in areas inhabited by indigenous populations and expropriate property "for exceptional reasons". In Ecuador, Yasuni National Park is a perfect example of this back-and-forth around indigenous rights of property and natural resource management. Throughout the years its borders were often expanded and then reduced again to accommodate oil projects. In Colombia and Peru, the limits of protected areas are often redesigned to accommodate hydrocarbons projects, particularly in lands inhabited by indigenous communities (Vasquez 2014, 70-87).

Accepting oil exploitation in recognized indigenous territories as a "national interest" constitutes a discriminatory measure and renders environmental human rights a fiction for our society, by the fact that state, providing to one group with a clean environment and economic development, in the other hand is imposing environmentally disruptive projects to another group.

Under international law, indigenous peoples must take part in the use, administration, and conservation of the natural resources therefore states must first consult with their inhabitants, and grant them all due benefits as the owners of the lands. In the view of indigenous communities, the right to consultation also implies the right to veto. As Robert White asserts,

"Indigenous people insist that they ought to have decision-making powers and not simply be 'consulted' about decisions that affect themselves and their environments. Establishing tribal control over their own natural resources would mean being able to use their own indigenous knowledge and techniques to deal with environmental issues… corporate disrespect for indigenous beliefs and relationships to the land, undermine this possibility" (White 2013, 158).

The obligation to seek the consent of the affected communities often triggers heated controversy. For indigenous peoples, obtaining free, prior, and informed consent is an indispensable part of the consultation process and an expression of their right to self-determination, applicable to all of the projects which affect them and cause displacement on environmental and health grounds. Where consultation it is not observed, it can lead to socio-environmental conflicts, as in the case of the massacre in Bagua-Peru (Cerqueira 2017, 91)[9], where, following the state's failure to comply with free, prior and informed consultation, 33 people were killed (23 police officers and 10 natives) and one person disappeared. In this context, contrasting views on the use and management of natural resources emerge, which in the case of the state, identifies indigenous peoples as an obstacle to the development that is intended to be generated through the resources present in these territories, considering these peoples in some cases "capricious", "savage" or "primitive". On the other hand, indigenous peoples understand land as an essential element for their existence and as consequence, development, as a process that should not neglect its care: "indigenous peoples do not oppose development…. we want the development of the country, without putting "life" at risk" said Alberto Pizango during the Bagua conflict in 2009.

Conclusions

The relationship between environmental change, climate-induced displacement and human migration poses a new set of questions for future cases for international criminal law. While the phrase 'environmental refugee' is highly contentious, displacement of people due to environmental-related causes has major legal, human rights and national security concerns.

The judgments of the international courts have set a precedent in history for people to know that such crimes are heavily condemned by the international community. Although state presence in territories such as the Amazon

[9] Cerqueira D. 2017, Salazar K., La sentencia sobre los hechos de violencia en la curva del Diablo, Comentarios a la luz de los estándares internacionales de Derechos Humanos, (CNDDHH), https://www.caaap.org.pe/Libros/La-Sentencia-Del-Caso-Baguazo-y-Sus-Aportes-a-La-Justicia-Intercultural.pdf

region is absent, it is possible to attribute responsibilities to the state for the control and monitoring of activities that are carried out in these territories, or in the case of nature reserves, cannot as in the case of garimpeiros. In this line, the adoption of norms and sanctions that protect indigenous peoples is fundamental to direct the behavior of activities that could put the security of these human groups at risk. A universally recognized right to a healthy environment and increased corporate accountability would encourage transnational companies to conduct business in a less environmentally destructive manner and, as a result, protect human rights. If we are not yet ready to provide rights to nature, then we can apply the existing law to avoid impunity against humans.

It is important to mention that the adoption of international treaties and the development of international jurisprudence have had a positive impact on the protection of indigenous peoples, and as a result of their impact on national contexts, regulatory systems have been created that include this social group within the mechanism for guaranteeing rights, thus strengthening the human security approach. Recently, for example, the Inter-American Court of Human Rights has been reviewing the case of Tagaeri and Taromenani vs. Ecuador, where it is possible to understand that the incidence of transnational companies and extractive activities have had an impact on the decisions of the state, which should also protect the interests of indigenous peoples in voluntary isolation. It is therefore necessary to relativize the impact that the activities of post-industrial societies have on human wellbeing, since extractivism generates significant dangers for the health and safety of the indigenous peoples of the Amazon, reinforcing the lack of recognition of the reasons that caused the displacement in the first place, hiding the responsibility from the companies that contribute to the destruction of the environment.

In order to accept a case that may involve transnational companies the prosecution need to be mindful of the underlying power relationship involved between most corporate activities and the human and wider environments affected. Ultimately, there needs to be an approach that encompasses the subject of corporate accountability and acknowledges that the polluting activities by corporations that cause harm and injury to the wider environment, producing adverse effects that extend beyond humans - do constitute crimes. Another hurdle in the prosecution of big corporations is determining that the behaviors under examination amount to crimes since these behaviors are legal and do not directly violate the law. But the fact that a behavior has been ‘normalized’ does not mean that it should be acceptable, especially when what is at stake is a significant degree of harm. Transnational companies are one of the largest contributors to environmental destruction

but are not liable for environmental destruction or the negative impacts the destruction may have on humans under current international law.

States have a duty to protect their inhabitants, preserve the ecosystem for future generations and share with the local community whatever economic benefits may flow from extracting oil from their lands. Furthermore, states have the obligation to supervise the operations of their own companies and those companies operating outside their territory. It should not be forgotten that states themselves can be held responsible for environmental harms under international law both at home and in other states across national boundaries.

Displacement in the Amazon region need be neither inevitable nor total if interventions are carefully designed - well-thought -out programs of intervention can result in little or no displacement. The international community has a responsibility to protect the indigenous communities in the Amazon, to respond to the allegations of crimes against humanity, and to ensure that violations and impunity do not persist. Representatives of states and corporations committing, allowing, aiding and abetting these crimes must be held accountable.

States such as Ecuador have set challenges in this respect, by recognizing interculturality in their legislation as a transversal axis of relations between the cultural diversities that make up these states. The Ecuadorian constitution, in art. 57, for instance, recognizes the reality of the peoples in voluntary isolation that inhabit the Amazon region, establishing the concept of ethnocide as a mechanism of effective protection against the dangers related to the expansion of the activities of dominant societies that could endanger their existence. However, although the domestic legislation of states has been changing in recent years, the space for politics and the wide margins of impunity in these territories for people who commit serious environmental damage or actions against indigenous communities is still present, opening up the need for international law to proceed to identify the relationship between crimes against humanity and damage to the environment. An issue that was already being identified as "ecocide" in the 1970s[10]. Under the presidency of Jair Bolzonaro in Brazil, for example, the incursion into the Amazon has accelerated significantly, in view of a national policy that aims to consolidate projects for timber extraction, agro-industry, mining and infrastructure, in which indigenous peoples are not considered as interlocutors, but as subjects that would benefit from being "integrated into Brazilian society". Faced with the human rights implications of these policies in 2019, CADHU, an association of human rights lawyers, filed a

[10] Available at: https://www.bbc.com/future/article/20201105-what-is-ecocide

complaint with the ICC[11], holding Bolzonaro responsible for systematic and widespread attacks on the ecosystem and indigenous peoples of the Amazon, which would constitute crimes against humanity under the Rome Statute. In the face of these different processes involving the jurisprudence of the Inter-American Court of Human Rights, local actors for the defense of the rights of indigenous peoples, the state and companies, we find that safeguarding ecosystems also represents a case for human security. In the face of these different processes involving the jurisprudence of the Inter-American Court of Human Rights, local actors for the defense of the rights of indigenous peoples, the state and companies, we find that the safeguarding of ecosystems also represents a case for human security, which is also a challenge for our century, given the problems generated by the concept of environmental justice.

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[11] Siqueira Flavio, ¿Jair Bolsonaro comete crímenes contra la humanidad al devastar la Amazonía?, available at: https://www.openglobalrights.org/does-bolsonaro-commit-crimes-against-humanity-by-devastating-the-amazon/?lang=Spanish

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