

INDIGENOUS PEOPLES AND LOCAL GOVERNMENT

Experiences from Malaysia and the Philippines

Engagement in mainstream political processes and seeking participation in local government is an option increasingly taken up by indigenous peoples in order to regain more control over their lives and their destiny.

This volume presents the result of research on indigenous peoples' participation in local government in two Southeast Asian countries: the Philippines and Malaysia. The book compiles existing legislation affecting indigenous participation in local government in the two countries, and looks at concrete experiences with local governments. It identifies the problems and constraints for indigenous participation and also looks into indigenous women's present and potential role in local government institutions.

While there is an underlying common experience of ongoing dispossession, marginalization and weakening of traditional institutions due to state negligence, misguided policies and powerful vested interests, the case studies reveal enormous differences with respect to state policies and the possibilities for indigenous communities to constructively engage in local government.

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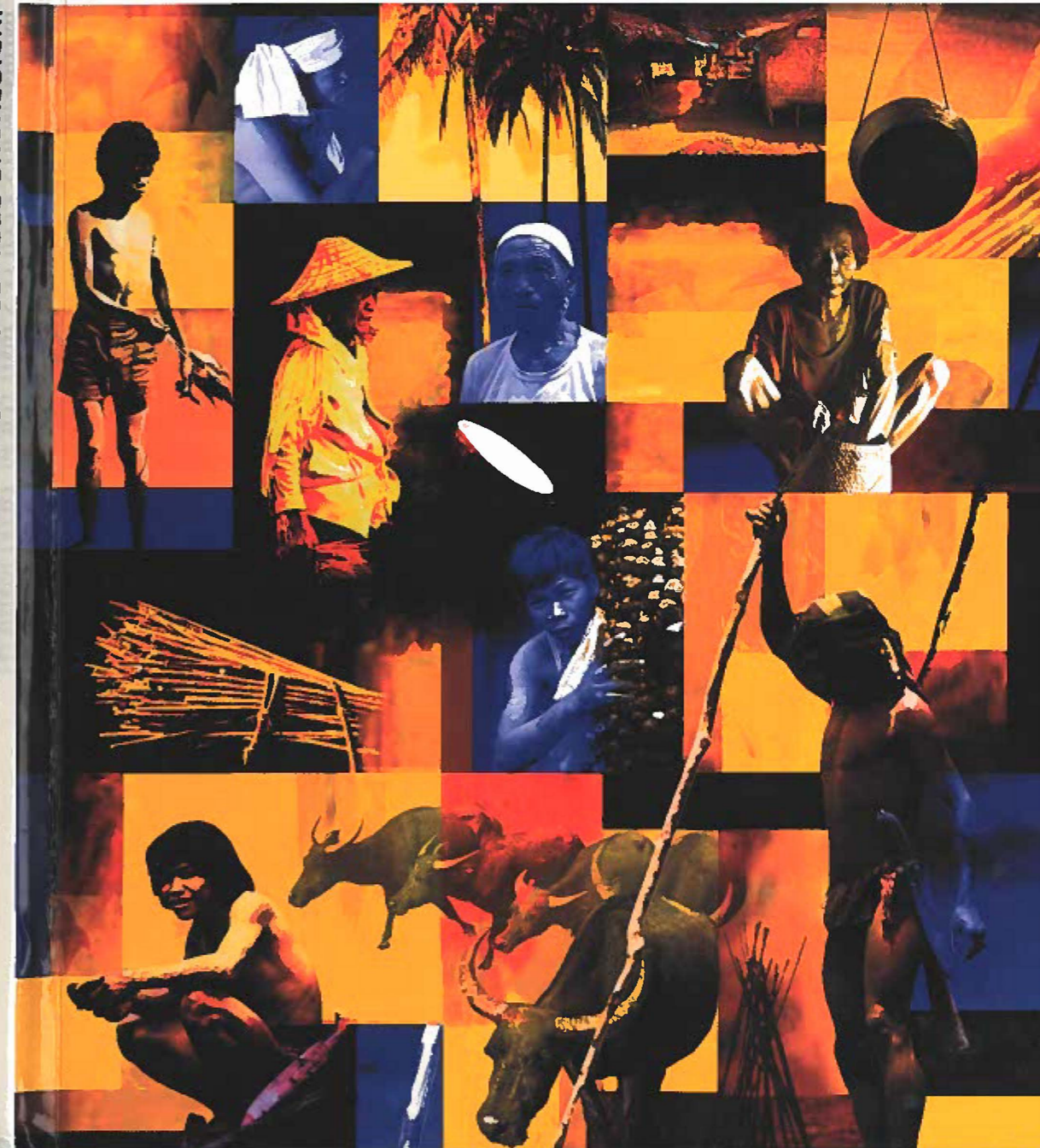
INTERNATIONAL
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INDIGENOUS AFFAIRS

IWGIA

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**EXPERIENCES FROM MALAYSIA
AND THE PHILIPPINES**

by
Cordillera Peoples Alliance (CPA)
and
PACOS Trust

IWGIA
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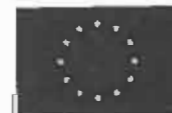
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INTRODUCTION

INDIGENOUS PEOPLES' SELF-DETERMINATION AND LOCAL GOVERNMENT: EXPLORING THE OPTIONS

By Christian Ermi, IWGIA

Ever since indigenous peoples joined hands with the United Nations Working Group for Indigenous Populations (UN WGIP) in working on a Draft Declaration on Indigenous Peoples Rights, the right to self-determination has been on top of their agenda. It has entered the draft declaration as article 3 which states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development".¹ Article 3 has always been the most contentious one, and remains so in the ongoing discussion within the Open-ended Working Group, with most governments showing stiff resistance to accepting, and indigenous representatives as adamantly defending it. Since the right to self-determination is enshrined in the Charter of the United Nations and other international legal instruments like the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the controversy, it is all-too well known, ultimately revolves around the issue of the recognition of indigenous peoples as "peoples".

What makes article 3 so difficult to accept for most States is its statement that self-determination implies the right to "freely determine their political status". The reason for their opposition is their adherence to the principle of State sovereignty and territorial integrity, and consequently, their fear that the recognition of the right to self-determination of indigenous peoples could be a threat to the unity of States, to stability and peace². Indigenous peoples argue that since the right of self-determination under international law is a right of all peoples, it would be discriminatory if it was applicable to all other, but not indigenous peoples.³ As Henriksen has pointed out, while indigenous peoples base their demand of the right to self-determination on the principle of equality, this does not necessarily mean that they intend to establish their own State. "One should bear in mind that the western nation state concept is not the most natural way of implementing or exercising the right of self-determination for the vast majority of indigenous peoples."⁴ In line with the position of indigenous peoples elsewhere in the world, indigenous representatives from all over Asia have also reiterated this during a

regional conference in 1999 when they wrote in their concluding declaration that they "acknowledge that although autonomy and self-government may be a way through which many indigenous peoples wish to exercise their right of self-determination, that these are not the only ways by which indigenous peoples may exercise this right".⁵

Although, as Henriksen writes, the United Nations itself has so far been reluctant to recognize any further extension of the right to self-determination beyond the traditional context of de-colonization, he believes that there are indications that the understanding of the scope of the right of self-determination may be evolving further. And he points out that the "international process is influenced by national political processes, which often tend to be more pragmatic and flexible", that "national experiences of indigenous self-determination... directly influence the international debate and thereby move the discourse forward".⁶

Meanwhile, indigenous communities all over the world are facing the harsh reality of their struggle to maintain their identity and control over their lands and resources in the face of increasing assimilation pressures and ongoing encroachment on their territories. With the exception of a few cases where indigenous peoples have been granted a certain degree of autonomy or self-governance by the State, most indigenous peoples are still struggling to carve out as much space as possible within the existing power structure of nation states in order to regain more control over their lives and their destiny.

In Southeast Asia, the region where the two country studies presented in this volume have been conducted, most independence movements of indigenous peoples – like the indigenous peoples of the Chittagong Hill Tracts of Bangladesh, of numerous indigenous ethnic groups in Burma or in Northeast India⁷ – are ready to negotiate or have negotiated a solution within the framework of the existing nation state. Certain forms of autonomy agreements have emerged or are likely to emerge from these negotiations. In all other Southeast Asian countries regional autonomy does not exist and, with the exception maybe of the Cordillera Region on the Philippines, under the given socio-political conditions will not be a realistic option for a long time to come.

Far from the dismal picture of secession and civil war painted by apprehensive governments, asserting self-determination among most indigenous peoples in Southeast Asia takes place in a far more subtle, unobtrusive way, and on the

level that has ever since been the social sphere most relevant to their lives: the community.

Forced to be part of nation states on which they have little influence, and thereby into political systems alien to them, indigenous communities are faced with the dilemma to either reject the system – and continue their demand for the recognition of their right to some sort of self-governance –, or to accept, try to engage in and gain more influence over it. With their traditional political organization severely weakened or even dissolved, for many indigenous peoples in Southeast Asia, the first option would imply enormous efforts to revitalize traditional governance. Furthermore, in light of the current policies and legislative frameworks of most Southeast Asian nations, the option of struggling for self-governance has little prospect of success. Engagement in mainstream political processes and seeking participation in government – and maybe exploring possibilities for a pragmatic interfacing of traditional forms of governance with the state system – might for many be the more realistic alternative. With the small numerical strength of indigenous peoples in most Southeast Asian nations this in most cases means above all engagement on the local level, i.e. in local governments. In fact, except for communities in very remote areas they have hardly been able to avoid being drawn into the state political-administrative system, even if they had preferred so. And, after all, linking up with the state power has always been attractive to the more ambitious among them, as it was a way to gain power, status and wealth.

Since colonial times anthropologists have studied the interaction of traditional indigenous political institutions and leaders with the state politico-administrative system. However, fairly little research has been conducted in Southeast Asia on indigenous peoples' engagement in local government within the conceptual framework of indigenous-rights advocacy, analyzing existing experiences in light of their potentials and limitations for furthering indigenous peoples' rights, and among them self-determination. As democracy slowly advances in most Southeast Asian nations, and since this often – as for example in the Philippines or Thailand in the early and mid-1990s or Indonesia just before the new millennia – includes decentralization and the devolution of power to local governments, such research is highly relevant for the contemporary indigenous rights movement in Asia.

This volume presents the result of research on indigenous peoples' experiences with participation in local government in two Southeast Asian countries: the Phil-

ippines and Malaysia. The research is part of an IWGIA project that aims to explore the potentials of and to strengthen indigenous peoples' participation in local government in two countries in South America (Peru and Venezuela) and the two mentioned above.⁸

In both countries, the research focused on two areas in which data was gathered. In the Philippines the case studies were conducted in the Cordillera region in the North, and in Mindanao in the South. In Malaysia, case studies were conducted in the eastern state of Sabah and among Orang Asli communities on Peninsular Malaysia. The research results were presented and discussed during national-level workshops in both countries, and in October 2003, a workshop on "Indigenous Peoples and Local Governance" was organized in Sagada, in the Cordillera in the Northern Philippines, during which the experiences documented by the research in the two countries were exchanged.

While there is an underlying common experience of ongoing dispossession, marginalization and weakening of traditional institutions due to state negligence, misguided policies and powerful vested interests, the case studies reveal enormous differences with respect to state policies and the possibilities for indigenous communities to constructively engage in local government. There is the cases of almost complete disenfranchisement of indigenous communities, like that of the Orang Asli in Peninsular Malaysia, where any interaction with the local government structure has to be done through or at least sanctioned by the Department of Orang Asli Affairs (Jabatan Hal Ehwal Orang Asli or JHEOA), a specialized agency created to control and govern the Orang Asli. In contrast, the Local Government Code in the Philippines provides for the creation of Local Special Bodies that are supposed to ensure the representation of civil society organizations and concerned and private sectors in the community, and to make policy recommendations to the local chief executive and local legislative body. Even though this provides better opportunities for civil society involvement, the observed level of participation in local government is varying and in most cases still fairly low.

Key factors determining the level of indigenous peoples' engagement in local government are on the one hand found within the state system, i.e. they are related to the degree of democratization of political processes in general and on the local level in particular, the degree of decentralization of governance, and, where they exist, the degree of actual implementation of decentralization laws,

as well as the level of harmonization of laws, policies and state institutions. Other crucial factors lie within the indigenous communities themselves, i.e. they relate to their capacity to make use of the existing opportunities. This again is largely determined by the level of awareness and mobilization by the communities (as, for example, reflected in the presence and active participation of local civil society organizations), the existence and strength of customary indigenous institutions and the extent to which they are able to interface with the state structure. As the study in the Philippines concludes, traditional values and institutions promote self-governance, but can also be beneficial to formal structures of local governance (page 159). On the other hand, the same report points out that decentralization and opportunities created for indigenous peoples' participation "can in fact be instruments for the obliteration of indigenous institutions as these are increasingly subsumed under state law, in the name of decentralization for good governance." (page 194)

The United Nations Development Program (UNDP) characterizes good governance as being, "among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources."⁹

While pointing out that the characteristics of good governance defined in societal terms remain elusive, the UNDP document cited above lists nine core characteristics of good governance, which are "interrelated ... mutually reinforcing and cannot stand alone".¹⁰

- Participation
- Rule of law
- Transparency
- Responsiveness
- Consensus orientation
- Equity
- Effectiveness and efficiency
- Accountability
- Strategic vision

(more details in the report on Peninsular Malaysia on page 14)

The document further adds that these characteristics “represent the ideal - and no society has them all. Even so, UNDP believes that societies should aim, through broad-based consensus-building, to define which of the core features are most important to them, what the best balance is between the state and the market, how each socio-cultural and economic setting can move from here to there.”¹¹

However, as pointed out above, seemingly well-intended policies that aim at promoting good governance can have deleterious impacts on indigenous customary institutions and thus weaken effective participation in local government in tune with their culture and social organization. Thus, while the working group on “Advocacy on good governance and indigenous peoples’ self-determination” formed during the workshop on “Indigenous Peoples and Local Governance” mentioned above acknowledged UNDP’s nine core characteristics, it found them insufficient to address the particular situation of indigenous communities. The working group therefore suggested the following additions:

- The recognition of collective rights and decision making;
- The need for cultural sensitivity;
- Respect for traditional self-governance systems and institutions;
- Respect for customary law;
- The need to further women leadership and participation.

The research results presented in this volume reveal the various limitations for meaningful and effective participation of indigenous communities in local government. Engaging in local government still remains an unsatisfactory option for indigenous peoples to promote their rights in general, and local-level self-determination in particular. The participants at the workshop on Indigenous Peoples and Local Governance therefore came up with fifteen concluding recommendations that point at the various directions their own and the respective governments’ work has to take in order to make engagement in local government a viable option and good governance a meaningful concept for indigenous peoples.

RECOMMENDATIONS FOR FURTHERING AND SUPPORTING INDIGENOUS PEOPLES’ PARTICIPATION IN LOCAL GOVERNMENT

(by the participants of the workshop on Indigenous Peoples and Local Governance, Sagada, Philippines, October 29, 2003)

- 1) To continue to assert the recognition of indigenous peoples rights over territories, resources and customary law (including the selection of leaders).
- 2) Non-interference of the state in dispute settlement between and within indigenous communities.
- 3) Non-interference of the state and democratization in the selection of indigenous leaders.
- 4) Capacity building for leadership, resource management and participation in local governance.
- 5) Sensitizing and capacity-building of Local Governments (including bureaucrats and government employees) in promoting the rights and welfare of indigenous peoples.
- 6) To continue network building and exchange of experiences, lessons learned and information with regard to local governance.
- 7) To utilize available laws, policies or programs that are useful to indigenous peoples in furthering their rights and welfare.
- 8) To call for the adoption of, and demand, the implementation of local, national and international instruments that promote indigenous peoples’ rights.
- 9) Greater recognition and participation of indigenous women in community affairs, leadership, resource management and local governance.
- 10) Greater recognition and participation of indigenous youth in community affairs, leadership, resource management and local governance.

11) To continue research and documentation on resource management and customary law of indigenous peoples. For the Philippines, the evaluation and assessment of the implementation of the Indigenous Peoples Rights Act (IPRA).

12) Greater political involvement in existing political processes to advance the recognition of indigenous rights and issues.

13) To promote the indigenous concept of good governance and our own perspective and decision-making on development.

14) To build mechanisms for the greater participation and engagement of indigenous peoples in relation to the formulation of policies, guidelines and programs concerning indigenous peoples at all levels

15) Active support to elected indigenous office-holders by elders, peoples' organization, and support NGOs.

Notes:

¹ The United Nations Draft Declaration on the Rights of Indigenous Peoples as approved by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1994. UN Document E/CN.4/Sub.2/1994/2/Add.1. Article 3 is almost identical to the common Article 1, Paragraph 1 of the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

² Hennksen, John B. 1999. Implementation of the Right of Self-Determination of Indigenous Peoples. Self-determination. *Indigenous Affairs* 3/01. Copenhagen: IWGIA, page 14. The article can also be found on the IWGIA web-site at <http://www.iwgia.org/sw228.asp>.

³ *ibid.*

⁴ *ibid.*

⁵ The Baguio Declaration. Conference on Indigenous Peoples, Self-determination and the Nation State in Asia, Philippines, 18-21 April, 1999. Published on the IWGIA web-site at: <http://www.iwgia.org/sw228.asp>

⁶ Hennksen *op.cit.* p. 7

⁷ Here, Southeast Asia refers to a socio-culturally and not geo-politically defined region, thus including the Chittagong Hill Tracts of Bangladesh and the seven states of Northeast India.

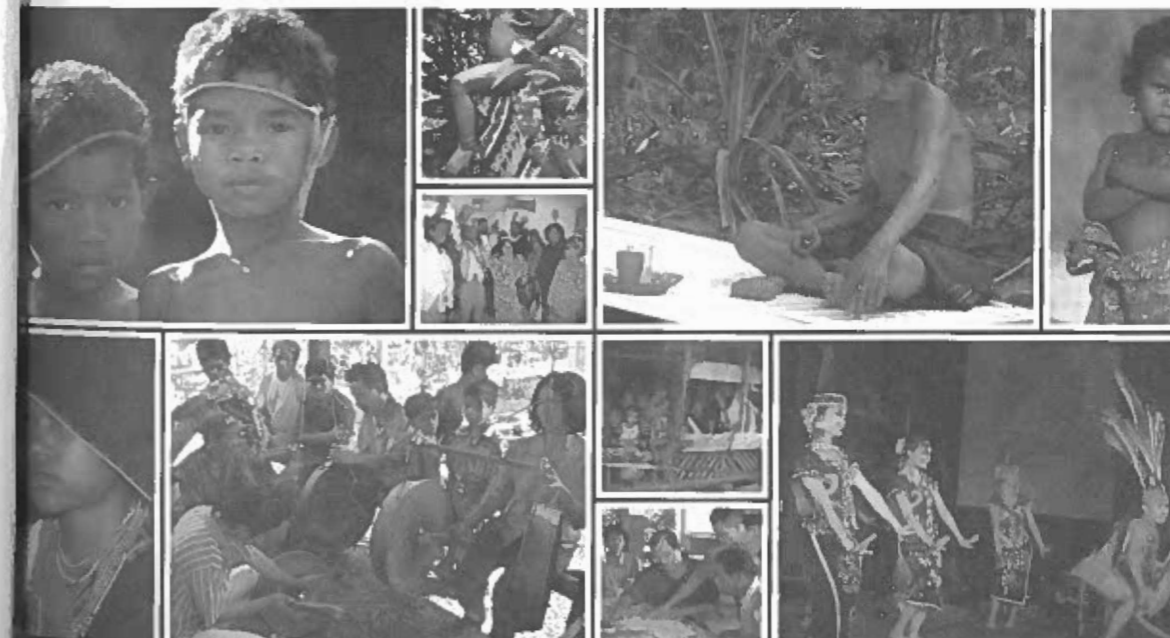
⁸ The project itself is one in a series of initiatives of IWGIA that aimed at furthering exchange of experiences, discussions and a better understanding of the multifaceted processes of political participation and asserting the right to self-determination. These include the Conference on Indigenous Peoples, Self-determination and the Nation State in Asia, workshops on Indigenous Peoples and Political Parties, and Indigenous Peoples and Self-determination in Northeast India and the Arctic. The project Indigenous Peoples and Local Government is part of a program funded by the European Commission.

⁹ Governance for sustainable human development. A UNDP policy document. United Nations Development Programme, January 1997. <http://magnet.undp.org/policy/default.htm>

¹⁰ *Ibid.*

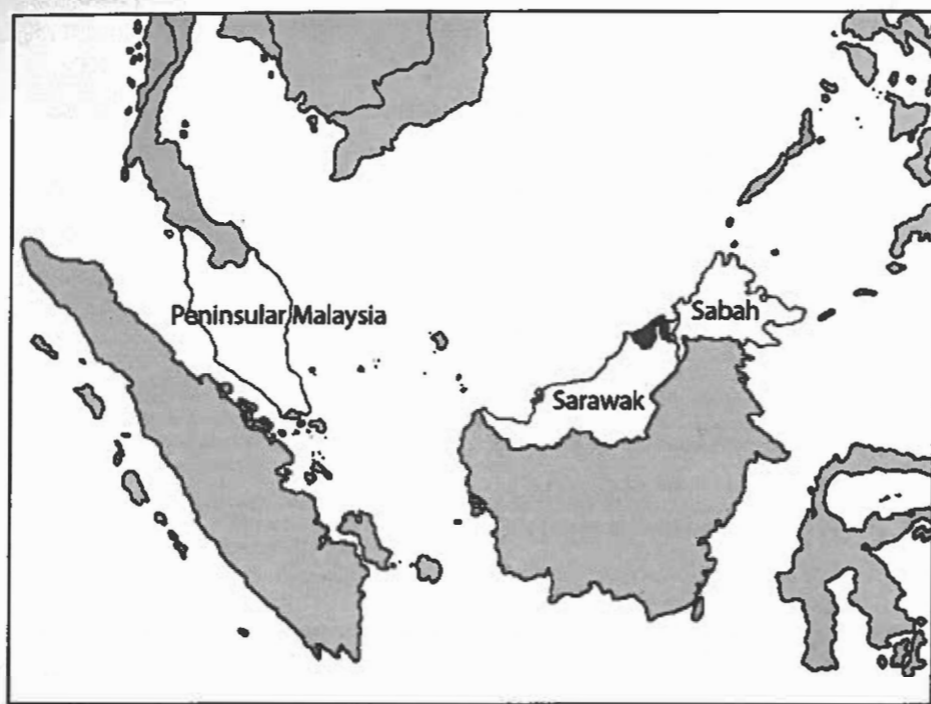
¹¹ *Ibid.*

MALAYSIA



Undang-Undang
Undang-Undang
Undang-Undang
Undang-Undang

Map of Malaysia



ORANG ASLI





1.

I. RESEARCH OBJECTIVES, CONCEPTS AND METHOD

A. OBJECTIVES

This research aims to look at various issues arising from Orang Asli relations with the local government in Malaysia. Specifically, it looks at how government policies and programs discriminate against the Orang Asli and hopes to provide important insights into the conduct of and relationship among the federal, state and local governments. The long-term goal of the research is to promote the participation of the Orang Asli in all decision-making processes involving them and their future, with equal participation of men and women in civil society, in economic life, and in politics.

Towards this end, the research took on the following specific objectives:

- To understand the origin and rationale of local government among the Orang Asli;
- To look into the historical and present context of Orang Asli participation and involvement in local government;

- To look at Orang Asli experiences with local government and to identify the problems and constraints for full Orang Asli participation;
- To assess the role and place of Orang Asli women in the practice of local government;
- To suggest ways by which greater Orang Asli participation and involvement in local government can be achieved.

B. METHOD AND PROCESS

The research involved gathering of both secondary and primary data. Secondary data were obtained from various published and unofficial documents including legislation, JHEOA policy statements, organizational charts and other government reports. Primary data were gathered mainly through direct interviews and questionnaire surveys of individuals and groups in the selected communities. Community-level workshops, interviews with JHEOA officers, and direct experiences and records of the Center for Orang Asli Concerns were also used. Most of the data were gathered between August 2002 and March 2003.

For the fieldwork, two Orang Asli areas were selected: the Temuan communities in the Dengkil district of Selangor and the Semai communities in the Batang Padang district of Perak. A total of seven Temuan and five Semai communities were included in the survey.

C. WHAT IS GOOD GOVERNANCE?

For purposes of the study, we have taken 'good governance' to mean the exercise of the economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interest, exercise their legal rights, meet their obligations and mediate their differences.

Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable, and promotes the rule of law fairly. Good governance ensures that the voices of the poorest and the most vulnerable are heard in decision-making. The allocation of development resources and the political, social and economic priorities are based on a broad consensus among the three stakeholders – the state, the private sector and civil society.

All three stakeholders are critical for sustaining human development: the **state** creates a favourable political and legal environment, the **private sector** generates jobs and income, and **civil society** facilitates political and social interaction.

Following the norms set by the United Nations Development Program (UNDP), nine core characteristics measure good governance:

Participation – All men and women should have a voice in decision-making, whether directly or through legitimate intermediate institutions that represent their interest. Such broad participation is built on freedom of association and speech, as well as on the capacity to participate constructively.

Rule of law – Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

Transparency – Transparency is built on the free flow of information. Process, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

Responsiveness – Institutions and processes try to serve all stakeholders.

Consensus orientation – Good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.

Equity – All men and women have opportunity to improve or maintain their well-being.

Effectiveness and efficiency – Processes and institutions produce results that meet needs while making the best use of resources.

Accountability – Decision-makers in government, the private sector and civil society organizations are accountable to the public as well as to institutional stakeholders. The accountability differs, depending on the organization and on whether the decision is internal or external to the organization.

Strategic vision – Leaders and the public have a broad and long-term perspective on good governance and human development. There is also an understanding of the historical, cultural and social complexities that ground this perspective.

(UNDP, Management Development and Governance Division, Discussion Paper 2 "Reconceptualizing Governance," January 1997, p.9.)

Local government is a system of administration for small political units such as towns, countries, and rural districts. It operates within a larger governmental framework and, unlike a federal system, the national or central government usually delegates the powers of the local government. Local councils, which are traditionally democratically elected, administer such matters as local environmental health, refuse collection, parks and recreation, traffic regulations and matters related to town and country planning applications.

In Malaysia, the local government consists of 145 local authorities divided into three main categories, namely: city councils or city halls, municipal councils and district councils.

Three key legislations pertain to local government and aim to secure the quality of life of the local communities. These Acts are:

THE LOCAL GOVERNMENT ACT, 1976 (ACT 171) that concerns the establishment of local authorities, their organizational structure and the collection of rates,

THE TOWN AND COUNTRY PLANNING ACT, 1976 (ACT 172) that relates to the control of development at the planning level, and

THE ROAD, DRAINAGE AND BUILDING ACT, 1974 (ACT 133) that controls development of infrastructure and building at the implementation level.

The roles and responsibilities of local authorities include local policies, licenses for premises, maintaining roads, environmental protection, town planning, development control, urban services, maintaining public health and local development projects. Some of the services provided by the local authorities include maintaining roads and drains, solid waste collection and disposal, town beautification landscaping and other public amenities. In development control, the local authorities prepare structure and local development plans to guide development planning. They also process and approve the planning submission of proposed projects. Officers of local governments are government appointees, as local government elections have long been discontinued.

In the case of the Orang Asli, however, legislation and practice show that matters of local governance are vested in the assumed authority of a special agency catering to a particular ethnic group. This special agency is the Jabatan Hal Ehwal Orang Asli or JHEOA (Department of Orang Asli Affairs).



2.

II. THE ORANG ASLI: ORIGINS AND ADMINISTRATION

A. THE PEOPLE

The Orang Asli (“Original Peoples”) are the indigenous minority peoples of Peninsular Malaysia. They are the descendants of the early inhabitants of the peninsula before the establishment of the Malay kingdoms. They number 133,000 today, representing a mere 0.5 per cent of the national population. Anthropologists and administrators have traditionally regarded the Orang Asli as consisting of three main groups, which in themselves comprise several distinct tribes or sub-groups. The main groups are the Negrito (Semang), the Senoi, and the Aboriginal-Malay. Each tribal group is further divided into various subgroups, as listed in the table below.

Linguistically, some of the northern Orang Asli groups (especially the Senoi and Negrito groups) speak languages, now termed Aslian languages, which suggest a historical link with the tribespeople in Burma, Thailand and Indo-China. The members of the Aboriginal-Malay tribes, whose ancestors were believed to have migrated from the Indonesian islands to the

south of the peninsula, speak dialects that belong to the same Austronesian family of languages as Malay, with the exception of the Semelai and Temoq dialects (which are Austroasiatic).

The Orang Asli have equally varied occupations and ways of life. The Orang Laut, Orang Seletar and Mah Meri, for example, live close to the coast and are mainly fisherfolk. Some Temuan, Jakun and Semai people engage in permanent agriculture and now manage their own rubber, palm oil or cocoa farms. About 40 per cent of the Orang Asli population – including Semai, Temiar, Che Wong, Jah Hut, Semelai and Semaq Beri – live close to, or within forested areas. Here they engage in swidden farming (hill rice cultivation) and do some hunting and gathering. These communities also trade in *petai*, *durian*, rattan and resins to earn

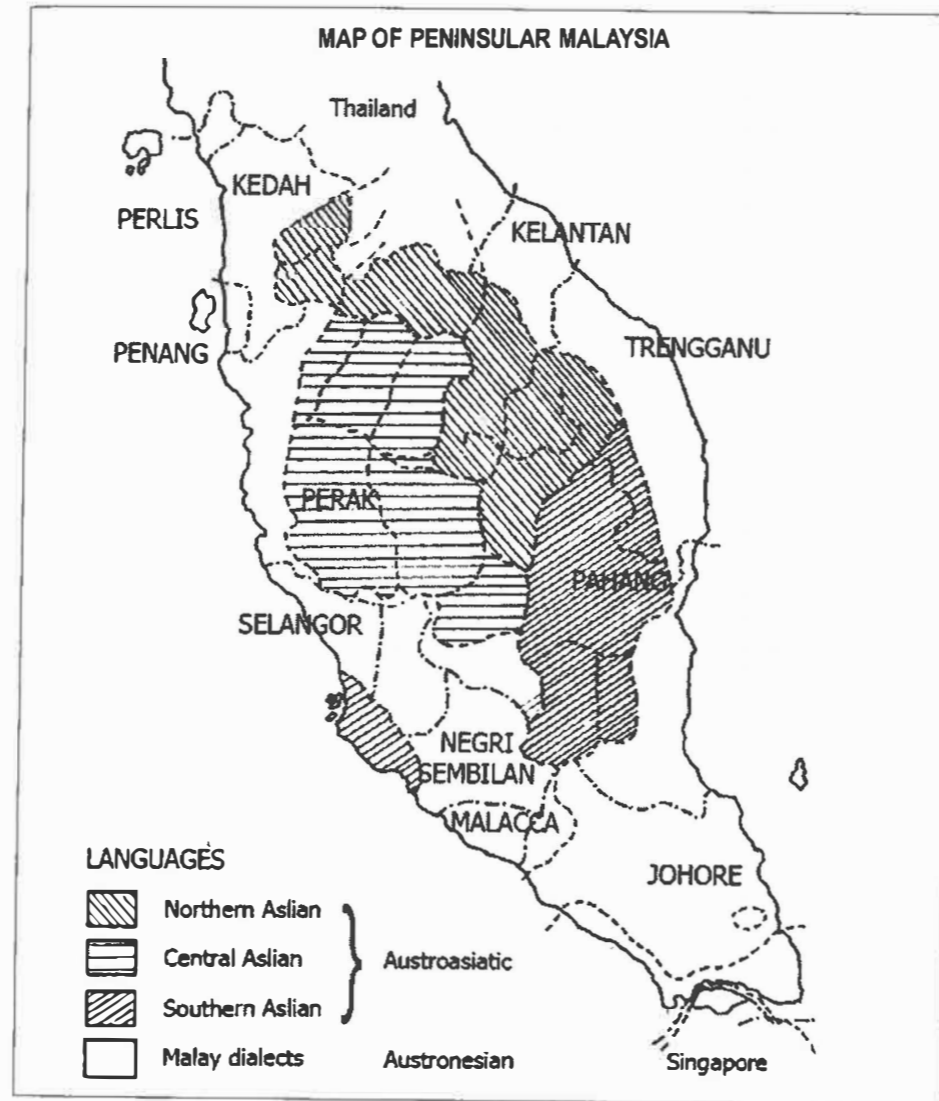
POPULATION OF ORANG ASLI SUB-GROUPS, 1999

SUBGROUP	POPULATION
Negrito	
Kensiu	254
Kintak	150
Jahai	1,244
Lanoh	173
Mendriq	167
Batek	1,519
<i>Sub-total</i>	3,507
Senoi	
Semai	34,248
Temiar	17,706
Jah Hut	2,594
Che Wong	234
Mah Meri	3,503
Semaq Beri	2,348
<i>Sub-total</i>	60,633
Aboriginal Malay	
Temuan	18,560
Semelai	5,026
Jakun	21,484
Orang Kanaq	73
Orang Kuala	3,221
Orang Seletar	1,037
<i>Sub-total</i>	49,401
TOTAL	113,541

Source: COAC calculations from JHEOA data. Figures only include Orang Asli residing in traditional settlements or Orang Asli areas and do not include Orang Asli living in urban centers or residences generally classified as ‘Malaysian’. According to the Statistics Department, the 2000 Census suggests a population of 132,873 Orang Asli.

cash incomes. A very small number among the Negrito (e.g. Jahai and Lanoh) are still semi-nomadic, preferring to take advantage of the seasonal bounties of the forest. A fair number also live in urban areas and are engaged in both waged and salaried jobs. There are also several professionals among them today.

To a large degree, the Orang Asli remained in relative isolation during the colonial period (ca. 1640s-1950s) and led autonomous lives. This was primarily because they were regarded by the colonialists as people of no political or eco-



conomic consequence. About the only people who were interested in the Orang Asli then were the missionaries and the anthropologists.

B. BEGINNINGS OF THE ELEMENTS OF ADMINISTRATION

The coming of the British did not significantly affect the aborigines during the early years of settlement. The Perak government was the first to appoint a liaison officer with the Orang Asli community, mainly because of personal interest and preference of the official, H.D. Noone. He also drafted an enactment for the protection of the Aborigines, as they were then called, and advocated the establishment of Orang Asli reserves. However, the Japanese Occupation (1942-1945) put an end to these plans.

The Japanese Occupation was a time when both British colonialists and the Communist insurgents came into close contact with the Orang Asli in the forest areas. This was especially so when the Malayan People Anti-Japanese Army (MPAJA), a force of largely Chinese communist guerrillas, sought the Orang Asli's help and refuge to fight against the Japanese imperialists in Malaya. After the war, the communists themselves staged a full-scale revolt against the British colonial government (called the Emergency of 1948-1960). That revolt subsequently forced the communists to return to the forests where they waged a guerrilla war against the government. Here, they re-established their contacts with the Orang Asli and sought food, labor and information from them. In so doing, the Orang Asli were inevitably drawn into the conflict and became the subject of military action by the Malayan government.

An early response of the British forces was to herd the Orang Asli behind barbed wire fences in hastily built resettlement camps that did not even have the most basic facilities. Many Orang Asli died in these squalid camps – from disease, malnutrition and depression – before the British changed their tactics. The strategy of winning their 'hearts and minds' was eventually adopted, and the Malayan government was able to win the war, primarily with the help of the Orang Asli.

However, for the Orang Asli, the Emergency had put into place two very important institutions that would have a great impact on future Orang Asli administration and autonomy. These were the establishment of the Department of Orang Asli Affairs and the enactment of the Aboriginal People's Act.

C. JHEOA – GOVERNING THE ORANG ASLI

The Department of Aborigines, as the JHEOA was then called, was established in 1954 under an Enactment known as the Aboriginal People's Ordinance No. 3, 1954. This was later renamed the Aboriginal People's Act (1954, revised in 1974). The Act provided for the protection, well-being and advancement of the Orang Asli against encroachment and exploitation, besides providing education and other development infrastructure appropriate to their requirements.

The birth of the JHEOA, and the system by which the Orang Asli were governed, had its roots in the Emergency years of 1948 to 1960. The security motive of the Act is quite evident in its provisions. It is clear that the overriding purpose for establishing the Department of Aborigines was to ensure control of the aborigines and to win them over from their support of the insurgents. Thus, the Department, at least in theory, became responsible for all matters concerning the aborigines, including their administration and welfare, medical treatment, and a limited amount of education. That the government's focus was on control and security, rather than on development and modern governance, can clearly be seen in several provisions of the 1954 Act.

D. THE ABORIGINAL PEOPLE'S ACT (1954, 1974)

The Aboriginal People's Act is unique in that it is the only piece of legislation is directed at a particular ethnic community. For that matter, the Department of Aborigines, or the JHEOA as it is called today, is also the only government department that caters to a particular ethnic group.

As it was enacted during the height of the Emergency, the Aboriginal People's Act basically served to prevent the communist insurgents from getting help from the Orang Asli, and vice-versa. It also aimed to prevent the insurgents from imparting their ideology to the Orang Asli. For this reason, there are provisions in the Act that allow the Minister to prohibit any non-Orang Asli from entering an Orang Asli area, or to prohibit the entry of any written or printed material (anything capable of conveying a message), among others. Even in the appointment of headmen, the Minister has the final say. The Act treats the Orang Asli as if they were a people needing the 'protection' of the authorities to safeguard their well-being.

Nevertheless, the Act does recognize some rights of the Orang Asli. For instance, it stipulates that no Orang Asli child shall be prevented from attending any school because of being Orang Asli. It also states that no Orang Asli child attending any school shall be obliged to attend any religious instruction without the prior consent of his/her parents or guardian. Generally, the Act recognizes the right of the Orang Asli to follow their own way of life.

While the Act provides for the establishment of Orang Asli Areas and Orang Asli Reserves, it also grants the state authority the right to order any Orang Asli community to leave – and stay out of – an area. In effect, the best security that an Orang Asli can get is one of 'tenant-at-will'. That is to say, an Orang Asli is allowed to remain in a particular area only at the pleasure of the state authority. Any time the state wishes to re-acquire the land, the Orang Asli have no choice but to move elsewhere. Furthermore, in the event of such displacement, the state is not obliged to pay any compensation or allocate an alternative site for relocation.

Thus, the Aboriginal People's Act laid down certain ground rules for the treatment, government and administration of the Orang Asli and their lands. Effectively, it accords the Director-General of the Department of Orang Asli Affairs (JHEOA) the final say in all matters concerning the administration of the Orang Asli. In matters concerning land, the state authority has the final say. The development objective of the Act, therefore, appears to be subsumed by both the security motive and the tendency to regard the Orang Asli as wards of the government.

E. POLICIES FOR INTEGRATING THE ORANG ASLI

A policy of 'integration' was officially adopted by the Malaysian government in 1961 – just a year after the end of the Emergency. This policy is contained in its '*Statement of Policy Regarding the Long Term Administration of the Aborigine Peoples in the Federation of Malaya*' (JHEOA 1961). The main thrust of the policy is for the Government to "... adopt suitable measures designed for their protection and advancement with a view to their ultimate integration with the Malay section of the community" (JHEOA, 1961: 2). In later official communications, the objective of the policy statement was changed to "ultimate integration with the wider Malaysian society", "integration with more advanced sections of the population," or "integration with the national mainstream."

The 1961 Policy Statement was also the most important document pertaining to Orang Asli development, as it accorded the Orang Asli some recognition of their rights as indigenous peoples. It clearly spelt out several affirmative actions that need to be implemented for the Orang Asli "to benefit on an equal footing from the rights and opportunities which the law grants to the other sections of the community" (JHEOA 1961: 2). More specifically, the 1961 Policy laid down several 'broad principles' that most Orang Asli today would find very difficult to object to. Among these principles are:

- The aborigines ... must be allowed to benefit on an equal footing from the rights and opportunities, which the law grants to the other sections of community.... Special measures should be adopted for the protection of institutions, customs and mode of life, person, property and labor of the aborigine people [1(a)].
- The social, economic and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation.... Due account must be taken of the cultural and religious values and of the forms of social control [1(b)].
- The aborigines shall be allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system [1(c)].
- The special position of aborigines in respect of land usage and land rights shall be recognized.... Aborigines will not be moved from their traditional areas without their full consent [1(d)].
- Measures should be taken to ensure that they have the opportunity to acquire education at all levels on an equal footing with the other sections of the population. At the same time, care must be taken to ensure that their own dialects are preserved and measures should be introduced to enable the teaching of these dialects [1(e)].
- Adequate health services should be provided ... and special facilities should be provided for the training of their own people as health workers and medical personnel [1(g)].
- In all matters concerning the welfare and development of the aboriginal peoples, Government will seek the collaboration of the communities concerned or their representatives [1(j)].

However, while acknowledging that this 1961 Policy had never been withdrawn or replaced, the JHEOA today has clearly ignored all these protections and promises. This fact is demonstrated in its actions and in the content of the current 10-point *Program Summary*, outlining development strategies and visions of the JHEOA for the Orang Asli.

F. NEW POLICIES FOR THE ORANG ASLI

The JHEOA appears to have abandoned its 1961 *Statement of Policy* and has instead come up with a 10-point strategy. The rationale for doing so is to "place the Orang Asli firmly on the path of development in a way that is non-compulsive in nature and allows them to set their own pace." The 10 strategies, as outlined in the English version of the *Program Summary* (JHEOA, 1993), are:

- 1) Modernizing their way of life and living conditions, by introducing modern agricultural methods and other economic activities like commerce and industry.
- 2) Upgrading medical and health services, including having better-equipped clinics in interior areas, to bring about a healthy and energetic Orang Asli community.
- 3) Improving educational and skill development facilities, including programs to provide better hostel facilities for both primary and secondary students.
- 4) Inculcating the desire among Orang Asli youth to become successful entrepreneurs by showing and sometimes opening doors of opportunity for them.
- 5) Getting Orang Asli in interior areas to accept Regrouping Schemes as an effective means of improving their living standards and turning their settlements into economically viable units.
- 6) Encouraging the development of growth centers through the restructuring of forest-fringe Orang Asli villages, including the establishment of institutions such as Area Farmers Organizations and co-operatives.
- 7) Gearing up Orang Asli culture and arts, not only to preserve their traditions, but also as tourist attractions.

8) Eradicating poverty, or at least reducing the number of hardcore poor among the Orang Asli.

9) Introducing privatization as a tool in the development of Orang Asli areas.

10) Ascertaining a more effective form of development management in line with the direction in which the Orang Asli community is progressing.

The expressed goals of the JHEOA "to improve the wellbeing and (to) integrate the Orang Asli with the national society" (JHEOA, 1993: 3) remain largely unchanged. The more obvious changes to the policy strategy are the introduction of privatization as a tool for the development of Orang Asli areas, participation in tourism and inculcating an entrepreneurial class of Orang Asli youth. The Malay version of the strategy statement further elaborates the strategies including "increased efforts at introducing a value system based on Islam for the integration of the Orang Asli with the wider society in general and the Malays in particular."

However, some of the positive assurances in the 1961 *Statement of Policy* – to wit: that the land rights of the Orang Asli shall be respected, and that the Orang Asli will not be moved from their traditional areas without their full consent – are glaringly absent in the new development strategy of the JHEOA.

G. ISLAMIZATION AND ASSIMILATION

The Orang Asli have become the target of institutionalized Islamic missionary activity. The expressed objective of the JHEOA is "the Islamization of the whole Orang Asli community and the integration/assimilation of the Orang Asli with the Malays" (JHEOA 1983: 2). The *dakwah* (Islamic proselytizing) program involves the implementation of a 'positive discrimination' policy towards Orang Asli who converted, with material benefits given individually and through development projects. The establishment of a special unit called 'Dakwah Orang Asli' in Pusat Islam, the Islamic Centre that is under the ambit of the Prime Minister's Department, further suggests that this policy has the sanction of the state. It is also increasingly apparent that the development objective of the JHEOA is linked with a program of Islamization.

H. OTHER LAWS AFFECTING THE ORANG ASLI

Apart from the ethnic-specific Aboriginal People's Act, the Orang Asli are also subject to all other laws of general application. Some of these have special significance to the Orang Asli. They include:

THE NATIONAL LAND CODE 1965

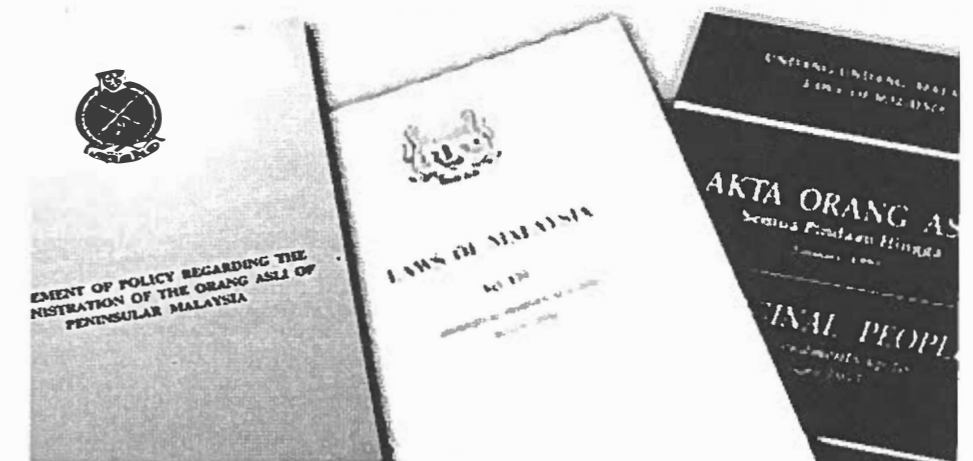
This is a piece of Federal Legislation dealing with land and land tenure, including registration of titles. Based on the Torrens System, it holds that the state authority is the owner of all lands and of all minerals and rock therein or thereon. Private interests in land are vested only upon alienation and registration with the appropriate land authority.

THE NATIONAL LAND CONSERVATION ACT 1960

This Federal Act has been adopted by all states in the Peninsula. It provides for the conservation of hill land and the protection of soil from erosion. It prohibits the clearance of hill land and the planting of short-term crops without a permit from the Collector. The Collector also has the power to prohibit or interfere with destruction or removal of trees or vegetation, which are likely to cause erosion.

THE NATIONAL FORESTRY ACT 1984

This Act has been adopted by all states in the Peninsula. It asserts that all forest produce are the property of the state and prohibits the removal of any forest produce without a license.



THE LAND (GROUP SETTLEMENT AREAS) ACT 1960

This legislation enables various agencies such as the Federal Land Development Authority (FELDA) to develop large areas of lands for settlement. These huge land schemes, involving 400 to 600 families, have changed the course of rural development, causing a more equitable distribution of land among the mainly Malay rural population. However, the Orang Asli have been virtually left out, and have become the losers in cases where their lands are located within the areas designated for such settlement schemes.

THE LAND ACQUISITION ACT 1960

This Act gives powers to the state authority to acquire private land for public purposes, including agriculture. Until recently, the Act allowed the acquisition of a parcel of land as long as it is required for the nation's development. Thus, the law allows acquisition of land for private purposes as well.

THE PROTECTION OF WILDLIFE ACT 1972

This is perhaps the only Act that takes special cognizance of Orang Asli interests and their way of life. The Act permits the Orang Asli to shoot, kill or take certain wildlife as long as this is for their own consumption and subsistence.

Frequently, in practice, the laws mentioned above come into conflict with each other. When they do so, the interests of the Orang Asli usually come in second place.

I. THE FEDERAL CONSTITUTION AND ORANG ASLI DISCRIMINATION

The Orang Asli are vaguely mentioned in only four provisions of the Federal Constitution. It has thus become increasingly difficult for the Orang Asli to argue for the same rights and privileges that are accorded to the Malays.

The four provisions that mention the Orang Asli in the Federal Constitution are:

- Article 8(1), which legitimizes discriminatory legislation in favor of Orang Asli by way of provisions for their protection, well-being and advancement (including the reservation of land) and the reservation for aborigines of a reasonable proportion of suitable positions in the public service;

- Article 45(2), which provides for the appointment of Senators 'capable of representing the interest of the aborigines';

- Article 160(2), which unhelpfully defines an aborigine as 'an aborigine of the Malay Peninsula'; and

- Ninth Schedule, List 1 that vests upon the Federal Government the legislative authority for the 'welfare of the aborigines'.

An indirect reference to Orang Asli is made in Article 89 regarding Malay Reservations, which authorizes reservation of such lands in favor of 'natives of the state' besides Malays. However, despite their recognition as the indigenous peoples of the Peninsula Malaysia, the Orang Asli are not beneficiaries of the special position given to the Malays and the natives of Sabah and Sarawak by Article 153. This article posits the mandatory duty of safeguarding the special position of these 'Bumiputeras' in specific areas of economic activity, education and employment in the Yang di Pertuan Agong (the constitutional monarchy).

What the Constitution merely does is to authorize the Government to enact laws, which discriminate against other persons in favor of the Orang Asli, so long as the provisions of the law are for their protection, well-being and advancement. However, it is significant to note some issues in the actual governance of Orang Asli affairs, particularly in relation to their rights to traditional lands and resources. According to the Constitution, the welfare of the Orang Asli is a federal matter, but land and forests are state matters. This has been the most cited reason for the appalling slow pace at which Orang Asli lands are being recorded as aboriginal areas or reserves. The JHEOA frequently uses this apparent constitutional 'discrepancy' as an excuse to explain their lack of commitment in implementing land reforms for the Orang Asli.

It should be noted that there is a precedent wherein a federal authority has been able to legally enforce its jurisdiction over the state. This is the Federal Land Development Authority (FELDA). FELDA has effectively managed to get state governments to give up huge tracts of land to the federal agency for its land reform and resettlement programs. In terms of natural resources, there is also the precedent of the national agency PETRONAS. PETRONAS has legal ownership of all petroleum resources in states where they are found, subject to the payment of a small royalty or premium.



3.

III. RESULTS OF FIELD SURVEY

A. THE FIELDWORK AREAS

For the first area, seven Temuan (Aboriginal Malay) communities within the district of Dengkil in Selangor were selected for this research project. These areas represent communities that are close to urban areas, and have faced, or are facing, direct threats from encroaching development.

For the second area, five Semai (Senoi) communities were selected. These communities still have access to their traditional resource base and, to a fair extent, still practice their traditional way of life.

Research assistants were enlisted from the respective research areas as they know the language and the people better than the principal researchers do. In addition, it was a means to encourage further participation of the people in the research and to arm the individuals with concrete research experience. A variety of data-gathering methods were utilized including individual and group interviews, questionnaires, community discussions (especially for checking the results of the surveys) and sec-

ondary data. The nature of the data-gathering methods depended to some extent on the preference of the local Orang Asli fieldworkers.

In the third segment of the fieldwork, interviews were conducted with officers from the Department of Orang Asli Affairs, including the Director-General himself. Opinions and experiences were also obtained from Orang Asli leaders and representatives who attended a national workshop organized by Suhakam (the Human Rights Commission of Malaysia) on December 29-30, 2002 to discuss their problems and aspirations.

B. TEMUAN EXPERIENCES WITH LOCAL GOVERNMENT

We surveyed seven (7) Temuan villages, located approximately three (3) to five (5) kilometers away from Dengkil town, close to Putrajaya, the new administrative capital of Malaysia. These villages are Kampung Bukit Tampoi, Kampung Bukit Damar, Kampung Batu 28, Kampung Bukit Dugang, Kampung Sungai Buah, Kampung Kelingsing and Kampung Bakok.

NAME OF VILLAGE	No. of families	No. of PRRT * houses
Kampung Bukit Tampoi	46	4
Kampung Bukit Damar	14	4
Kampung Batu 28, Jenderam Hilir	23	4
Kampung Bukit Dugang	30	X
Kampung Sungai Buah	22	2
Kampung Kelingsing	25	5
Kampung Bakok	15	5
TOTAL	175	24

*Projek Pembasmian Rakyat Termiskin, Project for the Eradication of the Very Poor – a project of the government that provides simple house structures to those Orang Asli and non-Orang Asli who are deemed to be very poor.

The Temuan here still speak their own distinctive dialect, although they use the standard Malay when conversing with outsiders. They live in settled villages and their houses differ little from ordinary rural Malay villages. The villages surveyed represent 175 families.

TEMUAN PARTICIPATION IN LOCAL GOVERNMENT PROGRAMS

Most of the villagers have little experience with programs of the Local Government. Of those interviewed, around 65% attended at least one program of the government (specifically the JHEOA), with around 25% having attended more than one program. One of the more popular programs is 'Program Minda', which is a program aimed at motivating Orang Asli individuals to be more independent and self-reliant. Other programs include 'Giat Belia', 'Gotong Royong', 'Kesedaran' and 'Bina Semangat', as explained in the table below. The selection of participants is done either by JHEOA officers, or more often by the JKKK, the JHEOA-sanctioned Village Security and Development Committees.

The Temuan say that they need a lot of support, subsidies and facilities to improve their economic situation. They want proper houses and better access to their settlements, not these kinds of programs. According to them, these programs of the government do not resolve any of their more urgent problems.

The 'Gotong Royong' program is exceptional because the village committee initiates it for clearly beneficial purposes, such as cleaning up the vicinity of the village. Everyone is directly involved and you can see the results immediately. In contrast, other JHEOA programs do not bring any immediate improvement in the quality of life of the Temuan.



PROGRAMS CONDUCTED FOR THE TEMUAN IN DENGKIL

PROGRAM	ISSUE FOCUSED	ORGANIZER	WHERE	FEEDBACK FROM THE VILLAGERS
Program Minda	Self Realization Aim: to be more independent and self-reliant	JHEOA	Dengkil	The program focuses more on being self-reliant and not to always depend on the government for assistance.
Bina Semangat	Motivation Aim: to be more independent and self-reliant	JHEOA	Dengkil	Seen as a propaganda attempt by the JHEOA to show that the state or local government is doing their best for the well-being of the Orang Asli. Generally, no one agrees with such propaganda statements.
Giat Belia	Youth Aim: to expose the youth to modern values and skills	JHEOA	Dengkil	Most of the youth are not interested in this program. Some participated but felt that the JHEOA and the local agencies could do more to improve the lives of the Orang Asli.
Gotong Royong	Village self-help Aim: To complete village-level tasks on a community basis	JKKK	Each Village	The villagers perceive this as the more important program because they feel that such village-level activities not only bring the villagers together, but also bring concrete benefits for themselves.

Like other Indigenous Communities, the Dengkil Temuan face a number of problems especially with regard to housing, land disputes, unemployment, poverty and lack of basic amenities (including water supply, electricity and telephone). The people feel the JHEOA's programs must be changed in order to address these problems directly. There should also be programs that can educate them about their rights as Orang Asli. Most of the programs do not touch on any of these topics. Instead, what they suggest is that the Orang Asli must work independently on their land by farming or other activities.

SOME TEMUAN EXPERIENCES WITH LOCAL GOVERNMENT AGENCIES

The research shows that around seventy-five per cent (75%) of the people only relate with the local government when applying for service facilities. These facilities include water supply, telephone, housing allocations (under the PPRT scheme), children's school facilities, or to fill up job vacancies. All these applications are made through the JHEOA or at least with their notification. Most of those interviewed are of the opinion that any communication between themselves and the local government agencies must go through the JHEOA. This has been the practice for a long time and the people believe that the system works this way. However, some bypass the JHEOA and approach other government agencies directly on their own.

In most cases, if a problem occurs, or if the people need to resolve an issue, they notify the relevant JKKK committee member about it. After that, the committee will discuss the problem with the village-head (*batin*), and a village meeting is called. Then, the committee or the *batin* will forward the decision or demands to the JHEOA.

Some specific cases brought up during the survey follow:

CHILDREN'S SCHOOL AID

One person requested for spectacles for his children from the JHEOA, under a scheme for this. However, until now, the request has not been approved. Under this scheme, school uniforms are also allocated for Orang Asli children. According to one villager, these uniforms are never brought to the schools or to the village but are kept in one JHEOA officer's house. The Orang Asli feel that it is improper for such things to be transacted in the personal residences of government servants.

APPEAL FOR PPRT HOUSES

Some of the villagers related what happened after they requested the JHEOA for PPRT houses in their area. The JHEOA agreed to build houses for those who were eligible under the scheme for the very poor. Officers from the JHEOA then came to the village and measured the area where the houses were to be built. They also requested the villagers to clear the proposed area for the houses, which



they did. Unfortunately, after three (3) months, there was no further response from the JHEOA. When some of the people went to meet with the officers, the officers just told them to wait. It has been more than two years now, and the houses have not yet been built.

REQUEST TO BUILD A BRIDGE

Another villager said that people from his village had requested the JHEOA to build a bridge for the village. This was one of the promises made by the government during the elections. It has been a few years since the promise was made but it remains unfulfilled. According to him, housing, water supply, electricity, roads and bridge projects are election gimmicks that have always been used to get the votes of the Orang Asli.

UNFAIR TREATMENT BY LOCAL GOVERNMENTS

Before the general elections, the ruling party, UMNO, announced that there were budget allocations for Orang Asli development that would be utilized once they win the elections. On the other hand, some development projects would already be implemented for the nearby Malay villages during the election campaign.

SAND FOR ELECTRICITY

The people of Kampung Bukit Dugang applied for water supply from JHEOA. After waiting for a few years, they were given water supply, which the Orang

Asli community paid for. Then the villagers applied for electricity. However, it was too expensive for the villagers to undertake. In 1986, a private company made a proposal to pay for the introduction of electric supply on the condition that the villagers would allow the company to mine for sand on Orang Asli land for the construction industry. The batin arranged a meeting between the committee members and the people. They agreed to the deal, which included the construction of houses costing RM8,000.00 each in addition to the supply of electricity. This worked out well for the Orang Asli and everybody was happy. Although the agreement was negotiated between the batin and the sand company owner, the JHEOA was approached for its endorsement, which it granted. This shows the overwhelming influence this government agency has over the Orang Asli.

PROPOSAL TO BUILD A SAND FACTORY

Another village had a slightly different experience. The village wanted piped water supply, electricity and a playing field. As usual, they applied through the JHEOA but there was no development. Around 1986, the batin had a meeting with the JHEOA and the Sepang State Assemblyman where they discussed the community's needs. Nothing much came out of this meeting. During this time, some companies from the outside were mining for sand on Orang Asli land without the people's consent. The batin confronted these companies and was able to protect the area from the trespassers. The batin then applied for a permit to mine the sand himself, but the District Officer rejected his application. The batin then had a second meeting with the Sepang Assemblyman who suggested mining the sand under the name of the Assemblyman's company. After discussing this suggestion with the JHEOA and the District Officer, the application was approved in 1993. However, the village people have not been the main beneficiaries in this project.

NO COMPENSATION FOR LAND

One of the Orang Asli representatives from Kampung Sungai Buah related that he had some agricultural land near Bukit Unggul. Sometime around 1994, a private company took his land and offered him a house in another place as compensation. When the company took his land, they promised to give him alternative land and a decent house including all the facilities. However, the company did not give him any alternative land for agriculture. No facilities were provided in the house that the company built and it is now abandoned. Because of this, he

complained to the batin and the committee and requested them to lodge a complaint with the JHEOA. But until now the problem remains unsolved. The batin is too afraid to follow up the JHEOA because they blame the villager for what happened as he did not consult them. The land in Bukit Unggul is now developed as a golf course.

PARTICIPATION IN LOCAL GOVERNMENT DEVELOPMENT PROCESS

None of the villagers interviewed have been included in any local government development planning process. Around 65% of the people said that the local government agencies do not understand the Orang Asli's needs. Thirty-five per cent (35%) said they were unaware of how the local government system works.

WOMEN'S PARTICIPATION

About 80% of the respondents do not know how women have been involved in the local government. Sixty-five per cent (65%) felt that women cannot participate in local governance. Seven per cent (7%) of the Temuans interviewed felt that women must play a bigger role at the village level before getting involved in the local government. The survey results also reveal that in the Dengkil district, Orang Asli women were never given any major role in local government programs.

There are some specific programs organized specifically for women. These include cooking, handicraft-making, embroidery and sewing. Others are related to health, especially concerning childcare and documentation of newborns. Apart from medical check-ups for pregnancy, delivery and children, the women's experience with local government is rather limited.

With regard to medical services, Temuan women often face obstacles when dealing with the JHEOA. They are required to get letters from the JHEOA authorizing them to get free medical treatment from government hospitals or clinics. However, their experience has been that it takes a very long time for the JHEOA to issue such letters. Many women find it more prudent and faster to pay the fees themselves than to risk waiting for the JHEOA letter until after the clinic has closed. In one emergency case, a Temuan woman without a letter from the JHEOA was denied the use of the ambulance by the health department; she had to hire a private car instead.

ABORIGINAL PEOPLES' ACT (ACT 134)

Among the Temuans interviewed, 55% know of the existence of Act 134 (Aboriginal Peoples' Act) but do not understand the implications of the law. Around 15% felt that the law is alright. Some of the village committee members said they know that Orang Asli affairs fall under Act 134 but they are unable to explain any specific portions of the Act, including those sections that pertain to their rights.

Around 70% think that the Act is one-sided and does not really protect the majority of the Orang Asli. Twenty-five per cent (25%) said the law can protect their rights. The remaining 5% do not have any knowledge about the Act.

Most of the Temuans felt that laws affecting the Orang Asli are enacted without consulting the Orang Asli communities or at least their batin. One of them said that under the law, they have all the rights to their land. But in practice, the government often acquires their land for various purposes without adequate compensation. Around 70% of the people interviewed were not happy with the law because it gives special privileges to Malay-Bumiputras only and not to them. They also feel that the law needs to be amended to ensure their rights to land and life. In view of this, the Peninsular Malaysia Orang Asli Association (POASM) has drafted an Orang Asli Reservations Act that will provide more security to their traditional lands. However, according to those interviewed, there has been no development or response from the authorities on this matter.

Those interviewed also said that there are no specific programs or workshops organized by the JHEOA or other local government agencies on topics pertaining to the law and Orang Asli rights.

POLITICAL INVOLVEMENT

More than 80% of the people interviewed are not involved, directly or indirectly, in any political party. They only participate in political processes during general elections. Some of them support the ruling coalition, Barisan Nasional (BN), and helped campaign for BN candidates. Very few support the opposition.

Generally, the people are aware that many empty promises are made by the ruling party during the elections. After the elections, they know that few, if any, of these promises will be kept.

TRANSPARENCY

FUNDING ALLOCATIONS

Around 90% of the people have no knowledge of the funds allocated to local government agencies for the Orang Asli. The other 10% know that there are certain allocations but they do not know the actual amounts. They all agree that local government officials never take the initiative to explain these funding allocations to the people.

EMPLOYMENT OPPORTUNITIES

Local government agencies decide what jobs or contracts, if any, are to be awarded to the Orang Asli. The respondents generally perceive that most of the contracts and job opportunities are given to the Malays. They also do not know what contracts are available for the Orang Asli.

Five (5) respondents experienced applying for contracts with the district office. All their applications were rejected, with the explanation that they had not converted to Islam. Few Orang Asli are able to work in local government agencies. Of the 50 people interviewed, only two persons were working in local government agencies.

ACCESS TO INFORMATION ON DEVELOPMENT PLANS

Seventy per cent (70%) of the people interviewed said that they do not know about the development plans in the areas surrounding their village. Some of the committee members might get some information through the JHEOA, but all agree that the information about the exact plan and how their villages will be affected are known only after or just before the development had actually started. Some of the village committee members find out about such development plans solely on their own initiative.

In Kampung Bukit Tampoi, for example, the state government proposed a development plan for 2005 that would affect part of the village land. Most of the villagers have no knowledge about this plan. None of the villagers was included in this development planning process.



Around 80% of those interviewed agreed that they could get information from the JHEOA upon request. Even so, only 20% feel that the JHEOA would be able to resolve the problem in their favor. The people believe that the JHEOA is not interested in solving their problems and will merely refer them to other departments.

SELECTION OF VILLAGE REPRESENTATIVES

The JKKK members are chosen through an election conducted by the JHEOA. The function of this committee is to facilitate liaison and communication with the Department. Around 90% of the people interviewed know about the election process and how it is conducted. They also accept the way the elections are conducted.

INITIATIVES FROM LOCAL GOVERNMENT

Around 90% of the people interviewed were unaware that any strategies had been initiated to improve the relationship between the Orang Asli and the Local Government. Most of them never attended any dialogue or feedback sessions or interaction programs organized by any government agency.

According to the respondents, there is no effort to bring the people together to deal with a particular issue. For example, the JHEOA never played an important role in settling the people's problems, especially land problems, in their favor. There is no clear link between the Orang Asli and the political representatives looking after their affairs.

According to one Temuan interviewed, the relationship was better about 15 years ago. He said that some of the JHEOA officers made regular visits to their village then and often talked to the people about their problems. In comparison, there are no visits at all now.

SUGGESTIONS FOR IMPROVEMENT FROM THE TEMUANS

There are some suggestions forwarded by the Temuans in the areas surveyed to improve the relationship between the JHEOA/Local Government and the Orang Asli community.

MORE EFFORTS TO TACKLE ORANG ASLI ISSUES

More dialogues need to be organized between the Orang Asli and various local government agencies. Greater effort is needed to provide education for Orang Asli children, more job opportunities and bigger allocation for PPRT houses, to improve the use of funding resources and to understand the Orang Asli way of life. JHEOA officers should also make more visits to the villages to improve the community's education, economic and social development. More subsidies or financial support should be given to the Orang Asli who work on their farms or lands.

GREATER WOMEN'S PARTICIPATION

The JHEOA must encourage more participation among Orang Asli women. Women must be given opportunities to participate in local government activities. They must also be given equal opportunities for education, social involvement and economic progress.

INCLUSION IN THE DEVELOPMENT PROCESS

Orang Asli representatives must be included in any development planning process affecting them. Some suggest that at least the batin or the village committee members should be included in the planning and implementation of projects affecting the Orang Asli and their land. More importantly, the Orang Asli should be part of the decision-making process for such projects.

ORANG ASLI REPRESENTATION IN JHEOA

The JHEOA must appoint representatives from the Orang Asli community to decision-making positions in the department. The Orang Asli must have positions at the district level to be able to influence higher authorities in the resolution of their problems. There should also be more senators chosen by the Orang Asli to represent them in parliament.

MORE SUBSIDY AND FUND ALLOCATIONS

Local Government agencies must ensure the allocation of funds to allow the Orang Asli to build small factories or small-scale industries. This will create more job opportunities for the Orang Asli.

FAIR COMPENSATION

Laws should be amended to ensure that the Orang Asli's rights are protected. There should be no discrimination in implementing the law.



C. SEMAI EXPERIENCES WITH LOCAL GOVERNMENT

The second study area was in the Batang Padang district of Perak and covered five (5) Semai communities, comprising 230 families. The villages surveyed were Kampung Batu Ampo, Kampung Pos Gedong, Kampung Chang Sungei Gepai, Kampung Chang Baru, Kampung Sungei Bil. The approach taken here by the Semai fieldworkers was to consider the responses to certain issues faced by the communities.

BACKGROUND INFORMATION OF THE VILLAGES

VILLAGE	LOCATION	NO. OF FAMILIES	NO. OF PPRT HOUSES	FACILITIES AVAILABLE (YEAR IN BRACKET SHOWS WHEN THEY GOT THE FACILITIES)
Kampung Batu Ampo	Between Tapah and Ipoh	20	17	-electricity (1997) -water supply from nearby river
Kampung Pos Gedung	12km from Bidor	50		-primary school under Ministry of Education -kindergarten by JHEOA -post office
Kampung Chang Sungei Gepai	4.5 km from Bidor	78	8	-water from nearby forest (1986) -electricity (1999) -phone (1995) -road (1993) -Recent TSB Development Projects affecting the village
Kampung Chang Baru	Next to Kg Sungei Gepai	41	21	-buses for children to go to school's in nearby town (1976) -water and electricity (1978)
Kampung Sungei Bil	Near Tanjung Malim and Slim River	51	20	-school (1960) -electricity (1982) -water (1984) -road (1988) -toilets (1992)

SOME COMMON PROBLEMS FACED BY THE SEMAI

MAIN PROBLEM IN THE VILLAGE	AFFECTED VILLAGES
Insufficient PPRT houses	Pos Gedung, Kg Chang Baru
No piped water supply	All 5 villages
Islamization	All 5 villages
Logging	Pos Gedung, Kampung Sungei Bil
Poor roads	Pos Gedung
Lack of or poor telephone service	Kampung Batu Ampo, Kampung, Pos Gedung, Kampung Chang Sungei Gepai, Kampung Chang Baru
Kindergarten issues	All 5 villages
Effect of Risda projects	Chang Baru and Chang Gepai
Electricity	Pos Gedung and Chang Baru
Bad service in government hospitals	All 5 villages

SEMAI ISSUES AND EXPERIENCES

Some of the issues and problems raised by the respondents are given below.

WATER PROBLEMS

All the five villages face serious water problems. The small streams in the nearby forests are inadequate to supply the villagers' daily needs. In some cases, logging has polluted the water supply. Generally, the main concern of the Semai is the unavailability of clean water for drinking, cooking and bathing. The situation worsens during the drought when the Semai have to collect water from a nearby swamp.

In the case of Kampung Sungei Bil, the people say that there is discrimination by local government agencies in supplying water to the village. According to them, the state water agency supplied water only to the old village. People from the new village did not get any water supply despite several applications made through the JHEOA. However, because of the urgency of the water problem in Kampung Chang Sungei Gepai and the slow response of local government authorities, the community used their own financial and human resources to repair the dam, replace the PVC piping and supply water to all the houses in the community.



PPRT HOUSES

Houses built for the villagers under PPRT projects are smaller than the ones built for the village leaders. A villager complained that the houses are very small and not constructed properly. During rainy days, water leaks through the roof and windows. The material used is of inferior quality and the villagers were told not to renovate the houses.

Not all villagers get PPRT housing aid through the JHEOA. The department decides who qualify for the houses. According to the villagers, those who support JHEOA programs and policies are given priority. Those who ask questions or explanations from the Department are usually the last to receive the houses. Those who oppose any programs imposed by the JHEOA will never get any benefits from this scheme. This causes much stress in the villagers' relationships with each other.

TOK BATIN BEING A 'YES MAN' TO THE JHEOA

According to a villager, there has never been a truly dedicated and courageous village leader. Some people believe that the batins seldom report the villagers' problems to the authorities concerned because they are paid an annual allowance by the government and receive other privileges from the JHEOA. Worse, some batins feel it is their duty to convince the villagers to support all programs of the JHEOA.

In serious land cases, the people consult the Tok Batin to express their dissatisfaction with certain proposals. However, the Tok Batin is usually passive and will raise these issues to the JHEOA only when forced to by the villagers. In the end, the Tok Batin invariably explains the situation on behalf of the JHEOA!

ISLAMIZATION

Most of the people interviewed perceive the non-governmental Muslim missionary organization, PERKIM, to be a local government agency. This is not surprising, as PERKIM seems to get the full support of the JHEOA and other departments. Recently some of the community leaders attended a seminar conducted



by the JHEOA. They were informed that development for the Orang Asli has been taken over by PERKIM and that there would be an Islamic Religious Leader and development officer from PERKIM in every village.

In one village, Pos Gedong, various Islamization programs have already taken place. One is the 'adopted children program' (Program Anak Angkat). Under this program, a Muslim university student will stay with a foster family.

During this time, he or she will try to convert the family to Islam. Villagers were also offered money, around RM200.00, for each person who converted to Islam plus a monthly allowance.

There are other Islamization programs such as mass-conversion ceremonies to Islam and mass-Islamic weddings. Recently, some officers from the Islamic Department came to the village and organized a party for Muslims without prior notice or discussion. According to some people, in all these cases, no one could oppose these unwanted 'developments'.

BAD ROAD SYSTEM

The village of Pos Gedong, situated 12 kilometers away from Bidor town, has the worst roads of all the Semai villages surveyed. This makes it very difficult for the villagers to go to town to buy groceries and avail of other services. The villagers and village leader approached various parties like the JHEOA, the Wakil Rakyat and the Menteri Besar for the past 6 years. Still there has been no development because the authorities make empty promises and keep the people waiting.

LOGGING

Two of the five Semai villages surveyed, namely Kampung Pos Gedong and Kampung Sungei Bil, face the problem of logging in their native land. In Kampung Sungei Bil, logging occurs in their traditional forest, which is quite far from their village. The logging company pays around RM2000 to the village leader as compensation.

In Pos Gedong, the villagers opposed the logging projects but were threatened with eviction if they persisted. The government claims that the land belongs to the state. In one instance, two officers approached the village leader in Pos Gedong to get his signature. When he refused, they forced him to sign by threatening that he would have to answer to higher authorities who had already approved the project. Finally, the village leader agreed to sign because he could not stand the pressure.



Later, the village leader and some villagers went to see Mr. Zainal, head officer of JHEOA in Tapah, to ask for action on the logging problem. Mr. Zainal dismissed their plea, saying that the logging is being done in a forest reserve, which is under the jurisdiction of the Forestry Department. He said that the JHEOA could not interfere in the affairs of another department. Then in May 2002, the village leader and a few villagers went to the Forestry Department to protest the logging in Pos Gedong. The Orang Asli were verbally assaulted in the office. The officers of the Forestry Department said that the Department owned the land and that they could do whatever they liked with it. An argument ensued between the two parties, ending with the Orang Asli being chased away.

POOR TREATMENT IN GOVERNMENT HOSPITALS

Semai women, in particular, face many problems when seeking medical help in government hospitals or clinics. In one incident in 1996, an ambulance was called when a villager had labor pains. The ambulance arrived but the driver harassed the woman verbally throughout the journey. He also drove recklessly forcing the pregnant woman to cling to her seat tightly, bearing the pain. A similar case was that of a villager who went for a caesarean operation in the Teluk Intan hospital. She gave birth to a premature baby and had to stay in the hospital for a few days longer. Throughout her stay, the nurses verbally abused her.

OTHER PROBLEMS

Some of the other problems raised by the Semai respondents are presented below.

PROBLEMS AND SITUATION FACED BY THE VILLAGERS	LOCAL GOVERNMENT AGENCY INVOLVED
<p>No subsidy Most of the villagers do not get full funding for the maintenance of their oil palms under the TSB /group replanting project. The Semai were encouraged to plant commercial crops but after having done so, they were told that there was no funding for their subsidies. If they still need help, they would have to give up their farm to one of RISDA's subsidiary companies and become a minority shareholder in it. They cannot interfere in the business after that.</p>	-RISDA (local government agencies) - JHEOA
<p>No public phone facilities Some villages still do not have public phone facilities. Others have phone booths without phones. In some areas, the phones have not been repaired for a very long time by the concerned authorities.</p>	-Telekom -JHEOA
<p>Village kindergarten If the community establishes its own kindergarten through the initiative of educated Semai in the community, the authorities will declare it illegal.</p>	-JHEOA, -Kemas

Most of the villagers did not get full funding or subsidies for the maintenance of their oil palms under the TSB project or group replanting. The Orang Asli were encouraged to plant commercial crops but after they did, they were told that there was no funding available. If they still needed help, they would have to give up their farms to RISDA's subsidiary companies in exchange for dividends from RISDA. From thereon, Orang Asli cannot interfere in any business concerning their oil palms.

Some villages still do not have public phone facilities. Some have phone booths but without the phones. Some others have not had their phones repaired for a very long time by the relevant authority.

In some communities, a few educated individuals established their own pre-schools to help prepare the Orang Asli children for primary school. If the community has its own kindergarten, authorities like JHEOA and KEMAS will declare it as illegal.

WOMEN'S PARTICIPATION

Around 55% of the Semai surveyed said that they have not been involved in government projects. Neither have they been invited to planning or post-planning

meetings. If they do participate, it is through their own willingness or curiosity. Their role in these meetings is just to listen.

REGULATIONS AND PROCEDURES

According to some villagers, there are informal rules and regulations being practiced or imposed by the JHEOA in the Orang Asli's dealings with any government department. Some of these include the following:

- Any application to any government agency should be made through the JHEOA.
- Outsiders are not allowed to go inside Orang Asli villages without permission from the JHEOA and the district police office.
- Orang Asli can stay wherever they want but they cannot own the land.
- Orang Asli receive a lot of funding from government and so they should listen to the government and cannot oppose it.
- Act 134 gives full authority and responsibility to the JHEOA for Orang Asli security, development and welfare.

ABORIGINAL PEOPLE'S ACT (ACT 134)

While some Semai have heard about Act 134, most do not know its contents or its implications. They feel that it is the JHEOA's responsibility to educate and inform them about Act 134. Overall, around 35% of the Semai respondents are aware about the law but feel that the law pressures them. They feel that they do not have a choice in life and do not have the freedom to voice out their feelings especially on matters involving land.

LOCAL GOVERNMENT PROGRAMS FOR THE SEMAI

Just as in the Temuan communities, the JHEOA organizes programs to change the mindset of the Semai Orang Asli and motivate them to be self-reliant and independent. In one instance, some Orang Asli were brought to Pulau Langkawi where they were reminded that the government had allocated millions of ringgit for their development. Still their situation had not improved. Some of these programs are tabulated below.

PROGRAMS IN THE FIVE VILLAGES DURING THE PAST 2 YEARS

PROGRAMS	PURPOSE
Mesra Minda	To change the Orang Asli's conventional thinking and culture to make them at par with the mainstream society.
Motivasi	Orang Asli are reminded not to marry immigrants, not to get drunk and drive recklessly, to maintain their own culture and not to be influenced by foreign cultures.
Anak angkat	Organized by Perkim, the Muslim proselytizing movement. The adopted 'child' (invariably a Muslim student) will try to introduce Islam to the foster family and convert them to Islam.
Visit to Langkawi	Participants were reminded that the government had allocated millions of ringgit for the development of the Orang Asli and yet they had not improved.

ATTEMPTS BY THE COMMUNITY TO RESOLVE ISSUES

Some of the Semai communities reported that they have attempted to overcome these problems in relating with local government agencies, through the following actions:

- Submission of written and verbal complaints about their problems to several government agencies such as JHEOA and the police;
- Meeting with and applying directly to agencies/institutions such as RISDA, Wakil Rakyat (Member of Parliament), District officer, TNB for electricity, JBA for water, and Jabatan Haiwan (Veterinary Department) for livestock matters.
- Writing protest letters and memoranda to local government agencies and engaging in discussion and negotiation.

- Meeting with top politicians of the state, including the Menteri Besar (Chief Minister).
- Taking the case against the government and private developer to court (such as the case of Kampung Bukit Tampoi)

From the survey, it appears that the villagers are generally afraid or reluctant to deal with the government and local government officials, especially those from the JHEOA, Forest Department and the District and Land Offices. The Orang Asli hold these officers in awe and respect, even though they know very well that these officers are the cause of their problems and misery. The Orang Asli interviewed were particularly tired and frustrated with the JHEOA since this is the local government authority that is supposed to look after their wellbeing and progress. Not only are the JHEOA inefficient, they also do things to oppress the Orang Asli.

Most of the villagers believe that any relation or communication between the Orang Asli and the local government agencies must pass through the JHEOA. This has been the practice for a long time and around 80% of those interviewed believe that the system works this way. This has caused problems for the Orang Asli, especially when JHEOA officers are slow to act on their requests or use administrative foot-dragging to sabotage Orang Asli interests in favor of the government or private developer. The practice of not recording Orang Asli lands that were approved for gazetting as early as three decades ago is a case in point.

In Kampung Chang Sungai Gepai, however, the people decided to take matters into their own hands and by-passed the JHEOA on at least two occasions. One was in solving their water problem themselves by installing their own water gravity system. The second was by negotiating directly with the concerned government agency, RISDA, for the replanting of their oil palm crops.

In general, it is clear that people in the communities are frustrated and tired with the JHEOA and want to see it revamped or closed down altogether.



4.

IV. OPINIONS OF ORANG ASLI OUTSIDE THE FIELDWORK AREA

A. SUHAKAM WORKSHOP ON INDIGENOUS PEOPLES RIGHTS

On December 29 – 30, 2002, the Malaysian Human Rights Commission (Suhakam) organized a workshop for Orang Asli leaders and representatives throughout the peninsula. It was the third leg of a series of workshops (the first two being held in Sarawak and Sabah earlier) to gauge the aspirations of the Orang Asli of Malaysia. The main objective of the workshop was to identify and discuss the problems faced by the Orang Asli. This was an opportunity to gather opinions from other Orang Asli outside the research areas and from government authorities representing the different states. The most important and common issues raised are given below.

LAND RIGHTS

The Orang Asli expressed great dissatisfaction with the government agencies for the non-recognition of their traditional or

adat lands. Many villagers mentioned cases of how their lands were taken away by private companies, with the help of the government and the JHEOA. Some also revealed how their lands were reclassified as Malay Reserve lands. The representatives from the government however maintain that the said lands do not belong to the Orang Asli and that the state has full rights over it. They said that in fact, the Orang Asli should be ready to relocate anytime the government needs such lands. The government would of course compensate them for their crops and dwellings lost, but not for the land. This was a major contentious issue among the participants.

PERMANENT TITLE FOR THEIR LAND

Whenever the Orang Asli seek help from local government agencies, usually for infrastructure or agricultural development, they are told that the land first needs to be titled in the Orang Asli's name. However, when the Orang Asli apply for such title, their applications are rejected and the land is given to somebody else or to some other agency. Orang Asli are told that they can only get titles – in the form of 99-year leases – if they agree to resettle elsewhere.

LOGGING AND MINING

Logging and mining activities present a serious threat to the security of Orang Asli lands. Often, private companies or so-called Orang Asli cooperatives get licenses to log in Orang Asli areas, without the Orang Asli's knowledge or consent. Frequently, the consent for the logging comes from the JHEOA itself, which is supposed to act as a guardian of Orang Asli interests.

CONSULTATION AND DECISION-MAKING

Many Orang Asli participants to the workshop felt that local government agencies, especially the JHEOA, do not consult the villagers in any development project on their land. At times, they only inform the *batin* or village-head, who usually agrees with whatever is proposed, either through force or collusion with the officers concerned.

OPINION ON LOCAL GOVERNMENT

The majority of the participants were dissatisfied with the various branches of

local government in their area, especially the JHEOA. Some strongly believed that the JHEOA was the main culprit in their deplorable situation today, especially for their lands being taken away. They also said that the JHEOA was playing an important role in urging the Orang Asli to convert to Islam by promising facilities if they did so. The participants were unhappy that the JHEOA never played a pro-active role in solving the many problems faced by the Orang Asli such as lack of a water supply, electricity, proper housing facilities, applying for birth certificates or identification cards, marriage certificates and others.

SOCIAL INFRASTRUCTURE

The failure of the government to improve the quality of life of the Orang Asli is clear from official statistics. Orang Asli social indicators are way below that of other Malaysians. For instance, the national poverty rate has dropped to below 9%, while the poverty rate among the Orang Asli remains high at 80.4%.

RESPONSE BY HEADS OF LOCAL GOVERNMENTS AGENCIES

Present at the workshop were representatives of various branches of government, including federal and state government agencies and the Director-General of the JHEOA. The Director-General denied most of the complaints and defended the activities of the JHEOA. His responses and those of other civil servants clearly showed that they were not willing to see the real issues and address them accordingly. They felt it was an affront to their leadership and management ability and sought to defend the actions of their staff or their department. It was also clear that they were not aware of what was happening on the ground.

RESOLUTIONS FROM THE PARTICIPANTS

The following is a summary of the resolutions forwarded by the Orang Asli participants to resolve the issues they face and to find permanent solutions to their recurring problems:

- Give land titles to Orang Asli and recognize their land rights.
- State Governments should discuss with local Orang Asli communities any development plans in or around their area, and must get their approval before implementing these plans.

- Government should recognize the right of the Orang Asli to use the forest where they reside.

- Form a national commission to analyze and reconcile issues regarding Orang Asli land rights, the Aboriginal People's Act, government policies regarding the Orang Asli, and the current JHEOA system of administration.

- Orang Asli must administer the JHEOA. Give Orang Asli proper training and educate them in various fields so that they will be able to administer the JHEOA.

- Orang Asli must be provided basic amenities such as water supply, electricity, roads, housing, schools and others.

- Local government agencies must include the communities in the discussion, planning and implementation of projects or programs relating to the Orang Asli or their land.

- Give equal chance for Orang Asli women to participate in every aspect.

- SUHAKAM must investigate all Orang Asli complaints immediately.

These resolutions were incorporated into a report outlining the aspirations and demands of the indigenous communities in Malaysia. The report was then submitted to the chair and other commissioners of SUHAKAM. It was later learned in August 2003 that the chairperson had asked for several key resolutions to be removed, especially those pertaining to land rights. This in effect made the document a meaningless piece of paper, totally devoid of indigenous content. This is one clear case where an extensive and expensive process of consultation and consensus was thwarted by one official, who chose to act on his personal biases rather than on the wishes of his client-base.



5.

V. VIEWS FROM THE JHEOA

The organizational structure of JHEOA reflects a typical bureaucracy with a hierarchical system. While the trend has been to devolve JHEOA responsibilities (such as health, education and agricultural development) to other government agencies, officers in other agencies still have the mistaken notion that the JHEOA *must* be consulted, or even sought for its consent, before engaging in any activity involving the Orang Asli.

Because of the perception that the JHEOA is the Orang Asli's legal guardian, it is convenient for states to obtain JHEOA consent in behalf of the Orang Asli, whenever the state wants to acquire Orang Asli land. While the state has direct control over the land, it normally coordinates with the JHEOA whenever Orang Asli are to be evicted, relocated or developed. Clearly, it appears that the JHEOA is the only local government agency handling all Orang Asli's affairs. This, despite the fact that its actions run counter to its mandate to work for the advancement, wellbeing and progress of the Orang Asli. Thus, when the state wants a particular Orang Asli land, the JHEOA convinces the *batin*, if it cannot convince the community, to accept the State Government's proposals. This is the

reason why most of the people interviewed said that JHEOA is the main culprit particularly in land rights issues. This has prompted some Orang Asli interviewees to comment that the JHEOA is not a "public servant" but a "government servant"!

A. INTERVIEW WITH JHEOA OFFICERS

At first, it was difficult to get JHEOA officers to speak. Most often, the person in charge would not be around. When they were around, they insisted on a letter of endorsement from the Director-General (DG). In any case, we were able to get an on-the-fly interview with the DG during the SUHAKAM workshop, and with another Orang Asli officer in the JHEOA who was willing to talk.

VIEWS OF THE DIRECTOR-GENERAL

At the SUHAKAM workshop, the DG refused to answer any question regarding land rights or Orang Asli land issues. He said that the department had no power to interfere in Orang Asli land issues because land was under the purview of the state government. Apart from the land issue, the DG was defensive regarding other complaints against the JHEOA. His answers tended to be rhetorical, without giving any clear answer or solution to the problems raised by the Orang Asli participants.

According to the participants, the JHEOA's lower-level officers are the same. They normally take the issues or complaints raised by the community for granted and never show any serious or genuine intention to solve the problem. Some officers even refuse to talk to the villagers, insisting that they deal only with the *batin*. Most often, JHEOA officers focus on implementing their own plans and strategies rather than on helping the people.

When the people raised this problem with the DG, he said that he would look into it. He also mentioned that the policy of the department is to take note of the complaints and to try to resolve the issues as soon as possible. According to him, one or two officers might not follow the procedure, but generally, everyone in the department is eager to help the community. They always look forward to plan and implement what is best for the community.

Some quotes from the Director General on the efficiency of the JHEOA:

"As a department entrusted by the government to ensure the socio-economic development and protection of the Orang Asli, the department has at times regularly drawn criticisms and allegations from several quarters within the country as well as abroad. Most of these criticisms and allegations have been based on wrong or inaccurate information not only with regard to the role and jurisdiction of the department and its relationship vis-à-vis other government agencies, but also on the pre- and modern-history, demography, politics, economy and socio-cultural set up of this country."

"Nonetheless, it is pertinent to emphasize this does not mean that the department is closing itself to criticisms especially the sincere ones, and constructive suggestions from any quarters. As can be noticed from the department's website, the information available is still not comprehensive as to cover every aspect of Orang Asli's life. Continuous efforts to update the information will be carried out. At the same time, we are open to suggestions and ready to respond to inquiries."

VIEWS OF A SENIOR ORANG ASLI OFFICER IN THE JHEOA

There are few Orang Asli staff in the JHEOA, and less than five in any senior position. We are told that most of the Orang Asli staff in the JHEOA are pro-establishment in their views, even if these are detrimental to the wellbeing and progress of the Orang Asli. It was difficult to find anyone who would share his honest views on the JHEOA. Fortunately, there was one senior Orang Asli officer who had thought about the issues, saw the measures being taken from within, and wanted to point out the shortcomings so that some improvements could be made. Some of his comments are given below.

ABOUT THE JHEOA

First, the senior officer agrees that the JHEOA system is outdated and cannot resolve Orang Asli problems as the people want it, nor recognize their rights as aboriginal people. The Aboriginal Peoples' Act, which was enacted during the

Emergency Period to control these people, is very much outdated. The government is comfortable with the law, which controls and oppresses the people's rights and changes the people's mindset so that they will obey or follow whatever the government wants. In other words, the government makes sure that its interest is secure when dealing with Orang Asli communities.

Although the JHEOA plans and implements programs and projects at the local level, important issues such as land, policies and lawmaking still fall under the Federal and State governments. The JHEOA, which was then under the Ministry of National Unity and Social Development, sees its role mainly in the provision of social welfare, housing and basic amenities.

It is an unwritten policy of the JHEOA that if any member of the Orang Asli community needs to deal with other government agencies, he or she is required to get an acknowledgement letter from the department. With this letter, the Orang Asli is supposed to get better treatment or privileges. However, in practice, it is a very complicated and slow process, as it always is when dealing with the JHEOA. For example, if someone needs medical attention, he first has to get a letter from the JHEOA to be exempted from paying the fees. Although theoretically it is easy to get such a letter, in reality it is very difficult and frustrating. The unwanted procedure and unfriendly atmosphere in the JHEOA make the process a very slow one. In an emergency where the patient needs immediate attention, he is likely to skip all these and go directly to the hospital for treatment, paying the fees himself.

ATTITUDE OF FRONT LINE OFFICERS

An important role of the front line officers in JHEOA is to facilitate Orang Asli affairs and to care for their welfare. Besides, they are also involved in planning and implementing programs or projects that benefit the community. However, these front line officers usually treat Orang Asli like children, telling them what to do. They never care about what the community has to say or how their indigenous system works. In most cases, the JHEOA officers make the decisions for the community and do not listen to what they think.

When problems occur, the JHEOA officer quickly blames the community, claiming that these people are under-developed or that they do not want to learn new things. Some even continually scold the Orang Asli for the way they carry on with their lives.

WORKING WITH OTHER DEPARTMENTS

Other government departments that work directly with the Orang Asli are the Land Office, Police, Forest Department and some implementing agencies such as RISDA and FELCRA. These departments or agencies mainly act to control Orang Asli activities. The State Land Office, for example, is directly involved in eviction, relocation and Village Rearrangement Program (PSK). Although most of the departments closely coordinate with JHEOA, the villagers find it impossible to get information on any proposed development in their area, much less be involved in the planning stages of the project.

In most cases, the community is forcibly relocated without proper consultation or fair compensation. Regarding the current land issue, the JHEOA has been actively involved in getting the community to accept the 99-year-lease on their land. The JHEOA never clearly explained the content of the agreement and instead gave false information to get the people's approval.

Another program affecting the Orang Asli community's land rights is the Village Rearrangement Program (PSK). This involves restructuring the boundaries and lots of the settlements into neatly-arranged and organized settlements. However, the new land area of the settlement is very much smaller than their original land. Moreover, once the 'rearrangement' is done, the JHEOA never shows a serious interest in upgrading these villages. Comparatively, the other government agencies play an active role in upgrading Malay villages.

THE STATE AND DEVELOPMENT

The government is supposed to be the community's public servant, but in the case of the JHEOA, it acts as their master. The JHEOA or any other government agency must try to give what the community really wants, not forcing them to accept the government's interest. Giving an analogy, a person operating a restaurant must give what the customers want. In the case of the government, when the community wants tea, the government gives them chocolate drink. The Orang Asli do not refuse, but they retreat. When the government only offers one thing and never bothers with their needs, the community is forced to accept it. In the end, the government takes full control of the indigenous community and their land.

The Orang Asli community is not anti-development but neither do they want their way of life, land rights and identity to be jeopardized in the name of development. What is happening is that the private company takes the people's land with the help of JHEOA for development projects. Most of the private companies or contractors are cronies of the government and take over Orang Asli land with ease.

If there is genuine interest to bring development into the Orang Asli community, the local government should focus on upgrading their villages, providing basic amenities such as schools and transportation, recognizing their land rights, and being pro-active in dealing with the community's problems. Many Orang Asli are capable of administering, facilitating and running the department. They should be given the opportunity to do so.

It has been noted that the current system of the department has failed to resolve Orang Asli issues and problems. It only imposes the government interest on the Orang Asli. The JHEOA and its DG often come out with new ideas, claiming that the new project will improve the community's situation. But it always ends in failure. After a few years, a new DG takes over the department with new plans and methods. Clearly, there is neither consistency nor continuity in this top-to-bottom approach. On the other hand, when the people are involved in the planning and implementation of a particular development project, they know what they want and how to do it.



6.

VI. MOVING FORWARD

A. SUGGESTIONS FOR MOVING FORWARD

The Orang Asli are not anti-development. Neither do they want their way of life, their rights to their land, and their identity to be jeopardized in the name of development.

If there is genuine interest in bringing development to the Orang Asli, the local government agencies should focus on upgrading their villages, making sure that basic amenities are in place, including schools and health services. They should also recognize their rights to their traditional lands and provide more economic and political opportunities to the Orang Asli, including that of governing their own department.

More specifically, the Orang Asli forward the following pre-conditions to assure their development, wellbeing and progress:

- Recognize Orang Asli traditional land and accord it permanent title. Once this is in place, local government agencies will be required to treat the Orang Asli as legitimate land-owners and deal with them accordingly.
- In keeping with existing laws on the use of Orang Asli lands (such as the Land Acquisition Act), state governments and local government agencies should involve the Orang Asli in any plan to develop or acquire such areas. Discussions should be done at the earliest possible stage, and not only after the project has been approved or decided upon.
- The Government should recognize the right of the Orang Asli to use the forest where they reside.
- There should be full and informed participation, including access to information, in all programs or projects involving Orang Asli communities. Such participation should not discriminate against women; rather it should actively encourage the participation of women in every aspect.
- The Orang Asli should be allowed to administer the JHEOA. If necessary, proper training and education should be given to realize the goal of a JHEOA run by Orang Asli.
- Orang Asli, like other Malaysian citizens have a right to basic infrastructure facilities such as water supply, electricity, roads, housing, schools and others. Priority should be given to the provision of these facilities rather than changing the mindset of the Orang Asli.
- The resources of the state authority should not be used to convert the Orang Asli to any religion other than their own. Rather, such energies and resources should be utilized to promote indigenous culture and spirituality.

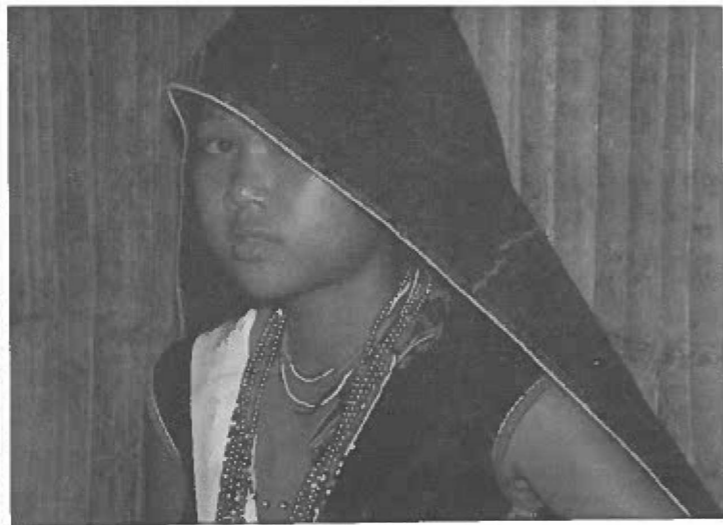
B. CONCLUSION

The alienation of the Orang Asli from the processes of the democratic government is an observable fact. This is evident from the highest level of the executive government to the middle levels of local government agencies. Notwithstanding the constitutional provision discriminating in favor of the Orang Asli, the Orang Asli have little or no say in administrative or executive policies. This is so even with regard to their own advancement, wellbeing and development, especially at the local level.

Like other aboriginal groups in the world today, the Orang Asli suffer severe handicaps of social and economic underdevelopment, which render them vulnerable to exploitation, discrimination or neglect. The time has come for the government to recognize their responsibility towards the Orang Asli and to take steps to ensure their rightful place as a people in this country.

SABAH





1.

I. INTRODUCTION

This study explores indigenous peoples' participation in Local Government in Sabah. The study is part of a regional research program financed by the European Commission under its Democracy and Human Rights Program and implemented through the International Work Group for Indigenous Affairs (IWGIA). The research program covers South America (Peru and Venezuela) and Asia (Malaysia and Philippines). The research provides valuable background information on the impact of existing legislation and administration, the problems and constraints as well as future prospects for indigenous concepts of good governance.

In Sabah, the indigenous peoples make up about 60% of the population (2000 Census). Majority of the indigenous peoples reside in the rural areas where they make their living as farmers. A large number of indigenous peoples also hold posts in various government departments, or are in some way connected to the Local Government administrative structure. This study focuses not primarily on the presence of indigenous peoples in Local Government, but rather on the quality of their participa-

tion and on the principles they hold. A second part of the study looks into the problems and constraints faced by rural indigenous communities in their participation in governance and self-determination.

The current situation of the indigenous peoples' participation in Local Government was shaped by Sabah's history, first as a British Protectorate, later as a British Crown Colony and finally as a member State of the Federation of Malaysia. Before British rule, the indigenous communities were largely self-governed. Prominent figures, each with special roles and skills to secure peace and prosperity, formed the leadership structure in the communities. However, under the British colonial regime, new legislation and institutions were introduced, ultimately changing the traditional fabric of native administration and leadership.

Upon the entry of Sabah into the Federation of Malaysia in 1963, the situation was largely influenced by policies from the Peninsula, which was then ruled by a Muslim-dominated coalition. This further affected indigenous communities' space for self-determination and self-governance. Besides the influence of Federal policies, the development approach adopted by the State government left the people, especially rural indigenous communities, with limited space for participation in decision-making and self-determination. This study outlines the problems that constrain the active and meaningful participation of the indigenous peoples of Sabah in the Local Government and in internal local governance.



2.

II. METHODOLOGY

Two community workshops and several interviews with government officials at different administrative levels were conducted to assess the nature and extent of the participation of indigenous peoples in Sabah in local government. The effect of existing legislation on such participation was also looked into. (Refer to Appendix 1 for List of Respondents).

The community workshops were conducted in two study areas, namely, Kg. Tiong in Tuaran District and Kg. Gana in Kota Marudu District. The workshops discussed the indigenous peoples' traditional and current leadership structure, and their experiences of participating in Local Government. Villagers with and without direct affiliation to the Local Government administrative structure participated in this study. Where deemed relevant, individual interviews with village leaders were conducted. However, the empirical material referred to in this report was obtained not only in the two study areas, but also from PACOS' general experiences and current work in other indigenous communities throughout Sabah. (See Appendix 2 for general information about the two study sites.)

During the community workshops and interviews with village leaders, it was obvious that most villagers find the issue of indigenous peoples' participation in Local Government and community leadership difficult to relate to and reflect on. This is probably because the selection of village leaders, who directly interact with the various government departments, is in most cases no longer in the hands of the communities. Rather, elected government servants select the village leaders. Thus, the communities' own reflections on the problems they face in Local Government participation are rather limited. We then tried to look at the way the indigenous communities, through their actions and interaction with government, participate in Local Government. From these discussions, we attempted to analyze the problems indigenous communities face in terms of active and meaningful participation.

A gender sensitive approach was adopted throughout the study. Special efforts were made to include women in the community workshops. Smaller women-only discussion groups were held to ensure that women's voices were heard. Interviews were conducted with women community leaders, a woman District Officer and a woman government officer at the Ministry of Rural Development.

In Sabah, Local Government and governance are generally perceived to be sensitive issues. Nonetheless, the government officers in the different departments dealing with local governance were very forthcoming and willing to discuss the issues and problems regarding the participation of indigenous peoples in Local Government. This was with the exception of one government department, where the study team was unable to arrange an interview despite numerous inquiries.

Finally, the effect of existing legislation on indigenous peoples' participation in Local Government was initially a major aspect of the study. However, research revealed that much of the legislation in use today is a carryover from the British colonial rule. Such legislation is no longer actively enforced and much of it has been repealed. Instead, the important aspects of rural administration and development are defined by the objectives and functions of the various government agencies dealing with these matters. Because of this, discussion of legislation and indigenous peoples has become a minor aspect of the study. This matter is tackled in Section 5 where traditional administrative and leadership structures in indigenous communities are discussed.



3.

III. A NOTE ON THE CONCEPT OF INDIGENOUS PEOPLES AND LOCAL GOVERNMENT WITHIN A SABAHAN CONTEXT

The ethnic composition of Sabah's population is complex and varied. Ethnic classifications were and still are politically and socially significant, as the whole notion of establishing ethnic classifications is based on historical experience. However, the question of who can be labeled as indigenous, or "the real and original owners of Sabah" (Luping 1994:1), has repeatedly been raised. The term 'Bumiputera', literally meaning 'son of the soil', was created primarily to facilitate the implementation of Malaysia's New Economic Policy (NEP), which was introduced in 1970¹. The special position and privileges as 'Bumiputeras' accorded to the Malays in Peninsular Malaysia were extended to all native groups in Sabah and Sarawak. However, many of the indigenous peoples of Sabah view the term 'Bumiputera' as objectionable since they are non-Muslims and non-ethnic Malays.

In Sabah, the Native Ordinance of 1952 defines who is a 'native' and the procedure to get a declaration of native status through the Native Courts. The definition of 'native' is broad and includes any person whose parents, or at least one parent,

is indigenous to Sabah and have (has) been living as a member of a native community. It also includes indigenous peoples of Sarawak, Brunei, Indonesia, Singapore and the Sulu group of islands in the Philippine Archipelago who have lived as and been a member of a native community in Sabah for three to five years consecutively preceding the claim to be a native of Sabah.

As an organization committed to strengthening the capacity of indigenous peoples in Sabah to handle various issues concerning their community, PACOS recognizes the definition of indigenous as stipulated in the Native Ordinance. However, since the definition provided in the Ordinance is not comprehensive, PACOS also puts emphasis on the inclusion of indigenous value systems. Thus, PACOS agrees with the definition stated by indigenous peoples and their organizations in a United Nations context that indigenous peoples 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 pattern, social institutions and legal systems."
(Simpson 1997: 206)

DEFINITION OF LOCAL GOVERNMENT

When assessing indigenous peoples' involvement in Local Government in Sabah, we have found it necessary to look not only at how the indigenous communities participate in the government apparatus but also the influence these communities have on the development and conservation policies directly affecting their livelihood.

By Local Government, we mean the government and government-related institutions, structures and processes that have an impact on the social, economic, cultural and religious lives of communities at the village level.

¹ The NEP was introduced to strengthen unity through (1) reducing and ultimately eradicating poverty by increasing the level of income-expanding opportunities for employment and (2) restructuring society in order to correct the economic imbalance between the different ethnic groups.



4.

IV. BASIC INFORMATION ABOUT SABAH

Sabah is the second largest of the 13 States in the Federation of Malaysia, covering an area of 73,619 square kilometers. Sabah occupies the northern part of the island of Borneo and borders Sarawak in the west and Indonesia in the south. Sabah together with Sarawak make up East Malaysia, which is separated from Peninsular Malaysia by the South Chinese Sea.

The climate of Sabah is hot and humid throughout the year; it is not affected much by severe storms and typhoons. The landscape is highly dissected and steep and about 60 percent of Sabah's area is mountainous. Most of the lowlands are found at the coastal region. Both the coastal belt and mountainous slopes are heavily forested. Tropical rainforest of one type or another characterizes most of the state. Sabah has been called 'the land of biodiversity' referring to the State's rich natural resource endowment contributing to one of the highest species biodiversity in the world.

A. SOCIAL HISTORY OF SABAH

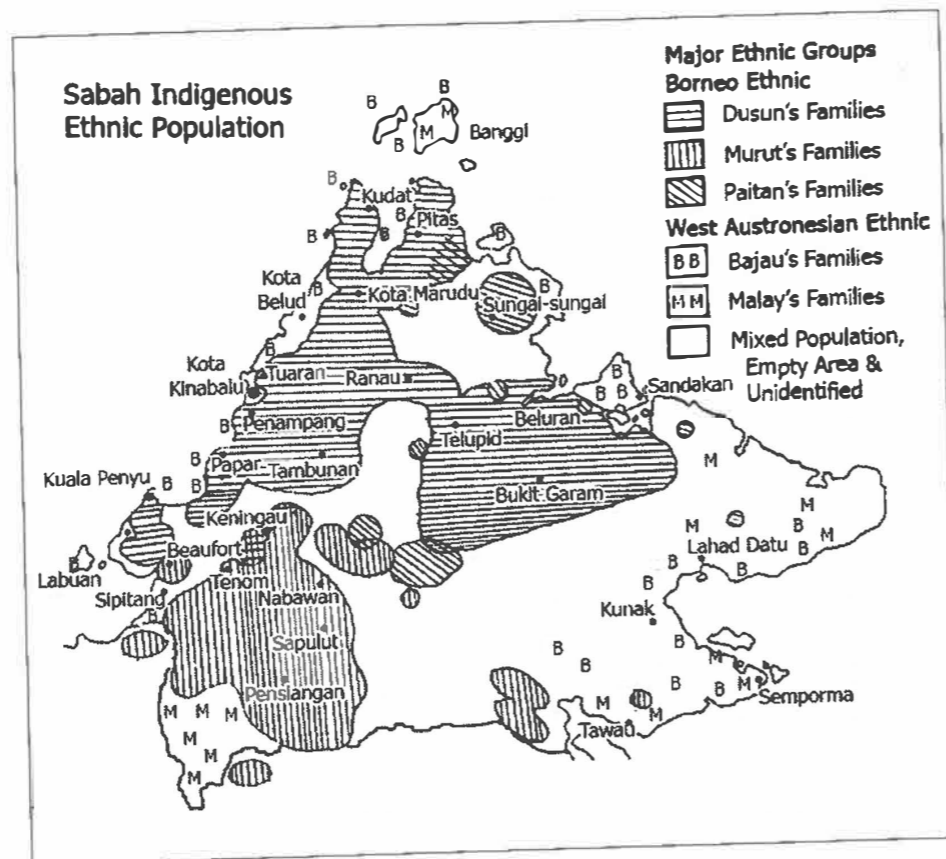
Archaeologists estimate that Sabah was populated at least 30,000 years ago when the early inhabitants frequented the Madai limestone caves for shelter and food. Hunting and gathering were probably their main economic activities with little or no agriculture. Subsequent documents of communities living in the coastal plains of Sabah indicate that they were largely self-subsistent, producing food and other necessities for themselves. Forest and land were the main resources, to which everyone had rights to use, cultivate or occupy. Communal way of life was practiced and decision-making was by consensus rather than by enforced authority.

Communities were forced to move inland with increasing piracy, invasions, slave-raiding and oppression by the Brunei and Sulu Sultans, who considered themselves the owners of the land and the people. As trade and feudalism developed, people had to produce not just for subsistence and for barter, but also to pay poll taxes and custom dues imposed by the Sultans, Datus and their functionaries. Very often, people responded to these oppressive acts by getting together and fighting back, though not always successfully.

From the 17th until the early 20th century, slavery was a thriving trade. Piracy was rife from the 18th century onwards. The commercial potentials of Sabah's natural resources were a decisive factor in shaping the State's history. Until 1877, Sabah was part of the Brunei Empire. That year, the sultans of Brunei sold the northern part of Borneo (Sabah) to a British trading company. The British government granted the trading company a Royal Charter and the North Borneo Chartered Company was established. Since 1888, North Borneo became a British Protectorate. Like any other company, the Chartered Company's main objective was to secure a profit. The expanding market for tobacco and rubber stimulated European interest in setting up plantations in Sabah. The Chartered Company realized that in order to do this, it was necessary to clarify the legal boundaries between the lands used by the natives and those that were available for such plantations. Thus, as part of the aim to develop agricultural production and to gain access to the resources, a system of codification and land titling started under British rule. After the Japanese Occupation during World War II, Sabah became a British Crown Colony in 1946. The exploitation and control of Sabah's natural resources, especially timber and farmland, continued. In 1963, Sabah became independent but joined the Federation of Malaysia later that year.

B. POPULATION

According to 2000 statistics, Sabah has a population of 2.6 million. Sabah is characterized by ethnic pluralism with more than 40 different indigenous groups, including Kadazan, Dusun, Rungus, Murut, Sungai and Lundayeh. They speak more than 50 languages and 80 dialects. The Dusunic, Murutic and Paitanic groups are the larger of the ethnic groups (see map below).



The indigenous population in Sabah makes up about 60% of the total population. The Kadazan-dusuns, which is the most dominant ethnic group, occupy western, northern and central Sabah. The Rungus communities reside on the northern part of Sabah. The Murut communities are found in the southwest interior of Sabah. The Sungai communities occupy the eastern part of interior Sabah. The Lundayeh communities are found in the southern part near the border of Sarawak and Kalimantan.

The diverse landform, soil, climate and vegetation provide a diverse agro-ecosystem for the many indigenous communities. The indigenous peoples are mostly subsistence farmers who practice diversified agriculture, including cultivation of wet and hill rice, vegetables and fruit trees. The rural farmers often pursue a wide range of livelihood activities. Parts of the production system are for subsistence while others are for income generation. Rotational agriculture in its pure form as the major source of subsistence is becoming increasingly rare. Permanent farming of annual and perennial crops as well as off-farm activities are often economically more important. Apart from farming, many of the land-based indigenous communities rely on the diverse forest resources for food, medicine, fuel, building materials and other household needs. There are many fishing communities along the coastline and river mouths. Their cash income is derived mainly from surplus food crops, cash crops and fish sold at the market.

C. THE POLITICAL SYSTEM IN SABAH

Sabah has secured a certain degree of autonomy through the Malaysian Federal Constitution. The Constitution gives the Sabah government the right to legislate its own laws, and the freedom to control land and forest utilization, as well as Local Government and other forms of development in the region. Despite this, the political agenda of the Federal government, which for decades has been dominated by the Malay-Muslim dominated Barisan Nasional (BN) coalition, has been strongly promoted in Sabah since its entry into the Federation. The strong Federal political influence has caused tension between political parties representing the indigenous population of Sabah and the Federal-supportive political parties. The opposition parties criticized the Federal-friendly parties for slowly undermining the Twenty Points agreement. This agreement was drawn up when Sabah entered the Federation to ensure that the control of Sabah would remain in the hands of the Sabahans. Some of the safeguards included in the agreement are: free choice of religion, control over finance and resources such as land and forests, and control of education including the right to use English as the official language. Today however, most of the major indigenous political parties, such as the United Pasokmomogun Kadazandusun and Murut Organization (UPKO) and the Sabah United Party (PBS), have joined the BN Coalition, leaving Sabah with a weak opposition.

Sabah practices parliamentary democracy. Under the State Constitution, the Yang di-Pertua Negeri acts as the Head of State but only holds certain executive

powers. The state is administered by the State Cabinet, the Sabah State Legislative Assembly and the State Public Services Department. Currently there are 11 Ministries overseeing several government agencies and statutory bodies. Three of these ministries are especially relevant for the governance of local communities: the Chief Minister's Department, Ministry of Rural Development and Ministry of Local Government & Housing.

The institutional setup in Sabah today is divided into three levels: state, district and village. At the state level, there is the Sabah government and different state and federal ministries and departments. The District Office is the main institution at the district level. The connection between the village level and district level is through the Village Head (*Ketua Kampung*) of each village and the Committee for Development and Security (JKKK).



5.

V. SOCIO-POLITICAL STRUCTURE AND GOVERNANCE IN INDIGENOUS COMMUNITIES IN SABAH

The following section gives a thorough description of the traditional and current administrative and leadership structure in indigenous communities in Sabah. It is important to understand the changes in the governance structure and its effects on the indigenous communities and their space for self-determination and self-governance.

A. THE TRADITIONAL ADMINISTRATIVE AND LEADERSHIP STRUCTURE

Traditionally, the unit of administration and governance among the indigenous communities in Sabah was restricted to the village level. Before British colonial rule, the indigenous peoples were effectively independent. Four major institutions of authority governed the indigenous political and administrative system: the Village Head (*Orang Tua*), the Council of Village Elders, a Priestess (*Bobohizan*) or, in some indigenous communities, a Priest (*Momurinait*), and the Descent Group Chief or *Hoguan Siou* (paramount leader). The four institutions worked closely together to safeguard the interest of the community. Traditional law or custom (*adat*)

was used to govern and control the behavior of the community.

Because the various tribes were often at enmity with one another, prosperity, harmony and security were major considerations in the selection of community leaders. Thus, the community leadership was usually comprised of individuals who were knowledgeable about the *adat*, had certain specialized knowledge, and were wealthy, generous, brave and physically strong. Furthermore, personal integrity, reliability, honesty, wisdom and sense of justice were valued personal characteristics when selecting the village leaders.

The Village Head, usually a man, held the highest authority. He was responsible for the overall administration of the village and management of the resources. He was further responsible for maintaining law and order in the village. The Village Head presided over village meetings and hearings and played a major role in ensuring that the traditional land boundaries, customary laws and rituals were followed. The position as the Village Head was usually inherited, but the villagers in fact, decided the succession. When a Village Head died, a village gathering was held. This gathering was attended by most of the senior male members of the community and selection was done through discussion and consensus within the Council of Elders. The Village Head was selected for his extensive knowledge of *adat*, his wisdom and impartiality as well as his prowess and organizational ability to protect the village from raids.

The Council of Elders was comprised of members of the community who were 40 years old and above. Besides choosing the Village Head, the Council also advised him on all important matters concerning the village. The Council of Elders was the village administrative body, which made important decisions pertaining to security, development, justice, health, moral and spiritual standards of the community.

The Council of Elders sought their advice from the village Priestess, or in some ethnic communities, a Priest. The Priestess was involved in most aspects of village life: birth, marriage and death as well as other daily activities such as farming, hunting and fishing. Besides being a medical specialist, the Priestess was also a ritual specialist who ensured moral and spiritual integrity. *Adat* formed the basis of individual behavior and it was believed that non-adherence to *adat* would bring disease, sickness and natural disasters. To restore harmony, appropriate rituals had to be performed by the Priestess. The Priestesses were specialists in rituals and it was believed that they could avert disasters. They were thus very influential and powerful figures in the community.

The last of the major institutions of authority was the paramount tribal leader or warrior, the *Huguan Siou*, who was responsible for the security of the community by leading his group of warriors in protecting the village from outside intruders. The paramount leader or warrior was chosen for his prowess in war and in the defense of the community. *Huguan Sioun* represented a higher authority and, while still seeking the advice and assistance from the Priestess to ward off enemies, he was superior to the Village Head in all important questions of justice, ceremony or war. The *Huguan Sioun* was also the person to arrange for truce or alliance with other tribes.

Details of the process of decision-making are unknown today but apparently, in the days of inter-tribal warfare, the decision to attack or retaliate against another village was made in consultation with all the wise elders and community members at large. Most decisions, and particularly difficult ones, were probably made not in a rash manner, but may have involved several days of seeking wisdom and omens through prayers, interpretation of dreams and consultation with seers. From the limited information available on past processes of decision-making within the Council of Elders, the overall approach was participatory in nature. While the few elders the Council made the final decision, it was based on consultation with other members of the community after listening to comments made during the course of social interaction.

Although women were active in village life, they are hardly visible in recorded history. An exception is in Rutter (1929) where there were reported cases of women who had risen to the position of Village Head and performed with courage and success, particularly among the coastal groups.

Throughout the nearly 80 years of British rule, there were a number of notable uprisings against the British, particularly the Chartered Company. There is no doubt that women played a role in these rebellions, as several references were made by Rutter (1929). One was a Bajau woman known as Nuik, who escaped from the British fort and was captured. Another was Dayang Bandang, spouse of Mat Salleh, a local rebel. Dayang Bandang came from a traditionally influential family, her father being a member of the royal house of Sulu. She was said to have pioneered the struggles against British rule, and not surprisingly, she was a target of attack by the British who disapproved of her. These examples give some indication that women were involved in community leadership and were active in popular movements and political campaigns of their time.

B. CHANGES IN THE TRADITIONAL ADMINISTRATIVE AND LEADERSHIP STRUCTURE

This section describes the changes in the traditional administrative and leadership structure in indigenous communities in Sabah, which occurred during the colonial and post-colonial period.

COLONIAL PERIOD

The gradual change in the traditional indigenous political and administrative system started when the Sultans of Brunei laid claim to the river-valleys of North Borneo. This was when an externally imposed form of political institution, the extended sultanate system, was introduced. Broadly speaking, there were three different categories of people who "owned" the rivers in various parts of Sabah. These were the Sultan himself, the *Wazirs* or Ministers, and the *Pengirans*, or the people living in the river valleys who had inherited the rivers from their forefathers. The Sultan, the *Wazirs* and the *Pengirans* collected revenues from the people inhabiting the river valleys they owned. However, they rarely collected the revenues and taxes themselves. Instead, this was done through native leaders in the district and thus, the position of Native Chief was introduced. To ensure law and order, the Brunei Sultanate also introduced a number of systems, one of them being the Native Court.

However, the most profound changes in the traditional indigenous administrative and leadership structure occurred during the 82 years of British colonial rule. Although the British rulers showed their intention to observe and respect the social orders of Sabah natives on paper, the laws and institutions they introduced in fact eroded the community structure of self-government and control over their resources.

The British rulers gradually replaced the indigenous political institutions with their own political institutions. A Legislative Council was formed and a Native Advisory Council was set up, with no representation of indigenous peoples. In effect, the Native Advisory Council was an agent of the government to explain its policy to the indigenous communities. The shortage of staff and government funds combined with a growing uprising among the natives spawned the drafting of the Village Administration Ordinance in 1891. This Ordinance significantly altered the native governance structure and modified the roles of the village leaders.

The chief District Officer had the power to appoint the Village Heads. The administration of the Village Heads was left to the Native Chiefs who were appointed by the government. The duties of the Village Heads included the reporting of 'bad characters' within their village, revenue collection and assisting government officers when called upon to do so. If the Village Head was found to be neglecting his duties, he could be fined or dismissed. Likewise, villagers who failed to support the Village Head without reasonable excuse could be punished. Hence, for the first time, all the people of Sabah became answerable to a central government, and the Village Head was integrated into the civil service. Although the codification of native customary rights and incorporation of these rules into colonial law was stressed by the British government, this served instrumental rather than humanitarian purposes. It allowed the understaffed and under-financed Chartered Company to rule indirectly through the native chiefs and native courts, who oversaw state-sanctioned indigenous legal systems. Further, by giving native leaders new authoritarian positions in society, colonial administrators were insuring the complicity of at least some natives.

With his duties and powers significantly modified, the Village Head became less important. He no longer held the high position he previously had in the community. Today, the Village Head is still part of the administrative and leadership structure in indigenous communities. However, the extent to which the new laws changed the relationship between the Village Head and the villagers varied. This was dependent on the degree to which the community acknowledged outside authority, as well as the degree of power and influence the Village Head possessed and exercised within the village. Furthermore, with so few European officers to supervise the country, most aspects of village life were left to the Village Head. The implementation of the Village Administration Ordinance, for instance, rested heavily on the Village Heads themselves, leaving some 'room for resistance'.

However, the fact remains that the role of the Village Head in the administration of the community changed with the introduction of laws and ordinances drafted by British officers. In particular, the three other traditional institutions of authority were heavily affected. The position of the *Huguan Siou* became redundant when warrior raids, or head-hunting, was banned by the British. With the role of the Village Head and the *Huguan Siou* altered and subdued, the Village Council of Elders disappeared in most villages. Besides British influence, the introduction of Islam and Christianity as well as Western medicine eroded the importance of the Priestesses. The priestesses, their rituals and anything connected with them were considered pagan, animalistic and barbaric. Today there are

very few priestesses left and few young girls are willing to learn or be initiated into the prayers and incantations conducted by the priestesses.

POST-COLONIAL MALAYSIA

Plans for a Federation of Malaya, Singapore, Sabah, Sarawak and Brunei first aired in 1961. Until it became clear that the British rulers were intent on leaving Sabah, there was hardly any political awareness or organized movement among the peoples of Sabah. However, the new prospect spurred some native and Chinese leaders to form parties, professedly as guarantors for the interest of the communities they sought to represent. In this way, the first parties were community based and they began to express their opinions for or against joining the Federation.

Subsequently, various committees and commissions were established to promote the idea of "Malaysia" to the people and to safeguard the rights of the Borneo people in the Federation. Even until Sabah's independence when it joined the other states to form Malaysia in 1963, the ordinary people were never really involved in the negotiations. Decision-making was mostly done by businessmen and/or community leaders representing narrow segments of the Sabah society.

Since the formation of Malaysia, there has been a very strong focus on nationalization, development and economic growth. However, it has been difficult for Sabah's natives to define their own interests in their own terms since joining the Federation. For example, the land laws and ordinances introduced by the British, stipulating the terms of access to and allocation of resources, underwent a series of changes. These changes further tightened the control of resources in the hands of the government. In 1968 the Village Security and Development Committee (Jawatankuasa Keselamatan dan Kemajuan Kampung, or JKKK) was introduced. The JKKK was established in all villages in Sabah as a way to institutionalize a system of community development. The role of the JKKK is supposedly to allow local people a voice in deciding which development projects are necessary. This state-initiated introduction of a new village-level institution has further changed the leadership of the Village Head. Most village matters, except for *adat*, now fall under the responsibility of the JKKK.

As village life became more complex, other village organizations, committees and leaders emerged to cater to the needs and concerns of the community. The main ones include the church and mosques committees, people's organizations, youth, women and school committees.



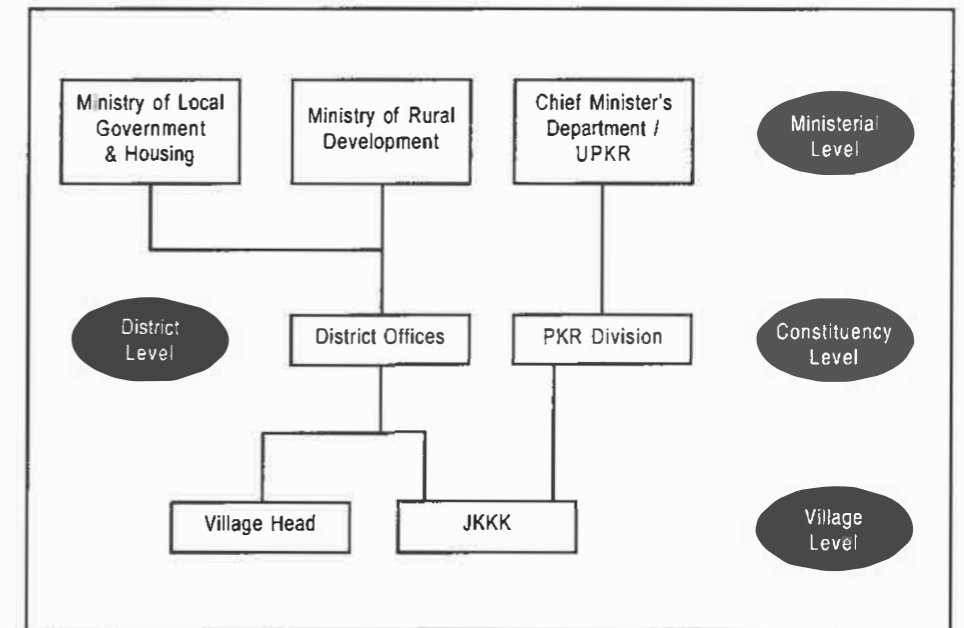
6.

VI. CURRENT GOVERNMENT ADMINISTRATIVE SET-UP AND INDIGENOUS PARTICIPATION IN LOCAL GOVERNMENT

This section introduces the government administrative structure and the issues affecting the indigenous people's participation in local government.

Since Independence, the government administrative structures and machinery have expanded quite extensively in tandem with the pace and scope of development in the State. More emphasis, however, is given to the economic sectors, as the State needs to generate funds to "bring development to the people". In contrast, the government agencies responsible for reaching out to the local communities and encouraging their participation in development are understaffed and under-funded. Currently, these agencies are under the jurisdiction of three different Ministries, which are integrated into the government administrative system in a variety of ways. The relationship of these agencies is shown in the following figure:

STATE GOVERNMENT ADMINISTRATIVE STRUCTURE RELATED TO INDIGENOUS PARTICIPATION IN LOCAL MINISTERIAL LEVEL



A. GOVERNMENT ADMINISTRATIVE STRUCTURE AT THE STATE LEVEL

THE MINISTRY OF LOCAL GOVERNMENT AND HOUSING

In 1979, the Unit for Native Affairs was established under the Ministry of Local Government and Housing. This unit was tasked to supervise and administrate all matters relating to native affairs and law. Essentially, this consisted of the native administration system, which was established by the colonial rulers and is still in use in the districts and villages. Each district has a Native Court, which is headed by the District or Native Chief, who presides over court hearings with other Native Chiefs and their representatives. Although less frequently used than before, the Native Courts are still an important avenue for the rural indigenous communities to get access to justice under laws that they can more readily understand and that better reflect their lifestyles and values.

The Native Affairs Council under the Ministry is responsible for all matters pertaining to customary laws and *adat* of the natives. It is headed by a President (usually the Minister) who is assisted by the State Secretary, the State Attorney-

General, the Permanent Secretary of the Ministry, a Secretary and not more than six other members who have special knowledge of native customary laws. All members, except the ex-officio members, are appointed by the Head of State on renewable two-year terms. The Secretary, who is a native, and usually a government servant and several other staff, handle the day-to-day affairs of the Council.

An interview with the secretary of the Council revealed that the Council has plans to introduce changes to narrow the definition of "natives" in Sabah. It is also considering systematizing the appointment of Village Heads and providing basic training for Village Heads to help them serve their communities better.

THE MINISTRY FOR RURAL DEVELOPMENT

The main objective of the Ministry for Rural Development is to establish a strong planning and coordination machinery that is sensitive to the needs of the rural communities. It does not implement projects and programs on its own, but works with the District Offices and other government agencies at the district and village level. Its main contact with the rural communities is through the JKKK, which number over 3,000 all over the State. The Community Development Unit of the Ministry is responsible for the registration and administration of the JKKK. It also conducts courses to ensure that JKKK members know their roles and responsibilities.

UNIT PEMIMPIN KEMAJUAN RAKYAT (PEOPLE'S DEVELOPMENT LEADER UNIT)

The Unit Pemimpin Kemajuan Rakyat, or UPKR, was established in 1981. It was perceived by the then-incoming government that there was a need to "assist the people to utilize the facilities and benefits provided by the government" (IDS 1992). The Unit's main function is to ensure that the people understand and support government programs and projects, and that they benefit and participate in the planning and implementation process. The Unit, which is under the Chief Minister's Department, does this through the PKR Division offices of each constituent. There are 48 constituencies in the State.

B. GOVERNMENT ADMINISTRATIVE STRUCTURE AT THE DISTRICT OR CONSTITUENCY LEVEL

THE DISTRICT OFFICE

There are 21 District Offices and 7 sub-District Offices throughout the state. The District Officer still plays an important role in Local Government in the districts. Almost all district administrative matters are under the supervision of the District Officer, including the Native Courts and District Councils. The District Officers also play an important role in the selection of the Village Heads, who usually regard the District Officers as their "chief". The District Office handles the payment of allowances for the Village Heads and the JKKK chairperson.

The Village Heads, JKKK and District Officers work closely on the minor rural development program and other special allocations for rural development. Proposals from Village Heads and JKKKs come to the District Officers first, who do the necessary preliminary processing. Thus, most Village Heads and JKKKs try to maintain a good relationship with the District Officers.

THE PKR DIVISION

The PKR Unit in the Chief Minister's Office has a Division in every electoral constituent. A Pemimpin Kemajuan Rakyat, or PKR, who is usually the constituent head of the political party in power, heads it. A typical set-up of a PKR Division at the constituency level has a PKR, assisted by a Community Development Officer (CDO), a number of junior staff who cover each of the zones in the constituency, and support staff at the office. These personnel are appointed either by the Establishment Office of the Chief Minister's Department or by the Cabinet. All these posts are temporary in nature.

C. ADMINISTRATIVE STRUCTURE AT THE VILLAGE LEVEL

THE VILLAGE HEAD

Any village with more than 250 people or about 50 households, except in certain isolated villages, is entitled to one Village Head and a JKKK. The Village Head is responsible for issues pertaining to *adat*, allocation of land, and land applica-

tions. In most cases, the Village Head is politically appointed with no term limit. However, in some cases the villagers still select the Village Head themselves.

THE JAWATANKUASA KEMAJUAN DAN KESELAMATAN KAMPUNG (JKKK)

The JKKK is headed by a chairperson who is politically appointed for two years at a time. The structure of JKKK and the issues it deals with vary from community to community, depending on how active and well organized the community is. In some communities, the JKKK deals only with security and development issues. In other communities, there are several sub-committees, each responsible for other issues pertaining to culture, education, welfare and women's affairs.

The JKKK is expected to meet once a month. The minutes of meeting are sent to the Ministry of Rural Development through the District Office. The JKKKs are supposed to receive basic training on how to set up and run a committee but only some do because the Ministry can only conduct a limited number of trainings per year.

D. ISSUES AND PROBLEMS PERTAINING TO THE ADMINISTRATIVE STRUCTURE

The administrative set-up, wherein different ministries control different aspects of community and rural development, has its pros and cons. The power sharing among the Ministries means that rural communities have a wider choice of alternatives in accessing decision-making processes. On the other hand, most rural communities are confused and muddled and cannot negotiate the many channels and layers of bureaucracy to bring their issues to the "top".

The many agencies established to reach out to the rural communities have had some impact in promoting local participation in development and politics. However, the vast majority of the people continue to live in isolation or have minimal contact with these agencies. Only those villages that are located near the urban areas are more exposed and have better contacts with the state machinery or agencies. These villages and communities have more experience in adapting to the changes and generally have leaders that are better at working with the new system.

Interviews with key informants reveal that there are many frustrations on both sides. The majority of the people interviewed are not satisfied or happy with the current situation. On one hand, the state agencies are not happy with the level and quality of participation from the local communities. On the other, the communities feel that they often do not have the freedom to participate on their own terms. The important issues that need to be resolved in order to create suitable conditions for local participation and cooperation are discussed below.

FUZZY LINE OF AUTHORITY AND LACK OF ACCOUNTABILITY

In the present set-up, the line of authority from the Ministry level down to the village JKKK is not clear. This has resulted in a lack of accountability among the personnel involved. For example, when the staff from the Ministry of Rural Development want to organize an activity at the district or village level, they need the cooperation of the District Office, the PKR division and the JKKKs. If this is not forthcoming, they can do little. For the villagers, this is also very frustrating when they want to communicate with the decision makers. Since it is difficult to pinpoint who is responsible for what and where authority lies, a lot of time and effort are wasted as they go back and forth from their villages to the district offices. Most of the time, the process does not go beyond the district level. This problem de-motivates rural communities in their efforts to be more pro-active.

"TOP-DOWN" ADMINISTRATIVE SET-UP

The current administrative structures are largely built on the framework inherited from the colonial rulers. Although this system provides a wide network of agencies and branch offices to cover most of the state, its main function is to assist the central policy makers administer and govern the outlying areas. Such a structural set-up tends to encourage the flow of ideas, initiatives and communication from the "top" or center to the "bottom" or district and villages. Aside from the JKKKs, there is hardly any mechanism to encourage feedback and consultative processes or to provide the space for local communities to lead in local governance. Even with the JKKKs, it is not clear how or where the links are with the state planning and implementation processes. Very often, initiatives and decisions made by villagers are not raised by the JKKKs or Village Heads to the "higher authorities" because of the lack of such mechanisms to do so.

WEAK STAFF AND INSUFFICIENT BUDGET

Unlike the UPKR, which has an office in every constituency, the Ministry of Local Government and Housing and the Ministry of Rural Development do not have branch offices. Instead, they work through the various District Offices. This high dependence on the District Office staff, who are already overloaded, means that community development programs and projects are not given the proper attention. In addition, personnel at both PKR division offices and district offices are not trained to deal with community development activities. Most of them are appointed to do administrative tasks.

The UPKR Divisional offices do not have their own budget for development. They depend on funds channeled from elected politicians, District Offices and other ad-hoc sources. Thus, most of them have inadequate transportation and office facilities. With only one vehicle to their disposal, it is difficult for UPKR staff to visit most of the villages in their constituencies. The lack of adequate telecommunication facilities prevents the personnel from receiving and acting on information and messages on time.

These problems are even more apparent at the village level. The JKKKs and Village Heads are given a small allowance by the government. However, they are expected to do the bulk of community and organizing work. To make matters worse, some JKKK chairpersons and Village Heads report that they have not been getting their allowances. In any case, with allowances so small and no fixed annual budgets, most of the JKKKs and Village Heads may not even have the money to hold regular meetings, much less to plan or implement programs.

THE "POLITICIZATION" OF THE JKKK AND PKR SYSTEMS

The justification for creating the JKKK and PKR systems, and incorporating these into the state administrative system, is to ensure that the state's development benefits the rural population. Unfortunately, such initiatives tend to be controlled by elected politicians and their agents, who consider it their prerogative to use these systems and the civil service for the promotion of their political agenda. Starting with the appointment of JKKK heads and Village Heads to the appointment of PKR Division heads, almost every aspect of these institutions are influenced or determined by directives from the "top". The strong influence of party politics and the politicization of fund allocation have given the JKKKs and PKRs

the image that they are an extension of the political party in power. The JKKKs and PKRs themselves do not have a good record of accomplishment in community work. Most of their efforts in the past focused on getting funds from the government or private sector for small projects, like roads and community halls. Sometimes these projects were not even necessary and resulted in a waste of public funds.

E. LAWS AND ENACTMENTS AFFECTING INDIGENOUS PEOPLES IN SABAH

It is important to note that no particular law provides for consultation and participation of local communities. Rather, this is mentioned in various policy papers and departmental guidelines, including the role and responsibilities of the JKKK, processes and criteria for the selection and termination of Village Heads and JKKK Chairpersons. Besides the Native Ordinance mentioned earlier, the following laws and enactments affect the indigenous peoples' rights and livelihoods in Sabah:

RURAL ADMINISTRATION ORDINANCE

The Rural Administration Ordinance, enacted in 1951, outlines the powers and duties of Native Chiefs and Village Heads. It also stipulates the power of the District Officers.

NATIVE COURTS ENACTMENT

The Native Courts Enactment outlines the constitution of Native Courts and the rules governing these courts. Attempts to codify indigenous customary law and to streamline the procedures have been met with approval by native chiefs. However, the standardization of customary law through this Enactment, such as the payment of compensation (*sogit*) to restore community solidarity, has been diminished due to drastic changes in the amount and concept of fines or compensation.

THE FEDERAL CONSTITUTION

The special position of Sabah's natives and their customary rights to land are guaranteed by the Federal Constitution under Article 161A(5). This article outlines the conditions for the alienation of lands and the preferential treatment of

natives by the state. Other sections mention the rights of the Sabah government to legislate its own laws, as well as its freedom to control land, forest utilization and local government.

LAND ORDINANCE

The Land Ordinance, which was enacted in 1930, tried to capture the *adat* on land. However, it fell short in its understanding of traditional indigenous systems of land use and ownership. It introduced the concept of private property, whereas most indigenous community land was held communally. It also does not recognize the fallow period, which is an essential element of traditional agricultural practices.

PARKS ENACTMENT

Through the Parks Enactment of 1984, park authorities are empowered to prevent people from encroaching into parks and taking, using and applying for park concessions for their own use. The Parks Enactment prohibits anyone from entering or removing anything from national parks without permission. Thus, indigenous communities are now denied access to these areas for hunting, collection of food and medicinal plants. They have been dispossessed of their lands because they were not consulted when the park boundaries were drawn.

FOREST ENACTMENT

Most of the Forest Reserves in Sabah were established in the mid 1970s and early 1980s under the Forest Enactment. While the Forest Enactment recognizes the *a priori* rights of indigenous peoples to the forests, the government failed to notify the indigenous communities of the need to come forward before the alienation of their lands. Thus, many indigenous communities lost their rights to the forest in the process.



7.

VII. INDIGENOUS PEOPLES' EXPERIENCE WITH PARTICIPATION IN LOCAL GOVERNMENT

For decades, indigenous peoples of Sabah participated at all levels of local government through involvement in government, administration and political parties. After joining the Federation of Malaysia, the government of Sabah followed the national policy of favoring indigenous peoples and Malay-Muslims over the Chinese population. This was to increase the natives' involvement in the governmental and financial sphere and to avoid Chinese economic domination. Under the NEP program, (see Section 4) governmental agencies expanded to help the natives engage in business. Natives were given preference in the distribution of manufacturing licenses, government contracts and concessions to land (Doolittle 1999).

The first indigenous political party UNKO (United National Kadazan Organization), which later became UPKO (United Pasokmogun Kadazandusun and Murut Organization), was formed in Sabah in 1961. Later on, another Kadazandusun-led political party, PBS (Sabah United Party) was set up. Cultural organizations such as KDCA (Kadazan-Dusun Cultural

Association) were also established. Both UPKO and PBS have joined the BN-Coalition and are thus currently part of the ruling government.

Some indigenous politicians and government servants are genuinely concerned about the welfare of the indigenous peoples. However, the indigenous peoples who participate in one way or another in local government are often not directly accountable to their communities (Wessendorf 2001). Therefore, they are not obliged to follow the agenda of indigenous organizations or the aims of their indigenous communities. Many indigenous peoples in government have lost their indigenous values, and are not genuinely concerned about indigenous values and ways of life.

Many government officers working in development and conservation were educated in Western countries. Thus, they often promote development policies continued from colonial times, and consider indigenous peoples' practices as backward and impediments to the overall development of the State. Examples of such policies are the government's efforts to eliminate rotational agriculture to make way for intensive cash crop production and resettlement of forest-dwelling communities.

Although the level of participation of indigenous peoples in local government in Sabah is extensive, problems remain especially for rural indigenous communities. In the following section, the focus will be, not on indigenous peoples' participation *per se*, but rather on the nature of this participation. We will look into the experiences and problems encountered by rural indigenous communities in their participation in local government.

A. THE NATURE OF RURAL INDIGENOUS PEOPLES' PARTICIPATION IN LOCAL GOVERNMENT

As noted in Section 6, the traditional governance system and leadership structure in indigenous communities in Sabah has changed radically in the past 100 years. The indigenous communities of Sabah have become part of a political system of governance and leadership, which is not their own, but created by governments led by politicians with alien rules. Although many indigenous people play an active role in this system of governance, it is fundamentally different from the traditional governance and leadership structure in most indigenous communities. Consequently, many indigenous peoples find it difficult to

adapt to the new system.

In a modern democratic system, decisions are made primarily through a majority vote. However, in many indigenous communities, decisions are done through consensus agreement following consultations and long discussions, in accordance with traditional governance and leadership systems. Decisions are made collectively and the opinion of elders is given special respect and regard because of their wisdom and experience. This difference between the two systems of governance poses a danger of marginalizing indigenous peoples due to a lack of understanding by the government of traditional systems.

Remote indigenous communities, in particular, find it difficult to participate to the extent that they can decide their own development course. This is due to a lack of education, training, communication and awareness of various government policies and enactments.

From the workshops and interviews conducted in the two study areas, it became apparent that the changes in leadership structure are a major factor contributing to the difficulties faced by these communities. The leadership structure now, as opposed to the traditional structure, is fragmented, individualistic and issue-based. Such leadership structure would eventually depend on the qualities of each individual leader such as trust, integrity, knowledge and family affiliation.

In Kg. Gana, one of the KKs said that there was confusion among the leaders and the people, about the roles, responsibilities and jurisdiction of the village leaders. In some cases, this confusion would make them feel inadequate. In others, the confusion would lead to conflicts between the JKKK and KK.

In Kg. Tiong, the fact that the government now appoints village leaders has created problems in the quality of leadership in the village. One of the two appointed JKKK chairpersons, in fact, resides outside the village. The villagers therefore feel that their needs are not properly addressed.

This case illustrates how dependent the communities are on the quality of their leadership. When the people are deprived of their right to choose their village leaders, they cannot ensure the quality of their leadership. While there are some cases of villagers who have complained to the District Office or the relevant ministry about their leaders, there are many other cases wherein unpopular lead-

ers are simply tolerated. Such leaders are not really recognized as leaders because they do not truly represent the interests of the community. However, they are "accepted" because they serve as the link between the community and the government.

It is apparent that the rural indigenous peoples participate in varying ways in local government, i.e., through non-participation, resistance or co-operation. These three forms of participation are examined more closely in the following section.

NON-PARTICIPATION

Malaysia practices a parliamentary democracy with regular elections. Thus, all citizens can have decision-making powers through their vote. However, in the remote communities of Sabah, many villagers do not participate in the elections for numerous reasons. Some villagers have little interest in activities outside the local community. Others have no Identity Card, which is a requirement for voting. Other villagers do not participate in elections because of their scant knowledge about the system. Lack of education and communication in the communities makes it difficult for the people to be informed about political developments. These conditions further reduce the possibility for them to engage in the decision-making process of the state.

While not all villagers exercise their right to vote during elections, all communities of a certain size must have a KK and a JKKK. Thus, indigenous communities in Sabah do take part in local governance in varying degrees. However, most rural indigenous communities find themselves left out when it comes to decision-making over their own development, or influencing legislation and policies affecting their livelihood.

An example of how indigenous communities are urged to "participate" in the development process is the case of the resettlement scheme in Kg. Gana. The Forestry Department implemented the Kg. Gana Resettlement & Integrated Development (GRID) project. The objectives of the project were: one, to assist in the development of infrastructure and basic facilities; two, to raise the income stability of the individual households; and three, to transform local land use patterns and resource use to new and improved farming systems. According to the GRID master plan, the principle to ensure success is that 'The most suitable

person to select which development path is most appropriate is the one whose life the choice will affect the most (in this case the farmer)'.

In year 2000, Forestry Department officers, in a community meeting, informed the villagers that a private company had contracted the land division part of the project. This left the villagers with nothing but the choice of what crop to cultivate on their land: wet rice, corn/maize, oil palm, fishponds, fruit trees or vegetables.

According to the villagers, they had to choose one of the above activities. However, the forestry officers strongly urged the villagers to choose oil palm. The idea was that an oil palm company would do the task of clearing the land and planting the oil palm. The villagers would then receive employment on the plantation and after some time, they would regain full control over their land.

During a subsequent community meeting, the villagers expressed confusion over which alternative to choose. They expressed a lack of understanding and knowledge of the scope and implications of establishing an oil palm plantation. Although the villagers had choices other than oil palm, they were afraid to refuse the oil palm production altogether. This incident shows that rural communities often become mere subjects instead of active participants in the development process. This may happen when there is a lack of local organization to resist being 'overrun' by government officials in making choices for the future of their communities. Communities that are poorly organized have little confidence to assert their rights or even enter into dialogue or negotiation with local/state authorities. Thus, they face the risk of having plans and projects implemented with little or no influence by the local villagers.

RESISTANCE

In Sabah, resistance by rural indigenous communities to government policy and lack of participation in the decision-making process are common. However, destructive and violent acts are rare. The rural population generally finds quieter and less obvious ways to assert and validate their claims. The defiance most often found in indigenous communities in Sabah can be characterized as 'everyday forms of resistance'. These are informal, covert self-help actions that require little coordination and planning. These actions typically avoid direct confrontation with authorities. Examples of such resistance can be seen in most of the communities adjacent to Sabah's largest national park. Here, the indigenous

peoples are struggling for the recognition of their customary rights to land and forests. The resistance in these communities often takes the form of encroachment, poaching and non-compliance with the Park policy, rather than riots and open violence.

While most indigenous communities express their resistance in subtle ways, a few others also resort to open, non-violent confrontation to assert their right to self-determination. In Kg. Tiong, the villagers set up their own Community Organization, PUSAKAG, as a supplement or alternative to government-initiated leadership institutions in the village. It deals with land, education and socio-economic issues. PUSAKAG is different from the JKKK since the villagers elect the members, with no interference from government authorities.

In Kg. Gana, some villagers resisted the resettlement project of the government by refusing to move from their old villages within the Forest Reserve. This was because their livelihood needs had not been considered in the resettlement project. Another example of open resistance by indigenous communities is the struggle to gain land rights in Kg. Tongod. Here, the community is experiencing extensive logging and conversion of forest areas into oil palm and rubber plantations. To protest against the destruction of their forest and livelihood, the villagers set up roadblocks to prevent the lorries of the logging company from entering their customary land. The Tongod community also filed a lawsuit against the logging company, the Land & Surveys Department and the State Government.

COOPERATION

Lack of cooperation, or even outright resistance, is a common phenomenon in rural indigenous communities in Sabah. However, cooperation with and support for local and state authorities is just as common. The KK and JKKK chairperson from each community meet regularly with district level authorities. In cases where the village leaders have established good working relations with the district authorities, the community often succeeds in getting their needs considered. The local politicians also make funds available for infrastructure development. They thus often are invited to community events such as the yearly opening of the Harvest Festival.

Cooperation depends not only on the perceived prospect of receiving funds. Communities also cooperate when they feel that the authorities respect their

voice during the decision-making process. In Kg. Tiong, Sabah Parks consulted the community when they reviewed the boundary of the adjacent national park. The fact that the community was consulted has made most villagers respect the park boundary and refrain from encroachment.

At times, cooperation and active participation in the district or state-level government arise out of a genuine belief in the system. However, there are also times when it is motivated by necessity or fear of the consequences of resistance. In some cases, the community cooperates because of promises made by government authorities or politicians of projects and funds for community development. Thus, village leaders face a dilemma in their role as the main link between the community and government authorities. If they are not supportive of government policy, they could lose their jobs or, funds would not be allocated to their community.

In other cases, cooperation arises out of the very nature of indigenous peoples in Sabah. Many rural indigenous peoples in Sabah are submissive and seldom question the decisions of government officials or politicians. This is probably a result of the historical dependence on and faith in village elders to make decisions for the common good of the whole community.

B. WOMEN'S PARTICIPATION

Generally, indigenous women tend to be less involved in formal institutions and structures such as the JKKK and political parties. They are more active in informal committees such as those related to schools, churches and People's Organizations. Women are likely to dominate or provide leadership in committees or groups concerning education, social welfare, socio-economic or income-generating programs and activities. For instance, the members of the socio-economic subcommittees of the People's Organizations that PACOS works with are mostly women.

Of the two formal village institutions, women are more active in the JKKK. Out of about 3,000 Village Heads, only a few are women. According to an officer of the Ministry of Rural Development, in year 2002 – 2003, about 45 percent of the members of the main committees of JKKK were women. Of this, about 75 percent held the secretary position, while the rest were heads of the welfare, women's affairs and education sub-committees. Only about 7 percent of the

JKKK chairpersons are women. Most of them come from the leadership of the women's wing of the dominant political party in the area.

From the Ministry's records alone, it is not possible to say how women participate in the activities and programs of the JKKK besides the positions they hold. From general observations, women tend to be passive and play supporting roles, with the exception of a few JKKKs in the East Coast and Ranau. Women in these particular districts have made use of the JKKK as a center for their activities, which are largely on entrepreneurship. Through the JKKK, they conduct skills training and promote other activities for women through networking with other local institutions and individuals.

During the workshops held in the two study areas, about half of those who attended were women. The workshop in Kg. Tiong had a strong participation of women in all stages of planning, organizing and conduct of the workshop. They were very vocal in all the discussions and contributed many good ideas. Women in the Gana study area were not as active. Although many attended the workshop, they were quite passive in the discussions except for a few individuals. These women were not familiar with the issues related to Local Government and tended to defer to the male leaders, who were just as unfamiliar with these issues themselves.

The disparity in the level of participation of the women in these two villages confirms the observations in other areas where PACOS works. Women from villages that are nearer to urban centers tend to be more educated and exposed. They therefore are more likely to take part or be included in the decision-making processes and structures of their communities. These women, like those in the remote areas, face many constraints that hinder their participation in local government. For those who are already active, they are over-burdened with household and child rearing chores, their salaried work if any, and the additional community work that comes with their involvement in Local Government. For the majority of women who do not participate, they have to overcome personal and family-related constraints. At the personal level, they do not have the confidence to engage in activities that require them to speak in public or lead community groups that have male members. Their husbands or family elders also tend to discourage their involvement, preferring them to concentrate on household matters. In addition, it requires financial and other resources to be able to organize activities for the communities. Women are usually disadvantaged in this area. In

some communities, cultural and religious practices and norms make it difficult for women to be active outside their homes and designated women's activities.

Recognizing the above constraints and the potential contribution of women in Local Government, the Ministry of Rural Development created a new program in 2003. This program will specifically provide training and exposure to potential women leaders throughout the State. The selected candidates will attend courses to improve their communication and organizing skills. They are expected to be the district motivator and role model. This program will be undertaken in cooperation with the Women's Affairs Unit, a government agency charged with the development of women in the State.



8.

VIII. CONCLUSION AND FUTURE PERSPECTIVES

The results of this study clearly show that while the indigenous peoples constitute the majority in Sabah and hold posts in the government administration, rural indigenous communities face numerous problems and constraints that hinder their full and meaningful participation in local government.

Indigenous communities were largely self-governing before the introduction of a centralized government structure and the enactment of various laws during the colonial period. Self-selected Village Heads and Council of Elders, in consultation with the members of the community, made decisions regarding all aspects of governance.

However, the traditional governance structure has since eroded. Today, government officials and/or politicians select most of the village leaders. The selection of village leaders is strongly influenced by party politics. Leaders must be members of the ruling political party and there are no clear guidelines or criteria for the selection and termination of village leaders.

The selected leaders constitute the link between the community and the district and state-level government administration. This has created a situation where the communities have lost their ability to determine their desired course of development and governance. This is because they now depend on the skills and integrity of a few leaders to secure the well-being of the whole community and to bring their issues of concern to the higher level.

Unclear lines of command further accentuate the difficulty of rural indigenous communities to influence the governance of their community. This is especially so with regard the linkages between village institutions and the district or the "center". While the ministerial jurisdiction is clear, what is confusing is the fact that there are several government and political agencies dealing with rural development issues.

Although rural indigenous communities often find it difficult to participate fully in local governance, some communities openly challenge the current structure by setting up their own People's Organizations. This might be due to the following reasons:

- Indigenous communities have a tradition of relying on a few strong leaders, selected by the villagers themselves.
- Many villagers find it difficult to challenge the structure because access to development funds is closely linked to the community's good relations with district agencies and/or local politicians.
- Finally, many villagers are not interested in participating in governance and the administration structure because they do not feel that they have the skills or the understanding to participate actively, or because they do not find it relevant for their livelihood. For example, many women are concerned with social welfare issues while many JKKKs deal mainly with projects and development issues.

Although a few communities openly challenge the current governance structure, villagers often find other ways to express their discontent with the development schemes affecting their livelihood and right to self-determination. In some cases, communities call on government representatives for a dialogue to discuss their problems. In other cases, villagers will simply not comply with the laws if these

affect their livelihood in such a way that it makes their day-to-day living problematic.

In accordance with the findings of this study, the following future courses for improving the indigenous peoples' participation in local government could be considered:

- Respect for other organizations within the community. These organizations should be seen as a complement rather than an opponent to the current community institutions, such as the JKKK and the Village Head. They can help the existing institutions work actively with district level agencies to secure the interests of the community. Such organizations are also important because it is in such alternative structures that women tend to be more comfortable and active in terms of leadership, participation and contributions.
- The traditional structure of community governance should be studied further and understood. Those aspects that ensure democratic decision-making can be revitalized. More ways should be explored to build those structures that ensure or encourage the participation of the whole community, aside from holding official positions in the current structure.
- The current selection and termination of village leaders should be depoliticized. Roles, responsibilities and jurisdictions of the various government agencies should be reviewed and clarified.

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APPENDIX 1 : LIST OF RESPONDENTS

Mohd. Said Hinayat	: Ministry of Local Government and Housing
Vinus Tokiu	: Ministry of Local Government and Housing
Haji Yunin Tamin	: Ministry of Rural Development
Dayang Zainon	: Ministry of Rural Development
Brian Matasi Logingon	: PKR Penampang
Saibul Supu	: PKR Kota Marudu
Jane H. K. Tan	: District Officer, Kota Marudu
Joseph Bangguan	: Assistant District Officer, Tuaran
Juliana Embun	: WKAN, Tuaran
Kamarullah Matalli	: WKAN, Tuaran
Hakim Utoh	: WKAN, Tuaran
Sumbilin Hj. Jalim	: WKAN, Tuaran
Lajimin Kading	: WKAN, Tuaran
Darmih Merau	: WKAN, Tuaran
Hj. Budiman Siafi	: KAN, Tuaran
Villagers and village leaders in Kg. Tiong, Tuaran and Kg. Gana, Kota Marudu	

APPENDIX 2: INTRODUCTION TO THE STUDY AREAS

This section presents the social and natural environment of the two study areas, Kg. Tiong in Tuaran District and Kg. Gana in Kota Marudu District.

KG. TIONG, TUARAN

Kg. Tiong is made up of three villages: Kg. Tiong Perungusan, Kg. Tiong Keranaan and Kg. Tiong Temburong. The community is located along the Crocker Range at approximately 1,800-2,000 feet above sea level in the Tamparuli sub-district of Tuaran, about 65 km. from the nearest town of Tamparuli. Both settlements and agricultural areas are located on steep hills with a number of streams crisscrossing the villages. Most of the natural forest is gone and the forest environment surrounding the community is a mix of upland and highland dipterocarp forest.

The community has a population of about 300 people of Dusun Tindal origin. Majority are Christians. While a number of villagers work with the government or in private sectors, the vast majority of the population is made up of subsistence farmers. The farmers grow hill rice and tapioca for their own consumption. Tobacco, vegetables and fruits like pineapple and banana are grown for the family and for sale if there is surplus. The main cash crop in the area is rubber, which is tapped when the price is considered high. Besides farming, the majority of villagers also carry out hunting, gathering of forest produce and fishing. Handicraft making and other traditional occupations such as house building, paid labor and blacksmithing are also part of the community's socio-economic activities. However, most of these types of work are carried out by the older generation because many of the youths have migrated to town in search for jobs.

THE INSTITUTIONAL LEADERSHIP SET-UP IN KG. TIONG

INSTITUTIONS	RESPONSIBILITIES
3 Village head (one in each village)	-Act as advisor on issues pertaining to disputes between villagers, land and marriage -Adat
2 JKKK (Kg. Tiong Temburong has no JKKK of its own)	-Community development -Community security -The link between community and government
The Community Organization (PUSAKAG – Established in 1999)	-Socio-economy -Education -Adat and culture -Sport -Land and natural resources
The church leaders	-Religious matters -Education
The Women's League	Women's affairs
School teachers	-Education

KG. GANA, KOTA MARUDU

Kg. Gana is made up of ten villages located within and adjacent to the Lingkabau Commercial Forest Reserve in the Kota Marudu district. It can be reached via about 37 km. on badly constructed logging roads from Kota Marudu town. The 450 families of the ten villages are being resettled as part of the government's community forest project – Kg. Gana Resettlement & Integrated Development

project (GRID). The objective of the GRID project is to establish a permanent resettlement in Kg. Gana and improve the livelihood and standard of living of the local population by integrating them into the mainstream of rural development.

The primary issues in the community center around the facilities in the resettlement area, the management of resources, the presence of logging companies, land distribution and participation in the community forest project. The resettlement project poses a major problem to the government due to its sheer size and the degradation of the immediate surroundings. The community has made a commitment to cooperate with the Project Management Team to facilitate the resettlement. However, many villagers are not aware of the objectives and activities of the project.

The villagers, who are indigenous Dusun Sonsogon and Paitan, are mostly subsistence farmers. They rely on the forest for food, building materials, medicine, animals, fruits, raw materials for handicrafts and recreation. Farmers find the conditions for farming in the resettlement area difficult due to a degraded environment. The community also faces social problems that have arisen as a consequence of resettling 10 villages, each with their own leadership and people belonging to different ethnic sub-groups, within one settlement. The institutional set-up for the leadership in the community is the following:

THE INSTITUTIONAL LEADERSHIP SETUP IN KG. GANA

INSTITUTIONS	RESPONSIBILITIES
10 Village heads representing each of the 10 villages	-Act as advisor on issues pertaining to disputes between villagers, land and marriage -Adat
10 JKKK representing each of the 10 villages	-Community development -Community security -The link between community and government
The church leaders	-Religious matters -Education
School teachers	-Education

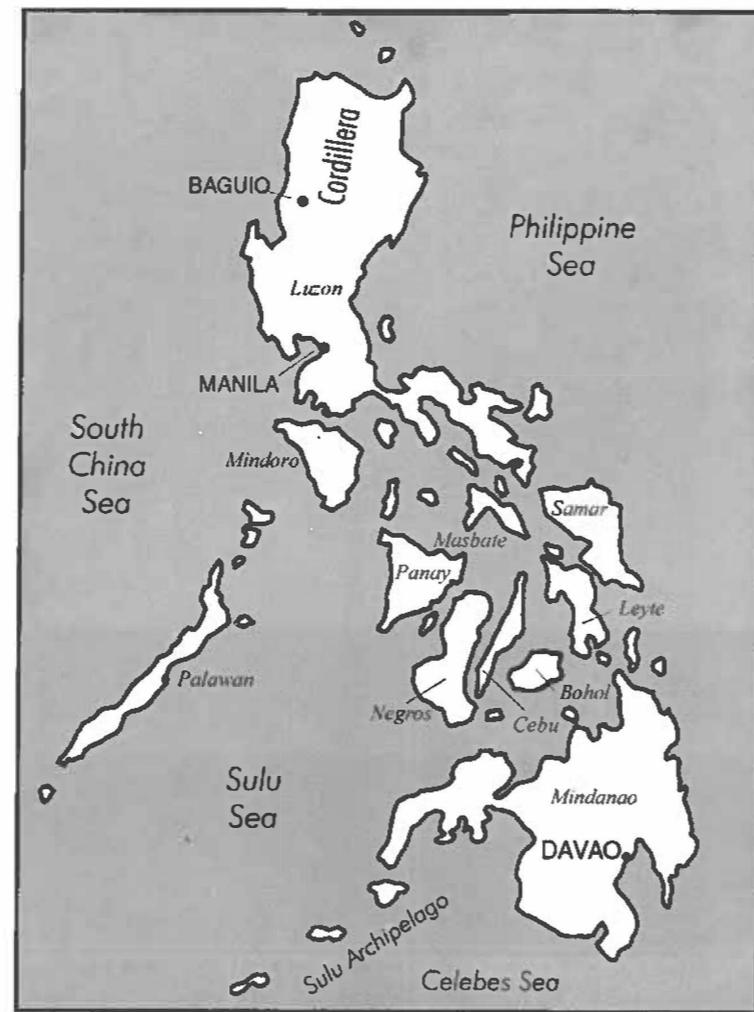
ABBREVIATIONS

Kg.	: <i>Kampung</i> (Malay for village)
UNKO	: United National Kadazan Organization
UPKO	: United Pasokmomogun Kadazandusun and Murut Organization
PBS	: Sabah United Party
KK	: <i>Ketua Kampung</i> (Malay for Village Head)
JKKK	: <i>Jawatankuasa Kemajuan dan Keselamatan Kampung</i> (Village Committee for Development and Security)
KDCA	: Kadazan-Dusun Cultural Association
ADUN	: <i>Ahli Dewan Undangan Negeri</i> (State Legislative Assembly Member)
GRID	: Gana Resettlement & Integrated Development Project
YB	: Yang Berhormat, (Your Honour)
PKR	: <i>Pemimpin Kemajuan Rakyat</i> (Peoples' Development Leader)
UPKR	: <i>Unit Pemimpin Kemajuan Rakyat</i> (People's Development Leader Unit)
CDO	: Community Development Officer

PHILIPPINES



Map of the Philippines





1.

I. INTRODUCTION

Twelve years ago in 1991, Congress passed the Local Government Code (Republic Act 7160). Is the situation of indigenous peoples (IPs) in the Philippines any better since then? Especially under the Indigenous Peoples Rights Act (Republic Act 8371) which was legislated in 1997 to advance the interests of IPs, has their plight really improved in the last seven years since the law took effect?

Much has been said about the gains in decentralizing governance through devolved structures and processes. Throughout the country, identified gains include expanded roles of Local Government Units (LGU) in legislation and infrastructure projects, increased citizen's participation in the planning and pursuit of local development, greater stability in the fund allocation and processes for local projects and social services, increased managerial and technical capacity and capability, and so on.

In its desire to improve local governance in the country, and in the light of the national and local elections in 2004, the Cordil-

lera Peoples' Alliance (CPA) is publishing the major findings of its research project on local governance. The publication aims to give due recognition to the role that various sectors of society play and can continue to play in governance.

The research project aimed to look into the participation of indigenous peoples in local governance, towards strengthening the participation of both men and women in the protection of indigenous peoples' rights. The CPA conducted the research from 2002-2004, with support from the International Working Group on Indigenous Affairs (IWGIA) through its European Commission-assisted project. Organizations and institutions involved in data gathering, data enrichment and dissemination workshops included Anthropology Watch and the University of the Philippines in Baguio and Mindanao, in coordination with the National Commission on Indigenous Peoples, the Department of Interior and Local Government, and Local Government Units in the case study areas.

The following primary methods were used to obtain data on experiences in relation to the Local Government Code:

- (a) A desk study which entailed the systematic collection and review of reports, previous studies, documented experiences, and legislation pertaining to local participation of indigenous peoples and the implementation of the Local Government Code (LGC), along with other policies related to local governance;
- (b) Field research for the case studies, using interviews, focus group discussions and secondary data gathering;
- (c) A regional survey particularly in the Cordillera Administrative Region to elaborate on selected aspects of LGC implementation, undertaken collaboratively with the Department of Interior and Local Government, National Commission on Indigenous Peoples, Local Governance and Development Research Group under the Cordillera Studies Center of the University of the Philippines Baguio; and
- (d) Regional, national and international workshops for data enrichment and validation of research results.

Part I characterizes the national and regional context of indigenous peoples in the country, the elements of their cultural system which have allowed self-

governance to prosper, the historical antecedents in their weak participation or non-participation in state-introduced political institutions and processes, and contemporary problems they face amidst larger political and economic forces, such as globalization and the state.

Part II presents the structures and dynamics in national and local governance, and the effects of decentralization (devolution, de-concentration and de-bureaucratization) on indigenous peoples in specific areas. The customary mechanisms for self-governance are described in order to demonstrate the positive aspects of the IP's cultural system, which must be recognized as requisite elements of local governance. A more particularized description of the situation of the indigenous peoples is first presented. For Northern Luzon, the study sites included the towns of Betwagan and Besao, both in Mountain Province, and Bakun and Mankayan in the Province of Benguet. For Mindanao, study areas were Lake Sebu and T'boli Town, both in South Cotabato, and Sirib in Davao City. The situationers are then followed by the results of the assessment of benefits and advantages that accrue to indigenous peoples since the implementation of the Local Government Code.

The assessment covered the extent of IP participation in local governance and gains under the LGC. We examined the IP's capacities for self-governance, the exchanges between customary and (state) introduced structures for political participation, the benefits in terms of access to basic services and proceeds from the state's use of common resources relabeled by the state as national wealth, and improvement in the overall direction of social and economic development in the localities. From the assessment, the project identified the policy harmonization issues that relate to indigenous institutions, the Local Government Code, and other laws and policies that affect good governance. The intent in looking into the advantages, strengths, gaps and constraints in local participation and opportunities is to explore the directions in policy reform and development towards improving the present situation.

Having identified the aspects of the customary system and state structures that can be harnessed for mutual collaboration, Part III tackles the broader issues and gaps in the provisions of the LGC, and recommends strategies to strengthen the relationship between indigenous institutions and state-introduced mechanisms.

With this publication, the Cordillera Peoples' Alliance commits itself to sustain its advocacy, raise awareness, and strengthen networks among various stakehold-

ers and interest groups toward achieving a shared understanding on the issues and problems of political participation of indigenous peoples and arriving at a consensus on how to respond to the challenges of good governance.



2.

II. GENERAL SITUATION OF INDIGENOUS PEOPLES VIS-À-VIS GOVERNANCE

The IPs comprise at least 17 percent of the total Philippine population, or more than 13 million out of at least 80 million Filipinos in the year 2000. Indigenous peoples are societies that have been able to maintain their traditional lifestyles despite colonization and the economic, political and cultural intrusions and influences from the wider society (United Nations' Working Group for Indigenous Populations). They represent a rich cultural diversity, with as many as 33 percent of all Philippine IPs found in Luzon, 6 percent in the Visayas, and 61 percent in Mindanao (including the Islamized and non-Islamized indigenous population).

A. CURRENT STATUS: POLITICAL REPRESENTATION, CULTURAL SURVIVALS, NEW ETHNICITIES

Political participation through representation is a crucial, though it is not the sole, indicator of how well indigenous peoples are integrated in governance. Nonetheless, representation is still far from the ideal, given the fact that only around two-thirds (68%) of the IP groups in the country enjoy recog-

nition as such.* Moreover, representational formations through the state-introduced structures often create new tensions in ethnic relations.

The creation of the National Commission on Indigenous Peoples (NCIP) has generated new attempts to define ethnicity in the Philippines, if only to facilitate political representation in programs and structures to mainstream the cultural minorities. For instance, for the NCIP, there are two types of IPs: those indigenous to the province and those who are recent migrants to the province. This is understandable because of the focus on ancestral domain recognition as a basis for political representation. As a result of this classification scheme, about 38 percent of groups who call themselves IPs do not enjoy representation in NCIP processes. However, 19 groups currently share representatives with other groups, while another 18 have more than one (1) representative.

What the data set tells us is that the so-called ethnic groups define their ethnicity as a tool for leveraging through representation in the government's main structure for political participation, to the extent of "over-representation" (in the case of 18 groups with more than one representative). It can be said, hence, that definitions of ethnicity today hinge not only on the cultural criteria but on political assertion as well.

B. POOR AND MARGINALIZED PEOPLE IN RICH RESOURCE AREAS

Philippine IPs' homelands are very rich resource areas in terms of their physical, hydrological, biological and cultural resources.

Despite the economic wealth and potentials, much of the land resources of indigenous peoples do not primarily benefit the local population. On the contrary, big

* The term indigenous people is used in the project to refer to those who have the following characteristics – (1) they claim or are recognized to be among the first, if not the first, to inhabit a given area; (2) have maintained their culture/lifeways as a response against colonization; and (3) are marginalized and therefore generally in a state of opposition against the present state wherein their ancestral domain is located (UN 1986, R.A. 8371 1997, IWGIA-AnthroWatch 2000). (Source: Anthrowatch, **Some Notes Regarding IP Groups to be Represented in the Consultative Body** as of 12 July 2001) The assessment of which groups rightly classify as IP is based on a series of inter-agency cluster meetings to assist the NCIP. Anthropologists and IP advocates from Anthrowatch, Ugnayang Agham Tao (UGAT), Ateneo De Manila University's Institute of Philippine Culture (IPC), the Legal Resource Center and the Office of the Presidential Adviser on Indigenous Peoples Affairs reviewed several materials to assess the representation of ethnolinguistic and indigenous peoples groups in the NCIP: "Population of Tribal Groups by Region and Province" (undated), prepared by the NCIP, Jesus T. Peralta's **Ethnic Group Briefs** (1994) and ESSC's **Philippine Culture and Ecosystems Map** (1998).

private and foreign corporations have, for many decades, enjoyed the forest, mineral and agricultural resources through extractive industries (mining and logging), infrastructure development (road building and dams) and land conversion (from forest to agricultural land and settlements as well as industrial estates). This is a historical trend commonly shared by the indigenous peoples.

C. A HISTORY OF EXPLOITATION AND NEGLECT

During the 19th century, large-scale logging deforested Negros, Cebu, and Bohol in the Visayas, and Ilocos, Nueva Ecija and Pangasinan in Luzon. By the 20th century, resource extraction and destructive utilization expanded to Benguet, Mountain Province, Cagayan, Isabela, and the provinces of eastern and central Mindanao, in terms of commercial logging, mining, and plantations for export crops or monocropped gardens. Such exploitation of forest resources supported the colonial agenda of helping US-based machine manufacturers (Roth 1983: 43-44; Tucker 1988:223-228).

- American investments in the sawmill industry in the Philippines accounted for 41 percent, with the local politico-economic elite accounting for 34 percent (Dela Cruz 1941:147).
- Logging in the Baguio area up to Mt. Data similarly supported corporate mining in Benguet for almost 70 years, only to give way to temperate vegetable gardens for the domestic market (Boquiren 1995; Cordillera Studies Center 1994).

In the 1960s, central and eastern Mindanao became expansion areas not only for human settlements, but primarily for logging and plantation economies which produced pineapple, banana, coconut, palm oil and rubber for export (Rodil 1994).



The people's security of land and survival is threatened more seriously now than ever before, with the forces of globalization opening up the few remaining areas of subsistence and customary control. Mindanao and Luzon's Central Cordillera still experience this history of social neglect, economic and cultural

marginalization, and land disenfranchisement as more and more settlers take over open areas.

In marine and coastal areas, we find mangrove deforestation, conversion to mariculture, as well as destructive, over- and unregulated fishing in central and western Mindanao, Panay, Zambales, Bataan, Laguna, Bulacan, Rizal and Quezon.

Corporate mining practically threatens most of the Central Cordillera, Sierra Madre, Mindoro, Marinduque, the Bicol region, Cebu, Negros Occidental, as well as western, northern and eastern Mindanao.

- Out of the country's total land area of 300,000 sq. km., as many as 73 applications for Financial or Technical Assistance Agreement (FTAA) as of February 1999 already covered 20 percent of the country, 60 percent of which are in areas under applications for Certificate of Ancestral Domain Claim (CADC) (ESSC 1999).

- Specifically, as wide as 950,225 hectares nationwide are the object of mining applications for gold and copper alone, in 14 out of 84 FTAA applications being processed by the Mines and Geosciences Bureau as of the previous year.

- Meanwhile, the number of applications for Mineral Production Sharing Arrangement (MPSA) had reached 1,450 by then. Further, 45 Exploration Permits (EPs) covering 452,561 hectares have already been granted.

- Operational mines produce industrial pollution which degrade inland and coastal waters and thus affect riverine and marine resources notably in Ilocos Sur, La Union, Abra, Benguet, Camarines, Mindoro, Masbate, Negros, Samar, northeastern Mindanao, and Davao.

- Elsewhere, unregulated small-scale mining of non-metallic minerals (including quarrying) contribute to widespread erosion in almost all the considerably populated islands.



Twenty-one (21) operational Timber License Agreements (TLAs) as of 1998 cover some 1.03 million hectares located in the Cordillera Administrative Region (CAR), Autonomous Region of Muslim Mindanao (ARMM), and Regions 2, 4, 9, 10, 12 and 13. Where TLAs had ended or were cancelled, logged-over areas are now subjected to unsustainable agricultural practices by a continuously expanding migrant settler population.

Meanwhile, unregulated logging (despite the presence of TLAs) in areas within or close to protected sites continues, and much more so where no protected areas have been declared, even under the Community Based Forest Management scheme of the government.

Lastly, small-scale logging and upland rainfed agriculture with minimal regulation are observed in almost all hilly lands in the country.

The expansion of industrial estates, which require land conversion and massive infrastructure development, are also key sources of pressure on land and resources. Physical plans for the expansion of settlements to decongest envisaged Regional Industrial Centers (RICs) indicate further encroachment into important bird areas and buffer zones of protected areas in the northern and central Sierra Madre, Central Cordillera, Mindoro, Panay, eastern and central Mindanao.

The conflicts among many competing groups on resource access, use and control emanate from the marginalized status of the customary system vis-à-vis state law. While poverty and demographic factors (especially population growth and



migration) are often faulted for these interrelated development and ecological processes, inequitable access to resources and weak institutional factors are just as much at the root of the precarious state of biodiversity losses.

Among indigenous communities, only three have so far been issued a Certificate of Ancestral Domain Title (CADT) as of 2003. Meanwhile, 181 Certificates of Ancestral Domain Claim were issued as of 2000, covering an area of 2,531,968 hectares (NCIP 2000). Only a small proportion of these (26 out of 181 CADC covering 360,165 hectares) have prepared Ancestral Domain Management Plans.

D. PERSISTING STRUCTURES OF GOVERNANCE TO DEFEND LAND, LIFE & RESOURCES

Indigenous peoples function as small and numerous distinct communities. Their traditional lifeways persist in varying degrees relative to the impact of colonialism, the impositions of the Philippine state, penetration by the market economy, influence of Christian missionaries, and the formal educational system.

Self-governance operates in the traditional structures of consensus-based decision-making, through kin-based social organizations and networks linked at varying levels, generalized reciprocity in goods and services for mutual support and cooperation, and persisting practices and rituals that sustain harmony and ethnic identity.

The capacity for self-governance is concretely demonstrated in various ways. This is seen in the persisting use and enrichment of indigenous knowledge and practices of natural resource management and the influence of traditional decision-making structures in the management of natural resources. There also exist distinctions in property regimes for varied arrangements of land use, access and ownership. Technological knowledge in maintaining and promoting agricultural diversity based on sustainable development principles are also practiced in traditional integrated farming systems or multi cropped areas. In fact, the homelands of cultural communities are areas where conservation efforts of the people are high, as seen in the following:

- local controls over the proper use of resources and against over-exploitation as in small-scale, regulated and scheduled hunting and fishing, forest resource utilization, fuel-wood gathering, cutting wood only for domestic use

- watershed maintenance (as in the *muyong* in Ifugao)
- community innovation in seed exchange to protect the genetic diversity particularly in food crops
- improvement of technologies in organic pest control mechanisms which include the *pangkalnibigih* (Ikalahan), *holok* (Ifugao), burning of leaves and branches of *aributung* in the swidden (Tagbanua) to drive away rice worms, or the fern *ariway* to drive insect pests away, and in the observance of simultaneous cropping calendars regulated by community rituals.

Indigenous knowledge systems are founded on the ecological principle that recognizes interrelatedness and interdependence across communities and ecosystems. Hence, accordingly, wherever and whenever the natural resource base is threatened, communities engage in the collective and active defense of land, livelihood and resources. This has been advancing as the people's organized capacities are strengthened to regain local control and sustainable use of threatened resources for the people's benefit.

These self-governance mechanisms are recognized even by the scientific community that promotes conservation for sustainable development. It can be said that the prospects for sustaining these indigenous knowledge systems and conservation efforts are bright, especially if supported, among the Manobo, B'laan, Bungkalot, Ubo, Ati, Tagbanua, Subanen, Tiruray, Ibaloy, Kankanay, Kalanguya, Agta, Palawan and Dumagat. Many of these cultural communities still observe resource management practices with regulation in accordance with their sound and time-tested indigenous knowledge systems. Where the customary system is still a strong regulatory mechanism for resource access and use as in central and eastern Mindanao, the Sulu islands, the northern Cordillera and central Sierra Madre, upland agriculture, forest extraction, and marine activities remain guided by ecological principles that promote sustainable practices.



3.

III. CASE STUDIES

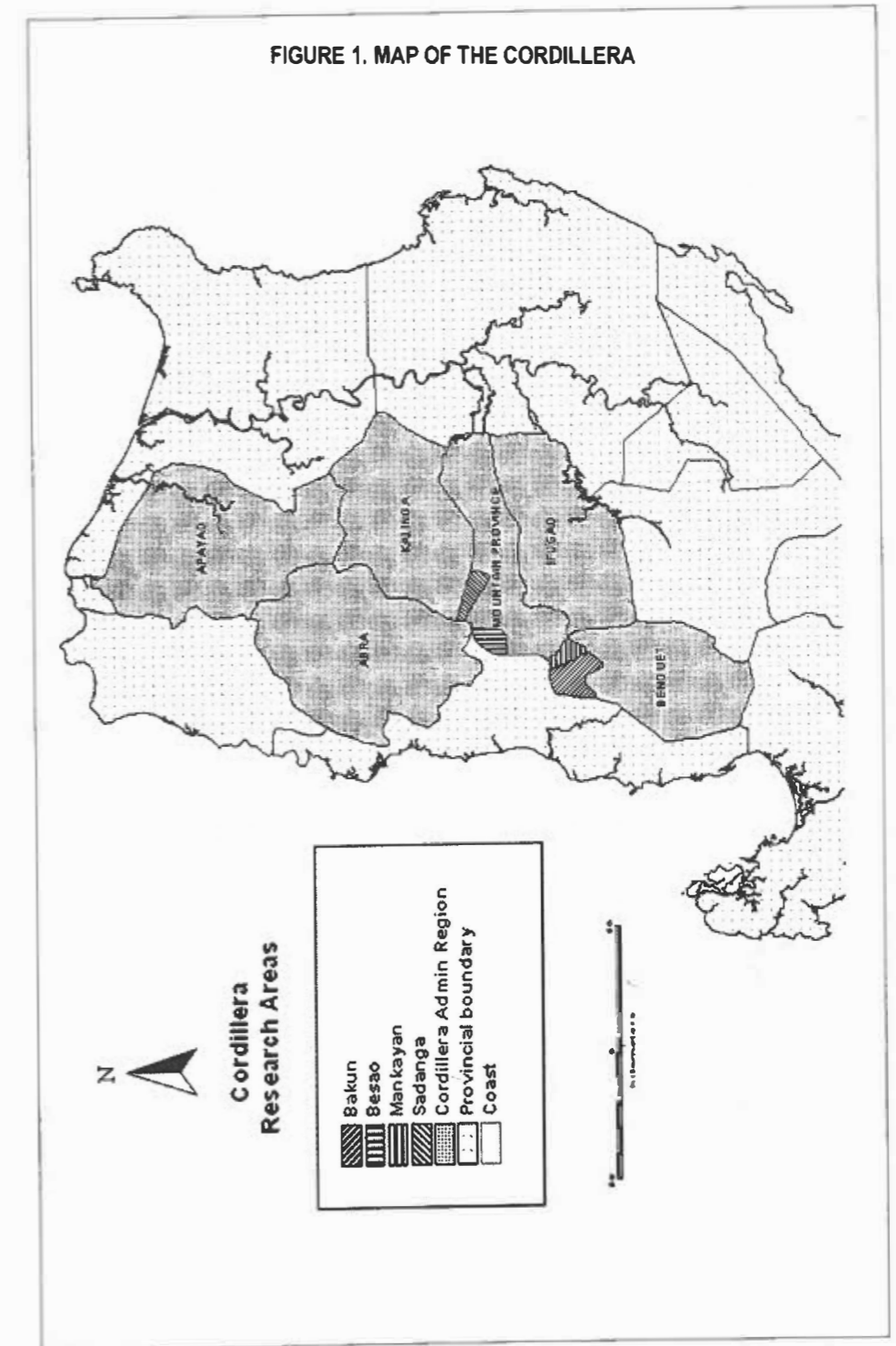
Detailed studies were undertaken in Betwagan (Mountain Province), Besao (Mountain Province), Bakun and Mankayan (Benguet), Lake Sebu (South Cotobato), T'boli Town (South Cotobato) and Sirib (Davao City). The first four are located in the Cordillera Administrative Region in Northern Luzon and the last three in Mindanao.

The contrasting cases illustrate common and diverse experiences of small-scale, subsistence communities on how they utilize indigenous institutions to cope with or question the dominant forces of the nation state during the colonial and post-colonial periods.

A. REGIONAL SITUATION IN THE CASE STUDY AREAS: CORDILLERA

The Cordillera Administrative Region (CAR) is a series of parallel, narrow and high mountain ranges recognized to be a very rich region. The Gran Cordillera is the largest mountain range in the country, home to seven (7) major groups of indigenous peoples collectively called Igorots ("from the moun-

FIGURE 1. MAP OF THE CORDILLERA



tains"). They live in scattered settlements mostly found between 500 and 2000 meters above sea level. The Igorots are considered "cultural minorities" nationally, although they comprise slightly more than half of the regional population. They have persisted in their indigenous social organization, decision-making and dispute settlement institutions, and cultural practices for more than 350 years of colonization unlike the majority of acculturated Filipinos.

The CAR is composed of six provinces, namely Abra, Apayao, Ifugao, Kalinga, Benguet, and Mountain Province. The last two provinces are the location of the Cordillera case studies in this research. The region is bounded on the west by the Ilocos coast and on the east by the Cagayan Valley. There are 1,152 villages distributed among 78 towns.

The region has a total land area of 1,829,368 hectares, covering one-sixth of the total area of Luzon Island where it is found. More than 81 percent of the area of the region (1,488,712 hectares) is classified as forest and watershed reservations. Physical resources include important metallic and non-metallic minerals, with gold and copper exploited for almost a century by foreign corporations and thus supplanting generations of traditional use by the indigenous population. Today, Lepanto Consolidated Mining Company and Philex Mining Corporation, both based in Benguet, are the country's top producers of copper and gold.

The terrain in the Cordillera is rugged, with mountain peaks as high as 7,000 feet above sea level. Of the ten highest mountains in the Philippines, seven are found in the Cordillera. The third highest mountain in the Philippines, Mt. Pulag, is found in Benguet at 2,922 meters above sea level (m.a.s.l.). Other high mountains are Mt. Panotoan with two summits (2650 and 2645 m.a.s.l.), Mt. Tabeyo (2819 m.a.s.l.), Paoay Plateau, Mt. Data, Mt. Amuyao in Barlig (2682 m.a.s.l.).

The enormous hydrologic resources make the region the watershed cradle and major energy source of Luzon. Mt. Data serves as headwater to five major river systems draining the Luzon lowlands. The water resources are tapped to supply the energy needs of most of Luzon's lowlands, through the now heavily-silted Ambuklao and Binga Dams in Bokod and, recently, the controversial San Roque Multipurpose Dam Project in the boundary area of Itogon, Benguet and Pangasinan funded by the Japan Bank for International Cooperation.

The bioregion which the Cordillera shares with the Ilocos has a very high percentage of Philippine endemic flora and fauna that have sustained the local

economy, society and culture for centuries. This rich biodiversity is increasingly threatened by intensive and widespread logging, mining, mono cropping and land conversion during the last 50 to 70 years.

Despite the region's rich resources, the mountainous terrain and generally underdeveloped conditions make access to many areas difficult. Town centers can be reached after several hours of riding over rough roads. Most of the interior villages can be reached only after several hours of hiking over mountains and crossing treacherous rivers.

The soils of the region are generally rich for mining and agriculture. However, 60.77 percent of the total land area of the region has slopes of over 50 percent (Regional Land Use Committee 1991). Hence, more than half of this area is prone to erosion because of the interplay of soils, climate and human activities. As much as 22.95 percent is estimated to be severely erosive, and 43.75 percent moderately erosive (RLUC 1991). Benguet province is reported to have the most erosive slopes. Other characterizations of the region's soils are the presence of meta-sedimentary and meta-volcanic soils which are rocky, clays which have poor drainage and are therefore unstable, and limestone which make the land rocky for agriculture.

The mix of effects of the natural soil types, soil structure and the steep terrain limits the scale of agriculture in the region. A meager 10.22 percent of the total land area is classified for the purpose of agriculture, particularly for the production of temperate vegetable crops, rice, and fruits. Nevertheless, majority of the population depend on agriculture both for subsistence and as source of cash, thereby discounting the physical limitations of the region. The greater motivation is to convert forest and agricultural lands into cash cropping areas, regional growth centers of industry, commerce and the services, and compact settlements.

Many foreign-funded projects as part of Official Development Assistance (ODA) have sought to strengthen the orientation of agriculture in the region toward mono-cropping for commercial purposes. Among them are the Cordillera Highland Agricultural Resources Management Program (CHARMP) funded by a loan from the Asian Development Bank, the Central Cordillera Agricultural Programme (CECAP) and the Caraballo and Southern Cordillera Agricultural Development Programme (CASCADE), both of which are EU-supported.

B. REGIONAL SITUATION IN THE CASE STUDY AREAS: MINDANAO

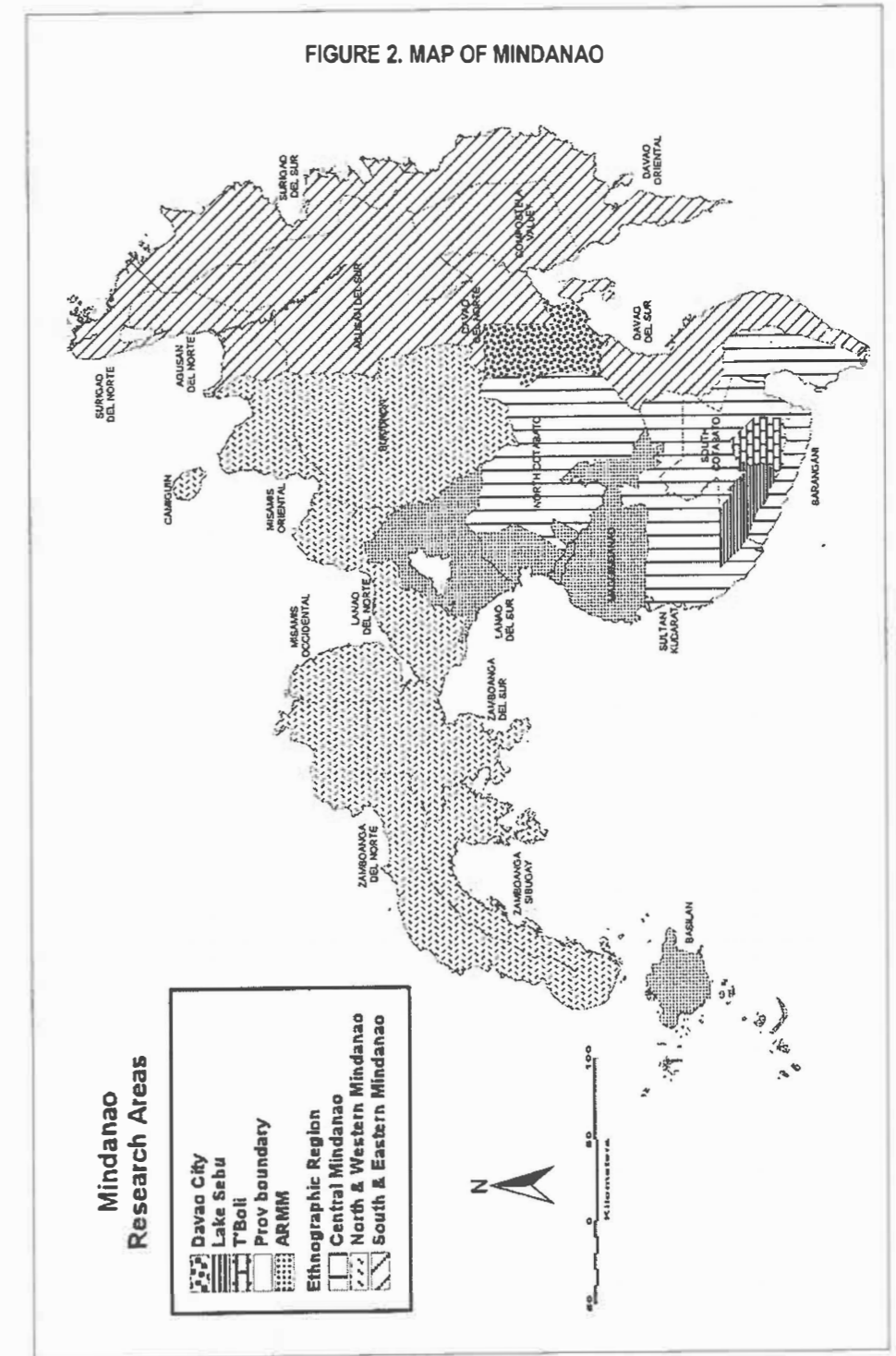
Mindanao is the last island in the Philippines to be fully utilized by its native population. It still has rich resource potentials in contrast with the Visayas, competing only with Luzon's Sierra Madre and Palawan for richness and diversity in land-based resources. Its land resources remain as the most expansive of the island groups. However, state policy over a century and especially in the last 80 years opened up the island to widespread and large-scale land conversion, commercial agriculture, resettlement programs, logging and mining. This has resulted in massive dislocation of the indigenous peoples and caused serious resource conflicts between the original residents of Mindanao and the now dominant settler population from the Visayas and Luzon.

Along with the Islamized section of the population, Mindanao's indigenous peoples comprise some 60 percent of the country's total IP population. South Cotabato in Region XII (where the case study areas in Lake Sebu and T'boli Town are located) is home to the Tasadays, T'boli, and B'laans. South Cotabato, with a land area of 7,468.76 sq. km., allots only around 46 percent of its land as alienable and disposable for use by its population, which totaled 1,315,334 in the year 2000. Almost half or 44.3 percent of the population in the province lives below the poverty line.

Dominant agricultural crops are coffee, rice, fruits (banana, jackfruit) and corn maintained by massive use of chemical fertilizers and pesticides. Illegal logging and swidden farming (kaingin) are mostly done in Tupi and Malungon, while the extraction of forest products is commercially done in Polomolok. Among the sources of funding for some of the development projects initiated in the province are the Federal Republic of Germany (FRG-GTZ), United Nations Development Program - Global Environment Facility (UNDP-GEF), Asian Development Bank (ADB), and Japan Bank for International Cooperation (JBIC).

Davao del Sur, meanwhile, includes within its boundary the City of Davao, site of another case study. Found in Region XI, the province boasts of at least two major watersheds, a protected landscape, and the country's highest mountain, Mt. Apo. Some 37 percent of the province's land area of 6,377.62 sq. km. is alienable and disposable. The province is home to the Bagobo, B'laans, Tagakaolos, Manobo, Maguindanao, Maranao, all native to the province, and settlers such as Ilocanos, Cebuanos, Hiligaynons and other Visayans. Average poverty incidence is 44.3 percent.

FIGURE 2. MAP OF MINDANAO



Small- and medium-scale mining and commercial farming of coffee, rice, and mono cropped fruits comprise the major sources of livelihood of the population. Meanwhile, extractive medium and heavy industries are present in the Davao Gulf. These, along with illegal cutting of trees and unregulated use of water resources by other entities, are the priority problems in resource management.

The province suffers from severe erosion, with more than half of the area affected. Despite the development-related threats, Davao del Sur is considered to be the largest and most advantaged province in the region, and is envisaged to continue as the top exporter of key food crops and industrial products and as a center for ship building and repair. It has been the recipient of financial assistance for development projects from the ADB, FASPO, Japan Bank for International Cooperation, and USAID.

C. SITUATION OF INDIGENOUS PEOPLES IN THE STUDY AREAS

The case study areas share a common history of socio-cultural displacement and neglect because of massive resource exploitation or land use conversion in the last 100 years. The specific features of each site are summarized in the following pages.

NORTHERN LUZON CASE STUDY AREAS

SADANGA, MOUNTAIN PROVINCE

Political Jurisdiction

Located in northernmost section of Mt. Province, E.O. No. 12 (July 3, 1985) created the town, now classified as a 5th class municipality with 8 barangays: Anabel, Betwagan, Bekigan, Belwang, Demang, Poblacion, Sacasacan and Saclit, with 55 sitios.

Population

1,974 in 401 households; Bontok, with sub-tribes: Masonay from Betwagan and Anabel; Walitan from Saclit; Yu ma-a from Poblacion and Demang; Awangan from Belwang and Bekigan; Soyosoyan from Sacasacan

Land area and land uses

15,310 hectares; Brgy. Betwagan with the largest land area with 3,112 hectares

Types of economic activities

Farming as primary source of livelihood for almost 90 percent of the population; also basket weaving, livestock-raising, and blacksmithing
Main products: rice and root crops

Literacy rate

79% (as of 1999)

Historical background

With a long history of permanent settlement based on irrigated rice, the community is known for its old peace-forging and peacekeeping tradition (*bodong*) based on the *pagta*, under the leadership of elders who sit in the *ator*. One *pagta* goes back to the 19th century, broken in 1973 as a result of a hold-up/robbery, followed by a series of incidents related to police and military intervention, illegal logging, the problem with the Cordillera People's Liberation Army (CPLA), stealing of carabaos, land area expansion because of the Internal Revenue Allotment, and retaliatory acts constituting a long-running tribal war.

BESAO, MOUNTAIN PROVINCE

Political Jurisdiction

Besao in northwestern Mt. Province used to be part of Bagnen municipality. Under EO No. 42 (June 1963) it became a municipality originally with four barangays, now reconstituted to have 14 barangays.

Population

10,067 total population composed of the Applai tribe or Kankanay of northwestern Mt. Province. The Kankanay dominate, comprising 98 percent of total population while only 2 percent are Ilocanos and Tagalogs who have intermarried in the area.

Land area and land uses

It is the second smallest municipality of Mountain Province with a total land area of 9,020 has. When the DENR issued a CADC in 1996, the total land area increased to 17,361.5 has. mostly classified as forestland.

Types of economic activities

As many as 84% of households depend on farming.
Main products: rice and root crops

Literacy rate

95 percent

Historical background

Except for ODA-assisted projects like the CHARM and CECAP, no other major influences had successfully entered the municipality as to significantly influence the change in status of the customary systems.

BAKUN, BENGUET

Political Jurisdiction

Bakun in northern Benguet became a regular municipality by Executive Order No. 42 (June 25, 1963) and in 1996 with the passage of Republic Act 4695, Bakun was included as one municipality when Benguet became a province. It has seven barangays with 150 sitios.

Population

13,226 with Kankanay comprising the majority followed by the Bago

Land area and land uses

30,678.7410 hectares

Forest (includes timberland, industrial, rivers & creeks): 15,647.2232 hectares

Types of economic activities

The major source of livelihood is upland farming of temperate vegetable crops and irrigated rice. Other sources: mining and gathering of bamboo and rattan, lumber sawing, carpentry, small scale bamboo craft, blacksmithing, furniture making, baking and loom weaving as cottage industries.

Literacy rate

80 percent

Historical background

A sawmill firm was granted a wide swath of concession to log Bakun's forests to provide timber for mining operations in the nearby mining districts of Lepanto and Itogon. The sawmill's logged over areas, particularly along Halsema Highway, paved the way for commercial vegetable gardens in the last 70 years.

On March 13, 1998, Bakun was issued a CADC covering their entire ancestral domain of 31,000 or so hectares. After three years, the CADT was formalized on July 19, 2002.

Primary projects are the mini-hydroelectric dams owned and operated by the Hydroelectric Corporation (HEDCOR). HEDCOR started its operations in the area as early as 1985-1987. At present, there are two operational mini-hydro electric power plants, the Northern Mini-Hydro and the Bakun AC of the Luzon Hydro Corporation.

A water diversion tunnel is set to be constructed in Bakun, to which there is strong opposition by the people.

MANKAYAN, BENGUET

Political Jurisdiction

Mankayan was established as a municipality of the Province of Benguet when the old Mt. Province was subdivided into four provinces on June 18, 1966 through RA 4095. At present, it is among the 13 municipalities of the Province of Benguet. It has 12 barangays.

Population

26,235 of a highly mixed population, with the Ilocano settlers and Kankanay as the majority.

Land area and land uses

Land uses are categorized into agricultural land which has the largest land area (7,515 has.), residential lot (139,186 has.) and institutional lot (49.63 has.).

Types of economic activities

Alongside the mining industry, highland vegetable farming is a major source of livelihood. Company miners and pocket miners (1,515), agriculture (3,088)

Literacy rate

No data

Historical background

Spanish colonial interest in the gold and copper mines was recorded in the 17th century. The interest materialized with the opening of the Spanish mining company's operations in 1862 headed by Senor Balbas y Castro.

In 1864, the operations were given the go signal, supported by a signed agreement from leaders Gobernador Tibaldo of Rancheria Mankayan, Mendoza of Tubo, Lancungan of Balili, Bayabua of Bato, Tambana of Bulalacao, Padduan of Tabbac and Bagnaken of Patpat.

By 1900, the Americans began the assays, followed by the establishment of three mining companies in the next 30 years.

After World War II, the Mitsui mining company of Japan reopened the Suyoc and Lepanto Mines and renamed it the Mitsui Mankayan Copper Mine that operated until 1945. After the war, Lepanto Consolidated Mining Company resumed operations and started rehabilitation works. Since then, the town of Mankayan has grown and developed alongside these two companies.

MINDANAO CASE STUDY AREAS

LAKE SEBU, SOUTH COTABATO

Political Jurisdiction

Southwestern section of South Cotabato; Composed of nineteen barangays, with Barangay Poblacion as the seat of the municipal government of Lake Sebu. Created into a distinct barangay simultaneous with the conversion of Lake Sebu into a municipality by virtue of Batas Pambansa No. 249 on November 11, 1982.

CADC No. 003 containing an area of 20,475 hectares for the T'boli tribe
CADC No. 004 with an area of 19,377 has. for the Ubo tribe. Both are subject for conversion to CADT.

Population

T'boli, Ubo, Manobo, Tasaday, and Maguindanao: 71 percent of total municipal population of 6,072

Land area and land uses

89,138 hectares (11.59 percent of South Cotabato's total land area)
Study area: 1,060 hectares

Types of economic activities

Weaving, farming, and handicraft; a heterogeneous population depend on: cropping, 8,926 (80%); fishing, 406 (1%); industry, 755 (7%); jeepneys, 64 units; Skylab, 80+ units

Literacy rate

No data

Historical background

The use and management of the lake was in the hands of the original inhabitants of Lake Sebu—the T'boli. Prior to the 1960s migration of the Bisaya to Lake Sebu, the pure T'boli population freely enjoyed the use of resources in the lake and the mountains. Majority of the land owned by the Bisaya at present were formerly owned and managed by the T'boli. The construction of fish pens and resorts came soon after the migrants settled in Lake Sebu.

Today, the Bisaya own majority of land in the area. Weaving, farming and handicrafts are the livelihood sources of the T'boli at present.

T'BOLI TOWN, SOUTH COTABATO

Political Jurisdiction

Southwestern section of South Cotabato; Composed of twenty-five (25) barangays with 225 sitios. T'boli town was created on March 5, 1974 under Presidential Decree No. 407. Part of Ancestral Domain, of which 17 barangays are covered by the T'boli Domain while eight (8) are under the B'laan Domain. CADC 168 T'boli Claim: Sinolon, Edwards, Poblacion, Talufo, Lamhaku, Lambuling, Lamsalome, Lemsnolon, Kematu, Desawo, Afus, T'bolok, New Dumangas, Laconon, Salacafe, Datal Dlanag, Tudok CADC 169 B'laan Claim: Lambangan, Datal Bob, Talcon, Aflek, Malugong, Basag, Mongokayo, Maan

Population

T'boli: 30,844; Hiligaynon: 19,877; B'laan: 4,158; Cebuano: 3,362; Maguindanaon: 1,238; Other local languages: 1,214 Total: 60,693

Land area and land uses

89,138 hectares (11.59% of South Cotabato's total land area)
Study area: 1,060 hectares

Types of economic activities

Agriculture: 47,838 (78.82%); Industry: 1,050 (1.73%); Services: 4,874 (8.03%)
Others: 6,931 (11.42%)

Literacy rate

68.67 percent

Historical background

September 1968: PANAMIN launched a settlement (educational services, medical assistance, improvement of farming technologies, community development, introduction of electric and water facilities, construction of farm roads settlements, and promotion of recreational activities) program for thirty (30) T'boli families; later, two hundred twenty (220) families settled when these projects were implemented; June 9, 1970: Presidential Proclamation No. 697 reserved 5,224 hectares for the T'boli living in peripheral areas and surrounding hills of the settlements project; April 6, 1972: Enacted the rainforest reservation of 19,297 hectares of the Tasadays; March 5, 1974: PD No. 407 created the municipality of T'boli consisting of twelve (12) barangays with a total population of 32,301 people (1975 NSO Census). Prior to the creation of T'boli, the municipality formed part of seven (7) municipalities of the province of South Cotabato, namely, Kiamba, Maitum, Polomolok, Surallah, Tupi and Maasim. In 1984, the land area of T'boli town was reduced with the creation of Lake Sebu; the separation of Lake Sebu also resulted to the IRA reduction of T'boli town. In 1990, small scale gold mining operations in Barangays Kematu and Desawo began to attract hordes of gold prospectors.

SIRIB, DAVAO CITY

Political Jurisdiction

Section of Davao City, composed of Upper and Lower Sirib, a barangay of Davao City

Population

70 percent of the population (3779 in 1995) belong to the Bagobo, specifically the Dyangan/Guiangan or Bagogo Clata group. There are several migrants residing in the area now; there are Ilocanos, Ilonggos, Boholanos and Cebuanos.

Land area and land uses

11,443 has

Types of economic activities

The area's produce is composed mainly of fruits: durian, marang, langka, lanzones, and banana (binangay variety). Recently, residents have been provided livelihood support in the production of ginger and raising of hogs and chickens.

Literacy rate

No data

Historical background

No data

D. ASSESSING THE GAINS UNDER THE LOCAL GOVERNMENT CODE

The structures and dynamics in national and local governance have effects on indigenous peoples. From the case studies of indigenous peoples in Northern Luzon and Mindanao (the Bontoc in Mountain Province, Kankayan in Mountain Province and Benguet, B'laan and T'boli in South Cotabato and Bagobo in Davao del Sur), such effects include the following:

ACCESS TO BASIC SERVICES

There has been recognizable improvement of the local situation over the last 10 years, although confined to health, education, mobility and access, infrastructure, and livelihood programs and services. These improvements are attributed to the devolved functions made possible under the Local Government Code (LGC) in terms of planning, increase in budget allocation and de-bureaucratization of some public processes in order to be more responsive to local needs.

In the main, the implementation of the LGC and the attendant processes of devolution, de-concentration and democratization have achieved the following:

- 1) Over the years since the implementation of the LGC, local government units (LGU) have been able to increase personal services and general services. These cover routine operations for administration, development conferences, monitoring and evaluation (M/E) which enjoy the largest and increasing shares in the local budget.

The regularity and increasing values for salaries, even the regularization of honoraria, are perceived as a positive result of the LGC. This view was clearly expressed by the Cordillera informants, as well as those from Sirib.

- 2) Despite the LGC, social development is allotted the smallest share in local development, utilizing the Municipal Development Fund or 20 percent from the Internal Revenue Allotment (IRA). Among the study areas, infrastructure always has the larger, though variable, share. In T'boli Town, infrastructure had the largest share. Because of the meager provision of 20 percent for social development as minimum share in the municipal development fund, the LGUs therefore have had to rely

on external support for much of their day-to-day needs. Meanwhile, funding for the more capital-intensive infrastructure projects has been sourced out from foreign assistance.

In the Cordillera case studies:

- There is now a marked improvement in local infrastructure, but this has remained only at the level of pathways, irrigation improvement, drainage improvement, water supply improvement, waiting shed construction, road repair and the like, for most of the areas.
- Other social development projects have been limited to sports development, short-term training for some skills (values, family health, livelihood-related), and community gatherings.

In Bakun, for instance, improvements attributed to devolution are most visible in the health services. An increase in health facilities and personnel was made possible through support from local funds. Six (6) sub-clinics manned by one municipal health officer, two nurses, seven midwives, one dentist, one sanitary inspector and 83 barangay health workers; and two functional botica sa barangay located in Ampusongan and Gambang were implemented – all these only since the early 1990s.

Health services which were reported to have been covered since 1995 include the areas of maternal and child health, pre-natal services, deliveries, breastfeeding, immunization, dental health services, nutrition and family planning. Information campaigns were also extended particularly on disease control, environmental health services, water sanitation, proper excreta disposal, solid waste management, food sanitation, industrial hygiene, public sanitation, primary health care development and health education services.

- Most improvements for local infrastructure have in fact been initiated by foreign-funded projects, primarily to promote the commercial production of vegetables. Planning studies also utilized much of ODA assistance, with very little long-term benefits being enjoyed by the local communities.

The Highland Agricultural Development Program (HADP) then, now called the Cordillera Highland Agricultural Resource Management Project (CHARMP) is designed to improve agricultural production and promote sustainable systems of resource management for high-value highland commercial crops. The project focuses on environmental concerns and LGU capability building. Total project cost of P1.3B is funded from loans secured from the Asian Development Bank and the International Fund for Agricultural Development (IFAD). Coursed through the Department of Agriculture, this program (including its predecessor Highland Agricultural Development Program) covers the municipalities of Bakun, Buguias, Kibungan, Kapangan, Atok, Tublay, Sablan, and Tuba in Benguet, and more municipalities in the other provinces of the Cordillera. Two municipalities in Benguet previously assisted under HADP were dropped, namely La Trinidad and Mankayan.

An earlier research of the CPA Research Commission has assessed that such ODA-funded agricultural projects *"specifically CECAP and CHARM, have not benefited the Cordillera people. Rather, problems and negative impacts have resulted because of the orientation of these projects towards the promotion of commercial agricultural production, deceptive rural financing schemes, inappropriate and corruption-ridden infrastructure projects, unwanted reforestation projects that conflict with prevailing indigenous practices of forest management, and land conflicts arising from contradicting schemes of land tenure and delineation. The approach of these programs has been to impose inappropriate projects, without going through the necessary consultation and participation of the people. It is no wonder, therefore, that these projects are presently beset with problems of resistance and opposition by supposed beneficiaries, not to mention backlogs in its program of implementation"* (CPA Research Commission, Official Development Assistance Projects in the Cordillera, CPA Land Congress 2001).

In addition, the National Power Corporation has a 70 MW Bakun Hydro Power Project intended to increase the generated electricity for Luzon. Related to this project is the planned diversion tunnel, which has been lacking endorsement from the LGU and the community for the past three years now.

Compared with the rest of Mountain Province, Besao has not been the recipient of the same volume and quality of externally-assisted projects, except for CHARMP.

In Lake Sebu:

- Improvements in health services have been achieved largely with external assistance. For instance, AusAid funded the equipment for barangay health units, the renovation of the rural health unit and personnel training. The International Red Cross gave funds for medicine, training of barangay health workers, water system for three barangays, and the construction of a barangay health station. Ironically, the municipal health unit at the Sta. Cruz Mission area was abandoned due to lack of funds.
- Education – construction of SIKAT, with funds coming from the UNDP.
- Mobility and access – complete cemented road from Surallah to Poblacion, Lake Sebu. People take the public utility jeep when they want to go to Surallah and back to Lake Sebu. Motorcycles are utilized when people are within Lake Sebu.
- Though the Local Government Code has provided the Municipality the discretion to allocate their budget to provide for the needs of the people, it is still obvious that development is focused on infrastructure. Moreover, the processes have become more complex. Approval of budget allocation has to go through channels and deliberation. Though the intention is to clearly set the development priorities, one cannot negate the motives of the officials who have their own biases and political agenda.

In T'boli Town:

- Infrastructure projects are considered significant improvements, considering the neglect during the past period. The budget allocation for infrastructure, in fact, has received the highest share of 41 percent.

- Farm to market roads, solar driers and warehouses or storage facilities have been prioritized in the utilization of ODA through the Southern Mindanao Agricultural Program.

In Sirib:

- In 2002, Barangay Sirib received P1M for the construction of a farm-to-market road and P1.4M for the installation of a deep-well from the funds of Congressman Ruy Lopez. The Department of Agriculture (DA) also allocated P1M for the construction of a farm-to-market road.
- The barangay's Internal Revenue Allotment (IRA) increased tremendously starting in the 1980s when plantations and fruit corporations, such as DavCo, Highland Banana Corporation, and Davao Fruits Corporation, began investing. The present IRA is more than P1M, coming mainly from taxes collected from these plantations. The IRA goes to pay the honorarium of barangay officials, 18 Barangay Health Workers (BHWs), three Barangay Nutrition Scholars (BNS), three Day Care Schools, and 35 Barangay Police.
- In health services, during the 1970s up to the '80s, there was only the city health worker to do circumcision once a year. Since the 1990s, Sirib now has barangay health workers, nutrition scholars and a midwife who provides services twice a week. The barangay now also has a potable source of water and the road is well paved.
- The NCIP provided livelihood assistance by dispersing carabaos, hogs, and chickens.
- The City Government of Davao provided Sirib with a water system and an electric generator worth P100,000.00.
- The NCIP provided mobile registration centers to facilitate the issuance of birth certificates and wedding certificates for the residents.

MEETING BASIC DEVELOPMENT NEEDS

The reported improvements, however, do not necessarily imply effective governance. The more basic development needs of the communities have yet to be addressed by the LGUs.

This is seen in the government's own Governance for Local Development Index (GOFORDEV Index), an evaluation and monitoring system, which relates the quality of local government performance with the level of socio-economic development. A pilot test revealed that good governance does not necessarily translate to local development and welfare. Two areas were pilot-tested: Bulacan, which is a relatively urban, developed area and Davao del Norte, which is less accessible. Based on the data, huge allocations for social and economic services have a weak correlation with the direct impact on people's welfare. This can be traced to weak local participation in the information-sharing and consultation exercises that need the community's involvement (Capuno, et. al., in Issues and Letters, May-June 2001).

In the Cordillera case studies, basic development problems articulated pertain to the following:

- Low productivity despite high (externally-dependent) input farming technology because of poor infrastructure support for farmers such as irrigation, post-harvest facilities, transportation facilities, farm to market roads
- Inappropriate financing schemes and usurious practices of middlemen, capital providers and traders
- Extractive resource utilization by large private companies which disadvantage the local people through physical, economic, social and cultural displacement (through logging, mining, energy development, commercial agriculture and mono cropping)
- Land conversion of scarce forest and critical lands into intensive cultivation areas or for infrastructure projects (road-building) supportive of big industry, leading to the degradation of critical ecosystems on which the people depend for their survival

- Graft-ridden and politically-leveraged projects which create disunity among the people

- Serious and fundamental conflicts between custom law and indigenous institutions, on one hand, and state law and formal structures of governance, on the other.

The last articulation is captured in a summative expression of what proponents of indigenous peoples' rights call development aggression. The social issues that accrue from the conflict cut across all aspects of life for the indigenous peoples, threatening their continued existence. Indeed, for the Cordillera case study areas, the real development needs require an all-sided, comprehensive and long-term approach to solve the problems in the region – not through short-gestation, one-shot, and disjointed donor-driven projects.

In Lake Sebu:

- Displacement from the land is a constant and strongly expressed social problem. The Datus claim that the Bisaya acquired land through falsification. The people's struggle remains how to redeem the land that they have inherited from their forefathers.

- Education is highly regarded as a basic need. Since the Bisaya were educated, the T'boli believe that they had the advantage of being able to acquire land and improve their economic status. The older generations saw to it that their children went to college even though they could barely make both ends meet.

- Though tourism has brought employment opportunities to the T'boli, access to the benefits of the industry is not sufficient to improve the economic status of the T'boli. Since the Bisaya own the resorts, the T'boli are employed as service crew. Others work as drivers of motorcycles. Educated ones work at the Municipal Hall, or as teachers in government schools or the Sta. Cruz Mission.

In T'boli Town, the following community problems were expressed:

- Landlessness: non-T'boli traders now own most of the ancestral lands of the T'boli. This situation emerged because of the usurious practices of traders in lending agricultural inputs (fertilizers, pesticides) to the T'boli.

- Food insecurity: livelihood assistance given to the communities is wanting, while the market for some of the agricultural produce is lacking. It is necessary to address the construction of farm to market roads and the provision of transport facilities.

- Poor access to social services: the delivery of health and educational services needs improvement. Not all barangays have health centers and primary schools.

- Poor access to micro-credit and finance: the T'boli are victims of the settler Bisaya's usurious practices. There is poor access to micro-credit and finance.

In Sirib:

- The most common dispute that arises is related to land. Relatives fight over their properties. The issue of ancestral domain claims is more pronounced in Upper Sirib compared to Lower Sirib. This is because most of the lands of Lower Sirib are already titled while those in Upper Sirib are not. Land disputes usually stem from the selling of land by the Bagobo to the Bisaya.

LOCAL PARTICIPATION IN GOVERNANCE

The LGC defines the arena of local participation in governance in the form of sectoral representation in the Sanggunian (local legislative body) and membership in the local special bodies (LSBs). It is in the LSBs where sectoral representation can be realized to ensure inputs to planning and local policy development related to the following:

- the provision of basic services (education, health, infrastructure)

- the utilization of Internal Revenue Allotment (20% social development fund)

- utilization of share in the national wealth
- access to commons/natural resource management
- revenue raising/resource generation

The expanded study for the Cordillera region looked into the extent to which people's participation, as provided for in the LGC, is being realized vis-à-vis indigenous peoples especially in relation to the following:

- Strengthening the role of the community in decision-making
- Improving the delivery of appropriate and desired social services
- Increasing the administrative, financial, and economic capability of community groups in the management of development projects
- Enhancing natural resource management systems pertinent to communities of indigenous peoples

The Cordillera case study had the added objective of examining local participation and the functionality of the structures for such. Results of the study (D. Delias 2002) indicate the tenuous status of membership and weak functionality of the LSBs in the Cordillera Administrative Region ten years after the implementation of the LGC. Local participation in governance has been limited to nominal membership in the Local Special Bodies and the accommodation of a few elders in the mechanisms for enforcement and decision-making (related to dispute settlement) such as the Lupon or similar structures. The series of data in the following tables provide detailed characterization of the situation.



COMPLIANCE WITH THE MANDATE OF LOCAL SPECIAL BODIES (LSBs)

There are two reasons for the creation of local special bodies: (1) to ensure the representation of non-government organizations (NGOs), concerned sectors in

the community and the private sector in the affairs of the local government unit, and (2) to be responsible for policy recommendations to the local chief executive and the local legislative body (Sanggunian).

LSBs are expected to ensure representation of concerned sectors, NGOs, POs and the private sector. The concerns acted on by the LSBs are largely those mandated by the LGC (Table 1) which pertain to functional planning for the sectors.

TABLE 1. MANDATE OF LSBs UNDER THE LGC

LOCAL SPECIAL BODY	MAIN FUNCTIONS	REQUIRED NO. OF MEETINGS
LOCAL HEALTH BOARD	Proposes the annual budgetary allocation for health facilities and services.	At least once a month or as often as necessary.
LOCAL SCHOOL BOARD	Determines annual supplementary budget and authorizes disbursement of the Special Education Fund	At least once a month or as often as necessary.
LOCAL DEVELOPMENT COUNCIL	Formulates development plans, appraise and prioritizes SED programs and projects, coordinates and formulates local investment	Once every six months or as often as necessary.
LOCAL PEACE & ORDER COUNCIL (LPOC)	Formulates plans and recommends measures to improve the peace and order condition in the locality.	
LOCAL PRE-BIDDING & AWARDS COUNCIL	Conducts pre-qualification of contracts, bidding, evaluation of bids; recommends awards re: Local Infrastructure Projects	
PLEB	Decides on complaints filed by citizens against erring PNP personnel.	

Although they are generally advisory in nature, some do have mandates beyond the recommendatory. Some examples of this are the Local School Boards that can determine and authorize the Special Education Fund expenditure and disbursement, the LPBAC which conducts bidding processes, the Local Health Board that assists in substantial delivery of health services, and the PLEB whose decisions are final and executory in cases of complaints filed by citizens against erring PNP personnel (except in cases of demotion and dismissal where appeals can be made).

Also as mandated by law, LSBs do have other functions and powers that can be optimized as a means of check and balance as well as for empowering people (Table 2).

TABLE 2. OTHER MANDATES OF LSBs

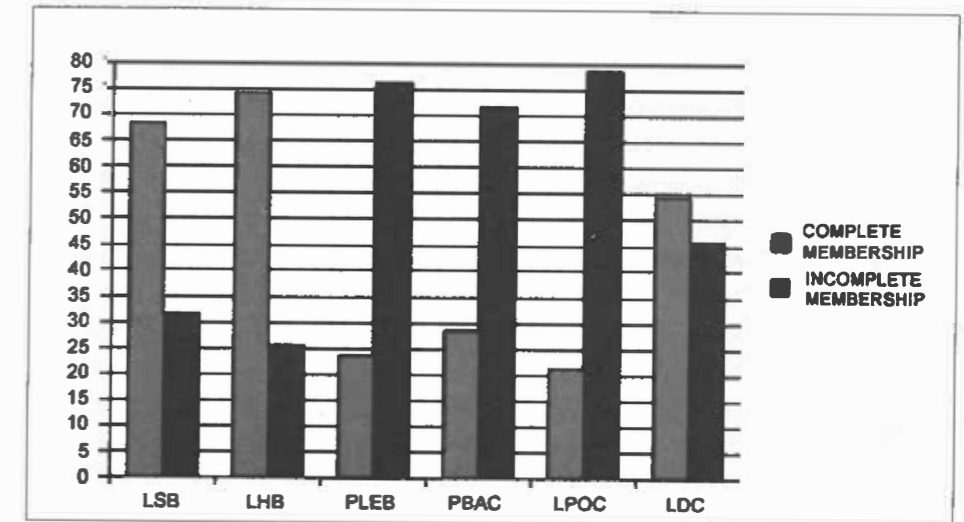
LSBs	OTHER MANDATES
LOCAL SCHOOL BOARD	<ul style="list-style-type: none"> - Serve as advisory committee on educational matters. - Authorized to recommend changes in the name of public schools (99-d). It is further noted that such changes shall be made only upon the recommendation of the said body. - The code requires the DECS to consult the LSB regarding the appointment of the division superintendent, supervisors, school principals, and other school officials.
LOCAL HEALTH BOARD	<ul style="list-style-type: none"> - Serve as advisory body to the SB on health matters. - Assist in the delivery of substantial health services and facilities.
LOCAL PEACE & ORDER COUNCIL	<ul style="list-style-type: none"> - Monitor peace and order programs and projects. - Formulate plans and recommendations to improve peace and order. - It is responsible for submitting to the national POC a periodic report on the peace and order situation in its jurisdiction.
PLEB	<ul style="list-style-type: none"> - It decides on people's complaints/cases filed against erring officers and members of the PNP. Its decision is final and executory except in cases involving demotion or dismissal; in which case the decision can be appealed with the regional appellate board.

• Less than half of the total number of municipalities have complied with the mandated composition of LSBs.

The LGC sets the composition of each LSB and further requires a minimum number of meetings for specific bodies to discuss issues and matters of interest to the community ("Basics of Local Governance and Field Operations," 1999).

Based on survey data, the non-completion of the requisite number for membership in half of the local bodies is notable in that it may reflect various issues ranging from the lack of awareness regarding LSBs and their existence, to the actual apathy of people to issues in the community. But this situation clearly shows that the membership structure of the LSBs does not follow what is legally prescribed. On the other hand, the Local School Board, Local Health Board, and the Local Development Council were organized properly in more than 50% of the municipalities in the region (Fig. 3).

FIGURE 3. REGIONAL SUMMARY OF COMPLIANCE WITH PRESCRIBED MEMBERSHIP IN LSBs



It is ironic however that members who are often absent from regular meetings of the LSB are those from government or even those whose presence is essential to the function of the LSB (Table 3).

TABLE 3. ABSENT MEMBERS IN LOCAL SPECIAL BODIES

LOCAL SPECIAL BODY	MOST OFTEN ABSENT MEMBER
LOCAL HEALTH BOARD	Department of Health Representative
LOCAL SCHOOL BOARD	Administrative Representative
LOCAL PEACE AND ORDER COMMITTEE	Sectoral Representative
PRE-BIDDING AND AWARDS COMMITTEE	Minority Party Representative
PLEB	Counterpart representative from other agencies
LDC	Congressman or Representative

The absence of members from government units may be explained by the lack or insufficiency of funds to cover expenses for attendance. We can reflect on the stipulation of the LGC of 1991 that states that the co-chairman and members of the provincial, city or municipal school board (Title IV, Section 101)/ health

board (Title V, Section 104), among others shall receive no remuneration. This means that necessary resources remain unavailable to many of LSB members, and this may be a deterrent to their participation in the activities of local bodies. Only members who are not government officials or employees are entitled to "necessary" traveling expenses and allowances, which are notably based on the "availability of funds". The lack of support for necessary expenses remains a block to participation of members.

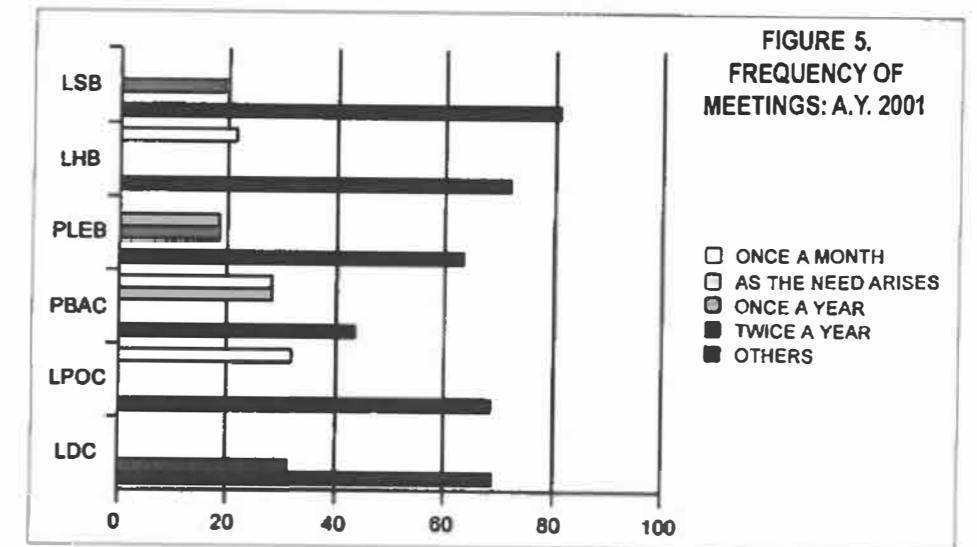
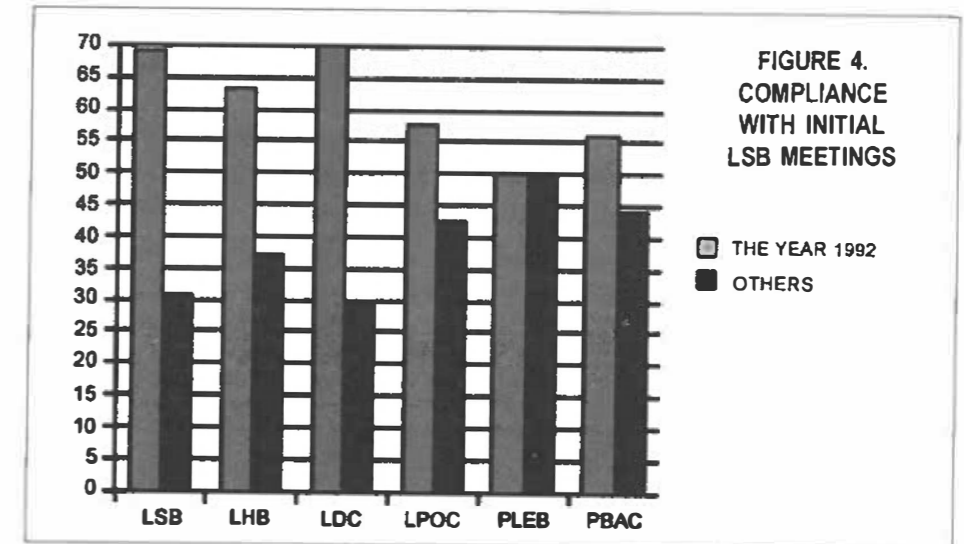
The representatives of various local bodies, especially from the community or NGO are typically those who do not have regular access to decision-making or even to the determination and shaping of policies. Some examples are the administrative personnel of schools, parents, or even the youth sector. Their membership in the LSBs broadens the base of participation in local governance. They are supposed to put forward the interests of their respective sectors through these mechanisms of participation. Along the same line, representatives from other agencies, NGOs, and experts who are community members (e.g. a Certified Public Accountant who is not part of the LGU) are enjoined to participate due to their expertise and awareness of facts that are pertinent to the municipality and the particular body's concern. Yet, it is also apparent that membership of people's organizations and NGOs is not maximized in the LSBs. This may again be the result of a lack of awareness about the LSB, the non-encouragement of POs and NGOs to participate, or the weak provision of support to the largely volunteer work of LSB members coming from the private and community sectors.

There also are members whose presence ensures checks and balances in the system. Take for example the missing minority party representative in the Pre-Bidding and Awards Committee, who is supposed to be more vigilant in the approval and actions with regard to contract awarding and processes. If the members who are to become channels for the above-stated reasons are absent, then they jeopardize the very essence for which the body was organized.

This also holds true in the case of certain municipalities where there is member substitution. Instead of the presence of the prescribed Certified Public Accountant from the private sector, there is instead the designation of the municipal accountant (two cases) or an engineer (one case) as the LSB member. The qualifications of LSB members are sometimes not met, or could not be met at the community level, thus indicating a need to amend the related provisions of the Code.

More than half of surveyed towns complied with the call for initial meetings of LSBs after the LGC was passed. However, such meetings were not sustained in subsequent years, not until 2002, when the LSBs seemed to have increased activity. This indicates poor functionality of the LSBs during most of the past decade of LGC implementation.

The figures below give a picture of the nature of LSB meetings in the past years. As can be seen, the mobilization of Local Special Bodies for regular meetings



has been minimal. It must be understood that meetings are convened by a body as a venue for articulation, discussion and settlement of issues and concerns among others. It is in these gatherings that resolutions and recommendations are made. At the same time, the body is informed of updates, inputs, and feedback from each other. It further reflects how active the council or the members are. In the Cordillera region, only the Local School Board failed to meet the minimum required number of meetings. The other local bodies met the minimum requirement for meetings. However, this does not mean that LSBs cannot meet more often if the need arises. There is more to be done in terms of mobilizing these bodies to regularize their meetings.

FUNCTIONALITY OF LSBs IN THE CAR

The Local Government Code provides the context for what each local body can and cannot do. As earlier mentioned, some are purely recommendatory, but some bodies do have a more action-oriented nature. Table 4 shows that the concerns acted on by the special bodies are largely those mandated by the LGC.

TABLE 4. ASSESSING LOCAL BODY ACTIVITIES AND SANGGUNIANG BAYAN RESPONSE

LSBs	CONCERNS ACTED ON BY THE LSB	RESPONSE OF THE SANGGUNIANG BAYAN
LSchB	Determined annual budget and reviewed recommendations. Determined past annual budget for schools.	Recommendation complied with/ request granted
LHB	Determined past annual budget for health programs and projects. Project implementation	Recommendation complied with/ Approved
LPBAC	Handled bidding procedures	Accepted
LPOC	Update and assess peace and order situation. Tribal conflict settlement. Tanod/CVO seminar. Illegal gambling and drug monitoring. Established police blocks.	Recommendation complied with/ Approved
PLEB	Re-organizational meeting. Creation and strengthening of the council	Funds made available/ Supplies for the SB
LDC	Prioritized projects to be funded by the 20% social development fund.	Recommendation endorsed.

It can be gleaned that there is a positive relationship between the special bodies and their respective Sanggunian. All the recommendations of the local body were being approved by the Sangguniang Bayan. This shows that despite being recommendatory, local bodies do have a bearing on the policies in LGUs.

Furthermore, the LSB can be a venue for lobbying for people's interests while at the same time providing sound and relevant feedback that legislators and LGU officials can use for the community's general welfare. It is clearly at the level of the LSBs where government responsiveness and effectiveness with regard to local policy formulation can be maximized, through duly designated community representatives.

The survey took note of the Municipal Local Government Operations Officers' (MLGOO) assessment of the functionality of various Local Special Bodies. Results of the survey show a continuum of perception that ranges from a negative assessment of LSBs as poor/non-functioning, to fair, satisfactory, good, active, a recommendatory body, or to a body that is responsive to the needs of the local community.

What can be understood is that there is a wide range within which local bodies locate themselves. In the same manner that they can alienate themselves from their objectives and the community, they can also be a significant contributor to the improvement of the conditions in a society. Their location in this continuum depends mainly on whether or not the community can feel their presence as representatives or advocates of the interest of the community. Unfortunately, LSBs continue to be alien to the people in a significant number of municipalities. There is a weak link between the local bodies and the sectors they aim to represent. At the most, the LSB's role in empowerment and assistance to the Sangguniang Bayan is clearly reported for the education sector.

The following are some of the more pertinent points based on the summarized evaluation by MLGOOs of LSBs in their municipality:

- 1) The nature of participation such as completion and qualification of membership and degree of active participation of members in the body, and coordination among members.
- 2) NGOs have a weak presence in the special bodies.

3) The activities of the special bodies in terms of what they can do and what they actually do. There is the perception that LSBs are only recommendatory bodies that do not have enough impact on the community, are not very effective, or cannot implement their mandates.

4) Lack of funds to support activities and programs of the special bodies.

CONTINUING CONCERNS AND AREAS FOR IMPROVEMENT

Local Special Bodies can be seen as mechanisms to enhance the process of decentralization. They are supposed to ensure the responsiveness of LGUs to their constituents and serve as a way for the people to participate. These are the reasons why representation in LSBs includes various sectors, NGOs and other stakeholders inside and outside the government. LSBs are supposed to reflect democratic representation and government accountability.

With this in mind, it can be said that the potential for the various LSBs to be a venue for participation has yet to be maximized. LSBs are a way to open the door of decision-making to stakeholders who otherwise do not have a more direct way of having their say. It allows sectors at the periphery to influence policy-making, to determine the direction and the kinds of programs of LGUs, and to monitor and check various activities and basic services that are delivered by the LGU. In this manner, efficiency, effectiveness and accountability are addressed. LSBs have every opportunity to represent the citizens affected by LGU policies and to ensure that the interests of the people are protected. However, this does not seem to be the case in the region. Basic representation is not even followed, thus pertinent actions must be done. A way to do this is through emphasizing the value of LSBs and inculcating the worth of their actions and decisions.

LSBs do have an impact on the community, if their functions are performed properly. Furthermore, while the law says that the members of these bodies are not given financial remuneration, it does not inhibit them from developing alternative strategies for motivating the participation of members. On the part of non-government members, various LGUs can at least ensure that they receive their due allowances in relation to their work as members of the LSB.

In addition, based on earlier discussions and the comments above, it can be said that there are other areas yet to be explored. Since LSBs have been doing their main tasks with a positive response from their respective Sanggunian, it is a logical possibility that local bodies can further articulate and advocate their interests. All the respondents noted that LSB requests and recommendations were well taken by the Sanggunian. Funds were released and projects were implemented. If we extrapolate from this, there is a good chance that other such actions or requests from the LSBs could be approved. Further, it is a very good opportunity for these bodies to pursue the interests of the people and to ensure the responsiveness of various LGU endeavors. Though LSBs are largely recommendatory, their option for greater contribution to responsive community development is not yet maximized.

Hopefully, the full potentials of LSBs can be realized, and other tenets of decentralization along with its benefits can be fulfilled. Despite the institutionalization of the local bodies in various LGUs, there is still an apparent lack in some aspects.

The survey results indicate that LSBs can be seen as mechanisms to enhance the process of decentralization and ensure that the principle of local participation is adhered to by the local government units. Thus, despite the implementation of the LGC for the past decade, there is still the need to:

- 1) mobilize participation and action in various LSBs;
- 2) increase the level of awareness about its role in local communities along with its potentials to contribute to LGU responsiveness, efficiency, and effectiveness, and
- 3) maximize these mechanisms as a venue for participation and involvement of community stakeholders.

STATUS OF INDIGENOUS SOCIO-POLITICAL STRUCTURES WITH FORMAL STRUCTURES OF GOVERNANCE

Given the weak representation and participation of local indigenous communities in the formal structures of governance, it is instructive to provide a more detailed assessment of other modalities by which devolution and decentralization may

have created some impacts. One such modality is in the day-to-day exchanges between the formal and informal structures of governance.

All case study sites have persisting customary structures for leadership, local participation and decision-making or conflict resolution for both civil and criminal infractions. However, these structures are in varying degrees of persistence, because of the influence of external or introduced elements in the social exchanges.

INDIGENOUS INSTITUTIONS FOR LOCAL GOVERNANCE PERSIST WHERE THE INFLUENCE OF MAJOR MODERNIZING FACTORS IS CORRESPONDINGLY LESS. SUCH FACTORS INCLUDE CAPITALIST INVESTMENTS AS IN CORPORATE MINING, LOGGING, NEW FARM PRODUCTION SYSTEMS, AND THE ATTENDANT GROWTH OF THE URBAN SECTOR SERVICED BY THE MAINSTREAM CHURCH, SCHOOLS, TRADING AND TRANSPORTATION FACILITIES.

Following the continuum from traditional subsistence production to production for the capitalist market, the customary system in the Cordillera case study areas is strongest in Sadanga, and decreases in influence as we move from Gueday to Bakun and Mankayan, which is the most urbanized town of the four. In Mindanao, Lake Sebu and T'boli Town still maintain their indigenous institutions, in contrast with Sirib in Davao City where the Bagobo population has long been acculturated. Yet, the inroads of the larger market and political forces have caused rapid changes in the status of indigenous decision-making structures and the role of traditional leaders.

This gradation is reflected in the status of the customary system in relation to its exchanges with the formal structures of governance (see Integrated Summary of Case Studies). Accordingly, the LGC provision to involve indigenous leaders in governance (as in the *Lupon Tagapamayapa*) tends to further undermine or weaken traditional structures where they are already being eroded by the larger and stronger forces of the market and the state. Thus, Sadanga's traditional leaders are still able to wield significant influence over a larger domain of conflict resolution concerns on a routine basis. Meanwhile, the influence of traditional leaders in Bakun and Mankayan are increasingly being confined to critical community-wide concerns, when the situation warrants their leadership, or to ceremonial functions (i.e., the performance of rituals) related to the life cycle.

We find similar trends in the Mindanao study areas. Traditional leaders have decreasing influence over community-wide economic and political decision-making

based on the customary system, where the colonial and missionary influence has been strongest (Sirib and Lake Sebu). This is especially so where the link to native land is increasingly being eroded because of new concepts or arrangements in land ownership and access.

The situational factors that influence the exchanges between the customary system and the formal structures are not always associated with how well the indigenous people have been acculturated into the mainstream of state-dominated life. In the case of Sadanga and Bakun, traditional leaders have consistently asserted the primacy of the customary institutions when leveraging for political power over land resources.

Bakun's example has traditional leaders leading the quest for recognition of ancestral domain rights, which resulted in the first awarded Certificate of Ancestral Domain Title in 2002. Before this achievement, traditional leaders led and actively supported the reconfiguration of what was previously an ordinary farmers' organization, into an organization that aggressively initiated collaboration with external organizations, including foreign donors. The organization, Bakun Indigenous Tribal Organization (BITO), also initiated project-based social development while resisting the entry of a foreign mining company. Based on these elements, the organization has enjoyed increasing popular support, thus serving to influence Local Government Unit initiatives.

Betwagan's experience, meanwhile, demonstrates the persistence of traditional institutions in the day-to-day affairs of the local population. This is seen in the routine of mutual cooperation and reciprocity in the agricultural cycle, in the observance of practices that ensure harmonious relations throughout the life cycle, and in the respect for property rights when natural resources are accessed and used. Most importantly, the traditional institutions have safeguarded the community from threats of corporate mining and militarization, which elsewhere in the Cordillera had victimized the local population.

POSITIVE VALUES IN THE INDIGENOUS KNOWLEDGE SYSTEM (IKS) - BELIEFS, PRACTICES, TECHNOLOGY, MATERIALS AND RESOURCES - PROMOTE SELF-GOVERNANCE. THESE CAN BE HARNESSSED TO PROMOTE COLLABORATION THAT IS MUTUALLY BENEFICIAL TO THE IPs AND THE FORMAL STRUCTURES OF GOVERNANCE.

Such positive values are seen in the following concerns (especially for Gueday

and Betwagan, also being strengthened now in Bakun):

- Mechanisms for conflict resolution that increasingly share the decision-making and adjudication functions with traditional structures
- Sustained management of natural resources using the customary system
- Maintained arrangements in resource access, use and control, as seen in regulations for sound use, prohibitions and practices related to resource sharing.

The T'boli of Lake Sebu maintain their IKS related to the protection of freshwater resources. However, the conflicts with LGU laws are becoming sharper as an increasing number of fish pens are allowed in the sacred waters.

These positive values have successfully been used to increase the influence of indigenous structures. These “social engineering” efforts are designed to strengthen the status of indigenous institutions by reconfiguring the IKS.

- Increased access to formally sourced resources:
 - Establishment or strengthening of livelihood sources of community groups
 - Maximization of benefits from external funding for projects (as the examples from BITO show, as well as in some externally funded projects in Betwagan and the Mindanao study areas
 - Having a Deputy Mayor among the Bagobos in Sirib, a position which is neither in the formal or indigenous structures of governance
- Increased political participation:
 - Representation in the formal structures of governance (through the Lupon and the LSB)
- Influencing the active critique of development policies and programs of the government and globalization, as in the case of Bakun and Betwagan against corporate mining and energy projects
- Strengthening and establishing alternative enhanced structures of governance that serve the interests of the indigenous peoples

TABLE 5a. INTEGRATED SUMMARY OF THE CASE STUDIES: BETWAGAN & GUEDAY

GOVERNANCE ASPECT		BETWAGAN	GUEDAY
1. Status of main traditional mechanism for decision-making & local participation		9 ator, all functional, pagta persists	7 day-ay all functional
2. Exchanges between customary and formal structures			
	Concerns		Decision-makers
a. Performance of rituals		Elders (traditional ceremonies to rentire life cycle sti II observed)	Elders (traditional ceremonies for entire life cycle sti II observed)
b. Formulation of local policy or local legislation		SB Barangay Council	SB Barangay Council
c. Resolution of conflicts		Elders (as themselves) and (as Lupon members) with Barangay officials	Elders (as themselves) and (as Lupon members) with Barangay officials
- Crime against property		Elders	Elders
- Crime against person		Between families	Both
- Divorce or adultery		Elders	Elders
- Regulation of agricultural fishing activities		Elders	Elders
- Land dispute within the family or among the family members		Lupon	Lupon
- Exploitation of natural resources		Barangay officials	Barangay officials
- Water and irrigation dispute		Elders	Elders
- Infrastructure projects within the village		Barangay officials; organized community groups	Barangay officials; organize community groups
- Implementation of government projects		Barangay officials	Barangay officials

GOVERNANCE ASPECT	BETWAGAN	GUEDAY
3. Resource access, use, control		
a. Ownership & access		
- Forest land	Communal	Either community or clan owned
- Swidden area	<i>Tayan</i> (clan ownership), land not tax-declared	
- Pasture or grazing land		Communal
- Irrigated rice land / Vegetable gardens	Private, individual through inheritance	Private, individual through inheritance
- Residential lots	Private, individual through inheritance; or <i>tayan</i>	
b. Regulations for :		
- Opening up and maintenance of agricultural areas	Community and elders	Community and elders
- Fishing in rivers and streams		Barangay officials / elders
- Hunting of game animals		Community, Barangay officials / elders
- Gathering of forest products		Barangay officials / elders
- Mining	Not applicable	Not applicable
- Water resource	Community & elders	Community & elders
4. Practices		
a. Prohibition/rest	<i>Tengaw</i> - no work, no travel	<i>Ubbaya, ngilin</i>
b. Generalized reciprocity		<i>begnas</i>
c. Redistributive resource access	<i>Nangimuya</i> for priority water access	<i>banbanes</i> (water scheduling / rationing)
d. Cooperative labor	Driving the rats out, Cleaning of pathways, Irrigation maintenance	Road maintenance, Cleaning of pathways, Irrigation maintenance Sugar cane processing

TABLE 5b. INTEGRATED SUMMARY OF THE CASE STUDIES: BAKUN & MANKAYAN

GOVERNANCE ASPECT	BAKUN	MANKAYAN
1. Status of main traditional mechanism for decision-making & local participation	<i>Tongtong</i> widely observed	<i>Tongtong</i> or <i>sarita</i> still observed
2. Exchanges between customary and formal structures		
Concerns	Decision-makers	
a. Performance of rituals	Elders (only selected traditional ceremonies continue to be observed)	Elders (traditional ceremonies declining)
b. Formulation of local policy or local legislation	SB Barangay Council	SB Barangay Council
c. Resolution of conflicts	Elders (as themselves) and (as Lupon members) with Barangay officials	SB, Barangay Council, Elders, Lupon
- Crime against property	Lupon	Court, Lupon, B. Council
- Crime against person	Lupon	Court, Lupon, B. Council
- Divorce or adultery	Court	Court, Lupon, B. Council
- Regulation of agricultural fishing activities	Not applicable	Not applicable
- Land dispute within the family or among the family members	Court	Court, Lupon, B. Council
- Exploitation of natural resources		
- Water and irrigation dispute	SB, Barangay officials, organized community groups	Barangay officials
- Infrastructure projects within the village		
- Implementation of government projects		

GOVERNANCE ASPECT	BAKUN	MANKAYAN
3. Resource access, use, control		
a. Ownership & access		
- Forest land	Communal; <i>muyong</i>	State & private (corporate)
- Swidden area	Private	Private
- Pasture or grazing land		
- Irrigated rice land / Vegetable gardens (for Bakun & Mankayan)	Private, individual through inheritance	Private, individual through inheritance
- Residential lots		
b. Regulations for :		
- Opening up and maintenance of agricultural areas	Private households	Private households
- Fishing in rivers and streams	Community,	LGU officials
- Hunting of game animals	Barangay officials,	Not applicable
- Gathering of forest products	Elders	CENRO
- Mining		National government
- Water resource	Community & elders, LGU officials	LGU officials
4. Practices		
a. Prohibition/rest		<i>ngilin</i>
b. Generalized reciprocity	<i>pakde</i>	<i>canao</i>
c. Redistributive resource access		
d. Cooperative labor		Mutual aid (rice or equivalent); Water system maintenance

TABLE 5c. INTEGRATED SUMMARY OF THE CASE STUDIES: MINDANAO*

GOVERNANCE ASPECT	LAKE SEBU	T'BOLI
1. Status of main traditional mechanism for decision-making & local participation	The traditional structure co-exists with the state-introduced structures.	1 Gono Skokum (Tribal House) beside the Municipal Hall
2. Exchanges between customary and formal structures		
Concerns	Decision-makers	
a. Performance of rituals	Elders	Datu or elders in the community
b. Formulation of local policy or local legislation	SB	Sangguniang Bayan, Barangay Council
c. Resolution of conflicts	Elders (case endorsed to barangay officials if it is not settled, it reaches the MTC, NCIP field and provincial offices if the case remains unresolved.)	At the barangay level, the datu plays a significant role in conflict resolution. If unresolved, it is then endorsed to the Municipal Tribal Council.
- Crime against property		T'boli vs. T'boli: Datu
- Crime against person		T'boli vs. Christian: SB & Barangay Council
- Divorce or adultery		
- Regulation of agricultural fishing activities	If customary laws will be followed, no fish pens will be allowed in the lake.	Datu or elders of the community
- Land dispute within the family or among the family members	Elders (case endorsed to barangay officials if it is not settled, it reaches the MTC, NCIP field and provincial offices if the case remains unresolved.)	T'boli vs. T'boli: Datu T'boli vs. Christian: SB & Barangay Council
- Exploitation of natural resources	If customary laws will be followed, no fish pens will be allowed in the lake.	SB, Barangay Council
- Water and irrigation dispute		
- Infrastructure projects within the village	Barangay Council	Barangay Council
- Implementation of government projects		

* For the Bagobo in Sirib, the traditional leaders no longer observe the indigenous methods of conflict resolution in as much as the entire community has already been well integrated in the formal structures of governance. Nonetheless, disputes among Guiangans as litigants are settled in the customary method. Wedding ceremonies also follow the Bagobo practice along with Christian rites

3. Resource access, use, control			
a. Ownership & access			
- Forest land	Forest lands are considered for communal access and use.		
- Swidden area			
- Pasture or grazing land			
- Irrigated rice land / Vegetable gardens	Bisaya, individual through inheritance		Not applicable
- Residential lots	Bisaya acquired it from the T'boli, T'boli inherited it from ancestors		Private property, acquired through inheritance
b. Regulations for :			
- Opening up and maintenance of agricultural areas	No data		Family activity
- Fishing in rivers and streams			Prohibited by municipal resolution but people continue to hunt wild game
- Hunting of game animals			Cut trees for building houses
- Gathering of forest products			Three mining companies operate in Kematu and Desawo
- Mining			A ritual is usually performed to the Fu EI before tapping a natural water source
- Water resource	Resolutions passed for the lake's protection and development		
4. Practices			
a. Prohibition/rest			
b. Generalized reciprocity			
c. Redistributive resource access			
d. Cooperative labor	Rehabilitation of Lake Lahit Helubong (annual celebration in Lake Sebu)		

ACCESS TO AND BENEFITS FROM COMMONS/NATURAL RESOURCE MANAGEMENT

What indigenous communities consider as common resources are, from the perspective of state law, resources that belong to the state, i.e., public lands which only the national government has the right to reclassify and allocate. As a result, there has been increasing tension on conflicting claims to the right to use, access and own such common resources. The Bakun case study demonstrates this tension.

THE IRA AND NATIONAL WEALTH

Presently, resource sharing under the LCG is provided in the form of Internal Revenue Allotment and as a share in the national wealth. The LGC provides that Local Government Units receive their share in nationally collected taxes to cover expenses for functions devolved at the lower levels. The share was set at 30 percent in 1992, 35 percent in 1993, and 40 percent in 1994 until the present. The nationally collected taxes are income taxes, estate and donor's tax, value-added tax, other percentage taxes, and taxes imposed by special laws such as customs duties, travel tax, and others.

The LGU share (of 40%) is distributed as follows: Provinces (23%), Cities (23%), Municipalities (34%) and Barangays (20%). The share for provinces, cities and municipalities is determined based on population (50%), land area (25%) and equal sharing (25%). For barangays, the share is P80,000 per barangay with 100 or more population, plus the computed equivalence of population (60%) and equal sharing (40%). Out of the LGU's share, 20 percent must be used for development projects (specifically not to include seminars and training).

The provision for a share in the IRA carries with it the responsibility of the LGU to cover the financial requirements beyond the IRA share. Related legislation which provides for additional LGU sources of revenue include the following:

- RA 7160 Sec. 290 which entitles LGUs to collect 40 percent of the Gross Collection of the national government from mining taxes, royalties, forestry and fishing charges from the share of government from co-production, joint venture or production-sharing, in the sharing of national wealth in their respective territorial jurisdiction

- RA 7916 (amended by RA 8748 or the Special Economic Zone of 1995) providing for a preferential income tax rate of 5% of the gross income of PEZA-registered enterprises, to be allocated to the national government, the local government unit affected by the creation of the Ecozone, and to the Special Fund of the LGU to be used in areas outside or contiguous to the Ecozone
- RA 7227 (Bases Conversion Law) specifying the allocation of the 5 percent Preferential Tax Rate between the national government and the municipality or city where the registered enterprise is located
- RA 7643 allocating 50 percent of the excess of the increase in collection of national taxes such as the 10 percent VAT and the 3 percent tax on the sale of goods and services

In contrast with the IRA, national wealth is defined by the LGC as covering minerals, forest resources, fishing resources (pelagic and marine), and water resources. Sec. 289 of the LGC gives to LGUs a share in national wealth located in their administrative jurisdiction, including sharing the same with the inhabitants by way of direct benefits. This share is computed as either 1 percent of the gross sales or receipts from the utilization and development of the national wealth within their respective areas, or 40 percent of gross collection in the preceding fiscal year from mining taxes, royalties, forestry and fishery charges derived by any government agency or government-owned or -controlled corporation (Sec. 291).

The allocation, meanwhile, is distributed among province (20%), component city/municipality (45%), and barangay (35%). Where the resource is located in two or more provinces, the sharing is based as well on population (75%) and land area (30%). For highly urbanized or independent city, the city gets 65 percent



and the barangay, 35 percent. Specifically for energy development projects, conditions are set in the law for the use of at least 80 percent of the proceeds to lower the cost of electricity in the LGU where the source of energy is located.

SOURCES OF TENSION

Vis-à-vis common resources, the conflicts between customary law and state law pertain to the issue of primacy, management responsibility, and benefit sharing. While custom law starts from the premise of prior, vested rights of indigenous peoples, the Philippine Constitution sets the supremacy of national law over all resources of the public domain. At the same time, the Indigenous Peoples Rights Act (RA 8371, 1997) recognizes all ancestral domains as the private but community property of indigenous peoples who have claims on these.

Other state laws which refer to common lands that hold national wealth are the Forestry Reform Code (PD 705), NIPAS Act (RA 7586, 1992), EIS Law or PD 1586, Water Code of the Philippines, Small Scale Mining Act (RA 7076), Mining Act (RA 7942, 1995), and the Wildlife Act (2001). Other legislation that have related provisions affecting national wealth or common resources are: Comprehensive Agrarian Reform Law (RA 6647), Agriculture and Fisheries Modernization Act (1997). Sectoral programs and policies also bear on common resources, such as the Integrated Social Forestry (LOI 1260, 1982), Community Based Forest Management Strategy (EO No. 263, 1996).

These state policies, in themselves, have often been operationalized amidst confusion and competition among the government agencies themselves, as well as between their partner communities and other stakeholders. The crucial issues in relation to the varying degrees of ownership (and control) and use are not only concerned with benefit sharing but with management as well.

The Local Government Code assures lower levels of governance a greater role in the utilization and enjoyment of benefits from natural resources found within their administrative bounds. In their desire for a bigger share of the IRA, some LGUs aggressively confirm, even expand, their administrative boundaries causing the intensification of boundary conflicts. This was an aggravating development in villages that have long defended their territorial boundaries against encroachment by outsider groups. To make matters worse, critical watersheds, forest resources, mineral lands and river systems are increasingly being targeted by

competing forces for either industrial expansion or protection. These are all being done in the name of development, now under the wings of privatization as well as of the IPRA.

Yet, the process of resolving how the benefits from these common resources can be equitably shared, without neglecting inter-generational needs and sustainability, remains too emotive, tedious and time-consuming. From the perspective of state law, the confused implementation of various land-related policies and programs by many agency actors often leads to weak management. Thus, in the face of imperialist globalization, sustainable development and protection become mere catchwords of state-sponsored development.

THE EXPERIENCE OF BAKUN

Bakun is the site of hydro projects for almost ten years now. In this municipality, there are two types of existing hydro projects. One is the series of mini-hydros with three power plants namely, LFS, Lower Labay and Lon-oy Plants, and the other hydro project is called the Bakun A/C Hydro. In the local operation and transmission of power, the three interconnected mini-hydros are called the Bakun Grid. This grid generates 11,000 kilowatts (kw) of electricity. The Bakun Grid is one of the three grids in the power operations of the Hydro-Electric Corporation in the whole province of Benguet. The Bakun Grid contributes about 33% of the 35,470 kw total capacity of all the mini-hydros of HEDCOR in the province.

The hydro projects in Bakun are being operated by HEDCOR, one of the corporations under the Aboitiz Group of Companies. HEDCOR is the country's largest mini-hydro group that started its operations in 1985. The Bakun A/C hydro project is a joint venture of the Aboitiz Equity Ventures and the multinational corporation Pacific Hydro Ltd. These hydro projects were conceived by the National Power Corporation (NAPOCOR) based on a study of the hydrological capacity of the Bakun rivers. This study was based on hydrological data from the neighboring watershed of existing hydro projects (Binga and Ambuclao Dams) that are within the Cordillera Central Mountain Range.

a. Benefits Stipulated in the Bakun LGU MOA

Assignment of responsibilities and provision of benefits arising from the operations of hydro projects in Bakun were embodied in two separate memoranda of

agreement (MOA) between the mother company of HEDCOR and the Bakun LGU. In the MOA for the mini-hydro project, the privilege tax as a provision in the Mini-Hydro Act was cited. In the MOA on the Bakun A/C Hydro, the Build-Operate-Transfer (BOT) law was applied and the specific provision cited the application of the power purchase agreement relevant to the host LGU.

The main benefits of the Bakun LGU as stipulated in the MOA on the mini-hydro are the following:

- 2 percent share of Northern Mini-hydro net sale of power generated by the hydro project to the Municipality of Bakun; and 1 percent share to the barangay where the hydro plants are located;
- assistance for energization in all the barangays of the Municipality;
- reasonable assistance for maintenance of roads leading to the power plants;
- technical support for community development and livelihood; and
- cooperation and assistance for the protection of watershed.

The main benefits stipulated in the MOA of the Bakun A/C Hydro are the following:

- 1% of the National Wealth tax from the gross revenue of the power plant for the utilization of water to be paid directly to the LGU according to the following sharing scheme:

Province	-	20%
Municipality	-	45%
Barangay	-	35%

- electrification fund equivalent to PhP 0.0025 per kwh of the total electricity sales;

- development and livelihood fund equivalent to PhP 0.0025 per kwh of the total electricity sales in accordance to the following sharing scheme:

Province	-	25%
Municipality	-	25%
Barangay	-	20%
Region	-	30%

- Environmental Enhancement Fund equivalent to P0.0050 per khw of the total electricity sales of the power station;

- Advance Financial Assistance of P16M in the pre-operation phase of the project (deductible from future payments) for the electrification of three barangays, access roads, development and livelihood projects;

- Electrification of the four other barangays during the operational period;

- Donations from the project proponent of several equipments and funds for community cooperatives and other projects.

b. Actual Benefits Derived from the Operations of Bakun Hydro Projects

The Bakun A/C Hydro started to operate commercially in February 2001. The benefits from its operations (as stipulated in the 1997 MOA) have yet to be realized. So far, the HEDCOR reported that it has donated a four-wheel-drive vehicle and a bulldozer for the use of the LGU. It has also built new roads and upgraded existing roads. The HEDCOR also donated P60,000 for the technical training of four Bakun farmers and P200,000 for information dissemination on the project (1 US Dollar ~ 55 Philippine Pesos).

Given this information, how has the municipality benefited, and what are the issues in relation to benefit sharing from common resources that we can identify?

i. Share from the National Wealth Tax

The Municipality of Bakun has been receiving its share from the national wealth tax since 1992, a year after the HEDCOR started to operate the three mini-hydros. For the year 2000, covering the period from November 1999 to October

2000, the Municipality of Bakun received its share of the 2 percent tax which is equivalent to P2.9 million (P2,913,433.58). For the first three quarters of the following year, the 2 percent share of the Municipality amounted to P1.2M (P1,243,384,382.17) while the barangay's 1 percent share amounted to P471,974.75.

The monthly tax payments for the year 2001 are detailed in Table 6:

TABLE 6. YEAR 2001 - BAKUN TREASURY OFFICE

MONTH	BUSINESS TAX QUARTERLY	2% MUNICIPAL SHARE	1% BARANGAY SHARE
JANUARY	1st quarter: PhP 109,265.18	PhP 140,382.35	PhP 42,511.55
FEBRUARY		PhP 86,028.50	PhP 27,566.57
MARCH		PhP 36,028.50	PhP 18,377.50
APRIL	2nd quarter: PhP 109,265.18	PhP 112,759.83	PhP 40,244.39
MAY		PhP 281,508.74	PhP 85,318.07
JUNE		PhP 399,778.59	PhP 112,901.27
JULY	3rd quarter: PhP 109,265.18	PhP 2,464.95	PhP 43,320.19
AUGUST		PhP 184,430.63	PhP 10,173.25

Yet, the share of the LGUs from the national wealth is a meager amount. HEDCOR generated P160M in annual income for the year 2000. Based on this amount, the total tax share of the LGU and all the benefits, including the share of the region and the province, would only be between P5M to P10M annually. The law requires 2 percent and 1 percent tax share of LGUs, but the "equitable" distribution of benefits according to this sharing scheme is lopsided. The income sharing between host communities and the power developers heavily favors the power developers.

ii. Non-release or Delayed Release of Tax Share Due to Boundary Disputes

Despite such payments, the LGU of Bakun has not received its full share from the national wealth tax due to the boundary dispute between the LGU of Alilem,

Ilocos Sur (the location of the Power Plant) and the LGU of Bakun. (It is not known if the LGU received the P16M advance assistance during the pre-operational phase.)

Meanwhile, the 1 percent barangay tax share from the mini-hydros has not been released because of a boundary conflict between Barangay Poblacion, Sinacbat and part of Ampusongan.

In the Bakun A/C Hydro, there is also a conflict between the Municipality of Bakun, Benguet and the Municipality of Alilem, Ilocos Sur in the sharing of the 2 percent tax payment. It is important to note that the tax share from the Bakun A/C Hydro is relatively a big amount considering that the power plant has an installed capacity of 70 megawatts (MW). It is therefore expected that the share from power sales of this project is much bigger than the share from the three mini hydros. Though the HEDCOR classifies this as a small hydro, the Department of Energy classifies it as a big hydro project because it generates more than 50 MW.

iii. Non-disclosure of Sales Accounts of HEDCOR

It is the concern of the LGU to determine the basis of the 2 percent municipal tax share and the 1 percent share of the host barangays. However, the officials of the LGUs claim that the power developers do not provide them with financial reports. The LGUs therefore do not know the basis or the derivative of the percentage share from the power sales.

iv. Slow and Limited Electrification of Host Communities

In compliance with the Barangay Electrification Benefit as stipulated in the MOA, the HEDCOR and its power distributor, the Benguet Electric Cooperative, reported that it was able to energize 672 households in Barangay Poblacion and in Ampusongan, Bakun in 1994. These two barangays have a total population of 3,634.

To date, only three out of the seven barangays in the municipality have been supplied with electricity. The three energized barangays are not even completely energized; only one or two sitios within a barangay are supplied with electricity.

Expansion of the electrification program and the total electrification of the municipality, which is the responsibility of the developer of the mini-hydros, was assigned to HEDCOR under the MOA of the newly developed Bakun A/C Hydro.

v. Socio-Economic Assistance and Community Benefits

The HEDCOR reported a cumulative donation in the amount of P35,000 for the period from March 1997 to February 2001. These donations were given for community and school projects. The following table shows the specific cost of items and beneficiaries:

TABLE 7. HEDCOR DONATION / ASSISTANCE FOR BAKUN

DONATION / ASSISTANCE	BENEFICIARY	COST	DATE
5 cans of paint	Ampusongan Elementary School, Bakun Municipality	PhP 2,00.00	February 2001
5 rolls cyclone wire	Bakun National High School, Bakun Municipality	PhP 2,500.00	February 2001
75 bags cement for construction	Users of concrete steps from Poblacion to Lon-oy dam, Bakun Municipality	PhP 15,000.00	April 2001
11 sets of books entitled Aklat Adarna through the Social Welfare and Development Unit	Bakun Municipality	PhP 6,000.00	March 2000
16 mm and 12 mm rebars for construction	Users of Palidan, Dalipey Barangay Hall, Bakun Municipality	PhP 10,000.00	March 1997

vi. Other Issues and Concerns

Most of the above-cited issues are the unfulfilled commitments of the power developers and distributors as stipulated in the MOA. There also are other benefits for LGUs that are required by the Local Government Code and the Department of Energy Law. However, these other benefits have not been included in the MOAs and are not in actual application. As required by law, these direct benefits are the following:

- Reduction in the Cost of Electricity

At least 80 percent of the proceeds derived from the development and utilization of hydropower shall be applied solely to lower the cost of electricity in the LGU where such source of energy is located (Sec. 294 of the LGC).

- Prioritization of Load Dispatch

In times of energy shortage, the energy-generating facility shall prioritize up to 25 percent of its contracted or available capacity, which shall be delivered by the appropriate electric utility to the resettlement site and people affected and thereafter to the host LGU or host region.

Another issue is the diversion tunnel to limit household access to water for traditional uses. The proponents of Bakun A/C hydro have proposed a tunnel extension for the hydro project. However, this proposal was successfully opposed by the communities of Sinacbat, Bagu and Dalipey. According to the affected communities, the proposed tunnel extension would divert water from their irrigation and household water supply.

In conclusion, it has to be stressed that the energy program of the government was formulated within the framework of the Social Reform Agenda (SRA). This agenda focuses on the empowerment of the countryside. The SRA seeks to attain a balanced economic growth coupled with a dimension of social equity. It underscores two aspects of development, namely, poverty alleviation and countryside development. However, a closer look into the operation of government policies in Bakun Municipality reveals that the attainment of balanced economic growth is still far behind. This example of a development project in a rural area, as an impetus for development under the Local Government Code, demonstrates that devolution still leaves much to be desired as far as the indigenous communities are concerned.



IV. THE NEED FOR BUILDING GOOD GOVERNANCE: ISSUES, GAPS AND CHALLENGES AHEAD

Good governance is the current convergence agenda of government and civil society sectors seeking to pursue the road to real local development. In the Philippines, the Local Government Code remains as the major policy framework to make this happen.

An assessment of gains during the last 11 years shows that the LGC has opened up numerous opportunities for self-directed and self-managed development in many towns and urban centers. Chief executives and other local officials now, more than at any other point in time in the last sixty years, enjoy the largest measure of administrative and political autonomy, along with regulatory power over economic and other developmental directions.

There have been gains in the last decade in improving governance, as recognized in the formation of alliances of LGU officials at each administrative level – namely, the League of Governors, League of Mayors, League of Vice-Mayors, and Association of Barangay Captains (Brillantes 1997). Such for-

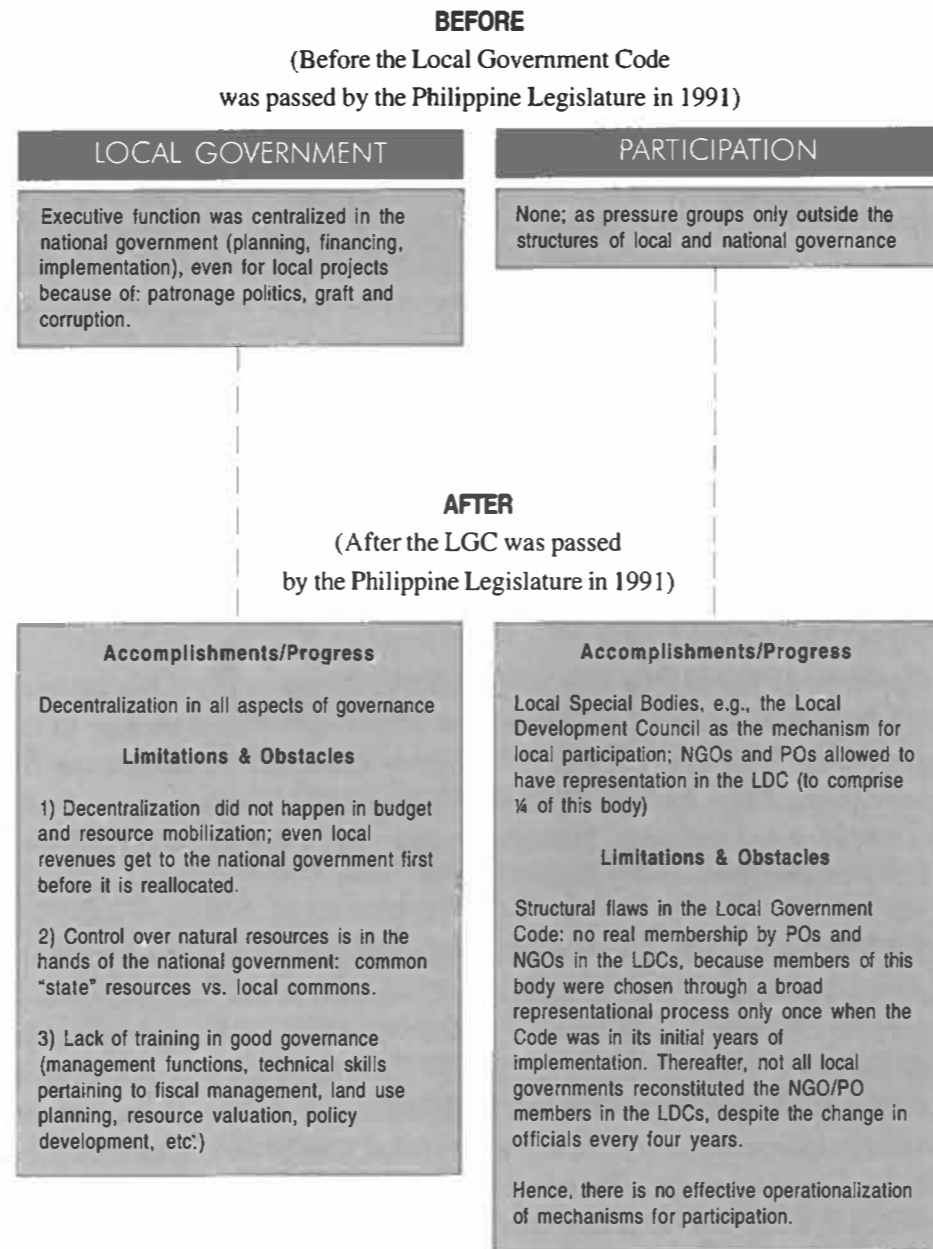
mations serve as a venue for achieving a common agenda and encouraging mutual support among members in relation to national policy guidelines and programs, such as, for instance, lobbying for increased share in the Internal Revenue Allotment, for reform of nonresponsive auditing rules and policies, and decentralizing the focus of Build-Operate-Transfer in Technical Assistance programs (ARD 1997). Institutional constraints are the objects of the LGU's quest for reform in the policy framework. Such constraints include the following: non-responsive auditing rules, lack of participation of LGUs in nationally designed and managed programs of line agencies (particularly for the environment, agriculture and the Social Reform Agenda), the small share from IRA, among others (ARD 1997).

Meanwhile, civil society participation in governance increased as a result of the LGC. As many as 16,000 nongovernmental organizations throughout the country were accredited for membership into LSBs within the first five years of the code's implementation (Brillantes 1997). Thereafter, this number reached a plateau because, as observed, many LSBs have not been functional or meeting regularly.

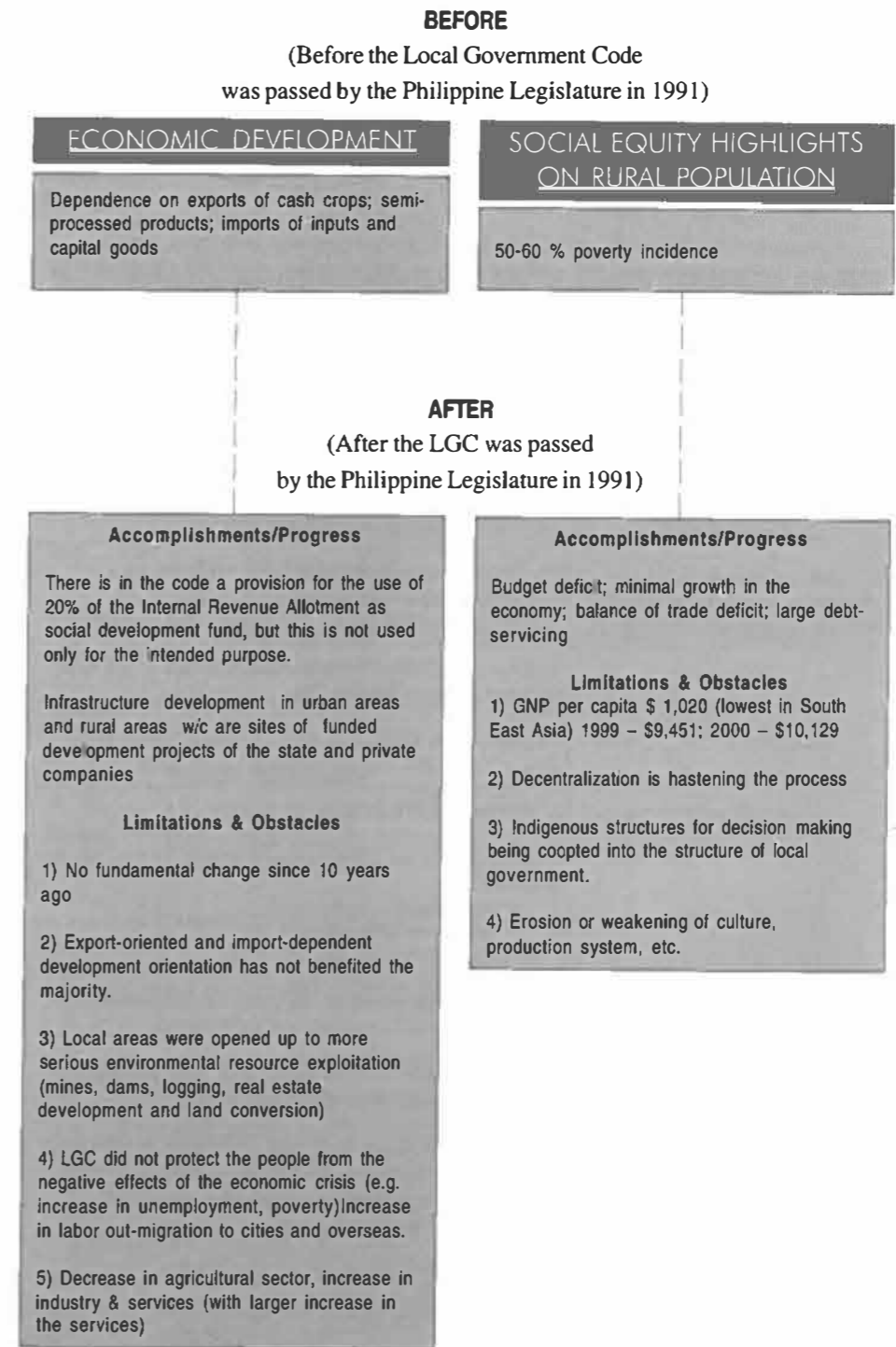
Moreover, the shared view from the perspective of civil society is that the spirit of participation in the LGC has not been effectively realized because of the government's failure to convene or make truly functional the major venue for participation, that is, the LSBs (Songco 1997). Beyond charges and countercharges of suspicion and arrogance, there are structural flaws in the Code, which constrain sustained civil society participation.

In a workshop conducted to examine the status of local participation particularly in the Local Development Council in the Cordillera, an assessment of the pre- and post-1991 situation offers an insightful contrast. Among the cited reasons for the inability to realize genuine local participation is the failure in decentralization itself, particularly in terms of budget and resource mobilization. Even local revenues go to the national government first before it is reallocated. Also cited is the fact that control over natural resources is still in the hands of the national government, i.e., the issue of common "state" resources vs. local commons. Another is the low level of capacity and capability of both civil society and government in good governance (e.g., management functions, technical skills pertaining to fiscal management, land use planning, resource valuation, policy development, etc.) (CDPC 2001).

SUMMARY OF THE PHILIPPINE EXPERIENCE IN POLITICAL DECENTRALIZATION*



* Source: CDP Inc., November 2001



Given these assessment highlights at the national level, it is important to reiterate the accomplishments in improving local governance. It is also important to enumerate the attendant issues and problems related to the pursuit of decentralization among indigenous peoples in whose lives the LGC seems to have made even less dent when compared with the rest of the countryside (Table 8).

TABLE 8. ACCOMPLISHMENTS, ISSUES AND PROBLEMS IN LOCAL PARTICIPATION

ACCOMPLISHMENTS	ISSUES AND PROBLEMS
	a. Representation/membership in LSBs
a. Initial implementation of the LGC widened the base of participation through the LSBs.	Weak representation/membership by the civil society sector in LSBs because of a low level of awareness on the following: <ul style="list-style-type: none"> • potentials of the LSBs • what participation in the LSBs entail • the process of recruitment of members
b. There has emerged a greater demand for improving the provision of basic services and infrastructure.	The Chief Executive of the LGU has a strong influence on who to designate as representatives. Constituents and stakeholders perceive this as a constraint to full participation.
	Some of the mandated agencies/offices/ sectors do not have representative/s in several LSBs.
	There are other NGOs, POs, sectors (similarly important or large enough) that are not represented in the LSBs.
	b. Functionality of the LSBs
	Chairmanship by the Chief Executive in many of the LSBs is a constraint to: <ul style="list-style-type: none"> • convening regular meetings • inputs from other members • balanced and fair decision-making
	NGO/PO representatives do not maximize their membership in the LSBs
	LGUs do not have the funds and logistics to support the activities and programs of the special bodies
	State-introduced structures in local governance, in subsuming the indigenous institutions, weaken the influence of the latter.

A. LOCAL PARTICIPATION IN GOVERNANCE

The interagency workshops at the regional and national level proposed several strategies and activities to improve membership in the LSBs. These include the following:

1) To improve the recruitment and selection process of becoming members in the LSBs:

i. LGUs to conduct massive advocacy activities/information drive encouraging NGOs/POs to organize themselves and participate in local governance

- LGUs to convene all NGOs/POs within their areas
- Notify NGOs to signify their interest to become members/representatives in LSBs
- Encourage NGOs to have their organization accredited
- Authorize local sanggunian to formulate simple requirements for accreditation
- Conduct massive advocacy activities and information drive encouraging NGOs/POs to organize themselves and participate in local governance
- Consider functional NGOs as well as those representing a big bulk of the community as representatives to LSBs.

ii. Ensure representation of all major sectors in the area in the LSB.

- Periodically survey-document NGOs and their particular programs/focus, particularly for participation in LSBs
- LGUs to designate permanent employees as NGO/PO affairs officers who shall ensure the LGU's initiative in increasing local participation in the LSBs.

iii. Provide appropriate logistical support to local participation in the LSBs

- LGU to include in its budgetary requirements a certain percentage for operational expenses of LSB members from the NGO/PO sector.

• A way to encourage participation/attendance in meetings is to provide benefits to members such as trainings/logistical support.

2) **Address** the constraints to LSB functionality because of the role of the **Chief Executive**, to craft a policy that will include the following provisions:

i. In cases where an LSB has no vice-chairman, one of the members should be designated as vice-chairman to automatically preside in the absence of the mayor/PO.

ii. Assign a stronger mandate to members of the **LDC**, and for the **Chief Executive** to serve in an advisory capacity only.

3) **Encourage** NGO representatives to have their own agenda to present to the **LSBs**.

4) **MOID** to conduct further studies on the participation of traditional leaders in **LGUs**.

5) **MOID** to explore the possibility of strengthening the **Council of Elders** to help in advocacy work.

6) **LGUs** to provide per diems to **NGO/PO** members of **LSBs**.

P. ACCESS TO BASIC SERVICES AND MEETING DEVELOPMENT NEEDS

As the main policy framework to guide countryside development, the **LGC** is expected to improve the provision of basic social services and harness the resource potentials of local areas for their self-managed development. The accomplishments and problems in relation to this are summarized in Table 9.

In response to these issues and problems, the case studies demonstrated that **improve** people's organizations and socio-political institutions could be effective mechanisms for making demands related to social services and development projects. To reiterate, demands can be made along the following lines:

TABLE 9. ACCOMPLISHMENTS, ISSUES AND PROBLEMS IN SOCIAL SERVICES AND DEVELOPMENT

ACCOMPLISHMENTS	ISSUES AND PROBLEMS
LGU officials have the chance to pay greater attention to providing people with better access to social services and infrastructure by ensuring the honoraria or salaries of personnel, services particularly for health, initiating livelihood programs, setting up small-scale infrastructure projects.	
Increased efforts in all modes of resource mobilization and innovative use of corporate powers by LGUs, albeit even in projects that created social conflicts	Similarly burdened LGUs with the problem of fund sourcing since the IRA is very small, insufficient to create any material impact on the development needs of IPs.
Surfaced the people's demand for increased access to quality social services	Carried out without veering away from a development direction based on what the global economy requires, to the neglect of what the local communities need, in the form even of their proximate development objectives, such as strengthening of community solidarity, increased productivity toward food security, increased income, sustainable production systems
	Such a development orientation creates demands that have further transformed the local economy to produce for and buy from the more powerful forces of the external market and political centers, thus keeping many of IP communities perennially marginalized.

1) Increase access to formally-sourced resources

- Establishment or strengthening of livelihood sources of community groups.
- Maximization of benefits from external funding for projects (as the examples of **BITO** show, as well as in some externally funded projects in **Betwagan** and the **Mindanao** study areas).
- Having a Deputy Mayor among the **Bagobos** (in **Sirib**), a position neither in the formal non-indigenous structures of governance.

2) Influence the active critique of development policies and programs of the government and globalization (e.g. in the case of **Bakun** and **Betwagan** against corporate mining and energy projects)

- 3) Strengthen or establish alternative or enhanced structures of governance that serve the interests of the indigenous peoples

C. BENEFIT SHARING AND OTHER SOURCES OF TAX SHARE

In examining community benefits from the IRA and proceeds from national wealth, the status of the indigenous structures relative to formal structures of governance is the most contentious, because of the pervasive limitations set by the national state's policy framework. In fact, it is in relation to financial and fiscal autonomy, as well in the development orientation of national, externally-funded programs, that the tension between the two systems of governance is felt. (Table 10).

TABLE 10. POLICY GAPS AND ISSUES ON THE IRA AND BENEFITS FROM NATIONAL WEALTH

ASPECTS	IRA SHARE	ISSUES	NATIONAL WEALTH PROCEEDS	ISSUES
Representation	Set by the LGC	Entrenched graft-ridden politics	Set by the LGC	Entrenched graft-ridden politics
Decision-making	Set by the LGC	Weak / No LDC	Set by the LGC	Imperialist globalization
Use of the resource	LGU, based on LDC approved plan	Inappropriate development plan	LGU, based on LDC approved plan; individual beneficiaries	Weakening IP institutions
Valuation	Set by the LGC	Weak / No technical capability	Private corporation & national government, rarely with LGU	Weak / Lacking technical capability
Benefit sharing	Set by the LGC and LGU	Benefit only to local elite	Set by LGC and LGU	Environment costing incorrectly derived

Among the attendant issues and problems are the following:

- 1) The basis for the computation of LGU shares from both the IRA and national wealth requires reexamination. Since IP areas are often large areas with low densities, the share of provinces, towns and barangays with IP population, unless modified, will always be insignificant.

- 2) For nationally-designed and negotiated development projects and investments, the LGU and the IP structures share the heavier burden in terms of the following:
 - Ensuring the reach and spread of benefits of socioeconomic benefits
 - Taking action on unfulfilled commitments of holders of development projects
 - Ensuring the interests of IPs in the long run, since compensatory schemes in development projects ignore previous and future local investments
 - Resolution of conflicts created by introduced projects

- 3) Requirements of the state-introduced structures create a burden on the customary system (need for documentation, written law, etc.)

- 4) The status of customary law vis-à-vis national law is unequal

- 5) Modernizing influences have weakened the property relations which are the basis of the customary system (resource access, use and control).

The grey areas in local governance (in terms of how to maximize the resource potentials for local development) can be perceived as areas for more critical collaboration between indigenous institutions and formal structures. Complementation between these two systems can be actively sought if policy reform is pursued to increase access to and share in the benefits from the commons.

D. EXCHANGES BETWEEN INDIGENOUS AND FORMAL STRUCTURES OF GOVERNANCE

To the extent that decentralization does not formally halt the persistence of the customary system, communities continue to benefit from the current situation where indigenous institutions define resource access, use, and control arrangements. Despite the conflicting property rights regime of custom law and state law, there are elements in indigenous institutions that are crucial for local governance to succeed. Key elements are the following:

- 1) The capacity for sustained management of natural resources according to the customary system: maintained arrangements in

resource access, use and control; regulations for sound use; prohibitions; practices related to resource sharing

2) The efficacy of conflict resolution mechanisms in decision-making and adjudication functions that increasingly involve or share with the formal structures

3) Positive values in the indigenous knowledge system (IKS), i.e., beliefs, practices, technology, materials and resources, that promote self-governance and which can be tapped to promote collaboration in governance.

Despite the fundamental conflicts between custom law and indigenous institutions, on one hand, and state law and formal structures of governance, on the other, how can LGUs in IP areas strengthen their governance system? Inter-agency workshops at the regional and national level yielded several strategies and activities to improve local governance toward ensuring the interest and well-being of IPs.

1) To improve local participation in governance - representation/ membership in LSBs, functionality of the LSBs :

a) LGUs to conduct massive advocacy activities/information drive encouraging NGOs/POs to organize themselves and participate in local governance

- Regularly convene all NGOs/POs within their areas.
- Notify NGOs/POs to signify their interest in becoming members/representatives to LSBs.
- Encourage NGOs/POs to have their organization accredited.
- Authorize the local sanggunian to formulate simple requirements for accreditation.
- Consider functional NGOs as well as those representing a big bulk of the community as representatives to LSBs.

b) Ensure the LSB representation of all major sectors in the area.

- Periodically survey and document NGOs/POs and their particular programs/focus, particularly for participation in LSBs.
- LGUs to designate permanent employees as NGO/PO affairs

officers who shall ensure the LGU's initiative in increasing local participation in the LSBs.

c) Provide appropriate logistical support to local participation in the LSBs.

- LGUs to include in their budgetary requirements a certain percentage for operational expenses of LSB members from the NGO/PO sector (in the form of per diem).
- Encourage participation/attendance to meetings by providing benefits to members (such as trainings/logistical support).

d) In cases where an LSB has no vice-chairman, designate one of the members as vice-chairman to automatically preside in the absence of the mayor/PO.

e) Assign a stronger mandate to members at the LDC, and have the Chief Executive serve in an advisory capacity only.

f) Encourage NGO representatives to have their own agenda to present to the LSBs.

g) NCIP to conduct further studies on the participation of traditional leaders in LGUs, explore the possible strengthening of the Council of Elders to help in advocacy work.

2) To improve the IPs' access to basic services and to meet development needs:

a) Establish and strengthen livelihood sources for community groups.

b) Maximize benefits from external funding for projects, provided that external funding has no disadvantageous terms or conditions. Likewise, these projects should have strong mechanisms for transparency and accountability.

c) Influence the active critique of development policies and programs of the government especially in relation to globalization (in particular in the case of IP areas with issues related to corporate mining, energy development and agri-business)

- d) Strengthen/establish alternative, if not enhanced structures of governance that serve the interests of the indigenous peoples.
- 3) To increase IP benefits from national wealth and other sources of tax share:
- a) Reexamine the basis for the computation of LGU shares from both the IRA and national wealth.
- Reform the basis for determining the IRA, to begin from the actual needs of communities. Since IP areas are often large areas with low densities, the share of provinces, towns and barangays with IP population, unless modified, will always be insignificant.
 - Review the impact of the IRA (relative to internal conflicts and tension its use and allocation had created among people, and between them and the LGUs).
- b) For nationally-designed and negotiated development projects and investments, the LGU and the IP structures must:
- Ensure the reach and spread of benefits of socioeconomic benefits.
 - Take action on unfulfilled commitments of holders of development projects.
 - Ensure the interests of IPs in the long run, since compensatory schemes in development projects ignore previous and future local investments.
 - Resolve conflicts created by introduced projects.
 - Ensure transparency and accountability of all projects in IP areas.
- 4) To build on indigenous institutions and knowledge systems, the exchanges between indigenous and formal structures of governance must be nurtured and strengthened. The following are recommended directions for policy formulation and advocacy:
- a) Aim for a comprehensive development planning on resource management, protection and utilization (from local to regional or the Regional Development Council) within the framework of recognizing the collective rights of IPs over their land and resources.

- b) Ensure the direct participation of IP sectoral representatives in development planning and monitoring.
- c) Ensure full information disclosure to all affected communities especially on matters of resource mobilization, financial allocation, design and implementation of development projects.
- d) Review the free and prior informed consent (FPIC) process to include the following critical elements:
- putting in place a mechanism to define the stakeholders in directly and indirectly affected communities in project areas, as well as the receivers of off-site impacts
 - refining the process that will ensure community participation involving these stakeholders, and reflect the people's true sentiments/position
 - forming an oversight committee to monitor project implementation processes.
- e) Harmonize conflicting policies or guidelines of various government agencies in order to strengthen the respect of indigenous peoples rights, interests and welfare, and to protect the environment.
- f) Ensure the improved participation of local communities in the formulation of local policies.
- g) The national government to initiate and support the formulation of planning standards for regions and provinces with indigenous peoples.
- h) Ensure that planners in the national level will not disregard plan frameworks based on community consultations.
- i) Strengthen public consultations so as to be open, transparent, democratic.
- j) Pursue appropriate development projects with less adverse impacts instead of big projects with big adverse effects.
- k) Recognize indigenous resource management systems from the local to national levels of governance.

At a more specific level, given the insights from the case studies, the need to maximize the use of Indigenous Knowledge Systems in governance is a very critical domain for advocacy and capability building. Among the directions which are suggested are the following:

- 1) Promoting while upgrading local agricultural technology and farming systems to become effective and sustainable (many Sustainable Agricultural technologies represent tested ways of enriching IKS with scientific experimentation).
- 2) Promoting forestry programs that rely on knowledge of the biological importance and values of indigenous species as well as ecological functions (watershed management, irrigation control, soil and water conservation).
- 3) Conservation-science based utilization of natural resources, using both indigenous and exogenous knowledge.
- 4) Developing market-based strategies for livelihood activities based on the sustainable use of biological resources.
- 5) Strengthening the scientific elements of indigenous knowledge, practices and techniques in ecosystem and human health management.
- 6) Using available materials and human resources : for physical and social infrastructure development as well as for service delivery (tapping local structures for participative management, local experts such as farmer scientists and technologists).
- 7) Curricular reform to build on IKS while at same time enriching its scientific base (there are numerous opportunities in the recently revised basic education curriculum).
- 8) Supporting IKS research, documentation, publication and dissemination in popular forms (instructional materials, public for a, action research projects).

9) Continuing education for teachers (training) on IKS incorporation in the curriculum and co-curricular programs

10) Forming strategic partnerships with academic institutions, service agencies (NGOs) and community-based organizations for complementation in programs and services.



5.

V. CONCLUSION

The past 11 years of experimentation under the Local Government Code are replete with well intentioned and successful practices. Basic changes in the policy framework, however, are certainly necessary in order to realize the genuine spirit of decentralization.

Among indigenous peoples, though, the local autonomy associated with the customary system is being contested by the local autonomy touted by the formal, state-introduced system. Because of the fundamental conflicts in the premises of both systems, the windows opened by the LGC can in fact be instruments for the obliteration of indigenous institutions, as these are increasingly subsumed under state law, in the name of decentralization for good governance.

Advocates of both the national and local system of formal government on one hand, and the customary system, on the other, will need to examine how best to utilize the positive elements of both systems for mutual benefit. It is in the domain of expanding genuine participation by civil society groups repre-

senting the interest and welfare of indigenous peoples, from which the reform of the policy context can proceed. Such expanded and improved local participation needs to start from the very strengths of indigenous institutions for governance, and from the premises basic to custom law. Without real participation, the path to genuine development will always be litigious, even painful. The directions for innovation and creativity recommended by the research, it is hoped, can be considered as meaningful, pragmatic, realistic and appropriate contributions toward building good governance in the country.



6.

VI. RECOMMENDATIONS FROM THE REGIONAL WORKSHOPS

In order to disseminate and popularize the result of the research on the impacts of the Local Government Code on indigenous peoples, and to get more insights on local governance issues of indigenous peoples at the local level, three workshops by major islands—namely Mindanao, Luzon and the Island Groups (Panay, Palawan, Mindoro, Negros) were held from October to November 2004. The workshops were attended by IP leaders, representatives of IP organizations and support groups, academe, officials of Local Government Units and government agencies, namely from the National Commission of Indigenous Peoples and the Department of Interior and Local Government.

The programme of the workshops was as follows:

- 1) Presentation and discussion of the research result on the Local Government Code and discussions
- 2) Workshops on local governance issues; IP leadership and traditional systems on self governance; resource management and development vis a vis local governance

- 3) Plenary sessions on recommendations and advocacy planning on good governance and capacity building of IP communities.

These workshops served as a very enriching forum for information dissemination and exchange, sharing of experiences and lessons, insights and ideas on local governance issues in relation to indigenous peoples. Likewise, it provided an avenue for dialogue and interaction between IP leaders and government officials from local government units and government agencies towards better cooperation with respect to good governance and promoting indigenous peoples rights, interest and welfare.

The recommendations of these workshops are presented here as a useful information towards building good governance in the Philippines.

A. MINDANAO WORKSHOP

I. ON IP SYSTEMS AND RESOURCE MANAGEMENT VIS-A-VIS LOCAL GOVERNANCE

- a) Recognition of IP system (customary laws) and culture to enhance unity and cooperation of IP communities: continue to strengthen IP governance and justice system.
- b) Strengthen IP political structure at the community level and promote collective decision making on community issues: Acknowledge IP traditional leaders in their wisdom and knowledge of governing the tribe/ community.
- c) Institutionalize the participation of women IP leaders (Bai) in decision making processes.
- d) Strengthen communal land ownership and protect the ancestral domain from destruction by mining, logging, agri-business and others; IPs traditional use and management of resources should be respected.
- e) Enhance existing sustainable agricultural practices of IPs and strengthen the collective use and management of IP resources for their livelihood and upliftment.

- f) Organize a broad consultation on sustainable development for IPs and conduct a critical evaluation on IP resources: review government plans and implementation of projects which are destructive and violative of the indigenous peoples collective rights.

II. ON PARTICIPATION AND OTHER CONCERNS ON LOCAL GOVERNANCE

- a) Strengthen genuine sectoral representation in the LGUs.
- b) Recognize and respect self governance of certain IP communities which should be acknowledged and respected by LGUs through a declaration of recognition.
- c) Amend certain provisions of the Local Government Code in recognition of IP self governance mechanisms; less authority to the executive (mayor, governor); more support to representatives of civil society.
- d) Recognize the practice of customary law and self governance on conflict resolution, protection and enhancement of resource management.
- e) Promote the participation of genuine IP leaders in development planning and budgeting by LGUs.
- f) Recognize the rights of IPs to define and implement their own development plans and processes.
- g) Ensure the delivery of basic services to IP communities.
- h) For LGUs to effectively address the continuing violation of the human rights and collective rights of indigenous peoples, harassment of IP leaders, arrest and detention, salvaging; land grabbing, implementation of destructive projects, unwarranted resource exploitation and expropriation among others.

I. PROMOTE AND STRENGTHEN INDIGENOUS SYSTEMS AND CULTURE AND INCREASE THE CAPACITY OF IP COMMUNITIES OF THE ISLAND GROUP FOR GOVERNANCE

- a) Enhance the indigenous peoples systems and culture of cooperation, collective decision making, peaceful negotiations and review critical practices causing disunity.
- b) Increase the capacity of IP communities through leadership training, appropriate technology and networking with other IP organizations.
- c) Build the unity and leadership of communities and grassroots organizations through awareness raising and educational activities on indigenous peoples rights and issues, on the Indigenous Peoples Rights Act, the Local Government Code and other related laws.
- d) Consolidate existing IP organizations and increase their capacity to effectively address their issues and concerns.
- e) Mobilize resources from support groups and institutions for delivery of much needed assistance and support to IP communities.
- f) Sharing and exchange on best practices and lessons on resource management and utilization.
- g) Develop an advocacy plan to promote the rights and welfare of indigenous peoples in local governance.
- h) Establish a network of IP organizations and support groups in the Island Group (Panay, Negros, Palawan, Mindoro) for better cooperation, coordination and advocacy of common issues and concerns.

II. PROMOTE THE RECOGNITION OF INDIGENOUS PEOPLES RIGHTS IN LOCAL GOVERNANCE:

- a) Traditional/indigenous political systems should be respected and recognized by Local Government Units.

- b) Conduct educational activities among LGUs on indigenous peoples rights and issues, especially on the violation of land rights.
- c) Promote effective dialogues between genuine IP leaders and community members with officials of LGUs in addressing the concerns of IP communities.
- d) Ensure close coordination between LGUs and the National Commission of Indigenous Peoples on indigenous issues and concerns.
- e) Come up with a Memorandum of Agreement between the NCIP, the Department of Justice and the Department of Interior and Local Governance on the protection of human rights of indigenous peoples.
- f) Promote sustainable resource utilization and management to ensure food security and sustainable land management to support the livelihood activities of communities.
- g) For LGUs to immediately address the urgent issues of IPs such as the opposition to army reservations and militarization in Panay, ecotourism, threats of large scale mining and large dams; and the nonrecognition of IP land rights by private entities such as corporations; land grabbing, forest destruction and others.

LUZON WORKSHOP

I. PROPOSALS FOR REVISIONS OF THE LOCAL GOVERNMENT CODE WITH RESPECT TO INDIGENOUS PEOPLES RIGHTS AND PRACTICE OF SELF GOVERNANCE

- a) Greater participation of genuine representatives of sectors in all levels of local governance which are democratically chosen by the concerned sector and ensure the functioning of the Local Special Bodies with transparency and accountability. Review the criteria for selection of representatives to allow greater participation of local leaders in the Local Special Bodies.
- b) Review classification of tribal barangays in the context of respecting and recognizing IP systems of self governance, autonomy and mechanisms of decision making.

- c) Recognition of the role of genuine tribal elders in dispute settlement within the practice of positive customary law which should not be limited to the "Lupon ng Barangay" and with provisions of logistical and financial support to elders.
- d) Stronger mechanisms for transparency and accountability of LGU officials. Elections should not be dominated by money and goons.
- e) Uphold the practice of self governance of IP communities especially on resource control, management and development and on socio-cultural and political matters.

II. STRENGTHENING IP LEADERS AND COMMUNITIES FOR LOCAL GOVERNANCE:

- a) Strengthen the positive aspects of customary law, especially on peaceful settlement of tribal and community conflicts.
- b) Conduct massive education and training for capacity building of IP communities and LGUs on the rights and welfare of IPs and for good governance.
- c) Sustain local struggles for the defense and recognition of indigenous peoples rights.
- d) Uphold the role of genuine IP leaders in community affairs and enhance the greater participation of women and youth.
- e) Establish collaboration and cooperation between LGUs and IP organizations and community leaders on matters affecting IP communities such as development projects within the context of respecting the collective rights of IPs and for good governance.
- f) Ensure the participation of genuine IP leaders in the planning, implementation and monitoring of projects in IP areas.
- g) Establish a network of IP leaders and other concerned sectors (i.e. church, academe, government employees) on good governance to promote IP rights and welfare in local governance and enhance greater cooperation of LGUs with civil society.

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KEY INFORMANTS

NAMES	AFFILIATION/POSITION/OCCUPATION/AGE
<i>SADANGA, MOUNTAIN PROVINCE</i>	
Albert Agpawan Sr.	Mayor's Secretary, Sadanga Municipality, Sadanga, MP
Godeliva Gamonnac	SB Secretary, Sadanga Municipality, Sadanga, MP
Nena S. Simongo	DILG-MLGOO, Sadanga Municipality, Sadanga, MP
Anthony P. Chinalpan	MPDC, Sadanga Municipality, Sadanga, MP
Francis P. Dangiwan	Municipal Mayor, Sadanga, Sadanga, MP
Alinog Fanasan	23, President, Angsebey Group Organization, Betwagan, Sadanga
Tommy Lagayan	54, farmer, elder, Betwagan, Sadanga
Pablo Lagayan	27, President, Ob-obfo Organization, Betwagan, Sadanga
Elena Langngag	36, member, Ag-agya Women's Organization, NADPI Treasurer, Betwagan, Sadanga
Sumarag Wanchag	60+, 2 nd term Barangay councilman, Betwagan, Sadanga
Sumiteg Gayyaman	70+, woman elder, Betwagan, Sadanga
Ernesto Gayyaman	27, Barangay Secretary (present), Betwagan, Sadanga
Kitab Tumapang	60+, Barangay Councilman (present), elder, Betwagan, Sadanga
Peter Agrong	29, Ob-obfo Secretary, Betwagan, Sadanga

NAMES	AFFILIATION/POSITION/OCCUPATION/AGE
<i>BESAO, MOUNTAIN PROVINCE</i>	
Paul Casiwan	Member, Barangay council at present, former Barangay secretary, 2000-2002, farmer
Biteng Ganaden	70 years old, former Barangay councilman, 1995-1997, and present Lupon member and dap-ay elder, farmer
Biyernes Apaleng	82 years old, former Barangay councilman in Lacmaan, Lupon member, dap-ay elder, farmer
Sanggupen Li-o	74 years old, Lupon member, dap-ay elder, farmer, <i>mansapit</i> or traditional elder, who decides on community affairs and cases
Gunner Bagsiyao	Former Barangay council, 1997-2002, farmer
Dalison Pilala	48 years old, former Barangay Council, 1997-2002, MABAFA (Masameyew Batugyan Farmers' Association) member.
Luis Mangallay	Gueday Barangay captain, former SB member, 1995-1997, farmer
Beltran Balbaong	SB member, former Barangay council, 1995-1997, farmer
Nida Pilala	43 years old, BHW, MABAFA member
Eli Engwet	26, Member-Gueday Youth Organization
<i>MANKAYAN, BENGUET</i>	
Efren Nalicao	65, Elder, former vice mayor, former appointed mayor
Crispin Domilos	Resident, Poblacion, Mankayan, affected by the LMCI
Tadic Calama	Miner, resident Poblacion, Mankayan
Peter Banagui	Barangay Captain, Poblacion, Mankayan, Benguet
Rommel Del-esen	Legislative Staff Officer, Mankayan Municipal Office
Cecille Wagiyen	MLGOO
Engr. Dick Tip-ac	MPDC
Hon. Materno Luspian	Mayor
James Guanzo	Vice Mayor
<i>BAKUN, BENGUET</i>	
Hon. Bartolome Sacla	Mayor, Municipality of Bakun
Cornelio G. Colyong	Municipal Planning and Development Coordinator
Ernesto Suriben	<i>Papangoan</i> , former Barangay Kagawad, former Barangay Secretary

NAMES	AFFILIATION/POSITION/OCCUPATION/AGE
Fernando Aliba	SB Member (present)
Amos Bit-a	Project Manager, BITO, retired government employee
Nelson Mendoza	Chairman, BITO
Meliason Bayawa	Volunteer staff, BITO
Julia Mendoza	Volunteer staff, BITO
Fausto Maliones	Secretary to the Mayor
Ruben Ta-awan	Council of Leader (<i>Papangoan</i>) BITO (Bakun Indigenous Tribes Organization)
Donato Ngiwas	Organization) Kayapa, Bakun Council of Leader (<i>Papangoan</i>) BITO
<i>LAKE SEBU, SOUTH COTABATO</i>	
Datu Peter Carado	NCIP Coordinating Officer
Myrna Pula,	Researcher of the Sta. Cruz Mission
Datu Ricardo Ulo	Grandson of Lolo Mafuk, datu who donated the land to Sta. Cruz Mission)
Datu Leong Faan	oldest member of the Tribal Elders
Datu Tabidad Ungkal	3 time Municipal Tribal Chieftain
Datu Nongos Tuhitum	PANAMIN Coordinator
Benito Blonto	Municipal Tribal Council Secretary
<i>T'BOLI TOWN, SOUTH COTABATO</i>	
Dr. Salvacio Dagang	Vice Mayor of Tboli town
Mr. Rogen Guardaya	Municipal Planning and Development Coordinato
Ms. Daisy Lilio	SB Secretary
Datu Tuan Simfal	Elders in Barangay Laconon
Datu Mantang Timan	Elders in Barangay Laconon
Crispin Simfal	Barangay Captain
Carlos Blusan	Chairperson of the local cooperative
Sr. Susan Bolanio	Executive Director, Justice and Peace of Marbel
<i>BARANGAY SIRIB, CALINAN DISTRICT, DAYAO CITY</i>	
Edilberto Onggo	Brgy. Captain
Marciano Eroc	Kagawad
Datu Uton	