

\* Covo \* Hak \* Hak Hik \* Haque \* Kapkheng \* Karapatan \* 權利 \* สิทธิ \*  
Kopotutan \* Mwnthai \* Ngam-thou \* Taj hkwaiv-taj yax \* अधिकार \* Quyền

# RIGHTS!

Training Manual on the

United Nations  
Declaration on the Rights of  
Indigenous Peoples



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# INTRODUCTION TO THIS MANUAL

## BACKGROUND

The development of a training manual on the UNDRIP was one of the recommendations put forward by participants in the Asia Workshop for the Promotion of the United Nations Declaration on the Rights of Indigenous Peoples held in June 2007 in Baguio, Philippines. The AIPP has made the realization of this recommendation part of its Regional Capacity Building Programme, which is aimed at enhancing the awareness and capacity of indigenous peoples at the grassroots level in promoting their rights.

This training manual was drafted in response to the need expressed by indigenous peoples' organizations for skills in raising the awareness of both indigenous and non-indigenous communities regarding the UNDRIP, and in influencing policy makers to redesign or shape existing and future laws, policies, and programs such that these become consistent with the standards set forth in the UNDRIP. Its specific objectives are as follows:

1. To provide a basic educational tool kit for the conduct of community trainings and seminars for raising awareness and generating advocacy of the UNDRIP;
2. To develop a pool of trainers among indigenous leaders in Asia on the UNDRIP and related issues;
3. To contribute to the awareness-raising, advocacy and popularization of the UNDRIP and thus advance the recognition of indigenous peoples' rights in Asia.

This training manual is by no means comprehensive but gives basic information to understanding the rights of indigenous peoples as provided for by international human rights instruments, including the UNDRIP. It contains key points on the realities faced by indigenous communities in their efforts to exercise their rights and to gain respect for these. As a training manual, it also provides basic training and facilitation guidelines to indigenous organizations and communities which are its main audience.

This manual is designed for localization and translation in various languages, for wider adaptation and use by indigenous organizations and communities. Each module of this training manual can be adjusted to better suit the particular needs, situation and awareness level of each specific target audience. Correspondingly, time management for discussing each module and each of its part can be determined according to the situation and characteristics of the target audience.

This manual is a work in progress. It shall continue to be improved and enriched through the conduct of actual trainings, and also through the continuing struggles and advocacy work of indigenous peoples.

## CONTENTS

The training manual contains an overview of the UNDRIP, modules on nine thematic areas, and one module on practical advocacy skills.

Each thematic module features a set of objectives, a discussion of specific rights relating to the theme, a view of the realities on the ground, a discussion of experiences and lessons learned, and an advocacy guide.

## **Overview of the UNDRIP**

The overview provides a background to indigenous peoples' engagement in the process of drafting and adopting the UNDRIP as a human rights mechanism. Then it runs through the contents of the UNDRIP, specifying the articles by thematic area. It serves as a guide to the whole Declaration.

### **Module 1: The Right to Self-Determination**

This module discusses key issues related to the right of indigenous peoples to self-determination, and to autonomy and self-government. It identifies how indigenous peoples can fully enjoy their right to self-determination in the long term, the challenges in achieving this, and the best ways of addressing such challenges.

### **Module 2: Free, Prior, Informed Consent**

This module focuses on the FPIC or Free, Prior, Informed Consent, one instrument of self-determination that indigenous peoples can already use even if they are yet to achieve autonomy or self-government.

### **Module 3: Customary Law**

This module discusses the right of indigenous peoples to practice and strengthen their distinct systems of customary law, to assess the extent to which this right is respected or restricted in their respective countries, and to gain a long-term perspective on how indigenous peoples can fully enjoy this right.

### **Module 4: Rights to Land, Territory and Resources**

This module spells out the provisions in the UNDRIP that address indigenous peoples' rights to land, territory and resources, and to the autonomous management, conservation and development of these. It reflects on the extent to which indigenous peoples' rights to land, territory and resources, as enshrined in the UNDRIP, are upheld or violated in different countries. Also, it engages training participants in the exercise of envisioning a better future with respect to the said rights.

### **Module 5: Cultural Rights**

This module discusses cultural rights, the UNDRIP provisions on these and the reality of cultural rights violations in different countries. It also discusses experiences in cultural rights assertion.

### **Module 6: Development Issues**

This module sheds light on development issues pertaining to indigenous peoples and familiarizes participants with UNDRIP provisions that address critical concerns related to develop-

ment. It also aims to involve participants in envisioning a better future with respect to indigenous peoples' self-determined development.

### **Module 7: Migration and Trans-Border Issues**

This module aims to make participants understand the causes and implications of migration and trans-border issues for indigenous peoples. It also discusses how the UNDRIP can be used to address these issues.

### **Module 8: Human Rights and Militarization**

This module discusses relevant provisions of international instruments, including the UNDRIP, on human rights and militarization. It aims to make participants understand the particular implications of militarization and human rights violations on indigenous peoples.

### **Module 9: Special Sectoral Concerns**

This module deals with the particular issues and concerns of indigenous women, children, youth, elders and disabled people.

### **Module 10: A General Guide to Practical Advocacy Skills**

This module discusses the concept of advocacy and provides guidelines for the development of advocacy strategies and tactics, including those that can be employed in engaging governments and other stakeholders in negotiation or dialogue. Experiences, good practices and skills in actual advocacy work, plus monitoring and assessment, are discussed as reference.



# OVERVIEW OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

PREPARED BY JOAN CARLING

## I. BACKGROUND

Indigenous peoples across the world have been historically subjected to colonization, subjugation, assimilation and other forms of oppression which they have resisted in various ways.

Most nation-states have refused to recognize the demand of indigenous peoples to remain rooted in their lands and territories, which define their social systems, culture and identity.

Some indigenous peoples in developed countries have entered into agreements and signed treaties with states, allowing them certain rights and levels of self-governance. But most states that are party to these treaties and agreements have refused to implement them and even violated them. This has been the case with the United States, Canada, Australia, and New Zealand.

As a result of continuing state denial of the collective rights of indigenous peoples, indigenous leaders in the 1970s began to engage the United Nations in negotiations for the recognition of their peoples' rights as human rights.

### **The establishment of the UN Working Group on Indigenous Populations**

The UN Working Group on Indigenous Populations (WGIP) was established in 1982 in response to the clamor and demand of indigenous peoples across the globe to be provided a space within the UN system. According to WGIP Chair, Professor Erica-Irene Daes, indigenous peoples are "the first grassroots movement to gain direct access to the UN."

Indigenous peoples from the different global regions channeled hundreds of complaints and statements to the UN through the WGIP. They reported numerous cases of physical dislocation, massive plunder of land and resources, economic displacement, political discrimination, social marginalization, violation of cultural integrity and denial of collective identity.

### **The formation of the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples**

Indigenous leaders persistently demanded that the UN formulate a declaration on the rights of indigenous peoples. Because of this, the Working Group on the Draft Declaration (WGDD) was formed in 1995 under the auspices of the Sub-Commission on Human Rights. Both indigenous peoples and governments were engaged for eleven years in the WGDD's work. The indigenous leaders strove for the inclusion of substantive articles in the Draft Declaration on the inherent



#### **Suggested Method**

*Distribute metacards to the participants. Ask the participants whether a copy of the UNDRIP is available in their own language/s, and whether they have read it. Then ask them to write down very briefly what they know or think the UNDRIP is all about. Post the metacards on a board or wall so that you can refer to them later.*

*Input the following back-grounder to the UNDRIP.*

rights of indigenous peoples to self-determination and to their land, territories and resources. These remained very contentious throughout the eleven years as states strove to qualify, limit, weaken or erode those rights.

Finally, in June 2006, the UN Human Rights Council (HRC) adopted the Draft Declaration, with some revisions from the Chair of the WGDD. Then in September 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples.

## II. THE DECLARATION

The UNDRIP is an international human rights instrument that sets the minimum standards for guaranteeing the collective rights of indigenous peoples. It is an affirmation of collective rights that have long been exercised by indigenous peoples. It is not a new set of rights granted by states; rather, it is a recognition of inherent rights and defines the obligations of states to respect those rights.

Like the Universal Declaration of Human Rights, the UNDRIP is a legal instrument. By its nature as a Declaration, it may not have the binding force of a Convention – e.g. the International Convention on Civil and Political Rights (ICCPR), the International Convention on Social, Economic and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) – which have been signed by states or ratified by them explicitly as parties. However, as R. Hatano, a member of the WGDD, has emphasized, the Declaration “nonetheless sets out the rights of indigenous peoples and the duties of States towards these peoples.” Besides, much of its contents are reiterations of rights already provided for in the aforementioned Conventions; they specify that the provisions in these Conventions apply to indigenous peoples.



### Suggested Method

*Again, distribute metacards to the participants, and ask them to write down, one by one, in their own language/s what they understand of:*

- *human rights;*
- *collective rights;*
- *inherent rights;*
- *the granting of rights vs. the recognition of rights.*

*Again post the metacards on the board or wall, separately from the metacards regarding the UNDRIP. Refer to them and provide the correct definitions of the foregoing terms as you discuss the following.*



### Note to trainers

*Clarify the difference between a Declaration and a Convention or Treaty. Refer to the excerpts from the UN Treaty Reference Guide appended to this Overview.*

## III. THE CONTENT

The UNDRIP consists of 24 preambular paragraphs and 46 operative articles. The preambular paragraphs give the background, lay out the context, and define the parameters of the operative articles, which set down the actual rights of indigenous peoples.



### Suggested Method

*Give the following input, flashing the summaries of the contents of the UNDRIP as you go along.*

## A. The 24 Preambular Paragraphs

1. The preambular paragraphs are statements of historical reference and reiterations of international instruments that uphold the fundamental rights of indigenous peoples. For example:

*Concerned that indigenous peoples have suffered from historic injustices, as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.*

*Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.*

2. The preamble also contains references to existing international human rights standards and basic principles of international law, including the Charter of the United Nations, the ICESCR, the ICCPR, the ICERD and, above all, the principle on the equal application of the right of self-determination to all peoples.

3. The preamble, further, welcomes the efforts of indigenous peoples in organizing themselves for political, economic, social and cultural enhancement.

4. It recognizes that respect for indigenous peoples' knowledge, culture and traditional practices contributes to sustainable development and to the protection of the environment.

## B. The 46 Operational Articles

The articles enumerate and elaborate on the individual and collective rights of indigenous peoples. The articles define the obligations of states in relation to the rights of indigenous peoples. They also state that the exercise of these rights shall be subject only to such limitation as are determined by law and in accordance with international human rights obligations, and shall be non-discriminatory.

It is possible to divide the UNDRIP into ten distinguishable parts.

### Part 1: Articles 1 to 5

These articles set down important general principles, including the recognition of the right to self-determination:

*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. (Article 3)*

*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (Article 4)*

## **Part 2: Articles 6 to 11**

These articles affirm the right of every individual among the indigenous peoples to a nationality, as well as the right of indigenous peoples to physical existence, integrity and security, and to full guarantees against genocide, forced population transfer and dislocation, and against the removal of indigenous children from their families and communities. They also affirm the need for Free, Prior and Informed Consent (FPIC) in the matter of relocation.

## **Part 3: Articles 12 to 14**

This part proclaims rights connected with the cultural, spiritual and linguistic identity of indigenous peoples. It affirms the right of indigenous peoples to practice and revitalize their cultures and traditions; to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; to revitalize, use, develop and transmit to future generations their histories, oral traditions, languages, etc.

This part also mentions the responsibility of states to address grievances and provide redress mechanisms, developed in conjunction with indigenous peoples.

## **Part 4: Articles 15 to 16**

This part enumerates various rights related to education and information: the right to set up indigenous educational institutions; the right of access to education in indigenous languages and cultures; the right of access to the mass media; the right to appropriate portrayal of indigenous culture in such media.

This part also mentions the responsibility of states to take special and effective measures in order to implement the said rights.

## **Part 5: Article 17**

This part is about international labour law and national labour legislation concerning standards and guarantees against child labour and other violations of labour standards.

## **Part 6: Articles 18 to 24**

This part enumerates the various rights of indigenous peoples related to decision-making and development. It stresses the need for the participation or representation of indigenous peoples in legislative, administrative and other decision-making processes, and for FPIC.

This part elaborates on the rights of indigenous peoples to the maintenance and development of their political, economic and social institutions; to economic upliftment and social services without discrimination; to traditional medicine as well as access to health services. It also elaborates on the special needs and the development of indigenous women, elders, youth, children and persons with disabilities. It provides for guarantees against all forms of violence and discrimination.

## **Part 7: Articles 25 to 34**

This part deals with the rights of indigenous peoples to their lands and territories and the resources these hold, and to the conservation of their environment. It also deals with the rights

of indigenous peoples to the integrity and conservation of their genetic resources, traditional knowledge, science and technology, culture and identity.

The principle of FPIC regarding projects affecting indigenous lands and other resources is reiterated. Military activities are prohibited from the lands or territories of indigenous peoples unless justified by a significant threat to public interest, or freely agreed to or requested by the indigenous peoples concerned.

### **Part 8: Article 35**

This part upholds the right of indigenous peoples to define the responsibilities of individuals to their communities.

### **Part 9: Articles 36 to 37**

This part deals with the rights of indigenous peoples across borders, and in relation to states with whom they have forged treaties.

### **Part 10: Articles 38 to 46**

This section is composed of general provisions. It deals with the obligation of states to take effective and appropriate measures, including legislation, in order to achieve the purposes of the Declaration. It also specifies the right of indigenous people to have access to financial and technical assistance from states and through international cooperation; the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with states or other parties. It provides for the organs and specialized agencies of the UN system and other intergovernmental organizations to contribute to the full realization of the provisions of the Declaration. It promotes respect for, full application of, and follow-up on the effectiveness of the Declaration by the UN and its bodies, including the UN Permanent Forum on Indigenous Issues (PFII).

## **C. The Provisions Of The UNDRIP By Thematic Area**

As may be gleaned from the foregoing, it is also possible to divide the UNDRIP into provisions regarding particular thematic areas. In the succeeding modules, the thematic areas are:

1. Self-Determination and Self-Government;
2. Free, Prior and Informed Consent;
3. Customary Law;
4. Land, Territory and Resources;
5. Cultural Rights;
6. Development Issues;
7. Migration and Trans-Border Issues;
8. Militarization and Human Rights;
9. Special Sectoral Concerns.



#### **Note to trainers**

*Synthesize the lesson, referring to the first set of metacards posted, on what the participants knew or thought about the UNDRIP.*

## IV. EXCERPTS FROM THE UN TREATY REFERENCE GUIDE

<http://untreaty.un.org/English/guide.asp>

### A. Introduction

Over the past centuries, state practice has developed a variety of terms to refer to international instruments by which states establish rights and obligations among themselves. The terms most commonly used are the subject of this overview. However, a fair number of additional terms have been employed, such as “statutes”, “covenants”, “accords” and others. In spite of this diversity of terminology, no precise nomenclature exists. In fact, the meaning of the terms used is variable, changing from State to State, from region to region and instrument to instrument. Some of the terms can easily be interchanged: an instrument that is designated “agreement” might also be called “treaty”.

The title assigned to such international instruments thus has normally no overriding legal effects. The title may follow habitual uses or may relate to the particular character or importance sought to be attributed to the instrument by its parties. The degree of formality chosen will depend upon the gravity of the problems dealt with and upon the political implications and intent of the parties.

Although these instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all of these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 Vienna Convention on the Law of Treaties (“1969 Vienna Convention”), which entered into force on 27 January 1980, contains rules for treaties concluded between States. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (“1986 Vienna Convention”), which has still not entered into force, added rules for treaties with international organizations as parties. Both the 1969 Vienna Convention and the 1986 Vienna Convention do not distinguish between the different designations of these instruments. Instead, their rules apply to all of those instruments as long as they meet certain common requirements.

Article 102 of the Charter of the United Nations provides that “every treaty and every international agreement entered into by any Member State of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it”. All treaties and international agreements registered or filed and recorded with the Secretariat since 1946 are published in the UNTS. By the terms “treaty” and “international agreement”, referred to in Article 102 of the Charter, the broadest range of instruments is covered. Although the General Assembly of the UN has never laid down a precise definition for both terms and never clarified their mutual relationship, Art.1 of the General Assembly Regulations to Give Effect to Article 102 of the Charter of the United Nations provides that the obligation to register applies to every treaty or international agreement “whatever its form and descriptive name”. In the practice of the Secretariat under Article 102 of the UN Charter, the expressions “treaty” and “international agreement” embrace a wide variety of instruments, including unilateral commitments, such as declarations by new Member States of the UN accepting the obligations of the UN Charter, declarations of acceptance of the compulsory jurisdiction of the International Court of Justice under Art.36 (2) of its Statute and certain unilateral declarations that create binding obligations between the declaring nation and other nations. The particular designation of an

international instrument is thus not decisive for the obligation incumbent on the Member States to register it.

It must however not be concluded that the labeling of treaties is haphazard or capricious. The very name may be suggestive of the objective aimed at, or of the accepted limitations of action of the parties to the arrangement. Although the actual intent of the parties can often be derived from the clauses of the treaty itself or from its preamble, the designated term might give a general indication of such intent. A particular treaty term might indicate that the desired objective of the treaty is a higher degree of cooperation than ordinarily aimed for in such instruments. Other terms might indicate that the parties sought to regulate only technical matters. Finally, treaty terminology might be indicative of the relationship of the treaty with a previously or subsequently concluded agreement.

## **B. Signatories and Parties**

The term “Parties”, which appears in the header of each treaty, in the publication *Multilateral Treaties Deposited with the Secretary-General*, includes both “Contracting States” and “Parties”. For general reference, the term “Contracting States” refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for such States and entities; the term “Parties” refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty and where the treaty is in force for such States and entities.)

## **C. Treaties**

The term “treaty” can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics.

(a) Treaty as a generic term: The term “treaty” has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. Both the 1969 Vienna Convention and the 1986 Vienna Convention confirm this generic use of the term “treaty”. The 1969 Vienna Convention defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. The 1986 Vienna Convention extends the definition of treaties to include international agreements involving international organizations as parties. In order to speak of a “treaty” in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Even before the 1969 Vienna Convention on the Law of Treaties, the word “treaty” in its generic sense had been generally reserved for engagements concluded in written form.

(b) Treaty as a specific term: There are no consistent rules when state practice employs the terms “treaty” as a title for an international instrument. Usually the term “treaty” is reserved for matters of some gravity that require more solemn agreements. Their signatures are usually sealed and they normally require ratification. Typical examples of international instruments designated as “treaties” are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition

Treaties and Treaties of Friendship, Commerce and Cooperation. The use of the term “treaty” for international instruments has considerably declined in the last decades in favor of other terms.

#### **D. Agreements**

The term “agreement” can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.

(a) Agreement as a generic term: The 1969 Vienna Convention on the Law of Treaties employs the term “international agreement” in its broadest sense. On the one hand, it defines treaties as “international agreements” with certain characteristics. On the other hand, it employs the term “international agreements” for instruments, which do not meet its definition of “treaty”. Its Art.3 refers also to “international agreements not in written form”. Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State. The term “international agreement” in its generic sense consequently embraces the widest range of international instruments.

(b) Agreement as a particular term: “Agreements” are usually less formal and deal with a narrower range of subject-matter than “treaties”. There is a general tendency to apply the term “agreement” to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance. The UN and other international organizations regularly conclude agreements with the host country to an international conference or to a session of a representative organ of the Organization. Especially in international economic law, the term “agreement” is also used as a title for broad multilateral agreements (e.g. the commodity agreements). The use of the term “agreement” slowly developed in the first decades of this century. Nowadays by far the majority of international instruments are designated as agreements.

(c) Agreements in regional integration schemes: Regional integration schemes are based on general framework treaties with constitutional character. International instruments which amend this framework at a later stage (e.g. accessions, revisions) are also designated as “treaties”. Instruments that are concluded within the framework of the constitutional treaty or by the organs of the regional organization are usually referred to as “agreements”, in order to distinguish them from the constitutional treaty. For example, whereas the Treaty of Rome of 1957 serves as a quasi-constitution of the European Community, treaties concluded by the EC with other nations are usually designated as agreements. Also, the Latin American Integration Association (LAIA) was established by the Treaty of Montevideo of 1980, but the subregional instruments entered into under its framework are called agreements.

#### **E. Conventions**

The term “convention” again can have both a generic and a specific meaning.

(a) Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to “international conventions, whether general or particular” as a source of law, apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists.

This generic use of the term “convention” embraces all international agreements, in the same way as does the generic term “treaty”. Black letter law is also regularly referred to as “conventional law”, in order to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term “convention” thus is synonymous with the generic term “treaty”.

(b) Convention as a specific term: Whereas in the last century the term “convention” was regularly employed for bilateral agreements, it is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. Convention on Biological Diversity of 1992, United Nations Convention on the Law of the Sea of 1982, Vienna Convention on the Law of Treaties of 1969). The same holds true for instruments adopted by an organ of an international organization (e.g. the 1951 ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the International Labour Conference or the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN).

## **F. Charters**

The term “charter” is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known recent examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952.

## **G. Protocols**

The term “protocol” is used for agreements less formal than those entitled “treaty” or “convention”. The term could be used to cover the following kinds of instruments:

(a) A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a Protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally ipso facto involve ratification of such a Protocol.

(b) An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a “two-tier system”. The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is a well-known example.

(c) A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer adopted on the basis of Arts.2 and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer.

(d) A Protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.

(e) A Protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.

(f) A Process-Verbal is an instrument that contains a record of certain understanding arrived at by the contracting parties.

## **H. Declarations**

The term “declaration” is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. An example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled “declarations” were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights. Declarations that are intended to have binding effects could be classified as follows:

(a) A declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984.

(b) An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter.

(c) A declaration can also be an informal agreement with respect to a matter of minor importance.

(d) A series of unilateral declarations can constitute binding agreements. Typical example are declarations under the Optional Clause of the Statute of the International Court of Justice that create legal bonds between the declarants, although not directly addressed to each other. Another example is the unilateral Declaration on the Suez Canal and the arrangements for its operation issued by Egypt in 1957 which was considered to be an engagement of an international character.

## **I. Memoranda Of Understanding**

A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework of international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations. The United Nations usually concludes memoranda of understanding with Member States in order to organize its peacekeeping operations or to arrange UN Conferences. The United Nations also concludes memoranda of understanding on cooperation with other international organizations.

## **J. Modus Vivendi**

A modus vivendi is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification.

## **K. Exchange of Notes**

An “exchange of notes” is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

# **V. GLOSSARY OF TERMS RELATING TO TREATY ACTIONS**

## **A. Adoption**

“Adoption” is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule. [Art.9, Vienna Convention of the Law of Treaties 1969]

## **B. Acceptance and Approval**

The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state. [Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

## **C. Accession**

“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question. [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

**D. Act of Formal Confirmation**

“Act of formal confirmation” is used as an equivalent for the term “ratification” when an international organization expresses its consent to be bound to a treaty. [Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986]

**E. Amendment**

The term “amendment” refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties. [Art.40, Vienna Convention of the Law of Treaties 1969]

**F. Authentication**

The term “authentication” refers to the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initialling by the representatives of those states. [Art.10, Vienna Convention on the Law of Treaties 1969]

**G. Correction of Errors**

If, after the authentication of a text, the signatory and contracting states agreed that it contains an error, it can be corrected by initialing the corrected treaty text, by executing or exchanging an instrument containing the correction or by executing the corrected text of the whole treaty by the same procedure as in the case of the original text. If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting states. In the UN practice, the Secretary-General, in his function as depositary, informs all parties to a treaty of the errors and the proposal to correct it. If, on the expiry of an appropriate time-limit, no objections are raised by the signatory and contracting states, the depositary circulates a proces-verbal of rectification and causes the corrections to be effected in the authentic text(s). [Art.79, Vienna Convention on the Law of Treaties 1969]

**H. Declarations**

Sometimes states make “declarations” as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state’s position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature.

**I. Definitive Signature**

When the treaty is not subject to ratification, acceptance or approval, “definitive signature” establishes the consent of the state to be bound by the treaty. Most bilateral treaties dealing with more routine and less politicized matters are brought into force by definitive signature, without recourse to the procedure of ratification. [Art.12, Vienna Convention on the Law of Treaties 1969]

**J. Deposit**

After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a

depository. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depository will usually be the government of the state on whose territory the treaty was signed. Sometimes various states are chosen as depositaries. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depository must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned. [Arts.16, 76 and 77, Vienna Convention on the Law of Treaties 1969]

### **K. Entry into Force**

Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally. [Art.24, Vienna Convention on the Law of Treaties 1969]

### **L. Exchange of Letters/Notes**

States may express their consent to be bound by an “exchange of letters/notes”. The basic characteristic of this procedure is that the signatures do appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of both letters or notes, each of the parties having in their possession one letter or note signed by the representative of the other party. In practice, the second letter or note, usually the letter or note in response, will typically reproduce the text of the first. In a bilateral treaty, letters or notes may also be exchanged to indicate that all necessary domestic procedures have been completed. [Art.13, Vienna Convention on the Law of Treaties 1969]

### **M. Full Powers**

“Full powers” means a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting, authenticating the text of a treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty. Heads of State, Heads of Government and Ministers for Foreign Affairs are considered as representing their state for the purpose of all acts relating to the conclusion of a treaty and do not need to present full powers. Heads of diplomatic missions do not need to present full powers for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited. Likewise, representatives accredited by states to an international conference or to an international organization or one of its organs do not need to present full powers for the purpose of adopting the text of a treaty in that conference, organization or organ. [Art.2 (1) (c) and Art.7 Vienna Convention on the Law of Treaties 1969]

**N. Modification**

The term “modification” refers to the variation of certain treaty provisions only as between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable. If the treaty is silent on modifications, they are allowed only if the modifications do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and the purpose of the treaty. [Art.41, Vienna Convention on the Law of Treaties 1969]

**O. Notification**

The term “notification” refers to a formality through which a state or an international organization communicates certain facts or events of legal importance. Notification is increasingly resorted to as a means of expressing final consent. Instead of opting for the exchange of documents or deposit, states may be content to notify their consent to the other party or to the depositary. However, all other acts and instruments relating to the life of a treaty may also call for notifications. [Arts.16 (c), 78 etc, Vienna Convention on the Law of Treaties 1969]

**P. Objection**

Any signatory or contracting state has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states. [Art.20-23, Vienna Convention on the Law of Treaties 1969]

**Q. Provisional Application and Provisional Entry into Force of Treaties****1. Provisional application**

The growing use of provisional application clauses in treaties is a consequence of the felt need to give effect to treaty obligations prior to a state’s formal ratification of/accession to a treaty. The obligations relating to provisional application are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework.

**Provisional application of a treaty that has entered into force**

The provisional application of a treaty that has entered into force may occur when a state undertakes to give effect to the treaty obligations provisionally although its domestic procedures for ratification/accession have not yet been completed. The intention of the state would be to ratify/accede to the treaty once its domestic legal requirements have been met. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969). [Art. 25, Vienna Convention on the Law of Treaties 1969]

**Provisional application of a treaty that has not entered into force**

Provisional application of a treaty that has not entered into force may occur when a state notifies that it would give effect to the legal obligations specified in that treaty provisionally. These legal obligations are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/ accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969). Provisional application may continue even after the entry into force of the treaty in relation to a state applying the treaty provisionally until

that state has ratified it. Provisional application terminates if a state notifies the other states among which the treaty is being applied provisionally of its intention of not becoming a party to the treaty. [Art. 25 (2), Vienna Convention on the Law of Treaties 1969]

## **2. Provisional entry into force**

There are also an increasing number of treaties which include provisions for provisional entry into force. Such treaties provide mechanisms for entry into force provisionally, should the formal criteria for entry into force not be met within a given period. Provisional entry into force of a treaty may also occur when a number of parties to a treaty which has not yet entered into force, decide to apply the treaty as if it had entered into force. Once a Treaty has entered into force provisionally, it is binding on the parties which agreed to bring it into force provisionally.

The nature of the legal obligations resulting from provisional entry into force would appear to be the same as the legal obligations in a treaty that has entered into force, as any other result would create an uncertain legal situation. It is the criteria for formal entry into force that have not been met but the legal standard of the obligations remains. [Art. 25 (1), Vienna Convention on the Law of Treaties 1969]

## **R. Ratification**

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

## **S. Registration and Publication**

Article 102 of the Charter of the United Nations provides that “every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it”. Treaties or agreements that are not registered cannot be invoked before any organ of the United Nations. Registration promotes transparency and the availability of texts of treaties to the public. Article 102 of the Charter and its predecessor, Article 18 of the Pact of the League of Nations, have their origin in one of Woodrow Wilson’s Fourteen Points in which he outlined his idea of the League of Nations: “Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always openly and in the public view”. [Art.80, Vienna Convention on the Law of Treaties 1969]

## **T. Reservation**

A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved, or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made. [Arts.2 (1) (d) and 19-23, Vienna Convention of the Law of Treaties 1969]

### **U. Revision**

Revision has basically the same meaning as amendment. However, some treaties provide for a revision additional to an amendment (i.e., Article 109 of the Charter of the United Nations). In that case, the term “revision” refers to an overriding adoption of the treaty to changed circumstances, whereas the term “amendment” refers only to a change of singular provisions.

### **V. Signature ad referendum**

A representative may sign a treaty “ad referendum”, i.e., under the condition that the signature is confirmed by his state. In this case, the signature becomes definitive once it is confirmed by the responsible organ. [Art.12 (2) (b), Vienna Convention on the Law of Treaties 1969]

### **W. Signature Subject to Ratification, Acceptance or Approval**

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. [Arts.10 and 18, Vienna Convention on the Law of Treaties 1969]

Treaty	Status as of	Signatories (s) and Parties (p) among Asian States																				
		B	Ca	Ch	li	lo	J	nK	sK	L	M	N	Pa	Ph	PNG	Si	Sr	Th	Ti	V		
<b>CORE TREATIES</b>	2010 January 19																					
<b>ICERD</b> International Convention on the Elimination of All Forms of Racial Discrimination	Entered into force <b>1969 January 4</b> 85 signatories, 173 parties	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	p	
<b>ICCPR</b> International Convention on Civil and Political Rights	Entered into force <b>1976 March 23</b> 72 signatories, 165 parties	p	sp	s	p	sp	p	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	p	
<b>ICESCR</b> International Covenant on Economic, Social and Cultural Rights	Entered into force <b>1976 January 3</b> 69 signatories, 160 parties	p	sp	sp	p	sp	p	p	sp	p	sp	p	sp	p	sp	p	sp	p	sp	p	p	
<b>OTHER TREATIES</b>																						
<b>CEDAW</b> Convention on the Elimination of All Forms of Discrimination Against Women	Entered into force <b>1981 September 3</b> 98 signatories, 186 parties	p	sp	sp	sp	sp	p	sp	p	sp	p	sp	p	sp								
<b>CAT</b> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Entered into force <b>1987 June 26</b> 76 signatories, 146 parties	p	p	sp	s	sp	p	p	p	sp	s	p	sp	p	sp	p	sp	p	sp	p	p	p

**B** – Bangladesh, **Ca** – Cambodia, **Ch** – China, **li** – India, **lo** – Indonesia, **J** – Japan, **nK** – North Korea, **sK** – South Korea, **L** – Laos, **M** – Mongolia,  
**N** – Nepal, **Pa** – Pakistan, **Ph** – Philippines, **PNG** – Papua New Guinea, **Si** – Singapore, **Sr** – Sri Lanka, **Th** – Thailand, **Ti** – Timor Leste,  
**V** – Vietnam

Treaty	Status as of	Signatories (s) and Parties (p) among Asian States																			
		B	Ca	Ch	Ii	Io	J	nK	sK	L	M	N	Pa	Ph	PNG	Si	Sr	Th	Ti	V	
<b>CRC</b> Convention on the Rights of the Child	2010 January 19 Entered into force <b>1990 September 2</b> 140 signatories, 193 parties	sp	p	sp	p	sp	sp	sp	p	sp	sp	sp	sp	sp	p	sp	p	p	p	sp	
<b>CMW</b> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Entered into force <b>2003 July 1</b> 31 signatories, 42 parties	s	s			s							sp			p		p			
<b>CPD</b> Convention on the Rights of Persons with Disabilities	Entered into force <b>2008 May 3</b> 144 signatories, 77 parties	sp	p	sp	sp	p	sp	sp	sp	p	s	sp	sp	sp		s	sp	sp	s		
<b>CED</b> International Convention for the Protection of All Persons from Enforced Disappearance	Not yet in force adopted by the General Assembly 20 December 2006 81 signatories, 18 parties				s																

**B** – Bangladesh, **Ca** – Cambodia, **Ch** – China, **Ii** – India, **Io** – Indonesia, **J** – Japan, **nK** – North Korea, **sK** – South Korea, **L** – Laos, **M** – Mongolia, **N** – Nepal, **Pa** – Pakistan, **Ph** – Philippines, **PNG** – Papua New Guinea, **Si** – Singapore, **Sr** – Sri Lanka, **Th** – Thailand, **Ti** – Timor Leste, **V** – Vietnam

**MODULE 1****SELF-DETERMINATION AND SELF-GOVERNMENT**

PREPARED BY RAJA DEVASISH ROY

**OBJECTIVES**

1. To understand why self-determination is a fundamental right of indigenous peoples;
2. To gain an overview of key issues related to indigenous peoples' rights to self-determination, autonomy and self-government;
3. To know the provisions in the UNDRIP that address these rights;
4. To assess the extent to which these rights are respected or restricted in our respective countries;
5. To learn about good examples of how indigenous peoples have asserted these rights;
6. To gain a long-term perspective on how indigenous peoples can fully enjoy these rights, to identify the challenges in achieving this, and to define the best ways of addressing such challenges.

**CONTENTS****I. INTRODUCTION**

- A. Background
- B. Definition of terms and scope

**II. UNDRIP PROVISIONS**

- A. Core articles
- B. Related articles

**III. REALITIES ON THE GROUND**

- A. General situation
- B. Laws and policies
- C. Challenges in implementation

**IV. EXPERIENCES AND LESSONS LEARNED**

- A. Advocacy and lobbying
- B. Action and mobilization
- C. Actual exercise of the right

**V. CHALLENGES**

- A. Needs, capacities, strategies
- B. Implementation
- C. Monitoring

## I. INTRODUCTION

### A. Background

Throughout the ages, peoples have held on to some mode of community identity, based on common geographic, historical and other persistent social factors. Each people recognized and asserted at least its own self-identity through various cultural, political and other means.

The explicit and comprehensive right of peoples to self-determination, however, is a more recent phenomenon. It is rooted in the philosophical, political and legal thought that emerged with modern nation-states from the late 18th century onwards.

Before World War II and the birth of the UN, the right to self-determination was generally applied to nations in creating their own independent states, and in asserting national sovereignty and territorial integrity.

After World War II, liberation movements and new states arose amidst the breakup of old colonial orders and the redrawing of national boundaries. As a result, the community of nations and international law recognized an expanded concept of the right to self-determination to include all peoples, regardless of how they might be identified and classified vis-à-vis pre-existing nation-states.

The UN Charter, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) all reflected this expanded concept of the right to self-determination. Article 1 of the UN Charter states that one of the three purposes of the UN is “to develop friendly relations among nations based on respect for the principle of equality and self-determination of peoples...” Article 1 of both the ICCPR and the ICESCR also expressly state: “All 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.”

The UNDRIP, in almost exactly the same words, upholds the right to self-determination and its non-discriminatory application to all peoples, including indigenous peoples (see PP 2, PP 4 and PP 5). The UNDRIP explicitly states that the right to self-determination applies to indigenous peoples as well nation-states (see PP 16, PP 17 and Articles 3 and 4).

### B. Definition of terms and scope

#### 1. Right to self-determination

Article 3 of the UNDRIP states that self-determination includes the right of an indigenous people to freely determine their political status, and to freely pursue their economic, social and



#### Suggested Method

*Distribute metacards to the participants and ask them to write down their answers to the following questions:*

*What do you understand by self-determination?*

*How have indigenous peoples in your country or territory exercised their right to self-determination in the past?*

*What do you think are the main obstacles in indigenous peoples' exercise of this right?*

*What do you think are the specific rights of indigenous peoples related to self-government?*

*Collect and cluster the written replies, and synthesize the ideas of the participants. Then give them an input, guided by the following.*

cultural development. This is only the non-material dimension of the right to self-determination, which has a material dimension to it – the right of a people to their territory, to the lands it encompasses and to the resources these hold. The two dimensions are inextricable from each other, especially when it comes to the exercise of self-governance.

## 2. Right to self-government

The right of a people to freely determine its political status, in theory, includes the right to form an independent state that stands on equal footing with other nation-states, or otherwise, to define its mode of associating with an existing state wherein it enjoys the same rights as the other constituent peoples of that state.

Thus, the right to self-government directly translates into the right of peoples to govern themselves without external influence. This right covers a wide range of options:

- seceding outright from a state and creating their own state;
- joining a federation of states as one constituent and co-equal state;
- constituting an autonomous political unit wherein it exercises a degree of self-rule within a broader nation-state; and
- asserting specific rights as defined by the basic laws and through specific processes of the nation-state.

The UNDRIP provisions on the right to self-determination and self-government are among the most contentious. This was seen during the drafting process of the UNDRIP until the stage of its final adoption. During implementation, too, this may pose challenges, particularly because the right is easily prone to be interpreted as a threat to the national sovereignty and territorial integrity of UN member-states.

There is no explicit UNDRIP provision that refers to an indigenous people's right to create an independent state. Indeed, Article 46 clearly states:

*Nothing in this Declaration may be...construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.*

But the underlying concept of the right to self-determination and indigenous peoples' rights in general may, in certain respects, support the legal and moral bases for a people to create their own state. Whether this extent of self-determination applies to a given situation depends on historical, political, legal and other contexts.

For indigenous peoples whose occupancy of their homeland territories remains intact, the right to self-government is best exercised on a territorial basis. It can be applied over a formally-delineated and usually contiguous geographic area: national, federal, intermediate (regional, state, provincial) or local (district, prefecture, municipality, etc.), according to the hierarchy of political divisions adopted by nation-states.

- In some cases, the territorial boundaries of indigenous self-government units within nation-states coincide with the boundaries of general administrative units (such as regions, provinces, districts, etc.). Example: the provinces that now constitute the Autonomous Region of Muslim Mindanao (ARMM) in the Philippines.

In other situations, the scope of an indigenous self-government system may be a defined socio-political or ethnic but non-territorial constituency, whereby the units are not clearly demarcated into contiguous geographic areas. Examples:

- The Saami in Norway, Sweden and Finland do not have territorially demarcated self-government units, but have a Saami Parliament each in the aforesaid three countries.
- Similarly, there is an Assembly of First Nations in Ottawa, Canada, where indigenous chiefs from all over Canada meet.

### 3. National and international contexts

The right to self-determination and self-government may be said to operate in international contexts, insofar as they are applied to cases that may involve fundamental changes in the political relationship between an indigenous people (or a conglomerate of indigenous peoples) and one or more nation-states. Examples include Greenland as an autonomous region with the option to declare full independence vis-à-vis Denmark; or East Timor winning full political independence and international recognition vis-à-vis Indonesia.

In national contexts, indigenous peoples exercise some degree of self-rule over some defined geographic area or political constituency within the boundaries of the overlying nation-state.

### 4. Essence

The essence of the right to self-determination is actually embodied in just two words: consent and control.

#### • Consent

This is the freedom of a people to say yes or no, to accept or reject any proposal, project, program or policy, any activity or action that has any sort of implication on their individual lives and their life as a community, and on their territory, the lands this encompasses, the other resources it holds. A people can exercise this freedom within any context, whether or not the people are self-governing.

#### • Control

A people, however, may be able to exercise greater power – i.e., the power of control. More than just having the freedom to react positively or negatively to the initiatives of others, they can actively (some use the word pro-actively) set their own guidelines or rules, formulate their own laws and policies, outline their own programs and projects, and get these enforced or implemented. They are able to exercise full sovereignty over their life as a community, their territory, the lands it encompasses and the other resources it holds. Such a people fully enjoy the right to self-determination because they are fully self-governing.

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## II. UNDRIP PROVISIONS ON SELF-DETERMINATION AND SELF-GOVERNMENT

### A. Core Articles

#### PP16

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

#### PP17

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

#### Article 3

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.

#### Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.



### Suggested Method

*Present the following UNDRIP provisions, involving the participants in reading them. Discuss and elaborate on the provisions, relating them with one another.*

**Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

**Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

## B. Related Articles

The following are related articles, especially relevant to indigenous peoples in their relation to the state and the international community:

### PP14

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

### PP15

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

### PP18

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

### Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

### Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

### Article 40

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

### III. REALITIES ON THE GROUND

#### A. General Situation

Before the adoption of the UNDRIP by the UN General Assembly, many governments in Asia refused to recognize the indigenous peoples' rights now provided for in the Declaration; many even disagreed with the basic premise that their countries had indigenous peoples who were distinct from the mainstream populations. Even after the UNDRIP was approved, some governments in the region still attempted to minimize the Declaration's application to their respective countries.



#### Suggested Method

*Choose the appropriate method or combination of methods among the following:*  
*Sharing of experiences or case studies*  
*Short film documentary, photos*  
*Guided open discussion*  
*Synthesize the main points that arise in the process.*

Current leaderships in many nation-states, often reflecting entrenched discriminatory ideas and practices in their respective societies, still tend to deny the application of the right to self-determination to indigenous peoples living within their boundaries. They refuse to apply this right on an ongoing basis, and from time to time in its different aspects and contexts (civil and political, economic, social and cultural).

In practice, the specific right to autonomy and self-government is denied in varying degrees to indigenous peoples in Asia, save for a few exceptions which are discussed below.

Even in cases where the right to autonomy and self-government is formally recognized in state law, a daunting array of obstacles continues to prevent its substantial realization in practice.

In Asia, as elsewhere, the very first problem is that many states do not even have accurate listings, maps, and ethnographic data on indigenous peoples' identities and territories, which are crucial in defining the parameters of self-government.



#### Suggested Method

*In discussing laws and policies, and challenges in their implementation, refer to the points made under headings [B] and [C] below, but also ask the participants to draw upon their knowledge of the laws and policies in their own country and respective localities to fill up a Gaps Analysis table.*

## Gaps Analysis

UNDRIP PROVISIONS ON SELF-DETERMINATION AND SELF-GOVERNMENT Paragraph or Article number	NATIONAL OR LOCAL LAWS OR POLICIES  Specific laws, policies conforming with UNDRIP	GAPS  Specific laws, policies NOT conforming with UNDRIP	CONSIDERATIONS & IMPLICATIONS  Can current laws, policies be used to support indigenous peoples' positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally? Or politically?	OPTIONS & RECOMMENDATIONS  What needs to be done? How? By whom? Where? When? For how long?
On self-determination				
On self-government				

## B. Laws and Policies Related to the Recognition of the Right

### 1. Right to self-determination

There are few examples in national laws of an explicit recognition of the right to self-determination, in its most comprehensive definition that allow peoples to create an independent state. Such examples include the Constitution of the defunct Soviet Union, the Panglong Agreement in Burma and the case of Sabah and Sarawak in the 1950s, when the Federation of Malaysia had just been founded.

However, there are several examples of the recognition of the right to self-determination in the more specific context of autonomy and self-government (see below).

### 2. Right to self-government

The indigenous peoples of India have strived for years to achieve self-government. The peoples of Nagaland, Manipur and Mizoram were able to achieve this through struggles that

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compelled the Indian state into negotiating with them and granting them autonomous states. In appending a Sixth Schedule and a Seventh Schedule to its Constitution, India also granted non-Mizo peoples in Mizoram, and the various indigenous peoples in Tripura, Meghalaya, Assam and Arunachal Pradesh self-government through Autonomous District Councils (ADCs).



**Members of the Jharkhand Save the Forest Movement (JJBA) at a meeting in Gilua villag, Kuchai block, Sarai-kela-Kharswan district. Photo by Chris Erni**

In Jharkhand, also in India, the indigenous peoples have been successful in establishing their own state, but they are yet to achieve recognition of their traditional leaders and adequate representation in local government units called panchayats.



### Note to trainers

*In discussing laws and policies related to the right to self-government, emphasize the fact that self-governance is relevant not only at the higher but as much at the local levels. Ask the participants to give examples of a law or policy that allows indigenous communities to exercise this right at the village level or similar levels.*

### REFERENCES AND FURTHER READINGS

Constitution of India: Sixth Schedule [Articles 244(2) and 275(1)]: Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Erni, Christian. "Autonomous Districts: The Sixth Schedule to the Constitution of India." Paper prepared for presentation by the International Work Group for Indigenous Affairs at the Workshop on Self Determination, 5 to 8 September 2009, Kathmandu, Nepal.

Federal law of India: Panchayats (Extension to the Scheduled Areas) Act (1996).  
State law: Jharkhand Panchayati Raj Act (1996).

### 3. Treaties

The relationship between indigenous peoples and states is often reduced to written agreements variously styled as treaties, accords or agreements.

- In the United States, Canada and New Zealand, agreements between indigenous peoples and governments are called "treaties", and thereby an element of the international character of the agreements is acknowledged. Under U.S. law, provisions of treaties are regarded as part of domestic law and are hence enforceable through litigation in the domestic courts. In New Zealand, the Waitangi Tribunal was established to implement the provisions of the Treaty of Waitangi of 1840.

- Nepal has a similar system with a very high status accorded to international agreements. This is likewise the case with several countries in Latin America and a few countries in Europe.
- In most other countries, the provisions of international treaties or other intra-state political agreements may not be directly enforced in the domestic courts of law.
- In some countries in Asia, governments have entered into political agreements with indigenous peoples, e.g., the Mizo Accord (1985, India), the Chittagong Hill Tracts Accord (1997, Bangladesh).

In many cases, non-implementation of the provisions of accords is a crucial feature in the denial of indigenous peoples' rights, such as in the case of the Chittagong Hill Tracts.

#### FOR FURTHER READING

Roy, Raja Devasish. 2008. "The Chittagong Hill Tracts 'Peace' Accord: Whose Peace?" in Danilo Geiger, ed. *Frontier Encounters: Indigenous Communities and Settlers in Asia and Latin America* (Copenhagen: International Work Group for Indigenous Affairs): 483-532.

Boltjes, Miek, ed. 2007. *Implementing Negotiated Agreements: The Real Challenge to Intra-State Peace* (The Hague: T.M.C. Asser Press).

## C. Challenges in Implementation

### 1. The right to self-determination

While certain aspects of the right to self-determination can be understood within a legal context and implemented through a human rights body or domestic court of law, certain other aspects of this right may only be exercised in a political rather than a legal context. These include the ultimate exercise of the right to self-determination through victory in a war of liberation, or through negotiated political settlement, or a combination of both.

For example, while the independence of India and Pakistan was actually legislated upon by the British parliament through the Act of Indian Independence (1947), Bangladesh exercised its right in the political sense and became independent from Pakistan through a war of liberation. Once Bangladesh became independent in fact in 1971, and member states of the UN started to recognize it, and later provide UN membership, it mattered little what the legal status of Bangladesh was under Pakistani law.

For international contexts of the exercise of this right, see:

- the status of Greenland in its relations with the European Community and the membership of the ICC and Saami Council, along with USA, Canada, Iceland, Denmark, Sweden and Norway in the Arctic Council;
- the inclusion of indigenous peoples' representatives in national delegations (such as Canada and Norway) to international meetings (such as the Convention on Biological Diversity and UN bodies);
- the recognition of the Chin National Front, NSCN, as signatories in the international agreement on land mines.

## 2. The right to autonomy and self-government

The exercise of the right to autonomy and self-government has many obstacles, limitations and challenges including:

- lack of fiscal autonomy and insufficient access to finances;
- discrimination by national governmental entities;
- political unrest;
- militarization;
- population transfer and minoritization.

## IV. EXPERIENCES AND LESSONS LEARNED

### A. Advocacy and Lobbying Related to the Right

#### 1. Examples in the Asian setting:

- East Timor vis-à-vis Indonesia
- Ainu in Japan
- Cordillera in the Philippines

#### 2. Examples from outside Asia:

- Cree in Canada
- Saami in Northern Europe



#### Suggested Method

*Ask the participants to give any examples they know about good practices, experiences, and lessons learned in the assertion or exercise of the right to self-determination, autonomy, and self-government.*

### B. Action and Mobilization to Defend Rights

#### 1. Examples in the Asian setting:

- Northeast India
- Chittagong Hill Tracts
- Java, Indonesia

#### 2. Example from outside Asia:

- Saami Council in Northern Europe

### C. Actual Exercise of the Right

#### 1. Examples in the Asian setting:

There are a few examples of a relatively high degree of autonomy or self-government that are recognized in different countries.

- In Asia, some of the best examples are in Northeast India (special constitutional dispensations on Nagaland and Mizoram, and Autonomous District Councils to which the 6th Schedule to the Constitution of India applies).

- The states of Sabah and Sarawak in Borneo also include both special provisions in the Federal Constitution of Malaysia and in the Constitutions of Sabah and Sarawak on land rights, the status of the indigenous peoples, the restrictions on the entry into the states of non-natives. This is similar to the Inner Line Regulation of Northeast India (1873), which applies to

Nagaland, Manipur, Mizoram and Arunachal Pradesh, which forbids the entry into, and the acquisition of land, by any other than a “native” of the territory within that “inner line”.

## 2. Other medium-level examples within Asia are:

- peninsular India (other than the Northeast, especially those where the 5th Schedule to the Constitution of India applies); and
- Chittagong Hill Tracts, Bangladesh.

## 3. Examples from outside Asia:

- Greenland in northern Europe with the Greenland Home Rule Act
- Kuna Yala in Panama.



### Note to trainers

*Certain cases showing the actual exercise of this right may involve armed struggle followed by some degree of political settlement or international recognition. This might be a sensitive topic, which the individual trainer must mention but carefully handle on a case-to-case basis, depending on the situation.*

## V. CHALLENGES

### A. Needs, Capacities, Strategies

Needs, capacities and strategies will obviously vary, from country to country, from one indigenous people to another, and from situation to situation.

#### 1. At the international and national levels

One common concern in the indigenous peoples' relations with the state is their organizational and lobbying weaknesses at the national and international levels.

- At the international level, few indigenous peoples have been able to promote their case in an efficient manner. (Exceptions, to an extent, are the Cree in Quebec, Canada, the Saami from Scandinavia and the Inuit from Greenland.) There is no central secretariat for indigenous peoples at Geneva, New York and other international centers dealing with human rights issues.

- Similar problems are faced on account of organizational, logistical and resource constraints at national levels. Few indigenous peoples have offices and representatives in national capi-



### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants. Discuss with the participants the three main points as listed below:*

- Needs, capacities, strategies
- Implementation
- Monitoring

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

*One possible poster you can ask the participants to work on is a mapping or charting of levels of governance in their respective countries or contexts which they should take into consideration in strategizing.*

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tals. (Notable exceptions include AMAN in Jakarta, Indonesia, and the Assembly of First Nations in Ottawa, Canada.)

- In some cases, it is the capacities of states that may require strengthening to enable them to deal with indigenous peoples' issues. Here, indigenous peoples have a role as well, for it is their rights that are violated if the states' capacities in protecting their rights are weak. Reliable information and data on indigenous peoples and their situations are often unavailable. Often, national census data is not ethnically disaggregated to reflect the actual social, educational and economic status of indigenous communities. National laws and policies, and consequently, national programs often do not account for the differing socio-economic context of indigenous communities, perpetuating the cycle of discrimination, exclusion and marginalization. Auditing of national laws and policies, and consequent legal, administrative and programmatic reforms would raise the capacities of states to deal in an equitable and just manner with indigenous peoples' rights and development needs.

## 2. At the local (sub-national) levels

**Challenges regarding needs.** At the local level, there may be serious gaps in the knowledge of indigenous communities regarding their rights and entitlements from local government bodies. Thus, one pressing need is to disseminate information about the indigenous peoples' entitlements (under local government laws or other laws and policies) in culturally appropriate formats (booklets, compendia, monographs, video, etc).



### Note to trainers

*Trainers should develop a good knowledge of the major self-government issues that require focus at the national and local levels.*

**Challenges regarding capacities.** Capacity-raising of indigenous communities remains a major challenge in most parts of Asia.



### Note to trainers

1. The trainers should discuss with the participants the current situation of capacity needs of the communities, their weaknesses and strengths, and the possible forms of training, organizational reforms, networking etc., that may be required to enhance the capacities of indigenous organizations.
2. The discussions on capacities should be at all levels: local, national, international. It is very common to find that most indigenous peoples' organizations have little or no voice in their national capitals. Thus capacity-raising of indigenous peoples' organizations at national levels could constitute an integral part of the trainings.
3. AMAN (the national-level organization of the indigenous peoples of Indonesia) can be cited for best practice for other indigenous peoples to follow (tailored to their needs, of course).

### 3. Challenges regarding strategies

Examples:

- From 1986 to 1987, the Cordillera Peoples' Alliance (CPA) successfully campaigned for provisions for indigenous peoples' regional autonomy in the post-Marcos Constitution of the Republic of the Philippines. But when an Organic Act for the creation of the Cordillera Autonomous Region was formulated, the CPA saw that it gravely lacked provisions that would guarantee democracy and respect for the diverse political and cultural institutions of the region's various peoples. Also it was severely limited in land-resource rights guarantees and respect for variation in the customary land-resource laws of peoples. Thus, instead of advocating the ratification of the Organic Act, the CPA conducted a region-wide educational campaign on its flaws and successfully convinced communities to reject it. Some observers saw this as a step backward in the movement for Philippine indigenous peoples' self-determination. The CPA, however, felt that it was a step necessary to prevent the institutionalization of what it believed would have been a distorted form of self-government.
- The Saami in Norway and the Jumma in Bangladesh sometimes utilize the strategy of providing (local and indigenous) language as a compulsory qualification for jobs with local authorities and schools. This limits non-indigenous peoples' role in local governance and development programmes.



#### Note to trainers

*Trainers will need to make this as participatory as possible as it will require the trainees to discuss a matter which at times is conceptually difficult.*

## B. Implementation

In many cases, the major challenge in enforcing the right to self-determination, including the right to self-government, is not the absence of a law or policy but rather their non-implementation. There are numerous examples from various parts of Asia.

### 1. ADCs of Northeast India

The Autonomous District Councils (ADCs) in Northeast India are a case in point. Theoretically, the ADCs are vested with the authority or prerogative to legislate on matters of customary law, but without the cooperation of the Governor of the province, this may not be possible, as was the case for example with the Chakma ADC in Mizoram state.

### 2. Chittagong Hill Tracts, Bangladesh

Similarly, in the Chittagong Hill Tracts region in Bangladesh, an accord was signed on 2 December 1997 between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti (JSS), a political party of the indigenous peoples, to reestablish peace, demilitarize the region and devolve self-government rights to a regional council and three district councils. However, more than twelve years after its signing, many crucial aspects of the accord remain unimplemented.

## C. Monitoring

### 1. Difficulties in monitoring

The monitoring of self-government, autonomy and other aspects of self-determination remains an immense challenge for indigenous peoples. In many cases, the absence of any international or other supra-national mechanisms to resolve disputes over self-government is a key factor hindering proper monitoring. Similarly, the absence of any national or international mechanism to oversee implementation of peace accords and other political agreements on self-determination and self-government also creates difficulties in monitoring.

### 2. Major processes and mechanisms for monitoring

National judicial processes and human rights mechanisms and international human rights mechanisms (treaty bodies, UN special rapporteurs, the UN Human Rights Council) are among the major venues to monitor the various aspects of self-determination, including self-government. However, the disadvantaged situation of most indigenous peoples and their marginal participation, or absence of participation, in international and national mechanisms often stand in the way of proper monitoring of self-government.

### 3. Presence at the UN

The sustained presence of indigenous peoples in a substantive manner in UN the and other human rights processes is extremely important for ensuring proper monitoring of indigenous peoples' rights at the international level. While participation in the specialized mechanisms dealing with indigenous peoples rights – such as the UN Permanent Forum on Indigenous Issues, the UN Expert Mechanism on the Rights of Indigenous Peoples – and engaging with the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples is important, substantive engagement with other UN and international mechanisms is also vital for advocacy on indigenous peoples' rights. Similar efforts may be required at the national justice system, national human rights mechanisms (if any), lobby and advocacy through civil society groups and, of course, participation in the mainstream political process, however difficult this might be.



#### Note to trainers

*Remember to wrap up the session, summarizing the main points.*

**MODULE 2****FREE, PRIOR, INFORMED CONSENT**

PREPARED BY LULU A. GIMENEZ

**OBJECTIVES**

1. To understand free, prior, informed consent (FPIC) as an instrument of self-determination;
2. To gain an overview of key issues related to this instrument;
3. To know the provisions in the UNDRIP that pertain to FPIC;
4. To assess the extent to which the right to FPIC is respected or violated in our respective countries;
5. To learn from the experiences of indigenous peoples in trying to exercise this right;
6. To identify the challenges in exercising the right to FPIC, and to define the best ways of addressing such challenges.

**CONTENTS****I. INTRODUCTION**

- A. Background
- B. Definition of terms and scope

**II. UNDRIP PROVISIONS**

- A. Core articles
- B. Related articles

**III. REALITIES ON THE GROUND;  
EXPERIENCES AND LESSONS LEARNED****IV. CHALLENGES**

- A. Needs, capacities, strategies
- B. Implementation and monitoring

**I. INTRODUCTION****A. Background**

Even in colonial times, it was already acknowledged that indigenous peoples ought to be consulted on plans that would likely affect them, and that they ought to be free to either give or withhold their consent to these plans. Rarely, however, has this principle been re-

**Suggested Method**

*Distribute metacards to the participants and ask them to write down their answers to the question: What do you understand by free, prior, informed consent or FPIC? Collect and cluster the written replies, and refer to them as you give an input guided by the following.*

spected, much less put in practice, in regard to the exploitation of indigenous peoples' resources, both natural and human.

In June 1989, the right of indigenous peoples to consultation – indeed to participation in decision-making – was for the first time enshrined in an international treaty, International Labour Organization (ILO) Convention No. 169. Among the Convention's provisions are the following:

**Article 6 (1)**

*In applying the provisions of this Convention, governments shall:*

*(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*

*(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;*

**Article 7(1)**

*The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.*

**Article 15**

*(1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*

*(2) In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.*

The ILO states that the provision of mechanisms for the exercise of the right to consultation and participation in decision-making is “the cornerstone of Convention No. 169.” But it has also noted that the operationalization of these mechanisms “remains one of the main challenges in fully implementing the Convention in a number of countries.” (ILO 2009: 59)

In 1997, the UN Committee on the Elimination of Racial Discrimination (CERD) noted that indigenous peoples had “lost their land and resources to colonists, commercial companies and State enterprises,” and urged the states which were party to the International Convention on the Elimination of All Forms of Racial Discrimination to “ensure that. . .indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.” (CERD 1997: para. 3 and 4d)

In 2000, the World Commission on Dams became the first international institution to refer to the right to consultation and participation in decision-making as the principle of free, prior, informed consent (FPIC). In recommending the adoption of a new policy framework for water and energy resources development, the WCD (2000: xxxiv) remarked:

*Public acceptance of key decisions is essential for equitable and sustainable water and energy resources development. Acceptance emerges from recognizing rights, addressing risks, and safeguarding the entitlements of affected people, particularly indigenous and tribal peoples, women and other vulnerable groups. Decision making processes and mechanisms are used that enable informed participation by all groups of people, and result in the demonstrable acceptance of key decisions. Where projects affect indigenous and tribal peoples, such processes are guided by their free, prior and informed consent.*

In 2003, when the UN Economic and Social Council's Sub-Commission on the Promotion and Protection of Human Rights issued norms for corporations to observe, it stipulated that "Transnational corporations and other business enterprises shall . . . respect the principle of free, prior and informed consent of the indigenous peoples and communities to be affected by their development projects (Economic and Social Council 2003: para. 10c).

## B. Definition of Terms

The drafters of the original Implementing Rules and Regulations (IRR) of the Philippines' Indigenous Peoples' Rights Act (IPRA) have referred to free, prior, informed consent as "an instrument of empowerment" which "enables IPs [indigenous peoples] to exercise their right to self-determination" (IPRA IRR Part III Section 1). Indeed, in situations where indigenous peoples are not self-governing and, therefore, not in full control of their territories, lands, resources or even their very lives, FPIC is usually the only instrument of self-determination that they can lay their hands on.

The drafters of IPRA (Chapter II Section 3g) define FPIC as:

*the consensus of all members of the ICCs/IPs [indigenous cultural communities/indigenous peoples] to be determined . . . free from any external manipulation, interference or coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community . . .*

In issuing Guidelines on Indigenous Peoples' Issues, the UN Development Group (2008:28) defined the "Elements of Free, Prior and Informed Consent" as follows:

**Free** should imply no coercion, intimidation or manipulation;

**Prior** should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/consensus processes;

**Informed** should imply that information is provided that covers (at least) the following aspects:

a. The nature, size, pace, reversibility and scope of any proposed project or activity;

b. The reason/s or purpose of the project and/or activity;

- c. The duration of the above;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
- g. Procedures that the project may entail.

At the same time, the International Indian Treaty Council (2008: 5-6) put forward the following definitions of the elements of FPIC:

1) **Free** is defined as the absence of coercion and outside pressure, including monetary inducements (unless they are mutually agreed on as part of a settlement process), and “divide and conquer” tactics. It must also include the absence of any threats of retaliation if it results in the decision to say “no”.



2) **Prior** is defined as a process taking place with sufficient lead time to allow the information gathering and sharing process to take place, including translations into traditional languages and verbal dissemination as needed, according to the decision-making processes decided by the Indigenous Peoples in question. It must also take place without time pressure or time constraints. A plan or project must not begin before this process is fully completed and an agreement is reached.

3) **Informed** is defined as having all relevant information reflecting all views and positions. This includes the input of traditional elders, spiritual leaders, traditional subsistence practitioners and traditional knowledge holders, with adequate time and resources to find and consider information that is impartial and balanced as to potential risks and benefits, based on the “precautionary principle” regarding potential threats to health, environment or traditional means of subsistence.



4) **Consent** can be defined as the demonstration of clear and compelling agreement, using a mechanism to reach agreement which is in itself agreed to under the principle of FPIC, in keeping with the decision-making structures and criteria of the Indigenous Peoples in question, including traditional consensus procedures. Agreements must be reached with the full and effective participation of the authorized leaders, representatives or decision-making institutions as decided by the Indigenous Peoples themselves.



The elements prior and informed are critical to determining whether a community's consent to an activity, project or program, action or policy will indeed be given or withheld freely. In many cases, one of which will be discussed below, the solicitation of consent after commencement of project has made affected communities feel resigned to the continued implementation of the project or even helpless before the power of its implementors, such that they believe they can no longer do anything about it. Thus, in effect, they are coerced or intimidated into giving their belated consent. In even more cases, communities have said yes to projects on the basis of false or incomplete information. In effect, they were manipulated into giving their consent.

It must be stressed that, especially for indigenous peoples, consent is a matter of consensus – i.e., of collective decision-making, not of individual will. In many cases, the proponents of projects affecting indigenous peoples have maneuvered around FPIC requirements by misrepresenting the consent of individuals as community consent.

Colchester and MacKay (2004) have referred to the manipulation and maneuvering of FPIC processes as engineered consent. They note that much of this engineering has taken place in the Philippines, in relation to projects in mining and dam construction.

## II. UNDRIP PROVISIONS FOR FPIC

### A. Core Articles

#### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### Article 11

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed



#### Suggested Method

*Present the following UNDRIP provisions, involving the participants in reading them. Discuss and elaborate on the provisions, relating them with one another.*

consent before adopting and implementing legislative or administrative measures that may affect them.

### **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

### **Article 29**

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

## **B. Related Articles**

### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

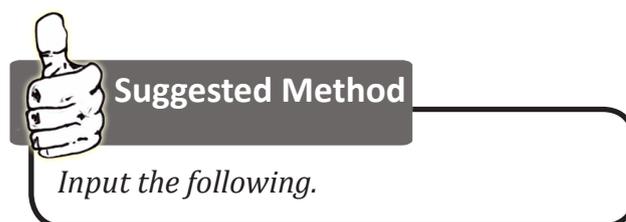
### **Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

### III. REALITIES ON THE GROUND; EXPERIENCES AND LESSONS LEARNED

There are several areas of concern in which the principle of free, prior, informed consent has consistently been violated. Indigenous peoples must insist on FPIC compliance in these areas. These include but might not be limited to:

- the exploitation of land and other natural resources within a people's territory, especially where this may result in:
  - » environmental damage or degradation;
  - » health and safety hazards;
  - » the economic dislocation of the people resulting from the degradation of their traditional means of livelihood;
  - » the relocation or removal of the people from their traditional territory;
  - » the desecration of burial sites and other sacred places;



- military occupation;
- the exploitation of a people's traditional knowledge, e.g. in food production and medicine, especially where this involves:
  - » the taking of mineral, plant and animal materials from the area, for uses that the people can neither determine nor control;
  - » the patenting of such materials or the registration of claims of intellectual property
  - » rights over these, disenfranchising the people who originally discovered them and depriving other people of free access to them;
- the taking of samples of human tissue for genetic studies, especially where this involves the patenting of the genetic materials, as has happened with the Human Genome and the Human Genome Diversity projects;
- the exploitation of a people's culture, especially where this involves:
  - » the taking of human remains and other sacred and historical artifacts;
  - » the display of sacred ceremonies and other rituals outside of their proper context;
  - » the inappropriate portrayal of the people and their culture, particularly in the mass media and for tourism.

With the depletion of fossil fuel and mineral deposits, timber stands and soil fertility in parts of the world that have been intensively exploited for several decades or even hundreds of years, and frontier areas, such as those occupied by the indigenous peoples of Asia, have become targets of aggressive capitalist expansion in the installation and operation of hydropower dams and geothermal power plants, the drilling and pumping of oil and natural gas, mining, logging and the development of plantations. It has been rather easy for capitalist corporations to advance their projects in areas occupied by indigenous peoples because they mostly enjoy the backing of national government, and because there are hardly any national laws that specifically require them to obtain the free, prior, informed consent of affected peoples. Where such laws exist – as in the Philippines – they are often broken.



**Suggested Method**

*First ask the participants if they know of any laws and policies in their country that provide for free, prior, informed consent or some semblance of it, and how these laws and policies are complied with or implemented. If such laws and policies exist, ask them to fill up a Gaps Analysis table.*

**Gaps Analysis**

UNDRIP PROVISIONS ON FREE, PRIOR INFORMED CONSENT	NATIONAL OR LOCAL LAWS OR POLICIES	GAPS	CONSIDERATIONS & IMPLICATIONS	OPTIONS & RECOMMENDATIONS
Paragraph or Article number	Specific laws, policies conforming with UNDRIP	Specific laws, policies NOT conforming with UNDRIP	Can current laws, policies be used to support indigenous peoples' positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally? Or politically?	What needs to be done? How? By whom? Where? When? For how long?

**EXAMPLE:  
MANEUVERING AROUND FPIC REQUIREMENTS FOR  
THE SAN ROQUE DAM PROJECT, PHILIPPINES**

**(Note: The barangay , which will be frequently referred to below, is the smallest political and administrative unit in the Philippine local government system.)**

In 1994, the government of Fidel V. Ramos (President from 1992 to 1998) invoked the existence of an energy shortage to revive the dam projects of his kinsman, deposed dictator Ferdinand E. Marcos (President from 1965 to 1986). These included the construction of the San Roque dam along the boundary of the Cordillera province of Benguet and the lowland province of Pangasinan.

The dam was to be 200 meters high and 1.13 kilometers wide. It was to be built on the Agno river. The dam itself would be erected between the Pangasinan municipalities of San Manuel and San Nicolas. But the reservoir that it would create was going to reach into the municipality of Itogon within the province of Benguet, where two other large dams had already been installed on the Agno during the 1950s. Sedimentation and flood studies indicated that the silt build-up behind the San Roque megadam would meet with silt spillage from the two older dams. All villages between San Roque and these two dams were thus threatened with partial, if not total, inundation.

The village that constituted Barangay San Roque, would be dismantled. This was occupied by nearly 600 migrant Ilocano households. Eight villages would be drowned in the reservoir. These were occupied by about 90 households of Kalanguya, Ibaloy and Kankanaey indigenous to Benguet, along with about 10 households of migrant Ilocano. The members of nearly 40 more indigenous Benguet and migrant Ilocano households frequented the vicinity of all the eight villages to cultivate swiddens, pasture cattle, and extract gold placers from the waters and the riverbanks of the Agno.

Upstream of the reservoir, in the municipality of Itogon, about 5,000 Kalanguya, Ibaloy and Kankanaey households were going to be affected by sedimentation and flooding. In addition to them, over 3,000 households were going to have their livelihood activities affected by watershed management regulations.

In 1995, immediately after Ramos announced his plan to build the San Roque dam, the leaders of affected communities in Itogon expressed their opposition to the dam project. And in 1996, the members of the affected communities in barangays Itogon Proper, Tinongdan, Dalupirip and Ampucao petitioned the Office of the President to cancel the project. They successfully lobbied local government units to support their petition. This would have stalled the project because Philippine law required local government endorsement for any project that would generate a high impact on the environment.



**Suggested Method**

*Now ask the participants if they can share experiences in relating or struggling with the state and/or with corporations that had plans for them and/or their territories and were thus, in principle, supposed to seek their free, prior, informed consent regarding these plans;*

*If the participants have no experiences or knowledge to share, or if you need to cite examples to help them start their discussion, you may input either or both of the Philippine examples provided below.*

But Ramos went on a campaign to change the minds of local government officials. He committed 300 million pesos worth of development works to the various barangays and the municipality of Itogon, and promised even more benefits to the province of Benguet. The Governor of Benguet joined Ramos's campaign. He got the Mayor and Municipal Council of Itogon, as well as the Chairs of the Barangay Councils of Dalupirip and Ampucao, to reconsider their position. But the Provincial Board of Benguet took a firm stand in support of the communities, against the construction of the San Roque dam.

Towards the end of October 1997, the Indigenous Peoples' Rights Act (IPRA) became law, and with it the stipulation that the proponents of projects affecting indigenous peoples secure their free, prior, informed consent. The IPRA Implementing Rules and Regulations (IRR) at the time equated consent with consensus. Even a single dissenting voice in a community could challenge a hundred votes of consent to a project.

But Ramos had already awarded the contract for the construction and operation of the San Roque dam earlier in the month, to a conglomerate composed of three transnational corporations, Sithe Energies, Marubeni, and Kansai Electric. This conglomerate was to be known as the San Roque Power Corporation (SRPC).

Ramos also had groundbreaking ceremonies held at the dam construction site although no actual work could yet be done by the SRPC's subcontractor for construction, another transnational called Raytheon, because the occupants of the site had yet to be relocated.

The awarding of the contract and the holding of groundbreaking ceremonies sparked intense protest. By the end of 1997, the opposition to the San Roque dam project was already being transformed into an organized and militant mass movement, and from 1998 to 1999, this movement spread throughout the Municipality of Itogon.

But the Ramos government and the succeeding government of Joseph Estrada (President from 1998 to 2001) continued to ignore the protest. Instead of addressing it, the government had the state-owned National Power Corporation (NPC) work with the SRPC so that they could forcibly relocate the Ilocano occupants of the dam site and start construction.

The NPC was also to work with the newly created National Commission on Indigenous Peoples (NCIP) on negotiating with individual heads of Benguet and Ilocano families whose households would be dislocated from the dam's reservoir area, so that they would accept relocation and compensation, and their acceptance could be used as an indication of consent.

To complement government efforts, Marubeni engaged a non-governmental organization known as Veritas (Truth) in the task of persuading affected Benguet communities to accept the project. Veritas staff went around Itogon to tell people to "Just accept the project because it has already commenced and you cannot stop it. But you can still make the most of the situation by demanding fair compensation for your lands, houses, trees and other land improvements, and asking for other benefits."

Communities became divided between people who remained stubbornly opposed to the project and those who were already resigned to it. While the latter signed compensation acceptance documents, the former petitioned the NCIP to issue a cease and desist order to the San Roque dam builders, invoking the absence of a consensus in favor of the project, as obvious from the persistence of their protest.

The NCIP, however, was paralyzed: it could not act on the petition. Evelyn Dulnuan, the first NCIP Chair appointed by Gloria Macapagal Arroyo (President from 2001 to the present) had herself conducted an investigation from which she concluded that the proponents of the San Roque dam project had failed to comply with FPIC requirements and were unlikely to ever obtain consent to their project. But she explained to a delegation of the Itogon Inter-Barangay Alliance (IIB-A) that “The NCIP is under the Office of the President, and the President won’t let me do anything. She has me by the scruff of the neck.” In 2002, Dulnuan finally issued a statement to the effect that the NCIP could not make any decision on the matter of the FPIC of the indigenous peoples affected by the San Roque dam project because the contract for the project had been signed before the IPRA took effect, and the law could not be applied retroactively.

The IIB-A thus prepared to take the case to court. But preparations for the suit took the lawyers so long that by the time the papers were ready in mid-2002, the dam had already been completed, and water impoundment had begun.

In October, the IIB-A, through the Cordillera peasant federation APIT TAKO in which it was a member, filed a report with the UN Special Rapporteur on indigenous peoples. Based on this, the Special Rapporteur told the Economic and Social Council’s Commission on Human Rights (Economic and Social Council 2003b: 19-20):

This has occurred because local mechanisms for the protection of indigenous rights have not been effective. The indigenous communities of the municipality of Itogon tried to avail themselves of the mechanism provided by the Philippines’ Local Government Code to withdraw endorsement of the dam, but the project continued. The Philippines’ Indigenous Peoples’ Rights

Act provides for free and prior informed consent and enables an indigenous community to prevent the implementation of any project which affects its ancestral domain in any way by refusing consent to the project. Though Itogon’s indigenous communities petitioned the National Commission on Indigenous Peoples to suspend the project because free and prior informed consent had not been given, the commissioners declined to act on the petition. Thus, the laws designed to protect the indigenous communities were in fact ignored.



#### Suggested Method

*Synthesize the main points that have arisen from the discussion/sharing. Ask the participants to identify what lessons they have learned. Synthesize these lessons.*

## IV. CHALLENGES

### A. Needs, Capacities, Strategies

Needs, capacities and strategies will obviously vary, from country to country, from one indigenous people to another, and from situation to situation. In general, however, we can say that in most Asian countries:

- the paramount need is for national legislation providing for the right of indigenous peoples to free, prior, informed consent on all matters that pertain to or affect them and their territories, the lands these encompass and the other resources these hold.



#### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants. Discuss with the participants the three main points as listed below:*

- Needs, capacities, strategies
- Implementation
- Monitoring

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

Correspondingly, we can say that the major concerns are

- what strategy should indigenous peoples employ to achieve such legislation, and
- whether indigenous peoples have the capacity to implement such a strategy.



### Note to trainers

*1. The trainers should discuss with the participants the current situation of capacity needs of the communities, their weaknesses and strengths, and the possible forms of training, organizational reforms, networking etc., that may be required to enhance the capacities of indigenous peoples' organizations.*

*2. The discussions on capacities should be at all levels: local, national, international. It is very common to find that most indigenous peoples' organizations have little or no voice in their national capitals. Thus capacity-raising of indigenous peoples' organizations at national levels could constitute an integral part of the trainings. Besides the capacity for lobbying national legislators, the capacity for media projection should be considered, likewise the possibility of establishing a national network of indigenous peoples' organizations with an office in the national capital.*

## B. Implementation and Monitoring

In some Asian countries, the challenge is not the absence of favorable laws or policies but rather the violation or non-implementation of these, as is the case in the Philippines. In such cases, the challenge to indigenous peoples is that:

- They be vigilant and keep track of all policies, programs and projects, actions and activities outlined for them or their territories.
- They demand that each and every policy, program and project, action and activity affecting them go through the FPIC process – i.e.:
  - » • prior to the implementation of the policy, program or project, action or activity,
  - » • all information about it and its implications be divulged to their communities;
  - » • their communities are afforded time to deliberate the matter according to customary processes;
  - » • their communities are given freedom to say yes or no, and their answer will be respected.
- If communities consent to a policy, program or project, action or activity, they deliberate among themselves what terms or conditions they should ask for, negotiate for these assertively and lay these down clearly in a memorandum of agreement with the entity concerned.

- They monitor the implementation of the agreement vigilantly.



### Note to trainers

*1. The capacity to handle technical information and assess their implications is, in many cases, lacking among communities. This is a challenge in itself – one that needs to be seriously addressed if efforts to secure FPIC implementation are to be effective.*

*2. As above, the need for organization and networking is a significant challenge.*

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**MODULE 3****CUSTOMARY LAW**

PREPARED BY RAJA DEVASISH ROY

**OBJECTIVES**

1. To understand why indigenous peoples have the right to practice and strengthen their distinct systems of customary law.
2. To gain an overview of key issues related to indigenous or customary law.
3. To know the provisions of UNDRIP that address the indigenous peoples' right to practice customary law.
4. To assess the extent to which the indigenous peoples' right to customary law is respected or restricted in our respective countries.
5. To learn about good examples of how indigenous peoples assert their right to customary law.
6. To gain a long-term perspective of how indigenous peoples can fully enjoy their right to customary law, to identify the challenges in achieving this, and to define the best ways of addressing such challenges.

**CONTENTS****I. INTRODUCTION**

- A. Background
- B. Definition of terms

**II. UNDRIP PROVISIONS**

- A. Core articles
- B. Related articles

**III. REALITIES ON THE GROUND**

- A. General situation
- B. Laws and policies
- C. Challenges in implementation

**IV. EXPERIENCES AND LESSONS LEARNED**

- A. Advocacy and lobbying
- B. Action and mobilization
- C. Actual exercise of the right

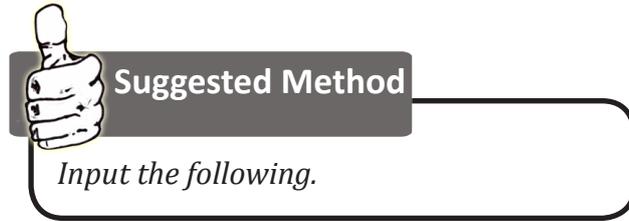
**V. CHALLENGES**

- A. Needs, capacities, strategies
- B. Implementation
- C. Monitoring

## I. INTRODUCTION

### A. Background

Throughout history, human societies have been regulated by internal institutions – social-political and cultural-religious structures and processes – which served to shape the life of communities. These were at first informal and flexible rules and functions passed from one generation to the next – in a word, customs – that people relied on to resolve questions and disputes involving community membership, kinship, marriage, property rights, resource access, leadership, blood feuds and warfare.



When a people reaches a certain level of political development, the informal customs evolve into customary law, which are interpreted and modified, applied to specific cases, and enforced through the action of the entire community, or by institutions or groups of indigenous political-religious, military or juridical leaders that gradually assume the role of an incipient state.

The persistent practice and broad scope of customary law are strong indications of the indigenous character of a people. At the same time, in the modern era of nation-states, customary law comes into conflict with state-imposed legal-judicial systems, and often loses out. The result is that indigenous systems of customary law and leadership are often reduced to token and harmless rituals, except in countries where the indigenous legal-judicial system is formally recognised.

On the other hand, the rise of the indigenous peoples' movement has created new political space for indigenous communities to assert their customary laws, especially those that they can wield as weapons to protect their cultural identities and group social values; to defend their territories, lands and resources; to cement local (intra-community and inter-community) alliances; and to begin asserting, to some degree, a measure of self-rule.

#### 1. Definition of terms

A legal scholar has defined customary law as

*an established system of immemorial rules which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his counselors, their sons and their sons' sons, until forgotten, or until they became part of the immemorial rules (Bekker 1989:11).*

Social research has shown customary law to be continually evolving. In studying legal pluralism in the Northern Luzon Cordillera, an anthropologist has observed customary law to be “both structure and process” [Wiber 1993:13], and one of our own colleagues has found it to be:

*a system which people evolved, transformed or innovated on over time, in the course of their coming to terms with changing realities [Gimenez 1996: 14].*

Customary law is a coherent body of laws, but it is not rigid like state law.

Customary laws are formulated in an inclusive and consensual manner, in unstructured ways and over time, unlike state laws which are passed in the formal sitting of a legislative body in only one or several sessions.

Customary laws are generally transmitted through oral tradition and practice, unlike state law which is formally written down.

Three kinds of laws are of particular importance to most indigenous peoples. They are:

- laws governing family and kinship: these include matters pertaining to marriage, divorce, child custody, maintenance, inheritance, etc.;
- laws governing territory and the ownership or use of, or access to land and resources;
- laws governing feuds or violent conflict among individuals or kinship groups within the community, or between communities that observe common principles of conflict resolution.



### Suggested Method

*At this point, ask the participants what they know of their customary laws in the three categories given above and discuss their knowledge with them. Then continue with the input.*



### Suggested Method

*At this point, divide the participants into groups and have them discuss then do some role-playing about customary law versus state law, pinpointing the advantages and disadvantages of:*

- *Simply having principles of law vs. having detailed provisions of law;*
- *Flexibility vs. rigidity;*
- *Consensus vs. convention;*
- *Community legislation vs. state imposition;*
- *Community adjudication vs. state judges' control;*
- *Arbitration of disputes aimed at a win-win resolution vs. arbitration which tends to result in a win-lose situation.*

*Have the participants present the results of their group work, and synthesize, then continue with the input.*

The customary laws of indigenous peoples are closely linked to the economic, political, spiritual or religious and other cultural and social traditions. Therefore, they cannot be seen in isolation as pure “law”, as in the case of non-indigenous or mainstream societies.

In fact, customary law may serve as the very basis of an indigenous people’s identity and integrity; it may be the crucial criterion that sets them apart from other peoples and that constitutes an integral part of their indigeneity. In Indonesia, the indigenous peoples are known – in Bahasa Indonesia – as *masyarakat adat*, meaning people [who live by] customary law.

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## II. UNDRIP PROVISIONS RELATED TO CUSTOMARY LAW

### A. Core Articles

#### Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.



#### Suggested Method

*Present the relevant UNDRIP provisions. Involve participants in reading the provisions. Discuss and elaborate on each provision.*

#### Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

#### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the

cases where they exist, juridical systems or customs, in accordance with international human rights standards.

### Article 40

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

## B. Related Articles

### Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

## III. REALITIES ON THE GROUND

### A. General Situation

The continued survival of indigenous peoples is accompanied by the persistence of deeply rooted customary law and by its unavoidable conflict with bodies of law grafted by post-colonial states onto Asian societies from Anglo-Saxon and Roman legal traditions. The conflict between customary law and state law has produced different situations in the various countries and among the various indigenous peoples of Asia. They include the following:

- The main body of customary law is recognized and respected by the pre-existing state, and institutional mechanisms are created to reconcile or minimize conflicts between customary law, on one hand, and state legislation and jurisprudence, on the other hand.



#### Suggested Method

*Input the following but involve participants in a discussion of the particular situation in their area or country.*



Offering tokens of peace, resolution of Basao-Tonglayan dispute in 2006 (Cordillera, Philippines. Photo by Marlon Gomarcho

- The main body of customary law is suppressed or supplanted by state law. While parts of it may be selectively assimilated by state law, the rest gradually atrophies, marginalized by suppression or disuse.
- The main body of customary law develops into its own expanded set of state laws, usually in the context of a new state created through a revolutionary process.

Meanwhile, customary laws as practised by specific indigenous peoples continue to evolve in their own right, as they try to adapt to various internal pressures (including the impact of the market economy, state operations, and diffusion of foreign lifeways into the indigenous). The

direction of change may be in the form of written (in lieu of traditional oral) forms; adoption of general standards if not outright codification; substantial or procedural adjustments in order to adapt to changing community norms, or to conform with specific national or international laws; or, on the other hand, revival of a dead or dying customary law because it answers a new need.

## B. Laws and Policies Related to the Recognition of the Right

The following are provided as examples of positive laws that recognize, in varying degrees, the existence and practice of customary law among indigenous peoples in specific countries and areas.

### EXAMPLES OF POSITIVE STATE LAWS ON RESPECT FOR CUSTOMARY LAW

#### INDIA

- Constitutional provisions regarding Nagaland (article 371a), Manipur (371c), Mizoram (371g)
- 6th Schedule (Autonomous District and Regional Councils)
- India's Federal Law "Panchayati Raj (Extension to Scheduled Areas) Act" of 1996
- State-level laws in India such as Chotanagpur Tenancy Act 1908, Santal Parganas Tenancy (Supplementary Provision) Act 1949

#### MALAYSIA

- Constitutional provisions in Malaysia: articles 151, 153(2), 161(a), 161(b), 161(e)
- Constitution of Sabah: article 41

In various countries of Asia, there are laws and policies that positively recognize customary rights, for example, over forest resources, subsurface resources, water sources, family law, etc. In some cases, the positive law may not be an independent and separate law particularly highlighting customary rights. Instead, the recognition could be a small section or even a single but important provision of a general law on land, or resources, or some other subject. In the case of



## C. Challenges in Implementation

In many Asian countries, indigenous peoples and states encounter the following challenges with regards recognition and respect of customary law. In general, these are either negative laws and policies, or of non-implementation of positive laws:

- There exist conflicts between state law and customary law, especially regarding land and resources. The status of customary law is often regarded to be of a lower status and of lower priority in application.
- With respect to family law, a great challenge is gender issues: women do not enjoy equal rights in the customary laws of numerous indigenous peoples worldwide.
- Some customary laws may also conflict with national and international human rights standards, such as on the matter of women's rights and child rights.
- Whether to codify customary law or not often becomes a controversy among indigenous communities, or between an indigenous people that relies on flexible and adaptive practice and a state that requires codification. Codification is not the same as simply writing down customary law. It depends on the practice, i.e., what prevails. One challenge is thus how to sustain customary law without codification, and thus maintain its flexibility and adaptability.
- Arbitration vs. court cases: arbitration under customary law is cheaper, faster, not stuck in formalities, more flexible and allows for more nuances and local adaptations.
- In some cases, establishing individual membership in an indigenous community becomes problematic. For example, do the children of a mixed-marriage family (an indigenous parent and a non-indigenous parent) keep their membership?
- In still other cases, equal inheritance of land by men and women may conflict with the community's interest to maintain contiguous clan/village territories, and even its collective control over land in the case of mixed marriages.



### Suggested Method

*Ask the participants to identify the ways, in actual practice, in which the (positive) laws and policies are being neglected, under-implemented, unimplemented or even violated by contrary or contradictory acts or omissions. Ask them to locate where the difficulty lies – with administrative procedures or development projects, etc.*

*The exercise should highlight whether the remedy lies with legal reform (amendment of the law), or administrative acts (implementing rules), or adjudication (winning cases in court and establishing precedent cases), or human rights advocacy at national or international levels.*

*If part of the challenge lies in the indigenous peoples' absence of awareness about their rights, this can also be identified here.*

### For Discussion:

#### The Issue of Equity and Equality

In some matrilineal societies, such as the Khasi and the Garo in Bangladesh and Northeast India, only women, and usually the youngest daughter, inherits the parental homestead. This may be a case of equity, without being "equal" in the mathematical sense.

Philippine societies, both indigenous and non-indigenous, are largely bilineal. But in many of them, such as the Kalinga in the Northern Luzon Cordillera, it is also assumed that the youngest daughter will inherit the parental homestead. This is because it is also assumed that, even after she marries and establishes a family of her own, the youngest daughter, along with her family, will stay with her parents to take care of them through old age, until their death. She will thus “earn” the homestead. This may be regarded as a case of “equity” but can also be seen as a case of “inequality” inasmuch as it limits the life choices of the youngest daughter whereas the other children are free to go and do as they will.

## IV. EXPERIENCES AND LESSONS LEARNED

### A. Advocacy and Lobbying Related to the Right

Here are some examples of best practices on customary resource rights from different parts of the world:

#### **INDIA. Naga, Mizo rights in the constitution of India.**

The recognition of land rights and religious and social customs of indigenous peoples of Northeast India (Mizos and Naga, for example) in the Constitution of India can be brought in here.

[Article 371A for Nagaland, and article 371G for Mizoram. Their provisions are almost identical. Article 371A was inserted through the Constitution (13th Amendment) Act, 1962, while article 371G was introduced through the Constitution (53rd Amendment) Act, 1986.]



#### **Suggested Method**

*Ask the participants to give examples they know about good practices and learning experiences in the assertion or exercise of the right to observe customary law, in the fields of:*

- *Advocacy and lobbying for the state and other non-state actors to recognize and respect customary law;*
- *Action and mobilization to defend the said rights;*
- *Actual exercise of the said rights.*

#### **INDIA. Autonomous District (And Regional) Councils, Northeast India.**

(Sixth Schedule to the Constitution of India (Article 244(2) and 275(1)).

Autonomous District Councils (“ADCs”) and “Regional Councils” in Northeast India are an example of a (semi) autonomous unit within an autonomous state (province) to accommodate indigenous peoples a measure of autonomy from the state in which their group may not form a numerical majority (and thus be marginalized).

ADCs’ authority over land and customary law is recognized. For administration of justice involving customary law, ADCs’ are authorized to establish their own courts. Thus this is a form of indigenous juridical autonomy, juridical because it covers both legislative and judicial matters.

#### **PHILIPPINES. Indigenous Peoples Rights Act (IPRA).**

For customary resource rights – again, with necessary caveats – IPRA, Philippines may also be mentioned. Challenges and difficulties include (i) inadequate funding of the National Commission on Indigenous Peoples (NCIP), (ii) slow pace of provision of titles; (iii) conflicting traditions and customs between communities, etc.

**AOTEROA (NEW ZEALAND). Waitangi Tribunal.**

Again, with caveats, the Waitangi Tribunal in Aoteroa (New Zealand) may be mentioned. Here too challenges remain with regard to the resolution of claims on account of evidential matters, logistics, bureaucratic procedures, discrimination, etc.

**Others.**

Some of the best practices from the Module on Land, Territory and Resources may also be mentioned:

- PACOS Land Rights, Sarawak
- Nepal Community Forestry
- Forest Rights Act, India
- Movement for the Protection of Forest and Land Rights in the Chittagong Hill Tracts, Bangladesh

**B. Action and Mobilization to Defend Rights****INDIA. JJBA, Jharkand**

(see section on Land, Territory and Resources)

**BANGLADESH**

Movement (former Committee) for the Protection of Forest and Land Rights in the Chittagong Hill Tracts; The movement spearheaded a reasonably successful campaign to resist industry-oriented mono plantations in the name of “social forestry” that were to have been funded by the Asian Development Bank and the Government of Bangladesh. The struggle still continues in courts of law and outside as a process of creating new “reserved forests” out of community lands is still to be formally resolved.

**NORTH EUROPE**

Saami advocacy for Nordic Saami Convention.

**Note to trainers**

*Refer to materials from the Madrid Seminar on Special Mechanisms for Indigenous Peoples, some of which are enclosed in the CD which accompanies this manual.*

**JAPAN**

Nibutani Dam Case of the Ainu People in Sapporo District, Hokkaido, Japan. This case recognized the Ainu people’s right to the land and also recognized them as an indigenous people. This was a turning point in the Ainu struggle against discrimination and for equal rights.

**REFERENCES**

Judgment of the Sapporo District Court, Civil Decision No. 3, issued March 27, 1997, 1598 Hanrei Jiho 33; 938 Hanrei Times 75, 38 International Legal Materials 394 (1999).

Tahara, Kaori. 1999. “Nibutani Dam Case” in Indigenous Law Bulletin, University of South Wales Indigenous Law Centre, August/September 1999 International Issue: 18-20.

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## NICARAGUA

Awas Tingni case: Inter-American Court of Human Rights, Caso de la Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua, Sentencia de 31 de agosto de 2001.

This landmark case upheld the rights of the Mayagna community's customary law land rights, highlighting the "communitarian" and other traditions, which were held to have not been extinguished by the creation of the Nicaraguan state. An interesting feature of the case is that the main counsel in the case is the incumbent Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, Prof. Dr. James A. Anaya.

### C. Actual Exercise of the Right

## INDIA

Sixth Schedule District Councils as a best practice.

### EXAMPLE

#### SIXTH-SCHEDULE DISTRICT COUNCILS

Extract from: Roy, Raja Devasish. 2005. Traditional Customary Laws and Indigenous Peoples in Asia (London: Minority Rights Group International): 15.

Mizoram is also among those states in Northeast India where the Sixth Schedule to the Constitution of India applies. This Schedule provides for another type or form of autonomy at a level that is lower than that of a state; namely, autonomous district and regional councils, whose populations are usually from one or more ethnic groups that are distinct and separate from those in other parts of the state. Thus, Mizoram has a number of district and regional councils populated by indigenous people who do not belong to the majority Mizo group (who themselves are an indigenous people). One such council is the Chakma Autonomous District Council, having jurisdiction over an area with an overwhelming majority of indigenous Chakmas, who are also the largest indigenous group in the neighbouring region of Chittagong Hill Tracts in Bangladesh.

The Sixth Schedule district and regional councils – such as Chakma Autonomous District Council – have jurisdiction over several matters, including land administration, administration of justice, and limited legislative powers. They are partially autonomous from the state governments (although the Governor of the state, a federal government appointee, retains certain legislative prerogatives), and enjoy the power to make laws on, inter alia, such subjects as allotment of lands (other than reserved forests), management of forests (other than reserved forests), regulation of 'jum' (swidden) cultivation and inheritance of property. In addition, these councils are empowered to regulate the levying of interest rates above a certain percentage, money-lending and trading by those not native to the state.

### EXAMPLE

#### SIXTH-SCHEDULE DISTRICT COUNCILS

##### Establishment of Village or Town Committees or Councils

Extract from: Roy, Raja Devasish. 2005. Traditional Customary Laws and Indigenous Peoples in Asia (London: Minority Rights Group International): 17.

Apart from the special constitutional safeguards on Mizo customary law as mentioned earlier, other such safeguards on customary laws include the legislative preroga-

## RIGHTS! AIPP

tives of the autonomous district and regional councils and their authority to establish judicial and quasi-judicial bodies. The aforesaid councils may pass laws for the establishment of village or town committees or councils, the appointment and succession of Chiefs or headmen, marriage and divorce, and social customs. Village councils or other courts so constituted by district or regional councils are empowered to try all suits and cases between indigenous people (“scheduled tribes”), excluding grave criminal offences that carry high prison sentences or death penalties, unless the governor of the state expressly authorizes the indigenous court or person concerned to try them. Regional and district councils hear appeals against the judgments and decisions of the village councils or other courts.

## V. CHALLENGES

### A. Needs, Capacities, Strategies

**Needs.** Some needs are fairly common: like difficulties of accessing information on customary law principles, absence of a data base, absence of compendia on customary laws etc.

**Capacities.** Capacity-raising of indigenous peoples’ organizations, leaders and activists is required in most situations. Training programmes of PACOS, Hill Tracts NGO Forum (later, CIPD and KMKS) may provide some ideas.

**Strategies.** Strategies are required on how best to collect information (e.g., to codify or not), on how to lobby (civic action, litigation in court, human rights advocacy, etc.).

### B. Implementation

Implementation or enjoyment or exercise of the customary law rights that are already recognized in state law will vary from country to country and people to people.

Examples of best practice laws that have been mentioned are the Autonomous District Councils in Northeast India; the Land Titling in Philippines (under IPRA); and the Waitangi Tribunal in Aotearoa, New Zealand. In practice, however, there are severe implementation gaps in the said examples.

There will most likely be similar implementation challenges in most other countries.

### C. Monitoring

Mechanisms to monitor the situation of customary laws in most countries face difficulties.

Absence of clear supervisory and oversight mechanisms create severe difficulties, even in cases of relatively strong customary personal law practice, such as Sabah (in Malaysia), North-east India, and Chittagong Hill Tracts (in Bangladesh).



#### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants, which will vary from country to country, and from place to place.*

*Discuss with the participants the three main points as listed below:*

- *Needs, capacities, strategies*
- *Implementation*
- *Monitoring*

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

The links between customary law practice and supervision by human rights watchdog bodies and formal courts of law are often weak, misunderstood or tense. There is a general need to increase synergy between and among watchdog bodies and indigenous peoples' institutions and share responsibilities.

The UNDRIP makes it clear, especially in Article 34, that customary law must conform to international human rights standards.



**MODULE 4****LAND, TERRITORY AND RESOURCES**

PREPARED BY CHRISTIAN ERNI

**OBJECTIVES**

1. To understand why land and other natural resources are extremely important for indigenous peoples;
2. To gain an overview of the existing problems in having the land and resource rights of indigenous peoples formally recognized, especially in our own countries;
3. To gain an overview of key issues related to the management and conservation of land and resources by indigenous peoples;
4. To know the provisions in the UNDRIP that address indigenous peoples' rights to land, territory and resources, and to the autonomous management, conservation and development of these;
5. To reflect on the extent to which indigenous peoples' rights to land, territory and resources, as enshrined in the UNDRIP, are upheld in our own countries;
6. To learn about good examples of how indigenous peoples assert rights to land, territory and resources;
7. To envision a better future with respect to our own communities' rights to land, territory and resources, to identify the challenges in achieving this, and to identify the means by which the challenges can be addressed.

**CONTENTS****I. INTRODUCTION**

- A. Indigenous peoples' relationship to land, territory and resources
  1. The multi-dimensional relationship of indigenous peoples to land
  2. The consequences of land loss
- B. Indigenous peoples' rights to land, territory and resources
  1. Non-recognition by the state
  2. Indigenous peoples' customary law and state law
- C. (Optional Section) Indigenous peoples' systems of resource management and conservation

**II. UNDRIP PROVISIONS ON RIGHTS TO LAND, TERRITORY AND RESOURCES**

- A. Core articles: overall recognition of rights to land, territory and resources
- B. Related articles:
  1. On the recognition of customary laws regulating rights to land and resources
  2. On the right to an easily-accessible, fair, inclusive and expeditious mechanism of redress for past injustices
  3. On the right to means of subsistence and to development
  4. On the recognition of indigenous peoples' conservation and protection of the environment
  5. On land, territory, resources and the right to self-determination

### III. REALITIES ON THE GROUND

- A. How rights to land, territory and resources are respected or violated
- B. Laws and policies, good and bad, pertaining to the recognition of rights to land, territory and resources
- C. Challenges in having good laws and policies implemented
- D. Challenges in resisting or preventing the implementation of bad laws and policies

### IV. EXPERIENCES AND LESSONS LEARNED

- A. Actual practice or exercise of land-resource rights within the existing framework of national laws and policies
- B. Advocacy and lobby at national and international levels
- C. Assertive action and mobilization at national and international levels

### V. CHALLENGES

## I. INTRODUCTION

### A. Indigenous Peoples' Relationship to Land and Territory

#### 1. The multi-dimensional relationship of indigenous peoples to land

In a report to the UN Commission on Human Rights, Special Rapporteur Erica Irene A. Daes summarized four elements that are unique to indigenous peoples:

- A profound relationship exists between indigenous peoples and their lands, territories and resources;
- This relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities;
- The collective dimension of this relationship is significant; and
- The intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability.

What distinguishes indigenous peoples' relationship to land from that of many other peoples is its multi-dimensional character:

a. Land is the basis of livelihood.

Indigenous peoples live in almost all major biomes of the world, from the high arctic to the tropical rainforest. Over centuries or even millennia, indigenous peoples have developed sophisticated and well-adapted forms of land and resource use that provide their communities with what they need to make a living.



#### Suggested Method

*Pose the following questions, written on cards and distributed to participants:*

- *In your own experience, how have indigenous peoples been able to hold on to their lands, territories and resources?*
- *What are the main threats and problems encountered by indigenous peoples in relation to land, territory and resources?*
- *What do you think are the rights of indigenous peoples related to land, territory and resources?*

*Collect and cluster the written replies, and synthesize the ideas of the participants.*

*Input the content below, showing photos and other visual material. At points indicated below, engage the participants in group interaction.*

**EXAMPLES OF INDIGENOUS LIVELIHOOD SYSTEMS:**

- Hunting and fishing in the arctic and sub-arctic;
- Transhumant (nomadic) pastoralism in the deserts and semi-deserts of Africa, and of West and Central Asia;
- Shifting cultivation in the tropics and sub-tropics of South and Central America, Africa, and South and Southeast Asia;
- Intensive agriculture, like wet-rice cultivation in South and Southeast Asia, or corn production in North and Central America.

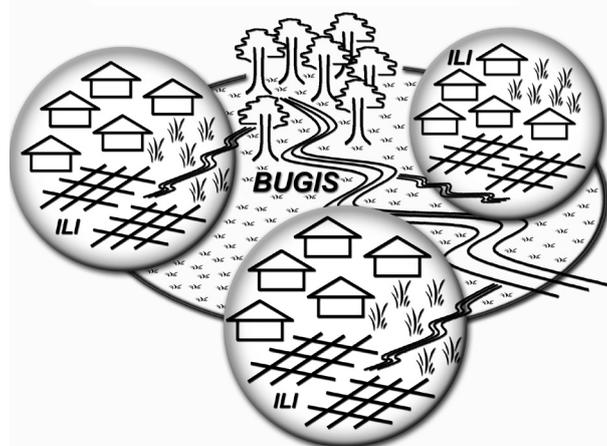
In most cases, indigenous communities combine their main or pivotal form of land use with several other forms of land-resource use. For example, shifting cultivators in Southeast Asia usually combine swidden agriculture with animal husbandry (they keep pigs, chicken, cattle, buffalo, horses etc.), hunting and gathering, fishing, cultivation of cash crops (like rubber, coffee, tea, spices) and seasonal off-farm employment.

Most indigenous people are still largely dependent on land and natural resources for their livelihood, even though an increasing number of the youth are seeking employment outside their communities.

b. The relationship of indigenous peoples to the land goes beyond economics; it has a social and cultural dimension.

The social organisation of indigenous peoples is reflected in the way the community regulates access to land and resources.

The Tangkhul Naga of Northeast India, for example, distinguish between land over which individuals have use rights, land that belongs to a clan, and land that belongs to the whole village. There are clear regulations on the use of each type of land.



Simplified diagram of a Kalinga tribe's bugis (territory) and constituent il-ili (villages) by Rafael Marcus Bangit



The Upper Fay Valley in the Buhid Ancestral Domain, Mindoro, Philippines. Photo by Christian Erni

Land use and ownership rights are defined similarly among the Kalinga of the Northern Luzon Cordillera in the Philippines, who differentiate between: (1) rice fields owned by individuals; (2) swidden land used by individuals but owned by the village; (3) pasture and forest land owned by the entire tribe, whose territory may consist of several villages.

A village identifies strongly with its land, and so does the individual who has inherited a paddy field from an ancestor.

The history of a community or a people is often written in the landscape: particular geographical features or landmarks like mountains, rock formations, lakes, ponds, gorges, creeks, particular parts of a forest, groves or even single trees have meaning, are often linked to myths or legends, or tell stories about events of the distant or more recent past.



### Group Interaction

*Ask the participants for examples from their own communities. Ask them to draw their own diagrams if possible.*

c. Indigenous peoples have a strong spiritual relationship to land.

Indigenous peoples consider their lands as inhabited not just by people, plants and animals, but also by spirits. Many indigenous peoples believe that, along with the many kinds of nature spirits, their ancestors' spirits continue to live on their land. Thus indigenous peoples' territories typically have many sacred places which are either never visited, or visited for special ceremonies. The land is their temple.



### Group Interaction

*Ask the participants for examples from their own communities.*

d. The relationship to land is strongly communal. Land is the source of collective identity as communities and as a people.

e. The relationship to land has also an intergenerational dimension: land has been handed down by the ancestors, and it will be handed down again to children. As a result, there is a strong sense of responsibility towards the land.

Because of the close interconnections of economy, social organization, culture, spirituality, and the environment – i.e. the land, territory and resources – the experience of indigenous peoples throughout the world is that when the relationship between a community and the land it occupies changes, the relationships within this community also change. In other words, if rapid changes occur in the land use or land tenure systems of indigenous communities, or if indigenous communities lose access to and rights over land and resources, the indigenous communities will themselves change rapidly. And the changes that happen in indigenous communities will affect the environment and the people living nearby.

Most important is to be aware of the impact of land loss, of the changes and effects that can come about due to land alienation. A look at what happened around the world will tell us what is likely to happen in our own communities if the land alienation problem is not addressed.



### Group Interaction

*Ask the participants for examples of experiences with change in their own lands and communities.*

## 2. The consequences of land loss

Since the relationship of indigenous peoples to land is usually so close and multi-dimensional, the impact of land loss can be devastating. Among some indigenous peoples it has led to total social breakdown.

### EXAMPLE: THE KHWE OF THE CENTRAL KALAHARI IN BOTSWANA

The Khwe used to live on hunting and gathering, and raising goats, donkeys and horses. But all the good land with access to water was taken away by outside farmers and turned into cattle ranches.

Only in the Central Kalahari Game Reserve could about 1,000 Khwe continue an independent life. But even this ended just recently when the Khwe were relocated out of the reserve.

Left without land, their life has become extremely harsh, and the Khwe have become the poorest and most marginalized sector of Botswana society.

A few have found jobs as farm hands. They live on the farms with their families in total dependence on the farm owners.

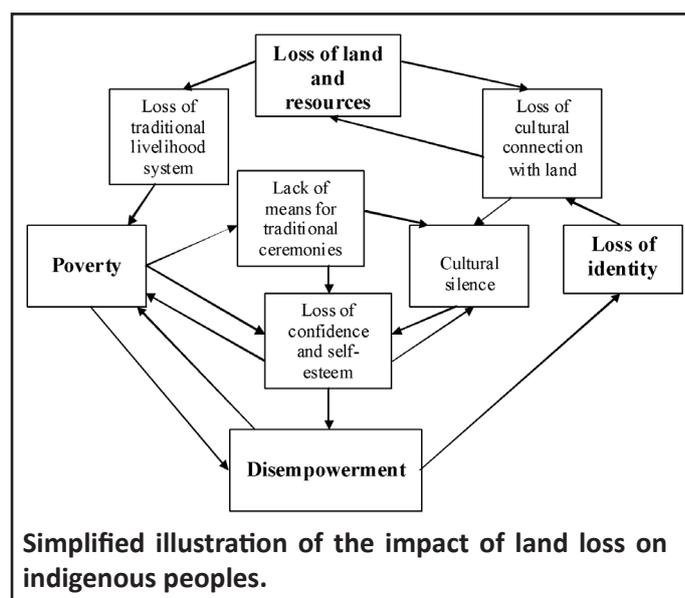
It is important to note that this is a very common situation. Indigenous people generally have much less access to education than the majority people. As a consequence indigenous people find it very difficult to obtain an education that enables them to find alternative incomes when they have lost their lands.

Therefore, throughout the world indigenous people who have become landless end up working as unskilled laborers. But as modernization and mechanization in agriculture and industry progresses, they tend to become unemployed again.

As a result of land occupation by outside farmers in Botswana, the Khwe communities have been torn apart, and their traditional social structure has broken down. Many have moved to towns, where they live in slum areas and try to make a living as daily laborers. Over the recent decades more have been forced to move their homes as cattle farming was modernized and fewer people are needed.

The result is not only devastating for the Khwe, but poses problems to the nation.

Thousands of Khwe have now been relocated by the government to special resettlement sites. There, the government provides food and housing, and runs schools and health centers. But there are almost no jobs in these resettlement sites, and hardly any other economic opportunities. So people are forced to spend most of the days idle. Al-



coholism and domestic violence are rampant. Social structure and culture have almost totally disintegrated.

As a consequence of losing their land, the Khwe have become almost totally dependent on government support. It is very costly and difficult to develop viable economic alternatives under such conditions, and almost impossible to revive the people's culture and society.

Many such examples can be cited from all over the world where indigenous communities have been alienated from their land and resources. It is widely recognized that, as a result, indigenous peoples are often among the poorest of the poor.

The interconnection between land loss, disruption of social structures and values, and poverty among indigenous peoples is well established. In a workshop on indigenous peoples and poverty organized by IWGIA in 2002, this was illustrated with examples from India.

Among communities in Central India, where social structures and values have broken down as a consequence of land loss, indigenous communities have been impoverished to the point of starvation. On the other hand, in Northeast India, indigenous communities have maintained a certain control over land and natural resources. Their social structure and culture is thus intact, and there is much less poverty.

The Asian Development Bank conducted a series of studies on poverty and indigenous peoples in 2001 and 2002. The results were revealing: in all reports, land loss was consistently mentioned as one of the main causes of poverty. Two examples from the ADB report are presented below.

#### **EXAMPLE 1: INDONESIA**

During the project's provincial workshop in Palu, Central Sulawesi...many adat community representatives and supportive NGOs stated quite strongly that the main cause of adat community poverty is lack of recognition and protection of their rights to their land and natural resources, from which many have been dispossessed. (Plant: 37)

#### **EXAMPLE 2: PHILIPPINES**

The most frequently recurring issues raised during consultations with indigenous peoples refer to their lands. This may take on the form of landgrabbing by powerful politicians and business persons, entry of CBFM [Community Based Forest Management], tourism, plantations, projects such as dams and individual claims by non-indigenous persons. (Plant: 38)

One of the consequences of land loss and social breakdown are poor health and the high costs of trying to address health problems. In Australia for example, many people originally thought that forcing indigenous people to change from their traditional lifestyles would improve health conditions. But the opposite happened. Their social systems were weakened and people did not feel in control of their lives anymore. They were forced into development that did not respect their cultural values and knowledge. They lost their community vision for the future. Social and health problems increased as a result. It became a major embarrassment to the national government that these problems were created. And now, because the social systems have been weakened so much, the cost of health services to try to address this is often more than twice than that for the non-indigenous peoples. It has been only with restoration of community lands that some

of these problems could be addressed. Even so, much of the damage and problems are extremely difficult to reverse.

One of the severest consequences of the social breakdown due to land loss is increasing security problems. This is reflected in increasing crime rates and conflicts.

But all this does not have to happen:

According to a statement of the Lumad of Northwestern Mindanao quoted in the ADB report (p. 35ff), indigenous peoples cannot be poor if the following are present:

- Forest for all their food and health needs;
- Peace;
- The indigenous characteristic of helping one another in times of need;
- Knowledge about the forest; and
- Indigenous systems and means to help them choose their own lifestyle.

The ADB report concludes by stating:

*Access to land and control over the ancestral land/domain is crucial for indigenous peoples' well-being. Moreover, the ancestral domain [communally owned land] provides the context and environment that make development possible. (p. 60)*

(We must point out, though, that while the ADB or World Bank have clearly identified the crucial role of land rights in addressing the poverty and marginalization of indigenous peoples, this unfortunately does not mean that their policies actually conform with their own analysis and recommendations.)

Special Rapporteur Daes has concluded in paragraph 21 of her report:

*The gradual deterioration of indigenous societies can be traced to the non-recognition of the profound relationship that indigenous peoples have to their lands, territories and resources, as well as the lack of recognition of other fundamental human rights.*

Therefore, the recognition of indigenous peoples' right to their land is crucial, not only for their physical but also for their cultural survival.

This is particularly relevant also for members of indigenous peoples who chose or were forced to migrate to cities in search of employment. Usually, they maintain close connection to their villages of origin. Having this connection is important for them to maintain their identity and to withstand the assimilation pressure from the dominant society surrounding them.

## **B. Indigenous Peoples' Rights to Land, Territory and Resources**

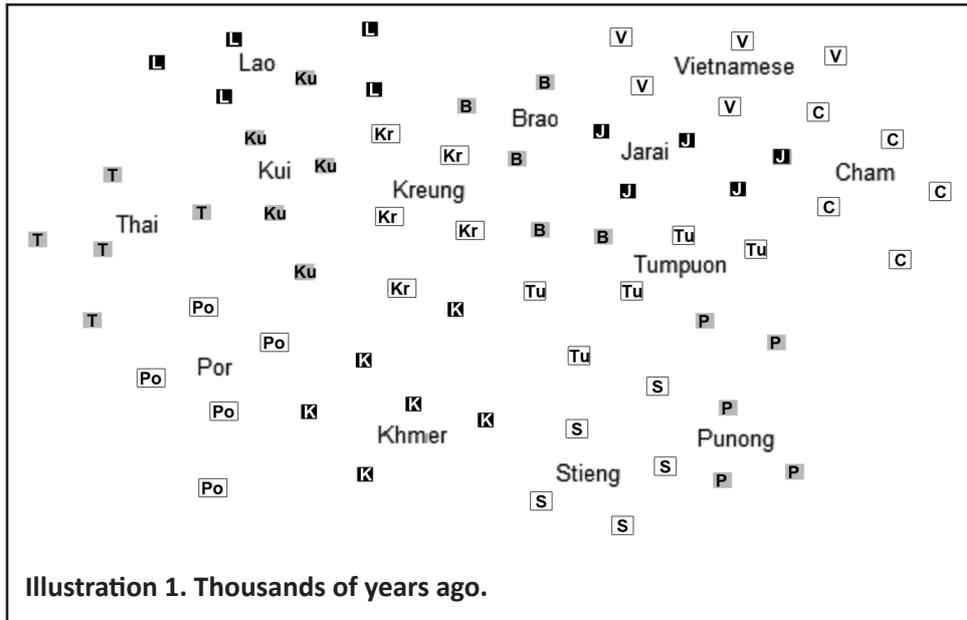
### **1. Non-recognition by the state**

Except for international sea waters, the whole world has been divided up among nation states. So today, indigenous peoples all over the world live within the boundaries of one nation state or another.

This is a fairly recent phenomenon. Until 100 to 150 years ago, the political geography of the world still looked quite different.

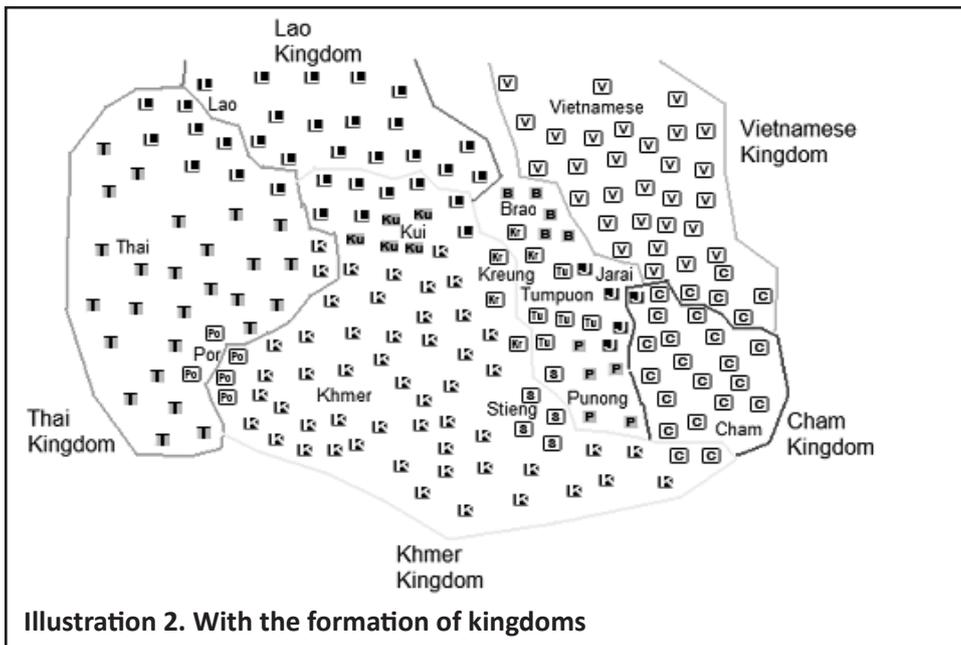
**EXAMPLE:  
MAINLAND SOUTHEAST ASIA  
(This example has been taken from an unpublished article  
written by Peter Swift)**

Thousands of years ago in most of Asia all the different peoples, the Khmer, Thai, Lao, Vietnamese, Kui, Stieng, Punong, Brao, Kreung, Jarai, Por, Tumpuon, Cham, and other ethnic groups probably all lived basically the same way. People probably lived in villages that looked pretty much the same, and there was probably no higher level of social organization. And they did not live in the same places where they live today. There were no kingdoms then, and no countries (Illustration 1).



Then, some of these ethnic groups came into contact with Indian or Chinese civilization, and they started to form kingdoms. They included the Khmer, Thai, Lao, Vietnamese, and Cham. When a people had a kingdom, their people expanded and moved into other areas.

In some cases, they pushed out the people who were there; in other cases they just controlled them (ruled over them in their kingdom). The kingdoms were based on lowland rice farming, and their populations increased; the other peoples farmed upland rice. The result is shown in Illustration 2.



Then, in the 1800s, the French came. They took control over areas held by the Khmer and the Vietnamese, and part of the Lao kingdom. At that time, the Cham kingdom no longer existed. The Thai kingdom remained independent, and took over the other part of the Lao kingdom. (Illustration 3)

During this time, the Khmer, Lao, and Vietnamese kingdoms were maintained, but they were under the control of the French. The French used the dominant peoples (the Khmer, Vietnamese, and Lao) to help them rule the other peoples.

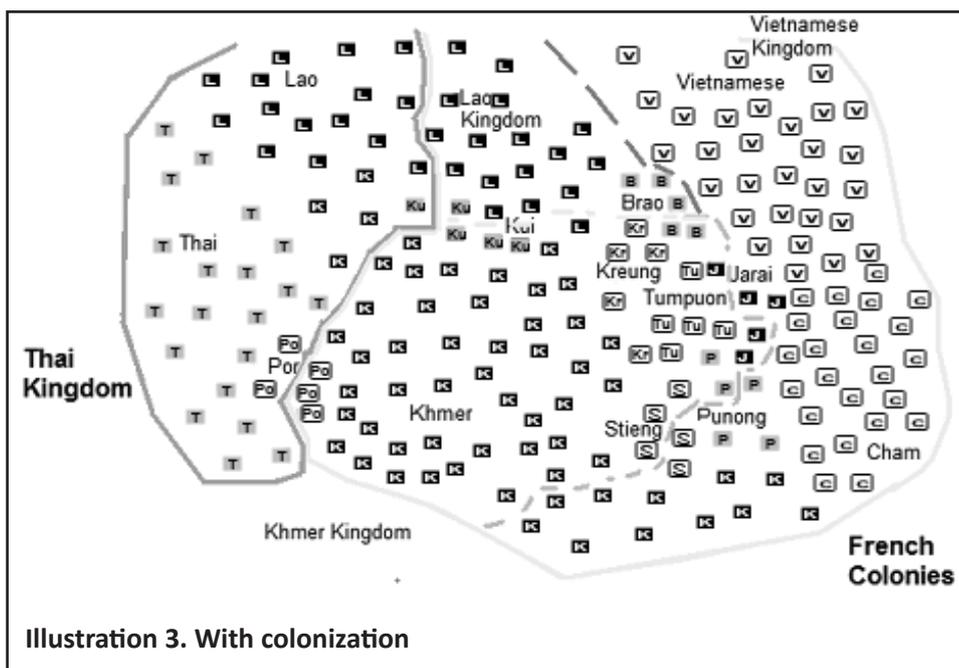


Illustration 3. With colonization

However, all of the peoples within the French colonies were colonized.

In 1954, Cambodia, Laos, and Viet Nam became independent countries (or “nation states”). This was the beginning of state-building. The rulers of these countries tried to build their states and control all the people in them.

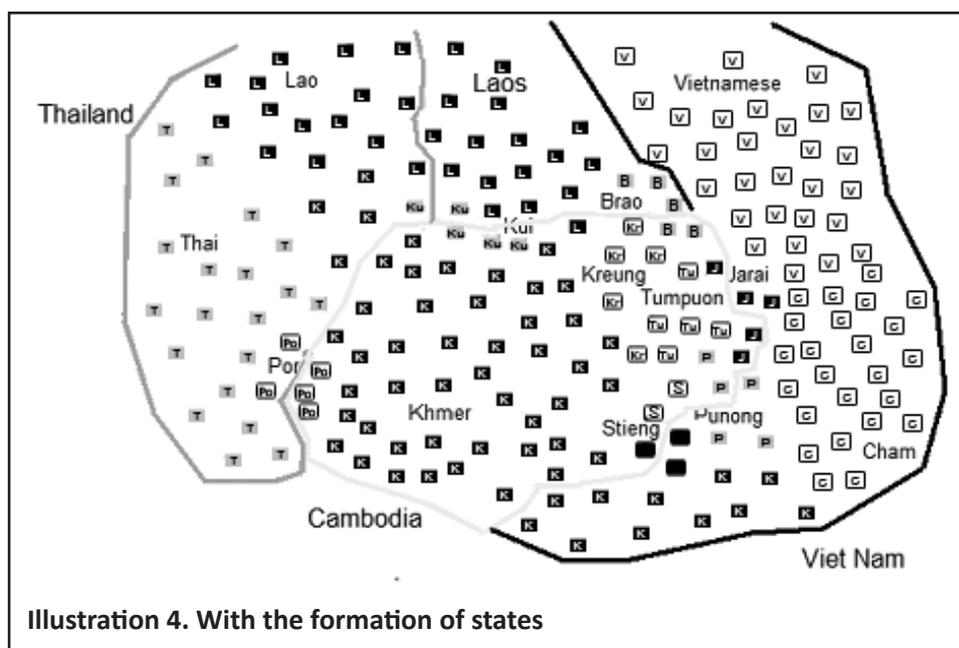


Illustration 4. With the formation of states

In Cambodia, the state was controlled by the Khmer people. In building their state, they tried to control the other peoples within the boundaries of the country: the Por, Kui, Stiang, Punong, Tumpuon, Kreung, Jarai, and others. So these peoples were essentially colonized by the Khmer state. They are called indigenous peoples.

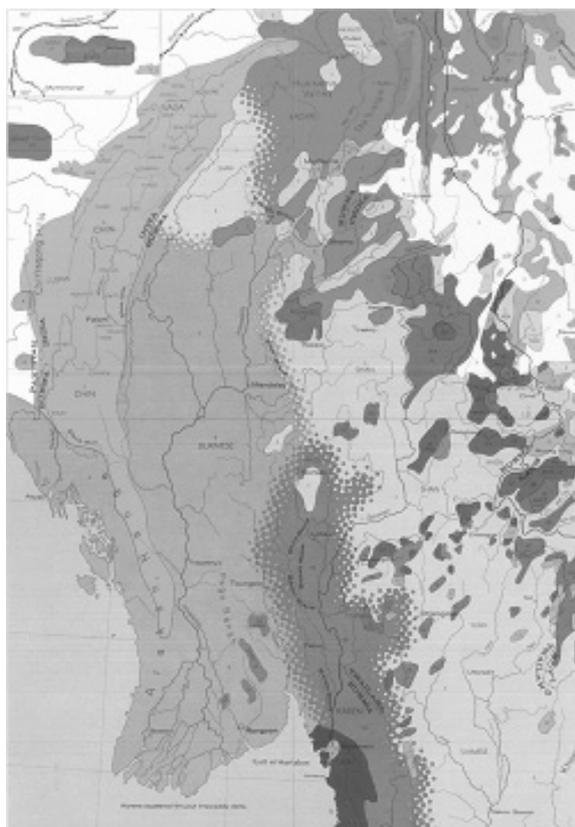


**Indigenous peoples in the Indochina region: straddling international boundaries. Map copied from Erni 2000**

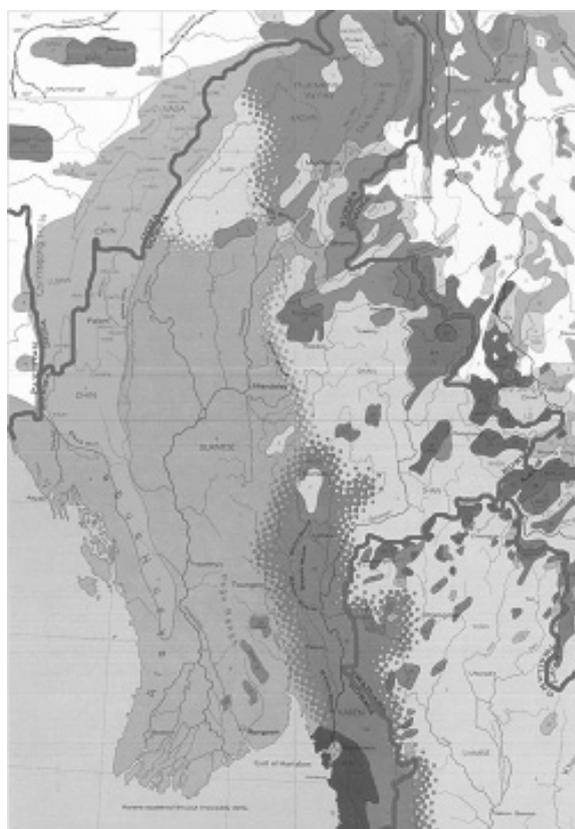
**a. Colonization, external and internal**

The history of the non-recognition of the land and territorial rights, and of the dispossession of indigenous peoples is closely connected to colonialism. Well known cases are the colonization of the Americas, Australia and New Zealand by Europeans. The territories of indigenous peoples were taken through many means, but above all by military force. Indigenous peoples were forced onto reservations.

The underlying justification used is connected to the doctrine of terra nullius. This doctrine holds that indigenous lands are legally unoccupied until the arrival of a colonial presence, and can therefore become the property of the colonizing power through effective occupation. In the seventeenth,



**Ethnic diversity in Burma and adjacent areas in India, China, Laos and Thailand. Map source: Lebar and Musgrave, eds. 1964**



**State boundaries cutting across indigenous peoples' territories. Map source: Lebar and Musgrave, eds. 1964**

eighteenth and nineteenth centuries, when Europeans were “discovering” new continents, lands and peoples, the “discovering” state claimed ownership of the “discovered” lands.

**Definition: TERRA NULLIUS**

This is a Latin expression deriving from Roman Law literally meaning “empty land,” i.e., “land belonging to no one” or “nobody’s land.” It was applied to land that was unclaimed by any sovereign state recognized by European powers. It was used by European powers during the era of colonialism to justify their claims over lands occupied by people whom they considered “backward,” who did not have any European system of laws on ownership or property, and who were also believed not to make proper use of the land in a way deemed appropriate by the colonizers.

**EXAMPLE:**

**THE REGALIAN DOCTRINE IN THE PHILIPPINES**

The Spanish Crown claimed ownership of all land and other natural resources in its colonies, and thereby dispossessed all indigenous peoples of their customary rights to these. Land could become the property of a private individual or corporate entity only by grant from the Spanish Crown. Other natural resources could be exploited by a private individual or corporate entity, but not without the payment of rent known as the King’s Fifth, i.e., the surrender of 20% of the product or of the proceeds from its sale to the coffers of the Spanish Crown.

All subsequent Constitutions of the Philippines, even after independence, have subscribed to the Regalian Doctrine, placing all the land not yet titled to any private entity in the ownership of the state. Thus, indigenous peoples who do not use paper titles to record their land rights have remained dispossessed.

After decades of struggle by indigenous peoples and a relentless legislative lobby by indigenous rights advocates, the Philippine Congress passed the Indigenous Peoples’ Rights Act (IPRA) of 1997, which made it possible for indigenous peoples to acquire Certificates of Ancestral Land Title to their properties and Certificates of Ancestral Domain Title to their territories. This is generally seen as a positive step towards the recognition of indigenous peoples’ rights. However, it implies a continuation of the claim that the state ultimately owns the land. Only the state has the authority to “grant” titles to indigenous communities. Also, the titles granted them do not protect indigenous communities and other people from being evicted or expropriated by the state. Should the state deem that it would be in the national interest to seize a piece of property or territory for the advancement of a development policy or for the implementation of a development project, it can do so by invoking the prerogative of eminent domain.

**Definition: EMINENT DOMAIN**

According to Wikipedia, in common law legal systems eminent domain refers to: *the inherent power of the state to seize a citizen’s private property, expropriate property, or seize a citizen’s rights in property with due monetary compensation, but without the owner’s consent. The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development. The most common uses*

*of property taken by eminent domain are for public utilities, highways, and railroads. Some jurisdictions require that the government body offer to purchase the property before resorting to the use of eminent domain.*

The legal concept of regalian doctrine has been adopted even in countries that have never been colonized, such as Thailand, where the state now claims ownership of vast areas of land and forest inhabited by indigenous peoples.

The colonial concepts of terra nullius, the regalian doctrine and eminent domain have, however, not remained unchallenged, and there are cases in which indigenous peoples have won legal battles over them. Below are two examples.

### **EXAMPLE 1.**

#### **CARIÑO VS. THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS**

In this case, on which the Supreme Court of the United States decided in 1909, the Regalian Doctrine was successfully challenged, and the “native title,” i.e., the pre-existing customary rights of the Cariño family to their land, was recognized.

Despite this precedent, the Regalian Doctrine continues to be applied, and the customary rights of indigenous peoples have been ignored throughout the Philippines, on a large scale.

### **EXAMPLE 2.**

#### **MABO VS. THE GOVERNMENT OF QUEENSLAND, AUSTRALIA**

In this landmark case, the High Court of Australia decided in 1992, in favor of Eddie Mabo, David Passi and James Rice, of the Meriam people of the Murray Islands in the Torres Strait. Mabo and company had challenged the Queensland government’s title to the islands, which it annexed in 1879. The judgment’s importance goes beyond the case itself since it rendered the concept of terra nullius irrelevant, and recognized native title.



#### **Group Interaction**

*Ask the participants: Who owns the forests in your country? How has this come about?*

Today, many states the world over continue to ignore the fact that indigenous peoples have inhabited and used areas of land and sea for hundreds of years. These are usually remote areas, mountainous, forested, or vast grasslands or deserts. The states usually regard the land and other resources found in them as public or government lands. And the states usually dispose of them as if the indigenous people were not there.

There are however exceptions:

As a legacy of British colonial law in Malaysia, so-called Native Customary Rights (NCR) are still recognized in two states, Sarawak and Sabah. Sadly, the law has most of the time been ignored or overruled.

In India, laws that are in place also have their origin in British colonial legislation. Under the so-called 5th and 6th schedules of the Constitution, certain rights of the Adivasi, the indigenous peoples in mainland India, are recognized under the former, those of some indigenous peoples in Northeast India under the latter. Again, and especially in mainland India, the laws are not fully enforced by the State.

## b. Territorial rights

The collective nature of indigenous peoples' rights is most clearly expressed in their affirmation of their rights to their territories.

### **Definition: TERRITORY**

A territory (from the word terra, meaning land) is a defined area, including land and waters, considered to be the possession of an animal, person, people, organization, institution, country subdivision, nation or state.

UN Special Rapporteur Rodolfo Stavenhagen (2004, p.4) writes of indigenous peoples' territorial rights:

*Closely linked to the land problem is the territorial issue. Indigenous peoples have been historically rooted in specific locations, their original homelands, which in some cases constitute well defined geographical areas. Indigenous peoples' organizations now demand the recognition and demarcation of these territories as a necessary step to ensure their social, economic and cultural survival. The territory of the San Blas Kuna is constitutionally protected in Panama; so is that of the Yanomami in northern Brazil. The Mapuche of southern Chile and the Miskitos of Nicaragua, among many others, have been in the forefront of these struggles in their countries. The Colombian Constitution of 1991 recognizes the traditional homelands of a number of indigenous groups and assures them of legal protection. Philippine legislation recognizes indigenous ancestral domains. In some Canadian provinces aboriginal title to territory is legally recognized.*

## **2. Indigenous peoples' customary law and state law**

The claim of the state over indigenous peoples' lands, territories and resources ignores not only the fact that indigenous peoples have occupied and used these, but also the fact that they have always had their own customary laws recognizing and regulating ownership, access and other rights to these.

Despite the imposition of state laws, many indigenous societies still have their own customary systems regulating access to, and use and management of land and resources. Most of these systems are community-based, i.e. the right to use and manage land and resources are regulated within a community and not by any higher-level institution.

The customary laws regulating such community-based land and resource use systems are usually very complex. Use or ownership rights of a particular resource or stretch of land depend on the nature of the land or resource and the relationship that has evolved between this particular resource or track of land and the community members.

**EXAMPLE:****THE BONTOK SYSTEM OF LAND USE AND OWNERSHIP**

The Bontok are an indigenous people of the Northern Luzon Cordillera in the Philippines.

Bontok anthropologist June Prill-Brett writes that each of her people's villages "is an autonomous agricultural community that is socially, politically, and economically independent of all others."

Traditionally, the Bontok have a complex land use system combining rice cultivation on irrigated terraces with shifting cultivation, the breeding of livestock like pigs, buffaloes and cattle, and hunting and gathering of forest products.

The Bontok, according to Prill-Brett, "view the land as a gift from 'the one in the highest'. To them land is a source of life; 'it belongs to no one or to everyone.' " Nonetheless, the Bontok have rules specifying community members' rights to land and resources within the village. Bontok communities recognize three categories of land rights, each with its own rules of ownership and succession:

**Lamoram.** This is communal land; it belongs to all village members. Lamoram include forests and hunting grounds, smaller woodlands, pasture land and village settlements.

**Tayan.** This is land that was once part of the communal domain but has been segregated as the property of a kinship group. Usually, it is land that was cleared for shifting cultivation. The descendants of the person who did the work now have the right to use that land. But tayan can, instead, be a woodlot, a pasture, or a fishing site that has been used continually by several generations of only one kinship group, and so has become the group's property.

**Fukod.** This is land recognized by the community and the kinship group as the property of an individual. It is a plot of land that has been developed through hard labor like the building of terraces and the installation of irrigation channels. The person's labor gives him or her exclusive right to the developed land, and it is inherited only by one of his or her own descendants. It usually consists of paddy fields or vegetable gardens.

Probably in all indigenous agricultural societies, some form of individual rights over certain resources or parcels of land is recognized. Paddy fields are a typical example. Very common also is the right over perennial plants, like fruit trees – which, however, does not necessarily imply the right over the land on which they grow.

Collective rights over land other than paddy fields are common among indigenous societies. In many cases, this even includes land for shifting cultivation.

But collective rights are not always identical with communal rights. Such collective rights may exist on different levels. The collective in which these rights are vested may be the whole community or part of it, like the kinship groups among the Bontok who have the exclusive right over the swidden land opened by their forebears. Or they may be held by a social unit larger than a single community, like among the Bontok's neighbors, the Kalinga.

In many modern nation-states there is no recognition of communal or any other form of collective land rights. There are usually only two types of land ownership: private property (owned by individuals or corporations) and the so-called public domain (owned by the state).

As we have seen earlier, many post-colonial states have continued to adhere to the laws and policies that were introduced by the colonial powers which established state control over vast areas of land, especially forests. Since only private land titles are recognized, indigenous peoples' ancestral lands have been taken over by the state and given out to private entrepreneurs on a large scale.

In some countries, communal rights are recognized. In the states of Sabah and Sarawak in Malaysia, for example, communal titles are recognized in Land Ordinances. And in Northeast India, the Autonomous District Councils have the authority to regulate use of and access to land, forests, water bodies and other resources according to customary law. But in both countries the governments still try to promote individual titles over communal titles, and in Sarawak and Sabah, customary land rights have for many decades been simply ignored by the state when handing out large-scale concessions for logging or plantations.

But there are also other forces at play undermining existing customary law and eroding traditional communal land rights. Holding sway for many years, these forces have unfortunately affected communities to the extent that indigenous peoples themselves now prefer individual ownership over communal ownership.

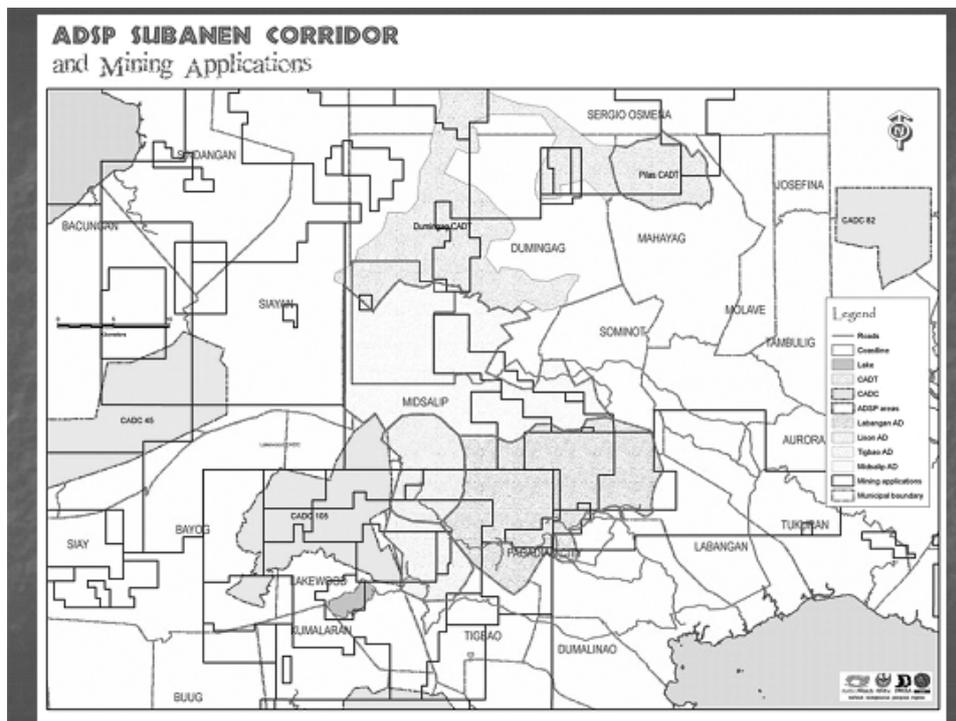
In the present context of increasing market integration, communal land rights are – from the point of view of entrepreneurial individuals – disadvantageous: these individuals cannot use land as collateral for taking out loans from banks, or they are – understandably – not willing to invest labour and money unless they are sure to reap the profits themselves. Thus, there is a push for privatization wherever market integration has progressed far, and the production of cash-crops has come to dominate the domestic economy of the communities. Land is increasingly regarded as a commodity to be bought or sold. Since governments generally tend to consider communal land rights as backward and incompatible with a market-oriented economy, this attitude is supported either explicitly or implicitly by government development policies and programs, such as agricultural loan, land allocation or cash crop promotion programs.

Today, indigenous peoples' customary laws are like islands in a sea of state laws. There are only a few cases in which they are officially recognised:

- As a result of the Peace Accord between the Bangladesh Government and the Parbattya Chattagram Jana Sanghati Samiti (JSS), the Hill Tracts Council was formed, under which a system of layered rights and authorities are recognized, part of which are customary laws of the different indigenous peoples.
- In the so-called Autonomous District Councils (like e.g. Khasi Hills ADC, Garo Hills ADC, Jaintia Hills ADC, North Cachar Hills ADC or the Karbi-Anglong Autonomous Council) created under the 6th Schedule of the Constitution in Northeast India, customary laws are part of the legislative set-up based on which the Autonomous District Councils are operating. ADCs have among their subjects the regulation of rights, access to and management of land and natural resources.

In most countries, however, customary rights over land and resources are still either not recognized, are ignored or are contested by competing laws in the service of vested interests.

An example is the Philippines. Here, ancestral domains are recognized and being titled. But because the state is promoting large-scale mining, there is continuing encroachment on indigenous peoples' territories.



Map of the ancestral domains of the Subanen on the Zamboanga Peninsula covered by Certificate of Ancestral Domain Title (shaded in light blue) and by mining applications (outlined in black). Map source: Anthropology Watch

### C. (Optional Section) Indigenous peoples' systems of resource management and conservation

(Note: This summary has been taken from Erni 1997: 24-27)

The resource use systems of indigenous peoples are as diverse as the environments in which they live. This enormous diversity makes it difficult to generalize on the nature of indigenous resource use and management systems. But there are a few basic features that are common to most:

1. Indigenous resource use systems are highly decentralized and based on the utilization of renewable resources, i.e. they rest on tapping biological processes (like forest succession for restoring soil fertility or population dynamics of game and fish species) rather than on the exploitation of organic and inorganic capital (oil, coal, mineral resources) accumulated in geological time spans.
2. This means that traditional indigenous resource use is not – and even their more modern forms are only to a very limited extent – dependent on external energy and nutrient subsidy in the form of fuel and agrochemicals.
3. Consequently, traditional indigenous resource use systems are not “self-poisoning” (Clarke 1977: 389).
4. This means that in indigenous resource use systems, the present generation is bearing the cost of production rather than passing them on to future generations. In this way, indigenous resource use systems fulfill the main criteria of the World Commission on Environment and Development’s definition of sustainable development.

5. Traditional indigenous economies are usually based on the utilization of a broad range of wild and domesticated animal and plant species. Indigenous peoples manipulate their natural environment accordingly. This increases the complexity of an ecosystem's microhabitat pattern and thereby often enhances, rather than reduces, biodiversity. Many of the so-called 'wildernesses' – like the savannas of East Africa, the woodlands of Northern Australia, the dry forests of mainland Southeast Asia or even the Amazon rainforests – should rather be called 'cultural landscapes' inasmuch as they have been created or at least shaped, and in any case maintained, for centuries through indigenous peoples' constant interaction with their natural environments.

6. Closely related to, and in some cases the result of the use of a broad variety of species and microhabitats is the high degree of decentralization of indigenous peoples' resource use systems mentioned above. Indigenous communities are, generally, to a large extent economically self-sufficient. They are able to satisfy most household needs locally; both production and consumption occur locally. Little energy and matter leave the local system.

In general, most traditional indigenous resource use systems show properties which largely correspond to those identified as the fundamental principles found in highly sustainable self-regulated systems, like the utilization of existing natural processes, recycling, symbiosis and small-scale spatial diversity; a high structural and functional compatibility with the organizational principles found in nature, etc.

7. What is crucial about such small autonomous systems is that they are clearly more sensitive to ecological problems than larger, more complex ones.

For indigenous peoples, to be sensitive to ecological problems is a question of survival. What this, of course, requires is an intimate knowledge of the natural environments and processes.

In indigenous cultures, experts exist who are peculiarly aware of Nature's organising principles, sometimes described as entities, spirits, or natural law (Posey 1996: 31). Although Indigenous Knowledge is highly pragmatic and practical, Indigenous Peoples generally view this knowledge as emanating from a spiritual base: all Creation is sacred, the sacred and the secular are inseparable, spirituality is the highest form of consciousness, and spiritual consciousness is the highest form of awareness. In this sense, a dimension of Indigenous Knowledge is not local knowledge, but knowledge of the universal as expressed in the local. (Clarke: 382.)

8. Indigenous peoples' traditional economies are so-called subsistence economies, whose functional logic differs fundamentally from the now globalised model of the capitalist market economy. Indigenous subsistence economies are need-oriented, which means that production aims – and therefore the overall level of production is geared – at fulfilling the totality of individual and communal needs, as defined by the prevalent values of the society.

The crucial implication is that in contrast to the logic of capitalist commodity production, which is based on the primacy of profit maximization, production stops when needs are met. Especially in non-monetized indigenous economies, driving production beyond this level just does not make sense, as there is simply no use for accumulated surplus. The self-amplifying mechanism of profit maximization, capital accumulation

and reinvestment in production, leading to exponential growth, is absent. Therefore, subsistence economies have an inherent tendency to rather ‘underuse’ than fully exploit (or over-exploit) natural resources. This is provided, of course, that the resource base is still sufficient, which again in most cases depends on whether the respective indigenous community retains uncontested control over its territory.

9. But even then, over-exploitation of certain resources is possible – and at times has occurred among many indigenous communities. However, because of their intimacy with their natural environment, and their direct and vital dependence on it, self-regulation processes are more likely to occur in time. Explicit and implicit conservation rules, both age-old and recent, can be found among indigenous peoples all over the world. Often, they are embedded in ritual practices and regulations.

Nevertheless, just as often, neither explicit nor implicit conservation rules may be found, or, even where prevalent, there may be “little correlation between beliefs prescribing certain practices and actual behavior” (Colchester 1994: 27). And yet, as among Amazonian Indians, balance is achieved.

*Many Amazonian Indians, it has been found, have an opportunistic rather than conservation attitude to the environment and achieve ecological balance because their traditional political systems and settlement patterns encourage mobility. Indians thus move their villages, fields and hunting expeditions to fresh areas once localities are exhausted because it requires less effort than does obtaining diminishing returns from the present locations. Balance is thus achieved unintentionally by negative feedback rather than through conscious concern with excessive use. Market demands and other pressures that sedentarize and enlarge these communities, thus disrupting traditional residence and settlement patterns, coupled with new technologies such as outboard engines that cut travel times and machines to process crops, may upset these negative feedback cycles and cause indigenous communities to over-exploit their locale. (Ibid.)*

Under such drastically changed conditions, affected indigenous communities also have to devise explicit conservation rules. It has been found that self-imposed conservation rules are more likely to emerge among indigenous communities than elsewhere. In India, for example, a “forest/poverty/tribal interface” (Poffenberger et al. 1996:4) has been identified with respect to successful community forest management:

*Forest protection activities appear most common in areas that are characterised by significant concentrations of forest, poverty, and high tribal populations. Cultural and economic ties to the forest often lead tribals to play a leadership role in establishing controls over degrading forests, although low-caste and low-income groups are also active. (Ibid.)*

Some of the decisive factors that ensure compliance with self-imposed conservation rules are the small size of traditional communities ‘where people know each other’, the prevalence of customary law, traditional authority, and social control exerted and sanctions imposed by the community. (Society for Promotion of Wasteland Development:5)

## II. UNDRIP PROVISIONS ON RIGHTS TO LAND, TERRITORY & RESOURCES

### A. Core Articles

The UNDRIP recognizes the importance of land, territory and resources for indigenous peoples, and several articles refer to the rights of indigenous peoples over these. The central articles in this respect are 25 and 26. In addition, Articles 8 and 10 clearly provide for protection from dispossession.

#### Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

- a. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b. Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- c. Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- d. Any form of forced assimilation or integration;
- e. Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.



#### Suggested Method

*Present a list of the relevant UNDRIP provisions.*

*Involve participants in reading the provisions.*

*Discuss and elaborate on each provision.*

**LINKS**

Other international legal instruments relevant for indigenous peoples' right to land, territory and resources are:

- The International Labor Organization's (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169)
- International Covenant on Social, Economic and Cultural Rights
- International Covenant on Civil and Political Rights
- The Discrimination (Employment and Occupation) Convention, 1958 of the ILO (Convention No. 111)

**B. Related Articles****1. On the recognition of customary laws regulating rights to land and resources**

In recognition of the fact that indigenous peoples have their own customary laws regulating access to land and resources, the UNDRIP has included an article that emphasizes that these have to be taken into account.

**Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**LINKS**

Other international legal instruments do contain provisions, although not very explicit, which are relevant to the recognition and protection of customary laws regulating rights to land and resources. Among them are:

- ILO Convention No. 169
- International Covenant on Social, Economic and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of all Forms of Racial Discrimination
- ILO Convention No. 111

**2. On the right to redress for past injustices**

A separate article in the UNDRIP addresses past injustices and dispossessions, and provides for the right to redress, both in the form of restitution and compensation:

**Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**(LINKS)**

Apart from the UNDRIP, there is no international instrument that explicitly provides for the right to redress of past injustices.

### 3. On the right to means of subsistence and to development

Closely connected to land and resource rights are the right to particular forms of livelihood and development. Article 20 of the UNDRIP addresses this:

**Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

**LINKS**

The same three international legal instruments mentioned above contain provisions that are relevant for the recognition of indigenous economic systems and means of subsistence.

- ILO Convention No. 169
- International Covenant on Social, Economic and Cultural Rights (ICSECR)
- ILO Convention No. 111

### 4. On the recognition of indigenous peoples' conservation and protection of the environment

A separate article addresses environmental conservation issues, providing for the overall right to conserve and protect the environment on their lands and territories. The article however also provides for the more specific right to oppose the disposal of hazardous materials on their lands and territories.

**Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**LINKS**

The rights of indigenous peoples and their contribution to the conservation of biodiversity has been explicitly recognized in Agenda 21 adopted at the World Conservation Congress in Rio de Janeiro in 1992, and the UN Convention on Biological Diversity (in particular article 8j).

**5. On land, territory, resources and the right to self-determination**

Inseparably linked to the recognition of the right to land, territory and resources are provisions for basic rights to self-determination, representation and decision-making. These are more extensively dealt with in a separate module on self-determination. They include the following.

**Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**LINKS**

The UNDRIP is so far the only international legal instrument that explicitly recognizes indigenous peoples' territorial rights and right to self-determination. Article 1 of the Charter of the United Nations, however, upholds the self-determination of peoples as one of the UN's basic principles. According to the Charter, the second purpose of the UN is:

*To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.*

Indigenous peoples have ever since fought hard to be equally recognized as peoples, and therefore be granted the right to self-determination.

### III. THE REALITIES ON THE GROUND; HOW RIGHTS ARE RESPECTED OR VIOLATED

#### A. Laws and Policies on the Rights to Land, Territory and Resources

##### 1. Laws and policies

What are the main laws and policies on land and resource rights?

##### 2. Adjudication

How are cases of dispute or conflict over land and resources dealt with?

##### 3. Redress

What happens when communities or individuals have been dispossessed? Are there mechanisms for restitution or compensation?

##### 4. Governance, management and conservation

What are the laws and policies related to governance, management and conservation of land and resources?

##### 5. FPIC and development projects

What are the official procedures when the state or private corporations launch development or resource extraction projects in indigenous peoples' territories?

#### B. Challenges in having good laws and policies implemented

Illustrative examples include the Autonomous District Councils (ADCs) in Northeast India, the Indigenous Peoples' Rights Act (IPRA) in the Philippines, and the Chittagong Hill Tracts (CHT) Land Commission.



#### Suggested Method

*Ask the participants to assess the situation in their particular country with respect to laws and policies as well as procedures pertaining to the rights to land, territory and resources, as elaborated below. Have them fill up a Gaps Analysis table.*



#### Suggested Method

*Discuss examples of good laws or policies but weak implementation, then ask participants to cite similar examples in their own country.*

**Gaps Analysis**

UNDRIP PROVISIONS ON LAND, TERRITORY RESOURCES	NATIONAL OR LOCAL LAWS OR POLICIES	GAPS	CONSIDERATIONS & IMPLICATIONS	OPTIONS & RECOMMENDATIONS
Paragraph or Article number	Specific laws, policies conforming with UNDRIP	Specific laws, policies NOT conforming with UNDRIP	Can current laws, policies be used to support indigenous peoples' positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally? Or politically?	What needs to be done? How? By whom? Where? When? For how long?
<b>Laws And Policies</b> Articles 25 & 26, 8 & 10, 27				
<b>Adjudication</b> Articles 27				
<b>Redress</b> Articles 28				
<b>Governance</b> Articles 20 & 29				
<b>FPIC</b> Articles 19				

**IV. EXPERIENCES AND LESSONS LEARNED****A. Actual Exercise of Land-resource Rights Within the Existing Government Framework****Case study 1.****Ancestral domain titling in the Philippines**

In the Philippines, the Indigenous Peoples Rights Act (IPRA) or Republic Act 8371 recognizes the right of indigenous peoples to obtain paper titles to their ancestral domains. The official document issued in recognition of the collective land rights of indigenous communities is called Certificate of Ancestral Domain Title (CADT). As of June 2008, 71 CADTs have been approved, covering 1.6 million hectares and over 300,000 beneficiaries.

The law defines indigenous territories as ancestral domains (AD). However, this is something that must be demonstrated; therefore it requires proofs: ethnography of the people, genealogies spanning at least six generations, a census, and a geographical reconstruction based on indigenous toponyms. With all this information, people from the communities included in an AD develop a process of self-delineation, which serves as a basis for the official survey and monumenting process. What follows are administrative procedures which end with the production of a claim book that includes all the documents of the process, the scrutiny of the claim book and survey maps by the National Commission on Indigenous Peoples (NCIP), whose seven commissioners have to be present in at least three meetings. This leads to the formal approval and, eventually, the awarding of the CADT by the NCIP.

The process to obtain a CADT takes a long time because of the large amount of proofs required. On average, this process can take between two and three years. In many cases in the Cordillera Administrative Region, the process has already gone on for more than ten years yet remains uncompleted. And the process is expensive. The NCIP has only a limited budget for processing CADT applications, and it has been estimated that about 500 are still pending.

There are no limits to the size of a CADT or the number of communities that can jointly apply. Only in a few cases has an indigenous people decided to apply for a CADT covering its entire territory. These include the Matigsalug in Mindanao (102,324 hectares) and the Buhid in Mindoro (90,000 hectares). In most cases, several CADTs have been issued or are being applied for by one particular indigenous people, covering between a few thousand to a few ten-thousand hectares.

In many cases, the communities applying for a CADT face considerable problems arising from conflicts between different government agencies, in particular the NCIP and the Department of Environment and Natural Resources (DENR), regarding, for example, protected areas overlapping with AD claims, opposition from local governments and companies due to commercial interests, and the collusion of the NCIP with such interest groups instead of living up to its mandate to support the indigenous communities.

Even when communities possess a CADT, they are often faced with pressure resulting from corporate interests in accessing natural resources within their AD. The NCIP has often supported companies in obtaining the Certificates of Free, Prior and Informed Consent (FPIC) that they need to start exploiting the natural resources, rather than helping the communities in critically assessing the requests of these companies.

Nevertheless, many indigenous communities all over the Philippines consider the IPRA an advancement since it allows them to secure their territorial rights. They also find that the lengthy and complicated proof-building procedure has in the end been valuable because it has allowed them to recover elements of their culture. And they appreciate having defined clear and exact boundaries of their AD with the help of sophisticated methods and technologies like GPS (global positioning satellite).

Communities possessing a CADT are, however, also well aware that a title is not enough, that they need to have their own development plans for their ADs and strengthen their traditional or newly formed institutions to confront the challenges they are faced with.

**Case study 2.****Community Forestry in Rasuwa District, Nepal****(written by Sara Subba, Program Development Officer of The Mountain Institute)**

Community Forestry (CF) was first adopted by the Government of Nepal in 1989 for the sustainable management of the country's forests by transferring management authority from the Department of Forestry to the Community Forest User Group (CFUG). Today, after two decades, CF, specifically in the hills of Nepal, is considered quite a success. One of the major factors to this achievement is the fact that the CF strategy focuses on empowering local people, exclusively those that are deemed disadvantaged and marginalized. As such, the CF policy in Nepal endorses equal access to resources resulting in the equal benefit-sharing of those resources. Another noteworthy accomplishment of the CF in Nepal is that it promotes participation of marginalized groups, especially women and indigenous communities, in decision-making process in the management and conservation of the forests.

Rasuwa District of Central Nepal is nestled amidst the famous biodiversity-rich Ganesha Himal and Langtang Mountain range. This area is the stronghold of the Tamang ethnic group, an indigenous community with a rich culture and heritage. Like most of the hill regions of Nepal, Rasuwa lacks development activity. The people of the area are secluded from attaining any benefits from mainstream development. The availability of health and education facilities is extremely limited, and the living condition of the communities is poor. Thus, many people migrate seasonally to other areas to supplement their income through trade or wage-earning jobs, and the exploitation of natural resources, including endangered wildlife species, is very high. However, recent implementation of CF has notably increased the access of disadvantaged groups, mainly women, and the condition of the forests is significantly improved.

One example of CF success is the tiny village of Chilime in Rasuwa. The CF law requires that 1/3 of the members of the executive user committee be women. Considering this, the village of 1,000 went ahead and had an all-women 15-member executive user committee to lead and manage their community forest.

In this case, increasing women's participation in decision-making has not only provided equal benefit sharing in the CF but has also empowered one of the most disadvantaged groups in all of Nepal. Further, an all-women executive committee has significantly optimized the effectiveness of conserving forests and high-value species, as females are the main collectors of firewood, timber, medicinal plants and wild foods, and are also considered to have extensive indigenous knowledge on the management of natural resources. Thus, they are of extreme importance as retainers of knowledge on native plants and animals for food, medicine, and fiber.

According to The Mountain Institute (TMI), a non-profit organization supporting the villages of Rasuwa in the formation and registration of CFs, the people of Chilime are now more aware of the importance of privately cultivating tree species and endangered medicinal plants because the CFUG prohibits unsustainable harvesting of these plants and trees from the community forest.

Similarly, the Chilime CFUG holds various programs and trainings on private cultivation of these species, promoting sustainable harvesting while providing alternate liveli-

hood. With demonstration plots and nurseries to generate seedlings for plantations, the Chilime CFUG is indeed a winning example of the efficacy of CF.

## B. Advocacy and lobby

### Case study 1.

#### Forest Rights Struggle in India (written by Gam A. Shimray)

In India, most indigenous peoples are classed under the administrative category of scheduled tribes (STs). There are about 577 ST communities numbering 84.32 million as per the 2001 census, comprising 8.32% of the total population and making the Indian subcontinent the abode of more than a quarter of the world's 350 million or so indigenous peoples.

Most ST communities live in a contiguous belt stretching from Western to Eastern Central India on mainland India, and in the Northeast, an area lying between China, Burma and Bangladesh. On mainland India, which this case study focuses on, the indigenous peoples are called Adivasi (literally meaning original inhabitants or indigenous people).

Prior to the British colonization of Adivasi areas, Adivasi habitations were largely independent realms, though large areas were nominally part of the regional kingdoms. These were, in effect, self-governing first nations. The introduction of the alien concept of private property began with the Permanent Settlement of the British in 1793. The colonization of the forests, which commenced formally with the Forest Act of 1864 and was consolidated with the Indian Forest Act of 1927, reduced the rights of the Adivasi to mere privileges conferred by the state. Incursions into and invasions of the Adivasi homelands by the British led to stiff resistance. The same Forest Acts have been used by the Indian State for the same logic and purpose. Hence, the resistance of the Adivasi has continued into contemporary times in various forms.

Today, state-sponsored development and conservation have displaced 10 million Adivasi (a conservative estimate), mainly in the mid-Indian region. At present, 62.9% of the Adivasi are officially landless. The Forest Survey of India data for 2003 show that the forest area is 23.57% of the country's total land area. But other estimates show that this is much more than the actual forest cover, which includes areas such as coconut plantations and sugarcane fields as forest. It has been further argued that at least 12.4% of the country's recorded forest area has no forest cover. The misrepresentation is being done to reach an arbitrary target of 33% set by the Forest Policy of 1952.

Further, 22% of the forest area, or 5% of the total land area, has been declared as protected, with the establishment of 90 national parks and 501 wildlife sanctuaries. About 4.3 million people, mostly Adivasi, continue to inhabit the protected area, with progressive restriction of access to resources and the threat of forced eviction. As of 30 June 2005, there were 2,690 forest villages, with hundreds more not officially recorded. However, during this phase of eviction, whether their rights were recorded or not made little difference as the eviction drive covered almost all communities inhabiting forest areas.

According to the Forest Survey of India Report of 2003, about 37.82% of the forest cover of the country and 63% of the dense forests lie in 187 tribal districts (out of a total of 449 districts in the country). Hence, the Adivasi were to face one of the worst expressions of state brutality in contemporary India.

The current crisis was precipitated when the Inspector General of Forests issued a circular on 3 May 2002 to the chief secretaries, as well as the Secretary of Forests and Principal Chief Conservator of Forests (PCCF) of each state and union territory, outlining a “time-bound action plan” for the eviction of encroachers by 30 September 2002. Between May 2002 and March 2004, evictions were carried out from 152,400 hectares. About 300,000 forest dwellers were removed from their habitat and deprived of their livelihood during this period. Their houses were burned, crops and food were destroyed, women were raped, and men were shot at and killed. Hundreds of villages were set on fire or demolished, and this led to clashes and deaths in police firings.

Earlier, in 2000, the Supreme Court banned the “removal of dead, diseased, dying or wind fallen trees, drift wood and grasses, etc.” from all national parks and wildlife sanctuaries. This deprived about four million people living inside protected areas of access to a critical source of survival income.

At the slightest sign of opposition, the Adivasi are branded as extremists, arrested, or shot at and killed. In May to June 2002, an estimated 40,000 families were evicted from their homes, with 15,000 families forced out in the Sonitpur District of Assam alone; eight people were killed in police firings in different parts of the state. Elephants were deployed to raze the villages. On 19 February 2003, mass police action forcibly dispersed the peaceful protest occupation of barren, deforested land by the Adivasi, with one protester killed and hundreds injured in the Muthanga Wildlife Sanctuary of Kerala. Stories of this type were widespread across the country.

The unprecedented nationwide eviction drive led to widespread protests. The Campaign for Survival and Dignity (CSD) emerged as a result in the latter part of 2002. In July 2003, the CSD held a public hearing in Delhi, the nation’s capital, where the horror stories from different parts of the country were narrated. In a coordinated move to thwart large-scale evictions, hundreds of thousands of Adivasi and other forest communities in the states of Orissa, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Tamil Nadu, Chattisgarh, Jharkhand, Andhra Pradesh and West Bengal started filing claims of their rights in the offices of the district collectors. This process of filing claims to their lands has taken the shape of a mass movement. Around 70,000 Adivasi from the impoverished districts of Kalahandi, Bolangir and Nuapara in Orissa declared their boycott of the parliamentary elections if their ownership rights were not settled.

Towards the middle of 2004, the United Progressive Alliance (UPA) came to power with the promise to settle the rights of the Adivasi. In October 2004, the government was seized by crisis, and dialogue with the CSD commenced. On 21 December 2004, the Ministry of Environment and Forests (MoEF) was forced to issue another order to all states and union territories to stop evictions of forest dwellers until their rights had been settled. Even this had no effect. The Prime Minister, in a meeting held on 19 January 2005 with the ministers and other heads of all concerned departments plus the Planning Commission, decided that the Ministry of Tribal Affairs would formulate a “Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act” with the assistance

of a technical support group, keeping the discredited MoEF at bay though not out of the process.

On 15 August 2005, while the nation celebrated Independence Day, the forest dwellers launched a nationwide protest where well over a hundred thousand participated. The CSD declared filling up jails as a form of protest, demanding the forest rights bill. About 80,000 courted arrest from mid-November until 13 December 2005, when the bill was introduced in Parliament. The left political parties had also begun taking active interest in the issue.

The CSD finally won the battle for legal recognition of Adivasi rights over forestlands, with an Act that has the following key features:

- the right of Adivasi to claim their ancestral lands;
- customary rights over local natural resources;
- rights of settlement of old habitations and unsurveyed villages;
- the right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity;
- the right to protect, regenerate, or conserve or manage any community forest resource that they have been traditionally protecting and conserving;
- determination of the rights by the gram sabha (village assembly).

However, since its formulation, the Act has been met with opposition from the governments at the center and the states, the forest bureaucracy, and a section of the conservationist non-governmental organizations. Cases demanding that Adivasi forest rights be declared null and void have been filed in the high courts and the Supreme Court. Hence, the struggle is far from over, and the CSD continues to take the lead.

The CSD now is composed of about 200 mass movements covering about 13 states in India.

## C. Assertive Action and Mobilization

### Case study 1.

#### **People's resistance to the creation of new state forest reserves in the Chittagong Hill Tracts, Bangladesh (written by Devasish Roy)**

Since the 1870s, about a quarter of the Chittagong Hill Tracts (CHT) region in south-eastern Bangladesh (total area: 13,189 sq. km.) has been classified as “reserved forests”. These lands are directly administered by the central Department of Forests, and the land and resource rights of the communities of indigenous people living there are denied. The communities – many of whom have been occupying the lands in question for generations, even centuries – are deprived of equal access to education and health-care services, and are often persecuted or harassed by Forest Department officials who falsely implicate them in criminal cases. According to some, the people are only a little better off than modern-day “serfs”.

In the early 1990s, an attempt was made to expand the area of these reserved forests by 890.34 sq.km. of land, including homesteads, titled land and customarily held swidden, forest and grazing commons. Notifications were issued under the Forest Act of

1972. This would displace tens of thousands of people, mostly indigenous communities, including those that had earlier been displaced by the Kaptai Hydroelectric Dam (1960) and rehabilitated for government-run agro-forestry projects of the Jum Control Division of the Forest Department.

Facilitated by the local NGO, Taungya, many of the community leaders gathered in Rangamati in the early 1990s to deal with the issue from a common platform. They included the headmen and communities of the Betbunia-Kashkhali areas and the Chakma Chief, who petitioned the Prime Minister and concerned forest officials, plus the community leaders of the Rajasthali area, who even went to the High Court to protect their rights. (The case is still pending.) The meeting resulted in the formation of the Committee for the Protection of Forest and Land Rights in the CHT, which was later re-named as the Movement for Protection of Forest and Land Rights in the CHT.

Since its inception, the Movement has been raising awareness about the issue among CHT communities. They have mounted peaceful resistance programmes and campaigns, and even held direct dialogues with Forest Department and senior government officials and leaders.

Although the possession of some of these lands have been taken over, and its inhabitants evicted, in most cases the Forest Department has been unable to take over possession. It is widely believed that unity among the concerned communities has succeeded in preventing takeovers, even though the formal gazette notifications have not been removed.

## Case study 2.

### **Jharkhand Jungle Bachao Andolan (Jharkhand Save the Forest Movement)**

Over the past decades, communities all over India have started to protect whatever forests remain to them, and to regenerate denuded forests. In 1996, a report was published, saying:

*An estimated 12,000 to 15,000 villages, primarily in eastern India, have mobilized to protect one to two million hectares of regenerating forest. The evolution of this approach to resource management draws on both ancient traditions and emerging strategies. (Poffenberger et al. 1996: 2)*

In Jharkhand, the Jungal Katai Andolan was launched as early as 1978, as a protest movement against the devastation of forests in the Kolhan-Singhbhum area, mostly inhabited by the Hos. The forest rights movement remained particularly strong in regions of Ranchi and West Singhbhum districts that were inhabited by the Munda and the Ho, and protests continued in a sporadic manner until the emergence in 2000 of the Jharkhand Jungle Bachao Andolan (JJBA, the Jharkhand Save the Forest Movement).

The JJBA emerged out of an initiative to launch a campaign for the restoration of the forest rights of the Adivasi in Jharkhand. The forest rights campaign is run as a project by the Bindrai Institute for Research Study and Action (BIRSA) with support from the International Work Group for Indigenous Affairs (IWGIA). Under the still ongoing project, existing Forest Protection Committees have been strengthened, and the formation of new Forest Protection Committees has been promoted. Communities have launched the JJBA as a grassroots movement for the restoration of indigenous peoples' forest rights,

providing themselves with a common platform for experience-sharing, coordination and cooperation.

Over the past eight years, JJBA has witnessed an enormous expansion. It now has about 5,000 registered members in 45 blocks in 12 of 22 districts of the state. An indicator of the scale of mobilization achieved by JJBA is the number of people attending rallies in the state capital, Ranchi. In 2000, around 7,000 people gathered for the first rally, and in 2006, around 20,000.

While the protection of their forests is the concern around which the work of the JJBA revolves, the indigenous peoples of Jharkhand have also become conscious of the importance of forest conservation. They have started to act and make demands, to confront and challenge forest officials, contractors and the timber mafia, and they have filed a case at the High Court of Jharkhand to restore the Mundari Khunkati villages' rights over their communal forests.

The Adivasi communities gathered under the banner of JJBA have understood that they can protect their forests in the long run only if their rights over their forests are recognized. Re-establishing control gives them the confidence that they will be able to reap the fruits of their efforts, and thus the incentive to forego immediate returns in favor of long-term protection. Thus, the determination of indigenous communities in Jharkhand to protect and regenerate their forests is inseparably linked to



Rallye and public meeting of the Jharkhand Jangal Bachao Andolan (JJBA – Jharkhand Save the Forest Movement) in Ranchi, the capital of Jharkhand. Photo by Chris Erni

asserting their customary rights over them. Given the non-cooperative attitude which the Forest Department has so far shown, this simply means: keeping the Forest Department out of their forests. It may also imply confrontation with the timber mafia who, often in direct collusion with the Forest Department, continue to illegally fell timber. And it may even mean that they have to do away with their own leaders, if these have become corrupted by contractors and Forest Department officials.

## V. CHALLENGES

### A. Three Levels Of Challenges

1. Needs, capacities and proposed strategies for promoting compliance with UNDRIP provisions on the rights of indigenous peoples to land, territory and resources in their particular country;

2. The implementation of the said strategies; and



#### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants.*

*Discuss with the participants the three levels of challenges (see below).*

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

3. The monitoring of this implementation.

## B. SOME GUIDANCE FOR THE TRAINERS

### 1. Needs, capacities, strategies

Needs, capacities and strategies will, of course, vary between communities, indigenous peoples and countries.

#### a. Challenges regarding needs:

How well do the communities and their leaders know the national laws related to the right to land, territory and resources? Is there a need to provide more and better information? This means information material that is culturally appropriate and easily accessible (popular booklets, videos etc).

If people know their rights, how well are these rights recognized, protected in the form of, e.g., title deeds or other official documents? Do they know and have access to the government agencies in charge of issuing these documents?

If their rights are violated, i.e. their land, territories or resources are encroached upon or alienated, do they know how to respond? What are the ways to respond?

Do they need help? Do they know who can help (legal aid groups, advocacy and support organizations, lawyers, Human Rights Commissions etc.)?

#### b. Challenges regarding capacities

In order to address the needs identified above, communities and their leaders need specific knowledge and skills.

Are your communities and leaders able to address the needs identified above?

What are their strengths, what are their weaknesses?

What is needed to increase their capacities? What kind of capacity building (training, exchange, exposure) do they need? Who can provide these?



#### Note to trainers

*Trainers should know the basic laws and policies of the country related to the right to land, territory and resources.*

#### c. Challenges regarding strategies

If laws protecting the rights of indigenous peoples to land, territories and resources are in place and considered appropriate, the communities need to develop a strategy for ensuring that the law is properly implemented (this will be covered below).

In most cases, however, such laws are either absent or defective, insufficient or inappropriate.

Indigenous peoples and their communities, leaders and organizations therefore need to develop joint strategies to address this fundamental problem. The UNDRIP can help them raise the issue and push governments to acknowledge the need for legal reform.

The trainer can provide inputs on advocacy and lobbying strategies at different levels, i.e. local, national and international.

A first step can be a thorough review of existing laws and policies with regards the right to land, territory and resource, to identify the gaps and needs for changes, amendments or entirely new laws and policies.

Building alliances among indigenous peoples, and with support groups and supportive individuals, like lawyers, and legal aid and advocacy groups, is crucial.

Gaining the attention of the public through media can help, not only to build up pressure on governments, but also to provide protection to leaders in politically repressive countries. On the other hand, too much publicity may be counterproductive, exposing leaders and their organizations too much. The appropriate balance depends entirely on the political context they are working in.

Using not only UNDRIP but other international human rights mechanisms (the Human Rights Council, the UN Special Rapporteurs, or Treaty Bodies like the Committee on the Elimination of Racial Discrimination, the Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, etc.) can help build up pressure on national governments.

## 2. Implementation

In some cases, existing laws and policies may provide sufficient protection of indigenous peoples' right to land, territory and resources. The major challenge here is enforcing the law. Lack of implementation and weak enforcement of laws is a main problem throughout the region.

Trainers should facilitate a discussion on the state of affairs with respect to the implementation and enforcement of laws.

What are the experiences at the local level? Why are laws not properly implemented?

What can they do about it? What strategies can be developed to force governments to properly implement the law?

## 3. Monitoring

Indigenous peoples need to continuously monitor the implementation or enforcement of existing laws, as well as the legal revisions and reforms which they are demanding from governments.

National judicial processes and human rights mechanisms, as well as international human rights mechanisms are possible venues for monitoring implementation of laws or legal reforms on the right to land, territory and resources.

This implies the need for strong national-level advocacy and lobby groups, e.g. national alliances of indigenous organizations, as well as the continuous presence of indigenous representatives in the various processes within the United Nations.

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**MODULE 5****CULTURAL RIGHTS**

PREPARED BY LULU A. GIMENEZ

**OBJECTIVES**

1. To shed light on the matter of cultural rights and the violation of these;
2. To present UNDRIP provisions on cultural rights to the participants and get them to discuss these in relation to the reality in their locality, in their country;
3. To get participants to consider and plan actions and projects:
  - a. for the implementation of UNDRIP provisions on cultural rights in their locality, in their country; and
  - b. in the exercise of their cultural rights as provided for in the UNDRIP.

**CONTENTS**

- I. CULTURE AND CULTURAL RIGHTS
- II. CULTURAL RIGHTS IN THE UNDRIP
  - A. In the preamble
  - B. In the succeeding articles
- III. THE REALITIES ON THE GROUND
  - A. General situation
    1. The erosion, degradation, or destruction of indigenous cultures
    2. Plunder and exploitation of indigenous culture
    3. Discrimination
  - B. Laws and policies, good and bad
- IV. EXPERIENCES AND LESSONS LEARNED
- V. CHALLENGES

**I. INTRODUCTION TO CULTURE AND CULTURAL RIGHTS****A. Culture as Basic Component of Indigenous Identity**

Culture is not just a matter of songs, stories, music, dances and ceremonies. It is a people's

**Suggested Method**

*Pose the following questions, written in cards and distributed to participants.*

- *In your country's experience, what are the main forms by which indigenous peoples express their culture?*
- *What are the problems and hindrances encountered by indigenous peoples in expressing their culture?*
- *What do you think are the rights of indigenous peoples related to culture?*

*Collect and cluster the written replies, and synthesize the ideas of participants.*

*Present the main content of this module, including photos and other visual material.*

language, their way of thought, their way of life – their ways of viewing, approaching and relating with their particular environment and with the world in general. Culture distinguishes them as a people; it is integral to, and a basic component of their identity.

As recognized in the UNDRIP itself, the cultural rights of indigenous peoples are inseparable from their rights to the lands and territories in which they have evolved and continue to practice their cultures. Cultural rights are also inseparable from the right to self-determination because indigenous peoples' cultures are inextricable from their economic systems and their systems of self-government.

## B. The Cultural Rights of Indigenous Peoples

**For the purpose of spelling out the various rights of indigenous peoples, however, we distinguish cultural rights as:**

- the freedom of indigenous peoples to persist in, also to develop, their own
  - » language;
  - » worldview, religion or belief system and spiritual traditions, philosophy and ethical system;
  - » knowledge and learning systems, science and technology;
  - » customs, practices or habitual ways of doing things;
  - » music, performing arts, literature, visual and other arts;
- the right to the recognition of their “ownership” or “authorship” of the above;
- the right to their heritage as embodied by and transmitted through their:
  - » history and oral traditions;
  - » artifacts and archaeological sites;
  - » education in these and in their culture as a whole;
- the right to respect their culture and its integrity – to respect these for what they are;
  - » the right not to be forced or pressured into acculturation – i.e., to being assimilated or integrated into another, usually more dominant, culture and, in the process, losing their own;
  - » the right not to be discriminated against;
  - » the right not to have their culture, or even just aspects of it, prostituted;
- the right to legal redress for preventing or stopping the violation of the above, and for restitution (including restoration or reparation) for ongoing or past violations.

## C. Cultural Rights in International Instruments Prior to UNDRIP

Some cultural rights were already provided for in international instruments that preceded the UNDRIP – specifically:

- the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, but the definition and protection of cultural rights were not yet adequately developed in this instrument; and

- the International Covenant on Social, Economic and Cultural Rights, 1966, but the instrument did not explicitly address indigenous peoples' cultural rights.

## II. CULTURAL RIGHTS IN THE UNDRIP

The UNDRIP provides for cultural rights as follows.

### A. In the Preamble

#### PP2

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

#### PP3

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

#### PP4

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

#### PP5

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

#### PP7

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

#### PP11

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.

..

### B. In the Succeeding Articles

#### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - a. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;



#### Suggested Method

*Present a list of the relevant UNDRIP provisions. Involve participants in reading the provisions. Discuss and elaborate on each provision.*

- d. Any form of forced assimilation or integration;
- e. Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

### Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

### Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

### Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

### Article 14

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

### Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

### Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

### Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

### Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

## III. THE REALITIES ON THE GROUND

### A. General Situation

The aforesaid provisions are meant to address the concrete situation in regard to at least three major areas, as follows.

#### 1. The erosion, degradation, or destruction of indigenous cultures

Indigenous peoples have been losing their languages, religions, knowledge and learning systems, arts – indeed, their very ways of life – as a result of colonial occupation, the taking of indigenous peoples' lands, the destruction or degradation of ecosystems, genocide, the dismemberment of indigenous communities, population displacement, religious persecution or intolerance, forced assimilation, discrimination, and other pressures placed on the members of indigenous communities by the inability or unwillingness of colonialists,



#### Suggested Method

*Choose the appropriate method or combination of methods among the following:*

- *Sharing of experiences or documented case studies*
- *Short film documentary, photos*
- *Live performances by cultural activists*

*Present the following. At the indicated points, interact with the participants to bring out the state of their own indigenous cultures, the forms of cultural exploitation, and the forms of discrimination they have observed in their particular setting.*

*Synthesize the main points that arise in the process.*

states, legal and judicial systems, schools, the mainstream religions, the market, and the mass media to respect or accommodate or even just tolerate their being different.

### A Note on the Situation in Regard to Religion

Interphase has been possible between indigenous religion and some mainstream religions but not others – certainly not with fundamentalist Christianity and fundamentalist Islam.

### A Note on the Situation in Regard to Language

Ethnologue, the website of the Summer Institute of Linguistics or SIL International, (<http://www.ethnologue.com/>) lists 6,912 living languages in the world today, 2,269 of which are Asian. But 516 are endangered languages, spoken by only a few elderly persons in a community, and 78 of these are indigenous Asian languages.

The following is a preliminary listing of endangered languages in Asia, with the name of the language followed by the recorded number of speakers:

- Afghanistan: Tirahi (100)
- Cambodia: Samre (50)
- China: Ayizi (50)
- East Timor: Makuv'a (50)
- India: A-Pucikwar (10 or less); Khamyang (50); Nagarchal; Nefamese; Ruga; Ullatan; Urali
- Indonesia (Java and Bali): Benkala Sign Language (41)
- Indonesia (Kalimantan): Lengilu (4)
- Indonesia (Maluku): Amahai (50); Emplawas (250); Hoti (10); Hulung (10); Ibu (35); Kamarian (10); Kayeli (3); Loun (20); Naka'ela (5); Nusa Laut (10); Paulohi (50); Piru (10); Salas (50)
- Indonesia (Papua): Burumakok (40); Duriankere (30); Dusner (6); Kanum, Bădi (10); Kayupulau (50); Kehu (25); Kembra (20); Kwerisa (32); Liki (11); Mander (20); Mapia (1); Masimasi (10); Masep (25); Mor (25); Morori (50); Namla (30); Saponi (4); Tandia (2); Worla (6)
- Japan: Ainu (15)
- Laos: Arem (20)
- Malaysia (Peninsular): Mintil (40)
- Malaysia (Sarawak): Punan Batu 1 (30); Sian (50)
- Nepal: Chukwa (100); Kusunda (7); Lingkhim. (97); Pongyong; Saam (23)
- Philippines: Agta of Alabat Island (30); Agta of Isarog (6); Arta (15); Ata (4); Ayta of Sorsogon (18); Ratagnon (2)
- Taiwan: Amis, Nataoran (5); Babuza (4); Kanakanabu (8); Kavalan (24); Kulon-Pazeh (1); Saaroa (6); Thao (6)
- Thailand: Mok (7)
- Viet Nam: Arem (20); Gelao, Red (20); Gelao, White (20)

Most Philippine Aeta communities – also known as Agta, Arta, Ata, Ayta, etc. – no longer speak their own languages even among themselves; they have adopted the dominant language of trade and government in their respective roaming areas.

There exists a Universal Declaration of Linguistic Rights (1996) (<http://www.linguistic-declaration.org>). The drafting and proclamation of this was supported by the

UNESCO, but it was actually written and signed by academics, independent writers, and non-governmental organizations, and is thus non-binding on governments.



### Group Interaction

*Discuss with the participants the state of their own indigenous cultures in their own communities or country.*

## 2. Plunder and exploitation of indigenous culture

Many of the sacred lands of indigenous peoples have been plundered for the natural resources they contain. In many parts of Asia, sacred lands are inseparable from the people's home sites, crop cultivation sites, small mining sites, water sources and forests because these host the remains of venerated ancestors and are also the dwelling places of nature spirits. When governments and private corporations evict communities from their villages and seize their lands to build hydropower dams, log timber, extract minerals, or develop plantations, they thus also violate the communities' sacred places.

But, along with archaeological and other historical sites, the sacred lands of indigenous peoples have also been plundered for the very artifacts they contain, including grave markers, objects buried with the dead and even the dead themselves. The bones, mummified remains and mortuary paraphernalia of indigenous peoples' ancestors have been taken and put on display in public museums or made part of private collections.

Worse, living persons have been put on display: their villages become showcases along an "eco-trail", safari or tourist route; or they are made to live in a re-creation of their village in a fair or within a so-called "heritage park"; or they are encouraged to perform their songs, instrumental music, dances and even their religious ceremonies out of the normal context, as a "living museum" come-on or in festivals held to promote tourism. Some perform in hotels or as party attractions. Some display themselves in parks, charging fees for posing with tourists. The exploitation of indigenous culture for commerce in tourism is especially pronounced in Thailand and the Philippines.

Sadly, poverty has pushed many indigenous people into participating in the commercial exploitation – indeed, the prostitution – of their own cultures or, at least, of the most visibly attractive aspects of these.

Lately, indigenous knowledge, especially of plant genetic resources for agriculture and medicine, has been the target of bio-prospecting, piracy and patenting. Researchers and the institutions or private corporations that employ or sponsor their work ask for information from indigenous people, seek out the plants and animals they identify as sources of seed or medicine. They take these to the laboratory for analysis, apply for patents as original "discoveries" or for the pharmaceuticals to declare these produce as original "inventions". Should the patents be approved, indigenous people wishing to sell their own herbal preparations would have to do so illegally.



### Group Interaction

*Discuss with the participants the situation in their communities or country related to the exploitation of their cultures.*

## 2. Discrimination

In India, Adivasi, which simply means original settlers or indigenous people, has become a term equated with backwardness. In this caste society, Adivasi are regarded as even less than Untouchables.

In the Philippines, indigenous peoples – often called “tribal Filipinos” even though many of them are not or no longer organized as tribes – have invariably been regarded as colorful, brave, and interesting but primitive peoples, left behind by history, belonging to different and inferior “stocks” or races. This is transmitted to the majority of Filipinos by school texts, the tourism authority and the mass media.

Discrimination has contributed significantly to cultural erosion and acculturation because it has placed added pressure on indigenous people to give up their community’s language, manner of dress, manner of living – to deny their identity.



### Group Interaction

*Discuss with the participants the problem of discrimination in their own country.*

## B. Laws and Policies, Good and Bad

Most Asian countries are signatories to the UNDRIP, the International Covenant on Social, Economic and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. Most are also party to the Multilateral Convention on Biological Diversity (<http://www.cbd.int/convention/convention.shtml>), which contains significant provisions on the recognition and protection of indigenous knowledge.



### Suggested Method

*First, discuss the points raised below. Then involve participants in a Gaps Analysis of the laws in their own country, using the table also provided below.*

The constitutions of India, Cambodia, Malaysia and the Philippines provide for cultural freedoms and indigenous peoples’ cultural rights. In the Philippines, for example, the Indigenous Peoples’ Rights Act (IPRA) spells out these rights. But the IPRA as written text and its enforcement or implementation are two different things.

In some Asian countries, there are policies that outrightly violate or subtly deny cultural rights. For example, in Malaysia and in Thailand, the state promotes the concept of one country, one race, one culture – denying diversity or even encouraging its suppression. But in many Asian countries, this is not the main or the only problem.

One problematic policy area is prioritization of cultural concerns. In the area of public education, for example, a common conflict of priorities is between the state’s centralized development of curricula and textbooks, on one hand, and its avowed promotion of indigenous language which requires a great degree of decentralization.

### **EXAMPLE: TEXTBOOKS FOR INDIGENOUS EDUCATION**

In the Philippines, the IPRA allows indigenous communities to exercise control over the education of their children. Whether in the schools that the communities themselves have established, or in those that were built within their locality by a church or by the government, teachers are allowed to conduct lower grade classes in the indigenous languages so that students can grasp basic ideas more readily. Also, the communities can intervene such that false information and discriminatory ideas about their people – especially about their history – is corrected.

But textbook production is centralized, and teachers are taught by both the Department of Education and the Civil Service Commission to be true to the texts in their teaching. This is a source of at least two major difficulties for the teachers: (1) how they can help their students grasp what the textbooks say in Filipino or in English; (2) how they should deal, and help their students deal, with any false information or discriminatory idea they encounter in the textbooks.

Textbook correction and translation are not a priority of the Department of Education – which is among the departments that receive the lowest budgetary allocations from the Philippine government. Unless decentralized, translation would also be an extremely difficult task to undertake in a country where the SIL has listed 171 distinct, living languages.

A similar problem besets Malaysia, where the SIL has listed 140 distinct, living languages. There is space for the use of indigenous languages in the school system, but there are no funds available from the government for the production of textbooks in these languages.

### **For Discussion: Higher Education and Acculturation**

Governments in the Philippines, Malaysia, Thailand and India have attempted to facilitate the upliftment of indigenous peoples' economic condition and social status by providing scholarships in higher education as well as imposing acceptance and employment quotas that will ensure indigenous people's access to universities and establishments.

In the Philippines and in India, however, this has often resulted in the acculturation of indigenous scholars – indeed, in some cases, not only has the indigenous scholar been estranged from his or her culture but come to belittle it. In a few cases, the scholars have become so alienated from their respective cultures that they can no longer return to their localities and use their knowledge and skills in the service of their communities.

How should we view this?

Indigenous peoples' cultural rights are especially difficult to secure in countries where the scarcity of resources and the de-prioritization of cultural concerns do not allow governments to invest in the development and operation of instruments or mechanisms for rights-protection;

also in countries where economic need overrides the need to protect cultural rights against violation by, say, the tourism industry.

Indigenous peoples’ cultural rights are most difficult to secure in environments characterized by religious intolerance. They are similarly difficult to secure in countries where governments promote a one-nation, one-people, one-culture, one-language policy. The consequence of this policy in Japan, for example, was official denial of the very existence of the Ainu and the various Ryukyuan peoples for many centuries. It was only in June 2008 when the Japanese parliament finally conceded that the Ainu, who occupied the island of Hokkaido and the disputed borderlands between Japan and Russia, were an indigenous people with their own language, religion and way of life quite distinct from those of the Japanese majority, and were entitled to the rights provided in the UNDRIP. Up to now, the Japanese parliament remains silent on the status of the Ryukyuan peoples who occupy the Okinawa archipelago (or the Kingdom of Ryukyu up to annexation by Japan in 1879).

### Gaps Analysis

UNDRIP PROVISIONS ON CULTURAL RIGHTS	NATIONAL OR LOCAL LAWS OR POLICIES	GAPS	CONSIDERATIONS & IMPLICATIONS	OPTIONS & RECOMMENDATIONS
Paragraph or Article number	Specific laws, policies conforming with UNDRIP	Specific laws, policies NOT conforming with UNDRIP	Can current laws, policies be used to support indigenous peoples’ positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally? Or politically?	What needs to be done? How? By whom? Where? When? For how long?

Module-5

## IV. EXPERIENCES AND LESSONS LEARNED

The Japanese parliament's 2008 declaration recognizing the status of the Ainu as an indigenous people was the result of years of lobby by Ainu activists, mainly effected through participation in UN fora. The Japanese government had been aggressive in its efforts to assimilate the Ainu into the mainstream of national society. It was only through stubborn persistence in speaking their own language, and practicing their own religion and way of life, that the Ainu, as well as the Ryukyans, retained their indigeneity.

Along with assertion of a distinct collective identity, the de facto exercise of cultural rights is what has allowed many a people to retain their indigeneity in the face of the occupation of their territory, the usurpation of their lands and resources, the destruction or marginalization of their economic system, the suppression of their religious and political freedoms, and their having suffered countless insults to their dignity.

In fact, indigenous peoples have used aspects of their culture – often, apparently innocuous stories, chants, songs, dances and rituals – as weapons of unification and resistance. One good example is the experience of the Tingguian, Kankanaey, Bontok and Kalinga peoples of the Northern Luzon Cordillera in the Philippines.

### **EXAMPLE: ASSERTING CULTURAL RIGHTS**

From 1973 to 1986, when the indigenous peoples of the Cordillera were waging a shared resistance to the Chico dam and Cellophil projects of the Marcos dictatorship (see module on Development Issues), many of the cultural expressions of this resistance made their way to the cities of Baguio and Manila, and abroad. These helped to unify students, workers and professionals from different parts of the Cordillera in support of the resistance and contributed significantly to its eventual victory.

Among the venues opened to the cultural expressions of the resistance was the Counter-Grand Cañao. This was an activity held parallel to the Grand Cañao, a yearly tourist come-on conducted in the city of Baguio by the Marcos dictatorship, showcasing colorful cultural expressions from the diverse peoples of the Cordillera. Students, teachers and the el-



### **Suggested Method**

*Ask the participants to share any experiences of the following:*

- *Actual practice or exercise of cultural rights despite state or church efforts to deny or suppress these;*
- *Lobbying government/legislators for the recognition of cultural rights;*
- *Mobilization or mass action in assertion of these rights.*



ders of migrant urban poor villages protested the Grand Cañao for its prostitution of sacred ceremonies and its false projection of peace and prosperity in the region. Their protest became a movement in its own right, lasting from 1978 to 1983, and drawing the participation of thousands.

After five years of being disrupted by protest marches and being challenged with a Counter-Grand Cañao, the event was renamed by the Marcos dictatorship as the Highland Festival. This, however, did not sidetrack protestors. And so the first Highland Festival, held in 1983, also became the last.

The campaign against the Grand Cañao, a.k.a. Highland Festival, was the first protest movement in the Philippines to focus on the issue of respect for indigenous peoples' cultures.

### **For Discussion: Government-Sponsored Festivals**

In India, the government holds cross-district cultural exchange festivals among students, in an affirmation of diversity. But in the Philippines, the government holds cultural festivals primarily for tourism – for promoting the idea that the Philippines are fiesta islands.

In the Philippines' Cordillera Administrative Region, where an intense protest campaign against the exploitation of culture for tourism was waged during the late 1970s and early 1980s, the festivals are, ironically, now drawing massive participation from the same sector that once spearheaded the said protest – the studentry. Elders frown on the festivals. And those of the Pidlisan tribe of the Northern Kankanaey of Sagada even censure tribal youth who participate in the Mountain Province's Lang-ayan Festival. But the young people in the Mountain Province and elsewhere say the festivals are "our chance to show our pride in what we are."

What are the implications of festivals like these? Should the students participate in them?

## **V. CHALLENGES**

### **A. Three Levels of Challenges**

1. The participants' needs, capacity and proposed strategies for promoting compliance with UNDRIP provisions on the cultural rights of indigenous peoples;
2. The implementation of the said strategies; and
3. The monitoring of this implementation.



#### **Suggested Method**

*This final section should be a participatory process of envisioning and identification for the particular context of the participants.*

- *Discuss with the participants the three main points as listed below.*
- *Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

## B. Some Suggested Strategies

1. Information-dissemination, education on cultural rights not only among indigenous communities but also among the wider population.

2. National, local status assessment, problem-identification and strategizing, preparatory to

3. Lobbying national, local legislative bodies to address cultural rights as provided for in the UNDRIP;

4. Drumming up support for the lobby through media projection, community and school petition-signing campaigns, etc.

5. Following successful lobbies, educating local and national executive/enforcement authorities, also educators, mass media practitioners and religious authorities on indigenous peoples' cultural rights: the rights per se, as contained in the UNDRIP, as contained in the national constitution (where applicable), and as provided for in specific national and local laws.

6. Conceptualizing, planning, implementing actions and projects in the exercise of cultural rights and in gaining redress for the violation of these. Examples of such actions and projects include:

- indigenous roots renewal program for urban youth;
- textbook-correction and teachers' re-education projects aimed at rectifying discriminatory notions, misconceptions, misinformation, inaccuracies about indigenous peoples and their cultures;
- projects in revitalizing and gaining recognition and respect for indigenous learning systems and institutions;
- community dialogues, discussions with educational and religious authorities, media practitioners;
- campaign for the return of religious, other sacred, historical and other culturally important artifacts taken to museums, collections, laboratories;
- campaign for the return of human remains taken to museums, collections, laboratories;
- campaign for the International Rice Research Institute, other plant breeding institutions, commercial seed companies to return and help communities re-propagate the seeds they have taken, purportedly for ex-situ conservation, then replaced with their own Green Revolution seeds or hybrids, and effectively wiped out;
- campaign for the revocation of private individual or corporate, or institutional patents to genetic resources for food and medicine which can be identified and ascertained as material originally discovered, domesticated/cultivated, bred/developed, and propagated by indigenous communities;
- an alternative option would be to demand to be given a just share of the benefits from the use of indigenous peoples' "intellectual property".



**MODULE 6****DEVELOPMENT ISSUES**

**PREPARED BY GAM A. SHIMRAY, LULU A. GIMENEZ AND JANNIE LASIMBANG  
WITH INPUTS FROM SAMART SRIJUMNONG AND CHINKHANMUAN GUALNAM**

**OBJECTIVES**

1. To shed light on development issues as these pertain to indigenous peoples;
2. To involve participants in a discussion of indigenous peoples' concerns related with development
3. To familiarize participants with UNDRIP provisions that address critical concerns related to development;
4. To get participants to reflect on the situation in their own communities regarding development;
5. To share with participants the experiences of various indigenous peoples in reckoning with development aggression and asserting their right to self-determined development; and
6. To involve participants in envisioning a better future with respect to indigenous peoples' self-determined development, and to identify the challenges in realizing this as well as the means for addressing those challenges.

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  - B. Indigenous peoples' development concerns
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- II. UNDRIP PROVISIONS RELATED TO DEVELOPMENT
- III. REALITIES ON THE GROUND
- IV. EXPERIENCES AND LESSONS LEARNED
- V. CHALLENGES

## I. INTRODUCTION

### A. Mainstream Development Issues

#### 1. Development aggression

Indigenous peoples have suffered many adverse impacts from development initiatives in numerous countries. According to conservative estimates, at least 10 million indigenous people have been displaced in India alone as a result of development projects initiated and implemented, or fostered and facilitated, by the state.

The projects typically involve the opening of large mines, the building of large dams, the installation of thermal or nuclear power plants, road construction, timber concessions, the clearing of land for plantations and the establishment of tourist resorts. Usually forced upon indigenous peoples and invariably involving the usurpation of land and other natural resources within the territories that the indigenous peoples have settled or roamed, these projects represent what can be termed as development aggression.



#### Suggested Method

*Ask the participants/trainees to write down two points each on what they understand by development. After this, classify the cards and stick them up on a board or wall in clusters. Synthesize then move on to a lecture on Mainstream Development Issues as outlined below. Allow discussion, especially of examples from the participants' own communities.*

The adverse effects of development aggression on indigenous peoples include:

- Militarization;
- Political repression and denial of the right to self-determination – especially the right to free, prior, informed consent;
- Dispossession and dislocation;
- Environmental degradation;
- Competition and conflict within and between communities over the scarce resources that remain accessible to them;
- The degradation of traditional occupations, the erosion of the indigenous knowledge that these are associated with, and thus the deterioration of the social capital that communities have built up over generations;
- Inability to meet basic needs;
- Loss of food security, high incidence of hunger and occurrence of famine;
- Breakdown of social controls and values, alcohol and drug abuse, prostitution, criminal violence, etc.

It is expected that indigenous peoples in Asia and all over the world will continue to suffer development aggression inasmuch as the territories they occupy remain rich in the natural resources coveted by profit-hungry corporations that have well-entrenched connections to national authorities and to powerful multi-lateral institutions like the International Monetary Fund (IMF) and the World Bank.

#### 2. Market integration

Either as a consequence of development aggression or alongside it, indigenous peoples have been drawn into participation in the market economy. Land-resource and livelihood displace-

ment, and decreased self-sufficiency in food and other basic needs, have compelled many individuals to sell their labor power, talents, or the products of their craftsmanship – some seasonally, others perennially. Agricultural modernization programs, such as those that have sprung from the World Bank-supported Green Revolution of the 1970s and from the ongoing “gene revolution”, are encouraging entire communities to forsake their traditions of highly diversified, low-external input subsistence production in favor of high-external input and market-oriented monocultures.

The negative consequences of the integration of indigenous peoples in the market economy may be outlined as follows.

### **a. Loss of both food sovereignty and subsistence security**

Indigenous communities become dependent on the market. It is no longer their own food needs but market demand that determines the nature of their agricultural products. To take optimal advantage of the demand for a certain product, they will likely cultivate only this product – in other words, monocrop. But the demand and supply situation in the market may change, and this may bring about a sudden shift in the prices of products. If producers are unable to adapt quickly, they may not be able to earn enough money for buying even their most basic subsistence needs.



**One of the hundreds of so-called “temporary” army camps in the Chittagong Hill Tracts (Rangamati District), strategically located near a village and the road. Photo by Chris Erni**

### **b. Vulnerability to exploitation**

Shifts in the price, demand and supply situation in the market are often due entirely to manipulations by local merchants or global powers, rather than actual changes in the needs or tastes of consumers. Whether the manipulators are local or global forces, it is usually difficult, often impossible, for indigenous peasants to effectively reckon with their power.

In the Philippines, for example, merchant cartels have enjoyed control of rice and vegetable supply and prices for decades. They are able to manipulate both produce supply and prices because they also wield control of credit financing for production. Peasants must sell their produce to the merchants at any price the latter dictate because this is stipulated in the terms of their credit contracts. As creditors, the merchants already make huge gains either from charging interest at usurious rates, or from retaining substantial shares of the harvest or the cash income from its sale. As traders, the merchants make additional gains from underpricing the produce.

In the late 1990s and early 2000s, local merchants in many developing countries found their prospects for continued accumulation of wealth threatened by market globalization – which allowed the European Union, the United States, China, Australia and other large economies to dump their surplus produce all over the world, driving down domestic prices. But the local merchants were able to cope simply by squeezing the local peasants.

The impact on the indigenous peasantry in some countries has been more devastating than in others. In many places, the indigenous peasants have had to surrender ownership of pre-

cious traditional lands to their creditors and become mere tenants or agricultural workers. In the Philippines, thousands of them have had to leave agriculture altogether and either resort to small-scale mining or take up contractual jobs in private construction and public works projects in urban areas. In India, some 60,000 peasants, most of them indigenous people, have committed suicide by ingesting pesticides because they had no alternative to agriculture, and no hope of ever extricating themselves from indebtedness and securing a future for their families.

### c. Degradation of land and other natural resources, disruption of ecosystem balance

There are some cases in which indigenous peasants have been able to cope with market globalization by taking out bigger loans, intensifying their production and expanding this towards areas that their communities traditionally conserved as forests. But in overcultivating the land and clearing watersheds, the peasants have been jeopardizing the long-term sustainability of their production.



Environmental degradation is, however, an old story in the development of market-integrated agriculture. Pressed to make good in the market – because otherwise, their families would starve – farmers have long been striving for higher and higher yields by means unfriendly to nature.

Farmers have been using fertilizers synthesized from petrochemicals, and these fertilizers have made the soil acidic, less hospitable to the micro-organisms which have helped to maintain its friability and, thus, less cultivable.

As said, farmers have also been monocropping, and this has contributed to nutrient imbalance in the soil as well as allowed pests to spread more easily and more quickly. To address pest problems, the farmers have been using poisons, also synthesized from petrochemicals. These are indiscriminate killers, and in most cases, the pests have developed a resistance to the poisons, while the organisms that used to prey upon them have been decimated.

Stronger and stronger poisons have thus been developed by input-producing monopolies. And in recent years, the trend among these monopolies has been towards the development of pest-resistant crops by means of genetic engineering.

Genetically engineered crops like Bt corn, which carries the DNA of the bacteria *Bacillus thuringiensis*, can kill pests as well as beneficial insects. Meanwhile, their bacteria DNA can transfer to weeds whose extermination would then require the use of powerful herbicides, offsetting the benefit of not having to use insecticides.

Monocropping, the use of petrochemical fertilizers and pesticides, and the cultivation of genetically engineered crops all threaten the sustainability of farming because they disrupt the balance in the ecosystem of the farm itself and its environs.

#### **d. Discarding of traditional knowledge and technology, and erosion of indigenous genetic resources**

In adopting the technology of the Green Revolution and that of the “gene revolution”, indigenous peasants have had to forsake the agricultural knowledge and technology developed by their predecessors. In clearing forests and monocropping, they have also been eroding biodiversity both on their farms and in the general environment. In all parts of the world where indigenous peasants have shifted to monocultures, genetic resources important to long-term food security are fast disappearing.

For example, on the Northern Luzon Cordillera in the Philippines, the indigenous peasants have bred more than 300 distinct varieties of rice. A number of these varieties originated from Kabayan in the province of Benguet, and Hungduan and Kiangan in the province of Ifugao. Kabayan, Hungduan and Kiangan seeds were introduced to many areas of the Cordillera through traditional seed-exchange mechanisms, and they were cross-bred with varieties indigenous to those areas. The resultant breeds now thrive in other parts of Benguet and Ifugao, and in various parts of the Mountain Province and Kalinga. But the parent breeds are now difficult to find in Kabayan, Hungduan and Kiangan because these areas have recently been integrated into the Cordillera’s Vegetable Belt.

Here, the indigenous peasants now plant vegetable seeds supplied to them by local merchants, who source these from agro-input monopolies. These are hybrid seeds of temperate-climate vegetables which have not adapted to the conditions of the tropical pine ecosystem of the Cordillera Vegetable Belt. The crops can survive only with the application of tremendous amounts of fungicides, herbicides, vermicides and insecticides.

Potato, cabbage, carrot, green bean, snow pea, or iceberg lettuce is monocropped across thousands of hectares. The soil nutrient imbalance created by monocropping is offset by the application of tremendous amounts of petrochemical fertilizers and chicken dung. But nothing can offset the loss of the rich agricultural biodiversity that has inevitably resulted from the monocropping.

From 2001 to 2003, the peasants of the Cordillera Vegetable Belt were badly affected by the flooding of the Philippine market with cheap vegetable imports, and many wanted to revert to traditional diversified subsistence production. But they no longer had access to the plant genetic resources they needed and so were stuck with growing crops which they had no certainty of selling at prices that could cover their huge, high-input production costs. Only the political pressure that they and their local officials exerted on the national government to curb vegetable importation could save their families from starvation.

#### **e. Departure from traditional values and disruption of customary relations pertaining to land; increased privatization of resources traditionally held in common**

The market has been called the great diluter of values. And their integration in it has caused many indigenous people to lose their traditional regard for land as a resource collectively defended and tended, retained and maintained by their communities for the collective survival and well-being of not only the past and the present but also the future generations of these communities. To those who have completely lost touch with tradition, the land has become like any other commodity in the market – either an object or an instrument of competition between unrelated individuals or firms. The land and the other natural resources it holds can be appropriated,

exploited, mortgaged, sold and purchased by such individuals and firms without thought of any responsibility towards any common good.

With increasing integration of indigenous communities into the market economy, land-resource privatization has also been increasing. In some indigenous peasant communities, it has become possible for individuals to accumulate landed property, rent this out to fellow community-members who have little or no land of their own, or hire them to work the property.

#### **f. Migration and human resource depletion.**

Failure to cope with market demands, or to survive on meager crop shares or wages, has compelled many individuals and families to leave their home villages and seek employment or other opportunities elsewhere. In some areas, emigration from the village has resulted in the depletion of the human resources required to sustain food production by and for the community as a whole.



### **3. The question of human development**

The rationale invariably offered for programs in promoting market-integrated agriculture, or for projects in opening mines, installing power-generation facilities, building roads, granting timber concessions, clearing land for plantations, or developing tourist resorts in areas occupied by indigenous peoples, is the need for interventions that will propel a nation's economic growth. The assumption is that economic growth will generate increased employment and commerce, and thus deliver the masses of the nation's citizenry from poverty.

Development thinkers, however, point out that economic growth ought not to be regarded as the goal of development; neither should it be considered an adequate instrument of development. Development should be geared towards improving the conditions in which human beings live, and this improvement cannot be achieved by simply giving people jobs and other means of making money. It requires deliberate efforts to provide people with such basic needs as safe and sufficient water and shelter; also with such basic social services as health care, education and information. These are essential to achieving what the United Nations Development Programme (UNDP) refers to as "human development":

*Human development is a process of enlarging people's choices and enhancing their capabilities. The process concerns the creation of an enabling environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. It is a broad concept with as many dimensions as there are ways of enlarging people's choices. Among the most basic and critical dimensions are: a long and healthy life, access to knowledge, and a decent standard of living. Without these basic dimensions,*

*other dimensions such as political freedom, the ability to participate in one's community, self respect and so on will often remain inaccessible. (UNDP 2008: iii.)*

For many indigenous peoples, programs and projects aimed at propelling the economic growth of the countries they live in have brought about the very opposite of human development. These have deprived them of what they already had – i.e., water, food, medicine, clothing, shelter and the means by which to produce or gain access to such necessities. In most cases, the said programs and projects have also been implemented by denying indigenous peoples their political freedom, their civil liberties, their human rights.

#### **4. The human rights-based approach to development**

Increasingly, however, development institutions, such as the UNDP, and funders, such as the European Commission, have adopted a human rights-based approach to development. In relation to indigenous peoples, this means the promotion of development with due regard for their rights – especially:

- the right to self-determination, including
- the right to define their own development concept or model, programs or plans and policies;
- the right to say yes or no to other plans that may affect them;
- the right to land, territory and resources;
- the right to their own economic, cultural and socio-political systems;
- their basic civil liberties and human rights.

#### **5. The concept of sustainable development**

In textbook terms, economic growth means the production and consumption of increased amounts of goods and services. The production of consumption goods requires the investment of physical capital, the extraction of raw materials from nature, the use of intermediate materials processed by human hands and the expenditure of more human labor. In the market economy, profit from the production and sale of goods can be transformed into financial capital for further production and sale, and so on. Thus, economic growth both requires and results in the harnessing of ever-increasing amounts of all sorts of resources in a process that is – theoretically – unending.

The earth's resources are, however, finite. Some resources are renewable – water, a colony of coral, a forest, plants and animals in the water and on land, humus, micro-organisms, etc. But they cannot be replenished if they are consumed at a rate that is faster than nature has time to regenerate them. And the organisms in an ecosystem are interdependent; some species of plants and animals cannot be made to thrive again if the other species they depended on have been decimated. It is possible for the earth to regenerate petroleum, coal, even minerals and humic acid. But this would take at least one geologic era – i.e., several hundred million years. In practical terms, then, these resources are non-renewable.

The capacity of human beings to endure exploitation is also finite. In earlier times, it was possible for one people or its ruling class to exploit other peoples and classes for generations. Since ancient times, however, human beings have so matured in consciousness of what is right and wrong, just and unjust, that no people or social class would bear continued exploitation by another people or class for even a single generation.

In short, economic growth based on massive and intensive exploitation of the earth and of human beings is unsustainable. It is this exploitation that has given rise to the environmental and social crises that have erupted worldwide since the last century. Since the last quarter of the 20th century, social and environmental scientists have been putting forward arguments for an alternative to this, and proposing variations on a common model of what has come to be called “sustainable development”.

In its 1987 report, the UN World Commission on Environment and Development (WCED) chaired by Gro Harlem Brundtland defined the term sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (UNWCED 1987: Chapter II: 1)

Governments, multi-lateral institutions and transnational corporations have appropriated the term, making sustainable development appear possible without compromising their goals of endless economic growth and boundless profit. They make it seem like the problems of environmental degradation and poverty are simply the result of inefficient resource utilization and persistence in backward technology, and can be solved if developing countries were to adopt the more efficient methods and more advanced tools of production employed in developed countries. Thus, upon the urgings of the IMF, the governments of many developing countries have adopted policies that favor the takeover of their extractive industries by transnational corporations, saying these corporations command the capital and technology needed to make natural resource extraction more efficient and environment-friendly – more “sustainable”. This is the case in the Philippines and Indonesia, for example, in the field of mining.

The original proponents of sustainable development, however, question the very need for continued extraction of huge amounts of certain resources – for example, metals, which can be reused or recycled from waste rather than mined; diamonds, which would not be in great demand were it not for the market for jewelry.

The model of sustainable development is precisely a rejection of the aforementioned goals of endless economic growth and boundless profit. Its proponents espouse scaled-down production and consumption, sufficient only for meeting the genuine needs of the masses of humanity and not the artificial needs that have been induced by the market or the insatiable cravings of affluent elites. They believe that it is possible for all persons and peoples to have all their genuine needs met, and to live decent, productive and creative lives, if the earth’s remaining resources were to be utilized rationally and carefully – rather than greedily and wantonly – and the benefits from such utilization were to be shared equitably.

This model of development resonates with the values that underpin indigenous peoples’ traditional relationships with nature and with each other – values that uphold the conservation of natural resources for future generations and equitable sharing of these resources among the members of communities.

#### REFERENCES

- UN Development Programme. 2008. Human Development Indices: A Statistical Update. <http://hdr.undp.org>
- UN World Commission on Environment and Development. 1987. Our Common Future. <http://worldinbalance.net/intagreements/1987-brundtland.php>.

## B. Indigenous Peoples' Development Concerns

As may be gleaned from the foregoing, indigenous peoples have particular concerns that ought to be taken into consideration when discussing development. Aside from the foremost concerns of indigenous peoples – which are the retention of their lands and the resources these hold, and the respect of their right to self-determination (see modules on these subject matters) – the following should be taken into consideration.

### 1. Indigenous economic systems

Asian indigenous economies generally bear the following characteristics:

- Production is small in scale and low in intensity.
- This is because it is primarily oriented towards providing for the family or household, or the small community.
- Because it must provide for various needs, it is highly diversified.
- Diversified production also spreads risks among numerous sources of wherewithal.
- It can generate a surplus, or produce things not needed for subsistence – e.g. gold, gemstones, civet musk.
- Surplus produce or unneeded goods are usually traded for necessities that cannot be produced with local resources.
- Labor requirements are high, especially in mountain or upland agriculture.
- This makes it imperative that women and girls engage in as much agricultural work as do the men and boys.
- This also necessitates the reciprocal exchange of labor between persons, households, or families; also the pooling of labor among all able-bodied members of a community, especially in connection with rice production.
- Reciprocal exchange and pooling of material resources, as well as labor, occurs in connection with situations of dire need – e.g. in connection with illness or death and the need to host costly healing or mortuary rituals.
- There are mechanisms for distributing wealth that has been accumulated by a person, household, or family among the other members of the community.
- The practice of wealth distribution derives from:
  - » recognition of the labor contributions that the other members of the community must have made to the process by which the person, household or family built up its wealth;
  - » recognition of the interdependence and mutual interests of the members of the community, who are usually related to one another by consanguinity or affinity;
  - » recognition of the fact that the land, from which the wealth must have originated, essentially belongs to the community as a whole.



#### Suggested Method

*Ask the participants to write down two points each on what they think should be considered when discussing development in relation to indigenous peoples' economies, culture and societies. After this, classify the cards and stick them up on a board or wall in clusters. Synthesize then move on to a lecture on Indigenous Peoples' Development Concerns as outlined below. Allow discussion, especially of examples from the participants' own communities.*

- The land is not just the soil but all the living and life-giving things it holds. Land is the source of life. Thus, it cannot belong exclusively to a single person or household or family; it is necessarily a resource and responsibility shared by all the members of a community. Even when a parcel of land is segregated from common access, for exclusive use by a person, household or family, its fate remains the concern of the entire community.
- It is the community's responsibility to defend the land.
- It is also the community's responsibility to manage the land's resources wisely, conserving these for future generations.
- Principles and guidelines pertaining to the use, disposition and management of natural resources are part of the community's customary law, as are principles and guidelines pertaining to all responsibilities related with land, people and wealth.

## 2. Traditional occupations

Traditional occupations are still the chief sources of livelihood of most indigenous peoples in Asia. During the Fourth Indigenous Development Conference of Asia held in Sabah, Malaysia in 2008, it was estimated that traditional occupations still accounted for 95% of indigenous peoples' livelihood in Timor Leste, 90% in Cambodia, 80% in Malaysia and 70% in Thailand. In the Philippines, the figures vary from people to people, but it would probably be safe to say that, on the average, indigenous peoples there still derive more than 50% of their livelihood from traditional occupations.

The traditional occupations of Asian indigenous peoples include:

- farming, which involves a combination of some or all of the following:
  - » crop cultivation in the form of terraced wet-rice culture, swidden cultivation, homelot gardening, etc.;
  - » the raising of domesticated animals, including buffalo, cattle, horses, goats, pigs, chickens, ducks, etc.;
- fishing, hunting and gathering of materials or products from the wild;
- basketry;
- textile weaving and carpet making;
- carpentry;
- wood or stone carving or sculpting;
- pottery;
- wine and beer making;
- sugar making;
- salt making;
- small-scale mining;
- metal smithing;
- jewelry making.

In many indigenous Asian societies, there are also persons who earn some or all of their living as traditional specialists in one or more of the following:

- healing, which involves one or a combination of the following:
  - » "herbal" medicine, which in many cases actually involves medicinal substances taken not only from plants but also from animals and minerals;
  - » midwifery;
  - » deep-pressure massage;



- » bone setting;
- » surgery;
- » energy healing;
- » spiritual healing;
- mediation with ancestor and nature spirits;
- divining;
- mediation of intra-community and inter-community conflicts.

Development interventions ought not to put these traditional occupations at risk, considering that they fulfill the following functions:

- They are the means by which families and communities provide for their own needs in food, shelter and clothing, and even their cash needs.
- Involving the pooling, sharing, or exchange of labor, material resources, products, or financial resources, they help consolidate inter-family bonds and community ties.
- Involving exchanges of seeds and broods, traditional farming promotes agricultural biodiversity.
- Traditional occupations serve as venues for the transmission of indigenous knowledge – horizontally, among the members of a community and among different communities; vertically, from the older generations to the younger.
- They also serve as venues for the practice of collective decision-making, communication, and cooperation within and among the communities.
- They are thus essential to the maintenance of economic, cultural and political stability within and among communities.

### 3. Traditional healing

Indigenous health practitioners have been servicing their communities for millennia. Yet their work is, at best, regarded as “alternative” medicine and, at worst, as “quackery”. Non-recognition by state health authorities has led to the marginalization and loss of income of indigenous health practitioners, and contributed significantly to the deterioration of indigenous knowledge on health. In some countries, the problem is compounded by religious intolerance of the indigenous health practitioners. This has even involved serious human rights violations, such as the killing of so-called “witches”, who are mainly women.

In most countries, state health authorities give recognition only to the practitioners and products of “western” medicine. In developing countries, public health officials help encourage the use of the pharmaceutical products of private corporations by distributing promotional samples of these during individual consultations, community education seminars and area medical missions. Yet the state is often unable to sustain the delivery of professional medical care and pharmaceuticals to rural populations. This is because state budgetary allocations to health are generally limited, especially in developing countries. The state does not appreciate the traditional practices of community midwives in attending births



and providing maternal care, yet these are important to consider in programs for reducing the rates of maternal and child mortality in rural areas. There is little or no official support for research towards the validation of “alternative medicine”. Yet pharmaceutical corporations have been engaged in bio-prospecting and bio-piracy – stealing and profiting on indigenous peoples’ knowledge of medicinal plants, animals and minerals, and patenting the products as original “discoveries” or “inventions” to which they have exclusive rights of sale.

Despite generally unfavorable conditions, however, indigenous peoples have been able to exercise their rights to the improvement of their health conditions and to the maintenance of their own, indigenous health systems.

- Many have been documenting their indigenous knowledge on health, especially in the field of herbal medicine, and consciously placing the knowledge in the public domain so that it cannot be privately patented but, rather, become accessible to all.

- In some countries, it has become possible for indigenous herbalists to work with chemists to standardize their preparations – i.e., prepare herbal tablets, tinctures, syrups, ointments, etc. with a specific measurement of the amount of active ingredients these contain so that they can be administered in standard doses. In India and the Philippines, the herbal preparations can be submitted to pharmaceuticals-regulating authorities, who would then verify the contents by chemical analysis and license the sale of the preparations following defined standards of labelling.



- In some countries, it has become possible for indigenous healers to apply to the government for license to practice, and a few have done so. In fact, some organizations have set up licensed clinics where indigenous health treatments are made publicly available.

#### 4. Indigenous knowledge

Indigenous knowledge is largely the collective knowledge of a community. Thus, except for matters sacred or arcane, almost all knowledge is available for access by all the members of the community, and is often freely shared even with people outside the community.

In indigenous knowledge systems, there is usually no real separation between knowledge and practice. Knowledge cannot be compartmentalized. It is incorporated in language. It is integrated with spiritual and ethical beliefs, with rules of ritual and customary law. It includes knowledge about nature and how human beings should relate with other beings in their natural environment; about society and how human beings should relate with one another. Although embodied in tradition, it is not static. Indigenous knowledge is both founded upon generations of experience and enriched by more recent experiences. It is dynamic and cumulative. It is thus capable of giving rise to innovations in technique and technology.

Indigenous knowledge is widely recognized today as a rich source of information on ecosystems and their management; on biodiversity in general and the identity, characteristics and uses of specific plants and animals; on food and medicinal substances, and on healing; even on hydrology, geology and mineralogy. It is thus vulnerable to exploitation, as evidenced by the numerous cases which have been brought to the attention of the World Intellectual Property Organization in which individual researchers and corporations have appropriated information from indigenous peoples regarding seeds and medicinal substances. Aside from these cases of what is now referred to as bio-piracy, there have been numerous instances in which corporations engaged in natural resource extraction have used information from indigenous peoples to locate water and mineral deposits, and dispossess the very communities that told them about these resources.

## 5. Traditional education

Indigenous knowledge is transmitted through a system of learning that can be described as a lifelong pedagogical process and an inter-generational transfer of knowledge aimed at maintaining a flourishing and harmonious society or community. Children from a young age receive guidance from older members of the community to prepare them for life and their responsibilities towards society. An important aim of inter-generational transfer of knowledge is to ensure that community members enjoy adequate economic security in an environment of socio-cultural and political stability.

Traditional education is achieved through the principles of participatory learning, holistic growth, nurturance and mutual trust.

Participatory learning requires the community member to be fully engaged in the learning process, through exposure and observation, dialogue and practice. Except for certain specialized knowledge and skills, children from an early age are exposed to the different types of life-skill activities in the community. For example, parents bring their children along when they work their fields and teach the children what they need to learn about farming, relevant to their age.

Holistic growth involves education not only in skills but also in the community's ideals and perspectives in developing its own spiritual, ethical, political, juridical, natural resource management, livelihood and health systems. Thus, in indigenous communities, children also learn from an early age beliefs, values and customary laws expressed through encouragement or prohibition of actions or activities.

Repetitive application and practice are central to learning oral traditions pertaining to the community's spiritual and ethical beliefs, collective knowledge of its environment, history, customary laws, its members' relationships and commitments to one another, and its relationships and commitments to other communities.

Specific traditional activities and occupations that require a high degree of discipline and understanding, such as spiritual healing, "herbal" medicine and various crafts, are learned through apprenticeship. The apprentice would stay with his or her master until he or she develops the knowledge and skills required to practice on his or her own. For example, in Sabah, Malaysia, the bobohizan or priestess undergoes about seven years of apprenticeship before she becomes proficient in officiating ceremonies. Besides those skills and techniques learned from their teachers, apprentices may also acquire further knowledge through self-study, or independent exploration and discovery, and revelations.

Ideally, education is conducted in a spirit of nurturance and mutual trust between teachers and learners. As it is a life-long process, there are no barriers such as age limit, time frames, or grading.

While persisting in their traditional forms of teaching and learning, indigenous peoples have availed of mainstream educational services. And they have invested tremendous efforts in getting their learning materials and mechanisms integrated into mainstream or formal education systems.

Mainstream education systems involve instruction from pre-school to tertiary-level institutions and the training of instructors. These are usually guided by a standard set of curricula provided by ministries or departments of education, based on state policies. Adult education has also become common in many countries and takes on many forms, ranging from formal class-based learning to self-directed learning.

The inclusion of indigenous ways of learning, teaching and training has been important in ensuring that students and instructors are able to benefit from education in a culturally sensitive manner that draws upon, utilizes and enhances awareness of indigenous knowledge. For indigenous learners and teachers, the inclusion of these methods often results in greater educational effectiveness because it provides an interphase with indigenous peoples' experiences and worldview. For non-indigenous students and teachers, education using such methods promotes awareness of the traditions and collective experiences of indigenous peoples, thereby generating greater respect for and appreciation of other cultural realities.

In terms of educational content, indigenous educators, organizations and parents have been working with various institutions to include indigenous peoples' history and indigenous knowledge within curricula, course books, textbooks and learning aids. The inclusion of these promotes respect for indigenous peoples' experience and culture.

## **6. Access to mainstream education, information and mass media**

As indicated above, the mainstreaming of indigenous learning mechanisms and materials would not only promote multi-culturalism in society but also make formal education a more fruitful experience for indigenous people. It would thus help states and non-state educational institutions to guarantee indigenous peoples' right of access to knowledge.

Access to non-traditional, non-indigenous knowledge is critical at this point in the development of indigenous communities, given the numerous issues and options they must reckon with. Adequate knowledge and understanding of these issues and options is crucial to their enjoyment of their right to free, prior, informed consent, and thus to their exercise of self-determination.

Indigenous peoples also have the right of access to means of communicating their views on the said issues and options to the public. They should thus be afforded space in the mass media, as well as opportunities and training in the special skills required for the development of their own print and broadcast media outfits.

Affording indigenous peoples opportunities to create their own space in the mass media would, further, give them the chance to project their own experiences, situation and culture without the misrepresentations or distortions that the mainstream media have been prone to making.

## 7. Socio-cultural continuity

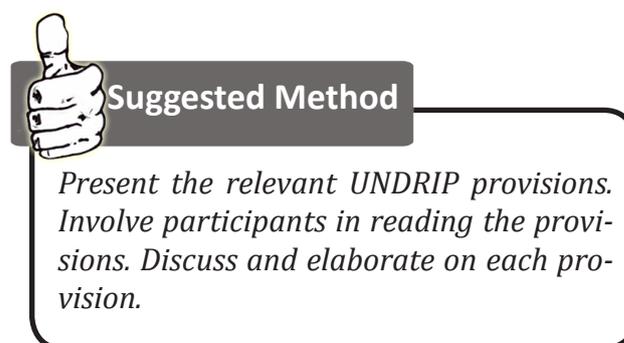
As shown by their participation in the market economy and their availment of mainstream social services, indigenous peoples are not anti-development. Although they have persisted in traditional livelihood systems, occupations and production technologies, indigenous peoples are aware that these need to be augmented, given the natural growth of their own and other populations, and the competing interests of other peoples, as well as governments and corporations, in the resources within their traditional territories and expansion areas. Although they have persisted in their traditional ways of life, indigenous peoples are aware that they must acquire new knowledge and skills so that they can deal with the challenges posed to them by the world outside their communities. For indigenous peoples, the pursuit of economic sufficiency and adequacy in new life-skills is extremely challenging because it must be undertaken without sacrificing the continuity of their society and culture.

## II. UNDRIP PROVISIONS RELATED TO DEVELOPMENT

### A. Comprehensive Provisions on Development

#### PP6

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, the colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,



#### PP10

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

#### PP11

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

#### Article 3

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.

#### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

**Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions....

**Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

**Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**B. Specific Provisions on Health****Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

**C. Specific Provisions on Indigenous Knowledge, Education, Information and Mass Media****PP13**

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child

**Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

**Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

**LINKS**

- The UN Declaration on the Right to Development. This declaration describes development as an inalienable human right and also implies the full realization of the right of peoples to self-determination.
- ILO Convention No. 169. This convention stipulates a right-based approach to development, based on the respect for indigenous peoples' right to determine their own priorities underlining the concept of consultation and effective participation.
- ILO Convention No. 111. This Convention specifically deals with the elimination of both direct and indirect discrimination of indigenous people and other minorities in employment and in regard to their occupation.
- The International Covenant on Social, Economic and Cultural Rights.
- The International Treaty on Plant and Genetic Resources for Food and Agriculture. This treaty recognizes the importance of farmers' knowledge to the conservation of plant and genetic resources for food and agriculture, and recognizes the rights of the farmers to their knowledge. It, however, vests primary ownership of the plant and genetic resources in the state.
- The Convention on Biological Diversity. This Convention recognizes the importance of indigenous knowledge to biodiversity conservation and recognizes the rights of indigenous peoples to their knowledge.

- The UNESCO Convention Against Discrimination in Education.
- The World Declaration on Education for All.



### Note to trainers

*Many of the ground realities would already have been drawn out from the discussions in the introduction, though randomly. Here the trainer should consolidate/streamline them, using the guide questions provided.*

## III. REALITIES ON THE GROUND

### A. General Situation

#### 1. Development aggression

- Are there any development projects currently outlined for your community's lands or territory? What are these? What is the purpose of each project?

- What is your community's stand on each project? Why has it taken this stand?

- Has your community articulated this stand to the project proponents? How have the project proponents reacted?

- What does your community plan to do about the project in the future?



### Suggested Method

*Divide the participants into five groups to discuss the four topics below. Ask them to write down the results of their discussion for poster presentation later.*

*Ask all the groups to put up their poster presentations and have a plenary discussion on each topic.*

*After the discussion, synthesize.*

#### 2. Market integration

- What are your community's experiences in participating in the market economy?

- Has your community drawn any lessons from these experiences? What are these?

- Is your community now using these lessons to mitigate or counteract any negative consequences of market participation? If yes, what mitigating or counteracting measures has your community undertaken?

- What does your community plan to do in the future, in relation to market participation?

#### 3. Indigenous economy and culture

- What are the salient features of your local economy?

- What are the traditional occupations of your people?

- What are the salient features of the indigenous knowledge – including technology and practice – that your people employ in these occupations?

- Are the local economy, technology and practices sufficient for sustaining your community now and beyond the present generation? Or do these need to be augmented? What augmentations do you think are necessary?

- What do you think should your people keep in mind when augmenting or making innovations upon tradition?

#### 4. Indigenous and mainstream health practice and services

- Do your people at present have traditional healers among them? And are they able to practice their occupation freely? Are they your community's primary source of health care? Or have their services been rendered secondary, or even marginalized, vis-a-vis mainstream health services? If so, why?
  - If your community has access to mainstream health services, characterize these services.
  - Has your community had any problems related to health care or services that have not been addressed? If so, what does your community plan to do about them?

#### 5. Indigenous and mainstream education, information and mass media

- What are the salient features of traditional education – or the means of transmitting knowledge – among your people?
  - If the members of your community avail of mainstream educational services, characterize these services.
    - Has your community – through its members who are teachers, through organizations, or as the parents of students – been able to introduce indigenous methods of education in formal schools? Has it been able to introduce indigenous material in the formal school curricula, course books, textbooks, or course materials? If so, how has the incorporation of indigenous educational methods and materials affected the learning experience of students from your community?
      - Does your community have regular or frequent access to information through public channels, such as government gazettes, commercial newspapers, radio and television? Does your community think it receives sufficient and accurate information from these public channels about the issues that concern it and the options it should consider? If not, what do you think your community should do about this?
        - Does your community have access to information media as channels for bringing its concerns and views to the public? If not, what do you think your community should do about this?
          - Are your people's history and culture treated with accuracy and respect in the mass media? If not, what do you think your community should do about this?

## B. Laws and Policies



### Suggested Method

*Break up the participants into groups, each of which will take charge of filling up one thematic row in the Gaps Analysis table below. There should be one group each for laws and policies that pertain to: economics, health, education and information, other social-cultural concerns, development in general. After the table is filled up, have the participants explain their entries, discuss these further, synthesize.*

**Gaps Analysis**

<p>UNDRIP PROVISIONS ON INDIGENOUS PEOPLES AND DEVELOPMENT</p> <p>Paragraph or Article number</p>	<p>NATIONAL OR LOCAL LAWS OR POLICIES</p> <p>Specific laws, policies conforming with UNDRIP</p>	<p>GAPS</p> <p>Specific laws, policies NOT conforming with UNDRIP</p>	<p>CONSIDERATIONS &amp; IMPLICATIONS</p> <p>Can current laws, policies be used to support indigenous peoples' positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally?</p>	<p>OPTIONS &amp; RECOMMENDATIONS</p> <p>What needs to be done? How? By whom? Where? When? For how long?</p>
<b>Economics</b>				
<b>Health</b>				
<b>Education &amp; Information</b>				
<b>Other Social-Cultural Concerns</b>				
<b>Education &amp; Information</b>				

Module-6

## IV. EXPERIENCES

### EXAMPLE

#### Combining “Western” and Indigenous Medicine in Community Health Care Development

In 1981, indigenous people who had undergone university training in medicine – including a couple of doctors and several nurses and medical technicians – established the Philippine non-governmental organization CHESTCORE (short for Center for Health Education, Services and Training in the Cordillera Region). They serviced communities in the remotest parts of the region, where neither government nor church missions provided any health care. They did this by:

- assessing health and sanitation conditions;
- educating villagers about such matters as the need for latrines, pig pens, hand-washing and the segregation of eating utensils used by members of the household who had communicable diseases;
- giving paramedical training to villagers who had the aptitude and commitment for community health work, and organizing them as CHWs (Community Health Workers);
- administering professional tests and treatments to persons with maladies that were beyond the CHWs’ capacity to diagnose and treat, and mobilizing other medical professionals in the Cordillera to help with this through periodic medical missions;
- arranging for surgeries or procedures in urban clinics for cases that required special instruments, equipment or facilities.

In the course of working with communities, the CHESTCORE encountered remarkable indigenous healers – most notably, in the village of Aguid, Sagada, Mountain Province, an elder named Manzano Domin-eng who was a walking encyclopedia on medicinal plants in the tropical pine forest ecosystem. The CHESTCORE recruited a taxonomist and, starting with Domin-eng, documented indigenous knowledge of herbal medicine. They catalogued the plants, identifying these by their popular as well as scientific names, photographing then making scientific drawings of these, recording their medicinal usage, then validating the uses both by subjecting the herbal preparations to chemical analysis in the laboratory and observing their efficacy on field. In 1986, they published the results in a compendium entitled *Common Medicinal Plants of the Cordillera Region*. They developed standardized herbal preparations for simple ailments and, by 1990, were teaching CHWs throughout the region how to make and administer these properly.

The CHESTCORE also documented other traditional healing methods. In 1996, they published a manual entitled *Nainsigudan a Panangagas* (Traditional Healing) and used this in the CHW trainings that they continued to give all over the region.



### Suggested Method

*Ask the participants to discuss their people’s experiences in:*

- *Advocacy and lobbying for the recognition of rights related to development;*
- *Action or mobilization to assert or protect these rights;*

*Actual exercise or practice of the rights. To start off, you may refer to the examples provided below.*

By combining “western” with indigenous medicine, and by training more and more people in the use of both, the CHESTCORE had filled a big gap in the delivery of social services to indigenous peoples because, in most villages of the rugged Cordillera, there is no doctor.

## EXAMPLE

### Passing on the Knowledge of Generations

In Sabah, Malaysia, a number of communities have been establishing community herbal gardens to promote traditional health care and also a way to pass on knowledge and practices to the next generation. Some communities are linking this to a project, Grandmothers’ Walk, with the local preschool centre, where children are brought to the herbal gardens to identify various medicinal plants and their uses. The community also keeps a registry of the plants and their uses but these information are kept strictly in the community to protect against bio-piracy.

Through this project, community members have easy access to herbal medicines and some also hold workshops to do simple processing of these medicines as a way of promoting their use in families and to exchange views about the use and protection of traditional medicines. Most of those involved in the promotion of traditional medicines are women who still hold special knowledge and are active practitioners as part of their role to maintain good health of the family.

## EXAMPLES

### Incorporating indigenous peoples’ concerns in education

#### The projects under the IMPECT umbrella in Thailand:

Foothold in the Hills covering Chiang Mai and surrounding villages Supported by the Bernard Van Leer Foundation, [www.bernardvanleer.org](http://www.bernardvanleer.org)

Objective:

*...to create and facilitate a positive learning and developmental environment for young children, whereby cultural identity and a sense of security in their own culture are instilled, thus enabling them to act within Thai mainstream society.*

Participatory Alternative Education for Indigenous Children and Youth

Supported by the Pestalozzi Children’s Foundation, [www.pestalozzi.ch](http://www.pestalozzi.ch)

Nature:

*...promotes mother tongue class room teaching and the integration of local knowledge and skills into curricula.*

Muticulturalism and Education Policy Research Center

Chiang Mai University Faculty of Education

Objective:

*...to study on the linkage between education and culture, paving way for the multicultural society.*

NECTEC project  
Chiang Mai University Faculty of Education  
Objective:

*...to study the whole school learning reform, stressing on the students' thinking, in the schools in Pai and Pang Mapha Districts of Mae Hongson, Thailand, most students of which are from IP families.*

The PACOS Trust Learning Centres in Sabah, Malaysia:

Years of experience in organizing communities and establishing pre-school education among them has led an indigenous organization, the PACOS Trust, to set up learning centres that bring together community members to plan and control educational activities that are important for them. This initiative was in part a response to the Malaysian government's move to establish its own pre-school centres in which the national curriculum would have been implemented without taking into consideration the work done by indigenous organizations.

## V. CHALLENGES



### Suggested Method

*Start with an envisioning exercise:*

- Ask for three participants – one to represent the people, one to represent mainstream development agents, one to represent the state/ruling classes.
- Have the one who represents the people get down on all fours – hands and feet on the floor/ground. Have the agent stand beside him/her. Place a chair behind the agent, and have the one who represents the state stand on it.
- Ask the one who represents the state to assume a posture that demonstrates his/her power over the agent – e.g. leaning and pressing down on the agent's shoulders. Ask the agent to assume a posture that demonstrates his/her power over the one who represents the people – e.g. stepping on his/her back.
- Ask the participants what the one who represents the people should do to be rid of the pressure – and perhaps pain – he/she is suffering. Hopefully, they will say, move and rise up. And this will shake up – or even topple – the structure.

*After the envisioning exercise, break up the participants into groups. Ask them to:*

- Discuss what they, as indigenous people, would like to achieve in terms of development, by “moving” and “rising up”.
- Discuss how they can achieve these – i.e., what strategies they propose.
- Assess their needs, capacity and resources for pursuing these strategies.
- Discuss implementation and monitoring.

*Have the participants write the results of their discussion for poster presentation, then have each group present in plenary.*



## REFERENCE FOR THE TRAINER

### INDICATORS OF INDIGENOUS DEVELOPMENT

The Asia Indigenous Development Conferences elaborated on 10 elements of indigenous systems and also developed a set of indicators of the goals and aspirations of indigenous peoples, as outlined in the following paragraphs related to Cultural Integrity and Empowerment (social, cultural, spiritual and education development), Technical integrity and Environmental Sustainability (Technology, Natural Resource Management development), Wellbeing (Economic, Health development) and Governance (Political and Juridical development).

- Collective values and identity are maintained.
- Indigenous perspectives and values are actively promoted.
- Traditional land use and ownership systems are alive.
- Traditional social and political institutions exist, and customary laws are enforced to regulate indigenous ways of life.
- Indigenous skills and knowledge systems on social, cultural, spiritual practices and education are intact and actively promoted.
- Traditional defence and security systems exist.
- Indigenous languages are widely used in the community and taught in schools.
- There are transparent and good systems of resource distribution.
- Traditional belief systems are freely practiced.
- Shamans, ritualists are free to practice rituals and ceremonies.
- Venues for community gatherings exist.
- Indigenous knowledge systems are intact and actively promoted, in particular indigenous natural resources management and indigenous technology.
- Modern technology does not take over indigenous technology.
- Indigenous skills and knowledge on natural resources management and indigenous technology are promoted and developed.
- Environmental integrity of indigenous peoples' territory is ensured.
- Traditional institutions actively enforce the sustainable use of natural resources.
- Customary laws are in place to regulate technology and resource use.
- Indigenous peoples own and control their lands and natural resources, and collective rights over lands and resources are recognized by government and non-indigenous people.
- There is active lobbying against globalization that negatively impacts the lives of indigenous peoples.
- Indigenous production systems are encouraged, practiced and maintained.
- Subsistence economy is recognized and thriving.
- Indigenous knowledge systems are intact and actively promoted within indigenous economic and health systems.
- Indigenous healing is practiced and recognized, and indigenous healers are free to use and promote their knowledge.
- Traditional medicines– both resources and knowledge – are protected by the setting up of laws, community protocols.
- There is participation in development processes and in decision-making.
- There is active lobbying to change laws and policies affecting indigenous peoples negatively.
- Traditional defence and security systems exist, including the freedom to develop own defence and protection mechanisms.
- Indigenous knowledge systems on governance and juridical knowledge are intact and practiced.

- Community organizations exist to ensure that community issues are addressed.
- The human rights and fundamental freedoms of indigenous peoples are recognized and guaranteed by governments.
- Traditional institutions are gender-sensitive.
- There is full and effective participation of women and youth.
- Indigenous peoples are guaranteed citizenship.
- Genuine autonomy is achieved or being advocated.
- There is a strong foundation of traditional leadership, e.g. based on responsibility and accountability.

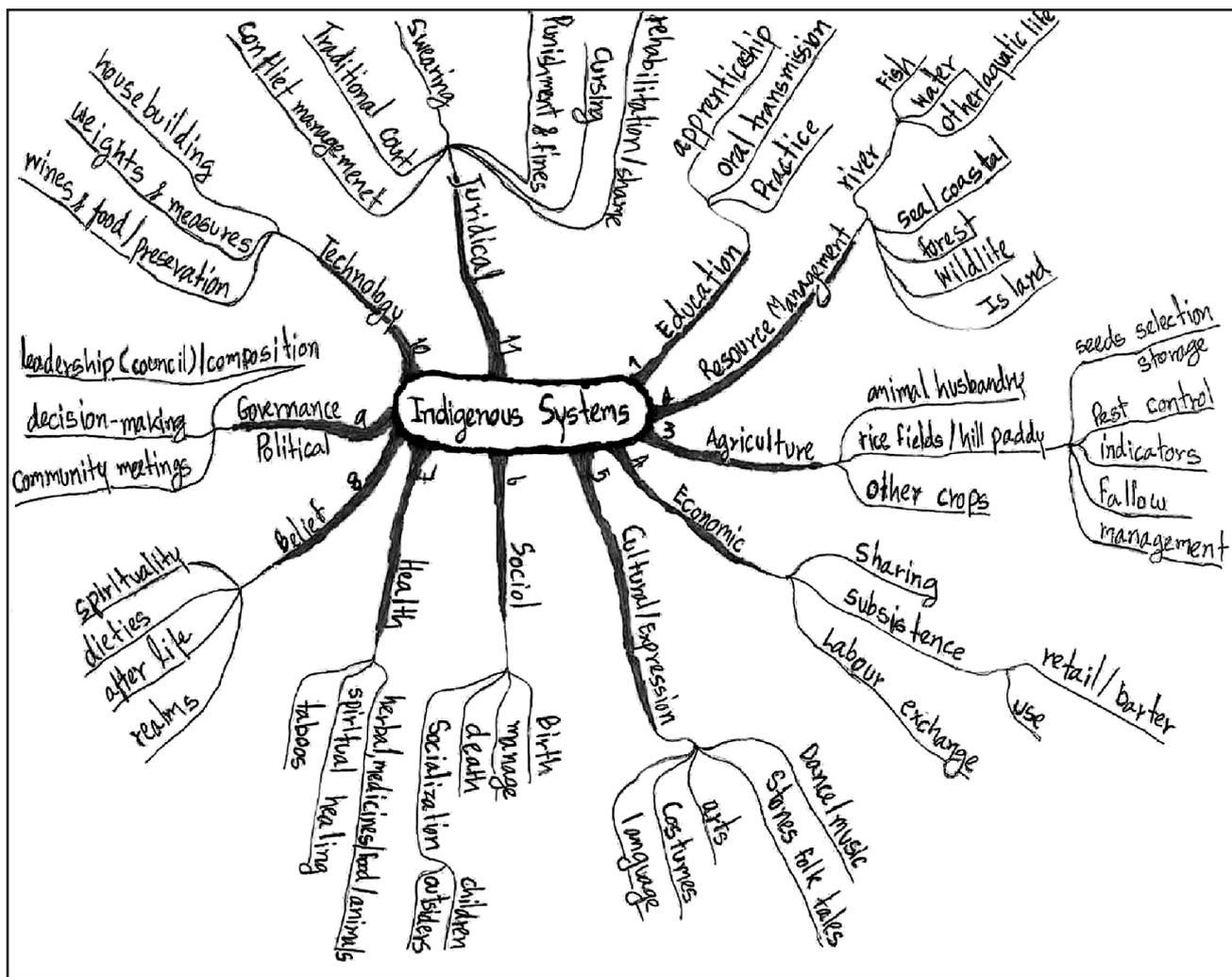
**REFERENCE**

**Contours or Elements of Indigenous Peoples' Self-Determined Development**

Extract from the report of the Consultation Workshop and Dialogue on Indigenous Peoples' Self-determined Development or Development with Identity 14-17 March 2008, Tivoli, Italy (UN Document E/C.19/2008/CRP.11)

From the discussions that took place, these were the key points...identified as elements or contours of self-determined development. It was agreed that the term to use is self-determined development as this captures more aptly the thinking and practice of indigenous peoples.

- Strengthen, protect and enhance distinct cultural institutions, indigenous philosophies and worldviews, customary laws, indigenous political governance and justice systems, and pro-



tect and reinforce traditional knowledge.

- Strengthen indigenous beliefs and practices which promote harmony and sustained interaction with their environment, holistic management of territories and natural resources so that these can still be used by the future generations.
- Promote programmes and projects which are holistic and which enhance the values of reciprocity, equity, solidarity and interconnectedness.
- Start from the indigenous concepts of economic, social, political, cultural and spiritual well-being and diversity and develop indicators to measure how such well-being is promoted.
- Respect and protect right to lands, territories and resources; Develop and promote laws and policies which ensure indigenous peoples control, ownership and access to these.
- Respect and operationalize the right to free, prior and informed consent.
- Ensure equality, non-discrimination and right to political participation in all decision-making bodies, programmes and projects brought into their communities.
- Respect and promote cultural rights and right to identity and revitalize cultural traditions and customs while also revising some aspects which do not promote gender or intergenerational balance.
- As part of the implementation of the right to self-determination, autonomous regional governments or other self-governing structures of indigenous peoples should be developed or enhanced and the control of these structures over social services such as health and education should be ensured.
- Promote indigenous peoples' participation in political governance, legislative structures from the local to the national level and beyond.
- Reinforce traditional livelihoods of IPs which are ecologically sustainable and which ensures equitable sharing of resources and benefits.
- Demand-driven, meaning indigenous peoples are fully involved in identifying, designing, implementing, monitoring and evaluating development programmes, policies or projects.
- Promote use of mother tongue, establish bilingual and intercultural education.
- Promote and support integrated local development projects that ensure the leadership role played by indigenous organizations and communities in project conceptualization, participatory planning, decentralized execution and local capacity building
- Protect indigenous peoples' intellectual, cultural, religious and spiritual property and provide redress for misappropriation.
- Provide adequate social services adapted to the socio-cultural and linguistic characteristics of indigenous peoples
- Provide options for indigenous peoples to decide which aspects of the subsistence economy, intercultural economy (interface between the subsistence and market economies) and the market economy.
- Support the development and use of culturally appropriate and environmentally sustainable technologies.
- Provision of environmental services from indigenous territories should be valued and compensated.
- Reinforce resilience, mitigation and adaptation processes of indigenous peoples especially in the face of climate change.

## REFERENCE FOR THE TRAINER

Adapted from "Indigenous Peoples' Poverty Alleviation Community Action Tool" (2007: 31) prepared by the Asia-South Pacific Bureau of Adult Education in Mumbai, India.

**Determining what people want:** Based on analysis and understanding of the situation, people should clearly identify and list what they want in the short term and in the long term.

Then they should prioritize what issues they will tackle, what things they want to achieve, and what things can wait for the future.

**Assessing resources and capacity:** People have to sincerely and clearly take a hard look at their own situation to assess their own resources, capacity, willingness, readiness at the commitment level, and other aspects of their situation in order to check if the plan they have drawn up is realistic and practicable. Obviously in most cases, there would be weaknesses and lack of different things such as skills, resources, etc. So how can we overcome these shortcomings? Can we produce or acquire the things we need? If we can, how do we go about it? Are there people who can help us? Perhaps we should approach the problem from another angle?

**Analysing the strengths and weaknesses of our adversaries and ourselves:** Analyze the strengths and weaknesses of the different opposing forces involved in our situation. Identify the possible points through which their defenses can be penetrated, or the possible ways by which their weaknesses can be maximized to our advantage. Similarly, honestly analyse our own strengths and weaknesses. Identify how we can enhance and strategically make use of our strengths and what we can do about our weaknesses. To what extent would our weaknesses obstruct our objectives? How can we prevent this from happening, and what contingencies have we prepared in case there is trouble?

**Creative approaches:** Be creative in strategy. We can take a look at other struggles to learn and adapt strategies and plans used in their situation. But we have to consider all the points mentioned above in order to identify a feasible strategy for organising and taking action creatively and effectively. There is always more than one way to approach a problem. We just have to widen our imagination. Do not just look at a problem from one perspective only. View it vertically and laterally, and from all possible angles. Who knows, perhaps you can identify another way or several ways to confront and address a certain situation. We have to be innovative and flexible because there is never only one sure solution or strategy. We would probably have to keep innovating along the way depending on the response from the other forces at play in our situation.



**MODULE 7****MIGRATION AND TRANS-BORDER ISSUES**

PREPARED BY CHRISTIAN ERNI AND MRINALINI RAI

**OBJECTIVES**

1. To know what migration is;
2. To understand what cause indigenous people to migrate today;
3. To understand the implications of migration for indigenous peoples;
4. To study how the UNDRIP can be used to address critical issues related to migration and trans-border issues among indigenous peoples.

**CONTENTS****I. INTRODUCTION**

- A. Forms of migration
  1. Forced migration
  2. Voluntary migration
- B. The causes of migration among indigenous peoples today
  1. Seeking peace: migration to escape oppression and violence
  2. Eking out a living: migration to escape poverty
- C. The implications of migration for indigenous peoples
  1. Cross-border migration: lack of legal status
  2. Urban migration: alienation and assimilation
  3. Adaptation: life away from home

**II. UNDRIP PROVISIONS RELATED TO MIGRATION AND TRANS-BORDER ISSUES**

- A. On Citizenship
- B. On Forced Migration or Relocation
- C. On Indigenous Territories Divided by International Borders

**III. REALITIES ON THE GROUND**

- A. General situation relating to migration
- B. Laws and policies good and bad
- C. Challenges in implementation

**IV. EXPERIENCES AND LESSONS LEARNED****V. CHALLENGES**

## I. INTRODUCTION TO MIGRATION AND TRANS-BORDER ISSUES

### A. Forms of Migration

Humans have migrated since prehistoric times. Our ancestors colonized much of Africa about 150,000 years ago, moved outward from there 70,000 years ago, and had spread across Europe, Asia and Australia by 40,000 years ago. They migrated to the Americas 20,000 to 15,000 years ago, and had colonized most of the Pacific islands by 2,000 years ago.

There have been many large-scale migrations in historical times, like the Bantu expansion to Southern Africa around 11th century, the Mongol and Turkic expansion across Eurasia in the 13th century, and the southward expansion of the Vietnamese between the 11th and the 18th centuries.

The word migration is derived from the Latin term *migrare* which means to change one's home or dwelling place. Among human beings, migration refers to any movement of people from one locality to another. This can occur over short or long distances, as individuals or in large groups, and on a short-term, seasonal, or permanent basis.

People who migrate are called migrants. More specifically:

- People who are leaving one's native region or country to settle in another country are called *emigrants*.
- People who are coming to a particular region or country from another region or country are called *immigrants*.

Two basic categories of migration can be distinguished:

- **Forced migration** has been used by authoritarian regimes throughout history as a means of social control. It is also called "populations transfer".
- **Voluntary migration** occurs when people themselves make the decision to move elsewhere. There are many reasons for that decision.

#### 1. Forced migration

An example of forced migration were the "Indian removals" by the US government. This was a 19th-century program to ethnically cleanse the lands east of the Mississippi river of its Native American population, to pave the way for land-hungry white settlers. An estimated 100,000 Native Americans relocated in the west as a result of this program.



#### Suggested Method

*Pose the following questions, written in cards and distributed to participants.*

- *Why do you think migration is an issue to indigenous peoples?*
- *In your country's experience, why do indigenous peoples migrate to other areas within and outside the country?*
- *What are the opportunities as well as problems encountered by the migrants?*
- *What do you think are the rights of indigenous peoples related to migration?*

*Collect and cluster the written replies, and synthesize the ideas of participants.*

*Present the main content of this module, including photos and other visual material or one of the videos on migration enclosed in the CD that accompanies this manual.*

### EXAMPLE: THE CHOCTAW TRAIL OF TEARS

The first removal of Native Americans was the relocation of the Choctaw Nation from their territory in the deep South of the present United States (Alabama, Arkansas, Mississippi, and Louisiana) to lands west of the Mississippi River (now the state of Oklahoma). A Choctaw chief was quoted in a newspaper saying that the removal was a “trail of tears and death.”

The Choctaws were very much against removal, but their fifty delegates were bribed with money and land to sign the Treaty of Dancing Rabbit Creek, which ceded the remaining 45,000 sq km of their formerly much larger territory to the United States. The Choctaw emigrated in three stages in 1831, 1832 and 1833. Nearly 15,000 Choctaws were forced to leave. About 4,000 died along the trail of tears from exposure, disease, and starvation. Approximately 5,000 to 6,000 Choctaws remained in Mississippi in 1831 after the initial removal effort, and became objects of increasing legal conflict, harassment and intimidation. The removals continued well into the early 20th century. In 1903, 300 Mississippi Choctaws were persuaded to move to Oklahoma.



**Choctaw Village Near the Chefuncte**  
by Francois Bernard, 1869, Peabody Museum, Harvard University

The women are preparing dye to color cane strips for making baskets.



**Choctaw Sharecroppers**  
photo taken near Philadelphia, Mississippi, USA in the early 1900s  
Smithsonian Institution

### EXAMPLE THE RESETTLEMENT PROGRAM IN LAOS

A modern example of forced migration is the resettlement program of indigenous communities in Laos.

In Laos, the Lao people make up about half of the population and are both culturally and politically dominant. The other half of the population are usually called “ethnic minorities” and are considered Laos’s indigenous peoples. Most of them live in small, often remote villages in the mountains. The Lao state has a policy to integrate indigenous peoples into the mainstream society. One strategy is resettlement, which in most cases happens against the will of the people.

At the beginning of the 1990s, the Lao government planned to resettle 180,000 households totalling 1.5 million people, of which 60% should be resettled before the year 2000. The target has not been achieved, but two new resettlement plans have been made. Approximately 211,125 people were included in the first resettlement plan for 2001 to 2005. As of 2005, 59,947 people had already been resettled, and another 151,178 people still had to be resettled during the implementation of the second plan for 2006 to 2010.

Forced resettlement is not an official policy but part of the overall “development” program of the government. The government is supposed to provide access to services and the market, and to improve the standard of living, health, food productivity and food security of the resettled people.

However, studies have shown that in most cases the contrary happens. Resettlement programs have led to increased poverty, malnutrition, a higher mortality rate and a general deterioration in the health of affected villagers. Furthermore, they often have a negative impact on the environment, running counter to another stated objective: the conservation of forests.

## 2. Voluntary migration

Different patterns of voluntary migration have been identified:

### a. Temporary migration

This is a pattern of people moving to a place and staying there for only a limited period of time, like for the duration of their work contract or until the end of their studies abroad;

### b. Seasonal migration

This is a special form of temporary migration. It is common among indigenous peoples who live on hunting and gathering, pastoral activities, and swidden cultivation. Communities shift their settlements in accordance with the availability of resources (game, wild plants, grazing for livestock, cultivable land that has been sufficiently fallowed, etc.). In some regions of the world, indigenous pastoralists cross national borders during their annual migration cycle, and this brings them in conflict with the states that wish to exercise control over those borders.

Seasonal migration is also common in areas where modern agriculture has remained dependent on manual labor, such as in plantations where fruits need to be harvested by hand. In the US, for example, migrant workers provide much of the manual labor required in picking apples, oranges, grapes etc. Many of the fruit pickers come from abroad and are hired through labor contractors.

### c. Permanent migration

This involves people moving to another place to stay there permanently.

Permanent migration can happen within a country, such as in the examples provided below.

- **Rural to urban migration:** people moving from the countryside to the cities. It is more common in developing countries where urban construction and industrialization create jobs, thus attracting people.

- **Urban to rural migration:** people moving from the cities to the countryside. It is more common in developed countries where the higher cost of urban living forces poor people to move to the fringes of the city, to suburban areas.

- **Rural to rural migration:** This takes place when people seek a better life in another part of the country. Often, this “other part of the country” are indigenous peoples’ territories, to which settlers are attracted. Many settlers migrating to indigenous peoples’ territories do it on their own. They are called spontaneous settlers. In other cases, it is indigenous people who move spontaneously into frontier areas, where they live with other settlers from other areas, to form mixed-ethnic communities.

Often, however, it is the state which promotes migration to indigenous peoples’ territories. In such cases, the migrants can be called state-sponsored settlers. Large-scale state-sponsored migration often happens within the framework of explicit programs, which can be called transmigration programs.

Examples for transmigration programs involving indigenous peoples’ territories are those that have been implemented in the Chittagong Hill Tracts in Bangladesh; the Central Highlands of Vietnam; various parts of the Philippines, but especially on the islands of Mindoro, Palawan and Mindanao; and West Papua in Indonesia.

Even where no explicit state program for settler colonization of indigenous peoples’ territories exists, government at least tolerates it. Settler colonization of indigenous peoples’ territories within the borders of a particular country is an aspect of internal colonialism. Other aspects of internal colonialism are the massive exploitation of natural resources by logging, mining and power corporations, and large-scale land conversion for plantations, again either under the sponsorship or with the toleration of the state.

## EXAMPLE

### THE TRANSMIGRATION PROGRAM IN THE CHITTAGONG HILL TRACTS

Mainly as part of its anti-insurgency strategy, the government of Bangladesh launched a large-scale transmigration program in 1979. Over the ensuing years, between 200,000 and 450,000 Bengali-speaking migrants from various parts of Bangladesh were resettled in all the three districts of the Chittagong Hill Tracts (CHT). The majority of the migrants were Muslims.

One of the key objectives was to increase the proportion of Muslim Bengalis living in the CHT. The presence of Bengali settlers loyal to the state would allow the state security forces to exert more effective control over the CHT. Naturally, turning the indigenous people into a minority in their own land would weaken them and their support to the armed resistance movement. Thus, while in 1951 the indigenous peoples accounted for 90.01% of the population of 287,688, by 1991 they made up only 51.43% of a population of 974,445.

Better known than internal colonization is the colonization of other parts of the world, such as the Americas, Australia and New Zealand, which were colonized by European settlers from the 16th to the 20th centuries. This is known as *transcontinental settler colonialism*, which is no longer practised.

But people have always and for various reasons moved over long distances to live in other parts of the world. Today, *international migration* is a global phenomenon.

International migration occurs when persons cross state boundaries in order to stay in another country for long periods of time or even permanently. There are many reasons for international migration: to look for better economic opportunities; to join family members who have already migrated before; because of the political situation in one's own country; to get access to better education.

International migrants can be categorized as:

- Legal economic migrants, who are usually business people and highly skilled workers;
- Illegal economic migrants, who are usually low-skilled workers;
- Political migrants, who consist of refugees and persons seeking political asylum. Depending on the circumstances of their migration and the laws of the country they migrate to, they can be considered either legal or illegal.

International migration is closely related to the creation of nation-states, national boundaries and the concept of citizenship.

Citizenship in a nation-state vests a person with the inalienable right of residence in that state (as well as other political and economic rights). Non-citizens do not have the same rights. They are subject to the state's immigration law, which defines, among others, who can enter the country, take up residence and employment, for how long and where.



### Group Interaction

*Ask the participants for examples from their own communities.*

## B. The Causes of Migration Among Indigenous Peoples Today

Many indigenous peoples have legends telling about the movement of their distant ancestors to the territories they are now occupying. In most cases the migration happened many centuries ago. But there are also more recent movements of indigenous peoples, communities or individuals. In the following we will be concerned only with these.

### 1. Seeking peace: migration to escape oppression and violence

For centuries, indigenous peoples all over the world have experienced oppression and violence by dominant groups. Indigenous peoples' responses have varied, depending on the particular circumstances. In cases in which resistance proved disastrous in the long run, indigenous communities were sometimes forced to leave their ancestral lands and seek a safer future elsewhere. Sometimes direct political pressure was aggravated by resource scarcity, which may have also been a result of the pressure by hostile dominant groups, or it may have been caused simply by population growth.

In Northern Thailand, many indigenous peoples founded their villages in relatively recent times. While some indigenous peoples, like the Karen and Lua, have lived there for centuries, all other indigenous ethnic groups – like the Lahu, Lisu, Hmong, Mien, Akha and others – have settled there only within the last 100 years, and most of them even only within the last 50 years. For the majority, the main reason for moving to Thailand was oppression in their places of origin, i.e. China and Burma.

### **EXAMPLE: HMONG MIGRATION**

The Hmong's ancestral lands lie in the southern provinces of China. Their relationship with the Chinese (dominantly, the Han) has changed over time but has, in general, been rather antagonistic since the Chinese have always regarded the Hmong and other indigenous peoples as “barbarians”.

From the mid-18th century onward, from what we know, Han-Hmong relations deteriorated severely as suppression of the Hmong became increasingly harsh and the Hmong responded with a series of armed rebellions. The wars became especially bloody between 1855 and 1881.

Warfare and the severe oppression by the Chinese are generally seen as the main causes of the start of the Hmong exodus into Northern Vietnam and Northern Laos during these years. From there, the Hmong continued to move southward and westward, into Thailand.

Large numbers of Hmong were also forced to leave Laos in the wake of the Indochina wars. Many Hmong were recruited into the “secret army” created by the U.S. Central Intelligence Agency to fight the communist Pathet Lao. After the US lost the war and the Pathet Lao took full control over Laos in 1975, about 25,000 Hmong fled across the border into Thailand. Tens of thousands have followed over the past 30 years.

Most Hmong from Thailand were resettled to various countries all over the world. It is estimated that by 1990, more than 90,000 Hmong refugees had gone to live in the United States; 6,000 in France; 3,000 in Canada, Australia, Argentina and French Guyana.

## **2. Eking out a living: migration to escape poverty**

Poverty is the main reason for migration among indigenous peoples. It has many causes, among which are:

- Loss of land and resources due to encroachment by settlers, state and corporate resource extraction like logging or mining, the construction of dams, or the establishment of plantations;



**Hmong embroidery showing the war in Laos and the people's escape to Thailand.**

- Resource scarcity as a result of the population growth of indigenous communities and the constriction or lack of land available for territorial expansion;
- Environmental disasters like droughts or floods;
- Armed conflicts;
- Forced relocation.

The migration patterns found among indigenous peoples are similar to those briefly introduced earlier. Foremost has been rural-rural migration, when people have tried to find land to cultivate and establish new communities far from their places of origin, like what has happened in northern Thailand over the past 100 years. But rapidly increasing is rural-urban migration. More and more indigenous peoples, above all the youth, are seeking employment in cities in their own countries or abroad.

Often, this starts among the youth seeking higher education outside their communities, in nearby towns, in national capitals or, when they succeed in getting scholarships, in universities abroad. Parents of indigenous children are often ready to sacrifice their savings or even land and other resources to allow their children to obtain higher education, as they hope this will allow them to lift themselves out of poverty and to lead a more comfortable life.



#### Group Interaction

*Ask the participants for examples from their own communities.*

## C. The Implications of Migration for Indigenous Peoples

### 1. Cross-border migration: lack of legal status

Indigenous migrants crossing international borders to escape repression, violence or poverty often become extremely vulnerable due to their lack of legal status in the host country. Unless they are recognized as refugees and under the protection of the UN High Commission on Human Rights or the respective government agency of the host country, they are treated as illegal immigrants and thus exposed to exploitation, denial of basic rights and arbitrariness of state authorities.

#### EXAMPLE:

#### LACK OF CITIZENSHIP AMONG INDIGENOUS PEOPLES IN THAILAND

Indigenous peoples in Thailand are badly affected by the Thai Kingdom's Nationality Act of 1965 (amended in 1992). Section 7 of the Act provides that:

*A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was: (1) the person having been given leniency for temporary residence in the Kingdom as a special case; (2) the person having been permitted to stay temporarily in the Kingdom; and (3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration.*

Under this Act, hundreds of thousands of indigenous peoples were declared “aliens” and continue to be denied their rights. The first population census was conducted in 1956 according to the National Household Registration Act. However, the “hill tribes” were not covered due to lack of access to their villages, lack of officers and prejudices. An official survey of the hill tribes was conducted in 1969 to 1970 covering 16 provinces of Northern Thailand, and an estimated 111,591 people were officially recorded. However, the enforcement of the Nationality Act had already made most hill tribes aliens. The fact that most hill tribes could not speak in Thai made it difficult to prove their origin even if they had been living in the area for a hundred years.

The lack of citizenship has been a long-standing cause of human rights violations committed against indigenous people in Thailand. Without citizenship, there is no guarantee of fundamental rights. Freedom of movement is limited, health care is limited, and children and university students without citizenship cannot obtain proper education certificates.

A solution to the citizenship problem has not yet been reached. In 2007, there were 480,000 stateless indigenous persons in Thailand. Of these, 120,000 persons have been granted permanent resident status, 300,000 were awaiting a decision on their request for permanent resident status, and the remaining 60,000 were stateless children who attended school. However, these figures do not account for those left out of the national census.

A cabinet resolution of 18 January 2005 outlined a plan to speed up the processing of citizenship applications in order to eliminate the lack of citizenship among the so-called “hill tribe population” of Thailand. In practice, however, the resolution has not been implemented fully since the National Security Council and the Interior Ministry did not show their support, and many local officers have not worked sincerely to solve the existing problems. Furthermore, the 2006 nationwide political conflict led to a complete standstill.

## **2. Urban migration: alienation and assimilation**

Leaving one’s community implies separation and weakening of one’s ties with the community. Being forced to live in an alien social environment, indigenous migrants are under an even greater assimilation pressure. In interaction with members of the dominant group, indigenous migrants often try to hide their identity. Living in small migrant communities or even in isolated nuclear families makes it much more difficult to pass on one’s language and culture to the children. Breakdown of identity and social networks result in more vulnerability. And if indigenous migrants do not succeed in adapting to the new conditions, they often seek comfort in alcohol and drugs.

Urbanization and internal rural-to-urban migration are two distinct phenomena. Rural-urban migration is perhaps one of the most pressing issues affecting indigenous peoples around the world today. Many indigenous people have started to migrate to cities in the hope of economic advancement in urban centers. However, this move can prove extremely difficult for those who have to adapt their cultural practices, lifestyle and economic expectations to their new urban environment.

Indigenous people who have migrated to cities commonly find themselves at the fringes of society. Among the many reasons are discrimination, lack of marketable skills, lack of formal education, and language differences. The hardships faced by indigenous people in the cities are directly related to their weakened economic and social status. Some of the most pressing difficulties are insufficient access to health care, education and housing.

Until recently, the study of indigenous peoples' urbanization has been subsumed under research on the migration movements of peasants, without acknowledging the distinct differences between indigenous and non-indigenous communities. Now, advocacy for poor migrants in the cities has included demands to recognize the special circumstances of indigenous people. These include culturally pertinent education, respect for indigenous social organization, and promotion of indigenous traditions.

### 3. Life away from home: how indigenous migrants adapt to their new environment

Rarely do indigenous communities abandon their ancestral land altogether. Indigenous migrants, be they individuals, families or communities, often maintain links to their communities of origin.

Usually, only some members of a community leave and try to make a living elsewhere. When they are successful, they report back to their community, others follow, and together they try to recreate their community in the new-found location, whether rural or urban.

But migration in many cases implies separation and a breakdown of community and even family ties.

On the other hand, migration can also be seen as part of a strategy by which particular indigenous families or communities ensure continuity. Migration allows not only for the tapping of new resources but also the creation of new relationships and networks. Indigenous families and even whole communities and ethnic groups have thus accepted migration as a way of surviving and adapting to the new conditions imposed by globalization.

#### EXAMPLE

#### OVERSEAS FILIPINO WORKERS FROM THE CORDILLERA

(Most of the following has been taken from Flora Belinan, "Extreme Poverty and Survival: Cordillera Indigenous Peoples as Migrant Workers," *Indigenous Affairs*, March 2007.)

The Philippines' Cordillera Administrative Region (CAR) is predominantly occupied by indigenous peoples who have adapted fairly well to the educational system that was introduced here by the US colonial government and by American and European missionaries in the 1900s. As of 2006, the CAR had a literacy rate of nearly 89%. As of 2000, nearly 400,000 persons in a population of what was then 1.2 million had completed their secondary education. Among these, nearly 98,000 had also completed their tertiary education and held either academic degrees (nearly 67,000) or certificates of training in specialized skills (nearly 31,000). Yet 39,000 members of the CAR labor force were unemployed. (Data from the National Statistical Coordination Board's Regional Socio-Economic Trends – CAR 2006.)

By the middle of 2005, the number of unemployed in the CAR labor force had reached 57,000. (Data from the National Statistics Office Labor Force Survey July 2005.) Global-

ization had resulted in the closure of most factories and many business enterprises in Baguio City, the CAR's center of education, medical care, communications, manufacturing and commerce, and in the national capital region 250 kilometers from Baguio. At the same time, the opening of the domestic market to cheap agricultural produce from developed countries and China had led to the closure of many farms, most badly hit among which were those in the CAR that were producing temperate-clime vegetables.

The lack of employment opportunities, both in the urban and rural areas of the country, is the main reason why millions of Filipinos now work abroad. Some 33,000 (2.2%) of the 1.5 million Overseas Filipino Workers (OFWs) surveyed by the National Statistics Office in 2006 were from the CAR. Almost all of them held academic degrees, but only half – nurses, engineers, merchant marines and school teachers – worked in the fields they originally studied for. Some of the nurses, in fact, had studied to be medical doctors. The remaining half had retrained and were employed as factory or construction workers, shipyard or foundry welders, drivers or mechanics, domestic helpers or caregivers, hotel and restaurant workers, singers or dancers, etc. They made do with whatever jobs were in demand because these enabled them to sustain or, in fact, uplift the economic conditions of their nuclear and, in many cases, even their extended families back home.

Many, if not most, OFWs live a difficult life. They have to bear the psychological impact of leaving their loved ones behind. They have to adjust to a new and different setting – to an unfamiliar social and physical environment.

Acculturation is an added problem for indigenous people who had been strongly grounded in their communities' way of life but, in becoming OFWs, assimilate foreign views, values and lifestyles. Some – especially domestic helpers and caregivers – are forced to adapt to the culture of their employers as part of their work. There are employers who are adamant in this regard, and could make failure at adaptation a reason for terminating employment. Some convert to one of the dominant religions in the country where they work because of the need to belong or in their search for spiritual upliftment.

While working overseas can bring economic improvement to their families back home, it is, in most cases, a temporary arrangement. The artificial raising of living standards mostly results in strained family relations especially when the OFWs' contracts terminate, they return home and the standards decline.

Actually, family problems emerge while the OFWs are still abroad. In some cases, the spouse who is left behind adopts a lavish lifestyle and squanders the money sent home by the OFW spouse on gambling, alcohol and illicit relations. In other cases, it is the OFW spouse who indulges in illicit affairs, stops remitting money to their family, and in extreme cases decide to abandon their family altogether. In still other cases, especially where both spouses are working abroad, the children become emotionally distressed and turn to alcohol or drugs, which they can easily afford because they have plenty of cash. Whichever the case, families are shattered.

On top of these hardships, many OFWs are exploited and mistreated by their employers. They suffer racial and wage discrimination, and are denied basic rights. They do not receive protection from the Philippine government. They often fall victim to the false accusations of employers and are imprisoned. Worse, some have been killed.

Sexual abuse by employers is a common problem. Many women return home traumatized, some even driven to insanity, by the experience of rape.

The Philippine government has done nothing substantial and long-term to address these problems. Instead, it has enacted laws to intensify labor exportation as a solution to the country's chronic economic crisis.



### Group Interaction

*Ask the participants for examples from their own communities.*

There are many cases, however, in which indigenous peoples have succeeded in recreating communities in their new environment. Existing networks are thus expanded and may reach across international borders or continents.

Migration leading to cross-cultural contact and interaction do not necessarily result in full assimilation and loss of identity. In many cases, intercultural learning and new experiences have actually led to the reaffirmation of identity. Detached from their original communities, indigenous migrants live outside the social and cultural context native to them, but they often manage to reshape their lifeways around a reaffirmation or recreation of identities, by adopting a mix of old and new viewpoints, values, and forms of social organization. These migrants who live within a “trans-cultural” or “multicultural” environment face the challenge of adapting their indigenous identities to very different conditions.

### EXAMPLE

#### NETWORKING AND THE AFFIRMATION OF IDENTITY AMONG MIGRANTS FROM THE CORDILLERA, PHILIPPINES

Migration from the rural villages of the Northern Luzon Cordillera actually started long before globalization made its impact felt here. Population increase and limited arable land had resulted in a surplus of rural labor as early as the 1920s in some areas and as late as the 1980s in others. To a great extent, the surplus was absorbed by the mining industry which developed in the province of Benguet from 1900 to 1990, by agricultural development programs that the US colonial government then the post-colonial Philippine government undertook in unoccupied parts of the Cordillera from the 1920s to the 1950s, and by the various establishments as well as the informal economy that grew in the course of urban development in Baguio.

Migration overseas first took place in trickles, starting with the exhibit of a Cordillera village – complete with the villagers – in the Saint Louis Exposition of 1904, and increasing with offers of work and grants of scholarship in the US. By 1960, there were enough migrants from the Cordillera in the US state of California to form the first overseas association of persons from BIBAK – short for Benguet, Ifugao, Bontoc, Apayao and Kalinga, which were the names of the sub-provinces comprising the old Mountain Province at the time.

The original BIBAK was an association of students, academics and professionals from the rural villages of the Cordillera who were studying or working in Baguio City

or had taken up permanent residence there. This original BIBAK was formed in 1940, became inactive in the 1980s, but has recently been revived.

Like the original BIBAK, the first overseas BIBAK, based in Los Angeles, became a venue for Cordillera migrant students, academics, nurses and workers to provide moral support to one another and hold periodic gatherings in which they could tell the stories, perform the music and dances, even the rituals, and prepare and share food in the custom of their respective villages, affirming their shared yet diverse heritage and identity.

Today, there are BIBAK associations in at least nine US states and in many other parts of the world.

## D. The Issue of Indigenous Territories Divided by International Borders

Apart from the more obvious forms of migration as discussed above, there is another special form – that of cross-border movement of people within an indigenous territory that is divided by international borders.

History is replete with cases of a territory inhabited by one indigenous people or by closely-related indigenous peoples, that later becomes criss-crossed by international borders between two, three or even more nation-states.

Examples include indigenous peoples of Borneo along the Malaysia-Indonesia border, indigenous peoples of the Malay peninsula along the Malaysia-Thailand border, indigenous peoples of New Guinea along the Irian Jaya-Papua New Guinea border, and indigenous peoples along Northeast India's borders with Bangladesh and Burma.

It's bad enough that the indigenous territory is artificially cut up, and the pre-existing ties of trade, kinship, tribal alliances, and seasonal movements of people within the indigenous territory are disrupted because of border restrictions.

Worse results happen when these territories become the subject of dispute among adjacent nation-states, especially when such disputes turn into recurrent border wars. In such event, the affected indigenous communities are often subjected to tighter restrictions on the movement of people and goods, to forced relocation and other coercive methods that amount to ethnic cleansing, and to recruitment into paramilitaries of the warring states.



### Group Interaction

*Ask the participants for examples from their own communities.*

## II. UNDRIP PROVISIONS RELATED TO MIGRATION BY INDIGENOUS PEOPLES



### Suggested Method

*Present a list of the relevant UNDRIP provisions.*

*Involve participants in reading the provisions.*

*Discuss and elaborate on each provision.*

### A. On citizenship

#### Article 6

Every indigenous individual has the right to a nationality.

#### Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

### LINKS

Other international legal instruments relevant to indigenous peoples' rights include:

- ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169)
- International Covenant on Social, Economic and Cultural Rights
- The Discrimination (Employment and Occupation) Convention of the ILO, 1958 (Convention No. 111)

On the international level, the right of indigenous peoples to freedom from discrimination in employment is embodied in Article 20.2 of ILO Convention 169. However, the standard applies only to indigenous people migrating within their own country of citizenship. The silence of ILO Convention 169 on the issue of protecting indigenous people who have migrated to other countries limits the ability of the migrants to seek redress for the infringement of their rights especially in countries that have not yet ratified the Convention.

Enforcement of the employment and labor rights of migrants is especially complicated for undocumented individuals.

Indigenous people who have migrated outside their countries of origin can, however, also be protected by the UN Migrant Workers Convention No. 45, regardless of their immigration status.

## B. On Forced Migration or Relocation

### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

## C. On Indigenous Territories Divided by International Borders

### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

## III. REALITIES ON THE GROUND

### A. How Rights are Respected or Violated



*Make reference to the introduction above, in particular the dominant legal paradigm and the exceptions.*

*Next, ask the participants to report on the situation of their own communities.*

*Pay special attention to cases of relocation, denial of citizenship and citizens' rights or basic civil and political, social and economic rights to migrants.*

### B. Laws and Policies on the Rights of Migrants

#### 1. Citizenship and immigration laws

What are the main laws and policies on citizenship and immigration?

#### 2. Relocation

a. Are there cases of relocation in the participants' country? In each case, how was relocation effected? Forcibly, or with the consent of the relocated indigenous people? How was consent obtained? What were the official procedures involved?

b. What happens when communities or individuals have been relocated? Are there mechanisms for compensation? Is the option open for the relocatees to return to their homeland?



*Ask the participants to assess the situation in their particular country with respect to laws and policies on citizenship and immigration rights, as elaborated below. Have them fill up a Gaps Analysis table.*

### 3. Trans-border relations

Are there indigenous people in the participants' country whose traditional territory have been divided by the boundaries between the nation and its neighbor countries? If so, do the members of the indigenous people have the freedom to move around their traditional territory, and relate with fellow-members across the international boundaries?

#### C. CHALLENGES IN HAVING GOOD LAWS AND POLICIES IMPLEMENTED

One illustrative example is the Inner Line Regulation in Northeast India affecting Nagaland, Mizoram, Manipur, Arunachal, and Meghalaya.



**Suggested Method**

*Discuss examples of good laws or policies but weak implementations.*

#### Gaps Analysis

UNDRIP PROVISIONS ON MIGRATION AND TRANS-BORDER ISSUES	NATIONAL OR LOCAL LAWS OR POLICIES	GAPS	CONSIDERATIONS & IMPLICATIONS	OPTIONS & RECOMMENDATIONS
Paragraph or Article number	Specific laws, policies conforming with UNDRIP	Specific laws, policies NOT conforming with UNDRIP	Can current laws, policies be used to support indigenous peoples' positions or interests? Are there loopholes in the law that can be used for or against indigenous peoples? Should the matter be approached legally?	What needs to be done? How? By whom? Where? When? For how long?
<b>Citizenship and Immigration</b> Articles 6, 9 & 33				
<b>Relocation</b> Article 10				
<b>Trans-border Issues</b> Article 36				

Module-7

## IV. EXPERIENCES AND LESSONS LEARNED

1. Successful migration by indigenous peoples.

2. Successful resistance to forced migration, or successful negotiation of just terms regarding relocation with free, prior, informed consent.



### Suggested Method

*Ask the participants to give any examples they know about the two topics listed below.*

## V. CHALLENGES

### A. Three Levels of Challenges

1. Needs, capacities and proposed strategies for promoting compliance with UNDRIP provisions on the rights of indigenous peoples to citizenship, protection from forced relocation and cross-border relations in their particular country;

2. The implementation of the said strategies; and

3. The monitoring of this implementation.

### B. Some Guidance for the Trainers

#### 1. Needs, capacities, strategies

Needs, capacities and strategies will of course vary between communities, indigenous peoples and countries.

#### a. Challenges regarding needs:

How well do the communities and their leaders know the national laws related to citizenship, and the laws regulating cross-border relations? Is there a need to provide more and better information? This means information material that is culturally appropriate and easily accessible (popular booklets, videos etc).

If people know their rights, how well are these rights recognized? Do they have citizenship? Are they able to contact other communities of their people living across the border? Do they know and have access to the government agencies in charge of providing ID cards or other relevant matters?

If their rights are violated, i.e. for example if citizenship is denied, do they know how to respond? What are the ways to respond?



### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants.*

*Discuss with the participants the three levels of challenges (see below).*

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

Do they need help? Do they know who can help (legal aid groups, advocacy and support organizations, lawyers, Human Rights Commissions etc.)?



### Note to trainers

*Trainers should know the basic laws and policies of the country related to citizenship, migration and trans-border issues.*

#### **b. Challenges regarding capacities:**

In order to address the needs identified above, communities and their leaders need specific knowledge and skills.

Are your communities and leaders able to address the needs identified above?

What are their strengths, what are their weaknesses?

What is needed to increase their capacities? What kind of capacity building (training, exchange, exposure) do they need? Who can provide these?

#### **c. Challenges regarding strategies:**

If laws are either absent or defective, insufficient or inappropriate, what can be done to address the problem? Indigenous peoples and their communities, leaders and organizations need to develop joint strategies for this. The UNDRIP can help them raise the issue and push governments to acknowledge the need for legal reform.

The trainer can provide inputs on advocacy and lobbying strategies at different levels, i.e. local, national and international.

A first step can be a thorough review of existing laws and policies to identify the gaps and needs for changes, amendments, or entirely new laws and policies.

Building alliances among indigenous peoples, and with support groups and supportive individuals, like lawyers and legal aid and advocacy groups, is crucial.

Gaining the attention of the public through media can help, not only to build up pressure on governments, but also to provide protection to leaders in politically repressive countries. On the other hand, too much publicity may be counterproductive, exposing leaders and their organizations too much. The appropriate balance depends entirely on the political context they are working in.

Using not only the UNDRIP but other international human rights mechanisms (Human Rights Council, the UN Special Rapporteurs, or Treaty Bodies like the Committee on the Elimination of Racial Discrimination, the Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, etc.) can help build up pressure on national governments.

## 2. Implementation

In some cases, existing laws and policies may be sufficient. The major challenge here is enforcing the law. Lack of implementation and weak enforcement of laws is a main problem throughout the region

Trainers should facilitate a discussion on the state of affairs with respect to the implementation and enforcement of laws.

What are the experiences at the local level? Why are laws not properly implemented?

What can they do about it? What strategies can be developed to force governments to properly implement the law?

## 3. Monitoring

Indigenous peoples need to continuously monitor the implementation or enforcement of existing laws, as well as the legal revisions and reforms which they are demanding from governments.

National judicial processes and human rights mechanisms, as well as international human rights mechanisms, are possible venues for monitoring implementation of laws or legal reforms.

This implies the need for strong national-level advocacy and lobby groups, e.g. national alliances of indigenous organizations, as well as the continuous presence of indigenous representatives in the various processes within the United Nations.

### FOR FURTHER READING

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**MODULE 8****HUMAN RIGHTS AND MILITARIZATION****PREPARED BY BERNARDINUS STENI****WITH INPUTS FROM FAMARK HLAWNCHING, JACQUELINE CARIÑO, ATINA GANGMEI AND ROBELIZA HALIP****OBJECTIVES**

1. To identify and elaborate on the relevant provisions of the UNDRIP in relation to human rights and militarization;
2. To understand deeper the concept of human rights and militarization in relation to IPs;
3. To relate their situation, experiences and challenges they face in relation to the recognition, protection, promotion and exercise of their human rights;
4. To formulate strategies in order to advance the aforesaid rights.

**CONTENTS****I. INTRODUCTION**

- A. Concept of human rights
- B. Scope and definition of militarization
- C. International and national human rights instruments

**II. UNDRIP PROVISIONS ON HUMAN RIGHTS**

- A. Preamble
- B. Articles

**III. REALITIES ON THE GROUND**

- A. General situation
- B. National laws and policies
- C. Challenges of national laws and policies

**IV. EXPERIENCES AND LESSONS LEARNED**

- A. Advocacy, collective and assertive actions
- B. Actual exercise of human rights
- C. Lessons learned

**V. CHALLENGES IN IMPLEMENTATION OF UNDRIP**

- A. Conflict of national laws with international laws
- B. Government programs in conflict with human rights
- C. Lack of funds for implementing HOUR instruments
- D. Weak capacity of HOUR bodies
- E. Language limitations in delivering HOUR services
- F. Lack of awareness about HOUR instruments and bodies
- G. Military hostility to HOUR groups
- H. Legal issues on the application of HOUR laws
- I. Weaknesses in the judicial system

## I. INTRODUCTION

### A. Concept of Human Rights

The essence of every human being is having freedom, equality and dignity. This is the very foundation of human rights as fundamental in maintaining peace, harmony, cooperation, development and security in every society. The respect for human rights also defines the roles and obligations of those who have the political power (the State) and those who are governed (the citizens). Disregard and contempt for human rights result in barbarous acts and in massive suffering especially among those who are already marginalized within society. If human rights are not protected by the rule of law, and are systematically violated by those responsible for upholding these, then people have the right to rebel against tyranny and oppression.

Everyone is entitled to the enjoyment, exercise and respect of their individual rights and to live with dignity, freedom and equality regardless of race, gender, religion, ethnicity and nationality. It is an inherent entitlement that has to be respected by each person for the enjoyment of everyone. It is then imperative that each has a duty not only to exercise their right, but also to respect the right of others. Human rights are essential elements in achieving a fulfilling life not only as individuals but also as part of a larger society.

The principles of human rights have existed as part of the history of humankind. Because of the compelling need to set out an international standard for the respect of human rights by every nation, the United Nations formulated and adopted the Universal Declaration on Human Rights (UDHR) in 1948. The various provisions of the UDHR uphold the civil and political rights of every person, and define the role of every State in respecting and upholding these rights as its core obligation. It also now forms part of the international customary law regarding the rights of citizens in relation to States.

The subject of human rights raises issues that are neither simple nor easy to resolve. Human rights are political in nature, and they require the political will and commitment of every State to uphold and implement. States should be open to public scrutiny, and must be held accountable with respect to their obligations in respecting human rights. States have a duty to govern according to the rules of law and to respect the rights and freedoms of individual citizens. Citizens must also be constantly vigilant, and must demand transparency and accountability of States in relation to their human rights obligations.

**Are human rights guaranteed in laws? Which laws?** Yes, human rights are guaranteed both in international law and in many national laws. The international law of human rights, which is stated in the International Bill of Human Rights, is the primary basis. Human rights are also



#### Suggested Method

*Pose the following questions, written in cards and distributed to participants.*

- *What comes to your mind when you hear the terms human rights and militarization?*
- *What do you think are your human rights?*

*Collect and cluster the written replies, and synthesize the ideas of participants.*

*Distribute copies of simplified version of instruments as handouts.*

*Present the main content, including photos and other visual material.*

protected in the national constitutions and statutes of many states around the world. In addition, treaties or agreements that states have signed oblige them to ensure the recognition and implementation of these rights and freedoms to individuals and citizens.

**Why are these universally recognized laws so important?** The reasons are best stated in the preamble of the UDHR, which states:

*The inherent dignity and ... equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and that disregard and contempt for human rights resulted in barbarous acts.*

The preamble goes on to warn:

*... it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...*

**Who are entitled to these rights? Are there exceptions?** Every human being is born with equal human rights. Everyone is entitled to these rights in equal measure. These rights are inalienable: they cannot be taken away, lost or surrendered whatever a person does or whoever that person is. In the eyes of the law, even suspects and criminals are human beings with inalienable rights. A person accused of wrongdoing is entitled to fair trial and presumed innocent until proven otherwise; those proven guilty or convicted are entitled to appeal. As detainees or prisoners, they have the right to be treated humanely.

Every individual's human rights must be respected. To respect the rights of another person is to value that person's human dignity. It is:

*...a conscious effort to find our common essence beyond our apparent divisions, our temporary differences, our ideological and cultural barrier.*

**Is “a freedom” the same as “a right”?** Yes, in law they are the same. Your “freedom from torture” is your “right not to be tortured”.

**What is meant by the word “equality”?** Human rights law establishes equality by protecting individuals from discrimination. Persons should not be discriminated against simply because of their beliefs or status in life; the law applies equally to rich and poor, to the Christian, Muslim, Buddhist and animist, to majority and minority, to the dominant and the dominated. Migrant workers are entitled to equal pay for equal work alongside the citizens of the country where they work. Women have the same rights as men. If a woman wishes to stay at home, it is her right and must be respected. It is also her right to work outside the home if she wishes to and to receive equal pay for her work. It is the duty of the state to make all these opportunities available.



**What is the duty of the state?** Considering that every state has national sovereignty, a state calls on another state to respect each other's territorial integrity and political independence. However, there is a difference between meddling in the internal affairs of a state and compelling it to observe standards of conduct to which it has committed itself.

**Can states decide “to abide” or “not to abide” by their duties to protect individuals?** Firstly, states have to agree to certain treaties, covenants and conventions, which set standards for the treatment by the state of its citizens and call it to account for its efforts (or non-action) in implementing these standards and answering allegations that may arise. Secondly, even if a state does not agree to these treaties, as a UN member-state, it is obliged under the UN Charter to promote, respect, and observe human rights. Thirdly, the International Bill of Human Rights and other human rights conventions together make up a body called international human rights law. In this regard, a government's treatment of its citizens is now the legitimate concern of the international community. Below is a quote from Boutros-Ghali during the 1993 World Conference on Human Rights in Vienna:

*It is the state that the international community should principally entrust with ensuring the protection of individuals. However, the issue of international action must be raised when states prove unworthy of this task... and when – far from being protectors of individuals – they become tormentors... In these circumstances, the international community must take over from the states that fail to fulfill their obligations.*

**What is the difference between a “human rights violation” and a “criminal offense”?** Both involve wrongdoing. A criminal offense is a harmful act committed by one or more persons against other persons or against society at large, an act prohibited and punishable by the laws of a country. A human rights violation, on the other hand, is committed by the state through its agents (such as police or armed forces) against an individual or groups. In like manner that an individual who commits a crime is brought to justice, the state itself should also be made accountable when it violates the human rights of its citizens.

**What are the conditions and measures that favor human rights protection?** Strong institutional mechanisms are needed, such as having separation of powers, an independent judiciary system that is accessible to citizens, and special laws on human rights protection, to try and punish human-rights violators. If such mechanisms are lacking, international human rights law cannot be enforced within the state through a legal process. The UN can impose economic sanctions and, in some cases, allow armed intervention against a government that systematically violates human rights. Although governments can still abuse human rights with impunity, they are now increasingly aware of the importance of a good human rights record, if only to improve their global public image and trade and investment prospects.

One factor that allows states to violate human rights is that many people are not aware of their basic rights according to law. Thus, there is a need for widespread public education on human rights, to heighten vigilance against human rights violations, and to develop skills and network for monitoring and documentation of human rights violations. For a state to respect human rights, the key is an enlightened and vigilant citizenry that constantly hold the state accountable to its human rights obligations.

At the same time, when citizens consistently inform the international community of their government's human rights violations, the said government will find it harder to cover up such violations. Such global exposure may convince the international community to take action, and for the government itself to comply with its human rights obligations and standards.

**Are atrocities committed by armed opposition groups also considered human rights violations?** Atrocities that armed opposition groups may commit against ordinary citizens are as morally reprehensible as state-inflicted human rights abuses. Such atrocities, even if done in the name of a just social cause or political goal, also violates basic human rights. Even belligerent governments and insurgent armies are obliged by war conventions and international humanitarian law to respect the rights of non-combatants, hors d'combat (combatants who have ceased fighting), and prisoners of war. In strictly legal terms, however, human rights law is applicable to the conduct of the state towards individuals. The law exists to regulate the state's use of power and to protect citizens from the state's abuse. In moral terms, one cannot be distinguished from the other but in legal terms, they are treated separately.

**How are human rights violations related to tyranny?** It is stated in Article 21 of UDHR that “the will of the people shall be the basis of the authority of government.” Where a government ignores the will of the people and does its worst to suppress the people's will, it loses legitimacy and becomes a tyranny. Such a government increasingly relies on brute military force and becomes a most brutal and systematic violator of human rights. In such cases, human rights issues become an important arena in the broader resistance of an entire people against a tyrannical regime or an oppressive state.

**Wole Soyinka said:**

*Man dies in all who keep silent in the face of tyranny.*

**Pastor Martin Niemoller composed this poem:**

*First they came for the Jews*

*And I did not speak out—*

*Because I was not a Jew.*

*Then they came for the Communists*

*And I did not speak out—*

*Because I was not a Communist.*

*Then they came for the trade-unionists*

*And I did not speak out—*

*Because I was not a trade-unionist.*

*Then they came for me—*

*And there was no one left to speak out for me.*

## **B. Scope and Definition of Militarization**

During the elaboration on the draft UNDRIP, the scope and definition of the term “militarization” was one of the contentious issues. Since there is no agreed definition of militarization by the international community, the elaboration focused on contribution of demilitarization in indigenous territories instead of pushing for a comprehensive definition or a working definition of the term. Representatives both of states and indigenous peoples agreed that demilitarization of indigenous territories contributes to peace, economic development, social progress and strengthens the understanding and friendly relations among nations and peoples of the world.

Militarization is not merely the physical presence of massive military forces and camps, but the government's reliance on the armed forces instead of civilian agencies as its main instrument to implement state policies and programs. In the extreme case, militarization blends into martial law, whereby the armed forces take over the most important civilian functions of government, in-

cluding legislative, judicial, administrative and local-police functions, or even including delivery of social services and cultural functions in the guise of “civic action.”

Militarization can be imposed under the banner upholding national unity and territorial integrity (actually, defending the chauvinism of dominant society against indigenous peoples that assert their rights), or the supposed protection of natural resources, pursuit of national development, and corporate interests.

The rhetoric of national unity and territorial integrity, as a fundamental political goal, has been deeply rooted in newly-independent countries emerging from colonial rule. This goal is pursued in total disregard, and in most cases in outright suppression, of the exercise of the right to self-determination by indigenous peoples.

One of the worst kinds of militarization is when the armed forces becomes the main instrument of a chauvinist or ethnocidal state policy to either forcibly assimilate indigenous peoples into the dominant society, or to forcibly rule over indigenous territories like a foreign invading and occupying power.

### **EXAMPLES**

**(from Indigenous Affairs 2/01)**

#### **Militarization in the Chittagong Hill Tracts**

**Chandra Roy writes:**

The presence of the army in CHT affairs has its roots in Bengali hegemony predicated on the creation of Bangladesh as a separate homeland for the Bengalis. The existence of indigenous peoples in the territorial framework of the Bangladeshi State, with their own identity, cultures and traditions, is a challenge to the concept of a homogenous state. The demands of the indigenous people for autonomy and the right to their own cultural identity were translated as being secessionist, and integration and assimilation became the fundamental pillars of the Government’s policy in the CHT, with the army as its main instrument in this process. (“Militarization and Chittagong Hill Tracts” in Indigenous Affairs 2/01, published by IWGIA)

#### **Militarization in Nagalim, Northeast India**

In Nagalim, in North East India, the Indian State has applied a systematic policy of militarization through counter-insurgency operations to silence the demands of the Naga people to self-determination. (Indigenous Affairs 2/01, published by IWGIA)

#### **Militarization in the Cordillera, Philippines**

**Joan Carling and Benedict Solang write:**

Since the successful struggle of the Cordillera indigenous peoples against the building of four megadams along the Chico River and the commercial logging activities of the Cellophil Resource Corporation in the late 70s to early 80s, militarization of the Cordillera countryside has always been part of the State Policy, from the Marcos Regime to the present.

The exploitation of lands, territories and resources of indigenous peoples and the protection of private interests in indigenous territories often boil down to the interest of the states. To accomplish this, militarization is imposed in such territories.

In addition, early 21st century global politics has given most states the convenient opening to further justify militarization as their main approach in pursuing the policy of anti-terrorism.

## C. International and National Human Rights Instruments

### 1. Universal Declaration of Human Rights 1948

#### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 3

Everyone has the right to life, liberty and security of person.

#### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

### 2. Convention on Civil and Political Rights (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966)

#### Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 9

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

### 3. Convention on Economic and Social Cultural Rights (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966)

**Article 1**

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**4. Vienna Declaration and Programme of Action, July 1993****Part I**

(5) All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

**II. UNDRIP PROVISIONS ON HUMAN RIGHTS AND MILITARIZATION****A. Preamble****PP 6**

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

**Suggested Method**

*Present a list of the relevant UNDRIP provisions.*

*Involve participants in reading the provisions.*

*Discuss and elaborate on each provision.*

**PP 11**

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

**PP 15**

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

**PP 17**

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

**PP 18**

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

**PP 19**

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

**PP 21**

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

**B. Articles****Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and International human rights law.

**Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Article 3**

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.

**Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**Article 24**

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

**Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 29**

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

**Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

**Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

**Article 44**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Suggested Method**

*Choose the appropriate method or combination of methods among the following:*

- *Sharing of experiences or documented cases*
- *Short video documentary*
- *Guided open discussion*

*Synthesize the main points that arise in the process. You may wish to include the points below.*

**III. REALITIES ON THE GROUND****A. General Situation**

Being driven away from ancestral lands for development projects. Being suspected as insurgents when they oppose government programs and projects. Being subjected to militarization, with concomitant cases of harassment, physical and psychological torture, and intimidation. These are but some of the human rights violations, which the indigenous peoples of Asia have experienced for decades despite the existence of human rights laws and instruments.

The state commonly resorts to militarization in IP communities especially in areas where there is strong opposition against a planned government project or policy. In these cases, the armed forces establish military camps within or just beside the communities, which they use as base for military operations. These result in numerous human rights violations, including cases of rape, civilians used as human shields, disruption of economic activities of the people, ethnocide, and relocation. In addition, military efforts to establish and expand local paramilitary forces and intelligence networks within the community likewise create divisions among the people.

These acts of militarization are often justified by laws and provisions at the national and local levels. These laws legalize numerous types of human rights violations, the military takeover of civilian functions, and the executive assumption of emergency powers. Most of the laws were crafted supposedly to combat terrorism and insurgency or in response to a state of emergency.

In addition, rights of indigenous peoples already formally recognized by the state continue to be violated due to non-implementation of laws, conflicting laws and interpretation of laws, introduction of loopholes in implementing rules, and other means by which these rights are diluted or negated in actual practice.



### Suggested Method

*Prepare and present a matrix of laws and policies, as below.*

## B. National Laws and Policies

### 1. Negative laws

NATIONAL LAW/POLICY	CONTENT	FURTHER REFERENCES
Law No 34/2004 on National Armed Forces (Tentara Nasional Indonesia) in Indonesia	The TNI still maintains the Army's territorial command structure, such as Kodam (military regional command), Korem (military regiment command), Kodim (the military district command) and Babinsa (village guidance), which continue to control indigenous and local institutions and to appropriate natural resources and indigenous peoples' territories as well.	Usman Hamid and Saiful Haq, "TNI reform: No more business as usual," The Jakarta Post, Indonesia, 17 Oct 2008
Law No 15/2003 on Anti-Terrorist Law in Indonesia	To prove initial evidence of terrorism, police can refer to any intelligence evidence (article 26). Terrorist activities may include any activity that assists terrorist by lending money, hiding information (article 13).	Simon Butt, Anti-Terrorism Law and Criminal Process in Indonesia, University of Melbourne, Australia <a href="http://alc.law.unimelb.edu.au/download.cfm?DownloadFile=90A180E0-1422207C-BA7D439277CCFF7A">alc.law.unimelb.edu.au/download.cfm?DownloadFile=90A180E0-1422207C-BA7D439277CCFF7A</a> download Jakarta, May 2009

NATIONAL LAW/POLICY	CONTENT	FURTHER REFERENCES
<p>Martial Law in Burma</p>	<p>On 17 and 18 July 1989, the martial law administration empowered the military to impose death sentences on political opponents, including people not accused of violence, through summary judicial procedures that fall short of international standards for fair trial and are contrary to the safeguards enshrined in the Myanmar Judicial Law. These deficiencies include allowing the death penalty for non-violent, not clearly criminal or else only minor offences, elimination of the right of appeal to a higher court and apparent curtailments of the right to a defense, particularly as regards the calling of defense witnesses.</p>	<p>Amnesty International, Myanmar (Burma) New Martial Law Provisions Allowing Summary or Arbitrary Executions and Recent Death Sentences Imposed Under These Provisions, AI Index: A S A 16/15/89 DISTR: SC/CO/GR, <a href="http://burmalibrary.org/docs3/16-15-89-ocr.pdf">http://burmalibrary.org/docs3/16-15-89-ocr.pdf</a></p>
<p>Armed forces special power act (AFSPA) 1958, in India</p>	<p>Special authority for the military to shoot and kill on mere suspicion. The law grants the military wide powers to arrest without warrant, shoot to kill, and destroy property in so-called “disturbed areas.” It also protects military personnel responsible for serious crimes from prosecution, creating a pervasive culture of impunity.</p>	<p><a href="http://www.hrw.org/en/news/2008/08/17/india-repeal-armed-forces-special-powers-act">http://www.hrw.org/en/news/2008/08/17/india-repeal-armed-forces-special-powers-act</a></p>
<p>Oplan Bantay Laya of the Armed Forces of the Philippines (AFP)</p>	<p>A long-term, top-level and comprehensive military operational plan of the AFP aimed at destroying the Communist Party of the Philippines and its New People’s Army by 2010. The Oplan specifically targets indigenous peoples’ territories because these generally mountainous and thickly forested areas are thought to be strategically important to the NPA as guerrilla strongholds. The Oplan also targets legitimate indigenous peoples’ organizations as “front organizations” of the Communist Party.</p>	

NATIONAL LAW/POLICY	CONTENT	FURTHER REFERENCES
Prevention of Terrorism Act 2002, India	This law was enacted to repeal other laws and consolidate their contents: Internal Security Act (MISA), Terrorist and Disruptive Activities [Prevention] Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), the Armed Forces Special Powers Act (AFSPA), the Assam Preventive Detention Act, National Security Act, Essential Services Maintenance Act, and the Armed Forces [Jammu and Kashmir] Special Powers Act (1990). The successor law of 2002 is more draconian and heinous than its predecessor in trying to quell “terrorism” and “threats to national unity.”	<a href="http://lib.ohchr.org/HRBo dies/UPR/Documents/Session1/IN/LIB_IND_UPR_S 1_2008_Liberation_uprsub mission.pdf">http://lib.ohchr.org/HRBo dies/UPR/Documents/Session1/IN/LIB_IND_UPR_S 1_2008_Liberation_uprsub mission.pdf</a>

## 2. Positive laws

NATIONAL LAW/POLICY	CONTENT	FURTHER REFERENCES
Law No 39/199 on human rights in Indonesia	Human rights, including the rights of indigenous peoples to self-identity, land and territory.	<a href="http://www.hrw.org/legacy/asia /indonesia">www.hrw.org/legacy/asia /indonesia</a>
Establishment of human rights institutions as government bodies in countries such as the Philippines, Malaysia, Indonesia, and Thailand.	Monitoring and reporting the development of human rights in the respective countries.	<a href="http://www.komnasham.go.id">www.komnasham.go.id</a>
Ratification of international human rights instruments, such as ICCPR and ICESCR, by the Philippines, Indonesia, and Thailand.	State obligation to comply with civil and political rights as well as social, economic and cultural rights, of their respective peoples.	

## C. Challenges of National Laws and Policies

**1. Positive laws are not implemented or only passively, while negative laws are more actively implemented.** National governments in most Asian countries have passed laws that contain both positive and negative elements: some favorable and some oppressive to indigenous peoples. The general trend, however, is for oppressive laws to be more actively implement-



### Suggested Method

*Input the following, elaborating with case studies or inviting participants to discuss cases they know of.*

ed while the positive laws are only barely or ineffectively implemented. Examples of oppressive laws that are being implemented in full force: martial law in Burma, AFSPA of 1958 in Northeast India, and Oplan Bantay Laya in the Philippines.

**2. Government uses inconsistent and fragmented approach rather than human rights-based approach.** Governments often rely on compartmentalized or sectoral approaches that result in fragmented, inconsistent, or even contradictory implementation of laws and social services as applied to indigenous peoples. This is in contrast to the holistic and human-rights-based approach, which is more effective. In addition, corrupt practices that are rampant within the government result in the misuse and depletion of funds supposedly allocated for indigenous peoples.

**3. Conflicts between national and local governments.** Conflicts commonly exist between the national and local governments, particularly in the jurisdiction or division of powers and functions that are relevant to human rights (police powers and courts, for example), and in the allocation and use of public resources. In most cases, national government priorities predominate, and local government concerns are relegated to the sidelines. These issues are also connected to the question of autonomy and self-government in indigenous territories.

**4. Persistent militarist mindset.** A persistent militarist mindset continues to exist not only within the armed forces, but also among civilian agencies and supposedly civilian law enforcement services. This mindset is totally hostile to the concept of human rights and its strict observance even in war or emergency conditions. It constantly erodes efforts to strictly observe human rights in actual practice, especially during military and police operations.

**5. Particular defects as well as openings in the legal and judicial system.** In each country or state system, we can identify particular defects as well as openings in the legal and judicial system that pose either advantages or disadvantages in the implementation of human rights laws. Examples of defects and disadvantages: legal technicalities such as prescription (expiration of case due to passage of many years), non-applicability to cases prior to the adoption of human rights laws, and immunity of officials to suit, which are often invoked by governments to escape accountability for their human rights violations. This is on top of judicial corruption and intimidation, which results in the dismissal of human rights cases. Examples of openings and advantages: the possibility of indigenous systems of law being used instead of, or to complement, the modern legal and judicial system in protecting the human rights of IPs and in pursuing human rights cases.

## IV. EXPERIENCES AND LESSONS LEARNED

### A. Advocacy, Collective and Assertive Actions

#### EXAMPLES OF ADVOCACY, COLLECTIVE AND ASSERTIVE ACTIONS

##### Philippines

1. People's organizations and communities launched anti-militarization mobilizations in Cordillera to demand the



#### Suggested Method

*Share the examples provided below or ask the participants to engage in a sharing of experiences, but provide questions to guide them.*

*Synthesize and input the lessons and tips below.*

withdrawal of military detachments inside indigenous territories. These mobilizations – rallies, dialogues, pickets, etc. – succeeded in causing the pullout of abusive soldiers and military detachments that were committing human rights violations and causing social problems like gambling and drunkenness.

2. The information and education campaign of the government's Commission on Human Rights now includes collective rights of indigenous peoples, which was not part of its human rights education in the past. This reflects the mainstreaming and integration of indigenous peoples' rights education in different languages, which was a result of the sustained lobby and advocacy by Philippine indigenous peoples for the inclusion of indigenous peoples' rights in the general human rights framework.

### India

3. In the Naga area in Manipur, Northeast India, peoples' protests to remove the military outpost from the town were successful. Women's organizations were able to rescue civilians arrested by the military.

### Indonesia

4. The Alternative Report on ICERD submitted to UN Committee on ICERD (1 June 2007) by Indonesian Civil Society Movement included indigenous peoples. The report brought up the issue of racial discrimination, including the discrimination against indigenous peoples (suku Anak Dalam, Dayak, Papua) by various laws and policies, and by government projects and private companies in and around indigenous territory. The report also touched on issues of racial discrimination against certain ethnic groups. Responding to this report, the government opened up to linkages for discussion with civil society, including indigenous peoples' organizations.

## B. Actual Exercise of Human Rights

### EXAMPLES OF ACTUAL EXERCISE OF HUMAN RIGHTS

#### Indonesia

1. In the community of Ambon, Maluku, the military was behind the conflict between two religious groups among the people. Community leaders used the adat, or the customary way of conflict resolution, which resulted in the withdrawal of the military.

2. Community protection of forests against private companies and protected areas is seen in the Lorelindu National Park in Indonesia. The indigenous women's organization is strong in the locality, and is able to protect the forest using customary forest management. A woman leader from Natatoro, organized under the village government, is renowned for her leadership in the struggle to protect their forests.

*Note: Adat has a long history in Indonesia as part of the legacy of Dutch colonial rule. In this sense, village government could be also called adat government. When the indigenous peoples' movement grew stronger and succeeded in its lobby especially at the*

*international level, adat also became a popular “internal term” in Indonesia to refer to indigenous peoples.*

## **Burma**

3. Formerly, forced labor was a common practice, which the government justified in the name of the common good or for national development. Local groups who opposed the practice lobbied international bodies like the UN and human rights bodies. They were able to put international pressure on Burma’s government to recognize the problem of forced labor until it was formally abolished.

## **C. Lessons Learned**

To know and understand our basic human rights makes us more alert to human rights violations. When there is collective knowledge of violations and whole communities are motivated to act in response, human rights becomes a major social issue.

States, as the main culprits in human rights violations, are not expected to be impartial educators on human rights issues. More often than not, state efforts merely misinform and confuse the people by twisting some human rights concepts. Thus, indigenous peoples must develop their own strategy and methods, and to conduct their own program, in human rights information and education.

Some human rights mechanisms may not be available in our country because the government did not sign certain international conventions and covenants. However, we should still raise the awareness of communities and the public at large about these mechanisms, so that we can more effectively assert our rights and campaign for the government to ratify the relevant international instruments.

## **TIPS IN ASSERTING OUR HUMAN RIGHTS**

### **Know our rights**

Even if the government has ratified an international human rights instrument, there is no guarantee that the rights of indigenous peoples or the relevant sector will be protected. Often, civil society has to demand that the government adhere to their ratification commitments.

Knowing our rights also ensures that we can tackle local human rights issues in the broader context of the relevant UN human rights mechanism. Once an issue is identified together with the relevant mechanisms for redress, we can take more effective action.

### **Link human rights mechanisms to local issues**

- Look at your community – do they know and understand their rights?
- If not, raise their awareness to the level where they can recognize violations to their rights and encourage them to act.
- If yes, involve them in discussions on types of action they want to take.

**Identify specific UN instruments and mechanisms that can be used**

- Know which convention or covenant can have maximum impact: which ones were ratified by the government, or at least the related processes in which the government participates
- Know the specific offices to which your appeals should be directed, to ensure an urgent and effective response.

**Identify other mechanisms that can support your cause**

- Identify and maximize guidelines or commitment by governments in the implementation of a certain agreement or convention, which your community can demand from the government.

**V. CHALLENGES IN IMPLEMENTATION OF UNDRIP****A. Conflict of National Laws with International Laws**

Certain human rights provisions of UNDRIP, which are based on existing international laws and human rights standards, are contradictory to some existing national laws.

**EXAMPLES:**

- Various “anti-terrorism” laws vs Bill of Rights (constitutional guarantees to civil and political rights)
- Armed Forces Special Power Act (AFSPA) vs International Convention on Civil and Political Rights (ICCPR)
- Penal Court vs ICCPR national policies on mining, forest, and other natural-resource management vs
- International Convention on Economic, Social and Cultural Rights (ICESCR)

**B. Government Programs in Conflict with Human Rights**

Many national government policies and programs on development are in conflict with the basic principles of human rights as applied to indigenous peoples. In the name of national development, governments continue to uphold policies that violate the rights of indigenous peoples to their lands and resources. Many government-sponsored development projects continue to be implemented in indigenous territories without their free, prior and informed consent, and which results in displacement and dislocation of communities, deprivation or disruption of livelihood, worsened health and safety problems, degradation of socio-cultural traditions, etc.

**Suggested Method**

*Pose the following question to the participants:*

*What do you think are the challenges faced in the implementation of UNDRIP’s human rights provisions?*

*Prepare cards containing the question and distribute to participants. Ask each participant to write their answers on the cards.*

*Synthesize the ideas of participants by grouping the answers into clusters based on common points then summarizing the main points.*

*Input the items below.*

*Wrap up the whole module by relating the different topics.*

*Suggested Time: 45 minutes*

### **C. Lack of Funds for Implementing Human Rights Instruments**

Governments commonly do not allocate enough funds to the national human rights institutions and related service agencies, as these are not considered national priorities. The lack of funds often becomes a justification for government agencies not to thoroughly implement human rights instruments, which would include the continuous work of public education and information, monitoring and documentation of the human-rights situation and specific cases, and prosecution of human rights violators. Meanwhile, governments allocate huge budgets for military operations that ravage indigenous peoples' territories.

### **D. Weak Capacity of Human Rights Bodies**

The human rights institutions at the national and lower levels are supposed to function as independent bodies. In many instances, however, they lack independence, clear mandate and sufficient authority, in addition to the lack of expertise and resources. In many cases, members of these institutions are political appointees that are beholden to or susceptible to manipulation by the appointing body. Their mandate and authority are limited to receive and process complaints but lack the power to redress the problem and issues. In extreme cases, these same institutions become smokescreens for the government to cover up and human rights violations against indigenous peoples.

### **E. Language Limitations in Delivering Human Rights Services**

Many of the human rights instruments, as well as supporting materials such as guidelines, have not been translated into the diverse languages of indigenous peoples. This deprives many indigenous communities of the basic information on human rights and their application, as well as their enjoyment of related human rights services, even in cases where the provisions are clear.

### **F. Lack of Awareness About Human Rights Instruments and Bodies**

As a whole, indigenous peoples remain greatly unaware of the content and operation of human rights mechanisms and institutions at the international level, and their equivalents at the national level where these exist. The UNDRIP itself remains a new subject, which most Asian indigenous peoples are unaware of. This situation limits the capacity of indigenous peoples in campaigning and advocating for their collective rights.

### **G. Military Hostility to Human Rights Groups**

Human rights groups and individuals continue to be under steady attack by agents of the state, mostly among the military and police forces. Through mass media, their own propaganda sorties in communities and schools, legal counter-actions, surveillance and at times actual arrests, these state agents often succeed in demonizing human rights defenders, if not actually silencing and neutralizing them.

### **H. Legal Issues in the Application of Human Rights Laws**

In many Asian countries, defects and loopholes in the legal and judicial system provide numerous technicalities for culpable state agents to escape accountability for their human rights violations. One is to invoke the principle of prescription (the expiration of a case due to the pass-

ing of so many years) or to raise so many procedural issues in order to abort or unnecessarily prolong the judicial process. Another is to invoke the non-applicability of a human rights law to incidents that occurred prior to the passage of the said law. Still another is to invoke the immunity of top government officials from suit in order to limit culpability to the lower echelons only.

## **I. Weaknesses in the Judicial System**

In many Asian countries, weaknesses in the judicial system greatly affect its effectivity in enforcing human rights laws and actual protection of human rights. Such weaknesses include the vulnerability of the supposedly independent judiciary to efforts by the executive department, both official and non-official, to control and influence the courts.



**MODULE 9****SPECIAL SECTORS****PREPARED BY JACQUELINE CARIÑO****WITH INPUTS FROM BERNARDINUS STENI, FAMARK HLAWNCHING, JOAN CARLING,  
ATINA GANGMEI AND ROBELIZA HALIP****OBJECTIVES**

1. To identify and elaborate on the relevant provisions of the UNDRIP in relation to the special sectors of indigenous women, children, youth, elders and the disabled.
2. To understand deeper the particular issues and concerns of indigenous women, children, youth, elders and the disabled.
3. To relate the situation, experiences and challenges faced by the special sectors to the recognition, protection, promotion and exercise of their human rights.
4. To formulate strategies to advance the rights of the special sectors.

**CONTENTS****I. INTRODUCTION****II. UNDRIP PROVISIONS****III. REALITIES ON THE GROUND**

- A. General situation
- B. Laws and policies relating to special sectors

**IV. EXPERIENCES AND LESSONS**

- A. Women
- B. Children and youth
- C. Elders
- D. Lessons learned

**V. CHALLENGES**

- A. Challenges
- B. Strategies

## I. INTRODUCTION

There are special sectors that need particular attention and support in the assertion of their rights as indigenous people. Why the need for special attention? This is because these sectors are the most marginalized, discriminated against, neglected and most vulnerable to the violation of their rights. They also have their own particular issues and concerns that we need to be sensitive to and to address as we strive for equality and dignity for all sectors in our society.

### Who make up these special sectors?

**Indigenous women** are, of course, that half of the population who, because of the gender roles assigned to them by society, are usually considered inferior or subordinate to men. They are thus often discriminated against and boxed into stereotype roles in society such as: women are “the weaker sex”, or “should obey their husbands”, or “stay home to cook, clean, and look after the children.”

These stereotypes should be changed, and women’s rights to equality, their special interests and needs as child-bearers, as well as their contributions to society, should be recognized. This is so that they can fully participate as co-equal and valuable members of society in our struggles to defend and assert our rights as indigenous peoples.

**Indigenous children** are those aged below 18 years. Because of their young age, they need special care and attention, not only from their families, but from the whole of the community. They represent the future of our society and should thus be nurtured and their welfare protected. Their particular rights and needs as children should also be recognized and respected.

**Indigenous youth** are those aged 18-35 years. They are in the prime of their lives and thus have much to contribute to society. They have special characteristics that make them valuable members of our indigenous societies, like their physical strength, vigor, fresh ideas, and readiness to learn. They are at the time of their lives when they are defining their future, and they should thus be guided to choose the right direction for the interests of their community and society. However, youth are oftentimes silenced or brushed aside by elders who do not appreciate their ideas and important role. They are increasingly alienated from their indigenous cultures and drawn by foreign influences and



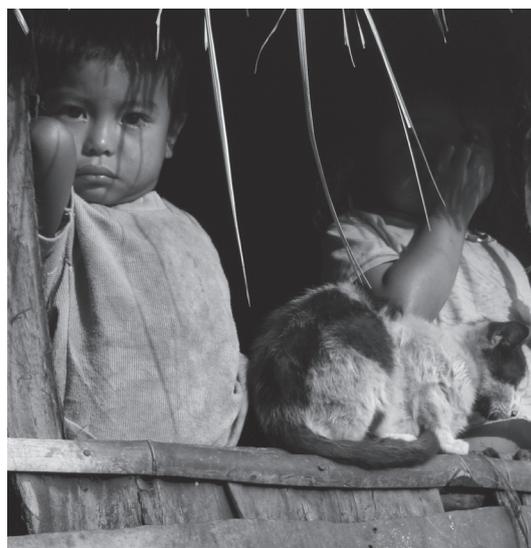
### Suggested Method

*Pose the following questions, written in cards and distributed to participants.*

- *What do you think are the specific concerns of special sectors such as women, children, youth, elders and the disabled, in the exercise of their rights as indigenous people?*
- *What do you think are the main obstacles in the special sectors’ exercise of these rights?*

*Collect and cluster the written replies, and synthesize the ideas of participants.*

*Present the main content of this module as Powerpoint or lecture input; include photos and other visual material related to the rights and concerns of special sectors.*



**Children of Sitio Talampak of Lacub, Abra.**  
Photo by Noel Godinez

vice. They should be supported and groomed to become new and upright leaders of our indigenous communities.

**Indigenous elders** are those aged 60 years and above. They have special needs and rights. Many continue to be essential forces in the livelihood and economic activity of indigenous communities. Some of them have become weak or disabled or dependent on their children and families for their survival. Many are holders of wisdom and traditional knowledge that are important to the continued survival and balanced development of our indigenous communities. Others are traditional leaders and veterans of our long-running struggles to defend and assert our rights as indigenous peoples. It is essential to value and care for our indigenous elders as important members of the community, to provide their needs, and to learn from their knowledge and experiences so that these may continue to be transmitted to the younger generation.



Hmong woman, Chang Khian village, Chiang Mai province, Thailand. Photo by Chris Erni

**The disabled** are those persons with deficiencies, whether congenital or not, in their physical or mental capacities. These deficiencies make them unable to ensure by themselves, wholly or partly, the necessities of a normal individual and social life. It is necessary to prevent physical and mental disabilities from being a barrier to the meaningful participation of indigenous persons in their community. We should assist disabled persons in developing their abilities in the most varied fields of activities and to promote their integration in normal life as far as possible.

## II. UNDRIP PROVISIONS FOR THE SPECIAL SECTORS

### Article 7

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

### Article 14

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

### Article 17

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work



#### Suggested Method

*Present a list of the relevant UNDRIP provisions.*

*Involve participants in reading the provisions.*

*Discuss and elaborate on each provision.*

that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

### Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

### Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

### Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

## III. REALITIES ON THE GROUND

### A. General Situation

Indigenous women, children, youth, elders and disabled persons are more often than not subjected to particular forms of discrimination and oppression.

Specifically for indigenous women, aside from the discrimination they experience as indigenous peoples, they are often stereotyped as being fit only to do domestic work. They are thus tied to the home and prevented from meaningful participation in community affairs. In addition, many tribal communities continue to practice their traditional male-dominated socio-political systems where women are not fully involved in decision-making. This is so despite the important role that indigenous women play in agricultural production and other livelihood activities for the family.

Also, because of the notion that they are inferior or subordinate to men, women often become victims of sexual harassment, abuse and physical violence by men and the dominant society. Violence against women is thus a normal or usual occurrence. In areas that are militarized or occupied by settlers, indigenous women often become victims of violence at the hands of state forces and other outsiders.



#### Suggested Method

*Break up the participants into groups, to discuss the situation of the women, children, youth, elderly and disabled. Print out and distribute the following questions to guide their discussion.*

*Have each group present the results of their discussion in plenary, then synthesize, providing additional input if necessary. You might wish to use the following in your input.*

Trafficking and prostitution of indigenous women is also a growing social problem. Due to the depressed economic situation of many communities, indigenous women are often forced to migrate to the cities. Here, unemployment and poverty force them into prostitution, thereby exposing them to diseases such as HIV-AIDS.

For indigenous children in general, many of them are denied of their right to access formal education due to poverty and discrimination. Trafficking of children and child labor are also very common in depressed areas. Juvenile offenders likewise are not given special protection as they are commonly mixed with hard criminals in state penitentiaries.

The fading away of the rich heritage of indigenous peoples is a concern nowadays as many of the native priests and community elders who have rich knowledge on the indigenous ways are unable to pass on their wisdom to the younger generations due to the change of mindset of the latter. Technology, education and religion are getting in the way

#### *Guide questions ON WOMEN*

- *Characterize the women of your communities, and describe the roles they play domestically and socially, economically and politically.*
- *Can the women of your communities participate actively in discourse and decision-making?*
- *Are there customary laws or practices which put women at a disadvantage or, conversely, in an advantageous position – in the context of the home or the community, economically or politically?*
- *What are the implications of these?*
- *Are there special problems the women face at present, especially in relation to changes in the general situation your communities confront?*
- *Are there national laws or policies which discriminate against women or, conversely, aim to eliminate discrimination against women? What about laws or policies which render women especially vulnerable to exploitation or, conversely, protect them against this? Etc.*

#### *Guide questions ON CHILDREN*

- *Are there special issues or problems that your communities face at present vis-à-vis the situation of children? E.g.:*
- *worsening poverty and increased participation of children in production activities inimical to their health or development (Note: Child labor may be regarded internationally as inimical to children's development but might be seen in a different light by indigenous peoples.)*
- *armed conflict and the participation of children in warfare (Note: There are indigenous peoples who wage war as whole communities – children included.)*
- *Are there national laws or policies that address the situation of the children of your communities, or of children in general?*

#### *Guide questions ON THE YOUTH*

- *Characterize the youth of your communities and describe the roles they play in the home and in the community, economically and politically.*
- *Can the youth of your communities participate actively in discourse and decision-making? Or are there customary laws or practices that constrain them from doing so?*
- *If the youth of your communities cannot participate actively in discourse and decision-making, what are the implications of this?*
- *Are there special problems the youth face at present, especially in relation to changes in the situation your communities confront?*
- *Are there national laws or policies that address the special needs, problems, concerns or issues of the youth?*

of the retention, preservation and transmission of indigenous traditions and culture.

For the disabled, they also experience discrimination and are not given the necessary support for them to become gainful members of society.

All these special sectors generally lack access to the basic social services due them. The state has failed to

provide the needed provisions to meet the needs of the special sectors of society for the development of their full potential and greater contribution to the society. Also, policies against discrimination are lacking in many states and where they exist, these are not implemented sincerely.

*Guide questions ON ELDERS*

- *Characterize the elders of your communities and describe the roles they play in society.*
- *Are there special problems they face at present, especially in relation to changes in the situation your communities confront?*
- *Are there national laws or policies which negatively or positively affect the wellbeing, status and functions of the elders of your communities?*

*Guide questions ON THE DISABLED*

*Characterize the disabled in your communities.*

*Are there special issues or problems that your communities face at present vis-à-vis the situation of the disabled?*

*Are there national laws or policies that address their situation?*

## **B. Laws and Policies Relating to the Special Sectors**

Aside from the UNDRIP, there are other international instruments that guarantee the rights of the special sectors to equality and non-discrimination, as well as give due recognition to their particular needs. These instruments include the following:

### **1. International standards**

#### **Universal Declaration of Human Rights**

##### **Article 2:**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Convention on Civil and Political Rights** (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966)

##### **Article 2 (1):**

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

##### **Article 3:**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

**Article 6 (1):**

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

**Convention on Economic and Social Cultural Rights** (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966)

**Article 2 (5):**

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 3:**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

**Article 7:**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. . .

**Article 10 (3):**

The States Parties to the present Covenant recognize that. . . Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**Convention on the Rights of the Child** (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989)

**Article 1:**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier

**Article 2:**

(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members

**Article 4:**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

**Article 8:**

(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

(2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**ILO Convention No.169** (Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session)

**Article 3:**

(1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

(2) No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

**Article 4:**

(1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

(2) Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

(3) Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

**Article 20 (3):**

The measures taken shall include measures to ensure. . .

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

**Convention against Discrimination in Education** (Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 December 1960)

**Article 1 (1):**

For the purpose of this Convention, the term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

**Declaration on the Rights of Disabled Persons** Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975

(2) Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

(3) Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

(4) Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

(5) Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

(6) Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

(7) Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

(8) Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

**Convention for the Elimination of All Forms of Discrimination against Women (1979)**

It requires all States to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality of men”. This is the main international treaty specific to women.

**The Declaration on the Elimination of Violence against Women (1993)**

On December 20, 1993 the Declaration on the Elimination of Violence against Women was issued in the General Assembly of the United Nations. The Declaration states the principles of action to eliminate violence against women in homes and communities, and gets governments’ commitments and practices of compliance in eliminating violence against women.

**2. National laws on special sectors**

There are also national laws that pertain to the special sectors. The following are a list of laws in Indonesia, both positive and negative.

**Positive Law**

Indonesia: Law on the welfare of elders No. 13/1988

Everybody has an obligation to take care of their parents, including elders.

**Negative Law**

Indonesia: Anti-Pornography Law No. 44/2008

Criminalize the way of life of indigenous peoples such as using minimal clothes, dress, etc.

### 3. Challenges of national laws

- National laws and policies still carry discriminatory provisions on indigenous women, children, youth and elders.
- Overlaps and conflicts among laws and policies lead to double standards and inconsistencies in recognizing the rights of indigenous women, children, youth and elders, such as in conflicting interpretations among government agencies at the national, regional and local levels.
- Many countries in Asia have existing national bodies on the rights of women and children such as the national commissions for women in India and Indonesia. Such bodies should make special provisions to address the needs their respective indigenous constituencies, and to include representatives of indigenous women, children, youth and elders in the appropriate national commissions.
- The modern judicial system has many incompatibilities with indigenous systems of law. In many cases, the police and courts show negative biases in delivering judicial remedies to indigenous women, children, youth and elders.
- There exist national laws and policies that dwell on the rights of indigenous women, children, youth and elders in almost all the Asian countries. But there is a big gap between the written law and their practical implementation. Many people in government and private companies are not aware or sensitive enough to the situation and concerns of the said special sectors.

### 4. Strategies for national law

- Provide indicators on bad/good laws dealing with human rights and militarization as well as indigenous women, children, youth and elders.
- Identify bad/good laws regarding the said issues.
- Repeal bad laws and exercise good laws.
- Identify the overlaps and conflicts among laws and policies on general human rights and the rights of indigenous women, children, youth and elders.
- Set up various legal, extra-legal and meta-legal strategies to harmonize conflicting laws and policies, or repeal specific laws and provisions as needed.
- Lobby for the adoption of special mechanisms and measures to meet the needs of indigenous women, children, youth and elders.
- Lobby for the allocation of special budgets for indigenous peoples in order to implement good national laws to support the implementation of UNDRIP.
- Establish judicial remedies and other forms of redress to address grievances and complaints of indigenous peoples, including its special sectors, regarding rights violations.
- Conduct special trainings and awareness campaigns, to raise the awareness level of indigenous women, children, youth and elders on their rights, and of indigenous communities as a whole.
- It is important that indigenous peoples' organizations take this up as a priority, and to advocate for the rights of special sectors at all levels.
- Capacity building to document and report cases of violations of the rights of special sectors.
- Provide specialized training on documentation for indigenous activists to document and report cases of violations of the rights of special sectors.
- Indigenous peoples' organizations, national human rights bodies, and NGOs supportive to indigenous peoples' issues, can help provide these needs.
- Public campaign by working together with press, publishing various publications, developing greater networking to sensitize the people in the government, public and private companies to respect the rights of IWCFE and deliver the required services to these special sectors under the provisions.

## IV. EXPERIENCES AND LESSONS IN ASSERTING RIGHTS

### A. Women

1. Tining of Kalinga province, in the Cordillera region of the Philippines, fought against the World-Bank funded Chico river dams, helped organize the women in her community, and helped set up the women's federation, Innabuyog, a member-organization of the Cordillera Peoples' Alliance. Tining represented her organization in the Beijing 4th World Conference on Women in 1995, where she spoke of her experiences and took part in drafting the Beijing Indigenous Women's Declaration.



#### Suggested Method

*Ask the participants to give any examples they know about good practices, experiences, and lessons learned in the assertion or exercise of the various rights of indigenous women, children, youth, elders and disabled.*

2. Self-organized Naga women like the Naga Women's Union and the Naga Mothers Association have been able to mobilize the women for their active participation in political discourses in the community. They also do a lot of work in conflict resolution to maintain peace and harmony within the community and among different ethnic groups of the Naga people.

3. As a result of women's advocacy and lobby work, there are now existing national commissions for the rights of women and children in many countries such as in Indonesia, India and the Philippines. However, these bodies only address general women and children's concerns. Thus, further awareness-raising, advocacy and lobby work are necessary so that particular issues and concerns of indigenous women and children are likewise addressed.

4. Indigenous women have distinguished themselves through their participation in national political processes like in Papua and Nepal. In Nepal, the National Indigenous Women's Federation (NIWF) is composed of indigenous women activists and indigenous women organizations, professionals and educators. It has regional-level networks in five regions of Nepal and district-level alliances and members. It makes efforts to raise the issues and concerns of indigenous women in Nepal and abroad, and strengthen the movement of indigenous women in particular, and indigenous peoples in general, for securing their collective rights.



Young women soldiers of the National Socialist Council of Nagalim (NSCN, Isaac-Muivah faction), the strongest armed resistance group of the Nagas. Since 1997 they have a cease-fire with the Indian government and have been negotiating on the future status of the Naga territories.

5. In Ngata Toro, a village in Lore Lindu National Park in Central Sulawesi, the community has been carrying out initiatives that, in their own words, are aimed at "strengthening our traditions, customary laws, culture and local institutions for sustainable use of our forest, land and water for the benefit of all our community members and our environment". The objec-

tives of the initiatives, among others, are: (a) to preserve the tropical forest ecosystem through revitalizing indigenous knowledge and traditional laws on access, control and sustainable use of natural resources, and (b) to obtain maximum benefit from the preservation/conservation of the tropical forest ecosystem in order to ensure sustainable natural resource-based development. Initiatives are based on the Toro philosophy “Mahintuwu mampanimpu katuwua toiboli Topehoi” which means “To protect and preserve together our life and environment as bestowed by God”.

During the Foundation Phase (1993-June 2000), the indigenous people of Ngata Toro explored and documented their indigenous knowledge, customary laws, traditions and traditional lands as a foundation for strengthening the relationship between the people of Ngata Toro and the natural environment, including natural resources.

During the Acknowledgement Phase (July 2000-October 2001), the people of Ngata Toro struggled to have their indigenous knowledge, traditions, and traditional lands acknowledged by the government, represented by the Lore Lindu National Park Authority. To facilitate this, a number of new community-based organizations were established, including the Organization for the Indigenous Women of Ngata Toro, as well as a number of community-based enterprises for economic development. Since then, this women’s organization has been playing an important role in ensuring the achievement of the objectives mentioned above. It has served as an inspiration and model for women in other local communities to revitalize their roles and rights in relation to community life and natural resources management. Its activities have also helped fulfill the UNESCO requirements for granting Ngata Toro the status of a World Heritage Site.

## B. Children and Youth

1. Indigenous Lumad children in Davao and Agusan in Mindanao island, Philippines, now have access to bilingual primary education and secondary education with livelihood opportunities specifically designed to be appropriate for indigenous children. In addition, a school for living traditions has been set up among the Talaandig in Bukidnon where traditional knowledge and culture is transmitted by elders and “cultural masters” to the young children and youth. Likewise, in other indigenous communities like in the province of Ifugao, there are schools of living tradition and a program for nurturing indigenous knowledge is being implemented starting with the teaching of indigenous practices by elders to the youth, and integrating these in the curriculum of the formal education system.

2. The Anti-Open Pit Mining Kids (AOPMK) of Itogon, Benguet, Philippines was organized at the height of the anti-open pit mining struggle of the Ibaloy and Kankanaey peoples against destructive gold mining by Benguet Corporation during the 1990s. Composed of elementary school children, they performed songs and other music forms, skits and other theater art forms portraying their people’s struggles. Their performances enlivened protest actions and were effective in raising awareness of the issue. After the closure of the mines and as the kids grew older, they moved on and joined other organizations. But the tradition of AOPMK is continued by other younger kids who continue to practice their music and theater arts as avenues for communicating with the larger world on present issues affecting their communities.

## C. Elders

The Cordillera Elders Alliance is an organization of elders, leaders and peace pact holders that contributes to strengthening the role of the elders in the indigenous communities and in

the whole of the Cordillera region, Philippines. “Elders” are not only old men but also include women and relatively young leaders who have gained the respect of the community for their wisdom and commitment to work for indigenous peoples’ rights. They engage in conflict resolution and mediation towards the settlement of tribal wars. They guide the youth in the practice of their leadership roles. They lead in observing indigenous socio-political systems, rituals and practices. They take positions in relation to emerging national, regional and local issues that affect their communities.

## **D. Lessons Learned**

We can draw some valuable lessons from the numerous struggles of indigenous women, children, youth, elders and disabled in the assertion of their rights. These lessons can help guide the indigenous peoples’ movements, wherever they are, in addressing the particular issues and concerns of the special sectors.

### **1. Know our rights**

When people are aware of their rights, they can reflect on their situation and assess whether their rights are respected or violated. This knowledge is necessary in order to empower indigenous women, children, youth, elders and disabled to actively participate in the struggle to achieve changes in their situation. Thus, priority should be given to awareness-raising and training activities on the rights and situation of indigenous women, children, youth, elders and disabled, not only among them but in the wider community as well.

### **2. Organizing and self-organization**

For indigenous people to be effective in their actions, they need to be organized. Self-organization is a means to unite the people for them to work together towards a common goal. Special organizations for women, for children, for the youth, for the elders and for the disabled are effective ways of motivating these special sectors to get involved and participate in the wider indigenous peoples’ struggles. These organizations should also make sure that the special interests and concerns of the special sector are addressed by the government, by the community and by the peoples’ movements. Space should be given for these special sectors to participate in decision-making in wider community affairs through representation or through direct participation.

### **3. Collective action to demand, protect and defend our rights**

We have learned from our long experience that rights are not freely handed to us. Rights are asserted and fought for through collective actions of the people. The UNDRIP is a result of more than 20 years of struggle by indigenous peoples around the world. Collective actions draw strength from the huge numbers of people who are asserting and fighting for their rights. There is strength in numbers, especially when we are vulnerable and marginalized. Indigenous women, children, youth, elders and disabled need to muster their organized strength into collective forms of action such as demonstrations, petitions, pickets, dialogues, barricades, marches, rallies, etc.

These collective actions are powerful means of expressing our demands and putting pressure on concerned authorities to recognize and respect our rights.

#### 4. Lobby and advocacy work to pressure government to recognize and respect our rights

Some of the good practices of government were the result of people's lobby and advocacy which exerted pressure on the government to heed the peoples' demands. Lobby and advocacy should be done through the concerted efforts of different sectors of society, including grassroots organizations, professionals, academic and religious institutions and advocates in the assertion of indigenous peoples' rights. Lobby and advocacy for the rights of the special sectors should be supported by the special sectors themselves to give teeth and strength to our efforts and collective actions. Lobby and advocacy work are necessary in order to pressure governments to give the basic social services, support and recognition that the special sectors rightly deserve.

## V. CHALLENGES AND STRATEGIES

**A. What do you think are the challenges faced by indigenous women, children, youth, elders and disabled in the implementation of the UNDRIP?**

**B. What are the strategies to address the following challenges?**



### Suggested Method

*This final section should be a participatory process of envisioning and identification for the particular context of the participants.*

*Ask the participants the two main questions as listed below:*

- *What do you think are the challenges faced by each special sector in the implementation of UNDRIP?*
- *What are the strategies to address the said challenges?*

*Split up the participants into workshop groups, and have them do poster presentations afterwards, in plenary.*

**1. National sectoral bodies should address the particular needs of indigenous women, children, youth, elders and disabled, and include their representatives.** Many countries in Asia have existing national bodies on the rights of women and children such as the national commission for women in India and Indonesia. Such bodies should make special provisions to address the needs of their respective indigenous constituencies, and to include representatives of indigenous women, children, youth, elders and disabled in the appropriate national commissions.

**2. Capacity building to overcome discrimination and awareness-raising on their rights.** Special training programs and campaigns to raise the capacity and level of awareness of indigenous women, children, youth, elders and disabled in exercising their rights need to be provided to them and to the community as a whole. It is important for indigenous peoples' organizations to take this up as a priority, and to advocate for the rights of the said special sectors at all levels.

**3. Capacity building to document and report cases of violation of rights of indigenous women, children, youth, disabled and elders.** Indigenous activists need to undergo specialized training programs in documentation, so that they can effectively document and report cases of violations of the rights of indigenous women, children, youth, elders and disabled. Indigenous

# GENERAL GUIDE TO PRACTICAL ADVOCACY SKILLS

Advocacy is active espousal. It is aimed at gaining support for a cause or goal and at drawing participation in a general movement or in particular activities. It is the generation of awareness, interest and concern around an issue, then the mobilization of people for a desired action on the issue.

Advocacy of legislative or policy, judicial, executive or administrative action on an issue usually entails a rather long, sustained and multi-faceted campaign. For it to be effective, it should be well planned.

## I. CONSIDERATIONS IN PLANNING A CAMPAIGN

**A. Determine whether you have complete information on the issue. If you have information gaps, fill them.**

**B. The first target of your advocacy work should be the communities affected by the issue. You therefore need to:**

1. Identify exactly who these communities are.
2. Find out whether they are even aware of the issue.
3. If they are aware, find out whether they have sufficient and accurate information and understanding of the issue.
4. Find out what they think, how they feel about it, and whether they can be mobilized to act on it.

**C. Gauge the Political Situation:**

1. Government is not monolithic. Even if the issue is a judicial decision, a law, a policy or its implementation, or a government program or project, it is possible that members of the judiciary, legislature, administration or bureaucracy, or perhaps local government units, are against it. You therefore need to find out how different people in government stand on the issue. Determine which government offices your campaign should address and which government officials would likely be your allies, which of them your adversaries.

2. Also determine how much political space is open to you, in your prospective conduct of a campaign. Gauge whether you should prepare for repressive action on the part of the state.

**D. Assess media coverage and gauge public awareness of the issue. Also gauge what kind of information and education materials will be most effective in attracting and sustaining the attention of the public.**

### **E. Assess the condition of your campaign machinery:**

1. Determine who exactly among the members of your organization can devote time to the campaign. Determine what their skills and capacities are, and define what roles they should play in the campaign.

2. Gauge who else, outside your organization, you can draw into the campaign. Note their skills and capacities, and gauge what roles they can play in the campaign.

**F. Based on an assessment of campaign needs and campaigners' capacity, determine the scope or targeted coverage of your campaign – whether it will be local (municipal, provincial, district etc.), national, regional or international.**

**G. Assess the condition of the material resources available to you for engaging in the campaign and gauge the possibility of raising more resources.**

## **II. BASIC COMPONENTS OF A CAMPAIGN**

### **A. Information and Education**

Information-dissemination and education work may simply mean speaking with people, whether individually or in groups, in small meetings, forums or seminars, or in big public rallies. On the other hand, it may entail the production of such materials as the following:

- fact sheets;
- news reports or press releases;
- statements of position, position papers, manifestos, petitions, resolutions;
- essays, feature stories, exposés;
- magazines, pamphlets, primers, comics;
- info-posters, posters, photographs, photo essays, art exhibits;
- theatrical, musical or dance performances on a stage, in a village square, on the streets etc., which may or may not be interactive or participatory;
- slide shows or power point presentations;
- video documentaries, short films;
- audio productions such as recordings of songs, dramas or commentaries;
- radio or television talks;
- press conferences;
- etc.

Be as creative as possible, using traditional as well as modern forms. The important thing is to consider what forms will be most effective with your audience, given their character, needs and tastes.

#### **Some tips for information and education work:**

1. Be clear in communicating your message. First, make sure that what you want to say is clear in your own minds. If it is, then you can say it clearly to others.

2. Good timing and good pacing are important. News is best released when it is still fresh. But biting commentary and in-depth analysis of an issue might be better presented to the public when some awareness of this issue has already been generated. On the other hand, when an issue is no longer “hot” or has gone stale, it will be difficult for you to draw or revive public interest in this issue.

3. It is possible to achieve high impact at low cost. For example, you may want to produce a video documentary that can be distributed in digital form. But this might prove to be very expensive. It might be cheaper for you to invite a television news and features team to cover your issue. Their documentary, made at minimal or even no cost to you, would likely reach a wider audience than a video documentary of your own.

4. Efforts and resources do not necessarily have to come from your organization only. Maximize the interest, goodwill, skills and talents, and resources of allies or simply concerned people among mass media outfits, artists, the academe, religious organizations, other types of non-governmental organizations (NGOs) and politicians.

5. If, however, the mainstream mass media is inaccessible to you, try to find resources for setting up your own alternative, such as a community newspaper or a community radio. Some national and overseas or international NGOs provide assistance for these.

## B. Mass Mobilization, Mass Action

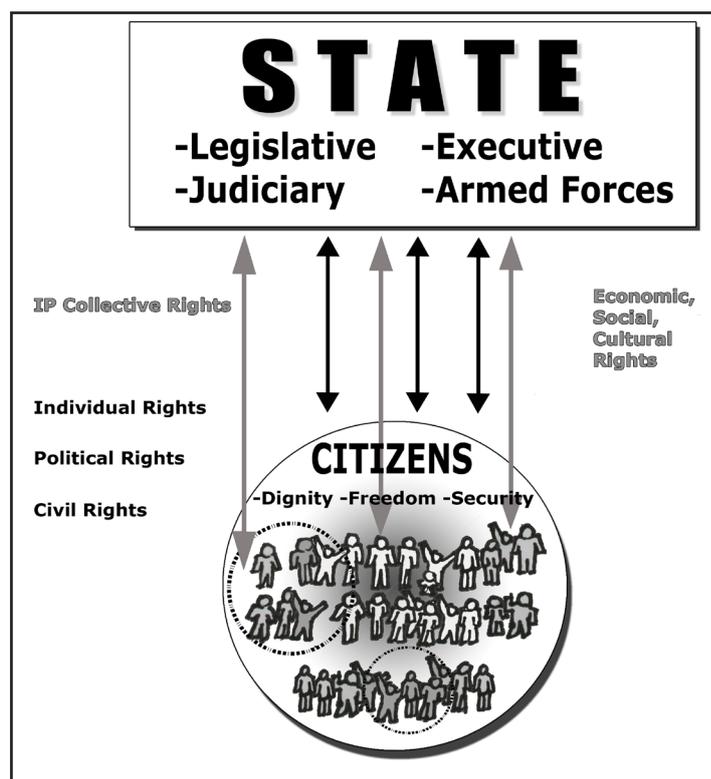
**Mass mobilization** means drawing the participation of large numbers of people in an action for or against a policy, program, project, act or activity.

1. The action may constitute a demonstration of unity. It is called a mass action simply because people are participating in it en masse. Such a demonstration can be used in:

- picketing the session of a government body, or the meeting of the officers or stockholders of a corporation;
- lobbying the government body, or the officers or stockholders of a corporation to take a desired measure or counter-measure;
- rallying the public to support or adopt your cause;
- simply expressing protest massively.

2. Some mass actions are, however, not just demonstrations but actual measures taken by communities – for example:

- To defend their land, communities may stand in large numbers across an access road, bridge, pier or port, serving as a human barricade against the entry of people and equipment sent to destroy the land.



## RIGHTS! AIPP

- To assert their right to the land, they may hold a sit-down, also in large numbers, all across the area they live on or use for their livelihood, in order to fight eviction.
- For the same purpose, they may hold a mass planting of trees or crops on the day scheduled for their eviction.
- To gain the freedom or to prevent the torture or execution of fellow protesters who have been arrested and jailed, they may mass up outside the courthouse, jailhouse or military barracks to which the prisoners have been taken, and stay there until these prisoners are freed.
- Etc.

This latter form of mass action requires more solid unity and a higher level of organization as well as militancy.

### **Some tips on mobilization:**

1. To mobilize people for mass action, you must convince them of the necessity and legitimacy of your proposed action; you must build consensus in favor of this action. To achieve this, you must talk to the people you wish to mobilize. You can:

- conduct a house-to-house or door-to-door campaign;
- seek out and speak with groups of people who are gathered together – for example, to wait for a ride or as passengers in a public vehicle;
- hold meetings with organizations or communities.

2. It will be best if, aside from talking to the people, you distribute some material that briefly addresses the matter.

## **C. Alliance Work**

Alliance work is crucial to success in advocacy.

There are two levels of alliance work.

### **1. Forging a mass alliance:**

This is the unification of a broad mass of citizens around a particular issue or a general cause. It is the bringing together of groups and individuals so that they can address the issue or work for the cause in an organized and concerted manner.

A mass alliance may be short-term or long-term, loose or tight, informal or formal, depending on the nature of the objectives that its members or affiliates have agreed upon.

**Note:** In establishing a mass alliance, it is imperative that the people involved understand clearly the alliance's objectives and program of action, and that they are truly united on these.

### **2. Making allies among elites:**

This means making friends with persons in power on the basis of a shared position regarding an issue or on the basis of a common goal. The friends made may be officials in local or national government, or in an international institution such as the UN, or they may be public figures whose power lies in their capacity to influence government decision-making or mass opinion-

making. The friendship may be very temporary or it may prove to be long-lasting, depending on the character of the person allied and on your effectiveness in dealing with him or her.

Besides making friends with persons in power, it may be desirable or necessary to make friends with persons who have access to power, or to the information, documents and resources held by local, national or international elites. These persons may be low-level government functionaries or simply executive assistants.

### **Some guiding principles in alliance work:**

1. Enter into an alliance with other citizens or with elites on the basis of your own power – i.e., the strength of your organization. Strength is not always based on numbers, although this, too, is important. Strength also derives from the commitment you have already shown to struggling for the cause of indigenous peoples or for any just cause, the clarity of your vision or the logic of your political theory, the integrity of your practice, the consistency of your performance. In this strength lies your power to persuade and forge unity.

2. Take into consideration the traits of indigenous relations in your efforts to achieve cooperation and build solidarity. Consider, for example, that:

- Indigenous kinship networks are far-reaching; likewise are the obligations attached to kinship.
- Even oral pacts or agreements – as long as they have been sanctified or notarized by ritual – are strong and binding.
- The opinions of elders are respected.
- Etc.

3. In entering into an alliance, you should make no compromise as far as basic principles and the interest of indigenous peoples are concerned. You should be prepared to make a few concessions – such as agreeing to lobby a local government body with a small delegation instead of a mass demonstration. But your concessions should never run counter to what you stand for.

4. Go with understanding and patience. You might sometimes find others exasperating – such as when they fail to see your point in a discussion. Try to understand their views and situation. Discuss things with them patiently until you reach an agreement.

## **III. OUTLINING A CAMPAIGN PLAN**

### **A. Define clearly:**

1. What the issue is,
2. Who are affected by it,
3. How and why they are affected by it and
4. What your stand is.

### **B. Also define clearly:**

1. What you would like to achieve – i.e. your objective – in campaigning on the issue;
2. What your advocacy calls will be;

3. Who you will address your calls to – government? if so, which branch/es or agencies or units and officials of government? a corporation? the public? the affected communities? all of the above? (If you will address your calls to multiple audiences, define which call you will be addressing to which audience.)

**C. Lay down what steps you need to take in order to achieve your objective – including, but not limited to the following:**

- preparation of information and education materials for affected communities;
- information-dissemination, education and consensus-building among these communities;
- together with the affected communities, formulation and signing of a statement of position or position paper, or a petition or resolution on the issue;
- submission of the statement or paper, petition or resolution to the office of the government branch, agency or unit and/or the corporation it addresses, and distribution of the same to the mass media;
- an accompanying delegation of community leaders to the said office plus, perhaps, a press conference;
- follow up activities, including an audience with government or the corporation addressed by the initial statement or petition, public forums, speaking on the radio or television, mass actions, etc.;
- alliance work with appropriate government officials and public figures so that the public figures will help you gain support for your position on the issue, and the government officials will help you get favorable action on your petition;
- alliance-building among the various affected communities and with various organizations;
- more follow-up activities until you achieve your objective.

**D. Try to schedule or at least set phases. Be sure to provide for points in time during which you can sit down to assess the progress of the campaign and work out adjustments or follow-up activities.**

**E. Lay out your machinery for the campaign. Be sure to specify individuals and groups who will be taking on tasks in:**

- the production of information and education materials;
- information-dissemination, education and consensus-building among communities and the public at large;
- mobilization;
- alliance work with elites and others who have access to power;
- alliance-building among communities and organizations;
- secretariat functions, campaign coordination and administration.

**F. Work out your budget and a sourcing plan, including the allocation of existing resources, the pooling of additional resources from members of your organization and from supporters, further resource-generation.**





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