Indigenous Peoples: An Introduction to the Socio-Legal Framework with a Special Focus on the Declaration on the Rights of Indigenous Peoples and South Asia

“Indigenous peoples are not victims, but critical asset to the diversity of global humanity.”¹

At the foundation of human rights lie respect, tolerance, and upholding the dignity of individuals and groups in society. The basic principles of equality and nondiscrimination are applicable to every individual, with recourse through international law under the Universal Declaration of Human Rights.² To enforce these rights requires commitment from individuals, groups, governments, and the international order. The International Labour Organisation (ILO) Convention (No. 169) and the UN Declaration on the Rights of Indigenous Peoples 2007³ reiterate, in Article 3 and 1 respectively, that indigenous individuals have the right to full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the UN, the Universal Declaration of Human Rights and international human rights law.

Indigenous peoples in many areas of the world have suffered from centuries of discrimination and mistreatment. A combination of abhorrent practices has placed indigenous peoples on the periphery of the larger and more powerful societies in which they exist. Furthermore, there has been unwillingness to engage, on an international and domestic level, with collective rights by which indigenous peoples can recognise and assert their equal worth and dignity as a distinct group. Historical neglect has led to the need for distinctive provisions and legal distinctions for indigenous peoples.

² Preamble to the Universal Declaration of Human Rights (adopted 10 December 1948).

The recognition of indigenous peoples as distinct groups has led to a separate body of international laws and norms, which have become operational over the last three decades. The rights of indigenous peoples have risen sharply to the forefront of international attention, culminating in the adoption of the Declaration on the Rights of Indigenous Peoples in September 2007, and at the same time establishing a framework for strengthened engagement on indigenous people’s issues. Related developments include the ILO Convention (No. 169) on Indigenous and Tribal Peoples (1989). The promotion of this convention is now a thematic priority of the European Initiative on the Declaration of Human Rights, the 2005 Heads of State World Summit with a reiteration on the Millennium Development Goals and the Advancement of indigenous peoples rights, the beginning of the second decade of the Worlds Indigenous Peoples, and most important, the Declaration on the Rights of Indigenous Peoples.

Difficulties arise in the application of collective rights when defining what ‘indigenous’ is and who is included among indigenous peoples. Certain states, especially in Asia, refuse to accept that indigenous peoples exist in their borders, citing imported European populations as a necessity. In this chapter, the authors rebuff this misconception, using examples of a number of indigenous peoples of South Asia and the application of international human rights law.

This chapter is divided into four main sections. Section I addresses the complex issue of defining indigenous peoples, section II addresses recent developments in International Law to promote and protect the rights of indigenous peoples. Section III addresses the recent Declaration on the Rights of Indigenous Peoples and analyzes the extent to which the rights of indigenous peoples can now be understood as international customary law, and section IV provides conclusions.

I. Definitional Issues in the Context of South Asia

‘Indigenous’ is a relative concept that relates strongly to the land. To this end, colonization from Western imperialists and non-Western colonizers has played a huge part in determining the path that the rights of indigenous peoples have taken. Within the context of South Asia, the term ‘indigenous’ is perhaps the most difficult to define, not least of which because of its relative nature of application to the relevant groups and communities. For example, the Veddas of Sri Lanka and the Adivasis of India and Bangladesh were colonized well before the European imperialist powers created the Commonwealth. A similar situation arises in the case of Sindhis, Baluchis or Pakhtuns of modern day Pakistan and Afghanistan. Colonization led to the destruction of many indigenous peoples whereas, the survivors were conquered or subjugated. Furthermore, notwithstanding the independence movement in South Asia, a more

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