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OVERVIEW: BUSINESS AND HUMAN RIGHTS, AS THEY CONCERN THE RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES

MINORITY AND INDIGENOUS RIGHTS

Minority and indigenous rights are part and parcel of human rights. Under international human rights law, minority and indigenous persons have the same rights as everyone else (remember article 1 of the UDHR - We are all born free and equal in dignity and rights).

Minority and indigenous persons are frequently victims of discrimination based on ethnicity, language, religion and/or culture and way of life. That's why several global and regional human rights instruments contain minority and indigenous-specific rights and measures that are intended to combat and overcome this discrimination and to achieve equal rights.

As far as minorities are concerned, the international instruments include the International Convention on the Elimination of All Forms of Racial Discrimination (UN), the Convention against Discrimination in Education (UNESCO), article 27 of the International Covenant on Civil and Political Rights (UN, ICCPR), article 15 of the International Covenant on Economic, Social and Cultural Rights (UN), the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Linguistic and Religious Minorities, the Framework Convention for the Protection of National Minorities (Council of Europe), and a series of declarations and recommendations from the OSCE and other regional organisations.

While indigenous peoples generally can claim all minority rights, in addition they have indigenous-specific instruments available for their protection. The main instruments concerned include the Indigenous and Tribal Peoples Convention (ILO Convention No. 169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Articles 17, 29 and 30 of the Convention on the Rights of the Child (UN) contain provisions addressing both minority and indigenous children. Notably, general comments from treaty bodies underline many of the standards, and so does case law from the Human Rights Committee under the ICCPR.

In addition to the equal enjoyment of all human rights and the prohibition of discrimination, the contents of the minority and indigenous rights extend to a series of special measures and special rights concerning the right to life and the groups' physical existence, as well as the rights to their own identity, culture, language, education, employment, participation in the economy and in public life, and so on. Hate speech and incitement to violence are prohibited. The special measures, also known as preferential treatment or positive discrimination, are intended to speed up the elimination of discrimination and the achievement of equal rights.

As they are more vulnerable, the additional rights available to indigenous peoples are stronger and more extensive than minority rights. The indigenous groups are thus entitled to land and resources rights as well as traditional economic activities for the sake of their cultures, the right to autonomy is clearly spelled out, and many of the indigenous rights are group rights on top of individual rights.

General human rights issues concerning f.ex. gender, trafficking, human rights defenders, child labour and conflict areas are always a focus of attention. In this and other human rights contexts, governments should provide protection and businesses should respect the rights of those affected by their activities.

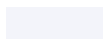
The terms 'minorities' and 'indigenous peoples' have not been defined in writing, but the elements of the definition include objective characteristics including national, ethnic, linguistic or religious origins, self-identification, the numbers (less than 50% of the State population), and a time factor (new and recent arrivals are usually not included). For indigenous peoples, in addition, the definition would refer to original inhabitation and a culture quite different from the majority approach.

From my previous presentation on general human rights law, you'll recall the comments on national implementation and responses, incl judicial remedies and NHRIs, as well as the two main approaches to international monitoring, that is the Charter-based and treaty-based monitoring procedures. Both are relevant to business activities and human rights; we'll come to that later under case studies.

THE BUSINESS CONSIDERATIONS

The Guiding Principles and other standards like the Global Compact relating to business and human rights foresee that companies respect human rights in general and minority and indigenous rights in particular, as well as labour standards, good governance like no corruption, and the environment including climate change and biodiversity. With companies we mean both national and multi-national enterprises in various lines of work, such as manufacturing, transport, the financial sector, investment, also State-owned companies, and so on.

Within the Framework to Protect, Respect and Remedy of the Guiding Principles, as you'll hear about in a series of other lectures in this course, companies have a duty to prevent human rights violations in the course of their activities and to remedy them if or when things go wrong; the duty to prevent extends to the supply and value chains from top to bottom; and the companies should exercise due diligence. In the process the sustainable development goals should be taken into account.



Corporate social responsibility (CSR) refers to companies' own ethical guidelines and principles, while Social license to operate (SLO) refers to the establishment of a company relationship with local communities in order to gain acceptance for their operations. Again minorities and indigenous peoples should have access to these standards and processes. Impact benefit agreements (IBAs) can serve to mitigate impacts and divide benefits from project development, incl possible payments to local communities.

Governments are expected to have in place the necessary legislation for protection and remedies, as well as national action plans. This applies to both sending and receiving countries, though it's particularly important as concerns headquarter countries. The legislative frameworks in the north and south should be consistent and complementary. Access to remedy should always be provided. Development actors should play a role in supporting Governments in the Global South; also the private sector should contribute to development through reduction of inequalities and poverty.

CASE EXAMPLES

As a study tool, a listing follows of situations where companies should pay attention to minority and indigenous rights. It's an occasion to discuss the applicable standards, remedies and other responses:

As compared with majority areas, does it matter if salaries are lower and working conditions poorer in a factory based in an area where most of the inhabitants are minority persons? What if at the same time most of the managers are non-minority persons? In this type of workplace, what other human rights issues would you look for?

What matters more when building long-distance highways or oil and gas pipelines, the distance covered or the degree to which the construction may affect minority livelihoods and/or indigenous lands?

Can a restaurant or a café refuse to serve minority persons? What should be the response?

Can journalists or NGO-activists freely investigate and report on company practices, in connection with f.ex. mining operations or factory working conditions, in minority and indigenous areas?

When attacks against reporters or defenders who are focused on business-related activities, and these are common in f.ex. the mining and agribusiness sectors, what should governments do? Collect information, legislate, investigate, prosecute? Or tolerate impunity for the sake of the national economy?

For mining or other business operations in areas where indigenous peoples live, one has to refer to UNDRIP and ILO169 with regard to the rights of indigenous peoples as groups to the land on which they have traditionally lived and on which their culture, way of life and livelihood are based, as well as natural resources on that land. Free, prior and informed

consent (FPIC) as set forth in UNDRIP clearly requires indigenous consent, but few States have adopted the rule; a consultation process is more common but even that is often missing.