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Indigenous women's rights and international law

Challenges of the UN Declaration on the Rights of Indigenous Peoples

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Introduction

Are Indigenous women's rights protected in international law? As Indigenous people, Indigenous women are ensured the rights enshrined most explicitly in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN General Assembly 2007). The UNDRIP represents globally endorsed minimum standards and an important normative framework of the rights of Indigenous peoples founded on international human rights law. *As women*, Indigenous women are assured the rights contained most notably in the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) (1979). In spite of these two key international human rights instruments, however, Indigenous women's rights remain an overlooked issue both at international and local levels.

I begin the chapter with a consideration of the UNDRIP and the work of the Permanent Forum on Indigenous Issues. Second, I examine feminist critiques of the human rights law and how these analyses may have relevance to advancing Indigenous women's rights. Feminist legal scholars have argued that the international human rights framework has either neglected or failed women and their rights. I ask whether the Indigenous human rights discourse reproduces and perpetuates similar exclusions and hierarchies toward Indigenous women as international law is regarded to maintain toward women in general. In conclusion, I consider the Zapatista Women's Revolutionary Law as an example of an explicit expression of Indigenous women's rights developed by grassroots Indigenous women. I juxtapose it to the UNDRIP and ask how the Declaration would have been different had it taken the Revolutionary Law seriously and, therefore, contributed to a fuller and more effective recognition of Indigenous women's rights in the international human rights discourse.

The UNDRIP and the Permanent Forum on Indigenous Issues

There is a widely shared understanding that the Declaration on the Rights of Indigenous Peoples reflects rights already found in international human rights treaties. Rather than creating new rights, it interprets existing human rights in the context and circumstances of the world's Indigenous peoples and, thus, enables a more effective framework for exercising and implementing those rights (Gilbert 2007; Anaya 2009; Charters and Stavenhagen 2009). Yet out of 46 articles, the UNDRIP mentions women only in three. Article 21.2 calls for states to take effective measures to ensure the improvement of Indigenous peoples' economic and social conditions while paying particular attention to 'the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities'. Article 22.1 reiterates the need to attend to 'the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities' in implementing the Declaration. Article 22.2, considered to be the most important provision with regard to specifically safeguarding Indigenous women's rights, calls for states, 'in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination'. Finally, Article 44 states that the Declaration applies equally to 'male and female Indigenous individuals'. Besides these three articles, the language of the UNDRIP is gender-neutral and it does not elaborate what the 'rights and special needs' of women or the other aforementioned groups might be.

Seven years after the adoption of the UNDRIP, there are very few analyses of the substance or the implementation of the Declaration with regard to Indigenous women and their rights. For example, none of the 26 chapters of the edited volume *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Charters and Stavenhagen 2009) nor the 11 chapters of the edited volume *Indigenous Rights in the Age of the UN Declaration* (Pulitano and Trask 2012) addresses Indigenous women's rights. *The Internationalization of Indigenous Rights: UNDRIP in the Canadian Context* (Mitchell 2014), an edited report with 11 chapters, also contains no considerations pertaining to Indigenous women. The edited volume, *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (Hartley *et al.* 2010) contains one chapter on Indigenous women's rights, with a focus on violence against Indigenous women in Canada (McKay and Benjamin 2010). Similarly, the edited volume *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Allen and Xanthaki 2011) includes a chapter that considers the UNDRIP in the light of Indigenous women's rights at the intersection of collective and individual rights. Focusing more on the (false) dichotomy (see: Isaac and Maloughney 1992; Monture-Okanee 1993; Nahanee 1993; McIvor 1995; Kuokkanen 2012) between collective and individual rights, the chapter says little about the actual rights of Indigenous women (Xanthaki 2011).[1] In sum, the discourse of Indigenous women's rights in the international Indigenous human rights framework is next to non-existing and is only given token attention.

The chapter by M. Celeste McKay and Craig Benjamin in *Realizing the UN Declaration on the Rights of Indigenous Peoples* (2010) argues that, although Indigenous women are not mentioned in the Declaration's several provisions on economic, social and cultural rights, these provisions implicitly contain protection of the specific rights and interests of Indigenous women, especially the right to live free from violence. McKay and Benjamin's consideration of these provisions, however, fails to demonstrate how exactly this is the case. Their example, the right to housing, is illustrative of the intersections of race and gender oppression and the ways in which inadequate housing conditions and the absence of matrimonial property provisions on many reserves in Canada compound the vulnerability of Indigenous women and their children to violence and

abuse in their own communities and in society at large (McKay and Benjamin 2010). Yet, as I argue, the implementation of the UNDRIP's provisions on economic, social and cultural rights would not alone guarantee the elimination of violence against Indigenous women.

This is also noted by the former UN Special Rapporteur on violence against women, Yakin Ertürk, who is critical of the UNDRIP for failing to address Indigenous women's challenges vis-à-vis their own communities, 'including often alarming degrees of gender inequality, patriarchal oppression and violence' (Ertürk 2007, para. 38). She notes that the UNDRIP remains silent, for instance, about

> what legal recourse, if any, an Indigenous woman would have, who is confronted with a discriminatory decision issued by a male-dominated community council that exercises Indigenous people's 'right to autonomy or self-government in matters relating to their internal and local affairs' (Art. 4 of the Declaration).
>
> *(Ertürk 2007, para. 38)*

Further, Ertürk criticizes the fact that the UNDRIP mentions the special needs of Indigenous women only along with those of inherently vulnerable groups (children, youth, the elderly and the disabled). She also notes that it fails to make reference to the Convention on the Elimination of All Forms of Discrimination against Women or the Declaration on the Elimination of Violence against Women (1993). Ertürk contends that these shortcomings may detract from the important human rights advances that the adoption of the UNDRIP signifies and 'prove to be counterproductive for Indigenous peoples' rights in the long run' (Ertürk 2007, para. 39). In her view, 'Ultimately, Indigenous peoples' struggle for social justice on a human rights platform will only be legitimate, and therefore successful, if human rights problems within the community, in particular violence and discrimination against women, are also acknowledged and addressed' (Ertürk 2007, para. 39).

Like Ertürk, Catherine Iorns takes issue with the UNDRIP's categorizing Indigenous women as inherently vulnerable. Examining the draft Article 22 which became Article 21 in the final version of the UNDRIP, she maintains:

> [I]t is not appropriate to categorise women along with children and disabled persons as similar vulnerable groups that need looking after. Women typically only have 'special needs' because of oppression that they face; it is not because they are in some ways inherently weak or vulnerable. The focus on 'special needs' perpetuates the stereotype of woman as victim, unable to defend herself or cater to those needs herself, and thus unable to take control over her own life. … Much more preferable would be to focus on the positive rights of women to participation in decision-making and government and thereby to focus on the structures that perpetuate their oppression.
>
> *(Iorns 1993, n.p.)*

Iorns contends that, with positive measures ensuring women's participation and with a focus on oppressive structures, many of the 'special needs' faced by Indigenous women would disappear. In her view, women should have been removed from the article and their rights should have been addressed separately (Iorns 1993).

The same draft Declaration has been criticized for not including 'any gender specific language with regard to violence against Indigenous women' (Parisi and Corntassel 2007, 87). Only as a result of intensive lobbying of Indigenous women were these concerns addressed to some degree in the final version of the UNDRIP by including Article 22.2 on protecting Indigenous

women and children from 'all forms of violence and discrimination'. However, the more substantial criticism by Iorns—the fact that Indigenous women ought not to be considered vulnerable in the same way or for the same reasons as children or elders—is not taken into account in the adopted Declaration of 2007. Rather than render Indigenous women inherently vulnerable or equate their vulnerability with that of children or elders, the provision ought to have stated that, in addition to the right to be free from all forms of violence, discrimination and violations of personal integrity and human dignity, also structural factors compounding violence, including barriers to Indigenous women's effective participation, need to be eliminated. As recognized by the United Nations International Expert Group Meeting on Combating Violence Against Indigenous Women and Girls held in January 2012 in New York, '[v]iolence against [Indigenous] women is often a consequence of women's exclusion from participation in decision-making' (UNPFII 2012, para 30).[2]

Like the UNDRIP, many international institutions focusing on the rights of Indigenous peoples fail to address intersectional discrimination of women.[3] Instead, they either dismiss it entirely or present Indigenous women's rights as 'add-ons' without recognizing that Indigenous women and men experience discrimination differently. As a result, they fail to analyse the multiple ways in which Indigeneity and gender interact to shape the experiences of Indigenous women. For instance, an analysis shows how the reports of the former UN Special Rapporteur on the rights of Indigenous peoples, Rodolfo Stavenhagen, 'contain occasional references to women but no consistent gender analysis' (Banda and Chinkin 2004, 16). Instead,

> Issues are largely presented in terms that do not recognize gender, and even when women are mentioned there is little focus on them as women. For example [Stavenhagen] criticizes the absence of a maternity clinic in one of the population centres of the Atacameño people in Chile and the high infant mortality rate. The consequences of there being no local accessible maternity care for Atacameño women are discussed in terms of the effect on the group rather than the added burden for women.
>
> *(Banda and Chinkin 2004, 16)*

The lack of intersectional or gender analysis has been evident in much of the work of the UN Permanent Forum on Indigenous Issues since its inception in 2001. The Permanent Forum resolved to have Indigenous women as the special theme of its third session held in 2004. In spite of the specific focus including a 'high-level panel and dialogue on Indigenous women', the report on the third session and the summary of the panel discussion provide a limited analysis of the forms and scope of the issues and challenges facing Indigenous women or obstacles in making their rights a reality. Indigenous women are recognized as one of the 'emerging issues at the international level' (UNPFII 2004, 43), yet what this means is not explained. Violence against Indigenous women is not discussed in the substance of the report and is only mentioned in the list of recommendations. Neither the report nor the summary explores the ways in which Indigeneity and gender intersect in the lives of Indigenous women and exacerbate the discrimination and subordination that they may face. The challenges experienced by Indigenous women are largely discussed simply as examples of discrimination against Indigenous peoples without paying attention to intragroup differences—Indigenous women's challenges vis-à-vis their own communities.

Why did Indigenous women delegates to the UN Working Group on the Draft Declaration not push for broader articulation of Indigenous women's rights or specific recognition of gender oppression faced by Indigenous women aside from the questionable 'vulnerability'? A likely reason could have been the fear of being accused of being divisive—breaking the ranks—in

already highly charged and often antagonistic negotiations, of which many Indigenous women have been accused when they have been calling attention to women's rights (Cardinal 1977; Holmes 1987; Krosenbrink-Gelissen 1991; Nahanee 1993; Eikjok 2000; Green 2007). Megan Davis also mentions 'the context of highly masculinist Indigenous politics' which tends to compel many Indigenous women to reconsider their agendas if not silence them altogether (Davis 2008, 143). She notes:

> As a result, issues such as land, sovereignty, self-determination and the right to development become the neutral policy objectives that the male dominated Indigenous political leadership pursues, based on an assumption that the experiences and needs of Aboriginal women and men are identical.
>
> *(Davis 2008, 143)*

Moreover, Indigenous women involved in the international rights advocacy may be reluctant to question negotiated and agreed-upon Indigenous peoples' rights because of concerns that any critique can be used to diminish hard-won advances in the area. The common quandary of Indigenous women reflects the difficulty experienced by women in nationalist movements the world over.[4]

The rights of women and the international human rights framework

Feminist human rights experts have long argued that universal human rights standards are in fact men's rights, as they are based on the male as the norm. These rights are primarily concerned with human rights violations that occur in the public sphere such as state violence, to the exclusion of most (gender-based) violations faced by women. As Catherine MacKinnon puts it: 'Human rights have not been women's rights—not in theory or in reality, not legally or socially, not domestically or internationally' (MacKinnon 1994, 5). When violations experienced by women are unlike those experienced by men, they are commonly overlooked as human rights violations.

The most obvious way in which human rights standards have excluded women's rights is with regard to violence against women. Most human rights violations experienced by women are gendered and compounded by invisibility. Charlotte Bunch points out:

> Women's human rights are violated in a variety of ways. Sometimes, of course, women suffer abuses (such as political repression) in ways that are much the same as those inflicted on men. But since the dominant image of the political actor in our world is male, the problem for women is visibility.
>
> *(Bunch 1995, 12)*

Referring to the Universal Declaration of Human Rights (UN General Assembly 1948), she further argues that, while 'many violations of women's rights such as rape and battering can readily be interpreted as forbidden under existing clauses such as "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment"', these rights have not been elaborated with regard to women, 'and therefore we have no significant body of international human rights law and practice in this area' (Bunch 1995, 13). As a result, the key definitions of human rights and their enforcement mechanisms apply primarily to violations of civil and political rights experienced by men. 'These definitions', she contends, 'have tended to exclude much of women's experiences (and that of many nonelite men as well) because these groups have not been well represented in human rights discourse' (Bunch 1995, 13). Therefore,

feminist legal scholars have argued that, in order to make human rights law genuinely inclusive of human rights violations experienced by women, it must include gendered violence (Bunch 1995; Friedman 1995; Stamatopoulou 1995; MacKinnon 2006).

Public/private hierarchy

From their inception, international human rights standards have focused on civil and political rights intended primarily to protect men within public life. However, as Hilary Charlesworth points out, 'this is not the arena in which women most need protection' (Charlesworth 1995, 106). The longstanding primacy of civil and political rights has resulted in the subsequent inferiority of rights violations taking place in the private sphere by individuals who in many cases are intimately known to the victim. The public/private distinction, widely debated in various fields of feminist theory, 'is a dichotomy largely used to justify female subordination and to exclude human rights abuses in the home from public scrutiny' (Bunch 1995, 14).

Some feminist and Indigenous scholars have criticized the public/private distinction as an inherently Western construct and not reflective of the realities of most women in the world (e.g. Pateman 1987; Mohanty 2003; Suneri 2011). Charlesworth counters this criticism by arguing that the public/private distinction can be considered Western 'only if the content of each sphere is defined by western experience, if women are regarded as always opposed to men in the same ways in all contexts and societies' (Charlesworth 1994, 69). In her view, what we need to recognize 'is that it is not the activity which characterizes the public and the private, but rather the actor: that is, women's subordination to men is mediated through the public/private dichotomy. What is "public" in one society may well be "private" in another, but women's activities are consistently devalued by being construed as private' (Charlesworth 1994, 69–70). In other words, the public/private dichotomy does not prescribe universal categories of what counts as public or private in a society but, rather, it sheds light on patriarchal mechanisms that create a hierarchy, privileging the public and assigning it to men, while women's spheres are constructed as private and subordinated. For example, violence against women is considered to occur in the private, domestic sphere and, thus, international human rights law provisions are conventionally considered non-applicable. Such a hierarchy between public and private/domestic exists in many contemporary Indigenous societies as well, introduced by hegemonic, heteropatriarchal colonial culture (Barker 2006; Hokowhitu 2012). As a result, Indigenous women's concerns (of violence, for instance) are dismissed by isolating and privatizing them as an individual matter (LaRocque 1997).

Critics contending that the public/private distinction did not exist in traditional Indigenous societies might be correct in their argument, but they miss the point and lose sight of not only the inherent hierarchies embedded in the human rights discourse but also the subordination of the question of violence against women in international law and in society at large. If social constructions of the public/private hierarchy did not affect Indigenous women as is sometimes implied, they would not experience the endemic levels of violence that they currently do. Given the fact that Indigenous women, their rights and rights violations remain all the more in the shadow than those of White women, both the invisibility of rights violations and the construction of women's lives as private represent even bigger obstacles for and often have more serious consequences for Indigenous women. The report of the UN Expert Group Meeting on Violence against Indigenous Women points out this reality:

> There is a stigma about talking about interpersonal violence within Indigenous communities. One reason for this is the imposed patriarchal societal practices that render

> interpersonal physical and sexual violence as belonging to the private domain and thus something that is not discussed in public. It is important to recognize the ways in which the private/public division of the colonizer has been adopted by Indigenous communities and how that affected the human rights of Indigenous women and girls.
>
> *(UNPFII 2012, para. 23)*

Rather than dismissing the public/private dichotomy as a Western construct, we need it to recognize how this dichotomy is employed to create, maintain and reproduce (also Indigenous) women's subordination. Recognizing the significance of the public/private distinction in examining the root causes of the invisibility and subordinate status of women's human rights construed as private does not, however, imply that we should stop examining how race/Indigeneity, class and other factors may delineate the boundary between the public and private and its permissibility differently. As Donna Sullivan notes, 'the boundary between public and private life has long been permeable when the state seeks to exercise control over disempowered communities' (Sullivan 1995, 128). In many countries, notions of privacy or inviolability of family have not protected Indigenous women or other marginalized women from, for example, coercive reproductive health policies such as forced sterilization (White 1989; Sullivan 1995; Lawrence 2000; Torpy 2000; Silvén *et al.* 2007; Kearns 2009).

The UNDRIP is widely considered to be an instrument that balances between individual and collective human rights of Indigenous peoples and that recognizes the full compatibility between the two (Charters and Stavenhagen 2009; Hartley *et al.* 2010). A lot has been said and written about the content, meaning and implications of the collective rights enshrined in the Declaration, but individual rights contained therein have thus far received much less attention. Ten of the 46 provisions enshrine individual rights, seven of which fall under the category of political and civil rights.[5] These include the right to be free from discrimination (Art. 2); the right to nationality (Art. 6); the right not to be subjected to assimilation or destruction of one's culture (Art. 8.1); the right to membership of one's community or nation (Art. 9); the right to education without discrimination in one's language and culture (Arts. 14.2 and 14.3); the right to work (Arts. 17.1 and 17.3); and the right to be free from gender discrimination among Indigenous people (Art. 44). The remaining three provisions include the right to life, physical and mental integrity, liberty and security of person (Art. 7.1); the right to physical and mental health (Art. 24.2); and Article 22 discussed earlier.

Aside from Article 22, the only individual rights in the UNDRIP outside the civil and political realm pertain to health. In other words, the UNDRIP is largely formulated to protect civil and political rights in the public sphere—a sphere which is dominated by Indigenous men (Engle 2011).[6] For example, the right to be free from discrimination in terms of conditions of labour, employment and salary (Art. 17.3) can be interpreted to pertain only to work in the public realm (cf. Charlesworth 1995). The work and economic activity within the domestic or private sphere—commonly performed by Indigenous women—is rendered invisible or not even considered 'work'.

There is, however, an area of civil rights that are pertinent to Indigenous women, but it is not addressed in the UNDRIP. That is sex/gender equality rights vis-à-vis the right to membership (or citizenship) in cases where either Indigenous governments or state legislation are the human and civil rights violators (Moss 1990; Singel 2012). It Canada, for instance, civil and political rights that Indigenous women have had 'since time immemorial' are founded on their traditional roles and responsibilities and supported by section 35(4) in the 1982 Constitution Act of Canada (McIvor 1995). There are also examples where Indigenous women have employed the equal protection provisions of applicable civil rights legislation in cases of gender discrimination in the membership codes of their own communities (Singel 2012).

Non-discrimination vs rights specific to indigenous women

A common critique by Indigenous women of the international women's movement suggests that focus on gender discrimination tends to overemphasize individual equality and rights rather than the effects of structural violence on women's lives. For example, the International Indigenous Women's Forum FIMI argues that 'flawed assumptions that operate within the global women's movement' make the movement's strategies of addressing gendered violence inappropriate for Indigenous women (FIMI 2006, 17). Indigenous women have long advocated a human rights framework that addresses gender-specific human rights violations of Indigenous women in such a way that does not disregard the continued practices and effects of colonialism. The Beijing Platform for Action (1995) emerging out of the Fourth World Conference on Women was criticized by many Indigenous women for its overemphasis on gender discrimination and gender equality, which, according to FIMI, does not recognize the special circumstances of Indigenous women and which 'depoliticizes issues confronting [them]' (FIMI 2006, 17).

No doubt there is overemphasis on gender discrimination and individual equality rights within certain fields of feminist theory and activism, especially within liberal feminism and its equality of opportunity approach that revolves around gender equality, with equal treatment and equal rights between men and women in the public sphere. The equality of opportunity and equal rights approach is reflected in the existing international human rights standards pertaining to women. For example, the definition of discrimination in the Women's Convention, 'which covers both equality of opportunity (formal equality) and equality of outcome (de facto equality)' is based on the limited approach of placing 'women in the same position as men in the public sphere' (Charlesworth 1994, 64). Such an approach has largely informed the activities of the UN Commission on the Status of Women, which is the main intergovernmental policy-making body promoting women's rights. However, the equal rights approach, with its prohibition of gender discrimination 'promises equality to women who attempt to conform to a male model, and offers little to those who do not' (Charlesworth 1994, 64).

The narrow liberal feminist focus on gender discrimination in the public sphere has also been criticized by many feminist legal scholars who have argued that to move beyond the limited approach of non-discrimination in women's human rights law requires defining rights that are specific to women and attend to specific obstacles that women experience. These include rights to reproduction and childbirth, minimum wage for domestic and subsistence work, and literacy (e.g. Burrows 1986; Charlesworth 1994). The inclusion of these and other rights 'responds more accurately to the reality of most women's lives than does the liberal feminist strategy of prohibiting discrimination in the public sphere' (Charlesworth 1994, 66).

Why did not the UNDRIP include these rights in its provisions? For instance, considering the significance of family in its various forms (extended families, clans, etc.) for Indigenous peoples, it is surprising that it did not include rights associated with reproduction and childbirth. Identifying and including rights that are specific to Indigenous women and attend to specific obstacles that Indigenous women experience would have only strengthened the UNDRIP and made it an even more ground-breaking instrument within international law than in its present form.

Besides the obvious need to critique narrow definitions of gender discrimination and the focus on the public sphere, the liberal feminist discourse needs to be challenged for its tendency to consider violence against women only as an issue of personal integrity and individual autonomy rather than a socio-economic issue and an outcome of colonialism (Grewal 1999). Critiques of liberal feminism should not, however, obscure the crucial importance of feminist

analysis of human rights law with regard to its shortcomings in addressing violence against women.[7] This analysis offers significant and critical insights also for considerations of Indigenous women's rights. A key problem in addressing rights violations of Indigenous women is the dominant definitions of human rights and the mechanisms to enforce them. Feminist legal scholarship can contribute to our understanding of these dominant definitions and the way in which inherent hierarchies therein have been constructed to privilege certain rights over others.

The UNDRIP's emphasis on civil and political rights rather than human rights in the private sphere may also stem from a widely held view in international law and at the state level according to which 'oppression on the basis of race is considerably more serious than oppression on the basis of gender' reflected, for example, in the fact that the Women's Convention 'contains much weaker implementation mechanisms that the Race Convention [International Convention on the Elimination of All Forms of Racial Discrimination (1965)]' (Charlesworth 1994, 65). Indeed, some Indigenous women consider oppression and discrimination of Indigenous peoples more pressing than oppression of Indigenous women (e.g. Jaimes Guerrero 1997; Lindberg 2004; Sunseri 2011). I would argue, however, that it is a question of visibility and a matter of the public/private hierarchy rather than a scale or primacy of oppression.

The situation whereby the feminist movement overemphasizes gender discrimination and the Indigenous movement focuses on colonialism reflects the failure of identity politics to attend to intragroup difference or oppression (cf. Crenshaw 1991; Dick 2011; UNPFII 2012; Kuokkanen 2014). As a result, the rights of Indigenous women remain in the shadow and unaddressed by key documents and instruments such as the UNDRIP.

Below, in the final section, the chapter examines the rights enshrined in the Zapatista Women's Revolutionary Law (ZWRL) and asks how the UNDRIP would have looked different had it included key insights formulated by Indigenous women themselves. The ZWRL is one of the very few existing, explicit articulations of Indigenous women's rights. What makes it even more noteworthy is that it is a local, grassroots initiative by Indigenous women in Chiapas, Mexico. As such, the Zapatista Women's Revolutionary Law can hardly be dismissed as a (White) feminist conspiracy, as the indictment by Indigenous male leadership sometimes goes when Indigenous women advocate their rights (see, e.g. Hoogte and Kingma 2004; Johnston 2005; Smith 2005; Green 2007; Otzoy 2008; Sylvain 2011).

Zapatista Women's Revolutionary Law and the UNDRIP

Indigenous women represent one of the most revolutionary forces in Chiapas. Women have called attention to the lack of harmony in gender and power relations within their communities and introduced critical perspectives particularly to those traditional customs that degrade, oppress or marginalize them. As a result, they are not always met with open arms. Activist women are often 'subject to threats and physical violence that … differ from those accorded to men's political organizations' (Nash 2001, 180). This violence originates from both within and outside women's own communities.

The Indigenous uprising in Chiapas and the Zapatista movement have changed gender roles and women's participation in politics and 'public' affairs. Indigenous women make up almost a third of the National Zapatista Liberation Army (EZLN, *Ejército Zapatista de Liberación Nacional*). For many, it has often been the only way of participating in the Indigenous struggle for autonomy and asserting individual agency as women. A key element of the Zapatista philosophy for social change is the liberation and empowerment of Indigenous women of Chiapas (Speed *et al.* 2006). Subordinate roles of women, poverty, forced marriage, male alcoholism and violence have made some women flee their circumstances and join the Zapatista Army. In the

movement, women are treated more equally than in their own communities or Mexican society in general. Diane Goetze suggests:

> Being a part of the EZLN has offered women the opportunity to show others that they can be educated, serve as leaders, and carry an essential workload. The Zapatista movement has, in many ways, served as an outlet for women to voice their grievances, and, in some cases, a channel to have them met.
>
> *(Goetze n.d., n.p.)*

The challenges experienced by Zapatista women in their communities but also within the Zapatista movement, led to the creation of the Women's Revolutionary Law (*Ley revolucionaria de mujeres*). This 10-point list, accepted by consensus at the EZLN meeting in March 1993, stipulates women's rights to education, equal pay, and equal participation and leadership (Marcos 2005). The laws also oppose forced marriage and denounce male physical and sexual violence. The 10-point Women's Revolutionary Law in full reads as the following:

1 Women, regardless of their race, creed, color or political affiliation, have the right to participate in the revolutionary struggle in a way determined by their desire and capacity.
2 Women have the right to work and receive a just salary.
3 Women have the right to decide the number of children they will have and care for.
4 Women have the right to participate in the affairs of the community and hold positions of authority if they are freely and democratically elected.
5 Women and their children have the right to primary attention in matters of health and nutrition.
6 Women have the right to an education.
7 Women have the right to choose their partner, and are not to be forced into marriage.
8 Women shall not be beaten or physically mistreated by their family members or by strangers. Rape and attempted rape will be severely punished.
9 Women will be able to occupy positions of leadership in the organization and hold military ranks in the revolutionary armed forces.
10 Women will have all the rights and obligations elaborated in the Revolutionary Laws and regulations.

(Editorial Collective 1994, 39)

The ZWRL is a well-balanced document with a double emphasis on political participation and leadership (points 1, 4 and 9) on the one hand and the right to individual autonomy and the right to be free from all violations of personal integrity and human dignity (points 7 and 8) on the other. It indeed could be considered an embodiment of the ideal of the indivisibility of women's rights, enshrining both civil and political ('public') rights as well as protection from human rights violations that are usually gendered ('private'). In addition, the ZWRL explicitly enshrines women's reproductive rights (point 3), something that the Declaration on the Rights of Indigenous Peoples remains silent on. Likewise, individual autonomy and integrity of women, the right to choose their partner and not to be forced into marriage are not included in the UNDRIP. As the UN Expert Group Meeting on Violence against Indigenous Women discussed, forced marriages continue to be a reality for many Indigenous women in the world (UNPFII 2012).

Some rights articulated in the ZWRL are also enshrined in the UNDRIP: the right to work, the right to health and the right to education. However, the UNDRIP does not specify any of

these rights in gendered terms or address the often disparate access to work, education and health services between Indigenous men and women.

UNDRIP guarantees Indigenous individuals 'the right to enjoy fully all rights established under applicable international and domestic labour law' (Art. 17.1) and prohibits discriminatory labour conditions, including salary (Art. 17.3). However, it remains silent on gendered dimensions of labour that disparately affect Indigenous men and women and on unpaid domestic work and subsistence activities that characterize many Indigenous women's lives globally (Kuokkanen 2011). Gendered dimensions of labour were discussed at the Expert Group Meeting, including trafficking in Indigenous women and girls as domestic workers and prostitutes and the subsequent increased vulnerability to sexual violence. The report noted that trafficking is related, among others, to gendered discrimination regarding membership and citizenship as well as access to health services:

> [Trafficking] raises a host of human rights problems for Indigenous women and girls, including the lack of identity or citizenship cards, which means that Indigenous women and girls have no access to basic health services, including reproductive health services. The lack of a birth certificate also increases the risk of trafficking, discrimination and violence for Indigenous girls and youth. That is further exacerbated by a lack of access to education, health services and the legal system.
>
> *(UNPFII 2012, para. 28)*

There is another critical dimension to the right of Indigenous women to work and a just salary—a dimension that distinguishes it from a general recognition of the right to work—and that is the pressing need to ameliorate Indigenous women's socio-economic circumstances in a way that alleviates their poverty and, hence, circumstances that give rise to violence. The ZWRL recognizes this implicitly by enshrining the right of women to work and a just salary, but the UNDRIP does not.

Discussions of literacy, education and poverty are necessary to any consideration on Indigenous women's rights in general and elimination of violence against Indigenous women in particular. On the right of Indigenous individuals to education, the UNDRIP mentions children but not women (Art. 14.2). Yet Indigenous women often have more limited access to education as well as health services than men in their communities. This was recognized by the Expert Group Meeting in relation to existing limitations in international law in eliminating gendered violence against Indigenous women. These limitations include 'a lack of domestic enforcement measures for international instruments, a lack of accessibility to treaty committees and a lack of familiarity with the formal, legalistic requirements of the international human rights framework', which are further 'compounded if Indigenous women and girls lack education or have low literacy' (UNPFII 2012, para. 16).

The UNDRIP recognizes the right of Indigenous individuals 'to access, without any discrimination, to all social and health services' and 'to the enjoyment of the highest attainable standard of physical and mental health' (Art. 24). Yet the Declaration fails to mention reproductive rights and there is no connection made between health and Indigenous peoples' rights to their territories, such as the health effects of adverse environmental impact on Indigenous peoples' lands (see e.g. Tauli-Corpuz 1998; Lambert Colomeda 1999; Schell *et al.* 2005). Quite separately, Article 32 enshrines the collective land rights and calls for states to provide effective mechanisms for just and fair redress and appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact on Indigenous peoples' territories. However, as the Expert Group Meeting noted:

> Environmental violence and the lack of accountability of corporations and States on Indigenous lands have resulted in devastating health and reproductive impacts, including toxins that are released into the environment and which cause severe and ongoing harm to Indigenous women, girls and unborn generations.
>
> *(UNPFII 2012, para. 26)*

UNDRIP's Articles enshrining the right to political participation and other forms of participating in decision-making are all collective rights (Articles 5, 18, 27 and 41). Unlike the ZWRL, the UNDRIP does not mention Indigenous women's right to political and community participation and to leadership positions, although it is widely recognized that Indigenous women's access to decision-making and political participation at local, national and international levels continues to be limited (Kersey and Bauman 1995; RCAP 1996; Jaimes Guerrero 1997; Asia-Pacific Forum on Women, Law and Development 1998; Archibald and Crnkovich 1999; Green and Voyageur 1999; Anderson 2000; Prindeville 2004; Rude and Deiter 2004; Belausteguigoitia 2005; Johnston 2005; Napoleon 2005; Olivera 2005; Richards 2005; Dick 2006; Speed *et al.* 2006; Parisi and Corntassel 2007; Sunseri 2011). The UNDRIP also fails to note that excluding women from participation in decision-making often gives rise to gendered violence (UNPFII 2012, para. 30).

Why were the unambiguous, well-formulated provisions contained in the ZWRL not integrated into the UNDRIP? The ZWRL was formulated in 1993 and made public in 1994, well over a decade before the UNDRIP was adopted in 2007. The core principles reflected in the ZWRL have already been enshrined in existing human rights law, such as the Women's Convention and the Declaration on the Elimination of Violence against Women. Including the provisions articulated in the ZWRL would only have strengthened the UNDRIP. It would have resulted in a radically more comprehensive human rights instrument for Indigenous peoples which would have been more profoundly attuned to the ideal of indivisibility of Indigenous peoples' rights and which would have moved beyond the public/private hierarchy and the standard practice of privileging civil and political rights found in international human rights instruments.

Conclusion

This chapter has considered the effectiveness of international law in protecting Indigenous women's rights, with a particular focus on the Indigenous human rights discourse. It has employed feminist critiques of the human rights law and examined their relevance in considering and advancing Indigenous women's rights. Feminist legal scholars have demonstrated that the conventional human rights framework has not adequately addressed, promoted or protected women's rights. Examining the Declaration on the Rights of Indigenous Peoples in the light of feminist human rights analyses and the Zapatista Women's Revolutionary Law, I have argued that Indigenous human rights discourse reproduces and perpetuates similar exclusions and hierarchies toward Indigenous women as international law maintains toward women at large. I have also demonstrated how legal feminist analyses of human rights law can provide significant tools in developing a more nuanced understanding of the ways in which the dichotomies such as the public/private, entrenched in human rights instruments, can contribute to the invisibility of the rights violations of Indigenous women. Furthermore, feminist human rights considerations can assist in recognizing the link between conceptualizing human rights in terms of civil and political rights (construed as public) and concealing gendered violence (construed as private), a serious issue on the global scale for Indigenous women as well. Both

feminist critiques of international law and the Zapatista Women's Revolutionary Law shed light on the limitations of the UNDRIP as an instrument protecting Indigenous women's rights.

The chapter suggests that engaging with feminist human rights analyses is necessary if Indigenous women are to advance their human rights, whether locally, nationally or internationally. Importantly, this does not imply that there is no longer a need to criticize women's rights discourses focusing extensively or exclusively on gender equality rights in the public sphere. However, critiquing hegemonic forms of feminism for their narrow scope or exclusionary and supremacist theories, priorities and practices needs to be specific enough in order not to descend into a wholesale rejection of feminist theory and practice.

The UNDRIP has widely been hailed as a comprehensive, ground-breaking human rights document addressing the rights of Indigenous peoples. However, as the analysis in this chapter demonstrates, regarding the protection of the rights of Indigenous women, the UNDRIP contains several limitations. Like other international human rights instruments, it reflects the bias of prioritizing civil and political rights and the subsequent inferiority of rights violations taking place in the sphere considered private. It also renders Indigenous women inherently vulnerable, categorizing them with children and elders. Instead, the UNDRIP ought to have acknowledged that, in most cases, women's vulnerability stems from the prevalent gender discrimination and subjugation in society.

Notably, the Declaration on the Rights of Indigenous Peoples does not pay attention to the gendered dimensions of and the disparate access to rights in Indigenous communities by Indigenous men and women. It lacks explicit protection against intragroup oppression within Indigenous communities, the existence of which is recognized by the Zapatista Women's Revolutionary Law and the Expert Group Meeting on Violence against Indigenous Women.

The UNDRIP does not enshrine rights that are specific to Indigenous women or attend to specific obstacles and structures that maintain discrimination against Indigenous women. As feminist legal scholars maintain and the Zapatista Women's Revolutionary Law demonstrates, there is a need to move beyond the narrow approach of non-discrimination of women in human rights law and to formulate rights specific to women such as rights to reproduction and childbirth, minimum wage for domestic and subsistence work and literacy. These rights were articulated with regard to Indigenous women as early as 1993 by the Zapatista women in Chiapas. Even today, the Zapatista Women's Revolutionary Law represents a rare example of an explicit expression of Indigenous women's rights developed by grassroots Indigenous women. It offers an important and unique human rights framework developed locally with global relevance, which attends to specifically Indigenous women's rights and balances between rights in public and private spheres, thus attesting to the fact that Indigenous women need protection in both arenas. It represents a precedent of the indivisibility of Indigenous women's rights, something that is sorely missing in the UNDRIP and other international human rights instruments.

Notes

1 The chapter also incorrectly argues that there is no scholarship examining how collective rights may oppress the rights of Indigenous women (see Green 1985; Moss 1990; Fiske 1996; McIvor 1999; Dick 2011; Sylvain 2011).

2 The author participated in the meeting as one of the six invited experts, all of whom were Indigenous women representing the different regions of the world. Also the chair and the rapporteur of the meeting were Indigenous women.

3 Intersectionality emerged as an analytical tool to address and examine multiple, interlocking and mutually reinforcing systems of oppressions faced by subordinate groups due to their race/ethnicity,

gender, sexuality, etc. For example, I have employed Crenshaw's (1991) political intersectionality analysis to examine responses to gendered violence in Indigenous communities (Kuokkanen 2014). The intersectionality analysis was first developed by Black feminist scholars (Collins 1991; Crenshaw 1991).

4 For instance, recounting perceptions of women's involvement in nationalist organizations in Vietnam in the early 20th century, Cynthia Enloe notes, 'Problems were legitimate if they were obstacles to nationalist unity; they were illegitimate if they made men in the nation anxious' (Enloe 2000, 60).

5 The total number (10) includes provisions that either contain solely individual rights or both individual and collective rights. Some of the subsections of provisions enshrining collective rights also include individual rights and those are included here as well.

6 This was reiterated by the participants at the 2012 UN Expert Group Meeting on Violence against Indigenous Women and Girls (UNPFII 2012).

7 There is a tendency in Indigenous politics and, to some extent, in scholarship to reduce all feminism to 'White mainstream' feminism (i.e. liberal feminism) (for a discussion on this, see e.g. Green 2007; Ramirez 2007; Kuokkanen 2012).

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