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“The Importance of Strong Representation for Minorities”.

In my brief remarks, I will discuss the importance for the fulfillment of minority participatory rights of strong representation for minorities. I’m going to make three main points, one about how the fulfillment of some participatory rights of minorities can be impeded by lack of clarity on representation, a second that some substantive participatory rights can require complex intraminority discussions that benefit from strong representation, and a third that representation of minorities within different state organs can support better state understanding of minority rights issues.

First, then, clarity of representation can be important to the fulfillment of some participatory rights of minorities. Here, I will speak of certain minority rights that may extend somewhat beyond the strict guarantees of the 1992 UN *Minorities Declaration*. That *Declaration* tends to have an individualistic focus. Elsewhere in my scholarship I have made arguments for a more collective dimension in rights including rights of minorities. But, looking simply at legally established rights for the moment, consider some domestic and international rights that do tend more toward rights held by minorities as collective entities. One major development I will reference is on the duty to consult in the context of the rights of Indigenous peoples. – Members of Indigenous peoples will also typically qualify as members of minorities, though they will usually prefer the *lex specialis* of Indigenous rights law as the main legal identification. In Canada’s domestic law, for example, rights-bearing Indigenous communities benefit from a state obligation to consult

potentially affected rights-bearing Indigenous communities in advance of making decisions that could have adverse effects upon their rights. There is a complex doctrine – I have written two books on it – and it arises hundreds of thousands of times a year in Canadian government decision-making. But it depends crucially upon having clear representatives of the rights-bearing communities in a particular situation. In some contexts, there are conflicts between imposed democratic structures and traditional hereditary structures of decision-making in particular Indigenous communities, and when it comes to consulting with those communities, those uncertainties can cause problems on whether consultation occurs correctly in the most appropriately rights-protective way. International norms similarly recognize duties of consultation and cooperation with Indigenous peoples, with aims toward and sometimes obligations to obtain free, prior, and informed consent in advance of decisions affecting Indigenous peoples. Fully respecting rights in this context makes it essential to have clarity on who represents Indigenous peoples for purposes of indications during consultations or for purposes of providing consent. A feature of more collective participatory rights in contexts where those apply is that clarity of representation becomes essential to full fulfillment of rights of minorities in those contexts.

Second, some substantive participatory rights depend upon complex internal discussions within minority communities. Consider the combined effect of articles 2(2) and 4(5) in respect of economic participation. Persons belonging to minorities have rights to participate in economic life and in economic progress. If there are clear impediments to that participation that do not offer anything else to the minorities in question, then matters are simple – those impediments are a direct interference with minority rights. However, consider the more complex – and realistic situation – where different choices on economic policy involve tradeoffs and some forms of economic participation of minority communities may have negative consequences for cultural

issues for those same minority communities. This might arise if certain kinds of economic development will significantly change traditional communities. Even something so commonplace as the gentrification of neighbourhoods with minority populations in the course of urban development, offering economic opportunities but also often eroding cultural cohesion, has given rise to such issues. On such issues, there will often be internal disagreements within minority communities - that isn't surprising - in democratic participation on various issues, people in majority communities often disagree with one another as well. But here we reach another situation where strong representation matters - but it needs to be representation that tries to find common ground within a minority community on some choices and then helps to make that clearer to others, notably to state officials who may be making decisions affecting the outcome on that issue. Some complex issues associated with participatory rights of minorities may thus give rise to intraminority disagreements that ultimately call for good, genuine, and strong representation of minority interests based on dialogue amongst those persons who are members of the minority.

Third, representation of minorities within different state organs matters. I have made this point previously with respect to matters like the attempt by religious minorities to convey to state officials the impacts upon their religious and cultural rights of state decisions. In some states within the United States, governments engaged in more dialogue with religious communities in advance of adopting various COVID policies so as to attempt to limit the negative effects on minority religious rights where possible. That sort of pre-infringement engagement can be a sound practice, but participation of individuals with minority religious backgrounds in government itself can help make sure that otherwise potentially misunderstood perspectives are at the table from the beginning. In the context of increasingly secular governments in many countries, the right of effective participation in decisionmaking in article 2(3) of the Minorities Declaration may imply the importance of having

members of religious minorities present within state organs. And the same principle applies to other classes of minorities as well. Having members of minorities represented in legislative, executive/administrative, and judicial roles matters, and is a further step toward better understanding of minority issues.

The 1992 Minorities Declaration issues important calls for government action, and the steps forward are not always simple. But the steps on participation undergird so much else that it is important to get them right. I have referred to several ways in which strong representation is an important part of establishing better respect for the necessary underlying participatory rights. I look forward to our ongoing dialogue and discussion.