

Role of NGOs in Protecting the Rights of Indigenous under ILO

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Abstract

The indigenous and people suffer serious abuses of their human rights throughout the world. They experience heavy pressure on their lands from being logged, mining, roads, conservation, construction of dams, agribusiness etc. Many countries have worked towards protecting their rights and preventing its abuse. The laws meant for protecting their human rights are often violated and sometimes they are found to be inadequate to prevent the abuse of rights of tribes. Many countries laws are inconsistent with the international human rights law too. The International Labour Organization has developed agreements and mechanisms to address the core problems of these people. These agreements are binding on the states which ratify them. The issues of tribes and indigenous people addressed by the ILO have resulted in jurisprudence recognizing their rights. This also include the rights of indigenous and tribes on par with protection of their lands, territories, resources traditionally occupied and right to a healthy environment; protection of cultural sites of religious significance; protection of cultural and physical integrity; participation in decisions that affect them and use their own cultural, social and political institutions; to be free from discrimination and to equal protection of the law. In implementing any of such laws for protection of human rights of indigenous and tribal people the international institutions like ILO and United Nation rely on the information given by NGOs and groups. They work for protecting of their human rights and fundamental freedoms. This paper analyses the role of ILO in protecting the rights of indigenous and tribes. It summarizes the role of NGOs in international standard setting which is a prerequisite for protecting the rights of indigenous and tribes.

Introduction

The rights of tribal people have assumed an important role in international human rights law and a discrete body of law which confirms and protects the individual and the rights of tribal people has emerged since two decade. This body of law is still expanding and developing through indigenous advocacy in international arena through the decisions of international human rights bodies, through recognition and codification of their rights which is presently considered by the UNO through various conventions and treaties. Even the international bodies have contributed to progressive development of tribal rights by interpreting human rights instruments of general application to account for and protect their rights collectively. The African Commission on Human and People's Rights, UN Committee on the Elimination of Racial Discrimination, UN Human Rights Committee, the International Labour Organization Committee of Experts and Inter- American Commission on Human Rights all ensure protection of human rights of tribes and indigenous.

Despite of these advances in international law, there is still violation of tribal rights. Much of this abuse is associated with heavy pressure to exploit the natural resources in indigenous peoples' territories.

Indigenous peoples in tropical forest areas have suffered especially severely from this intensifying pressure on their lands, which is resulting in rapid deforestation as a result of logging, mining, agricultural expansion, colonisation and infrastructure projects. Environmental conservation initiatives also often do not account for indigenous rights. Further, many of the international developments related to indigenous rights have yet to be translated into concrete changes at the national and local levels. National laws in many countries, continue to be substantially at odds with international human rights standards.¹

ILO and Tribal/Indigenous People

The ILO was founded in 1919 as a specialised agency of the League of Nations, the predecessor of the United Nations. It was the first international organisation devoted to the protection of human rights. Today, the ILO is a specialised agency of the United Nations with headquarters in Geneva and offices throughout the world. Until the 1970s, the ILO was the only member of the UN system to have consistently expressed an interest in indigenous peoples' rights. This was in large part due to widespread exploitation of indigenous labour that continues to the present day in certain countries. The ILO also adopted the first international instrument to exclusively address indigenous peoples' rights in 1957², The Indigenous and Tribal Populations Convention as revised in 1989.³ It seeks to ensure that indigenous and tribal peoples enjoy human rights without discrimination, exercise control over their own development and participate in decision-making processes that affect their lives. ILO estimates that indigenous and tribal peoples constitute 5% of the world's population totalling some 370 million people worldwide in 70 different countries. Such figures, however, disguise dramatic differences in terms of levels of legal recognition, social and political realities. Indeed, the diversity of coverage is an important hallmark of the Convention including both subjective and objective criteria for identifying indigenous and tribal peoples.⁴

The indigenous peoples concern those descending from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Tribal peoples, in turn, are those 'whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations'. In both cases, self-identification as either indigenous or tribal is considered a 'fundamental criterion'.

The Convention emphasis on self-identification and ascription of the same rights to both indigenous and tribal peoples offer a unique inclusive approach to address diverse and deep-lying social, political and cultural inequalities. Whereas this volume in line with the wider literature uses the term indigenous as a short-hand to cover both indigenous and tribal peoples, the dual nature of coverage is crucial to explain the relevance of the Convention in many national contexts. Whereas the international standards recognising indigenous rights have increased, the gap between these standards, and the aspirations and the realities on the ground remain considerable. Deepening inequalities, socio-environmental conflicts as well

¹ Fergus Mec Key, "*A Guide to Indigenous People Rights in the International Labour Organization*", (Forest People Programme) 2021 at p4

² ILO 107

³ ILO 169

⁴ <https://www.tandfonline.com/doi/full/10.1080/13642987.2019.1677615>

as continuous calls for action from the international community and indigenous peoples' representatives illustrate with clarity the urgency of putting the Convention and its implementation under scrutiny.

Across the globe, indigenous peoples suffer from what has been labelled as 'development aggression', referring to top down and imposed forms of development connected to the extraction of natural resources located on their territories.⁵ Such 'aggression' in the name of development is particularly acute when it comes to large-scale developmental projects taking place on indigenous peoples' territories and is often synonymous with forced displacement, land dispossession and environmental degradation, and the resulting cultural disruption, with scant attention to rights. This has not only amplified social and environmental impacts, but equally augmented the levels of socio-environmental conflicts, the frequency of violence and the break-down of constructive dialogue. Indeed, one needs not spend a lot of time with indigenous organisations to get a sense of the intense pressures and dilemmas they face on a wide range of topics from forestry, extractive industries to infrastructure development. Overworked, underrepresented and under massive pressure in a context of intense investments, volatile politics and transformative projects, the relevance of an internationally grounded human rights framework effectively working on the ground is clear.⁶ Since the adoption of the Convention, there has been an upsurge in targeted development support by both ILO and other international and national development agencies leading participatory development initiatives, tailored support schemes and the inclusion of indigenous priorities in rural, health and education planning. On the other hand, the indigenous development challenge is about much more than extending and adapting outreach programmes.⁷

The ILO has, for example, spearheaded analytical work on the presence of forced labour, child labour and discrimination among indigenous peoples tying the C169 mandate to ILO's core focus on labour standards. This has also led to numerous work-oriented observations by the ILO in international settings. As noted in the statement made by the ILO during the 2018 Permanent Forum on Indigenous Issues: Indigenous women and men work in a wide range of sectors, as construction workers, street vendors, on plantations, in natural reserves, the tourism industry, in the services sectors or as domestic workers. Often however, opportunities for indigenous women and men are limited to the informal economy, where working conditions are poor and violations of fundamental rights at work are more likely to occur. In this context, indigenous women in particular are vulnerable to exploitation, and face rampant discrimination because they are women and because they are indigenous.

An important change in the last 30 years is how indigenous peoples have been recognised as actors and not only subjects or victims of international law. The participation of indigenous peoples in the making of international law is of essential importance to ensure a much more direct and participatory role for indigenous peoples. Hence, a central concern of the collection of papers is to offer some reflections on the role that the ILO can offer for supporting the direct and active participation of indigenous peoples in law-making and wider standard-setting process. If the ILO is the institutional host of the only binding international instrument, other agencies have largely bypassed the ILO in terms of adopting institutionalised ways of engaging with indigenous representatives in their international processes. The International institutions and mechanisms dedicated to indigenous issues such as the Permanent Forum on

⁵ Jérémie Gilbert and Cathal Doyle, "*A New Dawn over the Land: Shedding Light on Collective Ownership and Consent*", (Hart Publishing, 2011).

⁶ Huseyin Polat, 'Indigenous Peoples' Co-Ops and the Ilo-Indisco Programme', *Review of International Cooperation* 91 (1998): 97–109.

⁷ Pro 169, *Indigenous and Tribal Peoples Rights in Practice: A Guide to Ilo Convention 169*, (Geneva: International Labour Organization, 2009).

Indigenous Issues (PFII), the Expert Mechanism on Indigenous Peoples (EMRIP), the UN Voluntary Fund for Indigenous Peoples and the work of the Special Rapporteur on Indigenous Peoples have different roles and complementary terrains. Other specialised agencies such as the FAO and UNESCO are also actively supporting and integrating indigenous peoples' rights in their activities.

Role of NGO

A major initiative in UN human rights standard setting was the adoption of Universal declaration of human rights in 1948 and the adoption of international covenants on civil and political rights and covenant on economic, social and cultural rights in 1966. All these together form the international bill of human rights. Even the NGOs played a predominant role in drafting this bill but they were not entitled to move the proposals as it required the sponsorship of governmental representatives.

Charles Malik noted that "the NGOs served as batteries of unofficial advisers to the various delegations, supplying them with the streams of ideas and suggestions"⁸ he said the genesis of every article in the UDHR was a dynamic process which had many minds, backgrounds, ideologies and legal system. Non-Governmental input in human rights standard setting of a whole range organization has a substantial effect. Organizations like ILO, Council of Europe and Organization of American states are the notable examples which have worked towards protection of human rights.

The NGOs have worked in human rights standard setting programmes in issues concerning prevention torture, child rights and indigenous rights. The third area of human rights standard setting programme is of special interest. When the international bill of human rights and other instruments were drafted subsequent to it, no one involved in the drafting process concerning the specific rights and interest of indigenous people. Their concern became a matter of UN only after the comprehensive study of the problem of discrimination against indigenous/tribal populations which was carried out by Mr. Joe Martinez Cobo, a special rapporteur of the sub-commission on prevention of discrimination and protection of minorities.⁹ The study carried out suggested that sub-commission and its subsidiary organs prepare a declaration of the rights and freedoms of indigenous populations to form a basis of the convention.

The study also recommended that authentic representatives of the world's principal indigenous organizations participate directly in the preparatory work. And in fact, the evolution of standards of the rights of the indigenous peoples became one of the priority tasks of the Sub-Commission's Working Group on Indigenous Populations, which was created in the early 1980s. The Working Group is presently seized with a revised text of a draft Universal Declaration on the Rights of Indigenous Peoples. According to the report of the 1989 session of the Working Group, some 135 non-governmental organizations were represented in the Working Group. They are all entitled to participate and to provide information to the Working Group. In view of the considerable financial burden of travelling to Geneva for indigenous organizations and groups coming from other continents, the United Nations had the care and wisdom to establish a trust fund in order to meet the expenses of a number of indigenous representatives. It should be noted that in UN documents the term indigenous peoples' organization is now in common use which implies something more and different than the term "non-governmental organizations."¹⁰ With the appearance of indigenous peoples' organizations on the international scene, it became clear that existing

⁸ Chairman, Third Committee, UN General Assembly adopting the UN Declaration.

⁹ The Working Group on Indigenous Populations on its Seventh Session, U.N. Doc. E/CN.4/Sub.2/1989/36 (in particular Annex I containing the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples, as presented by the Chairman/Rapporteur, Ms. Erica-Irene Daes).

¹⁰ Barsh, "*United Nations Seminar on Indigenous Peoples and States*", 83 AM. J. OF INT'L L. 599, 602 n.20 (July 1989)

international structures and arrangements do not fit the perceptions and aspirations of these indigenous organizations. These organizations openly challenge the representative character of governments, and they claim to be the genuine representatives of indigenous communities. At the level of the Sub-Commission's Working Group on Indigenous Populations, a practical solution has been found. In the Working Group, also indigenous organizations that function at the community or national level and are most directly representative of and knowledgeable about conditions and aspirations of their peoples are allowed to participate in the work. This facility is granted in spite of the fact that these organizations do not qualify for consultative status according to present rules and regulations. It remains to be seen whether this practical solution will also be followed when the draft universal declaration on the rights of indigenous peoples will be discussed at higher levels of the UN hierarchy.

Suggestions & Conclusions

The problem relating to indigenous participation in the revision of the ILO Convention on Indigenous and Tribal Populations is noteworthy. Under ILO rules only international NGOs are allowed to speak in formal sessions, but not organizations which represent indigenous peoples at the community or national levels.¹¹ The Director of the International Work Group on Indigenous Affairs expressed the misgivings of some indigenous organizations in the following terms: "they were relegated to the rim of the conference hall, looking on aghast as their fundamental rights were discussed, debated, horse-traded and, more often than not, thrown out."¹² A senior official of the ILO commented that the participation by NGOs in the revision process was greater than at any time in the history of the United Nations system for the adoption of any human rights instrument. He saw the issue in the light of a certain amount of conflict among different NGOs over who is truly representative. It seems that there is a deeper conflict than suggested by the ILO official. It is a conflict between the presumed representative character of the existing governmental structures and international organizations and institutions on the one hand, and legitimate aspirations of the indigenous peoples on the other hand, inasmuch as the latter wish to exercise the right to self-determination and acquire national and international recognition.

In modern times international legislation has an increasing impact on domestic legal orders. With the development of the concept and structures of international cooperation, the volume of international legislation is rapidly increasing. It is a matter of concern that a great deal of international legislation, which directly or indirectly affects the rights and wellbeing of individuals, groups and entire populations, is the product of national or international bureaucracies without proper democratic control or input. Parliamentary involvement is limited or totally excluded. Parliaments are often faced with texts already completed and adopted.

The international law of human rights is a people oriented law, and it is only natural that the shaping of this law should be a process in which representative sectors of society participate. This is a logical requirement of democracy. While the orientation of contemporary international law and a fortiori of international human rights law is supposed to bend towards serving human and welfare interests, the international law-making process generally follows traditional patterns with a predominant role for states. This is an anomaly and reveals a lack of democratic quality. It is to the credit of UN working groups

¹¹ Berman, *The ILO and Indigenous Peoples: Revision of ILO Convention No. 107 at the 75th Session of the International Labour Conference, 1988*, in 41 *REVIEW OF THE INT'L COMMISSION OF JURISTS* 48-57 (Dec. 1988); Samson & Swepston, *Response to Review 41 Article on ILO Convention*, in 42 *REVIEW OF THE INT'L COMMISSION OF JURISTS*, 43-46 (June 1989).

¹² *Id.* at 52

involved in human rights standard-setting that they provide ample room to NGO representatives to participate in the proceedings. In fact, NGOs themselves have progressively conquered this space. In a modest way this practice fills a democratic gap. It is suggested that the present practice should be formalized by devising new rules concerning the NGO role in international standard setting. This matter should be approached with some degree of caution, because the end result of such formalization may well have a restrictive effect on present practice. Transparency and public discussion are essential elements of democratic processes. These elements are also needed in international legislation, and NGOs can play an instrumental role in this regard.

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