

INTERNATIONAL STANDARD FOR THE RIGHTS OF INDIGENOUS PEOPLE

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ABSTRACT

The issue revolving around indigenous people is a contentious and a complicated one. Violation of human rights on indigenous people has been massive and widespread. It has been a long road for the indigenous people to bring recognition at the international level and to formulate their protection in international law. The establishment of Working Group on Indigenous Populations (WGIP) has been a significant development in the process of making the United Nation Declaration for Rights of Indigenous People (UNDRIP) and bringing it to a reality. It discusses the issues that hinder the drafting of the Declaration and the contestation in converging it to an agreement under the Working Group. It explains and mentions the provisions of the Declaration and examines its wide perspective. This Declaration is a new development in the international law and it sets a new standard for the protection of indigenous rights.

Keywords – human rights, indigenous people, international law, WGIP, UNDRIP

INTRODUCTION

The development of indigenous rights in the history of international law has been a slow process and a unique one with the evolvement of many controversial issues. International instruments like the UN Charter, is a non-binding document applicable to all people and covers protection of many rights. However, binding legal documents are also adopted for the protection of civil, political, culture, social, economic rights of all men. The established instruments considered to be largely based on individual rights, remains insufficient for protecting the collective rights of a group and community-based people like the indigenous population and their different forms of violation. Indigenous people face discrimination under the State, by their activities and violations of the treaties. So, an international instrument becomes very important and a Declaration from the highest level needs to be developed for the indigenous people. When it comes to addressing the issue of indigenous people, it has only been the two ILO conventions, which has been safeguarding their rights. And how far it can protect is another question. However, to protect the indigenous people, in terms of protecting an individual, a human being, then there are different rights, international laws, covenants available that have been established. But having to look at

them as ‘indigenous peoples’, no concrete law is adopted at the international level. Through the long process under the Working Group of Indigenous Populations, the Declaration finally came to be adopted in September 2007, which gave new hope to the indigenous people.

THE STATE OF INDIGENOUS PEOPLE: PRIOR TO THE ESTABLISHMENT OF WGIP

The process of colonization has had great impact on the human race experiencing different forms of human rights violation. Several policies were introduced, treaties and agreements were signed between indigenous people and the government in trying to control over land and territories. According to Hurst Hannum, the seizure of Indian lands in the Americas was generally for private ownership of land, it points out two ways of seizure - firstly, indigenous peoples held no “title” to their lands, and another act was direct genocide, which has given way to continuing assaults by the government and private parties on indigenous lands and their sub-soil mineral and oil deposits,¹ so were the situations of the aboriginals of Australia, where their land were taken over on the pretext that the lands were unoccupied. Sovereignty was claimed over indigenous people and their territory by the Europeans on the ground of *terra nullius*, which the doctrine represented that indigenous people possessed no international legal existence.² Expanding acquisition over land and resources of indigenous people through forceful means leaves them landless and impoverished; such experience is encountered by indigenous people in US, Canada, New Zealand, Australia, in the tropical regions and various other areas where resources are found in abundance. In New Zealand, the Treaty of Waitangi in 1840, a treaty signed between the Maori and the British, where the rights seen to be granted to the Maori people but conflict exist in extending the sovereignty to its people with greater authority conceded towards the British government.³ After World War I, changes emerged with the establishment of League of Nation for the protection of the people related to several human rights issues, like the minorities, workers, etc. but there was no particular reference for indigenous people. The first attempt made by indigenous people to bring the issue to the international forefront was in 1923, when a chief of Iroquois Confederacy brought a case against Canada before the League of Nation, followed by a Maori leader in an attempt to put forth the violation of the Treaty of Waitangi by New Zealand in 1925.⁴ Later, with the creation of the United Nation, situations got favourable for indigenous

¹ Hannum, H. (1987-1988). New developments in Indigenous Rights. *Virginia Journal of International Law*, 28(649), 649-678.

² Macklem, P. (2008, Fall). Indigenous Recognition in International Law: Theoretical Observations. *Michigan Journal of International Law*, 30(177). 177-210.

³ Stevenson, M.S. (2008). Indigenous Land Rights and the Declaration on the Rights of Indigenous Peoples: Implications for Maori Land Claims in New Zealand. *Fordham International Law Journal*, 32(1), 298-343.

⁴ Corpuz, T.V. (2007, October 13). How the UN Declaration on the Rights of Indigenous Peoples Got Adopted. www.tebtebba.org/.../20-un-declaration-on-the-rights-of-indigenous-...

people. And there have been many circumstances that influence the gradual change of status for indigenous people.

The Inter-American system from its very establishment in 1948, acknowledged the existence of an “indigenous question”,⁵ and further contributed much to the rights related with the indigenous population. It has also taken some important decisions in favour of indigenous people like the case of *Awas Tingni Community vs Nicaragua*. The two Covenants of ICCPR and ICESCR safeguards human rights protection of all people, while article 27 of ICCPR mentions the protection of minorities. Though article 27 does not refer to the indigenous people specifically, cases related to protection of indigenous rights upheld this specific provision such as the case of *Ominayak vs Canada*. ILO undertakes series of studies related to indigenous workers which is apparent in its adoption of various conventions and recommendations on indigenous population. In 1957, the ILO adopted Convention no. 107 known as the ‘Indigenous and Tribal Populations Convention’. It also adopts the ‘Indigenous and Tribal Populations Recommendation, 1957 (No.104) supplementing the Convention. Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965 under General Assembly Resolution 2106 (XX), condemns racial discrimination and promotes equality of all people. The nature of discrimination and subjugation faced by indigenous population due to their racial difference also finds protection under the Convention. The Decade for Declaration to Combat Racism and Racial Discrimination (1973-1982), brought wide opportunity for the indigenous populations with the hosting of the World Conference to Combat Racism and Racial Discrimination in 1978 which touches upon the right of indigenous peoples, endorsing “the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language and also recognizes the special relationship of indigenous people to their land and stresses that their land, land rights and natural resources should not be taken away from them”.⁶ Further, in 1977 the International NGO Conference on Discrimination against Indigenous Populations in the Americas was an important progress for indigenous populations, where this Conference also led to emerging of two resolutions - to establish a Working Group on indigenous populations and to create a Declaration of the Rights of Indigenous Peoples.⁷ While the indigenous groups participating in the Conference came forward with a document, “Draft Declarations of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere”, which includes indigenous

⁵ Barelli, M. (2010, November). The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime. *Human Rights Quarterly*, 32(4), 951-979.

⁶ Hannum, H. (1987-1988). New developments in Indigenous Rights. *Virginia Journal of International Law*, 28(649), 649-678.

⁷ Lawlor, M. (2003). Indigenous internationalism: native rights and the UN. *Comparative American Studies*, 1(3), 351-369.

rights, which was characterised as the fundamental political document of the international indigenous movement.⁸ Another important Conference was the International NGO Conference in 1981 by the Sub Committee on Racism at the United Nations in Geneva, which addresses issues on indigenous peoples and land. The participants showed their support on the cause for indigenous people. Such were the importance of international conferences, which contributed to the development of the indigenous movement in moving forward. Indigenous people and Organizations attempt to attend conferences and make their causes known, which further emboldens the Working Group. Though the struggle for indigenous rights progresses at slow rate, the different developments happening within the UN paved the way for indigenous people in the years to come.

WORKING GROUP ON INDIGENOUS POPULATIONS (WGIP): DISSENTING ISSUES UNDER DRAFT DECLARATION

In 1971, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities appointed Martinez Cobo as a Special Rapporteur to study the problem of indigenous population and discrimination against them.⁹ Recognizing the need for protecting the human rights and fundamental freedoms of indigenous populations, the ECOSOC passed a resolution authorizing the Sub-Commission on Prevention of Discrimination and Protection of Minorities for the formation of a Working Group on Indigenous Populations (WGIP) in 1982.¹⁰ WGIP became the largest UN forum that deals with human rights issues with increased participation of indigenous groups, also opened to States, NGOs, indigenous peoples' organizations which became a platform where indigenous people report on conditions of indigenous people, States' violation of treaties and standard of human rights.¹¹ The working of WGIP involves participation of the indigenous people which is a significant difference with the way decisions are being taken in formulating instruments on indigenous people and also on other international instruments. This kind of participation is a great change in the history of the indigenous people, and in a broader sense, to the activity of the UN.

⁸ Ortiz, D. R. (2006, January). The First Decade of Indigenous Peoples at the United Nations. *Peace and Change*, 31(1), 58-74.

⁹ Stomki, L. (1991). The Development of Minimum Standards for the Protection and Promotion of Rights for Indigenous Peoples. *American Indian Law Review*, 16(2), 575-596.

¹⁰ Economic and Social Council Resolution 1982/34. ap.ohchr.org/documents/E/ECOSOC/resolutions/E-RES-1982-34.doc

¹¹ Niezen, R. (2000, January). Recognizing Indigenism: Canadian Unity and the International Movement of Indigenous Peoples. *Comparative Studies in Society and History*, 42(1), 119-148.

Working Group's fulfilment on the draft declaration might have come later than expected, but it has already started its process since its creation. The attempt of the Working Group to produce the draft within the First International Decade (1995-2004) could not be fulfilled due to wide dissenting opinions between the States which moved for alterations and the indigenous people who supported for drafting without any changes. Disagreements between indigenous people and the State revolves around many issues, associated with definition, recognition, collective rights, rights related to land, territories, resources, self-determination, prior consent. The inflexible position of both the groups and their conflicting views decelerates the drafting in reaching towards a consensus.

State's objection on usage of the term like 'peoples', does not confine just on mere usage of the term, rather it has deeper meanings and issues. States fear the collective rights that associates with the usage of the word which gives the right to self-determination of indigenous people. Looking at the case of China, it does not object to referring to its 'national minorities' as 'indigenous peoples' on semantic grounds, rather fears that rights may be developed for indigenous peoples.¹² On the concept of the term 'peoples' to apply to indigenous groups, States assert their own stance, Canada's acceptance of the term 'peoples' was subject to the inclusion of a qualifying phrase, failing which would only support the term 'people', United States pushed for the inclusion of a provision making clear that convention did not imply right to self-determination as understood in international law.¹³ Within the definition of indigenous people, the criteria of self-identification forms an important characteristic which was also mentioned in ILO169 in article 1(2) which reads, "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups...", and is also expressed in the Draft Declaration in article 8 to have the 'right to identify themselves as indigenous'. Self-identification involves two form, self-acceptance and acceptance from the community. Working Group reports in 1988 that "the harsh lessons of past history showed that the recognition of individual rights alone would not suffice to uphold and guarantee the continued dignity and distinctiveness of indigenous societies and cultures",¹⁴ which implies the insufficient protection of indigenous people as groups under the established instruments. The controversy related to the collective rights of indigenous people complicates the Working Group in the process of drafting. For the protection of human rights, various international instruments have been established but

¹² Hannum, H. (1987-1988). New developments in Indigenous Rights. *Virginia Journal of International Law*, 28(649), 649-678.

¹³ Daes, A.I.E. (2008, March). An Overview of the history of indigenous peoples: self-determination and the United Nations. *Cambridge Review of International Affairs*, 21(1), 7-26.

¹⁴ Graham, M.L. (2004, Spring). Resolving Indigenous Claims to self-Determination. *ILSA Journal of International & Comparative Law*, 10, 385-420.

human rights laws protects individuals rather the groups and so it remains inadequate, as it has been considered that indigenous rights are collective which ‘emanates from the fact that they are members of groups rather than individuals’.¹⁵ Recognition of collective rights forms an important aspect for protecting indigenous people in ensuring the full enjoyment of their rights.

Another major issue which concerns indigenous people is their right to land and natural resources. Looking at the case of Canada, the relation of Canadian with the First Nations was the drive for land and natural resources.¹⁶ The colonisers rush for natural resources available and occupied forests rich in tropical timber, land resources, minerals, etc. The significance of land rights by the indigenous people has been recorded and analysed by Cobo in his concluded report, portraying the importance and the relationship of land to indigenous people having many deep-rooted implications. The Human Rights Committee in its General Comment of article 27 of ICCPR which states that, “the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples”,¹⁷ the approach is that where land is a central significance to the sustenance of a culture, the right to enjoy one’s culture requires the protection of land.¹⁸ Indigenous people’s perspective on land is not just a measurable area and a means of production, but covers a broader notion which is a source of their dependence for survival physically and spiritually. Also, when it comes to land and resources, another issue has been the restitution which needs to be addressed in a fair and transparent manner. Ensuring indigenous people the right to control over land and resources becomes important for their survival as distinct people and in maintaining their identity. And so it is considered to be a crucial right for the protection of indigenous people.

Self-determination forms one of the core issues when it comes to indigenous rights. The complexity associated in granting the right heightens disagreement between States, affecting the drafting of declaration for a long period. The debate on the issue regarding the usage of term ‘peoples’ for its association on the right to self-determination, has been a complexity in defining the term ‘indigenous’. Following World War II, the General Assembly of UN adopted the Declaration on the Granting of Independence to Colonial Countries of 1960, in article 2 states that, “all peoples have the right to self-determination; by virtue of that right they freely determine

¹⁵ Stomki, L. (1991). The Development of Minimum Standards for the Protection and Promotion of Rights for Indigenous Peoples. *American Indian Law Review*, 16(2), 575-596.

¹⁶ Lertzman, A.D., & Vredenburg, H. (2005, February). Indigenous Peoples, Resource Extraction and Sustainable Development: An Ethical Approach. *Journal of Business Ethics*, 56(3), 239-254.

¹⁷ CCPR/C/21/Rev.1/Add.5 26 April 1994.

¹⁸ Gilbert, J. (2010). Custodians of the land: Indigenous peoples, human rights and cultural integrity. In M. Langfield (Ed.), *Cultural Diversity, Heritage and Human Rights: Intersections in theory and practice* (pp.31- 44). Routledge.

their political status and freely pursue their economic, social and cultural development”,¹⁹ which became the guiding principle of recognizing self-determination of all people. The two binding UN Covenants viz. ICESCR and ICCPR adopted in 1966, further proclaimed the right to self-determination as declared under the 1960 Declaration. How controversial ‘self-determination’ a term it maybe and a much debated issue, it has been mentioned not only in declarations but in treaties, which implies to be very much a right of people though difficulties in its implication persist. Indigenous people ensured for inclusion of the right of self-determination while States stood reluctant against its insertion. As Daes mentions, it would be inadmissible and discriminatory to argue that these people lack the right to self-determination merely because of their indigenesness. Self-determination for indigenous people is viewed by States as decolonisation, a threat to territorial integrity and sovereignty of States,²⁰ and thus it becomes difficult for the States to accept the application of the principle to indigenous peoples. States proposes addition of certain conditions and amendments with the inclusion self-determination. In the case of Canada which emphasises that the principle should be implemented only within the framework of existing nation-state, and also bring recognition on the interrelationship of indigenous communities and the state; while Australia concerns the territorial integrity.²¹ Self-determination as a serious contention was further seen in joint statement of Australia, New Zealand, USA to Human Rights Council whose view was that there could be possible secession threatening territorial integrity, political unity.²² Indigenous people’s opinion on the other hand is that, right to self-determination should include determining their own destiny and political, economic, cultural and social structures, which should also encompass the right to use and control their own lands and natural resources, to impose taxes, to engage in cross-border trade, to impose their own civil and criminal jurisdiction with respect to indigenous and non-indigenous people living in their territory.²³ When it comes to self-determination, States feared affecting its territorial integrity, while on the other hand, indigenous peoples made clear of ensuring sovereign rule on matters that affects them.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

¹⁹ General Assembly resolution 1514 (XV), 14 December 1960.
<http://www.un.org/en/decolonization/declaration.shtml>

²⁰ Davis, M. (2008). Indigenous Struggles in standard-setting: The United Nations Declaration on the Rights of Indigenous Peoples. *Melbourne Journal of International Law*, 9, 439-471.

²¹ Daes, A.I.E. (2008, March). An Overview of the history of indigenous peoples: self-determination and the United Nations. *Cambridge Review of International Affairs*, 21(1), 7-26.

²² Gilbert, J. (2007). Indigenous Rights in the Making: The United Nations Declaration on the Rights of Indigenous Peoples. *International Journal on Minority and Group Rights*, 14, 207-230.

²³ Daes, A.I.E. (2008, March). An Overview of the history of indigenous peoples: self-determination and the United Nations. *Cambridge Review of International Affairs*, 21(1), 7-26.

The Declaration was adopted by the General Assembly in September 2007, with a majority of 143 in favour for it and 4 against it; those voting against were the United States, Canada, Australia and New Zealand.²⁴ It is a detailed and a lengthy document, containing 23 Preambular paragraphs and 46 articles. The Preambular paragraph is relatively long and it forms the principle on which the provisions in the Declaration are based upon. After wide debates within the Working Group on the issue of collective rights of indigenous people, it came to be acknowledged and the Declaration was passed with the inclusion of the term “peoples”, where many group rights has been asserted in the Declaration and also echoed in the Preamble.

The importance and the ethics of human right that all people are equal have been affirmed in the Preamble itself. The equality of all people has been assured in the second para itself, “affirming that indigenous peoples are *equal to all* other peoples”. Further affirming the theory, it declared the invalidity of doctrines that claim superiority of people in para 4. Again reaffirming in para 5, of the Preamble itself, to be “*free from discrimination of any kind*”. Another important point mentioned in the Preamble is the acceptance and recognition of the indigenous people as different and the right to be different, as mentioned in the second para itself, “recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such”. It also acknowledges the suffering and injustices faced by indigenous people. It recognizes the right to control all forms of development affecting them, in para 10, “convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their developments in accordance with their aspirations and needs”. The Preamble also affirms the self-determination of all people as acknowledged by different international instruments, also stating in para 17 which reads, “...nothing in this Declaration may be used to deny any peoples their right to self-determination...”. It also calls upon the States to respect the treaties signed and make necessary arrangement for it, and to implement the rights through consultation. The last para of the Preamble proclaims, “a standard of achievement to be pursued in a spirit of partnership and mutual respect”, it reflects the role of the UN human rights machinery and its contribution over the last decades, where after centuries of oppression and cultural assimilation, it eventually supported on the establishment of a dialogue between States and indigenous people.²⁵

²⁴ Coulter, T. R. (2008-2009). The UN Declaration on the Rights on Indigenous Peoples: A Historic Change in International Law. *Idaho Law Review*, 45, 539-553.

²⁵ Gilbert, J. (2007). Indigenous Rights in the Making: The United Nations Declaration on the Rights of Indigenous Peoples. *International Journal on Minority and Group Rights*, 14, 207-230.

The Preamble, as lengthy as it is, tries to cover the main principles that runs through the Declaration and portrays the crux of the Declaration. Recognizing all the rights of indigenous people and implementation of it should be in accordance with the Charter of the UN, and calling on the States for its fulfilment in good faith. The right to enjoyment of all rights has been assured, and is stretched out clearly in the Declaration, which shows the acceptance of the much debated issue that indigenous people can enjoy the right as a collective or as an individual, as stated in article 1 that “indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law”. And in article 2, it clearly asserts the indigenous people to be free and equal with other people as an individual and as collective. The right of indigenous people to full enjoyment of all human rights shows the equality of indigenous people with other people. The provision of the Declaration begins on the theory of equality, which shows the importance of the principle.

Article 3 to 5 covers right to self-determination. Article 3 clearly affirms, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Article 3, according to Daes, it is a right of cardinal importance for them because it is sacred right to which they have been entitled since time immemorial.²⁶ Further, elaborating in article 4 that, “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”. Having assured the right to autonomy, this right is further strengthened through article 5, adding that they have the right to maintain their political, legal, economic, social and cultural institutions. Article 6 to 10, covers their right to live and exist. Article 6 relates the right to a nationality and Article 7 covers both individual and collective rights. It gives an indigenous individual the right to life and integrity as indigenous individuals and the collective right to live as distinct peoples without being subjected to any act of genocide or any other act of violence. Article 8 confers the State of its duty of protection, while their right of belongingness to their own community is stated in article 9. Article 10 gives indigenous people their right not to be removed from their land forcibly, and such that no relocation shall take place without the free, prior and informed consent.

Article 11-13 mentions the rights related to cultures, religion, and language of the indigenous people, the right to practise, to revitalize, preserve and develop their own culture. Article 14-15 is associated with the right of indigenous people to control their education systems, allowing the usage of own language, and in article 16, indigenous peoples are also given the right to establish their own media. Article 17, affirms the protection of indigenous children from all forms of

²⁶ Daes, A.I.E. (2008, March). An Overview of the history of indigenous peoples: self-determination and the United Nations. *Cambridge Review of International Affairs*, 21(1),7-26.

labour exploitation. Article 18,19 relates to the consultation and participation of indigenous people. This also becomes an important tool to bring a better relation between States and indigenous peoples. Article 20,21 ensures indigenous peoples to maintain their own economic, political and social systems, to freely participate in all their activities for development and subsistence, without any discrimination, while States shall take appropriate measures for ensuring it. Article 22 further encourages those groups who require special needs to be given attention. Indigenous people's right to development is affirmed in article 23, giving their right "to determine and develop priorities and strategies for exercising their right to development". Article 24 concerns their right to health and establishes their right to preserve and maintain their traditional ways and preservation of all medicinal objects.

Article 25-30 is associated with land, territories and resources. Taking into consideration on the importance of land towards indigenous people, article 25 asserts their right to maintain their spiritual relation with lands and other resources, acknowledging their relation to land of more than a material relationship. 'Territories' mentioned is translated as referring to the physical space that enables the survival of the indigenous peoples through the reproduction of that culture.²⁷ With a potent right declared in article 26, giving them their right to their lands, territories, resources owned, to develop and control, calling on States to give legal recognition and protection. Further duties to States are mentioned in article 27 for implementing through transparency, and the right to redress is referred in article 28. Further, article 29 affirms indigenous peoples their right on "conservation and protection of the environment and the productive capacity of their lands or territories and resources", also falling the duty on the States for implementing assistance. Article 30, disallows military activities on the land and territories of indigenous peoples, and States are bound to have prior consultation to run such activities on their land. Article 31 gives indigenous people the right to maintain, control their cultural heritage, their traditional knowledge, intellectual property and its forms of manifestations. Article 32, gives the right to "determine and develop priorities and strategies for the development or use of their lands or territories and other resources", and States have to consult prior to any move on any project that affects their land, territories or resources. Article 33 asserts indigenous peoples the right "to determine their own identity or membership in accordance with their customs and traditions". Article 34, gives indigenous people their right to promote, develop and maintain their institutional structures, while article 35 expresses the relation of an individual with the society which mandates the responsibility of individuals towards their own communities. Article 36, protects the indigenous peoples who are divided by international borders, given the right to keep in contact, cooperate in all activities.

²⁷ Montes, R.A., & Cisneros, T.G. (2009). The UNDRIP: the foundation of a new relationship between indigenous peoples, states and societies. In C. Charters (Ed.), *Making The Declaration work : the United Nations Declaration on the Rights of Indigenous peoples* (pp.138-168). Copenhagen: International work group for indigenous affairs.

For realizing protection, implementation becomes as important part which is the duty of the States, and articles 37, 38 endorses the duty of the States and acts as a guide. Article 38, mention the State's duty to take appropriate measures, "in consultation and cooperation with indigenous people", for the Declaration to come into a reality and achieve its main aim. Through article 39, the indigenous people can call upon States and also through international cooperation, for assistance, whether in financial or technical. If there are any conflicts or disputes, it needs to be resolved through a fair procedure, and the right to access good and effective decision, and the right for effective remedies which had been asserted through article 40. Article 41, 42, calls on the States, the United Nations, its specialised agencies, Permanent Forum on Indigenous Issues, and other organs for their contribution in realising the provision of the Declaration. Article 43 recognises that this Declaration constitutes as "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world". So this is to be used as the scale for measuring the level of protection in relation to indigenous rights. Article 44 ensures equal right to both male and female. And further, article 45 affirms that, "nothing in this Declaration may be construed as diminishing or extinguishing the rights of the indigenous peoples". Article 46 acts as the guide for enjoyment of the rights enshrined thereof to be in line with the UN Charter and provide rules to be applied in exercising the rights in this Declaration.

The Declaration, considered to be a lengthy one, covers a wide variety of issues covering both individual and collective rights. Establishing the concept of collective rights, is the acceptance that peoples are groups, and the interest of the group needs to be protected, apart from the individual right. The notion of collective right runs through the Declaration which makes it unique, unlike international instruments in the past which have always focussed on the notion of individual rights. Most States supported the spirit of the articles but they felt they required more precision in their drafting because of the implications of these rights for domestic land tenure systems, pointing out some States' opinion, like, the US who believed the language to be too broad and imprecise, while other states such as Australia and Canada argued that the articles needed to be amended in light of their own domestic land laws.²⁸ The controversial rights, which were long debated in the Working Group, like the self-determination, collective rights, land, resources rights, are all included in the Declaration. The granting of the right of ownership and use of natural resources is seen as a ground-breaking one in the international law, because such usage has always been in control under the State. According to Alexandra Xanthaki, this is a major step forward; international law and practice have never before agreed to recognise the unqualified right to self-determination to sub-national groups.²⁹

²⁸ Davis, M. (2008). Indigenous Struggles in standard-setting: The United Nations Declaration on the Rights of Indigenous Peoples. *Melbourne Journal of International Law*, 9, 439-471.

²⁹ Xanthaki, A. (2009). Indigenous Rights in International Law over the Last 10 years and future developments. *Melbourne Journal of International Law*. 10(27), 27-37.

The adoption of this Declaration is a great achievement for the indigenous people in the struggle for recognition of their rights. It is also a great achievement for the United Nations, towards the progress of human rights, and for all the supporters of justice and human values. The Declaration is a non-binding instrument, so a State is not legally bound by it. But being its signatory shows their agreement and acknowledgement of the standard which has been set as the rights of indigenous peoples. Robert T Coulter points out five elements of the Declaration that makes it extraordinary³⁰ – 1) the recognition of collective rights, 2) the recognition of the right to exist, 3) the recognition of the right of self-determination within countries, 4) the recognition of the environment as a human right for indigenous peoples, 5) the recognition and enforcement of treaty rights as a human right. The Declaration is an acceptance of indigenous peoples in the international community, and also within the States and the governments they exist. It further call upon States to look into the matters regarding implementation and protection of the enshrined rights, and also mandating States to take prior consent on activities that happens in the territories of the indigenous people, or that affects them. Hence, though State has been the violator of rights, protection also has to come from the State, so the Declaration puts a lot of emphasis on the State for its protection. It is a guide for the State in making laws related to indigenous rights and also a guide for the indigenous people in making demands for their rights. It is the new standard for measuring the protection of indigenous people, and the State has to make the effort in setting the laws and other legal provisions according to the standard set in the Declaration. Establishing such document strengthens the international law by formally recognising the rights of indigenous people and mandating States for incorporating the minimum needs of protection.

CONCLUSION

The process of colonization affected many indigenous people. And with the advancement in industrialization, the search for resources also increased, further disrupting their activities. In introducing different forms of developmental projects, the mainly affected ones has been the indigenous peoples, faced with the loss of land and resources, it drives them into poverty. Attempts to bring their problems and situations known at the international platform became futile. However, situation started to change with the creation of United Nation, opening up an international platform for addressing different issues and slowly it expanded in producing instruments for protection of different groups and minorities. Various Conferences were organized and eventually indigenous rights were seen to be recognized in different international instruments. However, the established instruments became insufficient for the indigenous people as it was unable to address all their issues. And all these eventually contributed to the development of the process of standard setting in one form or the other. Broader document

³⁰ Coulter, T. R. (2008-2009). The UN Declaration on the Rights on Indigenous Peoples: A Historic Change in International Law. *Idaho Law Review*, 45, 539-553.

dealing specifically on indigenous people which encompasses all their issues needed to be developed. To go forward in formulating such a document, the Working Group for Indigenous Population was formed whose foremost mandate was to draft the Declaration. And this became a turning point for the indigenous people in their process for setting an international standard. It was a significant step taken by the UN towards the realization of the Declaration and it shows the concern in bringing a solution towards indigenous people and their issues. The Working Group took that responsibility for the fulfilment of protection involving lots of disagreements and debates through its long process of drafting.

When it comes to indigenous rights, lots of issues gets associated, regarding their land protection, territories, resources, their self-determination, cultural rights, their collective rights. Disagreements started from the implication of the term 'peoples' which associates collective rights, giving the right to self-determination. Indigenous people expressed the intimate relation of land and the interconnection of various other rights demanding their own control over their land and natural resources which the State highly opposes. So, a provision implying particularly for indigenous people becomes essential for covering all these issues which is why, the recognition in the international arena becomes a complicated process. Their trust in the State has completely failed and hence they prefer to maintain and govern themselves in all activities affecting them. Which is why, to be recognized at the international level becomes so important. The Declaration includes many issues, covering both individual and collective rights, unlike the other instruments. It gives an individual the right to exist as an indigenous individual and as indigenous peoples. It protects individual right to nationality, to develop and maintain one's own identity, to belong to a community. It covers broad areas of collective rights, to land, resources, have their own political, social, cultural, educational, systems, and their right to develop, maintain, have priorities, to consult them in matters related to them, with the right to self-determination. The Declaration acknowledges that self-determination is for all people and henceforth it applies to indigenous people as well and one cannot be denied of such right.

Declaration having adopted, is recognition and an acknowledgment of indigenous people within the international community. However, the international community depend on the State for the development of its people. So implementation is another challenge, because States need to accommodate and make laws for protection in putting forward the intention and the principle of international law. Yet, a bigger question arises on the willingness of the State to make it a fruitful one. As without implementation, the importance and the meaning of the Declaration remain unfulfilled and through the implementation, it will prove the sincerity and commitment of the States and the international community towards the indigenous peoples. However, with the adoption of the UNDRIP, indigenous peoples and their rights has been recognized and the minimum standard for the protection of indigenous rights has been set.