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Research on the Legal Responsibilities of Multinational Companies in Protecting the Rights of Indigenous Peoples: From the Perspective of American Law

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Abstract. This paper examines multinational enterprises' (MNEs) legal responsibility in safeguarding Indigenous rights through analyzing the U.S. legal system. Specifically, the paper focuses on the Apache Stronghold v. United States case to illustrate the systematic legal gaps at the state, federal, and international levels. This Supreme Court case reveals three significant issues: the absence of mandatory FPIC mechanisms allows MNEs to exploit indigenous lands and resources without prior consent; the limitation of a narrow definition of corporate liability to hold the parent companies liable; and the lack of legal enforceability of international soft law. Therefore, establishing legally enforceable mechanisms in accordance with international standards is essential to ensure consistent protection of indigenous rights. This essay argues for a multi-level legal reform. The specific measures will expand beyond FPIC implementation into legislation, the expansion of corporate liability, and the binding enforcement of UNDRIP between countries. These measures aim to ensure transparent and enforceable implementations of international standards for indigenous protection.

Keywords: Indigenous rights, Free, Prior, and Informed Consent, corporate liability, UNDRIP, Apache Stronghold v. United States.

1. Introduction

With the aggressive expansion of global resources, an increasing number of multinational enterprises (MNEs) are focusing on indigenous areas with highly concentrated resources. Through the United States' case studies, the essay highlighted the problems related to land ownership, cultural exploitation, and environmental pollution, particularly the MNEs' legal responsibility towards Indigenous protection, which lacked a formal legal framework, thereby contributing to these issues. In countries like the United States, which has diverse Indigenous races, MNEs reflect a systematic, insufficient legal framework. Therefore, this essay focuses on the lack of legal responsibility of MNEs in protecting Indigenous rights through analyzing three levels: the state, federal, and international aspects.

The background of this question lies in the wealth and power imbalance between the primary market actors and the indigenous community. Indigenous populations only comprise 6 percent of the

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global population, yet they represent 16 percent of those who live in extreme poverty. However, their living areas contain much of the world's remaining untapped oil, minerals, and biodiversity, which are the major investment sectors of many multinational enterprises (MNEs). With these profit-generated economic activities, indigenous people are silenced as they suffer from limited rights of speech in essential decisions and insufficient legal protection. In the 2025 Apache Stronghold v. United States, the U.S. Supreme Court rejected the Indigenous appeal against the mining activity on their sacred lands, which consequently led to mining on religiously significant lands. Similarly, the 2023 Navajo Nation v. United States case has highlighted the dangers of one-sided legal interpretations, as it narrowly interpreted the treaty's water rights, underscoring the home country's reluctance to uphold Indigenous claims against corporate interests.

Previous scholarly studies offer a valuable overview of the gradual recognition of Indigenous rights since 1945. Pritchard explained in his essay that Indigenous treaties were established due to the colonial power asserting sovereignty over Indigenous territories despite Indigenous early occupation. These treaties were established as a negotiated result, acquiring indigenous lands in exchange for governmental protection, but eventually led to the large-scale denial of indigenous acquisition of their lands [1]. The International Covenant served as a precursor to the protection of Indigenous peoples. While this research demonstrates that international law has established suggestions in resolving Indigenous land conflicts in modern society, it also reflects the "perspectives and interests of powerful states." From the federal and state perspective, there is also a lack of federal responsibility in holding parent companies accountable in Indigenous protection, which both studies fail to suggest how soft law can be converted into "hard, enforceable obligations" of MNEs' economic activities through federal legislation or extraterritorial jurisdiction.

These precedents reflect the legal voids in the United States that contribute to the lack of responsibility among multinational enterprises (MNEs). Therefore, this essay will center on analyzing the legal voids through three key aspects. First, the current state law on land-use and resource development marginalizes indigenous interests. Second, the problem in blocking liability tracing is caused by judicial interpretation and the separate liability between the subsidiary and the home company at the federal level. Lastly, the international soft law fails to constrain corporate behavior due to a lack of enforceability. Based on these analyses, this article proposes legal reforms to establish legislation that incorporates international soft law into domestic legislation, thereby enhancing the transparency of legal procedures to ensure accountability and uphold Free, Prior, and Informed Consent (FPIC) as advocated internationally.

2. Problems in the protection of indigenous peoples

2.1. Violation of FPIC & exploitation of indigenous rights

A critical concept of the interaction between MNEs' constructions and indigenous interests is Free, Prior, Informed, and Consent (FPIC), which refers to the right of indigenous people to "give or withhold their consent" for affairs associated with their "lands, territories, or rights [2]." At the state level, there is a lack of enforceable rules that practice FPIC, which allows the MNEs to develop industries on indigenous lands without considering indigenous interests.

The violation of FPIC and the prioritization of economic benefits over indigenous rights is demonstrated in the Supreme Court case Apache Stronghold v. United States (2025). Oak Flat is a sacred site of great religious significance to the Western Apache, an indigenous group in Arizona, where they believe as a "direct corridor to the Creator [3]." However, Oak Flat is discovered to hold a substantial number of mines, which has attracted the attention of MNEs. In 2014, Oak Flat was

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included in the National Defense Authorization Act, which authorized the state government to transfer the land to a joint venture between two foreign mining corporations directly through the state-level procedure. This procedure was not opened to the indigenous population for public consultation. It did not include FPIC mechanisms, as the decision was made directly by the state government to transfer the land to the MNEs.

According to the court's record of the case, the state court agreed that denying indigenous religious activities on Oak Flat completely prevents them from conducting religious exercises and constitutes a substantial burden on their right to practice their religion [3]. Thus, it should not be allowed. However, the estimated value of the mining project was over $15 billion [4]. Eventually, the majority believed that respecting the right to religious exercise does not apply to situations involving "a disposition of government real property." Although the state acknowledges the critical religious significance of Oak Flat, it still decided to transfer the land to the corporate mining industry, reflecting a preference towards economic benefits. At the state level, it offered no legal aid procedure to the Apache tribe, and their legal challenges could only be appealed at the federal level.

The federal law provides a more comprehensive legal framework for indigenous protection, including the Religious Freedom Restoration Act (RFRA), which supports the protection of religious practices and establishes standards for indigenous protection in other Supreme Court cases. However, the Supreme Court decision in the Apache case revealed a systematic judicial restraint. At the Supreme Court, according to the definition of "substantial burden" under RFRA in the Navajo Nation Case [5], the court primarily interprets the transfer of this sacred land as putting a burden on indigenous religious practices and hindering religious freedom [3]. The majority of the jury overruled this definition by narrowing RFRA protection to direct coercion or prohibition of religious practices, which ultimately led to the denial of acknowledging the spiritual harms resulting from the exploitation of resources at Oak Flat. In the same case, the federal courts also denied the legal enforceability of Treaties that were agreed between the state and the indigenous community.

2.2. Parent company responsibility

The separate legal personality between parent and subsidiary companies allows MNEs to evade responsibility. Both contribute to the final denial of the Apache appeal for acquiring Oak Flat. One critical obstacle to holding companies responsible for the harms caused by subsidiary behaviors in indigenous communities or developing areas is the concept of separate legal entities, which defines a subsidiary as a separate entity that is "taxed, regulated, and liable as its own company [6]." Under this doctrine, the parent company will not be held liable for its subsidiary's actions. In the Apache Stronghold case, the Supreme Court primarily focused on whether the government had infringed the 1852 Treaty with the Apache tribe and the breaking of the RFRA [3]. There was more emphasis on the government's decision rather than on examining the infringement caused by the company itself. According to the U.S. Federal law, the parent company will be held liable only when it "directly controls its subsidiary [7]." Or when the parent company is viewed as the same as the subsidiary, which is referred to as "piercing the corporate veil." Although the law establishes "piercing the corporate veil" to ensure that responsibility can be traced to the parent company, it still sets a high standard, requiring plaintiffs to prove the parent company's high level of involvement in the subsidiary's operations. This is rare in practice, especially in indigenous cases, partially because they were excluded from the decision-making process. In this case, the court did not determine Rio Tinto or BHP as the direct operator, which allowed the parent company to be segregated from this sacred land issue. Although the court emphasized whether it imposes a "substantial burden" on Apache's religious activities, it discussed this topic by focusing on the constitutionality of the government

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procedure rather than the company itself. This thereby shows the lack of legal force to hold the parent company liable.

2.3. Implementation of international legal standards

Ideally, the domestic legal doctrine should be established upon the international conventions. International laws, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), establish the framework for protecting the rights of indigenous peoples. However, these documents are considered "soft law," which lacks legally binding force and enforceability [8], and thus rarely reach a practical implementation level in U.S. domestic law. Compared to Canada, some provinces have incorporated UNDRIP into their provincial laws to support the concept of Free, Prior, and Informed Consent (FPIC) in legal procedures. The U.S. legal system fails to implement specific guidelines under international standards, or the requirements established in indigenous treaties. The following section will advocate for a multilevel reform framework that targets these legal voids and establishes enforceable corporate responsibility standards, particularly from the perspective of the parent company.

3. Suggestions

3.1. Implementation of UNDRIP

Under the UNDRIP, the right to be informed, self-determination, and to acquire compensation from the government or MNEs' actions. This can be constructed in two parts: Pre-project and post-project mechanisms.

3.1.1. Pre-project mechanism

Article 18 in UNDRIP points out that the state should grant indigenous peoples the right to self-determination in "matters which would affect their rights [9]." Additionally, it stated that the indigenous population shall choose their representatives and establish independent "decision-making institutions." The State government can implement this concept by establishing an indigenous legal branch in which the indigenous community will make decisions. The representatives will be chosen directly by the indigenous public and report their decisions directly to the state government. According to law school professor Carla Fredericks, to effectively implement the UNDRIP, indigenous people must have the right to design and conduct Free, Prior, and Informed Consent (FPIC) agreements [10], underscoring the importance of indigenous voices in the implementation of the UNDRIP.

To thoroughly ensure FPIC, this established institution will be responsible for negotiating with the MNEs before any project is initiated. MNEs must file declarations that clearly state the project's objectives, areas to be occupied, intentions, and any other information that may harm or potentially harm indigenous communities. If there is harm or potential harm to the indigenous community, including but not limited to occupying culturally significant areas for economic gain and extracting resources through methods that may impact the local environment, a compensation mechanism must be included in the declaration. These declarations will be reviewed by the indigenous legal branches and discussed to determine whether they have infringed on human rights or caused irreversible harm to the local community. The negotiation process should be made public within three days after it is settled, and indigenous people can raise any disagreements within a week before the project

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commences. This process ensures that indigenous people are aware of the impact of the MNEs' behavior and make decisions independently.

3.1.2. Post-project mechanism

Based on UNDRIP Article 32, the state government shall establish a mitigation mechanism to address "environmental, economic, social, cultural, or spiritual impact [11]." This is to ensure that the indigenous community receives proper compensation for the harm that has already occurred, as it will issue compensation according to the damages caused by government decisions or the behaviors of MNEs. The indigenous legal branch will issue periodic written reports, including but not limited to opening information related to the MNE projects' actual impact, mitigation measures, and the community's appeal. If the reported data of a corporation shows substantial differences with its declaration, negotiated compensation must be given to the indigenous community. This report will be posted on the government's official website for public scrutiny and congressional review, thereby enhancing transparency and accountability. Through these structural reforms, the state government can effectively implement the FPIC, ensuring the indigenous people's self-determination rights, avoiding similar problems in the Apache Oak Flat case, where commercial interests are prioritized above cultural and religious rights.

3.2. Parent company's responsibilities

It is essential to recognize the critical role played by the MNEs in indigenous protection. As pointed out in section II, the court primarily focused on the constitutionality of the government's transfer of indigenous land, ignoring the company's infringement. Currently, the parent company is only held responsible when the direct operator of the subsidiary is the same as the parent company, or when the subsidiary is the parent company itself. These high standards make it extremely rare for a parent company to be held liable for the actions of its subsidiaries. In the case of Lungowe v. Vedanta in the United Kingdom, the court believes that as long as the parent company is involved in making regulations, training, monitoring, or instructing a subsidiary, it will have a direct duty of care towards the subsidiary [11]. This can be done without piercing the corporate veil, which makes it easier to hold the parent company responsible for protecting indigenous people. For the U.S., the federal court could expand the scope of "direct operator" into "involvement in the subsidiary's management or is aware of the potential harm the subsidiary may bring to the local community." The home company should also be involved in the declaration filing procedure to be fully aware of the impact of the subsidiary's action. This can ensure that the plaintiff can trace the infringement back to the parent company.

3.3. Increase legal-binding power of international soft law

The primary issue with international declarations, such as the UNDRIP, is that they lack legally binding force. Therefore, it is essential to transform it into treaties and agreements to ensure its effective implementation into domestic law. UNDRIP is a typical example; as pointed out in research by Chloe Wood from the University of Western Sydney's Law School, it is crucial to integrate it into domestic law for UNDRIP to become a legal tool that indigenous people can use to protect their rights [12]. Many countries have directly incorporated UNDRIP into their legal systems by amending laws to acknowledge indigenous self-determination, indicating the possibility of implementing international declarations. In the U.S., precise constitutional requirements have

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already been established to respect the "free exercise" of religion and other fundamental human rights, underscoring the importance of respecting human rights in the face of commercial interests.

Many scholars pointed out the danger of lacking practical and mandatory mechanisms to implement international declarations. According to Center for World Indigenous Studies (CWIS) research on implementing UNDRIP, soft law that lack of executive compulsory power often is degraded to "ritualized compliances" which means "having institutionalized methods of achieving certain goals, while having little commitment to the goals themselves" [13], indicating the need of mandatory measures to ensure indigenous rights are effectively protected.

To effectively implement international legal standards and constitutional principles, countries with frequent business interactions with the U.S. should establish binding agreements to comply with U.S. domestic requirements in procedures such as declaration, negotiation, and mitigation processes, as outlined in sections 3.1 and 3.2. These agreements can ensure rigorous coherence with the indigenous protection law in conflicts that involve multiple nations. These mechanisms, including agreements, standards, jurisdictional systems, and other measures, can serve as a practical means of indigenous protection. It is essential to establish these specific measures, as they promote UNDRIP into legal responsibilities, clarify the government's duty in protecting indigenous people, and prevent declarations from becoming non-legally binding advocacies.

4. Conclusion

This research examined the legal duty of Multinational Enterprises, especially the parent companies, in protecting indigenous rights through three legal levels: state, federal, and international. Analyzing the case Apache Stronghold v. United States, the research reveals the state government lack in structural protection of indigenous interests, the Supreme Court's prioritizing economic and commercial advantages over cultural and religious rights, the primary focus on government decisions' constitutionality instead of MNEs' responsibility, and the international soft law like UNDRIP lack of legal-binding authority in constraining domestic legal choices.

The crucial result of this research is that the systematic legal loopholes allow MNEs to acquire indigenous lands and resources without the consent of indigenous people. At the state level, the absence of FPIC mechanisms prevents indigenous people from asserting their rights. At the federal level, the separate legal entities of the parent company and its subsidiary, along with the prioritization of economic potential, combined with the demanding standards for holding the parent company liable, have made it impossible for the indigenous population to regain their rights. Internationally, the failure to promote international declarations into binding commitments would result in "rights ritualism" and prevent indigenous protection from being effectively implemented.

Looking forward, this research provides a three-level legal reform strategy. At the state level, state legislatures should integrate FPIC into their legal procedures by establishing pre- and post-project procedures. This includes four major components: declaration, negotiation, mitigation, and compensation, all of which are essential in protecting indigenous interests. At the federal level, the Supreme Court and Congress must reconsider the corporate liability standards, as a narrow standard would make it challenging to hold parent companies accountable for responsibilities related to indigenous protection. Internationally, the multinational agreements between the U.S. and other frequently interacting countries ensure that the indigenous protection requirements are being effectively implemented. Only through coordinated commitments and transparent legal procedures can indigenous communities reclaim self-determination over their lands, cultures, and their future development.

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