



INDIAN RIGHTS AND THE ENVIRONMENT

ARMSTRONG WIGGINS

The author, a Miskito from the Northern Autonomous Region of Nicaragua, is the Coordinator of the Central and South America Project of the Indian Law Resource Center, Washington, D.C.; a non-profit, non-governmental organization that has consultative status with the U.N. Economic and Social Council. This article appears in its full length along with footnotes and annotated bibliography in the Yale Journal of International Law, Winter 1993, Volume 18, Number 1. Reprinted with permission.



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As millions of dollars poured into environmental organizations during the past decade, hundreds of activists headed for Central and South America to save threatened animals and to preserve the rain forests. Some activists arrived with naive and romantic notions about virgin forests. They had failed to accept the fact that the forests were already occupied, used, and "developed" by Indians. The environmentalists soon met and were sometimes confronted by Indian tribes and nations asserting their ownership of the same forests, lands, and resources that the environmentalists sought to protect.

Environmental protection plans drawn up in Washington or in Latin American capitals are greatly complicated by the questions and demands of Indian communities. What role should Indians play in decisions to establish a national park or protected area on lands traditionally Indian? Who owns and who is entitled to make decisions about the valuable land involved in proposed debt-for-nature swaps? How should environmentalists respond to Indian proposals for development initiatives or alternative conservation practices that conflict with their own proposals?

Responsible environmentalists must con-

stantly wrestle with these and related questions in their daily work. There is an urgent need for analysis and reform of the relationship between Indian rights and environmental protection. They have important roles to play in the development of principled laws and democratic policies that will both protect the fragile environment and guarantee the survival and development of Indian peoples in the 1990's and the twenty-first century..

Rethinking an Old Myth About the Future of Indian Peoples

The first step toward reconciling environmental policies and Indian rights involves facing some long-standing myths about Indian peoples that have shaped current laws and policies. One such myth—sustained by non-Indians for 500 years—is that Indians are disappearing peoples. In an 1898 lecture delivered to law students in Washington, D.C., U.S. Supreme Court Justice John Marshall Harlan said of Native Americans:

"(The Indian race) is disappearing and probably within the life time of some that are now hearing me there will be very few in this

country. In a hundred years, you will probably not find one anywhere... It is certain as fate that in the course of time, there will be nobody on this North American continent but Anglo-Saxons. All other races are steadily going to the wall. They are diminishing every year."

This myth has informed the two most infamous Supreme Court decisions in Indian law. One decision upheld the legal authority of Congress unilaterally to abrogate Indian treaties. The other decision declared the plenary power of Congress to impose its laws on Indian tribes and nations. Notwithstanding the sweeping changes that have taken place in civil rights and human rights law over the past decades, neither of these cases has been overruled.

Although not always stated so candidly, the myth that Indians are disappearing peoples underlies policies toward Indians everywhere in the Americas. For example, Mario Vargas Llosa, a prominent Latin American author and 1990 Peruvian presidential candidate articulated a modern viewpoint on the demise of Indians in a 1990 Harper's Magazine cover story. Vargas Llosa did not emphasize the physical disappearance of Indians, but rather

their inevitable assimilation into the dominant, non-Indian culture:

"Perhaps the ideal- that is, the preservation of the primitive culture of America- is a utopia incompatible with this other and more urgent goal- the establishment of societies in which social and economic inequalities among citizens be reduced to human... If forced to choose between the preservation of Indian cultures and their complete assimilation, with great sadness I would chose modernization of the Indian population, because there are priorities; and the first priority is, of course, to fight hunger and misery..."

Although policies toward Indians in the Americas rest at least in part on the view that Indians will die out or assimilate into a superior non-Indian world, the facts stand in stark contrast to the myth of the vanishing Indian. Today thirty million Indians live in the Americas, a number roughly equal to the combined populations of Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama. In Guatemala and Bolivia, Indians make up the clear majority of the population. Indians are a significant minority population in almost every country in the hemisphere, and in many countries they still maintain a large and resource-rich land base. Indian nations and tribes throughout the Americas are carrying on the historic struggle for their land, resources, self-government, and cultures.

Indian Land, Indian Resources, and Indian Development

Indian leaders consistently cite Indian land rights as their most vital concern. Without their land base, Indians may be able to survive as individuals in the dominant economy and culture of their non-Indian neighbors, but they will not be able to survive and prosper as distinct peoples with distinct cultures and traditions. Indeed, governments throughout

the Americas, led by Europeans and their descendants, have sought to expropriate, allot, and control Indian land and resources as a means of assimilating Indians. policies such as these make beliefs about the disappearing Indian self-fulfilling prophecies.

New laws and policies must fully recognize how Indians view their land. Although there are differing views among Indian communities, common themes do exist. Indians generally feel a sense of permanence in their land that non-Indians do not share. Non-Indians tend to be very nomadic, to view land as a commodity to buy and sell, and to have ancestral roots on other continents. Generally, Indians hold their land in some form of communal ownership. The idea of private, individual land is historically unknown in Indian communities and is rare even today.

When Indians speak of rights to their territories, they are referring not only to the land, but also to flora, fauna, waters, and mineral resources. Indian cultures and religions celebrate the close interrelationships that people share with animals, plants, and natural resources. The idea of sustainable development is part of the cultural and religious heritage of most Indian peoples. This cultural and religious heritage is very much alive and well today. As recent studies show, the survival of Indian communities and cultures has contributed greatly to the survival of some of the world's most biologically rich environments.

It would be a mistake, however, to take too romantic a view. Indians, like all other humans, utilize and develop their territories: they plow, plant, harvest, and mine the earth and use its resources. Some observers argue that Indians with bulldozers and chainsaws will soon be as destructive to their home environments as non-Indians are to theirs. Some Indians have already permitted toxic waste dumping, storage of nuclear waste, and other environmentally dangerous practices on their lands, while others are hotly debating whether to do so.

Nevertheless, those Indians willing to sacrifice their homelands are the exception. Most Indian communities have maintained their cultures, homelands, and resources by resisting outside forces that have attempted for centuries to destroy or purchase them. The Indian regions on maps of Central America have remained green not because non-Indians left the Indians alone, but rather because Indians successfully fought to keep the regions green.

Indians and Environmentalists

Most environmental organizations are based in North America and Europe. Those organizations that exist in Latin America are based in cities among Ladinos and are often funded by their North American and European counterparts. Indians are on the margins of the organized environmental movement. Although some environmental groups have established good working relations with Indian organizations, most relations between Indians and environmentalists are uncertain and strained. There is even potential for serious conflict.

Like human rights workers, academics, and other non-governmental activists, many environmentalists bring with them the baggage of their own cultures. They have been raised within the framework of laws and policies that have long oppressed Indians. Because the academic and legal communities have not yet given prominent attention to the issue of Indian rights, most environmentalists remain unfamiliar with the history of Indian land disputes. If leading human rights organizations write reports about Guatemala and Bolivia without even mentioning that the Indians of those countries are majority populations subjected to minority rule, it is not surprising that many environmentalists are not sensitive to Indian concerns. For instance, during a 1988 conference between environmentalists and representatives of COICA, the



Illustration by Oswaldo Guayasamín

Amazonian Indian coordinating group, an exchange occurred about debt-for-nature swaps. A COICA leader explained that the debt involved was not Indian debt, while the "nature" involved was Indian land that Indians had not agreed to trade for anything.

Another disturbing trend involves attempts by mineral development corporations, hazardous waste disposal companies, lumber companies, and others to pass out favors in Indian communities to buy support for their projects. Governments have long used this approach. More recently, environmental groups have sought support for their projects through similar steps. By gaining the backing of some members of an Indian community, outsiders can create the appearance that Indians were actually involved in the decision-making process and that the whole Indian community approves. There is danger that these divide-and-conquer tactics will seriously harm Indian communities, undermine legitimate Indian leadership, and generate a backlash against environmental projects that may be seen as manipulative or colonialist.

Nevertheless, some effective alliances have developed to promote both environmental protection and Indian rights. In Brazil, the Yanomami lost nearly one-fifth of their population when gold-miners invaded and poisoned their lands in the late 80's. In the late 1970's, the Indian Law Research Center filed a human rights complaint with the Inter-American Commission on Human Rights demanding legal demarcation of the Yanomami terri-

tory and expulsion of outsiders. Environmental and human rights groups joined with Indian groups to place effective and overwhelming pressure on Brazil's President to expel the miners and demarcate 22.5 million acres of ancestral Yanomami land in 1991. The demarcation process has now begun. A number of non governmental organizations have agreed to monitor implementation of Brazil's new Indian laws and policies. [Significant changes have taken place regarding this matter. See article pg. 23]

On Nicaragua's Miskito Coast, Miskito communities helped develop a government program to expel resource pirates from a marine and coastal environment rich in turtles, shrimp, lobster, and fish. The project trains Miskitos to manage and police the area themselves. It was initiated not in board rooms in Washington or in government offices in Managua, but in a series of meetings held in Miskito communities along the Coast. Environmental groups have actively and financially supported every phase of this pioneering bottom-up environmental protection project in a Central American Indian area.

Developing a Sound Legal Framework for Indian Rights and the Environment

Environmentalists and Indians must not merely critique laws and policies to secure the health of Indian communities and their environments. The groups must develop a sound, international legal framework to replace myths and arbitrary government power. Fortunately, the effort to develop a sound international legal framework for Indian rights is well underway. For the past 15 years, Indians have worked within the human rights system of the U.N. to develop Indian rights protections. The U.N. Working Group on Indigenous Populations, has been meeting for ten years and will soon release the final draft of a proposed declaration on the rights of Indigenous Peoples. Within the U.N. human rights system, the issue of Indian rights has moved in one decade from the fringe to the mainstream. The annual Working Group

meetings are now among the most vital and well attended of all U.N. human rights activities. Human rights experts who previously focused exclusively on the rights of individuals now support protection of the group rights of Indian communities.

In 1989, the International Labour Organization (ILO) approved a new convention on the rights of Indigenous peoples requiring Indian participation in all matters concerning development of their land and resources. Also in 1989, the Organization of American States (OAS) began its own law reform to prepare a new judicial instrument to secure the rights of Indigenous peoples.

Indian rights advocates hope that better legal guarantees at the international level will prompt national governments to provide better legal protection for Indian rights. Indians throughout the Americas are fighting for their rights in national courts, national legislative bodies, and constitutional conventions resulting in rapid changes such as Brazil's new constitution which supports Indian rights and the demarcation of Yanomami land.

Conclusion

The protection of human rights and the environment requires a truly international legal order based on democratic principles. Non-Indians must reject the myths and imperialism that have shaped laws and policies toward Indians in the Americas thus far. Governments must respect democratic decision making with Indian communities and must ensure that relations between Indians and their neighbors are based on agreement rather than on domination. Indians, not outsiders, will best govern Indian land and resources. Although Indian communities, like all others, have difficult decisions to make about their development, if Indians are permitted to chart their own future they will continue to serve not only themselves, but also the global environment. Working together as equals, Indian communities and the rest of the world can share important lessons about how best to provide for all future generations.