

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.

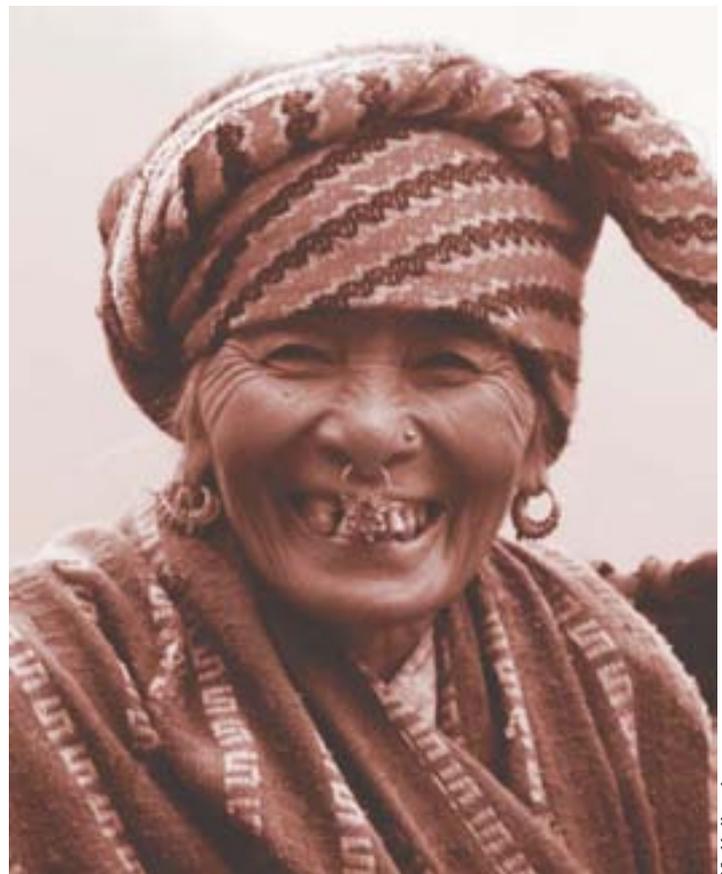
ILO Convention 169 (1989)

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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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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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. 	

Table 5: Government organisations for indigenous peoples	
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.

Whether or not linked to the Decade, non-UN international development agencies have supported more projects for indigenous peoples than UN agencies.



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.

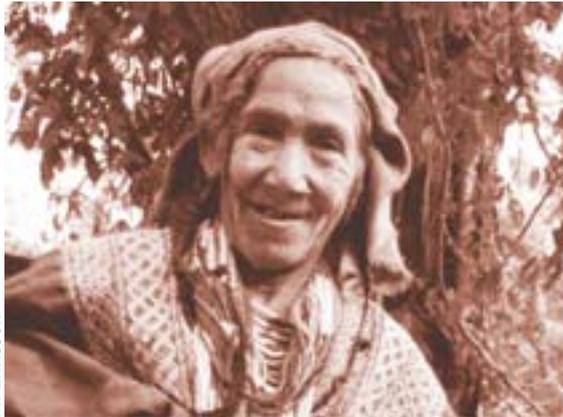
Government supported research and cultural centres for indigenous peoples in Bangladesh, India, and Thailand

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
were negated by
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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.