

IWGIA

“...VINES THAT WON'T BIND...”

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INDIGENOUS PEOPLES IN ASIA

Proceedings of a Conference held
in Chiang Mai, Thailand, 1995



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EDITOR
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DIRECTOR'S PREFACE

*"Take a strip of true rattan
take a strip of the inwag-vine
they can't go together
it just can't be, it's troublesome".*



The references in this *ambahan*¹ to the troublesome efforts to combine the traditional dependable tying material - rattan - with an inferior type - inwag-vine - was interpreted by a congenial researcher as a poetic way of expressing the ultimate impossibility of combining continuities of life and culture in an indigenous community, with the operations of big industrial ventures on ancestral land.

We have chosen this symbolic statement as an introduction to the world of differences in culture and lifestyles but at the same time likenesses in contemporary fate of the indigenous peoples of Asia. They present their statement in this document, which contains the written versions of the presentations given at the conference 'Indigenous Peoples in Asia', held in Chiang Mai, Thailand, from 9 to 11 October, 1995. The conference was jointly organised by the International Work Group for Indigenous Affairs (IWGIA), the Asia Indigenous Peoples Pact (AIPP) and the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT).

The conference was the concluding part of an IWGIA networking project in South and Southeast Asia, which was funded by the Danish International Development Agency (DANIDA) as the second component of the South-South Communication Programme, which started in 1993.

The meeting was attended by more than fifty representatives from different parts of Asia: Nepal, India, Bangladesh, Burma, Thailand, Malaysia, Indonesia, Philippines, Vietnam and Tai-

¹ The poem from the Hanunoo-Manyan, an indigenous people in Mindoro Island in the Philippines, is cited by Danilo Geiger: Protect the Daga Kaumputan; In: Manaligod, Ruffy (ed.): Development Aggression. Tribal Filipinos & Ancestral Domain. Quezon City: TABAK 1990; page 55.

wan. Most of the speakers and participants of the conference were indigenous persons, as are most of the authors of the articles presented in this volume. This reflects the main aim of the conference: to provide a forum for indigenous peoples from different parts of Asia to come together, to share experiences and to have the opportunity to discuss future perspectives and strategies. Although the conference was mainly meant to provide a forum for dialogue among indigenous peoples, the organisers also invited non-indigenous experts who are active in support of the indigenous peoples' struggle in Asia. They furthermore invited government representatives from Asian countries to take part, to share their views, to listen and to learn more about the problems, perceptions, needs, and suggestions for solutions by the indigenous peoples in their own and in neighbouring countries. In this respect, however, the conference was only partially successful, since few government representatives accepted the invitation.

The headlines of the four topics discussed were:

- The Concept of 'Indigenous' in Asia.
- Indigenous Peoples' Juridical Rights and Relations with the State and the Non-Indigenous Populations.
- Movements and Forms of Organisation among Asian Indigenous Peoples.
- Perspectives on the Future.

After each section, the facilitator summed up the discussions and on the last day three workshops looked at the concept of indigenous, international strategies and future co-ordination. The workshops produced comments and proposals which were approved by the meeting. The results are presented as 'Conclusions from the Conference' in the final chapter of this volume.

The structure of the document basically follows the organisational structure of the conference. After a general introduction on the situation of indigenous peoples in South and Southeast Asia, three authors discuss the concept 'indigenous' in the Asian context.

Due to the critical importance to the present situation of the indigenous peoples in Asia, the second and third topic were of major concern for the conference. Contributions on the indigenous peoples' juridical rights in various Asian countries and on

indigenous movements and organisation thus form the main body of this document. They are followed by reflections on perspectives for the future.

In general, the work of two of the organisers, IWGIA and AIPP, aims to cover all of Asia. The scope of the conference was, however, confined to countries from South and Southeast Asia. On the one hand this was intentional. The organisers were convinced that in order to provide a forum for sharing of knowledge and true learning from each other's experiences, the number of participants had to be limited. Furthermore, the general circumstances and the juridic-political system which the indigenous peoples in each of the states represented have to cope with are highly diverse, and on the continent as a whole, diversity is even greater. A regional focus was therefore necessary.

On the other hand, non-representation of some countries (like Japan) or particular regions (like Peninsular Malaysia) was also the result of unfortunate circumstances which prevented the invited representatives from participation. But with respect to the Peoples' Republic of China and to Burma, the absence of - non-exiled - representatives is a direct reflection of the severe discrimination, oppression and denial of basic human rights, they are forced to endure.

An indirect outcome of the conference was the establishment of a close relationship between the organising institutions. IWGIA highly appreciates the co-operation with IMPECT and AIPP, a co-operation which has after the conference been continued in other forms. Finally it is our hope and conviction that the contacts established with the participants will continue and be strengthened in the future, thus providing a strong network of relationships between the indigenous peoples of Asia.

Inger Sjørsløv
Director, IWGIA



1. Exchange of experiences: learning from Bapa Raja (J.P. Rahail, Indonesia)

2. Sharing with local indigenous NGO workers: IMPECT staff members during the cultural night

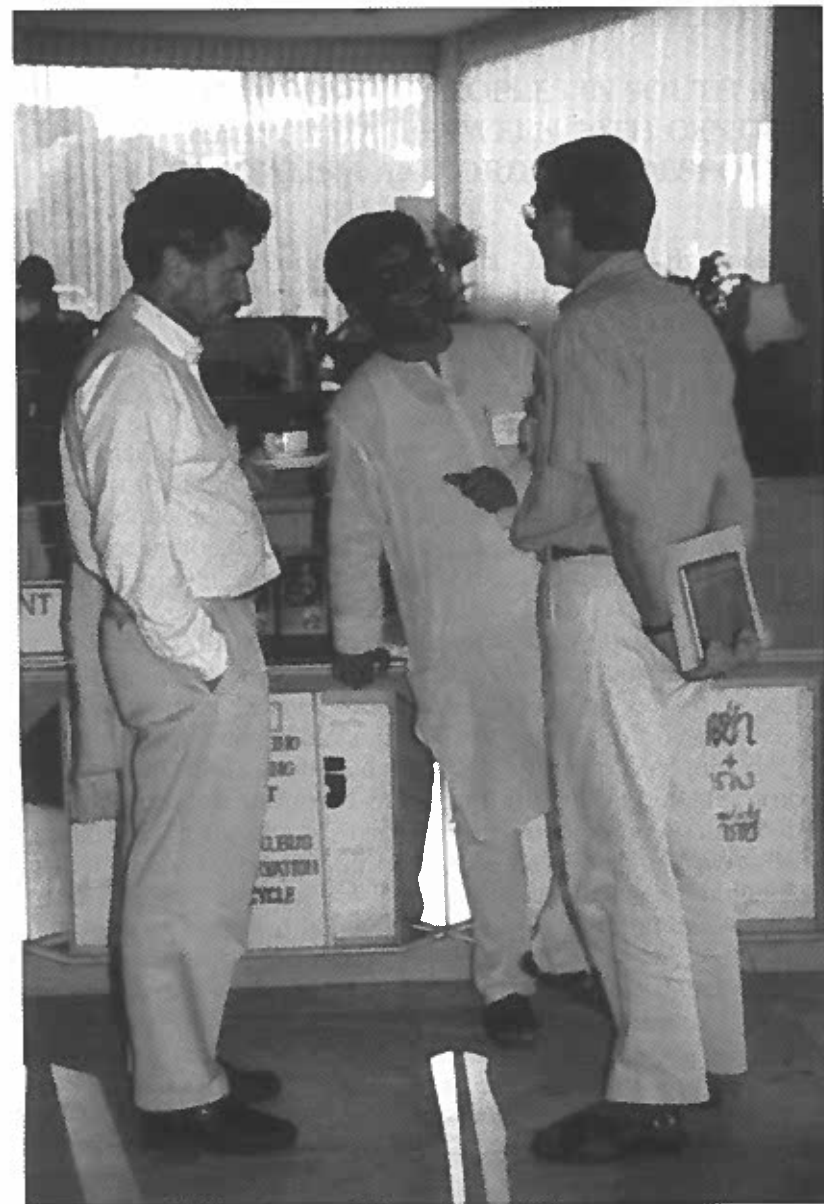


3. Strengthening identity: Young Karen playing a traditional lute.



4. Seeking spiritual support for the conference: Karen giving an opening prayer with co-organisers Luingam Luithui (left) and Prasert Trakansupbakon (standing)

5. Meeting across boundaries: Ma A Lenh, the H'mong representative from Vietnam (left), listens to his H'mong colleague from Thailand playing a traditional flute.



6. Making friends: Anders Baltzer Jørgensen, Danish anthropologist (left), IWGIA board member Jens Dahl and Tapan Bose (India) during an informal chat in the lobby

INDIGENOUS PEOPLES IN SOUTH AND SOUTHEAST ASIA: BETWEEN 20TH CENTURY CAPITALISM AND ORIENTAL DESPOTISM



The world looks to Asia - impressed by rocketing GDP growth rates and the increasing self-confidence both of its 'economic tigers' and the emerging NICs (Newly Industrialised Countries). Some countries may look at them in envy, some even in fear of their growing competitive strength on the world market; but most are keen on getting a piece of the cake: access to the rapidly expanding consumer markets.

Economic development in East and Southeast Asia has become the major motor of the global economy. 30 per cent of the world export volume now comes from this region, and its growth rates in the 1980s were more than double that of the OECD, almost four times that of Africa and five times that of Latin America.

Whereas Hong Kong, Singapore, Taiwan and South Korea have already established themselves as regional economic powers, the 'tiger cubs' Thailand, Malaysia and Indonesia seek to join the NIC-club soon. Even the Philippines, bled out during two decades of Marcos dictatorship and its nepotistic 'crony-capitalism', is said to be 'back on the road again' (The Economist, 11 May 1996). Its still hesitating pace on the way to NIC-hood is related by some of its more successful neighbours to an 'unfortunate' historical heritage of European cultural traits and the concomitant erosion of what they term 'Asian values'.

Contrary to earlier European scholars like Max Weber, who argued that it was the particularities of the 'Asiatic Mode of Production' that prevented the development of capitalism, some of Asia's new leaders maintain that it is precisely the underlying values of the 'Asiatic Mode of Production' which brought about one of the most successful forms of capitalism (Coulmas 1996).

The alleged core Asian values - learning, obedience, diligence, thrift, the precedence of the community over individual interests, strong desire for harmony, close family ties and respect of authority - are conceived of as contrasting with the

decadence of modern European values and its consequences, social ills like drug abuse, crime and violence, brought about by decades of prosperity and the largesse of state authorities. The prevention of such a development, the forgers of the new Asianism argue, is the responsibility of the state. So, whereas the core Asian values are seen as the pillars on which prosperity and the new Asian self-esteem rests, the very foundation of this magnificent building, it is believed, are 'sturdy authoritarian structures' - the other gem of their cherished cultural heritage.

The centralisation of state power is often said to be a necessary, though not sufficient, condition for the development of a modern capitalistic economy (Franke 1996:4). In all of the celebrated economic miracle countries of East and Southeast Asia (as well as in some of the less successful ones) the military played a crucial role in the build-up of centralised state structures. 'Sturdy authoritarian structures' still today often translate as outright rule (like in Burma) or indirect control (like in Indonesia) or at least a strong influence of the military on the government (like in Thailand).

And for the majority of citizens in most of these nations, the reality behind the veil of GDP and trade statistics still gives little reason for pride or joy. Economic success in these countries has until now, to a large extent, rested on the massive plunder of human and natural resources: on child labour, underpayment, excessively long working hours, low health and security standards at the workplace, heavy environmental degradation and pollution; and, above all, the determined and oftentimes brutal suppression of political opposition, involving blatant human rights violations.

No doubt, the human rights situation has somewhat improved and democratisation is slowly gaining ground in some countries formerly well known for their autocratic regimes, like the Philippines, Thailand, Taiwan or South Korea. Nevertheless, authoritarian government styles to a varying extent prevail even in these countries, they are still pronounced in Indonesia, Singapore and Malaysia, and reach totalitarian dimensions in Burma and China. Criticism with respect to the human rights situation is often rejected by pointing out that international human rights standards are based on western concepts, and

therefore not applicable and not acceptable to Asian countries. Any foreign criticism pertaining to civil rights is interpreted as interference with internal affairs and even termed moral imperialism.

Fertilised by the considerable economic benefits amicable relations with the new economic powers promise, these arguments seem to catch on in the West. The top-level Asia-Europe Meeting of 1 - 2 March in Bangkok this year, celebrated as a 'historic event', reflected this clearly: the participating Asian countries - Japan, China, South Korea and the ASEAN member states - succeeded in having human rights issues completely excluded from the agenda.

The opposite side of the coin

But by far not all Asians, and not even members of otherwise well-known hardline governments, agree with the rather cynical view of the protagonists of the new Asianism. Anwar Ibrahim, Vice Prime Minister and Minister of Finance of Malaysia called it "a shame, although clever, to take Asian values as an excuse for authoritarian practices and the denial of basic civil rights". And many Asians do not see the concept of human rights as something particularly western. In fact, each of the more than 70 human rights agreements and declarations at the United Nations were voted for by more than 100 states, the majority of them non-western (Heinz 1996:10). As Anwar Ibrahim continued:

"To say that freedom is western or un-Asian is an insult both for our own traditions and our ancestors, who sacrificed their life against tyranny and injustice. [. . .] Honestly, we have to admit that we are still struggling to eradicate the remains of the so-called 'oriental despotism'" (Hansen 1996:29).

What Anwar Ibrahim refers to is the other, less shining side of the coin called Asia's 'Great Traditions': the powerful socio-cultural systems which had their ideological foundation in either Hinduism, Buddhism or Islam. At the end of the 18th century, before European colonialism became firmly entrenched, the region was dominated by political systems that were the bearers of these 'Great Traditions'. These Buddhist kingdoms and principalities in Sri Lanka, mainland Southeast and East Asia, the petty Hindu or Muslim states in India and the Muslim sultanates

of Malaya and the Indonesian archipelago were all extremely hierarchical and more or less centralised, like in Malaya, Indonesia and India, and of varying degree in other regions, but in all cases the social formations were autocratic and rather militaristic state societies. Their power rested basically on the military subjugation and control of the people and often reached despotic dimensions. The rise and decline of dynasties, constant wars and shifting power centres, the concomitant bloodshed, plunder and enslavement marked these Great Civilisations' path through the last two millennia of history (in China even longer) as much as all the adorable achievements in engineering, architecture and arts and crafts, which are so often invoked in testimony of the glorious heritage of modern Asia.

The inherent contradiction

A closer look clearly reveals that the 'Asian values' referred to by the forgers of the new Asianism (mainly Singapore, Malaysia, Indonesia and China) are derived from the particular experiences of these countries, and therefore are by far not characteristic of Southeast or East Asia in general, and much less for the rest of the continent.¹ But another aspect of this cultural chauvinism is often ignored. What is seldom realised is that domestic politics of the protagonists of the new Asianism contradict their own appeals to western critics: to respect Asian cultural peculiarities, their countries' different values. Aside from the fact that this demand rests on the unjustified claim to represent Asia, and therefore 'Asian values' in general if the leadership of a country so strongly demands that a particular set of values (which they claim to represent the basic values of that society) be respected by other nations, one should logically assume that the same holds true with respect to the values and traditions of those members of that society who do not subscribe to the dominant creed. This, however, is rarely the case.

¹ Although one cannot legitimately speak of 'Asian values', it is true that there is a range of values at least partially shared across national boundaries, and it was suggested that these values represent 'emerging Asian values' as they might develop into generally accepted regional moral norms and world views similar to the ideas of democracy and human rights in Europe (Südostasien Informationen 2/1996:9).

What I am above all referring to here are South and Southeast Asia's indigenous peoples' values and traditions. Their cultures, which are as much 'Asian' as that of the heirs of the 'Great Traditions', are usually considered inferior, backward or outrightly primitive by the dominant ethnic groups. And their right to cultural identity and integrity is being denied by the very governments that defy what they call western cultural imperialism. Such policies clearly violate universal human rights; but they at the same time put in danger what is probably the most precious heritage of the region: its amazing cultural diversity.

Diversity and dichotomy

South and Southeast Asia boast one of the highest degrees of cultural diversity in the world. But whereas the majority of the populations in most South and Southeast Asian countries are comprised of the descendants of the few dominant pre-colonial state societies, the bulk of the region's cultural diversity is vested in the heritage of its indigenous peoples.

Now, there has been a lengthy debate concerning who can be considered as 'indigenous' in the Asian context, and whether this concept is applicable to Asia at all (See for an in-depth discussion Gray, 1995). This discussion is of crucial political importance as it mainly evolved in response to the refusal of Asian governments (notably India, Indonesia, China and Burma) to accept the concept for their own countries. They usually refer to the fact that since decolonisation, Asian countries have been inhabited and ruled by Asians. And with the absence of a colonizer population, the term 'indigenous' allegedly does not make sense. On the other hand, if the concept is broadened to encompass non-European invasion and colonisation, then, as the argument goes, it is almost impossible in the Asian context to identify the original - which would then have to be correctly called the 'indigenous' - inhabitants of the respective countries, as immigration occurred throughout much of the regional history, and migration patterns are highly complex. It is thus concluded that either all peoples in Asia must be considered indigenous, or there are no 'indigenous peoples' at all.

I do not intend to elaborate further on that issue. Three of our contributors - Tapan Bose, Luigam Luithui and Benedict Kingsbury - will discuss the problem in detail. What I am aiming at in the introduction is to draw attention to the broader context

of the present political discourse of Asian ruling elites, as well as the historical developments which set the vectors for the present situation of those peoples which came to identify themselves as the indigenous peoples of South and Southeast Asia.

Almost two thirds of the world's 300 million indigenous people live in Asia. From the arctic of Northern Siberia, the deserts and steppes of Western and Central Asia to the Great Himalaya ranges, the monsoon forests of central India and the rain forests of Borneo to the tiny islands in the Sulu Sea, they live all across the vastness of the world's largest continent. Their sheer number and the complete range of ecosystems they have adapted to leaves us little reason to wonder about the high cultural diversity we are experiencing. Even if we narrow our focus on South, Southeast and East Asia, the number of indigenous peoples is astonishing.

In light of such high diversity, any attempt to generalise makes gross simplification unavoidable. Nevertheless, for the

Some Basic Data on Indigenous Peoples in Selected Asian Countries

Country	Total Number (in Mio.)	% of Total Population	Number of Ethnic Groups
Bangladesh	0.6	1	13
Burma	11	30	60
Cambodia	0.099	1.1	-
China	91	8	55
India	51.6	7.7	350
Indonesia	1.5	1	300
Japan	0.05	0.4	-
Laos	0.8	23	67
Malaysia	2.005	11.1	71
Nepal	11.1	60	60
Philippines	6.5	16	50
Taiwan	0.36	2	10
Thailand	0.5	1	23
Vietnam	9	13	54

Sources: Burger 1987; IWGIA 1994; Keyes 1987; McKinnon/Wanat 1983; Nicholas 1993; Noblen/Nuscheler 1994; Schechla 1993; TABAK 1990

region in question such an endeavour can be justified precisely in light of the political discourse on Asian identity, values and indigeneness.

As argued previously, the basic cultural values and the political structure and style of many of the region's modern states are in essence the legacy of pre-colonial authoritarian state societies. So if there is one legitimate generalisation concerning indigenous peoples in that region, then it is the statement that these values and socio-political features are far removed from those which characterize most of the indigenous peoples' societies.²

In my arguments above, an imaginary line was drawn, setting apart the indigenous peoples from the descendants of the dominant pre-colonial state societies. I am aware that by this I have revived the much criticized and long abandoned classificatory opposition between 'state societies' and 'non-state' or 'tribal' societies. Above all, the term 'tribe' - due to its association with European colonialism - is rightly resented by those to which this label was applied. However, if we use the terms 'tribal' or 'segmentary' as analytical concepts in an institutional approach, denoting a specific type of social organisation, they may be quite helpful in gaining a better understanding of the historical developments which brought about the present situation of the region's indigenous peoples. What an institutional approach clearly reveals is that in the course of historical development a quite uniform pattern of regional differentiations of socio-political organisation and cultural expression evolved which is usually referred to as 'socio-cultural dichotomy'. Although originally applied to mainland Southeast Asia, the concept is as much applicable to East and insular Southeast Asia, as

² I say here 'most' because some peoples who identify themselves as indigenous may be heirs to a political and cultural tradition rooted in a social system much closer to the Ancient Traditions and Oriental Despotism than to the host of indigenous peoples' societies (like the Cham of southern Vietnam, the Shan in northern or the Mon in southern Burma). In other cases, the present-day comparably egalitarian segmentary (tribal) social structure of some of the indigenous peoples in the region was brought about by the final defeat of their former states or principalities and the dissolution of the pre-existing social order (like the former 'adivasi kingdoms' in India; see Bates 1995:110).

well as, although in a more restricted sense, to the highly complex socio-cultural landscape of the Indian Subcontinent.

In Southeast Asia, to which the term is most often applied, the state societies known as the region's early civilisations - such as the Khmer empire in Cambodia, the Hindu-Buddhist kingdoms on Java or the Vietnamese and Siamese kingdoms - came into being due to Chinese and Indian influence as trade increased after the 1st century A.D. The creation of these sinicized or indianized empires led to an increasing disparity between the populations brought under control of the ruling elite and those living in or withdrawing to remoter areas where they retained their traditional culture and socio-political organisation. However, as Christie remarks:

"None of these pre-colonial states [in Southeast Asia of the 18th century A.D.] could be described as 'nation-states' in the European sense. They could more accurately be described as 'ethnic empires', where a dominant ethnic group governed a wide range of minorities, normally at the periphery of the state, but where no serious attempt was made to integrate them into a common national identity. The sustained effort to create an inclusive national identity was only to begin systematically in the early twentieth century" (1996: 7f).

What emerged in this process is a socio-cultural dichotomy, the co-existence of two distinct types of socio-cultural systems, which throughout history have in each particular case been related to each other in constantly changing and complex ways. This interrelationship has shaped both, although, due to the marked imbalance of power, more decisively that of the indigenous peoples.

The socio-cultural dichotomy can be drawn along four dimensions, their relative significance varying in each case: the geographical, the economic, the sociopolitical and ideological dimension.

In most of mainland Southeast Asia, in the Philippines, Taiwan, in southwestern China, Peninsular Malaysia and in most areas in India, the dichotomy is one between highlanders and lowlanders; in Indonesia it is first of all one between the inhabitants of the inner versus the outer islands (Java and neighbouring small islands vs. the rest of the archipelago), but

also one between coastal dwellers and those living in the (also often upland) interior.

Closely connected to the geographical features are economic differences: In most cases intensive plough agriculture (mostly irrigated rice) in the densely populated alluvial plains (or the fertile volcanic soils of Java) contrast with extensive swidden agriculture (often combined with terraced wet rice cultivation where the terrain allows) or hunting and gathering in the comparably sparsely inhabited uplands.

As already indicated before, whereas the lowland populations were in pre-colonial time socio-politically organised as highly hierarchical, rather centralised state societies of varying size, the indigenous peoples in most cases lived in comparably egalitarian band or segmentary societies, or in petty chiefdoms, in which villages were politically, and to a large extent economically, autonomous units.

The ideological or religious divide has up to the present been quite decisive: whereas the pre-colonial (and most of the present) state societies have been the bearers of the Great Traditions (Hinduism, Buddhism, Islam), the indigenous peoples usually retained (at least until European proselytizers appeared) their own traditional beliefs.

Obviously, these are very broad generalisations. Especially with respect to India, speaking of a socio-cultural dichotomy and thereby setting the indigenous peoples, the *Adivasi*, in contrast with the rest of the population, may appear unacceptable to those aware of the country's highly complex socio-cultural landscape. And it may correctly be argued that if there is such a dichotomy, it is a product of colonial politics. Crispin Bates writes:

"The term tribal has been coined at times to describe anyone who practices slash-and-burn cultivation or hunting and gathering, regardless of their culture or for how long they have been doing this. A very good example are the Badaga, inhabitants of the Nilgiri Hills described by the anthropologist Paul Hockings, who were regarded for a long time as 'tribals' for their practice of slash and burn, although they were settled peasant cultivators of the Mysore Plain until they were driven into the hills by warfare some time in the sixteenth century (Ross King 1870; Hockings

1980). *At the same time, while economics can play a part in defining a community, many settled farmers still call themselves adivasis, while there are many hunter-gatherers and slash-and-burn agriculturalists in India today who call themselves Hindus. From this we may conclude that the 'adivasi' communities cannot be easily distinguished from Hindu peasant communities by their way of life. But neither is it easy to describe the 'adivasis' in terms of their religion since Hinduism itself is so highly eclectic*" (1995:107).

Such may as well be said of areas in insular or mainland Southeast Asia. In fact, virtually all of the region's indigenous peoples have had long-standing, throughout history highly variable and dynamic relationships with the politically dominant societies. They themselves may at times have possessed rather hierarchical and centralised political systems, in adaptation to and thereby able to - at least for some time - withstand the pressure of the expanding empires. They may have originally lived in the lowlands and practised intensive wet rice cultivation. They may have adopted wholly or partially the ideological foundations of one of the Great Traditions, and they may have even played an important role in the ritual complex of the dominant state societies, like the Jarai cited above, or the Pardhans for Hindu villagers in central India (Bates 1995:113). No doubt, the set of features presented above as general characteristics of the socio-cultural dichotomy are broad and rather crude criteria, hardly standing up to scrutiny on the micro level.

But what is important is the fact that it is along basically the same lines that distinctiveness is created and experienced, often by both indigenous and non-indigenous peoples. And it is along these lines that stigmatization and discrimination by the dominant groups occurs. What counts for the peoples who identify themselves, for example, as *adivasis* is the fact that caste Hindus do not consider them to be (proper) Hindus (no matter with what religion they identify themselves) and therefore are treated as outcasts, the so-called 'untouchables'. This again means that they can legitimately be discriminated against and exploited. For caste Hindus, the subjugation of the 'savages' therefore becomes just a 'natural' act (see Ratnaker Bhengra's contribution in this volume).

In some instances and at first glance, the relationship between the dominant society and the indigenous peoples in pre-colonial times may not appear to have been very antagonistic. Keyes notes on mainland Southeast Asia:

"Despite a growing distinction between the hill and lowland peoples, sharp boundaries did not develop between the two. Rather, throughout most of Southeast Asia, hill peoples were incorporated into social systems dominated by the lowland peoples. They remained 'the holders of the wild', 'the people of the upland fields' who rendered periodic obeisance to the lowland rulers in return for recognition of their status as the first inhabitants of these lands. These relationships found symbolic expression in rituals involving both lowland and upland peoples" (1977:19).

He then moves on to cite two famous examples: the triennial exchange of gifts between representatives of the Khmer ruler and the so-called *sadets*, the Lords of Fire and Lords of Water, the spiritual leaders of the Jarai of the Central Highlands of today's Vietnam and the biannual ceremony at the royal capital of Luang Prabang in Laos, "which act out a historical-mythical scenario, permits us to witness the genesis of the world by the dancing ancestors, the organising of a territory seized from the aborigines, and the installation of the ruling line" (ibid.:, c.f. Archaimbault 1964).

What these examples in fact illustrate is, on the one hand, that although the pre-colonial states could sometimes expand their political control to the remote areas where indigenous peoples lived (the highlands areas or the interior of Indonesia's outer islands), and although many indigenous peoples, at certain times and to some extent recognized the suzerainty of the rulers, they retained much political and economic autonomy. Above all, as the rulers of the traditional states based their power on the control of labour and not land (land and not people was abundant in those days) the indigenous peoples, to a large extent, maintained control over their territories and its resources.

On the other hand, they show that in spite of the mutual respect between the lowland societies and the 'hill peoples', their relationship was marked by a clear imbalance of power.

And the prevailing attitude of the ruling powers toward the indigenous peoples was in most cases far from benevolent. Although the socio-cultural dichotomy to some extent also encompassed symbiotic relationships between lowland and upland societies in economic matters, and although the dominant society may in some instances (at least in rituals) have recognized the latter as the original inhabitants of the land, the predominant attitude of heirs of the Great Traditions towards the hill peoples was, and still is, characterised by arrogance and outright contempt. Considered to be savages, no moral restriction whatsoever confined encroachment on their lives and property. For the indigenous peoples, attempts of military subjugation by a foreign power were already a pre-western colonial reality, raids and enslavement a recurrent experience.

The indigenous peoples in Peninsular Malaysia and across the border in southern Thailand (in Malaysia known as Orang Asli), for example, were until recently (and in some areas still are) called *sakai*, which means 'slave'. And this was not merely an empty invective:

"Slave raids into Orang Asli settlements were not an uncommon feature in the 18th and 19th centuries. The slave-raiders were mainly Malays and Bataks, who considered the Orang Asli as 'kafirs', 'non-humans', 'savages' and 'jungle-beasts'. Sometimes, however, they were aided by other 'tame' Orang Asli" (Nicholas 1993:2).

'Pre-colonial colonisation'

The biannual ritual at the former court in Luang Prabang, in fact, expresses a historical reality which indigenous peoples in many areas of South, Southeast and East Asia have experienced: that their territories were invaded by those who came to be known as the bearers of the 'Great Tradition', that they were subdued, alienated from the more fertile portions of their lands and driven to remote areas. Except for those living in areas far removed from the centres of power, most indigenous peoples in South, Southeast and East Asia were, in a sense, 'colonized' peoples already before European colonisers emerged on the scene. A few examples shall suffice to illustrate this.

As Prasert Trakansuphakon describes in his contribution to this volume, the Karen were driven away from the fertile plains around Chiang Mai in the north of present day Thailand by the

expanding Thai kingdom. Whereas they were retreating towards the mountains to the west, their brothers and sisters living across the Tenasserim range had to flee from the constant harassment of the Burmese. Many of them also had to leave the lowlands and seek refuge in the mountains, some of them migrating far to the east, into what later became part of the territory of modern Thailand.

The forbearers of the *adivasi* in India have for centuries been under pressure from more powerful societies and had to adapt in varying ways (see C.K. Janu and R. Bhengra in this volume). Often, the only option was to retreat to the mountains. There, they often successfully reestablished their social order according to the changed circumstances, and entered into complex relationships with the people now dominating the lowlands, as the following two examples illustrate:

"All too often, however, adivasi kingdoms are thought of as static and backward societies outside the mainstream of Indian culture. That this is not so, I believe to be very clearly illustrated by the case of the kingdom of Bastar, which was itself a relatively recent creation, having been founded by migrants, the family of Annam Deo, who were forced to move northward into the highlands of central India in the early fourteenth century following the Muslim invasion of their homeland at Warangal in Andhra Pradesh" (Bates 1995:113 f).

"[. . .] many so-called tribals, such as the Gonds of Deogarh in central India, had been plainsmen themselves until they were driven into the hills by warfare and the growing numbers of Hindu settlers. Even in the early nineteenth century many adivasis of central India continued to produce a wide range of valuable products upon which the plains people depended" (ibid.:112).

India's *adivasis* have, however, in many cases never really accepted foreign dominance. 'Tribal rebellions' caused as much trouble for the Mughal emperors as for the British in the 19th century.

The situation of the indigenous peoples in present day Nepal is also to a large extent the legacy of the pre-colonial invasion by a foreign power. The Hindu kingdom of Nepal was in fact

created only in the 18th century, through the forced subjugation of the indigenous peoples (see Parshu Ram Tamang's contribution in this volume).

Similarly, the historical experiences of the indigenous peoples of Taiwan since the end of the nineteenth century are overshadowed by the forced annexation of their ancestral lands by invading powers. There, foreign occupation started with the appearance of the Dutch and Spanish colonisers. After parts of the island were invaded by them in the third decade of the 17th century, ethnic Chinese (Han) under Cheng Chen-kong drove the Europeans off Taiwan and established their rule over the western plains. From that time on, the indigenous peoples constantly had to fight the Han who were invading their ancestral lands in increasing numbers. In 1885, the whole island was annexed by the mainland Manchu regime. Still, the indigenous peoples maintained control of the eastern plains and the mountains until the Japanese, after having won the Sino-Japanese war in 1895, established their ruthless rule. But in 1947 the Chinese returned, when the Nationalist Kuomintang, after their defeat by the communists on the mainland, fled to Taiwan and created the Republic of China. (See Mao Lung's contribution in this volume).

One of the largest forced exodus of an indigenous people in the region is that of the Hmong from southern China. Although some scholars believe that their original homeland is the area of the lower Yellow River and Yangtze in central China, from where they were pushed southwestward by the expanding Han (ethnic Chinese), what can safely be assumed is that at least since the early 13th century A.D. they have lived in the province of Guizhou and neighbouring areas, where the majority of the Hmong in China are still living (Mischung 1990:35ff). Throughout history, the relationship between the Hmong and the Han has been precarious. It seems that the Hmong have defended their lands and independence more fiercely than other indigenous groups against the expanding Han settlers and the claims of the Manchu emperors. Between 1796 and 1911 alone, 350 'uprisings and disturbances' were registered (Diamond 1988, cit. in Mischung 1990:44). But between 1855 and 1881 the Manchu Government decided to launch its bloodiest and most expensive war against the Hmong. The reason apparently did not lie in the Government's wish to expand its territory for the

benefit of the empire's growing population. A more convincing argument is that it was above all the taxation of the profitable opium production which the heavily indebted Manchu Government wanted to force on the Hmong (Cooper 1984:20f; 1986:27).

"To say that the wars had economic motives does not, of course, deny that there was repression by the Manchu authorities or that many thousands of Hmong fled across the border. For all we know, the nineteenth century Hmong exodus from China could have been every bit as great as the twentieth century exodus from Laos. Perhaps even greater" (Cooper 1986:27).

Although some Hmong had migrated south into Indochina earlier, it was due to this exodus that Hmong now live in large numbers in the north of Vietnam, in Laos and northern Thailand, where they now constitute what the respective governments usually call an 'ethnic minority'.

The making of minorities

Although peaceful coexistence and some kind of economic and ritual symbiosis between the dominant state societies and the indigenous peoples did exist at certain times and in certain places, the relationship between them was in general antagonistic. And centuries of negative experiences has made indigenous peoples all over the region wary of outsiders and caused them to develop a deep-seated distrust towards them.

But the pre-colonial states could in most cases establish only weak or temporary political control over the indigenous peoples' territories. Such control usually extended only to the fringe areas of the highlands or the outer islands, where most indigenous peoples live. Therefore, though many indigenous peoples at certain times and to some extent had to recognize the suzerainty of lowland or coastal rulers, they retained much political and economic autonomy. And the crucial difference between the pre-colonial rulers and their western successors was that they were interested in the control of labour and not land, as land was abundant in those days. Therefore, even the indigenous peoples who had to pay tribute and provide corvée labour retained de facto control over their land and the resources on it. This has radically changed with the establishment of western colonial rule.

These changes brought about by European colonisation are too manifold and complex to be thoroughly discussed here, so attention shall be drawn to just a few aspects:

In some regions, the establishment of colonial rule reinforced the existing antagonism between the dominant groups and the indigenous peoples; in others it was responsible for the very creation of such an antagonism, like in the Philippines, where hispanicisation (i.e. above all christianisation) of the lowland population led to the emergence of a dichotomy where none existed before: that between the Christian majority and the so-called 'cultural communities' (see David A. Daoas's contribution in this volume). Among the Karen of Burma or the Dayak of Borneo, christianisation of the indigenous peoples on the one hand, has deepened the divide between them and the non-indigenous peoples who remained Buddhists or Muslims respectively, while on the other hand, it contributed to the strengthening of their identity vis-à-vis the dominant population.

But the impact of colonial rule on the relationship between the dominant populations and the indigenous peoples went far beyond the religious sphere, which is well illustrated in the case of the divide-and-rule policy of the British in Burma. After the British annexed Burma to India following the third Anglo-Burman War, 'Burma proper' was put under direct British administration. The resulting weakening of the traditional Burmese elite, the disintegration of old values, altered property rights and the establishment of a colonial export economy, led to extensive destruction of the traditional social structure and the loss of Burmese identity. In the so-called 'Frontier Areas', the mountainous areas inhabited by the indigenous peoples, the British introduced a kind of indirect administration in 1922 which permitted traditional leaders and rulers to maintain their positions under British sovereignty. Though this was meant to protect indigenous peoples, and to a certain extent indeed did so, (see on the Chittagong Hill Tracts in Sanchay Chakma's contribution), it also strengthened alienation and tensions between them and the Burmese, further reinforced by the British proclivity for recruiting Chin, Kachin and Karen for their Burmese regiments.

Of crucial importance to the situation of indigenous peoples during that period were new legal concepts introduced by colonial governments.

"Economic difficulties for many of the so-called adivasi communities in fact began in the eighteenth and early nineteenth centuries when the introduction of British conceptions of property rights and a European legal system deprived them of vast areas of land. The stereotype soon developed, as it did of the American Indian, of the 'adivasi' as an uneducated, landless, and poverty-stricken indigent" (Bates 1995:109).

But it was another European ideological 'invention' implanted by the colonialists which has probably had the most decisive impact on the post-colonial situation of the indigenous peoples in South and Southeast Asia: the idea of the nation-state.

As indicated before, pre-colonial states were not in the first place defined by territories, they did not have clear and fixed physical boundaries. The state's sovereignty extended as far as it was able to exert its power on the peasantry. Therefore, its authority gradually diminished with increasing distance from the centre, fading out completely in the remote hinterlands that represented some kind of a buffer zone between competing empires. And this allowed the indigenous peoples who lived in these areas to retain much autonomy. With the establishment of clearly-defined and fixed state boundaries by the colonial governments, which eventually became the national boundaries of the post-colonial states, the indigenous peoples suddenly became members of an encompassing political unit, were declared the citizens of a nation and, what is crucial, because of their comparatively small numbers were made minorities.

The preexisting antagonistic relations have worsened dramatically because of the establishment of true power of the dominant society over the indigenous peoples after the creation of the nation-state. Whereas the colonial governments granted indigenous peoples at least some protection from land grabbing and exploitation by the dominant groups - by establishing special 'tribal divisions', controlling trade or outlawing lowlanders' settlement in the respective area, etc. (see the contribution by Sanchay Chakma in this volume) - such measures were not continued with in most of the independent nations in South and Southeast Asia.

South and Southeast Asia's indigenous peoples, having completely lost what autonomy they had before and having become

powerless minorities, are now more than ever exposed to exploitation and oppression by members of the dominant ethnic groups, who are in control of the government.

The continuing colonisation

As the contributions to this publication also clearly illuminate, the present situation of South and Southeast Asia's indigenous peoples is indeed similar in most countries, differing from each other more in degree than kind. Indigenous peoples in these areas are faced with:

- a general discriminating attitude of lowlanders in everyday situations;
- direct and forced or indirect and more subtle assimilation programmes (see for example the contributions of Kulwadee Charoensri and J.P. Rahail);
- violent repression by military and police and ethno- or even genocidal policies in areas with strong indigenous movements demanding autonomy or independence (as for example with the Naga in northeastern India, with several indigenous peoples in Burma or in the case of East-Timor and West-Papua in Indonesia);
- a loss of control over land and resources due to the non-recognition of customary land rights. Whereas in most South and Southeast Asian countries there do not exist any legal provisions granting indigenous peoples the right to their land and self-determination according to traditional law, Malaysia, for example, formally recognises customary law and therefore also traditional land rights of the indigenous peoples of Sarawak and Sabah, but they are all too often ignored or overruled, with reference to national interests (Jannie Lasimbang's contribution).

The non-recognition of the indigenous peoples' rights to their land is the ultimate cause of:

- the loss of land and resources due to logging, mining and other exploitative activities or due to infrastructure pro-

grammes (dams, roads, etc.) pursued by the national government;

- resettlements due to development or environmental conservation programmes (see Chayan Vaddhanuphuti's contribution);
- the influx of large numbers of settlers, either due to spontaneous migration or due to large scale government transmigration programmes like those in the Chittagong Hill Tracts or Indonesia's Transmigrasi programme.

There has been a long history of resistance to outside pressure among the indigenous peoples in South and Southeast Asia. Their strategies have always varied, according to the nature of threat they were confronted with as well as the options they had. Even today, and in spite of many commonalities, the approaches to the question of self-determination, for example, differ considerably between the indigenous organisations of the region. According to the specific situation and historical experiences, some are demanding outright independence (like the Naga in northeastern India), regional autonomy (like in parts of the Philippines) or self-determination based on the principle of peoples' federation (see Jimid Mansayagan's contribution). Some have not taken into use the term 'self-determination', but base their claims on the notion of customary law and tradition (like in Malaysia or Indonesia; see J.P. Rahail's contribution). This is mainly due to different historical circumstances, but also to differences in the degree of involvement in the international indigenous movement. The indigenous peoples, once they become familiar with the international movement for self-determination, in the sense in which it is understood in Article Three of the Draft Declaration on Indigenous Peoples' Rights, are unanimous in claiming their rights to self-determination as a fundamental right on the basis of which negotiations can be held with the state as to the specific realisation of the self-determination principle in each case.

The status of the indigenous peoples' self-organisation in the modern context varies considerably between the different countries and even between regions within a country. Some of the indigenous peoples in Burma, for example, have developed complex, highly effective, state-like organisational structures

during their more than four decades long struggle. Although in some areas, indigenous self-organisation is only incipient or non-existent, extremely dynamic indigenous organisations have emerged everywhere in the region during the last two decades. And the establishment and strengthening of already existing regional networks (to which the conference in Chiang Mai contributed) will undoubtedly have a catalytic effect in the near future. But a stronger international partnership, increased lobbying on the UN level and an intensification of "education campaigns directed at all sectors of society, that will promote understanding of the various nuances of indigenous life" (Minnie Degawan in this volume) will be necessary to reestablish the indigenous peoples' rights and to counter the erosion of their cultural heritage.

In general, the situation of South and Southeast Asia's indigenous peoples is rapidly deteriorating, precisely because of the economic boom some countries in the region are currently experiencing. Thailand, Malaysia, Indonesia and the Philippines have already sacrificed many of their natural resources (like timber) to the necessity of capital accumulation as a prerequisite for industrial development. Laos and Cambodia and, above all, Burma are following suit.

Just recently, on 13 June, an international consortium led by Swedish-Swiss Asea Brown Boveri (ABB) won the \$5.4 billion contract to build the 2400 megawatt Bakun Hydroelectric Project in Sarawak, Malaysia. More than 9000 indigenous people, mainly Kayan, Kenyah, Kajang, Ukit and Penan, would have to be resettled and 69,640 hectares consisting of primarily pristine rain forest would have to be cleared for the Bakun dam and reservoir. The largest share, at least 70 per cent, of the 2400 MW electric energy generated by the dam on the island of Borneo will be needed in the industrial centres of the mainland, transmitted via a 1700 km long cable, one third of it under water across the South China Sea. Although the opposition against the project is strong both in Malaysia and internationally, and although on 19 June, the High Court of Kuala Lumpur decided that the environmental impact assessment for the Bakun project was based on improper procedures and therefore ordered the construction to be immediately stopped, it remains very likely that the giant hydroelectric project, which will be the second largest in the world, will be realised. The government of

Malaysia has steadfastly declared on a number of occasions that the dam will be built at any price.

It is projected that more than half of the global investments in the energy sector in the next ten years will concern Asia. Ambitious to join the 'NIC-club', the respective governments are determined to provide for the preconditions which industrial growth demands: cheap labour, natural resources, the necessary infrastructure and energy. At stake are both the integrity of the natural environment and the rights of the people. But, as the example of the Bakun dam illustrates, the responsible governments are often willing to proceed with their plans at all costs. For the indigenous peoples, already deprived of their rights and rendered powerless in the course of recent history, this means increased confrontation with colonising forces on their remaining territories. It may well turn out that it is them who will be forced to pay the most exacting contribution to the unlucky marriage of 20th century capitalism and oriental despotism, celebrated by others as 'the Asian miracle'.

References

- Cooper, Robert 1984. *Resource Scarcity and Hmong Response. Patterns of Settlement and Economy in Transition*. Singapore University Press.
1986. The Hmong of Laos: Economic Factors in the Refugee Exodus and Return. In G.L. Hendricks & B.T. Downing & A.S. Deinard: *The Hmong in Transition*. New York: Center for Migration Studies of New York, Inc.
- Coulmas, Florian 1996. Asianismus - Das neue asiatische Selbstbewusstsein. *Neue Zürcher Zeitung* Nr. 40, 17/18 Februar, p. 17.
- The Economist* 1996. Back on the road. A survey of the Philippines, 11 May 1996.
- Franke, Peter 1996. Die Rolle des Militärs in Südostasien. *Südostasien Informationen* 12(2).
- Gray, Andrew 1995. The Indigenous Movement in Asia. In: R.H. Barnes & A. Gray & B. Kingsbury: *Indigenous Peoples of Asia*. Association for Asian Studies, Inc., Monograph and Occasional Paper Series, Number 48. Ann Arbor: University of Michigan.
- Hansen, Sven 1996. Stimmen aus Asien zu asiatischen Werten. *Südostasien Informationen* 12(1).

- Heinz, Wolfgang S. 1996. Asiatische Werte: Eine Herausforderung für die westliche Moderne? Zum Stand der Diskussion. *Südostasien Informationen* 12(2).
- IWGIA 1994. *The Indigenous World 1994/95*. Copenhagen.
- Keyes, Charles F. 1977. *The Golden Peninsula. Culture and Adaptation in Mainland Southeast Asia*. New York: Macmillan.
- McKinnon, John & Wanat Bhruksasri 1983. *Highlanders of Thailand*. Singapore: Oxford University Press.
- Mischung, Roland 1990. *Geschichte, Gesellschaft und Umwelt. Eine kulturökologische Fallstudie über zwei Bergvölker Südasiens*. Frankfurt a.M. Mimeo.
- Nicholas, Colin 1993. The Orang Asli of Peninsular Malaysia. In: C. Nicholas & J. Phoa & J. Lasimbang: *The Indigenous Peoples of Malaysia*. Report, Minority Rights Group. Mimeo.
- Nohlen, Dieter & Franz Nuscheler (eds.) 1994. *Handbuch der Dritten Welt. Südasiens und Südostasien*. Bonn: Dietz.
- Schechla, Joseph 1993. The State as Juggernaut: The Politics of India's Tribal Nations; in: Marc A. Shills/Glenn T. Morris (eds.): *Indigenous Peoples' Politics: An Introduction. Vol I. The Fourth World Center for the Study of Indigenous Law and Politics*. Denver: University of Colorado.
- Südostasien Informationen* 1996. Asiatische Werte 1(12), March.
- TABAK 1990. *Struggle Against Development Aggression*. Tribal Filipinos & Ancestral Domain. Quezon City: TABAK.

CHAPTER I THE CONCEPT OF INDIGENOUS PEOPLES IN ASIA

DEFINITION AND DELIMITATION OF THE INDIGENOUS PEOPLES OF ASIA



A brief history of international concern

International concern for indigenous peoples is not a new phenomenon. It began in the first half of the nineteenth century as a concern for aborigines or tribal peoples in the colonies. The terms aborigine or tribe are closely connected with European colonialism. They carried negative connotations like relative 'backwardness' and 'supposed primitivism'. In the heyday of colonialism, sections of the population in the colonies were labelled as tribes. Anthropologists and other social scientists provided the academic justification by defining people on the basis of physical features, race and several other, rather esoteric criteria like tribal languages, animism, hunting and gathering, meat eating, fondness for alcohol, dancing and naked or semi-naked people. But 90 per cent of the people so classified as tribes did not subscribe to these characteristics, which reflected the blatant prejudice of the academics and their support institutions.

Humanist concern for the oppressed is also a feature of history and even at the height of colonialism, voices were raised in Europe against the ruthless oppression and genocide of the 'aborigines' or the 'tribes' in the distant colonies. Without attempting to devalue the seriousness of the humanist concern of that period, I would like to add that these pioneers were limited in their perspective, that they accepted that these people were primitive and backward and campaigned for 'protection' on humanitarian grounds.

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For example, the Aborigines Protection Society, formed in London in the early nineteenth century, lobbied for protection of the aborigine populations of the new colonies on humanitarian grounds. As a result, certain protectionist measures were introduced in British North America. Later, these measures formed the basis for the centralised jurisdiction over 'Indian Lands and Indian Reserves' in the Constitution Act of 1967.

During the later part of the nineteenth century, when colonial powers were scrambling for Africa, concern for the tribal/aboriginal populations in Africa and Asia was voiced by some European Christian missionaries and a few humanists. A weak effort was made in Europe to establish an international responsibility for the tribes of the Congo basin. The effort was abandoned after Belgium's conquest of Congo (now Zaire) and the establishment there of one of the worst colonial administrations.

The British colonial administrators of the early 19th century were hostile towards the European missionaries as they believed that the missionaries were encouraging the tribals to agitate for the restitution of their land. Some missionaries were asked to leave the tribal areas. The work of W.W. Hunter, who was appointed by the Board of the East India Company to look into the causes of what was perceived as 'disturbances', finally resulted in the recognition of the differences between the tribal and non-tribal societies and the adoption of a protectionist policy.

But these so-called protectionist measures did not stop the alienation of tribal land. Thousands of men and women belonging to the tribal communities of the Jharkhand area were forcibly taken away to work in tea gardens of Assam and Darjeeling, and even to the West Indies and Fiji as indentured labourers. It is apparent that for some peculiar reason the work of the European missionaries and that of Hunter failed to instill a humanist concern in Europe for the tribal populations in the British Indian Empire.

After the First World War, minority rights figured on the agenda of international concern, primarily because of the ill-treatment of some of the minorities in mainland Europe and in the colonies during the war. Some standards for the treatment of colonised people were provided in the Covenant of the League of Nations. But the work of the League of Nations on the

indigenous issue was limited to criticism of the ill-treatment of the native tribal populations of Liberia ruled by African-Americans who had returned from the United States. The wider issue of the rights of indigenous or tribal populations of Asia, Africa, the Pacific areas and North and South America was not addressed.

The International Labour Organisation (ILO), set up at the time of the League of Nations, was also involved in developing standards for the protection of the indigenous and tribal populations in the 1920s. The ILO, however, was not able to make any significant impact in this area until the end of the Second World War. Between 1950 and 1970, the ILO worked as the lead agency in an internationally funded multi-dimensional development programme for indigenous populations of the Andean region of South America. It was this involvement of the ILO which led to the adoption of the 'Indigenous and Tribal Peoples Convention' in 1957. It is popularly known as ILO Convention No. 107.

Between 1920 and 1950, several indigenous groups of North America sent their representatives to the League of Nations and to the UN. They submitted memoranda to the UN Human Rights Commission demanding the recognition of their right to self-determination. These delegations, however, were not entertained. Nor were their memoranda accepted. All of the ILO and UN's work continued to be essentially protectionist.

In the UN, decolonisation as a principle of 'self-determination' was only accepted after lengthy debates in the General Assembly in the 1960s. Even then it was made clear that 'self-determination' as decolonisation did not apply to 'internal' collectivities. The so-called 'Blue waters and Salt waters' mindset limited decolonisation only to 'overseas territories'.

Because of this limited definition of the right of self-determination, the indigenous issue could not be put on the UN agenda through the route of decolonisation/self-determination. The only opening left was through the route of minority rights and discrimination. In the 1970s, Mr. Willemsen Diaz, who worked in the UN Human Rights Centre in Geneva, initiated efforts to incorporate the indigenous issue into the UN agenda. As a result of his works, the Subcommittee on Prevention of Discrimination and Protection of Minority Rights accepted a recommendation to set up a separate study on the problems of discrimination

against indigenous populations. The study was authorised in 1972 with Mr. José Martínez Cobo as the Special Rapporteur. Inadequate staffing and lack of funds hampered the work of the Special Rapporteur. Mr. Cobo was able to make only a couple of field trips, and the study was finally completed in 1983.

In the 1960s in Europe, the International Work Group for Indigenous Affairs (IWGIA) and Survival International were formed. They took up the campaign against the genocide and ethnocide of indigenous populations in South America. In 1975, some of the pioneer indigenous organisations such as the World Council of Indigenous Peoples in Canada and the International Indian Treaty Organisation in the US were formed.

They started lobbying the UN and the Western European governments. The Government of Norway was the first to be convinced. After the fourth Russell Tribunal hearings on indigenous peoples in Rotterdam, the Netherlands also became a strong supporter. Other Northern European countries joined later.

Indigenous peoples enter the UN

Finally in 1982, at the initiative of Mr. Theo Van Boven of the Netherlands, who was then the head of the UN Human Rights Centre, and with the support of some of the European states, a UN Working Group on Indigenous Populations was set up as a pre-sessional working group of the Subcommission on Prevention of Discrimination and Protection of Minorities.

It should be noted that the entire credit for getting the UN to accept the indigenous issue on its agenda goes to the indigenous groups of North America and some of the pioneer European NGOs who were concerned with the genocide of indigenous populations in South America. At this stage no Asian or African NGO or indigenous peoples' organisation was involved in this effort. Even the Australian indigenous peoples did not join the effort until the early 1980s. It is natural that as these peoples were mainly exposed to the indigenous peoples of America, their understanding of the indigenous issue at the conceptual level was strongly influenced by the American situation.

However, it does not mean that the indigenous or tribal peoples of Asia were silent or that NGOs of the Asian countries did not take up the cause of the tribal peoples in their countries. As a matter of fact, in Asia the tribal peoples of Burma (Myanmar), Bangladesh, India, Japan and Pakistan have been engaged in a long and

protracted struggle against the states for establishing their rights over land and other resources. They have also been fighting for the protection of their culture, language, livelihood, religion and social and political institutions. Considerable work has been done in these countries by humanist scholars, political organisations, social reformers and NGOs for the protection of the rights of the tribal peoples, as well as on the question of their right of self-rule, self-government and self-determination.

As a result, in some of these countries constitutional and legal reforms were introduced which provided protection to the tribal populations. Unfortunately, as most Asian governments did not allow their NGOs to participate in the UN fora, the Asian tribal peoples and their organisations were unable to participate in the process that led to the incorporation of the indigenous issue on the UN agenda.

The UN Working Group on Indigenous Populations started its work in 1982. It was given a dual task: First, to develop a criterion for determining the concept of indigenous and, second, to develop standards to guide member states of the UN in relation to the rights of the indigenous minorities in their jurisdictions.

It should be noted that the Working Group, which is a part of a subcommission of the UN Human Rights Commission, has no adjudicatory or legislative function. These bodies are to discuss human rights issues and draft proposals. They may indicate the norms of international law as established by member states in practice, but they do not have the power to establish new norms. Even the norms or principles established in the declarations of the UN General Assembly do not become international law until these are subsequently ratified by the state in the form of covenants and other international instruments.

The UN Working Group and the conceptual debate

However, as the Working Group was set up without defining indigenous peoples, the definition developed by Mr. José Martínez Cobo, Special Rapporteur on Discrimination against Indigenous Populations, was accepted by the Working Group (Sanders 1989):

"Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of

a different culture or ethnic origin arrived there from other parts of the world, overcame them, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under a state structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant" (Martínez Cobo, 1972).

In his final report published almost twelve years later, Mr. Martínez Cobo did not add anything new to the definition at the conceptual level. However, while defining an indigenous person he added that any individual who identified himself or herself as indigenous and was accepted by the group or the community as one of its members was to be regarded as an indigenous person (E/CN.4/Sub.2/1986/7/Add.4. para.381).

The draft Universal Declaration on the Rights of the Indigenous Peoples prepared by the Working Group does not include a definition of indigenous peoples or populations. This omission has been justified by the Chairperson - Rapporteur of the Working Group Ms. Erica Irene Daes - on the ground that "historically, indigenous peoples have suffered from definitions imposed by others" and as a result, in certain countries many indigenous peoples have been declassified. She maintains that because of this reason, the members of the Working Group insisted that no indigenous community, organisation, nation or even indigenous person from whatever region should be denied the right to express peacefully and without abuse an opinion or a viewpoint in the sessions of the Working Group. According to her, through this participatory process the Working Group was able to develop the widely accepted comprehensive draft Declaration of Rights of the Indigenous Peoples "without feeling a need for elaborating a definition of indigenous peoples" (E/CN.4/Sub.2/AC.4/1995/3, page 3).

The Working definition suffers from several flaws. The first flaw is that it defines indigenous peoples primarily from a chronological perspective. By identifying indigenous peoples with those who 'inhabited' an area before it was conquered or colonised by 'people from other parts of the world' the working

definition has limited the applicability of this definition mainly to pre-colonial populations. In any case, to decide the issue with reference to only 500 years of European colonialism is to ignore the history of non-European civilisations.

Having frozen the identity of the indigenous peoples in a historical-chronological axis, it treats the category of indigenous as a priori. And from it follows the definition of indigenous culture, customs, religion, society and history. The survival of the indigenous identity is explained by its isolation on the one hand and its marginalisation and discrimination on the other. This approach is simplistic as it treats the indigenous peoples in terms of an 'ethnographic present', as if the thousands of years of human history and interactions had never substantially altered the cultures of different peoples.

Among other things, this approach also fails to explain the phenomena of survival of the 'indigenous' identity in the face of adversity. Moreover, ethnic identities have also survived. But not all ethnic communities have lived in isolation. Many ethnic communities have completely lost control over their 'homeland' or the terrain which was the cradle of their culture. Yet their identities have survived. What then are the differences between the ethnic groups and the indigenous peoples?

It does raise a rather ticklish issue. It is a fact that the white Afrikaners from South Africa, after the abolition of apartheid, went to the Working Group as an indigenous people. Likewise, the Kashmiri Pundits community of India has been attending the sessions of the Working Group with the blessings of the Indian Government. Both these ethnic communities did not suffer from isolation or discrimination. On the contrary, until recently they were in power and were practising discrimination against others.

In 1983, realising that Mr. Cobo's original definition was not adequate to cover the isolated and marginal tribal populations of the Asian continent, the scope and the ambit of the 'working definition' was enlarged. It was decided that all those marginal and isolated groups existing in many countries who may not have suffered conquest or direct colonisation might be considered as indigenous peoples if they fulfilled the following criteria:

"(a) they are the descendants of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origin arrived there,

(b) precisely because of their isolation from other segments of the country's population they have almost preserved intact the customs and traditions of their ancestors which are similar to those characterised as indigenous,

(c) they are, even if only formally, placed under a state structure which incorporates national, social and cultural characteristics alien to their own" (E/CN.4/Sub.2/1983/21 Add. para. 379).

But even these additional criteria did not remove the confusion that is in the definition. This confusion exists not only among governments and experts, but also among the 'isolated, marginalised and tribal' peoples of Africa, Asia and Asia Pacific.

During the 12th Session of the UN Working Group on Indigenous Populations in June 1994, some of the representatives of indigenous or tribal peoples of Asian countries also addressed the need to redefine the criteria for determining the concept of indigenous peoples.

The confusion basically emanates from the use of the term 'indigenous'. In social sciences, terminologies carry a multiplicity of meanings. Social scientists selectively choose one or a few of the several meanings possible while using these terminologies. But it should be remembered that a concept or a term has no independent existence. It derives its meaning not only from theory, but is shaped by the contemporary power structure of which it is a part.

There is also another contributing factor, and that is the dialogue between the theorists and the activists. And that dialogue is mediated by the dominant power structures. To what extent the activist perception gets integrated into the conception depends on the influence exerted by that power structure.

The current concept or the theory of 'indigenous' has been shaped by the dialogue between academics and activists of Western Europe and North America, as well as the power structures of Western Europe which lent their support in and outside the UN. The concept, therefore, has its origins in a colonial historical perspective. When it is applied to the people of the Americas, Australia and New Zealand it creates no confusion. But it creates confusion when the same concept is applied to the peoples of Asia and Africa.

The Asian situation

It has been said by several Asian governments and many scholars, with some amount of justification, that this definition applies only to the conquered peoples of the Americas, Australia, New Zealand and the Pacific areas and leaves out the tribal peoples of Asia and Africa, in particular, and some ethnic communities in mainland Europe.

In the countries of Asia and Africa where migration has continued for thousands of years, it is impossible to identify any group as indigenous on a chronological basis. The tongue in cheek statement of the representative of the Government of India that after the departure of the British - the 'foreigners' who ruled over India for 200 years - only 'indigenous' peoples were left in India and hence, all Indians are indigenous, shows the weakness of this method of identifying indigenous peoples in Asia and Africa.

Governments of the Asian region have taken advantage of the confusion in the UN definition to exclude the millions of tribal peoples of Asia and Africa from the designation of indigenous peoples. These peoples who are called 'scheduled tribes' in India, 'tribes' in Bangladesh, Malaysia, Nepal, Pakistan and Thailand, and 'nationalities' in Burma (Myanmar) and China are treated as minorities within the nation-state systems. The ground for exclusion is that the tribal peoples of these countries are no longer colonised by overseas powers. Such an approach is ahistorical, astructural and partisan. Moreover, it ignores the phenomenon of internal colonialism by the non-tribal dominant groups within the state structures, both in the past and at present.

We have already seen that the term 'tribe' is closely connected with the rise of European colonialism and its racist hegemonic ideology. Despite its ideological connotation, the term has survived, especially in those post-colonial countries where a small fraction of the population has been classified as 'tribes'. Though its usage varies from country to country, it has always carried a negative connotation. In academic circles of these countries this term is still defined in the same way as was done in the mid-nineteenth century by European academics like Morgan.¹

It is important to understand this, lest we become confused by the varied terminologies used by different governments. In China or Burma, the term used is 'nationality'. It is not a recognition of an equal partner in an assembly of nationalities.

It is used to define a minority which needs to be 'developed and integrated' into the mainstream of Chinese or Burmese society. So, in effect, the term 'nationality' carries all the negative and pejorative attributes of 'tribe'.

Let us now examine the Hindi term 'Adivasi' which is commonly used in India to describe tribal people. The word originates from Hindu religious texts. Literally translated, it means 'original inhabitants'. But that is not the meaning in which it was customarily used. It was used in a cultural and a social context to refer to people who were outside the folds of the Hindu social system. It referred to people who had a different culture, religion, language and social system.

But this recognition of the 'otherness' did not mean that they were accepted as equals. The Hindus and Adivasi had no social or marital relationship. Therefore, the term 'Adivasi' was used in a derogatory sense to mean 'jungle', i.e. uncultured forest dwellers and unclean people.

A political debate

Throughout human history, people have moved from place to place, continent to continent. Intercultural influences and internal dynamics are near universal processes of history. Before the advent of colonialism and world capitalism, communities apparently lived in peaceful coexistence and syncretic relationships among culturally diverse societies. In certain cases, economically and militarily more powerful people pushed the relatively weaker peoples into ecologically fragile regions. For example, many Indian scholars believe that the Aryans who came to India around 1500 B.C. had subjugated part of the indigenous people of the subcontinent and accepted them into the lower echelons of the caste system, while the others, which they could not enslave, were pushed into uplands and forests where they enjoyed relative autonomy. This account of history may or may not be true.

The so-called conceptual debate will remain inconclusive. No concept can fully define a reality. But what is important to

1. Lewis Henry Morgan was one of the most influential representatives of 19th century European cultural evolutionism. He categorised cultures according to a crude scheme, in which he identified three main stages of cultural evolution: savagery, barbarism and civilisation.

note is that the real reason for excluding the tribal peoples of Asia is not conceptual, but political. And therefore, it is a political debate which needs to focus on the reality of powerlessness of the tribal peoples and their struggle for justice and the removal of the imbalance inherent in the present national and international power structures. It is time to look at the mechanisms perpetuating their subjugation and subordination within the countries in which they live, as well as today's global economic system.

Almost all tribal peoples and indigenous peoples of Asia live in relatively remote areas with meagre resources. During the colonial days, most of the forests in accessible areas on tribal lands were taken away. The post-colonial governments have followed the same policies. In Bangladesh, the Chakma and the Hajong tribes have been uprooted from their homelands. In Thailand, the Royal Forest Department is in the process of removing the tribal peoples from the traditional forest habitat in the name of preserving the environment. In Nepal, where the tribal people constitute the majority of the population, they have been denied any say in the governance of the country. In Burma, at the time of independence in the late forties, the federal government agreed to provide full 'internal sovereignty' to all the ethnic communities. Yet within 15 years of independence, the government had decided to impose Buddhism as the national religion. It initiated a programme of forced integration of all ethnic people into the so-called mainstream Burmese culture by denying them even the right to print books in their own languages. This policy has continued to date.

In India, despite the protection provided by the Fifth and the Sixth Schedules of the constitution, the tribals have lost most of their land. Their rights to forests and forest produce have been converted into concessions by law. Gigantic factories, mines, mega power projects and dams have been set up in their habitats. Millions of tribal people have been uprooted without adequate compensation. This has been done by the government in spite of having ratified ILO convention No. 107. In the northeastern parts of India, the army has been let loose to crush the movements of the tribal peoples there. In the central Indian tribal belt, when the tribal people rose in armed revolt during the seventies to reclaim their rights to land, water resources and forests, they were killed.

This is nothing short of ethnocide. At stake is their economic and cultural survival. Poverty, malnutrition, mortality, illiteracy and unemployment are markedly higher among the tribal peoples than among the rest of the populations of these states. The technocratic paradigm of development and modernisation sponsored by the IMF and World Bank policies of economic liberalisation and globalisation is posing a major challenge to the traditional holistic perception of the tribal peoples of their natural environment. The opening up of tribal areas to multinational corporations is eroding their community oriented values, collective identities, cognitive heritage, distinguishing socio-cultural and linguistic framework and consensual decision making processes. The state policies of assimilation and national integration, including education and linguistic policies, are all contributing to this ethnocide.

To conclude, we may state that the confusion over whether the tribals, scheduled tribes or nationalities of the Asian countries can be termed indigenous or not has little to do with conceptual clarity. It has to do with politics of the dominant ruling classes. As the struggles of the tribal peoples of Asia and the indigenous peoples of North and South America, Australia and New Zealand are similar, and as the current efforts of the United Nations is to institutionalise better provisions for the indigenous peoples, the tribal peoples of the Asian region should be regarded as indigenous in the context of international instruments. It is true that a declaration is a very weak instrument and is not enforceable, yet it has a moral force and does exert some amount of restraint on states.

References

- Sanders, Douglas 1989. *Human Rights Quarterly*, Vol.II, pp 406-433. Johns Hopkins University Press.
- Martínez Cobo, José 1972. *Preliminary report*. E/CN.4/Sub.2/L.566, June 1972. The final report was completed in 1983.

DEFINING 'INDIGENOUS PEOPLES' — SOME COMMENTS



As we have all seen, the emergence of the term 'indigenous peoples' as a political and legal concept has deep roots in the history of colonialism. At present, this term is being projected as a political and legal concept that can contribute to the protection and promotion of human rights for that group of human beings who are deprived and suppressed by state governments, whose approach to them so far has been that of assimilation at best, or ethnocide at worst. Therefore, the question we are facing has not really been, as certain states would have it, a question of concept. I think it is very clear from history that it is, in fact, a question of politics - the politics of domination, the politics of unwillingness to accept equality.

At the heart of this issue is another aspect, the human need for a sustainable world and a sustainable democracy, which is a prerequisite to this sustainable world. But here we are facing a situation where the states are preventing the indigenous peoples from enjoying the rights which these states have accepted as part of the Universal Declaration on Human Rights. Therefore, we do not see the need for coming up with a technical definition, although we do not rule out its importance. We should definitely work towards it, but so far this debate has been directed by those states who are raising apprehensions and fears on the development of a universal standard. They have not made any contribution towards reaching what they claim is the problem: establishing a technically sound definition. Therefore, we do not entertain the idea that there is not so much of a technical problem as there is a political problem. We believe that the solution lies in arriving at a stage in which we accept

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that the world has to be shared fairly among all its people; and only upon reaching this type of thinking can we really solve the so-called conceptual and technical problems.

If this not be the case, as we have seen, for example, from the questions of the governments of Bangladesh or India, then the issue becomes so complex that it defies common sense and defies human endeavour, because there is no willingness to accept historical reality. I consider the debate so far to have been the avoidance of historical reality. We therefore think that our efforts should also be directed towards understanding the experiences of other countries, e.g. those of South America. It is not just because of the European colonisers that the definition of 'indigenous' has emerged in South America. In fact, it was long after the European colonisers went back to Europe that this question has arisen and been accepted in those countries. Therefore, it is not just the presence of the invading population from overseas, but also the political boundaries that have been claimed by certain sectors of the population within that state, and who are, by virtue of those claims, imposing their identity, their ethos, their concepts on the rest of the people. The concept of indigenous peoples in South American countries encompasses not only the reality created by the invading forces from overseas, but also the domestic subjugation of the native people.

In conclusion, it is the indigenous peoples' plight as concerns their domestic oppressors, and not just the earlier colonisers that has made it necessary for us to address the issue under this concept of 'indigenous peoples'.

THE CONCEPT OF 'INDIGENOUS PEOPLES' IN ASIA: INTERNATIONAL LAW ISSUES



The meaning of 'indigenous peoples' as a concept of international practice is becoming a more and more important issue. The conveners have requested that this paper discuss international law issues concerning the meaning of 'indigenous peoples', with particular reference to the current controversy in the United Nations as to the applicability of the concept of 'indigenous peoples' in various parts of Asia. Since this paper is to focus on the practice of the UN and other international institutions established by states, this brief discussion will necessarily concentrate more on elaborating and responding to positions taken by state governments and inter-state institutions than on positions taken by other groups. Many of the papers in this collection present positions of Asian groups participating in the international debate. This paper deals with debates arising in Asia; similar issues are posed, often with distinctive variations or special elements, in Africa and in other parts of the world.

The Debate about the application in Asia of the concept of 'Indigenous Peoples'

For a particular group to mobilise and identify itself as an indigenous people is increasingly seen both as an appealing form of self-expression and as potentially an attractive strategy in national and international fora. The existence and recognition of this category internationally provides a legitimacy, perhaps

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even a language, for pursuit of aspirations and grievances that may otherwise struggle for purchase or vocabulary. A number of non-state groups in Asia have participated in international activities organised by, or relating to, indigenous peoples, and several organisations have been established, including the Pacific-Asia Council of Indigenous Peoples and the Asia Indigenous Peoples Pact.

The core of the controversy in the UN is reflected in a statement made in 1991 to the United Nations Working Group in the names of members of the West Papuan Peoples' Front, Karen National Union, Jumma Network in Europe, Indian Council of Indigenous and Tribal Peoples, Alliance of Taiwan Aborigines, National Federation of Indigenous Peoples of the Philippines (KAMP), Lumad-Mindanao, Cordillera Peoples' Alliance, Ainu Association of Hokkaido, Asia Indigenous Peoples Pact, Naga Peoples Movement for Human Rights, Homeland Mission 1950 for South Moluccas, and Hmong People:

"First and foremost, we want to bring to your attention the denial of some Asian governments of the existence of indigenous peoples in our part of the world. This denial presents a significant obstacle to the participation of many indigenous peoples from our region in the Working Group's deliberations. The denial also seeks to withhold the benefits of the Declaration from the indigenous, tribal, and aboriginal peoples of Asia. We hereby urgently request that peoples who are denied the rights to govern themselves, and are called tribal, and/or aboriginal in our region, be recognized, for purpose of this Declaration, and in accordance with ILO practice, as equivalent to indigenous peoples" (IWGIA 1991:40).

The category of 'indigenous peoples' seems a natural one for many groups and in many societal contexts. The total refusal or failure of some state governments and other actors to recognize and take account of distinctive histories, needs, vulnerabilities and aspirations of indigenous peoples has long been a cause of immense destruction, dispossession, misery, and death for a great many people. In some cases such non-recognition is part of a deliberate strategy of denial to facilitate outrages against clear international and national legal standards. Non-recognition may also be designed to cut groups off from the kinds of

transnational and international support (not all of it benign), identity and solidarity increasingly associated with 'indigenous peoples'. Some states pursue an international policy of denial even while agencies of these same states operating at the level of national rather than foreign policy recognize distinctive identities of particular indigenous groups.

On the other hand, non-recognition of a group as an 'indigenous people' is not necessarily motivated by malevolence, particularly when other bases of social identity and recognition of distinctive cultures, histories and needs are resonant and well established within the policy. The impetus for the international development of the concept of 'indigenous peoples' since the 1970s has come largely from regions of European settlement: the Americas, Australasia, the Nordic region. One of the organising ideas appears in the 1995 draft of the Inter-American Declaration on the Rights of Indigenous Peoples: "Indigenous peoples are those who embody historical continuity with societies which existed prior to the conquest and settlement of their territories by Europeans" (Inter-American Commission on Human Rights 1995). The same draft declaration goes on to recognize that even in the Americas this definitional statement does not exhaust the category of indigenous peoples, and additional alternatives are offered. Global international agencies have not confined the concept of 'indigenous peoples' to areas of European settlement. A tentative UN definition refers, for instance, to indigenous peoples as having "historical continuity with pre-invasion and pre-colonial societies that developed on their territories" (Martínez-Cobo 1986: Chapter 22, § 379).

The ILO has modified the historical requirement and broadened its legal definition to an additional category of 'tribal peoples'. The World Bank has dispensed altogether with criteria based on historical continuity and colonialism, instead taking a functional view of 'indigenous peoples' as "groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged" (World Bank 1991:19). While the ILO and the World Bank, as functional specialised agencies of the UN, have been able to take these broad approaches without unmanageable state opposition, the unresolved issue of the approach to be taken in the UN itself is of wider import and is more contentious. Several Asian state governments have argued that the concept of 'indigenous

peoples' is bound up with European colonialism and has little or no coherent meaning, social resonance, or application outside that context, other than in spurious forms promoted from outside. Maintenance of a strict requirement of historical continuity from pre-invasion or pre-colonial societies - a requirement that owes at least part of its inspiration to perceptions and experience in areas of European settlement areas - would be likely both to complicate and to restrict, without altogether excluding, the applicability of the concept of 'indigenous peoples' in other parts of the world. The issue of the extension of the international concept of 'indigenous peoples' outside the areas of European settler colonialism in which it developed its initial vibrancy raises both a space for political controversy and legal questions as to the nature and optimal development of this international legal concept.

Background: General international law relating to 'Indigenous Peoples'

Several international institutions have promulgated normative standards or policies that refer specifically to the category of 'indigenous peoples'. The greatest political interest at present centres on efforts in the United Nations to finalise and adopt a draft Declaration of the Rights of Indigenous Peoples. The current working draft was prepared between 1982 and 1993, with considerable participation of indigenous peoples, by the UN Working Group on Indigenous Populations (whose members serve as individuals). It is now before the Inter-Sessional Working Group of the UN Commission on Human Rights (whose members are state representatives), where state interests and concerns are more to the fore, although an appreciable number of indigenous peoples' groups and NGOs are able to take some part. This draft contains no definition of 'indigenous peoples', although several states and indigenous peoples have begun to press for adoption of a definition. The Chair-Rapporteur of the UN Working Group on Indigenous Populations, Erica-Irene Daes, has suggested that the solidarity and experience built up in gatherings of indigenous peoples, states and working group members since 1982 may provide a platform on which that body might construct an agreed definition.

The International Labour Organisation

The only general binding inter-state treaties concerning indigenous peoples have been adopted by the International Labour Organisation. ILO Convention 107 of 1957 remains in force for Bangladesh, India, Pakistan, and more than a dozen non-Asian states. ILO Convention 169 of 1989 is intended to supersede Convention 107, but at present has only 8 states parties, with none yet in Asia. These conventions include important provisions relating to land rights, resettlement, development projects, cultural issues, and other issues of concern to indigenous and tribal peoples. Convention 169 contains an important and wide-ranging definitional clause, Article 1(I), which stipulates that the Convention applies to:

- (a) tribal peoples in independent countries 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;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the 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.

The World Bank and the Asian Development Bank

The World Bank has a policy which imposes requirements concerning consultation, informed participation, preparation of an 'indigenous peoples development plan', and other special measures in certain projects affecting indigenous peoples. Under the Operational Directive promulgated in 1991 (and subject to possible future revision as new forms of governance instruments are adopted throughout the Bank):

"The terms 'indigenous peoples,' 'indigenous ethnic minorities,' 'tribal groups', and 'scheduled tribes' describe social groups with a social and cultural identity distinct

from the dominant society that makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, 'indigenous peoples' is the term that will be used to refer to these groups" (World Bank 1991:19).

The reason for choosing 'indigenous peoples' as the embracing term is not given, but almost certainly it reflects the momentum of international usage, particularly developments in the ILO and the UN. In providing more details about groups to whom the policy applies, the Operational Directive states:

"Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- (a) a close attachment to ancestral territories and to the natural resources in these areas;*
- (b) self-identification and identification by others as members of a distinct cultural group;*
- (c) an indigenous language, often different from the national language;*
- (d) presence of customary social and political institutions; and*
- (e) primarily subsistence-oriented production.*

Task managers (TMs) must exercise judgment in determining the populations to which this directive applies and should make use of specialised anthropological and sociological experts throughout the project cycle" (World Bank 1991:19).

Drawing upon its own experience and that of the World Bank, the Asian Development Bank is considering adoption of a similar policy. Both use the term 'indigenous peoples' in a wide and inclusive way, although there are significant differences. In particular, the World Bank notes that classifications of groups by states provide only a 'preliminary basis' for identifying indig-

enous peoples to whom the Bank's policy applies, whereas the 'preliminary' element is omitted in the Asian Development Bank's 1994 consultative document, apparently foreshadowing greater (and potentially excessive) deference to state governments. ILO Convention 169 is indicative of a different approach in international law, providing in Art 1(1)(b) that groups satisfying the prescribed criteria shall be regarded as indigenous peoples under the Convention "irrespective of their legal status [under national law]" (ILO 1989).

Other international instruments

An increasing number of treaties and other international instruments contain significant provisions concerning indigenous peoples, but generally offer no definition of the term. For example, particular provisions concerning indigenous peoples appear in the 1989 UN Convention on the Rights of the Child, the 1992 Biodiversity Convention, and numerous texts adopted by UN conferences, including Agenda 21 (1992) and the Final Declaration of the 1993 Vienna Conference on Human Rights; and the UN has proclaimed an International Decade of the World's Indigenous People. The Inter-American Commission on Human Rights proposed in 1995 a draft declaration on the rights of indigenous peoples, but despite lengthy consideration has not been able to agree on a definition, partly because of disagreements concerning particular free communities founded by people brought involuntarily from Africa to the Americas by the slave trade.

The UN Draft Declaration

The references in so many instruments to 'indigenous peoples' may suggest that if a group is regarded as an 'indigenous people', the group is thus a holder of numerous rights enjoyed specifically by indigenous peoples (or members of indigenous peoples). This is the approach apparently embodied in the current draft of the UN Declaration on the Rights of Indigenous Peoples. This draft provides, for example: "indigenous peoples have the right of self-determination" (Art. 3); "indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems" (Art. 4); "indigenous peoples have the collective and individual right not to be subjected to ethnocide

and cultural genocide" (Art. 7); "indigenous peoples shall not be forcibly removed from their lands or territories" (Art. 10); "indigenous peoples have the right to own, develop, control and use the lands and territories which they have traditionally owned or otherwise occupied or used" (Art. 26). This draft recognizes the likelihood of, but does not fully resolve, conflicts between rights of indigenous peoples and competing rights or interests held by others. The draft is also unusual for a UN human rights document in asserting many rights in forms under which the holders are non-state collectivities and not simply individuals. Many of the provisions in the Draft Declaration have the primary function of making clear what should not juridically be in doubt, that existing international standards apply also and equally to indigenous peoples, and that special circumstances of indigenous peoples may give special meaning to standard principles concerning e.g. non-discrimination and protection of property.

As international law stands at present, many claims made by individuals or groups who are 'indigenous peoples' do not rest on the group being an 'indigenous people'. For example, slavery, discriminatory dispossession, military brutality, genocide, and other atrocities are prohibited by the general international law of human rights, and the relevant international supervisory bodies frequently address claims by indigenous peoples in variants of these standard terms. In international law, claims made by non-state groups may draw upon at least five principal domains of discourse (and many claims simultaneously invoke several of these): human rights claims, minority rights claims, self-determination claims, claims to revendication of historical sovereignty, and claims based on particular attributes of indigenous peoples. Histories of dispossession and abuse, and current vulnerability and aspirations, are all relevant to the international law applicable to particular indigenous peoples, as are specific issues concerning historical entitlements, treaty promises, etc. Taken as a whole, against the background of existing international law, the UN draft declaration in its present stage of elaboration does not have the primary effect of establishing 'indigenous peoples' as a special category of rightholders enjoying a vast panoply of rights not held by others; if this were the case the question of definition would indeed be absolutely critical to the scope and viability of the Declaration. The main

effects of the process and the text itself are rather to declare or develop a number of basic principles of fundamental importance, to refute and disallow some types of arguments made against claims of indigenous peoples, to legitimate political and legal claims of indigenous peoples, and to elaborate the meaning of reasonably well-established international standards in special contexts involving indigenous peoples.

Defining 'Indigenous Peoples' in the United Nations

Neither the United Nations Working Group on Indigenous Populations nor the UN Commission on Human Rights have been able to adopt any definition of the term 'indigenous peoples' thus far, although there is increasing pressure for the UN to formulate at least an indicative elaboration if not a precise definition.

Agreement on a definition involves so many difficult problems as to cause representatives of some indigenous peoples and states to doubt the desirability of adopting any definition. Weighing heavily in the debates are two major sets of political concerns that have been espoused vociferously by several states. These relate to the use of the term 'peoples' and to the notion of 'indigenous'.

'Peoples'

The use of the term 'peoples' is a sensitive issue for many states, principally because the term has long been employed to designate a category of non-state groups holding particular international law rights, most notably the right of 'all peoples' to self-determination. Some state governments have therefore been reticent about the use of the term 'indigenous peoples' at the international level, even when, as in Canada, such terms as 'people' or 'nation' are regularly used in political discourse within the state. The UN General Assembly has recently sought to finesse the issue of collective rights (principally the right to self-determination) by referring to 'indigenous people' rather than 'indigenous peoples', as in the proclamation of the international decade of the world's indigenous people. A different approach was taken in ILO Convention 169, which expressly refers to 'indigenous and tribal peoples' but stipulates in Article 1(3): "The use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights

which may attach to the term under international law" (ILO 1989). As a matter of international law this fixation with terminology is misconceived: right-holders and the actual application of rights are both determined by substantive legal analysis rather than by terminology, and the logic of the principle of self-determination extends beyond the question of independent statehood to political and cultural options exercisable within the established state. Nevertheless, support among state governments for inclusion in the UN draft declaration of a clause similar to Art 1(3) is strong, notwithstanding the vehement opposition of representatives of many indigenous groups.

'Indigenous Peoples'

UN practice as to the meaning of 'indigenous peoples' has been guided by a tentative working definition prepared under the auspices of Special Rapporteur Martínez-Cobo:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society, and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

- (a) occupation of ancestral lands, or at least of part of them;*
- (b) common ancestry with the original occupants of these lands;*
- (c) culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);*
- (d) language (whether used as the only language, as*

mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

(e) residence in certain parts of the country, or in certain regions of the world;

(f) other relevant factors" (Martínez-Cobo 1986: Chap. 22, § 379).

Although a wide variety of definitional criteria are used in national and international practice, five criteria feature in this tentative working definition: self-identification, historical continuity with pre-invasion or pre-colonial societies, non-dominance, ancestral territories, and ethnic identity. Of these criteria, two in particular bear on current debates concerning the concept of 'indigenous peoples' in Asia: self-identification, and historical continuity.

Self-Identification

Self-identification has received great emphasis among indigenous groups and in international legal instruments. The commitment to self-identification is part of a move in international instruments away from treating indigenous peoples simply as victims who ought to be objects of beneficent protection, and toward acceptance of the implications of the ideology of self-determination. Self-identification (or self-definition) involves several different issues.

Firstly, states are increasingly inclined to acknowledge the general right of each indigenous people to recognition as a distinct group defined in terms of its conception of itself in relation to other groups, although national legislation is highly variable on this issue, and states frequently take active positions where controversies as to identity arise between or within groups. The applicability of relevant international standards is not determined by self-identification alone (although recognition may be highly relevant), as each international definition also includes objective criteria. This approach is evident in ILO Convention 169. Objective criteria are set out in Article 1(1), but Article 1(2) provides that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply". There is a difference of emphasis between states such as

the Peoples' Republic of China, which want definitions in international instruments to employ objective criteria, and indigenous groups stressing self-identification; but these positions are potentially reconcilable, analytically at least, through mixing compatible objective and subjective elements.

Secondly, self-identification may be interpreted as entailing the power to determine at the inter-group or international level which groups are indigenous peoples, either through general rules or specific decisions. The UN draft declaration lends some support to this position. Some indigenous peoples' groups have begun to seek exclusion of certain groups (e.g. Rehoboth Basters, a group of European descent living in Namibia) from the UN Working Group on Indigenous Populations, without result yet. It is unlikely at present that states will accept the notion that indigenous peoples are empowered to make general determinations of this sort at the international level, although they certainly have some influence on the practices of the UN and other bodies.

Thirdly, self-identification may connote the right of the group to assert and develop rules governing individual membership, raising difficult issues concerning the power to include, exclude, or preclude particular individuals contrary to their own wishes or self-identification. State practice on these questions has been mixed, although there is increasing acceptance that membership is a matter on which legislation and state administration should in general defer either to the wishes of individuals or to the decisions of the groups concerned. Group membership rules must, it appears, be consistent with internationally recognized human rights.

Historical continuity

Positions taken by governments of Asian States

The major controversy in the UN concerns the proposed requirement of historical continuity with a preinvasion or pre-colonial society established on the territory. As proposals in the United Nations for a draft declaration on rights of indigenous peoples have moved from the speculative and futuristic to the concrete and imminent, an increasing number of Asian state governments have taken the position that the concept of 'indigenous peoples' does not apply within their borders. India has espoused this position in the UN Working Group on Indigenous

Populations from the outset. Bangladesh and Burma/Myanmar have also followed this line. The Peoples' Republic of China has begun recently to take more assertive public positions against the applicability of the concept of 'indigenous peoples' in China. By contrast, several other Asian governments, including the Philippines most prominently but also Japan, Russia, and others, have not opposed the possible applicability of the concept within their territories.

The grounds for opposition among Asian governments vary and have not all been made fully explicit. At least three kinds of arguments are involved: definitional, practical and policy.

The definitional arguments are lexical, resting on a view of 'indigenous' as entailing prior occupancy, and stipulational, associating 'indigenous peoples' with the deleterious effects of European colonialism. The practical argument is that it is impossible or misleading to seek to identify the prior occupants in countries and regions with such long and intricate histories of influx, movement and melding. The policy argument is the powerful one that recognizing rights on the basis of prior occupation for particular sets of groups will spur and legitimate group mobilisation and claims by a vast range of groups, undermining other values with which the state is properly concerned.

(1) Definitional arguments

The views and approach of the PRC government on the meaning of the concept of 'indigenous peoples' are exemplified by its 1995 comments concerning consideration by the UN Commission on Human Rights' Inter-Sessional Working Group of a draft UN declaration:

"The Chinese Government believes that the question of indigenous peoples is the product of European countries' recent pursuit of colonial policies in other parts of the world. Because of these policies, many indigenous peoples were dispossessed of their ancestral homes and lands, brutally oppressed, exploited and murdered, and in some cases even deliberately exterminated. To this day, many indigenous peoples still suffer from discrimination and diminished status, and they cannot in fact exercise on an equal footing or to the full the economic, social, cultural, civil and political rights enjoyed by other citizens of the coun-

tries where they live As in the majority of Asian countries, the various nationalities in China have all lived for aeons on Chinese territory. Although there is no indigenous peoples' question in China, the Chinese Government and people have every sympathy with indigenous peoples' historical woes and historical plight. China believes it absolutely essential to draft an international instrument to protect their rights and interests The special historical misfortunes of indigenous peoples set them apart from minority nationalities and ethnic groups in the ordinary sense. For this reason, the draft declaration must clearly define what indigenous peoples are, in order to guarantee that the special rights it establishes are accurately targeted at genuine communities of indigenous people and are not distorted, arbitrarily extended or muddled. In the materials it prepared for the World Conference on Human Rights, the [UN] Centre for Human Rights presumptuously categorized ordinary minority nationalities in many Asian countries as 'indigenous peoples' and refused, despite collective and individual clarifications from the Asian countries, to rectify its mistake. This example amply demonstrates the necessity of an established definition of an indigenous people".

China's position is that the concept of 'indigenous peoples' is inextricably bound up with, and indeed a function of, European colonialism. This is buttressed by the widespread practice of colonial powers, adopted in part by the League of Nations and in extenso by the UN General Assembly, of treating the entire non-settler or non-European population of European colonies as 'indigenous peoples'. In this respect, 'indigenous peoples' are those who are continuing victims of sufferings caused by European settler colonialism – the losers, in a sense, in the process of the formation by Europeans of states outside Europe. China thus supported in general terms a definition under which indigenous peoples were "living on their lands before settlers came from elsewhere; descendantsof those who inhabited a country or a geographic region at the time when peoples of different cultures or ethnic origins arrived, the new arrivals becoming dominant through conquest, occupation, settlement or other means". There is no express reference to the notion of

'saltwater colonialism', used by the Group of 77 developing nations to distinguish European colonialism outside Europe from practices by non-Europeans that might share some characteristics with European colonialism. But China's approach strongly suggests that the 'historical misfortunes of indigenous peoples' that set them apart are the misfortunes of saltwater settler colonialism. India and Myanmar have also made similar arguments, stressing that indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside.

This historically-grounded definition underpins the implicit view of several Asian governments that the attempt to impose the concept of indigenous peoples' upon various Asian states is a form of neo-colonialism. The concept of 'indigenous peoples', made relevant and necessary in western states (including Latin America) by the enduring human consequences of the European incursion and majority settlement that gave these states much of their present form and character, is now applied at the initiative of these western states to Asian states that either staved off western colonialism or rid themselves of its most direct effects in the struggle for decolonization.

(II) Practical arguments

Building on the notion of indigenous peoples as the peoples who came first (or at least earlier than the others who are now dominant), representatives of the government of India have made the practical argument that the concept cannot apply in India because after centuries of migration, absorption and differentiation it is impossible to say who came first. (This is echoed in China's argument that all of the nationalities in China have lived there for aeons.) In 1991, for example, the representative of India in the Working Group on Indigenous Populations commented that most of the tribes in India share ethnic, racial, and linguistic characteristics with other people in India, and that 300 to 400 million people there are distinct in some way from other categories of people in India. While there are undoubtedly difficult cases at the margins, it has proved possible as a practical matter to enumerate a detailed list of Scheduled Tribes under the Indian Constitution. This constitutional category has provided a practical starting point for identification of groups to whom policies of international agencies relating to

'indigenous peoples' have been applied. This is not to downplay the practical problems, which in many areas may be severe. But the practical objections seem to reflect objections to imposition of a foreign concept to which strong policy objections are made.

(III) Policy arguments

There is implied also in the Indian government's position an argument that a forensic inquiry into who came first in India would be unhelpful and undesirable, for two reasons. First, some groups meriting particular protection would be excluded, while others not in need of particular protection might be included. Second, recognition of special rights and entitlements on the basis of being the earliest or original occupants might spur and legitimate chauvinist claims by groups all over India, many of which may be very powerful locally while in some sense 'non-dominant' nationally. Claims to historical priority already feature in some 'communal' conflicts, and incipient chauvinist movements abound, as in Maharashtra. Perhaps because of the sensitivity of what is involved, this second point is not often developed explicitly in government statements, but it seems to have animated India's longstanding concern to keep the concept of 'indigenous peoples' at a safe distance.

Tactical implications

The opposition of several major Asian state governments to the application of the concept of 'indigenous peoples' in their territories has obvious significance in the politics of issues relating to indigenous peoples in the United Nations. Having called for a clear, scientific, objective, and practical definition of indigenous peoples that can clearly be interpreted as not applying to any groups in the PRC, China comments: "Until a clear definition of indigenous peoples has been established, the Chinese Government, cannot formulate specific opinions on individual clauses of the draft declaration ..." (ibid.). The position of the PRC makes clear what is implicit: at least some Asian states may support - or at least not block - stronger provisions in the UN draft declaration if they are reasonably confident that such provisions will not be applied to groups within these states. A negotiating position is thus indicated: a draft declaration with a wide or open-ended definitional provision, or with

no definitional provision at all, may well meet with opposition or proposals for severe attenuation, whereas a draft declaration with a narrow and precise definitional provision may well be supported.

Conversely, the modern development of the international indigenous peoples' movement was driven in its early phases in the 1970s by groups in the five initial regions of the World Council of Indigenous Peoples: North, Central, and South America, the Nordic region, and Australasia. The inclusion of Asian groups was accomplished as such groups became more organised and active in international fora, but a slight hesitation about this has endured among some individuals active in the 'founding' regions. The temptation to acquiesce in a narrower definition in order to attain the agreement of Asian states to stronger substantive provisions in a UN declaration is undoubtedly present, but seems likely to be overwhelmed by the continuing commitment to universality and solidarity within the internationally-active indigenous peoples' movement.

Proposal concerning definition: Requirements and indicia

Like any legal concept, 'indigenous peoples' is a construct that itself has a shaping effect on social meanings and legal development. The international concept of 'indigenous peoples' may be understood as an abstraction from a vast set of complex particular realities. These realities involve divergent self-perceptions and political discourses of groups and national societies, and diverse state-society relations. The abstract international concept of indigenous peoples has the potential to be drawn from international society back into national society; the abstract concept is worked out and made particular in a specific context. This happens most obviously in those national societies where legal and political decision-making gives weight to international practices and texts referring to indigenous peoples, and to decisions and models in other countries which are understood as involving indigenous peoples. In different ways this happens also where groups draw upon the international concept of 'indigenous peoples' in constructing their own identities: thus groups whose self-concept might not have centered on prior possession may come to identify themselves as indigenous peoples with experiences and world-views shared with other indig-

enous peoples. Questions about the applicability of the international concept in various Asian states are, in part, questions about the suitability of the international concept in the context of competing visions of identities of particular groups and of national societies and polities.

The direct international political and legal benefits associated with being an 'indigenous people', the considerable significance of transnational solidarity with other indigenous groups, and the access to internationally mediated local benefits based on the concept of 'indigenous peoples', are all relevant in the evolution of the concept among groups, within national societies, and in transnational activities and international institutions. Non-state groups, and groups influential within the state structure, including groups with particular views of state sovereignty, naturally differ in their views on the mobilising effects of these benefits and on how access to them should be structured. These factors influence their positions on the meaning and applicability of the international concept of 'indigenous peoples'; positions taken by states and non-state groups shift as attitudes, social concepts, and aggregate interests change.

The definitional element of historical continuity with pre-invasion or pre-colonial societies is important in many contexts, and is often seen as a fundamental requirement. It may also be seen, however, as a product of one foundational phase in the continuing social process of the construction and elaboration of the international concept of 'indigenous peoples'. During this phase, the international concept of 'indigenous peoples', with its emphasis on historical continuity, did not necessarily reflect the full range of social categories and realities in many parts of Asia (or, indeed, in other areas of the world). Representatives of both states and non-state groups in Asia continue to suggest, albeit in radically different ways, that the international concept as commonly understood does not adequately incorporate their interests or their social realities. Thus, depending on the viewpoint, either the concept cannot sensibly be applied, or it is not at present likely to be applied without outside pressure. Undoubtedly there are elements of cynicism and opportunism in the debate. Nevertheless, each of the main positions encompasses persuasive substantive concerns that must be addressed if the concept is to evolve and have sustained useful application in situations where colonial settlement or invasion are not such

clear parts of the social context. The practice of international institutions in relation to 'indigenous peoples' suggests that the element of historical continuity - of 'being there first' - has not been seen, from a functional standpoint, as an essential and rigid requirement. Adoption of a more flexible approach to the meaning of 'indigenous peoples' is consistent with the functions of the concept in international law and institutions. A more flexible approach to definition may provide scope to promote the fundamental values underlying the concept of 'indigenous peoples' while recognizing both its changing nature and the need to work out the application of the concept in a vast range of situations. A flexible approach might involve compilation of a list of indicia, some of which would be requisites, others simply relevant factors to be evaluated and applied in cases of doubt or disagreement. Such a list might resemble the following:

Essential requirements

- self-identification as a distinct ethnic group
- historical experience of, or contingent vulnerability to, severe disruption, dislocation, or exploitation
- long connection with the region
- the wish to retain a distinct identity

Relevant indicia

- non-dominance in the national (or regional) society
- close cultural affinity with a particular area of land or territories
- historic continuity (especially by descent) with prior occupants of land in the region
- socio-economic and socio-cultural differences from the ambient population; distinct objective characteristics: language, race, material or spiritual culture, etc.
- regarded as indigenous by the ambient population or treated as such in legal and administrative arrangements.

References

- Inter-American Commission on Human Rights 1995. *Inter-American Declaration on the Rights of Indigenous Peoples*. Draft. Mimeo.
- International Labour Organisation (ILO) 1989. *Convention 169 on Indigenous and Tribal People*. Geneva: ILO.

IWGIA 1991. *Newsletter*, No. 2.

Martínez-Cobo, José 1986. *Study of the Problem of Discrimination Against Indigenous Populations*. Geneva: United Nations. Doc. E/CN.4/Sub. 2/1986/7.

United Nations 1994. *Draft Declaration on the Rights of Indigenous Peoples*. Annex to Doc. E/CN.4/Sub.2/1993/29.

World Bank 1991. *Indigenous Peoples*. Operational Directive, No. 4.20; in: IWGIA *Newsletter*, No. 3, 1991.

CHAPTER II JURIDICAL RIGHTS AND THE RELATION WITH THE STATE AND THE NON-INDIGENOUS POPULATIONS

PAST REGIMES' PERCEPTION OF INDIGENOUS PEOPLES' CULTURE IN THAILAND



The early regimes

During the Sukhothai, Ayuthaya and early Ratanakosin periods, all tribal peoples were free from being under the direct control of the government. But with the advent of the reign of King Rama V, a policy of nation-building began to take form. This gave birth to the single-culture policy, which was in fact that of the feudal lords and the monarchy, and which in turn was to a large extent influenced by the ancient Indian civilisations. From Rama V to General Plaek's period of rule about 50 years ago, the central Thai culture, along with the adopted Western culture, began to invade other local cultures in all domains, but primarily language, clothing, customs, food and the like. It is safe to say that during this period, local and indigenous cultures increasingly gave way to national culture.

During B.E. 2500-2520 (1957-1977), the government began to pay attention to the indigenous peoples. In general, during this period the government held that the indigenous peoples' cultures were not Thai cultures. The way indigenous peoples were conceived of by the government and the prevailing attitude and approach in dealing with them during those days can be characterised by the following four images:

Image 1 is that of the backward tribal peoples who need to be studied and helped.

Image 2 shows that they are peoples who must be put under control as they may endanger the nation's security, as many of the hill peoples, and especially the Shan and Haw (Yunnanese

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Chinese), are seen as peoples involved in drug production and trafficking, and deforestation. They therefore became the target of psychological campaigns and victims of a suppressive policy. The campaigns were mostly organised by the military or the police.

Image 3 reflects the attitudes that the indigenous peoples, particularly those who reside near the border, are essential for the country's security. They can function as the nation's 'fence'.

Image 4 portrays the indigenous communities as a tourist attraction. Trekking tours have emerged as a result.

Perception of recent regimes

In around 1986, the Thai government, led by General Prem Tinnasulanon, declared a new culture policy which apparently began to recognise tribal cultures. The 3rd article of the policy proclamation states:

"The government will promote folk and ethnic culture and encourage the people to understand, value and recognize each other's culture in order to exchange culture which should lead to peaceful co-existence, the atmosphere in which people learn to appreciate their own cultures".

Though the government has officially declared this policy, some of the involved government agencies still maintain their own ideas. These agencies are the military, the police, the Ministry of the Interior and the Forestry Department, among others.

However, among the culture-related agencies the conception of culture has evolved. Included among these agencies is the Office of National Culture Commission. Some of the concrete examples of what this agency has done are the following:

- The Office has announced the names of persons who have achieved excellence in the performing arts in various areas;
- The Office has promoted cultural education on television, for instance by informing about the Suai's tradition of wild elephant catching;
- The Office has initiated local-study programmes to inspire people in the villages to preserve, transmit and develop their community's knowledge;
- The Office has invited various hill area peoples to participate in the annual National Cultural Fairs, starting in 1995;

- In the formation process of the 8th National Social and Economic Plan, the Office has put forward the notion of cultural diversity, assuring that it can lead to national security in the true sense of the notion.

The present problems

Many government agencies have failed to recognise the new concept of culture. Consequently, they are not successful in helping the indigenous peoples to realise their potential for problem solving. Their communities continue to remain weak. The Chao Talae (also known as Sea Gypsies) in the south, for example, are still mistreated. They are not given the right and freedom to live as they wish. The authorities have even built concrete walls to block their access to the in-land public well. With the sole purpose of beautifying the sea-side areas.

Solution

It is necessary that the local authorities recognise the rights of indigenous peoples. They should also acquire some understanding about tribal cultures. Finally, they must respect the human rights and dignity of tribal peoples. If all these conditions are met, we can hope that government policies and plans will be better implemented, which will lead to advancement of the indigenous peoples.

THE PRESENT SITUATION OF INDIGENOUS PEOPLES IN THAILAND



This article deals with the ethnic groups or indigenous peoples of Thailand, describing what has befallen them, particularly in northern Thailand, during the last few years. But before I go on to describe the present situation, I would like to clarify a few points in order to make clear what we mean by 'indigenous peoples' in the Thai context. First of all, the term 'indigenous peoples' is not widely used by the Thai people. In general, the political situation in Thailand has led the Thai government to pay more attention to the 'hill-tribe peoples' and other ethnic groups within Thai society.

Historically, the indigenous peoples in Thailand were the Lua, the Karen, the Mon and the Krom who had lived in this part of the country before the Thai people came to settle there. The Krom and the Mon peoples have since been assimilated into Thai culture. As regards the Lua people, most have become Northern Thai or intermarried with them. However, there are a few Lua villages which still retain their own culture. The Karen, on the other hand, who arguably lived in Northern Thailand before King Mengrai founded Chiang Mai, are called a 'hill-tribe people' and still maintain their own ethnic identity. Thai officials do not use the term indigenous peoples or indigenous groups. They largely refer to either ethnic groups in general or refer to some of the groups as 'hill-tribe people'.

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When the Thai government refers to tribal groups or hill-tribe people, they mainly refer to those ethnic groups who have migrated to Thailand within the last century (within the last thirty to eighty years). For example, the eight major ethnic groups recognised by the Thai government are the Karen, Hmong, Lisu, Lahu, Mien, Akha, Htin and Mlabri. These ethnic groups are considered to be the hill-tribe people as they are ethnic groups who receive special attention from the government. But there are more than these eight recognised 'hill-tribe peoples' in Thailand. The people who are often overlooked as ethnic minority groups are the ethnic Chinese who came to Thailand during the last two to three centuries, the Muslim minority in the south (particularly in the four provinces near the Malaysian border) and the seafarers who also live in the southern part of Thailand (whom Ms Kulwadee refers to in her article). The Suai in the northeastern part of Thailand who live along the Cambodian border, the Lua people, the Yunnan Chinese, the Indian and Vietnamese and all the other Tai-speaking (non-Thai speaking) groups like the Shan, Tai Lue, Khoen, etc., are all also ethnic minority groups in Thailand.

The 1960 and '70s:

National security and the reservation policy

In the last thirty years, particularly during the period of the national economic and social development plan, the ethnic groups which are considered 'tribal people' have received special attention due to the fact that in the 1960s, the government began to have the opinion that these ethnic groups are problematic. When the government said that they have problems, they were not referring to poverty. They thought that the hill-tribe people might potentially be a source of problems for the Thai nation. The hill-tribe people were regarded in four main contexts: First, in the 1960s, these ethnic groups were seen as a threat to national security as it was also the beginning of the cold war in Southeast Asia; second, they were seen as the people who destroyed the forest because of their practice of shifting cultivation; third, they were seen as opium cultivators; and fourth, they were seen as an illiterate people who could not speak the Thai language, who could not understand Thai culture and who were not Buddhists.

In the 1960s, the government launched the policy to 'develop' and provide social welfare to the tribal people. During the first ten years of government, in an effort to deal with the tribal people, they tried to set up a sort of reservation system. They wanted to force all of the tribal people to live in a few places resembling reservations so that they would not fell more trees. Additionally, they would be easier to manage, they could be looked after and they could be kept away from the activities of the active political insurgency at that time. But the efforts to bring the tribal people to live in reservations were not well accepted and therefore did not succeed at that time. There was resistance to the idea of living on a reservation and the government's effort was aborted. The government then developed another plan to deal with the hill-tribe people by identifying and developing certain areas designed to be welfare and development areas for the tribal people. Some of the villages were designated as core villages and other villages were designated as satellite villages. This was the infrastructure programme that the government had created in order to provide 'development' assistance to hill-tribe communities.

The 1980s and into the '90s:

Opium eradication, resettlement and the citizenship problem

In around 1980 - 1990, the government implemented another plan to deal with the hill-tribe people. The government's primary goals were to replace opium cultivation by introducing alternative cash crop to these hill-tribe communities and to stop the practice of shifting cultivation because it is thought that the hill-tribes are the ones who destroy the forest. The government would have liked the hill-tribe people to settle in certain areas more permanently and encouraged a non-itinerant lifestyle among the hill-tribes. During this time, attempts were made to provide primary health care to the hill-tribes, including a plan to give citizenship to hill-tribe people. However, citizenship or identification cards were not given to all people. We do not exactly know how many hill-tribe people have received citizenship cards. About ten years ago, there was an attempt to do a survey of the number of the hill-tribe people who have citizenship cards. The statistics showed the figure to be approx. 60 per cent, but I was told by one of my colleagues that in reality the number is much lower than the official estimate given ten years

ago. It is perhaps closer to 25 or 30 per cent of the hill-tribe people who actually have citizenship, which is the major problem among the tribal people in Northern Thailand.

Poverty, prostitution and drug addiction

It is estimated that there are about 600,000 ethnic minority people primarily living in different provinces in northern Thailand and southwest of the North. In comparison to lowland Thai communities, these ethnic communities are poor, inaccessible and have no adequate infrastructure despite government efforts during the last thirty years to help develop these communities. By and large, these tribal people have stopped growing opium and have turned to other cash crop production using a large amount of chemical fertilisers and insecticides which have adverse effects on the environment. And even now, in many communities, a deficiency of rice is still a major problem causing many hill-tribe people to work as wage labourers. Some migrate to urban areas and the children often live on the streets as beggars. In Chiang Mai, we have about 300 street children at the moment and perhaps about 60 per cent of them are hill-tribe children. In the last estimation by UNICEF, Thailand is ranked second in the world in child prostitution. A large number of child prostitutes in Thailand are from the hill communities.

Although the majority of hill-tribe people in Thailand have not cultivated opium in the past, and opium production is currently very limited in Northern Thailand, a large number of people are addicted to opium. The younger generation is unfortunately also increasingly becoming addicted to heroin. In Chiang Rai and Chiang Mai, approx. 60 to 70 per cent of the households of the hill-tribe communities include drug addicts, and some of them have contracted HIV. In these communities, primary health care is not sufficient, and primary education is not provided in all communities. Some hill-tribe children attend secondary school in the lowlands, but later find no employment in their community, and subsequently turn to drugs. In the bars, restaurants and gas stations of Chiang Mai, for example, there are many young people working as gas station attendants or waitresses. These are often the children of ethnic minority groups. It is not unusual to find young hill-tribe girls working in restaurants, bars and brothels. Many have contracted HIV and AIDS, concurrent with the tourist industry boom. Many men

work in activities related to tourism by working as trekking guides, in bars and restaurants, in elephant camps, or selling food, drinks or crafts to tourists in their villages.

The lack of land rights

Some of the hill-tribe people have lived in Thailand for many decades, others have even been here for centuries. However, many of these same people have no land rights at all, partly because the forest land that they have been subsisting on has been proclaimed as a forest reserve or national park, thus making habitation illegal. The government has recently issued a proclamation calling for the hill-tribe communities to be moved out of the watershed areas and out of some areas protected for conservation purposes. In the last three or four years, we have seen conflicts between the state and ethnic minority groups over resource utilisation. In May 1995, there was a large demonstration by ethnic minorities, mostly Karen, protesting against the Royal Forest Department's policy of relocation and implementation of watershed conservation programmes which will not allow people to continue to live there. The hill-tribe peoples demonstration is the first such event in modern Thai history and indicates the frustration of the minorities people who have not been treated justly. This clearly reflects the problematic of the relationship between the state and the ethnic minorities, and the manner in which the government attempts to solve the problem of resource conflict through legal measures, but not a true understanding of and empathy with the ethnic minorities.

Assimilation policy, development programmes, and government control:

The loss of cultural identity and self-determination

Government involvement is not only limited to the area of resource management, it also involves areas such as education and religious beliefs. The modern Thai educational system emphasises the monolithic Thai culture. Children have to learn Central Thai language and acquire standard Thai cultural repertoire. Local history and knowledge are de-emphasised. In addition, Buddhist missionaries are sent to work in these ethnic minority communities, so that the ethnic people will understand more about Buddhism. By and large, the Buddhist monks feel that these ethnic groups who believe in their ancestral spirits are

irrational and traditional, and that they should therefore be converted to Buddhism.

While the government's involvement has brought the ethnic communities in close contact with the government, it has also weakened the ethnic communities and local culture. Their local organisations and institutions have been weakened and replaced by government appointed committees. For decades, the leaders in these ethnic minority communities have been the ones who represent the people. But when the government wanted to expand its control over these communities, the government appointed new leaders to replace the traditional ones. The new leaders in these communities are unable to respond to the needs of the tribal people and instead accommodate the demands of the government. The leaders have merely become government representatives carrying directives to the villagers. Local social control and cohesion have been largely eroded. It seems that as more development is introduced to these ethnic communities in Thailand, the ethnic minorities become less capable of maintaining control over their way of life, managing their own resources, maintaining their ethnic identity and coping with external changes.

Development experiences in Thailand exemplify the common phenomena of development which is propelled by the government as well as the capitalist economic system. In the process of development, it is always these small indigenous ethnic minorities, the powerless people, including women and children who have to sacrifice. It is not my intention to blame the Thai government officials, or even NGOs for causing the unintended adverse effects felt by the ethnic communities. In fact, the government officials and NGOs do have good intentions, but they often do not learn from or listen to the people. They disregard the existing indigenous system of knowledge and do not believe in the potential of the people. They do not see the relationship between ethnic communities and the environment. The position of the government is for development to be actualised or materialised, meaning that the economy must be improved, and law and order must be put in place. Integration of these ethnic minority communities has to be carried out in order that they assimilate into the state. But not even all of these ethnic minorities receive citizenship. Nor do they all receive equal rights to the use of land and equal access to

modern education or modern primary health care. In fact, the efforts to develop the highland people is the expansion of state control over the natural resources. It is not a process in which people learn how to strengthen their own capacity to cope with external changes.

Nature, culture and the rights of the people: Conservation on the wrong track

Not only does the issue of development involve the role of the state and the community, but it is also related to the issue of nature and culture. Development involves the way in which natural resources are being managed in Thailand and the way in which the culture of the ethnic groups is being dealt with by the state and outsiders. The cultural relationship with nature should be considered since most ethnic minorities traditionally have been dependent on natural resources. However, they are often blamed for forest destruction, soil erosion and encroachment upon natural parks and wildlife sanctuaries. In Thailand, and I believe that this is also true in other Southeast Asian countries, shifting cultivation is now considered to be destructive to the environment and should therefore be put to a stop. Ethnic minorities should not be allowed to exist in forest areas. People should not be in the forest because the forest belongs to the state and is a resource to be exploited commercially.

The question that one must ask is whether such a view, the separation between man and forest, will lead to sustainable development. And if ethnic minorities are forced to move out of the forest, they will have to look for new land, which may not be suitable to their traditional agriculture. This has become one of the current problems in Thailand. The view or the position of the government is to push the people out of the forest, regardless of whether they have been living there before the forest reserve law, or the forest law had even been passed. In addition, there is not enough land to allocate to these ethnic groups.

Not only will ethnic minorities be pushed out from the forest or the watershed areas, some of them will also be affected by the dam construction plans which are currently being reviewed by the government. In the past few months there has been a big debate regarding the construction of another dam in northern Thailand. The dam was proposed as a means to generate electricity, as well as to provide more water for irrigation

purpose. But there will be not less than 1,000 families to be evacuated from the proposed area. In 1995, the central plain of Thailand and the Bangkok area were flooded by monsoon rains and the government tried to use this as a reason to build more dams in northern Thailand. This will mean that the ethnic minorities must again suffer from government policies.

The problems which we are now confronting are intertwined with the issue of land ownership. In Thailand, ethnic minorities traditionally assumed their rights to the land, more explicitly the forest land, where they cultivate and gather natural resources such as mushrooms, medicinal plants and firewood, according to their own customary law. It is communal land which all members of the community share and look after. It is these ethnic minorities who collectively decide on the boundary of the communal land and its usage rights. Each ethnic group has developed its own indigenous knowledge about natural resource utilisation as well as its own natural resource management system. For example, the Khamu, in Nan province (south-west of Chiang Mai) have been known for their practice of rotational shifting cultivation, which is not destructive to the environment. Also, ethnic Thai Yuan and the Karen in northern Thailand have their own distinctive indigenous knowledge of forest use, forest land classification and systems of forest resource management. In both cases, they have established a local organisation which successfully looks after their community forest. This type of communal land ownership differs from state and private ownership. The former allows community members to decide how to utilise the forest and who has the right to use it. But the latter two types of ownership clearly suggest that only either the state or an individual has the right to use the land. The point here is that forest land should be recognised as common property for the ethnic minorities to manage, use and protect themselves. In addition, the indigenous management system, which differs from that of the state system, should be permitted so that ethnic minorities can maintain the right to subsist on their land and the incentive to protect it.

The problem facing ethnic minorities in Thailand reflects the changing relationship between the state and the ethnic communities. It is contended here that in the process of development, the state increasingly asserts its power over ethnic communities and the natural resources which are managed through their

traditional system. This often leads to conflicts between minorities and the government and the tendency for such conflict to continually occur.

National integration: Forcing uniformity, creating conflict

Ethnic minorities are the producers of their own culture, way of life and expression of identity. Culture is here defined as the belief system, the collective knowledge system accumulated by communities and the relationship among members of the community with nature. Indigenous resource management systems include rules and regulations for resource utilisation. But in my view, this concept of culture allows us to look into the potential of ethnic minorities in striving for sustainable development. However, the emergence of the modern state and the capitalist economy separates ethnic culture from that of the state. The modern state, particularly in Thailand, tends to create a kind of national culture. Even though there is a recognition of ethnic minority culture, the national culture is what the government would like all ethnic groups to adhere to, expecting them to speak the Central Thai language. Buddhism is the religion of the mainstream lowland Thai culture, which has become the dominant culture for all ethnic groups in Thailand. According to the government, ethnic groups may remain different in terms of language, custom and clothing. But they will have to share the common national culture, including learning the national language and subscribing to national religion and ideology. The issue at hand is the manner in which the modern Thai state defines culture. It tends to define the culture from a static and nationalistic view, putting national identity above ethnic identity. It also assumes that ethnic identity will wither away with the emergence of the modern state. However, recent history reveals that ethnic identity has persisted, become intensified and has become a source of endless conflict both in northern Thailand and in the neighbouring countries.

Regional development: Threats of a new magnitude

There is a major concern that I would like to state before concluding. Thailand is now moving on to another stage of development. It is pushing to become a newly industrialised country, or NIC. The government is interested in opening up the border so that Thailand will play a crucial role in upper

mainland Southeast Asia, which is called the 'economic quadrangle'. My concern is the following. First, there will be a lot of movement from China, Laos and Myanmar into Thailand. The movement of people will predominately be young women and labourers. Commodities will flow from China to Thailand. There will also be a lot of movement from Thailand, primarily the Thai capital, into Laos, some parts of Burma and southern China. With the advent of this new economic order, I am afraid that those who will suffer most will be the ethnic minorities who live in this area. There is already an extensive cross-border migration of Burmese people, Shan people and Thai Lue people into northern Thailand. I think that the future of ethnic groups in this part of the world will be in danger if the international communities, NGOs and ethnic leaders in this region do not begin to collaborate. As someone who has been working on this issue at the university, I have found it very difficult to convince the government to take the issue of ethnic minorities into consideration. It is the duty of people like us, academics, NGOs and everyone concerned with the life and future of ethnic minorities, to work together in finding solutions to this problem.

THE JURIDICAL RIGHTS OF THE INDIGENOUS PEOPLES IN BURMA



The very name 'Union of Burma' implies that the nation is a federation of many peoples (Klieg 1992:75). The indigenous peoples of the Union of Burma - like, among others, the Shan, Kachin, Mon, Karenni, Karen or Arakan - comprise over 40 per cent of the Union of Burma's population of 42 million people (Win n.d.:11). Before British rule, these indigenous peoples had their own land, religion, culture and administrative system. The non-indigenous people are the Burmese. During colonial rule, the British made a clear distinction between the Burmese and the indigenous peoples. The Burmese were ruled directly from British India, whereas the indigenous peoples were ruled indirectly and given considerable autonomy. The indigenous peoples have lived under the continuous military rule of the Burmese since 1948, when the British granted complete independence to Burma.

Panglong Agreement

Signatories and conditions

On 12 February 1947, some leaders of the Chin, Kachin and Shan signed the Panglong Agreement with the Burmese at Panglong village of Shan State in Burma in order to join the interim government of Burma. The basic conditions of the Panglong Agreement were:

1. The indigenous peoples would achieve freedom from the British more speedily through co-operation with the Burmese.
2. After independence, indigenous peoples would have the right to secede from confederation with Burma if and when they choose to do so.

Zu Tum Hmung, a member of the Chin indigenous people of Burma, is currently in a master's degree program in Philadelphia, USA, focusing on Christian faith and public policy.

3. Association with Burma would be on a federal basis with equal rights and status, and full internal autonomy for the indigenous peoples.

The signatories of the Kachin and Shan signed the Panglong Agreement without the consent of their peoples. The signatories signed the agreement because of their sincere trust in U Aung San, the national hero of the Burmese independence movement and father of present day opposition leader and Nobel Prize winner Aung San Suu Kyi, to implement the Panglong Agreement.

Non-signatories

The Karen, Mon, Karenni and Arakan did not participate in the Panglong Agreement. These indigenous peoples, notably the Karen, resisted Burmese colonisation in December 1948 and nearly overcame the Burmese. Nonetheless, both signatories and non-signatories continue the armed struggle for the right to self-determination with forces totalling more than 40,000 men, who have formed the National Democratic Front (NDF) alliance.

The constitutional crises

The 1947 Constitution

The first constitution of the Union of Burma, drafted in 1947, was supposed to provide for a federal system of government based on the Panglong Agreement. Instead, the constitution betrayed the agreement and imposed a rigid unitary form of government placing all central powers in the hands of the Burmese. In addition, the tenth chapter of the constitution made the condition that indigenous peoples could secede only after ten years. In response, representatives of the indigenous peoples met in Taung Gyi, the capital of Shan State, in 1956 and drafted a new constitution providing for a federal government. Before it could be accepted by Parliament, General Ne Win took power from Prime Minister U Nu in an army coup.

In February 1960, U Nu, promising autonomy to the Mon and Arakan peoples, won the general election and regained power from Ne Win. Other indigenous peoples sought the right of succession and tried to reinstate a federal form of government. In the resulting instability, Ne Win took power from U Nu on 2 March 1962 and abolished the 1947 Constitution.

The 1974 Constitution

After seizing power in 1962, Ne Win created a revolutionary council comprised of the armed forces. This council was disbanded on 2 March 1974 and replaced by the government of the now so-called 'Socialist Republic of the Union of Burma', which remained under army control. A few of the indigenous peoples participated in the republic with restrictions.

A group of Chin intellectuals submitted suggestions for the 1974 Constitution, including a federal system of government. Fifty of them were arrested by the army and imprisoned until the constitution took effect in 1974. The 1974 Constitution did not provide for the rights of indigenous peoples in either central or state administration. Moreover, no provision was made for freedom of speech, press or religion.

The present crisis

Following the pro-democracy uprising of 8 August 1988, the State Law and Order Restoration Council (SLORC) was established in September of that year and held a multi-party democratic election on 27 May 1990 for the restoration of democracy. The National League for Democracy (NLD) won the election with a landslide victory, but the SLORC failed to transfer power to the NLD and declared that they would continue to rule until a government was formed in accordance with a new constitution. Meanwhile, the elected representatives of the indigenous peoples were forced to take refuge outside the country.

The SLORC called a National Convention in early 1993 to draft a new constitution. The SLORC selected its own people to draft the constitution, including only 15 per cent of the representatives chosen in the 1990 election. The constitution provides that the Burmese Army will retain its dominant role in national politics. There is no consideration of the rights of indigenous peoples. If the Burmese Army were sincere toward indigenous peoples, it would not participate in forming the new government. The constitution being drafted by the SLORC is merely a white-wash constitution with a place for Burmese racial supremacy.

Bitter experiences

Assimilation

The Burmese military regime is pursuing a deliberate and calculated policy of forced assimilation. Most of the indigenous peoples are Christian. During 1964-65, all missionary institutions, colleges, medical health programmes, and other social development programs were nationalised, and the Burmese mandated adoption of the Burmese language and culture in government institutions in an effort to destroy the indigenous languages and cultures.

If any member of an indigenous people wants to become an officer, then he must marry either a Burmese or a Buddhist. Absolutely no indigenous persons serve in the top ranks of the Burmese Army. Burmese villagers from the plain areas are shifted to the hill areas of indigenous peoples by force in an attempt to dominate the indigenous peoples.

Persecutions

Indigenous people have been persecuted by the Burmese Army through such means as forced relocation, displacement, arbitrary arrests, forced labour, torture and forced service as unpaid porters in combat areas regardless of sex or age. In June 1995, the International Labour Organisation (ILO) at its annual conference, and Human Rights Watch/Asia on 26 July 1995, condemned and criticised the SLORC for using forced labour. According to Human Rights Watch/Asia, forced labour involved at least two million people since 1992 and "hundreds have died from beatings, exhaustion, accidents and lack of medical care while working across the country" (Human Rights Watch/Asia 1995:2). For example, forced labour was used to set up the site for the inauguration of the Indo-Burma border trade at Tamu Town on 12 April 1995 (The New Era Journal 1995:1).

The military intelligence (MI) of Burma often interrogates and tortures villagers, asking them to identify guerillas and their supporters. During front-line military operations, suspected guerillas and collaborators have been shot dead without court proceedings. Common types of torture include beating, cutting the skin, submersion in a water tank, electric shocks and drug injections.

In April of 1995, the village of Hlamphei was burned by the army, leaving the villagers with no shelter. A woman was shot

dead, but the case was not registered because of fear of the army (Hmung 1995:1). After more than 10,000 Chins were deported by the Indian government in September and October of 1994, the repatriated refugees were received and imprisoned by the military regime, after which they endured six months of pre trial detention followed by grossly unfair military trials (Lalthangliana 1994:8-9).

The totalitarian rule has also violated religious freedom. On Sunday, 29 January 1995, the predominantly Christian villages of Nat Myin Han, Nyong Kaung, and others, were ordered by Major Win Kyi of Infantry Battalion 50 to construct a fence for an army camp. The villagers appealed to the major to postpone it to a day other than Sunday, but their appeal was rejected. Also, Christian villagers from Lashee township were forced under threat of severe punishment to convert to Buddhism by regional commanders such as Major Khin Soe of Battalion 228, Company 1, and Captain Than Myint of Infantry Battalion 52, Company 4 (First News Bulletin April 1995:7).

No other choice but to seek refuge

The movement of refugees from Burma to Thailand began in the 1950s. People fled in order to escape the persecution of the Burmese army. A mass exodus occurred in 1984 and again in 1988, and continues to this day. There are about 80,000 refugees in Thailand today, crowded into only thirteen refugee camps. In January and February 1995, over 10,000 indigenous people fled to Thailand. The Burmese army entered into the refugee camps in Thailand and attacked the refugees. As a result, on 18 February the acting Thai Foreign Minister sent for the Burmese Ambassador to protest Burma's violations of Thai sovereignty and harassment of refugees on Thai soil. On 21 February, the Burmese army again attacked the refugee camps, this time with artillery; the Thai Army reported that shells penetrated up to 4 km deep into Thai territory (Burma Issues February 1995:3).

There are also more than 40,000 Chin and other refugees in India, where they have been forced to seek refuge since the 1960s. The government of India has decided to deport them. I asked the government of India not to deport these refugees. I also travelled to New Delhi and Geneva in July of this year and requested the intervention of the United Nations High Commissioner for Refugees (UNHCR). If the government of India

deports them, there will be extreme hardship for these people in Burma.

A few Chins and Arakans, as well as about 250,000 Muslim refugees (known as Rohingya) who seek recognition as an indigenous people, have fled to Bangladesh since 1991. With the active intervention of the UNHCR and other volunteer groups, half of the refugees have returned to their homeland (UNHCR 1995:1).

An underhand cease-fire

The Burmese armed forces numbered about 190,000 before the 1988 uprising, but today number about 400,000. Following the visit of Than Shwe and Khin Ngunt to China in October 1989, China supplied vast amounts of military supplies to Burma.

The army then sought a cease-fire with the indigenous armed groups. Thirteen armed groups signed the cease-fire with the army on condition that the SLORC would speedily restore genuine democracy in Burma. Meanwhile, the SLORC attacked the rest of the armed ethnic groups. As a result of this situation, the cease-fire groups formed the Peace and Democratic Front (PDF) Alliance. The Kachin Independence Organisation (KIO) extended its support to the PDF, which demanded that the SLORC quickly restore genuine democracy.

The SLORC's actions proved that the cease-fire was not a genuine attempt to solve the crisis, but rather a tool for wiping out the indigenous peoples. The late Brang Seng, chairman of the KIO, noted in an interview that "...[we] made every concession we could, but they only called on us to surrender - to abolish our party organisation and army - without solving any political problems. What they offered us were jobs and positions, but we wanted to solve political problems by political means" (Singh 1995:50-51).

Conclusion

There are no rights for indigenous people in Burma. There is no rule of law; whatever the Burmese Army says becomes law to be obeyed in indigenous lands in Burma. Because the Burmese have this attitude, they endeavour to practice 'the policy of a great nation' so that in the course of a few centuries there will be one race: Burmese; and one religion: Buddhism (Burma Debate 1995:19).

Neither imposition of genuine democracy nor the leadership of 1991 Nobel Peace laureate Aung San Suu Kyi will bring the civil war to an end, until and unless the indigenous peoples' socio-political and cultural rights, for which they have sacrificed their lives for more than 40 years, are respected and recognised by the Burmese.

Therefore, the restoration of the rights of the indigenous peoples in Burma will require no less than the intervention of the international community, and especially the United Nations. I appeal to the United Nations to repeat emphatically the UN General Assembly 49th session's call to the SLORC to have a political dialogue with representatives of the indigenous peoples.

References

- Klieg, Wilhelm 1992. *Burma*. Apa Production Ltd., Hong Kong. Win, Kanbawza. *A Burmese Appeal to the UN and US*, CPDSK Publication, Bangkok.
- Human Rights Watch/Asia* 1995. "Burma: Worsening Human Rights Situation Requires Increased International Pressure Action at ASEAN Meeting" New York, 26 July 1995.
- The New Era (Kbit Pyaing) Journal* 1995. printed, published, and distributed in liberated area No.(2), 12 April 1995.
- Hmung, Zo Tum 1995. Speech Delivered at the Thirteenth Session of the UN Working Group on Indigenous Populations at Geneva, on 27 July 1995.
- SAKEIBAKNEI Bi-Weekly News Magazine* 1994. Aizawl, 27 September 1994.
- First New Bulletin (All Burma Students' League)* 1995. "Religious Repression in Kabaw Valley", New Delhi, 30 April 1995.
- Burma Issues* 1995. Hanging On To Hope, Bangkok, February 1995.
- Information Bulletin of UNHCR* 1995. UNHCR Press, Geneva, June 1995.
- Strategic Digest* 1995. Vol.25 No.1, Institute for Defence Studies and Analyses, New Delhi.
- Burma Debate* 1995. Vol. 1 No.3, December/January 1995, Washington D.C.

THE RIGHTS OF CULTURAL COMMUNITIES IN THE PHILIPPINES



In the Philippines, the indigenous peoples are the people who have steadfastly maintained the traditional, or indigenous, socio-political, cultural and economic system in spite of the impositions of the Spanish and American colonisers. They are distributed throughout the Philippine archipelago, and consist of the following: first, the Islamic peoples who are concentrated in the southern Philippines; the people of the Philippine Cordillera in the northern part of the country; and other smaller groups scattered throughout the archipelago. They are referred to variedly as indigenous peoples, cultural minorities and, by the government, as cultural communities.

Historically, these indigenous peoples have been the subject of discrimination, exploitation, abuse and, in some cases, genocidal acts by the colonising powers and the colonised Filipinos. Their rights and interests were not recognised or respected. But what are the rights that the indigenous peoples demand?

Indigenous peoples' rights

The right to self-determination

Foremost among these rights is the right to self-determination. It is a term that reflects our aspirations to be masters of our own destiny. It may be said that all indigenous peoples' rights are subsumed under this right.

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The right to self-government

This is an integral component of the right to self-determination. The cultural communities have the right to govern themselves, by their own laws, and by the democratic participation of their own people. Their own justice system should also be respected and developed.

The right to ancestral lands and domain

The cultural communities of the Philippines have occupied, utilised and developed their land since time immemorial. It is on this basis that the right to ancestral lands and domain is anchored. The cultural communities own these lands and the resources located within. Corollary to this is the recognition of the indigenous land ownership concept which recognises communal ownership over lands and resources within the ancestral domain.

The right to cultural and religious integrity

This refers to the cultural communities' right to practice their culture and religion free from discrimination and exploitation. It refers to the recognition that their culture and religion is part of the national and worldwide cultural heritage, and therefore should be respected and allowed to contribute to the national cultural mainstream.

Corollary to this right is the right to education. An educational system would have to be developed to answer the needs of the cultural communities, in order to instill dignity and respect for their identity and culture, as well as to provide the necessary knowledge and skills for them to compete and survive in a fast developing world.

The right to economic prosperity

This right of the cultural communities covers their interest to develop their economy, to provide employment and to cover their needs, so as to raise their standard of living. Included is the right to manage their resources.

Other rights

There are rights other than the aforementioned ones, but they are of lesser importance. The other rights are closely related to them, and may even be considered as subsumed by the rights already discussed.

Historical discrimination and oppression

Now we come to the question: Are these rights respected in the Philippines? Historically, these rights have not been recognised. At the height of the Spanish and American colonial rule, these rights were trampled upon. Adding insult to injury, the restoration of these rights was not carried in the agenda of the Philippine government dominated by the Filipino majority.

Violation of the right to ancestral domain

The primary concern of the cultural communities for peaceful possession of their ancestral domain has been violated. During the time of the Spanish colonisers, they instituted the Regalian Doctrine, so that all lands and resources were deemed to belong to the Spanish crown. All people were then expected to pay tribute for the utilisation of such lands and resources. Lands were not owned by the people occupying them, unless these lands were granted to them by the Spanish government. Arbitrarily, the cultural communities were dispossessed of their lands under this doctrine.

This was reinforced by the American colonial government, which instituted the Torrens titling system. Under this system, it was necessary for the people to apply for titles to their lands. All lands not covered by title were then considered the property of the state and part of the public domain.

Squatters on their own land

This concept and land ownership system is maintained and enforced by the Philippine government up to the present. Most of the lands of the cultural communities are therefore owned by the state. In addition, these lands have been declared as forest reserves, watershed reserves and national parks, so they can not be titled. Effectively, then, the cultural communities are squatters on their own land.

The Chico Dam precedence

Repeatedly, the government has tried to appropriate many of the lands of cultural communities in the name of development. The celebrated case of the World Bank funded Chico River Dam Project in the Philippine Cordilleras was supposed to benefit the country, but at the sacrifice of the cultural communities. This project was, however, effectively resisted by the people. There

are other similar projects, even up to the present, highlighting the necessity of vigilance. What is necessary in this case is the participation of the cultural communities themselves in the development planning and implementation, so that their interests are properly considered and protected.

Discrimination and exploitation of culture

The cultures of the cultural communities have likewise been disregarded. Their cultures continue to be discriminated against by the prevailing Christian and Western culture in the national cultural mainstream. With respect to religion, conflicts arose between our Islamic brothers and the Filipino Christian majority. These conflicts arose from the lack of respect for the Islamic religion as well as from outright discrimination. In the case of other cultural communities, Christianity has gained a foothold among them so that their traditional culture is being lost, and the Christian mainstream culture is becoming prevalent among our indigenous communities.

Economic neglect

As a part of the discrimination, the economy of the cultural communities in the Philippines was disregarded. While their ancestral domain and the natural resources located therein were exploited by logging, mining and other industries, their economic conditions remained neglected.

Struggle and assertion of rights

The cultural communities of the Philippines have not been silent in the face of discrimination, exploitation and neglect. Ever since the Spanish colonial period, they have been known to fiercely resist oppression. After all, it is this same resistance which distinguished them from the Filipino mainstream and enabled them to retain their indigenous systems.

The Marcos dictatorship

Even during the time of the Marcos dictatorship, when exploitation and oppression were at their height, the cultural minorities were at the forefront of the struggle for democratic rights, not only their own, but those of the Filipino majority as well. During this time, the communist-led National Democratic Front, a revolutionary organisation, gained strength. It was also the

case with the Moro National Liberation Army of our Islamic brothers. Many of the cultural communities joined these organisations. Many more were involved in other organisations asserting their rights and struggling for the restoration of democracy.

Development of alternatives

It was also during this time that the cultural communities came to understand their plight better, and to develop many concepts and alternatives to adequately respond to their needs and to advance their rights and interests. This resulted in the concept of autonomy as the expression of the right to self-determination, as well as to provide a vehicle for the recognition and assertion of the cultural communities' rights.

The cultural communities were likewise able to link their movement to the national movement for democratic reform. The Filipino people were exposed to and educated in the conditions of the minority, and a level of understanding and support was reached. No longer were the cultural communities to be neglected and ignored.

Greater recognition of rights

These struggles and movements of the cultural communities paved the way for the greater recognition of their rights. It is important to note that this recognition was not granted on a silver platter. It was necessary for the indigenous peoples of the Philippines to continually and steadfastly assert their rights before recognition was given to them. Without the historical resistance and assertion of their unique and distinct culture and identity as indigenous peoples, it is likely that their rights would continue to be trampled upon.

When the Marcos dictatorship was ousted from power, a democratic government was installed. The Philippines then drafted a new constitution. In consideration and recognition of the rights of the cultural communities, it contained many provisions favourable to the indigenous peoples.

Government recognition of rights

Constitutional provisions

There are several provisions in the constitution of the Republic of the Philippines which consider and recognise the rights of the

cultural communities. These provisions clearly reflect the gains of the indigenous movement for the recognition of their rights. The Philippine Constitution states:

"The State shall recognise, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies". (Art. IV, Section 12)

"The Congress of the Philippines may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities". (Art. XVI, Section 12)

"The State recognises and promotes the rights of indigenous cultural communities within the framework of national unity and development". (Art. II, Section 2)

The creation of autonomous regions

Respecting the right of indigenous peoples to self-determination and self-government, the Constitution provides for the creation of autonomous governments in the regions where cultural communities are concentrated. The Constitution states:

"There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities and geographic areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this constitution, and the national sovereignty as well as territorial integrity of the Republic of the Philippines". (Art. X, Section 15)

Following this provision are the mechanics of how such autonomous governments are to be created. There were two Organic Acts which were passed in the Philippine legislature for the creation of the autonomous regions. The Organic Act for Muslim (Islamic) Mindanao was approved and the autonomous region was created.

In the case of the Cordillera, the proposed Organic Act drafted by a special commission representing the aspirations of the Cordillera indigenous peoples was, however, watered down by the Philippine Congress. As a result, the Organic Act was rejected by the cultural communities.

Presently, there is a bill being filed in Congress (RA 3719) based on the original proposal which was the product of democratic consultative processes and thereby much more reflective of our aspirations. The passage of such an Act would certainly greatly advance the realisation of the right to self-determination and self-government, and other rights for the cultural communities in the Cordillera.

The organic act pending in Congress

The salient points of the organic act pending in Congress include the following:

"Autonomy ensures for the people of the Cordillera the right to secure for themselves their ancestral domain, develop their economy, promote their cultural heritage and establish a system of self-governance within the framework of the Philippine Constitution and national sovereignty, as well as the territorial integrity of the Philippines.

The people of the Cordillera have the right, especially through their voluntary organisations and movements, to participate and be equitably represented at appropriate levels of social, economic and political decision-making and in the formulation and implementation of local, regional and national priorities, plans, programmes and projects, and to monitor their implementation.

The development of the region requires the creation of an environment that shall provide for the basic human needs and ensure a rising standard of living for all.

The natural, material and fiscal resources of the region shall be put to optimum and just use primarily for the benefit of the people of the Cordillera.

The Conservation and protection of the natural environment by the Autonomous Region of the Cordillera and its people is an essential dimension of regional development.

It is the task of the Autonomous Region of the Cordillera to establish within the framework of the national system of education, as defined in the Constitution and national laws, an educational system, both formal and non-formal, that provides for its people an education of the best quality within its means; responds to the needs of Cordillera communities; encourages creativity and critical thinking; promotes science and appropriate technology; respects indigenous culture; inculcates respect for human rights and the dignity of work; fosters love of God and neighbour, self-reliance, nationalism, solidarity and other desirable Filipino values; and contributes to the common good.

The National Government shall provide financial assistance to the Autonomous Region of the Cordillera by appropriating such sums as may be necessary to accelerate the development of the region.

The Regional Government shall pursue a policy of holding consultation or public hearings on matters of local and regional priorities, plans and programmes as well as transparency in the implementation of projects affecting the constituents of the local government units concerned.

The Regional Government shall, consistent with the Constitution and national laws and policies, provide incentives to investors, corporations and businesses, but shall adopt measures to prevent the exploitation of natural and human resources and to ensure that such activities contribute to the development of wealth and income among the inhabitants and local government units.

Subject to the Constitution and national policies, the Regional Government shall set guidelines for energy production, public transportation and communication.

The Regional Autonomous Government has the right to control the activities of transnational and domestic corporations to prevent the exploitation of the people and to ensure that such activities contribute to the development of the region and the democratic sharing of wealth and income among the inhabitants and local government units.

Subject to the Constitution and national policies, local government units are entitled to an equitable share in the proceeds of the utilisation and development of the natural resources within the respective areas in the manner provided by Regional Law including sharing the same with the inhabitants by way of direct benefits.

Customary laws affecting personal, family, tribal and property relations in the Cordillera shall be recognised among members of the indigenous tribal group or cultural community.

The Regional Government shall undertake measures to protect the ancestral domain and the ancestral lands of indigenous cultural communities.

Subject to the Constitution and the national policies, all lands and natural resources in the Autonomous Region that have been possessed or occupied by indigenous cultural communities since time immemorial shall form part of the ancestral domain”.

There are many more provisions in the proposed act which, when approved, would adequately answer the aspirations of the Cordillera cultural communities. While indeed these provisions have yet to be implemented, and their full implementation has yet to be assured, it is clear that the Philippine Government has opened avenues for the recognition of indigenous peoples' rights.

The need to pass the act

What should be done now in this context is to lobby for the passage of this act. As it is, government agencies like the Office for Northern Cultural Communities (ONCC) are vigorously

pushing for the dissemination of copies of the proposed act, so that the indigenous people may comment and propose revisions before it is finally passed. Congress was also convinced to conduct consultations down to the village level to discuss the contents of the proposed bill, thereby providing actual participation of the people in the final form of the law.

NGO co-operation and support

The co-operation and input of non-governmental organisations like the Cordillera Peoples' Alliance and other organisations shall likewise be solicited. This is in the interest of making democracy work for us, and so that their meaningful and substantial contributions will be incorporated.

The National Decade for Filipino Indigenous Peoples

Incidentally, our President issued an administrative order creating a national committee on the International Decade of the World's Indigenous Peoples and declared 1995-2005 as the National Decade for Filipino Indigenous Peoples. In this connection, an indigenous cultural Olympics will be held in the Philippines from 1 - 10 December 1995. The celebration will include performances, art exhibits, rituals, sports demonstrations and a trade fair on tribal arts and crafts. Our fellow indigenous people are invited to come and participate in this International Indigenous Cultural Olympics.

Continuing vigilance and struggle

Further, upon the passage of the act, it would be necessary to maintain vigilance in advancing and protecting indigenous peoples' rights. Truly the realisation and protection of indigenous rights requires our constant vigilance and persevering assertion. This includes the possibility that perhaps the proposed bill will again be watered down by Congress, as Congress is indeed dominated by non-indigenous people. It is also possible that the bill will not be passed by Congress. Should this happen, it will be necessary to continue the legal struggle for the recognition of our rights.

Indeed, if the Constitutional provisions will not be given the proper implementing laws, they are mere paper rights, and we could not rightly say that the indigenous rights are recognised. Then the struggle shall continue.

Other bills pending in Congress and the Senate

There are a host of other bills pending in the Philippine legislature which are similarly worded. These shall apply to other cultural communities not covered by the autonomous regions, so that their rights shall be protected. While some of these bills do not reflect the true interests of the cultural communities, there are those which are truly representative of their rights. It is therefore necessary to study these proposed bills, to separate the good ones from the bad. Then we may work for the passage of the former and the rejection of the latter.

Summary and conclusion

The cultural communities of the Philippines have become minorities by virtue of their non-subjugation by colonisers, thereby retaining their indigenous identity.

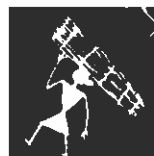
As indigenous cultural communities, they have been the subject of exploitation and discrimination. Their rights were misunderstood and not respected by the government.

The indigenous peoples resisted the exploitation and oppression, progressively asserting their rights and clamouring for their recognition. Because of the numerous struggles waged by the indigenous peoples, the government came to recognise their rights in the Constitution of the Philippines.

The constitutional provisions have to be given actual effectiveness through the passage of laws concretising these provisions in order for the indigenous peoples' rights to be really recognised.

With the proposed bills in Congress, we can now say that our rights are being considered, and that there is hope on the horizon. When the bills are approved, what remains to be done is for us indigenous people to marshal the law to its fullest and advance our rights and interest to greater heights. For, when we finally achieve self-determination, we shall be masters of our destiny.

JURIDICAL RIGHTS OF INDIGENOUS PEOPLES AND THEIR RELATIONS TO THE STATE AND NON- INDIGENOUS PEOPLES: THE CASE OF SABAH



History and background

Sabah occupies the northern portion of the island of Borneo, and covers an area of 72,500 sq. km, which is about 22 per cent of the total land area of Malaysia. There are about 39 ethno-linguistic groups in Sabah, speaking more than 50 different languages and dialects. They comprise about 75 per cent of the total population of Sabah. These include the Dusunic group, the largest of the Bornean (tektok) group, the Murut group and the Paitan group. Among the Dusun sub-groups are the Lotud, Rungus, Garo, Kimaragang, Kadazan, Tindal, Tagaas and Bundu; the Murut sub-groups include the Tambonuo, Sungai, Abai and Upper Kinabatangan people. Other indigenous groups which are not of north Borneo origin, but which travelled from the Philippines and Indonesia and have been settled for years in Sabah are the Bajaus, Bugis, Ibans and Cocos.

Traditionally, these indigenous or native communities have been living in North Borneo independently, with their own set of laws or *adat* and style of governance by a council of elders. With the ascendancy of the Sulu and Brunei Sultanate in the 1800s, parts of North Borneo came under their control. North Borneo came under the North Borneo Chartered Company rule in 1881 and later under British rule in 1888. They imposed taxes upon the people as well as their political systems. After the Japanese occupation during the Second World War, the British resumed their control over Sabah.

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In 1963, the Federation of Malaysia was formed when Sabah and Sarawak joined Malaya as distinct regions. Both Sabah and Sarawak came up with a 20-point agreement to safeguard their rights in the Federation which includes control over resources such as land and minerals, the right to language, religion, education and their own administration. Today, however, many of these safeguards have either been abolished or very much eroded, and Sabah and Sarawak were relegated to be merely two of the 13 states in Malaysia. This has resulted in worsening relations between Sabah and the Federal Government.

The present situation of juridical rights of the indigenous peoples of Sabah

Similar to other indigenous societies, land is very significant not only as their means of production, but also as part of their spiritual and cultural identity. Loss of land will not only result in the loss of essential resources on which their livelihood depends, but also the loss of their culture and tradition. The traditional concept of land as a limited community resource which can not be bought and sold has been established. Based on this concept, individuals could only claim rights to land they had opened and were cultivating or occupying.

Customary rights are established by opening up the jungle on a reciprocal basis to make farms or *tabasan* for cultivation. Farms are not abandoned after a crop is harvested, but left fallow to allow the soil to regain its natural fertility through jungle regrowth, while another plot is being cultivated. The plots which have been rejuvenated are then cultivated again, and the cycle is repeated. Such rights to land that is cultivated or kept fallow for future cultivation are recognised in the community.

Under the Sabah Land Ordinance, 1930 - which has not undergone many changes since it was introduced by the British in 1881 - some of these customary rights were captured under section 15, entitled 'Native Customary Rights (NCR)' and meant to protect native rights to land. NCR are also guaranteed by the Malaysian constitution under section 161A(5). The recognition of customary rights is the most fundamental issue in the security and ownership of land held by indigenous peoples. As such, the issues arising in discussing juridical rights of indigenous peoples are very much related to the contradicting system of customary

land rights and the inadequacy of the sections in the Land Ordinance, as discussed below.

Under Section 15 of the Sabah Land Ordinance, 1930, NCR in land include:

- Land possessed by customary tenure (customary tenure is defined as the "lawful possession of land by natives by continuous occupation or cultivation for three or more consecutive years or by title. . .");
- Land planted with 20 or more fruit trees per acre;
- Areas where fruit trees, sago, rattan and other plants of economic value are planted, upkept and regularly enjoyed as personal property;
- Grazing land stocked with cattle or horses;
- Land that has been cultivated or built on within three years;
- Burial grounds or shrines; and
- Rights of way for people and animals.

Land ownership: Two contradicting systems

The first system, which is based on *adat* and allows natives to own land through occupation and use, is inadequately captured in the Land Ordinance. The other system of land ownership is an open system in that it enables any individual, whether a Sabah resident or foreigner, to apply for and own land. The two systems of land ownership, found within the same Ordinance, give rise to contradiction and confusion. In fact, the root cause of this contradiction is the totally different system of customary land rights - that of the *adat* - which should have been fully separated, instead of being merged with the other provisions of the Ordinance.

Although the Land Ordinance gives priority to applicants claiming customary rights, in reality, the opposite happens. Villages in rural areas have complained that their applications to survey customary land are ignored. On the other hand, government agencies, cooperatives and other individual applicants who applied for the same land for agricultural purposes have been given priority. The main issue in the determination of land ownership in the systems appears to be the ability to develop land. Apparently, indigenous peoples are assumed to be incapable, or unable to compete with entrepreneurs. This is also related to government policies on rural development which emphasises the establishing of plantations in the state.

Section 13 reads:

"Upon receipt of any application for unalienated country land it shall be the duty of the Collector to publish a notice calling upon any claimant to native customary rights in such land who is not yet in possession of a registered documentary title to make or send in a statement of his claim within the date to be specified in the notice. If no claim is made the land shall be dealt with as if no rights existed".

Other issues related to the shortcomings of trying to incorporate the *adat* into the Land Ordinance is the definition of customary tenure. Even with the problems of land pressure, the fallow period now is between three to four years. This makes it difficult for rotational farmers planting hill rice to claim customary rights on land lying fallow. In the current Ordinance, there is also no provision for watershed areas, hunting grounds and areas developed for aquaculture purposes.

Other weaknesses of the Land Ordinance

Although an indigenous person has strong evidence to claim customary rights, government agencies and individual applicants who say they made their applications first get priority. Section 13 of the Ordinance indicates that applicants possessing customary rights should be given priority, and the Federal Constitution under 161A(5) allows for such preferential treatment for indigenous peoples of Sabah and Sarawak. Yet, large tracts of land under customary rights have been alienated to individuals and corporations simply because they claim to have money to develop the land, or by failing to get notification which is posted only on notice boards of the office. More detrimental is the use of section 28 of the same Land Ordinance to alienate land to government agencies with complete disregard for giving notice required under section 13. Other problems under the Ordinance are the short appeal period and compensation for land under NCR.

Views and aspirations of indigenous peoples concerning relations to the State and non-indigenous peoples

Despite the recognition of NCR by law, and even where the provisions are adhered to by the state, indigenous peoples feel their hold over their land is insecure. The policy of small-scale land development such as the granting of 15 acres to indigenous peoples for agricultural purposes has been undermined by the economic policy. This policy emphasizes large-scale land exploitation which carries with it a negative impact on indigenous peoples' lives, such as rights to land, their economic system and way of life.

As such, relations to the state are viewed by indigenous peoples - especially those who are marginalised - as unequal because of these negative impacts. Specifically, indigenous peoples feel that their rights to land and as peoples are not recognised; that the state does not recognise that they are contributing productively to the economy; and that the state does not totally believe that they can determine their own way of life and is constantly trying to change them. Indigenous peoples continue to attempt to lead a peaceful dialogue and negotiate with governments in their aspiration to achieve recognition socially, economically and politically.

Indigenous peoples form the majority in Sabah, so marginalisation normally felt by minorities is not so apparent. However, because the economy is dominated by non-indigenous peoples, many conflicts arise, including tension and an aspiration to compete and succeed in the market economy. Politically, the influences of power from outside the state have caused tension between indigenous peoples and non-indigenous peoples as well as ethnic polarisation.

The aspirations of the indigenous peoples of Sabah, as of other indigenous communities in Malaysia, are detailed in the Sibu Declaration, 1993, which demands:

- to change the land law which is working against NCR;
- the right to control and use their land (and all its resources);
- to stop all logging activities and the implementation of land schemes and development projects on their lands which do not benefit them;

- indigenous languages to be taught in schools;
- to be free to determine and control the system of justice in their communities in accordance with their traditions;
- equal rights to enjoy the benefits of just developments in areas such as education opportunities, scholarships, basic amenities and health services;
- the freedom to be members of, and establish their own associations, as well as to affiliate themselves to other organizations.

THE RIGHTS OF ETHNIC MINORITIES IN VIETNAM



Vietnam consists of 54 ethnic groups, which together create the Vietnamese community. In this community, the Kinh are the majority, accounting for 87 per cent of the country's population. The 53 ethnic minorities who make up the rest live mostly in mountainous areas.

The story of Vietnam's history is the story of nationalities united in the process of contributing and protecting our nation. History spread the minorities mostly across the mountainous areas, from the north to the south of Vietnam, along border areas. It has been passed down over generations that Thuc Phan An Duong Vuong who was a king of the mountains built the historical site, located in Dong Anh district, 18 km north of Hanoi.

During the feudal period, the central royal court always confided in tribal chiefs and clan heads in frontier areas and gave them the important duty of protecting the borderland. The king gave his princesses in marriage to the mountain people in order to improve their friendship.

In the revolution for national liberation, President Ho Chi Minh returned home from abroad and chose the area inhabited by ethnic minority groups to build the revolutionary base.

In Vietnam, there may be only one ethnic group in a particular mountain village. But there are many different ethnic groups inhabiting the subdistricts and the districts and they understand each other clearly. This is shown in the following folk verses:

*A gourd is filled with pity for a pumpkin
But although they are different vegetables, they share the
same garden.*

Ma A Lenh, a Hmong from Lao Cai Province in the north of Vietnam, is a writer, published both in Hmong and Vietnamese. He is the Vice-President of the Lao Cai Nationalities Cultural Association and the Vice-President of the Association of Lao Cai Province Writers.

We are different nationalities but we should respect each other because we live in the same country.

*One tree doesn't become a forest
But three trees can become a high mountain.*

If we gather together, we become much stronger. Our country has many nationalities and each nationality has its own cultural characteristics such as: language, customs, manners, etc., all creating the variety of Vietnamese cultures.

The Government's policy on minorities

Due to the living conditions and customs, the level of development of the different nationalities is not the same. The policy of the Government of the Socialist Republic of Vietnam towards ethnic minorities, which has been constant for years, is clearly presented in Vietnam's 1992 constitution, which states:

The Socialist Republic of Vietnam is the unified State of all nationalities living on the territory of Vietnam.

The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and forbids acts of national discrimination and division.

Every nationality has the rights to use its own language and system of writing, to preserve its national identity, and to promote its fine customs, habits, traditions and culture.

The State carries out a policy of comprehensive development and gradually raises the material and spiritual living conditions of the national minorities.

Prompted by this point of view, we resolutely support the struggle against discrimination of nationalities, tribes and races, thus protecting the legal rights of all nationalities.

Government programmes in minority areas

The implementation of that policy has yielded positive and encouraging results. The Government has carried out many national programmes to build infrastructure facilities in service of socio-economic development in the areas of ethnic minority groups, or programmes of afforestation on denuded land and

barren hills. Some programmes to assist ethnic minority groups face special difficulties, like community health programmes (especially against malaria or goitre), programmes for educational development, or the opening up of centres for disabled, lonely people and orphans.

In the period of economic development in line with market orientation, the Government has conducted a subsidy policy for the transportation of essential commodities to ethnic minority groups, and pupils of minority groups have been given writing paper. These policies have resulted in considerable change. From a self-sufficient economy, such as picking and gathering to permanent agriculture, the areas of ethnic minority groups have seen development oriented towards commodity production. The policy of encouraging permanent agriculture is very important and has gradually been carried out with significant results.

Nowadays, villages are connected by roads, so minority groups can acquire more knowledge. According to their position, every citizen has a different duty to fulfil. In Vietnam, every citizen is equal. However, due to the natural calamities and denuded land, the State has had to create policies suitable for minority groups.

Education and political representation

Because minority groups live in scattered communities, schooling is very difficult. Therefore, the Government has opened many boarding schools for minority children. The Government has educated minority children from the first grade to graduation. Then, children can take exams to attend college or the university. If they pass, they can obtain scholarships and if not, they are still sent to college without paying a fee, but they have to catch up with the other students.

Owing to this, our Government has trained many minorities to become science and technology cadres as well as cadres for government positions. The languages and writing of many minority groups are used on radio and TV and in many fields such as communication, education and criminal and civil court trials.

All nationalities are entitled to the right and obligation to take part in state management. Their members are entitled to stand for and to vote in elections to the state organs, from the grass roots to central government levels. In the Parliament of the Socialist Republic of Vietnam, the minority members occupy 16

per cent of all seats. The president of the National Assembly is a minority person. At the central level, we have ministers, vice-ministers, heads of departments, generals and senior officers who are members of ethnic minority groups.

Mr. Cu Hoa Van, Vice President of our National Assembly's Council of Nationalities, is a member of my Hmong group. And the president of our provincial council is also a Hmong.

Challenges for the future

However, we know clearly that the development of all ethnic minority groups is at different levels. Because of the geographical conditions of the areas they inhabit, the ethnic minority groups still face a number of difficulties such as poor transportation, a high illiteracy rate, and some customs and habits can still be called backward. These problems limit development.

To promote development of all ethnic minority groups equally, we have to find proper methods, new inventions and learn from the experiences of the ASEAN (Association of South East Asian Nations). In addition to equality, the most important thing we have to improve is the living standard of ethnic minorities in every region, both in substance and spirit, creating equal living standards and sweeping out imbalances between nationalities.

The Government must make adequate investments in both capital and technology transfer in order to boost production. We must have better education to train more talented cadres among ethnic minority groups. At the same time, every nationality has to protect and improve their nation's culture and their self-reliance, in order to advance to the same level of development as neighbouring nations, thus contributing to prosperity and a happy life.

INDIGENOUS PEOPLES' JURIDICAL RIGHTS AND THEIR RELATION TO THE STATE IN INDIA



Diversity: the existing and basic reality

In very early times mankind must have coped more easily with the differences in ethnicities and cultures. This is perhaps because the differences therein had not as yet evolved into a plethora of pronounced variations or because the abundance of time and spatial vectors allowed each to more or less mind their own business or let others be. Gradually, this changed.

By the time of the rise of the nation-states or states in Europe or even earlier, many peoples were beginning to unite themselves into more populous groups over larger areas, which the united group could then claim as its own. In the process, differences in dialects, languages, cultures, etc. were either reduced or obliterated, giving way to more simplified and homogeneous wholes. A process leading from the complex to the less complex. The Italian and German unifications are good examples of the assertion of peoples into a more compact, simplified, united and hence strong people. Their chaos turned into some kind of cosmos of their own. It would have been more tolerable if this newly found strength had not then led them into a game of colonialism and empires with its attendant conversion, assimilation, integration or outright obliteration, ethnocide or genocide of the peoples whom they either enslaved or conquered. It would be unfair to name only the Italians and Germans, there were others, too. Nevertheless, they still largely attest the euro-centric nature of the then situation in the world.

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The probability is that one sort of assertion is matched or countered by another sort of assertion, one sort of unity by another sort of unity, and the assertion of unities may give a sense of, or really lead to the resolution of particular problems or issues. But what is lost in the process is not given much thought.

What I am trying to say is that in our headlong rush for simplification, we are losing sight of the complexities. In our urge to be united and strong, we are losing sight of the diversities involved. This has been the dominant approach towards man and nature for the last few centuries. Thank God, that at least in the realm of nature, man has now begun to talk about conservation of biodiversity, regeneration etc. Let us hope that it is not only idle remain. It is, however, equally important that we also begin speaking about the inherent diversity of humankind and begin to do something positive about it. Otherwise, it will result in a kind of 'eco-fascism' of nature over men and wielded by a few.

The indigenous peoples or the Adivasis of the world have been victims of the aforementioned approach in almost all countries in all corners of the world, and not necessarily only as a result of euro-centric expansionism. In fact, the Europeans, Australians and New Zealanders are gradually realising their past follies and making amends for them, though much still needs to be done. The Americans are rather reluctant on indigenous issues and at times co-operate with some of the many Third World countries which at present have the worst kind of record against indigenous peoples. In fact, a devastating quote by Bernard Nietschman would be most appropriate here:

"Third World colonialism has replaced European colonialism as the principal global force that tries to subjugate indigenous peoples and their ancient nations [...]. Invasion and occupation of indigenous nations once done by white expansionist powers are now done by foreign brown expansionist powers [...] what is called 'economic development' is the annexation at gun-point of other peoples' economies. What is called nation-building is actually state expansion by nation-destroying. Territorial consolidation, national integration, the imperatives of population growth and economic development are phrases Third World states

use to cover up the killing of indigenous nations and peoples" (Nietschman, cit. in: Penz 1992:159).

In spite of such sufferings, crimes and killings being inflicted by states and their societies, the indigenous peoples have established that their issue is not only one of equality within a specific 'nation' state, but also one of the recognition of their identities as separate and distinct nations or peoples on the international arena; hence to be equally conferred the rights that accrue to nations or peoples, internationally. This is an issue which can only be addressed and resolved by the right, appropriate and correct approach towards diversities.

Having said that, we shall now move on to addressing the question of juridical rights of the indigenous peoples of India and their relationship with the Indian state.

The caste system

Before dealing with any social or political issue in India, one has to come to an understanding of the dominant social system in the country. This will give one an insight into the social character of the dominant society or societies in India and the repercussive effects it has had, especially on the oppressed and marginalised, and in this context *inter alia*, the indigenous peoples or the Adivasis of India. This understanding must be internalised, felt emotively. Unfortunately, in most cases this is not so for many, even amongst those who are well-intentioned. This is because their understanding has come to them through the readings and interactions of and with upper castes, class and national elites in India and their literature. Rarely are they able to capture the horrors, the agony, pain and injustice against those who are oppressed by the dominant caste sections in their true significance. This horror, this agony and pain and injustice can only be understood if one experiences it or tries to experience it. Above all, it must be seen and witnessed as if seen through their eyes.

W.N. Kuber has summarised the basic principles of caste as "(1) inequality of mankind based on birth, (2) inequality of professions and (3) absolute and rigid social exclusion between the four main castes and the equally rigid sub-divisions between themselves; [the] whole system permeates the dogma of Brahmanic superiority" (Kuber 1990).

The worst sufferers of the oppressive caste system were the untouchables: groups who did menial jobs, manual in nature, and who were often regarded as being ritually unclean and polluting. "The touch or shadow or even voice of an untouchable was deemed by caste Hindus as polluting. They were forbidden to keep animals and to use certain metals for ornaments, and had to live in the unhygienic outskirts of villages. [. .] They were denied the use of public wells and their children were not admitted to schools attended by caste Hindu children. All temples were closed to them. They could not get service even from barbers and washermen. They were treated by caste Hindus as sub-human. Public services, including police and military services, were closed to them. [. .] Their social segregation kept them untouchable throughout their life. They remained socially degenerated, economically impoverished, politically servants of the upper classes, and were permanently excluded from educational and cultural opportunities. They were born as untouchable, they lived and died as untouchable" (ibid.:2). G.S. Ghurye has cited "endogamy as the essence of the caste system" (ibid.: 3).

Dr. B.R. Ambedkar, one of the great 'untouchable' leaders treated Hinduism as "[. .] a mass of sacrificial, societal, political and sanitary rules and regulations, all mixed up" (ibid.:80ff). He remarked: "The religion which discriminates between two followers is partial and the religion which treats ten millions of its adherents worse than dogs and criminals and inflicts upon them insufferable disabilities is no religion at all" (ibid.:80). Elsewhere, Ambedkar has said, that the religion of the Hindus is incompatible with fraternity, liberty and equality.

How does all this relate to the indigenous peoples of India? The indigenous peoples of India, it must be recollected, are ethnically and culturally different from the Hindu peoples. There can be no doubt that some amongst them may have been assimilated into the lower rungs of Hindu caste society, but most of them to a great degree retained their cultural, linguistic, religious, economic and political separateness. Particularly, they held on to the attachment to their traditional lands or territories. The untouchables, on the other hand, were largely culturally and religiously assimilated into Hindu society, and their political incorporation into caste Hindu society was achieved by Gandhi's epic fast of the year 1931.

The evils of caste society have a bearing on the indigenous peoples to the extent that the Adivasis were similarly regarded with no less contempt and lack of esteem as was extended to the untouchables. In fact, they were derisively regarded as 'junglees' or wild people. Hence, all attempts to subjugate them socially, economically and politically were naturally legitimate.

However, fortunately, the Adivasis being more independent and also living in less accessible terrain were largely saved from the absorption into Hindu caste society, with the indigenous peoples of the North-East being the least affected; much less than the Adivasis of the central Indian tribal belt, while the Adivasis who were more dispersed in western and southern India were to some extent more influenced by Hinduism. But even they could be distinguished from Hindu caste society, and certainly they did not form part of orthodox Hindu caste society. Still, as one travels from the south and west of India, to the east and north-east, one can easily see the increasing social, economic and political independence and separateness of the indigenous peoples.

In spite of all these characteristics, at the time of independence, no Adivasi dominated state was accorded in the Indian union. The excuse was that the areas concerned did not have linguistic uniformity. It can be said in passing that even now in no state of India do we find linguistic uniformity, let alone at the time of independence when we began with only 14 states. Even now, in the list of constitutionally recognized languages, not a single one is a tribal language. Why this discrimination? Is it because tribal languages are not related to the 'sacred' Sanskrit language? Even Sanskrit, which is now regarded by many as a 'dead language' and spoken in no significant area of the country, is given constitutional recognition. Then why not Bhilali, why not Santhali, Kurux, etc.? Therefore, the Adivasi dominated states or varieties of so-called autonomous regions that we now find in the country were not very lately conferred by the judicious and fair sense of the Indian rulers, but are the result of protracted, and at times, bloody heroic sacrifices of the indigenous peoples. The struggle for autonomy and self-determination is still a feature of the Adivasi regions in India.

Therefore, one must not be fooled that a formal adoption of a constitution bearing the positive features of many Western ones has automatically resulted in the repeal of the caste system and the values on which it subsisted and thrived. It is an

accepted sociological fact that the values of any society are reflected in the institutions it builds, be they legislative, executive or judiciary. Hence, we can say that caste prejudice has adapted and taken new forms, and the denial to the Adivasis of their rightful dues is only a reflection of the same.

Therefore, the Asia Indigenous Peoples Pact has rightly declared that:

"In the Asian Sub-Continent and to a lesser extent in other Asian countries, many people suffer from the evils of casteism and like behalf, which practice nullifies, diminishes or impairs the equal recognition, enjoyment and exercise of human rights and fundamental freedoms in the areas of political, economic, social, cultural or any other sphere of public life. We therefore recognize and declare casteism as a form of racism" (AIPP 1993:3).

But what are the juridical rights bestowed on the indigenous peoples in India?

The Indian Confederation of Indigenous and Tribal Peoples (I.C.I.T.P.) has laid down in an official statement to the Government that the Indian Constitution confers the following provisions for the safeguarding of the interests of the Scheduled Tribes:

- (a) the Parliament and the state legislatures with Tribal Elected Members from the Reserved Constituencies;
- (b) the 6th Schedule and the 5th Schedule;
- (c) the Scheduling of the Castes and Tribes became a State subject and not a central government subject;
- (d) the Commissioner for Scheduled Castes and Scheduled Tribes is to place an annual report before Parliament, with no executive functions;
- (e) a Parliamentary Committee for the Welfare of the Scheduled Castes and Tribes, created later on, to look into some specific aspects and to report;
- (f) powers of the Governors (a Constitution within the Constitution);
- (g) Tribal Advisory Committees both at the centre and in the states;
- (h) reservation of employment in the governments and public undertakings;
- (i) educational facilities and scholarships;

- (j) special state legislations to safeguard the Adivasi from land alienation;
- (k) Tribal Development and Financial Corporations in the state governments;
- (l) Prime Minister's 20 point programme.

Of these (a), (b), (c), (d), (g), (h), and (i) are of much importance. We deal with some of them below, beginning with the mechanism and questions of scheduling of tribes.

Scheduling

Article 342 of the Constitution lays down the power by which the state may notify or specify any tribes or tribal communities for scheduling. By the mechanism of scheduling, the constitution has enabled a list to avail of certain positive discrimination treatment in the area of educational scholarship, employment opportunities and development and welfare schemes.

The precise language is:

"(1) The president may [with respect to any state or union territory], and where it is a state [after consultation with the Governor thereof], by public notification, specify the tribes or tribal communities which shall for the purposes of this constitution be deemed to the Scheduled Tribes in relation to the state [or Union Territory as the case may be]".

"(2) Parliament may by law include or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification".

From the language of the two clauses itself, it is apparent that if power vests in a dominant, caste-class-nationality elite, whose interest is to a great extent inimical to the interests of the Adivasis, then scheduling can be a tool to politico-legally schedule some groups and not schedule others. Also, only a part of a group may be scheduled.

This does not necessarily coincide with historical, sociological or anthropological advice or expertise. For instance, in Jharkhand, many groups which were categorised till 1931 along

with the other Jharkhandi indigenous groups are no longer scheduled now. This, along with the kind of self-perception communities begin to have of themselves, has fragmented inter-tribal solidarity and hence weakened the Jharkhand movement. Hence, it is much more important for the Jharkhandi communities to define themselves rather than sanctify a mechanism of scheduling essentially in the hands of caste-class-nationality elites, who are largely opposed to the genuine economic and political rights of Adivasis. Moreover, scheduling or non-scheduling in the context of a caste society can wreck havoc and confusion on the identificational self-perception that communities have of themselves. For instance, the non-scheduling of the Kurdmis of Jharkhand who were in 1931 still categorised along with the other Scheduled Tribes has created much confusion and consternation for the Kurdmis, with many amongst them wanting to climb the caste social ladder, while others are opposed to integration with caste communities.

There are many other such Jharkhandi communities who have been similarly confused. Many communities who could more appropriately be classified as tribes are put in the caste classification. All this has resulted in the ungluing of subaltern Jharkhandi cohesiveness, which then consequently hampers the Jharkhand movement. This can only be explained with the logic of conspiracy. Added to this is also the fact that it is then only the tribes who are scheduled who can take advantage of the particular benefits that have been constitutionally reserved for them. Moreover, the principle of area restriction, whereby a scheduled tribe is a scheduled person in one state, while not in another, has further confounded the question of their identities as well as their legal and constitutional dues.

Positive discrimination and reservations

In Article 15 (4) of the Constitution of India, it is stated that "Nothing in this Article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes". And Article 16 (4) states: "Nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented

in the services under the state". Article 15 (4) enables the state to make for the educational, social or economic advancement or benefit of the socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. It is not obligatory, but leaves it to the discretion of the respective government to take suitable actions.

The basis or the principle on which Article 15 (4) rests is that protective discrimination or preferential treatment is valid because the socially and educationally backward classes need it, so that in due time they would be in a position to stand equally with the more advanced sections of society. Hence, reservation of seats in educational institutions for students of the backward classes and the Scheduled Castes and Tribes is covered by Article 15 (4).

By Article 16 (4), the state is permitted to make provisions for the reservation of any backward class of citizens who are, in the state's opinion, not adequately or sufficiently represented in the services under the state. For Article 16 (4) to apply, two criteria must be complied with: (1) the classes of citizens must be backward, i.e. socially and educationally, and (2) the class is not adequately represented in the services under the state. However, a seminar on the reservation policy at the Indian Social Institute in Delhi has concluded that "reservation of seats in educational institutions, in services, in the matter of selections, admissions, recruitment, appointments and promotions are being vehemently opposed by members of the upper castes. If left to them, they will not permit the reservation policy to succeed. As long as such reservation remained only on paper, it served the limited purposes of political promises to SCs and STs. In places where few members of SC/ST Communities have begun to take advantage of such reservations, deep and widespread resentments against them have emerged amongst the upper castes. They fear that their unquestioned monopoly in all areas of importance may not last for long. They also fear that SCs/STs would become so socially liberated and economically independent that they may not continue to be available as their cheap labour source any more" (Indian Social Institute 1985).

Further, in "... the matter of admissions, appointments, and promotions of SCs and STs, both the prejudices of the officials and the reservation rules themselves come in the way. Over the years, a number of discrepancies and deliberate distortions have

crept into the Rules and Procedures. As a result, there are many offices and departments where reservation rules have been followed meticulously on paper, but yet the representation of SCs and STs remain poor. Many posts have been formally de-reserved, allowed to lapse or moved out of the purview of reservation. Hence, there is need to take a hard look at the reservation rules, revise them, simplify them and make them more purposeful and really effective (ibid.).

Therefore, one can say that protective discrimination at the most has been very grudgingly and hesitantly conferred and implemented by state and society for the benefit of the conferrees. However, the real evil, often called conspiracy, has not really been this grudge and hesitation by state and society, but the fact that these education and employment sops and allurements have actually deprived the indigenous communities of their educated lot, who are in great numbers co-opted into the mainstream society with very little care and concern for their more impoverished and struggling brethren. All that the overwhelming majority of them care about is the security of their salaries, their wives and children. What these sops and allurements have done is to confuse, cloud, corrupt, or castrate the political will of the educated elite of the indigenous communities into some kind of political oblivion or impotency. And yet it is these same lot who glibly parrot about classless and communitarian indigenous societies. Hence, there is now a need amongst the indigenous peoples of India to do some kind of class analysis, particularly from the grass roots, and seek redressals. On the part of the educated elite it may mean not aspiring for these sops and allurements or handouts, or at the worst opting out of them. Only then can they make a true and meaningful contribution to the struggles of their peoples rather than for themselves.

Political reservations

The Indian constitutional law provides for political reservations at the centre or House of the people and in the state or Legislative Assembly.

By Article 330 of the Constitution, "seats shall be reserved in the House of people for: a) Scheduled castes, b) the Scheduled Tribes".

By Article 332 of the Constitution, it states that "seats shall be reserved for the Scheduled Castes and Scheduled Tribes, [. . .] in the Legislative Assembly of every state".

By Articles 330 and 332 the law in India intends to guarantee a certain number of seats for the representation of the SCs and STs. This reservation of seats, however, is not very meaningful where the overwhelming majority of the residents are tribals, such as in the states of Nagaland, Mizoram, Meghalaya etc., and have in fact now been displaced. Where influx of non-tribes has taken place, there it serves as some kind of check, but here the evils of a party system are more apparent. Non-tribals also get a chance to vote for the tribal candidate, and may put their weight behind a candidate who is more amenable to them or their philosophies. The candidate elected may be more a member of the party concerned, than a candidate of the tribals who has the genuine interests of the tribals at heart. That is why Dr. B.R. Ambedkar had also wanted separate electorates for the Scheduled Castes where SCs would have been voted for by only the SC population. But this separate electorate was ruthlessly killed by Gandhi's epic fast in 1931.

The evils of the party system have not even spared the north-east, where there are tribal majority states. Here too, the national parties with their organisational and financial clout have supported tribal members who perhaps serve more the interests of the party rather than the genuine interests of the local tribal people. Therefore, some have concluded that "[...] the entire system of political reservation has today turned out to be a farce, and meaningless to the SCs/STs. If political reservations for the SCs/STs is to become effective, some way will have to be found in which the SCs and STs can choose their own representative" (Indian Social Institute, 1985). However, it is a sad fact of history, which very few are aware of, that it was due to the machinations of Mahatma Gandhi that the fate of separate electorates, in which the marginalised communities would have themselves elected their representatives, was sealed.

Indigenous territories

Moreover, political reservations were, by Article 334 of the Constitution, also meant to have ceased after a certain number of years. But because of the politically volatile nature of the question and also because of the politics of pampering, no

political party has seriously thought of doing away with it. Still, as long as that continues we will continue to have some kind of proxy candidates.

Most informed persons are aware of the importance of land to the polity, economy, culture and spirituality of indigenous peoples. In India, except for the north-eastern part (and that too not wholly), corporate and communal spaces and territories have been legally recognized and ceded. More importantly, the de facto nature of the peoples' control over their territories has played an important role in the retention of much of their territories. It is only now, after independence, that government intrusion and penetration is taking place. In the rest of India, the territorial spaces of the indigenous peoples have been more intruded upon and disturbed. This is the case to a larger extent in the central Indian area, and even more so among the dispersed tribes of western and southern India. However, the struggle for the control and ownership of their lands was never really given up and this struggle is becoming more strident now.

Historically, one can safely conclude that there may have been a gradual loss of Adivasi lands to the private non-indigenous persons. It has not been possible to plot out the extent of land alienation of the tribals, therefore there is need for more exhaustive and in depth studies in this area. However, we can emphatically state that the organised takeover of the Adivasi lands intensified with industrialisation and urbanisation after independence. The table below is indicative of the extent of the catastrophe.

In spite of legal safeguards against the alienation of Adivasi lands, their lands are being lost because of the concept of Eminent Domain of states and the central laws like the Land Acquisition Act, 1894, the Coal Bearing Area Acquisition Act etc., are endowed with power to acquire lands for 'public purpose', 'national interest' and the like.

The scheme of the Land Acquisition Act, 1894 (L.A.A.) under Section 4 requires the publication of a preliminary notification on the land required for a public purpose or for a company. This is followed by an entry, survey, and investigation by authorised government persons. Objections to such acquisitions may be made within a 30 day notification period by any person having an interest in the land to the collector. The collector must hear the objections.

Category of Project	Displaced Persons (DP)		DP Resettled		Backlog		Tribals Displaced		Tribals Resettled		Backlog	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
Dams	164.0	76	41.00	25	123.0	75	63.21	38.5	15.81	25	47.40	75
Mines	25.5	13	6.30	25	19.2	75	13.30	52	3.30	25	10.00	75
Industry	12.5	5.9	3.75	30	8.75	70	3.13	25	0.80	25	2.33	75
Wildlife Sanctuaries	6.00	2.8	1.25	21	4.75	79	4.5	75	1.00	22	3.50	78
Others	5.00	2.3	1.50	30	3.50	70	1.25	25	0.25	20	1.00	80
Total	213.0	100	53.80	25	159.2	75	85.39	40	21.16	25	64.23	75

A conservative estimate of the number of total persons displaced and tribals displaced by development schemes 1951-1990 in India (in 100,000). (Source: Tribals displaced. The price of development, by Walter Fernandes, Indian social Institute, New Delhi)

By section 6, the land required for public purpose must be certified. The declaration must be published in the official gazette as conclusive evidence that a particular land is marked for public purpose. After this declaration, the collector must obtain the order of acquisition.

Section 9 enjoins the collector to give notice to all persons interested in the government's intention to take possession of the land. The claims of compensation for all interest in such land may be made to him at a time and place specifically mentioned. Such notices are served on the places or near the land to be acquired.

Section 11 empowers the collector to make enquiry into measurements, value and claim and to issue the final award, and section 15 lays down that for determining the amount of compensation, the collector must be guided by section 23 and 24. After the award has been issued, the collector can, according to section 16, take possession of the land which thereupon vests absolutely in the government, free from all encumbrances.

According to section 18, it is open to any interested person not accepting the award to apply in writing to the collector to refer the matter to the court for determination with respect to any controversy over the measurement of the land, the amount of compensation or the apportionment of the compensation among the persons interested. As laid down in section 22, the proceedings will be in an open court where lawyers can appear, plead and act. The criteria for determining compensation are set out in section 23.

But we also have laws that may even over-ride the L.A.A., such as the Coal Bearing Area Act (Acquisition and Development Act 1957), which is a central legislation. "In the inherent conflict between the state governments [. . .] the central government's control over the minerals under the land, the C.B.A.A. has precedence over the L.A.A." (Andolan/Kendra 1993:22). The C.B.A.A. is used in preference over the L.A.A. because "[. . .] this act also provides for entry into the lands for the purposes of prospecting, that the acquisition proceedings are conducted by agencies subordinate to the Coal Ministry and not to the state government, and that the estimation of land value is done after the land vests in the government and concurrently as in the L.A.A. [. . .]" (ibid.).

Amongst the criticisms levelled against the C.B.A.A. by Bharat Jan Andolan and Nav Bharat Jagriti Kendra (1993:36ff) are the following:

"Firstly is the fact of C.C.L. being given absolute rights over the coal area, with few counter checks. It gives clearance to a company to acquire lands according to norms fixed by itself. Having issued notification to respective state and local governments, C.C.L. itself then proceeds to undertake the full procedure of acquisition. It can and would seem to do so without reference to local government. It is this fact of lack of wider consultation, in fact the arrogance to nobody, that underlies everything being done".

"Secondly, another weakness in the system is that the 'competent authority', the acquirer, the assessor and the appeal tribunal, are all of or chosen by one party: Coal India Limited. The court of appeal is not the local judiciary, but a tribunal set up by the Coal Ministry [. . .]. This is to the detriment of oustees and affected persons. It places the court of appeal at a place, less accessible to the people [. . .]".

"Thirdly, the communication to the oustee is left far too much to chance. An illiterate person from the village will not be reading a government notice board in a government office up to five miles away [. . .] nor will he be waiting for his daily copy of the [newspaper] to keep up with chance land acquisition rules".

"Fourthly, the fact is that the people feel helpless face to face with a powerful public sector company who acts as if it itself is the government and is above the law [. . .]".

"Fifthly, the preliminary surveys done by C.C.L. have a very limited perspective. They are land related. From the material point of view, surveys of material assets such as wells and trees are not surveyed. Above all no questions were asked about the social needs and problems of the people".

Therefore, in spite of local laws like the Chotanagpur Tenancy Act (1908) (C.N.T.A.) in Jharkhand for the benefit of the indigenous peoples, the state has powerful laws like the L.A.A. and the C.B.A.A. to acquire Adivasi lands.

Though the law as laid down in the Bello Banerjee's case (AIR 1954, sc. 170) that the acquisition of land is subject to the conditions of 'public purpose' and 'compensation', many or most also agree that a "critical examination of the various stages of evolution of this power [Eminent Domain] and its ethical basis will serve no useful purpose as the power has become firmly established in all civilised countries". As if this power itself was a criteria for being called civilised. Unfortunately, the indigenous peoples have been the victims of such civilised laws in such civilised countries.

Finally, we come to the mechanisms of autonomy that have been provided constitutionally or by law in the country.

Mechanisms of autonomy

On 20 February 1993, as a result of a violent and prolonged agitation, an accord was signed between the All Bodo Students Union (ABSU), the Bodo Peoples Action Committee (BPAC) and the Additional Chief Secretary of Assam for setting up the Bodoland Autonomous Council (B.A.C.). However, the constitutional validity of the B.A.C. was challenged in the High Court of Assam on the basis that apart from provisions of Article 224 of the Constitution and its attendant Fifth and Sixth Schedules, there are no other constitutional provisions for the administration of tribal areas. Hence, "it is beyond the power and competence of the state legislature to enact such a legislation to provide for a separate scheme of administration of a particular

area in the plains district of the state in view of the fact that no such power has been conferred and any such exercise would be against the constitutional mandate" (The North East Voice 1994).

The history between the 5th and the 6th Schedule

There has been amongst the various communities and peoples of India, a long tradition of village government or local self-rule. It may not have been an ideal form of government, but it existed, so much so that Sir Charles Metcalfe, a British Governor in India in the 19th century, observing the *panchayat* - a council of five persons in a village which were centres of social, economic and administrative activities - labelled it 'Little Republic'. These *panchayats* were largely prevalent in caste based societies. The indigenous peoples had their own form of governments or councils which extended from the hamlets and villages over larger areas via inter-village and inter-community solidarities. A few writers have sought to explain that no form of socio-political organisation existed amongst the Adivasis of India. These of course have been countered by more authentic writings, according to which government in Adivasi society as compared to caste based society was more liberal, fraternal, egalitarian and just - in a sense small Democratic Republics.

The resilience of the indigenous peoples' governments is well demonstrated by the fact that throughout their history and up till now, the Adivasis in India have rebelled and revolted against external forces in defence of their land, polity and independence. These revolts became critical during British intrusion into their areas. Jayaprakash Rao writes:

"Throughout the 19th century numerous tribal revolts broke out in the country with the extension of the modern administrative system by the British into the tribal areas. The British used force from time to time to contain the unrest among the tribal populations. To deal with the tribal unrest on a long term basis the British evolved special laws for administering the tribal areas as the simple people were culturally and economically different from the neighbouring peasant communities" (Rao 1995).

The first important measure taken to deal with all the tribals as a class may be called the Scheduled Districts Act XIV of 1874. The Act enabled the Executive to extend any enactment in force

to any part of British India to a 'Scheduled District' with such modifications as might be considered necessary. Thus the Executive was vested with the authority to exclude these areas from the operation of ordinary laws and give them such protection as they might need.

Then in 1918, by the Montague-Chemsford Report, the question of the administration of Backward Areas was dealt with. The report opined:

"[. . .] that the political reforms contemplated for India couldn't be applied to the Backward Areas where people were primitive and there was no material on which to base political institutions. They suggested demarcation of such areas and the exclusion from the operation of the normal laws of the provinces. The report recommended that such areas be directly administered by the Head of the provinces. The Government of India Act 1919 was enacted to implement the recommendations of the report".

The 1919 Act divided the backward tracts into two categories: Wholly Excluded Areas and Modified Excluded Areas in which the schemes or laws could be introduced with modifications. The next major step was the Government of India Act of 1935. By this Act the backward tracts were classified as 'Excluded' and 'Partially Excluded' Areas. The North-East Frontier Tract (Sadiya, Balipara and Lakhimpur), the Naga Hills District, the Lushai Hills District and the North-Cachar Hills Sub-Division of Cachar District were specified as 'Excluded Areas'. The 'Partially Excluded' areas were the Garo Hills Districts, the Mikir Hills (Nowgong and Sibsagar), the British portion of Khasi and Jaintias Hills Districts other than the Shillong Municipality and Cantonment areas. The principle adopted in the selection of these areas was that where there was an enclave or a definite tract of country inhabited by a compact tribal population, it was classified as an 'excluded' area. Where, however, the tribal population was mixed up with the rest of the communities and the tribals were substantially enough in number, the area was classified as 'partially excluded'. The Excluded Areas were placed under the provincial rule of the Governor acting in his direction. The Partially Excluded Areas were left within the ministerial responsibility with respect to the administration of these areas. The Governor had the power to over rule the

ministers, if it was deemed fit to do so. No act or law of the central or provincial legislature would apply to any of the areas. But the Governor had the authority to apply such laws with modifications as considered necessary.

Just before independence and afterwards, strong democratic institutions at the grass roots were envisaged. Therefore, the idea of democratic decentralisation through *Panchayati Raj* became one of the directive principles of state policy. The case of the tribals, it was realised, needed different treatment, and the constitution makers also recognised the necessity of different political and administrative set-ups for the tribal areas. Hence, they provided for a Sixth Schedule in the then area of Assam or the North-East. For the rest of the tribal areas of India a provision known as the Fifth Schedule was provided for. In doing so, the constitution makers were guided by the following main consideration:

- a) the necessity to maintain distinct customs, socio-economic organisation and political culture of the tribal people of the region and to ensure autonomy of the tribal people and to preserve their identities;
- b) the necessity to prevent their economic and social exploitation by more advanced neighbouring people of the plains, and
- c) to allow the tribal people to develop and administer themselves according to their own genius.

Currently, the Sixth Schedule operates in the states of Assam, Meghalaya, Tripura and Mizoram in the north east, while the Fifth Schedule covers the tribal areas of the rest of the country. However, while scheduling in 1874, the British omitted certain areas having tribal majorities from scheduling, which remained unrectified even after independence.

"To rectify this anomaly, the parliament amended the Fifth Schedule of the constitution in 1976, enabling the President of India to increase the scheduled area and the Government of India directed the State Governments to send proposals for scheduling such tribal majority villages,

areas. However, many State Governments did not send proposals for scheduling the tribal majority villages/tracts and these have remained un-scheduled to this day. The net result is the absence of the scheduled areas in the states of Tamil Nadu, Karnataka, Kerala, U.P. [Uttar Pradesh] and W.B. [West Bengal] in spite of a large number of tribals living in compact areas. In the states where there is a scheduled area large tracts of the tribal areas hitherto un-scheduled, still remain outside the boundaries of the scheduled area" (Rao 1995).

What is the Fifth Schedule?

According to Article 244 (1) of the Indian Constitution, a schedule known as the Fifth Schedule provides for the constitution of a Tribes Advisory Council (T.A.C.) in each state having a 'scheduled area', and if the president so directs, also in any state having Scheduled Tribes but no Scheduled Areas. The T.A.C. shall consist of "[. . .] not more than twenty members of whom, as nearly as may be three fourth shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the state".

However, the T.A.C. members are totally incapacitated by the overriding powers of the governor. Section 4 (2) of the Fifth Schedule says: "It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and the advancement of the Scheduled Tribes in the state as may be referred to them by the Governor". The Governor's power is supreme. What if the Governor does not refer to them, then what shall the T.A.C. advise on? And anyway, it is advice only pertaining to 'welfare and advancement' which seems rather vague and does not really amount to much in these times of increasing substantive restitution, restoration and recognition of tribal lands, economic, socio-cultural, religious and political rights.

Paragraph 5 of the Schedule says:

"[. . .] the Governor may by public notification direct that any particular Act of parliament or of the legislature of the state shall not apply to Scheduled Areas or any part thereof in the state. The Governor may also make regulations for peace and good Government of a Scheduled Area in consultation with the Tribes Advisory Council, in particular

such regulation may, a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas, b) regulate the allotment of land to members of the Scheduled Tribes, c) regulate the carrying on of business as moneylenders by persons who lend money to members of the Scheduled Tribes. [. . .] All regulations made under this paragraph must, however, be submitted to the President and until assented to by him, shall have no effect”.

So we see that the President's assent makes the T.A.C. even more remote and centrist.

The powers conferred on the Governor under this Schedule have been left flexible with the intention of making different sets of regulations to suit socio-cultural and socio-economic needs of different tribal communities living in different states or in different areas within a state. The Governor could have extended the Forest Act, excise Mining Land Acquisition Laws and Criminal and Civil Procedure Codes with necessary modifications to the scheduled areas. For instance, the Governor could have modified the Forest Act enabling tribals living in scheduled areas to continue with shifting cultivation and to meet their small timber requirements without any restrictions. Similarly, the Governor could have prevented the vending of liquor by outside agents or the state agencies in the scheduled areas and allowed the tribals to distil liquor to meet religious requirements. Unfortunately, in none of the states having scheduled areas, have the Governors used the discretionary power conferred on them by the Fifth Schedule while extending the Acts and laws made by the state legislatures and parliament. Why this inactivity in one instance and activity in another? Could it be because the office of the Governor is after all only comprised of humans? More so, this bias would only be more logical and obvious if the states were dominated and governed by non-indigenous ethnic and nationality groups.

The actual operation of the Fifth Schedule shows that the Tribes Advisory Council meets infrequently, and when they do, they are more concerned with petty matters of local relevance than policy issues of general concern for the tribals. As regards the role of the centre to protect the tribals, it is to be noted that except once, the centre has never invoked the authority of the Fifth Schedule. Analytically, it can be seen that the Schedule can

be used by the central bureaucracy to subvert in collusion with the state bureaucracy the political process involving the tribals at the state level.

What is the Sixth Schedule?

The Sixth Schedule of the Constitution of India is applicable to the tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram. The Sixth Schedule provides for an Autonomous District Council with executive, legislative and juridical powers. According to section 2 of the Schedule, “[t]here shall be a District Council for each autonomous district consisting of not more than thirty members of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage”. This 13.3 per cent nomination is less discriminatory compared to the T.A.C., where 25 per cent of the members are nominated. Further, “[. . .] if there are different Scheduled Tribes in an autonomous district, the Governor may by public notification divide the area or areas inhabited by them into autonomous regions” and shall have a Regional Council.

Both the District and Regional Councils are empowered to make laws on the following:

- a) the allotment, occupation or use, or the setting apart, of land, other than any land which is reserved forest for the purpose of agriculture, or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;
- b) the management of any forest not being a reserved forest;
- c) the use of any canal or water course for the purpose of agriculture;
- d) the regulation of the practice of Jhum or other forms of shifting cultivation;
- e) the establishment of village or town committees or councils and their powers;
- f) any other matter relating to village or town administration, including village or town police and public health and sanitation;
- g) the appointment or succession of chiefs or headmen;
- h) the inheritance of property;
- i) marriage and divorce;
- j) social customs.

However, until the proposed laws are submitted to the Governor "[. . .] and until assented to by him [they] shall have no effect". But what if the traditional bodies in traditional manner develop laws on succession of chiefs or headmen, marriage and divorce, and social customs, amongst others, then what happens? Nevertheless, any Act made by the Parliament or the state Legislatures on the powers conferred on the Autonomous District Councils cannot be extended to the Autonomous District Councils without their prior approval.

By section 4, both councils may constitute village councils or courts for the trial of certain cases and suits subject to the powers and procedures of the code of civil procedure 1898.

"The District Council [. . .] may establish, construct or manage primary schools, dispensaries, market [cattle ponds] farms, fisheries, road transport and waterways in the district and may, with the previous approval of the Governor make regulations for the regulation and control thereof and in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district".

Both councils, in their respective areas and jurisdiction "[. . .] have the power to assess and collect revenues in respect of such lands in accordance with the principles for the time being followed by the government of state in assessing lands for the purpose of land revenue in the state generally". Similarly, both councils can "[...] levy and collect taxes on lands and buildings and tolls and persons resident within such areas". The District Council is also empowered to levy taxes on:

- a) profession, trades, callings and employment;
- b) [...] and animals, vehicles and boats;
- c) taxes on the entry of goods carried in ferries;
- d) taxes for the maintenance of schools, dispensaries or roads.

However, once again, unless the regulations are submitted and assented to by the Governor, they are ineffectual.

"According to paragraph 13 of the Sixth Schedule, the estimated receipts and expenditure pertaining to a District Council are first to be placed before the District Council for

discussion and there after be shown separately in the Annual Financial Statement of the state to be laid before the state. Legislative under Article 202 of the Constitution. In fact, the discussion in a District Council is merely a formality, and no real autonomy in budgeting has been conferred to the District Council. The State Governments have endeavoured to control the financial autonomy of the Autonomous District Council by manipulating quantum of fund that should be placed to the Council" (Verma, n.d.)

The autonomy of A.D.C. have been much affected in the area of financial independence. They have to depend on their respective State Governments in matters of financial allotments. This in turn has reduced their autonomy and performance. One of the sources of finance of A.D.C. experience is the share of royalty accruing each year from the licenses and leases for the purpose of prospecting for or extraction of minerals granted by the state Government in respect of any area within an autonomous district. Many A.D.C.s have complained that they are not given their due share from the collection of royalties and taxes. Secondly, the A.D.C.s have complained that because of an obstructive attitude of the respective State Governments in the matters of the release of funds, they had been forced to adopt undesirable practices so as to raise funds in order to discharge their constitutional obligations, like running primary schools, dispensaries and even to meet the salaries of their employees.

The role of the Governor is very powerful. Section 15 of the Schedule states, "[. . .] if at any time the Governor is satisfied that an act or resolution of the District Council is likely to endanger the safety of India (or is likely to be prejudicial to public order) he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the council and the assumption to himself of all or any of the powers vested on or exercisable by the council) to prevent the commission or the continuance of such act, or the giving of effect to such resolution". Further, by section 16 (2):

"If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried out in accordance with the provisions of the Schedule, he may by notification assume to himself all or any of the functions or powers

vested in or exercisable by the District Council, or, as the case may be, by the Regional Council and declare that such function and powers shall be exercisable by such persons or authority as he may specify in this behalf for a period not exceeding six months, provided that the Governor may by further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion”.

Finally, regarding the Autonomous District Councils, after more than four decades of their existence, it is seen that:

“1) The councils have failed to establish healthy conventions in the performance of their functions. There has been no effort to follow healthy parliamentary practices in the legislative field and the control of the legislative wing over the executive wing is almost non-existent.

2) In the discharge of executive functions after several years of working, there has been no perceptible improvement in implementation of projects. No effort has been made by the council to mobilise additional revenue by developing financial resources for undertaking development activities.

3) The District Councils have failed to maintain cohesive relationship between the new constitutional set-up and the traditional tribal institutions. They could not stand as custodians and trustees for the tribal people. Rather it may be said that the District Councils having been armed with constitutional powers have put them under a firm control over the tribal institutions.

4) There is inadequate co-ordination between the official departments and the political components of the District Councils.

The District Councils have the power for recruitment and appointment of staff of certain rank and categories for running their administration. But they have to borrow higher officers from the State Government for policy formation and preparation of various development projects. It

has been noticed that there is a certain apathy to depute experienced and expert officers to the District Councils. Such instances have been found that the State Governments have deputed such officers who are alien to the tribal aspirations and culture and customs. These officers virtually create hindrances in every phase of development works of the District Council” (Verma n.d.).

Finally, as said earlier, the Autonomous District Councils have been functioning for more than four decades. The north-east of India has witnessed many changes in the while.

“There are now states which are predominantly tribal. In the changed context, it appears that the District Councils do not have any relevance in some of the states. The purpose for which the District Councils were set-up was to protect the interests of the tribal populations residing in these areas from exploitation by the people of the plains, to protect and preserve the tribal institutions, which, it was thought, might not be done by legislature dominated by the plains people. This idea is no longer valid in case of predominantly tribal states. So the District Councils in Nagaland and Mizoram were dissolved when these areas attained statehood except for the districts in Mizoram. Each inhabited by a minority tribal group have been provided District Councils under the Sixth Schedule. Again, after thirty five years of independence Tribal Autonomous District Councils had to be created in Tripura, which started functioning from 16th January 1982, under the Seventh Schedule and from the 1st April 1985 under the Sixth Schedule of the constitution. It has been done for the same purpose, for protecting and developing the tribal people of the state who are the sons of the soil and now have become an alarming minority due to continuous influx of outsiders into their state” (Verma n.d.).

The Bodo Accord

We have already mentioned the 20-point Memorandum of Settlement or Bodo Accord that has already been much criticized and objected to by many. It was signed between the Bodos and the state of Assam to, “[. . .] bring about an amicable

solution to the problems of the Bodos and other plains Tribals in the north bank of river Brahmaputra within Assam". The objective is to provide "[. . .] maximum autonomy within the framework of the constitution to the Bodos for social, economic, educational, ethnic and cultural advancement".

The accord states that an Act of the Assam Legislative Assembly shall form a Bodo Land Autonomous Council (B.A.C.) "[. . .] within the state of Assam comprising continuous geographical areas, between river Sankosh and Mozbat/River Pansoi. The land authority records of the state will scrutinise the list of villages furnished by ABSU/BPAC having 50 per cent and more tribal population which shall be included in the B.A.C. for the purpose of providing a continuous area, even the villages having less than 50 per cent tribal population shall be included".

"The B.A.C. will comprise a General Council comprising 40 members, 35 elected on the basis of adult suffrage and having a life of five years. The Government will have power to nominate 5 members [. . .] This council will have powers to make bye laws, rules and orders for application within the B.A.C. area on the subjects enumerated in schedule A".

However, section 7 lays down that the "[. . .] General Council shall be consulted and its views shall be given due regard before any law made on the following subjects is implemented in the B.A.C. area:

1. the religious and social practice of the Bodos;
2. the Bodo customary laws and procedures;
3. the ownership and transfer of land within the BAC area".

Because of the influx of non-tribals into the region the accord also states that the "[. . .] B.A.C. shall within the laws of the land, take steps to protect the demographic complexion of the areas falling within its jurisdiction".

Regarding finances for the B.A.C., they "[. . .] will be earmarked under a separate Sub-head within the state budget, in keeping with the guidelines laid down from time to time by the Government of India. The Government of Assam would have no power to divert this ear-marked allocation to other heads/areas except in exigencies". And the provisions made "[. . .] regarding allocation of funds should be in line with the spirit of the Constitution's (Seventy-second) and (Seventy-third) amend-

ments". This appears rather vague. Further, the General Council "[. . .] will have power to raise finances from levies/fees/taxes etc. on subjects mentioned above". Further, the "[. . .] Government of Assam will deposit in the B.A.C. fund revenue collected from the tea gardens falling within the B.A.C. area".

In the area of trade and commerce the "[. . .] General Council will have powers to regulate trade and commerce within its jurisdiction in accordance with the existing law. For this purpose it can issue permits and licenses to individuals within the B.A.C. area. The Government of Assam and the Union Government while considering allotment of permits to people residing within the B.A.C. area will give preference to the Bodos".

Jharkhand Area Autonomous Council Act

In 1994 an agreement was arrived at between representatives of the Centre, the State of Bihar and some leaders of the decades long Jharkhand Movement. On this basis, the Jharkhand Area Autonomous Act (J.A.A.A.) was conceded by the state of Bihar in December the same year. However, this deals with only about 35 per cent of the entire area of Jharkhand and the territories in Bengal, Orissa, and Madhya Pradesh have not as yet been conceded any such autonomy. It will be significant to note at the outset that due to an influx of outsiders into the Jharkhand Area of Bihar and the official non-recognition as tribals of many who could be classed as such, the tribal situation in Bihar, and even in the Jharkhand areas in Bengal, Orissa and Madhya Pradesh is rather complex.

Nevertheless, by the proposed Act, the State Government will establish an autonomous council for the said area which will comprise not more than 18 (11.1 per cent) nominated members. Meanwhile, an interim council has been imposed on the people of the area. Amongst other members it has 31 members in the interim council who are members of the Janta Dal, and have been nominated. The Janta Dal has very little support in the Jharkhand Region. Moreover, the Janta Dal Chief in Bihar, who hails from outside Jharkhand and is the current Chief Minister of the State of Bihar has gone on record in saying that "Jharkhand will be built over his dead body". So we can very well foresee the attitude and actions of Biharis in relation to the J.A.A.C.

The council's electoral constituencies will be divided in such a manner that the population in both council constituencies will

be about the same. The council constituencies will be formed by dividing the state legislative assembly constituencies into two. All the constituencies which have been reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) will continue to be reserved for them. The normal term of the council will be a period of five years.

Regarding membership to the council, there is an important contradiction. According to section 6 of the Act, a member of the council must not be a member of parliament. If he is, he must resign his MP seat. However, by section 13, the State Government is authorised to nominate two members of parliament, "wholly or mostly of the area" to the council. What exactly is this 'wholly or mostly' and why is this exception made for nominated members and not for elected ones?

The Governor can, after providing reasonable opportunity of being heard, at his discretion, dissolve the council if it is unable to execute its duties or is functioning in such a manner that it may not be able to achieve its objectives. The council must be reconstituted within six months, but the period can be increased by the Governor if the circumstances do not make the holding of election practical.

There will be one chairman for the council who will be a member of the Scheduled Tribes. The chairman will be elected by the elected council members. The vice-chairman of the council will be nominated by the chairman.

Constitution of the executive council

The Chairman may "[. . .] nominate not more than 19 members of the council as the members of the executive council in which Scheduled Castes, Scheduled Tribes, Backward Classes, minorities and women shall be given proper representation as far as possible".

Regarding the legislative powers and functions of the council, it "[. . .] may recommend to the Bihar Legislature through the State Government for legislation on subject specified in schedule 3". Further, "[t]he council may make regulations and by-laws on the subjects specified in schedule 3 provided that such regulation shall not be inconsistent with any law made by the state legislature". Therefore, one notices that the law making powers are only recommendary in nature and hedged in by state control.

Among the personnel and administrative powers of the council, the council, "[. . .] may create posts of class three and

four and make appointments there on for its establishment", provided that the "[. . .] creation of posts and appointments [. . .] may be made in accordance with policy and procedure prescribed by the State Government".

Regarding the taxing and levying powers, the council can collect levy for only pitched roads or bridges at the rate predetermined by the State Government. It can further, according to the common policy of the State Government, collect fees for boats, for any cleanliness or maintenance it provides at religious places or pilgrimage centres, fairs and village markets, for water provided by the council for drinking or irrigation, and for providing lighting at any common public place or road. Collecting fees from boats in Jharkhand whose rivers very few boats ply, is ridiculous. It would be more appropriate to collect fees from roadworthy vehicles.

The council shall also have a fund known as the Jharkhand Area Autonomous Council Fund. Herein, a minimum of 25 per cent of the state annual plan shall be specified for the area of the council. Further, "[. . .] the council may place to the credit of the fund all sums received as the grant and loan from State Government or other sources", and "[. . .] may place to the credit of the fund all sums received as income or donation made in its favour by any trust or charity".

The council can also plan, co-ordinate, execute and implement programmes or schemes within a whole range of subjects listed in schedule 3 of the Act - however, all under the common direction of the State Government. The subjects given in schedule 3 amongst others are public health, clinics, hospitals and nursing centres, tourism, agriculture, construction and cemeteries, village markets, bazaar and farms, public health and sanitation, bee-keeping, milk industry, primary and high school education, to provide lands and buildings for the council, rural development, small scale and village industries, mines, minerals, welfare, urban development, forests, irrigational use of medium and big canals, provision of land for agriculture, animal husbandry, animal hospitals, tribal sub-plan and welfare, dance, theatre, culture, youth welfare, census, weights and measures, local transport, food and supplies, village security, municipality panchayat, etc. In total, a list of 42 heads or subjects, but it does not include subjects like college education (general), soil conservation, handloom and textiles, library services and museums

and archaeology which are included in the list of Bodo Land Autonomous Council.

Conclusion

Therefore, we have seen that the Indian constitution allows for the protective discrimination or the safeguards for the indigenous peoples of India in a variety of ways. We have dealt here with the protective measures that are regarded as more important such as the scheduling of the tribal communities or their non-scheduling, reservation in educational institutions and in government employment, political reservation and types of autonomy. They were also treated with reference to the basic Indian Law bearing on it. However, we must note that no matter how benevolent these bestowals appear, they were largely the result of an era and time when the indigenous peoples were still considered a sort of trust for the so-called civilised world. And most of what was attempted or thought to be done in the name of the Adivasis was paternalistic in conception as well as implementation. But now we see that the climate for the indigenous peoples has undergone a change and many self-determination movements of the indigenous peoples are at critical stages. In fact, with the standard setting exercises that are being conducted by the United Nations Working Group on Indigenous Populations, the provisions of the Indian constitution pales.

Jaganath Pathy has stated:

"As the proposed declaration treats the indigenous as peoples with unique social organisation, culture, language, shared history, identity and aspirations, it is superior to the Indian constitutional rights for the Scheduled Tribes. Let us recall that it is only the peoples who have the right to self-determination. It also recognizes collective corporate rights over traditional occupied lands and not just individual recorded ownership. Moreover, the declaration provides greater autonomy and internal self-determination than envisaged even in the Sixth Schedule of the Indian constitution. It provides for a new physical and symbolic space for the indigenous peoples".

Are the Rulers of the Indian states willing to face the challenge of the UNWGIP and make the necessary constitutional amendments to the law of the land or do the indigenous peoples press

on ahead with their struggle and force change? The past example of the ruling classes of India have not been too heartening, hence the indigenous peoples must conclude that their destiny lies in their own hands and press on with their struggle.

References

- Asia Indigenous Peoples Pact (AIPP). *Declaration on the Rights of Asian Indigenous/Tribal Peoples*. Chiangmai, 1993.
- Indian Social Institute. National Seminar on the Reservation Policy in India, 28-30 August, 1985. New Delhi.
- Fernandes, Walter n.d. *Tribals Displaced. The Price of Development*. New Delhi: Indian Social Institute.
- Fernandes, Walter 1995. Displacement Statistics Chart. Chart distributed at Workshop on Displacement Policy, Varora, Maharashtra.
- The North East Voice*, Sept - Oct. 1994, Guwahati, Assam, India.
- Andolan, Bharat Jan and Nav Bharat Jagriti Kendra 1993. *Report on Social Impact*.
- Rao, Jayaprakash 1995. Conspiracy of Silence. Panchayat Raj in Tribal and the Scheduled Areas. Paper presented at seminar organised by Other Media. New Delhi, June, 1995.
- Gassah, L.S. 1995. The Sixth Schedule to the Constitution: Autonomy and Development vis-à-vis 73rd Amendment, Paper presented at seminar organised by Other Media, New Delhi, June, 1995.
- Verma, N. C. Deb (n.d.). Tribal Self-Rule in Perspective of Existing Constitutional Provisions for the Scheduled Areas and Tribal Areas. (a.d.)
- State Government of Assam. *Memorandum of Settlement (Bodo Accord)* February 1993.
- The Jharkhand Area Autonomous Council Act, Bihar 1994.
- Pathy, Jaganath. What is Tribe? What is Indigenous? Turn the Table towards the Metaphor for Social Justice, New Delhi (Unpublished).
- Burman, B.K.Roy 1993. Skeletal Outline of Issues to be Examined with Reference to Different Aspects of Tribal Development - Intentions, Realities, Challenges and Tasks Ahead.

Paper presented during workshop organised by Akhil Bharatiy, Adivasi Vikas Parishad, New Delhi, 1993.

The Jharkhand Area Autonomous Council Act, 1994. Pahuja Law House, Patna, Bihar, 1995.

Penz, S. Peter 1992. Colonisation of tribal lands in Indonesia. *Social Action*, vol. 42 April June 1992, p. 159

Kuber, W. N., *Ambedkar B. R.* 1990. Publication Division, Government of India, New Delhi, 1990.

SANCHAY CHAKMA

THE LEGAL RIGHTS SITUATION OF THE INDIGENOUS PEOPLES IN BANGLADESH



For a long time, the indigenous peoples of Bangladesh have been facing the severe effects of government policies, including population transfer, gross violations of human rights, land grabbing, divide-and-rule policy, and even ethnic cleansing. The Government of Bangladesh does not recognise us as indigenous peoples in the constitution. We have no constitutional rights as indigenous peoples. The government is very carefully trying to avoid the international recognition of indigenous peoples in Bangladesh. The constitution has recognised the rights of citizens in general, but we have clear linguistic, cultural and socio-political distinctiveness from the majority Bengali people. That is why we want the right to a 'separate status' in the constitution as indigenous peoples.

Historical background

Historically, the Chittagong Hill Tracts (CHT) were an independently ruled small mountain state in the subcontinent of India, much as the 'Garo Hills' were outside Bengal. History shows that the Jumma Peoples in the CHT (twelve multi-lingual ethnic groups - Chakma, Marma, Tippera, Mrung, Pangkhua, Lushai, Bawm, Sak, Khumi, Mru, Tongchengya and Khyang - collectively known as Jumma People)¹, the Mandis (Garo), Hajongs, Koches in greater Mymensingh and the Santal in Dinajpur,

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¹ Derived from 'jhum', the local Bengali term for swidden agriculture, which is the dominant traditional method of land use among most indigenous peoples in the CHT.

Rangpur and Thakurgaon have been living there for hundreds of thousands of years. The CHT, in particular, were a 'Kapas Mahal' in revenue records hundreds of years ago because the chiefs of the CHT paid a tribute in cotton to the Mughals for the privilege of access to the markets of Chittagong. That means that the chiefs of the CHT ruled over the area by dint of a reasonable amount of tribute to the Mughals. Recently, Raja Debashis Roy (the Chakma Chief) wrote an article titled 'The Hill People and the Constitution of Bangladesh'. He states that "In the constitutional history of the 'tribal areas' of this subcontinent and especially since British times, some of the mountainous regions in the north-west and north-east of the subcontinent were designated as 'excluded areas' or 'tribal areas', to protect the integrity and heritage of the peoples of these regions". A large part of the old Mymensingh district inhabited by the Mandi People was recognised as a 'partially excluded area' by the Government of India Act, 1935.

The CHT was recognised as either a partially or fully excluded area since the time of the British up to the promulgation of the Pakistani Constitution of 1962. The 1962 Constitution redesignated the CHT as a tribal area. However, in 1964, an arbitrary constitutional amendment excluded the name CHT from the constitution without any prior consultation with the people of the area, despite clear provisions to the contrary. The protestations of the Hill Peoples went unheeded, just like a few years earlier when they sought to prevent their richest valley lands from being swallowed by the Karnaphuli Hydroelectric Reservoir that was created by the Kaptai Dam.

At first, the British rulers adopted provisions for the indigenous and tribal peoples in recognition of their 'separate identity'. The '1900 Regulation Act' was one of those provisions by which the CHT were recognised as an excluded area. By this act, the CHT Jumma Peoples could practice their rights in a special manner. All outsiders were prohibited from entering the CHT without prior permission from the Deputy Commissioner of the CHT. But all safe guards were gradually deleted from the constitution in the period of Pakistani rule. And the present constitution has opened up the CHT for all. Moreover, the Government of Bangladesh has encouraged population transfer along with militarisation. As a result, gross violations of human rights, land grabbing, massacres, rape, etc. have been taking place in the CHT.

Background of the Bangladesh Constitution

The first constitution of Bangladesh, adopted after independence in 1972, has four main pillars: (i) Nationalism, (Bengali Nationalism), (ii) Secularism, (iii) Democracy and (iv) Socialism. In that constitution, the indigenous peoples of Bangladesh who were not linguistically Bengali lost their national identity and constitutional rights. The constitution clearly stated that "By nationalism all citizens of Bangladesh are Bengali". As a protestation, the popular leader of the indigenous Jumma Peoples of the Chittagong Hill Tracts, the late Mr. Manabendra Narayan Larma (so far the only indigenous Member of the National Parliament, from 1973 to 1975) strongly criticised the idea of Bengali Nationalism. He demanded that the Jumma Peoples' national identity be included as well as the identity of other indigenous peoples of Bangladesh. But the architect of independence and the father of Bengali nationalism, Sheikh Mujibur Rahman, ignored the demand. In the then Parliament, Mr. M.N. Larma argued that "because a Bengali can not be a Chakma, how can a Chakma be a Bengali? If it is so, why then is the Parliament adopting Bengali nationalism in the constitution?"

Since the death of Sheikh Mujib in a military coup, the constitution has changed many times. The Marshal and administrator, General Zia-Ur-Rahman has amended one main point of the four pillars, which inserted 'Faith in Almighty Allah' instead of 'Secularism'. It was a great instrument against indigenous and religious minorities, as this amendment meant that they became treated as second class citizens in the country.

Thus, the rights of the indigenous peoples of Bangladesh have been undermined in every sphere of social, cultural and political life. According to the constitution, the fundamental rights of the citizens are verbally the same for all. The constitution states: "All citizens are equal before law and are entitled to equal protection of law" (Bangladesh Constitution Part III, Article 27). Another article states that "No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution" (Bangladesh Constitution Part III, Article 28/3).

In the sector of employment, every citizen shall be accorded equality of opportunity in the service of the Republic. In this

way, the constitution treats every right as being equal for all. But it is true that not every citizen in a state is equal in terms of ability. It is very difficult to find a 'homogeneous state' in the modern world. Most states are multicultural, multilingual and multi-religious; Bangladesh is no exception. Therefore, reasonable accommodation of different peoples, communities and language groups is necessary to maintain the fundamental rights and needs of the citizens of the state. That is why statutory rights are necessary for underprivileged sectors of people. Separate constitutional rights and special reconciliations for the underprivileged have to be part of the constitution.

International experiences

Some countries of the world have recognised the rights of indigenous and tribal peoples such as Australia, New Zealand, Canada, Philippines and some Latin American states. The countries mentioned above have either verbally or practically recognised the rights of indigenous peoples and have also undertaken development programmes for them. But most of the Asian countries have been denying the existence of indigenous peoples here. The case of Bangladesh is no exception. This year, the delegation of the Bangladesh Government to the United Nations Working Group on Indigenous Populations clearly stated that "there are in Bangladesh some ethnic groups, principally in the hill districts of the south-east who are distinct from the ethnic majority. The distinctiveness of latter groups in terms of culture and lifestyle does not give them an indigenous status vis-à-vis the rest of the nation, who, allow me to reiterate, are very much indigenous to the land, indeed more indigenous by hundreds of years than the ethnic groups of hill tracts".

The United Nations declared 1993 the Year of the World's Indigenous Peoples in recognition of the indigenous peoples. By recognising the struggle for self-determination, the United Nations itself has approved a 'permanent forum' for indigenous peoples. ILO Conventions 107 and 169, which clearly describe the rights of indigenous peoples, are important instruments for indigenous peoples. Emphasising the indigenous peoples' special cultural relations with the environment, the United Nations has recognised the right to self-determination. Hence, we have the right to develop our traditions, cultures, languages and socio-political institutions.

Conclusion

The debate on indigenous peoples should conclude by formal recognition of them as indigenous peoples. It should also undertake the proper steps to ensure their universal development. Those countries which are still ignoring the rights of indigenous peoples are also rejecting the reality of human dynamism. The United Nations Charter and Universal Declaration of Human Rights are the assets of all human beings. We have the right to enjoy these rights, to the same degree as our non-indigenous brothers and sisters. Furthermore, the indigenous peoples must be part of society as well as a part of a state. Without self-determination, we shall not be able to exist as peoples on earth. Therefore, we the indigenous peoples of Bangladesh are demanding safeguards with a constitutional guarantee.

INDIGENOUS PEOPLES AND JURIDICAL RIGHTS IN NEPAL



Nepal lies on the southern slope of the great Himalayas between India in the south, east and west and China in the north. Nepal is a meeting ground of different peoples that exhibits a remarkable diversity of cultures, languages and religions. The 18 million inhabitants of Nepal speak more than 70 languages belonging to four language families: Tibeto-Burman, Indo-Aryan, Dravidian and Austro-Asiatic, which can clearly be identified on a geographical basis. If the high mountain region of the north is being inhabited by the peoples of Mongoloid stock, the south is held by the Aryan stock. The central region has a mixture of inhabitants. There are about 40 mutually intelligibly distinctive cultural groups in Nepal.

The Himalayas and its foothills in Nepal were the abode of the many Mongoloid groups of cultures known by probably the more general regional term of *Kiratas*. Hindu (Indo-Aryan) penetration started here between the 12th and the 14th century, escaping from Muslim invasions in India. The present Hindu state was founded in the 1769 by conquering more than 80 feuds, principalities and tribaldoms. The newly founded state was an autocratic administration on the basis of well-established Hindu religious norms, i.e. a caste ridden hierarchical social system being governed by a ruler considered to be an incarnation of God and assisted by high caste elites in the discharge of royal functions. This elitist governing structure has been protected by a despotic, ruthless monarchy throttling every voice of opposition with an iron hand. The process continued until 1990, with slight ease since 1950.

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In 1990, Nepal adopted a British type of parliamentary political system to govern the country. During this historical process, Nepal adopted five constitutions (the Constitution of Nepal, 1 April 1948, The Interim Government of Nepal Act, 1951, the Constitution of the Kingdom of Nepal 1959, The Constitution of Nepal, 1962, and the Constitution of the Kingdom of Nepal, 9 November 1990, and a number of amendments in 1967, 1975, 1981 and *AIN* (Legal Code) to examine the constitutional and legal provisions in relation to indigenous peoples in the historical context of Nepal.

This paper is divided into six sections. Beginning with a geo-cultural-political setting of the Nepalese society, the second section evolves a definition of Nepalese indigenous peoples. The third section looks into those state laws which replaced the customary laws and examines their impact on indigenous peoples' social, cultural, political and economic rights. The fourth section deals with the present constitutional and legal provision related to indigenous peoples, the fifth holds a discussion on indigenous peoples' aspiration for political and constitutional change. The last section concludes with the Nepal Federation of Nationalities' (NEFEN) approaches to deal with the challenges.

The definition of indigenous peoples in the context of Nepal

As suggested by the National Consultation of Indigenous Peoples of Nepal (23 - 26 March 1994) held in Lapsiphedi, Kathmandu, NEFEN, has clearly defined indigenous peoples as:

1. those communities which possess their own distinct and original lingual and cultural traditions and whose religious faith is based on ancient animism (worshipper of ancestors, land, season, nature), or who do not claim 'the Hinduism' enforced by the state as their traditional and original religion;
2. those existing descendants of the peoples whose ancestors had established themselves as the first settlers or principal inhabitants in any part of the land falling within the territory of the modern state (Nepal), or who inhabited the present territory of Nepal at the time when persons of different culture or ethnic origin arrived there, and who have their own history (written or oral) and historical continuity;

3. those communities which have been displaced from their own land for the last four centuries, particularly during the expansion and establishment of the modern Hindu nation-state and have been deprived of their traditional rights to own the natural resources (Kipat communal land, cultivable land, water, minerals, trading points, etc.);
4. those communities who have been subjugated in the state's political power set-up (decision-making process), whose ancient culture, language and religion and non-dominant social values have been neglected and humiliated;
5. those communities whose society is traditionally erected on the principle of egalitarianism, rather than the hierarchy of the Indo-Aryan caste system, and gender equality (or rather women enjoying more advantageous positions) rather than social, economic and religious subordination of women, but whose social norms and values have been slighted by the state;
6. those communities who formally or informally admit or claim to be 'the indigenous peoples of Nepal' on the basis of the aforementioned characteristics.

Though 'indigenous peoples' and 'nationalities' are not entirely synonyms, all the 'nationalities' seem to be the 'indigenous peoples' in the Nepalese context.

On the basis of the aforementioned criteria, NEFEN has identified the earliest settlers of Nepal as the Tibeto-Burman speaking people. They are known presently as Limbu, Rai, Sunuwar, Tamang, Gurung, Thami, Jirel, Hayu, Lepcha, Chantyal, Thakali, Chepang, Kusunda, and Raute in the hills and Tharu, Danuwar, Dhimal, Meche, and Koche in the plains.

Nevertheless, His Majesty's Government of Nepal neither recognises nor accepts the definitions of NEFEN and the National Committee for the International Year of the World's Indigenous Peoples, Nepal. They are using the term 'Aadibasi/Janajati' to further their political interests as a part of the election strategy: VOTE BANK. During the Nepali Congress Government, they had hurriedly formed a National Committee for the International Year for Indigenous Peoples in Nepal just a couple of days before leaving to attend the Human Rights Conference in Vienna, without the representation of indigenous peoples. It was just a face saving act to face the international community in Vienna. This committee did nothing.

The government of the Nepal Communist Party, the United Marxist-Leninist (UML) had also formed a National Committee for the International Decade of Indigenous Peoples in Nepal, but with no clear policy. It should be noted that both governments had formed the committees due to the constant pressure by NEFEN and the indigenous peoples of Nepal. The UML Government had no clear vision, though a minor fund for the development of the Janajati was allocated. The last two governments' approaches and acceptance of indigenous peoples in Nepal clearly indicate the state of hesitation and the problem of recognition. The government uses indigenous peoples to dispel their fears, rather than to sincerely satisfy and realise the indigenous peoples' aspirations.

Historical background

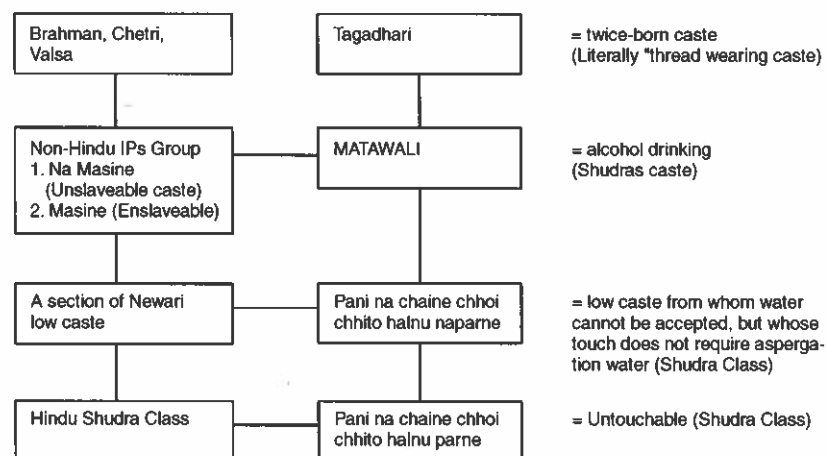
Until the foundation of the present Hindu nation-state, and even after, indigenous peoples had a communal mode of production, generally characterised by pastoralism and swidden agriculture. The production relations were based upon kinship relations and communal alliance, rather than class stratification. The property relationship were characterised by the system of communal land ownership (*Kipat*) that was not only equitable, but was based on a number of considerations such as family needs, collective responsibility, mutual respect and welfare. Under this *Kipat* system, all resources, including lands and forest, were controlled communally by clans and distributed in accordance with family needs. This system had allowed the indigenous peoples to maintain and regulate their relations with nature, i.e. the protection of the physical environment. It guaranteed a continuous source of food supplies to community members and constituted a mechanism of social control to protect common resources. Their social and political organisation was led by the village head, the powerful local authority legitimated by the village council. Based on these institutions, the indigenous peoples enjoyed socio-political autonomy and maintained their mode of existence for many years with the help of culturally prescribed and socially accepted customs (*Ritibiti system*).

With the very inception of the state, the founder Shah King proclaimed Nepal a genuine Hindu state ("*Yo asila Hindustana ho*") to be governed by the Hindu Shastras. His successors and Ranas rulers followed him with their concepts of politics,

economics and administration being shaped by the Kautilya's Arthashastra, the Mahabharat, the Ramayanas, the Manusmriti and other Smritis. These Shastras consider the ruler as "an incarnation of God and his words as the law of the land and everything of the land belongs to the King, being ruler of the state". The implication of these laws are stated below:

- Land (*Kipat*), the most important resources of indigenous peoples was confiscated and distributed among *Brahman*, *Chetris* and *Thakuris* under the *Raikar*, *Birta*, *Guthi* and *Jagir* systems to encourage the new settlement of Hindus in indigenous peoples' areas, even exempting them from taxes and corvée labour.
- Indigenous peoples were heavily taxed to extract a surplus to support the ruling families and military. They were also introduced to different kinds of compulsory labour obligations, e.g., *Hulak*, *Rakam*, *Jhara* and *Bethi-Begar*, to construct palaces, temples, roads, irrigation canals, bridges, transport military supplies, reclaim waste land and supply forest products, which forced them to turn into tenant and bonded labourers.
- The existing laws, known as the *Muluki Ain* (Old Code), were compiled in 1854. The code tried to comprehend the pluralistic Nations of Nepal into a single scheme of the Hindu caste universe as shown below as the Nepalese *Varna* (caste) model.
- Throughout recent Nepalese history, the Hindus have been in control of Nepal's state politics by virtue of being its rulers. They spread a network of *Jimmawals*, *Talukdars*, *Mukhiyas* and *Jamindars* at the village level all across the country in place of community organisation, which took over the judiciary power of the traditional village council.
- The code established the supremacy of Hindu values and norms for controlling the social behaviours of people of all strata of society. This has been expressed in the inviolability of the high position of the *Upadhy Brahman*, sacredness of the cow which may not be killed, incest, levirate, copulation with the women of untouchables caste and violation of communal rules by caste members.

Nepali Verna Model (Caste System)



The code accorded a place for all indigenous peoples under the name of the Matawalis, classifying them as Masine (who could be killed or enslaved) caste in the bottom of the second rank of the Hindu Verna Model of social division. The code also prescribed, in detail, commensal rules, marriage alliance, occupational rules and the public regulations.

- The law provided that non-Hindu ethnic groups were given independence to pursue their traditional cultures, customs and usages to the extent that they did not directly contradict basic Hindu values. But they were not permitted to attend the schools for study and their languages were also banned from use in the office and in the educational institutions as a medium of instruction. This clearly shows that the coming to power of the Shah dynasty was the beginning of the non-recognition of the socio-economic and political rights of the indigenous peoples and the state's forced assimilation of indigenous peoples into the state melting pot.

There are many attempts, recorded or unrecorded, to establish an egalitarian society and democratic institutions in Nepal to oppose the autocratic regime. In due time, a form of parliamentary administration was established in 1951, which lasted until 1961. But the King banned the political parties and the parliamentary system, introducing instead a Panchayat Policy under

the active leadership of the Monarch in 1961. Accordingly, the King introduced and enforced a constitution of Nepal in 1962 and a Mulki Ain (revised National Code) in 1963 which repealed the old national code of 1854, and the laws establishing caste discrimination were repealed. But it would be no exaggeration to say that the sources of both the constitution and the new National Code were not different from Humdu Shastras, Hindu State and Hindu King. This Panchayat political system brought down total changes in the traditional village council and organisation by establishing an elected political unit, the 'Village Panchayat' at the village level, and a 'court' at the district level. The law gave some judiciary rights to both Village Panchayat and the court, and pronounced those decisions taken by traditional village councils to be illegal.

Present constitutional and legal provisions

Nepal has experienced five constitutions with a small number of amendments and two National Codes. The present 'Constitution of the Kingdom of Nepal 1990' has been effective since 9 Nov. 1990 with the new National Code of 1963. The constitution is the product of a five month long intense popular movement that took place in 1990 and in which many people lost their lives, land or were severely wounded. From the general human rights perspective, there are some positive aspects in the constitution, such as sovereign people, adult franchise, parliamentary system of government, constitutional monarchy, multi-party democracy and an independent system of justice. From the indigenous peoples' perspective, many other issues remained the same. There are only two provisions pertaining to the rights of indigenous peoples: first, that every community has the right to protect and develop its language, script and culture, to establish schools for providing education to children up to the primary level in their mother tongue (which was punishable in the previous constitutions), and second, that every community has the right to maintain its identity and for that purpose to manage and protect its religious places and trusties. There is no specific provision to promote the welfare of indigenous peoples and untouchables who have been oppressed in the past, though it had been suggested that laws should be passed to promote the health, education and employment of indigenous peoples in the directive principles of the state. The constitution of Nepal is a

legal document that makes a common bond between individuals and the state. It has nothing to do with communal rights of governing and collective ownership of natural resources.

The present constitution, in spite of mass protests, has again reconfirmed the state as a religiously Hindu State. The constitution has strongly protected Hindu values, e.g., the cow is presented as a National Animal, which should not be killed or harmed despite the presence of a large beef-eating indigenous peoples' population in the country. According to the National Code, killing, harming or the selling of cows is a crime punishable by life imprisonment, equal to the murder of a human being. And, if someone were to kill the slaughterer of a cow on the spot, the killing would not be punished. Despite the provision of the right to religious freedom mentioned in the constitution, converters attempting to convert members of other religions can be punished with three years imprisonment. If the converters are foreign nationals, they can be expelled from the country.

Moreover, the constitution has given absolute power to the King, declaring an emergency period and the right of law to manage the monarchy at his discretion.

The constitution also created linguistic discrimination, as the Nepali (Khas) language spoken by the ruling elites is treated as the national and official language, to be used in government offices and court, whereas the languages of the indigenous peoples and minorities are treated as 'mother tongues' of the nation and cannot be used for official purposes.

The constitution has made associations and political parties a part of the system, but has at the same time restricted the formation of associations and political parties on the basis of religion, caste, tribe or religion. This is the fundamental question for the development of an indigenous movement.

The existing law has recognised individual rights in relation to property and resources, but it does not recognise community rights. The laws on marriage regulation and incest allow non-interference or tolerance of the traditional customs and usages of ethnic groups. But when at the same time it is said that all traditional customs and usages of indigenous peoples and minorities are contradictory to Hindu norms and values, then the provision of non-interference makes no sense and cannot be enforced.

Views and aspirations of indigenous peoples concerning the relation to the State and the non-indigenous populations.

NEFEN is progressing with the collective views and aspirations of indigenous peoples through its bi-annual convention in which member organisations of indigenous peoples raise their issues and prospects and throw light on strategies they have developed in their own organisational meetings, conferences, seminars, workshops, consultations, movements and conventions with thousands and thousands of participants. The following expresses these aspirations of the indigenous peoples of Nepal. They demand that the Government of Nepal draft and implement policies which:

1. declare a secular state, not allowing the ruling dominant groups to make religion an instrument to suppress others' beliefs and religions. The National Code should be amended on the basis of equality, freedom and fraternity;
2. recognise the right to self-determination for all indigenous or ethnic peoples by creating a system within the multinational state system. The state should structure the local level of political units according to communities, providing them self-rule and autonomy and the collective rights of indigenous people must be recognised. Our aspiration for self-rule is not directed towards the division of state but to build a state as a symbol of representation of all cultures, religions, languages and peoples;
3. promote the indigenous ethnic peoples in the sharing of state power. All the peoples (nations) that make up Nepal should be represented in the Upper House of Parliament on a proportional basis according to population to check the duplicity of the Lower House and to give the opportunity to all groups, large or small, to take part in the decision-making process;
4. provide reservations for the development of indigenous peoples in employment, education and national political levels for a short-period as a compensatory programme;
5. compensate for the unilateral and illegal violation of the sole traditional right to natural resources/trade routes that were agreed on between indigenous peoples and the then colonising power. Ensure the indigenous peoples' wish that the present

day development in the name of modernisation does not adversely affect their lives;

6. establish an 'Academy for Nationalities' (indigenous peoples, culture, language and religion). Provide free education in mother tongues. Ensure the right to education and information (received in their own language);
7. ensure, through bilateral agreements, not to mobilise the youth from indigenous groups (who are presently serving the armies of foreign countries) to suppress the national and indigenous peoples' liberation movement in any part of the world. As there is a provision in the bilateral treaty restricting the Gorkha soldiers serving under the foreign army to be used against a Hindu community or state; create employment opportunities for such youths in the country itself in order to discourage such expatriation;
8. immediately ratify ILO Convention No. 169 on indigenous peoples and the UN Declaration 47/135 on the rights of the ethnic, religious and linguistic minorities and implement them with diligence and sincerity;
9. ensure, through legal provisions and their diligent applications, that the trafficking of women, bonded labour and child labour from indigenous groups for prostitution purposes is fully and immediately stopped; and to carry out repatriation, legal redress and the economic rehabilitation of such women.

Conclusion

It is observed that the present constitutional and legal provisions are not sufficient to tackle the issues and problems of indigenous peoples in Nepal. But we can be optimistic about the future because:

- the ethnic and indigenous peoples' issues and problems which were considered communal problems in the past are slowly being acknowledged as a national problem;
- the indigenous peoples' perspective of sustainable development is gaining popularity vis-à-vis the often fatal model of development promoted by dominant elites;
- the JANAJATI Movement has clearly shown the identity of non-Hindu ethnic groups in Nepal.

THE DIFFERENCES BETWEEN THE LEGAL STATUS OF THE INDIGENOUS AND NON-INDIGENOUS PEOPLES IN TAIWAN



The sources

The current government of Taiwan is the Kuo-mintang (Nationalist, KMT) which retreated from mainland China in 1947 and is still the ruling party. What I am going to discuss is the legal status of Taiwan's indigenous peoples under the KMT from 1947 to 1995.

First, I would like to point out that the term 'aboriginal' first appeared in 1985. The Alliance of Taiwanese Aborigines was founded in 1984. The official recognition of us as 'indigenous' came in February 1995. During 1949 - 1994, the Government of the Taiwan Republic of China called us the 'Mountain Tribesmen', 'Mountain People', or 'Mountain Fellowmen'.

The contents

During the initial stages after the arrival of the KMT in Taiwan, a large contingent of party members, teachers, soldiers and officers were sent to the mountains to teach us the Chinese language and prohibit us from using our mother languages or Japanese, the latter being the language we used during the Japanese occupation of Taiwan. They also set up numerous primary schools with Chinese as the language of instruction, the objective being to force us to give up our own language and to assimilate us into the Chinese culture.

The second step was the naming. Without any investigation into the sources and lacking any comprehensible system, they appointed us Chinese style family names and first names. This severed our historical relationship with our ancestors. Often-

Mao Lung Chang was born Panu Chapamumu. Like all the other indigenous people in Taiwan, he was forced to use the official name 'Mao Lung Chang' given by the KMT. Until recently, he was the President of the Alliance of Taiwan Aborigines (ATA) and he is a member of the AIPP Executive Council.

times, five brothers in the same family would receive five different family names! This blunder even resulted in unknowing incest!

Political aspect

There are eleven tribes in Taiwan. The government classified them into two election districts with each district having one seat in the National Council. Therefore, we are not familiar with the National Council member from our district and we belong to different tribes. He or she never visited our tribe, and for tribes consisting of very small populations, it will never be possible to elect one of their own to the National Council.

Economic aspect

The total population of the eleven indigenous tribes in Taiwan is approximately 350,000. Most of them are labourers, construction workers, coal mine workers, fishermen, truck handling workers, etc. Those who stay in the villages are the old women and children. The only income is the money sent by the men working outside the village.

Land rights

Most of Taiwan's indigenous peoples live in the mountains, i.e. the Reservation Areas in the mountains. However, the government occupied a large portion of the land by claiming that it was needed for development purposes. Research institutions and universities occupied additional land for research purposes. The military has also occupied some of the land to carry out exercises. During recent years, the national park policy has called for more of the land in the Reservation Areas to be turned into national parks. The Taiwan Power Company even stores nuclear waste on Lanyu Island where the Yami tribe lives.¹

Legal aspect

There are no authorities in the central Government of Taiwan who manage indigenous affairs. In 1984, we founded the Alliance of Taiwan Aborigines (ATA). The objective is that we, as indigenous persons, have the right to claim any and all of our

¹ See the video *Expel Nuclear 'Anito' from Ponso-No-Tao*; 10 min. English.

interests. We call on the government to: (a) restore our family names; (b) refer to the Mountain People as the 'indigenous' people and (c) return our lands. These were taken away by the government against our ancestor's will.

We demanded that Taiwan's indigenous peoples have equal status in government and in law. We protested and we marched through the streets of the capital against violations of the indigenous peoples' human rights. However, the government captured the Head Command of the march, Yi Jang Palure and the Vice Command Mayao Gumu (a priest) in 1995, and put them in jail claiming that they were violating the Congregation & Public Demonstration Law.

On the other hand, the largest opposition party - the Democratic Progress Party - also violated the law, but their Head Commander Shih Ming-te and the Vice Command Hsu Hsin-liang, Huang Hsin-chieh and Lin Yih-hsiung were not caught and put in jail. We point this out not because we want to urge the government to imprison these DPP men, but because of the unfair treatment that it represents. The indigenous peoples of Taiwan are discriminated against as concerns the laws, human rights and legal system.

The political coercion of Taiwan's indigenous peoples. A brief summary of recent events

Time	Cause	Name
6 June 1991	March to demolish the Mongolian and Tibetan Council and to set up the Taiwan indigenous Committee	Yichiang Palure (Liu wun- hsiung), Mayao Gumu (Lin Ching-shi). Sentenced to one year imprisonment and four years probation.
23 June 1993	March for the Restoration of our names, land rights, autonomy rights and the indigenous constitution	Lin Chien-Er, Yi Chiang Palure. Each sentenced to six months imprisonment; still appealing.

- 10 Dec. 1993 Anti-occupation march to demand the right to life You Ha Ni (Song Kuo-hsiung), Mayao Gumu. Sentenced to one year imprisonment; Mayao Gumu was put in jail on 21 April 1995, because of repeated offences.
- 28 July 1994 March against the building of the Tamachia Dam (the indigenous people must relocate) Taipang Salalei (Ziao Gui-chung) organised the tribesmen and is currently WANTED by the authorities). Yi Chiang was put in jail on 6 Oct 1995.

CHAPTER III INDIGENOUS MOVEMENTS AND FORMS OF ORGANISATION

THE HISTORY AND CONTEMPORARY SITUATION OF KAREN AND OTHER INDIGENOUS TRIBAL PEOPLES' MOVEMENTS IN THAILAND



Recent census data (1995) show the highland tribal population in Thailand to number 790,369, comprising 9 major ethnic groups: Karen, Hmong, Lahu, Lisu, Akha, Mien, Lua, H'tin, and Khamu, with the Karen the most numerous at 402,095 (51.3 per cent of the total). These peoples are spread over 20 provinces, including the central region and the northeast; but most of them live in the north which is the home to more than 90 per cent. With respect to length of residence, they may be divided into two groups: the indigenous proper (either concurrent with or preceding the Thai), including the Lua, Karen, H'tin, and Khamu, and those having arrived in the past 150 years or less, including the Hmong, Mien, Lahu, Lisu and Akha.

The time before 1850

The Karen refer to this period as the time of *Of-de Blauf de Co*, meaning 'the time of the Meeting Hall and Teaching Hall' or 'the time of the old city states'. This was a time when all the groups (Karen, Lua, etc.) in northern Thailand were independent. The Karen lived in the lowlands and were self-governing. Karen oral history shows that the words for Chiang Mai (*Kimai*), Lampoon (*Lepoo*), and Tak Province (*Labei*) originate from the Karen

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language. The large Karen communities lived like city states with state governors and a sophisticated political structure. When a community had a population of more than 30 young men and women, they would form *Blau* and *Co* - a meeting hall and teaching hall for the community.

1850 - 1950

This period is referred to as the time of *Of lau z Htof gix Lauz Hsau miz*, meaning 'the time of staying like wild fowl and pheasant in the forest'. This was a difficult period of history for the Karen, as it was a time when they had to split into small groups and move into the highlands as a result of pressure from the expanding Thai nation-state. Bangkok was extending its authority and Siam was becoming the Thai state.

The Thai state began to tax the Karen, but refused to recognise the traditional Karen leaders or political structure. Rather, it imposed its own governing system. This led to many conflicts among Karen leaders, some of whom adapted to the new system, while others refused. The Karen lost the meeting hall and teaching hall system of government and there resulted a great deal of conflict. Many Karen, in order to separate themselves from Thai authority, moved to small villages in the mountains. This was also the time of *T'mlax dof*, meaning 'the big robbers', who came to exploit and kill many Karen. It was a time of great conflict. The Karen were scattered in small villages and lost their power.

1950 - 1975

This was the time of conflict between the traditional law of the indigenous peoples and the civil law of the state. Because of the cultivation of opium in the north by some hill tribes, the Thai government established a National Economic and Social Development Plan, which included provisions for national security, focusing on the hill tribes. A number of bilateral development projects were initiated as a strategy to eradicate opium production and integrate the hill tribes into Thai society - in reality an assimilation policy. The law was used as a means for controlling hill tribe villages. Thai civil law replaced traditional indigenous laws and the government commenced to take control of hill tribe lands.

1975 - 1987

It was the time of marginalisation of hill tribe peoples. After the violent suppression of student protests and their demands for democracy in 1973, many students fled to the mountains in the north and west. Many joined the Communist Party of Thailand (CPT). This led to a tightening of national security measures and more active control of the people and the land in the mountains. Roads were built to villages; Thai schools were established; and tribal radio stations were established to report on fighting with the CPT.

It was a time of great change among the hill tribe communities. Much of the traditional culture was threatened and villages became more dependent on Thai society. It was a policy of 'divide and rule', in which the government encouraged conflict among the villages. Much of the communal sense was lost in many communities. Cash crops and new farming systems replaced traditional self-reliant farming systems, where villages grew crops to feed their families. The role of the traditional leaders declined. At the same time, opposition groups began to form in response to the pressures of government policies to marginalise the hill tribes.

1987 - present

This can be called the time of the cultural crisis and crisis of natural resource use. The government established a policy of increasing the number of conservation forests and wildlife sanctuaries and attempts to remove the hill tribes from these areas. In 1992, the government issued the first Master Plan for Development, Environment and Drug Control in the Highland Communities. This plan is based on a classification of forest land: mainly conservation forests and economic forests. Almost all of the areas designated as conservation forests include tribal communities. Therefore, due to forestry law, the hill tribes cannot practice their traditional land management systems anymore, and many were forced to relocate to the lowlands. This has created definite insecurity about their future and brought about a crisis in their culture. More and more young people are moving to the city because they are uncertain about their future in the hills. This leads to the problem of young girls becoming prostitutes, with many contracting AIDS. In numerous cases, these youth have lost their identity as tribal people, are margina-

lised in the city in low paying jobs, exploited by contract employers.

The indigenous peoples' response

A number of Peoples' Organisations and Non-governmental Organisations have begun to react to this situation. They are trying to organise their own communication system. Tribal/indigenous organisations were established in 1993 as a result of a number of traditional villages realising the need to organise themselves in response to the pressures of government policy and its relocation plans.

1. Government policy pressures

The first step was to discuss with officials the impact of the government policy. After one year of dialogue, there was no success as the government refused to change the policy.

The second step, in April 1995, was the coming together of different tribal groups to discuss the situation with the Ministry of Agriculture and Cooperatives. However, the government officials refused to attend. In response, the people began to gather in large numbers (around 3,000) in Chiang Mai and marched to Lamphoon, an adjacent province. The Minister then agreed to meet with the tribal people and an agreement was reached. Since then, there has been little progress on the part of the government, but the peoples' organisations continue with their struggle. The result is that the government has said that it will now compromise and not relocate the villagers. Discussions still continue.

2. Organisation of watershed management networks

During the same period, local watershed management networks have been established and strengthened. This was a necessary measure to gain official acceptance and prevent criticism and rationale for relocation of communities. These networks are based on traditional structures, particularly those of the communities. This has been quite visible among the Karen and is disseminating to other tribes.

3. Dissemination of information on the management of natural resources

Information was exchanged and disseminated regarding traditional methods of natural resource conservation as well as tribal awareness raising. This continues concurrently with government initiatives and is supplemented by the organisation of forums for the exchange of data relevant to the formulation of the 8th National Economic and Social Development Plan and the Second Master Plan for Highland Development. These efforts are directed at facilitating communication, co-operation and mutual respect between the government and local communities.

Local tribal organisations are becoming more numerous and stronger in response to the situational and policy pressures, particularly the plans for the expansion of conservation forests and the relocation of resident tribal communities.

FIGHTING FOR SURVIVAL: THE ONGOING ADIVASI STRUGGLES IN THE SOUTHERN INDIAN STATE OF KERALA



The context

Kerala, considered to be the most progressive state in India, has 320,000 Adivasis constituting 1.1 per cent of the total population of Kerala, or 0.47 per cent of the total Adivasi population of India. Belonging to 33 different groups, they are scattered all along the Western Ghats, living in almost all the districts of the state.

Once a free people living in plenty, in the past few decades our homelands have been subject to colonisation by hordes of migrants. Taking advantage of our accommodative and non-acquisitive culture, our lands and forests were taken away from us, forcing us to further withdraw into ghetto-like enclaves. Following the British, the state continued to extend and consolidate its claim for exclusive rights over our forests. We rapidly slid down the social ladder to the lowest rung, as no other communities have experienced.

Rapid destruction of the forests and migration previously unknown to us disable us from effectively intervening to change the course of our modern history of rapid marginalisation. The state and the constitution of India which had the special responsibility to protect us from the modern ravages gleefully continue to shirk this responsibility and actively initiate and participate in the genocide.

C. K. Janu, herself an Adivasi from Kerala, India, had to take up work as a domestic helper at the age of 6 and could not go to school. At the age of 15, she became a manual labourer for less than the stipulated minimum wage. She then joined the trade union of the Communist Party, became a party member and rose to district member. Later she was involved in literacy campaigns. She parted ways with the party, began organising Adivasis and has ever since worked for unity among the Adivasis. At present, she is with the Adivasi Vikasana Pravarthaka Samithy, leading the land struggle.

Starvation, hunger, destitution and death haunt us every day. Illiteracy in a world ordered on literacy alienates us from the system. Ill-health and diseases that are new to us, ravage us. Naked violence with savage brutality maims us, kills our women, men and children without any reprieve and remorse. Our women have been raped and sexually assaulted to the point that 165 unwedded mothers exist in Wayanad District according to the Scheduled Tribes Department. But in actuality, the figure is 300 in one panchayat¹ alone according to a District Collector, while we reckon that there are at least 1000.

The Assembly Committee on Women and Children visited many of these unwedded mothers. But quite hypocritically, the Government decided that the only action needed was to provide them with welfare schemes, and that the existing schemes were adequate for the purpose. The dominant society continues to treat us as subhuman. Our voices in desperation and assertion are ignored, stifled or suppressed. Being politically marginalised because of our being an insignificant minority in the political number game, we are struggling to emerge as ourselves.

In the name of our welfare and development

There has been no dearth of welfare and development projects in our name. There has been, of course, more of development than welfare under various schemes. The result has been massive displacement, deforestation, plunder, landslides, hunger and an increasing number of deaths due to starvation. Amidst our hills and forests, townships have sprung up with infrastructural facilities while we were forced into ghettos or onto the streets. The development has been the development of our homelands to make the lives of the migrants prosperous.

Welfare too has gone into huge sums of money. It is estimated that 100,000 Rupees have been spent per family in Attapadi of Palakkad district. But our people have been only marginalised by welfare. For example, the Suganthagiri Tribal Rehabilitation Project started in 1977 under the Western Ghat Development Programme to convert 1500 ha of forest land for cardamom cultivation and to settle 750 families by 1983 in Wayanad District. Our people were brought from far-away

¹ A panchayat is the lowest administrative unit of the state.

places with promises of grants of 5 acres of land per family. 521 houses were built for them which are now dilapidated. Officially, the project is a non-starter despite the 48,3 million Rupees pumped in up until June 1995. Corruption and mismanagement has now been officially accepted. Our people have been constantly ill-treated, salaries are often not paid and deaths due to hunger are now common. Similar is the situation in the 528 acre Cheengery Project that started in 1957 and was to benefit about a hundred families.

In addition to this, there is also the situation in which many of us are threatened with displacement by fancy projects. The Agasthyavanam Biological Park in Thiruvananthapuram District with its 100 million Rupees project to conserve and grow flora for tourism threatens to displace 56 Kani families, although a 1986 High Court order exists to ensure Agasthyavanam as a natural forest and restrict the entry of pilgrims and tourists. The Pooyamkutty Hydel Project threatens to displace hundreds of our people in Idukki District. Of the 280 families evicted for the Karapuzhka Irrigation Project, 150 were not given any land. The bulk of the 25 million Rupees meant exclusively for the Adivasis under the Rural Landless Employment Guarantee Programme (RLEGP) during 1993-95 has been diverted elsewhere in Attapadi, kicking up a scandal that was soon suppressed. The Girijan Sevak Samiti, an Adivasi organisation, has gone to the court. In sum, welfare and development has meant the exponential growth of our deprivation.

Struggle for our lands

Having been deprived of our forest, land constitutes our only means of survival with dignity and as a people. The Constitution of India, recognising the special nature of the process of alienation of our people everywhere, provided for special privileges, protection and provisions, with the state responsible to undertake the task. Recognising land alienation as a major cause of our rapid marginalisation, the Government of India recommended that the concerned State Governments enact laws restricting transfer of lands and restoration of our alienated lands.

The land reforms conferring rights of lands to the tillers, restriction on land holdings, redistribution of surplus lands etc. initiated by the leftist government of Kerala with extraordinary

success in other states, did not benefit us. Instead we, due to poverty and exploitation, lost out to the migrants who were 'tillers'.

The restoration of Adivasi land rights: theory and practice

The Kerala Scheduled Tribes Act 1975 (Restriction on Transfer of Lands and Restoration of Alienated Lands) was enacted by the Congress led Government as Act 31 of 1975. It was published in the Kerala Gazette Extraordinary No. 673 on 14 November 1975, after the mandatory assent of the President of India on 11 November 1975. A legislation unanimously passed by the then Assembly and supported by all the political parties there, it was included in the 9th Schedule to ensure that the Act itself should not be challenged in the Court of Law. But the rules operationalising the Act (KST Act, 1975) were formulated a full decade later in 1986. The Revenue Divisional Officer (RDO) of the concerned districts were entrusted with the responsibility for implementation. Passed with retrospective effect from 1960, the Act makes all transactions of Adivasi lands during the period 1960 to 1982 invalid and to be restored to the original owners, who will have to pay a sum which is the total of the amount received in consideration for the transaction and the amount spent for improvements on the land before the commencement of the Act as compensation. The Government may advance the required sum as a loan to be paid back in 20 years. The Act also restricts the transfer of Adivasi lands to non-Adivasis from 1982 without the prior consent of the authorities.

36.5 per cent of all Adivasis in Kerala live in Wayanad with a population of approximately 130,000, constituting some 20 per cent of the population of the district. A sub-committee constituted by the Assembly in 1976 visited Wayanad for a rapid survey of the nature of land alienation. Of the 298 cases represented to them, it was found that 71 (about 24 per cent) were lands grabbed outrightly by force, 67 were grabbed for a meagre sum and the rest for a small amount. Of the 14 cases where signatures were obtained on blank papers without any money actually being transacted, 5 did not receive the stipulated amount and two had their money taken away from them. This is indicative of the nature and manner of the land alienation history in Kerala.

It is estimated that 8,553 applications for restoration of land, totalling some 10,177 hectares, have been received until the last

date for receipt of application. The number has further risen to 8,750 since then. Of these, the majority have been from the districts of Palakkad (2,512 mainly from Attapadi), Wayanad (2,221) and Idukki (1,135). In almost all the districts except Eranakulam and Kozhikode, applications have been filed. When the Act became operational in 1986, the ground reality had changed as far as the Government and political parties are concerned. The Adivasis by then had become a politically insignificant minority and the Naxalites (Marxist-Leninist) who were radically organising the Adivasis, in time were no longer that active. For example, in Attapadi of Palakkad District, the 63 per cent Adivasis in 1961 became just 30 per cent by 1991. It has been the same story in other areas.

The migrants meanwhile became prosperous influencing political parties who shifted their earlier stand easily and began actively opposing the implementation of the Act itself. The pretext was that the Act itself was unjust to the migrants and could create conflict between us and the migrants. The fact is that this Act benefits only a small section of our people and affects a minority of the migrants. The fact is also that there has not been any conflict between us and the migrants as feared by the political parties and the media. This is in fact a well laid out ploy to scuttle the implementation of the Act.

In Attapadi, the Regional District Officer (RDO) was assaulted by the migrants when he attempted to evict an errant migrant. 'Karshaka Raksha Samithi', an active organisation of the migrants sprung up everywhere with the active involvement of political parties of all colours, vociferously opposing the Act. Fr. Vadakkan's 'Malayora Karshaka Sanghatana' became the champion of the migrants' cause, daring the Government to implement the Act.

As early as 1960, there has been a Government Order restricting the transfer of Adivasi land to non-Adivasis. The emergence of autonomous Adivasi organisations in different parts of Kerala in the eighties and their coming together to demand the implementation of the Act began to pressurise the state. The authorities took umbrage on the excuse that this was an additional duty and hence a burden on the RDOs. But Section 18 of the Act confers on the Government the power to assign the task to any other person. The State Welfare Ministers in New Delhi in 1993 resolved to constitute special courts to sort out such cases, at least in the most affected districts. This

remains to be implemented. The lack of funds to advance the beneficiaries for providing compensation as per the Act is pointed out. But it is mandatory for the Central Government to give grant-in-aid out of the consolidated funds and for the state to request them.

In a Public Interest Litigation filed by Dr. Nalla Thampi of Wayanad, the High Court issued an order to the Government in October 1993 giving 6 months time for the process under the KST Act 1975 with 15 April 1994 as the deadline. (This deadline has since been further extended to 15 October 1995 on the request of the State Government who has been desperately trying to obtain the permission of the President of India to bring an Ordinance to effectively nullify the Act itself). The Government still refused to act on the order and belatedly a circular was issued on 18 December 1993, a full month and 3 days after the High Court order, by the Revenue Secretary to the District Collector allowing the 6 months to implement the Act. Nominal efforts to sift through the application began while the political parties and the media stepped up their campaign against the Act itself.

In Kanjirappalli Taluk of Kottayam District, the proceedings were initiated in 18 settlements by the RDO. The RDO and his team were harassed by thousands of migrants during the day on 4 April 1994 and forced to give in writing that all further proceedings will be kept in abeyance until 20 April. The Tahsildar's jeep was set on fire by the mob and roads blocked to prevent the police from coming to the rescue. There were attempts to burn down the houses of Adivasis. 2000 odd Ullalar and Mala Araya people are attempted to be terrorised and subdued.

So far, of the 8,553 applications received before the expiry date, only 1,014 were processed by 15 April 1994 (i.e. about 11 per cent) and 496 decided upon. Of these, implementation actions have been taken in less than 100 applications. Contrast this with the efficiency with which the Government rushed to issue title deeds to migrant forest encroachers in about 28,000 hectares, primarily in Idukki District and under the personal supervision of the then Chief Minister until the whole process was stayed by the Court on the petitions of the Adivasi leaders, Mala Araya Maha Sabha (an Adivasi Organisation) and others in 1993.

Another sordid fact is that the implementation of the KST Act 1975 will not in itself resolve the land issue of the Adivasis as

only a minority will benefit from this. This is so as the majority of the Adivasis do not have records to prove their ownership or enjoyment of the lands at any time. For example, in Wayanad itself it is estimated that about 8300 families are totally landless while most others have less than 10 *cents* of land. Most of the Paniyas, Ooralikurumars, Kattunayakas and Adiyas, unlike Kuri-chias and Mullu Kurumars, have no records of ownership of land at any stage, being the worst victims of two centuries of slavery.

Adivasi self-organisation

The evolution of autonomous Adivasi organisations is a response to the failure of the state and the political parties to adequately address their existential problems. With their coming together in the 1992 'Adivasi Sangamam', they resolved to intensify their demand for land. Land for the landless is integral and primary to the survival of Adivasis.

The private forests in Kerala were taken over by the government as per Ordinance No. 14/71 issued by the then Governor on 10 May 1971. This was replaced by the Kerala Private Forest (Vesting and Assignment) Act 1971. The declaration of the High Court on 21 June 1972 that this Act was unconstitutional was struck down by the Supreme Court on 18 September 1973. Rules were framed in 1974. A vested forest committee was constituted on 26 March 1974 to look into the quality of the lands, to determine the type of utilisation of the lands as well as to identify lands to be assigned to individuals. The Committee recommended that out of a total of 1,69411.84 ha of lands, 23,058.63 ha were to be exclusively assigned to us. Some portions of these lands are, however, kept by various departments of the state in total violation of the recommendations, while others are kept by the settlers. The state did not bother to abide by the specific recommendations of its own Committee and hence has failed to implement its own Act of 1971.

Our resolve is to take back these lands. The emergence of the South Zone Adivasi Forum is symbolic of our desire to reach out farther, to unite our scattered communities in the southern region in the context of our being an insignificant minority in political terms, to evolve a common perspective, ideology and programmes and to develop appropriate strategies. The formation of the struggle committee in Kerala was to carry forward the

land struggles as the basis of mobilisation. On Republic Day, 26 January 1994, we declared that we would launch the direct take-over of our lands. The take-over of 67.5 acres of the 128 acres of vested forest in Ambukuthy in Manathavady Taluk was just the beginning, despite brutal attacks by the Forest Department. In June 1994, the Collector assured that a solution would be found, which has remained a false promise. The Cheengeri Project with 528 acres was established in 1957 and was to benefit about a hundred families. On 26 January 1995, about a hundred acres of lands were taken over by 249 of us. On February 1995, 244 of our women, men and children were arrested and the huts were demolished. On 5 March 1995, 76 families took over lands in Panavalli, built houses and began cultivating the land. Five days later, the houses were burnt down and on 3 April, 102 were arrested, of which 26 were children in the age group of 6 months to 5 years. We continue to hold on. On August 14, a state level campaign was launched linking up many of our people and supporters.

The major achievement thus far is that the issue of our survival and our lands has been kept a live issue despite opposition and organised attempts to confuse and subvert us by the political parties. We have also been able to weave a kind of relationship amongst a number of our organisations and communities. The ruling class and the state are baffled at our persistence and their inability to break our continued progress in the struggle. The issue of self-rule in our villages and the Bhuria Committee Report on the form of governance in our villages are issues we have begun to take up as agendas to further our survival.

ADAT SOCIETY IN THE ISLANDS OF KEI (EVAV), SOUTH-EAST MALUKU



Indonesia is an archipelago with approximately 17,000 islands spreading within 27 provincial divisions. Indonesians as a nation comprise various cultural groups with different customs and speaking different vernaculars. The fact that the country has three time divisional regions, - West, Central and East Indonesian Time Regions - shows how vast the area of the Republic is.

Overview of the traditional bonds among the Adat¹ society in Maluku

Maluku is a province where my Adat society dwells. The province consists of three second level regions (regencies - *kabupaten*) and one municipality, respectively. The regencies and municipality are:

1. The regency of North Maluku with Ternate as its capital;
2. The regency of Central Maluku with Masohi as its capital;
3. The regency of South East Maluku, with Tual as its capital;
4. The municipality of Ambon with Ambon as its capital.

Johannes Paulus Rahail is from Kei Besar Island in the Moluccas, Indonesia. In 1970 he was elected chief of the Adat Territory of Maur-Ohoivut, one of the six traditional domains under the rule of the rajahs on Kei Besar Island. Ever since, he has devoted his efforts to revitalising the traditional institutions of the Kei Besar people, and he led the struggle against recent government plans to exploit gas and mineral resources on the island and off its shores. Since 1991, he has participated in various seminars and workshops on environmental issues, biodiversity conservation and indigenous peoples' rights, both in Indonesia and abroad.

¹ "Adat is commonly translated as tradition, (traditional) custom, and in the literature on traditional societies it is also translated as 'indigenous'. [...] Thus an *adat* area is an area ruled by a particular set of traditions, an *adat* chief is a traditional chief, an adat society a traditional society, i.e. a society with a particular set of traditions" (J.P. Rahail 1995. Bat Batang Fitroa Fitnagan. Protecting Land and Sea: Traditional Land and Sea Use Patterns of the Kei Islands, p.1, translator's note. Draft).

The recorded number of islands in the province is 999. Yet, another source estimates that the number of islands is 1,207 hence the province is dubbed as a thousand-island province. The population consists of approximately 2,391,430 inhabitants.

Within the Adat society in Maluku, there are two major groupings consisting of group nine (9) and group five (5). Both groups have different names by the regions:

- In North Maluku, group nine is called *Uli Siwa*, group five is called *Uli Lima*;
- In Central Maluku, group nine is called *Pata Siwa*, group five *Pata Lima*;
- In South East Maluku, group nine is called *Loor Siu*, group five *Loor Lim*.

Between the two major groups one or two villages remain out of bond. In the islands of Kei, such villages are called *Loor-lobai*. Different names are used to refer to them in North and Central Maluku. In addition to the above grouping, there are special bonds binding two or three villages which have a special *Pela* relationship². This applies for the whole Central Maluku. Other regions have such relationships, but different terms are used. In the islands of Kei, the relationship is called *Bel*. Such a relationship generally binds villages or groups together. However, in many cases it also applies to villages of the same group. The bond is very deep and lasts for generations in the villages and binds them as brothers and sisters.

The Adat society in the islands of South-East Maluku

South-East Maluku is the regency in which I live. The capital is Tual. By the end of 1994, the population was 310,824. This regency has 8 sub-divisional administrative regions (subdistricts - *kecamatan*). They are:

- Kecamatan of Kei Kecil (Minor Kei) Islands with the capital Watdek-Tual;
- Kecamatan of Kei Besar (Major Kei) Islands with the capital Elat;
- Kecamatan of Aru Islands, with the capital Dobo;
- Kecamatan of Tanimbar Utara (North Tanimbar) with the capital Larat;

2. *Pela* is an agreement of solidarity between members of different areas or clans, resulting from marriages, peace agreements, etc.

- Kecamatan of Tanimbar Selatan (South Tanimbar), with the capital Saumlaki;
- Kecamatan of Babar Islands, with the capital Tapa;
- Kecamatan of Wonreli (including Kisar, Damer, Romang dan Wetar), with the capital Wonreli on the island of Kisar;
- Kecamatan of the Southernmost Islands (including islands of Leti, Moa, Lakor/Lemol), the capital is Serwaru on Leti island.

In South-East Maluku, the customs of indigenous groups vary by the *kecamatan*. However, in the *kecamatan* itself exist several indigenous groups with different customs and vernaculars.

- Kecamatan of Kei Kecil Islands and Kecamatan of Kei Besar Islands, which are collectively called Kei islands, have one vernacular and have the same customs. However, in Kecamatan of Kei Besar there are two villages having different vernaculars and their customs have different rules. The villages are Banda Eli and Banda Elat;
- Kecamatan of Aru Islands has seven tribal groups speaking their own vernaculars; they have their own customs;
- In the Kecamatan of North Tanimbar there are three tribal groups with their own customs and vernaculars;
- In the Kecamatan of South Tanimbar there are two tribal groups with their own customs and vernaculars;
- Kecamatan of Babar Islands has three tribal groups with their own custom and vernaculars;
- In the Kecamatan of the Southernmost Islands there are two tribal groups with their own customs and vernaculars;
- Kecamatan of Wonreli has three tribal groups with their own customs and vernaculars.

One can imagine how rich this region is with cultural diversity. Within a regency there are 22 tribal groups with different customs and vernaculars.

South-East Maluku has a seasonal climate consisting of:

- a. dry monsoon in the months of May, June, July, August and September;
- b. wet monsoon in the months of December, January, February;
- c. the transitional season from dry to wet monsoon, in October/November;
- d. the transitional season from wet monsoon to dry monsoon, in March/April.

The customs of the Kei (Evav) Islands

As mentioned earlier, there are two tribal groups having different customs and vernaculars within two *kecamatan*s on the islands of Kei (Evav). All customs on Kei, however, stem from one customary law called *Larwul Ngabal*. There are two villages whose population originated from Banda Island in Central Maluku. The people of the two villages have long settled in Kecamatan Kei Besar and still preserve their own customs. Yet, the customary law *Larwul Ngabal* applies to the people of these two villages as it does to other society members of other villages.

Larwul Ngabal is oral, not written, but it is positive in its nature. The enforcing mechanism is carried out by an implementing institution which has performed duties for centuries throughout the Kei Islands. The customary law is implemented in every Adat Territorial Settlement Unit which consists of:

Oboi: the smallest unit of settlement (at the level of *kampung*, village). The complete name is *Oboi-Nuhu* (settlement and soil). The head of *Oboi* is called *Kepalaso*a or *Orangtua* who is assisted by several clan chiefs (*Fam*) who are called *Seniri*;

Utan: the union of several adjacent *Oboi*. *Utan* is of the same level as the village in the government administrative structure. The customary term is *Utan-Bilan* (village and trip/development). The head of an *Utan* is called *Orangkaya* or *Kapitan*. In certain villages, the *Orangkaya/Kapitan* is assisted by several *Kepalaso*a who are responsible for their own territorial units;

Loor: the union of several *Utan*. This territorial unit is of the same level as *kecamatan* (sub-district). The complete name is *Loor-Yaat* (many/much and big/thick). The head of a *Loor* is called *Rat* (rajah), who in performing duties, is assisted by several *Orangkaya/Kapitan*, *Kepalaso*a, and *Seniri* in certain fields of duty and interests. The *Loor* territorial unit was called *Ratschap* during the Dutch colonial time.

So, *Oboi* is led by a *Kepalaso*a who is presently called *Kepala Dusun* (sub-village head), while *Utan* is led by an *Orangkaya/Kapitan* who is now called *Kepala Desa*.

The erosion of local traditions

There are several things which cause or aid the erosion of local traditions. They are, among others:

1. The intrusion of different religions disrupts family unity as each family member tends to spread his/her belief;
2. The arrival of outsiders who bring with them different ways of dressing, speaking and making jokes stain the purity of the local traditions;
3. The introduction of a market economy and money;
4. Schooling systems with curricula accentuating outside values;
5. Some of the youngsters who are educated in towns or who go to towns in order to make a living return to the village with urban values;
6. The development of new urban centres;
7. The decreasing number of old people who firmly uphold traditions and can thus set examples for younger generations; this fact and the fact that they are only versed in traditional knowledge and a mastery of vernaculars make them unable to give advice to younger people;
8. The members of society have too many activities and subsequently find very little time to attend social gatherings in which they can hear things about the traditions;
9. Certain members of the Government Employee Corps who obey their superiors or who are concerned only with their own interests, use their power to suppress people, weaken and manipulate the people in many ways;
10. Besides those who have power, persons from religious organisations, as well as from NGOs often 'sell' the Adat society for their own interests and worsen the situation;
11. Some retired government employees or members of the armed forces do not come home to join the 'disease curing' group, rather they act as 'disease givers';
12. The excessive respect of the local people to outsiders makes them underesteem their own traditions;
13. The misuse of power by the ruling group weakens the Adat society members;
14. Being fed up with the deceits by the outsiders, Adat society members tend to avoid outsiders; this is not always advantageous to the Adat society;
15. Excessive bureaucracy in the government down to the local level corrupts information and other services for the people;
16. The people have too little economic power; they are poorly paid, and have too many expenses.

Efforts in reviving and promoting the traditional life of the Adat society

Efforts before 1990

My Adat society at that time believed in and expected the authorities and church officials to pay attention to the traditions and do something for their survival. They also expected them to take actions in promoting traditional values. But when they did nothing, we were disappointed. We had done many things to meet the expectations of the authorities, as well as the church, expecting that they would listen to us in return and do something for our betterment. But the situation became even worse.

Given the situation, the leading Adat figures in Maur-Ohoiwut Adat territory in Watlaar, the Maur-Ohoiwut capital, joined together and passed the Watlaar Declaration. The Declaration states that Adat Law should become the basis of development programmes in all *negeri* (villages). The Declaration was presented to the local government, thereby urging it to support the people in compliance with the substance of the Declaration and the aspirations of the people. But the situation deteriorated to the point that the people stopped relying on the local government.

Then, on 30 November 1972, the leading Adat figures of Maur-Ohoiwut made a statement to urge the government to give special autonomy to Maur-Ohoiwut. But the government view was that it was not yet the right time to discuss the matter. The government encouraged the people to pay more attention to development activities in their villages.

The latest development was that the government ignored our Adat territory, despite the efforts we made to obtain recognition. The government kept running the administration of the villages in its own formal administrative system and put the territory under the administrative unit called *kecamatan* (sub-district). The territorial area of the Adat Legal Territory was considered non-existent.

Current efforts to guard the traditions

1990 was the year we took action as it appeared that the authorities would not respond to our demands. We began seeking better ways to be more self-supported and self-reliant. We decided to form a Routine Adat Assembly, locally called *Madiwun Uun Matan Maur-Ohoiwut (MUMMO)*. It can be trans-

lated as an Assembly for Developing Maur-Ohoiwut or Assembly of Maur-Ohoiwut Leaders. The objective is to arrange and manage customary matters ourselves, as well as to apply the special (local) management system in protecting the environment and in developing the human resources of Maur-Ohoiwut.

MUMMO I took place in Watlaar from 25 to 27 October, 1991. The theme was 'Arousing Self-Consciousness'. With MUMMO I we began writing a book on the existence of the Adat society and their traditions.

MUMMO II took place in Watlaar on 5-8 October 1992 with the theme: 'The people should participate in the development and the people should determine for themselves and for their own good'. The results of this assembly were among others: 1) establishment of the foundation; 2) the idea to invite the Minister of the Environment to open MUMMO III.

MUMMO III took place in Watlaar on 20-23 and 26-29 December 1993. The theme was 'Guaranteed culture and environment strengthen the basic frame of national development'. The sub-theme was: 'With the spirit of MUMMO III we promote efforts to conserve the natural and rural environment for the realisation of creating qualified human resources for the long run development programme of phase II'.

MUMMO IV took place in Watlaar on 5-7 December 1994 with the theme: 'Guarded tradition with good environment strengthens the implementation of the long run development programme of phase II'. The sub-theme was: 'With the spirit of MUMMO IV we promote the quality of human resources in order to maximise the utilisation of natural potentials and its sustainability for the welfare of the people'. The outcome of the assembly was: 1) putting stricter control over the supervision and management of natural potentials both on land and in the sea; 2) promoting the knowledge of the people over natural potentials; 3) promoting human resources by mental and cognitive training.

MUMMO V is designated to take place on 27-29 November 1995. Prior to the assembly, there will be MUWATMO (Muayamarah Wanita Maur-Ohoiwut; Assembly of Maur-Ohoiwut Women) on 21-25 November 1995. It is expected that the MUWATMO participants can take part in MUMMO V. The designated theme is: 'Developing natural resource management skills integrally by the people'.

What is needed for developing the territory

In Maur-Ohoiwut Adat territory there are two institutions in the forms of *yayasari* (foundation). They are:

- a. Yayasan ASLI. This institution has activities in educational and cultural development.
- b. Yayasan Pengembangan Maur-Ohoiwut (Foundation for Maur-Ohoiwut Development, YPMO). This institution has activities in training human resources and in economic promotion.

Besides this, there still exists the Adat institution, i.e. *Lembaga Adat Maur-Ohoiwut* (Maur-Ohoiwut Adat Institution), which is concerned with humanitarian services and is morally responsible for maintaining the harmonious life of the Adat society. However, the authorities or the ruling group or those in power (e.g. government and church officials) consider that this institution has no legal ground, so they grant no recognition.

The absence of official recognition to the Adat institution led the people to form organisations (institutions) which can obtain legal recognition from the authorities. Yayasan ASLI and YPMO are two organisations founded by the people to support the Adat. People in other areas in Maluku followed suit. They also set up organisations like Yayasan Learissa Kayeli in Haruku, Central Maluku, and Yayasan Neworita in South Tanimbar.

Suggestions as well as requests

From the description, the conclusion could be drawn that Adat societies everywhere need to support one another. The solidarity making efforts should be made from the local level to the national level and even internationally. Indigenous peoples' institutions should always be supported so that they can help the people to retain or regain their rights and cultural autonomy. The three organisations mentioned earlier, as well as other institutions elsewhere in Maluku, should be able to support one another in any form of activities, including finding ways to obtain funds for the continuity of their activities within Adat society so that in time, the Adat society can achieve economic self-sufficiency.

That concludes my description. I hope that this presentation is useful in the fight for the downtrodden and oppressed everywhere.

PEOPLES' FEDERALISM: THE LUMAD MINDANAW PEOPLES' PERSPECTIVE ON GENUINE SELF-DETERMINATION



In this article, I am going to present the Lumad Mindanaw Peoples Federation's (LMPF) perspective on self-determination founded on the principle of *peoples' federation*. Our concept of this federation was a result of our painful experience in dealing with the impositions of the Philippine state or the national government and even with our supposed allies in the nationalist freedom movement.

Finding our own way: the bitter experiences of the past

'Katawhang Lumad' or 'Lumad' is a Visayan term for 'grown out from the place or territory'. This term was officially adopted during the Lumad Mindanaw founding assembly in June 1986, and it signifies the organisational identity of the 15 (now 22 Lumad peoples) who are the descendants of the un-islamised and un-colonised inhabitants of Mindanao. These 22 peoples have distinct differences from the majority of the hispanicised and westernised Philippine population.

For more than a decade of the Lumad Mindanaw - now LM Peoples' - Federation's existence, the consigned propaganda and campaign machinery of the mainstream national liberation movement directed our organisation. Here, we use the term 'consigned' for clarification that Lumad Mindanaw has no organic relation as member organisation to any nationalist and

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democratic organisation in the Philippines. In the middle of the 1970s, the term tribal Filipinos or 'TF' was the church and non-governmental organisation's designation for the indigenous peoples. The underground National Democratic Front, or NDF, has categorically referred to us as 'ethnic minorities' or 'national minorities' and classified us as a special group under the peasant sector. Nevertheless, in the nationalist propaganda LM is projected as a genuine peoples' organisation of the tribal Filipinos in Mindanao who are struggling for national democracy.

While not all members of LM comprehend these dynamics, the organisation smoothly functioned according to the role defined under the structure of the nationalist movement. But at the peak of its propaganda, both internal and external organisational contradictions had surfaced. These contradictions were regarded as the eve of Lumad Mindanaw's maturity. But unfortunately, the mainstream interpreted this consciousness as 'revisionism' or 'leftist opportunism' which followed the path of the reactionaries. And recently, LM was labelled as 'rejectionist'. How and why, only the mainstream struggle knows the answer. But the truth is that the LMPF rejects nothing, except those impositions deterrent to the interests of the Lumad peoples. And with this, we think we do not deserve all these labels.

Towards the end of 1989, the mainstream openly showed their abhorrence of LM and the latter began to dissociate from them. Subsequently, a covert policy of isolation was directed toward the LM organisation. Non-governmental organisations and all allied organisations were cautioned against contact with LM. Likewise, funding networks on the local and international level were discouraged from supporting its organisational activities. Not content with this, the movement displayed its radical attitude by sowing a blaze of opinions. With the co-optation of a local organisation, LM was finally expelled from the national federation, the Kalipunan ng mga Katutubong Mamamayan ng Pilipinas, or KAMP.

Tackling organisational contradictions

It was during the 1991 Third LM Congress that the Lumad leaders began to insist on their collective right to set their own direction. The seed of self-determination had just fallen on the fertile grounds of the Lumad experiences. The Congress concluded with seven major recommendations which gave new mandates, embodied in two major concerns: the urgency to

clarify the direction of the Lumad struggle and to re-orient or re-organise Lumad Mindanaw and its constituent organisations based on this realisation. This challenge proved to not be easy indeed. It took us three years to objectify internal and external organisational contradictions. They were identified in:

1. the framework of struggle for self-determination;
2. the survival issue;
3. the option of armed struggle, and
4. the state's view on indigenous peoples' self-determination.

1. The framework of struggle for self-determination

In the framework of self-determination, the contradiction lies between the ideology of the mainstream and the belief and tradition which support our vision. The Lumad used to be considered under the peasant sector and accorded with the previously mentioned varying designations. But beyond these semantics, we want to be recognised by our identity either as *Manuwù, Mansaka, T'boli, Subanen, Mangguwangan, Manobo, Matidsalug, Dulangan, Mamanuwa*, etc. We are neither a minority in our territories nor can we remember how our uncolonised ancestors became Filipinos.

Lumad Mindanaw has been governed by state policies, and, on a similar level of intensity, by the nationalist movement through its organisational structure at the national and local level. The Lumads periodically elected officials, studied social and class analysis, national and global situations and the like. But in the end, we realised we were drifting away from our own beliefs and traditions. We had almost totally disregarded the wisdom of our people by casting hopes to the progressive personalities to act on behalf of our traditional leaders. We waged the struggle for national liberation. But when shall we fight for our own cause? What then have we fought for? To our unenlightened comrades, the ancestral domain, self-determination, beliefs and traditions are nothing but slogans. The movement treats and chooses to deal with the Lumads as a nomadic, primitive, communal and hence, backward society.

2. The survival situation

The survival situation is the most critical issue which often contravenes the organisational goals. This is the point wherein

social or peoples' survival are weighed against individual economic survival. Even sub-regional and local organisations suffered from this contradiction. Some concrete experiences were: Many of the LM's member organisations have pursued programmes designed by those who provided them with some sort of income. These include the government's counter-insurgency campaign as shown in the proliferation of the '*tadtad*' anti-communists who are mostly fanatics, and the 'pro-development' Lumads who have supported the Philippine National Oil Company (PNOC) in establishing a geothermal plant in one of our sacred domains in Apù Sandawa. These Lumads have chosen to become instruments of war against their kin or allow the intrusion of a company in territory closed for economic and security reasons. Thus, to tell them to avoid and refrain from affiliating with these entities without providing them with an alternative means of livelihood is tantamount to disregarding their rights to survival. Similarly, to assert social survival over individual basic needs violates the very fundamental law of man's existence. On the other hand, to allow individual interests to supervene the quest for self-determination is equivalent to the denial of the Lumad Peoples' existence. To respond to both, or at least to compromise on these contradictions, is the painstaking search for a solution.

3. *The option of armed struggle*

A considerable number of Lumads are involved in either the government or revolutionary forces in the insurgency conflict or even with bandits in the countryside. This is proof that Lumads do not hesitate to carry arms for a specific cause. These armed Lumads are noted for expertise e.g. in their solid knowledge of the terrain and proven capability to survive in the 'jungle', since forest is part of their home. Likewise, they are known to be loyal to their respective commanders. Thus, the option of armed struggle is a possibility. At the moment, it is only constrained by the lack of a centralised structure which will lead the people. The LMPF is not designed to become this centralised structure. However, it can facilitate the eventual growth of this type of *bagani*, who will act as guardians of territories and communities.

We also realised that the above contradictions are but a natural phenomenon which motivates us to define the direction of our struggle. This awareness prompted us to go back and dig

deeper into the roots of our history and tradition. This process enabled us to reflect and gain insight as to where we start the battle: determining the obstacles and the enemies which will oppose our aspirations, and how the ultimate end of our struggle can be attained.

We therefore felt that we have no regrets in our almost decade old organisational existence. No matter how discriminated or humiliated, we are still proud of our experience in our modest participation in the mainstream struggle. In many ways, this encounter has nurtured the maturity of our people in their struggle for self-determination. Although sometimes our struggle is obscured in times of difficulty and continuing poverty, we manage to hold on to this vision. A sound organisational principle based on self-determination will motivate us to sustain and consolidate our future gains in the struggle.

4. *The state's view on indigenous peoples' self-determination*

In Mindanao, the Lumad's problem of cultural survival is aggravated by the Philippine government's gross indifference towards the indigenous peoples and its consistent integrationist and assimilationist policies, its attempt to absorb them into the mainstream culture and politics. The government's ethnocide campaign is manifested in many ways. These include:

a. The granting of Certificate of Claims on Ancestral Domain/Land (CADC/CALC).

The Philippine government secures its definition of ancestral domain from the concoction of the Spanish *conquistadores*' Regalian Doctrine and the Americans' jurisprudence based on the Cariño case of 1909, in which Mateo Cariño, an indigenous uplander from Benguet Province, claimed land ownership and the US Court ruled in his favour.

The Department of Environment and Natural Resources (DENR) Administrative Order 2, series of 1993; the *Handog Titulo* Programme, or the granting of land titles programme; National Integrated Protected Areas (NIPAS), Industrial Forestry Management Agreement (IFMA), and the recent National Human Rights Plan 1996-2000 attempted to convert the ancestral lands into pieces of paper called certificates. These policies have become the Ramos Administration's contribution to upholding the system formulated by the colonisers which divests the Lumad peoples

of their inherent rights to their territory and exercise of traditional governance. Moreover, these are part of a ploy to deny the indigenous peoples' rights, rather than to do justice as the historical reality warrants. The Ramos Government boasted of delineating 121,242 hectares of ancestral domain to four tribal communities who are represented by 14 tribal leaders. According to DENR Secretary Victor O. Ramos, "such gesture was a manifestation of the President's sincerity in assuring the faith of the indigenous peoples on their claims to their territories".

In actuality, such certificates are designed to legally and completely deny the Lumads' rights and, at the same time, sow mistrust and foment animosities between the Lumads and the non-Lumads. In the first place, certificates can be a legal instrument for transferring rights. A multinational company has only to spend 14 million Philippine Pesos to lure the 14 certificate holders to give in to the former's exploitation of the land's natural resources.

Furthermore, supposing that there is a population of 3.5 million indigenous in Mindanao, together with 500,000 leaders: how many millions of hectares of land will the government grant? If President Ramos refuses to give the same size of land as the one already issued, is the government not instigating trouble among the Lumad leaders? And how can a Lumad leader govern his territory which was granted under CADC/CALC and whose origin is premised on legislation by non-Lumads in Manila? And lastly, how could a non-Lumad react if his small farm happens to be included in the CADC/CALC claims? Are these types of claims to paint a landgrabber image in the face of landless and displaced Lumads, serving as a decoy to accommodate the grievances of the thousands of landless peasants?

The issuance of the Certificates of Claims on Ancestral Domains/Lands without breaking the *Regalian Doctrine* is nothing but a *pseudo* recognition of ancestral domain. We should not forget that this foreign doctrine is the foundation of all Philippine land laws. This doctrine legalises the state's claim all over Mindanao. It must be stressed here that ownership of a portion of land does not and will never constitute the entirety of the ancestral domain and it will not assure self-governance. Ancestral domain and self-determination do not exist as independent reality but rather are interdependent concepts. Thus, a tribal territory without the right to self-governance is a *dead domain*.

Aggravating this problem is the direct participation of several pragmatic advocates who serve as accomplices in leading some unbeknownst Lumads to these government traps.

b. The Peace negotiation

Apparent to the Ramos Administration's peace negotiation strategy is its double standard - with a divisive and militarist character. It maintains a hardline stand against the mainstream movement and the Moro peoples' struggle for autonomy. Its open-ended policy of negotiations with every faction of the revolutionary movement is simply dictated by the logic that the movement's dwindling existence ceases to be a threat to national security, and thus needs no representation in the negotiation. Its counter-insurgency measures promote factionalism and confusion among the rank and file of the revolutionary forces. Of course, these are part of its divisive tactic to foil all opposing forces.

The Ramos Administration applied the same logic to the Lumads' struggle for self-determination. It excluded the indigenous peoples from formal peace talks. The presumption that the Lumad Peoples' issues and struggle can be addressed by the Islamic Moro National Liberation Front (MNLF), and the leftist National Democratic Front representations, or by the National Human Rights Plan of 1996-2000 makes apparent the glaring reality that only through armed struggle will the government listen to the Lumads. Another possibility is that the government is entertaining the idea of using the MNLF's Bangsa Moro Army (BMA) for its future counter-insurgency programme, thus domesticating social issues in Mindanao, particularly the armed struggle. This tactic is not new in the Philippines. This government is known to adhere to its militarist strategies that compel people to kill each other in the name of national interest.

The State appears determined to impose its monolithic structure on the Lumads' socio-cultural boundaries for the benefit of national security and unity. Given this scenario, we firmly conclude that nothing can be expected from the Government's underhanded issuance of certificates nor its pompous human rights plan. After all, these are the same rhetorical pieces of make-believes similar to the pronouncements of the past administrations.

Defining the Lumads' direction of peoples' struggle

The Lumad Peoples' Federation is defined as the relation of nations/groups of people based on the principle of peaceful co-existence and partnership in the responsible stewardship of land. This definition is grounded on three social aspects of Lumad peoples' history, beliefs and tradition, namely:

- The inherent right of all tribal peoples to determine and exercise self-governance within their territory. However, no nation or state has ever granted rights to peoples who existed prior to its emergence. Nonetheless, it is evident in the past that self-governance has been independently practised by the Lumads in some territories as this is sanctioned by their customary laws.
- Peaceful co-existence is a belief of natural order for lasting relationships with other peoples who acknowledge dependence on land. Our ancestors lived and practised this tradition. They have shown to us what respect for an ecological relationship means and how to safeguard our environment. Peaceful co-existence does not connote the absence of conflict. However, our customary laws prescribe the observance of equal rights, that no one should uphold interests at the expense of others.
- Meanwhile, partnership is basically stewardship with a shared responsibility in maintaining a sound human-environmental relationship with the land. The Lumad Peoples believe that the life source of all creatures originates from the land. Thus, any forms of destruction committed against her is gradual annihilation of humankind. No amount of profits nor development status can justify the human acts that ruin the integrity of our very source of life.

The above scenarios have guided us in coming out with firm resolutions which will be utilised as a basis of our perspective on self-determination. These include the following:

1. to present and urge all indigenous peoples to revitalise and strengthen their traditional structure and reaffirm the customary laws;
2. to reclaim all and remaining Lumad Peoples' territories;
3. to reinstitute traditional governance in the management of the communities and the ancestral domains, and

4. to strengthen inter-people relations and maintain a harmonious relationship.

To reiterate, the struggle for self-determination includes opposition to the existing foreign structures and other dominant social forces which are determined to impose their system, authority and ideologies upon our people.

It should be clear to all that, being indigenous, the common trait of our unity is diversity. Therefore, we advance our cause within the bounds of our customs and traditions. Waging this struggle requires a strong community base that is not only credible, but flexible to reach out to regional and international organisations who strive for the same vision. When we say strong links at the local level, we mean organisations whose strength lies not in number but in terms of due representation and determination. Our community organising efforts continue even without the recognition of the government or any cause-oriented entities.

We also avoid the kind of federation which is dependent on leaders and influential personalities, since their decisions will only undermine the capacity of our communities to participate in the governance. We also believe that federations are only tenable when represented by genuine peoples' organisations and not by individual alliances, similar to those we encountered during the last eight years of our existence. Federalism, likewise, should be dynamic and freely adjust to the changing local conditions. It also needs a constructive handling of internal organisational problems. Had there been flexibility and thorough understanding of our move, the national federation, KAMP, could not have expelled LM for its decision to deviate from the nationalist alliance's *correct political line*. In fact, we then urged KAMP to study the historical precedence of all indigenous peoples' organisations who opted for an independent position; to act as a mediator and to explain, based on the indigenous peoples' understanding and agreement, why their participation in the liberation movement has taken a new direction.

On national government

One should expect the Philippine Government to have some sense of decency. But on the contrary, it is socially and politi-

cally corrupt and morally insidious for imposing its authority on the Lumad Peoples against their will. The Government must recognise the historic destruction which colonised nation-states have committed to the detriment of indigenous peoples. The so-called social services, donations, infrastructure facilities and the like, even if rarely implemented, but somehow extended to our communities, are not enough to compensate for the physical, social and economic damages the government has caused. Besides, the benefits are obliterated by the intentions themselves. In short, the national governments are self-serving entities.

On the other hand, the Lumad Peoples do not intend to grab or seize state power. In the first place, we want nothing to do with a centralised and bureaucratic system of government. It is contrary to our traditions. All we are proposing to the government is the recognition and respect of our identity. Our gauge of sincerity for the present administration is its readiness to effect fundamental change within its system. Indigenous peoples may have participated in the national government, but only through peoples' representations. Meanwhile, the state should restrain its authority in the area dominated by the Lumad Peoples. It shall only govern in terms of maintenance of order and relations among its constituents.

On the non-Lumads

Lumad peoples' relations with non-Lumads, especially those who are not or do not want to be represented by the national state, can be defined and embodied by both traditional and contemporary agreements and treaties. However, these agreements should accord with a national government of peoples or any equivalent body. Individuals or groups who wish to reside in the Lumad Peoples' territory are most welcome provided they vow to respect and abide by our cultural practices and customary law. These non-Lumads can practice their own beliefs, lifestyles and the like but must not prevail over the Lumad practices. Our experiences in Mindanao have proven that settlers from Luzon and the Visayas do not have difficulties in integrating with Lumad communities. But when these immigrants started to buy or claim possession of the lands which the local chieftain permitted them to cultivate, they also imposed their authority, often in an arrogant manner because they considered themselves to be 'educated unlike the natives'. As a

result, there are Lumads who were converted into tenants and farm labourers or helpers of the *Biseyā* (the settlers from the Visayas); worse, many were forced to become squatters and, in avoiding conflict, opted to flee to the remote hinterlands.

On international community relations

As far as our ancestors' perceptions are concerned, Mindanao is the world itself. This is the context within which our people consider Mindanao as the ancestral land. On this premise, we view global relations as reaching out to other indigenous peoples' families of different races and cultures. Recognising that this belief and understanding may not be acceptable in a world market economy, for example the United Nations, it then becomes imperative to opt for a diverse international policy. Therefore the pursuance of synchronised international relations to as many institutions, agencies and peoples organisations outside of the UN system has been suggested. Simultaneously, we call upon the UN to accept genuine representation of indigenous peoples from regional and international federations, rather than relying on state dignitaries who are not rightful representatives of our kind.

On partnership in development

As mentioned earlier, peoples' federalism defines the kind of partnership of peoples based on the shared responsibility of stewardship of the Land. It applies to development work through co-operation. To the Lumad Peoples, the concept of stewardship, as well as development, is reflected in a healthy environment which is bountiful and where peace reigns. To us, the most important element of life is its essence - woven into an integrated life cycle and not for luxuries.

Partnership for development calls for a co-operation of all peoples in restoring environmental damages and instituting measures to arrest further degradation. In terms of technology and other developmental tools, they must be based on shared knowledge so that the communities will be able to participate and to retain the means of control over the process and that neither will be adopted for the sake of individual interests.

Conclusion

Reflecting on our survival, the difficulty now experienced in the national mainstream struggle on the one hand and the ethnocide policies and programmes of the government on the other have contributed to what LMPF is now. Enlightened and with new insights to complement the wisdom of our ancestors and elders, this concrete direction of the Lumad peoples' struggle for self-determination has transformed the Lumad's role from a mere beneficiary of a national liberation movement to a true partner in social transformation or movement.

We understand that the indigenous peoples in Asia experience different conditions and levels of sufferings. Thus, a simple and generalised solution will not serve. Our Lumad peoples' perspective on genuine self-determination may not be relevant to other indigenous peoples in the Asian region, nor may this alternative even be acceptable to other indigenous peoples in the Philippines outside Mindanao. However, despite the differences of our social realities, a grain of truth remains. The world is now divided by different states. Regardless of the ideological and development status of these independent states, the indigenous peoples dominated by them continue to be marginalised and regarded as a minority. In this light, I close my reflections with a question: Being an indigenous 'minority', do we really have to be ruled and rendered voiceless? Unfortunately, I cannot provide the answer but perhaps we, the indigenous peoples, can bring about a solution.

CHAPTER IV PERSPECTIVES ON THE FUTURE

**STRATEGIES FOR THE FUTURE: ACHIEVING
PARTNERSHIPS FOR THE ADVANCEMENT OF
INDIGENOUS PEOPLES' RIGHTS**



Let me begin by first observing that we are now in the last quarter of the inaugural year of the International Decade for the World's Indigenous Peoples which has the theme 'Partnership in Action'. We would have hoped that this UN proclamation, which came about after years of hard work by indigenous peoples and not as a result of the benevolent attitude of states, would pave the way for the establishment of the just social order which we aspire to achieve. However, this does not appear to be the case. I do recognise that significant steps have been taken towards this, as in the willingness of governments to send in their official representatives to this gathering. I recognise that this is an important step towards the creation of a just partnership between indigenous peoples and governments.

In the past nine months of this year we, the indigenous peoples, have time and again been frustrated in our desire to seek meaningful partnership and collaboration with state-governments. Let me just point out some of the things that have been happening at the UN with regards to indigenous peoples.

The Draft Declaration on Indigenous Peoples Rights

Last February/March, during the Commission on Human Rights meeting, the Commission did not even bother to discuss the Draft Declaration of the UN Working Group on Indigenous

Minnie Degawan, a Kankanaey of the Cordillera in the Northern Philippines, is the Secretary General of the Cordillera Peoples Alliance (CPA). She was active in the popular movement against the Marcos dictatorship. Following this, she became active in issues concerning the Cordillera, and this eventually led her to the CPA. First a trainer for community organisers, she was elected Secretary General in 1992. Through her work with CPA she has had the possibility of interacting with different indigenous peoples both at local, national and international levels.

Populations (WGIP). This Draft Declaration on the Rights of Indigenous Peoples is the result of 13 long years of work by members of the WGIP and indigenous peoples who sacrificed resources and time to go to Geneva every year. In 1993, the WGIP presented the final Draft Declaration and indigenous peoples, while not fully satisfied with it, took it as a positive omen that the drafting process was completed as the world was celebrating the International Year for the Indigenous Peoples. We had hoped that the draft would then go on and be adopted in its entirety by the parent body of the WGIP and on to the General Assembly for ratification into an International Declaration. This would have paved the way for an eventual enforceable convention.

However, such was not to be the case. The Commission on Human Rights (CMR), during its meeting last February/March, decided to form a new open-ended working group to elaborate on a draft declaration. It was as if 13 long years did not happen and that the world has not progressed an inch concerning the issue of indigenous peoples as a whole. Worse is the provision for the participation of indigenous organisations in the deliberations of such a draft. Whereas the WGIP has conducted its sessions with the participation of any indigenous organisation, the new so-called 'open-ended' working group seeks to make it difficult for indigenous peoples to participate in the processes. The term 'open' in this case refers only to governments, while indigenous peoples will have to undergo a long and difficult process just to become accredited to participate in it.

Even more disturbing is the position taken by some governments, notably those coming from Asia, to first define the scope of the declaration before deliberating on it. This is seen not only as a delaying tactic on the part of these governments, but more importantly, it is seen as an attempt to exclude some peoples in the coverage of the Draft Declaration. This makes the issue of definition increasingly important.

The Permanent Forum for Indigenous Peoples at the UN

Another initiative in the UN to address the centuries-old injustice perpetuated against indigenous peoples is the proposed Permanent Forum for Indigenous Peoples at the UN. Having recognised that the UN has no specific structure to address the multitude of issues faced by indigenous peoples, there have

been discussions on how best to resolve this impasse. The first proposal for such came from Greenland and was subsequently adopted in the programme of action of the World Conference on Human Rights.

While some governments enthusiastically endorsed this proposal, other governments were either hesitant or were downright opposed to the initiative. In June last year, the government of Denmark hosted a workshop to discuss the proposed forum with participants coming from indigenous peoples' organisations, governments and UN agencies. Again, similar to what happened during the CHR meeting in February, some governments exhibited their refusal to concede to the changing atmosphere between indigenous peoples and the international community. The issue of scope and definition of the term indigenous peoples again cropped up and, unfortunately, became the main focus of the three-day workshop.

The Decade

As was the case during the International Year, the International Decade for the World's Indigenous Peoples has not received much support from state governments and thus very little, if anything at all, has been accomplished. Much of the activities that have been outlined for the year, as in the case of the Philippine government, are activities that do not address the actual situation of indigenous peoples. The holding of indigenous olympics or cultural festivals are indeed important, if the threats to the survival of these distinct games and cultures are also addressed. Furthermore, the holding of such extravaganzas tend to trivialise the indigenous peoples' situation. Yet, it seems that official activities of governments for the Decade, if we are to go by their track record, will focus more on these types of activities.

It is indeed a sad commentary on our times when governments only recognise our existence as distinct peoples if there is the possibility of cashing-in on our perceived 'exoticness', as in the blatant use of indigenous dances and songs to attract tourists, but would go to all means to deny our existence when our rights are involved, as in the case of the Draft Declaration.

There have been other UN meetings in 1995 which also could have addressed some of our issues but failed to do so. I refer, for example, to the World Summit for Social Development in March. It is unfortunate that this summit did not take a stand for

indigenous peoples as one of the victims of structural adjustment programmes.

There was also of course the Fourth World Conference on Women, which provided for many of our indigenous sisters to come together under one tent to discuss common issues. This was, however, an initiative of the indigenous organisations and not an official one.

And there was the third session of the UN Commission on Sustainable Development (UNCSD) in April, where almost all the government speakers invoked the need to harness the knowledge and skills of indigenous peoples in achieving sustainable resource management, but unfortunately did not have the time nor the space for indigenous speakers. It would seem then that the UN is such a fragmented machinery that while one branch is calling for partnership the others seem not to know about it and go about their way ignoring indigenous peoples.

Other international organisations and UN agencies

As with the International Year, and again during the Decade, UN agencies and other international organisations are falling over each other in the mad rush to have glowing reports on their specific activities with or for indigenous peoples. Thus, we have several organisations such as the FAO, UNESCO, UNICEF and others scrambling into indigenous communities and implementing projects, that while maybe well-meaning, tend to further erode the community spirit or have other such negative effects.

We also have the multilateral aid agencies coming up with their policy papers on indigenous peoples. While this may be a good idea, it nevertheless defeats its purpose when indigenous peoples are not participants in the whole process. Thus, while we have the World Bank doing a revision of its Operational Directive on indigenous peoples and the Asian Development Bank soon to come up with its own policy paper, indigenous peoples continue to remain on the sidelines.

Interestingly enough, it is also the globalisation of the capitalist economic system, as concretised by the establishment of the World Trade Organisation, that is causing untold and worsening problems for indigenous peoples. In the efforts of Third World governments, especially those from our region, to compete in the world market, indigenous peoples are being sacrificed in the name of industrialisation. Our lands, forests, trees, waters and

even our cultures are now being exploited at a pace never seen before. It also appears that even our genetic make-up will soon be up for grabs to the highest bidders.

The challenges for creating partnerships

When as indigenous peoples we clamour for recognition, we, in the words of aboriginal leader Mick Dodson, "...make no claims for charity or for the creation of special privileges. But we do claim the justice of restoring pre-existing rights".

Every time we mention the term self-determination or even the term peoples, governments strongly react and say that these are threats to the integrity of states. But there can be no stronger guarantee for the maintenance of existing nation-states than to recognise the inherent rights of peoples. Peoples who are oppressed and whose rights are violated will always look for means to be free, regardless of whether or not there exists an international standard spelling out the rights of peoples.

We have been in this struggle for recognition since our ancestors first fought off the colonisers, and the next generation of our peoples will continue to do so unless a new order is established. To reach our goal will entail a long process, but, within the International Decade, we hope to achieve some milestones. The following are some thoughts on how to proceed with regard to the issues identified:

On the Draft Declaration and the issue of self-determination

I remember how last July during one of the indigenous peoples' caucuses, when the issue on how best to deal with the new open-ended working group's treatment of the Draft Declaration was being discussed, a number of our indigenous brothers suggested that indigenous peoples boycott the entire process as a show of protest. This would underscore the fact that indigenous peoples are almost ready to quit seeking dialogue with state governments to instead pursue independent initiatives. Such a suggestion indicates the level of frustration that we, as indigenous peoples, have reached in our struggle.

However, the decision taken by the caucus is to remain involved in the processes of the UN. This is again an expression of goodwill by indigenous peoples and should be reciprocated in full by governments by allowing for the participation of indigenous peoples in the new open-ended working group.

It is therefore urgent that we prepare ourselves for these meetings. For indigenous peoples, there has to be an understanding of what the UN is and what it is not. There is no point in expecting the UN to come up with a document that fully embodies our ideals, as it is not our forum. With this in mind, we should look at the Draft Declaration for what it is, a product of years of negotiations and compromises from both indigenous organisations and governments. It has its weaknesses, but it does have its role to play in furthering our struggle. Hence, I would urge that we, as an Asian bloc, move for its speedy ratification, in its entirety, and with no amendments or qualifications.

Yet even while the draft is undergoing its processes in the UN, we should begin to use it, popularise it among our constituents and invoke it in our struggles. The more we use the draft in our campaigns, the more likely that, in time, it will become an accepted standard.

For governments, most specially those which have publicly avowed their support for the document, as in the case of the Philippines, we urge them to influence other governments and prevent any attempts to weaken the Draft Declaration. We will hold them to their public commitments of supporting the Draft Declaration. Also, we strongly urge governments to include indigenous peoples in their official delegation who have a grasp of the situation, instead of relying purely on diplomatic personnel.

Governments should also ensure the inclusion of indigenous peoples in all of the processes involved in the adoption of the Declaration. While it would be ideal that governments contribute towards allowing indigenous peoples' participation through the Voluntary Fund, this might not be easily acceptable, thus we would, at a minimum, urge Asian governments not to block the participation of any indigenous organisation.

On the Permanent Forum and capability building of indigenous organisations

The Permanent Forum (PF) should emerge from a process and not be established for appearance's sake or to be able to champion an accomplishment. It should come about as a result of the Decade, rather than be formed for it. In 1994, the indigenous delegates from Asia proposed that the PF be composed of regional representatives and that its mandate include acting on complaints submitted by indigenous peoples. It is my

view that the PF should also serve as an avenue for building solidarity among the diverse indigenous peoples.

There are still a lot of issues within the discussions on the Permanent Forum that indigenous peoples need to agree upon. What is imperative at the moment is to provide for the space for the process to emerge. Indigenous peoples' organisations need to be informed of this initiative, what has been discussed and asked for their input.

Understandably, many of us here in Asia will not have the capacity to indulge in such discussions, given that our daily activities tend to be geared to the very basic issue of survival. It is indeed difficult to visualise indigenous peoples faced with the prevalent threat of forced relocation due to the building of a dam or the entry of a big mining company in their territory taking the time out to think about what would be the best position of the Permanent Forum within the UN structures. But this is an issue where we need input from our peoples, as without our active participation in the establishment of such a forum, there would be no point at all of having requested it in the first place.

Thus, I urge all to think of the Permanent Forum in the framework of the Decade. Governments could sponsor multi-party discussions on this important issue, as has the government of Denmark. These could be their contributions to the Decade, so that discussions would complement cultural jubilees.

This is also true for advocate organisations and funding agencies. While the priority area of work remains in the capability building of local organisations, funds may be sought for such discussions. These discussions would have the most impact if they were to be held at the regional level and also allow for inter-regional interaction. It is not always certain that indigenous peoples are aware of the situation of other indigenous peoples. We need to aggressively seek out our brothers and sisters and share similarities and differences. I see the example of an organisation from South America who is ignorant of the situation of the Asian indigenous peoples as a reflection of the long road which we must travel in terms of building relations based on solidarity between and among indigenous peoples.

Again, we have to accept this as a collective burden, in which we must also reach out to those outside of our region, and in reaching out we also carry with us not only our specific

concerns, but those of the others in the region as well. Incidentally, at the end of October 1995 a meeting is being convened in Peru to gather indigenous peoples together to discuss indigenous peoples and human rights. They have invited the Cordillera Peoples Alliance to join the meeting so that the participants can benefit from the experiences of Asian indigenous peoples as well.

On international organisations and other initiatives

The indigenous women's caucus in Beijing during the Fourth World Conference on Women came out with a comprehensive document which addresses the gender issue, but more importantly it identifies the so-called new world order as nothing but the re-colonisation of indigenous peoples. The Beijing declaration goes on to identify the beneficiaries and the forces behind this re-colonisation as the rich industrialised nation-states.

If we are to look for long term solutions to the issues faced by indigenous peoples, this basic fact has to be acknowledged and identified. We cannot allow these nation-states to continue to dictate their wishes to us. To combat this we need to urge the governments of our countries to vigilantly oppose the efforts of imperialists in order to once again gain control over our sovereignty. Yet, as we urge on our governments, we must not also lose sight of the reality that it is these same governments that are colonising us. It is indeed a double burden for us indigenous peoples that we are struggling to free ourselves from the local colonisers and at the same time, the more powerful forces at the international level.

Thus, while some governments may have passed what appears to be very progressive legislation on indigenous peoples, the economic programme being pursued on an international level still threatens the indigenous peoples. For example, the Philippines 2000 vision is a nightmare for the indigenous peoples as it means the further exploitation of the remaining resources in our territories. Thus, even if an autonomous government were to be set up in our region, we would still not have achieved self-determination as the means by which we should be able to control our own destiny are rapidly being taken away from us: lands and resources.

It is in this connection that we need to secure our relations with the other struggling and oppressed peoples in our countries. There is a need to seek and promote active dialogue between

the indigenous and the non-indigenous citizens in order to prevent governments from surrendering the sovereignty of our countries to those who continue to seek to colonise us.

We should also continue to lobby international organisations to allow for the direct participation of indigenous peoples in the initiatives that have an impact on indigenous peoples. The days where consultation meant informing us of projects should be gone and in its wake genuine and far-reaching dialogues should be established. We are both capable of and interested in the drafting of guidelines and policy papers. Therefore, international organisations should heed us.

On human rights

The violation of our individual human rights usually occurs as a result of our desire to have our collective rights recognised. This is the case when we mount opposition against development projects and the military is sent in to quell our resistance. And it is amazing how governments deal with the issue. Some will deny that such violations exist, while others ignore it and never refer to it, and still others present it as nothing but the government's legitimate effort to defend itself from terrorists. Worse is the more prevalent attitude of the media to ignore these violations and instead focus on romanticising the indigenous peoples as 'noble savages' or 'exotic'.

Our efforts should therefore be geared at exposing all such violations in all available fora. We were successful in ousting a dictator because of the widespread support we received from the international community, which was appalled at the gross human rights violations going on in our country during that time. We can only muster such support if we let the world know of the actual situations our peoples are faced with.

Summary

I would like to conclude this series of suggestions by pointing out that it took us years to have some members of the WGIP understand and support our demands; it will take more time for governments and the society at large. We need to seek to establish a relationship based on mutual respect between the state-governments and indigenous peoples. This should not be due to fear or intimidation on the part of indigenous peoples, or one that is a result of a patronising attitude on the part of

governments. This respect that we seek is rooted in understanding, which in turn will only be achieved if all of us open our minds and hearts to new ideas. Decolonisation is not only physically removing the coloniser, but it also involves a cleansing of biases and preconceived ideas.

Moreover, I urge governments, advocacy organisations, aid and funding agencies, as well as indigenous peoples' organisations to conduct massive and sustained educational campaigns directed at all sectors of society that will promote understanding of the various nuances of indigenous life. The fears that exist as a result of centuries of miseducation, both intentional and not, will take years to erase. But if progressive elements in governments were to initiate such a campaign within governments, it would take us a step further in the establishment of a just and lasting partnership.

Ultimately, the success or failure of our efforts for the recognition of our inherent rights will lie not in the hands of governments or of the international community but rather in our peoples' determination to struggle and live out the essence of self-determination. It will not be granted like manna from above or emerge from the halls of the legislative bodies in our respective countries - it can only be achieved through difficult struggles. Yet, we take heart in the victories achieved by indigenous peoples in different parts of the world, no matter how small. These are but evidence that we are pursuing a just struggle which will not be frustrated.

CHAPTER V CONCLUSIONS FROM THE CONFERENCE

CONCLUSIONS FROM THE CONFERENCE

The following conclusions consist of the agreements made at the end of the conference with elements of the summing up of each section included as a commentary.



The Concept of 'Indigenous Peoples' in Asia

The conference unanimously accepted the relevance and importance of the concept 'indigenous peoples' in Asia. The presence of the indigenous movement throughout the region draws peoples together as indigenous because of the common problems which they face. The meeting considered that a strict definition of indigenous was unnecessary, because the term constantly has to be adapted to encompass different situations. Furthermore, the general definitions which exist in the United Nations and the World Bank all provide a general orientation for the meaning of the term which fully embraces the indigenous peoples of Asia.

The meeting considered that as a general orientation, the following elements are useful indications of how the term indigenous applies in Asia.

1. Indigenous peoples have a special attachment to lands and territories.

On the basis of this, indigenous peoples claim ownership and control of their lands and resources. However, throughout Asia indigenous peoples are threatened with expulsion from their territories, economic interests are plundering their resources and they suffer invasions by outsiders. In the name of development, large-scale displacements of the indigenous peoples have occurred. Invasions constitute a colonisation which undermines the prior ownership of indigenous peoples of their ancestral territories.

2. Indigenous peoples have a sense of shared ancestry and have the right to self-determination

The collective identity of indigenous peoples is found throughout Asia and stretches far into their history. This shared

ancestry provides the grounds for self-identification of themselves as indigenous and of respect for their identity by other indigenous peoples. Unfortunately throughout the region authorities refuse to recognise indigenous peoples' territories and even their right to define themselves as indigenous.

3. Indigenous peoples have their own languages, cultures, spirituality and knowledge.

These features make each indigenous people guardians of their heritage and responsible for passing the wisdom of their ancestors to their descendants. The constant robbing and commercialisation of indigenous peoples' heritage by outsiders is common throughout Asia. The conference expressed particular concern at the collection and patenting of genetic material from indigenous peoples.

4. Indigenous peoples have their own political, social and cultural institutions. These include customary law, consensual decision-making processes, community life and collective sharing.

The indigenous peoples of Asia strive to control their own lives and make their own decisions. They claim self-government from within, and do not want political systems imposed from outside. This constitutes the exercise of self-determination which was recognised by government and indigenous representatives at the conference as a fundamental right.

5. Indigenous peoples' lands and territories and cultural institutions are violated by states and global forces through acts of domination.

This factor of indigenous peoples in Asia consists of their being marginalised, dispossessed and colonised peoples, a fate which they share with the other indigenous peoples throughout the world. The colonisation of indigenous peoples in Asia has not only come about through the process of invasion by Western powers but particularly, during the decolonisation process, where different peoples lost out and became prey to the interests of the newly formed states and international interests.

6. The indigenous peoples of Asia consider that the UN Draft declaration applies to them and constitutes the basic minimum

demands for their survival. The concept of indigenous peoples in Asia should be protected by the Draft Declaration.

International fora

The conference discussed the participation of the indigenous peoples of Asia in international fora and decided that, in spite of the difficulties, attendance at significant meetings was important. The two most immediate meetings are those of the Open-ended Working Group of the United Nations Commission on Human Rights to be held in Geneva in November 1995 and the Asian Development Bank consultation on operational procedures for indigenous peoples to be held in Manila during the same month. The conference provided the following mandate for Asian representatives attending these meetings.

The UN Open-ended Working Group

1. Indigenous representatives from Asia should constantly remind the governments and other people attending the meeting of the existence of indigenous peoples in Asia.
2. The Open-ended Working Group should be arranged to meet back to back with the Working Group on Indigenous Populations.
3. The restrictions on participation at the Open-ended Working Group should be lifted and indigenous peoples should have full access, freedom to speak and present papers.
4. The representatives should emphasise that the draft Declaration of the Rights of Indigenous Peoples is the minimum acceptable set of international standards for the rights of the indigenous peoples of Asia.
5. The UN Voluntary Fund should be extended to support attendance of indigenous peoples at the Open-ended Working Group.

The Asian Development Bank consultation

The conference recognised the positive initiative of the ADB in calling for a consultation with the indigenous peoples of Asia. The representatives at the conference agreed to take copies of the draft directives and, where appropriate, make written comments in time for the November meeting. The ADB agreed to circulate these comments to the participants.

The International Decade for Indigenous Peoples

The conference supported the idea of an international summit of indigenous peoples during the International Decade and proposed that it should have the same status and funding as other UN summits.

The Human Rights Centre in Geneva was requested to ensure that information about the decade is distributed more widely among indigenous peoples, organisations and governments. Knowledge about the Decade is still very rudimentary.

Strategies for co-operation and strengthening indigenous networks in Asia

1. The general role of networks should be to identify indigenous peoples, to look for shared experiences and to help build the capacity of both networks and specific organisations. Consistency and involvement of the regional networks was emphasised as well as the need to allocate times and resources to keep the networks functioning.

2. Indigenous peoples' networks will identify key activities, training needs and ensure communication and dissemination of information with their members.

3. Constructive ways of seeking resources from funding agencies should be sought and governments should create strategy papers for working constructively with indigenous peoples along the line of the Danish government's strategy paper.

4. The conference considered that the globalisation of the indigenous movement and its allies was important. Indigenous peoples, where possible, will seek open and constructive dialogue with non-indigenous peoples and states to gain recognition and implementation of their rights as well as to promote the struggle for democracy in the states where they live.

5. Future activities and follow-up to the conference will be organised through the indigenous peoples' networks in Asia.