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Human Rights Law and the Arctic Indigenous Peoples

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At its evolution in the late 1940s, the international human rights legal framework has not referred to Indigenous peoples. Given its nature that form of set of individual rights, international human rights law has traditionally been addressed individuals, but not communities or groups, as the right holders. However, some elements of individual rights are not meaningfully exercised unless a community or group components are attached to them – most importantly the exercise of a right to culture or religion. The mainstream human rights law recognized the "community" connection in the enjoyment of those rights. Such rights are generally applicable to social groups that form minorities in countries in which they live. Indigenous peoples form ethnic minorities in most countries in which they live. Therefore, despite a lack of reference to Indigenous peoples in the mainstream international human rights law, individuals belonging to Indigenous group, as with others in a given society, fully enjoy human rights, and some of them in a collective setting. Hence, any actions by states resulting in the violation of rights applicable to Indigenous peoples are unlawful. This section briefly introduces the international human rights legal instruments that apply to Indigenous peoples, particularly the Sámi Indigenous people.

The mainstream human rights law primarily includes the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. The UDHR offered a comprehensive set of universally applicable human rights. While it is a non-legally binding document, most of the rights embodied in it eventually have been codified in the ICCPR and ICESCR. The latter two together have added three subsequent legal instruments – the optional protocols. Altogether, these instruments combined are called International bill of human rights. As stated above, none of these instruments explicitly referred to Indigenous peoples. Yet, some of the provisions in these documents provide strong grounds for Indigenous peoples' rights. The most cited provision is Article 27 of the ICCPR and Article 15 (1) (a) of the ICESCR. The former is about non-interference in the exercise of minority culture, where individuals, in community with other

members of the group enjoy the practice of culture, forming the core identity of the group. The latter is about ensuring individual's participation in the practice of culture. The proper implementation of the provisions is overseen by the treaty monitoring bodies created under both Covenants. For ICCPR it is called Human Rights Committee (HRC), and for the ICESCR, it is the Committee on Economic Social and Cultural Rights (Committee on ESCR. They enjoy the authority to offer guidance in the form of so-called "General Comment", and "Concluding Observation" responding to country reports submitted by the parties. The General Comments provide interpretation of specific articles to guide states while implementing them.

Both Committees interpreted the aforementioned articles in favour of the rights of Indigenous peoples, particularly in regard to their right to land and land-based activities. For example, in 1994 the HRC adopted General Comment 23, suggesting that a right to culture with particular reference to Indigenous peoples means exercising their traditional and nature-based livelihood activities, such as hunting, fishing, gathering, trapping etc., and skills they developed traditionally to perform those activities. Similar interpretation is found also in the General Comment 21 (2009) on article 15 (1) (a) by the Committee on ESCR. The Committee highlighted the collective component of Indigenous rights in connection to their lands and resources as part of the practice of cultural. What particularly important is that these treaty monitoring bodies explicitly indicated that the provisions of these rights are not considered as negative rights with states abstaining from interference, they rather are positive rights requiring affirmative actions from the states to meaningfully promote them. Afterall, the essence of human rights is about protection from the violation of rights, and adoption of subsequent measures for their promotion.

Other human rights instruments, as they relate to Indigenous peoples, speak the same language. For example, the Committee on the Elimination of all form of Racial Discrimination (Committee on ERD) under the Convention on the elimination of all form of Racial Discrimination (CERD) in its General Comment 23 specifically addressed Indigenous peoples. The Committee consistently affirmed that discrimination against Indigenous peoples falls under the scope of the Convention. Hence, by virtue of the General Comment, the Committee required the state parties to provide information (while

submitting the country report under article 9 of the Convention) on the situation of Indigenous peoples in the respective countries. The Committee further highlighted that states must take all appropriate measures to eliminate discrimination against Indigenous peoples.

The essence of Indigenous peoples' rights in the mainstream human rights instruments, as stated above, are explicitly complemented by further developments Indigenous-specific human rights legal framework. For example, the International Labour Organization (ILO) Convention 169 (ILO 169) of 1989 is the only legally binding international treaty applicable to Indigenous and Tribal peoples in independent countries. The treaty offered substantive rights of Indigenous peoples concerning their ancestral lands that they own or otherwise occupy for their traditionally held livelihood practices. Their rights to participation and consultation in the management of the lands and resources offer an essential milestone, which latter has been strengthened through the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP emphasised on the norm of Free, Prior and Informed Consent (FPIC) in several of its articles. The FPIC not only ensure Indigenous participation in the process of decision makings on issues that of their concerns, but it also offers a veto right for them. Although the UNDRIP is a non-legally binding document, the subsequent developments suggest that the FPIC has become a legal standard employed by judicial mechanisms. For example, the HRC in 2009 in Angela Poma Poma Vs Peru case, and the Inter-American Court of human rights in Saramaka people vs. Suriname case explicitly endorsed the FPIC as a legal standard to determine the conclusions.

For more on this, read…

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