**Remarks by Gerard Quinn**

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**Finnish Presidency of the Nordic Council**

**WEBINAR ON THE HUMAN RIGHTS OF INDIGENOUS PERSONS WITH DISABILITIES.**

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Thank you very much for the opportunity to address you. And thank you for organising this very important event.

When I became the new UN Special Rapporteur on the rights of persons with disabilities last year I announced that one of my thematic priorities will be indigenous persons with disabilities around the world and especially as an aspect of intersectionality.

We have not yet commenced active work on the topic but this event gives me a chance to share some preliminary ideas and, more importantly, to learn from you.

I have just finished my first thematic report on armed conflicts and disability which is sadly topical at the moment, and am about to move on to a consideration of artificial intelligence and disability – a game changer for good or ill. Hopefully, shortly after that, I will commence work on indigeneity.

What questions hang over us today?

* What does international law have to say about indigenous persons and groups with disabilities?
* How does it help us understand some of our missteps in the past?
* What does it point toward? Does it require of our countries a fresh policy imagination? I believe it does.

To answer these questions – to set the table – I want to focus on **just three main points**:

* **First, what do we mean by intersectionality**? I’m not going to give a highly technical answer – as I believe that misses the point. I want to drill into the essence of intersectionality. At heart, it is a different way of seeing reality. The test for us is whether it adds clarity to the situation of indigenous persons with disabilities or not. I believe it does.
* **Intersectionality in human rights.** Secondly, I want to draw out the implications of intersectionality in human rights law. Put this another way, does it help us see, view and value difference in human rights? I believe it does.

**Indigeneity & disability - A new agenda.** Thirdly, what of the future?

Its all well and good analysing the past – but is there a pathway forward? Curiously enough, I think it is the admixture of ideas about intersectionality with newer approaches represented by the UN Sustainable Development Goals that point to the future.

# Intersectionality.

But first things first.

What is meant by intersectionality? Clarity here is important.

Its probably true to say that it came about as a result of certain disenchantment of traditional human rights approaches and especially in the field of discrimination law and practice.

The traditional approach was to the effect that differentiation - or discrimination - had to pivot on a clear ground - like race or disability – that it had to be demonstrably unequal relative to how others were situated ( comparator group) and that a clear legal or compensatory remedy could be identified.

Well, first of all, none of us are born with one identity.

So there is something highly artificial in requiring persons to be labelled in one group or another.

And justice isn’t simply about relative treatment. Is it how I am treated relative to others that really counts? Doesn’t that reduce justice to relativities of treatment (disabled v non-disabled, indigenous v other).

Some have said that this traditional approach is ‘morally empty’ – we have to broaden the frame to go beyond mere relativities of treatment. Indigeneity is a really good example.

And do traditional legal remedies really uproot the root causes of inequality? There may be considerable satisfaction in winning a case – but should we not aim for more. Does social justice require more?

And another thing. And this is the key thing.

One of the problems of unequal treatment is the implicit (sometimes explicit) privileging of one group over another. This has real-life material consequences for the life and life chances of the disfavoured group.

Worst of all, the disfavoured group may internalise these external judgments – creating ‘spoilt identity’ and helping re-produce underlying wrongs.

One of the insights of intersectionality – building on the overlapping nature of human identity or identities – is that one person may experience multiple sets of privilegings – black, disabled, religious minority, indigenous, disability.

They theory is that this is not just additive – that the combination of privilegings creates something new – an extremely difficult mix to extricate oneself from.

So the effects are not just additive – they are cumulative and qualitatively different to the sum of its parts.

# 2. Implications for Human Rights.

So what? What’s the cash value of these ideas - how do they animate change?

It depends on whether your world view is legal or broader.

From a traditional lawyers’ point of view – not much difference. We still practice equality law on a ground-centric approach – **within** race, or gender, or disability. Or we lead off with one and then super-add the other (disability + age).

Courts are comfortable with the old approach. They tend not to expound on new theses like cumulative disadvantage.

I think there are many explanations for this – but the one I keep coming back to is a lesson from legal history. The legal system in most countries is deliberately structured as a synchronic enterprise (to look at treatment in the here and now). They do not like opening up the conversation to how you got here (your earlier life, your life chances, the accumulated disadvantages you faced along the way). This may change in courts – but it will take time.

All of which leads to a different kind of insight – ***the implications mainly have to do with human rights policy and not so much human rights litigation.***

When you stand back and think about it, most equality law is about providing a platform to test whether one group is treated equally relative to another group. It tends to be a ***reactive process*** – one that relies on the resilience of litigants to go to court. It is good in itself - even vital – but it is not enough.

So, from a policy-makers perspective, you tend to ask a different set of questions once you switch to an intersectional framework.

Why do I say this?

Its important to get beyond the lawyers worldview. Adopting an intersectional approach forces is to ask deeper questions than simply ‘how was I treated compared to someone else.’ It forces us to come to terms – to really come to terms – with how we have ended up where we are.

Human difference in the past was not universally celebrated to put it mildly. Individuals found their life chances and even worldviews constrained not by what they did but by who they were.

Privileging was subtle – but very impactful. Key gateways into the lifeworld – the world of work and social interaction – where shut unless you conformed.

I think the real value of intersectionality is that it forces us to face these deeper and often uncomfortable questions.

It is hard to face the gap between our professed ideals and the reality. Nobody likes looking in the mirror too much. But it is a badge of political maturity to be able to frankly acknowledge the multiple disadvantages that have accrued through historic and systemic discrimination- even to see it as discrimination.

Of course, the whole point is to find better ways of acknowledging and valuing difference – and better ways of providing ‘moral repair’ for the wrongs done in the past.

***We have moved on.***

The series of UN thematic equality treaties – covering various ‘vulnerable groups – is now well developed in gender (CEDAW), race (CERD), disability (CRPD), etc. What we desperately need is a thematic treaty on the rights of older persons – another day’s story. Slowly but surely, the treaty bodies that interpret these treaties are climbing out of their ground-specific silos and acknowledging intersectional aspects.

In turn they are beginning to ask the harder questions of States. One interesting result – why insist on independent living for persons with disabilities if you don’t insist on it for older persons too including older persons with dementia.

Indigeneity as such gets a passing mention in the preamble to the CRPD. Unlike gender and youth, it is not directly factored into the body of the treaty. Why not? The answer is simple.

Indigenous groups were present during the drafting – especially from New Zealand and Canada (and Sweden). But their issues were relegated in importance. This had nothing to do with principle – and everything to do with power - or the relative lack of power - of the indigenous groups present at the table.

However, the CRPD Committee has shown itself to be alert to intersectionality between disability and indigeneity.

One can easily see the full panoply of rights – civil, political, economic, social and cultural - at play. Civil rights open up a theoretical space of freedom for persons to manage their own lives. This space was literally closed down for persons with disabilities through incapacity laws.

Political rights offered some route to re-right the wrongs. But even recently, the European Court of Human Rights has sanctioned limitations on voting for persons with disabilities! A ruling which I hope will be reversed by the Grand Chamber. And indigenous persons around the world probably constitute a classic ‘discrete and insular minority’ – unable to wield political power commensurate with their numbers.

And it is interesting see – historically – how social rights or social systems were constructed to exclude or to cushion those who were excluded. Segregated educational facilities for both indigenous persons and persons with disabilities set in train s elf-defeating logic of exclusion in later life.

Cultural rights. Ah – here we are at the core. The policy makers’ question is how do we reverse embedded cultural assumptions about inferiority? How do we flip the underlying cultural assumptions to be more receptive to the inherent rights of indigenous persons with disabilities? One of the most underused provision of the UN disability treaty is Article 8 which requires States to nurture receptiveness in the community to the rights of persons with disabilities. Something similar is needed on the rights of indigenous persons.

In my work on disability, I want to build on the UN Declaration on the Rights for Indigenous Persons. I am particularly animated by Article 5 to the effect that indigenous persons have a right to maintain and strengthen their ***distinctive*** political, legal, economic, social and cultural institutions.

And I do believe that the UN SDGs move us in a direction more receptive to the rights of indigenous persons – especially its new philosophy of economy and society, its emphasis on people and place (always important to indigenous persons), its deemphasis of consumption and its insistence that those left farthest behind will be moved forward faster.

I will do so in close cooperation with UN SR on indigenous persons as well as the UN SR on the right to culture.

Let me close by welcoming your questions, observations, and ideas. As we move forward we count on your voices in making work on indigeneity, disability and old age meaningful. I commend the work of the Nordic Council and look forward to sharing your insights with the wider UN family.

Thank you.

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