

First International Decade of the World's Indigenous People in Asia, 1995-2004

Assessment Synthesis Report



About the Organisations

International Centre for Integrated Mountain Development

The International Centre for Integrated Mountain Development (ICIMOD) is an independent regional knowledge, learning and enabling centre serving the eight regional member countries of the Hindu Kush-Himalayas – Afghanistan 🇦🇫, Bangladesh 🇬🇧, Bhutan 🇧🇹, China 🇨🇳, India 🇮🇳, Myanmar 🇲🇲, Nepal 🇳🇵, and Pakistan 🇵🇰 – and the global mountain community. Founded in 1983, ICIMOD is based in Kathmandu, Nepal, and brings together a partnership of regional member countries, partner institutions, and donors with a commitment for development action to secure a better future for the people and environment of the Hindu Kush-Himalayas. ICIMOD's activities are supported by its core programme donors: the Governments of Austria, Denmark, Germany, Netherlands, Norway, Switzerland, and its regional member countries, along with programme co-financing donors. The primary objective of the Centre is to promote the development of an economically and environmentally sound mountain ecosystem and to improve the living standards of mountain populations.

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Tebtebba, based in the Philippines, is an indigenous peoples' organization born out of the need for heightened advocacy to have the rights of indigenous peoples recognized, respected and protected worldwide. Established in 1996, Tebtebba seeks to promote a better understanding of the world's indigenous peoples, their worldviews, their issues and concerns. In this effort, it strives to bring indigenous peoples together to take the lead in policy advocacy and campaigns on all issues affecting them. Tebtebba has a special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. Tebtebba, a word used by the indigenous Kankana-ey Igorots of the Northern Philippines, refers to a process of collectively discussing issues and presenting diverse views with the aim of reaching agreements, common positions, and concerted actions.

International Fund for Agricultural Development

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Assessment Synthesis Report



International Centre for
Integrated Mountain Development
Kathmandu, Nepal



Indigenous Peoples'
International Centre for
Policy Research and Education
Baguio City, Philippines



International Fund for
Agricultural Development
Rome, Italy

International Centre for Integrated Mountain Development (ICIMOD)
Kathmandu, Nepal
November 2007

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Published by

International Centre for Integrated Mountain Development
G.P.O. Box 3226
Kathmandu, Nepal

ISBN 978 92 9115 069 4 (Printed)
978 92 9115 070 0 (Electronic)

Editorial team

Susan Sellars-Shrestha (Consultant Editor)
A. Beatrice Murray (Senior Editor)
Dharma R. Maharjan (Layout Design)

Cover photo: composite from photos by N.K. Rai, A. Wilkes, D. Sherpa, S. Drong, N. Foerst, M. Kollmair, M. Eriksson

Printed and bound in Nepal by

Hill Side Press (P) Ltd.
Kathmandu

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Foreword

Director General, ICIMOD

Two-thirds of the world's estimated 300 million indigenous people live in Asia, often in remote areas, especially the hills and mountains. Indigenous peoples commonly retain a strong cultural, social, spiritual, and economic attachment to their land, but this connection is rarely recognised or valued by the existing systems of administration and governance. Irrespective of their legal status in the different countries, many indigenous peoples experience a lack of recognition of their cultural identity. They suffer exclusion and marginalisation. Indigenous people form a considerable proportion of the mountain poor, and thus need special attention in national and international development efforts in view of reaching sustainable development for all. With their extensive traditional knowledge and unique cultures, they contribute to maintaining mountain diversity and thus the ability to adapt to environmental change.

The present publication is the outcome of an assessment of the impact of the First International Decade of the World's Indigenous People in selected countries of South and Southeast Asia. It was carried out with support from the International Fund for Agricultural Development (IFAD) and prepared in cooperation with the Tebtebba Foundation in the Philippines. The report presents a synthesis of the findings of individual assessments carried out in cooperation with partners in ten Asian countries – Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Nepal, the Philippines, Thailand, and Vietnam – and presents the recommendations to a wider audience. The assessment documents and analyses the extent to which the proclamations made at international level were translated into policy and programmatic changes at national and local level. The findings show that the main strength of the decade was at international level, where indigenous people's organisations and networks have been strengthened and institutionalised. The most recent success, the adoption of the 'UN Declaration on the Rights of Indigenous Peoples' on 13 September 2007, is a visible outcome of these activities. The main challenge now is to improve the situation of indigenous peoples at national and local levels, where the successes of the First Decade are less visible. The recommendations given at the end of the synthesis provide some good indications for the way forward.

I am confident that this document will help to promote indigenous peoples' issues in Asia and beyond, and will contribute to the success of the Second International Decade of the World's Indigenous People. It will certainly help ICIMOD and our partners to sharpen the focus of our efforts to enable and facilitate the equitable and sustainable well-being of the people of the Hindu Kush-Himalayas.

Andreas Schild
Director General, ICIMOD

Foreword

IFAD

In Asia and the Pacific Region, indigenous people are among the poorest, most vulnerable and marginalised. Besides being income poor, people suffer from food insecurity, poor health and sanitation, and low levels of education. They are also disproportionately exposed to uninsured risks – health epidemics, droughts, and climate change, among others.

Even if the Asia and the Pacific Region achieves the Millennium Development Goal of halving poverty by 2015, the bulk of remaining poverty will be concentrated among indigenous peoples and other marginalised groups living in less-favoured areas (uplands and mountains, marginal coastal areas, and drylands), with extremely difficult agro-ecological conditions. Socioeconomic and political marginalisation renders their traditional access to resources (land, forests) insecure. In addition, a number of recent studies have shown that not only do they have less access to assets but returns to the assets they have are also low.

IFAD's Strategic Framework (2007-2010) accords high priority to indigenous people's development because they are not only among the poorest, they are also custodians of the world's biodiversity and providers of environmental services. Enhancing the capabilities of indigenous peoples is a major strategic focus of IFAD in the region of Asia and the Pacific. IFAD-funded programmes in support of indigenous peoples focus on areas such as enhancing access to productive resources, enhancing livelihoods through sustainable natural resource management, and strengthening indigenous peoples' institutions. The evaluation of IFAD's regional strategy in 2006 recommended continuation of this focus and national stakeholders also strongly endorsed this priority in regional meetings in 2006.

We are happy to have collaborated with ICIMOD and the Tebtebba Foundation in undertaking this important study. The study highlights some important successes of the Decade including increased solidarity among indigenous peoples, and the development of some enabling laws and constitutional provisions to enhance their access to resources. However, it also brings out failures which include the lack of awareness about the Decade among policy makers, development practitioners and the public in general; serious implementation gaps in national laws and international conventions; and the lack of recognition of indigenous rights.

The Assessment Synthesis Report and the 10 country reports provide a wealth of information, insights, and lessons, which can help all of us in achieving greater success in the implementation of the Second Decade. It will definitely help IFAD in better designing its country strategies, projects, and programmes in support of indigenous people. It will also provide inputs for policy dialogue with governments and other stakeholders.

Ganesh Thapa
Regional Economist
Asia and Pacific Division
IFAD

Acknowledgements

Many people contributed to carrying out the assessment, preparing the country papers for the ten countries in South and Southeast Asia, and extracting the details for this synthesis report. On behalf of ICIMOD, I would like to thank them all. Some I would like to mention in particular.

First, our special thanks go to the Tebtebba Foundation in the Philippines, and in particular Victoria Tauli-Corpuz and Leah Abayao, for their uncomplicated collaboration and partnership in conducting the assessment. Tebtebba, an Indigenous Peoples' International Centre for Policy Research and Education, is widely renowned for its work on and with indigenous peoples in Southeast Asia.

Second, we are grateful to the International Fund for Agricultural Development (IFAD) whose financial support made the assessment possible. Ganesh Thapa, the Regional Economist, Asia and Pacific Division, contributed substantially to the success of the assessment and to the empowerment of indigenous peoples with his vision, ideas and encouragement.

My sincere thanks go to my colleague Radhika Gupta who coordinated the entire project on behalf of ICIMOD. She developed the framework for the country assessments, attended most of the consultations across South Asia, coordinated the submission of results, and started drafting this synthesis report before leaving ICIMOD for further studies in January 2007.

We especially thank all the colleagues who contributed directly or indirectly to compiling the report, first and foremost the country report writers who organised the data collection and consultations, including Abe Almirol, Bernabe Almirol, Clint Bangaan, Aida Priscilla Cadiogan, Mangal Kumar Chakma, Sanjeeb Drong, Leah Enkiwe, Walter Fernandes, Om Gurung, Joseph Marianus Kujjur, Ritu Dewan, Dawa Lhamo, Seng Narong, Luong Thu Oanh, Moul Phath, Françoise Pommaret, Albertus Hadi Pramono. Raja Devasish Roy, Sakda Saenmi, Sanjaya Serchan, Rukka Sombolinggi, Bernardinus Steni, and Andreas Wilkes.

We also recognise and appreciate the contribution of the participants of the culmination workshop in Kathmandu in November 2006, whose abundant knowledge on indigenous peoples' issues contributed substantially to the synthesis of the results of the country studies, particularly Navin K. Rai, Lead Social Development Specialist and Indigenous Peoples Coordinator for the World Bank, Ganesh Thapa from IFAD, Victoria Tauli-Corpuz, Chairperson of the United Nations Permanent Forum on Indigenous Issues, and Gabriel Campbell, then Director General of ICIMOD.

Finally, special thanks for additional inputs to the synthesis report goes to our ICIMOD colleagues Dhruvad Choudhury, Joy Dasgupta, Eva Gerharz, Tawheed Gul, Narpal S. Jodha, Elisabeth Kerkhoff, Krishna P Oli, Numa Rai, and Xitij Rai as well as to the editorial and production team Beatrice Murray, Susan Sellars-Shrestha, Dharma Ratna Maharjan, and Asha Kaji Thaku.

ICIMOD and its Culture, Equity, Gender and Governance (CEGG) programme is very fortunate to have had the opportunity to carry out this assignment and is committed to taking part in further work related to indigenous peoples.

Michael Kollmair
Programme Manager CEGG
ICIMOD

Acronyms and Abbreviations

ADB	Asian Development Bank
AITPN	Asian Indigenous and Tribal Peoples Network
CBD	Convention on Biological Diversity
CHARM	Cordillera Highland Agricultural Resource Management Programme
CHT	Chittagong Hill Tracts
CPRGS	Comprehensive Poverty Reduction and Growth Strategy
CSDM	Centre for Sustainable Development in Mountainous Areas
ECOSOC	Economic and Social Council
FPIC	free, prior, and informed consent
ICCPR	The International Covenant on Civil and Political Rights
ICERD	The International Convention on Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMPECT	Inter Mountain Peoples Education and Culture in Thailand Association
INDISCO	Interregional Programme to Support Self Reliance of Indigenous and Tribal Peoples through Cooperatives and Self-Help Organizations
IP	indigenous peoples
IPRA	Indigenous Peoples Rights Act
NCIP	National Commission on Indigenous Peoples (Philippines)
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	National Foundation for Development of Indigenous Nationalities
NFE	non-formal education
NGO	non-government organisation
OHCHR	Office of the High Commissioner for Human Rights
PESA	Panchayat Extension to Scheduled Areas Act
PRSP	Poverty Reduction Strategy Paper
Tebtebba	Indigenous Peoples' International Centre for Policy Research and Education
TSP	Tribal Sub-Plan
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WGIP	Working Group on Indigenous Populations
WTO	World Trade Organization

Currency Equivalent

\$1 = IRs 45.00 (aprox.) in 2004

Chapter 1: Introduction

The International Decade of the World's Indigenous People

Definition of indigenous people

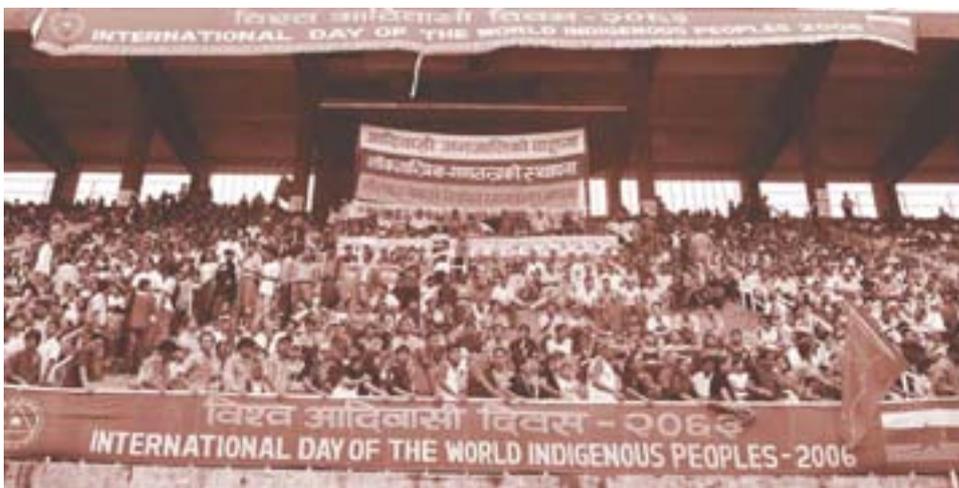
Although there is no single generally agreed upon definition of the term 'indigenous people', a widely used (e.g. World Bank, ADB, IFAD) pragmatic characterisation in the Asian development context is as follows:

'The term 'indigenous people' refers to social groups with a social and cultural identity that is distinct from the dominant groups in society and that makes them vulnerable to being disadvantaged in the development process (IFAD 2000). Indigenous peoples are known by different names in various Asian countries: 'hill tribes' in Thailand, 'ethnic minorities' in Vietnam, 'minority nationalities' in China, 'scheduled tribes' in India, and 'cultural communities' in the Philippines. The features that distinguish them from the mainstream populations include a strong emphasis on clan cultures and ethnicity bonds, a strong sense of identity, and a relatively higher status for women.'

Situation of indigenous peoples

Of the estimated 300 million indigenous people in the world, about 70 per cent live in Asia. Indigenous people continue to be among the poorest in society in almost every country, with higher levels of illiteracy, malnutrition, lack of access to health services, and landlessness. Many of these communities have remained marginal to mainstream political and economic systems and experience social discrimination, economic exploitation, and political marginalisation (IFAD 2000). The productive resources and lands of indigenous peoples are increasingly being exploited in the name of 'national interest' or conservation. The exploitation of minerals, water, and biodiversity, in particular, is taking place at an accelerated pace under the forces of globalisation. Although the importance of community participation in conservation and natural resource management is now well recognised, the general approach to conservation is still largely one of fencing and fining. Issues of tenure and

The term 'indigenous people' refers to social groups with a social and cultural identity that is distinct from the dominant groups in society and that makes them vulnerable to being disadvantaged in the development process (IFAD 2000).



O. Gurung

ownership of land (as opposed to access rights to forest products granted within specific domains) still remain unresolved. Economic and industrial policies tend to reign over social and culturally sensitive policies. As a result, indigenous peoples are becoming further impoverished.

Background to the Decade

The focus on indigenous peoples' issues at an international level can be traced back to the 1950s and 1960s. These two decades were significant in two ways. With the process of decolonisation, there was a renewed emphasis on peoples' right to self-determination, which at a larger level created a political climate in which new groups could begin to assert claims. In the West, the women's movement and the anti-racism movement gained momentum in the 1960s and, as Bleie writes, '...their defence of diversity, including the right of the oppressed to speak for themselves, paved the way for an incipient indigenous movement' (Bleie 2005). The First NGO Conference on Discrimination Against Indigenous Populations was held in 1977. The active engagement of indigenous peoples with the United Nations system began with the setting up of the 'Working Group on Indigenous Populations' (WGIP) in 1982. The annual meetings of this group began to create a legal language that would accord legitimacy to the rights and claims of indigenous peoples around the world. Crystallisation of an 'international indigenous identity' began to take place.¹ Indigenous peoples' issues were brought to the fore in diverse international forums and United Nations processes, such as the World Conference on Human Rights 1993, the World Summit on Social Development 1993, and the Beijing Conference on Women 1995.

In 1993, which was the International Year of Indigenous People, the United Nations World Conference on Human Rights (UNWHCR) in Vienna recommended that the UN declare a decade of indigenous people. This recommendation was implemented through the UN General Assembly Resolution 48/163 of 21 December 1993. The United Nations High Commissioner for Human Rights was appointed as the Coordinator of the Decade.

Declaration of the Decade

Over the last two decades, the issues facing the world's indigenous peoples have been given increasing attention with the recognition of the intrinsic link between their continued marginalisation and lack of rights, and persistent poverty. A diverse range of international initiatives have been introduced to address the problems faced by indigenous peoples. One of the most significant among these initiatives was the United Nations declaration of 1995-2004 as the First International Decade of the World's Indigenous People (hereafter referred to as the 'Decade') with the main objective of 'strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health'. The theme was 'Indigenous People: Partnership in Action'.

Objectives of the Decade

The main objectives of the Decade were

- i. adoption of the Draft Declaration on the Rights of Indigenous Peoples,
- ii. establishment of a permanent forum for indigenous peoples in the United Nations system.

¹ The phrase 'international indigenous identity' may seem to be an oxymoron. However, it holds meaning when placed in the context of the intense debates around defining the term 'indigenous'. The continued contesting of the term and the fact that many states still do not accord it official legitimacy is central to the political claims of indigenous peoples, which derive legitimacy by invoking an 'international indigenous identity.' Even if referred to in different ways by states/governments, the recognition of indigenous identity at an international level provides a legal and moral idiom for expressing demands for recognition and collective rights.

The United Nations declared 1995-2004 as the first International Decade of the World's Indigenous People with the main objective of strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education, and health.

Some other broad objectives of the Decade included

- i. further development of international standards and national legislation for the protection and promotion of the human rights of indigenous peoples,
- ii. furthering the implementation of the recommendations pertaining to indigenous peoples at all high-level conferences.

In 1995, the General Assembly adopted the 'Programme of Activities' for the Decade and identified a number of other specific objectives:

- i. The development of activities by specialised agencies of the UN system and other inter-governmental and national agencies that benefit indigenous peoples
- ii. The education of indigenous and non-indigenous societies concerning the cultures, languages, rights, and aspirations of indigenous peoples
- iii. The promotion and protection of the rights of indigenous peoples

Declaration of the Second Decade

In January 2005, the United Nations declared a Second International Decade of Indigenous People in recognition of the fact that many of the objectives of the first Decade were not adequately met. The present assessment is, therefore, placed at a critical juncture to reflect upon the successes and failures of the first Decade. It is hoped that the findings generate ideas for action and strategies to make the Second Decade more effective.

Assessment of the Decade

IFAD, ICIMOD and Tebtebba

To what extent did the declaration of the Decade improve the status of indigenous peoples in the world? What tangible, positive changes did the Decade help to bring about in the way that individual nation states address the issues and needs of indigenous peoples? What, in general, is the value of such declarations by international bodies like the United Nations?

Towards the end of the Decade, in 2005, IFAD, together with ICIMOD and the Tebtebba Foundation, started one of the few comprehensive assessments of the first International Decade of the World's Indigenous People to find an answer to some of these questions. The assessment covered ten countries in Asia, five ICIMOD regional member countries (Bangladesh, Bhutan, China, India, and Nepal), and five in Southeast Asia (Cambodia, Indonesia, Philippines, Thailand, and Vietnam) covered by the Tebtebba Foundation, the Philippines.

IFAD and ICIMOD's interest in the assessment emerged from the distinct overlap in their mandates to address rural poverty in an environmentally sustainable way. The geographical areas on which IFAD and ICIMOD focus are home to large numbers of

in 2005, IFAD, together with ICIMOD and the Tebtebba Foundation, started one of the few comprehensive assessments of the first International Decade of the World's Indigenous People



S. Dhong

indigenous peoples (Table 1). Approximately 100 million indigenous people live in the Hindu Kush-Himalayan region, ICIMOD's area of coverage.

Country	Indigenous Peoples' Population (approx.)	Number of Main Indigenous Communities
Bangladesh	1.2 million (50% in CHT)	45
Bhutan	672,425 (100% of population)	-
Cambodia	140, 397 (1.6% of total population)	17
China	106.4 million (48.7 million in South West China)	55
India	84.3 million	647
Indonesia	30-80 million	N/A
Nepal	8.74 million	59
Philippines	12-15 million	110
Thailand	1 million	9
Vietnam	14 million	54

Tebtebba, established in 1996, is an indigenous peoples' organisation, as well as a research, education, policy advocacy, and resource centre. It seeks to further the understanding of the world's indigenous peoples, their perspectives, issues, and concerns in order to ensure social and environmental justice and sustainability. By bringing together indigenous people at all levels, it seeks to promote sharp advocacy through policy and campaigns recognising, respecting, and protecting the rights and aspirations of indigenous peoples.

IFAD's strategic framework emphasises the need to build the resilience of the poor. It believes that a focus on indigenous peoples will contribute to the achievement of the Millennium Development Goals. The value of focusing on indigenous peoples is highlighted by the fact that one-third of IFAD's investment projects are in regions where there are indigenous peoples in large numbers. In addition, historically, 20 per cent of IFAD's total investment in Asia has been for the development of indigenous peoples.

Objectives of the assessment

The assessment sought not only to document and evaluate changes at the level of the United Nations, but also to analyse the extent to which such proclamations translate into policy and programmatic changes at national levels. The main objective of the assessment was to analyse the successes and failures of the Decade at the national level in individual countries.

The assessment was divided into three broad but inter-linked parts:

- i. Policy analysis – analysis of local, national, regional, and international policies and frameworks
- ii. Programme analysis – documentation of successes, failures, and lessons from projects
- iii. Situational analysis – to capture the broader contextual environment including the role and influence of civil society, the judiciary, research institutions, media, and public discourse

The intended broad outcomes of the assessment were

The main objective of the assessment was to analyse the successes and failures of the Decade at the national level in Bangladesh, Bhutan, China, India, Nepal, Cambodia, Indonesia, the Philippines, Thailand, and Vietnam.

- i. to assess the extent to which the Decade advanced the cause and rights of indigenous peoples through an analysis of the successes, failures, and lessons learned from the Decade; to identify outstanding issues; and to evolve innovative approaches, strategies, and options for the future;
- ii. to initiate a collaborative dialogue and consultation process with a diversity of stakeholders, to strengthen institutional capacities, and to share lessons and disseminate the findings in order to advance the rights of indigenous peoples;
- iii. to identify and facilitate policy and programme development and advocacy strategies that support the rights of indigenous peoples.

Methodology and partners

The assessment was undertaken in collaboration with in-country partners in all ten countries (Bangladesh, Bhutan, China, India, Nepal, Cambodia, Indonesia, the Philippines, Thailand, and Vietnam). Many of these partners were indigenous organisations or people themselves or are active in research on indigenous peoples' issues and in lobbying for their rights at local, national, and international levels.

The assessment was undertaken by the following partners.

In South Asia:

- Bangladesh – Bangladesh Adivasi Forum
- Bhutan – Institute for Language and Culture Studies
- China – Centre for Biodiversity and Indigenous Knowledge
- India – Indian Social Institute and North-eastern Social Research Centre
- Nepal – Nepal Federation of Indigenous Nationalities

In Southeast Asia:

- Cambodia – Moul Phath
- Indonesia – Albertus Hadi Pramono (Independent)
- Philippines – Tebtebba Foundation
- Thailand – Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT)
- Vietnam Centre for Sustainable Development in Mountainous Areas (CSDM)

A combination of primary and secondary research was used for the collection of data and information.

Primary research consisted of a series of consultations at the local and national levels with indigenous people, indigenous peoples' organisations, researchers, universities, NGOs, and donor agencies. Where possible, discussions were also held with government representatives.² The consultations were in the form of workshops or individual interviews and discussions. Secondary research consisted of a literature review of documents and reports from the UN, other



N. K. Rai

² In most countries, direct discussion with government agencies and representatives was not possible because of the sensitive nature of the topic (in most countries 'indigenous peoples' are still not recognised as such) or because government officials were not aware that 1995-2004 had been declared the International Decade of the World's Indigenous People.

The assessment was undertaken in collaboration with in-country partners, many of whom are indigenous organisations or people themselves or are active in research on indigenous peoples' issues and in lobbying for their rights at local, national, and international levels.

international agencies, the government (especially policies), NGOs, and the media, and academic writing. Much of the data was collected through a secondary review of material and validated through discussions and interviews.

Both national consultations and local consultations were conducted in all ten countries. Organised by researchers, the national consultations proved to be very useful in generating feedback, comments, and suggestions from key people from various institutions and organisations, including indigenous peoples' organisations.

A culmination conference was held in November 2006 in Kathmandu, Nepal, in which all the country researchers presented their findings of the assessment and deliberated on a set of common recommendations that could be put forth as an outcome of the assessment. The present synthesis report captures only some features of the country reports for the sake of brevity. For more detailed information and analysis, the individual country reports should be referred to. (The ten country reports, and budget analyses for India and the Philippines, will be published by Tebtebba.)

Scope of assessment and country reports

To refine the scope of the assessment, a greater focus was placed on regions with large populations of indigenous peoples. Accordingly, for India, a separate report was produced for Northeast India. In the case of Bangladesh, a substantial part of the research was devoted to issues in the Chittagong Hill Tracts (CHT), and in China, to the four provinces of Southwest China.

Bhutan, in many ways, is unique and most of the findings for other countries cannot be generalised or said to apply to Bhutan. At the same time, the Bhutan report provided a detailed description of the ethno-linguistic mosaic of the country. Bhutan is also a signatory to various conventions, like the Convention on Biological Diversity (CBD), which are integral to the discourse on the rights of indigenous peoples.

Each of the country reports, while following a broad common methodology and having similar areas of focus, represents a wide diversity in style and level of critique of policies and programmes. Furthermore, the reports are also naturally conditioned by the ideological leanings of the individual researchers, as well as the political context of the country that they were researching.

Outline of assessment report

This publication is organised into an introduction (Chapter 1), three main chapters that form the body of the report (Chapters 2-4), followed by recommendations and conclusions (Chapter 5). Chapter 2 provides a summary of the impact of the Decade at the international level, focusing primarily on the activities of the UN system. Chapter 3 presents the overall impact at the national level under broad thematic areas. Chapter 4 focuses on policy issues and changes at the policy level, with a substantial part of the chapter devoted to policy changes in each country. This is followed by a documentation and analysis of selected programmes and projects for the empowerment of indigenous peoples implemented during the course of the Decade. Chapter 5 presents a synthesis of the findings of the assessment and recommendations.

Chapter 2: Impact at the International Level

When analysing the successes and failures of the Decade, it is important to distinguish between changes at the international level, particularly at the level of the UN system, and those at national level. The impact of the Decade has been far more marked at the international level. Furthermore, the extent to which the Decade is perceived to be successful varies depending on whom the question is directed to. Even at the national level, it is important to not extrapolate the successes of the Decade as perceived by indigenous people who have had a chance to participate in deliberations at the international level, to people at the grassroots. The real effectiveness of the Decade can only be judged against the positive changes on the ground, in this case, for the common indigenous person.

Organisational Impact

The few assessments of the Decade that have been undertaken, including those by the UN system, have largely focused on the changes within the UN system. These findings are summarised in the following in relation to changes at the organisational level (OHCHR 2003).

Two of the major objectives of the Decade at the level of the UN system were the adoption of the Draft Declaration on the Rights of Indigenous Peoples and the creation of a permanent forum; these are discussed first.



N. K. Rai

Two of the major objectives of the Decade at the level of the UN system were the adoption of the Draft Declaration on the Rights of Indigenous Peoples and the creation of the United Nations Permanent Forum on Indigenous Issues.

United Nations Permanent Forum on Indigenous Issues

The Decade was successful in creating the United Nations Permanent Forum on Indigenous Issues (UNPFII) in 2000 as a subsidiary body of the Economic and Social Council (ECOSOC). The Permanent Forum has a broad mandate covering culture, education, economic and social development, environment, health, and human rights. The Permanent Forum is the first formal space created for indigenous peoples to interact within the UN system and make their needs and concerns known. Various UN agencies and member states attend the sessions of the Permanent Forum, which meets annually, to talk about what they have done and are doing for, and with, indigenous peoples. The Permanent Forum is composed of eight 'indigenous experts' and eight experts selected by ECOSOC. The distribution of the government seats is based on the five United Nations regional groups, with three additional seats rotating among the regions. All indigenous people who attend the Forum make statements to this group of sixteen and, through them, to the world.

The main mandate of the Permanent Forum is to provide expert advice and recommendations on indigenous issues to the United Nations ECOSOC, as well as to programmes, funds, and agencies of the United Nations, and to promote the integration and coordination of activities related to indigenous issues within the UN system (McGuffie 2002).

While the Permanent Forum is seen to be a significant achievement of the Decade, some indigenous activists have contended that the creation of a Forum on Indigenous 'issues' rather than 'peoples' was a compromise born of the continued refusal of states to extend unqualified rights of self-determination to indigenous peoples.

Draft Declaration on the Rights of Indigenous Peoples

One of the tasks that the Working Group on Indigenous Populations (WGIP) had been engaged in since its creation is the drafting of a 'Declaration on the Rights of Indigenous Peoples'. In 1993, the WGIP adopted the text of the Declaration and sent it to its superior body, the Sub-Commission on the Promotion and Protection of Human Rights, which in turn adopted the text in 1994 and sent it to the Commission on Human Rights for consideration. In 1995, the Commission on Human Rights established an Inter-Sessional Working Group with the mandate to consider the text and draw up a draft declaration for consideration and adoption by the UN General Assembly, within the framework of the International Decade of the World's Indigenous People (1995-2004). The adoption of the Declaration by the General Assembly was one of the foremost objectives of the Decade, which saw an intense process of negotiation and lobbying between indigenous peoples' activists and governments from different parts of the world.

The fact that the Draft Declaration was not adopted was seen by indigenous peoples across the world as one of the biggest failures of the Decade. Under discussion for a decade by an Inter-Sessional Working Group that meets annually in Geneva, progress on the adoption of the Draft Declaration was stalled on the issue of states refusing to recognise the collective rights of indigenous peoples, including their ownership of land and resources. In the course of the Decade, only two of the forty-five articles of the Draft Declaration were adopted. Indigenous peoples contend that this is evidence of the long-standing problem of lack of political will on the part of a number of states.

Some of the key issues considered essential by indigenous peoples, but viewed as 'impediments' to the progress of the Draft Declaration, included affirmation of the collective rights of indigenous peoples, the use of the term 'indigenous

Despite the fact that the Draft Declaration on the Rights of Indigenous Peoples was not adopted during the decade, the human rights standards included in the Declaration have assumed a normative value that has influenced organisations and forums at the international level.

peoples’, affirmation of the rights of indigenous peoples to self-determination under international law, and affirmation of indigenous rights to lands, territories, and resources.³

Despite the fact that the Draft Declaration was not adopted in the course of the Decade, indigenous activists have stated that the human rights standards elaborated over many years and included in the Declaration have assumed a normative value that has influenced organisations and forums at the international level. Although the Draft Declaration was not adopted, the framework of the Draft Declaration remains and is used by international organisations in indigenous peoples’ issues. Further, many have felt that the ongoing dialogue around the Draft Declaration has led to a renewed dialogue with some states.

UN Special Rapporteur

Another significant accomplishment of the Decade was the creation of the post of the UN Special Rapporteur on the ‘Situation of Human Rights and Fundamental Freedoms of Indigenous People’ in 2001. The role of Mr Rodolfo Stavenhagen, who was appointed to this position, has been to:

‘...gather, request, receive and exchange information and communications from all relevant sources, including governments, indigenous people themselves, and their community and organisations, on violations of their human rights and fundamental freedoms; to formulate recommendations and proposals on the appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people and to work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Promotion and Protection of Human Rights.’ (OHCHR 2007)

It may be worth noting that among the countries covered by this assessment, the only one visited by this Special Rapporteur was the Philippines. Furthermore, it was an NGO (Tebtebba), not a state agency, that led and organised this event and was very much responsible for its conduct. A publication on what transpired during the Special Rapporteur’s visit is also available. Dr Stavenhagen’s report on his Mission to the Philippines was presented to the 59th Session of the Commission on Human Rights (for details see Cadiogan 2006).

In the course of the Decade, the Rapporteur presented three annual thematic reports:

- i. Impact of large scale development projects on human rights and fundamental freedoms of indigenous peoples and communities
- ii. The question of access to the administration of justice by indigenous peoples and indigenous customary law



N. K. Rai

A significant accomplishment of the Decade was the creation of the post of the UN Special Rapporteur on the ‘Situation of Human Rights and Fundamental Freedoms of Indigenous People’ in 2001.

³ In June 2006, the new United Nations Human Rights Council (HRC) approved the Draft Declaration. The only two countries voting against the Declaration were Russia and Canada. Although the approved Declaration contained some compromise text relating to those provisions upon which consensus had not been reached, this was seen as a major step forward by indigenous peoples. The Declaration failed to obtain sufficient votes at the General Assembly in November 2006, however, it was finally adopted on September 13, 2007 – with 4 countries voting against and 11 abstaining.

- iii. The hindrances and inequalities that indigenous peoples face in relation to the access to and the quality of education systems

These issues resonate in the problems faced by indigenous peoples in all the countries assessed, as will be seen in the next chapter.

Some of the other activities carried out by the UN system specifically for the Decade were

- creation of a Voluntary Fund for Indigenous Populations, and
- creation of an Indigenous Fellowship Programme.

Voluntary Fund for Indigenous Populations

A United Nations Voluntary Fund (VF) was set up in 1995 to accept and administer voluntary contributions from governments, inter-government and non-government organisations, and other private institutions and individuals to fund projects and programmes during the Decade and to support the activities of the Coordinator of the Decade. The Fund provided small amounts of money directly to indigenous peoples' organisations to implement human rights projects at the community level in addition to promoting human rights awareness. The Fund is administered by the Secretary General and the Coordinator of the Decade.

According to the Secretary General, in his report of 25 June 2004 on the preliminary review by the Coordinator of the Decade on the activities of the UN system in relation to the Decade, the Voluntary Fund supported 176 projects proposed, evaluated, and implemented by indigenous organisations in several countries including Bangladesh, India, Nepal, and the Philippines. The size of grants was generally between US\$ 5,000 and US\$ 10,000. The projects have included human rights training sessions, support for publications, and activities aimed at strengthening indigenous peoples' organisations.

At its Ninth Session in April 2004, the Advisory Group of the United Nations Voluntary Fund for the International Decade of the World's Indigenous Peoples recommended that a technical seminar be held to evaluate the contribution and impact of the United Nations Voluntary Fund for Indigenous Populations and the Voluntary Fund for the Decade in achieving the goals of the Decade. A seminar was held in July 2004. According to the past beneficiaries of these funds participating in the seminar, 'the voluntary funds were considered to be an expression of partnership with indigenous people by involving them in the decision-making processes of the United Nations through the Board of Trustees and the Advisory Group, respectively' (OHCHR 2004b). Furthermore, according to the recommendations of the Advisory Group, knowledge of the existence of the Fund and the possibility of applying to it directly (without any intermediaries, government or non-government) has spread among indigenous communities (OHCHR 2003). However, the success of the Fund must be qualified in light of the finding of this assessment that the awareness of the Decade itself was extremely limited, a point elaborated upon in the next chapter.

Indigenous Fellowship Programme

Established in 1997, the aim of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in the Indigenous Fellowship Programme is to give indigenous women and men the opportunity to gain knowledge in the field of international human rights in general, and about indigenous rights in particular, in order to assist their organisations and communities to protect and promote the human rights of their people. More than 75 indigenous fellows from 37 countries have been accepted by the programme. Most are active in their communities and

A United Nations Voluntary Fund (VF) was set up in 1995 to accept and administer voluntary contributions from government and non-government organisations, and private institutions and individuals to fund projects and programmes during the Decade.

in the United Nations system in promoting the rights of their peoples.

An independent evaluation of the Indigenous Fellowship Programme by the OHCHR in August 2004, as part of the Office's overall assessment of the Decade, concluded that 'the Indigenous Fellowship Programme was greatly appreciated by indigenous



M. Kollmair

peoples and organisations'. The Fellowship generated a new indigenous leadership with a sound knowledge of, and background in, human rights and international processes. Although 'the evaluation provided information on cases where fellows had, on their return to their community and organisation, developed activities with the local authorities or other state or public entity to promote institutional changes', interviews with some indigenous activists as part of this assessment found that most had felt constrained by the lack of funds in adequately imparting their knowledge and training to other indigenous individuals and organisations, and in creating awareness about the Decade generally. This is corroborated by the report of the OHCHR itself. In soliciting suggestions from recipients of the Fellowship in the course of the evaluation, the report states that, 'the suggestions focused on ways in which the Office could support activities that the fellows might wish to undertake on their return to their communities as well as initiatives that might be taken by the fellows to strengthen communications both within the United Nations and among each other' (OHCHR 2005). This could be an important point to follow up in the second Decade.

Inter-Agency Support Group on Indigenous Issues

Established in January 2002 at the instigation of the High Commissioner for Human Rights, the Inter-Agency Support Group (IASG) on Indigenous Issues meets twice a year to promote cooperation among UN agencies on indigenous peoples and provide support to the Permanent Forum. However, despite the existence of this group, little evidence of this cooperation can be found at the ground level in different countries.

Activities

International Day of the World's Indigenous People

August 9th was declared the International Day of the World's Indigenous People, a date which marks the first meeting in 1982 of the WGIP. The formal observance of 9 August is well-attended in both Geneva and New York. In New York, the focus has been mainly on providing a forum for United Nations organisations to meet with indigenous representatives to exchange information on activities. In Geneva, indigenous peoples celebrate their own cultures through a morning event of dance, song, story, and music that now attracts good press coverage. The event coincides with the annual sessions of the WGIP.

This day has also been celebrated with enthusiasm in many of the countries covered by this assessment, becoming an important symbolic marker of the struggle and identity of indigenous peoples. The present assessment found that 9 August has been central in creating awareness about the Decade in many places where it has been celebrated.

The International Day of the World's Indigenous People (August 9th) is celebrated with enthusiasm and is an important symbolic marker of the struggle and identity of indigenous peoples.



L.T. Oanh

Studies and other initiatives of the Sub-Commission on the Promotion and Protection of Human Rights

In the course of the Decade, experts of the Sub-Commission on the Promotion and Protection of Human Rights undertook several studies on indigenous peoples' issues including:

- 'Indigenous people and their relationship to land' and 'Indigenous peoples permanent sovereignty over natural resources', both prepared by Erica-Irene Daes (2001);
- 'Treaties, agreements and other constructive arrangements between states and indigenous populations', prepared by Miguel Alfonso Martinez (1999); and
- 'Draft principles and guidelines on the heritage of indigenous people', prepared by Erica-Irene Daes drawing on her study on the subject submitted to the Sub-Commission in 1993 (Daes 1994).

The report of the ten-year study by Miguel Alfonso Martinez on 'Treaties, agreements and other constructive arrangements between states and indigenous populations', which came out in 1999, has been particularly criticised in the Asian context on the grounds that its findings fail to acknowledge an indigenous presence in either Asia or Africa as the issue was declared too complex (AITPN 1999).

OHCHR Questionnaire to evaluate the Decade

In 2004, the Office of the High Commission for Human Rights developed a questionnaire to evaluate the Decade. The questionnaire (OHCHR 2004a), which received replies from 50 organisations, found that:

- 36 per cent noticed positive changes during the Decade in terms of better access to development projects, improved information on indigenous rights, the strengthening of local indigenous organisations, and an increase in indigenous participation in local authorities;
- 44 per cent felt that there had been no improvement at the community level; and
- a small percentage said that the situation had worsened.

In response to whether there had been any improvements at the national level:

- 52 per cent noted positive changes and referred to the recognition of indigenous identity and other indigenous rights, better indigenous representation in political institutions, the multiplication or strengthening of indigenous organisations, and the creation of national indigenous institutions; and

- 44 per cent felt that few or no changes had occurred at the national level and that indigenous people should be more involved in political decisions; some noted a regression in national policies.

At the international level:

- 68 per cent indicated that the Decade had brought positive changes including better access to diverse international activities, and the exchange of experience and contacts with other indigenous organisations and representatives, and
- 14 per cent stated that they did not know of the Voluntary Fund for the Decade and some complained that there was unequal access to international meetings.

Outcomes

How far did the UN system go?

Although important institutional developments took place at the level of the UN system during the Decade, indigenous peoples in many countries continue to be among the poorest and most marginalised, as acknowledged in the report of the Secretary General on the Preliminary Review of the Decade. This is confirmed by human welfare and poverty indicators. Although the political will of individual states is essential for the recognition of the rights and identity of indigenous peoples, many have contended that the UN system itself did not go far enough in implementing the objectives of the Decade.

In a review presented at the Asian Consultation on Vienna Plus 10 held in Bangkok in 2003, some of the reasons identified for the UN system being unable to accomplish the objectives that the General Assembly committed itself to include the following:

- The UN system was unable to organise itself sufficiently well internally to implement the objectives of the Decade. This is seen, for example, in the fact that, although the Decade was proclaimed in December 1993, the General Assembly only adopted a 'Programme of Activities' two years later, in December 1995. Further, a coordinator for the Decade was identified only in 1997.
- There was a lack of adequate financing. The Voluntary Fund for the Decade did not receive enough financial support. It is reported that the UN records indicate that from January 1995 to October 1999, only US \$1.1 million were received by the Voluntary Fund and that three countries provided 70 per cent of this contribution.
- There is a lack of cohesion within the UN system. Specific attention to indigenous peoples' issues is at different stages of evolution in different UN agencies. In most countries, there is little or no coordination between different UN agencies. Among these, IFAD, ILO, and, in some countries, UNDP and UNESCO have been more active than others in working on indigenous peoples' issues.

Few would deny that the Decade raised considerable awareness of indigenous peoples' issues within the UN system. However, as one indigenous activist put it, '... it is far from weaving those issues into the basic fabric of UN policy and international law on the whole' (Chakma and Yukna 2004).



M. Kollmair

Although important institutional developments took place at the UN system level during the Decade, many contend that the UN did not go far enough as indigenous peoples in many countries continue to be among the poorest and most marginalised.

Chapter 3: Impact at the National Level

Changes at both the policy and programmatic levels, as well as in the larger contextual environment of individual countries, can be discerned between 1995 and 2004 with respect to the rights of indigenous peoples in Asia. However, the declaration of the Decade per se exerted a minimal influence on these changes. Although there were some celebrations of the Decade, these were not a major factor in facilitating change. Instead it has been changes in political systems and regimes, the strength of indigenous peoples' movements, and the influence of international multilateral and bilateral agencies that have been pushing for policy reform, to which changes in the rights and livelihoods of indigenous peoples can be attributed.



D. Sherpa

General Awareness of the Decade

While general awareness of the Decade was low, a significant level of awareness was raised among certain groups (e.g., within the UN system and indigenous representatives and activists). Maximum awareness of the Decade was found among indigenous representatives and activists who had the opportunity to participate at the international level in various meetings or trainings organised by the UN. In places where these representatives went on to organise further programmes for awareness creation, training, and other forms of capacity building, some indigenous groups, many of which are politically active in negotiating with the state at the national level for the rights of indigenous peoples, were also aware of the Decade. Much of this awareness was concentrated in urban areas or areas where indigenous communities are found in large numbers. However, in general, awareness of the Decade did not permeate to the common indigenous person at the grassroots.

Although the Decade raised considerable awareness on indigenous peoples' issues within the UN system, there was little awareness of the Decade among staff of UN agencies who were not directly involved with indigenous programmes and projects. This reflects a larger problem of lack of cohesion within the UN system and, particularly, the limited influence of the UN over nation states on sensitive issues such as identity and citizenship. The UN agencies that were most aware of the Decade and proactive about indigenous peoples' issues were the United Nations Permanent Forum on Indigenous Issues (UNPFII) and International Fund for Agricultural Development (IFAD).

Over the years, awareness of indigenous peoples and some of the issues that they have been raising has increased considerably in civil society at large. However, direct awareness of the Decade in civil society was low. This was found to be true even among academics who work on social inclusion.

Workshops and meetings held to undertake the present assessment were often the first time that indigenous peoples and others learned of the Decade. This absence

In general, awareness of the Decade was surprisingly low among staff members of international agencies, government organisations, and indigenous people who were not working directly on indigenous peoples' issues.

of awareness was attributed by several indigenous activists who had participated at the international level to the lack of funds available for awareness raising. While funds are indeed a major constraint, it seems that indigenous activists involved in deliberations at the UN and international level get caught up in a meetings and conferences conveyor-belt, which becomes an occupation in itself. Ultimately, the issue of awareness of the Decade and responsibility for creating awareness brought up a larger question of who was the Decade really meant for? One indigenous activist who has been active at the international level contended that the Decade was meant primarily for negotiations within the UN and at the international level. He asked, 'what is the point in taking the Decade to the grassroots unless the Draft Declaration is adopted?' Perhaps this calls for a more conscious discussion of this question among indigenous activists.

Impact of the Decade

Strengthening solidarity among indigenous peoples

The most positive impact of the Decade is arguably the creation of heightened awareness of indigenous peoples' issues at the international level. The creation of formal spaces within the UN system, such as the Permanent Forum on Indigenous Issues, has enabled indigenous activists from different parts of the world to come together and has opened avenues for dialogue with national governments. This has not only engendered greater solidarity among indigenous peoples, but also given their voices and the issues raised a certain moral legitimacy, force, and urgency. In the words of an indigenous activist from India, 'we are now more confident in asserting our rights knowing that many other indigenous people around the world are facing similar problems'. The 'International Day of Indigenous People', 9 August, is celebrated by indigenous peoples' organisations with great gusto in most countries and has played an important role in spreading awareness about indigenous peoples issues. Even though most states do not afford official legitimacy to the use of the term 'indigenous peoples', increased international pressure, as well as national level advocacy, has resulted in indigenous peoples being acknowledged indirectly by representatives of the state. One example of this can be found in Bangladesh (see box).

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Prime Minister's Message on the International Day of the World's Indigenous People

Despite the Government of Bangladesh's denial of the existence of indigenous peoples and lack of participation in the UN Decade of the World's Indigenous People and the International Day of the World's Indigenous People, on the occasion of the Indigenous People's Day in 2000, the then Prime Minister of Bangladesh Ms Sheikh Hasina mentioned to the magazine 'Sanghati' that Bangladesh is home to 2 million indigenous people. Similarly, the present Prime Minister Begum Khaleda Zia, in a message to the same magazine on the same occasion in 2003, also acknowledged the significant contribution of indigenous people to the liberation war and to the country's welfare.

(Drong et al. 2006)

An indicator of this increased solidarity is the presence of several indigenous peoples' networks operating at different levels, many of which were born in the course of the Decade. These active networks include:

- Asia Indigenous Women's Network (AIWN) – Asia wide
- Asian Indigenous and Tribal Peoples Network (AITPN) – Asia wide
- Asian Indigenous Peoples Pact (AIPP) – Asia wide
- Assembly of Indigenous and Tribal Peoples (AITT) – Thailand

- Bangladesh Adivasi Forum (BAF) – Bangladesh
- Centre for Organisation Research and Education (CORE) – Active in Northeast India
- Chin Human Rights Organization – India, Bangladesh, and Burma
- Cordillera Peoples Alliance – Philippines
- Highlanders Association – Cambodia
- Indian Confederation of Indigenous and Tribal People (ICITP) – India
- Indigenous Knowledge and Peoples (IKAP) (for mainland montane Southeast Asia [MMSEA] – China, Burma, Cambodia, Laos, Vietnam, and Thailand)
- Indigenous Peoples Alliance of the Archipelago (AMAN) – Indonesia
- Indigenous Peoples Forum – Cambodia
- International Alliance of Indigenous and Tribal People of Tropical Forests (AITPTF) – worldwide
- Khmers Kampuchea-Krom Federation (KKF) – southern Vietnam
- Nepal Federation of Indigenous Nationalities (NEFIN) – Nepal
- Regional Initiative on Indigenous Peoples’ Rights and Development (RIPP) of UNDP – Asia and the Pacific
- Regional Network for Indigenous Peoples in Southeast Asia (RNIP) – Thailand, Malaysia, Indonesia, Philippines, and Vietnam
- Indigenous Peoples’ International Centre for Policy Research and Education (Tebtebba Foundation) – Philippines
- Thirteen Tribes Forum⁴ and Thai National Assembly of Tribal People⁵ – Thailand
- Tribal Women’s Network – Thailand

An indicator of this increased solidarity is the presence of several indigenous peoples’ networks operating at different levels, many of which were born in the course of the Decade.

The creation of networks has played an important role in advocacy at the national, regional, and international levels. Some of these networks have consultative status with the Economic and Social Council, which allows them to formally present stands on various issues. Some networks are contributing to a body of research on indigenous peoples’ issues in order to make them more widely available to the proceedings and reports of the UN system. The work of the Tebtebba Foundation is particularly notable in this regard. Tebtebba’s role is notable not only within the



A. Wilkes

⁴ A learning network among leaders of the 13 tribes in Thailand: Karen, Khamu, Sakai, Palaung, Htin, Shan, Hmong, Mien, M’lawbri, Lahu, Lisu, Lu’a, and Akha

⁵ The main goal of this Thai National Assembly of Tribal People was to create a people’s movement to jointly solve the problems related to two issues: natural resource management and the personal legal status of Thai mountain people.

Many indigenous peoples' networks were born in the course of the Decade and have played an important role in advocacy at the national, regional, and international levels.

UN; Tebtebba is also leading the Philippines in policy advocacy in relation to issues such as free, prior, and informed consent (FPIC) and education. Key achievements have also been attained elsewhere by other networks such as the Indigenous Peoples Alliance of the Archipelago (AMAN) of Indonesia and the Assembly of Indigenous and Tribal Peoples (AITT) of Thailand in 1999. AMAN was a prime-mover on indigenous peoples' policy advocacy and programme development. In addition, regional networks established earlier such as the Asian Indigenous Peoples' Pact (AIPP) and Asian Indigenous Women's Network (AIWN) have carried out significant activities such as the Second Asian Indigenous Women's Conference, held from 4-8 May 2004. Other activities carried out by various indigenous peoples' organisations, indigenous peoples' advocacy organisations, and NGOs range from education, training, awareness-raising, policy advocacy, research and publications, socioeconomic livelihood work, and campaigning. However, most of these networks are only able to influence national development and political agendas to a limited extent.

While networks have played an extremely important role, their solidarity with each other should not be romanticised, a point clearly seen during this assessment. Evidence was found of tensions and rivalry between networks, often reflecting deep intra- and inter-indigenous disputes touching upon issues of inclusion and exclusion among them. This also reflects the issue of what could be termed 'elite capture of indigenous peoples' voices' and the rotation of power among network members. Interviews with some respondents in India, indicated that the definition of indigenous peoples contributed to this rivalry in the Northeast. This is because in Northeast India, the situation is far more complicated than tribal/indigenous versus non-tribal/non-indigenous, with layered migration and political connotations attached to the term 'indigenous', and many people claiming to be indigenous. As a result, there is the possibility of groups of non-tribal people or powerful tribal groups dominating less powerful non-tribal or tribal groups. However, it must be noted that destructive disunities occur not only between indigenous peoples, but also in other movements. It is a priority for indigenous peoples to work towards overcoming this disunity as soon as possible.

Attitudes towards indigenous peoples in 'mainstream' civil society

Much has been written about the negative and pejorative attitudes towards indigenous peoples and the origin of these attitudes in colonial times. Anthropological literature on India, suggests that the concept of 'tribals' arose out of a colonial construct under which all those living on the margins of mainstream agrarian society, within the structure of the Hindu caste system, were delineated as 'primitive' and tribal. This discourse underlined the civilising mission of the colonisers and justified their appropriation of indigenous peoples' territories. However, discriminatory attitudes were prevalent in many pre-colonised and non-colonised societies to justify cultural superiority and economic exploitation.



Traits of being ‘barbaric’ and ‘uncivilised’ attributed to indigenous people spilled over into the post-Colonial era, explaining why the term ‘tribal’ is rejected by many indigenous people (for example, by the Jumma people of Bangladesh). The term tribal itself means ‘primitive’ as is stated in leading dictionaries. That is why the term is rejected and insulting. This continuing attitude was reflected in the policy arena by states pursuing policies of ‘assimilation’ towards indigenous peoples; seeking to bring them into the national ‘mainstream’ and neglecting to respect their cultural distinctiveness. This has changed in later years to a more ‘integrationist’ approach, at least in theory, if not in practice.

Discriminatory attitudes towards indigenous peoples in mainstream society are still widespread. The present assessment found this to be the case even among the staff of development agencies that work in implementation on the ground level, who blame what they deem to be ‘traditional’ and ‘backward’ attitudes of indigenous peoples for the lack of progress and change in the areas that indigenous people inhabit. Attitudes that over-romanticise indigenous peoples are equally discriminatory, these are also common among development agencies. This perhaps points to a need for an awareness programme to destroy myths among staff of development agencies at different levels. In many areas there continues to be a high rate of illiteracy among indigenous people, which in turn creates a lack of confidence among them to counter these stereotypes.

Nevertheless, evidence can also be found of changing attitudes among secular, liberal individuals and organisations in mainstream society. In Bangladesh, for example, a number of networks involving both indigenous and non-indigenous people have grown, such as the ‘Bangladesh Adivasi Odhikar Andolan’, which is working to support and create national opinion on indigenous peoples’ causes.

While discriminatory attitudes towards indigenous peoples in mainstream society are still widespread, there is evidence of changing attitudes among secular, liberal individuals and organisations in mainstream society.

Role of the Media

The role played by the media in covering the struggle and issues of indigenous peoples over the course of the Decade presents a mixed picture. While media coverage of indigenous peoples’ issues has increased compared to earlier times, still not enough space is allocated. This can be attributed to a number of structural factors.

Firstly, the coverage of social issues is receiving less and less space in a media increasingly driven by commercial and corporate concerns. As a result, the coverage of issues such as development-induced displacement or the struggle for forest rights, which have a direct impact on indigenous peoples’ lives, is greater in what are popularly understood as ‘left-leaning’ papers or alternative media, which tend to cater to a specific readership.

Secondly, when it comes to political coverage, it is only when a ‘critical event’ occurs or during time of political change when space opens for indigenous activists to assert their rights that they come into the spotlight. A current example of this can be found in Nepal, which is undergoing a political transformation from a monarchy to a federal republic. Indigenous peoples are using this time of change to press for adequate political representation in the new system, which is amply covered in the media.

A third structural reason for poor media coverage of indigenous peoples’ issues is that the media has traditionally been overwhelmingly dominated by non-indigenous people, who, in the past, have not necessarily been sensitive to indigenous peoples’ issues. This in turn links to the point made earlier about high rates of illiteracy among indigenous peoples, as well as the domination of the national media by

Indigenous People in the Media – Nepal

A survey conducted in 2000 among 104 mainstream publications in Kathmandu and 20 other cities in Nepal found that indigenous people constituted only 14 per cent of the editorial staff, 22 per cent of the managerial staff, and 12 per cent of columnists. These are low percentages considering that indigenous people account for approximately 35 per cent of Nepal's population.

(Gurung and Serchan 2006)

During the Decade, many indigenous peoples' organisations started magazines in their own languages and there were great advances in radio broadcasting.

mainstream languages, both of which are barriers to the entry of indigenous people into the media.

However, there were some positive changes during the Decade. Many indigenous peoples' organisations have started their own magazines in their own languages. The greatest advances can perhaps be seen in the medium of radio broadcasting. For example, in Nepal, the state run channel Radio Nepal has started broadcasting news in the languages of several indigenous communities such as Gurung, Magar, Newar, Tamang, Sherpa, Limbu, Maithili, and Bhojpuri, and an Association of Nepal Indigenous Journalists has also been established. Community radio is emerging as an increasingly popular and effective way of reaching far-flung communities and facilitating the active participation and initiative of indigenous peoples. Positive changes can also be observed in Vietnam, where radio and television programmes are now available in 14 ethnic languages. The Government of Vietnam has also decided to provide, free of charge, 17 newspapers and magazines in various languages for the most remote hamlets, villages, and communes.

Specific coverage of the Decade in the media was poor and was largely limited to regional and local media and events such as the celebration of 9 August. However, there are some examples of indigenous peoples' issues receiving media coverage not directly connected to the Decade. There has been media coverage of issues (including indigenous issues) surrounding the Convention on Biological Diversity (CBD), and there has also been coverage of major policy-level changes such as the Scheduled Tribes: Recognition of Forest Rights Bill in India and the Indigenous Peoples Rights Act (IPRA) in the Philippines. There has also been increasing media coverage of the often violent struggles over land between states and indigenous peoples when national parks are created or when large dams displace millions of people. However, the extent of coverage accorded to these issues still has a long way to go to be satisfactory. An important area of capacity-building support identified by indigenous people is the need, on the one hand, to sensitise journalists to indigenous peoples' issues and, on the other, to train indigenous people themselves in techniques of influencing the media. Even though the media is key in general awareness raising, there is no mention of the way indigeneity/ethnicity is treated in the media, in other words how indigenous peoples are depicted, and whether ethnicity is mentioned as a factor in normal news, leading to the perpetuation of stereotypes.

Role of the Judiciary

The role of the judiciary in upholding the rights of indigenous peoples has been increasingly realised over the past decade with the rise in public interest litigation (PIL). Public interest litigation has been used to redress violations of environmental rights. However, the extent to which the judiciary has upheld the rights of indigenous people has been affected by the structural factor of its independence from the executive arm of the government and also by the frequent mitigation of often positive judgements by the economic imperatives of the state. In Bangladesh, for

example, the judiciary still needs to be separated from the executive. The role of the judiciary also needs to be highlighted in the context of the discussion of the legitimacy of customary laws versus state laws, an area that remains contested and, indeed, strikes at the heart of the issue of the recognition of the collective rights of indigenous peoples. The issue of taking special measures or providing privileges for indigenous peoples (giving them other rights than mainstream society) goes beyond just customary law, and is a key issue in the indigenous peoples debate.

There are also quite a few examples of the positive role played by the judiciary. In the Chittagong Hill Tracts (CHT) in Bangladesh, a high level court upheld customary law in a dispute over the succession of the chieftainship of the Bohmong circle. In accordance with the customary laws of the Bohmong circle, the court ruled against the government's recognition of one family member as the chief. This decision has been regarded as a positive precedent in protecting customary law and upholding the rights of the indigenous peoples in the CHT. A crucial question, however, is whether or not the Bangladesh courts will be as sympathetic towards customary resource rights as they have been in the case of customary personal laws. The positive role that the judiciary can play in the CHT is still constrained by the fact that civil and criminal judicial authority, now vested in civil servants, has still not been transferred to the judicial officers of the Ministry of Law and Justice, despite the passing of the CHT Regulation (Amendment) Act of 2003.

Judicial enquiries have also been made in cases of abduction of indigenous persons by non-indigenous persons in the CHT. However, the perpetrators of human rights violations have gone unpunished, as reports of enquiry commissions have not been published. The case of the kidnapping of Kalpana Chakma in 1996 is evidence of this (Drong et al. 2006).

The most well-known case of the judiciary upholding the rights of indigenous peoples is the Samata judgement 1997 in India, which asserted the rights of tribal people over their land and resources, as enshrined in the Indian Constitution (Fifth Schedule). However, this judgement was overruled in 2001, with the economic policy of the country taking priority over social issues (see box).

In India, the period from 2000 onwards saw the governments of different states, particularly in Andhra Pradesh, Jharkhand, Chhattisgarh, and Orissa, which have large tribal populations, granting numerous mining leases to multinationals to exploit mineral resources in Scheduled Areas.

The BALCO Judgement 2001, India

In 2001, the Supreme Court of India upheld a judgement sanctioning the transfer of 51 per cent of the shares in the Bharat Aluminium Company (BALCO), a public sector company, to a private company, in violation of the laws of the land, thereby over-riding the Samata judgement, which had prohibited the alienation of tribal land to non-tribal ownership. When land was acquired from local tribal people in Madhya Pradesh for BALCO it was legitimised as being taken for a public purpose. However, this is not permissible according to the Samata judgement as this is a private purpose and so tribal people have rights over their land and resources. However, through the BALCO judgement it became permissible to transfer land belonging to tribal people to a non-tribal entity.

The BALCO sale also violated provisions of the Land Acquisition Act (a central government act), which lays down procedures to be followed for the compulsory acquisition of land in India.

(Kujjur 2006)

The role of the judiciary in upholding the rights of indigenous peoples has been increasingly realised over the past decade with the rise in public interest litigation.

Land alienation and dispossession of rights to ancestral territories have been uniformly cited as among the biggest problems confronting indigenous peoples in the world today.

Another major case, which is well known internationally, in which the judiciary did not finally uphold the rights of tribal people is that filed by the Narmada Bachao Andolan against the Sardar Sarovar project in central India. The Narmada Bachao Andolan has been contesting the height of the Narmada dam, but the Supreme Court has not stopped the raising of the dam. Instead it has only insisted upon rehabilitation.

Even where the judiciary has passed judgements supporting the rights of indigenous peoples, compliance by the administration is often poor (Indian Social Institute 2006, pp 77-78), mitigating against the potential for positive change that inheres in the judiciary.

The assessment also found that in other countries, like Nepal for example, the judiciary is still considered by indigenous peoples to be unsympathetic and conservative. This is borne out by the Supreme Court's decision to be cautious in certain matters, as well as its decision about the languages of indigenous nationalities. On 1 June 1999, the Supreme Court struck down the decision of the Kathmandu Metropolitan City to use Newari at the local level as unconstitutional. The Court thus barred the use of what the 1990 Constitution has called 'national languages', which include the languages of indigenous nationalities, at any level of government.

Land Rights and Access to Natural Resources

Common issues

Land alienation and dispossession of rights to ancestral territories have been uniformly cited as among the biggest problems confronting indigenous peoples in the world today. The demand by indigenous peoples for self-determination and the recognition of collective rights (the main issues on which there has been no consensus, stalling the passing of the Draft Declaration on the Rights of Indigenous Peoples) links directly to the issue of land rights. The issue of land rights is highly contested, not only as it relates to the ownership of land, but also to access to natural resources. Although participatory regimes of natural resource management have found wide acceptance in policy and practice, the rights accorded to indigenous and other communities remain rights of concession. Further, little analysis can be found on the impact of some participatory regimes that have been widely praised, such as community forestry, specifically as they relate to indigenous peoples. A case from Nepal shows that community forestry can displace indigenous peoples from the land they occupy and depend on for their daily subsistence, and that even if the land is still legally accessible to them, they are forced to use it for permanent forestry instead of traditional purposes.

Indigenous peoples' rights to their land and territories are not only undermined by conservation imperatives, but also exponentially by extractive industries such as mining. As mentioned earlier, neo-liberal economic policies of states reign supreme, posing an ever-more urgent challenge to the rights of indigenous peoples. The lands, forests, and territories of indigenous peoples are still being acquired to build dams, create national parks and protected areas, and for mining and mineral extraction, without 'free, prior, and informed consent'⁶ of indigenous peoples. The issue of internal displacement of indigenous peoples continues to remain inadequately addressed. Where compensation, resettlement, and rehabilitation are provided, they are usually provided in a way that destroys the social fabric of indigenous communities, for whom the symbolic significance of their lands in the spiritual and cultural sense is as important as its material value.

⁶ Agencies like the World Bank, which provide substantial amounts of financing for large infrastructure and dam projects, still recognise only 'free, prior, and informed *consultation*', not consent.

Little account is taken of indigenous peoples' traditional livelihoods, which are often forest-dependent or based on shifting cultivation or nomadic herding. The discourse around these livelihood forms has become dominated by arguments that they are 'primitive', unproductive, and environmentally unsustainable. Most governments have put in place policies and orders that discourage or place outright bans on shifting cultivation.⁷

The Resettlement of the Miao in Southwest China

A visit made to Napo county in the Guangxi province in Southwest China found a problem with ethnic minorities not wanting to stay at the resettlement sites provided by the government. The two ethnic minority groups found in this township are the Miao and the Zhuang. The Miao usually live on the 'top of mountains' as one county official put it, while the Zhuang inhabit the valleys. The Miao are in the minority and one of the poorest ethnic groups. The areas where they live are remote and not connected to electricity, roads, and public drinking water supply systems. The government, as part of its poverty eradication programme, has been trying to resettle the Miao in sites in the valleys to bring them down from the mountains. Their practice of swidden agriculture is discouraged and they are targeted for the adoption of standard poverty alleviation packages and programmes. However, many of the Miao, especially those of the older generation, do not stay for long at the resettlement sites and try to return to their own way of life and ancestral lands. A dominant perception of the Miao among the county officials is that the Miao are 'not capable of taking up activities related to the IFAD project, are lazy, drunks and gamble', and that this is why they return. While symptomatic of a larger problem of resettlement, this particular case also demonstrates the need for development agencies to go beyond the delivery of standard packages and instead design and facilitate more innovative and flexible projects in order to be able to reach the poorest and remotest of communities.

(Field visit made as part of the assessment, July 2006)

In the case of displacement, indigenous peoples are often confined to subsistence agriculture and provided with barren and uncultivable resettlement sites. Sometimes this leads to the indigenous people going back to their own lands and territories, which often results in violent confrontations with state authorities.

Several laws and policies were passed in the course of the Decade that impact on land rights and access to resources of indigenous peoples. Not all of these laws and policies are negative, and some create spaces that did not previously exist for the recognition of indigenous peoples' rights to their ancestral domains. These laws and policies are the outcome of the increased mobilisation of indigenous peoples in the past 20 years to secure their rights to land. While success has been achieved in some countries, it is in its infancy in others. State recognition of indigenous peoples' rights to land and resources varies quite significantly from country to country in Asia. Sometimes the right is simply not recognised, whereas other times even though it is recognised, indigenous persons are not given access to it, because they are not able to fulfil the bureaucratic requirements.

The lands, forests, and territories of indigenous peoples are still being acquired to build dams, create national parks and protected areas, and for mining and mineral extraction, without 'free, prior, and informed consent' of indigenous peoples.

⁷ ICIMOD, with the support of IFAD and five partner countries (Bangladesh, Bhutan, India, Myanmar, and Nepal), devised a new, unbiased proposal for an initiative on shifting cultivation to try to comprehend why hundreds of millions of farmers continue this practice, despite rigorous and extensive government efforts to eradicate the tradition. The study looked at farmers' innovations that helped maintain the system despite a non-supportive external context. The goal was to increase awareness about shifting cultivation, develop a platform for sharing of ideas, and develop comprehensive policy recommendations to aid governments (Kerkhoff and Sharma 2006).

Several laws and policies were passed in the course of the Decade creating spaces that did not previously exist for the recognition of indigenous peoples' rights to their ancestral domains.

Preliminary analysis has found that much more information needs to be disseminated to communities to enable them to understand the legal and policy regime and how to assert their rights within it. This is particularly important as there is evidence of alienation of the lands of indigenous communities at the hands of powerful and elite indigenous individuals who often collude with external commercial forces to serve their personal interests. The issue of inequities within indigenous communities, as well as intra-indigenous conflict, needs to be given much more attention in the contemporary context.

While these are some of the common, over-arching issues relating to the issue of land-rights and access to natural resources, different countries have different policy regimes and laws. The section below provides a brief outline of some of the major contemporary issues pertaining to land rights in the countries covered by this assessment. This outline is by no means exhaustive. As this is a synthesis report, only significant issues that have come up, particularly within the frame of the Decade, have been highlighted.

Bangladesh

In the CHT, the issue of state-sponsored migration of Bengali Muslim settlers from the plains to the lands of the Jumma people, despite the CHT Peace Accord of 1997, continues to be a pressing one. Since 1979, more than 400,000 Bengali Muslims have migrated to the CHT with land-grants, rations, and cash given by the government as incentives. As no cultivable land was vacant for settlement, the settlers have forcibly occupied the lands of the indigenous Jumma people.

Other projects that have disenfranchised indigenous peoples in Bangladesh include the commercial forestry projects in the plains, implemented with financial support from the Asian Development Bank (ADB), and the creation of rubber, tobacco, and other mono-plantations in the CHT on long leases of land from the indigenous peoples. The impact of these on indigenous peoples' livelihoods, as well as on biodiversity, needs further research.

Political Settlements in the CHT, Bangladesh

As recently as January 2005, Bengali Muslim settlers from the Maischari cluster village in Khagrachari district of the CHT constructed houses on the recorded lands of the indigenous Jumma people in the Gamaridhala area with the help of the army. A huge military presence continues to be an issue for indigenous peoples in many areas of Asia.

(Drong et al. 2006)

Cambodia

A progressive land law that protects the rights of indigenous peoples to their land was passed in Cambodia in 2001. The Land Law of 2001 allows indigenous communities to manage their community and immovable property according to their traditional customs before their legal status is determined under a law on communities. It also recognises shifting cultivation as one of the agricultural methods practised by these communities and grants ownership of immovable property to indigenous communities as collective ownership.

Compared to the land laws of other countries, this law is extremely positive. However, two points need to be noted about this law. Firstly, it is qualified by the principle of the eminent domain of the state and, secondly, notwithstanding this law, around

4.7 million hectares of the 18.1 million hectares of Cambodia's total area are currently on the concession list of 21 local and international logging companies. Among these concession areas, around 2.4 million hectares (about 50%) are located in four north-east provinces where indigenous highland populations reside. Furthermore, many current practices in land use and disposal are against the Land Law 2001, with many cases of land sales being approved by individual community members in an environment of insufficient information and, often, threats and intimidation. There are also cases where the lands of indigenous peoples are being taken over by non-indigenous individuals with power and connections, without the approval or acceptance of the indigenous communities.

There has been a dramatic increase in the immigration of Khmers to the highlands, encouraged by policies of economic development, and facilitated by new roads and other infrastructure. Between the 1992 Census and the National Census in 1998, the population of Ratanakiri Province grew by around 41 per cent and by 82 per cent in the provincial capital Banglung (Ironsides 2004).

The case of Cambodia illustrates the need for awareness creation and capacity building of indigenous groups about the provisions of new laws and their rights under them, instead of assuming that the passing of a law will necessarily reverse earlier detrimental situations. The lack of enforcement of the 2001 Land Law is also a result of the lack of access to information on land rights.

China

Between 1998 and 2000, two significant changes in forest and land resource tenure were announced in China, nullifying all previous forest and land tenure arrangements:

- A ban was placed on commercial logging in the upper reaches of the Yangzi river under the Natural Forest Protection Programme.
- The Sloping Farmland Conversion Programme was implemented, which seeks to decrease cultivation and increase forest cover on all slopes over 25 degrees.

Both of these policies are problematic from the perspective of indigenous peoples and ethnic minorities. In the case of the Sloping Farmland Conversion Programme, although the State will compensate farmers for the loss of grain yields in the form of grain and cash for education and health services, this is only for a period of eight years. This leads to uncertainty in the long term. The ownership of trees already being grown by people is not clear. The old livelihood system has been destroyed, without a clear vision for what will happen after eight years. It also effectively bans all swidden (shifting) cultivation, which has been the mainstay of many indigenous communities, even though this practice provides rotational forest cover on the land used for agriculture. This, in turn, has tremendous implications for the survival of traditional and staple food varieties, as the case of the Dulong illustrates (see box).

For many years, farmers gained development opportunities from forestry operations. After the ban on commercial logging, farmers not only lost income from timber sales, but also from transportation, restaurants, and lodging facilities. A study estimated that throughout Yunnan the logging ban would decrease household incomes by around 200 Yuan and put 2,525,000 farmers back below the poverty line (Zhao 2001).

Finally, the huge construction of infrastructure under programmes for poverty alleviation has had implications for the land rights of ethnic minorities.

Cambodia's Land Law of 2001 is a progressive law that protects the rights of indigenous peoples to their land.

Loss of Agrobiodiversity in Dulongjiang

The Dulong people of China traditionally practice swidden (rotational) agriculture. A study of the impact of the Sloping Farmland Conversion Programme on agrobiodiversity in Dulongjiang reported the following:

- Since implementation, many crops and varieties that used to be planted in the swiddens have basically disappeared. The survey identified 49 crop varieties. The seeds of 5 varieties have totally disappeared, the seeds of 17 varieties are kept by very few households, and the seeds of 8 varieties are still planted regularly. The remainder are no longer planted.
- Many of the varieties whose seeds still survive can only be planted in swidden fields and many seeds will lose their viability if they are not planted soon.

(Centre for Biodiversity and Indigenous Knowledge 2006)

In India, the principle of the ‘eminent domain of the State’ – whereby the state can acquire any and all land in the name of ‘public purpose’ – overrides all other land laws, provisions, and policies.

India

In India, the principle of the ‘eminent domain of the State’ – whereby the state in the name of ‘public purpose’ (although justified as in the ‘national interest’) can acquire any and all land – remains supreme, overriding, when invoked, all other land laws, provisions, and policies. It is under this principle that lands are acquired to build infrastructure, mines, dams, and other projects by Indian and foreign companies (see box). ‘Public purpose’ has not been defined in the 113 years since the Land Acquisition Act was enacted in 1894. However, in 1998 a draft Land Acquisition (Amendment) Bill was introduced by the Government of India, which provided for ‘just’ compensation. While the first part of the eminent domain has been followed unabated, compensation has been pushed to the back burner and the draft Land Acquisition Bill has yet to be passed.

The following are some of the causes of land alienation and lack of access to natural resources in India:

- **Government policy:** Government policies on forests, wildlife, and water, despite moving towards participatory management, have generally been detrimental to the rights of indigenous and tribal peoples, as they have been pushed out to make room for conservation areas. Ownership rights remain vested with the state (except in Northeast India, where the Sixth Schedule and Article 371 of the Constitution of India apply, see Chapter 4 on policy) and customary

Dams in Northeast India

The rights of indigenous peoples in Northeast India are being urgently threatened by the planned construction of hundreds of major dams. The Minister for Power, Government of India, outlined in the Rajya Sabha on 14 March 2002, plans to build ten major hydroelectric dams in the region with an estimated potential of 58,971 MW or 38% of the country’s total power (*The Assam Tribune*, 15 March 2002). On 24 May 2003, the former Prime Minister Mr A. B. Vajpayee launched the 50,000 MW Northeast Initiative (*The Telegraph*, 25 May 2003). In order to achieve this objective, 48 dams are being studied and a list of 156 has been prepared.

This decision has serious implications for the indigenous peoples of the region because most of the planned dams are in tribal areas. Of the 156 possible dams in seven states, 59 are in Arunachal Pradesh alone where most of the tribes live according to their community-based customary law, which is in conflict with the land laws that only recognise individual ownership.

(Fernandes et al. 2006)

Land Alienation, Immigration, and Conflict in Northeast India

An important cause of land alienation and, by implication, conflict is immigration. Historically, immigration is not new to Northeast India. For over a thousand years nomadic communities from East and Southeast Asia have settled in the region and integrated themselves with its peoples. Conflict did not exist at the time of their settlement because resources were abundant so their immigration did not cause a major loss of livelihood for those already resident. The myths and languages spoken in the region substantiate the assertion that it is a region of immigrants. The region continued to witness immigration in the 19th and 20th centuries under colonial policies. Such immigration is now the basis of many conflicts. Prominent among such immigrants are the Adivasi and other tea garden workers. They were displaced from Jharkhand and its neighbouring regions, impoverished by the Permanent Settlement of 1793, and brought to Assam as indentured labours to work in the tea gardens.

Since the late 1970s, Bangladeshi Muslims, and Hindus from Bangladesh and Nepal, have also come to the region. As a result of the immigration of Bengali Hindus, the tribal population of Tripura has declined from 58% in 1951 (Sen 1993, p13) to 31% today. According to estimates, there are more than 200,000 Burmese refugees living in countries neighbouring Burma, over 40,000 of them in Northeast India, mostly in Mizoram.

Both push and pull factors facilitate immigration and encroachment. The push factors are poverty, feudalism, and lack of land reforms in the immigrants' place of origin, e.g., Bihar, Nepal, and Bangladesh. A major pull factor is that the legal system in the Northeast encourages encroachment on tribal common property resources, which the formal law treats as State property. For example, Bihari immigrants have encroached on what were called the wastelands of Karbi Anglong in Assam. The Karbis allege that they get pattas (deeds) by bribing State officials. The second pull factor is the need for cheap labour. Immigrants are usually willing to work at lower wage rates than locals. As most immigrants are agricultural labourers, they bring with them techniques of cultivation that they use to prosper and can grow up to three crops a year on the land. Most people in the Northeast are used to a single crop economy. The immigrants work for daily wages in construction and other areas at lower wages than the local people. The share-cropper system in regions like Assam deprived small farmers of the motivation to grow a second crop, as half or more of what they grew went to the zamindar or landlord. In the hill areas, the system of jhum kept the communities at a single crop.

Conflict results when local people try to defend their livelihood by initially reacting to all outsiders who they feel prosper at their cost. When shortages overtake them, local people compete among themselves for the remaining scarce resources.

(Fernandes et al. 2006)

rights to land that have not been recorded are generally not recognised. The rights of indigenous and tribal people to access forest produce, for instance, are negatively impacted by the diversion to industries with a preference for plantations instead of mixed forests and the nationalisation of non-timber forest products (NTFPs). Although the government has set up tribal cooperatives in many states to help indigenous people, these cooperatives have become just another agency of exploitation as they procure most tribal products far below market prices.

- **Immigration:** An important cause of land alienation and the resulting conflict is immigration. This is particularly an issue in Northeast India, where much of the violent conflict is partly rooted in the protection of lands and territories against outsiders in defence of ethnic identities.

- **Mining and mineral extraction:** A major cause of land alienation among tribal and indigenous people in India is state encouraged mining and mineral extraction. As mentioned earlier, in contravention of the Samata Judgement, state governments have been leasing out tribal lands to private and multinational mining companies. The governments of Orissa and Jharkhand have already signed 86 memorandums with multinational companies to set up steel, aluminium, hydro, and other mineral-based industries in predominantly tribal inhabited regions. Police atrocities towards tribal people protesting mining projects in Orissa, for instance, have been widely reported in the press.
- **Indigenous landlordism:** An increasing trend seen particularly in Northeast India is what has been called 'indigenous landlordism' (Ironsides 2004). There are several cases of the privatisation of communal land encouraged by government bank loan policies and programmes promoting cash crops, which are manipulated by local indigenous elites to their own advantage.

Indonesia

Land is one of the most contested natural resources in Indonesia. The concept of the eminent domain of the state is also found in Indonesia and can be traced back to Basic Agrarian Law, which came into place over forty-five years ago. The concept of state domain inheres in the idea of hak menguasai negara (controlling right of state), according to which the state does not own lands, but has the highest authority to govern them for the prosperity of all peoples. However, the state, in practice, acts as a legal person, which entails the right to own land. For this reason, the state in Indonesia claims all untitled land as its property. This concept also has an odd position with respect to masyarakat adat (indigenous peoples) and hukum adat (customary law), where the latter must not be against national and state interests. This conditionality also applies to hak ulayat (customary rights). This policy has been used to pursue the pro-market policies contained in Government Regulation No. 40/1996, wherein rights over land can be taken over for investment in commercial enterprise. The impact of this has been most visible in plantations, one of the most popular commercial activities in Indonesia that is very destructive to the rights of indigenous peoples. Land is appropriated mostly through repressive means, including forced eviction, the signing of blank letters of agreement, and below market price compensation. The booming oil palm industry in Indonesia is underpinned by this policy.

Some of the positive and negative policies and laws of the Indonesia Government in relation to the rights of indigenous peoples over land and natural resources are summarised below:

- **Land registration:** In 1997, the Government initiated a scheme of land registration through order No. 24/1997 in order to provide land security. However, land registration clearly privileges private property over communal property.
- **Customary land rights:** In 1999, as an outcome of the advocacy of indigenous peoples and the fall of the Suharto regime, the government issued Regulation No. 5/1999 in relation to the Guidelines on the Settlement of Customary Land Rights of masyarakat hukum adat. This policy is progressive and allows for the recognition of customary rights. However, the Regulation has a clause that requires research to prove the existence of masyarakat hukum adat, which can hinder the recognition process. It is also important to note that the final outcome of this process is to identify indigenous lands on land-use maps and not to give communal land titles.

The concept of the eminent domain of the state is also found in Indonesia and is used to appropriate land for plantations, often through repressive means.

- **Forestry:** In the realm of forestry, during the Decade Indonesia saw a new law, No. 41/1999, which marked a positive paradigm shift by recognising the existence of communities living in and around forests, including indigenous peoples. However, here too, the law employs a conditional recognition approach. The other loophole in the law is that it claims indigenous forest lands as forest areas, unless they have land titles. It defines indigenous forest lands as state forests that lie within the territory of masyarakat hukum adat. Further, the passing of laws in 1999 also divided forests into various categories including the category of ‘production’ forests, which allows for logging concessions to feed the timber industry. In order to appease indigenous and other vulnerable people, a community-based forestry scheme was introduced in 2001. However, the scheme is only allowed in protection forests and production forests, which are not already let out, in effect giving indigenous communities only the ‘crumbs’.
- **Mining:** Mining is also a crucial component of the Indonesian economy. A new law was passed in 2001 that does not take into account the aspirations and needs of indigenous communities. The law requires that a contract between a concessionaire and the Executive Board of Oil and Gas Mining, on behalf of the state, shall include a clause on community development and the recognition of indigenous rights (Article 113p). However, it is not clear as to how this clause should be implemented. Moreover, such an approach implies that the state transfers its constitutional duty in protecting the rights of vulnerable groups to the private sector.
- **Spatial planning:** In 1992, parliament agreed to pass the Spatial Planning Law (No. 24/1992), followed by a Regulation in 1996, which opened up opportunities for peoples’ participation. However, there is no mechanism to ensure community input into the spatial plans. On the other hand, the state tends to be friendly to the market by accommodating the needs of investment schemes in spatial plans. Local communities can express their objection to the spatial plans, but the final decision is in the hands of the central government at the national level, and both the regional government and local parliament at the regional level.
- **Swidden agriculture:** Most indigenous people in Indonesia still practice swidden agriculture. The government labels this practice ‘destructive to the environment’ and has been trying to impose sedentary agriculture. In 1993, a decree was issued to resettle the swidden cultivators out of forest areas.
- **Marine and fishery sector:** One area in which there appeared to have been extremely positive changes in the resource rights of indigenous peoples in Indonesia is in the marine and fishery sector. A policy was drafted in consultation with Indigenous Peoples Alliance of the Archipelago (AMAN) containing articles in favour of roles, interests, and practices of masyarakat adat in coastal zone management, including the application of adat sanctions for criminal violations. However, the draft submitted by the Ministry of Marine Affairs and Fishery to the Parliament in 2005 was changed substantially to favour the government at both national and regional levels, while significantly reducing the role of local/indigenous communities in decision making.

As an outcome of the advocacy of indigenous peoples and the change in regime, the Indonesian Government has implemented a progressive policy (Regulation No. 5/1999), which allows for the recognition of customary land rights.

Nepal

As in the case of the other countries studied, in Nepal the loss of rights of access to forests, water bodies, and land with the creation of national parks and other nature conservation areas has led to the displacement of indigenous peoples from their traditional lands. The traditional cultivable lands and pastures of indigenous peoples have been incorporated into wildlife sanctuaries and national parks without any compensation.

The creation of protected areas in Nepal has led to the loss of rights of access to forests, water bodies, and land, and the displacement of indigenous peoples from their traditional lands.

The following policies and practices have affected the rights of indigenous peoples over land and natural resources in Nepal:

- **Community forestry:** While Community Forestry in Nepal has been widely hailed as a model to emulate throughout the world, and one of the most progressive in terms of giving forest rights to local communities, it has never been analysed from the specific perspective of indigenous peoples. People who have traditionally occupied lands, but who do not have the necessary official documents to prove ownership, have been displaced by the establishment of community forests. Indigenous communities are also affected by a prohibition on clearing land for cultivation in community forests, an act which attracts severe penalties.
- **Shifting cultivation:** Shifting cultivation in Nepal is locally known as khoriya or basme (in the east). It is a traditional farming system for many indigenous peoples and strongly linked to their culture and identity. It is mostly practised in areas where permanent cropping is not possible because of steepness. Fields are cleared of (forest) vegetation on a rotational basis, after which they are cultivated for one or two years. After the cropping phase, the land is left fallow for 7 to 12 years and the forest regenerates. This rotational agroforestry practice should not be confused with the clearing of forest for permanent cultivation. Its main practitioners are the indigenous Chepang, Magar, Sherpa, Rai, and Tamang people. There is certainly a cultural dimension to the practice of shifting cultivation in the sense that only certain ethnic groups have the expertise to make it work. It is these groups who depend on it for their livelihoods. Although shifting cultivation is practised in many hill areas of Nepal, the government and development organisations have been discouraging or ignoring it. It is seen as a sign of underdevelopment, thus most policy makers claim it no longer exists in Nepal.

Shifting cultivators generally belong to the poorest farmers, who resort to the most marginal lands. In fact, the term khoriya refers to the land that is too steep for terrace cultivation. In recent decades, the pressure on these lands has increased, causing a shortening of the fallow period in many areas from 10 years to only 2-3 years. Factors that have contributed to the shortening of fallow periods are the allocation of shifting cultivation land to other purposes (e.g., community forestry and cardamom cultivation) and population pressure. The communities themselves are growing and migration is increasing from other parts of Nepal to some areas.

Working Towards Environmental Justice: A Movement of Indigenous Fishing Minorities in Chitwan National Park, Nepal

Indigenous peoples reliant upon natural resources have been distressed by policies dealing with wildlife preservation and biodiversity conservation. The Chitwan National Park (CNP) in southern Nepal is inhabited by two indigenous fishing communities, the Bote-Majhi and the Musahar. Their struggles have not received much attention in the popular discourse of Nepal, as concern has been focused on survival of the Asiatic one-horned rhinoceros. As the park remains under the control of the forest bureaucracy, the palace, and the Nepal Army, local people are not sufficiently engaged in protecting its biodiversity. This has brought about a grassroots movement that has resulted in an increased political and social space for the rights of indigenous peoples. A recent ICIMOD 'Talking Points' book examines the relationship between the multifaceted topic of policy formulation with reference to wildlife conservation and the lives of indigenous peoples affected by these policies and, furthermore, brings forth insights for the democratisation of protected area management.

(Jana 2007)

Philippines

When it comes to the issue of land rights and recognition of indigenous peoples' ancestral domains, the most progressive law in Asia, and perhaps the world, can be found in the Philippines. Despite obstacles in its implementation and various technical, conceptual, and legal issues that need to be resolved, the Indigenous Peoples Rights Act (IPRA) 1997 has provided hope to indigenous peoples that change is indeed possible, not only in the Philippines but around the world.

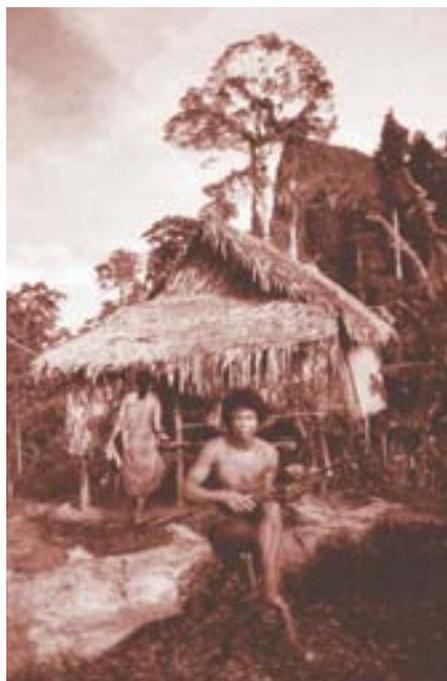
The enactment of the IPRA came after a long and arduous struggle by indigenous peoples and civil society. It took a decade to pass the Act and the lobbying for its enactment was a very long process. The legal bases for the enactment of IPRA are the state policies on indigenous peoples and ancestral domains as expressed in the 1987 Philippine Constitution, and this was further helped by international treaties and conventions (notably ILO Convention 169) and the UN Draft Declaration on the Rights of Indigenous Peoples.

The IPRA has been hailed internationally and locally as a landmark piece of legislation, being the first and most comprehensive law on indigenous peoples in Asia. It is also a striking example of a legal instrument that incorporates customary laws on property rights while at the same time operating on a constitutional mandate to recognise and promote indigenous peoples' rights. The law codifies a wide range of indigenous peoples' rights, foremost of which are:

- the right to ancestral domains and lands;
- the right to self-governance and empowerment;
- social justice and human rights; and
- the right to cultural integrity

Almost a decade after the enactment of the IPRA, several aspects of the law remain controversial and need to be the focus of renewed advocacy and lobbying.

- **State ownership of untitled land and natural resources:** While the IPRA, in principle, provides for legal ownership and titling of ancestral domains and land, this shall be carried out "...within the framework of national unity and development in accordance with the Constitution and applicable norms and principles". This implies that the IPRA recognises state ownership and control over untitled land and natural resources including all other property rights to ancestral domains that existed prior to, or are vested by, the enactment of the IPRA, while upholding the rights of indigenous peoples to their ancestral lands and territories. This scenario may result in competing and overlapping claims over a certain area of land. For example, existing contracts, licences, concessions, leases, permits, logging concessions, and mining permits for the exploitation of natural resources within an ancestral domain may continue to take effect until they expire. The presence of multiple rights over the same land area will increase the conflict over land and resource access and control in the implementation of the IPRA.



TEBTEBBA

When it comes to the issue of land rights and recognition of indigenous peoples' ancestral domains, the most progressive law in Asia, and perhaps the world, is the Indigenous Peoples Rights Act (IPRA) enacted in the Philippines in 1997.

The Philippines is also an example of the success of indigenous peoples' lobbying in discouraging the mining industry

- **Right to ancestral domains and land:** The right of indigenous peoples in the Philippines to their ancestral domains and land is formally established by the issuance of a Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT) on the basis of native title. By granting land titles, the IPRA has the potential to be a powerful legal instrument for addressing indigenous groups' collective rights to land. The awarding of a CADT or CALT is done through a delineation process, which is highly contentious because indigenous peoples have to go through a long and tedious process requiring a significant investment both financially and in terms of manpower. One of the main hurdles is the requirement of a technical survey, which requires sophisticated equipment and adequate funds to produce. Prior to the survey, the claimant must submit proof of claim, which is rather cumbersome for indigenous people who, in general, are financially and technically incapable of producing such evidence. Another issue is the settling of boundary conflicts with contiguous areas. Existing claims by other entities can cause delays in the delineation process.
- **Free, prior, and informed consent:** Another point of contention in the IPRA is the issue of free, prior, and informed consent (FPIC). As provided in the law, any individual or company, whether government or private, that is interested in setting up a development project within the ancestral domain or land should first secure the FPIC of the indigenous community. The final approval of an FPIC application is given by the National Commission on Indigenous Peoples (NCIP) on the basis of the 'community's recommendation'. The process of generating consent from community leaders and peoples is open to manipulation by private groups and individuals.

The Philippines is also an example of the success of indigenous peoples' lobbying in discouraging the mining industry, despite the neo-liberal economic policy of the government. One recently issued policy was the National Policy Agenda on Revitalizing Mining in the Philippines, as contained in EO 270, in January 2004. The Executive Order (EO) provides for the Philippine Government to promote responsible mineral resources exploration, development, and utilisation, in order to enhance economic growth. The EO was silent on the resources inside ancestral domain areas. However, under pressure from the National Anti-Poverty Commission – Indigenous Peoples (NAPC-IP), in coordination with the NCIP, the EO was amended to include a stipulation that the “rights of affected communities,

Filipino Indigenous Peoples' Successful Advocacy Against Mining

After the slump of the mining industry in the Philippines in 1985 (which was mainly due to the mounting protests of indigenous peoples and the depletion of mineral resources by the extraction boom of the 1960s and 1970s), the government set its sights in the 1990s on encouraging foreign investment in mining. This coincided with a time of economic liberalisation. The Philippine Mining Act of 1995 was enacted with the support of the Asian Development Bank (ADB). Its enactment resulted in a massive influx of foreign mining corporations. However, despite the increase in mining applications, the expectation that the Mining Act of 1995 would revitalise the mining industry was not realised, mainly because of the mounting protests from various stakeholders, especially the indigenous peoples in whose territories most of these mines were situated.

The mining industry has its own view of the failure of the expected boom. They claimed that the boom failed because of questions about the legality of the Act in 1997 raised in the LaBugal case and because of increasing conflicts about land use due to the presence of multi-layered policies and laws.

(Cadiogan 2006)

including the rights of indigenous cultural communities, especially the free and prior informed consent, shall be protected”.

Thailand

In Thailand there is virtually no recognition of indigenous peoples’ rights to land and forests. There is no mechanism for indigenous people to obtain legal documents for communal or individually owned farms, swidden land, or even community forests. About 40 per cent of the country is managed by the Forest Department, including the homelands of indigenous peoples. The government has consistently blamed the highlanders for deforestation and used this argument to justify relocating them to lowland villages. The fact that many indigenous people lack citizenship certificates denies them even the normal rights and protection accorded to Thai citizens.



B. Leduc

In Thailand there is virtually no recognition of indigenous peoples’ rights to land and forests.

Since the mid-1990s, the indigenous peoples of the highlands, with the support of NGOs, have started pressing for usufruct rights to use, manage, and control community forests in the uplands. A Community Forestry Act was enacted in 1997, but could not be implemented due to opposition by national conservation groups. The Act was amended in 1998 to prevent the recognition of communal forests in areas zoned as watershed protection and priority conservation zones. The movement for the recognition of communal forests continues (Colchester 2004).

Another programme that has been destructive of indigenous peoples’ ways of life is the Master Plan for Community and Environment Development and Narcotic Plant Suppression in the High Areas, which is currently in its third phase. This programme has led to the forced relocation of indigenous peoples to lowland areas, often at sites that are unsuitable for cultivation. Indigenous peoples’ networks, such as the Tribal People Assembly of Thailand (TPAT), proposed an alternative plan in 2003 to promote community development in a sustainable way. The outcome of their proposal remains to be seen. The draft was approved by the Permanent Subcommittee on Investigations and is currently being refined and combined with the existing State Master Plan. However, unfortunately, the combined state and people sector mechanism was recently abolished by the new Cabinet.

The present assessment found that the attempt to integrate the plans, or to draft a master plan for high area community development, inspired communities to think about community development and to realise the significance of developing a master plan to cooperate with public sector organisations at various levels. This has resulted in many more highland development programmes being initiated by NGOs and indigenous peoples’ organisations.

Vietnam

Huge poverty reduction programmes have been in place in Vietnam since the early 1990s. Vietnam is one of the countries that is making rapid progress towards the Millennium Development Goals (MDGs). However, even though there has been a reduction in the poverty levels of indigenous peoples, there is still a huge disparity between lowland and highland peoples. Furthermore, the changes have not necessarily been positive in relation to indigenous peoples’ access to natural resources. Much of the economic growth has been fuelled by a fundamental change



L.T. Oanh

In Vietnam, all land is owned by the State and allocated to households for forestry and agricultural purposes. However, because many ethnic minority groups lack the ability to invest, they are excluded from a large share of land allocation.

in the economic structure in which the proportion of agriculture and forestry has been falling sharply (from 90 per cent in 1990, to less than 56 per cent in 2003). There has been a large-scale conversion of forests into plantations and agricultural extension tends to favour lowland rice over upland crops.

The Central Highlands have been lagging behind other ethnic minority areas. A World Bank study, using data from the 1998 Vietnam Living Standards Survey and the 1999 Census, found that, while northern highland minorities benefited from economic growth in the 1990s, the growth of central highland minorities has stagnated. According to Baulch et al. (2002) the same ethnic groups whose living standards have risen fastest are those that have the highest school enrolment rates and are most likely to intermarry with Kinh partners. Furthermore, the creation of 'New Economic Zones' has created intense conflict over land by encouraging the immigration of people from the lowlands. In 2001, the press reported widely on protests by the central highlanders (which met with state violence) against the government's plan to turning the indigenous peoples' ancestral forests into the country's largest coffee growing region (BBC 2001 and BBC 2004).

In Vietnam, all land is owned by the state and allocated to households for forestry and agricultural purposes. However, the allocation of perennial crop land or forestry land is often linked to the ability to invest labour and capital into the land. Many ethnic minority groups lack this and, therefore, are excluded from a large share of land allocation. Furthermore, State forestry enterprises control almost 40 per cent of the forest land.

Progress has been made in the formal titling of forestry land. In addition, a revised law on forest protection and development was approved by the National Assembly in 2004. This law provides an overall framework for a move towards social and community-based forestry. The Act protects the forest-user rights of households, communities, and other sectors, as well as their ownership of plantation forests. It also provides for the multiple-use of protection forests in the uplands and for exploitation rights within these, thereby holding the potential for a radically new management system. However, there has been little involvement of forest-dependent communities, who are mainly ethnic minorities, in the development of national and local-level commune forest plans. There is a need to create a greater understanding of forest policies (Swinkelo 2006).

Language and Education

Common issues

The issue of the use of indigenous languages in education of indigenous peoples' children is double-edged. On the one hand, if the use of indigenous languages is facilitated by state policy, it could perhaps be seen as an indicator of a genuine move away from the practice of assimilation. On the other hand, if indigenous peoples are to enter the mainstream political and economic domain and engage with the majority on equal terms, they need to learn the language of the majority. While, ideally, this should not be the situation, it is a product of a long history of the marginalisation of indigenous peoples. At the same time, the very survival of many indigenous languages is under threat. The survival of indigenous cultures and knowledge is also inextricably linked to the language issue. The answer to this dilemma has emerged in advocacy for school curriculum material to be produced and taught bilingually. The advances on this front are at different stages in the various countries. Existing high rates of illiteracy draw attention to the issue of language and education. Where schools are provided, often there is a high drop-out rate or poor performance among indigenous children because the medium of instruction is not in their language and, in addition, the content is often far removed from the substance of their daily lives and experiences.

The survival of indigenous cultures and knowledge is inextricably linked to the issue of language.

Bangladesh

The Baseline Survey on Indigenous Peoples in North-west Bangladesh (conducted by the NGO Research and Development Collective) published in November 2000, reports the literacy rates of Santal, Koch, and Mahalis as 22 per cent, 17 per cent, and 25 per cent respectively. Bhumija, a local NGO working in the south-west region, has developed a database on 20 different groups within the indigenous population. Among them, the literacy rate of Buno is 7 per cent and Rajbanshi is 14 per cent. The primary school enrolment rate is 12.5 per cent. The majority of indigenous children usually attend NGO run or private schools. There is little or no information available on the status of education in the CHT. It was observed that only one in five villages had primary level educational institutions in the CHT. In contrast, at the national level there are two schools for every three villages. This clearly points to the fact that children in the CHT have fewer opportunities for education than children in the rest of Bangladesh (Drong et al. 2006).



S. Drong

The CHT Accord of 1997 provides for the introduction of primary education in the languages of the indigenous peoples. However, concrete measures to reform school curricula have yet to be taken.

Studying in the national language (Bengali), which is not the mother tongue of the indigenous people, leads to learning difficulties. The CHT Accord of 1997 provides for the introduction of primary education in the languages of the indigenous peoples. However, concrete measures to reform school curricula have yet to be taken. No similar arrangements have been proposed for the plains. These omissions are contrary to the provisions of ILO Convention No.107 and the Convention on the Rights of the Child, both ratified by Bangladesh.

Cambodia

In the area of education for indigenous minority people, a number of positive trends can be seen but also some disturbing trends. In 2003, the Ministry of Education, Youth and Sport formulated a policy to strengthen the non-formal education system and bilingual languages of indigenous peoples. This policy promotes the development of literacy in indigenous languages as a bridge to Khmer literacy. NGOs are working in close cooperation with the Ministry of Education, Youth and Sports to create a model for bilingual education in formal education. Another positive trend is the success of non-formal education (NFE), both bilingual and monolingual. An important reason for the success has been that indigenous minority communities have been given the flexibility to manage classes at the time most suited to their seasonal and daily lives. Another feature of NFE is that indigenous minority people are the teachers and have been able to use indigenous languages to support Khmer literacy. However, the NFE lacks materials and classes in post-basic literacy.

China

In China there has been recognition of ethnic minority languages in education. However, despite the use of bilingual or ethnic minority languages in some areas, the focus is most often on the transmission of knowledge and values from mainstream Han culture. A series of supportive policies (including the elimination of fees in some areas) has served to enhance school attendance rates in ethnic minority areas. However, there are concerns over the content of school education in these areas. In some areas bilingual textbooks have been produced and in some cases they are in use, although this is often restricted to specified schools. For example, in 2000 in Sichuan province only around 20 per cent of students in minority autonomous areas were receiving bilingual education. The remainder followed the mainstream Han language education. Some 85 per cent of those receiving bilingual education were attending schools where most courses are taught in Han Chinese and only the ethnic minority language was taught in the students' own language. The issue of the use of ethnic minority languages in education is a reflection of the fact that, although state discourses on ethnic minority areas stress the right of ethnic minorities to subsistence and development, it is implicitly assumed that this means the adoption of 'modern' or 'scientific' practices and culture, which are more associated with the Han culture. Even the Tenth Five-Year Poverty Reduction Plan Outline (State Council 2001) states that "feudalism and superstition and backward living customs should be rooted out".

India

The Government of India has not initiated any special programme or policy on the educational rights and privileges of tribal peoples in response to UN declarations like the 'Right to Equal Access to Education', although some policy statements in conformity with those voiced in the UN declaration could be read in the Programme of Action 1993. The Programme of Action 1993 proposes actions for the use of tribal languages in elementary and adult education programmes and provides for the participation of local people in formulating, planning, and implementing education programmes at the village level, i.e., through the village education committees

(VEC). However, very few village education committees have been formed and, where formed, they have not done any outstanding work.

Government reports are vague in relation to the number of Scheduled Tribes that have benefited during the Decade, be it through the formal or non-formal education system. The 'Right to Education



W. Fernandes

Amendment' was passed in November 2001 by parliament, with the stated aim of attaining universal elementary education, the reduction of disparities, and the equalisation of educational opportunities. However, the Amendment does not mention any particular provision for Scheduled Tribes, unlike the National Policy on Education, 1986.

Very few Indian states have started using tribal languages in their school curricula or as their medium of instruction. In Meghalaya, primary education is in the Khasi language in the Khasi area and in Garo in the Garo area. In Assam, the Boro have begun a school curriculum in Boro language, and in Jharkhand some tribal languages are used in education. However, in Tripura, although tribal people have started some studies in Kok Borok, much of the education is in Bengali, and in Arunachal Pradesh the medium of instruction is in Hindi. Most of the other states use English, Assamese, Bengali, or Hindi in their school curricula and as their medium of instruction. A fair number of navodaya vidyalayas⁸ have been set up in tribal districts. However, it needs to be seen how far these schools are meeting the socio-cultural needs of tribal people and to what extent the local communities are involved in the various activities of the schools.

Indonesia

For the Government of Indonesia, the Bahasa language is crucial in building a sense of national identity. As formal education programmes reach villages, children of indigenous people also attend school. However, at these schools, as in the whole country, Bahasa Indonesian is used as the language of instruction. Teaching of local languages does exist in some provinces, but only the languages of the dominant local cultures.

In 2003, Law No. 2/1989 on the National Educational System was replaced by Law No. 20/2003, recognising the different needs of vulnerable groups. Article 5 of this law states that "citizens in remote or backward regions as well as masyarakat adat in remote areas are entitled to a special service of education programmes". Although, it is not clear what is meant by special service, the Law opens a window of opportunity for indigenous peoples. With the decentralisation of educational policies, the law allows schools to develop local content (muatan lokal) in their curricula. Some groups in West Kalimantan have done this. The Institute Dayakologi of Pancur Kasih, for example, produces books containing Dayak stories to be used in elementary schools. Meanwhile, the masyarakat adat of Landak District, in a statement issued on 27 February 2004, demanded that the government incorporate their traditions, language, local wisdom, and adat laws into the curricula from kindergarten up to high school.

⁸ Navodaya vidyalayas were started by the Government of India to provide free education to talented students from rural backgrounds in every district of India.

Very few Indian states use tribal languages in their school curricula or as their medium of instruction.

A noteworthy symbolic initiative of the Government of Nepal is the broadcasting of five-minute news bulletins on Radio Nepal in various indigenous languages.

Nepal

One of the significant government initiatives in Nepal to focus on indigenous nationalities has been that related to language. The 1990 Constitution of Nepal provided for the right to education in mother tongues other than Khas-Nepali up to the primary level (Article 18.2), although the responsibility for the provision of such education lay with the people of the community concerned, not the government. The indigenous nationalities themselves have, nonetheless, taken up this responsibility and, by pressuring the government, have prepared related teaching materials and begun classes at the primary level.

However, given that the languages of indigenous nationalities are not the language used by government, for administration, or for education, proficiency in their own language does not provide job opportunities for indigenous people. Hence, the usefulness of learning their own language is questioned by some indigenous nationalities.

Nevertheless, indigenous nationalities have, on their own initiative with minimal assistance from the government, continued to try and foster their mother tongue education. The Kirat Yakthung Chumlung, an organisation representing indigenous Limbus, have even successfully managed to tap international donors like the Danish International Development Agency (DANIDA) for what has been called pioneering mother-tongue education for Limbus.

During the course of the Decade, one of the major programmes initiated by the government was the Education for All National Plan (2001-2015). With advocacy by NEFIN, the Ministry of Education was pressured to form an additional thematic group on the right of indigenous nationalities and mother-tongue speakers to basic and primary education in their own language. The thematic group, comprised of indigenous nationality experts, leaders, and activists, came forth with various recommendations, most of which were incorporated in the national plan of action.

Another noteworthy symbolic initiative of the government regarding the language of indigenous nationalities is the broadcasting of five-minute news bulletins on Radio Nepal in various languages.

Philippines

The right to education for indigenous peoples is clearly provided by Section 30, Chapter VI of the Republic Act 8371 of 1997. Known as the Indigenous Peoples Rights Act (IPRA), it provides that:

“The State shall provide equal access to various cultural opportunities to the IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children and youth shall have the right to all levels and forms of education of the State.”

Yet in the Philippines, many indigenous peoples still face many problems and challenges in education. These range from the long-standing, nationalist-driven basic curriculum to a state-driven pedagogy.

Policies are not always translated into good programmes or even meet the policy expectations. Nine years have passed and few programmes have been

conceptualised and implemented on education for indigenous peoples in the Philippines. The NCIP through its Education, Culture, and Health office has implemented programmes limited to the granting of scholarships and, more recently, employed the development of an Indigenous Peoples' Basic Curriculum. The Department of Education has introduced some programmes for indigenous peoples through its Bureau of Alternative Learning System⁹ (formerly the Bureau of Non-Formal Education). Towards the end of 1999, the Department of Education started work on indigenising a curriculum for the public schools in indigenous communities. Many indigenous peoples expressed the opinion that the framework used by the Bureau of Alternative Learning System (BALS) is not favourable to indigenous peoples as it is largely operating on a dichotomised paradigm: the structured modern versus the unstructured traditional. BALS is largely premised on the idea that traditional forms of knowledge and learning systems are not formal and thus are unscientific. While debates continue to grow on this dichotomy, indigenous peoples find it derogatory to categorise their education and efforts as 'informal' and 'unscientific'. Indigenous peoples are calling for recognition of the level that indigenous peoples' learning systems can reach.

In the Philippines, the right to education for indigenous peoples is clearly provided for in the Indigenous Peoples Rights Act (IPRA).

Since 1999, Tebtebba has worked to help address the problems faced by indigenous peoples in the area of education. Tebtebba first worked in a project funded by ADB to assess the country's Bureau of Non-Formal Education (BNFE). Tebtebba produced a consolidated report and a programme proposal for the Department of Education to pursue, but has since been set back by resource problems as it is dependent on funding for such programmes to work. Tebtebba, together with partner indigenous peoples' organisations in the Philippines, then moved on to engage in grassroots education work, focusing on three aspects:

- Revitalisation and strengthening of indigenous knowledge
- Indigenisation of the formal education curriculum
- Value-added education in which education work is directly linked to indigenous peoples' campaigns and advocacy

Two workshops on Grassroots Education in Indigenous Peoples' Communities were organised and implemented by Tebtebba in the Philippines in February 2004 (for indigenous peoples in the southern Philippines) and August 2004 (for the northern Philippines group). This effort was followed by a Mindanao Forum on Indigenous Peoples' Education and Learning Systems, held from 15-17 August 2005 at Tagum, Davao City, which was again organised and implemented by Tebtebba and SILDAP.¹⁰

Thailand

In 1999, the Education Act was passed in Thailand. In it, the State made a commitment to provide twelve years of basic education free of charge. Another notable point about the Act is that it invites the participation of individuals, families, community organisations, local administrative organisations, NGOs, and other civil society institutions to take part in the provision of education. This law has opened up space for alternative education for indigenous peoples, such as the study of the student's mother tongue and their ancestral culture, including local curriculum development. However, in practice, the State has not yet actualised the

⁹ The Philippine Department of Education's non-formal education programme focuses on: 1) promotion of literacy programmes for the attainment of basic skills that include numeracy and functional literacy; 2) development of livelihood skills that manifest in individual specific competencies aimed at achieving economic productivity; and 3) expansion of certification and equivalency programmes, which are administered by the formal education subsystem, into the non-formal sector.

¹⁰ SILDAP-Southeastern (Community Learning Centre in the Philippines) is a local NGO based in Davao which is working with indigenous peoples in the southern Philippines. They have established schools for indigenous children at the elementary level and have developed some curricula for use with indigenous children.

IMPECT in Thailand and CSDM in Vietnam are examples of networks that have contributed significantly to capacity building in education.

free 12-year basic education for all. Under this law, the school is a corporate and autonomous body, which can charge various indirect expenses to parents. All these conditions make it hard for indigenous children to access educational services. Further, those without citizenship certificates can only receive basic education and cannot continue to higher education. All these problems have prompted concerned organisations and groups to start a network to strive for an alternative education bill.

Individual organisations have initiated innovative work on studying and compiling indigenous bodies of knowledge and using these to develop curricula that would result in a systematic process of transmitting this knowledge. The objective of this is to support the development of education, agriculture, and forestry extension in line with the needs of indigenous communities.¹¹ For example, the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) has contributed significantly in the fields of capacity building in education, natural resource management, and livelihood work of indigenous peoples especially in the highlands.

Vietnam

Government policy on education in Vietnam is contradictory in that, although it is officially committed to maintaining the unique cultural identity of indigenous groups, especially the dances, folklore, and modes of dress, the standard textbooks tend to emphasize Kinh culture and history. There has been a massive expansion of education facilities for ethnic minorities in Vietnam (Baulch et al. 2002). There are more than 95,000 pupils in 25 provinces, with 144 districts and 1239 schools. However, Vietnamese remains the dominant language of instruction and most officially sanctioned textbooks are in Vietnamese. This scenario may be changing slowly as the assessment found that eight ethnic languages are taught in ethnic schools (Oanh 2006).

Finally, similar to Thailand, the Centre for Sustainable Development of Mountainous Areas (CSDM) provides an example of a network that has done a lot with regard to natural resource management, livelihoods, and capacity building on education.



M. Kollmair

¹¹ This project of the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) was carried out from 1998 to 2000 with support from INDISCO/ILO.

Chapter 4: International and National Laws, Policies and Programmes for Indigenous Peoples

Overview

Constitutional recognition

At the level of policy, the overarching issue of constitutional recognition of indigenous peoples remains unresolved in most countries in Asia, with the exception of the Philippines. States still do not accord official recognition to the term 'indigenous', and less so to 'peoples'. The reluctance stems from the refusal to accept notions of self-determination and recognition of collective rights, two issues that the struggles of indigenous peoples have come to articulate most forcefully. These remain the main points of contention between states and indigenous peoples. For them, these two issues subsume a host of others related to land rights, recognition of customary laws and practices, and control and ownership of natural resources. Different terminologies are used to refer to indigenous peoples in different countries such as tribal, ethnic minority, highlanders, adivasi, and so on. To different degrees, each of these terms implicitly recognises characteristics of indigeneity. However, it is important to note that some terms like 'tribal' are often rejected by indigenous peoples themselves, who argue that they carry negative connotations, attached to them during their colonial origins, of being 'primitive', 'backward', and 'barbaric'.

The overarching issue of constitutional recognition of indigenous peoples remains unresolved in most countries in Asia, with the exception of the Philippines.

However, even though states do not officially legitimise the term 'indigenous', there has been engagement with indigenous peoples' issues in different ways at the national level, as well as in international forums, relating directly to the rights of indigenous peoples. Activity within the UN system, such as the creation of the Permanent Forum on Indigenous Issues, has forced states to enter into this engagement. In addition, states are signatories to various international conventions and treaties, which directly or indirectly have a bearing on the rights of indigenous peoples. However, better mechanisms are needed to ensure the compliance of states with international treaties and conventions.

Laws and policies

At the national level, even though indigenous peoples are not constitutionally recognised, certain general articles, guaranteeing basic rights for all citizens and certain special provisions for 'backward' citizens, can be found. Unfortunately this term refers only to one dimension of indigenous peoples, their poverty, marginalisation, or 'backwardness' in relation to mainstream society, but not to their cultural distinctiveness. However, these general articles can be harnessed by indigenous peoples to seek part of their rights, even if in a limited way. In addition, four other factors have led to the enactment of laws and policies at the national level to safeguard certain rights of indigenous peoples:



N. Foerst

Several policy changes, which have direct or indirect implications for the rights of indigenous peoples, have taken place in Asia over the course of the Decade.

1. Changes in political regimes leading to the creation of new political spaces
2. A greater emphasis on equity and social inclusion in development
3. The urgency of resolving identity-related conflicts rooted in socioeconomic and political marginalisation
4. The long and persistent struggles of indigenous peoples which has given them a greater voice at both the national and international levels

Several policy changes, which have direct or indirect implications for the rights of indigenous peoples, have taken place in Asia over the course of the Decade. However, these cannot be directly attributed to the Decade. Most of the positive policy changes have resulted from the intense lobbying efforts of indigenous peoples over a much longer period than the Decade. The contribution of the Decade towards these policy changes was to give indigenous peoples and organisations greater confidence in struggling for their rights. Indigenous activists and leaders exposed to the norms of international law and justice through participation in programmes for the Decade at an international level have increasingly been able to express their rights at the national level in the requisite language and terminology.

Policy changes in favour of indigenous peoples have also often been a by-product of larger changes at the policy level, such as trends in the decentralisation of governance and peoples' participation in natural resources management. It must be noted, however, that for all the positive policy changes, there have been as many policies that are detrimental to the rights of indigenous peoples. Most of these are linked, particularly in the Asian context, to prerogatives of economic growth driven by economic liberalisation and globalisation favoured by states. Therefore, often good policies from the perspective of indigenous peoples tend to be overridden or their impact annulled by more negative ones, leading to contradictions and conflicts at the policy level. Nevertheless, indigenous peoples have tried to use existing laws to leverage positive changes to whatever extent possible.

Programmes and projects

Many programmes and projects for the empowerment of indigenous peoples and the enhancement of their livelihoods were implemented between 1995 and 2004 by non-government organisations, indigenous peoples' organisations, international development agencies, including the UN, and governments. These programmes and projects can be indirectly linked to the Decade to the extent that it has created a heightened awareness of indigenous peoples' issues. However, it cannot be claimed that these programmes and projects took place because of the declaration of the Decade. It is also important to note that, where specific programmes were implemented in relation to the Decade, it was largely at the behest of NGOs and/or with the support of international agencies.

International Conventions and Treaties

Most countries are signatories to different international instruments dealing with the rights of indigenous peoples. However, such conventions and instruments do not translate into legal rights and remedies unless they are enacted into national legislation. Nonetheless, they provide a reference point for governments to make laws for indigenous peoples. In the words of an indigenous activist, international conventions and treaties 'also make indigenous people aware and assertive of their rights'.

One of the broad objectives of the Decade was to "further development of international standards and national legislation for the protection and promotion of the human rights of indigenous peoples". However, mechanisms to ensure proper

reporting and compliance with international conventions and treaties within the UN system remain weak. The Declaration of the Decade did not contribute towards remedying this.

Compliance with international conventions and treaties by all the countries assessed is poor. The few mechanisms that do exist to ensure compliance are not properly carried out and awareness of them is extremely low among indigenous peoples. But the Decade did raise awareness among indigenous advocates and organisations who attended UN training programmes, conferences, and other activities organised for the Decade, and the mere existence of these conventions and treaties lends legitimacy to the efforts of indigenous peoples/organisations to obtain and enforce their rights.

ILO Convention 107 (1957)

ILO Convention 107 concerns the adoption of certain proposals for the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, bringing into close consideration the Declaration of Philadelphia. It considers the non-integration of these various populations into the national community due to their social, economic, or cultural situation and considers it advantageous for humanitarian and national reasons to integrate them and, therefore, improve their livelihoods. It considers the adoption of general international standards, not only positive integration and improved living and working conditions, but also the protection of the populations concerned. Of the countries assessed, only Bangladesh and India are signatories to this convention.

ILO Convention 169 (1989)

ILO Convention 169 concerns the adoption of certain proposals with regard to the partial revision of ILO Convention 107 relating to indigenous and tribal peoples in independent countries. It recalls the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the various international instruments on the prevention of discrimination. Developments in international law since 1957, developments in the situation of the concerned populations, and recognition of their own institutions, ways of life, and economic development are also considered. In addition, Convention 169 notes that indigenous and tribal peoples' fundamental human rights are not being exercised to the same extent as for the rest of the population and so calls on the distinguished contributions of indigenous and tribal peoples to cultural diversity and international co-operation. None of the countries assessed are signatories to this Convention.

ILO Convention 111 (1958)

This convention on employment and occupation is also relevant as it protects indigenous peoples' rights to practice traditional occupations, including shifting cultivation and nomadic herding. It has been ratified by many countries, including some of those covered in this assessment apart from Bhutan and Thailand.

The Decade raised awareness of the existence of international conventions and treaties that lend legitimacy to the efforts of indigenous peoples to obtain and enforce their rights.



M. Kollmair

Although most of the countries assessed are signatories to multiple conventions, compliance is poor.

International Convention on Elimination of all Forms of Racial Discrimination (1963)

The International Convention on Elimination of all Forms of Racial Discrimination (ICERD) calls on all state parties to condemn racial discrimination and pursue a policy of eliminating racial discrimination and promoting understanding among all races. In the social, economic, and cultural fields, adequate development and protection of certain racial groups or individuals, in the form of full and equal enjoyment of human rights and fundamental freedoms, must be guaranteed. In addition, state parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, to combat prejudices that lead to racial discrimination. Finally, the Committee on the Elimination of Racial Discrimination oversees the implementation of the Convention, as it is one of seven UN-linked human rights treaty bodies. All of the countries assessed are signatories to this Convention.

International Covenant on Economic, Social and Cultural Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty committing the 155 states that are party to it to work towards granting economic, social, and cultural rights to individuals. It builds upon the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights. It contains considerable international legal provisions, including rights relating to work, social protection, standards of living, physical and mental health, education, cultural freedom, scientific progress, and self-determination. Furthermore, compliance by state parties and the level of implementation of rights and duties under the Covenant are monitored by the Committee on Economic, Social, and Cultural Rights, which submits an annual report on its activities to the Economic and Social Council. All of the countries assessed, except for Bhutan, are signatories to this Covenant.

International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights (ICCPR) is an international treaty based on and created as a separate, binding covenant to the Universal Declaration of Human Rights. It was created to solve the disagreement between capitalist and communist nations over the aforementioned declaration, as capitalist nations favoured the first-generation 'civil and political rights' and the communist nations favoured the second-generation 'economic, social, and cultural rights'. Similar to the International Covenant on Economic, Social and Cultural Rights, which is the other half of the declaration, the Human Rights Committee monitors compliance through periodic reports submitted by the member states. The covenant contains two Optional Protocols, the first creates an individual complaints mechanism to be reviewed by the committee and the second abolishes the death penalty. All of the countries assessed, except for Bhutan, are signatories to this Covenant.

Convention on Biological Diversity – Article 8j (1992)

The Convention on Biological Diversity (CBD) is an international treaty with the objective to develop national strategies for the conservation and sustainable use of biological diversity. It is recognised for the first time in international law as a fundamental part of the development process and “a common concern of humankind”. The three main goals of the CBD are: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits arising from genetic resources. The Convention agreement covers all ecosystems, species, and genetic resources and reminds decision makers that

natural resources are not infinite and must be used in a sustainable manner. Finally, it acknowledges that significant investment is required to conserve biological diversity. However, it points out that conservation itself will bring considerable environmental, economic, and social benefits. Article 8(j) in particular is on “respecting, preserving and maintaining knowledge and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, [and] demands the equitable sharing of the benefits arising from the utilization of such knowledge and practices”. All of the countries assessed are signatories to this Convention, except for Cambodia which has acceded to it.

Table 2 shows which countries of those assessed have signed the above mentioned conventions and treaties.

	Bangladesh	Bhutan	Cambodia	China	India	Indonesia	Nepal	Philippines	Thailand	Vietnam
ILO 107	√				√					
ILO 169										
ILO 111	√		√	√	√	√	√	√		√
ICESCR	√		√	√	√	√	√	√	√	√
ICCPR	√		√	√	√	√	√	√	√	√
CBD	√	√	accession	√	√	√	√	√	√	√
ICERD	√	√	√	√	√	√	√	√	√	√

Constitutional Provisions

Bangladesh

There is no direct mention of ‘indigenous’ peoples in the Constitution of Bangladesh. They are indirectly referred to as ‘backward sections of citizens’ thus qualifying for affirmative action. In the plains lands of Bangladesh, special provisions include the recognition of the personal laws of indigenous peoples and the regulation of the transfer of land to non-indigenous groups. In the case of the CHT, provisions for partial autonomy in governance have been put in place since the signing of the Peace Accord in 1997. This includes the setting up of a Ministry of Chittagong Hill Tracts Affairs, a Chittagong Hill Tracts Regional Council, three Hill District Councils, and a Land Disputes Resolution Commission. However, the implementation of these provisions is far from satisfactory.

Cambodia

A new Constitution was adopted in 1993 in which there is no special provision for indigenous peoples. Two Articles of the Constitution have an indirect bearing on the rights of indigenous peoples. Article 31 recognises and respects internationally accepted human rights standards stating that:

“The Kingdom of Cambodia shall recognise and respect human rights as defined in the United Nations Charter, the Universal Declaration of Human Rights and all treaties and conventions concerning human rights, women’s rights, and children’s rights”.

Further, Article 32 of the Constitution, states that:

“Khmer citizens shall be equal before the law and shall enjoy the same rights, freedom and duties, regardless of their race, colour, sex, language, beliefs, religions, political tendencies, birth origin, social status, resources and any position.”

There is no direct mention of ‘indigenous’ peoples in the Constitutions of Bangladesh, Cambodia or China.

The Government of India does not recognise the term indigenous, but instead refers to indigenous peoples as ‘Scheduled Tribes’.

Although there is no official definition of ‘indigenous peoples’ in Cambodia, there are laws and policies that use different terms such as ‘indigenous communities’, ‘indigenous ethnic minorities’, ‘highland peoples’, etc., whose intent clearly refers to indigenous peoples. Further, in 2004 the Inter-Ministerial Committee (IMC) for Ethnic Minorities Development in the Kingdom of Cambodia revised the Highland Peoples Development Policy and Guidelines, recognising indigenous minorities as ‘indigenous people’, as opposed to ‘highlanders’ or ‘ethnic minorities’.

China

The Chinese Government does not recognise that China has indigenous people, in the sense used in international circles, at the constitutional level. According to them, even the Han majority would be considered indigenous. Therefore, the term ‘ethnic minorities’ is used instead. However, like in other countries, the government does take part in discussions on issues that have a bearing on indigenous people, such as traditional knowledge and biodiversity conservation. Minorities have equal constitutional rights as citizens of China and are ensured representation in the People’s Congress. Further, the system of minority area autonomy gives some legal rights and privileges to governments in areas where large minority populations reside and contains certain preferential policies in relation to minority officials. The State Ethnic Affairs Commission is represented in the State Council and is consulted on policies affecting minorities.

Although the Minority Area Autonomy Law often helps ethnic minorities to realise certain rights, its effectiveness is severely curtailed by the relative lack of political power and representation held by ethnic minorities. The real locus of power rests in the Communist Party system, which does not require leaders to be from local ethnic minorities. In addition, even though the People’s Congress system provides for representation of ethnic minorities at each level, in practice, at the county level and above, an increasing number of ethnic minority representatives in the Congresses are government-employed officials who are members of ethnic minorities. Therefore, the representation system does not necessarily provide ordinary ethnic minority villagers with a channel of representation that is independent of the government system.

India

The Government of India does not recognise the term indigenous. Instead it lists indigenous peoples as ‘Scheduled Tribes’ (STs) as per the notification under Article 342 of the Constitution of India. As per the notification of the then President of India in 1950, Scheduled Tribes are ‘scheduled’ in specific states and as such are recognised as Scheduled Tribes only in those states. The Constitution of India contains provisions for the protection of Scheduled Tribes from exploitation and for their development. These are contained in Articles 15, 15(4), 16(4), 19(5), 23, 29, 46, 164, 330, 338, 339(1), 371(A), 371(B), 371(C), and 371(G). These include elements that prohibit discrimination on grounds of region, race, caste, sex, or place of birth (Article 15). Clause 4 of this Article empowers the state to make special provisions for the advancement of socially and educationally backward classes of citizens, such as the reservation of seats in educational institutions, relaxation of the qualifications required for admission into such institutions, the provision of housing or accommodation to members of such classes, and concessional treatment for them in the matter of settlement of government lands. Article 16(4) provides for the reservation of posts and services to ensure equal opportunity in employment. Article 19(5) makes provision for ‘special restrictions’ by the state for the protection of the interests of members of Scheduled Tribes. According to Article 29, a cultural or linguistic minority has the right to conserve its language or culture. Through Article 46, the state promotes the educational and economic interests

of the weaker sections of society and seeks to protect them from social injustice. Clause 4 has been specially incorporated so that the special provisions for Scheduled Tribes cannot be legally challenged on grounds of being discriminatory. Finally, Article 371(A) and (G) allow Mizoram and Nagaland to come under customary law, however, the problem of community land not being recognised by the state law system remains prevalent in the rest of the Northeast.



M. Kollmair

India has designated 'Scheduled Areas', defined as areas with a large number of tribal people within a small area, which are underdeveloped, and where there is a marked disparity in the economic standards between tribal people and non-tribal people. These criteria are not spelt out in the Constitution, but have become well established in other ways. The Fifth and Sixth Schedule of the Indian Constitution make special provision for these areas. The Fifth Schedule lays down special provisions for Scheduled Areas, most significant of which are the prohibitions or restrictions on the transfer of tribal lands. The Fifth Schedule does not apply to areas in Northeast India, where the Sixth Schedule is applicable.¹² However, the Sixth Schedule applies only to two out of the 27 districts in Assam and the whole of Meghalaya.

Panchayat Extension to Scheduled Areas Act (PESA), 1996

The 73rd Amendment to the Constitution of India 1992 relates to the Panchayati Raj (local self-government), with 33% of seats reserved for women and a continuation of the reservation of seats under Article 342 for tribal and dalit people. However, the 73rd Amendment does not make any provision for these groups to participate in the process of planning and decision-making in local level governance bodies, the panchayats. The Panchayat Extension to Scheduled Areas Act (PESA) of 1996 extends the provisions of the 73rd Amendment to include 'tribals' in Fifth Schedule Areas, which covers the tribal areas of nine states in India (Andhra Pradesh, Bihar, Madhya Pradesh, Orissa, Maharashtra, Gujarat, Rajasthan, and Himachal Pradesh). Two of the seven northeastern states come under the Sixth Schedule Areas, and the adivasis have to live either with the regular panchayats (for example in Arunachal Pradesh) or have no protective mechanisms at all.

PESA gives radical powers of self-governance to tribal people and prevents the alienation of tribal land by requiring consultation with gram sabhas and panchayats at appropriate levels, before the acquisition of land in scheduled areas for development projects. PESA, thereby, recognises the traditional community rights of tribal people over their natural resources. Before the enactment of PESA, laws passed by the central and State governments were applied mechanically to tribal areas, without taking into account the specificity of traditional tribal practices and institutions.

However, the application of PESA over the past decade leaves much to be desired. In practice, adherence to the letter and spirit of the law has been weak and many state governments have even passed laws that are not in conformity with the central law. Examples of these include land acquisition acts, and mines and minerals acts. While all tribal people acknowledge that PESA is a far reaching law, awareness of it remains poor. Where awareness does exist, communities lack the wherewithal and confidence to press for its proper implementation, pointing to the need for work in the area of capacity building. Some adivasi organisations are trying to use the provisions of PESA to gain their rights.

¹² For details refer to section on land rights.

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Despite the fact that India has substantial constitutional provisions to safeguard the interests of indigenous peoples, their implementation has been unsatisfactory, evidenced by the pattern of budgetary allocations.

Budget Analysis Summary

Despite the fact that India has substantial constitutional provisions to safeguard the interests of indigenous peoples, their implementation has been unsatisfactory. Evidence of this can be seen in the situation of land rights of indigenous and tribal people, as already described earlier. It can also be found in the pattern of budgetary allocations.

A budget analysis undertaken for this assessment by Ritu Dewan in India shows the major trends in terms of allocations and expenditures on tribal people in the central plan and non-plan outlays of the central government. It also shows the allocations by various central ministries to the tribal sub-plans. However, it must be noted that there were difficulties in obtaining data and problems of data continuity, consistency, and comparability, which limit the reliability of the analysis.

The budget analysis found the following:

- **Central plan revenue outlays** – The share of the budget allocated to tribal people (8.2%) in Central Plan Revenue Outlays has declined consistently (from 1.7% in 2001/02 to 1.1% in 2005/06).
- **Ministry of Tribal Affairs budget** – The share of the Ministry of Tribal Affairs Budget, as compared to total allocations in the All India Annual Budgets averaged only 0.19% between 2000/01 and 2004/05. Under the revised estimates, the absolute figures showed a decline in both Rupee and percentage terms, from IRs. 2,170 million in 2001/02 to IRs. 1,860 million in 2003/04, or from 0.17% to 0.13%.
- **Total plan outlay and non-plan outlay** – As an overall picture, the total plan and non-plan outlay taken together for tribal people is only 0.35%
- **Tribal sub-plans** – All the central government ministries and departments have to make compulsory contributions to the tribal sub-plans (TSPs). The funds contributed by the seven sectors to the TSPs have declined significantly in recent times. The sectors showing a decline in contributions include agriculture, environment and forests, drinking water supply, women and child development, and social justice and empowerment, which are crucial to the livelihoods of tribal communities. For example, the Ministry of Rural Development showed a decline in contributions from IRs. 8,499 million to IRs. 2,168 million between 2004/05 and 2005/06, and the Ministry of Health and Family Welfare from IRs. 5,815 million to IRs. 2,301 million for the same period. Most striking perhaps is the decline in contributions by the Ministry of Environment and Forests. Up to 2001/02, 62.6% of its funds were allocated to the TSP. This has dropped to a mere 8% today – a dramatic decline in the forest and environment considering the fact that to this day it is the indigenous people who live relatively closest to and are most dependent on forest and other natural resources, and it is they who face the greatest threat from climate change and the brunt of environmental degradation.
- **Village grain banks** – Budget estimates for the much needed village grain banks were slashed from an average of approximately IRs. 310 million to just IRs. 15 million in 2003/04, and to only about IRs. 5 million in 2004/05. And, even this meagre amount was not spent.

On a positive front, in 2003/04 and 2004/05, the 'special central assistance to the tribal sub-plan' and the provisions under Article 275(1) were fully honoured (i.e., the entire budget estimate was granted as a revised estimate and almost all of the revised estimate was actually spent). As these two sources of funds were fully utilised in both years, total actual expenditure for all heads (i.e., tribal people)

taken together is a respectable average of 98.2 per cent for both years. However, it must be noted that looking at exclusive budget heads may not reveal the complete story, as in most of the tribal states/areas, money spent on general aspects covers tribal people as well.

Indonesia

The position of indigenous peoples changed significantly in Indonesia when the People's Consultative Assembly (MPR) amended the 1945 Constitution in November 2001. The amended Constitution sends mixed messages to indigenous peoples in Indonesia. On the one hand, it adopts many of the principles of the Universal Declaration of Human Rights, as manifested in Chapters Xa, XIII, and XIV. It requires the State to protect and materialise the basic rights of its citizens, including indigenous peoples. On the other hand, although the amendments accommodate the aspirations of indigenous peoples, the Constitution accords conditional recognition to the existence of indigenous peoples, underlined implicitly by the notion that indigenous people need to 'progress'.

Such a contradiction is particularly obvious in two articles:

Article 18B(2): "The State recognises and respects the units of masyarakat hukum adat as well as their traditional rights as long as they still exist and in accordance to societal development and the principles of the Unitary State of the Republic of Indonesia that are regulated in state laws."

Article 28I(3): "Cultural identity and rights of traditional communities are respected in accordance to the advancement of time and civilization."

Such conditionality may lead to another round of disenchantment for indigenous peoples in Indonesia because they will have to deal with complex bureaucratic measures, with being treated as 'others,' and also as potential separatist groups or rebels.

Nepal

Nepal is currently undergoing radical political transformation, away from a government led by the monarchy to a federal republic. Elections for the formation of a constituent assembly, which will script a new constitution for the country, are expected to be held in November 2007 [at present deferred]. Indigenous peoples are using this time of change to press for adequate political representation in the new system.

At present, the interim government follows the interim 'ad hoc' Constitution of Nepal (amended) and contains an 'all-inclusive' provision for everyone including women, marginalised peoples, and Janjatis (indigenous peoples). Until the Constituent Assembly is formed and a new constitution drafted, basically, everyone in Nepal within this inclusive provision is entitled to their rights. The interim government has also committed itself to creating a federal system. However, these provisions are only in policy and not practice. Rural and Janjati peoples are still very much marginalised and lack political representation. Nepal, like India and Bangladesh, provides for affirmative action, like the reservation of seats in education and government employment, through Article 25.3 of the 1990 Constitution under the directive principles and policies of the state. However, Janjatis have generally faced tremendous problems in actualising this provision.

The former Constitution of 1990 established that every citizen shall have the right to preserve and promote its language, script, and culture. Indigenous peoples (Janjatis) have been defined as peoples with attachments to territories, distinct

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Indigenous peoples are using the current political changes in Nepal to press for adequate political representation in the new system.

cultures, religions, and languages and no recorded history of their migration and settlement time. This excludes the followers of the Hindu caste system who migrated to Nepal in historic times. However, the definition of Janjatis in the old Constitution encompasses certain groups that are not necessarily indigenous to Nepal, but rather part of a late migratory pattern. These include, for example, the Sherpas and Dolpos, who are late migratory groups from the Tibetan region.

The topic of Janjatis is very contentious. People do not necessarily agree on who is, and who is not, indigenous to Nepal. So although the government has recognised the Janjatis of Nepal, thanks to the persistence of indigenous organisations such as NEFIN and activists, it is once again only in terms of policy and not practice. However, the Janjatis are looking to change this with the creation of a federal state by acquiring autonomy through geographical location. In other words, in every region the majority will receive the majority of the seats and the minority will receive the minority of the seats in government. In accordance with the population ratio of the area, there will not only be social inclusion but, more importantly, proportionate social inclusion.

The Struggles of the Janjatis - A Two-step Process

The current debate with the government is basically a two-step process for the Janjatis. In the first phase, they wish to create a constituent assembly through proportionate social inclusion, hoping to change the traditional structure more in favour of indigenous peoples. In the second phase, they hope to substantially influence the writing of the new Constitution of Nepal based on a federal state structure, similar to that of the United States of America and India. At present, Janjatis will only have a significant impact in the 204-member segment of the Constituent Assembly due to the increase in indigenous political parties. Another issue at the heart of the debate is the question of how many seats will be increased in the constituent assembly. A number of Madhesi and Janjati 'andolans' or riots in the southeast of Nepal have prompted action to increase representation via the number of seats. The interim Government is looking into this closely and will need to decide exactly how many seats will be present in the Constituent Assembly before the proposed elections.

(Sunil Rai)

The current government seems to fear that, with geographical autonomy, current members of the government will be ousted, not only from the government, but also from the nation. However, Janjatis contend that they are not looking to discriminate against non-indigenous persons, but rather trying to have their say in issues that involve their region. In the past, centralised bureaucrats decided issues that affected the livelihoods of people in regions that they had not even visited. With Nepal's ratification of ILO Convention 169, Janjatis hope that the right to self-determination and recognition of collective rights will be incorporated by the new Constituent Assembly into Nepal's new constitution.

A government initiative targeted at indigenous nationalities that has attained high visibility both among indigenous nationalities and at national level, is the establishment of the National Foundation for Development of Indigenous Nationalities (NFDIN). NFDIN was established in 2002 through the NFDIN Act 2001 to work for the upliftment of indigenous nationalities. Apart from NFDIN, the government's five-year plans have recently begun to include indigenous nationalities as one of the targeted beneficiaries of their policies and programmes. The Ninth Plan (1997-2002), under the chapter on social security, contained a section on indigenous nationalities; the first time they were specifically mentioned as a target group in the fifty-year history of Nepalese planned development efforts.

Philippines

Prior to the enactment of the landmark Indigenous Peoples' Rights Act (IPRA) in 1997, indigenous peoples in the Philippines were referred to as 'non-Christian tribes' by the American Colonial Government when it started to introduce religion in the country. Later, at different periods, they were referred to by the government as 'cultural minorities', 'national minorities', and then the more acceptable term 'cultural communities'. Today, under the IPRA, they are referred to as 'indigenous cultural communities/indigenous peoples' (ICCs/IPs).

The policies of the state on indigenous peoples are contained in the newly ratified 1987 Constitution. These policies are:

- **Section 22, Article II:** The recognition and protection of the rights of indigenous cultural communities within the framework of national unity and development.
- **Section 5, Article XII:** The protection of the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being, subject to the provision of the Constitution and national development policies and programmes.
- **Section 6, Article XIII:** The recognition of prior rights, homestead rights of small settlers, and the rights of indigenous cultural communities to their ancestral lands and to the disposition or utilisation of other natural resources.
- **Section 17, Article XIV:** The recognition, respect, and protection of the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions, which shall be considered in the formulation of national plans and policies.

Thailand

There is no specific reference to indigenous peoples in the Constitution of Thailand. However, Article 46 mentions that people who have settled down as a community shall have the right to conserve and revitalise the traditions, wisdoms, art, and culture of their locality or nation. They shall also have a part in managing, maintaining, and making use of the natural resources and environment in a balanced and sustainable way. However, virtually no concrete policies and laws exist to actualise the spirit of Article 46.

Unless citizenship certificates are granted to all indigenous peoples or highlanders in Thailand, the constitutional provisions will remain meaningless.

Vietnam

As in the case of China, indigenous peoples in Vietnam are referred to as ethnic minorities in the Constitution of 1992. Article 5 of the Constitution, states a policy of 'equality, solidarity and mutual assistance among all nationalities, and forbids all acts of national discrimination and division'. Every nationality has the right to use its own language and system of writing, to preserve its national identity, and to promote its own customs, habits, traditions, and culture. The state commits itself to 'a policy of comprehensive development and gradually raising the material and spiritual living conditions of the national minorities'. Among other measures, Article 39 gives priority to programmes for health care for highlanders and ethnic minorities. Article 94 makes provision for the election of a Nationalities Council to make proposals to the National Assembly on issues concerning the nationalities, to supervise and control the implementation of policies on nationalities, and to execute programmes and plans for the socioeconomic development of the highlands and regions inhabited by ethnic minorities.

Under the Indigenous Peoples' Rights Act (IPRA), indigenous peoples in the Philippines are referred to as 'indigenous cultural communities/indigenous peoples'

Summary of constitutional provisions

Table 3 summarises the constitutional provisions recognising indigenous peoples' rights in the countries assessed.

Table 3: Constitutional recognition of indigenous peoples' rights			
Country	Constitutional Recognition	Term Used to Refer to Indigenous Peoples	Constitutional Rights
Bangladesh	x	Tribals in official documents and indigenous hill-people in some legal documents	Scope for affirmative action for 'backward section of citizens'
Bhutan	x	Socio-cultural groups ¹³	Article 9 'Principles of State policy'
Cambodia	x	Khmer Leu (Upper or Highland Khmer) highland people/ethnic minorities. From 2004, indigenous peoples	Article 31 and Article 32 (1993 Constitution of Cambodia)
China	x	Ethnic minorities	Equal rights as other citizens and some specific rights
India	x	Tribes (scheduled tribes), adivasi	Article 342 (affirmative action), Vth and VIth Schedules, Article 371, PESA 1996
Indonesia	x	Masyarakat hukum adapt (community of customary law), traditional people/masyarakat adat	Articles 18B and 28I of the Constitution
Nepal	In process	Indigenous nationalities/janjatis	All inclusive provision
Philippines	√	Indigenous peoples (after 1993)	Section 22, Article II Section 5, Article XII Section 17, Article XIV
Thailand	x	Tribal people, chao khao (hill-tribe people)	Article 46
Vietnam	x	Ethnic minorities	Articles 5, 39, and 94 of the 1992 Constitution

There is no specific reference to indigenous peoples in the Constitutions of Thailand or Vietnam.

Policies of Multilateral and Bilateral Agencies

During the Decade, several UN agencies, and other multilateral and bilateral agencies either formulated or revised existing institutional policies for their work in relation to indigenous peoples. One of the main agendas of the Permanent Forum in the second Decade is to continue to engage with the policies of multilateral banks. Even though the first Decade saw the revision of many policies, they are still lacking on several grounds. Some of the policies adopted and revised by multilateral and bilateral agencies are discussed briefly below.

¹³ This term is not used officially by the Royal Government of Bhutan. It emerged as a consensus term in a workshop organised in Thimphu for the assessment in the context of the debate on whether there are any indigenous peoples in Bhutan. Most participants agreed that the only term appropriate to refer to different ethnic groups in Bhutan was in terms of their linguistic and socio-cultural distinctiveness.

World Bank

In 2005, the World Bank issued a Revised Operational Policy on Indigenous Peoples (OP/BP 4.1) and Revised Bank Procedures on Indigenous Peoples.

The Revised 2005 Policy requires the following (Rai 2006):

- That 'free, prior, and informed consultation' be undertaken
- Avoidance of adverse impacts – including mitigation and/or compensation and avoidance of physical relocation
- Provision of project benefits that are culturally compatible
- Action plan for recognition of rights to lands and territories traditionally owned, customarily used, or occupied
- Equitable benefit sharing of the commercial development of natural resources, including sub-surface resources

The policy makes a shift from the 1982 Policy of 'do no harm' and the 1992 Policy (OD 4.20), which required that in addition to 'do no harm', project benefits should be tailored in a socially and culturally appropriate way. Despite these advances, the Revised 2005 policy has been criticised for the fact that:

- It proposes 'free, prior and informed consultation' rather than 'consent', which has a direct link to the issue of the land rights of indigenous peoples
- It assigns many key oversight functions to the borrowing country leaving scope for states not to follow international human rights norms and laws
- It allows for the possibility of indigenous communities to be resettled by Bank projects

Asian Development Bank

In 1998, the Asian Development Bank (ADB) adopted a policy on indigenous peoples. A basic principle of the ADB is to examine all of the implications and effects of its operations. This has been established in the policy and practices specific to indigenous peoples. The key elements of the policy ensure (ADB 1998)

- that affected populations and persons are at least as well-off as before the intervention, or that adequate and appropriate compensation is paid;
- equality of opportunity for indigenous peoples;
- consistency with the needs and aspirations of affected indigenous peoples;
- compatibility with the culture, social, and economic institutions of indigenous peoples;
- that interventions are conceived, planned, and implemented with the informed participation of affected communities;
- equitable development efforts and impact;
- that negative effects are not imposed on indigenous peoples without appropriate and acceptable compensation;
- the development of internal capacities for addressing indigenous peoples matters; and
- consultation with indigenous peoples' groups.

However, the policy has been vague and contradictory and the following components have led to criticism of it:

- The ADB policy and practices regarding indigenous peoples, as applied, will not replace or supersede existing Bank policies and practices.
- The ADB policy and practices regarding indigenous peoples are considered within the context of national development policies and approaches.
- The ADB policy and practices regarding indigenous peoples are within the basis of the fundamental relationship between the Bank and governments.
- Specific institutional development and capacity building support to indigenous peoples will be consistent with the Bank's old policies.

During the Decade, several UN agencies, and other multilateral and bilateral agencies, either formulated or revised existing institutional policies for their work in relation to indigenous peoples.

In 2001, UNDP issued a policy called ‘UNDP and Indigenous Peoples: A Policy of Engagement’.

- The application of policy will be made within the context of country-level legal frameworks and other relevant circumstances.
- The responsibility for preparing an indigenous peoples’ plan (para 38) is in the hands of the relevant government or other project sponsor.

UNDP

In 2001, UNDP issued a policy called ‘UNDP and Indigenous Peoples: A Policy of Engagement’. The following are some of the key features of the policy:

- The objective of this policy note is to provide UNDP staff with a framework to guide their work with indigenous peoples.
- A fund of USD 2 million was allotted for the establishment of a Regional Initiative on Indigenous Peoples’ Rights and Development (RIPP) (Asia and the Pacific).
 - This programme commenced operations at the end of 2004 within the framework of UNDP’s Policy of Engagement.
 - The RIPP seeks to generate greater awareness of development challenges faced by indigenous peoples in the region and to strengthen the regional cooperation framework.

IFAD

Since its inception, IFAD has been heavily involved in the development of indigenous peoples due to its targeted approach to rural development. It has provided the equivalent of USD 1,134 million in loans (about 12.6% of its total loan portfolio) since 1977 in support of indigenous peoples (IFAD 2006). Many of these loans have been directed to countries in Latin America and Asia. The IFAD Office of Evaluation noted that it must maintain its important role in addressing rural poverty with a specific reference to indigenous peoples. An overview of the IFAD projects and programmes related to indigenous peoples in six of the ten countries assessed is provided in the Annex.

Other agencies

In 2001, UNESCO adopted the Universal Declaration on Cultural Diversity.

In 2004, DANIDA (Danish International Development Assistance) developed their ‘Strategy for Danish Support to Indigenous People’.

The Norwegian Agency for Development Cooperation (NORAD) has developed ‘Guidelines for Norway’s Efforts to Strengthen Support for Indigenous Peoples in Development Cooperation’.

The development of special policies for engagement with indigenous peoples by international development agencies marks an advance. However, many respondents interviewed as part of this assessment stated that these policies are often not adhered to. The protests of indigenous peoples in different parts of Asia to projects funded by the World Bank and Asian Development Bank in particular bear testimony to this. Often indigenous peoples’ perspectives are not taken into account at all. For example, in consultations organised by the Asian Development Bank for the formulation of their country strategy in Bangladesh in 2003, indigenous people contend that they were not properly involved. Another instance of non-compliance with their own policies can be found in Bangladesh in the controversial UNDP project Promotion of Development and Confidence Building in the Chittagong Hill Tracts. The project has created a controversy over whether it is consistent with the CHT Peace Accord of 1997 and UNDP’s own policy on indigenous people.

The Policy Scenario and Poverty Reduction Strategy Papers

Overview of the policy scenario

It is not possible to provide a detailed policy analysis of every sectoral policy from the perspective of indigenous peoples. Table 4 provides an overview of the major positive and negative policy pronouncements as identified in the individual country reports, particularly those made within the frame of the Decade. Some of these policies have already been discussed in Chapter 3 under ‘Land Rights and Access to Natural Resources’ and ‘Language and Education’.

A number of government organisations have been set up for indigenous peoples to implement these policies (Table 5).

Overview of Poverty Reduction Strategy Papers

The ‘poverty reduction strategy papers’ (PRSPs) approach was started by the International Monetary Fund (IMF) and the World Bank in 1999 in order to outline detailed country-based strategies for poverty reduction. The main goal of the PRSPs is to provide the vital connection between national public conduct, donor support and the development results required to meet the United Nations’ Millennium Development Goals (MDGs). The PRSPs explain the macroeconomic, structural, and social policies and programmes a country will need to follow over a number of years to encourage broad-based development and decrease poverty, along with external financing requirements and the related sources of funding. Despite the fact that indigenous peoples are disproportionately represented among the poor, their needs and priorities are generally not adequately reflected in strategies employed to combat poverty.

Bangladesh

In line with the Millennium Development Goals, the Government of Bangladesh has been involved in a process of drafting a national policy or PRSP. Initially, the draft included only a few insignificant sentences concerning ‘tribal’ people with insufficient information, bypassing all issues of vital interest to indigenous peoples. However, after intense lobbying, the government amended its earlier draft, and held formal consultations with indigenous peoples in Dhaka on 28 April 2005. Representatives of indigenous peoples offered various concrete suggestions on the strategy paper, including on terminology. The government agreed to some of these demands, including accepting the term ‘indigenous’ along with its vernacular variants. With all-round support, this effort may provide a good precedent for the involvement of indigenous peoples in the policy-drafting processes. However, although a situational analysis of indigenous peoples and the term ‘adivasi’ have been included in the PRSP; there are no policy options or concrete action plans in the policy matrices of the document. As a result, no separate allocations were made for indigenous peoples in the last two national budgets, a major concern expressed by people interviewed for this assessment.



N. Foerster

Despite the fact that indigenous peoples are disproportionately represented among the poor, their needs and priorities are generally not adequately reflected in strategies employed to combat poverty.

Table 4: Positive and negative policies on indigenous peoples

Country	Positive Policies	Negative Policies
Bangladesh	<ul style="list-style-type: none"> • CHT Peace Accord 1997 • CHT Regional Councils Act 1998 • Land Dispute Resolutions Act 2001 • Hill District Councils Act 2001 	<ul style="list-style-type: none"> • National Forest Policy 1994 • Social Forestry Rules 2001
Bhutan	<ul style="list-style-type: none"> • All citizens are considered equal; special programmes for disadvantaged groups 	
Cambodia	<ul style="list-style-type: none"> • Draft National Policy for Indigenous Peoples Development 2004 • Land Law 2001 (allows indigenous peoples to gain collective title to land) • Forest Law 2002 and Sub-decree on Community Forestry 1997 	
China	<ul style="list-style-type: none"> • Minority Autonomy Law (Revised) 2001 	<ul style="list-style-type: none"> • Sloped Farmland Conversion Programme 2000 • Natural Forest Protection Programme (ban on commercial logging) 1999
India	<ul style="list-style-type: none"> • Scheduled Tribes (Recognition of Forest Rights Act) 2006 • Panchayat Extension to Scheduled Areas Act (PESA) 1996 	<ul style="list-style-type: none"> • Supreme Court Ban on Logging 1996 • Draft Tribal Policy • Mineral Policy and Regulations 1993 and National Mineral Policy 1993 • National Resettlement and Rehabilitation Policy 2003 and 2006 Draft
Indonesia	<ul style="list-style-type: none"> • Spatial Planning Law, 1992 (provision for peoples' participation); could be used positively by indigenous peoples to defend their land rights, although mechanisms for ensuring community inputs into spatial planning are weak. • Policy on Local Content (space for teaching indigenous cultures at schools), Education Law No. 20/2003 • Government Regulation No. 5/1999 – Guidelines on the Settlements of Customary Land Rights • Government Regulation No. 41/1999 – Forest Revised Law (but limited by conditions and administrative and penal barriers) 	<ul style="list-style-type: none"> • Government Regulation No. 27/1999 – on Environmental Impact Assessment (EIA), no specific protection for indigenous peoples • Government Regulation No. 2/1997 – on Land Registration, privileges private property over communal property • Government Regulation No. 18/2004 on plantations
Nepal	<ul style="list-style-type: none"> • National Foundation for the Development of Indigenous Nationalities Act 2002 • Reservation for Indigenous Nationalities in Education and Civil Services (2004) • Inclusion of indigenous peoples in five-year plans (as per 1990 Constitution) • Education for All National Plan (2001) 	<ul style="list-style-type: none"> • Forest Act 1992
Philippines	<ul style="list-style-type: none"> • Indigenous Peoples Rights Act (IPRA), 1997 	<ul style="list-style-type: none"> • Mining Act 1995
Thailand	<ul style="list-style-type: none"> • Law on National Human Rights Commission, 1999 • National Education Act 1999 	<ul style="list-style-type: none"> • Master Plan for Community and Environment Development and Narcotic Suppression in Rural Areas (2006 – Third phase) • Laws on natural resource conservation
Vietnam	<ul style="list-style-type: none"> • Overall thrust is on poverty alleviation, seen in the various decrees and programmes of the government. 	

Country	Relevant Nodal Government Agency/Body
Bangladesh	CHT Affairs Ministry; CHT Development Board; CHT Regional Council
Bhutan	Cultural Trust Fund
Cambodia	Inter-Ministerial Committee for Ethnic Minority Development; Department of Ethnic Minority Development (Ministry of Rural Development)
China	State Ethnic Affairs Commission
Indonesia	Directorate of Indigenous Peoples (Ministry of Social Affairs)
India	Ministry of Tribal Affairs
Nepal	National Foundation for the Development of Indigenous Nationalities (NFDIN)
Philippines	National Commission on Indigenous Peoples (NCIP) (created by IPRA)
Thailand	Tribal Welfare Division of the Thai Department of Public Welfare
Vietnam	Nationalities Council (Vietnam National Assembly); Nationalities Advisory Board; State Committee for Ethnic Minorities

Cambodia

In Cambodia, the PRSP recognises that indigenous peoples are marginalised due to inappropriate representation in the government and parliament. Lack of command of Khmer seems to also prevent members of indigenous communities from communicating with government officials. In the past, ethnic minorities were not included in the development and decision-making processes, and so the policy of the PRSP is to level the ethnic disparities to reduce poverty. The Khmer majority and the decision makers are said to have limited understanding of ethnic minority issues and, therefore, research on the development requirements of indigenous peoples is needed to improve and finalise the draft policy.

The PRSP also understands that remoteness and dispersion of indigenous settlement make development complex and less cost effective. This is one reason why the government and donors might inadvertently address issues of other social groups rather than indigenous groups. However, decentralisation promotes participatory democracy and development at the local level, opening up space for the social inclusion of indigenous peoples. It also envisages poverty-targeted programmes to enhance indigenous peoples' access to education. According to the PRSP, indicators specific to indigenous peoples should be included and monitored in local development planning. Thus, the Ministry of Rural Development has been appointed to work with indigenous peoples, national institutions, international agencies, and donors to improve livelihood conditions and overall well-being. Finally, although the PRSP states an obvious concern with unequal access to institutions and services for ethnic minorities, it does not consider the discriminatory and exclusionary nature of the services that are moulded to fit the needs of the Khmer language speaking majority.

Nepal

The high incidence of poverty in Nepal has pronounced regional, gender, ethnic, and caste dimensions. According to Nepal's PRSP, language specificity is a factor affecting the degree and patterns of material deprivation. And this also becomes a factor when the PRSP uses 'culturally-neutral' language to delineate the poverty reduction strategy for the indigenous peoples and dalits of Nepal. Poverty can be easily traced to the social, economic, and political exclusion of certain groups,

After intense lobbying and formal consultations with indigenous peoples, the Government of Bangladesh amended the draft poverty reduction strategy paper to include the term 'indigenous' along with its vernacular variants.

Vietnam's PRSP, the Comprehensive Poverty Reduction and Growth Strategy (CPRGS), recognises that ethnic minorities, especially ethnic women, suffer higher poverty than the rest of society.

coupled with the historical processes of social segmentation and geographical remoteness. Not only are indigenous peoples and dalits at the bottom of the social hierarchy, but inequalities also exist among indigenous peoples in terms of access to education and participation in the civil service, public office, and political leadership, as recognised by the PRSP.

The PRSP highlights sustained economic growth as a key to success along with the improvement of employment and income levels, promotion of social inclusion, delivery of fundamental services, and improvement in access to quality primary education for traditionally marginalised groups. The latter also includes the expansion of teacher training programmes where schooling occurs in the mother tongue of target communities. Furthermore, it emphasises that positive measures for members of indigenous nationalities must be implemented, not only in education and public service employment, but also in health and politics.

Of the four pillars of Nepal's PRSP (broad based economic growth, service delivery, social inclusion, and governance), the third pillar seems to be the weakest in terms of dedicated programmes and its correlation with the other pillars. The PRSP highlights the need for a poverty monitoring system, separate from regular programme monitoring, which would assess poverty trends and also aid the facilitation of social inclusion. However, although the formulation of the PRSP took place at both regional and national levels in consultation with indigenous organisations, there are still no indigenous-specific indicators in the poverty monitoring system and, more importantly, many indigenous inputs were not included in the final PRSP document.

Vietnam

Vietnam's PRSP, the Comprehensive Poverty Reduction and Growth Strategy (CPRGS), recognises that ethnic minorities, especially ethnic women, suffer higher poverty than the rest of society. 'Backward' beliefs, customs, and practices are said to be the main cause of the marginalisation. However, the CPRGS argues that geographic and cultural isolation, environmental degradation, ineffective protection of rights, and poor political representation are in fact the chief reasons for their poverty.



M. Eriksson

The CPRGS attends to ethnic minority issues, from poverty diagnostics to policy prescriptions and, through an explicit development goal called 'reducing ethnic inequality', combines ethnic mainstreaming with targeted interventions. Furthermore, the CPRGS also provides for the development of a system of indicators per region, province, and for rural and urban areas, disaggregated by sex, social quintile, and ethnicity, which evaluate the cost-effectiveness and impact of the programmes. The main parts of the poverty reduction strategy include: enhanced access to primary and secondary education in both national and vernacular languages; the stabilisation and settlement of ethnic minority communities into commune clusters and townships with adequate infrastructure systems and services; the transformation of subsistence indigenous economies into market-oriented economies through technology transfer and agricultural extension services; and the issuing of individual and collective land use rights certificates. With reference to the last component of the strategy, the new Land Law has been

established for land allocation practices that accommodate communal land use patterns. However, with reference to the first component of the strategy, although steps have been taken to promote literacy at the lowest grades, there are still only a very small number of schools teaching in minority languages.

The CPRGS also envisages the provision of regular health services; the training and employment of ethnic minority cadres at the local level; cultural development and the preservation of historical sites and traditional festivals; and the creation of data banks and community cultural centres. However, there are some worrying interventions that aim to change traditional lifestyles and production systems, such as shifting agriculture, and to resettle and cluster indigenous communities into more accessible areas. Previous interventions to alleviate poverty among the Khin and Hao dominant groups are also being used with ethnic minority groups. This might not work due to the diversity of their socioeconomic and cultural circumstances. The Joint Staff Advisory has warned that by 2010 the disparity between majority and minority groups may widen with minority groups representing 40% of the poor. The Joint Staff Advisory believes that better targeted, more effective redistribution mechanisms and the involvement of ethnic minority peoples in government processes are a must.

In conclusion, the following are needed: forms of indigenous representation; culturally-sensitive mechanisms and modalities of consultation; and the inclusion of the perspective of indigenous peoples in poverty alleviation strategies. These must be carried out in a different manner to that of the broad-based consultations of the CPRGS, which did not seem to involve members of indigenous organisations or even local NGOs.

Programmes and Projects

Overview

Where state sponsored programmes specifically related to the Decade were proclaimed, implementation was piecemeal and not sustained. For example, in the Philippines, the Department of Foreign Affairs was in charge of implementing the Programme of Activities for the Decade. However, its efforts were not sustained throughout the Decade and were limited only to an official proclamation in 1995 of the National Decade for Filipino Indigenous People (1995-2005). This proclamation was not disseminated widely and the majority did not know about it, including people within the government. Similarly, in Nepal, after the Declaration of 1993 as the International Year of Indigenous People, the Government of Nepal (at the time the Royal Government), formed an International Year of the World's Indigenous People 1993 National Committee. The government appointed committee did not organise a single programme during the year. After the proclamation of the Decade, another committee was set up, but like its predecessor died a natural death, without accomplishing anything.

Among the UN agencies, IFAD and ILO have been at the forefront of implementing programmes for indigenous peoples' welfare and rights. On the whole, however, there have been virtually no activities of the UN system specifically in relation to the Decade. In fact, in its final report reviewing activities within the United Nations system under the programme for the Decade, the United Nations High Commissioner for Human Rights suggested that, '...the Office should expand its activities at the country level in cooperation with United Nations country teams with a view to assisting governments with the implementation of programmes aimed at protecting the rights of indigenous peoples' (OHCHR 2005). Whether or not linked to the Decade, non-UN international development agencies have supported more projects for indigenous peoples than UN agencies.

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B. Leduc

A frequent response of indigenous peoples to the support provided by international development agencies is that there is not sufficient direct consultation with indigenous peoples and participation in project planning.

Most of the major UN bodies are present in all of the countries assessed. However, there is a lack of coordination among them. Cambodia is one of the few examples where coordination can be seen among UN bodies, even if it is not specifically over issues relating to indigenous peoples. Many multilateral and bilateral agencies have provided funds, but this is mostly for the development of big infrastructure or for conventional development programmes, which do not necessarily take into account the particular needs and cultures of indigenous communities.

Some international agencies now require ‘indigenous peoples’ development plans’. However, in China for example, the assessment found that no multilateral agency working in southwest China has a locally tailored plan (i.e., an indigenous peoples’ plan) for how it will engage with ethnic minorities in the region. According to one World Bank official interviewed as part of this assessment, the World Bank may have been in the process of developing such a plan in the 1990s, but in 1999-2000 international criticism of its involvement in resettlement of Tibetans in Qinghai made it impossible for the Bank to continue to develop an indigenous peoples’ strategy for China. In recent years, several agencies (e.g., the ADB and the UK Department for International Development) have requested minority development plans to be devised to complement projects that are designed for implementation in ethnic minority areas. Most such plans fail to take the culture of ethnic minorities into account in any significant way. Most such plans are based on analyses of production problems and recommend solutions from the off-the-shelf package of solutions that are standard to all projects within that domain. For example, indigenous peoples’ development plans for agriculture-related projects commonly note that grain crop yields are low, and therefore recommend that high-yielding hybrid varieties are extended and technical training given to farmers (Centre for Biodiversity and Indigenous Knowledge 2006). They are thus disregarding the fact that grain crops form only a small part of most traditional indigenous farming systems, and that high-yielding hybrid varieties are often not appropriate unless the entire farming system changes.

A frequent response of indigenous peoples to the support provided by international development agencies is that there is not sufficient direct consultation with indigenous peoples and participation in project planning. Indigenous peoples to a large extent continue to be treated as passive recipients. Respondents from Thailand also contend that the projects implemented by UN agencies were mainly projects built on cooperation with the government. Very few agencies cooperated with, or gave direct support to, indigenous peoples’ organisations. Further, indigenous people have also said that the work carried out by UN agencies is governed by complex regulations and bureaucratic procedures, with most of the communication carried out in languages difficult for indigenous people to access.

Example: the CHARM project in the Philippines

The Cordillera Highland Agricultural Resource Management Programme (CHARM) in the Philippines was jointly funded by ADB and IFAD and ended in 2005. The objective of the project was poverty reduction. The strategy was to increase the income of farmers engaged in temperate vegetable farming through the improvement of infrastructural support for agriculture and the empowerment of indigenous people to develop their own village natural resource management plans.

The main positive impacts of the project were the development of basic infrastructure in the beneficiary communities, which led to roads that provided easy access between farms and markets; proper irrigation that provided sufficient water for all the temperate vegetables; and locally-based training for local farmers to enhance their knowledge of temperate vegetables.

Based on the perceptions of villagers, other positive impacts of CHARM projects and activities included the following:

- Greater productive subsistence, increased food security, and enhanced bodily and social well-being were developed.
- CHARM provided a safety net against the full impact of the economic crisis brought about by the increased legal and illegal importation of temperate vegetables.
- The Barangay Natural Resource Management Plan (BNRMP) contributed to the empowerment of villagers by providing them with training and knowledge to communally plan for their village.
- The project fostered a stronger sense of community and collective responsibility among the indigenous people.

However, these positive impacts were negated by the government's implementation of the World Trade Organization's General Agreement on Tariffs and Trade (GATT-WTO), which allowed for access to imported temperate vegetables as of the provisions of the Agreement on Agriculture (AoA) which the Philippines became a party to in 1994. Due to the increased importation of vegetables, there was an abrupt decline in prices of the local vegetables. As a result, the positive impacts of CHARM were never really experienced. Although the impact of the vegetable importation was negative in terms of achieving the goal of CHARM, it became much more of a factor in terms of the actual living conditions of the local farmers. The beneficiaries were in fact serving as safety nets against the impact of vegetable importation or, in the bigger picture, globalisation and liberalisation. CHARM is yet another example of government programmes and policies contradicting each other causing positive impacts to be cancelled by negative impacts.

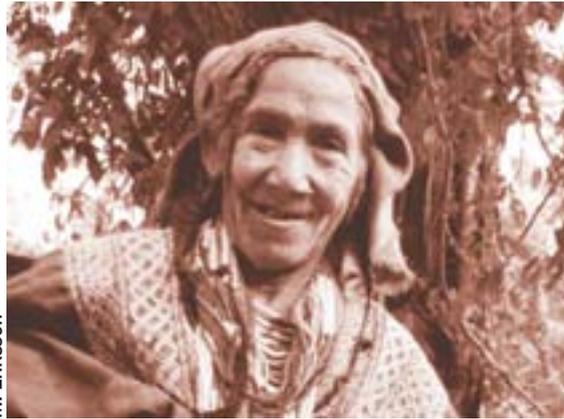
Government supported research and cultural centres for indigenous peoples in Bangladesh India, and Thailand

In Bangladesh, the setting up of cultural centres in plains districts is one of the few government projects in recent years directly aimed at indigenous peoples. Three such centres have been set up, one in the Netrokona district, another in the Moulvibazar district, and the third in the Cox's Bazar district. However, the major posts in these centres are still held by non-indigenous people who have little or no knowledge and experience of indigenous culture. It has been reported that the indigenous people of northwestern Bangladesh have rejected the government's offer to establish such a centre there, as the government officials insisted on it being called a 'tribal' cultural institute, whereas the indigenous people wished to call it an adivasi cultural institute.

**The positive impacts
of the CHARM project
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As an indirect result of the Decade there was more collaborative ethnic development work between indigenous organisations and networks and educational institutions

M. Eriksson



Similarly, in India the government has set up 'tribal research institutes'. The Draft Tribal National Policy 2003 proposed that the existing tribal research institutes located in different states should be further strengthened to carry out research and evaluation studies and work towards the preservation of India's rich tribal cultural heritage. It also envisaged the establishment of a national-level research

institution. However, the Draft Tribal National Policy 2003 was unanimously rejected at the Final Declaration of the National Assembly of Tribal, Indigenous, and Adivasi Peoples, in New Delhi in September 2004.¹⁴ Among the criticisms of the policy was the proposal to strengthen these tribal research institutes, based on the argument that "if the tribal research institutes had not been doing much so far, what was the rationale for multiplying new research institutions at the national level?"

Tribal research institutes are a low priority for the government and so receive very limited funding. However, in some tribal areas such as the northeast, the financial support is better. Regardless of whether these institutes are supported by the government or are private, they are still managed by intellectual, non-tribal persons and this brings about the problem of perception. Some of these non-tribal people lack knowledge of the subtleties and sensitivities of the local tribal issues. Although they are cogent and adhere to a completely different awareness, they are unable to really bring forth ideas and issues that are empathetic rather than sympathetic to that specific tribal region. Studies in these institutes tend to focus on the mainstream topics and concerns present at international, or even national, level completely overlooking the grassroots level.

In Thailand, the Tribal Research Institute, Chiang Mai University, Mahidol University, and the Chiang Rai Rajabhat carried out an analysis of the information from research and development projects in the area of ethnic studies. They found that the projects were mainly conducted by social, linguistic, and cultural research institutions that aimed to study these issues as related to indigenous peoples and to develop curricula in the area of ethnic studies. In the past, indigenous peoples received little direct benefit from this kind of work. However, at the end of the first International Decade of the World's Indigenous People, there was more collaborative ethnic development work between indigenous organisations and networks and educational institutions, as an indirect result of the Decade.

¹⁴ This position was based on a series of local, zonal, state, and regional consultations involving hundreds of tribal, indigenous, and adivasi representatives along with their allies and supporters.

Chapter 5: Findings and Recommendations

Findings

This assessment focused on documenting and analysing the impacts, successes, and failures of the first UN Decade of Indigenous Peoples, 1995-2004, in ten countries in Asia. However, its results present a broader picture of the status of indigenous peoples in each of these countries. The process of undertaking research for the assessment revealed that most changes at the policy level, in civil society at large, and at the international level cannot be attributed directly to the Decade. This problem of attribution limits the presentation of quantifiable and tangible impacts of the Decade. However, this does not mean that the Decade did not have an important indirect impact. Much of the findings of this assessment should thus be located within the Decade as providing a broad framework for analysis.

The first International Decade of the World's Indigenous People was preceded by the International Year of Indigenous People, declared by the UN in 1993. This in many ways set the stage for the Decade by creating widespread awareness of the need to focus specific attention on indigenous peoples' issues. Often interviews conducted as part of the assessment found that the people being interviewed did not make a clear-cut distinction between the Year of Indigenous People and the Decade. Often the success of the Year became associated with the success of the Decade. The announcement of the Decade was recognition of the fact that indigenous people around the world share similar problems and historical injustices and, therefore, need to act together at the international level. The Decade in some ways marked the engagement of the UN system with indigenous people, which had begun in the late 1970s. This recognition of indigenous peoples, it can be argued, in many ways and in many places created a more conscious 'indigenous identity'. This is an important impact of the Decade that cannot be underestimated.

One of the most successful aspects of the Decade was unanimously stated to be the increased solidarity among indigenous people around the world, and the strength that different groups derive from this solidarity. Many indigenous activists stated that they have gained greater confidence to assert the rights of their community at the national level. The Decade saw the formation of several new indigenous peoples' organisations and networks, which can be seen as an indicator of this confidence and solidarity.

The most tangible outcome of the Decade at the international level was the creation of the Permanent Forum on Indigenous Issues. While dissatisfaction remained over the use of the word 'issues' rather than 'peoples', the Forum has been widely hailed as the first formal space within the United Nations system for indigenous peoples to come together and make recommendations via the Economic and Social Council. This contention over terminology grows out of a larger debate on the use of the term 'peoples' plural versus 'people' singular. The recognition of indigenous 'peoples' subsumes some of the most critical issues such as self-determination and collective rights for indigenous peoples' continued struggle and advocacy.

A major expectation of the Decade was the actual adoption of the Draft Declaration on the Rights of Indigenous Peoples by the UN. The fact that only two of the forty-

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five articles in the Declaration were agreed upon, with continued contention over others, particularly those relating to issues of self-determination and the recognition of collective rights, has been unanimously stated to be one of the failures of the Decade. The call to announce a second Decade of Indigenous Peoples was heavily underlined by the need to continue negotiations for the adoption of the Draft Declaration. Nevertheless, indigenous activists have contended that the Draft Declaration has played an important role in norm setting, particularly in the realm of international human rights discourse, and has furthered the development of international standards regarding the

human rights of indigenous peoples [the Declaration was adopted in September 2007, see earlier footnote, ed].

The Decade has increased the moral pressure on states to address the grievances and demands of indigenous people and has contributed to the development of a certain level of literacy in the language of international indigenous rights activists.

States today can no longer afford to completely disengage themselves from indigenous peoples' issues. No government in theory denies that universal human rights apply equally to indigenous and non-indigenous people. Thus, the announcement of the Decade could also be seen as increasing the moral pressure on states to address the grievances and demands of indigenous people. The fact that an important distinction has emerged between indigenous peoples' rights and minority rights, structured around the debate at the level of international human rights discourse on group-rights versus individual rights, is a reflection of this changed moral and normative landscape. Indigenous people today criticise governments and measure government practices against these international norms and, in particular, against the Universal Declaration of Human Rights. The Decade, it could be argued, has contributed to the development of a certain level of literacy in the language of international indigenous rights activists. This positive impact of the Decade in creating indigenous activism at the policy level, however, has a negative side, which is the lack of dissemination of this information to the average indigenous person.

One of the most striking findings of the assessment was the extremely low level of awareness of the Decade among common indigenous people. Much of the awareness of the Decade was confined to indigenous activists who had the opportunity to participate in meetings at the international level. While the role they played in furthering critical negotiations that have the potential to bring about far-reaching and paradigmatic changes in the rights of indigenous peoples is, undoubtedly, laudable, it does not absolve them of the responsibility for carrying this message back to the indigenous person at the grassroots. The assessment also found that, within the enhanced solidarity among indigenous people, divisions and fragmentations could be found at the regional, national, and local levels between and among indigenous communities and networks. New hierarchies are clearly in evidence among indigenous peoples, structured and created by the inclusion and exclusion of participation within international forums and processes. The myth of pristine, united, simple, and non-hierarchical indigenous communities needs to be reviewed.

During the Decade there was some, although not substantial, change in the official recognition of indigenous peoples by Asian states. None of the governments of the countries assessed, with the exception of the Philippines, Nepal, and Cambodia, officially recognise indigenous peoples. Instead they refer to them by various other terms like tribes, ethnic minorities, and highlanders. The refusal to recognise indigenous peoples, despite normative acceptance of human rights standards, stems from the refusal to negotiate their demand for self-determination and recognition of collective rights. These two concepts pose a challenge at a

fundamental level to the very sovereignty of the nation state, the very being of which is premised on clearly bounded territoriality. However, to different degrees, states are being forced to engage with indigenous peoples at the level of policies and programmes. This change cannot, however, be attributed to the Decade in any direct way. It is the outcome of the many long struggles of indigenous peoples; changes in political regimes that have created new bargaining positions and political spaces; the large number of conflicts around the world rooted in issues of identity and ethnicity, which are not co-terminus with indigeneity but connected to it; and also a focus in 'developmentalist' discourse on social inclusion and a rights-based approach. The most that can be said in this regard is that the Decade lent legitimacy to the position of indigenous peoples.

Although most states do not officially recognise indigenous people in their national constitutions, an increase can be discerned in their engagement with indigenous people. Progressive legislation and policy changes have taken place during the course of the Decade, even if not directly attributed to it. There has been a move towards constitutional recognition by Cambodia, Nepal, and the Philippines. Other countries like India, Bangladesh, China, and Vietnam, within their own referential frameworks, have put in place policies and provisions to safeguard the rights of the tribal people and ethnic minorities. In some sporadic cases, a direct usage of the term indigenous can also be seen. This is indicative of the fact that recognition of indigenous identity is slowly creeping into the subconscious of the state and definitely the consciousness of civil society at large. More tangible evidence of this recognition can be seen in the fact that most states are signatories to major international conventions and treaties pertaining to the rights of indigenous people, with the exception of ILO 169, which again brings up the issues of self-determination and recognition of collective ownership rights to land. Nevertheless, compliance with these treaties and conventions is poor and there are no mechanisms at the level of the UN to ensure this.

In their official semantics, most states have shifted from a policy of 'assimilation' of indigenous people into the dominant culture to that of 'integration', which in principle accords respect to the culture and practices of indigenous people and the need for these to thrive and develop in accordance with indigenous peoples' own priorities, aspirations, and internal dynamics. However, this has not translated into practice. On the contrary, the validation of indigenous culture has taken place in an 'enclave' manner, leading to its commoditisation rather than genuine integration. Although there have been some positive policies and a greater opening up of space for the use of indigenous languages in education and the media, as seen in the promotion of bilingual education and radio in indigenous languages, these are made problematic by the fact that politics and economics are driven by the language and culture of the dominant/mainstream society. Indigenous people are caught in the double-bind of trying to ensure their cultural survival, while having to 'learn' the language of the dominant society, both literally and metaphorically, in order to gain an equal footing. This also brings up the question of the



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aspirations of indigenous people themselves, particularly in countries like Vietnam and China, which are pursuing vigorous poverty eradication programmes for ethnic minorities; programmes which, however, follow conventional developmental paradigms not taking into account the specific needs, values, knowledge, and practices of indigenous people. It is difficult to present an outright criticism of these programmes for they also bring with them infrastructure and other amenities, which satisfy the aspirations of indigenous people, even though they may be detrimental to their culture in the long run. This challenge of finding the right balance between the 'development' and 'empowerment' of indigenous people, such that they are no longer the poorest of the poor and socially and politically marginalised (which is premised conceptually on indigenous people entering the mainstream and steering their own course of development and change) is articulated in their demands for self-determination and the recognition of collective rights.

The assessment found that there needs to be greater clarity on the notion of self-determination and forums to facilitate constructive dialogue on this between states and indigenous people so that it is no longer perceived as a threat to the sovereignty of states. This argument draws upon the finding in the assessment that, for many indigenous people, self-determination does not mean a separation from the nation state. Instead, it is a call for a greater voice and control over decisions governing their lives, lands, and ancestral territories, i.e., the right to developmental decision-making.

In the course of the Decade, there has been a general policy shift towards greater decentralisation in decision-making by states, reflected in policies of participatory natural resources management and political decentralisation. These policies have definitely opened avenues for indigenous peoples to exert a greater voice. However, in all cases the effectiveness of these policies from the perspective of indigenous peoples is limited by several factors: the exercise of the principle of the eminent domain of the state; the promulgation of policies that are conditional; contradictory policies wherein economic policies take priority over social policies; poor implementation due to lack of political will and entrenched bureaucratic inertia arising in part due to prevailing pejorative attitudes towards indigenous people; and the continued militarisation and terrain of conflict between states and indigenous people. This situation is exacerbated by a lack of awareness and capacity among indigenous people to seize upon the opportunities presented by some of the more positive policies. Nevertheless, countless examples can be found of small efforts by indigenous peoples to use policies to their advantage within all the limits that exist.

The fundamental issues that concerned indigenous people during the Decade were not unique to the Decade, they still exist today. While indigenous people have attained numerous small and big victories as an outcome of their sustained struggles, some of these issues have assumed ever more threatening proportions in their implications for the rights of indigenous people due to a supra political economy, globalisation, increasing privatisation, and neo-liberal economic policies. The most urgent issue demanding attention is that of rights to land and natural resources. The lands of indigenous peoples, as in colonial times, continue to be taken over by states either under the imperatives of conservation or for dams, plantations, mining leases, and other extractive industries in the name of 'national interest and development'. The politically supported and economically motivated settlement of lowland people in the areas inhabited by indigenous peoples continues. There is increasing evidence of conflict due to this, resulting in increased militarisation and human rights violations both at the individual and the collective levels. Another fast emerging problem relating to the land rights of indigenous people is elite capture of land. This often occurs even in areas where

The most urgent issue demanding attention is that of rights to land and natural resources.

collective ownership is recognised and legal and policy provisions prohibiting the alienation of indigenous peoples lands to outsiders exist. Powerful and elite indigenous persons are disenfranchising their own communities of their lands through privatisation or alliances with external private interests. This points to the need for more vigorous capacity building of the more marginalised individuals and groups to make them aware of their rights.



D. Sherpa

The role of international agencies, the UN, and others in supporting the rights of indigenous people needs to be scrutinised far more critically. There is no doubt that certain international agencies have played a crucial positive role in pushing for policy change by governments in support of indigenous people, and have also provided critical funding towards poverty alleviation programmes seeking to bring basic amenities to indigenous people living in remote areas. However, indigenous peoples need to demand greater accountability not just from states, but also from international agencies. The work of many international agencies is a double-edged sword. While on the one hand these agencies contribute to poverty alleviation, they tend to promote standardised conventional packages, with little flexibility to take into account the specific and differentiated needs of indigenous communities. For instance, support is provided with high yielding varieties and mineral fertilisers that are often not applicable within the indigenous farming systems. The same agencies that support the capacity building of indigenous peoples within the domain of their work on social inclusion, provide grants in aid or development assistance loans for the building of dams and other infrastructure, which leads to the displacement of indigenous peoples from their lands and ancestral territories. The same agencies that call for participatory natural resource management also push, in another realm of their work, for sectoral reforms underlined by a neo-liberal agenda, which are in most cases not conducive to the rights of indigenous peoples. The assessment found that, while in letter an important achievement of the Decade was the development of policies by several agencies guiding their work relating to indigenous peoples, these policies were seldom implemented in the original spirit. The point here is that sectoral fragmentation leading to contradictory policies and practices plagues the work of international agencies as much as it does the work of states. International agencies should require stricter adherence to their policies for engaging with indigenous peoples and need to extend this to development policy lending.

The Decade also witnessed important changes in the attention given to indigenous peoples' issues in civil society at large. Even though negative attitudes and stereotypes about indigenous peoples continue to be widespread, there is much positive evidence of non-indigenous liberal individuals and organisations supporting the cause of indigenous peoples. This is reflected in the increased media coverage of their struggles and issues. The role played by the judiciary has been more mixed. Instances of the judiciary upholding the rights of indigenous people can be found alongside instances of passing judgements that violate long fought for rights. Given this, the role of social movements, and the advocacy of indigenous peoples' organisations and networks outside the judicial sphere continue to remain extremely important. Most of the programmes and projects implemented during the Decade, even though with little specific reference to it, were at the behest of non-government organisations with the support of international agencies. However, as at the international level, the number and scale of programmes was limited by the paucity of funding that came forth.

The Decade also witnessed important changes in the attention given to indigenous peoples' issues in civil society at large.

Recommendations

One of the objectives of this assessment was to come up with a set of concrete strategies and recommendations, some of which could be taken up for action in the second Decade. Many of the issues that emerged as requiring critical attention predate the Decade and some, in fact, having been exacerbated. Accordingly, the common recommendations that emerged from the country reports are not entirely new. However, this assessment of the Decade revalidates and reasserts a set of issues that are already the focus of advocacy by indigenous groups; a validation that is supported by in-depth research in the ten Asian countries.

In November 2006, participants and researchers from all ten countries assessed jointly developed a set of recommendations.

In November 2006, a culmination conference for the assessment was held in Kathmandu, Nepal. Participants and researchers from all ten countries deliberated upon a set of recommendations that they would like to present unanimously. These recommendations are listed below. The recommendations have been grouped pragmatically into thematic areas requiring attention, recommendations for the UN and other international agencies, and recommendations for states. However, the individual recommendations cut across this categorisation. Overall, it was noted that it would be very important to identify mechanisms to operationalise all the recommendations made.

Recommendations for thematic areas

Health

- Provide more support for culturally appropriate and functioning health-care centres and local healers and (improved) traditional healing systems in indigenous peoples' areas
- Provide more education on preventive and curative health care

Education

- Promote multi-lingual and intercultural education to preserve indigenous peoples' languages and cultures, and facilitate indigenous peoples' access to education

Capacity building

- Strengthen and legally protect indigenous organisations, consistent with international human rights standards
- Establish and support indigenous peoples' own media
- Provide research facilities to answer indigenous peoples' questions, address their concerns, and improve their traditional farming, natural resource management, and health systems
- Prepare registers of biodiversity and related indigenous knowledge, and work out a benefit sharing system for intellectual property rights collectively with indigenous peoples

Recommendations for the UN and international agencies

- Provide financial and technical support for indigenous peoples and indigenous peoples' organisations to develop, implement, and monitor programmes and projects
- Build the capacity of indigenous peoples and indigenous peoples' organisations to use and monitor national and international instruments to promote and protect indigenous peoples' rights (i.e., human rights violations, discrimination)
- Establish new mechanisms and support existing ones to actively promote awareness raising, capacity building, and the translation of relevant documents into local languages for indigenous peoples and indigenous peoples' organisations

- Promote culturally-sensitive poverty alleviation and/or development programmes
- Set-up activities on sharing and learning for non-indigenous persons, governments, civil society, and media on indigenous issues in order to increase awareness and recognition of cultural diversity (particularly about indigenous peoples)
- Build networks among indigenous peoples (mountain, coastal, and so on) which also reach to the grassroots, and strengthen existing ones
- Ensure stronger emphasis on the self-determination of indigenous peoples

Recommendations for states

- Collect disaggregated data to develop and define indicators of poverty and development for indigenous peoples
- Develop a contextual definition of the term ‘indigenous peoples’ at national levels
- Stop development-induced displacement and rehabilitation
- Stop the militarisation of indigenous peoples and their areas
- Ensure the equitable political representation of indigenous peoples
- Increase budget allocations for indigenous peoples’ interests and find ways to monitor these
- Recognise traditional and ancestral land rights
- Prevent the commodification of cultures in the name of tourism
- Pursue activities from a gender perspective

Objectives of the Second International Decade of the World’s Indigenous Peoples

The box below sets out the five main objectives of the Second International Decade of the World’s Indigenous People.

The Five Main Objectives of the Second International Decade of the World’s Indigenous People

1. Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes, and projects
2. Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights, or any other aspect of their lives, considering the principle of free, prior and informed consent
3. Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples
4. Adopting targeted policies, programmes, projects, and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth
5. Developing strong monitoring mechanisms and enhance accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy, and operational frameworks for the protection of indigenous peoples and the improvement of their lives

(United Nations Permanent Forum on Indigenous Issues 2004)

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Annex: IFAD Programmes and Projects Related to Indigenous Peoples

Overview

Since its inception, IFAD has been heavily involved in the development of indigenous peoples due to its targeted approach to rural development. In support of indigenous peoples, it has provided the equivalent of USD 1,134 million in loans (about 12.6% of its total loan portfolio) since 1977 (IFAD 2006). Many of these loans have been directed to countries in Latin America and Asia. IFAD funded projects have addressed an assortment of issues of great importance to indigenous peoples like indigenous knowledge systems and modern technology; indigenous institutions and judicial systems; access to ancestral lands and territories; the capacity-building of indigenous women; sustainable natural resources management; bilingual education and inter-cultural awareness; indigenous identity and self esteem; and culturally based micro-enterprise development.

An example of IFAD's support for indigenous knowledge systems can be seen in its project with Subanen communities in the Western Mindanao region of the Philippines. In this project, traditional ecological knowledge was documented and disseminated in local-based school curricula and the safeguarding of intellectual property rights was supported. IFAD's support for sustainable natural resources management can also be witnessed in the Jharkhand-Chhattisgarh Tribal Development Programme in India, where implementation of the provisions of the Panchayat Extension to the Scheduled Areas (PESA) Act of 1996 is being assisted. Village assemblies or gram sabhas have been set up and the ownership and management of all natural resources, along with execution of financial and food-aid programme resources, have been delegated to committees of women, men, and poorer household members.

IFAD's strategy in Asia and the Pacific with its specific focus on indigenous peoples was evaluated by the IFAD Office of Evaluation, which concluded that the strategic focus was very appropriate and relevant. The Office also noted that, due to IFAD's many accomplishments in Asia and the Pacific, it must maintain its important role in addressing rural poverty with a specific reference to indigenous peoples. Moreover, a separate evaluation carried out by the Andhra Pradesh Tribal Development Project in India underlined the fact that there was a direct correlation between the IFAD funded project and the decline of insurgency activities in the project vicinity.

However, that said, according to the Assessment report for North-eastern India written by Walter Fernandes, indigenous action was limited to the leaders who attended UN meetings. IFAD was unable to reach indigenous peoples in rural areas who wanted the support of IFAD to develop their own indigenous identities based on the revival of the local economy, natural resources, and their communities.

The following provides an overview of the IFAD projects and programmes related to indigenous peoples in six of the ten countries assessed including the project/programme name, location, status-quo, and IFAD's objectives (as of March 2007).

China

There are three ongoing IFAD projects/programmes in China related to indigenous peoples: the South Gansu Poverty-Reduction Programme, the Environment Conservation and Poverty Reduction Programme in Ningxia and Shanxi, and the Wulin Mountains Minority Areas Development Project. These projects/programmes have been selected due to the high level of poverty in the areas that they cover. For example, 80% of the twelve counties in the Ningxia and Shanxi programme are poor and 10% are extremely poor. Harsh living conditions due to extreme climates, regular droughts, lack of water, seasonal food deficits, low-yielding arable land, and inadequate access to potable water have made life ever more challenging. Inadequate healthcare and education, along with insufficient funds to improve technology, have also hampered progress.

IFAD aims to increase food security, income, and production on and off the farm. It also wants to achieve improved access to financial services, education, health, potable water, and social networks such as grass-roots organisations, along with support for rural infrastructure, protection of common resources, promotion of community participation, and micro-enterprises, support of literacy and training programmes, reduction of chronic poverty, and, finally, formation of small village groups to spread information and mobilise communities.

India

In India, IFAD has four ongoing projects/programmes related to indigenous people (Livelihoods Improvement Project in the Himalayas, Orissa Tribal Empowerment and Livelihoods Programme, Jharkhand-Chhattisgarh Tribal Development Programme, and North Eastern Region Community Resource Management Project for Upland Areas), four other projects/programmes which have ended (Livelihood Security Project for Earthquake-Affected Rural Households in Gujarat, Andhra Pradesh Participatory Tribal Development Project, Andhra Pradesh Tribal Development Project, and Orissa Tribal Development Project), and one programme that is not yet implemented (Tejaswini Rural Women's Empowerment Programme). These projects/programmes have been chosen to address the issues of vulnerable groups, disadvantaged women, marginal households, landless people, poor hill cultivators and farmers, earthquake affected people, and marginalised tribal peoples. The standard of living of some of these groups is further aggravated by the rugged highlands, remote and underdeveloped districts, and deprived regions, overlaid by environmental degradation.

A plethora of development driven initiatives have been undertaken by IFAD as part of these projects/programmes including women's development through support for women's self-help groups and apex organisations. Targeting for such programmes needs to be flexible and responsive to local conditions and should attempt to strengthen women's participation in governance.

Indonesia

The Rural Empowerment for Agricultural Development Programme in Central Sulawesi is the only IFAD project/programme in Indonesia related to indigenous peoples, but is not yet being implemented. The programme has been selected to attend to the widespread poverty in the highlands and coastal regions of the Central Sulawesi Province, the fifth poorest province in Indonesia. The struggle for natural resources has marginalised indigenous groups and caused irreparable environmental damage.

IFAD hopes to provide livelihoods for the most disadvantaged communities by raising incomes, introducing sustainable agricultural technologies and practices, and providing a revolving fund through which poor farmers can carry out a series of activities to generate income and produce assets. The programme also hopes to help communities plan their own activities and manage their own development, improve agricultural production, develop rural enterprises and access to markets, and build infrastructure such as irrigation facilities, water supplies, and roads.

Nepal

IFAD has two on-going projects/programmes in Nepal (Leasehold Forestry and Livestock Programme and Western Uplands Poverty Alleviation Project) and one closed project (Hills Leasehold Forestry and Forage Development Project) related to indigenous peoples. These three projects/programmes were chosen due to the large percentage of poor people in the areas that they cover who suffer from widespread poverty and environmental degradation. There are groups of poor families in 22 districts in the mid hills area of Nepal. The project areas are characterised by harsh terrain and climate, isolation, poor infrastructure, and degraded forestland. In addition, these areas were also affected by the insurgency. The projects/programmes started in the least affected insurgency areas before moving on to areas that were more insurgency-affected. In the areas worst affected by the insurgency, people were unable to secure enough food year round and struggled to grow enough crops to feed themselves.

In the now closed project, IFAD managed to restore degraded environments by leasing small sections of forestland to poor families as leasehold forestry groups on a renewable 40-year lease basis. Under these leases, the families managed the land for their own use and were able to regenerate the forestland and ensure greater food security, improved nutrition, and increased biodiversity.

In the two ongoing projects, IFAD aims to reduce poverty using a similar strategy of allocating leasehold forestry plots to poor families to allow them to increase incomes using forest products and livestock and improve household forage and tree crop production. The approaches used include improvement and strengthening of livelihoods through access to micro-finance, improved access to services and resources, promotion of different livelihood options (livestock, forestry, crops), creation of village finance associations, and the empowerment of women and marginalised groups.

Philippines

In the Philippines, IFAD has one closed project (Cordillera Highland Agricultural Resource Management Project) and two ongoing projects (Northern Mindanao Community Initiatives and Resource Management Project and Western Mindanao Community Initiatives Project). These projects have been implemented to address the high incidence of poverty among vulnerable fisher families, landless workers, upland people, labourers, women, and former combatants belonging either to indigenous groups or Muslim communities. These groups experience high rates of illiteracy, underemployment and unemployment, limited assets, landlessness, dependence on tenant farming or agricultural work, and introverted modes of living. Moreover, the location of these upland villages in remote, rugged, and largely mountainous regions without basic services and limited access to important natural resources such as forests and pastures make it increasingly challenging for the rural poor. The poverty rate of these groups is significantly higher than the national average in these areas, which also lack social infrastructure, government support services, and access to credit, especially for women who suffer low levels of social and economic development.

In the Cordillera Highland Project, IFAD helped increase production, created employment opportunities, reduced income and development gaps, addressed environmental concerns, made better use of existing staff resources, and strengthened local government units. Poverty reduction was carried out by increasing the disposable incomes of smallholder families through sustainable resource management, protection of the environment, mitigation of the adverse effects of development, strengthening of existing institutions, improving access to formal and informal credit, and involving poor people in planning and implementation.

In the two ongoing projects, poor communities are being enabled to plan, implement, monitor, and evaluate activities chosen by them in order to achieve increased subsistence production, cash crops, and fisheries so as to become self-reliant. In order to improve livelihoods, IFAD is working to improve the management of land and water resources, in fisheries development, off-farm activities, and small enterprise development. Former combatants and indigenous peoples are being given special attention through the consolidation of land ownership, the decentralisation of authority from the national level to the local level, building knowledge bases, bolstering the capacities of NGOs and peoples' organisations, supporting advocacy campaigns, legal assistance, orientation programmes, and the establishment of ancestral domains and their mapping to facilitate sustainable development and formulate protection plans.

Vietnam

There are a total of three IFAD projects/programmes related to indigenous peoples in Vietnam, two ongoing (Decentralized Programme for Rural Poverty Reduction in Ha Giang and Quang Binh Provinces and Rural Income Diversification Project in Tuyen Quang Province) and one closed (Ha Giang Development Project for Ethnic Minorities). These projects/programmes were chosen to tackle poverty in the poorest communities, for example, poor people in 900 villages in the project in Tuyen Quang Province. These areas are not only poor but are also distant and remote. They have a unique geography and climate, and unique upland vulnerability issues. In the closed project, the area involved also had to deal with annual food shortages lasting three to seven months.

With these projects/programmes, IFAD aims to improve productivity, income levels, and the food security of ethnic minorities, vulnerable communities, and women by providing training in agriculture and animal husbandry, marketing, and food storage and processing. IFAD also works to improve infrastructure, health services, and credit, along with strengthening village-level institutions such as user groups and village development boards. Enhancing a community's ability to manage commune-level institutions, promoting the government's ongoing decentralisation process, establishing management and service delivery structures, and developing environmentally sustainable and culturally viable models are also ways by which livelihoods can be improved in the project areas.

