

Indigenous peoples' self-determination - Market-inclusion or not?

The case of indigenous designs in the international
fashion industry

Vilma Elise Lewis-Clemmensen

Abstract

In recent years the focus on indigenous peoples' self-determination has been increasing. However, the debate on how to achieve this is rather divided. This study examines whether Slowey's (2008) theoretical assumption, that market-inclusion leads to increased self-determination, holds in a different context. In the study, the theory is applied to indigenous peoples' market-inclusion through intellectual property right protection, in the global fashion industry. The study aims to examine *How market-inclusion affects indigenous peoples' self-determination* and is designed as a combined comparative case study, encompassing the Most Similar System Design and Most Different System Design. The method is used to analyse three cases of indigenous market-inclusion into the global fashion industry to establish whether the theoretical assumption holds. The findings suggest that market-inclusion influences indigenous self-determination. However, the type of market-inclusion appears to determine whether the indigenous community experienced a short-term or long-term increase in self-determination. Additionally, having a strong strategy for how to decrease dependency on the state, is found to contribute to ensuring a long-term increase in self-determination.

Key words: Indigenous Peoples, Self-determination, Market-inclusion, Neo-liberalism, Intellectual Property, Intellectual Property Rights Comparative case study, Most Similar System Design, Most Different System Design
Words: 9898

Table of contents

1	Introduction.....	1
1.1	Research Problem, Research Aim, and Research Question	1
1.2	Relevance, Delimitations	1
1.3	Terminology	3
1.4	Thesis Disposition	3
2	Setting the scene	4
2.1	An indigenous development paradox: Collectivity vs. market-inclusion	4
2.2	International Agreements	5
3	Conceptualisations and Theoretical Framework.....	7
3.1	Conceptualisation: Self-determination	7
3.2	Theoretical Framework	8
3.3	Contextualising Slowey (2008)	9
4	Methodology	11
4.1	Research Design	11
4.2	Data Collection, Case Selection, and Empirical material	11
4.3	Data Analysis	13
4.4	Limitations	14
5	Combined comparative case study of Indigenous intellectual property in the international fashion industry	16
5.1	Empirical cases: Mixe, Maya, and Maasai.....	16
5.2	Comparative analysis	18
5.2.1	Variables.....	18
6	Conclusion	25
6.1	Reflections.....	26
7	References.....	27
8	Appendices.....	32
8.1	Appendix 1	32

Abbreviations

DRIP – Declaration on the Rights of Indigenous Peoples

ILO – International Labour Organization

IP – Intellectual Property

IPRs – Intellectual Property Rights

MIPI – Maasai Intellectual Property Initiative

MNCs – Multinational Corporations

MSSD – Most Similar System Design

MDSB – Most Different System Design

TRIPs – Agreement on Trade-Related Aspects of Intellectual Property Rights

1 Introduction

1.1 Research Problem, Research Aim, and Research Question

Indigenous rights have for long been overlooked and are continuously violated despite the Universal Declaration of Human Rights and the more recent United Nations Declaration on The Rights of Indigenous Peoples.

Indigenous peoples rank the highest on underdevelopment indicators, have some of the highest illiteracy and unemployment rates globally and often face discrimination in schools and at workplaces (Hymowitz et al. 2003). They are also regularly denied the right to manage their traditional lands, culture, and resources which limits the possibility for self-determination (ibid). If we want to reach the Sustainable Development Goals, in particular, the first goal; “No poverty” (UN, 2019a) it is crucial that there is a continued focus on this large marginalised group, that consist of over 370 million indigenous peoples’ globally. Representing 5% of the global population, yet 15% of the extreme poor in the world (The World Bank, 2019a).

The right to self-determination, that is the focus of this study, is one of the central aspects of the indigenous rights movement and is moreover a central topic in the Declaration on The Rights of Indigenous Peoples, as all the other rights intersect with it. It is, therefore, highly important for the indigenous peoples to achieve self-determination, but how to achieve it, is a somewhat contested topic.

Previous studies have shown that market-inclusion can lead to indigenous peoples’ development and self-determination (Slowey, 2008). And this study will thus aim to illuminate how market-inclusion can affect indigenous peoples’ self-determination, by looking at indigenous peoples’ market-inclusion in the fashion industry. Self-determination is in this study defined as “*a First Nation’s [indigenous peoples’] ability to govern in accordance with its own goals, values, and aspirations*” (Slowey, 2008:11).

The importance of indigenous self-determination for achieving indigenous socioeconomic development and for the indigenous rights to be respected has led to the aim and research question of this study:

How does market-inclusion affect Indigenous Peoples’ self-determination?

1.2 Relevance, Delimitations

In recent decades awareness of indigenous rights have increased (UN, 2013). This has led to a larger focus on rights violations such as the exploitation of indigenous design in the international fashion industry. The indigenous designs not only stand out because of the colourful prints but also give a sense of quality, as the indigenous clothing is known to be handcrafted. Some designers, like

Louboutin who is included in this study, have now started to collaborate with the indigenous peoples to avoid the backlash other designers have received for not accrediting the indigenous originality of the prints. Through collaborations with the international fashion industry or leasing their intellectual property (IP), indigenous people are now being included in the market, though it is not all indigenous peoples' who wish to do so.

This combined comparative case study will compare three cases with different types of market-inclusion and look at the effect market-inclusion has on their self-determination. The Santa Maria Tlahuitoltepec Mixe community (Hereafter referred to as the Mixe community) and Maya indigenous communities of Mexico and the Maasai indigenous community that is located on the boundaries of Kenya and Tanzania. The study will further aim to discuss the different perspectives on intellectual property rights (IPRs) and the opportunities and barriers market-inclusion bring to indigenous development.

Slowey's (2008) theory suggests that market-inclusion lead to larger self-determination, but whether this theory holds in the context of indigenous market-inclusion through the protection of their intellectual property (IP), in the international fashion industry, remains unknown. This is the research gap that the study aims to fill.

The right to self-determination, that this study is concerned with, is one of the central aspects of the indigenous rights movement and moreover a central topic in the UN's Declaration on the Rights of Indigenous Peoples. Indigenous self-determination is thus highly relevant for development cooperation as the achievement of it would fulfil the three major task that defines development cooperation (ECOSOC, 2016);

- 1) *supporting and complementing efforts of developing countries to guarantee the provision of universal social basic standards to their citizens, as a means for people to exercise their basic human rights;*
- 2) *promoting the convergence of the developing countries to higher levels of income and wellbeing, correcting extreme international inequalities; and*
- 3) *supporting efforts of developing countries efforts to participate actively in the provision of international public goods.*

This study can be situated in the tasks of development cooperation; as increased self-determination would support the effort of securing indigenous human rights as defined in the United Nations Declaration on the Rights of Indigenous Peoples (DRIP) aligning it with the first task. Secondly, indigenous peoples' market-inclusion would contribute to converging the large inequalities of the world's poorest – of which indigenous peoples represent 15% and thus promote the convergence of international inequalities. And thirdly, indigenous market-inclusion would incorporate indigenous peoples in the *provision of international public goods*, thus securing them financially.

Despite, the theory pointing in the direction of indigenous market-inclusion, it is relevant to note that there are several indigenous communities that are against creating partnerships which integrate them into the global economy as they believe that this will lead to exploitation (Slowey, 2008:13). This paper is therefore delimited to those indigenous peoples who wish to decrease dependency on the state by being integrated into the market, because otherwise the means would be contradictory to the goal, as “*a First Nation's [indigenous peoples] ability to govern in accordance with its own goals, values, and aspirations, which may or may not be neoliberal in orientation*” (Slowey, 2008:11).

1.3 Terminology

It is, highly relevant for the understanding of this study that it is clarified that indigenous peoples and groups are not homogenous and should not be perceived as such. In this study, indigenous peoples are referred to at a general level because many of the obstacles indigenous peoples face today are similar.

To have a clear understanding of the research question it is crucial that the concepts within it are clearly defined. The concept *Indigenous peoples* is widely used but does not have a clear international legal definition (Stavenhagen, 2005). There are several reasons for this. From the indigenous' perspective there is a smaller chance of excluding individuals who define themselves as indigenous with a broader definition of the concept. And from the nation states' perspectives a formal definition of indigenous peoples in connection to their rights would lead to more clear-cut violations of these (ibid).

To avoid going further into the conceptual debate, this study will use the definition presented by the UN "Indigenous communities, peoples and nations are those which having a historical continuity with pre-invasion and pre-colonial 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 the continued existence as peoples, in accordance with their own cultural pattern, social institutions and legal systems" (UN, 2019b).

Market inclusion will be defined as the possibility for individuals or groups to participate in the global market, through "the activity of buying or selling goods and services in all the countries of the world, or the value of the goods and services" (Longman, 2019).

Finally, *Self-determination* is another highly contested concept within the debate on indigenous development, this is primarily due to the debate of territorial sovereignty and self-governance, which will be further explained in chapter 3.

1.4 Thesis Disposition

The First chapter has presented the research problem, research aim, and research question, as well as the relevance and delimitations of the study and defined the terminology that will be used. Chapter two will initially set the scene and contextual background as an understanding of the socio-economic challenges indigenous peoples face is central to answer *How market-inclusion affect indigenous peoples' self-determination*. Chapter three and four discuss the conceptualisation of self-determination, presents the theoretical framework and the methodological approach that will be the foundation for chapter five; the analysis of the empirical cases. Chapter six concludes and discuss the findings and how they can be used in future research.

2 Setting the scene

Many indigenous groups throughout the world continue the fight for recognition and acceptance of their way of living and in the last three decades the awareness around indigenous rights have increased as a result of the indigenous rights movement that is driven by civil society as well as national and international organisations (UN, 2013).

Indigenous people are often seen as protectors of world cultural heritage, through their language, music, fashion designs, arts, and architecture (ibid). However, with globalisation their role is changing, and they are starting to see the possibilities and barriers intellectual property right protection can give them.

This chapter aims to map out the underlying theoretical discussion and briefly present the international agreements that influence indigenous peoples globally.

2.1 An indigenous development paradox: Collectivity vs. market-inclusion

A central development paradox, when discussing indigenous peoples' development and right to self-determination, is the opposing views on how indigenous peoples should engage in the current global market. It is argued that indigenous market-inclusion and patenting of their intellectual property [Intellectual property refers to the creations of the mind i.e. inventions, arts, music, etc] could be empowering (WIPO, 2004). This is because it could secure the necessities of life through securing collective ownership of indigenous intellectual property right (IPRs) leading to economic development (Kariyawasam and Guy, 2007). Whereas others argue that market-inclusion, the idea of intellectual property rights, and the way they are owned, undermine the indigenous view on property and collective ownership and contribute to the marginalisation of indigenous peoples (Picart and Fox, 2003; Lea 2008; Shiva, 2000).

To further expand on this debate those who argue for engagement with IPRs, suggest that anyone with the skills and time can take advantage of the patent system and that national adaptation of a pro-competitive approach to patent laws can ensure that anyone can benefit from it (Correa, 2000; Perry, 2016). Opposite, Anderson (2015) argues that patents clearly exemplify how IPRs protection only is for those who can afford the legal measures to secure their IP.

There are several arguments against indigenous engagement with IPRs. Barwa and Rai (2003) argue that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and World Trade Organisation is a "socially embedded, gendered instrument of governance" that reinforces and reproduces unequal power structures through continued non-recognition of knowledge (Barwa and Rai, (2003:91+95). Anderson (2015) similarly argues that IPRs have a historical affiliation with colonial power imbalances.

On the other hand, indigenous peoples' intellectual property will likely be exploited by multinational corporations (MNCs) and others, if their intellectual property is not protected (Kariyawasam and Guy, 2007). And it appears, that the only way to protect their intellectual property is to obtain the IPRs and adhere to the IPRs agreement, that as explained reinforces the existing unequal power structures.

When the World Intellectual Property Organisation argues that the IPRs discussion has been pushed forward by less developed countries making the discussion less polarised (WIPO, 2016), it could be expected that some of these countries are aware of the pros and cons of IPRs and have chosen to engage in the discussion to secure that their voices are included in the debate, despite the limitations.

Indigenous innovations are often "communally derived" or based on anonymous sources and do, therefore, not align with the Western property framework (Picart and Fox, 2013: 338). Thus by aligning traditional intellectual property and traditional knowledge with the Western property framework of individual responsibility and ownership, the indigenous understanding of knowledge as a collective property is changed and the interconnection, complexity and joint responsibility is lost, additionally changing one of the characteristics that defines them and their traditional way of living (Anderson, 2015; Paterson and Karjala, 2003).

What is the way forward then? The theory suggests IPRs pose numerous limitations but can also be used to reduce the distortions and inequalities in international trade (Anderson, 2015). In this study Slowey's (2008) framework will be applied, to present one possible way forward.

2.2 International Agreements

Another aspect that is important to be aware of, is the many international agreements and institutions that influence indigenous lives and their rights in the global society. These agreements represent the existing legal, and cultural standards on indigenous peoples' lives and further lay the foundation for the normative discussion of what indigenous peoples' role in the society and in the global market should be.

Three of the most influential agreements on indigenous lives are *The Declaration on the Rights of Indigenous Peoples (DRIP)*, the International Labour Organization's *Convention No. 169* and *the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)*. It should be noted, that as with most international agreements these are the products of institutions that are founded on the sovereignty of nation states and therefore reflect this.

Declaration on the Rights of Indigenous Peoples (DRIP)

The UN Declaration on the Rights of Indigenous Peoples was adopted in the UN's General Assembly on September 13th, 2007. According to the UN "The Declaration is the most comprehensive instrument detailing the rights of

indigenous peoples in international law and policy, containing minimum standards for the recognition, protection, and promotion of these rights” (UN, 2013).

The declaration is not legally binding but “indigenous organizations consider it to be an aspirational document that they hope is part of an emerging international “customary law” regarding indigenous peoples (Stavenhagen, 2005: 17).

International Labour Organization (ILO)– Convention No. 169

The ILO’s convention No. 169, adopted in 1989, is the primary international legal instrument dealing with the protection of the rights of Indigenous and Tribal Peoples and though there are multiple indigenous issues, the convention does not touch upon, it remains highly influential because it is legally binding opposed to many of the organisations concerned with indigenous rights (Joona, 2010). The convention is a revision of the 1957 convention No. 107, and one of the main differences in Convention No. 169 in comparison to Convention No. 107, is the acknowledgement that indigenous peoples should have the right to continued existence and development, whereas the Convention No. 107 assumed the gradual disappearance of indigenous and tribal populations (ibid: 24).

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

Opposite the DRIP and ILO No. 169, the TRIPs agreement, adopted at the Uruguay Round of the General Agreement on Tariffs and Trade [1986-1993] is not specifically targeted towards indigenous peoples but nevertheless remains influential on aspects of indigenous intellectual property rights (Anderson, 2015).

These international agreements illustrate how indigenous peoples are already highly incorporated in the global market and moreover why it is relevant to discuss market-inclusion’s effect on indigenous self-determination.

3 Conceptualisations and Theoretical Framework.

This chapter will discuss the concept of self-determination to establish under what circumstances self-determination is achieved, to allow for a later conclusion on how market-inclusion affects self-determination. The chapter will also include the theoretical framework and theorise it within the context of the global fashion industry.

3.1 Conceptualisation: Self-determination

“The most controversial issue regarding indigenous rights is the matter of self-determination” (Meyer, 2012: 330).

The UN presents the right to *Self-determination* as the most important right found in the Declaration on the Rights of Indigenous Peoples (DRIP) and argues that “All rights in the Declaration are indivisible and interrelated, and the right to self-determination is no exception. It colours all other rights, which should be read in the light of indigenous peoples’ self-determination, such as the right to culture, which can include indigenous peoples’ autonomy over cultural matters” (UN, 2013).

The contested debate surrounding the definition of self-determination intersects with the issue of national sovereignty. Article 3 in the DRIP which states that indigenous peoples have the right to self-determination, is limited by Article 46, “Article 46 clearly prohibits ‘any action that would dismember or impair (...) the territorial integrity or political unity of sovereign and independent states” (Meyer, 2012: 332). Meyer (2012) furthermore, argues that the right to self-determination primarily functions as a tool to negotiate with nation states without challenging article 46. This means that the idea of self-determination as self-governance and ownership of indigenous territories – that is often promoted by indigenous groups (Herr, 2017) - is not what is promoted when talking about indigenous rights in the UN system.

It becomes apparent that self-determination is one of the primary goals for indigenous development, despite the disagreement on how to achieve it. As stated in the introduction, self-determination is in this study defined as “*a First Nation’s [indigenous peoples] ability to govern in accordance with its own goals, values, and aspirations*” (Slowey, 2008:11).

Slowey (2008) then expands on this definition;

“Self-determination involves autonomy, accountability, and decision-making power. It requires significant amounts of political and economic control to make choices about institutions and economic activities, not only in a way that meets the needs, objectives, and goals of a band but also in a way that respects and maintains the culture and values

of the community. It requires decisive control to redesign political institutions and fiscal arrangements. Finally, it necessitates the development of social, economic, cultural, and political institutions run by and for First Nations people (Slowey, 2008: 11).

She claims that self-determination is increasingly based on the indigenous peoples' financial ability to actualise self-government, as this decreases their dependency on the state and allows the indigenous institutions to act more efficiently (Slowey, 2008: 77).

Below her theory will be further elaborated and theorised in the context of indigenous peoples' role in the international fashion industry.

3.2 Theoretical Framework

Slowey (2008) argues that the achievement of land rights for the Canadian Mikisew Cree First Nation gave the indigenous peoples the right to self-determination by allowing them the opportunity to participate in the market and lease their land to large corporations (ibid: 34). Their market-inclusion thus led to increased self-determination.

The argument is that the focus on individual independence from the state found in the neoliberal paradigm, would for indigenous peoples mean a decreased dependence on the state and lead to larger self-determination (ibid: xv). The indigenous idea of collective responsibility for health, housing, and welfare, separate from the state, moreover, aligns with the free-market philosophy of a minimal state and non-government provision of services (ibid).

The example, of how the Miki Cree First Nation's economic strategy of participating in the market led to economic development, self-sufficiency and in turn political autonomy and an improved socioeconomic status, illustrates the linkages between economic development for self-determination.

Slowey (2008) argues that market-inclusion was the primary facilitator for indigenous self-determination (ibid: 75) and moreover, that First Nations need to be fiscally autonomous, as it would be contradictory to be reliant on federal or provincial funding and claim to be self-determinant (ibid: 11-12). Indigenous communities will thus remain dependent on the national governments until they are able to make economic decisions for themselves (ibid). The primary focus of this study will thus be the relation between market-inclusion and self-determination.

She additionally finds that land-rights is a central issue when discussing self-determination, and what led to market-inclusion in her case study (ibid:12), but as land rights is a widely researched topic, which often end in a discussion of national sovereignty and that Slowey's (2008) main argument is that market-inclusion was the primary facilitator for indigenous self-determination, land rights will not be discussed further in this study.

Slowey's (2008) definition of self-determination will be applied throughout the study to examine whether market-inclusion affects indigenous peoples' self-

determination. The indicators that will be used to observe market-inclusion and self-determination will be further expanded on in chapter 4.2.

Lastly, it should be noted that the theoretical framework that will be applied throughout the study, therefore, aligns with the neoliberal paradigm, as it presumes that the way to self-determination is through market-participation and that this type of self-determination could re-establish indigenous independence from the state (Slowey, 2008: 17).

3.3 Contextualising Slowey (2008)

Indigenous intellectual property is a resource that all indigenous communities have. The communities are, therefore, not reliant on the transfer of land rights from their nations' governments, to be included in the market, as in the case of the Miki Cree First Nation. As they can be included in the market by leasing the right to their intellectual property.

The primary focus of the study will, as mentioned, be on market-inclusion and it is expected that we will find that market-inclusion has an effect on indigenous self-determination, as economic relationships with the global industry and an increased capital base will be achieved through this.

Slowey's (2008) theory assumes that the indigenous peoples' self-determination is expected to benefit from the increased capital based, despite differences in how they are included in the market. It should, therefore, be expected that both the case where market-inclusion is seen through a collaboration with a multinational corporation and the case where market-inclusion is seen through leasing IP, should experience increased self-determination. If this is the case, Slowey's (2008) theory will be confirmed.

Slowey (2008) further argues that indigenous governing institutions need to be in place so that the financial increase, the indigenous people experience through market-inclusion, can be used to strengthen these institutions. With strong indigenous institutions and a capital base, the indigenous communities could decrease dependency on the state and increase their own financial and political independence (ibid: 38).

Slowey (2008) presents three criteria that she argues need to be in place for indigenous peoples to obtain self-determination and socioeconomic development; money, geography, and industry (ibid: 76).

The argument is that *money*, a capital base, is critical to implement and operate indigenous governing institutions and because of this self-determination can only be achieved with sufficient means (ibid). This aspect is expected to be achieved through market-inclusion in the fashion industry.

Another aspect is *geography*. Slowey's (2008) argument is that the geography of the Miki Cree First Nation was so secluded that it allowed them to be both independent and self-reliant, but she also acknowledges that "proximity to urban or resource-rich areas may provide advantages to development, since access to

resources and integration with urban labour markets may be two pathways to success” (Slowey, 2008: 77-78). This aspect will be examined as a variable in the cross-case-comparison.

Lastly, she argues that the local *industry* is important for indigenous self-determination to achieve new economic relationships (ibid: 78). In the application of the theory, it will be argued that it is not only important for indigenous people to create an economic relationship with the local industry but that any economic relationship that can secure an income for the indigenous community, whether local or global is important for securing indigenous self-determination.

4 Methodology

4.1 Research Design

The study will be carried out as a deductive, combined comparative case study, as the aim of the study is to test Slowey's (2008) theory. The combined comparative case study encompasses the Most Similar System Design (MSSD) and the Most Different System Design (MDSD). This comparative multiple-case study design was chosen since the underlying assumption of the comparative design is that a social phenomenon is understood better when compared with other meaningful contrasting cases (Bryman, 2012: 65). And since case studies are fundamentally theoretical, and strategically selected cases can test when a theory holds and when it doesn't (de Vaus, 2001: 237), this aligns with the aim of this study.

The method further aligns with the study's aim of testing theory, as the biggest advantage of the MSSD/MDSD method is its ability to isolate explanatory variables (Anckar, 2006: 399-400). Through the use of this method, it should, therefore, become apparent that if market-inclusion is, in fact, the explanatory variable or whether there is another explanatory variable influencing the increase in self-determination.

The MSSD/MDSD will be analysed through qualitatively and the designs will be applied "loosely" meaning that all relevant control variables will not be matched systematically, but the variables deemed most relevant for the purpose of the study will be included (Anckar, 2006). Because the loose application of the comparative design will be applied, it was decided to include both the MSSD and MDSD to further test the theory and diminish the chance of unaccounted for variables creating the observed change in the dependent variable.

The study will be exploratory in its nature as it seeks to explore the effect of a phenomenon, in this case, the effect of market-inclusion on self-determination (de Vaus, 2001: 19). It will take a nomothetic approach to social research in that it explores the influence of market-inclusion on self-determination (de Vaus, 2001: 22). Nomothetic explanations usually centre on few causal factors and a larger number of cases, as will be the case in this study, instead of seeking the full explanation of one case as the idiographic approach (ibid).

4.2 Data Collection, Case Selection, and Empirical material

The theoretical framework is based on Slowey's (2008) case study of the Mikisew Cree First Nation, whereas the empirical documents presenting the cases primarily rely on informal sources. These documents were sampled through purposive sampling (Bryman, 2012: 408) and include newspaper articles, blog posts, and press releases, as well as statistics that illustrate the similarities and differences between the included cases.

These sources have been chosen as they allow for cross-case comparisons and can tell us something about the extent to which the indigenous peoples have or haven't been included in the global market, whether their intellectual property has been exploited or whether they have received financial compensation for the use of their IP. A wide variety of documents have been included since they all have a different aim. Christian Louboutin, for example, argues that his collaboration with Taller Maya and the related market-inclusion led to empowerment and indigenous development, whilst indigenous rights blogs and newspaper articles take a more critical stance towards the case.

The cases were intentionally sampled to test Slowey's (2008) theory. Two similar cases in Mexico were chosen with the assumption that they are similar on most variables but vary on the independent variable; market-inclusion and the dependent variable; increased self-determination. This assumption will be tested through the Most Similar System Design. The third case chosen is the case of the Maasai indigenous community in Kenya/Tanzania. It is expected that, when compared to the Maya case the Maasai case should be different on all parameters except the independent variable; market-inclusion and the dependent variable; increased self-determination, but this will be further examined through the Most Different System Design analysis.

Operationalisation

The study's aim is to examine market-inclusion's effect on self-determination. Market-inclusion (the independent variable) will in this study be observed as, indigenous peoples' participation in the market through receiving financial compensation for multinational corporations' use of indigenous intellectual property.

Increased self-determination (the dependent variable) will in this study be observed based on Slowey's (2008) understanding and will be achieved when the indigenous communities have the financial ability to actualise self-government, a coherent vision, and an economic strategy on how to decrease dependency on the state (Slowey, 2008: xv).

It is expected that the increase in self-determination will differentiate between the cases. The increase in self-determination will consequently be measured on whether the indigenous communities have achieved short-term market inclusion or long-term market inclusion and the 'strength' of their strategy for decreasing dependence (ibid). It is expected that it is most likely that an increase in self-determination will be achieved through long-term market-inclusion and a strong strategy for decreasing dependency.

4.3 Data Analysis

The data will be analysed qualitatively through the combined comparative case study. And the three cases will moreover be tested against the theoretical framework by Slowey (2008) with the aim of confirming or rejecting her theory; that market-inclusion leads to increased self-determination.

Initially, the cases will be presented followed by a cross-case comparison of each included variable. The included table will illustrate whether the cases' variables are similar or different, and the cross-case comparison will examine whether each variable influence self-determination.

Comparative case study

The combined comparative case study has been chosen as the method's primary strength is to isolate the explanatory variable, which in this study should mean that it can be determined what explanatory factor(s) that influence(s) the dependent variable; self-determination.

Most Similar System Design

The two Mexican cases, concerning the Mixe and Maya indigenous communities have been chosen for the Most Similar System Design because they share many of the same features, such as economic, cultural, and political characteristics, making them an optimal sample for a most similar system comparative inquiry (Anckar, 2006; Przeworski and Teune, 1970: 32).

The cases included in the MSSD are, therefore, similar on most aspects and the focus of the design is thus the intersystemic similarities and intersystemic differences (Przeworski and Teune, 1970: 33). The analysis 'control for' intersystemic similarities by securing that the two cases share similar characteristics, whereas the intersystemic differences are the explanatory variables (ibid). The aim of this design is to demonstrate as many similar characteristics as possible with a minimal number of different variables (ibid). But as the cases can never be systematically matched on all relevant control variables (Anckar, 2006), the most relevant variables for the study have been included.

It is expected that if market-inclusion is the only intersystemic difference between the two cases, it is the explanatory variable. Whereas if it is not the only intersystemic variable, further studies would have to be undertaken in order to examine whether there is more than one independent variable affecting the dependent variable (ibid).

Most Different System Design

For the Most Different System Design (MDS) the case of the Maya indigenous peoples will be compared to that of the Maasai indigenous peoples. These two cases have been chosen for this design because the dependent variable; self-determination is observed in both, despite the clear differences in the characteristics of the cases (Anckar, 2006: 390).

“The first step in this design is to identify those independent variables, observed within systems, that do not violate the assumption of the homogeneity of the total population” (Przeworski and Teune, 1970: 35). When comparing these two cases, it is found that the indigenous peoples are included in the market through their intellectual property, and the independent-variable; market-inclusion does, therefore “not violate the assumption of the homogeneity” as it is found in both cases. The MDS analysis will further test the assumption that the only independent variable the cases have in common is market-inclusion (ibid).

Another way to further test the theory, that market-inclusion leads to self-determination, is to adjust the independent variable. If the supposed explanatory variable; market-inclusion is excluded, and the dependent variable; self-determination disappears, the relation between the two can be further confirmed (Przeworski and Teune, 1970:45). However, before executing this kind of test some ethical considerations should be undertaken, as experimenting with a community’s flow of income could be quite problematic for their way of life.

Opposite, this type of test might not be necessary as the theory suggests that self-determination cannot be achieved without the financial ability to actualise self-government and if the indigenous groups access to capital is denied it could be expected that they would not have the financial ability to actualise self-government and achieve self-determination, as the case of the Mixe community will illustrate.

4.4 Limitations

In most studies, there is the chance that another explanatory variable than the one included in the study is producing the observed change, which threatens the internal validity (de Vaus, 2001: 234). To diminish the chance of this occurring, the combined comparative case study has aimed to account for as many variables as possible within the scope, but despite this, the limitation remains.

In the MSSD the number of differences between two similar cases are limited, despite this, the amount of differences will always be large enough to ‘overdetermine’ the dependent phenomenon (Przeworski and Teune, 1970: 34). Even if we assume that some differences can be identified as determinants, the efficiency of this strategy in providing knowledge that can be generalised is relatively limited (ibid).

Bryman (2012), however, argues that the assessment of qualitative studies’ generalisability is based on the inference between the data and the theory and that the aim of qualitative studies is to generalise to theory (Bryman, 2012: 399). The generalisability of this case is therefore based on the connection between Slowey’s (2008) theory and the analytical findings to determine whether the qualitative study’s findings could be applicable to other cases. In other words, the external validity of this study is consequently dependent on the degree the findings from the analysis align with the theoretical framework.

There are, additionally, limitations attached to the use of informal sources. Some sources are reliant on the same quotations and statistics and aren't all explicit about the originality of these. However, as a wide range of informal sources have been used, the representativeness of them should not pose an issue to the study (Bryman, 2012: 555). The sources, furthermore, align on whether the indigenous communities have been included in the market or not, despite disagreeing on the normative question of whether they should. The aim of the included sources is consequently achieved as they can tell us something about the market-inclusion of the indigenous peoples.

5 Combined comparative case study of Indigenous intellectual property in the international fashion industry

5.1 Empirical cases: Mixe, Maya, and Maasai

Mixe community and Isabel Marant

The case between the Mixe indigenous community and Isabel Marant¹ started when Isabel Marant reportedly aimed at copyrighting the design of the indigenous community (Wolf, 2015). Because of the clear similarities between the designs, Isabel Marant was accused of plagiarism (see appendix 1) (Larsson, 2015). And after a somewhat tumultuous legal process where another clothing brand; Antik Batik tried to achieve the copyright of the design, the French court ruled “that neither Isabel Marant nor Antik Batik could copyright huipil² shirts because they were a cultural artefact of the Mixe people” (Varagur, 2016). In spite of the outcome, the indigenous community were not financially compensated and were, therefore, not included in the global market, despite the multinational companies’ use of their design.

It should be noted that the Mixe community normally sells their shirts for around 300 pesos/\$16 dollars, whereas Isabel Marant’s was sold for \$365 almost 7000 pesos (Varagur, 2016; Larsson, 2015).

Yucatan Maya and Christian Louboutin

Then there is the case of Christian Louboutin³ and Taller Maya. Taller Maya is a clothing brand which is a part of the *Fundación Haciendas del Mundo Maya*⁴. The brand works with artisans from the Yucatan Peninsula to “preserve authentic craftsmanship and to ensure the long-term economic empowerment of Maya artisans” (see appendix 1) (Christian Louboutin, 2017). According to Louboutin, the *Fundación Haciendas del Munda Maya* helps create a healthy system of production, and the collaboration between the fashion brand and the foundation does not only create “unique artisanal pieces”, but also helps support the indigenous peoples (ibid). Through the collaboration between Louboutin and Taller Maya, the 200 Mayan artisans from the Yucatan Peninsula included in the project, produced bordados⁵ which were sold to Louboutin through the brand (ibid). The women received approximately 40 dollars per three bordados that were

¹ Isabel Marant is a French fashion designer (Larsson, 2015).

² *Huipil* is the name of the Mixe indigenous peoples’ traditional shirt (Varagur, 2016).

³ Christian Louboutin is a French designer (Christian Louboutin, 2017).

⁴ *Fundación Haciendas del Mundo Maya* is an indigenous organisation that aim to have the Maya identity and culture recognised, as well as work with Mayan development (FHMM, 2018).

⁵ Bordados is the embroidered pieces of fabric sold by the Mayas (Estaff, 2017).

used to create a Louboutin bags (Chards, 2017), that were later sold for \$1500 and a total at around 7000 pesos/\$394 for the few months' work. Though there were several blogs that were critical around the salary (Chards, 2017; Estaff 2017) it has been found that Taller Maya is a member of the World Fair Trade Organization, which guarantees compliance with global fair-trade principles (Taller Maya, 2019).

Additionally, Louboutin promised Taller Maya that they would receive 10% of the revenues of the bag, and Taller Maya ensured the indigenous community that the revenue would go to a new workshop in Santo Domingo Maxcanu where most of the indigenous people from the project live (Chards, 2017). However, it is not clear whether the workshop will be open for the whole indigenous community or only those working for Taller Maya.

Maasai and Koy Clothing

The Maasai indigenous people are a semi-nomadic indigenous group, living in Kenya and northern Tanzania (Reed, 2019). The Maasai indigenous peoples' are not only known for their warriors and indigenous culture, but also their appearance and traditional dress, which might be why numerous multinational corporations including; Land Rover, Louis Vuitton, Ralph Lauren, and Calvin Klein, have used their image or design in advertisements (Hebblethwaite, 2013). Until a few years ago the Maasai were not compensated whenever a MNC used their intellectual property. However, since Light Years IP⁶ became involved in their case and the Maasai Intellectual Property Initiative (MIPI) was created as an attempt to stop the exploitation of the Maasai IP (Young, 2017), they have managed to protect their intellectual property to some degree.

It is estimated that in 2017 around 80 companies were using the Maasai IP without compensating the indigenous peoples, which would equvalate around \$10 million in licensing fees every year (Young, 2017). For a population of which 80% live below the poverty line (Phipps-Rufus, 2013), this type of financial income could have a significant influence.

In 2008, the Maasai closed a licensing deal with the UK retail company Koy Clothing, that agreed to pay a license fee for clothes based on Maasai designs (see appendix 1) (Pilling, 2008). Light Years IP has, additionally, managed to get Land Rover to compensate the Maasai people for the use of their IP, thus including the indigenous group into the global market, through leasing their IP (Position ltd, 2019).

⁶ Is an organisation working with securing indigenous populations intellectual property (Light Years IP, 2019).

5.2 Comparative analysis

Table 1 – Research design for the combined comparative case study

	<i>Most Similar System Design</i>		
		<i>Most Different System Design</i>	
	<i>Case 1: Mixe</i>	<i>Case 2: Maya</i>	<i>Case 3: Maasai</i>
Variables			
<i>Country</i>	<i>Mexico</i>	<i>Mexico</i>	<i>Kenya/Tanzania</i>
<i>Demographics</i>	<i>Highly similar</i>	<i>Highly similar</i>	<i>Highly different</i>
<i>Indigenous language</i>	<i>Moderately similar</i>	<i>Moderately similar</i>	<i>Moderately different</i>
<i>Geography</i>	<i>Access to labour market</i>	<i>Access to labour market</i>	<i>Secluded</i>
<i>Level of freedom</i>	<i>63/100</i>	<i>63/100</i>	<i>45-48/100</i>
Explanatory variable 1 = Market-inclusion	Not market-inclusion	Market-inclusion (Short term)	Market-inclusion (Long term)
Explanatory variable 2 = Strategy for decreasing financial dependency	No	Yes	Yes
Dependent Variable	No increase in self-determination	Increased self-determination	Increased self-determination

Table 1 demonstrates the MSSD/MDS D research design. And further illustrates whether the cases are similar or different, in regard to each included variable, and whether the indigenous community of each case has achieved increased self-determination.

5.2.1 Variables

The first two cases; the Mixe community and the Maya indigenous peoples are both located in Mexico. They, therefore, encompass many similar characteristics.

Being located in the same country also ensures that the indigenous peoples of the two communities are subject to the same national legislation and policies that influence their way of living, such as to what degree they must answer to the government in regard to the use of financial support.

The Maasai community, on the other hand, is subject to legislation and policies from both Kenya and Tanzania. The two governments cooperate on certain aspects when it comes to the Maasai community (IC, 2019), but the Maasai's relation to national legislation is one aspect that could be subject for further research.

Demographics

This paragraph is reliant on numbers from The World Bank statistics to illustrate a fraction of the demographics and gender dynamics in the countries. These numbers are national numbers and are, therefore, not fully representative of the indigenous groups included in the study but give an idea of the differences between the regions of the study.

The life expectancy in 2017 was in Mexico, 79,7 for women and 74,9 for men. Whilst it in Kenya was 69,7 for women and 64, 9 for men, and 68,1 for women and 64,6 for men in Tanzania (World Bank, 2019b; World Bank, 2019c; World Bank, 2019d).

The mortality rate under five (per 1000 live births) in 2017, was in Mexico 12,1 for females and 14,7 for males, whilst it in Kenya was 41,5 for females and 49,5 for males, and in Tanzania is 50,3 for females and 57,6 for males (ibid).

The fertility rate (births per woman) in 2017 were 2.153 in Mexico, 3.793 in Kenya and 4.953 in Tanzania (World Bank, 2019e; World Bank 2019f; World Bank 2019g).

When looking at demographics, the age composition is often included. But as age composition in non-western contexts [in indigenous societies] remains a problem in demographic data collection (Coast, 2000: 90) it has not been included here. It was also found that the maternal mortality rate was highly similar between all countries and is therefore not expected to carry any explanatory value (World Bank, 2019b; World Bank, 2019c; World Bank 2019d).

What these numbers can tell us, is that the differences within Mexico are expected to be small as they are within the same country, whereas we can observe that the differences between Mexico and Kenya/Tanzania are relatively large.

Indigenous language

Of the Mixe community, 86.79% of the population speak indigenous languages, of which 10,6% only speak an indigenous language and not Spanish (Pueblos America, 2019). Of the Yucatan Maya indigenous people 59,5% speak the Mayan language (Wikipedia, 2019). Opposite, it is expected that the majority of the Maasai speak their native language *Maa*. Entologue (2019) finds that there are approximately 1.5 million people speaking *Maa* (Etnologue, 2019), but as the population-count for the Maasai people vary from 840.000 (IC, 2019) to about 2 million (Light Year, 2019), it is difficult to estimate the percentage of the Maasai who speaks *Maa*. This demonstrates how the use of indigenous languages is not

used by all the indigenous peoples in the two cases from Mexico, whereas the use of Maa is more widespread, though it is difficult to say anything more precise about this topic, without the specific numbers.

Geography

The Mixe and the Maya cases can both profit off their IP but are also both located in areas where the indigenous peoples have access to the classic labour market. Slowey (2008) argues that this two-way path to market-inclusion can contribute to provide advantages to development (Slowey, 2008: 77-78). Opposite, the Maasai community is somewhat more secluded. Yet, Slowey (2008) argued that it was being secluded that allowed the Mikisew Cree First Nation indigenous community to be both independent and self-reliant. It, therefore, doesn't appear that geographical proximity to labour-market-inclusion is the explanatory variable in this study.

Level of freedom

Mexico is a partly free country with 63/100 point in Freedom House' records (Freedom House, 2019). On the topic of political participation, it is found that indigenous Mexicans can participate in the political process, but that they remain underrepresented in formal political institutions. Mexican law furthermore bans discrimination based on ethnicity, gender, age, religion, and sexual orientation, but the indigenous populations have been subject to social as well as economic discrimination keeping many indigenous people in poverty (Freedom House, 2016).

The level of freedom for the Maasai community is rather difficult to determine as Freedom House' country reports are made per nation and the indigenous groups live on the boundaries of Kenya and Tanzania; the two countries are therefore included here. Both Kenya and Tanzania are also partly free according to freedom house, with respectively 48/100 and 45/100. The country reports do not comment directly on the rights of indigenous people, but they note that the Maasai community's freedom is threatened due to land-disputes, where land is giving to hunting and tourism corporations (Freedom House, 2018a; Freedom House, 2018b).

This illustrates that indigenous rights are discriminated in all three cases, but that the two cases situated in Mexico are at a different level of freedom compared to the Maasai community in Kenya and Tanzania. It, therefore, doesn't appear that the similarities in freedom between the two Mexican cases explain why the Maya community experienced self-determination and the Mixe did not, nor does the different levels of freedom between the Maya and the Maasai reject the assumption that it is market-inclusion that has an effect on self-determination.

Sub-conclusion:

In the above paragraphs it has been established that as the two Most Similar cases are within the same country, they share many similar structures and characteristics. The variables between the two Most Similar cases, those situated in Mexico have been accounted for, to establish their similarities as well as to

examine whether any of the included variables could explain why the Mixe case has not experienced an increased self-determination and the Maya indigenous community has experienced increased self-determination.

It was found that the two cases in Mexico had the same national policies; are expected to have highly similar demographics as they are within the same country; both have had a decline in indigenous language; both are geographically located with access to the labour-market; and experience similar levels of freedom. It was furthermore found that the Maasai case differentiated on all the same variables. With different national policies and legislation; highly different demographics; a wider use of indigenous language, though it is difficult to say something more precise about this; and by being secluded from the traditional labour-market; and experiencing a lower level of freedom. It, therefore, does not appear that the similarities found within these variables explain why the Mixe and Maya experienced different outcomes in self-determination, nor does the differences between the Maya and the Maasai reject the assumption that it is market-inclusion that has an effect on self-determination.

At this point, Slowey's (2008) theory holds, as the theory that market-inclusion is the explanatory variable for increased self-determination has not been rejected. But it is yet to be determined whether it is, in fact, market-inclusion that affects self-determination.

Market-inclusion

Based on the theoretical framework by Slowey (2008), the assumption is that market-inclusion is the explanatory variable. This will now be tested against the presented cases.

The Mixe community was not included in the market as their intellectual property (IP), their traditional clothing design was exploited by the multinational corporation Isabel Marant without the Mixe community receiving financial compensation. The Maya indigenous peoples were through the indigenous brand Taller Maya included in the market by selling the value of their IP to Christian Louboutin to use in his collection *Mexicaba* and could in this way secure an increased financial income. And the Maasai people were included in the market through leasing their IP to Koy Clothing and through reclaiming their IP from Land Rover, by having them compensate financially for their previous exploitation of the Maasai IP.

This reveals that within the scope of this study, it is the first independent variable that differentiates between two similar cases; the Mixe and the Maya case. Since the Mixe was excluded from the market and the Maya were included in the market through the collaboration with Louboutin, it suggests that the difference in increased self-determination could be explained by this variable. It further illustrates that the two different cases; Maya and Maasai, have this independent variable; market-inclusion in common, and that the theoretical assumption thus holds.

Based on these results the theoretical assumption is confirmed and it is found that market-inclusion affects self-determination, and consequently increased the financial ability to actualise the possibility for self-government for the indigenous

peoples. However, when looking at the relation between market-inclusion and the dependent variable; self-determination in the two cases, it appears that the type of market-inclusion could have an influence on the chance of achieving self-determination on the long-term.

The Maya community was included in the market through a one-time collaboration with Louboutin, which meant that the revenues from the market-inclusion were short-term. This meant that the continued financial ability to actualised self-government could not be achieved, and the income from the collaboration could only decrease financial dependency on the Mexican state temporarily. It is thus concluded that the Maya indigenous peoples' inclusion in the market led to a short-term increase in self-determination.

The Maasai, on the other hand, has managed to secure more long-term market-inclusion, through leasing their IP. Which enables them to decrease dependency on the state at a long-term perspective and establish or strengthen the indigenous political institutions which increase their chance for actualising self-government. It is, therefore, concluded that long-term market-inclusion, increases the chance of long-term self-determination for indigenous peoples.

For further clarification, the three cases have been positioned in Table 2 below depending on the case' relationship between market-inclusion and self-determination.

Table 2
The Relationship between market-inclusion and self-determination

	<i>No Market-inclusion</i>	<i>Short term Market-inclusion</i>	<i>Long term market-inclusion</i>
<i>No increase in Self-determination</i>	Mixe		
<i>Increase in Self-determination</i>		Maya	Maasai

The table illustrates what type of market-inclusion led to an increase in self-determination.

Strategy for decreasing financial dependency

At first, it appeared as though the only variable influencing self-determination and the chance of achieving long-term self-determination was market-inclusion. The analysis made it apparent that this is not the case, and that a strong *strategy for decreasing financial dependency* (Slowey, 2008, xv) also seem to influence the increase in self-determination.

It should be noted that self-determination cannot be achieved without market-inclusion and an increased capital base, and this variable can therefore not stand alone in explaining an increase in self-determination. However, it might be able to say something about how to achieve long-term self-determination.

It has been found that the Maya indigenous community has a weak strategy for decreasing financial dependency whereas the Maasai has a strong strategy for decreasing dependency. Since the findings show that increased self-determination

cannot be achieved without market-inclusion, no further study of the Mixe community will be executed. These findings will now be further explained.

The Maya community have, maybe subconsciously, established a strategy for how to decrease dependency on the state. This strategy primarily relies on the artisans, included in the collaboration between Taller Maya and Louboutin, receiving the salary and getting access to the sewing room, the revenues from the collaboration should fund.

Taller Maya also aims to create “opportunities of economic and social development for the artisans” as well as creating “accessible spaces for the promotion of Mayan cultural heritage, as a key to empower rural communities of the Yucatán Peninsula” (Taller Maya, 2019). It is not explicit how this will be achieved, but if economic and social development were to be achieved it could arguably benefit the chance of actualising self-government and self-determination.

The women included in the Christian Louboutin project, employed by Taller Maya, received a salary and will likely continue to benefit from their employment at Taller Maya and the new sewing room, but it is not known whether the sewing room is accessible for the whole indigenous community or only the women working for Taller Maya.

The problem with this strategy is that the financial gain most likely will stay at the individual or family level and thus not benefit the indigenous society as a whole. This might not be a problem as it could be argued that individual increased financial income decreases the overall indigenous community’s dependency on the state welfare and, therefore, increases their chance of actualising self-government. However, in this case, the intellectual property is collectively owned making it problematic that the indigenous peoples do not all benefit from selling the rights to it.

The Maya community’s strategy for decreasing dependency could be argued to continue to increase the self-determination after the collaboration with Louboutin ends, as the financial gain for the individual artisans could be said to decrease the overall financial income on the state. However, as this strategy is dependent on the individual artisans investing in the indigenous community and its governing institutions to decrease dependency, its influences on self-determination, though present, is assumed to be rather limited.

The Maasai community, on the other hand, have a rather extensive strategy for decreasing dependency. They have, with the help of Light Year IP, established the Maasai Intellectual Property Initiative whose aim is to consult with the community board and the Maasai people and create a strategy for how to appropriately use their culture. The initiative has, further, created a Maasai constitution to ensure that the indigenous people who live on the boundaries of the two countries, Kenya and Tanzania, are unified (Livni, 2017).

The initiative primarily works with securing Maasai IPRs and organising the community around this, to guarantee a collective standpoint when pressuring the MNCs to lease their IP instead of exploiting it. It is also the initiative that decides on the distribution of the profits achieved through IP (Livni, 2017; Hebblethwaite, 2013). And it has been expressed that the revenues from leasing their IP will go to community projects and to advance Maasai welfare, such as improving the

indigenous peoples' health, access to education and to continuously buying back rights to water and grazing land, which they are reliant on (Position Ltd, 2019). The Massai have expressed awareness of the dangers of wrongful distribution of IPRs revenues and therefore aim to distribute them fairly among the community (Hebblethwaite, 2013). Another aim of the initiative is to lobby and establish a connection to international partners that can help secure their IP in the future. So far, they have allied themselves with the African IP Trust and international lawyers who continuously work on their case (ibid).

It can thus be concluded that the Maya indigenous peoples' strategy for decreasing dependency on the state is relatively weak. Since it is reliant of the few indigenous people who experience an increased income as a result of the market-inclusion to invest in the indigenous governing institutions to achieve increased self-determination. It, therefore, only slightly increases the chance of long-term self-determination.

The Maasai have managed to create an extensive strategy on how to decrease dependency on the state. Through working with Light Years IP, whose aim it is to secure their IPRs and through the establishment of the Maasai Intellectual Property Initiative. The two organisations aim to secure the Maasai IP and distribute the revenues achieved from the market-inclusion fairly and furthermore, reinvest it in the society and indigenous institutions.

The Maasai strategy for decreasing dependency has consequently contributed considerably to the chance of actualising self-government and increasing self-determination, as it supports a collective indigenous vision, supports indigenous institutions, and, most importantly, ensures a continued financial income.

6 Conclusion

The study has illustrated how short-term market-inclusion, as was the case of the Maya community, led to a short-term increase in self-determination. Whereas the long-term market-inclusion, experienced by the Maasai indigenous community, led to a more sustainable and long-term increase in self-determination. Slowey's (2008) theory, therefore, holds true when tested against these cases.

These findings illustrate that increased self-determination can either be explained by its relation to market-inclusion, as was expected, or that an unknown independent variable, which was not controlled for, is causing increased self-determination. The hypothesis based on Slowey's (2008) theory is, therefore, confirmed although alternative explanations are not rejected (Przeworski and Teune, 1970: 37-38). It has, additionally, been found that having a strong strategy for how to decrease dependency on the state increases the chance of achieving long-term self-determination. Especially if the strategy not only aims to decrease dependency financially, but also aims to strengthen the indigenous governing institutions, and reinvest in the indigenous community.

The findings from this study thus suggest that though market-inclusion affects self-determination, it might be a combination of market-inclusion and a strong strategy for decreasing dependency that has the strongest effect on increasing self-determination. However, to establish whether a strategy for decreasing dependency is a necessary condition for achieving long-term self-determination or whether market-inclusion alone can also ensure self-determination, further studies will have to be undertaken, since these cases only illustrate how a combination of the two led to increased self-determination (Anckar, 2006: 398).

It is important to mention that none of the included cases have achieved self-determination as they do not yet have the "*ability to govern in accordance with its own goals, values, and aspirations*" (Slowey, 2008: 11) and furthermore have not achieved the capital base for actualising self-government and decrease dependency on the state completely.

However, the Maya and Maasai cases did manage to increase some of these aspects. The Maya community only managed to achieve short-term market-inclusion and a somewhat weak strategy for decreasing dependency on the state. Whereas the Maasai both increased their financial ability to actualise self-government, through the long-term market inclusion they experienced by leasing their intellectual property to Koy Clothing and created an extensive and strong strategy for decreasing dependency on the state. Together, this allowed them to experience more long-term self-determination compared to the Maya community. This takes them a step closer towards achieving self-determination. But if the aim is to be financially reliant on the profits from leasing their intellectual property it could be expected to be an uphill battle, as brands continue to exploit indigenous IP and it has not yet become a norm to lease indigenous IP.

6.1 Reflections

Despite the clear benefits of market-inclusion in relation to indigenous self-determination, there are also several aspects that remain problematic for the indigenous way of living. Most recently, Nike exploited the Kuna indigenous peoples, from Panama, by applying their traditional design ‘the Mola’ to their ‘Puerto Rico’ limited edition shoe (BBC, 2019). This case perfectly illustrates how MNCs do not respect indigenous design and further illustrates the continued importance of being able to govern over property, goals, values, and aspirations in order to achieve self-determination.

As illustrated in this study they are far from the only indigenous community to experience this type of exploitation. The Mixe community, though possessing many of the same characteristics as the Maya community, did not experience market-inclusion nor increase self-determination, because the MNCs disregarded their intellectual property right. This illustrates that if the MNCs do not act out of “goodwill” and respect indigenous IP, like in the collaboration between the Maya and Louboutin, the communities need to be able to claim their IPRs to secure market-inclusion like the Maasai. Which is why the international agreements influencing indigenous intellectual property and livelihood are so important, as they set a frame for protecting intellectual property. Although they are not all legally binding, they arguably have the power to change the ‘norm’ of exploiting indigenous intellectual property.

It has also been suggested that a voluntary code could be as powerful as legal routes. Voluntary codes can contribute to creating an industry norm, ensuring that those who exploit the indigenous brands are publicly shamed, it would be “a proud, ancient people against exploitative Western multinationals– and they’ll win the PR battle absolutely” (Hebblewaite, 2013). The problem with this approach is that, although it might be satisfactory to see the MNC be shamed, it does not benefit the indigenous peoples, whereas leasing agreements ensure that the indigenous communities are financially compensated for the use of their intellectual property.

For indigenous development to be achieved and their human rights to be protected the real causes of dependency must be addressed (Slowey, 2008: 34). Market-inclusion through the protection of indigenous intellectual property is one way to decrease dependency, and future studies could aim to further test this theory and examine the most efficient combination of market-inclusion and strategy for decreasing dependency and achieving self-determination. It could, further, be examined whether market-inclusion on its own could lead to long-term self-determination or whether it must be supported by a strategy for decreasing dependency.

Sharing the profits of indigenous resources is about more than sharing the profits, it is about sharing the decision-making power over the indigenous resources (Slowey, 2008: 12).

7 References

- Ankar, C., 2006. On the Applicability of the Most Similar System Design and the Most Different Systems Design in Comparative Research. *Int. J. Social Research Methodology*, 11(5), pp.389-401.
- Anderson, J. E., 2015. Indigenous Knowledge and Intellectual Property Rights. *International Encyclopedia of the Social & Behavioral Sciences*. 11, pp. 769-778.
- Barwa S., and Rai S. M., 2003. Knowledge and/as Power: A Feminist Critique of Trade Related Intellectual Property Rights. *Gender, Technology and Development*. 7(1), pp. 91-113.
- BBC, 2019. Nike cancels 'Puerto Rico' shoe over Panama indigenous design. *BBC*. [Online] (22 May) Available at: <<https://www.bbc.com/news/world-latin-america-48363024>> [Accessed 26 May 2019]
- Bryman, A., 2012. *Social Research Methods*. 4th ed. Oxford: Oxford University press.
- Coast, E., 2000., *Maasai Demography*. Ph. D. University College London.
- Correa, C. M., 2000. Reforming the Intellectual Property Rights System in Latin America. *World Economy*. 23(6), pp. 1083-1104.
- Chards, M. I. C. C., 2017. *Mayan Culture: Fashion's New Exploitation Source*. [Online] (19 July) Available at: <<https://culturacolectiva.com/fashion/louboutin-mexican-indigenous-exploitation>> [Accessed 22 April 2019]
- Christian Louboutin, 2019. *Viva MEXICABA!* [Online] (2 May 2017) Available at: <http://us.christianlouboutin.com/us_en/news/en_viva-mexicaba/> [Accessed 8 April 2019]
- ECOSOC, 2016. *What is development cooperation? 2016 Development Cooperation Forum Policy Briefs February 2015, No.1*. New York: ECOSOC.
- Etnologue, 2019. *Maasai*. [Online] Available at: <<http://www.ethnologue.com/21/language/mas/>> [Accessed 24 May 2019]
- Estaff, R., 2017. Louboutin Accused of Underpaying Maya Women Who created Bordados for Its Mexicaba Bags. [Online] (13 July 2017) Available at: <<https://remezcla.com/culture/louboutin-mexicaba-maya-bordados/>> [Accessed 18 April 2019]
- FHMM, 2018. *Visión y Misión*. [Online] Available at: <<https://www.haciendasmundomaya.org/mision-vision-valores.html>> [Accessed 25 May 2019]
- Freedom House, 2018a. *Tanzania Freedom in the World 2016* [Online] <<https://freedomhouse.org/report/freedom-world/2016/tanzania>> [Accessed 22 May 2019]

- Freedom House, 2018b. *Kenya Freedom in the World 2018* [Online] <<https://freedomhouse.org/report/freedom-world/2018/kenya>> [Accessed 22 May 2019]
- Freedom House, 2019. *Mexico Freedom in the World 2019* [Online] <<https://freedomhouse.org/report/freedom-world/2019/mexico>> [Accessed 22 May 2019]
- Hebbletwaite, C., 2013. *Brand Maasai: Why nomads might trademark their name*. [Online] (28 May 2013) Available at: <<https://www.bbc.com/news/magazine-22617001>> [Accessed 22 April 2019]
- Herr, R., S., 2017. Too Liberal for global governance? International legal human rights system and indigenous peoples' right to self-determination. *Journal of International Political Theory*, 13(2), pp. 196-214.
- Hymowitz et al, 2003. *Study Guide: The Rights of Indigenous People*. [Online] University of Minnesota Human Rights Center. Available at: <<http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html>> [Accessed 18 April 2019]
- IC, 2019. *Maasai*. [Online] Available at: <<https://intercontinentalcry.org/indigenous-peoples/maasai/>> [Accessed 19 May 2019]
- Joonas, T., 2010. International Norms and Domestic Practices in Regard to ILO Convention No. 169 – with Special Reference to Articles 1 and 13-19. *International Community Law Review*, 12, pp. 213-260.
- Kariyawasam, K. and Guy, S., 2007. Intellectual Property Protection of Indigenous Knowledge: Implementing Initiatives at National and Regional Levels. *Deakin Law Review*. 12(2), pp. 105-124.
- Larsson, 2015 - Larsson, N., 2015. Inspiration or plagiarism? Mexicans seek reparations for French designer's look-alike blouse. *The Guardian*, [Online] 17 June 2015. Available at: <<https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant>> [Accessed 16 March 2019]
- Lea, D., 2008. *Property Rights, Indigenous People, and the Developing World*. [e-book] Boston: Nijhoff Publishers. Available through: Brill <<https://brill-com.ludwig.lub.lu.se/view/title/15025>> [Accessed 5 February 2019].
- Light Years, 2019. *The Maasai Cultural Brand*. [Online] Available at: <<http://lightyearsip.net/the-maasai/>> [Accessed 24 May 2019]
- Livni, E., 2017. *The Maasai want their brand back*. [Online] (28 January 2017) Available at: <<https://qz.com/896520/the-maasai-want-their-brand-back/>> [Accessed 19 April 2019]
- Longman, 2019. *Global Market*. [Online] Available at: <<https://www.ldoceonline.com/dictionary/global-market>> [Accessed 10 May 2019]
- Meyer, W. H., 2012. Indigenous Rights, Global Governance, and State Sovereignty. *Human Rights Rev*, 13, pp. 327-347.
- Nuestro Mexico, 2019. *Santa María Tlahuitoltepec - Oaxaca*. [Online] Available at: <<http://www.en.nuestro-mexico.com/Oaxaca/Santa-Maria-Tlahuitoltepec/Santa-Maria-Tlahuitoltepec/>> [Accessed 22 May 2019]

- Paterson, R. K., and Karjala, D. S., 2003. Looking beyond Intellectual Property in Resolving Protection of the Intangible Cultural Heritage of Indigenous Peoples. *International and Comparative Law* 11(2), pp. 633-670.
- Phipps-Rufus, T., 2013. *Companies accused of exploiting cultural identity of Kenya's Maasai*. [Online] (8 August 2013) Available at: <<https://www.theguardian.com/sustainable-business/ethical-exploit-cultural-brands-masai>> [Accessed 13 April 2019]
- Pueblos America, 2019. *Santa María Tlahuitoltepec*. [Online] Available at: <<https://en.mexico.pueblosamerica.com/i/santa-maria-tlahuitoltepec/>> [Accessed 22 May 2019]
- Perry, M., 2016. *Global Governance of Intellectual Property in the 21st Century – Reflecting Policy Through Change*. ed., 2016. New York: Springer International Publishing.
- Picart, C. J. S., and Fox, M., 2013. Beyond Unbridled Optimism and Fear: Indigenous Peoples, Intellectual Property, Human Rights and the Globalisation of Traditional Knowledge and Folklore: Part 1. *International Community Law Review*. 15(2013), pp. 319-339.
- Pilling, D. 2008. *Warrior tribe enlists lawyers in battle for Maasai 'brand'*. [Online] Available at: <<https://www.ft.com/content/999ad344-fcff-11e7-9b32-d7d59aace167>> [Accessed 8 April 2019]
- Position Business Ltd, 2019. *Maasai Cultural Brand*. [Online] Available at: <<https://www.positionltd.com/maasai-cultural-brand>> [Accessed 18 May 2019]
- Przeworski, A., and Teune, P., 1970. *The Logic of Comparative Social Inquiry*. New York: John Wiley & Sons
- Reed, N., 2019. Cultural and Intellectual Property Appropriation: Disputes Over Culturally-Inspired Fashions. *Trademark & Copyright Law*. [Blog] 8 February 2019. Available at: <<https://www.trademarkandcopyrightlawblog.com/2019/02/cultural-and-intellectual-property-appropriation-disputes-over-culturally-inspired-fashions/>> [Accessed 16 March 2019]
- Shiva, V., 2000. North-South Conflicts in Intellectual Property Rights. *Peace Review*, 12(4), pp. 501-508.
- Slowey, G., 2008. *Navigating Neoliberalism: Self-Determination and the Mikisew Cree First Nation* [e-book]. Vancouver: UBC Press. Available through: ProQuest Ebook Central <<https://ebookcentral-proquest-com.bib101.bibbaser.dk/lib/copenhagenkb/detail.action?docID=3412575>> [Accessed 25 April 2019]
- Stavenhagen, R., 2005. The Rights of Indigenous Peoples: Closing a Gap in Global Governance. *Global Governance*, 11(1), pp. 17-23.
- Taller Maya, 2019. *The Mayan Way*. [Online] Available at: <<https://tallerm.myshopify.com/>> [Accessed 19 May 2019]
- UN, 2013. *Indigenous Peoples and the United Nations Human Rights System Fact Sheet No. 9/Rev.2*. New York: United Nations.

- UN, 2019a. *Sustainable Development Goals*. [Online] Available at: <<https://sustainabledevelopment.un.org/?menu=1300>> [Accessed 24 May 2019]
- UN, 2019b. *United Nations – Indigenous Peoples, Department of Economic and Social Affairs: Indigenous Peoples at the UN*. [Online] Available at: <<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>> [Accessed 18 April 2019]
- UN General Assembly, 2007, *Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007). [Online]. A/RES/61/295. Available at: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> [Accessed 19 April 2019]
- UNPO 2019. *Self-determination*. [Online] (17 September 2017) Available at: <<https://unpo.org/article/4957>> [Accessed 10 May 2019]
- Varagur, K., 2016. *Mexico Prevents Indigenous Designs From being Culturally Appropriated – Again*. [Online] (17 March 2016) Available at: <<https://www.huffpost.com/entry/mexico-prevents-indigenous-designs-from-being-culturally-appropriated-again>> [Accessed 23 April 2019]
- de Vaus, D., 2001. *Research Design in Social Research*. London: Sage Publications.
- Wikipedia, 2019. *Maya People*. [Online] Available at: <https://en.wikipedia.org/wiki/Maya_peoples#Yucatec_Maya> [Accessed 22 May 2019]
- WIPO, 2016 - World Intellectual Property Organisation, 2016. *Traditional Knowledge and Intellectual Property*. [Online] Geneva: WIPO. Available at: <https://www.wipo.int/export/sites/www/tk/en/documents/pdf/background_brief_on_tk.pdf> [Accessed 5 February 2019]
- Wolf, C., 2015. *Isabel Marant Reportedly Wants to Copyright Indigenous Mexican Design* [Online] (20 May 2015) Available at: <<https://www.racked.com/2015/11/20/9768890/isabel-marant-copyright-oaxaca>> [Accessed 21 April 2019]
- World Bank, 2019a. *Indigenous Peoples*. [Online] (2 April) Available at: <<https://www.worldbank.org/en/topic/indigenouspeoples>> [Accessed 19 April 2019]
- World Bank, 2019b. *Gender Data Portal - Kenya*. [Online] Available at: <<http://datatopics.worldbank.org/gender/country/kenya>> [Accessed 22 May 2019]
- World Bank, 2019c. *Gender Data Portal - Mexico*. [Online] Available at: <<http://datatopics.worldbank.org/gender/country/mexico>> [Accessed 22 May 2019]
- World Bank, 2019d. *Gender Data Portal - Tanzania*. [Online] Available at: <<http://datatopics.worldbank.org/gender/country/tanzania>> [Accessed 22 May 2019]

- World Bank, 2019e. *Fertility Rate total - Kenya*. [Online] Available at: <<https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=KE>> [Accessed 22 May 2019]
- World Bank, 2019f. *Fertility Rate total - Mexico*. [Online] Available at: <<https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=MX>> [Accessed 22 May 2019]
- World Bank, 2019g. *Fertility Rate total - Tanzania*. [Online] Available at: <<https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=TZ>> [Accessed 22 May 2019]
- Young, S., 2017. *Maasai People of East Africa Fighting Against Cultural Appropriation by Luxury Fashion Labels*. [Online] (7 February 2017) Available at: <<https://www.independent.co.uk/life-style/fashion/maasai-people-cultural-appropriation-luxury-fashion-retailers-louis-vuitton-east-africa-intellectual-a7553701.html>> [Accessed 19 May 2019]

8 Appendices

8.1 Appendix 1



An illustration of the similarities between the Mixe indigenous Huipil shirt and the shirt from Isabel Marant's collection (Larsson, 2015).



A picture from Christian Louboutin's website of the collection Mexicaba, on which he collaborated with the Yucatan Maya indigenous peoples (Christian Louboutin, 2017).



A picture from Koy Clothing who lease the Maasai indigenous community's intellectual property. And a picture of Land Rovers advertisement, in which they used the Maasai brand without permission (Position Ltd, 2019).