

1. Introduction

The outcome document of the 2012 United Nations Rio+20 World Summit committed member states of the UN to develop a post-2015 sustainable development agenda that identified poverty eradication ‘as the greatest global challenge facing the world today and an indispensable requirement for sustainable development’ (UNGA Rio+20, 2012 para.2).

As the international community moves to adopt the final draft of Agenda 2030 at the Sustainable Development Summit in September 2015, Latin America and the Caribbean (LAC) is ‘host to an emerging consensus... that the sustainable development agenda of tomorrow calls for a paradigm shift, for structural change that puts equality and environmental sustainability front and centre’ (UN/ECLAC, 2013 p.7). As Jeffrey Sachs points out, the global economy is not only following an unsustainable path, it is also affected by interrelated social, environmental and financial crises (Sachs, 2011 in Larrea, 2012 p.2). At the centre of Agenda 2030 are 17 Sustainable Development Goals and 169 targets that seek to ‘stimulate action over the next 15 years in areas of critical importance for people, planet and prosperity’ and to protect the planet from degradation, through sustainable consumption and production, sustainably managing natural resources and taking urgent action on climate change (UN Agenda 2030, 2015 preamble). They provide a plan of action for ending poverty and hunger, a roadmap for building a life of dignity for all and they promise to “leave no one behind” (Ban Ki Moon in UN News, 2015A). In the report from the 2013 LAC conference on the post-2015 sustainable development agenda, LAC governments recognise that development based on economic growth, centred on the reduction of poverty and the indiscriminate exploitation of natural resources, has failed to ensure the achievement of the Millennium Development Goals (MDGs). The current development model, wholly dependent on the use of energy and natural resources, is environmentally degrading and will be unable to generate income growth without impairing the planet’s resilience and survival (UN/ECLAC, 2013 p55).

Latin America today is an eminently urban and middle-income area, but this masks enormous heterogeneity and inequality¹. The region has the worst income distribution in the world, and in recent decades the productive opportunities in society have grown more uneven, the world of work has deteriorated and access to social protection has been segmented. In parallel, and as a result, citizen insecurity, violence and crime have spread (ibid., 2013 p. 11). LAC has one of the greatest endowments of natural capital in the world (UNDP, 2012C) and natural resource based industries are central to the economic structure of most of the regions’ economies (Marin and Smith, 2010 p.1). The continent has 20% of the world’s forested area, 15% of the planet’s arable land (Rebossio, 2015) and nearly 31% of total fresh water reserves (World Bank, 2012). In terms of subsoil resources, the continent holds 20% of petroleum reserves, as well as a 25% of the world’s biofuel reserves, 44% of the world’s copper, nearly 50% of silver, 65% of lithium, 33% of tin, and 22% of iron (Rebossio, 2015). The overwhelming importance on commodity exports to Latin American economic development is a response to rapidly growing external demand based on continuous global growth driven mainly by the increase in population (O’Toole, 2014 p.186). However, making extractives the centrepiece of development strategy poses questions about long term sustainability, as resources deplete and global commodity prices fluctuate (ibid., p.188). Activities based in the exploitation of these resources are considered to be problematic for sustainable development as they produce concentration, low inclusion, and environmental damage (Rebossio, 2015). Policy makers have warned that in the current context of falling exports and lower international commodity prices, Latin America is at a crossroads, the export model is exhausted in economic terms as the welfare model is in social terms (Barcena, 2015 cited in Rebossio, 2015). At the same time, however, we cannot ignore that poverty in the region was cut by nearly half during the last decade (UNDP, 2014A), more than 70

¹ The World Bank categorises the countries in LAC as: Higher-income countries (LAC1): Argentina, the Bahamas, Barbados, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Peru, Trinidad, Uruguay, Venezuela. Lower-income countries (LAC2): Belize, Bolivia, the Dominican Republic, El Salvador, Guatemala, Guyana, Honduras, Nicaragua, Paraguay (de la Torre, 2015 p.35).

million people were lifted out of poverty and LAC reduced inequality² by 5 percentage points on the regional Gini index³.

Levy and Schady, 2013.

² Despite being one of the most unequal regions in the world, between 2002 and 2010 inequality fell in all 18 countries with the exception of Nicaragua and Costa Rica (UNDP, 2012B; Cornia, 2014).

³ The Gini index for per capita income measures the extent to which the distribution of income or consumption expenditure, among individuals or households within an economy, deviates from a perfectly equal distribution (World Bank, 2015B)

Vakis et al., 2015B.

Recent data has shown a ‘new normal’ of stagnant growth rates across Latin America (Molina, 2014; World Bank, 2015A) and that inequality reduction is plateauing across the region⁴. This has been linked to the effects of decreasing commodity prices, a slower Chinese economy and shrinking investments globally, on the labour market, particularly the low-skilled jobs in the service sector (ibid.). Today one in four Latin Americans remain poor, and one in five (130 million people) live in chronic poverty (Vakis et al, 2015 p.12). While better-quality education, infrastructure, security and healthcare services have become part of the core demands of LAC’s rising middle class, (increasing from 23

⁴ Inequality plateau’d in Mexico Panama, Brazil, Dominican Republic, Chile and Paraguay between 2007 and 2012 (Molina, 2014).

percent of the population in 2003 to 34 percent in 2012, and in 2010 for the first time exceeding the number of people living in poverty) the chronic poor have not benefitted much from the impressive growth rates of the 2000's, they have been left behind (ibid.)⁵. As highlighted by the United Nations Development Programme (UNDP), in LAC the number of poor has risen for the first time in a decade. This means that three million people in the region fell into poverty between 2012 and 2014 and economic growth is not enough to build resilience or the ability to absorb external shocks, such as financial crisis or natural disasters (Faieta, 2015). Current global conditions, with disappointing growth in major emerging economies, pose similar challenges to all middle-income countries, where two thirds of the extreme poor live (de la Torre, 2015 p.xi). This has led to a common view that LAC countries should heavily tax natural resources, encourage other economic activities and the region should induce structural change away from these industries towards more knowledge intensive sectors (IPCIG, 2015). This includes attracting and investing efficiently, using criteria of social and environmental sustainability, to move beyond the ‘extractivist paradigm’ and towards productive diversification. The aim is to bring about a transformation of capital, away from the region’s non-renewable resources and towards human capital, such as education and capacity-building, physical and social infrastructure, and innovation and technological development (Barcena, 2015 cited in Rebossio, 2015).

A significant number of the contemporary social conflicts surround natural resource exploitation (Sinnott et al., 2010 p.51). As noted in the report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, increased demand for natural resources⁶ has

⁵ Ferreira et al (2012) define four economic classes based on the concept of economic security: (i) poor: per capita income below \$4 a day; (ii) vulnerable: high risk of falling back into poverty, income between \$4 to \$10 a day; (iii) middle class: income between \$10 and \$50 a day; (iv) rich: incomes above \$50 (all in 2005 purchasing power parity). See also ‘Profile of social groups in Latin America: the poor, the vulnerable and the middle class’ (UNDP 2014B).

⁶ The Special Rapporteur takes a broad view of ‘natural resources’ including land, water, soil, air, coal, oil, gas, other mineral and precious metal deposits, flora and fauna, forests and timber (UNHRC, 2015A).

resulted in the opening up of more areas for exploration and exploitation, especially in populated areas, leading to conflict between competing interests⁷ (UNHRC, 2015A p.5). Citizen engagement in the natural resources sector is notoriously difficult, presenting heightened risks of human rights abuses⁸ because the sector is especially lucrative (ibid., p.6). Socio-environmental conflicts involving multiple actors, including governments, local communities, indigenous populations, national or transnational companies, transnational organisations and non-governmental and academic organisations, are at the centre of Latin American development agendas and re-articulation processes more than ever before (Correa and Rodriguez, 2005 p.23; Coletta and Raftopoulos, 2015). Characterised by their complexity, their varied subjects, and the great diversity of the stakeholders involved (Correa and Rodriguez, 2005 p. 23), these conflicts can be linked to transformations in the economic, institutional and ideological forces of contemporary globalisation, including the global political environment in which state-level processes are embedded. Neoliberal prescriptions in Latin America and the Caribbean promoted a one size fits all approach to development, now being tested in debates on sustainable development and climate change (O’Toole, 2014 p.180). Latin America is not considered to be a main contributor to the greenhouse gasses that are causing climate change (having contributed only about 4% of global emissions). However, studies suggest the region is like to be disproportionately affected due to its dependence on extractive and export sectors, its climate variability (particularly the El Nino phenomenon which already causes adverse impacts on many countries) and inequality and poverty rates, which climate change will exacerbate (ibid., pp.154-5) (See *maps 1 and 2*). Effective responses to climate change will need to differ between local circumstances and adopt a plural notion of development that is neither rigidly statist nor based solely on the free market (ibid., p.180).

⁷ See also ‘The Next Not-So-Cold War: As Climate Change Heats Arctic, Nations Scramble for Control and Resources’ (Democracy Now, 2015).

⁸ See also ‘At your Own Risk: Reprisals against World Bank Group projects’ report (HRW, 2015A)

Map 1

UNEP/ROLAC 1998- 2009.

A state’s adaptation to global influences and dependencies within economic and environmental governance (Lambin, Turner, Geist, et al., 2001 in Davidsen and Kiff, 2013B p.3) hugely impacts the complex ecological, social and cultural relationships within local and regional environments (Schmink and Jove-Martin, 2011 p.4).

Map 2

UNEP/ROLAC 1998- 2009.

Within the context of neoliberal policies where goods, services and nature itself are at the centre of global contests and international negotiations, the prevalence of a model of sustainable development premised on natural resource exploitation has ever-wider implications for the livelihoods, territories, rights and identities of populations in Latin America (ibid., p.9; Roberts, 2012).

1.2 Methodology

Using documentary evidence and case study analysis, this paper explores the human rights concerns and socio-environmental conflicts surrounding extractive processes and development mega-projects in Latin America. The analysis uses the broad definition of natural resource exploitation as used by the Special Rapporteur on the rights to freedom of association and assembly, that includes both extractive processes (mining, fishing, logging, etc.) and construction of mega-projects that are intended to make use of natural resources, particularly for large-scale commercial gain (UNHRC, 2015A).

Part 1 considers development models pursued in Latin America, the impact of international economic globalisation on the region, and the responsibility of all actors involved in delivering development programmes. In the context of economic globalisation, the socio-environmental conflicts surrounding natural resource exploitation in Latin America provide a lens through which to view the contradictions within the concept of sustainable development and the practice of human rights.

Part 2 includes two case studies: the failure of the Yasuni-ITT initiative in Ecuador as an example of conflicts surrounding extractive processes, and the Interoceanic Grand Canal project in Nicaragua as an example of the conflicts surrounding mega-projects. Linking the findings from the two case studies to the wider regional debates surrounding natural resource exploitation and sustainable development in Latin America, these case studies provide the basis for an assessment of Latin American experiences of current development policies premised on natural resource exploitation.

Part 3 uses the case study findings to discuss the content of Agenda 2030 (the post-2015 sustainable development agenda), including the prescription of sustainable industrialisation for developing countries, in light of the conflicts surrounding sustainable development policies in Latin America.

1.3 Literature Review

Sustainable Development

The term ‘sustainable development’ was launched in the UN-commissioned Brundtland report, *Our Common Future* (1987). It defined sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’ and signalled a change in which issues of environment and economic growth would be considered together (Bull and Aguilar-Stoen, 2015 p.7). To a significant extent, and because of the ambiguity of its definition, sustainable development allowed different concerns and interests to meet, and at the 1992 UN Earth Summit in Rio de Janeiro the idea that economic growth can be reconciled with environmental conservation gained wide support from countries in the North and South (Adams, 2008). Economic growth in the south would decrease poverty, control population growth, relieve direct pressure on resources and provide economic resources for conservation (Mansfield, 2009). While development had long been discredited due to its association with foreign development cooperation, capitalism and mega-projects with little sensitivity to the needs and livelihoods of local populations and vulnerable environments (Escobar, 2011), now no longer seen as an environmental threat or cause of global inequality, development becomes the route to sustainability (Mansfield, 2009). In this way, governments around the world could circumvent discussions of the politically challenging issues necessary to reduce poverty, increase equity and create more environmentally friendly ways of living. However, the tensions surrounding these issues cannot be evaded by ‘stimulative definitions’ (Donnelly 1996, p.611). The inherent ‘promiscuity’ of the concept of sustainable development, or of any constructed ideology including ‘development’ and ‘human rights’, whose origins and meanings get lost and subverted in the overuse and politicisation of its language, inevitably leads to flexibility, uncertainty and contested meanings (Mowforth, 2014 p.10; Forsyth, 2005; Baxi, 2008). Studying the practice of human rights allows us to locate these promiscuous concepts ‘whose claims are projected across the broadest of analytical and phenomenological boundaries’ within the disarticulated practices

of everyday life where meanings are constituted by a range of social actors (Goodale and Merry, 2007 p.11). These actors experience human rights discourse ‘betwixt and between’, as a kind of legal or ethical liminality that can both empower the relatively powerless and also place them at a greater risk’ (ibid. p.35).

That sustainable development should be linked to capitalist development and neoliberal globalisation was not challenged in subsequent UN World Summits on sustainable development in 2001 or in 2012 (Mansfield, 2009). Governments and corporations, through the Bretton Woods Institutions, pursue sustainable business growth as the most viable sources of investment, jobs and tax receipts that are key for development (Connolly, 2012 p.1234; ibid., p.1228), under the neoliberal prescription that opening national markets to international trade will encourage and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability (WTO, 2015). A common vision of sustainable development envisages a mixed economy in which states and markets work in harmony to sustainable ends. Saha and Parker (2002, in O’Toole, 2014 p.208) call for a partnership between regulated markets and states willing to provide a seedbed for enterprise and competitive advantage as a way of meeting sustainable objectives (O’Toole, 2014 p.208). This faith in capitalism’s long term prospects for the progress of development and the enhancement of human rights has been labelled as symptomatic of ‘a distinct academic and popular denial of the the ‘limits to growth’ (Short, et al. 2015 p.2). Analysis shows that 30 years of historical data, including issues such as peak oil, climate change, and food and water security, resonate strongly with the feedback dynamics of ‘overshoot and collapse’ displayed in the *Limits to Growth* (1972) ‘standard run’ scenario (Turner, 2008 p.38) which results in collapse of the global system midway through the twenty-first century. The key driver behind the *Limits to Growth* prediction, and arguably the one most poised to quickly cause global economic collapse, is the depletion of non-renewable energy sources, especially of oil and natural gas (Short et al., 2015 p.2.)

Globalisation and development

The wealth derived from natural resources can have a tremendous impact on the economics and politics of producing countries (Humphreys, Sachs and Stieglitz, 2007). Political processes such as globalisation define the relations of power that shape what people and governments can do in a given context, who should have what resources and for for what purpose (Bull and Aguilar-Stoen, 2015 p.9). The dependence of developing countries on capital from developed countries, who are reliant on natural resources to meet their energy consumption needs, enables foreign direct investment (FDI), which heads disproportionately towards extractive sectors, to retain considerable influence over the terms of debate about the future direction of sustainable development policies (O’Toole, 2014 p.245)⁹. In Latin American this ‘cycle of dependence’ (Koenig, 2014) is also linked to the ‘resource curse’ (Auty, 1993) of developing countries and Karl’s ‘cycle of inequality’ (2003). Globalisation also drives the infrastructure development promoted by IIRSA (Initiative for the integration of infrastructure in South America), including construction of access roads and railways in a continent-wide push to open up frontiers for extracting hydrocarbons, mining, producing biofuels, harvesting timber and investing in agro-industry (Rival 2009 p.5). In 2014 the initiative had a portfolio of 579 projects with a total investment of \$163,324.5 million (IIRSA, 2015). In the context of almost universal acceptance that there can be no development without economic growth, and no economic growth without free trade, the protection of economic and social rights becomes difficult and raises questions regarding the responsibility of private and economic actors for both promoting and violating human rights in a state-centric system of international governance (Freeman, 2002, p.151; Rist, 2008 p.3). In practice private economic actors are increasingly responsible for the delivery of infrastructure development projects and their environmental, economic and social impact. Despite emerging

⁹ Since 2009 China has invested US\$99.6 billion, around 90% of its total FDI in LAC. Close to three quarters of all Chinese investments in LAC are tied to the energy and mining sectors (Espinsasa et al., 2015 p.2-3). See *also* Ellis, 2014 for an assessment of the environmental impacts of Chinese funded mega-projects in Latin America.

consensus on the responsibility of business actors to respect human rights¹⁰, the protection of economic and social rights in international law falls only on the state. Critics of neoliberalism have argued that 'It is no exaggeration to say that the corporation's built-in compulsion to externalise its costs is at the root of many of the world's social and environmental ills' (Friedman, n.d cited in Bakan, 2004 p.61). As Governments compete for corporate investments, business in the globalised world circumvents the shackles of regulation... to seek greater profit margins and greater shareholder returns by participating in a 'race-to-the-bottom' by reducing social protections (Connolly, 2012 p.1242; Marks & Clapham, 2005 p.429). Furthermore, concerns about competitiveness are increasingly being used by foreign corporations employing clauses written into free trade agreements to challenge restrictions posed by national environmental regulations on their activity¹¹ (O'Toole, 2014 p.245). Within a concept of sustainable development that encompasses both a human rights/human development ideology on the one hand, and a good governance ideology that encourages private investment for economic development this tension between the human rights obligations of companies, but laws binding states is not resolved. If openness to trade and investment is essential to development, rich countries also have more power to protect their industries and dominate multilateral trading bodies such as the World Trade Organisation (ibid., p.199). This raises questions about the sovereign power of Latin American nation states to determine how they will pursue strategies of sustainable development (ibid., p.245). Stammers summarises that there are a wide range of important critiques, including matters of fundamental political, economic and social concern, which identify many aspects of human rights praxis as being deeply problematic in the context of processes of accelerated globalisation (Stammers, 2009 p.205). Over time trade and environment debates have broadened out to include concerns that acknowledge the difficulties faced by developing countries in the world trading system and their priority of reducing poverty (O'Toole, 2014 p.199). Demand for natural resources (over consumption in the North) drives

¹⁰ See also UN Guiding Principles on Business and Human Rights (2011).

¹¹ See also Pacific Rim V El Salvador court case.

industrial development and extractive production patterns (overproduction/ overextraction in the South) (Vogel, 2009 p.vix). This feeds the pragmatic argument that be fast, effective and politically acceptable, development and environmental approaches need to develop strategies that work with the economic interest mechanisms of the neoliberal framework of industrialised countries (Davidsen and Kiff, 2013B p.5). In Bebbington’s assessment, the relationships between contemporary resource based models of economic and social development, state formation and forms of democracy is a topic that is still open for critical and creative analysis (Bebbinbgton, 2013).

Socio-environmental conflicts

The shift of FDI in Latin America from the manufacturing to the primary sector reflects the rise of China and other Asian industrial countries (Gudynas 2013 in Holleander, 2015 p.76)¹². Renewed investment in primary export activities represents a deepening of the process of ‘accumulation by dispossession’ Harvey (2004) and ‘eco-dependancy’ by which surplus extraction by the global capitalist system takes the form of ecological pillage (Dore, 1996 in O’Toole, 2014 p.173). Latin America’s historical dependency on natural resources, both for local livelihoods and to supply an evolving global market has made environmental issues central in policy debates and in widespread contests over the distribution of economic resources and goods, access to and control over natural resources, as well as representative and subjective meanings (Schmink and Jove-Martin, 2011; Escobar, 2011). Multiple examples from across Latin America demonstrate that local social and environmental concerns are subordinate to economic concerns, for governments trying to harness the wealth of their natural resources for economic growth, and for Multinational corporations (MNCs) and International Financial Institutions (IFIs) seeking to consolidate forms of neoliberal governance (Sawyer and Gomez, 2014 p.6). The violent conflicts that continue to characterise development projects in Latin America (ibid.), are often traversed by political, social, ethnic and economic

¹² Since 2009 China has invested US\$99.6 billion, around 90% of its total FDI in LAC and close to three quarters of all Chinese investments in LAC are tied to the energy and mining sectors (Espinsasa et al., 2015 p.2-3).

claims, involving struggles against local, national and transnational elites by indigenous peoples, small farmers and other marginalised groups as well as middle class actors sympathising with their cause (McNeish, 2012 p.39). These conflicts have been used to confirm that development, corruption and violence are structurally intertwined (Oslender in Howard et al., 2007 p.716) . For Hardt and Negri, de-territorialisation lies at the core of the imperial apparatus, and development is the mantra of this violent system (ibid.) for the consolidation of a global capitalist modernity (Escobar 2003).

Latin America provided the test-ground for the imposition of this Washington Consensus - a model of neoliberal economic development premised on globalisation, that pursued a simplistic form of capitalism in which development was more or less coincidental with industrialisation and all its attendant process of technological advancement. In recent years, the neoliberal orthodoxy has been readdressed (Kingstone, 2010), yet despite the ascendance of left-of centre governments, neoliberal policies remain largely intact in Latin America (O’Toole, 2014 p.172). Since 1999, a series of left-wing or progressive¹³ governments have come to power in what can be seen as a reaction against neoliberal strategies and a broadening out of the debates on development (Gudynas, 2013 p.25). On the one hand ideas of refounding states on the premise of “living well”, Mother Earth and granting rights to nature in line with indigenous cosmologies in Bolivia and Ecuador¹⁴, represent radical innovations in the ways in which sustainable development can be interpreted. The region has become a laboratory of initiatives seeking both ways of assessing the environmental cost of production and financing greener forms of growth, including investing in renewable energy or green industries such as

¹³ This group includes the governments of Néstor Kirchner and Cristina Fernández de Kirchner in Argentina, Evo Morales in Bolivia, Lula da Silva and Dilma Rousseff in Brazil, Rafael Correa in Ecuador, Tabaré Vázquez and José Mujica in Uruguay, and Hugo Chávez in Venezuela. Some would include the past administrations of Ricardo Lagos and Michelle Bachelet in Chile in this group and, with greater reservations, the Fernando Lugo government in Paraguay and the Ollanta Humala administration in Peru (Gudynas, 2013 note 6).

¹⁴ See also ‘Development as Buen Vivir: Institutional arrangements and (de)colonial entanglements’ Walsh, 2010.

wave or wind power sectors, eco-taxes, payments for environmental services, eco-tourism and biodiversity prospecting (O’Toole, 2014 p.245). However, populist governments in Bolivia, Ecuador and Uruguay have also pursued a neo-extractivist (Webber, 2010) model of development, expanding their industries for an export-led development model to fund social programmes through higher taxes or nationalisation. Thus doubts arose about the sustainability of the development strategies pursued during Latin America’s “Pink Tide” (Gudynas, 2010). Functional strategies and a certain type of populism, albeit re-conceptualised in a positive and mobilising sense, are evident in varying relations with the business community (widespread support in Brazil, but conditional support in Argentina). The diverse theoretical approaches in Argentina and Brazil do not question the rationality of development as growth, the role of exports or investment, or intervention to make use of nature. This is a style of development that accepts the conditions of neoliberalism, with the state reducing or compensating for some of its negative facets. It is a “benevolent capitalism” that aims above all to tackle poverty and inequality through corrections and compensation (Gudynas, 2010).

The impact of natural resource exploitation coupled with the effects of climate change seriously harm indigenous peoples worldwide, whose productive, social and cultural practices have a close and harmonious relationship with Mother Earth (Acedo, 2014). Governments have placed great weight on generating economic growth by way of state interventions, with the aim of not only preparing the ground for market actors, but as a means of improving the lives and livelihoods of the majority of the population (Bull and Aguilar-Stoen, 2015 p.8-9). And yet the need to explore and exploit resources in ever more invasive ways impinges on the lands of indigenous communities living in countries with important resource reserves (Burger, 2014). In Latin America most of the indigenous, rural and even urban protest movements are about persistent environmental degradation and public policies, production processes and appropriations of territory (Martinez, 2012 in Brand, 2012 p.8). A dual tendency identified in the region for confronting the processes of occupation and dispossession are to use national laws, and if that fails to use

international legal protections, and to mobilise social protest (ibid. p.14)¹⁵. The construction of the political agency of indigeneity in relation to environmental discourses is deeply ingrained in the idea of the possibility of a new political and social ecology (Coletta and Raftopoulos, 2015) based on alternative cosmologies, including *Buen Vivir* (living well) (Walsh, 2010; Gudynas, 2011). Based on a duality and complementarity between all elements that make up the indigenous world view, *Buen Vivir* includes the rights to the resources found on indigenous territories and the exercise of the right to control and manage those resources (Cunningham, 2010 p.53). *Buen Vivir* also incorporates a set of rights that includes freedom, participation, community protection and the rights of nature (ibid., p.4). However the radical constitutional reforms which have taken place throughout the continent in the last two decades, strategies of development based on natural resource exploitation and mega projects place constraints on the possibility of indigenous and peasant communities having meaningful participation in decisions that affect them (Cannon and Kirby, 2012 p.136). The State and private actors in many cases also portray environmental human rights defenders, and those who help to defend them, as criminals, characterising their opposition to “important” projects or activities as against national interests or anti-development (URG, 2014 para.11). By studying the practice of human rights in the socio-environmental conflicts surrounding the natural resource exploitation in Latin America, the implications of the tensions within a concept of sustainable development that promotes the environmental and social pillars of development as equal to economic development can be examined.

Human rights mainstreaming

In recent years human rights have assumed a central position in the discourse surrounding international development (Gready and Vandenhove, 2014). The

¹⁵ For an overview of how resistance to energy projects works at the local level including the findings from oil watch report (2005) see Martinez, 2012 in Brand, 2012 p. 10-13.

manifest failure of the Structural Adjustment Programmes (SAPs)¹⁶ of the 1980s prompted a major push in the 1990s for good governance and democracy and a desire from development thinkers to redefine development as something more than purely economic growth (Uvin, 2007). Human rights ‘mainstreaming’, launched as part of the 1997 UN Programme for Reform, sought to address the criticisms of previous UN policies. Human rights have become part of the core work of the United Nations development system (UNDG, 2013) and in 2003 the United Nations Development Group (UNDG) adopted the *UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming*.

Once institutionalised, both human rights and development stand in an ambiguous relation to power. While human rights can still be used to challenge power, their origins and meanings can get lost and be subverted in ways that result in them becoming a tool of power, rather than a challenge to it, a result of the promiscuity of the ideology and discourse of human rights (Baxi, 2008; Speed, 2007; Stammers 2002) and any constructed ideology (*see above*). McGrew argues that wider processes of globalisation present a number of important challenges including the fact that existing asymmetries of power in the global politics of rights means that the human rights system is all too likely to reflect western interests (McGrew, 1998 cited in Stammers, 2009 p.196), just as ‘development’ has been used as a theoretical construct to justify a prevailing Western ideology (Mowforth, 2014 p.3). The unequal power dynamics within international development institutions, their vulnerability to organised lobbies and the limitations this places on developing just and fair policies are discussed in a growing body of development literature that includes William Easterly’s *The Tyranny of Experts* (2013) and Joseph Stiglitz’s *The Price of Inequality* (2013). The efficiency and success of the corporate model can be seen in its decision-making based on risk assessments and cost benefit analysis, not on moral or ethical grounds,. Yet critics label this a ‘flawed paradigm’ of economics and technology in which analysts assume the market will solve all the key concerns

¹⁶ The SAPs imposed economic restructuring on poor countries, to reduce spending on health, education and social polices, to ensure debt repayment on conditional loans from the IMF and the World Bank (Uvin, 2007).

of sustainable development (poverty alleviation, climate change and human rights) without first addressing fundamental moral questions about justice (Sovacool, 2013 p.2). Analysis of human rights in practice gives equal weight to what the social theorist’s eye sees and what participants in human rights networks themselves tell us about the meanings and experiences of human rights as it relates to other forms of social practice’ (Goodale and Merry, 2006 p. 30). A holistic understanding of the practice of human rights and of sustainable development, within the context of Latin American responses to globalisation, poverty and climate change may provide insights for NGOs and policy makers working on issues of development, poverty and human rights in the context of the post-2015 development agenda. According to Paul Collier, the opportunity that nature presents to the countries of the bottom billion is the enormous value of their natural assets (Collier, 2010). In Line with Collier’s assertion, the concept of sustainable industrialisation and value addition has been prescribed to maximise the developmental impact of natural resources for the countries of the African Union, in its Agenda 2063 and the Common African Position on the post-2015 development agenda (UN High Level Expert Group Meeting on Africa, 2015 concept note). Therefore, if African nations are the next test bed for the imposition of economic and development policies from the West (Mowforth, 2014), are there any lessons from extractive development policies in Latin America that might prove useful in an African context?

2.1 Case Study: The Yasuni-ITT Initiative, Ecuador¹⁷

Bass et al., 2010.

The Yasuni-ITT initiative (the Initiative) was adopted as a government proposal in April 2007 after Albert Acosta, Minister for Energy and Mines, put forward the initiative as a counterproposal to Petroecuador's plan to exploit the Ishpingo, Tiputini and Tambococha oil fields (ITT concession block) in the Yasuni National Park (Acosta, 2012). The Initiative was promoted as a commitment to refrain indefinitely from extracting the 846 million barrels of oil reserves in the ITT oil field (nearly a quarter of Ecuador's total reserves), and as an innovative option for combatting global warming, protecting the biodiversity of Ecuador, and for supporting the voluntary isolation of the indigenous peoples (the Tagaeri and Taromenane) living in the Yasuni National Park. In presenting the Initiative to the UN General Assembly (UNGA) on 24th September 2007, Corrales declared

¹⁷ This case study uses the past tense to refer to the Yasuni-ITT initiative as per the government proposal, and its subsequent cancellation in August 2013. The author recognises that the initial civil society proposal to leave the oil in the ground still lives on in the Yasunidos coalition.

‘This would be an extraordinary example of global collective action that would not only reduce global warming... but also introduce a new economic logic for the twenty-first century...[that] recognises the use and service of non-chrematistic¹⁸ values of environmental security and maintenance of world biodiversity’ (Correra, 2007 in Larrea et al., 2009 p.10). The Initiative was marketed as a pilot project with the potential to be replicated by other developing and mega-diverse countries with large reserves of fossil fuels (Larrea, 2012 p.12)¹⁹. The Yasuni-ITT fund was expected to reach at least \$3.6 billion, equivalent to half the value of oil revenues, in a 13 year period with voluntary contributions from national governments, international organisations, private corporations, NGOs, and individuals. Interest earned from the Fund would be invested by the state, in line with the National Development Plan (*Plan Nacional*) and the MDGs, to conserve one million hectares of forest and to promote social development and the transition to a new development strategy based on equality and sustainability (Larrea et al., 2009 p.11). Ecuador promoted the Yasuni-ITT initiative within the concept of ‘shared but differentiated responsibilities’ as per the Rio Declaration on Environment and Development (Acosta, et al., 2009) and proposed that Yasuni Guarantee Certificates be recognised in the carbon market. It called into question the logic of extractive development based on primary products and exportation, instead accepting the goal of *Sumak Kawsay* (Living Well). It embodies a deep respect for the natural environment and the cultural choices of the indigenous peoples in voluntary isolation that still inhabit Ecuadorian territory (Acosta et al., 2012 p.1).

The proposal received significant support from international institutions, European governments, International NGOs, scientific communities and

¹⁸ Not occupied in the gaining of wealth (Merriam-Webster, 2015).

¹⁹ Countries that meet all these criteria include Brazil, Colombia, Costa Rica, Democratic Republic of Congo, Ecuador, India, Indonesia, Madagascar, Malaysia, Papua New Guinea, Peru, Bolivia, The Philippines, and Venezuela (Larrea, 2012 p.10).

personalities worldwide (Warnars, 2010 p.v; Martin, 2011 p.2)²⁰. International media consensus seemed to be that as far as environmental interventions go, the initiative was a novel and daring one (Davidov, 2012 p.12).

After three years of technical consultation, in 2010 an international trust agreement was signed by Ecuador and the UN and a major international fundraising campaign was launched. At the beginning of 2012, with \$116 million pledged²¹, the Ecuadorian government announced that it would move forward with the Initiative. However, President Correa signed an executive decree to cancel the Initiative in August 2013, blaming the failure on the lack of foreign support (the trust fund received only \$13m in deposits). Correa announced "The world has failed us... it was not charity that we sought from the international community, but co-responsibility in the face of climate change" (Watts, 2013). In a statement the UNDP announced that the initiative 'was born as a national proposal, and the decision to conclude it is also a national prerogative' (UNDP, 2013C). Much has been written about the Initiative and the reasons that ultimately led to its failure, including its institutional weakness on the domestic level (Martin, 2011 p.86) and questions surrounding the financial and project-related implementation mechanisms (Davidson and Kiff, 2013B p11), and Correa's own mismanagement of the initiative. International concerns centred on Ecuador's reliability and commitment to the project with Correa's frequent references to 'Plan B' (drilling the ITT oilfield), Ecuador's default on its foreign debt in 2008, and concerns over political stability in the wake of police strikes and social protests in 2010/2011 (Finer and Martin, 2010). The news of the cancellation of the Initiative prompted mass demonstrations around the country, leading to the formation of Yasunidos (Vidal, 2015), a grassroots movement who, in April 2014, handed in a petition with approximately 850,000 signatures to attempt to trigger a referendum on drilling in the ITT block. Ten days later the

²⁰ For a full list of official backers of the Initiative see Larrea, 2012 p.12. *See also* Martin, 2011c for a list of International and national NGOs who formed transnational networks to contribute to the Initiative.

²¹ US\$19 million was attributed to international donors, US\$50 million was pledged as a donation by Italy and US\$47 million was pledged as bilateral technical assistance by the German government (El Comercio 2012; PRNewswire 2012). A national fundraiser in Ecuador collected about US\$3 million (Davidsen and Kiff, 2013A p.25).

National Electoral Council (NEC) announced that only 359,762 signatures were legitimate²² and that organisers had failed to get enough signatures (5% of the electoral role) to trigger a national referendum (Vaughan, 2014). Yasunidos, accused the government of fraud, a claim which the government rejected. On 3 October, the National Assembly authorised drilling in the ITT oil fields but made it conditional upon the fulfilment of certain standards minimising the environmental impact and effects on the indigenous peoples living in the area (Mikkelsen et al., 2014 p.153).

Findings

It appears that Ecuador’s national laws and the 2008 Constitution contain robust protections for the rights of nature,²³ the environment and indigenous peoples. However, increased oil exploration in the Amazon rainforest and on traditional indigenous lands, a source of socio-environmental conflicts since the 1970s, is a permanent point of disagreement between Correa’s government and indigenous social organisations (Mikkelsen et al., 2014 p.148). According to the International Working Group on Indigenous Affairs (IWGIA), the number of social protests related to oil and mining in the Amazon South-East and southern Andean regions of Ecuador numbers on average 50 - 80 per month (Mikkelsen et al., 2014 p.150). The analysis below seeks to understand the dynamics of these conflicts, the key issues and how the actors have mobilised around the issue. Also included are references to Ecuador’s obligations in international human rights law and climate change agreements.

Nature and Biodiversity

Further oil development in Yasuní National Park, and in the ITT oilfield specifically, jeopardises its conservation value as the most biodiverse hotspot in the Western Hemisphere, by bringing unprecedented human access to one of

²² See also Vaughan, 2014 for the reasons given by the NEC for not accepting signatures.

²³ The first constitution in the world to do so. See also Kendall, 2008.

the most intact portions of the Ecuadorian Amazon²⁴ (Bass et al., 2010 p.7). The uniqueness of the National Park is its likelihood to maintain wet, rainforest conditions as climate change-induced drought intensifies in the eastern Amazon, increasing its ability to sustain this biodiversity in the long term²⁵ (ibid.). In cancelling the Yasuni-ITT initiative, Correa said that plans to open up the ITT oil fields would affect less than 1% of the park. However, according to Kelly Swing, founder of the Tipitini research centre, the area affected by drilling could be 20 or 30 times more than the government claimed (Watts, 2013). The impact of oil developments in the Yasuni National Park are already evident, with proximity to the Via Maxus access road the strongest spatial factor in predicting where deforestation²⁶ is occurring (Bass et al., 2010 p.7). A 2014 report using satellite imagery (Finer et al., 2014) uncovered that in block 31 (the adjacent block to the ITT block) Petroamazonas, a unit of the state-run company Petroecuador, had built a permanent steel bridge, access roads 2.5 times larger than stipulated by the Environmental Impact Study (EIS). It had cut 72% more forest area than allowed in block 31 of the Yasuni National Park, despite having made significant changes to the project in 2006 after the Ecuadorian Environment Ministry forced them to redesign the project without major access roads or processing facilities within Yasuni National Park.

In May 2014 Ecuador's environmental regulator gave the go-ahead to Petroamazonas to develop two of three fields in its ITT project (the Tipitini and the Tambococha fields) under the same seemingly roadless conditions as agreed for block 31 (Hill, 2014). In October 2014, Petroamazonas' environmental impact study for the Ishpingo oil field, the most environmentally sensitive oil field in the ITT block, was also approved. Three months previously,

²⁴ See also Bass et al., 2010 p.5 for a full data on the biodiversity, including endangered and near-threatened species.

²⁵ Glacier retreat in Ecuador and the larger Andes mountains is threatening to impact the livelihoods of approximately 100 million people. Changing climate patterns impact hydrological cycles and threatens Amazonian ecosystems (World Bank Report, 2008; Amazon Watch, 2012 in de Wit, 2013 p.2).

²⁶ Deforestation within Yasuni National Park is estimated at a rate of 0.11% per year, with that rate increasing (Bass et al., 2010 p.7)

in July 2014 Petroamazonas spilled 660,000 gallons of oil into the Amazon contaminating the Aguarico and Parahuaico rivers used by indigenous Cofan, Secoya, Kichwa and Shuar communities (sustainablebusiness.com, 2014B). Much of the tension between indigenous and environmental organisations and the state in Ecuador has concerned the role of nature for and within a development model that could be a realistic alternative to neoliberal capitalism. The preservation of nature is central to the Yasuni-ITT initiative because it simultaneously a source of economic value, as well as being a set of relations that underwrite the well-being of individuals and communities (Arsel and Angel, 2012 p.6). By linking the Yasuni -ITT initiative to the United Nations Framework Convention on Climate Change (UNFCCC), the challenge for the Initiative was to convince leading industrialised nations to go beyond traditional market 'off-set' investments and above-ground measures, and to accept the concept of avoided emissions from unexploited fossil fuel reserves (Martin and Scholz, 2014 p.5). In this sense the Initiative directly confronted criticisms surrounding the Clean Development Mechanism²⁷ (CDM) and the programme for Reduction of Emissions of Deforestation and Degradation (REDD) and their questionable commitments to environmental integrity, equity and indigenous rights²⁸, by leaving oil unemitted and in the ground, and by enhancing the participation of developing countries and indigenous groups in climate change mitigation (Larrea and Warnars, 2009 p222; Martin and Scholz, 2014 p.5).

Indigenous Peoples

The collective rights of indigenous peoples are guaranteed in Ecuador's 2008 Constitution, especially the right to maintain, develop and strengthen their identity and traditions, not to be displaced from their lands and to the protection of ritual and sacred sites and ecosystems (Government of Ecuador, 2008 art.

²⁷ Through the CDM industrialised countries invest in sustainable development projects in developing countries to earn credits which they can use to off-set their Greenhouse Gas emission targets, set by the Kyoto Protocol (Warnars, 2010 p.V).

²⁸ See also Larrea and Warnars, 2009 p.222 for debates surrounding REDD.

57)²⁹. International law has developed a clear principle of the right of indigenous peoples to permanent sovereignty over natural resources, based on the principle of self-determination contained in common article 1, paragraph 2 of the two International Covenants on Human Rights and on the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIPS)³⁰. The principle of permanent sovereignty is an integral part of the right of self-determination, including the right to participate in the governance of the State and the right to various forms of autonomy and self-governance (UNHRC, 2012 para.13).

- Cultural Survival

Yasuni park holds a strong significance for the cultural survival of Amazonian indigenous groups. An estimated 9,800 people live in the national park (UNESCO, 2008 in Davidsen and Kiff, 2013A p.15), including the Tagaeri and Taromenane cultures living in voluntary isolation and the Huaorani who were granted ‘The Huaorani Ethnic Reserve’, next to the park in 1983. The National Park itself was designated an ethnic reserve by the UN in 1989 (Finer et al., 2009) and in 2007 the government declared an area of 7,580 square kilometres in the south and centre of the park a *zona intangible* (intangible zone), specifically ruling out resource extraction in the area (Davidsen and Kiff, 2013A p.15). However, the *zona intangible* doesn’t prevent incursions by loggers and other illegal economic actors (Rival, 2009 p.12). The Tagaeri and Taromenane peoples are protected by the *zona intangible* and article 57 of the 2008 Constitution that specifically mentions that the territories of peoples in voluntary isolation are their ancestral homelands, irreducible and untouchable, and off-limits to all extractive activities. Furthermore ‘The State will adopt measures to... ensure that they can remain in voluntary isolation, respect their self-

²⁹ According to the 2010 census, indigenous people represent 7 per cent of the Ecuadorian population (1.018 million), comprising 14 distinct peoples and 12 indigenous cultures (MRG, n.d.; Larrea and Warnars, 2009 p.220). *See also* ‘UN expert: Ecuador’s indigenous people lack adequate access to social services’ (UN News Centre, 2006).

³⁰ *See also* ‘Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System’ IACHR, 2009.

determination and ensure that their rights are respected’ (Government of Ecuador, 2008 art.66). The Huaorani leadership continues to make clear that they oppose any new oil development on their ancestral territory (SOS Yasuni, 2006) that threaten’s access to traditional hunting, fishing, and gathering grounds. This is a threat to the rights of indigenous peoples is recognised by the Inter-American human rights system as ‘a material and spiritual element which they must fully enjoy... to preserve their cultural legacy and transmit it to future generations’ (*Awasi Tigni V Nicaragua*, 2001). Territory is ‘a fundamental basis for the development of indigenous communities’ culture, spiritual life, integrity and economic survival (ACHR, 1969 art.21). It encompasses the use and enjoyment of natural resources and is directly related, even a pre-requisite, to enjoyment of the rights to an existence under conditions of dignity...’ (IACHR, 2009 para.2). Oil activity in the ITT block will exacerbate an already tense situation between the indigenous groups living in the National Park as the Tagaeri-Taromenane find themselves encroached upon (Amazon Watch, 2013). In May 2006 the IACHR issued a precautionary order for the protection of groups in voluntary isolation (Rival, 2009 p.12) in response to the May 2003 killing of a dozen or more ‘Tagaeri’ and ‘Taromenane’ by a group of Huaorani men. As recently as March 2013 two Haorani were killed by members of the Tagaeri and Taromenane, and a retaliatory attack by the Haorani led to several deaths and a kidnap (Amazon Watch, 2013)³¹.

- Participation and Free Prior Informed Consent (FPIC):

The origin of the Yasuni-ITT proposal has its roots in civil society. It began in 1995 as a call by CONAIE (the Federation of Indigenous Organisations) for a moratorium on drilling in Yasuni national park, which then became a central component of later efforts by civil society groups (ERA, Acción Ecológica, Oilwatch) to put forth a vision for a ‘post-petroleum economy’ in Ecuador (Amazon Watch, 2013). Civil society had varying degrees of involvement in the Initiative, as part of a transnational alliance and as part of the Administrative and Leadership Council (CAD) for the Initiative from 2008. What had started as part

³¹ See also Mikkelsen et al., 2014 p.152.

of a long-standing indigenous and environmentalist resistance against oil exploitation in the Amazon, had effectively been appropriated by a state machinery whose actions and processes marginalised the very people that advocated the proposal in the first place (Vasconez, 2010 cited in Arsel and Angel, 2012 p.218). The Initiative was portrayed by the state as a key policy demonstrating its concern for indigenous livelihoods and well-being. However, according to Miguel Guatemal, vice-president of CONAIE, ‘there is non-dialogue, rather there is a direct imposition... we as the indigenous, have to accept everything that they say, (Guatemal, 2010 cited in *ibid.*). From these assertions it would appear that Ecuador failed in its obligations to guarantee the participation of indigenous peoples in the planning, and also in the decision to cancel the Initiative. The Government failed to award them their right to FPIC to oil exploration in the ITT block. Article 57 of Ecuador’s Constitution and the 2010 Citizens Participation Law enshrine the requirement that communities have the right to consultation, however they did not make extractive endeavours subject to their consent³². The decision to proceed with oil extraction in the ITT block, is allowed under Ecuador’s national law because, as provided for in the 2008 Constitution, it was deemed to be in the ‘national interest’ (Government of Ecuador, 2008 art.323). As well as being enshrined in International Labour Organisation (ILO) Convention 169 (1989) , the Inter-American Court of Human Rights (IACtHR) established the standard for the need to obtain the consent of indigenous peoples in the case of *Saramaka v. Suriname* (2007), further affirming in *Sarayaku v. Ecuador* (2012), ‘the safeguard of effective participation... must be understood to additionally require the free, prior, and informed consent [of indigenous peoples], in accordance with their traditions and customs’. At a press conference in November 2013, Franco Viteri, President of the Government of the First Nations of the Ecuadorian Amazon (GONOAIE), and CONAIE’s president, Humberto Cholango, warned that the 11th South-eastern Round of bidding was unconstitutional and in violation of human rights as it was being conducted without the FPIC of indigenous peoples and nations (Mikkelsen et al., 2014 p.154).

³² See Citizens Participation Law, 2010 art. 83.

Peaceful Assembly and Association

Between 78% and 90% of Ecuadorians were against the drilling of the park at the time the Initiative was scrapped (Keyman, 2015; Amazon Watch, 2013). The lack of democracy associated with both the decision-making process in cancelling the initiative, coupled with the dismissal of the Yasunidos petition for a referendum on drilling the ITT block, fuelled a high degree of ongoing civil discontent in Ecuador (Keyman, 2015 p.9; Mikkelsen et al., 2014 p.150). Martin Carbonell, a spokesperson for Yasunidos told the Guardian, “People are aware that this has damaged democracy. This was the moment when people could say this is not a democratic government” (Lang, 2013). According to the Special Rapporteur on the right to freedom of assembly and of association, social conflicts experienced in the context of natural resource exploitation are a stark demonstration of the severe consequences and counterproductive nature of the failure to provide any outlet for excluded groups to air their grievances (UNHRC, 2015A para.11). In the midst of the conflict surrounding the undemocratic decision to cancel the Yasuni-ITT initiative and drill the ITT oil fields, the president complained about “infantile environmentalists” creating obstacles to economic development. He dismissed groups that opposed him as part of an “infantile left” made up of “fundamentalists” who could not see that creating alternatives to an extractive economy was a longterm proposition, and short-term dependence on extraction for revenue and employment was unavoidable (Pérez, 2012). The government’s response to the protests included blocking the streets on which protestors were marching, firing rubber bullets and beating peaceful protestors (Keyman, 2015). The Special Rapporteur on the right to freedom of assembly and of association holds the view that any interference with peaceful assemblies, including dispersal, ‘should meet the strict tests of necessity and proportionality stipulated in international human rights standards’ (UNHRC, 2015A, para. 40), including that the right to freedom of assembly cannot be limited based solely upon an assembly’s message or content (ibid., para. 39). Furthermore, the Special Rapporteur links the restriction of these rights to questions regarding the right to participation, and ‘how genuine consultation processes or decisions are, and how valid is the

expression of free, prior and informed consent of affected parties (UNHRC, 2015A para.11).

The controversy surrounding the cancellation of the Yasuni-ITT initiative also fuelled a more general mobilisation by civil society to denounce the increasing criminalisation of social protest, and to demand open political debates and protection of the right to dissent (Keyman, 2015)³³. Humberto Cholango, president of CONAIE, denounced the criminalisation of social protest that had led to activists defending themselves against charges of terrorism and sabotage (Cholango, 2012 in Becker, 2013 p.43). As *the Guardian* reported in December 2014, the killing [of José Isidro Tendetza Antún’san, an indigenous Shuar leader, days before a protest at the UN COP20 in Lima] highlights the violence and harassment facing environmental activists in Ecuador...’ (Watts and Collyns, 2014). In 2013 the Ecuadorian government used an attack on dignitaries attending the opening session of the 11th South-eastern bidding round of oil concessions in Quito, to press charges against some of the demonstrators, including a number of indigenous leaders who were present. The Ministry of the Environment also decided, by means of Agreement No. 125 (4th December, 2014), to dissolve the Pachamama Foundation (Mikkelsen et al, 2014 p.155). According to the Special Rapporteur on freedom of association and of assembly, when violent incidents occur within otherwise peaceful assemblies, authorities have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organisers — to account for their actions (UNHRC, 2015A para.41). The Special Rapporteur also acknowledged that legal mechanisms, used to curtail the work of civil society organisations and individuals engaged in defending rights in the context of natural resource exploitation... [are] of concern because of the chilling effect the proceedings may have on the legitimate expression of dissent (UNHRC, 2015A para. 34).

³³ See also Amazon Watch report ‘Indigenous March Descends on Quito as National Strike Presses for Major Reforms’ 13th August 2015 (Koenig, 2015).

2.2 Case Study: The Interoceanic Grand Canal, Nicaragua

The Interoceanic Grand Canal (canal project), once built, will transport 5% of the world's commerce that moves by sea through it, doubling Nicaragua's GDP and lifting four hundred thousand people out of poverty by 2018³⁴ (Usborne, 2014; Renwick, 2015). The canal project would be the largest civil earthmoving operation in history requiring the excavation of approximately 5,000 Mm³ of earth, the mobilisation of more than 2,000 pieces of major construction equipment and an estimated workforce of 50,000 people (HKND Group, 2014). The construction includes the canal itself, two locks (each with their own control centre and electrical substation), a dyke, a stand alone dam below Lake Nicaragua, access and maintenance roads, a bridge over the Pan American Highway, new electrical transmission lines, two cement plants and aggregate quarries. The plans also include a Free Trade Zone including commercial developments, an airport, tourist hotels and approximately nine worker camps along the canal route. Critics of the canal project say that the environmental and social costs of constructing the canal could be catastrophic (Renwick, 2015), including destroying or altering nearly one million acres of rainforest and wetlands (Shaer, 2014) and irreversible damage to Lake Nicaragua (the second largest freshwater lake in Latin America) affecting the nearly one million people who depend on it for drinking water (Collombon, 2014). In addition, the project cuts through two UNESCO biosphere reserves housing endangered species³⁵ and some of the most fragile, pristine and scientifically important marine, terrestrial and lacustrine ecosystems in Central America (Meyer and Huete-Perez, 2014 p.288), also threatening multiple autonomous indigenous and afro-nicaraguan communities whose territories include the canal route.

In June 2013 Canal Law 840 was passed approving the construction of the Grand Canal, during a seven-day Congressional session without

³⁴ The country of six million has a per capita income of \$ 1,790, and 42.5 percent of the population lives in poverty, according to the World Bank (Renwick, 2015).

³⁵ See also Guardado (2014) and Meyer and Huete-Perez (2014) for data on the environmental impact of the canal project.

parliamentary debate, public consultation or prior feasibility and environmental impact studies (Perez, 2015). The Nicaraguan constitution was amended in December 2013 to make accommodations for the new law, (Howorth Johns, 2013). Law 840 grants Hong Kong Nicaragua Development Group (HKND Group), the Chinese firm behind the canal project, access and navigation rights to Nicaragua’s territorial waters, with the right to ‘extend, expand, dredge, divert or reduce’ them, as well as ‘the right to expropriate land and natural resources as it sees fit for the success of the project and sub-projects’ (Guardado, 2014; Renwick, 2015). The 50 year rights for HKND to build the canal are not tied to a legally defined route and legal documentation protects the agreement from governmental changes and also removes the Nicaraguan government’s right to sue HKND in national or international law courts for any environmental damage during the study, construction and operation of the waterway (Silva, 2015). Under the concession agreement HKND will pay a \$10 million per year to the government once the canal is in operation and after the first decade Nicaragua will be granted a 10 percent increase in ownership stake every 10 years (Renwick, 2015). Environmentalists and human rights activists, including The Cocibolca Group (a coalition of environmental organisations), Pro-Sandinista small-holder indigenous farmers and Pro-contra ranchers (white, 2015) warn that the rapidity of the decision and the terms of the agreement between HKND and the Nicaraguan government, plus the project’s unclear financial backing, set in motion a nightmarish scenario fraught with violence surrounding land expropriation, depletion of the region’s largest source of freshwater and destruction of biodiversity (Szakonyi, 2015; Howorth Johns, 2013).

Agurcia and Blanco, 2015A.

Findings

Environmental concerns:

HKND itself has recognised that the route finally chosen for the canal, a shipping channel 278 km long, 91 feet deep and up to 1,700 feet wide³⁶ will affect internationally protected nature reserves that are home to at least 40 endangered species of birds, mammals, reptiles and amphibians (Silva, 2015). The canal project will therefore disrupt animal migration patterns and ecological dynamics as it cuts through the Cerro Silva Nature Reserve and the Indio Maiz biological reserve, which form part of the UNESCO protected Mesoamerican Biological Corridor (CBM) whose ecosystems are already experiencing rapid destruction. The biodiversity-rich wetlands of San Miguelito and Bluefields,

³⁶ Wider, deeper and three and a half times the length of the Panama Canal (Shaer, 2014).

protected by the Ramsar Convention list of wetlands of international importance, will suffer from dredging, sedimentation, invasive species and pollution, while shipping and deepwater ports on the Atlantic and Pacific coasts will affect the habitats of endangered sea turtles, coral reefs and mangroves (Meyer and Huete-Perez, 2014 p.288). Environmental concerns particularly focus on the impact of dredging a 105-kilometre channel, possibly the biggest dredging job ever (Schneider, 2015) across Lake Cocibolca (Lake Nicaragua), the second biggest source of freshwater in Latin America (Zuidema, 2015). The only independent environmental impact report on the canal project (by the Centro Alexander von Humboldt) concluded that dredging the lake at a depth of more than 30m, displacing millions of tons of sediment, could radically alter and potentially destroy the biodiversity of the lake (Collombon, 2014). Plans to use the lake as the reservoir for the canal's lock system, requiring dams to be constructed below it in an area of frequent seismic activity, would increase the risk of local water shortages and flooding (Meyer and Huete-Perez, 2015 p.288) while salt infiltration in the lock zone, (as per the locks of the Panama Canal) would transform a free-flowing freshwater ecosystem into an artificial slack-water reservoir combined with salt water (ibid.).

In March 2015, HKND Group used the submission to the Nicaraguan government of its own environmental and social impact study (ESIA), completed by UK-based firm Environmental Resources Management (ERM), to publicise ‘the substantial changes made to the route, the mitigation measures to protect the lake and the forests, as well as the resettlement plans for about 7,000 families that live along the route of the canal’. The ESIA asserts that the canal project will comply with international standards stated in the Equator Principles statement and determines that ‘if we [HKND] manage to mitigate, control and compensate the impacts of the project, then the canal, in the end, will bring a net positive impact, i.e., with the protection of the Indio Maíz and the Mesoamerican Biological Corridor’ (Bill Ward cited in Agurcia and Blanco, 2015A). However, in June 2015 an external independent panel of experts, invited to review several chapters of the ESIA, raised serious concerns about the scientific evidence underlying ERM’s assessment, asserting that the ‘massive social, economic and environmental impacts, with the little information

available, have not been properly assessed’ (Williams-Guillén et al., 2015; Adkins, 2015). ERM and HKND executives joined government authorities in asserting that the canal construction is safe and feasible (Schneider, 2015). However, as environmentalist and frequent government advisor Jaime Incer Barquero has commented, the single fact that the ESIA was contracted by the same firm that will carry out the project, however well respected they are, makes the result biased and gives cause for concern over the price paid by Nicaraguan sovereignty in the quest for economic development (Howorth Johns, 2014A). ‘Holding the EISA in secrecy undermines the power of the Nicaraguan citizenry to assess the project, and calls into question the legitimacy of the entire ESIA process’ (Williams-Guillen et al., 2015). ERM themselves have also recommended that HKND and Nicaragua authorities pursue research that responds to the concerns raised by the special panel and other science and environmental organisations (Schneider, 2015).

Indigenous Peoples

A loose coalition of more than 30 concerned groups, including the indigenous and afro-Nicaraguan peoples who live in the South Atlantic Autonomous Region (RAAS)³⁷ filed a suit contesting Law 840 Nicaragua's Supreme Court in 2013. The suit, one of 31 appeals, claimed that the law which allowed the government to award the canal contract to the HKND Group without consulting the affected communities or issuing environmental impact studies, violated 23 articles of the Constitution and other international instruments protect indigenous peoples (Mikkelsen et al., 2014 p.98). As Indigenous Congressman Brooklyn Rivera stated “We can’t approve of this concession without information about it, and this law can’t substitute the legally established rights of the indigenous under Law 445” (Howorth Johns, 2013). In December 2013 the Supreme Court ruled that Law 840 was constitutional and rejected all the appeals in one ruling³⁸.

- Cultural Survival

³⁷ These include including Mískitu of Tasbapouni, Kriol, Monkey Point indigenous communities, and the Indigenous Creole communities of Bluefields

³⁸ See Mikkelsen et al., 2014 p.98 for details of the court ruling.

52% of the proposed canal route passes through traditional lands belonging to the Indigenous Rama and the nearby Kriol community. This 407,000 hectare area is home to six indigenous and three Afro-descendant communities, 15,000 people in total (White, 2015). Many fear the canal project will severely affect the communities’ ways of life (McGill, 2015), to ‘maintain their languages and cultures, as well as to preserve the communal forms of land property and their exploitation, use, and enjoyment’ as enshrined in the Constitution (Republic of Nicaragua, 1987 art.5).

Indigenous and afro-Nicaraguan communities from the RAAS, with a coalition of 11 groups including environmental and legal organisations, submitted a petition for protective measures to the Inter-American Commission on Human Rights (IACHR) citing the rights violations inherent in the Canal Law, contrary to DRIPS, ACHR as well as ILO Convention 169³⁹ (White, 2015; McGill, 2015; Kearns, 2015). At the IACHR hearing in March 2015, Rama leader and lawyer Becky McCray conveyed the damage the canal project would have to the culture of the region’s Indigenous communities, “If this project gets implemented, there is a strong possibility that the Rama language spoken in Bankukuk Taik will disappear as the last people who speak that language get forcibly displaced from their land” (McGill, 2015). Environmentalists and local communities also fear that should they be able to keep their traditional lands, the environmental damage from the canal project will be so severe that the region will no longer be able to sustain traditional livelihoods, a threat to the right to territorial property as a fundamental basis for the development of indigenous communities’ culture, spiritual life, integrity and survival (IACHR art. 21). Representatives of the government at the hearing rejected the allegations, which they blamed on ‘political interests’ while arguing that the project is ‘environmentally friendly’ (Silva, 2015). HKND argue that the canal project is the only way to preserve the Indio Maíz Reserve and other forest areas (Agurcia and Blanco, 2015A). The Nicaraguan government and HKND acknowledged that some people will be displaced, but plan to build 27 resettlement villages for 7,000 families (Otis, 2015) ‘residents can be confident that this house will be

³⁹ Nicaragua signed UN DRIPS in 2008 and ratified ILO Convention 169 in 2010.

better than the one they are currently living in, families opting for cash compensation will receive fair market prices for their houses’ (Bill Ward in Agurcia and Blanco, 2015A). Critics say provisions for compensation severely undervalue the properties at risk (Renwick, 2015). However, if the value of indigenous territory is as a material and spiritual element to preserve their cultural legacy and transmit it to future generations (*Awes Tigni V Nicaragua*, 2001) then for indigenous peoples the issue of monetary value is irrelevant.

- Participation and Free Prior Informed Consent:

From the evidence detailed above it would appear that the Nicaraguan government failed in its obligations to the indigenous communities whose territory is affected by the canal project, to provide the right of effective participation that additionally requires the safeguard of FPIC, as mandated in *Sarayaku v. Ecuador*, 2012. Furthermore, under national Law 445 communal lands of the RAAS are indissoluble and eternal, they cannot be donated, sold, leased nor taxed (Law 445, 2003 art.36). No formal discussions have taken place with indigenous peoples, and there are concerns about inclusion, participation, and receiving compensation if the canal project impacts their territory (Guardado, 2014). Despite the ambiguity surrounding the provision of FPIC, as referred to by Burger (2014), general agreement persists on the obligation of states to undertake consultations with indigenous communities that may be affected by development projects. HKND’s admission that although they have delivered a series of presentations to communities affected along the canal route, no formal consultations have taken place (White, 2015) is evidence that the government has repeatedly failed to respect indigenous rights of autonomy and FPIC (McGill, 2015). At the hearing of the IACHR March 2015, Becky McCray declared to the Commission, “The state’s omission of material in consultation with Indigenous Peoples and Afro-descendants denies our relationship to our lands and our social structures, flagrantly violating our territorial rights, our right to participation... [and] to self-determination (McGill, 2015).

Peaceful Assembly and Association

Nicaraguan citizens have been protesting to voice their concerns around national sovereignty, ecological impact, and social disruption of the canal project (Mc Gill, 2015; Runde, 2015). Pedro Alvarez, professor of civil and environmental engineering at Rice University, told the public hearing at the IACHR in March 2015 that there has been almost no public debate about the canal, its goals, risks and targets (knowledge@wharton, 2015). With the canal project managed directly by the president, and the concession agreement with HKND Group handled by the president's son, the finance minister himself has complained about the lack of information around project costs (Collombon, 2014). According to Octavio Ortega, leader of the National Council in Defence of Land, Lake and Sovereignty, a coalition actively opposing the passage of Law 840, many landowners distrust the project because it has been shrouded in secrecy, and as stated by Huete-Perez, “when you do things in an untransparent manner, of course people are going to start speculating about corruption” (Otis, 2015; Renwick, 2015)⁴⁰. Law 840 and the HKND concession agreement “completely assign all sovereignty rights not to a foreign government, but to a foreign company” (Feinberg, 2015 in Knowledge@wharton, 2015). While in 2013 Nicaraguans received in remittances 100 times the \$10 million per year that HKND will pay a to the government while the canal is in operation (Renwick, 2015; Runde, 2015), commentators observe that by granting a Chinese billionaire the ability to circumvent the Nicaraguan legal system and carte blanche to bisect the country, he is decisively favouring a capitalist reform agenda at the expense of his already precarious socialist populism (Perez, 2015). While his economic decisions have proved fruitful relative to the rest of Central America’s economic development⁴¹, the discrepancies between Ortega’s political rhetoric and economic action have fuelled domestic condemnation of his administration from

⁴⁰ In a November 2014 report by Transparency International listed Nicaragua as the third most corrupt country in Latin America (Rurode, 2014).

⁴¹ Nicaragua’s GDP growth has steadily rose over the course of Ortega’s tenure leading the region in double-digit investment and export growth (Perez, 2015).

opponents and those who once supported him (Perez, 2015). Opposition politician Victor Tinoco argues that building the canal is against agrarian reform, which was at the centrepiece of Ortega's Sandinista revolution (Rurode, 2014). Octavio Ortega isn't sure the canal will be built, but he fears the land will be confiscated for tourism development, and that developers will base their offers of compensation on the assessed tax value, knowing that many property owners lowball this figure to reduce their tax burden (Otis, 2015).

As the project construction got underway at the end of December, the official launch events, one in Rivas department and one in the capital Managua, took place amid road closures and community protests in El Tule, Río San Juan and Rivas city. Protests in Rivas saw hundreds take to the streets, while in Managua thousands of protesters, including more than 1,000 campesinos, complained that the authorities and the police tried to stymie the protests by erecting barricades and harassing protestors (White, 2015). On 24th December riot police and the military allegedly used excessive force, deploying tear gas and firing rubber bullets at protesters, to try to clear the El Tule roadblock on the Pan-American Highway (Al Jazeera, 2014). Dozens of protesters were injured amid reports of two deaths, although the police denied the claims (Runde, 2015; Panteres, 2014). Octavio Ortega and Ana Margarita Vijil, President of the Movimiento Renovacion Sandinista (MRS) (a left-wing splinter group of Ortega's Sandinista National Liberation Front (FSLN)) were arrested, along with 33 other anti-canal protesters and Ortega was beaten by the police (Otarola, 2015). Although the Nicaraguan police argued that the protestors used guns, machetes, stones and sticks to attack police, organisers claimed that their demonstration was peaceful (Penteres, 2014; knowledge@wharton, 2015). As per the previous case study, the UN Special Rapporteur on human rights defenders, and the Special Rapporteur of freedom of assembly and of association have stated that all peaceful protests and assemblies are legitimate, interference with peaceful assemblies 'should meet the strict tests of necessity and proportionality and and that where violence occurs, the state must take measures to de-escalate tensions and hold the violent individuals, not the organisers, to account for their actions (UNHRC, 2015A; UNHRC, 2012). Octavio Ortega told the *Tico Times* in June 2015 that the government had

created an atmosphere of intimidation to stifle dissent and alleged that the military has been harassing peasants under the pretence of protecting the environment in Ometepe, on Lake Nicaragua (Dyer, 2015).

HKND announced in June 2015 that the main work of the canal will now commence in 2016, fuelling doubts about the financing of the canal project and whether the canal will actually be built. As of June 2015 there had been approximately 50 protests against the canal project in the preceding year (Otis, 2015). Organisers of a national march against the canal on 13th June in described the movement against the canal project as having ‘great potential’, with Mónica López, executive director of POPOL NA, a pro-democracy NGO asserting that “People are upset... this goes beyond the canal” (Dyer, 2015).

2.3 Case Study Findings

Analysis of these case studies has revealed striking similarities in the nature of the tensions and conflicts surrounding the cancellation of the Yasuni-ITT initiative and decision to drill the ITT oil fields, and the construction of the Interoceanic Grand Canal in Nicaragua. The extent to which both case studies adhere to the observations of multiple international Special Rapporteurs regarding the human rights risks of indigenous peoples and human rights defenders, points to the unique and distinct nature of conflicts surrounding natural resource exploitation. In both case studies the economic interests at stake in these projects amounted to billions of dollars, both for the investment opportunities of the companies developing the projects, whether private (HKND Group) or state owned (Petroamazonas), and for the states in securing increased GDP growth, seen as the platform for driving development and poverty reduction in each country. Socially and environmentally at stake in both projects is the cultural survival of the local indigenous and afro-Nicaraguan communities impacted by drilling in the ITT oil field and along the construction route of the Grand Canal. In the face of climate change both the Yasuni National Park and Lake Nicaragua are sites of importance, Yasuni for its ability to sustain its biodiversity in the long term, and Lake Nicaragua, an essential source of drinking water and critical habitat for important endemic species. Drilling in the ITT oil field and construction of the Grand Canal in Nicaragua will have ‘irreversible’ consequences for eco-systems which are already threatened.

The failure of the Yasuni-ITT initiative is indicative of the cycle of dependence (Koenig, 2014) of developing countries on natural resource exploitation, and national and international economic interests determining its political acceptability. In proposing a new economic logic for the twenty-first century’ (Larrea et al., 2009 p10), the Yasuni-ITT initiative implied that the UNDP Human Development Index (HDI) must rise substantially for industrialised countries without the CO₂ emissions that have historically accompanied economic development (Vogel, 2009 p.37). The Initiative showed that with the enthusiasm and energy of mass social movements, political parties can gain traction against the entrenched economic and political interests of the

traditional oligarchy (Becker, 2013 p.45). The Yasuni-ITT initiative came from the civil society support base that carried Correa into government in 2007. The Correa government adopted the Initiative in line with its development agenda based on ‘Living Well’, and proposed it to the UN. However, the institutional weaknesses and mismanagement of the initiative by the Correa government point to the conclusion that social movements cannot ever achieve their transformative agenda without gaining control over governmental structures. In this sense the Yasuni-ITT initiative, and its subsequent cancellation is evidence of political moves to the left that require pragmatic steps and so are inherently contradictory and inevitably lead to conflict (Becker, 2013 p.45). Ortega’s pursuit of the Grand Canal project can be seen as a pragmatic calculation to boost economic growth in light of the Chinese investment proposal, despite the social and environmental consequences for his traditional FSLN support base of the communities of indigenous, afro-Nicaraguan and campesino farmers along the canal route. In this sense to find such similarities in the political contradictions between the traditional rhetoric of the Correa and Ortega governments (championing the rights of indigenous and peasant communities), while pursuing strategies of economic development based on natural resource exploitation and mega projects (which places constraints on the possibility of these same communities having meaningful participation in decisions that affect them (Cannon and Kirby, 2012 p.136)), highlights the pragmatic arguments that to be fast, effective and politically acceptable, development and environmental approaches need to develop strategies that work with the economic interest mechanisms of the neoliberal framework of industrialised countries (Davidsen and Kiff, 2013B p.5). As with the decision to drill the ITT oil field and the passing of the 2013 Canal Law 840 in Nicaragua, across Latin America the lack of public consultation and participation, threats to local livelihoods, indigenous rights, ecological justice and human rights (Swords, 2014 in Guardardo, 2014), have fuelled the mobilisation of social movements and local communities demonstrating against the projects. Notorious examples include the road construction through TIPNIS in Bolivia, construction of the Bela Monte Dam in Brazil, the Newport Yanacocha gold mining operation in Cajamarca, Peru and

hydro-electric projects in the Jocotán and Camotán regions of Guatemala⁴². Both case studies share striking similarities in the mobilisation of protests and in the of the government response to the protests. The Ecuadorian government has been criticised for its use of criminal defamation prosecutions, anti-terrorism laws and administrative sanctions against critical journalists, media outlets, NGOs and human rights advocates⁴³. In Nicaragua protesters accused the government of using increased militarisation to create an atmosphere of intimidation and to stifle dissent and pressuring the media to downplay the concerns of environmentalists and landholders who face expropriation of their land (Collombon, 2014; Dyer, 2015). This pattern of repressive legislation, harassment, violence and threats is used as a disciplinary measure to deter other communities from mobilising in support (Martinez, 2012 in Brand, 2012 p. 15), and is a trend across the world. The Special Rapporteur for freedom of peaceful assembly and of association has deemed human rights defenders in the context of natural resource exploitation as the most at risk from attacks and reprisals (Kai, 2015). Another global trend present in both case studies is what the Special Rapporteur has labelled the demonisation of protesters and human rights defenders (ibid.) when states and private actors in many cases portray environmental human rights defenders as criminals, characterising their opposition to ‘important’ projects as against national interests or anti-development (URG, 2014 para.11).

Correa and Ortega both made pragmatic political calculations to prioritise economic growth through natural resource extraction and development mega-projects, over the social and environmental pillars of sustainable development. Through partnerships with major economic superpowers, particularly China, Correa and Ortega have pursued economic growth on the premise that it is the only way fund social programmes and reduce poverty. Ecuador’s restricted access to world financial markets and its subsequent ‘China boom’ tied Chinese financial support to extractive industries (Ray and Chimienti, 2014 p.1), while China’s ability and willingness to navigate challenging business environments,

⁴² *see also* Burger et al., 2015; Webber, 2014; Ellis, 2014; Mittman, 2014.

⁴³ *See also* HRW, 2015B; HRW, 2015C

and its reputation for getting things done quickly has boosted its popularity in some host countries that are in need of capital, including Nicaragua (knowledge@wharton, 2015). The political cost of these choices, for both presidents, has been the alienation of their traditional support bases and strong opposition to the projects. Being politically acceptable at the international level and in line with the political interests of the traditional oligarchy at the national level, both case studies reflect the prevailing dominance of an economic model of development, upheld by business corporations and IFIs. Leftist governments, traditional champions of the rights of indigenous peoples and peasant farmers, when locked into a 'cycle of dependence' (Koenig, 2014) are prepared to confront opposition from their own support base as a political cost of the pursuit of economic development. If governments are willing to override and marginalise the rights of their traditional supporters, whose survival and livelihoods are intertwined with the environmental and social pillars of development, then we are left to questions whether a sustainable development agenda that seeks to de-couple economic growth from development (Lang and Mokrani, 2013 p.33) and in which all three pillars - economic, social and environmental development - are equal, is actually workable in the current neoliberal model of global governance?

3. Agenda 2030: The post-2015 Sustainable Development Agenda

This section uses the main findings from the previous case studies as a framework to review the content of ‘Agenda 2030’, the final draft for adoption of the post-2015 sustainable development agenda. Concentrating on the Declaration and the concept of sustainable industrialisation contained in Goal 9, the discussion highlights how Agenda 2030 addresses the key findings from the case studies regarding the tensions between the three pillars of sustainable development, and also the human rights protections and responsibilities for actors involved in conflicts surrounding natural resource exploitation.

Agenda 2030 affirms that combatting inequality, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent (UN Agenda 2030, 2015 Declaration para.13). It recognises that social and economic development depends on the sustainable management of the planet’s natural resources, and determines to conserve and sustainably use natural habitats to protect biodiversity, ecosystems and wildlife (ibid., para.32). Target 12.2 commits to achieving the sustainable management and efficient use of natural resources by 2030 (ibid., Goal 12.2). According to a high-level roundtable discussion at the 29th session of the UN Human Rights Council the whole message of sustainable development, as contained in Agenda 2030, is the integration of human rights and development (Craig McIber, 2015 in UNHRC, 2015B). Human rights are at the core of the new agenda, across the entire range of goals and targets (David O’Donoghue, 2015 in UNHRC, 2015B), and if not explicitly, a human rights based approach is implicit in the agenda (Joachim Ruckner 2015 in UNHRC, 2015B). The Declaration reaffirms the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law, and emphasises the responsibilities of all states, ‘in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all...’ (UN Agenda 2030, 2015 Declaration para.19)⁴⁴.

⁴⁴ The wording of respect, protect and promote differs from the legal norm of respect, protect and fulfil that carries with it an understanding of the obligation of states for the protection of human rights.

Agenda 2030 asserts that Governments, international organisations, the business sector and other non-state actors and individuals must contribute to changing unsustainable consumption and production patterns and commits to a 10 year framework for achieving this (ibid., para.28). Essentially both case studies highlighted that a state is free to engage in the natural resource sector in an unsustainable manner because it is both politically acceptable at the international level, and in line with the political interests of the traditional oligarchy at the national level, reflecting the prevailing dominance of an economic model of development, upheld by business corporations and IFIs. Agenda 2030 commits to ensuring enhanced representation and voice for developing countries in decision-making in global, international, economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions (ibid., Goal 10.6). Reports from the July 2015 Financing for Development conference (FFD3) in Addis Ababa, of ‘bullying’, ‘blackmail’ and no interest in reform from developed countries (Shore, 2015) suggest the questionable political will of developed countries for achieving this goal.

Goal 9 of Agenda 2030 details the goal of inclusive and sustainable industrialisation based on increased resource-use efficiency and greater adoption of environmentally sound technologies and industrial processes (UN Agenda 2030, Goal 9.4). Sustainable industrialisation also includes quality and resilient infrastructure to build dynamic, sustainable, innovative and people-centred economies that increase productive capacities, productivity and productive employment and financial inclusion (ibid. Declaration para.27). Sustainable industrialisation and value addition has been prescribed to maximise the developmental impact of natural resources for the countries of the African Union in its Agenda 2063 and the Common African Position on the post-2015 development agenda (UN High Level Expert Group Meeting on Africa, 2015 concept note). What both case studies revealed, however, is that in practice the parties responsible for carrying out natural resource exploitation violated their obligations in national and international law affirming the need for environmental impact assessments, environmental protections, guarantees of indigenous autonomy (including FPIC) and the participation of communities

affected. Agenda 2030 reflects the needs of indigenous peoples⁴⁵ as some of the most vulnerable (UN Agenda 2030, 2015 Declaration para.23) and recognises that natural resource depletion and adverse impacts of environmental degradation, including land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces (ibid., para.14). In both case studies the environmental and social consequences of natural resource exploitation were deemed to be irreversible, thereby bringing into question the concept of sustainable industrialisation and natural resource exploitation as sustainable development. Demand from industrialised countries for natural resources drives industrial development and the extractive production patterns of developing countries (Vogel, 2009 p.vix). This demand also defines the political acceptability of natural resource exploitation over alternative concepts of development. The Yasuni-ITT initiative proposed the internalisation of environmental costs on a global scale between different international entities, and a model of development without the CO₂ emissions that have historically accompanied economic development (Vogel, 2009 p.37). It was rejected because it had profound implications on governance, power, sovereignty, and the neocolonial dependence of states in the face of carbon globalisation (Davidson and Kiff, 2013B p.5). In light of these findings the likely success of the target to rationalise inefficient fossil-fuel subsidies, by removing market distortions including restructuring taxation to reflect environmental impacts and to minimise possible adverse impacts on the poor and the affected communities (UN Agenda 2030, Goal 12.c), seems limited.

While Agenda 2030 reaffirms that every State has, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic activity (ibid. Declaration para.18), sovereignty in the context of a cycle of dependence on natural resource exploitation may mean the violation of human rights in the pursuit of economic development. The contradictions in

⁴⁵ The inclusion of the rights of indigenous peoples in the sustainable development agenda has been debated. *See also* 'Why are indigenous people left out of the sustainable development goals?' (Glennie, 2014) and 'Indigenous Peoples Must Not Be Left Behind upon Launch of Sustainable Development Agenda says Secretary-General at International Day Commemoration' (UN news, 2015B).

Agenda 2030 mirror the contradictions between the rhetoric and development policies of both President Correa and President Ortega. Both the case studies and Agenda 2030 highlight the unresolved tensions between different conceptions of development within the promiscuous concept of sustainable development, and the pragmatic reality of world politics dominated by economic interests. As the final negotiations to decide the text of Agenda 2030 came to a head, states made pragmatic political calculations, including removing observers from witnessing the negotiations, the US delivering an ultimatum to ensure their demands were met, and state blocs pushing for changes to the language of the document⁴⁶ (Muchala, 2015). As per both case studies, backroom deals and pressure campaigns inevitably throw into question the legitimacy and fairness of international negotiations and the political will of governments to take the sustainable development goals seriously (Muchala, 2015).

⁴⁶ Further amendments made by the EU, and by the African Group and the Arab Group are also detailed in Muchala, 2015.

Conclusion

This paper has analysed development models pursued by (or imposed on) Latin America, to explore what the concept of sustainable development means within the context of economic globalisation and the practice of human rights. The analysis showed that demand from industrialised countries for natural resources drives the industrial development and extractive production patterns of developing countries (Vogel, 2009 p.vix). This demand also defines the political acceptability of natural resource exploitation over alternative concepts of development. The international debates surrounding the Yasuni-ITT initiative are central to the post-2015 sustainable development agenda, namely how to reduce poverty and inequality while at the same time protecting the planet and mitigating climate change. The Yasuni-ITT initiative, and its cancellation feed into questions surrounding the feasibility of environmental and development policies that are not linked to financial market mechanisms, while both case studies reveal the pragmatic calculations of traditionally leftist Presidents assuming that the economic interests at stake amounted to the route to development and poverty reduction in each country. The decision to drill the ITT oil field and the passing of the 2013 Canal Law 840 in Nicaragua included lack of public consultation and participation and threats to local livelihoods, indigenous rights, ecological justice and human rights (Swords, 2014 in Guardardo, 2014). As per multiple conflicts surrounding natural resource exploitation across Latin America, this has fuelled mobilisation of social movements and local communities protesting against these development projects. The extent to which both case studies adhere to the observations of multiple international Special Rapporteurs regarding the human rights risks of indigenous peoples and human rights defenders points to the unique and distinct nature of conflicts surrounding natural resource exploitation. The proliferation of repressive laws and practices, and the increasing criminalisation of human rights defenders and other civil society actors opposing natural resource exploitation projects is also a trend across the world. Agenda 2030 reaffirms that every State has, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic

activity (UN Agenda 2030, 2015 Declaration para.18). Sovereignty in the context of a cycle of dependence on natural resource exploitation may mean the violation of human rights in the pursuit of economic development, as dictated by international markets dominated by the energy demand of industrialised countries. In light of these findings the SDGs contained in Agenda 2030 that call on Governments, international organisations, the business sector and other non state actors to change unsustainable consumption patterns and remove market distortions, are shown to be removed from the practice of international governance and development policies driven by inequality and poverty and based on natural resource exploitation. The concept of sustainable industrialisation and value addition, prescribed for the countries of the bottom billion (Collier, 2010), can be viewed as problematic in light of the findings of the Latin American experience analysed in this paper, where the environmental and social consequences of natural resource exploitation were deemed to threaten human rights and international environmental protections. The aim of this paper has been to offer a holistic understanding of the practice of human rights and of sustainable development, within the context of Latin American responses to globalisation, poverty and climate change. It is hoped that any insights contained within this analysis will be useful for NGOs and policy makers working on issues of development, poverty and human rights in developing countries, in the context of the post-2015 development agenda.

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Extractive Processes, Mega Projects and Human Rights in Latin America.

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