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INDIGENOUS PEOPLE RIGHTS IN CONTEX OF CLIMATE CHANGE

CASE STUDY OF LEGAL CASES

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Abstract

This paper examines how indigenous people rights to the land are protected in practice in the context of the climate crisis. It will conduct a literature review, case study and discussion.

This article examines legal regimes in Finland, Mexico, Australia and Canada to investigate indigenous people rights and environmental justice. It will compare and analyse cases and controversies in domestic and international law, discuss climate change responsibility, and analyse research results.

In our study we found out that international treaties made to protect indigenous people rights are not supervised in practise in the occasion of climate crisis.

Introduction

The purpose of this paper is to outline how indigenous people rights are protected in practice. Our main question is as follows: How are legal regimes protecting the rights to the land of indigenous people in practice in the context of the ongoing climate crisis? For background information needed, we will conduct a literature review to see if previous studies have asked how existing legal protections have been provided in practice. The literature review includes some key concepts such as environmental injustice and green colonialism. And it introduces indigenous people rights to the land in perspective of climate crisis. Next, we will introduce our plan for the survey and methodology that we adopted.

In the main paragraphs of this article, we are going to scrutinize legal regimes in perspective of indigenous people rights of the land and environmental justice in following countries: Finland, Mexico, Australia and Canada. We decided to study these countries since our group speaks relevant languages, which would help us gain better access to decent information and ongoing issues. In addition, we will investigate some legal cases regarding indigenous people and climate crisis from the countries mentioned above. The cases and relevant controversies in domestic and international law will be compared and analyzed through the table, followed by some discussion about climate change responsibility. To conclude, some limitations of our methodology will be discussed, and analysis of the research results will be provided.

Literature Review

In the following part, we review previous literature on indigenous people and their human rights concerning the climate crisis. Starting with explaining some negative consequences of the climate crisis on indigenous people, we are mentioning some literature arguing the unfairness of the problems of the climate crisis, studies about the knowledge gap between indigenous and non-indigenous populations, articles about indigenous knowledge, and the definition of human rights of indigenous people. We are aiming at acquiring knowledge from previous studies in this field of study and finding out some aspects that have not been studied thoroughly before, which leads us to clarify our research questions for our research project.

Negative Impact on Indigenous Populations

First of all, we are going to explain the negative impacts of the climate crisis on indigenous people. It is broadly confirmed that indigenous people are usually the victims of the climate crisis, as Pearl et al (2018) mentioned that “the consequences of the climate crisis affect particular populations more so than others, and oftentimes the affected populations are voiceless. Among those most impacted are indigenous peoples” (p. 713). Since Indigenous people usually reside close to or surrounded by the natural environment, they are more affected by the climate crisis which greatly changes biodiversity and the environment.

Environmental Injustice and its problems

What is important to note here is that those who are negatively affected are not always responsible for the cause of the climate crisis. Green et al (2010) argue the unfairness of the spread of the negative impact of the climate crisis. While in most cases, non-indigenous people damage the environment through their economic and industrial activities, their lives are not seriously affected, but indigenous people's lives are.

Pearl et al (2018) see this unfairness as the nature of resources, adapting the theory of the tragedy of commons by Garret Hardin (1968). This theory explains that individuals seek to maximize their benefits from common resources while minimizing their negative impact, which might be negatively affecting others. Pearl et al introduce that there are two possible solutions to prevent from individuals dominating common resources, which are restraining the population increase so that the resource is not used up, and the self-sacrificing act that aims to be sustainable by some individuals not using the common resources. However, Pearl et al (2018) point out that the Earth is inherently unsusceptible to privatization, meaning these two solutions are effective enough. Since it is impossible to fence the natural resources to keep them distributed equally to everyone, eventually, those who have power over others get more access to the natural resources by oppressing others. They explain that this is an environmental injustice and indigenous people are the exemplifications of self-sacrificing acts. This is because indigenous people usually try to choose to live sustainably while other non-indigenous and industrialized populations are using up natural resources and ruining the environment. In this way, Pearl et al see the problem of environmental injustice as inevitable as the nature of the Earth is defenseless against domination, and indigenous people are taking the toll of the climate crisis on them.

Not only the negative consequences of the climate crisis but also the problem of environmental injustice make the situations of indigenous people worse and hopeless. Since the negative impact of the

climate crisis is unfairly spread to indigenous communities and they are more seriously affected by the climate crisis than other people, in most cases, only Indigenous people have experienced climate crisis saliently, which has created a gap in recognition between Indigenous and non-indigenous populations. Whyte et al (2018) point out that while for many non-indigenous people, the climate crisis is something coming up in the near future, it is something already they had or are having for many indigenous people. Pearl et al (2018) also touch upon this recognition gap as follows. “No population of people understands this aspect of climate change better than indigenous communities across the world.” (p.718), because they have salient experiences. According to Pearl et al, “Salient experiences are those that are personal to us and near in time.” (2018, p.723) and they influence people in decision-making and judging risks because people usually choose how to behave based on their salient experiences (Pearl et al, 2018). Therefore, for those who have not experienced climate change saliently, who are usually non-indigenous people, climate change is outside of their world and unimaginable. As a result, non-indigenous populations, who have more opportunities to reflect their opinions in political scenes compared to indigenous people, do not realize the urgency of the climate crisis and continue to try to maximize their benefits, which makes the environment worse.

Indigenous People’s Dislocation and Green Colonialism

Historically, indigenous people have experienced the dislocation of their land through colonization and the environmental crisis. In the period of colonialism, a lot of indigenous land was conquered by Western superpowers for plantations, and people there were eliminated or forced to move. In the current era, it is again indigenous people that suffering from dislocation. First, since indigenous people are usually living surrounded by or close to the natural environment, they are severely affected by environmental crises. Second, some states simply do not legally recognize the land owned by indigenous people, meaning that those indigenous lands are easily occupied by states or companies seeking to maximize their benefit. Pearl et al (2018) explain a case from Nicaragua versus Mayagna Community, which is an indigenous community in Nicaragua, over the land property. In this case, the Mayagna community argued that Nicaragua did not provide enough measures to ensure the property of the Mayagna community, simply because the state denied the land ownership of the indigenous community. (Mayagna (Sumo) Awas Tingni Community. v. Nicaragua, 2001)

Moreover, there is a new type of colonialism in this era, which is called green colonialism. As more and more states are now trying to address the climate crisis and try to be eco-friendly, renewable energy is getting popular. There is wind power energy as one of the sources of renewable energy.

However, in installing wind power plants, companies need vast land. In Finland, because of the development of wind energy, Saami people, the indigenous community in Finland have been forced to lose their homeland and the land for their reindeer herding, which is one of the primary resources of the community. This happens resulting from the government making indigenous people move away from getting the request from renewable energy companies. (Normann, 2020) What can be said from here is that indigenous people are losing their land and blocked from access to their land not only because of the consequence of climate change but also the power of the states trying to achieve sustainability.

Indigenous Knowledge

In this section, we are looking at how previous studies have touched on indigenous knowledge, which is one of the most popular topics in the study of indigenous communities regarding environmental issues. According to UNESCO, indigenous knowledge is defined as “the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings”. UNESCO also regards indigenous knowledge as necessary since they think they “provide a foundation for locally appropriate sustainable development (UNESCO)”. Some studies have studied how indigenous knowledge is perceived, and also how indigenous people get that knowledge. First of all, indigenous knowledge tends to be neglected. In a study carried out by Petzold et al (2020), they did a scoping review of peer-reviewed works of literature on indigenous knowledge and how they are distributed and represented in academic literature. They tried to find the tendency and the trend in the academic literature on indigenous knowledge of environmental issues. In that study, they found out that not much knowledge is attributed to Indigenous people even though they come from Indigenous people’s observations and experiences. Therefore, it can be said that indigenous knowledge is less represented in academic literature, which is usually the basis of decision-making in political scenes. In addition, Green and Raygorodetsky (2010) also pointed out that local indigenous knowledge is usually regarded as inferior to scientific knowledge coming from the Western part of the world. In the study of Rudiak (2014), the source of indigenous knowledge was examined. According to this study, there are two main sources contributing to indigenous knowledge, which are observation and reception. Observation is the experience that citizens had from climate change, and reception is the information from the media or public events. Through interviews with people from the indigenous community, he discovered that while both observation and reception contribute to people’s ability to report climate change and define what climate change is, reception might contribute more than observation since people knew more than what they have experienced in that community.

Indigenous people's human rights and UNDRIP

Since those people in indigenous communities are usually forced to experience unpreferable situations more than non-indigenous people, there are some specific rights for indigenous people. While the United Nations defines human rights in general as “the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.” (United Nation), the human rights of indigenous people include some other specific aspects in it. There are still debates going on about whether we should unify human rights in general and human rights for indigenous people or not. Pearl et al (2018) argue that there are both advantages and disadvantages to unifying them. The advantage is that we can put everyone at the same table regardless of being indigenous people or not in law-making or international political scenes. However, the disadvantage is that there is an undeniable fact that the indigenous population and resources are not big enough for advocacy or lobbying, which will end up pushing those people out of the circle in the end. Therefore, indigenous people need that specific protection for their human rights. In the General Assembly on 13th September 2007, the United Nations Declaration of the Rights of Indigenous People (UNDRIP) was adopted with the growing recognition of the protection of Indigenous people and their human rights. There are 46 articles, and it has created the framework for the international laws including the rights to self-determination, rights to participate, protection of their culture, and so on. By verbalizing those rights in the declaration, they tried to make sure that laws are addressing the issues with indigenous people. These are some of the articles,

“Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” (Article 2)

“Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” (Article 4)

“Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to an- other group.” (Article 7)

“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.” (Article 11)

“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” (Article 18)

As we can see above, this declaration touches upon not only general human rights, for example having the freedom or the right to express opinions but also upon unique situations that indigenous people have, for example, cultural protection and decision-making, which are usually ignored. However, as we have seen in the previous sections, indigenous people are having unpreferable situations and keep suffering from them. It could mean that despite the existence of the declaration which is aimed at forming the laws for indigenous people, they might not protect them enough.

Rights to the land

As a part of the human rights of the indigenous people, there are the rights to the land. This is because as we have seen above, indigenous people have been experiencing the loss of their land through colonization, climate change and green colonization. This deprivation of the indigenous land can be attributed to the different perceptions of the land between the Western view and indigenous people's view, according to Chesters (2009), therefore, it is necessary for indigenous people to challenge Western views on the land. In the viewpoint of the Westerners, rights to the land means rights to use the land. On the contrary, for indigenous people, that way of perception of the land is too strict. Indigenous people regard the land as having much more meanings other than its use or ownership. For example, they feel a strong connection to their land since their ancestors are buried there and the land enables them to be with their ancestors. Also, since they supply their food from the plants and livestock grown and produced in their land, they associate themselves with the land and they think that humans belong to the land. In this

way, indigenous people's perception of the land is more diverse, and they must fight with the perception of the Westerners. Marilyn Strathern (2009) then suggests the perception that the land is an intellectual property, in order to understand the indigenous people's view on the land. As mentioned earlier, indigenous people feel a personal connection to the land and see their land as a producer and creator of their life. By thinking of the land as an intellectual property, people can get more diverse views on the land. In addition, the rights of intellectual property have been used to support the argument for claiming the land in legal settings.

In the UNDRIP, there are also articles about the rights to the land of the indigenous people. These are some of them below.

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” (Article 10)

“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” (Article 26-1)

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” (Article 26-2)

“States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” (Article 26-3)

“Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” (Article 28-1)

“Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.” (Article 28-2)

“Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.” (Article 29-1)

“States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.” (Article 29-2)

As we can see here, in the UNDRIP, the rights to the land of the indigenous people are mentioned. They include indigenous people’s ownership of their traditional land, rights to be informed, as well as states’ responsibility of getting consent from indigenous people, provide the protection of the indigenous land and their ownership, and also, it mentions the compensation in case that indigenous people lose their land.

Research Question

In the following section, we are going to show our research question and explain how we generated it. As we showed in our literature review, previous studies have not touched upon how existing legal protections are implemented in reality. For that reason, we decided to look into it from several perspectives including legislations, media and people concerned, which is aiming at seeing the current situation of legal protection of indigenous people's human rights and if they are protecting enough in reality or not.

The reason why we decided to focus on the indigenous people’s human rights regarding climate crisis is that as we learned from our literature review, they are the most vulnerable to the negative impacts of climate change. Not only the consequences of climate crisis, but also the solutions for the climate crisis are putting burdens on indigenous people even though they are not necessarily responsible for the cause of climate crisis. For example, many governments are counting the indigenous land as the carbon compensation as most of the indigenous land are the forest. In this way, non-indigenous people take advantage of indigenous land for their own benefit and the reputation in the international settings. Since

more and more people and states are taking the climate crisis as serious and trying to take actions, the situation of climate crisis surrounding indigenous people is changing recently.

Also, we decided to research the rights to the land specifically among the several aspects of human rights. This is because the rights to the land is one of the most harmed rights and indigenous people have been experiencing dislocation both historically and concerning the climate crisis. Many indigenous communities have been forced to move to different area and their cultural typical movement have been blocked. When concentrating on the rights of land use, we want to bring up also that the lands the indigenous communities have, are usually not the original lands they had before colonial repression. Also concerning climate crisis, there are some indigenous communities having dislocated their homeland because of the environmental damage and they cannot stay in their homeland anymore. Additionally, it is not always the case that indigenous people have the say on how their land are used for the new industrial projects for instance. In this way, we thought the rights to the land is relatable to what is happening currently.

Therefore, we generated our research question as below.

How are legal regimes protecting the rights to the land of indigenous people in practice in the context of the ongoing climate crisis?

Methodology

In our research we are using qualitative research methods. The main method for gathering new information is case study method. Within that we are using content analysis for studying the legal cases, international treaty agreements, other documents and news. In our research we are using mixed methods in our case study.

We choose these methods based on the theme of our research question. We thought combining methods like in case study would give us the best possible insight to the situation. On one side we have the legal data to talk about official constructions of the realities and on one side we have the experiences of the people who are affected by these laws.

Qualitative research

In qualitative research, collected data is processed as an entity. All the details of the research data are observed, instead of altering the data into variables. Statistical probability is not enough to tell about complex situations where deeper understanding of the uniqueness of units is needed. Qualitative research consists of reduction of perceptions and then attempt to answer to the research questions. The data is observed from theoretical point of view, which gives direction to the study. One research is using the data's information suitable for the one study, and this needs reduction of the data. Combining discoveries, the data forms into more unified form for the research in question. (Alasuutari, 2012.) Our research topic is such complex so to understand all the contributing factors qualitative research obvious choice for us. Our main method style is case study.

Case study

Case study is most common methodology in international studies and is suitable for studying unique situations. Positive note to in-depth case study is the ability to find non-events and their characterises. (Maoz, 2002.) We hope to uncover things that are not done within the legal regimes in context of reacting to climate change. In case study you can use different kinds of methods to get best possible view to the problem (Hamel, Dufour & Fortin, 1993). We are using case study as a broad platform to get the best look for the problem. Therefore, we are studying legal cases connected to indigenous people's land rights. We are also trying to understand bigger picture of situation the indigenous societies are with the power relations to state and the influence of climate change.

Selection of cases must be done with basic understanding of aspects of the population from which cases are drawn and by being unbiased (Maoz, 2002). In our small research we chose to focus on four example cases. These example groups are from Australia, Canada, Finland and Mexico. We are aware that our examples are only few and none of them are from low-income countries. We are also missing examples from Asia and Africa. We neither do not have all of the climate change affects represented. Also, we are not studying countries that are under actively repressive politics against minorities, like Russia and China as they persecute the minority populations. Reaching out to those communities would be difficult and maybe dangerous for them. Therefore, we have decided to focus on communities where the legal grounds are accessible. These four countries had interesting different legal cases that reflected the states actions towards indigenous groups.

Further studies

To get information of how the indigenous societies are perceiving the legal treaties, good method could also be interviewing the indigenous people or NGO's representing them. This would need more time and bigger funding than course project. For deeper understanding of the situation this would be good method for further research. We tried to get small internet survey done to NGO's for this project but stumbled with classic problems with email surveys and did not get answers.

Survey use in research became popular in the USA after World War two. Surveys have kept their popularity since and they have become one of the most accepted methods for studies about population characteristics. (Balch, 2010.) As valued research method, it is valid choice for understanding indigenous societies more. When using internet surveys, the study needs to take in consideration the challenges of internet as a platform. In general, we must be careful, for example with selecting nonbiased participants, reaching a large sample and making sure that the surveys are fully filled. (Balch, 2010.)

Problem with emails is the email server software, that might classify the research email as a spam or viruses. Then the sender or the recipient might not know about the delivery if it is in the trash bin or removed automatically. (Balch, 2010.) We used email to send formatted small questioners to NGO's representing the indigenous communities. This did not turn out as effective way for communication, other types of interviews would be more suitable.

Legal Regime and Legal Protection

In the following section, there is an overview of the legal regime of Mexico, Finland, Canada and Australia regarding the indigenous people's right of the land and the environmental justice.

Legal Regime of Mexico regarding the right of the land of the indigenous people and environmental justice

In Mexico, several statutes and constitutional clauses shape the legal framework governing indigenous people's land rights in the context of climate change. Here are some key points of the judicial system concerning this topic:

Constitution of Mexico: According to the Constitution of Mexico, indigenous peoples in Mexico have been granted plenty of unique rights. According to Article 2 of that document, one of these rights is

the maintenance of their ancestral lands and territories. Additionally, the indigenous peoples are entitled to autonomy, self-governance, and the maintenance of their cultural identity. Their right to preserve and develop their own social, economic, political, and cultural systems is unassailable.

General Law on Indigenous Peoples and Communities: The General Law on Indigenous Peoples and Communities provides a legal basis for defending the rights of indigenous peoples. It defines guidelines for identifying, designating, and giving titles to indigenous lands and recognizes their legal claim to land and territory. The legislation strongly emphasizes the need for consultation with them and gaining their free, prior, and informed permission. Each state of Mexico has its own law according to the necessities of their communities, but you can perceive that all of them remain the principles of the Article 2 of the Constitution.

On the other hand, the promotion and defense of the rights of indigenous peoples fall under the authority of The National Institute of Indigenous Peoples (INPI) in Mexico. Its main goal is to make it easier for indigenous groups to participate meaningfully in the decision-making process. Within indigenous communities, the INPI supports projects that aim to safeguard land rights, preserve traditional knowledge, and encourage sustainable development.

Legal Titling: By establishing legal titles over these properties, Mexico has a framework in place to recognize and define indigenous regions. Indigenous groups have the option to start a procedure that will allow them to request the official acknowledgment, delineation, and titling of their ancestral lands. This legal framework protects their land rights and provides a base from which they can exercise their rights in relation to climate change and other problems.

Although Mexico has established legal protections for indigenous peoples' rights, it is important to acknowledge that obstacles and implementation gaps can still exist. Indigenous communities may face challenges such the invasion of their territory, inadequate consultation procedures, and constrained access to justice. It is crucial to make sure that current laws are effectively enforced and that indigenous peoples in Mexico are meaningfully included in decision-making processes on climate change in order to maintain their land rights during climate change.

Let's now look at Mexico's legal system as it relates to climate change. Mexican law, international agreements, and the Constitution all recognize the rights of indigenous peoples, indeed. Legal protections and unique rights pertaining to their lands, natural resources, and cultural legacy benefit indigenous peoples in Mexico. All these concerns about climate change can be addressed by implementing these safeguards.

The 2012-passed General Law on Climate Change is a key piece of Mexican legislation. Although indigenous peoples are not specifically mentioned in this law, it recognizes the importance of their knowledge and involvement in efforts to mitigate and adapt to climate change. The law emphasizes the significance of traditional knowledge integration and consultation in climate policy and actions.

The General Law on Climate Change is just one of the climate change laws and policies that Mexico has put into place. This law acknowledges the significance of taking into account social and cultural diversity, even though it does not directly address the land rights of indigenous peoples in the context of climate change. It also emphasizes the contribution of local communities and indigenous peoples to efforts to adapt to and mitigate climate change.

Additionally, Mexico has ratified other international agreements, including the International Labour Organization (ILO) Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These agreements attest to the indigenous peoples' ownership of their lands, territories, and resources. Additionally, they acknowledge that indigenous peoples have a right to take part in any decision-making processes that may influence them.

It is essential to understand that there may be variations in how these laws and regulations are put into practice, and that protecting indigenous rights and ensuring meaningful participation in the face of climate change continue to be difficult tasks.

Legal Regime of Finland regarding the right of the land of the indigenous people and environmental justice

In Finland, national laws, international treaties, and judicial rulings present as the main governing bodies for the legal framework dealing to indigenous peoples' land rights in the context of climate change. The following are the main points of the legal system:

Constitution of Finland: The Constitution of Finland recognizes the rights of the native Sámi people, who live in the country's northern areas. It ensures their ownership, use, and management of their traditional lands and natural resources as well as their rights to preserve and develop their language and culture.

Sámi Parliament Act: The Sámi Parliament Act creates the Finnish Sámi Parliament, which speaks for the Sámi people on issues pertaining to their land rights, language, and culture. The Sámi Parliament is authorized to make recommendations to the Finnish government and other authorities on matters affecting the Sámi people, such as land usage and climate change.

Reindeer Herding Act: For the Sámi people, herding reindeer is a vital economic and cultural practice. The Sámi reindeer herders' right to use particular territories for their traditional reindeer herding activities is recognized by the Reindeer Herding Act, which also governs reindeer farming.

Land Use and Environmental Legislation: Land use and environmental preservation are governed by a number of laws and regulations in Finland, which may have an impact on the land rights of indigenous peoples in regard to climate change. These laws include the Environmental Protection Act, the Nature Conservation Act, and the Land Use and Building Act. Within these legal frameworks, indigenous land rights and the preservation of Sámi traditional lands are taken into account.

International Treaties: Finland has ratified international treaties that protect the rights of indigenous peoples, such as the International Labour Organization (ILO) Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These treaties emphasize the rights of indigenous peoples to their lands, territories, and resources as well as their right to take part in procedures that have an impact on those rights.

It is important to note that the recognition and enforcement of Sámi land rights in Finland are still up for debate. Even though the Sámi people's land rights are mostly protected by the law, there are still problems with resource exploitation and infrastructural development.

Legal Regime of Canada regarding the right of the land of the indigenous people and environmental justice

In Canada, the constitution, federal and provincial laws, court decisions, and international agreements all play a role in determining the legal framework for indigenous peoples' land rights in the context of climate change. These are the main components of this legal system:

The Constitution Act of 1982: Section 35 of this document recognizes and affirms the existing aboriginal and treaty rights of indigenous peoples in Canada, including those to land, territory, and resources. It offers a legal foundation for defending and recognizing indigenous land rights, especially those affected by climate change.

Duty to Consult and Accommodate: The Supreme Court of Canada has ruled that when government or private agreements (like businesses) may have an impact on indigenous peoples' rights, including their ownership of land, there is a duty to consult with and accommodate them. Prior to decisions affecting indigenous groups' lands or resources, this duty calls for meaningful engagement and, in some circumstances, gaining their free, prior, and informed permission.

Comprehensive Land Claims and Treaties: With a number of indigenous communities, Canada has signed land claim agreements and treaties. With regard to co-management of lands and resources, land use planning, and environmental protection, these agreements offer methods for recognizing and resolving indigenous land rights.

Indigenous Self-Government: Some indigenous communities in Canada have signed self-government contracts that regulate their lands and resources and acknowledge their inalienable right to self-determination. These agreements give greater autonomy and control over resource management, including the ability to address the effects of climate change on their lands.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): This document that preserves indigenous peoples' rights to land, territory, and resources, has Canada's support. In the context of climate change, the statement emphasizes on the requirement for free, prior, and informed consent as well as the necessity to conserve indigenous traditional knowledge.

Environmental and Climate Change Legislation: Federal and provincial environmental laws and climate change policies are in taking place in Canada, and they are applicable to all citizens, including indigenous peoples. The protection of indigenous lands and resources, as well as the prevention and adaptation to the effects of climate change, may be addressed through these laws.

It's significant to emphasize that Canada's legal system is complicated and constantly changing regarding indigenous land rights and climate change. These rights are still being negotiated and implemented, in part through legal actions, judicial proceedings, and the creation of cooperative strategies between indigenous people, governments, etc.

Legal Regime of Australia regarding the right of the land of the indigenous people and environmental justice

Finally, it is moment to take a look on the legal regime of Australia. Legislation, judicial decisions, and international agreements all play a role in determining the legal framework in Australia regarding indigenous peoples' rights to land in the context of climate change. The following are the main points of this legal system:

Native Title Act of 1993: In Australia, the Native Title Act creates a framework for the recognition and protection of indigenous land rights. It enables native peoples to declare and support their native title claims to their ancestral lands. The rights to own, occupy, use, and enjoy land, as well as to take part in decisions affecting the land and its resources, are all included in native title. Native title rights

are important in combating climate change because they give indigenous groups a legal basis for participation in land management and adaptation measures.

Land Rights legislation: A few Australian states, including the Northern Territory, have particular land rights legislation that recognize and defend the rights of indigenous peoples to their lands. These laws offer ways for indigenous groups to obtain ownership or co-management rights over traditional territories, assuring their involvement in discussions on how to manage resources and use land.

ILUAs (Indigenous Land Use Agreements): ILUAs are voluntarily made arrangements between indigenous tribes and other parties, such as governmental organizations or business interests. These agreements allow for negotiation and consent-based agreements about the use of land and resources, including taking into account the effects of climate change. By providing them a voice in decision-making processes and establishing mechanisms for adaptive land management methods, ILUAs can strengthen the position of indigenous communities.

Native Title Tribunal: As a statutory authority, the Native Title Tribunal is in charge of mitigating native title disputes and supervising procedures related to it. This tribunal helps to mediate agreements and it also offers advice on native title rights and interests, particularly how those interact with matters related to climate change.

International Treaties: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other treaties that recognize the rights of indigenous peoples include Australia as a signatory. These international agreements place a strong emphasis on the rights of indigenous peoples to their lands, territories, and resources, as well as their involvement in important decision-making processes.

Climate Change Policies and Initiatives: Australia has created plenty of climate change policies and programs that have an impact on land and resource management. These laws seek to mitigate the effects of climate change and encourage environmentally friendly behavior. Given their extensive ecological knowledge and close relationships to their lands, it is essential that indigenous groups participate in the development of these policies.

It's critical to understand how complex Australia's legal system is when it comes to indigenous peoples' land rights and climate change, and how difficult it is to effectively recognize and safeguard these rights.

Analysis

Legal Cases

In this section, we'll look at pertinent legal disputes involving the ongoing climate issue in the four nations we've been discussing - Mexico, Finland, Canada, and Australia - where indigenous peoples' land rights have been violated.

Legal Case in Mexico: Wixárika People vs Government

Background

The Wixárika, commonly referred to as the Huichol people, are one of four indigenous tribes that live in the Great Nayar, an area in the southern Sierra Madre Occidental. On either side of the Chapalagana River canyon, in the states of Jalisco, Nayarit, Durango, and Zacatecas, lie their ancestral lands.

They have, sadly, had to deal with a number of obstacles and dangers to their way of life and culture. For instance, limited access to essential services, socio-economic marginalization, and discrimination, as well as the invasion of agricultural and mining activities on their ancestral grounds. Concerns regarding the influence of tourism on local communities and cultural traditions have also come up recently.

Additionally, they are feeling the effects of climate change, just like many other indigenous groups throughout the world. Their traditional lands and ways of life are affected by climate change in numerous ways, such as:

- As a result of weather pattern disruption brought on by climate change, unpredictable rainfall, droughts, or floods occur. They are unable to continue using their conventional farming methods as a result of these developments.
- They have a deep connection with nature and rely on the abundance of natural resources. Climate change disrupts natural cycles, such as animal migration patterns and plant blooming cycles. This instability hinders their ability to gather medicinal plants, perform customary rituals, and maintain their spiritual ties to nature.
- The frequency and severity of natural disasters like hurricanes, storms, and wildfires are also made worse by climate change. These occurrences frequently result in eviction, property damage,

and infrastructure destruction, posing a serious threat to the Wixárika villages and their way of life.

- The loss of biodiversity, including the extinction of plant and animal species, is another effect of climate change. Their cultural practices, traditional knowledge systems, and general ecological equilibrium in their surroundings are all threatened by the loss of biodiversity.

Along with other indigenous communities in Mexico, the Wixárika people have taken an active role in dealing with climate change and its effects. They place a strong emphasis on the need to protect their ancestral lands, traditional knowledge, and sustainable practices as important means of coping with and reducing the effects of climate change.

Case

In 2009, the Wixárika sites, which carry profound spiritual value for the Huichol people, have been granted concessions totaling 350,000 hectares by the Mexican government, allowing Canadian firms to purchase them. 22 of these mining concessions are held by the Canadian business First Majestic Silver Corp in partnership with the Mexican Minera Real de Bonanza SA de CV, and they directly threaten the Wixárika in the Sierra de Matehuala. In the Potos highlands, this region acts as an important center of government.

Both during the United Nations Permanent Forum on Indigenous Issues in New York and the Cancun Climate Summit in 2010, supporters of Wixárika expressed worry about the deterioration of this important region. The regions of San Luis Potos where mining concessions have been given, according to the federal government cannot be legally protected as communal or ejidal territory belonging to the Wixárika or Huichol people.

In fact, in 2011, the judicial decision was appealed on the grounds of unconstitutionality arguing that it violates the article 2, 4 and 27 of the Mexican Constitution, and also taking into account the legal precedent 2a. CXXXVIII/2002, which establishes the Constitution acknowledges the territorial principle of its citizens as well as the communities' preference to use and enjoy the natural resources of the areas they occupy.

Who won?

Firstly, the judicial court argued on the final judgement that one of the aspects of self-determination and autonomy of indigenous peoples and communities is the conservation and improvement of their habitat, the preservation of the integrity of their lands, and the right to access the preferential use and enjoyment of the natural resources of Mexico, according to Article 2 of the Mexican

Constitution. It argued that the precept establishes the territorial principle of indigenous peoples by recognizing their unity with the territories they occupy and their habitat, and as a result, the right to their exploitation in the form and method of possession and ownership of land.

The judge also argued that the possibility of coordination and association of the indigenous communities is established within the local field, for which the Constitution and applicable laws must be respected, in accordance with their right to decide their internal form of economic organization.

For this reason, the judge considered that the appellant is correct when he claims that within the indigenous territorial rights, not only are recognized the lands and/or surfaces in which the towns settle, but also the habitat and its environment must be taken into consideration, i.e., the integrity of the natural elements that make up the ecosystem. This further establishes that these rights protect the active relationship that exists between the peoples and the places to which they traditionally access.

The other argument why the judge decided to fail in favor of the Wixárika people was taking on account a precedent that establishes, in the first sentence of Article 4 of the Mexican Constitution, that indigenous peoples are provided with effective access to the state's jurisdiction and that the Mexican laws has established a number of protective/guardianship procedures for the benefit of indigenous communities, this is because of their particular inequalities. This facilitates their access to judicial protection among other more helpful situations, indigenous communities are currently in.

By requiring them to satisfy or comply with procedural charges, the members of indigenous peoples should not be put in a real and frank situation of defenselessness. In this case, the authorities violated the right mentioned above because they didn't ask for their informed consent in their own language regarding the use of the lands. That's why the judge also failed in favor of the Wixárika people.

Legal Case in Finland: Sámi people fishing rights

Background

Sámi people are indigenous people nation that lives in the area of four countries, Norway, Sweden, Finland and Russia. Sámi people are only people in European Union that has been classified as an indigenous people. Their area has been recognised and protected until 1600s, when Swedish kings allowed resettlements in the Sámi peoples area. States have tightened their control in the areas making borders their own. Nowadays in Finland, Sweden and Norway Sámi people elect representative body that has advisory position in the country on matters concerning the Sámi. (Lehtola, 2015.) In Finland the

elected body is The Sámi Parliament. The Sámi Parliament gets funding from the state and functions under the Ministry of Justice. The main task for The Sámi Parliament is to plan and implement the cultural self-government that is guaranteed to the Sámi as an indigenous people and the parliament makes initiatives, proposals and statements to the authorities. The election to for the parliament is in every four years among the Sámi. (Sámediggi, 2023.)

Who is counted as Sámi and gets to vote in the election is decided in Finnish law of The Sámi Parliament Act. The definition has been controversial, because it includes second definition “lapplanders definition” which allows non-sámi people to access the parliament. Additionally, the Supreme Administrative Court can pass people, who consider themselves as Sámi, by the Sámi Parliaments criteria. Court has done this in several election, which has been highly criticized by the UN committee in the Elimination of Racial Discrimination. It violates the Sámi people’s right to self-determinate. The Sámi Parliament has been complaining about it to the Supreme Court, but the cases have been dismissed. (Kortekangas, Johnstone, 2022.) John Last’s report in Foreign Policy Magazine describes the political situation with political parties and indigenous people. Last Prime Minister Sanna Marin tried to get the new Sámi Parliament act go through in government but it faced opposition inside her own party and coalition government. With the act, they try to change the situation and determinate more specifically who are considered to be Sámi. Indigenous people still face opposition for their rights within political parties. This has history within people in Lapland, who consider Sámi rights taking their rights down. From resisting the Sámi Parliament, they changed to trying to get the power within it. (Last, 2023.)

The history with Sámi in the area goes through with many states that Finland have been part of. The state of Finland has been discriminating against Sámi and been trying to erase their languages for example by school system. Government of Finland have been trying to establish a truth and reconciliation commission for the wrongdoing in history in cooperation with Sámi Parliament and the Skolt Village Assembly. (Truth and Reconciliation Commission Concerning the Sámi People, n.d.)

Sámi people live in the northern parts of each country where climate changes faster due to climate change. In Finland there are changes in reindeer economy, forests and berries. Also, climate change adds pressure to changes in land use. (Climateguide, n.d.) Finnish government have made report in 2020 about how the Sámi are readjusting their livelihood to climate change. In this report they find out that changes in climate and nature have already forced the Sámi people to change their cultural habits. In many aspects they are able to adjust, for example feeding more the reindeer. Climate change makes weather conditions more unpredictable, which creates dangerous situations. Sámi people are also worried that their cultural knowledge is not passing on to next generations. (Government’s website, 2020)

Case

These two cases have precedents by Supreme Court. In case KKO:2022:25, local Sámi was prosecuted for fishing outside permissible fishing days in Tenojoki. This is regulated by Tenojoki Act, done with Norway. Prosecuted Sámi person saw that he had right for fishing as an indigenous people. Finland's Constitution guarantees protection for Sámi culture, which includes also commercial fishing. The Supreme Court did not give Sámi more liberties to fish in the area and kept the charge against the person. (Supreme Court, 2022a.)

In case KKO:2022:26, some Sámi people had been fishing without the permit from Metsähallitus. In areas of Lapland the permit is usually free of charge for Sámi, but in some special times of salmon and trout it needed to be paid. In the permits there were no quota for Sámi and with high demand they were sold out fast. The Supreme Court kept the decision of the District Court to dismiss the charges for fishing without permit. In this case cultural rights were being understood in the court but not in the policy making. (Supreme Court, 2022b.)

Use of land including the waters is part of the human rights to the land. Regardless of having the official status of indigenous people, Sámi people are not fully in charge of their own land. They have more like right to be there as everyone else, more than specially reserved lands for themselves.

Who won?

Even though these cases represent few individuals, they have been chosen to precedents to the public website of the Supreme Court of Finland. These individuals also pleaded to their positions as an indigenous Sámi people, which will show how all of them might be treated in front of the court. In case KKO:2022:25 Sámi people did not win, and part of the reasoning was courts view of climate change being everybody's responsibility. In case KKO:2022:26 charges were dismissed, and the court saw that restrictions made to protect fish stock were making Sámi's opportunity to get fishing licence too hard.

The power relations with the state of Finland and the Sámi is that state gives Sámi seeming power but in reality, state might overrule indigenous rights or the Sámi Parliament. The main issue with deciding who is counted as Sámi to vote in the election for the Sámi Parliament is the power of influence in the Sámi issues. This has direct affect to the rights to land for the Sámi. When ethnic Finns get access to the Sámi Parliament, they get access to the decisions about who gets to profit for the land. They have been advocates for mining companies and land for their own use.

Even though Sámi people have rights specified to them as indigenous people in Finland's Constitution and they have their own authority's body, Sámi Parliament, they do not receive special

understanding of their situation in Finland. In both cases the Supreme Court said that the health of the environment is everybody's responsibility. With they mean that the Sámi people will not get more freedoms in restrictions of using nature. This does not consider who's fault the environmental situation nowadays is. Neither doesn't this sees any other solutions, which would inheld protection of the Sámi culture maybe by restricting more permits from other. Keeping Sámi in the same line with everybody else does not protect their culture in any special way. Fishing restrictions are made to protect the fish stock and losing the diversity of species is connected to the climate change.

Legal Case in Canada: Legal protection to indigenous lands from exploitation

Background

First Nations are groups of aboriginal people living in Ontario, Canada and there are more than 630 First Nation communities in Canada. In this case, however, the First Nations refer to ten northern First Nations; Attawapiskat First Nation, Apitipi Anicinapek Nation, Aroland First Nation, Constance Lake First Nation, Eabametoong First Nation, Fort Albany First Nation, Ginoogaming First Nation, Kashechewan First Nation, Kitchenuhmaykoosib Inninuwug First Nation and Neskantaga First Nation.

The Ring of Fire, the territory where the northern First Nations live, falls within 'Treaty 9' territory. In the early 20th century, the northern First Nations wanted to negotiate government to protect their rights against rapid development in the North. The government promised them the rights to hunt, fish and trap in their lands after several meetings, aided by interpreters, in 1905 and 1906. But without the First Nations knowing it, written in a language they didn't speak, the government added a line to the document "excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes." Still, many northern First Nations in Ontario are bearing overlapping crises due to the ongoing impacts of colonization: long-term boil water advisories, youth suicides, poverty and high food prices.

Recently Ontario government has planned to jumpstart mining in the north, particularly in the Ring of Fire region, to dig up raw materials for technology like electric vehicles. On April 26th, 2023, the ten northern First Nations launched a lawsuit against the Ontario and federal governments, arguing that resource extraction on their territories has contributed climate change that would harm their land. The Ontario government has tried to mine Ontario's Ring of Fire, in which the northern First Nations live, because it is believed to have some carbon and mineral deposit.

In Ontario's Far North, peatlands store about 35 billion tons of carbon, equal to annual emissions from over 39 billion cars. It's the second-largest intact peatland complex in the world. Mining and the construction of roads and transmission lines would cut through the peatlands and destroying them releases that carbon to the atmosphere. One study, published in the journal *Frontiers in Ecology and the Environment* in 2021, estimated that between 130 and 250 megatons of carbon could be released into the atmosphere if all the peatland in the Ring of Fire covered by mining claims is disturbed. The peatlands of the James Bay Lowlands are also home to endangered species like caribou and wolverines, and reams of migratory birds. At the same time, peatlands are sensitive to disturbances like development. They don't really recover, either: they take thousands of years to form, growing up to one millimeter per year.

Case

The nations are asking a court to find that a long list of federal and provincial laws related to resource extraction are not valid on their territories — and to bar Canadian governments from making any further decisions about how land there could be used without Indigenous consent.

However, Greg Rickford, Ontario Minister of Northern Development and Indigenous Affairs said the government would continue to focus on the economic development projects with whom who want to transform the region. And the government argued that the minerals of the land could power the push to lower global greenhouse gas emissions — specifically, the manufacturing of electric vehicles. First Nations, however, argued the costs of disturbing the region's peatlands outweigh any possible benefits.

Who won?

We cannot clarify since it is still controversial and an ongoing case. Also, it still doesn't have any clear resolution. It, however, is clear that the mining business of the government is now stalled. Mining of the Ring of Fire is now postponed and unclear when to resume. Although Greg Rickford, the government official, is clearly stating that he wants to keep his mining business going, it does not seem easy. Therefore, for now it is not clear that when the government could develop the northern First Nations' land.

First Nations, meanwhile, kept pushing for their sovereignty and rights. They are still fighting that Canada's reconciling of their relationship with Indigenous People must include the halt of its continued infringement of indigenous rights.

Considering the decision-making process that took place in the early 20th century, we could say clearly that power relations were not equal. The decision and control over the land was in the hand of the government officials, not the indigenous people, in that the government intentionally added some

sentences without indigenous peoples' consent and took advantage of their land based on them for about a century

Now, meanwhile, decision-making has become more democratic and comprehensive. Several representatives of the First Nations have seats at the parliament and working to protect indigenous rights. Also, the Canadian government is trying to protect indigenous rights by stating it in Canadian Constitution and Ordinance. Still, however, the impact of the colonialism is ongoing as stated above, constant efforts to protect indigenous rights are needed.

Legal Case in Australia: Environmental protection of indigenous lands in Torres island

In the following section, we are going to see the case in Australia. We chose the case between the Australian government and indigenous people in Torres Islands, over human rights in the context of climate change. This case is not specific about the rights to the land; however, we thought it is still relatable since the rights to the land are part of human rights. In addition, considering what Torres Islanders are facing because of climate change, it is also about their homeland. Therefore, we are going to look at this case regarding the negative effects of the climate change that indigenous people are having on Torres Island.

Background

Torres Strait Islanders are living in the Torres Islands which is in the north of Queensland in Australia. They were governed under Queensland until 1994 when they established their regional government body which is Torres Strait Regional Authority (TSRA). Even though Islanders are participating in their politics, they have been experiencing hardships in some respects. According to Australian Human Rights Commission, Torres Islanders as well as other Aboriginal populations in Australia are usually positioned lower than non-indigenous populations socially and economically. Indigenous people have not received the same level of the education as non-indigenous population, they have a higher rate of unemployment, and their average life expectancy is 10 years less than non-indigenous people. (2014) In addition, seeing the history of their politics, they have been struggling in being recognized in the Australian Constitution as well as their territorial status. In 2015, the group of Torres Islanders and Aboriginal people made a proposal for changes in the Constitution to recognize them as the first nations of Australia, to respect their culture, to acknowledge the relationship between them and their homeland. However, the prime minister at that time rejected their proposal showing his concern that recognition of what they proposed would end

up in a division between indigenous and non-indigenous people (BBC, 2015). Since then, TSRA has been requesting the government ministers and the Queensland government to get recognition.

In Australia, Torres Islanders have been experiencing the destruction of their natural environment for a long time as a result of the climate crisis. According to the Torres Island people, the sea level rise seriously affects their food supply, culture and their home. The Torres Strait Regional Authority (TSRA), which is their own government body revealed that while the global average of the sea level rise is 3.2mm per year, it has risen 0.6cm per year from 1993 to 2010 in Torres Island. (TSRA) and has caused a lot of flooding and erosion on their land. Because of the flooding and erosion, some small areas of the island have detached, and what makes it worse is cyclones hitting the island make the shoreline go away, meaning that the island is getting lost. This also severely affects the food supply and ecosystem on the island. Since the soil has gotten ruined, the plants, which is coconut tree that they traditionally have cultivated cannot grow anymore. This resulted in making Torres Islanders give up a part of their traditional diet. Not only the sea level rise but also the rise of the temperature negatively influences Torres Islanders. Because of the rise of the temperature and acidification of the ocean have resulted in coral bleaching, the death of reef and decline of the seagrass. People cannot find crayfish, which is one of the most important food sources there, because of the coral bleaching. In addition, since their natural environment and climate drastically have changed, it has become difficult for people to transmit their ecological knowledge to the next generation. Not only these experiences but also people in the Torres Island have been feeling anxiety and stresses toward their land and their home in the flooding and erosion areas. As seen here, Torres Islanders have been suffering from the climate crisis seriously because of the sea level rise and the rise of the temperature, which make people harder to stay in their land.

Case

In 2022, people in the indigenous community in Torres Island made a statement arguing that the state has not been working enough for protecting them from the damages of the climate crisis. The United Nations Human Rights Committee did a joint complaint between Torres Islanders and the state's party. In order to look into the legal protection of indigenous people's human rights in the context of the climate crisis in Australia, we chose the document that the UN Human Rights Committee published through the dialogue with both parties. The International Covenant on Civil and Political Rights is debated over this joint complaint.

Islanders' argument is that the Australian government has failed to protect Torres Islanders from the damage of the climate crisis which has resulted in violation of the several human rights. Here are some of the core arguments from the Torres Islanders.

1. The State party has failed to implement some programs for the adaptation to ensure long-term habitability in the Island. While the Islanders have made requests for a long time, the State has not responded and not funded for the programs.
2. The State party also has failed to mitigate the adverse effect of the climate crisis. While being one of the biggest emitter of the greenhouse gases, the State party has not been able to come up with any remedies for that.
3. Since the State party has failed to mitigate the climate crisis impact, it eventually has resulted in violations of the human rights of the Torres Islanders. For example, since their natural environment has gotten ruined, their rights to the healthy environment has been violated. In addition, as their land has been getting damaged, Torres Islanders will not be able to stay in their land in the near future which disrupts their family, home and the right to enjoy their own culture, as well as the rights of the future generations.

Against these arguments of Torres Islanders, the State party argues that they are not responsible for the violation of the human rights of the indigenous people because it has resulted from the climate crisis and not from the state's failures.

4. Torres Islanders have not provided sufficient causations between the violation of their rights and state party's policies or failure. Therefore, the violation of the human rights cannot be attributed to the state party.
5. The Covenant requires states to protect its citizens from the arbitrary deprivation of individual's life but does not require to protect from negative consequence of the climate change.
6. The State Party has provided some measures for mitigation and adaptation to climate change. Torres Strait Regional Authority (TSRA), which is a governmental body of the Torres Island including Torres Islanders and Aboriginal representatives, has made some programs for instance, Torres Strait Climate Strategy from 2014 to 2018 and the Torres Strait Regional Adaptation and Resilience Plan from 2016 to 2021.
7. Islanders failed to show that they are currently suffering from climate change.
8. The Covenant is effective for something happening in real life, not for the ones having the potential or in the future. Therefore, the Islanders argument which includes the potential consequence in the future is not covered in the Covenant.

What is important to note here is that there is the fact that the Australian High Court has ruled that the state party does not have the duty for paying for the failures in protecting people from the environmental harm in 2002. Therefore, the state party drew this to support their arguments like 4) and 5).

Torres Islanders made some comments toward the state party's counter arguments.

9. Islanders are suffering from climate change as they showed in the statement earlier, for example, flooding and erosion.
10. The State party is responsible for emission of greenhouse gases and its control.
11. The State party has not taken enough measures to prevent the indigenous land from being uninhabitable.

Finally, here are some of the State's comments on islanders' comments.

12. Climate change is a global phenomenon arising from actions of many different private actors for over decades, and it is beyond the control of the state. Therefore, it is difficult to attribute climate change to one state's responsibility.
13. The violation of the human rights has occurred from climate change but not because of the intention of the state to make it happen.
14. State has provided them about detailed info about the legislation, policies and practices aiming at protecting them from the climate change

Who won?

Since it is the joint complaint held by the UN human rights committee, there are no clear judgements saying which of the parties won, but the committee published the statement based on the joint complaint with both parties. The Committee acknowledged that the state party has tried to implement some programs and acts for mitigation and adaptation of the climate change. However, at the same time the committee pointed out that the state party has given insufficient explanations about the programs to the people living in the area. For example, in the construction of the seawall to reduce the damage from the loss of the island, the state party did not tell Islanders about the delay of the construction. Therefore, there are some problems in providing information in the state party. In addition, the Committee claimed that the state party should try all the appropriate measures to protect people from the violation of their rights to life and to enjoy their own culture. This is not because the state party is responsible for the adverse effects of climate change, but because they are responsible for protecting its citizens and ensure that they have general human rights.

As Torres Islanders argued, the state party only focuses on the state responsibility for the mitigation and adaptation of the climate change, and they do not consider enough about the vulnerability and unique situations that Islanders have as the indigenous people. In this regard, it can be said that the state party does not act inclusively enough for people in the minority or marginalized community.

However, when considering the decision making in the political setting in Torres Island, we can say it is inclusive since the government body of the Torres Island as well as some programs for mitigation and adaptation of the climate change partly consist of Torres Islanders.

The Summary of Analysis

	Plaintiff	Defendant	Region	Argument of Plaintiff	Argument of Defendant	Who won?
Mexico	Wixárika People (Huicholes)	Mexican Government	The Great Nayar (Southern Sierra Madre Occidental, in the states of Jalisco, Nayarit, Durango, and Zacatecas)	They claim that the authorities did not consult them in an informed manner and in their language if they agreed to concede part of their territories. They claim that the mine has harmful effects on the environment and its natural	That the land concession to the mining firm was an administrative concession for the benefit of all Mexican society, so they didn't need their permission or consent.	In the final appealment, Wixárika People won, part of their lands were given back.

				resources, which have been damaged by climate change.		
Finland	Public prosecutor	Individual Sámi people	Northern parts of Europe / Lapland	They broke fishing restrictions in waters owned by government	They had right as indigenous people to practice their traditional economies	1. Case the plaintiff 2. Case the defendant
Canada	The northern First Nations	Ontario Government	The Ring of Fire, Ontario	Government actions are contributing to climate crisis in their land	Development is needed for economic growth	Unclear, still ongoing
Australia	Torres Strait Islanders	Australian government	Torres Islands	Australian government failed to protect Torres Islanders' human rights	They are not responsible for the violation of the human rights of the indigenous people arisen from climate change	No clear judgements (since this is a joint complaint)

Discussion

Responsibility for Climate Change

In this section, we would like to discuss the responsibility for climate change. We agreed upon that non-indigenous people from industrialized countries have contributed to climate crisis more than indigenous people have, but still, it is hard to clarify the responsibility for the global climate change. Some view that government should take responsibility and protect its people through legal regime, while the other view every agent including individual is equally responsible for the climate change.

We have investigated the legal cases in Mexico, Finland, Canada and Australia to see what their Supreme Courts think about the responsibility for global climate change. Before discussion, we make ourselves clear that the discussion was based on the four cases above, and they do not represent the whole opinions of the countries. In the four cases, we could find that most Supreme Courts agreed that responsibility for climate change and need to compensate for its harm on indigenous people was mainly on the government. For example, Supreme Courts of Mexico and the UN Human Rights Committee in Australian case agreed that the government has a duty to protect indigenous people from climate change. And, although not concluded, government of Canada also ceased mining indigenous lands and started to protect the indigenous people rights to their land. Through discussions, we concurred that the protective actions of these governments have to do with compensation for their past infringements on their indigenous people rights to the land.

The Supreme Court of Finland, however, did not acknowledge its government's duty to compensate for violating Sami People rights in the case above. Rather, the Supreme Court said that the responsibility for climate change belongs to everyone including indigenous and non-indigenous people. In discussion, we believed that the judgement of Finnish Supreme Court did not mean that the government was not responsible for climate change but meant the Sami People lacked their power to claim their rights in the parliament and court. Also, we could find the Finish government has been trying to protect its indigenous people from climate change by writing reports on and monitoring Sami People affected by climate change, which indicates that the government itself is sensible of its responsibility. Therefore, we drew a conclusion that responsibility and need to compensate for climate change is mainly on governments that contributed more to climate change than indigenous people communities. However, as terming responsible agencies for global climate change and proving why they are responsible is never easy, we agreed that every agent in the society including indigenous people should try to cope with global climate change.

The UN / International treaties

According to what we talked about in the legal regime section, the four countries recognize the United Nations Declaration on the Rights of Indigenous Peoples.

As far as we know, numerous collective rights of indigenous peoples are recognized by the UN Declaration on the Rights of Indigenous Peoples, including: the right to self-determination, the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, the right to their lands, territories, and resources, the right to participate in decision-making processes that affect them, the right to maintain and develop their own cultures, languages, traditions, and customs, the right to protection from forced assimilation or destruction of their culture, and the right to access justice. However, what we examined in the analysis section tells us that the reality is quite the opposite. Are they recognizing this international document just for reputation? Is it just a fancy speech?

We think that this international treaty is kind of like “good wishes letter”, the principles and values of it creates a global framework of minimal requirements for the existence, dignity, and well-being of indigenous peoples all over the world, but this document is not binding even though they recognize it because there is no actual punishment in case the government of each country doesn’t comply it. Also, it is known that there are power structures inside the United Nations, a few powerful countries have more privileges than others. So, all the decisions taken by the General Assembly favor them.

Therefore, we can imagine that a minority group would be in a vulnerable position, and it would be even less powerful without their own state's protection.

Now, in the four countries legal framework, the right of the land of indigenous people it is protected. Also, in international law and international treaties there are statements that preserve that right as we saw in the analysis of the legal cases, the reality is other. From the four cases, just one was positive and beneficial for the indigenous group. Therefore, there is an actual problem, we consider that the current laws are not good enough to safeguard those rights, we truly believe that is needed to make laws that take into account the ongoing climate change crisis.

For example, as we said earlier, the United Nations Declaration on the Rights of Indigenous People recognizes plenty of their rights, however there is no mention of the climate change and its effects to these communities. We can assume that it is preserved within the protection of their lands and their natural resources, but is this enough? We don’t think so.

The Rights to Land

How the right to land is understood is vital to the ending results of the policy making. Usual non-indigenous and western view is to consider the right as owning the land. Then owning it also might include using the land way one wishes. Also, to profit from the natural resources. Many indigenous people have different connection to the land. As explained literature review some indigenous people view people belonging to the land. Everything coming from the land then would belong to it including the plants growing from it and animals and humans feeding from it. Different perceptions between non-indigenous people and indigenous minorities could lead to misunderstandings. Even in written agreements the understood result might be consider differently. Indigenous people might not know the rights they have in treaties and law and how to demand their rights.

Problem with land is also the common environmental changes. One piece of land cannot be ruled out from the effects of climate change. Owning of land is not so simple as it has been viewed for decades. In Finland Sámi people does not have land only for their own, others are also allowed to use it. They have rights in constitution for protecting their language and culture but not straight to owning the land only for themselves. In the Constitution of Mexico land is more clearly dedicated for the indigenous people. The example case proofs this right with the court ruling in benefit of the indigenous people in the mining case.

Communication between the state and indigenous people

Looking into cases in four countries, we found out that one of the problems in the legal protection of indigenous people in the context of climate change is in the communication between the State and indigenous populations. Despite several approaches and attempts for the mitigation and adaptation for climate change that most States have, they do not work sufficiently enough, and this is why indigenous people keep suffering from it and are violated their human rights. However, since climate change is one of the new challenges for most parts of the world, it is difficult to know to what extent do those approaches work in practice before implementing them. Regarding this in mind, we found the problem in the communication, more specifically, the states have failed to fulfill the responsibility for providing explanation for their citizens. For example, as seen in the case in Australia, the state sometimes omitted to give the explanation to indigenous people about the delay of the program. Also, in the case in Mexico, the state did not gain the consent of the indigenous people before giving concessions to the mining company even though the indigenous people would be affected by the decision and even though they have the rights to be asked for the consent. Moreover, we can point out the power imbalance arisen from the difference of languages in providing the information as a specific problem to indigenous people. Since

some groups of indigenous people only know how to speak their own language, not the one that most non-indigenous population speak, they are sometimes put in the weaker position in the communication. In the case in Mexico, the state forced indigenous people to speak Spanish, not their own language. Obviously, there was a power imbalance because they had to speak a language which is not their mother tongue. In this way, we noticed that there is a problem in communication between the state and indigenous people, therefore, we could claim that it is necessary especially for state to improve the situation by further communication since they are responsible for providing necessary information for its citizen.

Conclusion

In this paper, we have addressed how indigenous people rights to land are protected regarding climate crisis. We went through literature review for key concepts about indigenous people rights and climate change. We learned that indigenous people have been suffering from infringement of their rights due to climate change, and it is correlated to environmental injustice and concept of green colonialism. As well, we investigated legal regimes to see if they guarantee their rights sufficiently in practice to discuss responsibilities of climate crisis regarding indigenous people rights.

So, as we mentioned before, our research question is: How are legal regimes protecting the rights to the land of indigenous people in practice in the context of the ongoing climate crisis? After analyzing and discussing it, we came up with the conclusion that even though in the four countries' legal frameworks the right of the land of indigenous people is protected (also in the international law and international treaties), the reality is quite the opposite. From the four cases, just one of them was positive in favor of the indigenous group claim. The laws do not mention how to protect indigenous people's right of the land on the context of the ongoing climate crisis, we can make assumption while reading them, but in the real world, that's not enough. Therefore, we think that the current laws are not sufficient to protect Indigenous People's rights, as they do not consider the climate change crisis.

In our methodology we have limitations in the amount of cases we were able to handle in this size study. For broader research it would be beneficial to have study communities from low-income, medium-income and high-income countries. Also, communities with wide difference in history with state and with different problems with climate crisis. Reaching out to interview the communities would be important as well, but we were unable to get answers from NGOs of indigenous people. With this size research we

were able to get good look at how legal regimes were protecting indigenous people, when on the surface it seems that everything is done according to treaties.

Before finalizing our conclusion, we would like to make suggestions for future research regarding the methodology. In our project, we conducted content analysis based on legal regimes and legal cases to answer our research question. However, to investigate how those legal regimes are working in practice in more detail, conducting interviews with parties concerned can be suitable. By listening to the voice of for example, indigenous communities and its government body, or organizations working on the indigenous human rights, we thought we could get deeper insight for our research question by standing the viewpoint of indigenous people.

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