

Right to a Name and its Legal Inclusiveness
in protection of
the Indigenous Peoples` Identity and Culture

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LL.M. Capstone Thesis

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List of abbreviations

1. ACHR - American Convention on Human Rights
2. CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
3. CID – Cultural Identity
4. Coll.rN/T - Collective right to Name/Title
5. CRC - UN Convention on the Rights of the Child
6. ComID – Community Identity
7. ECHR - Convention for the Protection of Human Rights and Fundamental Freedoms
8. ECmHR – European Commission of Human Rights
9. ECtHR - European Court of Human Rights
10. ECOSOC - The Economic and Social Council
11. FrCPNM – European Framework Convention for the Protection of National Minorities
12. EChRML - European Charter for Regional or Minority Languages,
13. GrN/T – Group right to Name/Title
14. HR – Human Rights
15. HRCnc - Human Rights Council
16. HRCmt - Human Rights Committee
17. IACtHR - Inter-American Court of Human Rights
18. IC – Indigenous Culture
19. ICCPR – International Covenant on Civil and Political Rights
20. ICID/Ind.CID – Indigenous Cultural Identity
21. ICs – Indigenous Cultures
22. ID – Identity
23. IHRL – International Human Rights Law

24. IL– International Law
25. In.Rs – Indigenous Rights
26. Ind.ID – Indigenous Identity
27. Int.L/ Int.Lw – International Law
28. IPRL/IIPRL – [International] Indigenous Peoples` Rights Law
29. Ips – Indigenous Peoples
30. IpsID – Indigenous Peoples` Identity
31. IpsR – Indigenous Peoples` Rights
32. N/T – Name/Title
33. NMn/NMns – National Minority/-ies
34. rN/T – right to Name/Title
35. rNPL – right to Name of Place
36. rSDt – Right to Self-Determination
37. sDt – Self-Determination
38. sIP – self-identification
39. UN – United Nations
40. UN HRC –
41. UNDRIP – The United Nations Declaration on the Rights of Indigenous Peoples
42. UNCAT – Covenant Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment
43. UNPFII –United Nations Permanent Forum on Indigenous Issues

INTRODUCTION

How and why the right to a tile/name and its legal inclusiveness protects indigenous people's identity and culture?

(a) Why focus on right to name (rN/T) and its legal inclusiveness of indigenous people

Name is an identity and can do identity shaping. There are so many indigenous peoples over the world with distinct identity, common heritage of the whole humankind, but cannot fully and equally enjoy all benefits of current IL system. Right to name is one of the ‘forgotten’ rights since outset. Current little accommodation of it in the international law is not satisfactory in several aspects: doesnot respond to its dynamic, multi-actoral, multilayered, multifunctional nature was not regarded duly to give it autonomus status. Therewith the location of its unified legal regime has not been precisely defined. For its dichotomy of individualism and communalism legislative and practical problems remain open. But, times flows and disappeared or deliberately changed names is change if identity, lost of generations. The common problem of IPRL for legal status mechanisms dispersed throughout several thematic and regional texts. In addition, the common lack of time-sensitivity and differentiated in IPRL protection in very disproportion to the vulnerability, distinctiveness of the particular IPs and to the speed of extinction or assimilation of many of them.

(b) The jurisdictions areal of the thesis

As the theme covers problems of rN/T of IPRs in general and regional level, the purview is determined with conventional and soft-law sources regulating the discussed right. It varies from thematic, universal and regional conventions, their analyses in doctrinal sources, soft-law, which is the one of the main locomotive of the IPRL. Along the legal sources, for the role of the common wave of changes in global civil rights movements, research refers to their conclusions and related hypotheses on the indigenous right and to the nature of the name, naming and right to name has been put in the research areal.

(c) Methodology and Scholarship

Putting into center the problems of conceptualization of the right with evolving trend, the teleological-originalist approach to the content of the document had been employed primarily. The differences are observable both within initial emerging period of IHRL and multi-levelled modern IHRL, the comparative analyze is applied as well. In addition, as the concept changes are expressed in changes of applied mythologies and reasoning, the wide use of consensus-referred legal tactic, the critical analyze of methodological grounds were at stake as well. Moreover, the inherent link of the studied field, the nature of the right in question take the researcher's panopticon to the extra-legal areas to portray the relevant broader picture of the issue with indispensable elements of socio-political, historical-cultural character. The aim to finalize the thesis with practical contributions, not merely satisfying the analyses or description of the problems, methodology had another additional component of comparative analyze. Having regard the institutional-structural problems were relevant, the practical issues concerning components are

mostly based to approach focusing to search and provide as much as possible analytical, empiric grounds for the applicability of the alternatives effectively functioning within the system studied. The scholarship are leading and widely-cited authors, actively participating in emerging conceptualization of IIPRL. As well as, the recent publications are referred therein. The case-law of different international courts, the guide documents on their practice is also was guiding sources.

(d) Road map to Thesis

Research consist of 2 Chapters. First sub-chapter devoted to *conceptual framework*, the notion of name and its dimensions at all and for the law, in particular for indigenous peoples rights` law. The following sub-chapter is on legal regime of the right to name, its historical background and thematic, regional, universal legal regime. The second Chapter contains critical view on the inefficiency of the developments` speed. It will touch the inefficiencies discussed throughout the thesis. They lead to conclusions and the recommendations on them which in short can be classified as: time sensitivity for the right to Name of IPs, instrumental safeguard for assessment of infrastructural-sistematic violation against IPS in regulation of right to name, which is recommended with presumption of assimilation based to ulterior intention/predominant test for this. The practical project is appended. For terminology follow the Glossary

CHAPTER 1. INTERNATIONAL FRAMEWORK FOR RIGHT TO TITLE/NAME AND ITS LEGAL INCLUSIVENESS FOR PROTECTION OF THE IDENTITY AND CULTURE OF INDIGENOUS PEOPLE

1.1. CONCEPTUAL FRAMEWORK FOR THE RIGHT TO A TITLE/NAME

(Why it designed for and have a role in protection?)

1.1.1. What does name mean for Indigenous individuals and people?

(different dimensions and aspects)

(a) Name – powerful sign of an anthropomorphic organism

1. The name, onomastically is a product of historical, social development and carrier of national culture and self-identity, ethical-aesthetic norms of particular epoch¹, a cultural reality.² Being symbolic of attitudes and ideas;³ and therefore being more than mere signing, it expresses its carriers` distinctiveness, personal and group *identity*; exposes their worldview, manner of thinking,⁴ imagination of surroundings, as well as their morals, emotional link (*and its*

¹ Вагапова Фирдаус, [Историко-лингвистический анализ личных имен нижегородских татар XX века, КГУ](#). Vagapova Firdaus, [\[Historical-linguistic analyse of personal names of Nijegorod Tatars in XX century\]](#), 2002, Kazan State University, **pg 3** (Russian orig.: “Личные имена, как и имена нарицательные, являются продуктом исторического, общественного развития и несут в себе черты национальной культуры, национального самосознания, этико-эстетических норм той или иной эпохи. В личных именах нередко раскрываются стороны далекой истории народа, его обычаев, нравов, образа мышления, языковых реликтов, которые невозможно получить только путем изучения исторических и собственно лингвистических материалов [Саттаров 1982: 118]. Географическая среда, как известно, служит базой, на которой развивается культура народа во всех ее разновидностях”.)

² *(in Russian)* ГИЛЬФАНОВА Фарида Харисовна, [АНТРОПОНИМИЯ СИБИРСКИХ ТАТАР В ЭТНОЛИНГВИСТИЧЕСКОМ АСПЕКТЕ \(НА МАТЕРИАЛЕ РУССКИХ АРХИВНЫХ ДОКУМЕНТОВ XIX - XX вв.\)](#), [Gilfanova Farida Kharisovna. [Anthroponymy of the Siberian Tatars in ethnolinguistic aspect \(on the material of Russian archival documents 19–20 centuries](#), Kazan], 2010, **p.3**,

³ [The Relationship between Indigenous Peoples and Place Names](#), 16.2.16, ICT

⁴ Supra note 4, Sattarov cited by Vagapova,

continuity) to particular land⁵, ancestors, family/nation history, tradition(s),⁶ belief in future generations, indigenous knowledge, values, religion, spirituality.⁷

2. It accelerates cultural and linguistic competency and landscape⁸. Being, an integral unit of particular languages,⁹ - anthropomorphic organisms, whose/those vitality depends on communicative behaviours, - for such *linguistic basis* NAME is *prima facie* subject of culture and *language rights* regime.¹⁰

(b) Power of name: constructor of identities:

3. But not limited thereto: as ‘meaning’ is constructed through language, words not only reflect, but shape identity; and ‘identities do not exist before they are constructed’.¹¹
4. As [indigenous] identity has its existential manifestation both within and ‘out’ of the individuum, - **through difference** in relationship with others, it is a ‘combination of self-identification and perceptions of others’. Consequently, it’s complex, ‘multifacet’, multilayered, dynamic, discursive, evolving nature.¹² Weaver classifies three, inextricably linked facets – *self-, community-, external- identification*.¹³

⁵ Supra note 7,8 (Also: Bulletin of the UN Group of Experts on Geographical Names/UNGEGN/No51:*National Names Authorities - structures and operations*,2016,

⁶ **Supra note 4; Stolen Lives:** [The Indigenous Peoples of Canada and the Indian Residential Schools, Ch.1.Language, Names, and Individual Identity](#)

⁷ A.Arthur. [Africa's naming traditions: Nine ways to name your child](#), BBC, 30.12.16; E.Waugaman, "[What's in a Name?" Series, Names and Identity: The Native American Naming Tradition, Native American naming traditions can enrich your sense of self](#), 2011

⁸ H.Beyer, et al, *Critical toponymy: Place names in political, historical and commercial landscapes*, 2017.

⁹ L.Mackenzie, "[What's in a name? Teaching linguistics using onomastic data: Supplemental Material.](#)" *Language*, 94:4, 2018

¹⁰ S.Mufwene, [Colonisation, globalisation, and the future of languages in the twenty-first century](#), *IJMS*, 2002

¹¹ Weaver, p.242, [cit.8-9]

¹² Ibid, p.243

¹³ Ibid, p.240

5. However, there is no consensus about indigenous *cultural identity*.¹⁴ Nevertheless, through their common concept to distinct self-perceive and multicomponent practice,¹⁵ *Individual(s)* with(in) their *Group(s)* organize and crystallize some concept of *cultural identity*. **Again, identity, is not necessarily limited to areal of culture.**¹⁶ For its specific multi-componential nature, CI can be just most-encompassing construction for Ind.ID; I would say, ‘*artiste vedette*’, within composition’ of ID of particular group.
6. ***Self-perception*** is the key element of ID - both for individual and community.¹⁷ However, external oppressional-assimilation (non-native perspective) has been historically long-lasting, deeply-rooted, institutionalized and therewith had been vastly deleterious. Inasmuch as it have landed chilling-effect on ***self-affiliation, self-proud*** for ID. On other hand, oppression catalyzes IPs` defensive resort to strong accentuation on to collectivity, ***cultural proud*** against domination.¹⁸

(c) Power of naming

7. Accordingly, for its power of shaping¹⁹, ***name*** has a powerful role for constructing of identity(ies).²⁰. Even it holds most central²¹, inseparable²² specifics for identity, ***both personal and group***. Hence, labeling has vast opportunities, power to impact ***discourse***, “denoting

¹⁴ Supra note 1, O.Chiriboga

¹⁵ Ibid: not necessary to be overlapping or identical, esp. in background of chilling/shaming effect of racism.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid, p.244, Note 35, Balilla

¹⁹ D.Merskin, *The S-Word: Discourse, Stereotypes, and the American Indian Woman*, Howard Journal of Communications; p.349 (also: note 18, Retzlaff)

Citation: Canadian Journal of Native Studies, 25:2, 2005, pp. 609-626

²⁰ P.d’Errico, [Native American studies: A note on names](#), 2005

²¹ Contreras et al v. El Salvador, Judg.31.8.11, IACtHR.

²² T.H.Edie, [WHAT’S IN A NAME? INDIGENOUS LANGUAGES AND CULTURAL DIVERSITY IN THE DIGITAL AGE](#), 2019

personality', (re)construct and (re)affirm, **define** people and groups.²³ In d'Errico expression, *"names can have great power, and the power of naming is a great power"*. Here, Weaver agrees with West: *"those who powerless to self-represent as complex human beings against the backdrop of degrading stereotypes become invisible and nameless"*.²⁴

8. Accordingly, in most societies name is positioned as central aspect of ID; and ID, in itself, is aggregator of *"strands of ancestry, community, culture, language and history"*.²⁵
9. Therefore, it has **political implications** (*"Labelling is a political act since labels include and exclude"*.Retzlaff), can help (de)legitimise,²⁶ or the othering²⁷ of certain action and groups
10. Unfortunately, in historical and socio-political practice Name could have been *deconstructive*. Also, own and others' reference to people *"shape not only their own perception but also other's view of who they are. Negative labels and implications can disempower groups through the creation of potent negative stereotypes and can thus be a powerful means of exercising social control and a tool to manipulate identities"*.²⁸

(d) Name is symbol of resist

²³ S.Retzlaff; D.Parkin, "The Politics of Naming among the Giriama, 1988, p.61

²⁴ Cited (16) by [Weaver](#): C.West, "The New Politics of Cultural Difference," in Out There: Marginalization and Contemporary Cultures, ed. R. Ferguson et.al, Cambridge, 19-36

²⁵ F.Varenes & E.Kuzborska, [Human Rights and a Person's Name: Legal Trends and Challenges](#), Human Rights Quarterly. 37. 977-1023, 2015, **p38**,

²⁶ Ibid, Parkin; Lynch, What's in a name? The politics of naming ethnic groups in Kenya's Cherangany Hills, Journal of Eastern African Studies, 2016, 10:1, 208-227

²⁷ J.Powell, S.Menendian, The Problem of Othering: Towards Inclusiveness and Belonging, *Othering and Belonging: Expanding the Circle of Human Concern*, 2016, Is.1,17

²⁸ Retzlaff, p.610

11. Having regard the historically vast usage of (de-)naming in political [assimilation] practices versus IPs, that is what, makes Naming issue particularly sensitive for vulnerable groups such as IPs. Accordingly, insist on self-naming is a sign of resisting - ‘a specific response’, conscious choice for self-identification and rejection of imposition, are fundamental to construction and affirmation of political and social identities.²⁹
12. **Hereby we have individual, communal/social, cultural, linguistic, socio-political facets of the N/T. Accordingly, rN/T constitutes a relevant subject of the private, family, child rights, non-discrimination, women rights, cultural rights. all these are inter-related and co-exist.**

(e) Name is a dignity

13. **Dignifying** – a priori appears as an inherent element, because ID (individual and collective) here is at stake and it has fundamental link - ‘*intimacy and interconnectedness*’ with/to dignity.³⁰ It is in the very hearth of issue. Identification with its all dimensions (self-, collective-, extra-) is interactively (re)-shapes individual ***self-estimation and collective proud*** which *per se* are intertwined fibres of the dignity. Name is a first thing a person/community have a freedom to have a say on it. Therefore, the mentioned basket of dimensions, first of all, include to have a say on such primary issue as a name of your own ID, to feel and act free and proud both for your ID and for the fact of being able to act/feel such dignity-respected manner. Herewith dignity matters. Not to feel shame, distress, fear, inequality (*or any of things those*

²⁹ Supra note, 18, Retzlaff, It therefore has *increased attention of ethnic identifiers, ethnic migration, amalgamation, as it cited by Lynch, supra note 20: Comaroff and Comaroff, Ethnicity, Inc.; Hodgson, Being Maasai, Becoming Indigenous; Lynch, I Say to You*

³⁰ [D.Louw, Identity and dignity within the human rights discourse: An anthropological and praxis approach, Verbum et Ecclesia, 35:2, Art.#876, 2014](#)

are respect diminishing and disadvantage-imposing in the eyes of person`s and third parties), neither internally nor externally, not in and by self, nor in group level for independently having, defining, expressing your name and ID. Herewith dignity matters.

14. Having into account the value and nature of fibers that identity draw together (*Varennnes*,36), nature of name – being intrinsic to ID, the tragic and humiliating history of assimilation therefore accompanied intrinsically with naming policies³¹ identity-harming interference to naming cannot be in anyway modern world seen compatible to the sense of dignity, expressed in collective sense of the particular nation(`s individuals`).
15. The group/nation exists and is distinguished with and in name(s) firstly. Thus, it would be unacceptable to have others/third parties to have easy hand to interfere, to have a first or last, or decisive say on it, deprive people therefrom especially in modern times. The times of developing of IHRL/IPRL, times of high-techs and resources in possession of states to promote and provide preservation, (re-)vitalisation of IPs culture. Especially, after such a long development marathon that the international community/law run up, - though considerable slowly, hesitantly,³²) - particularly in last decades in so various directions, inc. IPRL.
16. In general, doing so with the ignoring attitude to *the dignity limb of the naming*, cannot per se avoid without implying disrespect, helpless, distress, shameful in eyes of her/himself, as well as of ancestors, present and future generations, anxiety, other dignity-degrading feelings (*compare: ECtHR standards on threshold of dignity degrading*). As N/T in all its aspects, inc.ID/CID is a substance for continuity, the moral responsibilities in front of past, present and future generations on ‘estafette’/‘passing a torch’ of cultural legacy, IPs` ID (*their self-*

³¹ e.g. L.BIGON, 2009, French practice of giving names of colonizing officers to new settlements1 streets, [Urban planning, colonial doctrines and street naming in French Dakar and British Lagos, c. 1850–1930](#). *Urban History*, 36:3, p.441

³² [Varennnes](#),[Kuzborska](#), 978,1022; [Mazel 152](#)

determination and others` respect thereto) doubles sense of duty, inc. a duty to hold sensitivity in respect of any harmful practices directly injuring ID and therewith the dignity. Having globally agreed about ICs as a common heritage of humankind,³³ any distress, shame for discrimination/disrespect, or for their extinction/lost is not 'isolated', rather than globally common. As the recent anti-racism protests leading to overthrow of slavery merchants monuments,³⁴ symbolizing the crystallized visibility of slaving memory and have being condemned in academic discussions³⁵, explicitly shows that, the generations of 'others/nonnatives' should non less concerned on the fact that, any act inflicting shame to particular group is and can durably be a shared 'legacy' of the common shame for their own direct [future] generations.

17. Despite discussible difficulties to direct attain of dignity concept for a group, the trend on the developments and recognition, even through individualization necessitates to focus on the issue to improve remedies into setting up more sophisticated remedies those **put into centre** of its approach this facet of identity too. It deserves to be regarded, as, IPs often have the wholist view with concept of dignifying/valuing themselves and outside world, inc. community and nature with its places inter-actively related. As Wong notes, IPs *give strong expression, more central role to cultural conversation*, values of relationship and community, where individual (and her welfare) are seen connected to other members and the whole group (and their welfare), in which Modern Western pluralistic societies comparatively more recessive.

³⁶The same to value of relationship to natural world, seeing it as their home³⁷, whilst modern

³³ Chiriboga

³⁴ A.Tidey, London removes slave trader's statue, launches review of other monuments, 10.06.20, EURONEWS.

³⁵ A.Araujo. Politics of Memory, Making Slavery Visible in the Public Space, Routledge, 2016

³⁶ D.Wong, (2012). Sustaining Cultures in the Face of Globalization. Culture and Dialogue. 2, **p.81**

³⁷ Ibid, (e.g. "...Mbuti hunter-gatherers of Central Africa.. regard the forest as sacred, the source of their existence, of all goodness. They talk, shout, whisper and sing to the forest, addressing it as mother or father or both, referring to its goodness and its ability to cure or "make good.")

Western cultures, also familiar to this value, but increasingly “*eclipsed by seeing natural world as a set of resources to be manipulated for sake of satisfying human needs*”; they may still appreciate view of ‘nature as a home for humanity’, but in regret for devaluation of same in themselves, find inspiration again in ‘naturalist’ communities.³⁸

18. Each nation lives in particular epoch with and in the names of itself, its members, places, and have distinct right to proud, and **belief in future generations. For IPs its of most sensitivity, as they became politically less-defendable**³⁹, become a minority population in a modern society, “*often strongly desire to maintain and impart their distinct social and economic structures, politics, language, culture, traditional lands, and beliefs to future generations.*”⁴⁰
19. The interferences to name have deleterious impact to ID of group, *its continuity*, at long end can put them face-to-face to extinction. IPs suffered historical from *ignoring attitudes*. Nowadays, international law with its mechanisms conceptualized in Ind.ID, inc. rN/T with less focus on dignity issues, lack of time-sensitivity, excessive-individualized, safeguarded insufficiently to meet IPs interests⁴¹ and its mechanisms, which is established after WWII, generally without participation of wide majority of IPs around globe, again mitigates their access to international justice for protection⁴² to (re)-shape *names* as an **complex, autonomous right** and binding effective remedy for it.
20. The fundamental substantive rights under notion and jurisdiction of which rN/T were attributed to and assessed by so far, did not specifically (i.e. completely, directly, and primarily) deal

³⁸ Ibid

³⁹ Anaya, sp.nt.64, Mazel, note 71

⁴⁰ V.Balilla, et al. Indigenous Aeta Magbukún Self-Identity, Sociopolitical Structures, and Self-Determination at the Local Level in the Philippines, **pg 2**, Journal of Anthropology.

⁴¹ Mazel, supra note 39

⁴² Sp.note 1, Chiriboga,

with specific issues of rN/T, serious strands (Varennes, Kuzborska) with serious implications in past, present and future

21. As the main concept of IPRL, including their rights to (Cultural) Identity has been formed hesitantly (sp.note 35), developed slowly and particularly rN/T remained “largely unaddressed”⁴³, and whichever protections have been established, they were *dissipated* under different rights in ‘labyrinth’ of different thematic, regional international (con)texts, *were not precisely defined and autonomously formulated*.
22. Whatever is addressed within different substantive rights perspective, was made incompletely, and very specific aspects - *time-sensitivity in face to extinctions, danger of naming (identification) to constitute an element of the ulterior intention to assimilation, existence of deeply-rooted (infra)structural problems, collectivity-sensitivity versus individualisation, the conceptualization with dignity-emphasize, remained non learned and emphasized*.

(f) Name in Time

23. *Historical parameter (time sensitivity)*: apart from cultural, linguistic, political, legal parameters, there can be noted that, for *time-perspective*, all material, oral, andromorphic, geographical ‘means’ to those names are attached, they have certain and different lifelong and can be subject of various interferences. Names, as a part of Ind.ID, heritage of all humankind, has very critical historical importance: carriers of continuity of ID/CID. As (i) the protection of IPsID has not yet duly protected, (ii) Name can easily be primary target of (de/r-)naming, historically integral part of assimilation process and (iii) in our days also can be a victim of

⁴³ [Varennes, Kuzborska](#), 978,1022

structural and other negligence of the states, (iv) being a part of extinction danger of Ind languages, IDs; (v) also, having regard the speed of general developments and Int.Lw particular mechanisms` opportunities, it can be considered as a subject of time sensitivity approach. Moreover, modern challenges made this issue more important to focus on this, as the globalization has especially destructive impact on IPs.⁴⁴.

1.2. INTERNATIONAL LEGAL FRAMEWORK of TITLE/NAME AND LEGAL INCLUSIVENESS OF THE RIGHT TO A TITLE/NAME

(How it protects)

1.2.1. Historical background

(a) Where we are now and how we come here

24. Overall view on development history of IPRL, in relation of the international developments and IPs problems (Ind.ID, rN/T within it), dialectically mutual impacts has been emphasized by scholars.⁴⁵ E.g., as S.Allen concludes that, modernity did not obliterated pre-modern IPs, rather than they adapt themselves thereinto, harnessed it, their modern identities “now constitute an amalgam of pre-modern and modern characteristics”.⁴⁶ He thinks, hampering of them by dominant societal groups lead to their fight for participation and legitimacy via “prising open its institutions at a supra-national level”, which consequently, made them active contributors and drivers in evolving and re-conception of modernity, re-shaping parameters

⁴⁴ Wong, David, **p.72**

⁴⁵ ALLEN, STEPHEN, [*The Consequences of Modernity for Indigenous Peoples: An International Appraisal*](#), *IJMGR*, 13:4, 2006, p.325

⁴⁶ Ibid, 340

and institutions of modernity, international civil society, modern IL.⁴⁷⁴⁸ Therefore, its fair claim that, to proceed to see them as “*peripheral to modernity discourses*” is unfair.

25. S.Allen emphasizes the emerge of the concept to representative government in a result of ‘*recalibration of sovereignty*’ and success of self-determination, “*a degree of leverage*” in international fora previously monopolized for States’s enjoyment. Despite he accepts “*fraught with theoretical and practical problems*” and failure of opportunity for IPs to enjoy of the supra-national level achievements to be integrated into national domains, he keeps claim that, these has granted them and can ensure to achieve equal access to modernity. Hoeover, the latter claim has strong challenges, especially in the face to his own claim on “fraughts” for IPRL, because of being non-satisfactory for interests of IPs, inaccessible particularly in practical sense.⁴⁹

26. But, how abovementioned improvements have been achieved? It occurred in the waves of vast dramatic changes throughout XX century⁵⁰. Mass changes and developments had occurred globally, particularly those in 60s, in political, social-cultural spheres⁵¹, art (esp. “revolutionary

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ See cited respectively, Chiriboga, Anaya, Mazel, Varennes, Yaksic

⁵⁰ Ibid, Anaya, sp. note 64, Allen, sp.n. 45, Mazel 71

⁵¹ Newton J., [*ABORIGINES, TRIBES AND THE COUNTERCULTURE*](#), pg 2, 54,60, (see for comparative analyze of processes accompanied with turning of *generation of counterculture* to aboriginal culture, though within the mainstream society, call to humanistic alternatives, tribalism, nostalgic Rousseauian naturalism in challenge to consumerism, lost of belief in Western agenda, science, even scientific socialism (Roth 1975:154), claims to "cooperation over competition, expression over success, communalism over individualism, being over doing, making art over making money), International Journal of Anthropology, 1988/23, pp. 53-71; Critics for unapologetic cultural appropriation: D.V.H.Maldonado, [*Did the hippies have nothing to say? he 1960s counterculture fuelled an artistic explosion in the US – but were the flower children merely privileged?*](#), 29.5.18, BBC Culture

cinema/film manifestos”)⁵² and science,⁵³ education, media,⁵⁴ various movements⁵⁵ had certain ‘shaking effect’ in activism globally. These challenged outdated, “pace, incremental respond” of particular government(s) ‘to the wind of changes’⁵⁶, played significant role in learning, understanding⁵⁷, (re-)presenting⁵⁸ of the indigenous people and their cultures. Thus, even now its hard to imagine today’s world [culture], without these period’s mainstream, representing with itself, *inter alia*, racial *awakening* - a time when Aborigines and their white supporters achieved paradigmatic shifts in the search for equality, justice and human dignity that still has powerful implications for 21st century.⁵⁹ Regretfully, not everything passed without rough practices too (see: 60s Scoop).⁶⁰

⁵² R.Monique, [Soundtrack of a revolution](#), 4.11.16, ABC NEWS; Ted S. Paly, *Histories of Convenience: Understanding Twentieth Century Aboriginal Film Images in Context*, in ed. N.Nicholson, 29-35, ed. Screening Culture: Constructing Image and Identity, 2003

J.Stoddard et al. [The Burden of Historical Representation](#): The Case of/for Indigenous Film, *The History Teacher*, 48:1, SHE, 2014, pp.9-36;

F.Ginsburg, [Screen Memories and Entangled Technologies: Resignifying Indigenous Lives](#) in Shohat, et al (2003). *Multiculturalism, Postcoloniality, and Transnational Media*, p.77-98, Rutgers Uni.Press; (theories of spectatorship, esp. Brecht’s theories for Sanjinés, Grupo Ukamau using cinematic form to create a language capable of communicating an *alternative, nonwestern subjectivity*: [J.Hanlon, Moving cinema: Bolivia's Ukamau and European political film, 1966-1989](#), University of Iowa, 2009

J.Burto, "The Camera As "Gun": Two Decades of Culture and Resistance in Latin America.", p.64-ff, *Latin American Perspectives* 5:1, 1978, 49-76

⁵³ Cited in J.Clark, ["Aborigines & Activism: Race, Aborigines and the Coming of the Sixties to Australia"](#), pg 8, ["first tentative and resisted steps towards a subtly new intellectual perspective that was anti-materialistic, millennial, liberating, confronting and open, political and self-conscious."]

⁵⁴ J.Pitsula [New World Dawning: The Sixties at Regina Campus](#), 2008, p.142-ff, HSE/CPRC, Regina

⁵⁵ *ibid*, p.296; R.McGregor (2009) Another Nation: Aboriginal Activism in the Late 1960s and Early 1970s, AHS, 40:3, p.343-360

⁵⁶ J.Piccini, Australia, the Long 1960s, and the Winds of Change in the Asia-Pacific, in Routledge Handbook of Global Sixties Between Protest and Nation-Building, [Ch.Jian, M.Klimke, M. Kirasirova, et al](#), 2018

⁵⁷ D.Jones, Territories, Existence and Identities: Indigenous Peoples in Argentine Films, p 96, in ‘Human Rights, Social Movements and Activism in Contemporary Latin American Cinema’, 2018

⁵⁸ C.Moore and S.Muecke, ‘Racism and the Representation of Aborigines in Film’, *Australian Journal of Cultural Studies*, 2:1, 1984, pp.36-55

⁵⁹ See Clark, *supra* note 6 said for Australia, seems applicable to the world; [F.Widdowson, Development, Postmodernism and Aboriginal Policy: What Are We Afraid Of?](#), Canadian Political Science Association, 2009

⁶⁰ E.Sinclair R, Identity Lost and Found: Lessons from The Sixties Scoop, *First Peoples Child and Family Review* vol. 3, no. 1 (2007); (in contra: Swidrovich C.M., “Positive Experiences of First Nations Children in non-Indigenous Foster or Adoptive Care: De-Constructing the "Sixties Scoop," University of Saskatchewan (2004); M. D. Jacobs, *A Generation Removed: The Fostering and Adoption of Indigenous Children in the Postwar World*, 2014)

(b) How and to what we came

27. All historical-social changes in ICR an HRMv was not left the legal area unaffected too; and vice versa.⁶¹ All process, can be titled, as J.Gardiner-Garden did for Australian context two decades ago, **a long way from Dispossession to Reconciliation**..⁶² However, both in legal and extra-legal spheres, IPL is not ‘solid and finished’.⁶³
28. In the wave of the developments in other scientific fora, social-cultural and human rights movements enhanced since post-WWII, legal discussions and subsequently approaches about IPs began gradually evolving; and now, after decades, as Anaja thinks, it stands with *multicultural state model* (incorporation of IPs into fabric state equally aggregating unity and diversity) as challenge to modern state.⁶⁴
29. However, the progress was very slowly.⁶⁵ As in outset it took startpoint from defective discourse: despite its self-determination provision (Art.73), UN Charter, excluded stateless nations, protected states with sovereign integrity. IPL is still incomplete, and in some (e.g. TWAIL) critical perspective, still maintains discrimination based on ‘differences on scale of civilization’⁶⁶
30. Not surprisingly, *right to title/name* of IPs has no single legal definition, autonomous formation yet at the international level. Not to say, IntL, like other related areas of

⁶¹ See paragraphs above

⁶² Gardiner-Garden J, 29.6.99, Dispossession to Reconciliation

⁶³ Sp.note 1, Chiriboga

⁶⁴ *emph.add.* S.J.Anaya Indigenous People in International Law, 2004; S.Anaya, International Human Rights and Indigenous Peoples: The Move Toward The Multicultural State, 21 ARIZ.J.INT’L & COMP.L.13, 2004, p.15,13

⁶⁵ UNDESA, UNDRIP Historical Overview

⁶⁶ ‘thus, even ‘universal standards’ may be applied not as an agent of liberation but dominance; (see: R.Shrinkhal, (2019). Evolution of Indigenous Rights Under International Law: Analysis from TWAIL Perspective, The Oriental Anthropologist, 19:1,7–24.

science/activity, *indigenous people*, as well as indigenous *identity* and *culture*, all phenomena central for rN/T themselves have no undisputed and single definition.⁶⁷ Instead, bouquet of criteria has been stipulated.⁶⁸ whatever had been designed, dissipated to various substantive norms on various texts. The reason relies specific historical-circumstantial specifics of both IPsR, rN/T (see para.xx-ff)⁶⁹

31. **Principle to Self-identification** (“*subjective criterion*”) had been accommodated only over 30 years after labourous, decades-lasting efforts/work of working group(s) in International Labor Organisation⁷⁰ in its Convention on Indigenous and Tribal Populations No.169 in 1989, that has revised previous Convention No.107 (1957), first exclusively-IPs-contented,⁷¹ but already "outdated", "destructive"⁷² with ‘assimilationist doctrine’ which new Convention shifted into ‘self-identification’-recognized concept.⁷³ Accordingly, definitions thus have been developed for IPs` *identifying*, ***not defining***.⁷⁴ Despite respect to improvements, it did not accept indigenouhood concept, and institutional progress was not sophisticated with “endeavour to reconcile indigenous societies with the modern settler societies that overwhelmed them”⁷⁵ For definition of IPs, UN guides that, no formal universal definition is

⁶⁷ R.Kuppe, [The Three Dimensions of the Rights of Indigenous Peoples](#), 11/I.C.L.Rev, 2009, pg109

⁶⁸ R.Wolfrum, Protection of Indigenous Peoples in International Law, 59 ZaöRV 369 (1999), pg.372

⁶⁹ E.Cirkovic, *Self-Determination and Indigenous Peoples in International Law*, *AILRev*, 31:2, 2009, 375-99; K.Engle, (2011), On Fragile Architecture: UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights, pg.143-ff, *EJIL*/22, 141-163

⁷⁰ F.MacKay, [A Guide to Indigenous Peoples' Rights in the International Labour Organization](#), (Also: [INDIGENOUS & TRIBAL PEOPLES' RIGHTS IN PRACTICE](#), 2009.)

⁷¹ O.Mazel. [The Evolution Of Rights: Indigenous Peoples And International Law](#)", *Australian Indigenous Law Review*, 13:1, 2009, p.140-58, **p.143-ff**

⁷² S.J.Anaya, "Indigenous Peoples and International Law Issues." *Proceedings of the Annual Meeting (American Society of International Law)* 92 (1998): 96-99; S.Anaya, [Indigenous Law and its Contribution to Global Pluralism](#) (7.10.09). *ILJ*, V:6, p.3, 2007; Arizona Legal Studies Discussion Paper, 09-33

⁷³ Accordingly, *supra* note xx; Kuppe, p.105

⁷⁴ [UN Development Group's Guidelines on Indigenous Peoples' Issues](#) (2009)

⁷⁵ Allen, 320

necessary for IPRs` recognition and protection, and this should be no obstacle in addressing IPs` substantial issues.⁷⁶

1.2.2. Substantive normative framework for right to title and its inclusiveness (*what and how protects*)

(a) *Notion of right to title/name and its evolution*

32. Since post-WWII period to our times, Int.Lw developed and its various universal, regional and thematic sources affordable IPRs in different aspects and scope (*substantive rights and mechanisms, legal status: binding and non-binding, subjects range and type: individual and collective*).⁷⁷

Universally:

33. ‘Twin covenants’, International Covenant on Civil and Political Rights (ICCPR/1966),⁷⁸ and International Covenant on Economic, Social and Cultural Rights (ICESCR/1966); *do not* contains any article specially referring to indigenous rights, meanwhile, in both common-text Article 1, guaranteed right to self-determination⁷⁹ with wide wording: ***to all people*** and tried to safeguard it with obligation ‘to promote realization of rS/Dt’, i.e. “*by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*”.⁸⁰ Most importantly, ICCPR directly prescribed group rights, and right of every child to name and nationality, Article 27 and **24** respectively:

⁷⁶ Ibid, p.8; (see aslo:ECOSOC,1995, understanding of IPs` historical suffering from definitions imposed by others)

⁷⁷ **For full list: [C.Dykes, Researching Indigenous Peoples International Law](#), NYU GLS, (upd. June/2019)**

⁷⁸ [International Covenant on Civil and Political Rights](#), adp.16.12.66, G.A.Res. 2200 (XXI), U.N.GAOR, 21st Sess. U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (e.i.f: 23.3.76)

⁷⁹ ICCRR, Art 1: “...”

⁸⁰ ICCPR, Art.1

Every child shall have, without any discrimination as to race, colour, sex, language⁸¹, religion, national or social origin, property or birth... 2. Every child shall be registered immediately after birth and shall **have a name**. 3. Every child has the right to acquire a **nationality**.

Article 27. ICCPR *In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, **in community with the other members of their group**, to enjoy their own **culture**, to profess and practice their own religion, or to use their own language.*

34. Especially Article 27, as it explicitly refers to minorities, it became commonly most-referred

Article for Indigenous peoples' rights defense.⁸² Despite states' insist to limit Art.27 to negative obligation, UN interpreted it to positive obligation to uphold 'minority' culture.⁸³ But, UN Human Rights Committee, the implementor of ICCPR, with interpretation on inadmissibility (*Ominayak and Mahuika cases*)⁸⁴ set legal 'impasse' by defining that s/Dt is a collective right, and therefore claimers can be only collectives, whilst collectives are not subjects of bringing case under First Optional Protocol. Till now, the question of representation - who can present/bring claim? - remains unaddressed: when individuals claims are considered as self-evident, "*peoples*" *claiming peoples' rights* remains 'ambiguous', 'contested', HRC left no room for individual communications under Article 1, when CESC (ICSECR-implementor) in contrary, ***did not exclude*** this.⁸⁵

35. ***From thematic-global texts, International Convention on the Elimination of All Forms of Racial Discrimination (CERD/1965)***, first international human rights treaty establishing monitoring mechanism protects minorities and individuals against racial discrimination within

⁸¹ All emphasises in norms were added by author

⁸² Mazel, 143

⁸³ Mazel, p.143, [UN Human Rights Committee \(HRC\), CCPR General Comment No. 23: Article 27 \(Rights of Minorities\)](#), 8 April 1994, CCPR/C/21/Rev.1/Add.5

⁸⁴ [Ominayak and Lubicon Lake Band v Canada](#), UNHRC, 38th sess, Comm.No 167/1984, UN.Doc CCPR/C/38/D/167/1984; [Mahuika v New Zealand](#), UNHRC, 70th sess, Comm.No 547/1993, [9.2], UN Doc CCPR/C/70/D/547/1993

⁸⁵ J.Summers, The Right of Peoples to Self-Determination in Article 1 of the Human Rights Covenants as a Claimable Right, New England Journal of Public Policy, 31:2, Art.5, **p1,4**

states⁸⁶, important and efficiently used instrument in elimination of discrimination in several areas important for Indigenous peoples⁸⁷ *The earlier Convention on the Prevention and Punishment of the Crime of Genocide* - first post-WWII instrument to *protect group rights, internationally criminalized* genocide (Art.2) defining it as acts of destroy a national, ethnical, racial or religious group.⁸⁸ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979), *Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT/1984) with their implementary mechanisms played significant role in Int.IPLR's 'normative basket'. *Convention on the Rights of Persons with Disabilities (CRPD/2006)*⁸⁹, reiterate ICCPR Article 24.2 in its thematic context.

36. Especially UN Convention on the Rights of the Child (CRC/1989)⁹⁰ **art. 8, successfully stipulates direct reference to indigenous individuals.** 72⁹¹ *“the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.*

37. *At the regional level*, early human rights treaties also only referred to the right to **a name** (where state have a strong say on name's recognition based to own identification-administrative, or political-national policy interests), **not to one's own name** with some nuances (*person, family has a decisive role, state has less interference, in very serious and legitimate aims, and it's more obedient to confirm – recognize and respect their will*).⁹²

⁸⁶ CERD, Art.4. 'group of one color or ethnic origin')

⁸⁷ Mazel, 143: utilized early warning action and urgent procedures, CERD Committee [Dec.2\(54\) on Australia, A/53/18 \(11.8.98\)](#) found that Australia's 1998 amendments to Native Title Act 1993 breached Convention and requested to suspend

⁸⁸ Mazel, 143

⁸⁹ *Convention on the Rights of Persons with Disabilities*, adopted 13 Dec. 2006, G.A. Res. 61/106, U.N. GAOR, 61th Sess., art. 18, U.N. Doc. A/RES/61/106 (2007) (entered into force 3 May 2008) (CRPD)

⁹⁰ [Convention on the Rights of the Child](#), adp.20.11.1989, G.A.Res. 44/25, U.N.GAOR, 44th Sess., U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (e.i.f. 2.9.90)

⁹¹ Mazel, 143

⁹² Varennes, 983

38. Different views on concept of name, made its negative ‘fingerprints’ traced not only into the international law doctrines and documents, but to subsequent implementing area as well. The view delegating the decisive role on name to the nation(al) state were especially strong in Europe, derived from different priorities (*e.g. debate in travaux preparatoires centralised around right to nationality of child*) and led to initial hesitancy, in long end undermined the fair balance to the IPs/NMns. Omission of such central aspect was therefore ‘odd’.⁹³
39. Lack of consensus was apparent even in European content: common-law countries with commitment to “laissez-faire”, leaving to person’s family and own to have a say on **own** name, more liberal than European traditionalist concept to naming following the acceptance of the dominant culture and nation. Whereas, *American Convention on Human Rights*⁹⁴, (1969/e.f:1978) Art.18: “*Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary,*”
40. Not to say that, there was and could not be concept to complex-autonomous right of name. Accordingly, it was, and mostly still is assessed under separate substantive rights (*see relevant chapter below*). This attitude also emerged and improved as the legal panorama, in background of which the achievements of waves of changes in international civil and human rights movements were standing.⁹⁵
41. Uncertainty and tensions still survives in transformed into persistent wish to remain nation states to excessive regulation into naming⁹⁶. However, overriding evolution was in action -

⁹³ Varennes, 979

⁹⁴ American Convention on Human Rights, sg.22.11.1969, art.18, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force 18 July 1978)

⁹⁵ Varennes, 980

⁹⁶ Varennes, 980

from ‘*right to a name*’ toward “*own`s name*’, i.e. *from concept of identification to identity*;

The converging trend is about to recognize self-identification centralized concept: own name.⁹⁷

42. In Europe, in 90s Framework Convention for the Protection of National Minorities, (FrCPNM/1995/e.f.1998) and the European Charter for Regional or Minority Languages (EChRML/1992/e.f.1998) was adopted with definitions respectively:

43. “*The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.*”⁹⁸

44. “*The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.*”⁹⁹

45. However CoE still stands face to face with tremendous issues raised since post-soviet countries integrated into Europe with enormous ethnic conflicts, soviet administration and its collapsing period legacy.

46. As it seen, there framework was addressing to protect areas necessary for IPs rights, obligated states *in most ‘fronts’ where IPs suffered from long-lasting disadvantage*.¹⁰⁰ However, it`s considered insufficient to meet the needs of Indigenous peoples, as separately formulated response to their situation is necessary and/or appropriate¹⁰¹

1.2.4. SOFT-LAW for IPs: NOT so ‘soft’, not so ‘tough’

⁹⁷ Varennes, 979

⁹⁸ EFrCNM: <https://www.coe.int/en/web/minorities/home?>

⁹⁹ <https://www.coe.int/en/web/european-charter-regional-or-minority-languages>

¹⁰⁰ Mazel, 144

¹⁰¹ Ibid

47. *Soft-law sources are considered* more specific and unambiguous¹⁰². For its comprehensive content and language evolution, IPRL, after long debates and expert work, almost peaked and centralized, - but, not completed/imperfected, - in The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 13.9.2007¹⁰³, not binding, but widely accepted¹⁰⁴ and for effects/implementations considered “legal weighty” inasmuch forms part of customary law.¹⁰⁵ Together other binding norms and their judicial/practical interpretations with frequent reference to declaration, - herewith cultivating optimism for future too, - they contributed to specifying of state obligations, conceptualization, particular rights` regime. It therefore, can be seen as a generally *leading guidance* document.¹⁰⁶ Being result of enormous efforts and discussions, it stipulates range of rights related to rN/T, well-intertwin the carpet of IndID for its multifacet nature.¹⁰⁷ Most importantly, UNDRIP, being reflection of IPs aspirations, declares those standards as minimum, which means calls actors to better improvement (**Article 43**).
48. **UNDRIP, Article 13, directly states: IPs have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.**¹⁰⁸

¹⁰² Varennes,982

¹⁰³ [UNDRIP,61/295.13.9.07.](#)

¹⁰⁴ 144 states majority, 4 opposing CANZUS countries subsequently expressed support, 11 abstentions reduced to 8

¹⁰⁵ for more: [S.Barnabas](#), *Legal Status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in Contemporary International Human Rights Law* (2017) 6 (2) IHRLR, some legal weight with far-reaching legal implications in international law. p.261

¹⁰⁶ For comparatively successful regional/European analogue: Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998)

Ibid, [Barnabas](#),

Fiona MacDonald & Ben Wood (2016) Potential through paradox: indigenous rights as human rights, Citizenship Studies, 20:6-7, 710-727

¹⁰⁷ Valennes,982

¹⁰⁸ [UNDRIP,61/295.13.9.07](#)

49. *Name and naming as an integral and powerful element of identity, self-identification, is an element of the custom, legal institution of the group, element of language, oral expression, expression of views, prima facie cultural institution, element linking to dignity and diversity – a priori actualize the relevant rights expressed in UNDRIP following articles: e.g. Art.3 (eq. ICCPR) self-determination, Art.2. equality, non-discrimination (general and indigenouness-based); Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, ...social and cultural institutions. Article 9 (ComID) right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.*¹⁰⁹
50. **Article 15** 1: “Indigenous peoples have the right to **the dignity and diversity of their cultures**, traditions, histories and aspirations which shall be appropriately reflected in education **and public information**. 2. States shall take effective measures, *in consultation and cooperation* with the indigenous peoples concerned, to combat *prejudice and eliminate discrimination* and to *promote tolerance, understanding and good relations* among indigenous peoples and all other segments of society”.¹¹⁰
51. “**Article 31**. Indigenous peoples have the right to maintain, control, protect and develop their **cultural heritage**, traditional knowledge and **traditional cultural expressions**, as well as **the manifestations of their ...cultures**, including **human** and genetic resources, **...oral traditions, literatures**, designs, right to maintain, control, protect and develop their intellectual property over such **cultural heritage**, traditional knowledge, and **traditional cultural expressions**”.¹¹¹

¹⁰⁹ Ibid

¹¹⁰ Ibid,

¹¹¹ Ibid

52. “**Article 33** 1. Indigenous peoples have the right to determine their **own identity** or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. 2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance *with their own procedures*”.
53. “**Article 34:** Indigenous peoples have the right to promote, develop and maintain their *institutional structures and their distinctive customs, spirituality, traditions, procedures, practices* and, ...**juridical systems or customs**, in accordance with international human rights standards”.¹¹²

In the context of assimilation risks:

54. Article 8, **Right not to be subjected to forced assimilation or destruction of their culture.** prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their *integrity as distinct peoples, or of their cultural values or ethnic identities*; ... (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.¹¹³

For inclusiveness:

55. **Article 18:** “Indigenous peoples have the right to participate **in decision-making** in matters which would affect their rights, through representatives chosen by themselves in accordance

¹¹² Ibid

¹¹³ ibid

with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions”.¹¹⁴

56. **Article 19:** “States shall **consult and cooperate** in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”.

57. *I. Accordance to its specific nature, right to name for indigenous people can and internationally is being assessed within following aspects:*

58. *As it seen, the rN/T was conceptualized in theory and judicial practice within the ‘legal construction materials under hand’, in scope of substantive rights as, and mechanism and procedures (judicial, non-judicial, bindi and non-bindind) established for those rights.*

1.2.5. UN Mechanisms for implementation/monitoring

59. Three mechanisms are specifically work on IPRs in UN: UN Permanent Forum on Indigenous Issues (UNPFII), ECOSOC high-level advisory body since 2000, working on issues related to economic and social development, culture, the environment, education, health, and human rights. Expert Mechanism on the Rights of Indigenous Peoples (EMRIP/2007), Human Rights Council set it to receive thematic advice. Special Rapporteur on the Rights of Indigenous Peoples. Scholars mentions to increase the system work with more higher level.¹¹⁵

¹¹⁴ Ibid

¹¹⁵ Mazel, 144

1.3. IMPLEMENTING-PRACTICAL FRAMEWORK AND CONCEPTUALIZATION

(Who gives and what to give as a name?)

60. Accordingly, the law-implementing instances, referring to both soft-law and treaty law, and acting in dichotomy: within the legal framework they have and following the global/regional trend, tried to minimize the state's hegemony, and determine a new balance in the interests of state(s) and individuals/groups, and thereby, in a certain manner contributed to the whole evolving process.¹¹⁶
61. *Four group of rights were employed: Identity right, Private life, family life and child rights, anti-discrimination right. In general, except the latter, all are not absolute rights, qualified for permissibility of interference.*

1.3.1. Name as a right to identity: self-identification (individual and group)

62. As it seen, the name was recognized in accordance to its primary ontological and practical-functional basis, as an element of the self-identification. It is named as central/basic aspect¹¹⁷
63. Under influence of traditional common law (*laissez-faire*), the general changes in IHRL especially since 60s, strengthening trend on IPRs and evolving concept of the positive obligations, the identity (in trio of nationality, name and family) concept recognized as prevailing identification concept by international courts.¹¹⁸ It was acceptance of idea that, “a name should be understood as the need to respect the identity of an individual and that this cannot be limited to the interest of a state in identification”¹¹⁹

¹¹⁶ Ibid,

¹¹⁷ Varennes, Kuzborska, 985

¹¹⁸ Serrano Cruz sisters v. El Salvador, IACtHR, 1.5.05, para.68;

¹¹⁹ Varennes, 986, cite:18

1.3.2. Name as private and family rights

64. European Court of Human Rights and European Court of Justice, via reference to international consensus and trend, corrected the treaties gaps and accepted name as fundamentally aspect of individual and its private life under Article 8.¹²⁰
65. However, as a continuation of the wide-recognized Euro-centric statist view, as well as unavoidable necessity of effective state administration, this is the qualified right subject to interference, conditioned with legitimacy, necessity in democratic society and proportionality, limited with strict grounds enlisted in the Article 8.2.
66. Here we come to questionable situation: inherently fundamental right and the justifiable permissibility to interference.
67. Remained committed to the method to strike balance on individuals and states interests, but expressing more commitment to statism, preferred to recognize the nation states' interests to general public administration and official language status.¹²¹ It was apparent in cases where there were phonetic, or lettering, or alphabetical differences.¹²²

1.3.3. Name as child rights

68. The issue for dealing with birth certification and giving the name since birth, it was child rights area that had influent role in developments in indigenous rights in this direction.

¹²⁰ Znamenskaya v Russia, ECtHR, 12.10.05; Standesamt Stadt Niebull, C-96/04, 30.6.05 C-168/91 [1993] ECR I-1191; Garcia Avello, Case C-148/02 [2003] ECR I-11613.

¹²¹ Mentzen alias Mencina v. Latvia, 71074/01, ECtHR, Adm. Dec. 7.12.04. For more: [Guide on Art 8, ECtHR](#)

¹²² Lithuanian and Turkey cases, e.g. Leonid Raihman v. Latvia, 1621/2007, 28.10.10; see: Varennes, Kuzborska, 1000-ff

However, the same slow progress, and lack of addressing of the structural problems remains open.¹²³

69. As scholars duly notes:

*“Initial explanatory documents as to what “right to a name” means were not helpful since they seemed to refer mainly to the obligation that all children have a recognized name and did not deal with who should be entitled to determine this name.”*¹²⁴

*“The statement that identity “includ[es]” nationality, name, and family relations suggests that identity relates conceptually to these aspects, but not exclusively, and thus identity must have content beyond these three enumerated examples (Hodgson 1993, p. 265). In other words, nationality, name, and family relations are key manifestations of a child’s identity, but they do not exhaust all the central elements of a child’s authentic personality.”*¹²⁵

1.3.4.Name within anti-discrimination rights

70. In discrimination context, in 70s-80s, ECmHR quite easily kept blind eyes of developed countries such as France, Netherlands, in gender-based discriminations, laws with **male favoritism (e.g. satisfying all family members identity presentation prevailingly on male members [surname] identity)** in state registrations,¹²⁶ while since 90s, it was unacceptable for legal thinkers in Strasbourg as well.¹²⁷

71. About ethnic and minority discrimination context, European judiciary usually followed the CErD and IACHR, who recognized the community limb of the identity¹²⁸. Continentally, two leading documents are adopted in 90s: FrCPNM, EChRML¹²⁹ and still have less progress in

¹²³ Anaya, Mazel, cited above

¹²⁴ Varennes, 979

¹²⁵ N.Espejo-Yaksic, [International Laws on the Rights of Indigenous Children](#), IHRC,2018,

¹²⁶ ECmHR, X v. The Netherlands, 1983, 9250/81,175,177; Losonci Rose and Rose v. Switzerland,664/06,9.11.09

For more: [Guide on Art.14, ECtHR](#)

¹²⁷ ECtHR, Burghartz v. Switzerland,16213/90, 22.2.1994; See, supra note, ECtHR Guide on Article 14.

¹²⁸ See cited Cruz sisters case, 2005

¹²⁹ See cited FrCPNM, EChRML

influence of hot areas of Europe with number of frozen conflicts,¹³⁰ aggravated with different agendas with discrimination.¹³¹

¹³⁰ [*Dr.M. Alice, et al Frozen Conflicts, Minority Self-Governance, Asymmetrical Autonomies – In search of a framework for conflict management and conflict resolution*, 2009, 1 May 2009](#)

¹³¹ M.Estébanez, K.GálEuropean, [*Implementing the Framework Convention for the Protection of National Minorities*](#), /Centre for Minority Issues (ECMI 1999; A.Bessudnov, A.Shcherbak, [*Ethnic Discrimination in Multi-ethnic Societies: Evidence from Russia*](#), *European Sociological Review*, 36:1, Feb.2020, pg.104–120

CHAPTER 2. THE LACKED NOTIONS

2.1. Lack of systematicity and autonomous concept

72. As it apparent and also mentioned by IIRL experts, there is dissipation, non specification¹³², non-differentiation:¹³³ Mazel refers to P.Thornberry for the claim that, “indigenous individuals may and do benefit from navigating their way through charters of undifferentiated human rights or utilising rights of minorities: “... *The problem with focussing on these ‘undifferentiated’ instruments is that the specific indigenous voice may be lost*”.¹³⁴ The case for a set of specialised rights within the human rights framework was still to be properly conceived and recognised.¹³⁵

73. Agreeing with the scholars, as well as having regard the repetitively mentioned time-senseless attitude costing the lost of generations by generations, as well as taking into accountsuch multi-facet character of rN/T any reform should include authonomy to rN/T.

2.2. Individualism vs collectivism

74. The ongoing prevail of the statism and individualism in the Int.Lw, inc. IHRL, Eurocentrism-derived overwhelmingly individualistic system¹³⁶ cause an obstacle and leads to debates for defence of the collective rights¹³⁷. nevertheless, these keystones of it are being continuously

¹³² Mazel, see citation

¹³³ Sp,note 1, Chiriboga

¹³⁴ Mazel, cite: 74

¹³⁵ Mazel, 144

¹³⁶ Ibid

¹³⁷ Mazel,150

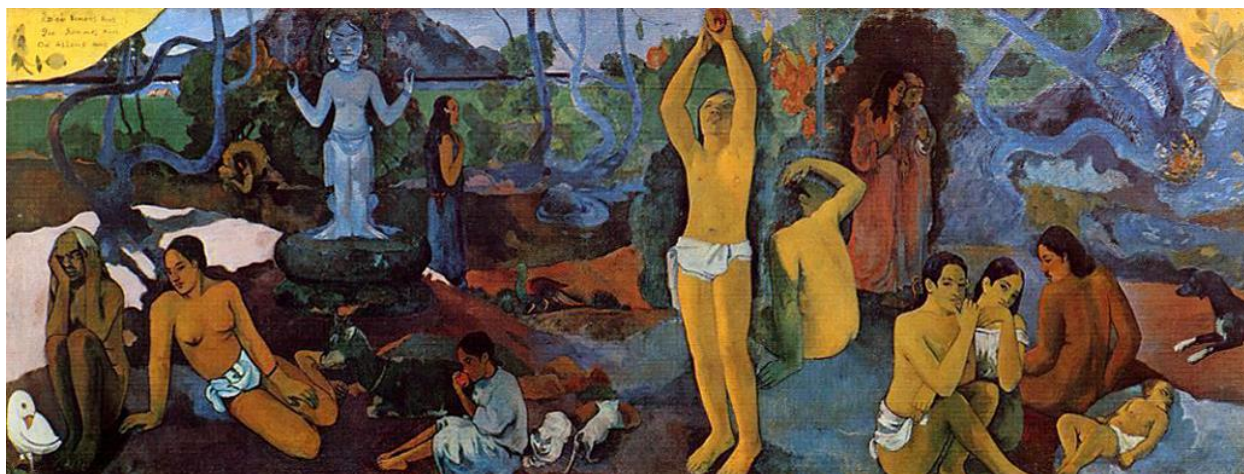
challenged by collective rights, ‘associational and cultural patterns, including IPRs, existing independent from state-structures,¹³⁸. Especially the horizontal concept of IPs society, as Wiessner describes them in contrast to vertical, Hegelian concepted Westerns state, as well as the level of accent laid by IPs to their community-spirit values, described by Wong, made it unavoidable.

75. As rN/T, directly related to all three dimensions of identification (self, community and extra) and culture, received its portion of ‘poison fruit’ from this general problem. The problem of collective rights concept and practice has strong harm to rN/T as well. In addition to its own primary ‘structural’ problem of being lack of single definition at all, the absence of the practical recognition of the *triplex (sintezator, or aggregator of identity-culture-language/anthropomorphism)* nature, and all these ‘mutually interactive’ has significant disadvantages. If a indigenous individual’s name simultaneously is personal, communal, privacy and culture, linguistic autonomy and heritage, with distinct value, the interference into it ought to be assessed in this complexity, all-matters-inclusive manner and the due time and dignity sensitivity in respect thereto. All patterns matter.

76. In this context, I would symbolically equate Name to P.Gauguin’s famous enigmatic multiconceptual, well-unimaterialised triplex work “Where do we come from? What are we? Where are we going?”¹³⁹ (see below): any deficiency in seeing overall picture is a priori wrong deed. Therefore, it seems, any future modelity for the right to access to collective claim for defence of rN/T against interferences, needs to balance the harms of general excessive individualism in IPRL, with its practical problems emphasized by Chiriboga.

¹³⁸ Sp.note 67, Anaya, 52, Mazel, 150

¹³⁹ [Paul Gauguin, Where do we come from? What are we? Where are we going?](#), 1897-98, o/c, 139.1x374.6 cm, Museum of Fine Arts, Boston



Paul Gauguin, *Where do we come from? What are we? Where are we going?*, 1897-98

2.3. Time sensitivity

77. As the stateless people are not seen as equal subjects of the international law-making process, the contemporary ever-strengthening trend and evolution¹ (*processed late, lazy, dilatory, sometimes sporadic, amorphous, spasmodic, but anyway gradually² processed forward*) in the standards and the (inter)national practice for the recognition and defense of the **indigenous peoples**³ rights, as well as in prevention and punishment of other grave injustices and violations in ethnic grounds, - *in other words, the overall process with improvement/ in the theoretical-academic, legal-practical and socio-economic perspectives*, - can be seen somehow as hope-cultivable means promising advantaged standards. Even the international documents on IPR contain the most modern views, advanced linguistic structure for best recognition of IP rights, they are apparently outdated (Harold Koh, 2013),^[OBJ] needs to be evolved with re-thinking of the concept for attribution of power to IPs (Young, S. 2019)⁴, to be fleshed out its scope and content with greater determinacy.⁵ In particular, they self-limited by excluding the right to secession aprioristically⁶ and herewith giving [substantively remaining] the fate of the self-determination to be determined in the hands and to mere “insaf”⁷ [read as: discriptive ‘sense of justice’] of

others again, rather than IPs themselves,⁸ and setting another quandary⁹ for international law.

The bloody tragic history of the uncertainty rooted to non-the-less bloody historical context¹⁰

78. Accordingly, in these conditions where the indigenous people¹¹ are not ***legally-conceptually*** entitled to ***full*** self-government, (n)either internal¹², (n)or external,¹³ and this is still especially sensitive issue in the areas with intense ethno-political complexity, geopolitical artificial borders,¹⁴ the disturbing picture appears remained: IPs forced to live through and to reconcile with the non-reconcilable results of the history per se defined mostly by wars. its impermissible to let this to go on when the global international law, inc. human rights law stuck in the critical struggle of law and politics¹⁵, "counter revolutionism" by corruptness of the system,¹⁶ that is criticised in different contextual analyses¹⁷ (marxist¹⁸, neoliberal¹⁹, Foucauldian analysis).²⁰ It can't be merely and only to be let national authorities to have last and first word over the destiny of indigenous people.²¹ Especially, if the political problems and hindrances have such an enormous problematizing effect.²²

79. Accordingly, without any aim to artificial hierarching and/or contesting of rights, for some fundamental cultural and other rights of collective and individual character, which can be titled here for thesis purpose as, f.e. "***attributive***", umbrella term for the for the demonstrative and central rights for legal and factual existence of the indigenous people, and not-to-be-ignored/vanished into "historical relicts". Being title-rights, they are *sine qua non* for legal recognition of the IPRs as well, regardless national and international regime, status and procedures. These are the rights staying as last and foremost "castle" of the demonstrative and expressive identity of the indigenous people against assimilation and/or other extinction actions in **legal context**. As the assimilation and extinction is equal to genocide²³, it should be protected with ***urgent Intervention act for protection for these specific attributive rights***. All

in all, it is easy to make states to amend the law or other civil legislation, rather than to provide even post-factum military actions, as we observed in Roghinhya, Syria recently.

80. The right to language and right to title/name of personal and nation (collective/communal right) since the birth enduring throughout the whole life, as central component of the existence of the particular nation under threat of extinction²⁴, should thus be defended in more prioritized, best/better-safeguarded, accelerated, internationally-fully-supported manner, provided with real/practic enforcement tools, sanctions and timeline-requirements-binded mechanisms.
81. *What primary concern, is the time. Here, non est disputandum, we, all actors, have no time. Tempus fugit versus festina lente.* During the decades-lasting discussions in all these decades so many people has been subjected to assimilation, genocide and other gross violations, extinct,²⁵ which is the same for all legal and general world community. The recent global threats that IHRL faced to, brings more concern to act promptly. However, even during the implementation of obligations under binding conventional regimes, and during the process of reforms, discussion on changes to the current situation, the resist of the states raises question: what impacts we have in such situation and what can be done unless the desirable regimes and implementations will be occurred? Its not the state-leading nations suffers, thus, even the discussion is carried out in their languages usually, but here the indigenous people, generation by generation loses valuable and irreplaceable human (re)sources of their identity, folklore. Therefore, there is need to have independent, judicial body/tribunal on Anti-Extinction, experts-Processed Interim Measures Procedures with time limit, interventional authorities, and strengthened with soft-power and legal sanctions, conditions in legal, financial, political areas.

2.4.Challenge on structural/systematic interferences

Assimilation-extinction context/ECtHR standard on Art.18

82. As the assimilation is not archived into history yet, and harsh bloodiness in the recent years Roginha, Syira, Kashmir crisis gave a strong message about the existence of the terrible internal reason of bloodiness of the conflicts: the hidden aggression, as a gas exploit of the slum accumulation, coming from the fact of being non-heard, non-equally treated, and being in such situation for so long time, being disqualified, disrespected systematically, institutionally, based to stereotypes and so on. Tragic results of such aggressions still is not able to teach us duly: the reasons if to be defited primarily, there should be dialogue, - equally and mutually respecting parties exchange of concerns, interests, requirements. However, the institutional violations those played a ground role for such tragic occurences, are usually deeply rooted.
83. And international mechanisms on IPs still are in the stage not to challenge them properly.
84. Its occupied with discussions about binding character, resistance by states, legal action ability of IPs are generally driven to the impasse of the ‘corner’ of the individualistic application system and confronted with subject – state – who has into its possession wide margin of appreciation. And such system have no single definition to name, when the assimilation procedures primary targets easily and usually contains the names.
85. However, another remarkable feature of such very recent, our-times conflicts is the justification tactics of the governments despite the wide range of social media, media and other information resources. And surprisingly easy engagement of such amount of enormous resources for hate, deconstruct. Nevertheless, the same practice – the systematic ground behind the scene of violation shows up in practices of other violation areas as well. Where, even in the

binding decisions of international courts, the violations, which had been brought to courts by individuals and had been proceeded for considerable time, fails in the enforcement period to reach the goal. The general measures calling to eliminate the reasons those led the violation, are not being duly executed¹⁴⁰. Under pressure of individual repetitive-cases workload, ECtHR developed its group-making cases procedures¹⁴¹, restricted the formal requirements of the application form years ago, facilitated non-individual procedures on court's application, pilot judgement (Protocol 15,16).

86. Accordingly, in such situation, its hard to challenge and be successful the institutional problems and name it as assimilation. However, in the light of the evolving concept on IIPRL, in the view of the opportunities derived by modern resources, it would be reasonable to adduce to the attitude that, the systematic, continuous disrespect of the particular rights leading to extinction, can be considered equal to assimilation – bloodless, but with the same result.
87. However, its hard to prove the that ulterior ill-intentions behind this pretty successfully coverable and usually high-establishment engagable ill-practices.
88. Therefore, there is need to repeat the practice of the previous generations of lawyers did, by utilizing into the maximum the opportunities under hand, as well as to resort to practices in procedures on other rights evolution.
89. The change of concepts in previous cases about determining the scope of the negative and positive obligations in IPRL, all dynamic shows that, firstly, the attempts to limit the obligations of state to negative ones has failed and in contrary, it subsequently proceeded to evolving positive obligation concept. Excessive interference to name, to treat it as a name, than one's own name had passed the same evolution in the wave of the massive social changes.

¹⁴⁰ Annual Report of Coe Cab.Min.,Execution of Judgements of ECtHR, 2018
See: ¹⁴¹ Bagvanov v Azerbaijan, communication

90. In modern times, some features of even most passive actions of the states, non-realisation by the state specific (easily-realizable) positive obligations cannot be justified anymore under curtain of individual occurrence, lack of resources, or persistent claims on gradual improvements, intensions in society groups, and so other usual claims. In contrary, presence of systematic, old-established ill-practices, or mere lack of reasonable justification of delay on positive obligations, continuity and severity of interference, and such kind of other parameters can be in cumulative assessment constitute, *might be not the fact, but presumption of assimilation*. **If the state, in the face of time-sensitivity and rapid changes of the socio-political, economical environment, still remains in the same or worse stand, such presumption of assimilation, can shift and enhance the burden of proof on the state to introduce the credible justifications to deny such a claim.** The acceptance of the systematic violations in several substantive rights, pilot judgment practice and IACtHR general measures impositions, is enough ground at least for optimism (if not for sooner realization) that, such a role-changing concept can come through such standards improvements.
91. Here as a tool, standard of ECtHR can attach academic or practical interest. ECtHR also applied to it only recent years after its over-century existence and examining vast amount of cases, especially from post-soviet countries. Non-surprisingly, majority of those cases are therefrom and involve political pattern. Article 18 (excess in conventional aims) is being proceeded, which gives opportunity to prove the systematic claims behind the situation resulting repetitive violations. This emerging precedent law is being championed by Azerbaijan now.¹⁴²
92. High interest of democratic society and time sensitiveness to IPRs and rN/T for preserve and to prevent from extinction, not to leave the colonialism-rudiment practices to proceed under

¹⁴² Guide on Article 18, ECtHR

different names and curtains to the new generations the deleterious effect of it to N/T, the phenomena of historical, social-cultural and political importance. For enhancing the international protection for sensitive issue as ‘hidden’ or ‘denied’ assimilation or acts with effect or character to constitute the assimilation, as it prescribed in the international law.¹⁴³

ECtHR precedent-law on Article 18 (excess of aims). It is newly emerged, and highly discussible. It has a set of criteria – *standards* for purely legal *assessment of highly, es. politically* covered *ulterior aim*. Standard is both for existence and provability of the vilation. In other words, how to prove that “hidden agenda” behind which certain political purposes masked and covered. *General referecence* is a core/primary teleological ground expressed in Article 1 of ECHR. ECtHR uses the term *Predominant aim test* for the cases where there is a plurality composed of the *ulterior purpose and the conventionally prescribed* legitimate purpose.

93. *Predominant purpose* is that very aim which “*truly actuated the authorities*”. This purpose was the *overriding focus* of officials actions. Even formally the applied restriction is fitting to the substantive provision of concention, Court find this not as obstacle to satisfy its assessment and found violation, because the accurately formalized, duly documented purpose even can be violation: as it was in reality used just as camouflage to attain the *extraneous purpose*, which was overriding focus of authorities` efforts. What things can serve as criteria, here the Court deepens the examination and assesses *proportionality of the actions with declared aims, their general and particular context, the continuity of actions, their timing, the actions thread, the tools, tactics chosen and the necessity and justifiability in the reasoning, focus of official`s efforts and actions, the casual link between aims, actions and the results*. Wide contextual

¹⁴³ UNDRIR, Art.8.

assessment not limited with particular cases circumstances, but enshrine to the wider contextual assessments based to international reports on situation of the country, the legislation and practice trends etc, The Court if is convinced that *predominant* aim in the case is the ulterior one, the violation will be confirmed.

94. The test for aim/purpose and *the proportionality of actions*, tools exercised for the claimed aims, weighty adduce to the teleological interpretation and particularities assessments, can serve to discover the assimilation or any other systematic violation actions and would have chilling effect on the political actors in the field with long-lasting rely on the immunities, almost-non-provability experiences. It seems, for systematic violations, at least for their reporting system, such assessment deserves to be incorporated.
95. As the same evolving had been occurred in gender rights, IPRL in itself, in private life rights, LGBTI+ rights conceptualisation, use of Article 3 with Article 8, application of Article 14 with substantive relevant rights – this familiar practice can be proceeded in the relevant jurisdictions for the claims on assimilation.

2.5.Dignity centralization

96. claim can be on uncertainty of legal regime applied to RtoName, when both fundamental *civil* (qualified) and *cultural* rights are applied to the assessment of Right to name, which both leaves more room for MoApr. of states again, when the facet of the identity as a subject to *dignity* was learned less. However, this and, also right to identity in collective sense/dimension of it, can trigger more effective protection, which is learned less again. Also, this can lead to reforming into independent right/article for right to name.

97. In one hand,

– having regard the mixed, complicated disputable situation on collective and individual rights discourse; in other hand

- the multi-dimensional feature of ID itself with its cultural, linguistic, moral and other features (that requires an autonomous legal regime);

- as well as the pushing back the dignity aspect of name and mere satisfying to call it central, basic, but at the same not to attach the due respect to the notion with such fundamentality;

– the apriori humiliating character of the assimilation, non-inclusiveness, risk of the extinction, which usually conductible through naming policies;

98. All these factors drives to conclusion that, probably, in order to achieve better argumentative tool(s) in the debatable discourse, and better practicable guarantees, there is need to give more weight to the dignifying aspect of ID, the Name and the degrading (individually and collectively) nature and implications of the interference into the name. It will be contributive with its seriousness and inherent absolutism.

99. For the standards and evolving concept of the international courts we see that, in all rights upon which the ID naming issues has been successfully claimed, right to private life, discrimination-prohibition, child and other rights, there were trend of courts to follow the trends. Especially, in domestic violence cases, as well as in LGBTI+ individuals cases (Varennnes/Kurzborska drives attention to this as well)¹⁴⁴, where improve of the positive obligations and restricting of the margin of appreciation has been occurred because of raising of the awareness and more focusing of the decision makers into dignity-respecting attitude. Its up to court to decide in which speed to follow the trends in order to act actively or passively in the consensus test. The

¹⁴⁴ Varennnes, 988

dilatory character of IHRL reforms, the partly understandable low course of the activism of the courts, leaves nothing to activists to drive more attention to this absolutivity-weighted character of the poligram of the name notion.

100.Despite the difficulties with debates on the notion of honour, proud or group dignity, which is totally different and sensitive for IPs, there is enough room in the notion of name itself, as well as in the treatment of “name” in international law, gives ground for optimism that, such absolutism-inclusive approach can have a weight in tilting the scales in favor and in the name of IPs rights` better protection. Even the vivid, anthropomorphic-organism attitude to name as an element of language, and to their carriers, can and should be especially sensitive for the under-extinction- risk groups.

101.All subjective and objective criteria applied so far by ECtHR on Article 3 (e.g. see Guide on Art 3, cases on metal cages and glass cabins; imprisonment conditions, LGBTI+ cases, etc), inc. (feeling helpless, humiliated in front/eye of him/herself and group members others, being treated non-equal, feeling anxiety, distress and helplessness in front of past, present and future generations and so on), easily shows that, even in the cumulative assessment standard the multilayered character of interference into name of indigenous person(s) can and should be assessed in the case of indigenous people in more sensitivity. All violations have suffered inflicting character, but such distinct phenomena needs more protection. The absolutism-weight-adding attitude can serve to have additional arguments in fixing of some antagonism of debated over the group rights and individual rights.

102.Here, in analysis of D.Louw we can find philosophical ground specifically for the IPRs context, how the dignity is linked into the ID more than expectable discussed in the IIRL fora.

103.Louw states that, “*Identity (characteristics), dignity (meaning and worth), ethos (habitus and pathos) and ethics (responsibility and human rights) describe an interconnected dynamics of networking relationships*”.¹⁴⁵ Thus, he agrees with Hobbes (Negt 2003:30) that “dignity is not a value inherent in the person ; [it] is a relational category: not an attribute peculiar to persons and their singularity; it is a relationship, or rather manifests itself in the gesture by which we relate to others to consider them human, just as human as we are... (Valadier 2003:55)”. Here he paraphrases: “**I cannot ‘claim’ dignity; I am dignity and dignify life within the quality of habitus.**”¹⁴⁶

104.As, identity is a qualitative concept and connected to the value of inter- and intra-human *communication*, h/dignity and identity should therefore be viewed as relational categories with **intimacy and interconnectedness**.¹⁴⁷

105.**Very righteously**, he see them best fitting in African spirituality - **ubuntu philosophy about** harmony in interpersonal relationships: a human being is only humane through the relationship with another human beings. **Life can therefore only be healed if relationships are healed.** Here, Louw in contrast introduces the fact that, European theologic circles then had been in hesitation to debate h/dignity and h/rights because of doctrine of sin, from which some saw need to withdraw to relativize and secularize merely as a limiting condition of human self-realization, no longer a description of the very essence of humans. (Huber 1996:120).¹⁴⁸

106.Even **European humanism, architect of** modern age believing that human dignity is anchored in the self, namely in one’s rational talents, initially linked the notion of h/dignity to Christian

¹⁴⁵ Sp.note, D.Louw

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

concept (microcosm of God). It was Renaissance, humanism of the Enlightenment, Kantian influence of human beings as rational beings/notion of human autonomy made the turn, put the human being as centrum, and then this ‘anthropocentric’ worldview in the heart of debate. “ ‘Dignity’ has increasingly meant ‘the worth of being human’/fundamental meaning of being human, became closely associated with *humanitas* as a synonym. (Meeks 1984:ix).” Therefore, had become key concept in the worldwide struggle for human rights. The shift from dignity to human rights became a focal point for discourse on ‘**value and worth of human beings**’ occurred when the recognition of equal dignity of all human beings was incorporated within the politics of democratisation and institutionalised by international law.¹⁴⁹ The reason perhaps is that human dignity, however, requires human rights for its embodiment, protection and full flowering (Meeks 1984:xi).

107. One must therefore admit that without human rights human dignity becomes a fleeting idea without concrete and contextual meaning. Concepts of human dignity and the *notion of democratisation of life* have become closely linked to the notion of human rights, thus ideas of h/dignity and h/rights have been shaped by a long historical development. (1996:114), In this regard **respect and equality** are interconnected categories”.

108. “*Human dignity and human rights* are closely interconnected, where dignity points to the *quality and value* of our being human. “Moltmann (1984) distinguishes between human rights as the quest for *freedom, justice and equality*, whilst dignity refers to how these issues impact on the quality of life of the individual, the unique and particular person: Human rights are plural, but human dignity exists only in the singular ... The dignity of humanity is the only indivisible, inalienable, and shared quality of the human being. (Moltmann 1984:9)”.¹⁵⁰

¹⁴⁹ Ibid, cited

¹⁵⁰ Ibid

109.Louw proceeds that, “Human dignity become an in-between issue squeezed in between sanctity and depravity (Witte 2003:119–137), between man as beast and man as an angel (merely divine) (Meilaender 2009). Mostly, the debate focuses on moral and democratic issues within the framework of personal, social and political ethics. In order to detect the meaning of identity and dignity, and to promote human rights, Louw offers that, “our starting point should be aesthetics (with emphasis on the value and meaning of life) and not ethics (with emphasis on moral issues and tension between good and evil), as the discourse runs the danger of become a moralistic imperative.”¹⁵¹

110.Accordingly, the discourse on enhancement on Ind cultures in the decising-making of the issues on IPs, gives the ground to have legal implications of such philosophical ground in the Ind.ID-preserving discussions.

¹⁵¹ ibid

Conclusion

Conclusions are those:

- name was not fully covered by law, not only indigenous right law, in wholist approach to its all dimensions
- accordingly, it has more sensitive value in the indigenous rights context, which was not respected duly
- dissipated throughout the international law norms, because of the initial deficiency in the outset of emerging and the classical and gradual 'accommodation' of this right, can not solve the inherent problems of right to name
- collective dimension of the right to name was not addressed duly, in compare the idendity of the personal
- absolutism-serving dignifying conception needs to be elobarated and focused more, but it was done less so far;
- the countries systematic failure in naming polcies and practices, non-inclusiveness of them has no standards effective to bring to the surface the presumption of assimilation or situation of equalt to assimilation

Recommendations

1. Wider legal concept for better sanctioning

As structural violation of substantive right to name can lead to violation of Article 14 (discrimination), its structural violation can lead to Article 17 and 18 ECHR, *with indication to the presumption of the ulterior aim to assimilation, obligating states to prove the absence of such aims, unless the otherwise is proved, the presumption should be taken as assimilation*. Which can provoke pilot judgments, and/or positive obligations in long end can lead to activate process to Art.46. (exclusion from int.org)

2. For the lack of time-sensitivity in context of both all aspects of r.t.name (identity, cultural, linguistic)

Again I cant leave the idea that, there is a common lack of *time-sensitiveness* as an independent PRINCIPLE, having regard the nature of the IPRs situation, which can trigger an internal conditional classification of IPRs, or more sophisticated mechanisms, inc. interim measures as well, thus the *legal inclusiveness is technically affords to be better facilitated. Especially if the countries has no power sharin Showing results for share of power lebanon consocialistic model of parliamentarism, without any quota or any other safeguard of inclusiveness*

3. Acceleration of the Collective rights concept for right to name (and other IPRs)

Ulterior purpose proving for structural problems can lead, at least for the compensation's high standard, to motivate the lawyers and people, which can trigger the raise in numbers and accordingly to the new *pilot judgements* which can accelerate the challenge of whole group rights.

Appendices

The link of the product within the Practical Project, Translation Mobile App for Talysh, Language, with the authors' project, co-working title OwAina (Mirror):

Talysh Dictionary & Translator (for IOS 6.0 OS)

Linked: https://play.google.com/store/apps/details?id=com.cc.talyshdictionary&hl=en_US

Description: For the narrowing of the research, language rights is taken in its digitalization²⁷ and “internationalization”²⁸ context and was a subject to practical project²⁹. Such limited-budgeted project was aimed to evidence that, the arguments of states for time, resources, lack of human resources, interest and economic value, is nothing but pretext and the issue here is the lack of political will, - another proof of systematic problem in the (inter)national level.

The general primary legal “tricks”/pretexts of the states: joining and forgetting, procedural “labirintization”, efforts to be left unbound/nonobligated legally, narrowing of the concept, dilatory approach and other such hindrances are apparent in the critical review of situations of the studied regions/states as well. **Focus-driver is to bring into the center affordability and less-costliness of the** effective tools, thus they can be adherent, enlarged and intensified application of the evolving concept of the positive obligations. The positive obligations in the states with low democracies usually are not respected about the rights of aborigine people since the birth, which institutes adversary impact on further [attributive] rights of them to self-identification both in individual and community/collective level³². The problem in Azerbaijan is similar to other post-soviet nations where the leading nation dominates because of the *sole official state language* and it imposes negative aspects to accelerate the assimilation in all spheres. From birth certificates to

name register, ID documents structure, *the ignoring policy* is incompatible with neither trends, nor obligations of international law (both soft and, if to say so, “hard“ [binding-force] law. The program is demonstrative example to introduce a simple material *for changing the policy on names, language, to shift into inclusiveness*, which is vital for non-extinction of those nations/people. in particular whose language is internationally recognized as in danger of disappear.

Based to official language dictionaries, and is being improved into English, in order to **take language into international arena, will facilitate other languages integration as well, which digitally makes the language somehow digitally-guarded in a certain level from extinction.**

Glossary

1. Indigenous People notion here in Thesis:

By agreeing with a number of scholars,^{152,153} I would prefer, for purpose of research, with due regard to respective context, to use terms *“indigenous people”* (IPs) and/or *“national minorities”* (NMs) covering all indigenous peoples, national, ethnic, cultural, religious, linguistic groups interchangeably, to avoid, - but not ignoring, - discussions on differences¹⁵⁴ *inter se*.

2. For definition of **indigenous people**, reference is UN guided practical ILO (binding):

“Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

and, UN “working definition” (M.Cobo):

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”

With **self-identification** (*subjective criterion*) is a fundamental criterion following factors are relevant to understanding of concept of “indigenous” by international organizations and experts: Priority in time in occupation and use of a specific territory; voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.

¹⁵² O.Chiriboga, [The right to cultural identity of indigenous peoples and national minorities](#), SUR 5 (2006), access.14.4.20

¹⁵³ Weaver H, [Indigenous Identity: What Is It, and Who Really Has It?](#), American Indian Quarterly, 25:2 (2001), pp. 240-255, University of Nebraska Press

¹⁵⁴ as righteously mentioned by O.Chiriboga as deserving differentiated international regulation, supra note

In addition to self-identification, “objective” criterion, elaborated by ILO and World Bank, includes:

Descent from populations, who inhabited the country or geographical region at the time of conquest, colonization, or establishment of present state boundaries.

They retain some or all of their own social, economic, cultural, and political institutions, irrespective of their legal status.

Their social, cultural, and economic conditions distinguish them from other sections of the national community.

Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

Name/title - is used inclusive for all kind of fore/mid-names of persons and, contextually, names of the places, name of community, according to Art 13.UNDRIP

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