

Self-Determination and
the Human Rights of
the Rio Yaqui Pueblos,
Sonora, Mexico

ABSTRACT

A submission to the United Nations Expert Mechanism on the Rights of Indigenous Peoples regarding a forthcoming report on the right of self-determination under the UN Declaration on the Rights of Indigenous Peoples

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Introduction

My name is James Hopkins and I am an Associate Clinical Professor in the Indigenous Peoples Law and Policy Program at the James E. Rogers College of Law, the University of Arizona ('IPLP') where I direct the Rio Yaqui Human Rights Clinic (the 'Clinic'). I would like to thank the members of the Expert Mechanism on the Rights of Indigenous Peoples ('EMRIP') and the organizing members at the University of Manitoba Faculty of Law and Centre for Human Rights Research including Professor Brenda Gunn for allowing me to participate in the important closed session on February 4 and 5, 2021.

The opportunity to comment in regard to self-determination for Indigenous peoples under the UN Declaration on the Rights of Indigenous Peoples ('UNDRIP') is timely in light of growing concerns with respect to climate change impacts in and around Indigenous communities and their respective Indigenous territories. I come from a small Algonquin community in Quebec, Canada north of the City of Ottawa and the topic of water scarcity and Indigenous rights was a remote principle until I relocated to the arid southwest along the Arizona – Sonora, Mexico border.

For the last eight years I have been working to assist the Traditional Authorities of the eight Rio Yaqui Pueblos in Sonora, Mexico through the IPLP and the Clinic has made significant progress in supporting the Rio Yaqui Pueblos with their on-going human rights struggle. My comments and that of the Clinic are in regards to the objectives described in the EMRIP Concept Note. The objectives are as follows:

- Hold an in-depth discussion on the topic to provide an opportunity for broad input to EMRIP's 2021 study on the UN Declaration and the right to self-determination;
- Discuss the latest related developments in the policy, legal and institutional fields, at national, regional and international levels; and
- Identify regional examples of good practices of self-determination (such as Treaties), or support for self-determination (such as constitutional recognition) as prima facie evidence of self-determination or enablers of self-determination), as well as the challenges to the achievement of self-determination from different regions. (emphasis added)

In addition to these objectives the Concept Note highlighted a list of topics that would be addressed in the forthcoming EMRIP Study. The following topics are directly relevant to the analysis on self-determination with respect to the human rights situation in the Rio Yaqui Pueblos:

...

- Examples of the current exercise of jurisdiction by Indigenous peoples, including de jure and de facto self-determination as well as in decisions about lands, territories and resources; economic, social and cultural rights; and civil and political rights; (emphasis added)

...

- The reconstitution of Indigenous Nations previously divided by state-imposed policies or borders and how self-determination may be managed or hindered, for example the deployment of incorporation statutes by the state; (emphasis added)
- Indigenous languages, ceremony and spirituality as a form of self-determination;
- Recognition and cooperation with Indigenous self-determination from Nation states and sub-national governments, including legislative and constitutional recognition; (emphasis added)
- Indigenous traditional sports and games as a manifestation of self-determination; and
- The exercise of Indigenous self-determination in an international context through participation in international policy fora and decision-making bodies. (emphasis added)

Summary

The purpose of this submission is to draw attention to the need for a human rights approach that recognizes, supports, and seeks to protect the Indigenous right to self-determination by extending an ecological and geo-spatial perspective beyond the confines of Indigenous territory. This recommendation flows from an increased awareness with regard to ecology, hydrology, and technical advancements that are not readily available to Indigenous communities in Mexico and as they pursue their right of self-determination. And yet, despite advancements in applied earth sciences Indigenous cultural knowledge readily accepts the interconnections between the environment and instills customary practices that support and protect interdependent relationships in nature at a local and regional level.

The basis of the Clinic's submission arose from a three-year dialogue that centered upon a Yaqui expression that loosely translates into "the river is not there any more". This three-year journey was based upon numerous requests to visit the mouth of the Rio Yaqui so as to witness the confluence of Sonora's largest river merge with the saltwater of the Sea of Cortes. Again, in the most literal sense the translation means exactly what it states: there is no river in the Rio Yaqui territory. Surface water arrives through federally permitted irrigation and drainage canals with the latter being highly toxic and dangerous to human health.

There are two critical details to this submission: because the Rio Yaqui is extinguished and the traditional Rio Yaqui territory sits on a drainage delta in the lower Rio Yaqui

basin its elevation descends towards sea level and thus the empty riverbed is submerged so the mouth creates a pathway for the Pacific Ocean to travel inland up the former riverbed of the Rio Yaqui approximately 42 kilometers. In the world of hydrology and climate change, this is unprecedented. And yet, numerous peer reviewed articles have avoided this topic altogether. To date, there is no peer reviewed study of a river becoming the pathway for direct oceanic surface passage.

Second, the Rio Yaqui territory reflects the ancestral homeland of the Rio Yaqui Pueblos and this definition fits within UNDRIP's reference to Indigenous territory including the protections and measures that must be afforded to preserve and support the right of self-determination. In regard to basins, it is critical to an ecological and geo-spatial understanding that the right of Indigenous self-determination be viewed within the context of interconnected sub-basins as is the case of the Rio Yaqui territory. The lower Rio Yaqui basin is one of three sub-basins that establishes the Rio Yaqui basin proper. It is the largest transboundary basin between the State of Arizona, New Mexico, Sonora, and Chihuahua. Yaquis travelled throughout the Rio Yaqui basin including the State of Arizona. For example, approximately 15 miles east of Douglas, Arizona and the Agua Prieta, Sonora border crossing is the United States San Bernardino National Wildlife Refuge which until 2016 sheltered the last U.S.-based population of the Rio Yaqui catfish, but has since become extant. The Refuge provides critical habitat for the Yaqui chub among other endangered species Indigenous to the Rio Yaqui basin. A historic cemetery in the Refuge is now protected in the Federal Registrar and holds the remains of Yaquis whose presence in the area was recorded since the first arrival of English-speaking settlers in the 1800s.

It is beyond the scope of this submission to address in detail the water scarcity situation in each sub-basin, however, elevating the discussion with respect to the Indigenous human right to self-determination across the Rio Yaqui basin would aid the State of Mexico in developing a sustainable surface and ground water management plan with the Rio Yaqui Pueblos. It would also attract the support of the United States and the closely related Pascua Yaqui Indian Tribe of Tucson, Arizona. As well, it would forge opportunities for alliances. At present, President Obrador has directly challenged Canadian mining companies in the middle Rio Yaqui basin for not paying taxes. And yet, these mining companies disclose their surface water allotments from the Rio Yaqui. As EMRIP is aware, courts are increasingly recognizing and protecting the human rights of Indigenous peoples and third parties in the case of extractive industries. In 2020, the Supreme Court of Canada held that a Canadian-based mining company was liable for the human rights violations committed by contracted security forces overseas in *Nevsun Resources Ltd. V. Araya*, 2020 SCC 5 and arguably the same principles apply to harms experienced by the Rio Yaqui Pueblos who do not have access to safe drinking water on account of over appropriated water reserves up river (note: mining activity occurs in close proximity to the Rio Yaqui traditional territory).

Precluding a discussion with respect to Indigenous territory and the ecological services that support its unique characteristics works against the genuine efforts of all the parties to seek reconciliation. As discussed below, the current administration under President Obrador ought to be applauded and genuinely supported for making significant progress in reconciliation with the Rio Yaqui Pueblos. The challenge, however, is to integrate the totality of the Rio Yaqui territory because decision-makers fail to see the interconnected aspects of the Yaqui perspective on the Rio Yaqui basin and the situation with respect to the impact of climate change and water scarcity are severe.

A. The Indigenous right of self-determination and the need for ecological and geo-spatial awareness

Decades ago, the Pacific Ocean breached an already extinguished Rio Yaqui and permanently entered the Rio Yaqui territory causing irreparable harm. Rights to water have been a permanent feature to Rio Yaqui customary laws and practices that pre-date Spanish contact. In this regard, the Traditional Authorities will regularly refer to the 1937 Decree by President Lazaro Cardenas which guarantees access to the Rio Yaqui for the benefit of the eight Rio Yaqui Pueblos. The Decree further guarantees a reserve equal to half the surface flow that is posited behind the Angostura Dam on the upper Rio Yaqui basin, less than 100 kilometers from the international U.S. – Mexico border.

The Angostura reservoir falls within the transboundary description established by the 1982 La Paz Agreement on the environment and demarcates a transboundary zone wherein the good neighbor principle applies with regards to actions by either nation-state concerning environmental and or hazardous waste. This includes basic forms of notice to significant changes that might occur in the zone as a result of development. In 1937, water scarcity in the Rio Yaqui territory was already an issue due to the encroachment of flood irrigation farming and thus President Cardenas knowingly hedged a beneficial reserve on the behalf of the Rio Yaqui Pueblos in the upper Rio Yaqui basin at Angostura.

B. The Rio Yaqui territory has lost approximately 880 square kilometers and the majority of its biodiversity resulting from the collapse of the coastal aquifer and ocean inland intrusion

With respect to the traditional Rio Yaqui territory in the lower Rio Yaqui basin, the Clinic has conducted a number of baseline tests and accompanying estimates including an on-site inspection from the Sea of Cortes to the mouth Rio Yaqui. The baseline mapping establishes an upriver pathway of the Pacific Ocean for approximately 40 kilometers. The riverbed within the Rio Yaqui territory is empty. Surface water in this area that is not part of the ocean channel is the result of spillover and drainage

contaminated irrigation drainage canals. The Rio Yaqui stops north of the Rio Yaqui territory at the Oviachic Dam and is diverted to one of two irrigation districts, as well as the City of Obregon, Sonora, and a nearby tourist town. Annex 1 to 3 contains images and a video references in support of the foregoing observations.

C. The Indigenous right to self-determination requires access to traditional knowledge derived from the traditional environment

Because the traditional territory was transformed by irrigation districts, the biodiversity of the area has suffered irreparable harm. The upper basin is home to critically endangered species including the Rio Yaqui catfish – the only Indigenous catfish species on the western Pacific slope – that became extant in the United States in 2016. The Clinic was part of an effort to monitor the final northern range of the species in the Cajon Bonito, Sonora and a small population was identified in 2017. This species was once part of the Rio Yaqui peoples cultural and ecological patrimony (see Annex 3). The fulfillment of the right to Indigenous self-determination requires positive efforts by the state to support access to traditional knowledge derived from the traditional environment.

D. Conclusion

In order to fulfill the spirit and intent of Articles 3 and 4 under UNDRIP, it is important that a broader view with respect to the meaning of Indigenous territory be taken into account when considering the definition of self-determination. This must include having regard to the ecological and geo-spatial features of the Indigenous territory and the delineation of territory consistent with the customary practices of the Indigenous group. For example, the modern approach to ethnographic mapping as illustrated by Professor of Anthropology Brian Thom recognizes the non-linear nature of Indigenous boundaries and the seasonal fluctuation of territoriality. To some measure this approach aligns more closely with ecology and geologic mapping because they are not linear and defined instead by their unique traits (i.e., basin and range).

Lastly, it is important to not view these findings as a cautionary warning with respect to future harm and geopolitical instability waiting years from now on the horizon. These harms are occurring today. For the Rio Yaqui Pueblos, they have been experiencing this situation for decades.¹ They have watched the ground crater and fissure due to the lack of groundwater while the State permits the development of a transboundary gas

¹ In 2012, Mexico's federal water authority – Conagua - authorized the annual transfer of 75 million cubic meters of surface water from the Rio Yaqui in the State of Sonora to the Capital City of Hermosillo. The water transfer was carried out under the newly established aqueduct project known as "Acueducto Independencia" which consists of a 123-kilometer water pipeline that began construction in 2010. This is the most recent transboundary basin transfer as it potentially moves supporting ground-water reserves in the United States to support the surface flow transfer to the Sonora middle basin. The project's objective was to supply the water scarce Hermosillo to the east along the Sonora middle basin and its surrounding municipality with much-needed water, having already exhausted its reliance on the Rio Sonora.

line that continues to rupture and explode due to the subsidence of the subsurface. The challenge in this context is to make human rights a place of innovation and forward looking problem-solving specific to challenges that we are experiencing and that show no signs of lessening or abating.

Annex 1

Rio Yaqui Traditional Territory Map (pre-1937 Decree)



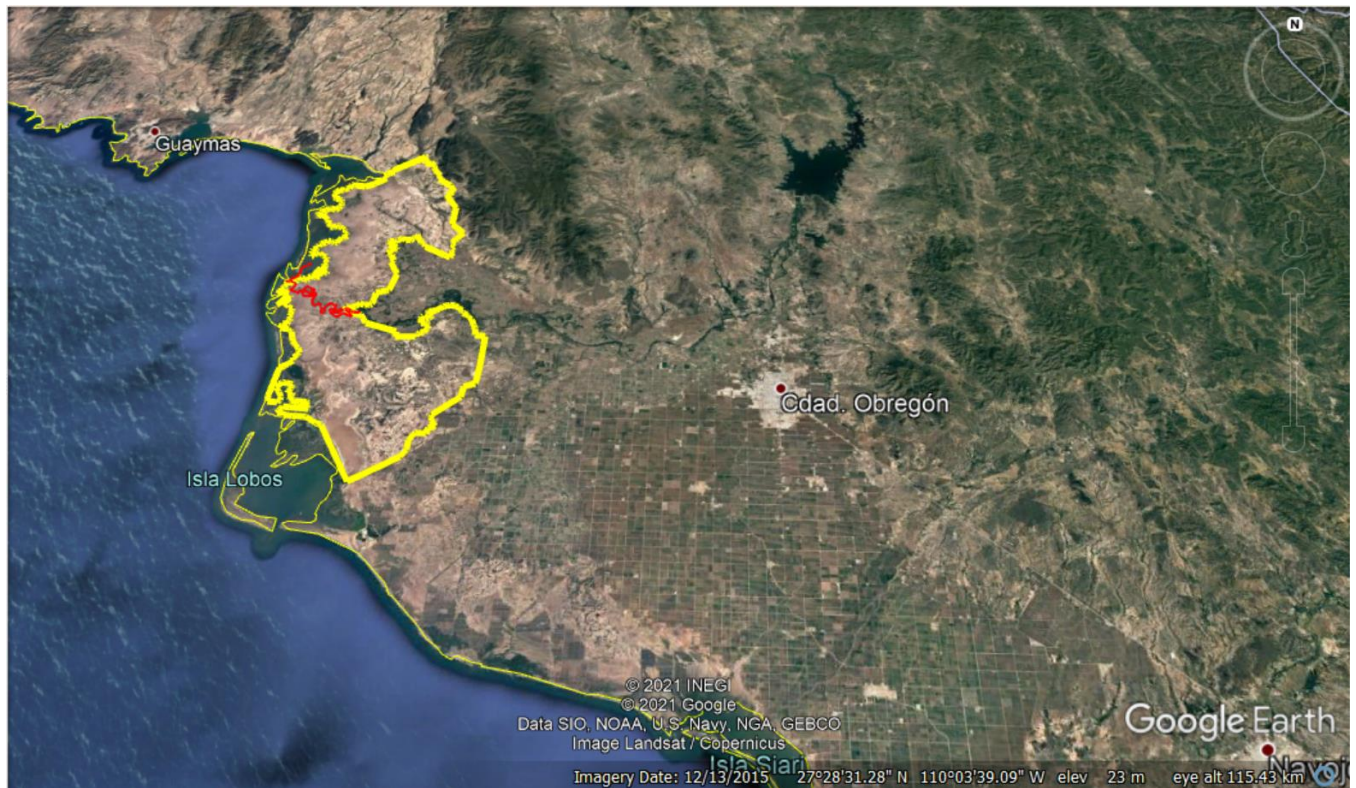
Annex 2: Ocean inland surface intrusion up the Rio Yaqui, coastal aquifer collapse, surface mining at salt pans

See: <https://www.youtube.com/watch?v=zi6lrN9nGvU>

Video of boat travel up the Rio Yaqui from the Sea of Cortes at 3:39 to 19:13

Red = Pacific Ocean channel inland up the empty Rio Yaqui approximately 40 to 42 kilometers based on Google Earth Pro GPS markers.

Yellow = collapse of coastal aquifer and resulting desertification achieved permanent loss of mangrove estuary including sea turtle nesting sites and other marine species. Estimated loss of land in the Yaqui territory is at 876 square kilometers.



Annex 2 continued

Coastal perspective of the desertification and Pacific Ocean intrusion



Annex 2 continued

Salt Pan: Surface salt deposits drawn from saltwater aquifer intrusion percolating during the rainy season to the surface. Limited salt shale surface mining occurs in salt pan. See video reference above to Annex 2 at 19:



Annex 3:



Pueblo Potam is the largest Yaqui Pueblo in relation to the Pacific Ocean’s overland intrusion. Groundwater is not fit for human consumption and there is no provisional water service. Yaquis resort to hand dug wells and rely on unsafe drinking water. Uptake includes exposure to sewage, DDTs, as well as other agrochemicals.



Annex 3 continued

The Rio Yaqui catfish became extant from the United States in 2016. Juvenile specimens were identified approximately 20 km south of the San Bernardino National Wildlife Refuge in 2017 in the Cajon Bonito, Sonora. It is also extant from the lower Rio Yaqui basin.

