IMPACT OF CLIMATE CHANGE MITIGATION MEASURES ON INDIGENOUS PEOPLES

Keywords: Climate change; indigenous peoples; hydro-energy; indigenous ecological knowledge

Abstract: The author presents selected ventures in the area of climate change mitigation and adaptation that negatively affect indigenous peoples. Against this factual background, she analyzes relevant international legal regulations. Such an analysis enables the answer to the main research question: can climate change adaptation and mitigation actions be the justification for disrespecting the rights of indigenous peoples? The research method adopted is legal-institutional analysis which includes an examination of the content of legal and other documents. Combined with critical analysis of literature and media reports this analysis allows representation of the reality – violations of the rights of indigenous peoples as a part of efforts to counteract climate change. Recommendations and main findings include: climate change adaptation and mitigation measures may not justify violations of the rights of indigenous peoples; such measures have to be developed in collaboration with indigenous communities; indigenous peoples’ rights may not be perceived as a factor hindering the State’s economic development or an obstacle to environmental protection; indigenous knowledge should be included in the strategies to combat climate change. Indigenous peoples should be regularly consulted by policy makers so that their traditional knowledge is incorporated in decisions regarding these matters.

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INTRODUCTION

The Global Risks Report 2019 enumerates extreme weather events and failure of mitigation and adaptation to climate change as the threats most likely to happen (ranked first and second in the list of top 10 threats). The process of mitigation involves reduction of greenhouse gas (GHG) emissions and enhancement of GHG sinks. The process of adaptation means adjustments made by social, economic and ecological systems in response to current or foreseen climatic changes or their effects or influences (Tauli-Corpuz & Lynge, 2008). The price of inaction in climate-related matters is becoming more evident with each passing year. A particular concern is the accelerating loss of biodiversity as species abundance has gone down to 40% of what it was in 1970. Such depletion impacts the human food chain, posing a threat to health and socioeconomic development and – indirectly – to wellbeing and productivity of entire populations as well as to regional security (Global Risks Report, 2019). In the Report the top 10 global risks are grouped according to the likelihood of occurring and their potential impact. According to both calculations, as many as six global threats are directly or indirectly related to climate change: extreme weather events, natural disasters, failure to prevent or adapt to climate change, loss of biodiversity and destruction of ecosystems, and crises in access to water and food (in the last two cases, climate change makes it difficult for States to provide the population with basic goods such as water and food). All this points to the increasing significance of threats related to climate change and ecological security for global security and to the growing concern with which the international community views these threats.

Climate change has profound impact on the Indigenous peoples and their lands. The intricate relationship that Indigenous People share with their environment, lands and resources is the foundation of their identities as separate peoples, of their distinct social and economic systems and of their cultures as well as the source of ecological knowledge they possess. The livelihoods of Indigenous Peoples are based on rotating cultivation, pastoralism, fishing, trapping or hunting and gathering (Tauli-Corpuz & Lynge, 2008). However, many of Indigenous People no longer live on their traditional territories, having moved to towns or to rural areas outside
their customary lands. Some of those who still live in the lands of their ancestors have turned to using modern technologies (for example the Saami reindeer herders ride snowmobiles and helicopters nowadays, thus adapting their traditional livelihoods rather than replacing them).

The aim of the paper is to fill in this gap and answer the following research question: can actions to mitigate climate change/crisis be the basis/justification for limiting or even disrespecting the rights of Indigenous Peoples? After this introduction, the paper continues with the review of the literature followed by two selected ventures in the area of climate change mitigation that negatively affect Indigenous Peoples. One of them concentrates on a hydro-energy project and the second on wind energy. After presenting the factual details of the situation, the author analyses the desired state/situation as stipulated in international legal regulations relevant in this context, most of all the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries (1989) and the United Nations (UN) Declaration on the Rights of Indigenous Peoples (2007). The same section also deals with the international jurisprudence and decisions of the human rights treaty bodies (of a recommendatory character). All of them analyse and interpret the legal regulations mentioned and make it possible to answer the main research question of this article. While there are many studies on human exposure to climate change and on the effects of climate change on the physical environment (including Indigenous Peoples), the same cannot be said about the studies on the effects of climate change mitigation measures on Indigenous Peoples.

The research method adopted in this article is legal-institutional analysis which includes an examination of the content of legal acts and other documents recognizing the rights of Indigenous Peoples such as the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (1989), the UN Declaration on the Rights of Indigenous Peoples (2007) and Kari Oca 2 Declaration (2002). This analysis also includes international jurisprudence and quasi-jurisprudence, most of all of the Human Rights Committee, the African Commission on Human and People's Rights, the African Court on Human and People's Rights and Inter-American Court of Human Rights. This (quasi)jurisprudence inter-
interprets and develops the rights of Indigenous Peoples with special emphasis on such rights in the context of climate change mitigation. All the judgments and decisions of these bodies are available on their websites. Combined with another method of discourse analysis of literature, media reports and internet sources that is used to develop the case studies, legal-institutional analysis provides a representation of the reality – violations of the rights of Indigenous Peoples as a part of efforts to combat climate change. The sources were selected mostly on the basis of their relevance to the subject matter of this paper. Where literature was lacking, the author used internet sources, for example with regard to the Markbygden wind farm, which is a very recent case and hence there is very little academic research available. The sources include a website of the Swedish company, Svevind, useful mainly for extracting factual information which then had to be interpreted in the light of legal regulations recognizing indigenous rights.

**REVIEW OF THE LITERATURE**

Kamrul Hossain (2016) points out that while the word “culture” is commonly associated with traditional orientation, a culture by no means is a static or outdated phenomenon; new practices, behaviors and knowledge are constantly transmitted by tradition along a cultural continuum. As societies develop and change with time, these transformations are incorporated into, and reflected by, culture. Thus culture encompasses also using modern technology in traditional practices: over time such factors transform identities of communities or whole societies.

Hence, Indigenous Peoples living on their traditional lands are particularly affected by climate changes; they also may be affected by the measures taken to combat it. The world population of Indigenous Peoples is estimated to be at least 370 million; their lifestyles practiced for thousands of years are sustainable and mostly carbon-neutral or even carbon-negative, thus contributing significantly to mitigating climate change. Contrastingly, the comparable 300-million population of the USA (4% of the world population) is responsible for a quarter of the worldwide GHG emissions.
Impact of Climate Change Mitigation Measures on Indigenous Peoples (Tauli-Corpuz & Lynge, 2008). In Indigenous territories biodiversity is preserved best (Statement of Victoria Tauli-Corpuz, 2016; Tauli-Corpuz, 2016; Nakashima et al., 2012; Adamson, 2007; Delivering on Paris Promise). All Indigenous inhabitants of their territories have managed local fauna since time immemorial, creating complex societies and cultures reflecting their spiritual, direct relations with nature. The majority of these peoples have perfected such ways of using natural resources that ensured sustainable use and maintained those resources so that their descendants would be able to use them as well. The knowledge and practices of Indigenous tribes, cultivated and expanded for centuries by generation after generation (Woodman, 2015), contributed to the preservation of nature. Thus, Indigenous Peoples are frequently described as stewards entrusted with the care for the lands of their forefathers – the lands they will pass to the next generations. Sometimes expectations towards them are unrealistic, but the sustainable use of resources they practice is an important contribution to nature conservation (Berkes, 2012; Guidelines for Considering Traditional Knowledge, 2014). However, Indigenous Peoples have only limited possibilities of taking part in the processes of making decisions with regard to development and play there a marginal role.

There is rich literature on Indigenous Peoples and their role in mitigating climate change. Among the most important publications one may list D.J. Nakashima et al. (2012), which contains a comprehensive summary of published research regarding the possible input of traditional/Indigenous knowledge into the studies on global climate change, including observations, influences and potential avenues of climate change mitigation; F. Berkes (2012), which analyzes the significance of Indigenous/local knowledge used in tandem with modern scientific ecology as well as its importance for Indigenous groups in the context of politics and culture; Guidelines for Considering Traditional Knowledges in Climate Change Initiatives (2014), which is a compilation of information facilitating understanding of traditional knowledge in relation to climate change, designed for US communities and institutions; G. Raygorodetsky (2017), which uncovers connections between Indigenous cultures and their lands – and how such knowledge and practices can become a cornerstone for developing global climate change resilience; and R. Pierotti (2011), which analyzes
such topics as ecological knowledge of Indigenous peoples and the areas where it has advantages over Western ecological knowledge, evolutionary philosophy that focuses on various approaches to communities and connections existing among different living entities, the need to understand relatedness in spiritual and biological creation; and a careful comparison of traditional/Indigenous knowledge with evolutionary ecology. All these publications point to the crucial role of Indigenous knowledge in the preservation of nature and biodiversity and in the fight against climate change. Some publications refer to the legal remedies (such as litigation) in the combat against climate change but that are still in close connection with Indigenous knowledge which may be considered a source or a component in shaping such remedies. Here one can add J. Koppel Maldonado, B. Colombi and R. Pandya (eds.) (2014), which discusses the impact of climate-related problems on the US Indigenous communities, such as deforestation, degradation or loss of whole ecosystems; loss of traditional knowledge, food security and traditional foods; shortage of water, permafrost thaw and loss of Arctic sea ice; as well as the most important ways in which tribal communities and programs react to the changes in their environments or R.S. Abate and E.A. Kronk (2013), which analyzes the impact of climate change on Indigenous Peoples around the world, the resulting challenges and threats as well as legal resources available to Indigenous Peoples to face such challenges. Authors of these publications refer to various practices of Indigenous Peoples that contribute to climate change prevention and mitigation such as using their Indigenous ecological knowledge or practices contributing to biodiversity.

SELECTED VENTURES IN THE AREA OF CLIMATE CHANGE MITIGATION

Climate change and diminishing biodiversity are counted among the greatest threats to the whole Earth, to the populations of individual countries and to Indigenous Peoples in particular because such change endangers implementation of human rights, especially in the case of such vulnerable marginalized groups. Least guilty of the environmental damage
and resulting climate changes, Indigenous tribes are the first to be affected by these factors and feel them most acutely. Projects or operations intended to mitigate the effects of climate change frequently limit the human rights of Indigenous Peoples further, such as by creating preservation areas or constructing large renewable energy projects, especially hydroelectric structures (UN Special Rapporteur on the Rights of Indigenous Peoples confirmed that Indigenous Peoples are victims of nature conservation (Eisen, 2016)). Projects of this kind are frequently implemented on Indigenous lands, yet sometimes they are not preceded by consultations, nor is free, prior and informed consent usually obtained from the inhabitants (Delivering on Paris Promise). In some cases, the projects have resulted in Indigenous Peoples being displaced from their traditional territories. A few representative examples will suffice to show this process. They concentrate on renewable energy projects, as one of the strategies to mitigate climate change is to cut consumption of fossil fuels by moving to alternative forms of energy and improving energy efficiency. The cases were chosen because they showcase the negative effects of climate change mitigation measures on Indigenous Peoples (in this case the Saami). While the first one was very publicized, the second one is probably less known. They also indicate how relevant such measures still are as the examples below are divided by about 40 years but the crux of the problem remains more or less the same.

HYDROPOWER – THE ALTA RIVER

The Norwegian Water Resources and Energy Administration, a power development government agency with jurisdiction over the Alta dam construction, began developing plans for this project at the beginning of the 1960s. The specifics of those plans were unclear as state agencies dealing with such undertakings were afforded considerable secrecy. The first information reached the public accidentally in the mid-1960s, when a Saami teacher Trygve Lund Guttormsen from Masi came across maps of his village during his visit to a regional engineering office in Narvik (Briggs, 2006).

In 1978 it was announced that the Norwegian Water Resources and Energy Directorate was planning to dam the Alta River (Finnmark, north-
ern Norway) and construct a power plant there. The Alta had been traditionally used by the Saami, the Indigenous People of Europe, as salmon-fishing grounds; it was also within their reindeer grazing lands. As the project threatened disruption of these traditional occupations and might lead to resettlement of two Saami villages at risk of being flooded, many Saami became involved in organizing coalitions to stop the construction on the river. Several of these organizations managed to gain outside supporters from a large number of other countries. The protests against the project included setting up camps around the construction site and blocking machines and hunger strikes in front of the Oslo parliament; when the efforts were unsuccessful, a number of activists chained themselves at the construction site. However, the judgment of the Norwegian Supreme Court from 1982 gave the government the right to build the dam and power station despite the Saami opposition, and the project was finished in 1987. Although unsuccessful, the Alta protests drew international attention to the matter of environmental rights of Indigenous Peoples, which ultimately led to the 2005 Finnmark Act, expanding the rights of the entire Finnmark population over the country’s property (The Alta Dam Controversy, http://www.environmentandsociety.org/tools/keywords/alta-dam-controversy).

In this context, the Saami raise the fact that energy produced by dams is not clean; the cost to the environment is disruption of the migration routes of reindeer and salmon. Besides, dam building causes flooding of Indigenous lands and destroys highly biodiverse river valley areas. Paradoxically, though hydroelectric projects are to mitigate the results of climate change, they worsen the situation of local Indigenous Peoples (Abate & Kronk, 2013). As Fikret Berkes (2012) points out, from the Indigenous tribes’ point of view preservation of biodiversity signifies “preventing large-scale destruction (hydroelectric development, mines, large ranches, and so on) and conserving certain “acceptable” levels of biodiversity. Such a view of biodiversity does not preclude practices of shifting cultivation for the markets, small-scale cattle ranching, selective logging for commerce, and subsistence and even commercial hunting”.

The dam had a significant social impact on the Saami, whose cultural identity, clearly differentiating them from the culture of the Norwegian
population, was strongly rooted in the centuries of reindeer herding, even if at that time only a fraction of the Saami community in Alta-Kautokeino actively practiced it. As the Alta dam endangered one of the last northern routes of reindeer migrations, it also posed a threat to Saami identity. While the actual damage is hardly quantifiable, the extent of Saami opposition to the project, including protest actions and reports demonstrating the significance of the river and the surrounding areas for the Saami, made it abundantly clear that the dam was seen as an intrusion into their ways of life (Briggs, 2006).

What the case of the Alta dam demonstrated was the way in which top-down, narrowly technocratic decisions can antagonize local and Indigenous populations who, feeling marginalized, form an opposition to the project which they might have accepted if approached differently. The discussions on the issue revealed that the State authorities were persistently unwilling to publish or consider any data regarding the social and environmental effects of damming the Alta, using scientific research selectively to support their point of view while suppressing or ignoring both traditional knowledge of the local Saami and scientific findings that contradicted the official standpoint. As the warnings of the Indigenous Saami residents of the area remained unheeded, and the local residents were kept out of the process, the resistance increased while the misleading research aimed at supporting the project was perpetuated as well (Briggs, 2006).

MARKBYGDEN WIND FARM

The construction of the largest wind farm in Europe in Markbygden area west of Piteå in Northern Sweden by a privately owned Swedish company, Svevind will have a serious impact on the Saami people and their livelihoods as it will restrict the movement of reindeer herders and pose a danger to the herds themselves. The wind farm is to include 1101 turbines installed over an area of approximately 500 km² (Markbydgen, 1101). However, 450 km² of this territory are traditional Saami reindeer herding lands (Large-scale Wind Farm in Saami reindeer land, online), which means that the farm will severely encroach upon reindeer pastures
belonging to Östra Kikkenjaur Saami Community (Waara, 2017). Wind parks will be no longer suitable for grazing as turbine-generated noise scares animals, and significant parts of traditional Saami pastureland will be fragmented and blocked by maintenance infrastructure and the 800-kilometre stretch of the access road. The loss of territory will be compounded by the fact that the energy produced by the Markbydgen farm is to be sold down south, in Europe, instead of helping the local market (Sami Reindeer herdres threatened by green energy projects 2019). The President of the Saami Parliament, Ingrid Inga, stated: “[w]e’re not against wind power – but we are against big wind farms like Markbydgen because they affect the reindeer business – the local Sámi herdres will lose about a quarter of their winter grazing land. That’s really reprehensible from our point of view” (Burgess, 2010; Szpak, 2019). She explained that reindeer herdres involves moving herdres from one seasonal pasture to another over the year, often across long distances. This is made progressively more difficult by the growing demands that the modern economy makes on these territories, which in turn can put an end to traditional Saami occupations (Large-scale Wind Farm… online).

As the Saami raised their concerns that the Markbydgen project may cause an infringement or violation of their rights, the Swedish government took a stance that combating climate change is a subject of national interest and thus takes precedence over the potential damage to reindeer husbandry although the latter is the main livelihood of the local Saami community (Stoyanova, 2013; International Work Group for Indigenous Affairs, 2016). Historian at the Centre for Sámi Research in Umeå, Patrick Lantto states that many people consider reindeer husbandry as potential obstacle to development in the area of northern Norway (Large-scale Wind Farm… online). However, climate change and loss of biodiversity – while being a threat at national and international levels – are among the greatest risks faced by Indigenous Peoples. In the cases of marginalized, vulnerable groups such as Indigenous Peoples, human rights are particularly threatened and undermined by climate change: although least involved in causing this negative process, they are the first ones who dramatically suffer the consequences (Havemann, 2016; Climate Change, 2007: Synthesis Report; Szpak, 2019). When investments in renewable
energy projects encroach upon reindeer pastures, the authorities tend to ignore the Saami rights and interests so that – paradoxically – both climate change and attempts to mitigate it threaten Saami human security, livelihoods, and development.

All this once again shows that hydro and wind-energy are not as clean as the proponents have promised. The outcome in these two cases is that Indigenous Peoples “cannot hope to preserve their identity, culture, and mode of subsistence” (Dieu, 1996) which are very often sacrificed at the altar of modern development and climate change mitigation. Climate change mitigation is a noble goal, and essential to humanity’s survival, but activities undertaken within its framework should be implemented with the free, prior and informed consent of Indigenous Peoples. The free, prior and informed consent is a consent given as a result of, for instance, good-faith consultation and participation. Such a consent must be offered freely without compulsion, intimidation or manipulation, and reasonable amount of time should be given to Indigenous Peoples so as to enable them to formulate their opinions (Goldberg & Badua, 2008; Powys Whyte, 2014; Szpak, 2019).

**RELEVANT INTERNATIONAL JURISPRUDENCE**

What are the relevant rules of international law and jurisprudence with reference to this? The most important international legal regulations in this regard are the *ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries* (1989) and the *UN Declaration on the Rights of Indigenous Peoples* (2007). *ILO Convention 169* constitutes a legally obliging treaty, but the *UN Declaration*, on the other hand, is of a recommendatory character as it is a UN General Assembly resolution. This does not change that fact that the great majority of the Declaration’s regulations mirror customary international law (above all an obligation to attain Indigenous Peoples’ free, prior and informed consent) (Heinämäki et al., 2017), and strengthen the rights of Indigenous Peoples, already established in other human rights conventions and in the decisions of international human rights treaty bodies. All these documents further Indigenous
Peoples rights and, if properly implemented, would allow them to exercise their right to self-determination. Taking into account the subject matter of this paper, it is worth pointing to the most relevant and specific provisions of these documents. After that the author will examine the interpretations of these standards (or customary international law mirroring them) made by the international courts and treaty bodies.

First of all, there is an obligation provided for in article 7 (3) of the ILO Convention 169 that governments should ensure that all relevant studies are conducted – with the Indigenous Peoples concerned involved in the process in order to evaluate the impact the planned development activities will have on their environment, culture and spiritual life. The outcomes of such evaluation should be treated as fundamental criteria for the implementation of such projects. The aim of such outcomes is to ensure that when the central authorities grant concessions on the Indigenous territory that may limit the Indigenous land rights, this does not threaten the Indigenous Peoples’ survival (Inter-American Court of Human Rights, Kichwa Indigenous People of Sarayaku v. Ecuador 2012, paragraph 204–205; Szpak, 2019).

ILO Convention 169 stipulates that the peoples concerned are entitled to make decisions as to their own priorities regarding such development because they affect their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use; they also have the right to control their own social, economic and cultural development to the maximum possible extent. Additionally, they shall be included in formulating, implementing and evaluating national and regional development plans and programmes which may have a direct impact on them.

In accordance with the UN Declaration, Indigenous Peoples are entitled to participate in the process of making decisions in matters that may affect them. Moreover, this should be implemented through their own representatives chosen by themselves and in line with their own procedures; they are also entitled “to maintain and develop their own indigenous decision-making institutions” (article 18). Article 32 (2) and (3) provides 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 connection with the development, utilization or exploitation of mineral, water or other resources”. States must also ensure that effective mechanisms that provide just and fair redress for activities affecting Indigenous lands are available as well as take proper measures in order to mitigate negative environmental, social, economic, cultural or spiritual impact of such projects (Szpak, 2019).

Other pertinent regulations comprise the *UN Declaration* articles: 20 (1) on the right of the Indigenous Peoples to safely enjoy “their own means of subsistence and development, and to engage freely in all their traditional and other economic activities”; 26 (1) referring to Indigenous land rights; 29 (1) on the right to “the conservation and protection of the environment and the productive capacity of their lands or territories and resources”; and last but not least, article 3 on the fundamental right of self-determination. If these provisions were implemented, it would help ensure to a large degree that Indigenous Peoples are able to survive and develop following their own customs, needs and aspirations. Indigenous Peoples’ rights may not be perceived as a factor hindering the State’s economic development or an obstacle to environmental protection (Szpak, 2019).

In the light of these regulations, let us consider the most significant conclusions of the international jurisprudence as well as rulings of the bodies monitoring observance of human rights treaties. It is notable that the Inter-American Court of Human Rights issued a ruling that the State shall adopt any measures necessary to ensure that newly established protected areas do not impede the process of returning Indigenous lands to their original owners (Inter-American Court of Human Rights, Xákmok Kásek Indigenous Community v. Paraguay 2010, paragraph 337 (25)). Hence activities aiming at protection of the environment or mitigation of climate change should be adapted to Indigenous People’s use of their ancestors’ lands. Besides, the individual communication to the UN Committee on the Elimination of Racial Discrimination proclaims that every State must have the consent of Indigenous communities before commencement of any projects to extract natural resources on Indigenous lands and to protect the rights of Indigenous Peoples over business and economic interests (Individual Communication, Lars-Anders Ågren et al.
versus Sweden, point 5.10; Szpak, 2019). This conclusion definitely applies to environmental actions relating to combating climate change.

The African Court on Human and Peoples’ Rights ruled also that the Ogiek population being constantly denied access to the Mau Forest as well as their eviction from there cannot be considered necessary or proportionate in the light of the purported goal to preserve the natural ecosystem of the Mau Forest (African Court on Human and People's Rights, African Commission on Human and People's Rights v. Republic of Kenya (African Court on Human and Peoples Rights, Ogiek people case, 2017, point 130). For centuries, Mau Forest has been a traditional land of the Ogiek hunter-gatherer tribe; and their sacred sites and the foraging areas are located within this territory (ibidem, points 145, 155, 158). Therefore, environmental protection cannot serve as a justification to deny Indigenous Peoples access to their territories.

What needs to be evoked here is the verdict of the Inter-American Court of Human Rights in the case Saramaka People v. Suriname. The ruling makes a correct distinction between situations demanding free prior and informed consent and those where consultations are sufficient. Two criteria are proposed to distinguish these situations: the scale of the project and its potential impact on Indigenous territories. The Court stated that it is necessary for States to obtain the consent of Indigenous and tribal peoples if the former want to conduct large-scale development or investment projects with a significant impact on the latter’s right of use and enjoyment of their ancestral territories (paragraphs 136–137). This decision can be construed as a right to veto such projects.

A similar conclusion was reached by the African Commission on Human and Peoples’ Rights in the Ogoni people case (Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria 2001, paragraph 53). Crucially, consent in such cases has to be conveyed in a way compatible with the practices and customary laws of relevant Indigenous Peoples (Inter-American Court of Human Rights, Saramaka People v. Suriname, paragraph 137; Inter-American Court of Human Rights, Kichwa Indigenous People of Sarayaku v. Ecuador, paragraph 180; African Commission on Human and People's Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group
The UN Human Rights Committee also ruled that a State may legitimately take steps aimed at promoting its economic development. The Committee’s decision stressed, however, that the rights which are protected by article 27, that is, the minorities’ rights to enjoy their culture cannot be considered secondary to economic development of the State. Thus, the freedom of State’s activities in this aspect should be proportionate to the obligations that emerge from article 27. The Committee stated that any measures which could deny a community the right to enjoy its own culture are in violation of article 27, while measures that impact the livelihood and way of life of individual members of the affected community would not necessarily mean a denial of the rights as defined in article 27 (Human Rights Committee, Poma Poma v. Peru, 2009, paragraph 7.4; Szpak, 2019). These conclusions can be applied to the Saramaka People case where due to the scale of the impact on the Indigenous territory it was not only consultations but the consent of the affected Indigenous community that was considered necessary.

The interpretations of universal standards regarding Indigenous Peoples made by commissions and regional courts reflect standards that should binding for all States, in part mirroring State’s obligations arising from the ILO Convention 169, UN Declaration on the Rights of Indigenous Peoples or general human rights treaties (such as e.g. Indigenous Peoples’ right to self-determination or their right to enjoy their culture).

CONCLUDING REMARKS

All of the judgments and observations included in this paper indicate that the environmental protection and actions undertaken in the framework of climate change mitigation may not serve as a justification for violating the rights of Indigenous Peoples, in particular their land rights and the right to maintain and develop their culture. Indigenous Peoples’ rights and interests may not be ignored and sacrificed at the altar of combating climate change. If mitigation measures are not to affect Indigenous com-
munities negatively, such schemes have to be developed by States in full and effective collaboration with these vulnerable communities (United Nations Permanent Forum on Indigenous Issues online).

In the author’s opinion, it can be even said that consent of Indigenous Peoples ought to become a sine qua non condition whenever any enterprise is planned on Indigenous lands, particularly in the case of energy projects and others with similar potential for adverse impact. However, at present the international community can only aspire to the level of political and legal development when genuine consent of Indigenous Peoples has become a requirement. This by no means involves a return to a pastoral way of life but rather empowering Indigenous Peoples so that they can make decisions regarding questions that affect their lives (Watters, 2001–2002).

Moreover, Indigenous Peoples have centuries-long experience in self-governing and are fully conscious of the ways and means by which they are able to either mitigate broadly understood consequences of climate change (Kari Oca 2 Declaration 2002). This is related to another conclusion that may be drawn from the above considerations: that there is an inseparable link between Indigenous Peoples and their role in mitigating climate change and preserving natural biodiversity and such rights of Indigenous Peoples as rights to lands and natural resources and the right to food security. The protection of Indigenous territories and natural resources located there is very closely connected with the protection of the environment and biodiversity. Indigenous Peoples are actually an indispensable active element of the ecosystems on their lands, and thus they may help improve the resilience of these ecosystems. Indigenous Peoples are also able to interpret the climate change effects and react to them in creative ways, combining traditional knowledge with different technologies in search for solutions that can provide also large-scale means of dealing with impending transformations. For example, farmers in Bangladesh turned to making floating vegetable gardens to protect their livelihood source from increasingly frequent floodings, while Vietnamese seaside communities participate in planting thick mangroves that will act as coastal barrier diffusing waves during tropical storms. In Latin America and the Caribbean, indigenous communities move their homes and fields
to locations less at risk from extreme or adverse weather conditions. For example, as Guyana savannah is afflicted by recurring droughts, during such periods the Indigenous Peoples move to forest homes, and began to use floodplains (which are usually too wet for any farming) to plant cassava, one of their staple crops (UN Permanent Forum on Indigenous Issues online).

Here one may mention the term Indigenous/traditional ecological knowledge which is “a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmissions, about the relationship of living beings (including human) with one another and with their environment” (Havemann, 2016). Consequently, Indigenous knowledge constitutes observations of the environment and natural resources accumulated over centuries. Indigenous knowledge provides an important source of information on climate change and its impacts and also on ways of mitigating it as well as on the conservation of the environment and biodiversity. Indigenous knowledge may also provide empowerment for local communities and “improvement of the knowledge base for decision-making” (Berkes, 2012; Maldonado, Colombi & Pandya, 2014). As Paul Havemann (2016) rightly claims, “sound environmental stewardship is not something that needs to be learned from scratch” as the Indigenous Peoples all over the world have gathered and developed their knowledge for generations. Those practices have for too long been neglected or eradicated and are still under threat today, yet they may teach us how to restore the ecological balance. Hence, they have to be included in the strategies to combat climate change. But so far the global community is not doing enough to mitigate climate change mostly conducting only selective mitigation activities, often undertaken at the expense of Indigenous Peoples, and neither the needs nor the contributions of Indigenous Peoples have received adequate consideration. Indigenous Peoples believe that they must become meaningful, centrally involved partners i.a. in research, development of technologies and international agreements (Tauli-Corpuz & Lynge, 2008). A human-rights and or Indigenous-rights based approach to combating climate change is needed. Many strategies that can be effectively applied in order to mitigate climate change, including sustainable use of land and resources, sustain-
able agriculture, sustainable forest management, protecting and expanding GHG sinks and reservoirs as well as introducing small, renewable energy systems managed by local communities. If implementation of these strategies takes into account both the ecological dimensions of climate change and the dimensions of environmental justice, equity and human rights, it will also offer a way of protecting and preserving Indigenous Peoples’ lands (Tauli-Corpuz & Lynge, 2008). Indigenous Peoples have to be regularly consulted by policy makers, scientists and the entire international community so that the traditional knowledge and experience of Indigenous Peoples is incorporated in studies and decisions regarding these matters (Tauli-Corpuz & Lynge, 2008).

To succinctly summarize the above considerations the author would like to offer some global strategy recommendations that are informed by this study:

– climate change mitigation measures may not serve as a justification for violating the rights of Indigenous Peoples;
– if such measures are not to affect Indigenous communities negatively, such schemes have to be developed by States in full and effective collaboration with these vulnerable communities;
– consent of Indigenous Peoples ought to become a sine qua non condition whenever any enterprise is planned on Indigenous lands, particularly in the case of energy projects and others with similar potential for adverse impact. The same should apply to enterprises undertaken not on traditional lands but which still impact traditional lands and resources;
– Indigenous/traditional knowledge provides an important source of information on the climate change and its impacts and also on ways of mitigating it. Such knowledge should be included in the strategies to combat climate change. Indigenous Peoples should be regularly consulted by policy makers, scientists and the entire international community so that the traditional knowledge and experience of Indigenous Peoples is incorporated in studies and decisions regarding these matters.
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