

Chapter 1

Vulnerability and the Voice of Indigenous Peoples through the Lens of Climate Change Policy

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While the first COP took place in 1995, it was not until 1998 that Indigenous peoples began participating, and not until 2001 that Indigenous Peoples Organizations (IPO) were considered a constituency. Meanwhile, even as participation in the UNFCCC grows, Indigenous peoples are routinely left out of global agreements including the Kyoto Protocol and Cancun Agreement, and only mentioned in non-binding sections of the Paris Agreement. However, this has not, and will not stop Indigenous peoples from taking a stand against climate change.

The Journey Begins

I could suddenly feel the ants crawling up my legs, the sharp pinches as they bit me. I looked down and noticed that I was standing directly on top of an anthill. Oddly enough, this would happen to me multiple times throughout my 27-month stay in Panama. This marked the beginning of my journey to the island of Ustupo, and, in a way, the beginning of my journey into a career in climate justice.

Ustupo, a town comprising of multiple islands off the coast of Panama, is home to an Indigenous group, the Guna Yala (sometimes spelled *Kuna Yala*). While serving as a Peace Corps volunteer in Panama, I was given the opportunity to travel to the Comarca (the equivalent of a reservation in the United States) Guna Yala to celebrate the Guna Revolution. In February of 1925, the Guna Yala fought against the Panamanian government to obtain their independence and become an autonomous territory. To remember this historic event, Guna Yala living on Ustupo reenacted the events of the day.

The morning began with a parade through the village; everyone wore red to commemorate the blood that was shed during the battle. The parade ended in the center of the town and was followed by reenactments. Actors outfitted as the Panamanian colonial police demanded the Indigenous stop wearing their traditional attires and stop practicing their culture. The actors dressed as the Indigenous Guna Yala fought back against the police. As the reenactment continued, I could feel the happiness and joy emanating from the re-enactors and observers alike. The Guna Yala are extremely proud of their triumph, and as they re-enacted the day, it was impossible not to become immersed in their history. However, the Guna Yala's future is uncertain. Within the next 20 to 30 years, this reenactment may not be able to take place on the Guna Yala's ancestral home. Sea level rise is an all-too-real threat for these small islands (1).

The Comarca Guna Yala, with their rich history and more than 45,000 Indigenous inhabitants, are at a risk of disappearing as the sea level rises, and they are already experiencing some of the impacts of climate change. In 2008, storms caused nearly every island in the archipelago to flood, ruining many traditional wood and straw houses, killing crops, and damaging buildings. The island residents have already begun discussing relocating to lands the Indigenous group owns on the mainland of Panama (2).

The more disturbing issue is that the Guna Yala is not the only Indigenous community that is experiencing the impacts of climate change or being faced with losing ancestral lands and the culture that is entwined with them. Indigenous communities across the globe—many considered to be sovereign nations—are battling with difficult circumstances forced upon them by the realities of climate change. Yet, Indigenous peoples are some of the most negligible contributors to greenhouse gas emissions. In addition, historically, Indigenous peoples have been given very little voice during international climate change negotiations, or at the international level in general.

Defining Indigenous

One of the many difficulties Indigenous peoples face at the international level is an ambiguous understanding of the term “Indigenous.” The United Nations (UN) has never officially adopted a definition of the term. Instead, the UN has a system for identifying Indigenous peoples that revolves around self-identification. Generally, Indigenous peoples are identified by the UN as having “self identification as Indigenous peoples at the individual level and accept by the community as their member, historical continuity with pre-colonial and/or pre-settler societies, strong link to territories and surrounding natural resources, distinct social, economic or political systems, distinct language, culture and beliefs, form non-dominant groups of society, and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.” While Indigenous is a generic term, in various countries different terms are used including tribes, first peoples/nations, aboriginals, etc. (3).

The Journey Continues

Flash forward to December 2015; I am no longer standing in the middle of the jungle being attacked by ants. Instead I am outfitted in professional attire, staring up at the Eiffel Tower. I'm in Paris for a reason similar to the one that compelled me to work in the jungle of Panama—a desire to learn more about Indigenous peoples, their history, their culture, and what role they will play in the historic climate change negotiations that are about to take place in Paris.

After serving as a Peace Corps volunteer, I returned to the United States and decided to commit my studies to learning more about Indigenous peoples and climate change. At the center of my masters research, I undertook the challenge and privilege of working with a Native American tribe in the Pacific Northwest, studying how climate change was impacting their community and how the tribe could use their own, traditional knowledge to adapt. Focusing on a subspecies of cutthroat trout that is being gravely impacted by climate change, I worked with fish biologists and tribal members to devise a culturally appropriate climate change management plan (4). Just as I was beginning this research, I was given the opportunity to attend the 21st Conference of Parties (COP 21) of the United Nations Framework Convention on Climate Change (UNFCCC) as a student delegate for the American Chemical Society. Attending COP 21 would be the perfect way to combine what I had learned and witnessed in the Comarca Guna Yala of Panama, with what I was learning in the Pacific Northwest of the United States. I was excited to attend the conference and hear more from and about Indigenous communities spanning the globe. Armed with my NGO observer badge, I had access to areas where the general public was not permitted. I was surprised to discover that while sovereign countries had their pavilions in the blue zone (the area not open to the general public), the Indigenous Pavilion was relegated to the public green zone, the area where NGOs and other organizations had their booths. This arrangement presented me with a question: when most Indigenous peoples from across the globe are considered to be part of sovereign nations, why aren't they treated like other nations in critical discussions directly impacting their peoples by the United Nations? To better understand the placement of the Indigenous Pavilion, it was important to learn more about the history of Indigenous Participation within the United Nations Framework Convention on Climate Change (UNFCCC).

History of Indigenous Participation at the United Nations Framework Convention on Climate Change

Indigenous NGOs, as well as some native governments, began attending the COP in 1998 in Buenos Aires, which was the 4th Conference of the Parties. In 2003, Indigenous peoples demanded that they be represented in the UNFCCC in the form of a working group. It wasn't until 2008, after the passing of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) that this working group was formed (5).

The UN adopted the Declaration on September 13, 2007. It was actually completely written by 1994, however, opposition from the United States and its

allies caused a delay in approval. Canada, Australia, New Zealand and the United States, referred to as the CANZUS group, opposed the Declaration, because it lacked a definition for Indigenous peoples. CANZUS also felt threatened by the concept of self-determination, fearing it threatened their national borders. In the end, 143 UN members, each representing a different state, voted in favor of the Declaration, while four members voted against it. The four nations that opposed the Declaration were the CANZUS group. As of 2010, each of the nations that opposed the Declaration have, to a degree, changed their original stance and have given “vague endorsements” in favor of it (6).

The Declaration “covers the full range of property, civil, political, economic, social, cultural, religious, and environmental rights of Indigenous peoples.” Drawing from international human rights law, the Declaration creates “minimum standards for protecting the survival, dignity, and well-being of Indigenous peoples” (7) and functions within the Human Rights Treaty System. Under The Declaration, although never officially defined, the term Indigenous refers to people who have “long-standing, land-based cultures of a local environment, describing in detail their composite rights, which are intergenerational and closely related to land and culture.” This definition implies that Indigenous people have the right of self-determination, they are entitled to live in their traditional manner, and have a right to cultural survival, even if they do not have political status (8).

In March of 2008, the Human Rights Council adopted resolution 7/23, the first-ever resolution acknowledging a relationship between climate change and human rights. This resolution requested that the Office of the United Nations High Commissioner for Human Rights “conduct a detailed study on human rights and climate change.” One year after the adoption of resolution 7/23, the Council adopted resolution 10/4. 10/4 acknowledges that climate change has both direct and indirect effects on the ability of people to enjoy human rights, specifically referencing the impact that climate change has on the human rights of already vulnerable populations (9). However, the resolution does not explicitly state that climate change violates human rights law (10).

In April of 2009, the Indigenous Peoples Global Summit on Climate Change was held in Anchorage, Alaska. Present at this conference were representatives of Indigenous people from the Arctic, North America, Asia, the Pacific, Latin America, Africa, the Caribbean, and Russia. In a paper entitled “The Anchorage Declaration,” the representatives explain that “the inherent and fundamental human rights and status of Indigenous Peoples, affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, must be fully recognized and respected in all decision-making processes and activities related to climate change.” They continue, asserting that when their lands, territories, environment and natural resources are being affected, the Indigenous people should, under the Declaration, have the right of self determination of Indigenous Peoples. Their final demand, in the form of “Calls for Action” is that the UNFCCC’s principles “reflect the spirit and the minimum standards contained in [the Declaration].” The “Calls for Action” include reducing emissions across the globe, recognition of the importance of using traditional knowledge for climate change adaptations, support for performing climate change assessments, the creation of “formal structures and mechanisms” (including meetings, briefings etc.), the abandonment

of adaptation techniques that could harm Indigenous Peoples' rights (such as nuclear energy, dams, etc), funding, risk insurance and recognition of fundamental human rights. The list of fourteen "Calls for Action" elaborates on many of the concerns Indigenous people across the globe have in relation to the effect of climate change on their livelihood (11).

A few months after the creation of the Anchorage Declaration, in September of 2009, there was an International Indigenous People's Forum on Climate Change (IIPFCC) held in Bangkok, Thailand. The end result of this meeting was the creation of a Policy Paper on Climate Change. Similar to the Anchorage Declaration, this paper contains a list of assertions, regarding the rights of Indigenous peoples in respect to climate change (12).

Each year after, the IIPFCC wrote proposals to the UNFCCC listing their demands. In November of 2014, the IIPFCC wrote a list of demands in preparation for COP 20 in Lima, Peru and COP 21 in Paris, France. First on their list of demands was "recognition of a human rights-based approach which respects Indigenous peoples' rights in climate-change agreements and related actions," followed by "respect of Indigenous peoples' rights to lands, territories and resources," "recognition of, and respect for, Indigenous traditional knowledge and the role of Indigenous peoples in adaptation and mitigation," "recognition of Indigenous peoples' community-based monitoring and information systems," "respect Indigenous peoples' rights to full and effective participation in all climate change actions and UNFCCC institutions," and "ensure Indigenous peoples' direct access to finance and capacity building (13)."

One year later, in November of 2015, the IIPFCC narrowed their demands to four in preparation for COP 21 in Paris and in the creation of a global climate change agreement. The four demands included "respect for human rights of Indigenous peoples in climate change policies and actions," "recognize peoples' traditional knowledge and positive contributions to climate adaptation, mitigation and respect Indigenous peoples' traditional livelihoods," "ensure full and effective participation of Indigenous peoples including women and youth in climate change-related processes and programs at local, national, regional and international levels," and "ensure direct access to climate finance for Indigenous peoples from developed and developing countries." (14).

Along with demands at international negotiations, the other path Indigenous peoples recently began exploring to bring attention to their plight and to give themselves a visible presence in the UNFCCC, is hosting a pavilion at the COPs. This was the same pavilion that I was slightly disappointed to see relegated to the Green Zone, rather than standing alongside the representative country pavilions in the Blue Zone. The first Indigenous Peoples' Pavilion occurred at COP 20 in Lima, Peru. The pavilion at COP 21 in Paris was only the second time the International Indigenous Peoples' Forum had been awarded such a space. And while their space was in the Green Zone, it was the largest space awarded to any group in that zone. The pavilion was financially supported by the government of Norway and the COP Presidency of France. Throughout the two weeks of COP 21 the Indigenous Peoples' Pavilion hosted over 80 different events, representing more than 300 different Indigenous communities from around the world. Even though the pavilion was not in the more prestigious Blue Zone, it still garnered

attention from high profile politicians, including presidents and prime ministers (15).

COP 21

Peruvian Palm Oil

It was in the Indigenous Peoples' Pavilion that I had the privilege of meeting Hilaria Supa Humán, a Peruvian congresswoman who represents Indigenous communities and is Indigenous herself. She and I were attending the same presentation, led by Peruvian Indigenous activist Robert Guimaraes Vasquez that focused on the problem palm oil companies are creating for Indigenous peoples in Peru. While his example was very specific, he touched on a number of shared issues concerning Indigenous peoples across the globe, many of which the Indigenous people were petitioning to include in the Paris Agreement.

Guimaraes Vasquez pointed out that while many Indigenous Peruvians do not have a college education, this does not mean they are not knowledgeable. Indigenous Peruvians, like many Indigenous peoples, have extensive knowledge about the forest and environment where they live. This knowledge is passed down from generation to generation and instills a sense of identity within the Indigenous peoples. This knowledge that Guimaraes Vasquez spoke about is generally referred to as Traditional Knowledge, or more specifically, as Traditional Ecological Knowledge.

Indigenous peoples have long standing ties to the earth and environment, however, in Peru the federal government does not legally recognize most Indigenous community territories, just small pieces of land. According to Guimaraes Vasquez, there are over 1,200 communities in Peru waiting a title on all or part of their territory, which means that over 20 million hectares of land—land where Indigenous community reside—is vulnerable to “land grabs.”

Currently, one of the biggest threats to Indigenous lands in Peru is the palm oil companies. Guimaraes Vasquez explained that there are around 25 companies linked to palm oil operating in Peru. These companies come into Indigenous areas with large machines that deforest and destroy the entire area. The once pristine forests, the homeland of Indigenous peoples, are being turned into deserts. As of 2013 palm oil production is responsible for nearly 10% of annual deforestation occurring in Peru, and is projected to increase rapidly (16). According to Guimaraes Vasquez, not only is the land being impacted, but potable water is as well. The companies use the rivers to transport wood, degrading the quality of water that many Indigenous peoples rely on for drinking.

Guimaraes Vasquez explained that while publicly the Peruvian government is calling for an end to deforestation, the Indigenous people are not seeing any action at the local level. Instead, Indigenous peoples have been mobilizing community groups. In response to the opposition of community groups, the palm oil companies have filed lawsuits against the group leaders. Guimaraes Vasquez discussed how one extremely vocal opposition leader was forced to leave the area and go into hiding after his life was threatened. But even death threats have not stopped the local groups from fighting back to protect their ancestral lands. The

community groups have submitted formal complaints to the government and are planning to take legal action on the local, national, and international levels.

Meanwhile, some of the Indigenous communities in Peru are hoping to take advantage of a native resource, rosewood, to both protect their forests and bring in income. Rosewood oil is a high-value product, and the Indigenous people in the area have found a British company willing to purchase the product, but if palm oil companies continue to come in and clear-cut their forests, all of the rosewood trees will be gone.

The problems that Guimaraes Vasquez spoke of relate directly to one of the demands that the IIPFCC made coming into COP 20, “respect of Indigenous peoples’ rights to lands, territories and resources”. They also speak to the more all-encompassing demand the IIPFCC asked for coming into COP 21, “recognize peoples’ traditional knowledge and positive contributions to climate adaptation, mitigation and respect Indigenous peoples’ traditional livelihoods” (14). Indigenous peoples have the ability to protect and maintain the forests, but not if they do not have the legal rights to their lands. The problems Guimaraes Vasquez and his people are facing in Peru are similar to problems most Indigenous peoples are facing.

Indigenous Youth Groups

Indigenous peoples in Peru are not the only Indigenous group taking a stand against climate change. Another presentation that took place in the Indigenous Peoples’ Pavilion featured youth Indigenous environmental activists from Panama and Bolivia. I had the opportunity to speak with Lupita Omi Casama, who is part of a youth Indigenous organization called “Clima y Juventud,” (“Climate and Youth”). Casama is a member of the Embera-Wounaan Indigenous group of Panama. She has been volunteering with Clima y Juventud for two years. Along with about 50 other Indigenous youth, she fights to end deforestation. Similar to the story Guimaraes Vasquez told about the palm oil companies, Casama explained that the youth are fighting against outside companies coming into their ancestral lands and clear cutting the entire forest.

The youth are organizing tree plantings and creating videos to increase awareness about the connection between deforestation and climate change. They have also been using social media to engage and communicate the problems facing their communities with other youth across Panama and throughout the world. Casama believes that youth must step up and protect their ancestral lands, because “if we don’t do this, who will help us? We are the future.” Casama explained that while Indigenous people are the minority, they do have the solution to climate change; respect for the forests and their ancestral lands. But if Indigenous peoples do not have rights over their own lands, it is difficult for them to prevent what is happening.

The presenters in the Indigenous Peoples’ Pavilion spoke with both despair and hope in their voices. While Indigenous peoples are feeling the impacts of climate change, they are not willing to sit back and watch it happen. Activists like Guimaraes Vasquez and Casama are taking action. They are spreading the word in their local areas, as well working to educate the global community through

presentations like the ones they gave at COP 21. Indigenous peoples had hope that the Paris Agreement would be a step in the right direction, helping them to better protect their territories, and to better help themselves and the world prepare for and adapt to climate change.

Paris Agreement

Even with the Indigenous peoples' demands, and their well attended Pavilion at COP 21, the Paris Agreement still disregards their rights and livelihood. Indigenous leaders have written multiple articles, blog posts, and an official statement, expressing how the Paris Agreement marginalizes Indigenous communities around the world.

While Indigenous peoples are mentioned in the Paris Agreement, the only references occur in nonbinding portions of the text. The first mention of Indigenous peoples can be found very early on in the document, in the preamble. The line reads, "Parties should, when taking action to address climate change, respect, promote, and consider their respective obligations on human rights, the right to health, the rights of Indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity" (17). Not only is this non-binding because of the location of the statement (in the preamble), it is also non-binding due to the wording, which encourages action using the word "should". Only statements that follow the word "shall" are considered legally binding and require that countries adhere to what is written in the document.

Indigenous peoples appear to be both encouraged and disappointed by their inclusion in the Paris Agreement. A statement released on December 12, 2016 by the IIPFCC explains their excitement and concern, reiterating the three messages they wanted the UNFCCC to take into consideration. The first message stated that "it is essential that the rights of Indigenous peoples be recognized, protected and respected within a broad human rights framework." However, while there is mention of this in the preamble, Indigenous peoples wanted this point to be made in the operative section of the agreement (18).

The second message that Indigenous peoples wanted to be included in the agreement was to keep the temperature goal "no more than 1.5 degrees Celsius"(18). During COP 21, there were multiple marches throughout the Green and the Blue Zones, with participants from small island nations and Indigenous peoples demanding the UNFCCC include a temperature goal of less than 1.5 degrees Celsius increase. Signs read "1.5 to stay alive." To the disappointment of these groups, the Paris Agreement stated that the goal is "holding the increase in the global average temperature to well below 2 degrees C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees C above pre-industrial levels." (17) For island nations like the Guna Yala, "pursuing" a 1.5 degree C goal will not be good enough.

The third, and final message the IIPFCC had for the UNFCCC was to include "recognition, respect for, and use of our traditional knowledge, with our free,

prior, and informed consent.” Once again, while this provision was included in the Paris Agreement, it included the qualification “where appropriate.” Indigenous peoples felt that this provision should be applied throughout the entirety of the Paris Agreement and should not include the provision “where appropriate” (18). An article published by Cultural Survival further expressed Indigenous peoples’ disappointment in the Paris Agreement. In the early drafts of the Paris Agreement, the protection of Indigenous rights was included in Article 2.2. However, the European Union, Norway and the United States, who are often criticized for their lack of support of Indigenous rights, forced the removal of the protection of Indigenous rights from the main text of the Paris Agreement. Instead, Indigenous rights were mentioned in the preamble of the Paris Agreement, a section of the text that is nonbinding. The UN Permanent Forum on Indigenous Issues Chair, Megan Davis, explained that the Paris Agreement only asks states to “consider their human rights obligations” when it should tell them to comply (19).

From the Indigenous peoples’ viewpoint, the largest problem with the agreement remains the use of “should” vs “shall”. Where Indigenous rights are mentioned in the preamble, language stating it “should” respect Indigenous rights, does not make it legally binding (19).

It’s Not Over

While the Paris Agreement was not necessarily the perfect document, it is still a major step in the right direction toward achieving the inclusion of Indigenous rights, a fact that Indigenous peoples acknowledge. However, it does not adequately reflect the rights of Indigenous peoples across the world. What will the Indigenous Guna Yala do if the sea engulfs their ancestral homeland? How will Guimaraes Vasquez and the Indigenous Peruvians stop deforestation if they do not have the titles to their land?

Indigenous peoples continue their battle. Youth groups like *Clima y Juventud* are fighting back; they are raising awareness and speaking out on behalf of their people. The IIPFCC produced a statement immediately after the Paris Agreement was signed, explaining their disappointment.

The main things I observed in my experiences in Panama, my research with a tribe in the Pacific Northwest, and my time in Paris, were the resiliency and determination of Indigenous peoples. They will continue to fight back and will be leaders in the movement to reduce and eventually end man-made climate change. Climate change is not a problem that will wait to effect Indigenous peoples in 20 years. It is a problem they are dealing with currently. From the impending flooding of the Guna Yala lands in Panama to the reduction of cutthroat trout in the northwest United States to the deforestation in Peru, these threats are current and real. The exclusion of Indigenous peoples from the binding sections of the Paris Agreement is disappointing given their role as stakeholders and how immediately it affects some of the Indigenous community but it is not stopping Indigenous peoples from seeking solutions that will affect the survival of their culture and even their land.

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