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PROTECTING THE RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES IN INTERNATIONAL LAW

Abstract: This research paper investigates a broad understanding of the concept of protecting the rights of Minorities and Indigenous peoples as one of the development practices in international law. In particular, the research will deal with the protection and rights of Indigenous peoples which is already enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Consequently, it is regarded to be a legal document of these communities in order to develop themselves and protect their rights as regards land, resources and others. The another aim of this paper is to critically discuss the issue concerning the rights of lands and property of indigenous peoples, and also according to international provision whether state can launch economic project on the territory of indigenous peoples without their consent.

Key words: minorities, Indigenous peoples, international law, self-determination, consent, declaration, provision.

Can States launch development projects on indigenous peoples' lands without the latter's consent?

The concept of the rights of Indigenous peoples is one of the development practices in international law. It is crucial to have this concept in order to interpret and develop a separate way of human rights of Indigenous peoples. According to Anaya, indigenous peoples are recognized as a powerful sector of societies and distinct communities whose ancestral roots are profoundly embedded in their environment and lands where they live.[1] In other words, it might be understood that Indigenous peoples exist in several parts of the world and they are recognized as group of people and tribes or other communities whose descendants were living on their lands and consequently, they are pre-invasion inhabitants of that place. The protection and rights of Indigenous peoples is already enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and it is regarded to be a legal document of these communities in order to develop themselves and protect their rights. Nevertheless, it is important to note that in the modern period, the concept of

[1]James, S. Anaya, *Indigenous peoples in international law* (2 edn, OUP 2004)

indigenous peoples can be controversial issue due to their marginalization and also discrimination by state governments. For instance, there are some critics about a few states that not comply with the legal framework of the UN Declarations and abuse the rights such as land and property of indigenous peoples in some particular regions.[2] It can be argued that governments may allow themselves to build some factories or make investment projects with foreign investors on the lands of Indigenous communities. Consequently, it can possible arise the issue that without the consent of the indigenous people governments can do what they wish. Since, from the side of some states there is the violation of the concept of normative framework on Free, Prior and Informed Consent which is affirmed in the UN Declaration as one of the legal provisions of the indigenous peoples in protecting their rights. The aim of this paper is to critically discuss the issue concerning the rights of lands and property of indigenous peoples, and also according to international provision whether state can launch economic project on the territory of indigenous peoples without their consent?

Background and the legal international standards

Since early fifteen and sixteen centuries the existence of indigenous peoples has been evidenced throughout the history. For instance, as Vitoria stated that in the period of medieval time, there were considerable enslavement and massacre of indigenous peoples in the sixteen century.[3] That is to say, it was truly stated that indigenous communities were mainly assimilated in the dominant society and according to some authors they were excluded or marginalized by colonial powers that used their lands and resources for political or economic purposes.[4] Though, Niezen added that indigenous communities had failed on claiming their rights due to the lack of awareness of international forums or treaties that could help to deal with their grievances about the acquisition of lands and resources and also the breach of their rights by state government.[5], However, the expansion of some organizations, regarding the indigenous peoples' rights, had changed crucially indigenous communities' belief and hope within the nationhood in the mid-nineteenth century. For example, the presence of the British Empire created the chance for indigenous peoples to redress any issue by appealing to the monarch and after that series of application were undertaken by Canadian Indians and the New

[2]Meetings coverage and press release, "Development Projects could help Indigenous Peoples survive or destroy them completely, depending on how they were managed, permanent forum told", United Nations, Third session, HR/4758, 2004

[3]Ibid p. 16

[4]Ronald Niezen, *The origin of Indigenism: Human Rights and the Politics of Identity* (USP 2003)

[5]Ibid p. 3

Zealand Maori.[6] Thus, it can be seen that since the early medieval period indigenous peoples have been struggling with nationhood to protect their lands rights, property rights and other relevant right issues, as well as an existence of them as whole communities.

Further development provisional attempt in protecting of the rights of indigenous peoples was the creation of the League of Nations and also the promise of the Woodrow Wilson about self-determination for nations which provided the opportunity to protect the right of minorities as well as to regard the right of indigenous peoples too. However, in some cases, the indigenous peoples were faced a considerable impediment when they would not have a sufficient power in decision of their political issues in territory of dominant state. It can be seen in an example of Deskaheh who was a chief the Cayuga Nation and spokesperson of the Six Nations of Grand River. He made contribution to keep sovereignty for aboriginal communities in Canada, though it caused the political disorder in the country.[7] That is to say Canadian officials were reluctant to interact with the Council of Six Nations Hereditary regarding the political issues of the country. The same position was demanded by aboriginal communities, unwilling of intervention into their territorial matters. As a result, over the time the campaign of Deskaheh was divided by those who supported Canadian officials known as 'modernists' and those who not supported called the 'traditionalist', they preferred the full self-government rather than to maintain the integration with Canadian officials.[8]

It is certainly clear that the League was reformulated into the United Nations and since that time there were more favorable conditions created to protect the rights of indigenous peoples. One of these conditions to promote and protect human rights was the adoption of the Universal Declaration of Human Rights in 1948. This development document on protecting the human rights was generated to further international human right provision such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Moreover, these provisions reasonably changed the substantial meaning of the international law in relation to protection of human rights. Consequently, by David Held it is stated that: "less concerned with the freedom or liberty of states and ever more with the general welfare of all those in the global system who are able to make their voices count".[9] In other words, this address may touch on those who are

[6]Carla Clarke, "Strategies of resistance: testing the limits of the law", State of the World's Minorities and Indigenous Peoples [2012] p.24

[7]Yale d. Belanger, "The Six Nations of Grand River Territory's attempts at renewing international political relationships, 1921-1924", Canadian Foreign Policy 13(3) [2007] pp. 23-49

[8]Ibid

[9]David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, [SUP 1995]

needed to be heard their voices, feelings and of course, their rights too. Similarly, the period of decolonization process brought more environments of freedom and free choices such as self-determination of indigenous peoples. However, contrary to the legal claim of the right to self-determination, there were a number of cases in relation to the unilateral and remedial secessionist claim of sub-national groups who might recognize themselves as indigenous peoples.[10]

Article 32 and the concept of Free, Prior and Informed Consent (FPIC)

It can be argued by some scholars that the right to self-determination of indigenous peoples is openly said in the International Covenant on Civil and Political Rights (ICCPR) and also the International Covenant on Economic, Social and Cultural Rights (ICESCR). They affirm that: "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".[11]By interpreting of this clause that it possibly implies communities of indigenous peoples that may belong to the class of peoples and as a result, they have to be entitled to the right of self-determination. If it is true, in that case they can claim all rights and aspects of self-determination. That is to say indigenous peoples may have the right to control over the lands, recourses and territories to develop their economic and cultural life of their communities. Nevertheless, opponents of this view have restrained of this concept particular to the indigenous peoples because many states may fear of raising the peoples and groups by claiming the concept of secessionism within the territory of host state.[12] Certainly, that was controversial issue and raised many attempts for indigenous peoples claiming the right of self-determination. Moreover, Article 32 of the UN Declaration on the rights of Indigenous Peoples that has been criticized and ignored by many states too. As article 32 and paragraph 2 of the Declarations states that:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in

[10] James Crawford, "The Right of Self-Determination in International Law: Its Development and Future", in Philip Alston (ed.), *Peoples' Rights* [2000] p. 7

[11] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [1978] [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [1967] [hereinafter ICESCR]

[12] Christopher Borgen, "The Language and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia", 10 Chicago Journal of International Law [2009] pp. 1-33

connection with the development, utilization or exploitation of mineral, water or other resources".[13]

In other words, it says that states, before undertaking any decision about the land and other political issue on the territory of indigenous peoples, they shall consult with local indigenous peoples and ask their consent about any project before utilizing their lands and territories; otherwise it can be the breach of law under international human rights. This is because that Article 1 affirms that the rights of indigenous peoples can be collectively or individually enjoyed with fundamental freedoms as it is provided by the Charter of United Nations, the Universal Declaration of Human Rights and international human rights law.[14] However, from the perspective of the states due to the global market demands such as exploiting the natural resources and increasing the potential infrastructures which may considerably affect on the development of indigenous peoples' life. Specifically, regarding to this issue there is another legal provision known as Free, Prior and Informed Consent that can give the right to consult and participate in relations to any development projects on the lands of indigenous peoples.

It is clear to note that dispute on the concept of Free, Prior and Informed Consent (FPIC) mainly touches on the life of indigenous peoples.[15] Furthermore, United Nations Permanent Forum on Indigenous Peoples deliberately emphasized each concept by giving the right interpretation.[16] 'Free' should be interpreted as no coercion, intimidation or manipulation. Further, 'Prior' should be implied as consent can be sought satisfactorily in advance of any authorization or commencement of activities and that appropriate representatives should assure enough time for the indigenous consultations/processes to realize. Another clause is 'Informed' that can imply indigenous peoples should be provided by sufficient information in relation to the nature, size, pace and scope of any suggested project and engagement. As well as, indigenous peoples should know the aim or reason of expecting the projects and duration of this project. In addition, they should be prevented from the potential risks of the activity which can affect on the locality of areas. Overall, a preliminary assessment of the economic, social, cultural and environmental impact as well as any general procedure of project should be informed by indigenous peoples. Finally, 'Consent' should be interpreted as crucial concept of the process of consultation and participation which should be carried out in good faith. Moreover, the parties of the consultation should

[13]United Nations Declaration on the Rights of Indigenous Peoples, Article 32, 2007
[14]Ibid, Article 1
[15] Tara Ward, "The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law", 10 Nw. J. Int. Hum. Rights [2011] 54
[16]Mauro Barelli, "Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Rights: Developments and Challenges Ahead", 16(1), Int. J. Hum. Rights[2012] pp.1-24

find an appropriate decision by establishing the atmosphere of mutual respect in good faith.[17]

As noted above, elaboration of FPIC identifies various aspects and an intended process of consultations and participations between indigenous peoples and state government. According to Laplante and Spears, consequently FPIC obliges states to attain consent from the indigenous peoples prior to authorizing or initiating some development projects on their lands. This is because, most of the development projects are situated on the land of the indigenous communities whose ancestors have lived in that territory for many centuries.[18] Nevertheless, some scholar argue that a number of states may not recognize the concept of FPIC, because they do not allow for those communities to have an authority to make barrier for states' development projects which is considered as significant for the development of the whole country and interests of their citizens.[19] Even though, as Article 26 states:"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired"[20], and also Article 29 which affirms that: "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources"[21] that means it is the choices of indigenous peoples to manifest or develop and how to manage with resources or lands in terms of characterization of existence as whole. Therefore, the main reason to be respected and recognized of indigenous peoples that is they are primarily attached to their lands due to the embedded tradition and customs, as well as due to the protection of cultural element and values.

Importantly, the significant jurisprudence regarding to the rights of indigenous peoples is the Inter-American Court of the Human Rights which is the advanced and substantive organ on the rights of Indigenous peoples and has been developed since the early 2000s.[22] One of intended purposes of this system has been focused on collective rights of indigenous peoples to lands and natural resources. In addition, the Court has considered that the land rights of indigenous peoples in the framework of Article 21 of the American Convention

[17] Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, UN Doc. E/C 19/2005/3 [2005] para. 45

[18] L. Laplante and S. Spears, "Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector",11 Yale HumanRights & Development Law Journal [2008] 69

[19] Report of the Working Group on the Draft Declaration on its 5th session, UN Doc. E/CN.4/2000/84, para 93

[20]Ibid, Article 26

[21]Ibid, Article 29

[22]J. Pasqualucci, "The Evolution of International Indigenous Rights in the Inter-American Human Rights System", 6 Hum. Rights Law Rev. [2008]pp. 281-322

can be respectively provided by them and this recent development of normative organ (IACtHR) also secures the rights of indigenous communities to manifest and own ancestral lands.[23] Recognizably, the UN Declaration is considered as a soft law which is not binding for all states, however the American Convention is legally binding treaty, therefore states should recognize the jurisdiction of the Court and its decision on the considered issues has to be obliged on the Parties to this treaty.

This normative interpretation in relation to the land right of Indigenous Peoples had been firstly met with the case of *Mayagna (Sumo) AwasTingni Community v. Nicaragua*[24]and later introduced with other number of cases in terms of connection of indigenous peoples with their lands. This case has been examined the situation that the land, which is traditionally used by the Awas Tingni Community, has been allowed to foreign companies by the Nicaragua government for mining and logging businesses without any effective participation and consultation process with host community. As a result, the Awas people complained this issue to the Inter-American Court of the Human Rights and court came to the solution that the government of Nicaragua indeed violated the rights of the Awas Tingni community in relation to the Article 25 on the land right and Article 21 on the right to property of the American Protection. More precisely, the Court found that the Nicaragua breached the Article 25 by not having effective consultations with local people that indigenous communities' lands could be titled and delimited.[25] Thus, it is possible to say that this was the first binding judgment which acknowledged the collective property rights of indigenous communities and the fundamental judicial framework of the Inter-American Convention.

By decision of the Court that it ordered to the government of Nicaragua to accept the need domestic legal measures to establish the effective mechanism for titling and delimitating of the property which belongs to the indigenous properties in accordance with customary law and its values.[26] It is also important to note that under the international treaty, apart from the concept of collective rights and self-determination which are foundational legal norms, the FPIC normative within the Human Rights is also legal consideration that takes place in the existence of whole indigenous peoples. Consequently, the community has to be informed that how it can be ruled and consent should be therefore agreed due to the respecting values of Indigenous peoples and considering this case that is also customary law.

[23]Inter-American Convention on the Human Rights, Article 21, 1969
[24]Mayagna (Sumo) AwasTingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgement Inter-Am. Ct. H.R. (ser. C) No. 79, [August 31, 2001]
[25]Ibid 62
[26] Alex Page, "Indigenous Peoples' Free Prior and Informed Consent in the Inter-American Human Rights System", Sustainable Development Law and Policy [2004] pp. 16-20

Another case is the *Mary and Carrie Dann v. United States*[27]which can be explained in a way that the Dann community and members of the Western Shoshone Nations filed the petition against the United States in relation to the rights of indigenous peoples. Historically, the Western Shoshone people used and occupied the most area of the Western America for many years before European colonization.[28] The argument of Dann peoples was explained that their rights to land have never been extinguished and they used it for cattle grazing and other activities. However, the US claimed that this was legal dispute not violation of the human rights, because the lands have been extinguished via administrative procedure by indigenous communities.[29] Nevertheless, the Commission came to the decision that the United Nations had breached right to equality, the right to a reasonable trial and the right to property of the indigenous peoples and concluded that the United State had an abortive decision in relation to "fulfill its particular obligation to ensure that the status of the Western Shoshone traditional lands was determined through a process of informed and mutual consent on the part of the Western Shoshone people as a whole."[30]Thus, it can be understood that normative solution by the Commission may determine the land right of indigenous peoples has to be based on fully informed consent of the entire community and based on having the opportunity to participate.[31]

Yet, another case that the IACtHR dealt with norm of FPIC and feasible example of the development projects by states in the lands of indigenous peoples is the *case of the Saramaka people vs Suriname.*[32] This case described that one of the six Maroon peoples who living in Suriname and French Guiana. The government of Suriname allowed to Chinese companies to arrange mining and logging businesses in the lands of Saramaka indigenous peoples without having a consultation with them. Consequently, Saramaka representative organizations submitted this case to the Inter-American Commission on Human Rights, and after considering the case by the Commission who then, requested the Court to decide the international responsibility of the Suriname government for the violation of 'Articles 21 (Right to Property) and 25 (Right to Judicial Protection)'.[33]Moreover, the Commission asked the Court to order the State a reparation measures for the used and exploited lands. However,

[27] Mary & Carrie Dann v. U.S., Case 11.140, Inter-Am. Comm'n H.R., Report No. 75/02, OEA/Ser.L/V/II.117, Doc. 5. Rev 1 [2002]
[28]Ibid p. 17
[29]Ibid p. 76
[30]Ibid p. 141
[31]Ibid p. supra note 60, at 18
[32]Inter-American Court of Human Rights, Case of the *Saramaka People* v. *Suriname*, Judgment of 28 November 2007 (Judgment on Preliminary Objections, Merits, Reparations and Costs)
[33]Ibid

despite the violation of the rights of indigenous peoples, the state argued the case and submitted several preliminary objections, referring to the Article 44 of the American Convention which states: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party".[34]In other words, the article allows any group of people to lodge the complaints in relation to violations of the rights in Convention and victims should file the petition before the Inter-American Commission. Nevertheless, the Court dismissed the preliminary objections including other followed seven and was in favor of the Saramaka people to protect their abused rights.

As regards the duty of consultation that the government of the Suriname has to oblige to effectively consult with Saramaka communities and to be ensured about its member's participation. Moreover, the Saramaka communities have to be consulted through the culturally relevant procedures correspondingly with their own traditions in the beginning of the development plan. Similarly, the UN Special Rapporteur on the occasion of protecting the central freedoms of indigenous peoples has observed that:

"[w]herever [large-scale projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. […] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence".[35]

Thus, Special Rapporteur defined that the legal norm of the FPIC is the crucial acquisition of the rights of indigenous peoples in terms of substantial development projects and the Court found that if the state would not ensure with the effective participation and consultation during the major investment projects, it had deeply impacted on the members of the Saramaka and to their property rights.

It is also significant to note that after the accepting the UN Declarations on the Rights of Indigenous Peoples, another attention need to be paid to the international environmental law. This can be explained that the substantial economic development projects can be impacted by mining and logging other activities which directly affect to the ancestral lands of indigenous

[34]American Convention on Human Rights, Article 44, 1969

[35] U.N., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, supra note 97, p. 2

peoples.[36]Thus, it can be suggested that states must be agreed with indigenous peoples in relation to intended development projects before utilizing and affecting environmental damage to their lands.

Similarly, according to principle 22 of the Rio Declaration, affirms that: "Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development".[37]It means that indigenous communities play a significant part in reasonable participation and for states; interest of communities should be maintained in attaining the sustainable development.

ILO Convention N. 169 and the African Commission on Human and Peoples' Rights

It is broadly accepted that the Convention No, 169 is an amendment of early Convention treaty No. 107 which dealt with Indigenous and other Tribal and Semi Tribal Populations in Independent Countries. It is possible to say that it is only international instrument regarding the rights of indigenous peoples and its legally binding obligation is open to further ratification.[38]Nevertheless, the limited number of the ratification members has been affected to the process in playing a significant role and the right of indigenous peoples.[39] The meaningful promise of the ILO 169 is to recognize and protect the special ties between indigenous peoples and their lands. For example, Article 13 provides that the government shall appreciate the special significant for the indigenous peoples in terms of cultural and spiritual values regarding their territories.[40]

One of the relevant provisions for the FPIC is the Article 6 which affirms that entitlement of indigenous peoples to be consulted and freely participated in the process of decision-making when the development projects of state or private companies may affect them.[41] It is crucially understood that if state maintain the ownership of mineral rights, it must consult with indigenous peoples to define whether their will would be damaged prior to initiating the exploitation of recourses of the communities. In addition, Article 15 deals with the resource rights which sets up the indigenous communities may have right to utilize their mineral resources and their lands should be

[36] D. McGoldrick, "Sustainable Development and Human Rights: An Integrated Conception", 45 International and Comparative Law Quarterly [1996] pp. 796-818
[37] The Rio Declaration on Environment and Development, 31 I.L.M. 874 [1992]
[38]J. Anaya, *Indigenous Peoples in International Law*, supra note 10, pp. 54-56.
[39] ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual' [International Labour Office, Geneva 2003]
[40]Ibid, Article 13
[41]Ibid, Article 6

protected, as well as any management and conservation should be effectively informed and consent.[42] Even though, this provision was criticized by governments that observed national constitution was provided in another way that all resources and minerals belonged to the government. However, the requirement of the provision on the right of indigenous peoples is just to consult with them if states want utilize their lands, if not, it could affect to their cultures, quality of life and livelihood.

The difficulties of provision can be covered in Article 16 which says: "removal from the traditional lands".[43] Indigenous and tribal communities can be a subject to being relocated from the lands they attain and their ancestral root used for many centuries. This convention deal with the assertion that indigenous and tribal peoples shall not be relocated, but it took place for particular reason in some states, especially in African region where small communities might be relocated regardless their consent in relation to their lands and territories. One of the cases relating to the removal of indigenous peoples from the their land is *the Centre for Minority Rights Development (Kenya) v. Kenya case*[44]

It was took place in 2010 that the African Commission on Human and Peoples' Rights produced significant decision in relation to the Kenya case. The claim has been said that the Government of Kenya relocated the Endorois peoples from their ancestral and own lands, by conducting no direct consultation and possible compensation, and also the rights of property, natural and mineral resources. However, all rights are covered in the Charter on Human and Peoples' Rights such Articles 21, 14 and 22.[45] It is true to say that this meaning of Charter may allow the Commission to consider the issue of Endorois indigenous communities in a way that traditional land of indigenous peoples is the entitlement to demand of official recognition of property title. In addition, the Commission made also clarification that the members of Endrorois communities who lost or unwillingly left their lands and possession, they entitled to compensation and to obtain other lands of equal extension and quality.[46] Moreover, according to Article 21 of the African Charter, the Commission affirmed that an indigenous person entitled to natural resources, in

[42]Ibid, Article 15
[43]Ibid, Article 16
[44] Centre for Minority Rights Development (Kenya) v Kenya, African Commission on Human and Peoples' Rights 276/2003 [2010]
[45] African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 [1982]
[46] J. Gilbert, Indigenous Peoples' Human Rights in Africa: the Pragmatic Revolution of the African Commission on Human and Peoples' Rights, International and Comparative Law Quarterly 60 [2011] pp. 245-270

other words, as Article says: "Indigenous peoples have the right to freely dispose of their wealth and natural resources in consultation with the State".[47]

In the aim of this article, it can be said that the central findings regards to violation of Article 22 which is the right to development. Accordingly, the Commission stated that the state has obligation not only to consult with Endorois indigenous communities, however also has a duty to obtain their free, prior and informed consent in accordance with their traditions and customs, because development or business projects would affect their cultures and territories.[48] Given the general standards to the case has been explained that government of Kenya had not achieve the prior, informed consent of communities prior to initiating their lands and commencing their relocation activity. It is clearly taken the view that the Commission supported the norm of FPIC in relation to the rights of indigenous peoples.

Similarly, one of the first human right treaty bodies in relation to indigenous peoples' issues is the Human Right Committee. It is assigned to control in accordance with the International Convention on Civil and Political Rights[49].The HRC supports a progressive interpretation of the right to Article 27 which is to protect the right of indigenous peoples and to carry out traditional activities with lands and resources where they live. It is suggested that the HRC prudently approached to the FPIC and the Committee also paying attention to rights of indigenous peoples in relation to FPIC. For instance, in the purpose of the study by the Human Right Committee by which can be shown one of the cases known as the *case of Ilmari Lansman et al. v. Finland*.[50]It described the situation where the Central Forestry Board of Finland government allowed to a private company to arrange the stone activities such as mining and quarrying in the place of indigenous locals known as Sami community who do a reindeer herding activities. As a result, this contract violated the right of Sami community which gives them to enjoy culture and own tradition on reindeer farming as enshrined in Article 27 of the ICCPR. However, HRC found that this provision had not been violated by Finland, because he noted that the process of consultation and their interest were considered during the proceedings. The HRC came to the decision that there is no breach of the Article 27 rather it was the only restricted impacts on the communities' way of life.[51] Thus, it can be suggested that the HRC took more privileging approach to the FPIC which accentuating not merely on

[47]Ibid, Article 21
[48] Centre for Minority Rights Development (Kenya) v. Kenya, para. 291
[49]International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171
[50]Lansman et al. v. Finland, Commuication No. 511/1992, U.N. Doc. CCPR /C/52/D/511/1992 [1994]
[51]Ibid

consultation, but their free and informed consent rather than considering the Article 27 of the ICCPR.

Conclusion

Many scholar attempted to discuss the issue of rights of Indigenous peoples and their relations to the own culture, lands and traditions. The acknowledgement of international human rights law also ensures that the mineral and natural resources and their protection become significant in order to secure and develop the existence as a whole community of indigenous peoples. However, the problem arose when the states initiated and dealt with international companies to exploit the resources in the lands of indigenous communities in order to develop their strategic interests. In this respect, the international normative frameworks has clearly created the principle of Free, Prior and Informed Consent within the United Nations system in order to respect the rights of indigenous peoples regards to their lands and natural resources and they may enjoy with the right which must be not only consulted by parties, but freely informed and consent form indigenous communities before the state does initiate any political and economic measures. In addition, the FPIC deals with many aspects in relation to how to conduct consultation, the way of mutual respect has to be considered and any potential risks should be informed before development projects will be implemented. Nevertheless, it was also criticized by states that they can authorize and initiate development activities on indigenous lands without their permission, because it is the land of whole citizens and intended development projects should be implemented in favor of whole citizens. However, the indigenous peoples claim that they have also right to self-determination and the control of own lands and territories which were used and occupied by their ancestors, entitle to only them. Furthermore, this study is submitted that a normative approach to FPIC was enshrined in Article 32 of the UN Declaration on the Rights of Indigenous Peoples and several the Commissions were considered in relation to relevant case of different regions and aspects of issues such as the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights other international bodies. As a result, the fact that several situations on effective decision and consequences of the government projects implies that the consideration of further matters is crucially required explicit and relevant legal judgment in order to protect the human rights of indigenous peoples as observed in the case of Endoroise community.

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ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚТАҒЫ ҰЛТТЫҚ АЗШЫЛЫҚТАР МЕН БАЙЫРҒЫ ХАЛЫҚТАРДЫҢ ҚҰҚЫҚЫН ҚОРҒАУ

Аңдатпа: Мақаланың жалпы мақсаты және тереңірек зертелетін мәселесі, бұл ұлттық азшылдық пен байырғы тұрғын халықтардың құқықтарын қорғау және оларға қалықаралық заңға байланысты қолдау көрсету туралы. Бұл халықтың құқықтарын қорғау және заңды түрінде ұлттық азшылдық пен байырғы тұрғын халықтарының қорғайтын акт ол Біріккен Ұлттар Ұйымының нормативті Декларацияда бекітілген. Бірақ қазіргі заманда біраз мемлекеттер бұл халықаралық құқықты орындамауының себебінен, санаулы қайшылықтардың туғызуда.

Сонымен қатар, мақаланың көбірек талқыланатын жерлері ол Байырғы тұрғындардың мәселесі, яғни олардың арасында қазіргі немесе жалпы болып жатқан жағдай – оларға деген дискриминацияның болуы және өздерінің аумағындағы жер, жер байлығы, жалпы олардың өз-өзімен ұлт болып даму құқұғын кейбір мемлекет органдарынан қолдамауы бұл қалықаралық заңның бұзылуы болып табылады.

Кілт сөздер: ұлттық азшылдық, байырғы тұрғындар, декларация, халықаралық заң, келісім сөз.

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ЗАЩИТА ПРАВ НАЦИОНАЛЬНЫХ МЕНЬШИНСТВ И КОРЕННЫХ НАРОДОВ В МЕЖДУНАРОДНОМ ПРАВЕ

Аннотация: В данной статье исследуется более широкое понимание защиты прав национальных меньшинств и коренных народов. В особенности больше интерпретируется признание и поощрение прав коренных народов и обеспечение их свобод, которые стали жертвами исторических несправедливостей и дискриминации социального общества. Делается вывод о необходимости выполнения и признания Декларации Организации Объеденных Наций о правах коренных народов, а также других договоров, которые позволяют коренным народам контролировать события, затрагивающие ресурсы и территории, сохранить свои институты, образование, культуру и традиции. Также рассматриваются проблемы эксплуатации земель коренных народов иностранными инвесторами и правительством, их несогласованность с международным законодательством, которое требует от государства добросовестно консультировать и сотрудничать с коренными народами относительно принятия решений по вопросам внутренних ресурсов коренных народов.

Ключевые слова: национальные меньшинства, коренные народы, международное право, декларация, конвенция, самоопределение, соглашение.