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

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

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.

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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.

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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, 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.

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

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)