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## Economic Growth in Developing Countries and its Impact on Human Rights of Indigenous Communities



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# Economic Growth in Developing Countries and its Impact on Human Rights of Indigenous Communities

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#### **EXECUTIVE SUMMARY**

Latin American economies are almost exclusively based on extractivism of natural resources. The overexploitation of these resources and the lack of enforcement of the law by the state may compromise vulnerable groups of people, especially indigenous communities. This situation affects the tenure of their lands and territories, the continuity of their cultural heritage and, very often, their very own survival. Paraguay, whose economy is mainly based on agriculture and livestock, was recently sanctioned by the United Nations Human Rights Committee stating that it violated the rights of an indigenous community to their lands and their concept of domicile, due to the lack of enforcement of the law regarding activities performed by agricultural companies. This situation is just one of many in which human rights of indigenous communities are being infringed by companies and the state in pursuit of economic growth, which is why it is a necessity to enforce and apply human rights principles within the framework of a sustainable development.

The purpose of this paper is to be able to demonstrate that companies and state bodies if not willing to abide, comply and enforce human rights regulations are able to cause serious human rights violations, affecting indigenous communities to the extent of risking their very existence. Indigenous people's mere existence is closely linked to the conservation and protection of the environment; therefore protection of both is not only needed but a matter of extreme and urgent necessity.

#### INTRODUCTION

Latin America and the Caribbean turned over time 'into the world's breadbasket and lungs' (Morris, World Bank 2020) by becoming one of the largest exporters of edibles.

According to the US Department of Agriculture (Statista 2021) in the year 2021 between the world's largest beef producers and exporters, three out of eight were Latin American countries. Regarding crops, between the six largest producers of soybeans, three are South American and between the largest exporters, three out of four are again South American countries (CAPECO 2022).

The world's increased population and higher life expectancy (Our World in Data 2019) has impacted into an enlarged requirement for food production pushing productivity levels at a high speed exerting more pressure on land, natural resources and wildlife, affecting communities especially vulnerable ones. In fact, the Sustainable Development Department of the Organization of American States (OAS) in 2009 published the following:

soybean production has undoubtedly triggered a number of different effects on countries and regions. Specifically, the production and commercialization of soybean and its derivatives in the Southern Cone of the Americas has experienced a drastic and accelerated increase in the last three decades without considering the sustainability of its natural resources (OAS 2009: 50).

In order to understand the economic impact and importance of agribusiness and livestock farming in the region, it is key to learn that to Brazil, livestock represents one-quarter of its GDP and 50% of its foreign currency income (Producir Conservando 2021); to Paraguay livestock represents 11% of its GDP (Paraguayan Table for Sustainable Beef 2020) and soybean 17% (Infonegocios 2022); to Uruguay agribusiness is about 12% of its GDP (Planning and Budgeting Office 2019) and to Argentina agribusiness represents 24% of its GDP (Agrofy News 2021). This, plus other economic indicators, clearly show that to local governments, it is truly important to facilitate and promote the development and increase of livestock and agribusiness since it represents an important income into poor countries which sometimes translates into softer rulings, lower taxes and overlooking breaches of law.

Taking this into consideration it is only logical that this increased requirement for food production translates into appealing and profitable business for some companies, both local and foreign, which operate in Latin America and the Caribbean but have no apparent positive impact on surrounding communities and specifically vulnerable ones, that with a lenient government equals a high risk of human rights violations.

This policy brief analyses the impact caused in fundamental human rights by companies developing agribusiness and livestock specifically in Paraguay. Considering that Paraguay is one of the largest exporters of commodities regarding livestock and grains it is important to learn that it is also one of those with the lowest human development index (CNN Investigaciones 2017) which makes it ideal to exhibit the harsh realities faced by vulnerable communities, in this particular case indigenous people. It also pretends to demonstrate that by adapting or abiding to transparency norms that will allow real traceability of commodities, a more sustainable business still is possible complying with human rights standards and the United Nations (UN) Guiding Principles on Business and Human Rights.

#### PROBLEM DESCRIPTION: PARAGUAY INTO CONTEXT

#### Indigenous communities and economic vulnerability

Developing countries face enormous challenges that need to be tackled in order for its citizens to access basic public services and benefits. In Paraguay for example, access to drinking water, health services, education and passable roads (MOPC 2017) are still considered a utopia in remote places, hence communities in rural areas to find themselves isolated and abandoned by the state. As an example, it can be pointed out that out of 711 indigenous communities only 244 have access to health services nationwide, which only represents 34.4% of all communities (MOPC 2017: 9). These communities are almost always in a vulnerable condition which only worsens the situation. Furthermore, if corruption (Transparency International 2021) is added to this list, the situation becomes desperate for a large segment of society considering that by the year 2021, 900,000 people living in rural areas were considered living in extreme poverty (Diario La Nacion 2021).

Furthermore, in Paraguay approximately 120,000 of about seven million people identified themselves as indigenous (Statistics National Institute (INE) 2019), according to data published by the government. 66.2% of indigenous people were living in poverty, about 80,000 people, and nearly half of them in extreme poverty (Coordinadora por los Derechos de la Infancia y la Adolescencia (CDIA) 2020).

#### **Deforestation**

Paraguay is divided into two major regions, Eastern and Western – or Chaco – which both have been suffering massive deforestation rates.

For example, the Chaco Region has been experiencing one of the most intense rates of deforestation in the world, promoted especially by livestock, so much so that in 2018, it was possible to identify the deforestation of approximately 54,460 hectares (TRASE 2020). Similarly, in the Eastern Region despite a 'Zero Deforestation Law' *en force* (National Congress 2004) although the level of deforestation in the area has drastically decelerated, it has not managed to prevent it from being permanently threatened by the lack of controls and monitoring by the authorities.

As a consequence, by 2020, the National Forestry Institute (INFONA) could only count for 1,800,000 hectares of forest in the region. According to data managed by the organisation TRASE, in 2017 alone, 8,000 hectares of forests were illegally deforested in the Eastern Region due to soybean production (TRASE 2020).

In 2012 approximately 60% of the indigenous communities were living in the Eastern Region and the remaining in the Chaco Region (INE 2018). According to information provided by the last census (FAPI 2012), the least populated zones were the most important urban areas, such as the capital city of Asuncion, and most indigenous communities inhabit rural areas which make them prone to the effects of deforestation, climate change and loss of their territories.

## Indigenous communities: Threats to their territory

The relationship between indigenous peoples and their land has a completely different approach than what is regularly known as tenure. It is not a matter of owning a property per se, but the possibility of continuing their own ways of life, which is a constitutional right.

For indigenous communities, the relationship with the land is not merely a matter of possession and production but a spiritual matter that they must fully enjoy, including the preservation of their cultural legacy and its transmission to future generations (Cuninghan 2017).

In Latin America, it has been a struggle for indigenous communities to own land and exert their rights. In Paraguay, in order to be legally recognised as a community by the government and possess land, a series of conditions need to be met at the Instituto Paraguayo del Indígena (INDI) which are neither fast nor simple to do. Furthermore, Paraguay has been sanctioned by the Inter-American Court on Human Rights (Corte IDH 2005) and protective orders have been issued by the Inter-American Commission on Human Rights (CIDH 2016) against the government for extreme delay and not complying with the law on granting ancestral land.

Considering the difficulties faced by indigenous peoples to own their ancestral lands and the massive rates of deforestation across Paraguayan territory mainly driven by livestock and agribusiness, it is not hard to picture how this situation is impacting indigenous communities. This situation has been constantly reported by civil society organisations (Earthsight 2020) and reporters (Benítez 2021) with little to no success.

An investigation called 'Grand Theft Chaco'

reported the situation faced by one of the last uncontacted tribes in South America, the Ayoreo Totobiegosode Tribe. According to their report livestock companies have continuously been clearing the forests inhabited by this indigenous community and providing leather to tanneries that sell it to European companies, including some of the biggest car manufacturers (Earthsight 2020). This information was made possible after following trucks transporting livestock from farms to slaughterhouses.

The lack of traceability regarding commodities in Paraguay is the probably one of the biggest threats for forests and, consequently, indigenous people's way of living.

Another threat faced by indigenous communities regarding their territories are wildfires, especially provoked fires to clear land for agricultural and livestock purposes, in fact the Ministry of Health (MSPyBS 2020) reported that the main cause for wildfires are related to human activities, such as land use change, land clearing, maintenance of pastures for livestock, among others and because of extended drought seasons, they tend to get out of control. In the year 2019 only, 325,000 hectares of land were affected in the Chaco Region because of wildfires (WWF 2019).

The common denominator at the origin of the increase in forest fires is human action, driven by situations such as expansive practices of agribusiness and extractive industries. This, coupled with the lack of effective regulatory frameworks for the protection of isolated indigenous peoples, makes their situation increasingly precarious (Diario El País 2020).

These wildfires not only represent the loss of large extensions of territories which translates into losing traditions, burial sites, sacred places and traditional diet amongst others, but also is a huge threat for health and living conditions making an already precarious situation into a desperate one.

With the extensive use of land for livestock and agribusiness, mass use of agrochemicals takes place both in the Eastern and Western Regions. The lack of enforcement of regulatory laws and permits by the government has been a constant problem for rural and indigenous communities that inhabit areas next to commercial farms. In fact, Paraguay has been sanctioned twice by the UN for the lack of enforcement of the law and access to justice.

One of the cases is related to the death of a farmer called Rubén Portillo Caceres who, although didn't belong to an indigenous community, did belong to a vulnerable community of farmers whose land got surrounded by major commercial farming companies as so often happens with indigenous territories (UN 2019). His case was reported to the UN Human Rights Committee (HRC) for fumigations with agrochemicals which, according to the complaint filed before that body, were the cause of his death. As a result of this complaint, the HRC published an opinion (United Nations 2019) in which it urged the Paraguayan government to punish all those responsible, to compensate the victims and disseminate this provision in the media. Paraguay was the first country sanctioned for an environmental case.

In 2021, Paraguay was again sanctioned by the HRC for a case regarding agrochemicals and ancestral territories from an indigenous community called 'Campo Agua', which was caused by Brazilian companies dedicated to soybean production. Fumigation was made with banned agrochemicals violating rules regarding barriers of protection established by law affecting the whole community's way of living, health, killing their cattle, contaminating water, disappearance of natural resources and as such, affecting traditions and rites. The community filed both an administrative and judicial complaint that lead nowhere, and for over 12 years this situation continued until the UN ruling (United Nations 2021b).

For the first time, the concept of domicile regarding the close relationship between indigenous communities and their territories was mentioned, and in this regard one of the HRC members stated the following:

For indigenous peoples, their lands represent their home, culture and community. Serious environmental damages have severe impacts on indigenous people's family life, tradition, identity and even lead to the disappearance of their community. It dramatically harms the existence of the culture of the group as a whole (United Nations 2021a).

The recommendations made to Paraguay by the HRC (United Nations 2021a) include:

- Members found Paraguay did not adequately monitor the fumigation and failed to prevent contamination, adding 'this failure in its duty to provide protection made it possible for the large-scale, illegal fumigation to continue for many years, destroying all components of the indigenous people's family life and home.'
- The Committee recommended that Paraguay complete the criminal and administrative proceedings against all parties responsible and make full reparation to the victims.
- The authorities are also urged to take all necessary measures, in close consultation with the indigenous community, to repair the environmental damage, and to work to prevent similar violations from occurring in the future.
- As proven, in weak States such as Paraguay companies need to take a serious compromise in order to operate within the legal framework even though State bodies fail to enforce legislation and regulations, whether it 's because of lack of resources, corruption or political will and because of this, human rights are constantly being violated by policies that put economic interests before human lives.

#### **POLICY RECOMMENDATIONS**

According to the National Census on Indigenous Communities 50.2% of indigenous communities own land, mostly insufficient and inadequate to their cultural needs and traditions (MOPC 2017). This situation worsens if taken into consideration that indigenous communities have lost approximately 42% of intact forests in their territories between 2000 and 2016 (Business and Human Rights Resource Center 2021) and if this rate continues, alongside an absent state as has been up until now, indigenous communities' culture and their very own existence are in critical danger of disappearing.

The UN, in its 2018 report 'Framework

principles on human rights and the environment', stated the following:

States must therefore refrain from infringing on human rights by causing or allowing environmental harm; protect against harmful interference with the environment from other sources, such as business, other private actors and natural causes; and take effective measures to ensure the conservation and sustainable use of ecosystems and biodiversity, on which the full enjoyment of human rights depends. Although it may not always be possible to prevent environmental harms that interfere with the full enjoyment of human rights, States should act with due diligence to prevent and reduce them as far as possible, and provide remedies for other harms (Principle 5).

This principle sets a list of obligations and compromises that every state should take in order to respect the environment, which, in the particular scenario of indigenous communities, is directly linked to the tenure of their land, the continuity of their culture and their very own survival.

A series of recommendations in order to prevent this tragedy to happen are presented in relation to some of the principles established at the UN Guiding Principles on Business and Human Rights, as follows:

- 1. Operational principles:
- Although Paraguayan rules allow activities that may impact the environment under Law 294/93, the state's enforcement to control its compliance is insufficient due to the lack of political will and resources. The Paraguayan state should seek to enforce regulations regarding permits to allow environmental impact, follow through the mitigation impact measures compromised by companies and seek in a timely manner the administrative and judicial procedures necessary in order to avoid or stop violations of the law.
- The state should increase the budget for enforcing the law and hire capable public servants who seek to enforce the law.
- The state should also regulate the Hydrological Resources Law in order to preserve this resource and protect communities that lack drinking water and sewerage systems, which is very often the case in indigenous communities.

- 2. Human rights due diligence:
- In 2018 it was recommended by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Paraguay (United Nations Human Rights Council 2018) for companies to ensure compliance with human rights in all business activities in accordance with the Guiding Principles on Business and Human Rights. National regulations protect human rights regarding labour law, migration law, environmental law and criminal and civil law, independently and not as a whole. The Paraguayan government is responsible for ensuring that there are no violations to human rights through many ministries, secretariats and public offices which often do not work in a coordinated manner. Therefore, as an ethical commitment companies should conduct proper due diligence, especially when operating overseas, in order to ensure that the commodities are not part of any illegal deforestation and that activities performed are in accordance with legislation, so that by making business they are not contributing with human rights violations.
- 3. Access to remedy:
- Public hearings regarding environmental issues that could affect communities should become mandatory for all parties, expanding from indigenous peoples to people in general in order for stronger joint forces to demand companies and the state to comply with the law. Discrimination against indigenous communities and setting them aside are a constant variable which only isolates them more.
- State bodies and institutions should provide the public information requested and not provide it coded or refuse to provide it without legal justification. Traceability of commodities is fundamental in order to preserve the remaining forests hence the way of living of indigenous communities.
- States' legal obligations regarding international human rights conventions should be enforced, particularly those related to vulnerable communities and environment. This translates into internal regulations, public policies and access to justice.

- State bodies should enforce the law seeking ways to manage lack or scarce resources by using technology. Satellite images as well as public information regarding permits have allowed convictions before, for illegal deforestation. This could become a powerful and cheap tool in order to monitor compliance and sanction companies that are violating the law.
- Judicial procedures regarding indigenous communities, their human rights, land tenure and conservation should become a high priority for the state, both the judicial branch as well as the District Attorney's Office.
  Paraguay has been sanctioned before for delaying justice to indigenous communities and measures should be taken promptly in order to avoid other sanctions.

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